

Setting up and running a

PUBLIC INQUIRY

GUIDANCE FOR CHAIRS
& COMMISSIONING BODIES



CENTRE for EFFECTIVE
DISPUTE RESOLUTION



Throughout the course of this project CEDR worked with a group of experienced professionals, each of whom have either led Inquiries of one type or another, been party to their design and implementation, or have had a key role in their execution.

CEDR would like to take this opportunity to thank them for all their input and assistance in the production of this report, while emphasising that this report does not necessarily represent fully their personal or organisational views on the Inquiry process or appropriate options for change.

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PREFACE

THE RT. HON LORD WOOLF OF BARNES

Inquiries, how they are conducted and by whom they are led, are a frequent topic of news stories these days. Inquiries play a very important role in our constitutional arrangements. The independence and thoroughness of their work both contributes to public trust in those institutions which are subject to review by Inquiries and means that the public places a great deal of trust in the Inquiries themselves. Those who are responsible for conducting Inquiries and in particular their Chairs bear a heavy responsibility to ensure that the way they are conducted meets the high expectations of the public.

There has recently been a review of the Inquiries Act 2005, which is the principal legislation dealing with Inquiries carried out by a Select Committee of The House of Lords, of which I was delighted to be a member. The Committee's report contained a wide range of recommendations. The response of the Government was very disappointing; many of the recommendations were rejected; some were accepted but even then, if legislation was required this would not occur before the 2015 Election and there is no hope of early implementation by the next government. In these circumstances it is fortunate that CEDR (Centre for Effective Dispute Resolution) have decided to publish their Guidance for Chairs and Commissioning Bodies of Public Inquiries. Those who have conducted Inquiries know how great the need for guidance is.

CEDR has rightly achieved a high reputation in the field of mediation and in particular, mediation in conjunction with civil litigation. Ever since I became fully aware of CEDR whilst working on my report on *'Access to Justice'* (1996) they have been the leading promoter of mediation in the UK. They now promote mediation on a global basis and have received plaudits for their contribution. The fact they have extended their attention to inquiries is to be warmly welcomed. This publication will provide Chairs with the practical assistance that they need throughout the process. I am also confident that it will not only be the Chairs of Inquiries who obtain assistance but all who are involved in the process will receive assistance as well.

Its format is clear and sensible. I suspect the checklist will be of particular assistance. It deals with the stages 'Before the Inquiry', 'During the Inquiry' and 'After the Inquiry'. This will be especially helpful, as will the general text which deals with issues such as 'Independence, Objectivity and Fairness: the challenge of impartiality', 'Difficult Topics' and 'The Public Interest'. Here what is needed may appear obvious but this is not the case in practice and economic and clear guidance will be of value.

It is fortunate that CEDR has created a unit to undertake its charitable Foundation activities, to conduct this type of initiative as a service to the public and CEDR is to be congratulated on a job well done.

And today more than ever, knowing about society involves first of all choosing what approach the inquiry will take and that necessarily means choosing how society can answer.

JEAN-FRANCOIS LYOTARD, PHILOSOPHER, 1924-1998

FOREWORD

SIR ROBERT FRANCIS QC

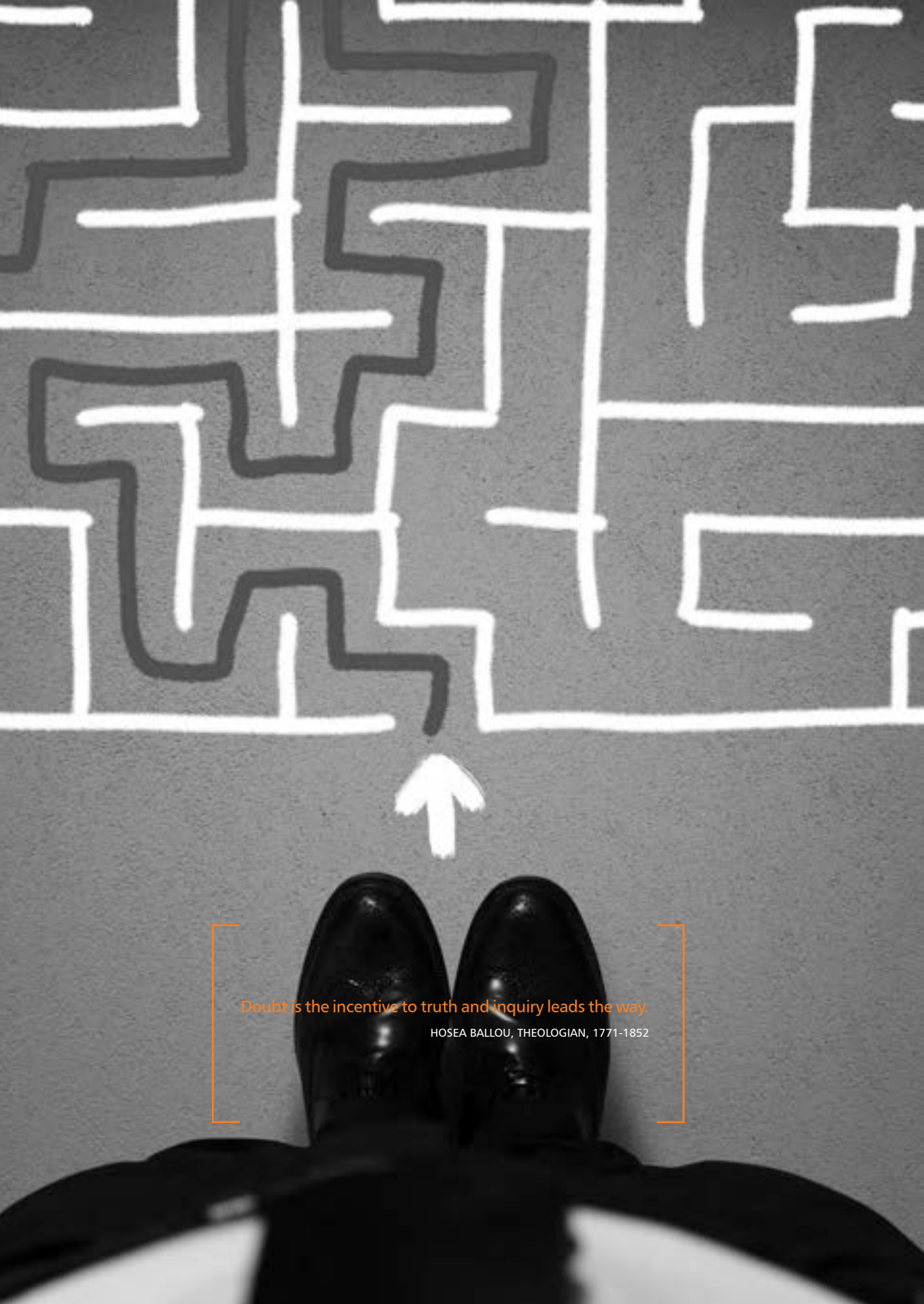
Public Inquiries are generally commissioned to look into matters of great public importance, requiring a rigorously independent, but fair and efficient approach to the issues involved. Almost never will it be a simple matter to organise and deliver the processes required. It is therefore astonishing that something like this guidance has not been generally available before now.

Those of us who have had the privilege and challenge of chairing a Public Inquiry will all have faced a moment shortly after accepting the role of wondering how to set it up and run it. Neither I nor any others with whom I have discussed this were offered any guidance or ready-made solutions to the myriad of issues that have to be resolved in order to do the job. The same applies to valiant Inquiry Secretaries and Counsel. We have all found ourselves re-inventing the wheel in finding a way to do our jobs.

Clearly each inquiry is likely to have its own separate characteristics, depending on the subject-matter and the expectations which have led to it. Nonetheless there is no reason why a common and systematic approach cannot be offered which will often not only make the life of those responsible so much easier, but will enable them to get on with the task in hand more effectively and quickly.

CEDR has performed a valuable service in bringing together a distinguished group of people with practical experience in this field and identifying the problems faced by those setting up inquiries and those responsible for running them and options for solving them. This guidance does not pretend that the same solutions are appropriate for every inquiry, but offers invaluable insight into many of the features commonly experienced. Starting with frequently ignored issues around the appointment of an inquiry panel and formulation of the terms of reference, through to the monitoring of the implementation of recommendations, this guidance is likely to encourage lateral thinking and help produce a process which is better tailored to the task in hand.

As the authors make clear this should be regarded as a 'living' document which can be developed in the light of experience. I commend it not only to those appointed to run or work in public inquiries, but dare I suggest it, to the Ministers and their advisers when considering whether or how to commission a Public Inquiry.



Doubt is the incentive to truth and inquiry leads the way.

HOSEA BALLOU, THEOLOGIAN, 1771-1852

Dr KARL MACKIE CBE, CHIEF EXECUTIVE OF CEDR &
FREDERICK WAY, CEDR FOUNDATION RESEARCH MANAGER

INTRODUCTION

We start this guide from a simple perspective - inquiry is important. It can be challenging, upsetting, difficult, unforgiving and at times potentially even dangerous, but it is critical that we as free human beings living in a democratic society are able to inquire as to why situations have arisen; how they have occurred; what the consequences were of the action; who was involved; what can be learnt from them and how the situation can be altered and improved for the next time it occurs.

CEDR's work on public inquiries - *The CEDR Inquiry on Inquiries* - was first triggered by a sense that there was scope for innovation in a process that had much overlap with many of the areas of conflict within which we operate. It is a process that is often triggered by a serious controversy about an incident, frequently accompanied by early allegations of blame and of defences to blame, that can trigger quickly opposing camps on historical events, or on future paths to reform. It also has much linkage with the legal system, the call for a public inquiry often being accompanied by an assumption that a judge and judicial process may be able to unravel difficult issues and possibly even resistance to the exposure of truth. And at the heart of the process is not only investigation but usually investigation by oral examination, followed by reflection and judgement typical of court forensic findings.

Two other aspects resonate with our work as legal and commercial conflict experts. Around and within the process of public inquiry, social dialogue is a key ingredient if not directly within the process, certainly in terms of the triggers to make the process happen and in terms of the process which ought to occur to ensure that the inquiry's conclusions can assist all those who have suffered or could suffer from the type of incidents which led to the call for inquiry. Second, the process is a hybrid between the assumptions of law - that truth can be uncovered and justice delivered; and of politics - that social debate and audit will help society improve its workings.

Not least of the reasons for our interest is that it is clear that the inquiry process is becoming something of a fundamental tool for social investigation in contemporary society. Its use and calls for its adoption are becoming more frequent in a society which grows more complex and whose failings are more transparent and objectionable. Yet surprisingly it is a process that has received little analysis in terms of its design. Our research indicates that all too often inquiries have to 'start from scratch' - there is no established mechanism by which judges, government or civil service, or any other body, capture the learning from previous inquiries.

Nor, in our view, has much thought been given to testing more innovative approaches to achieving the core purposes of inquiries - investigation; fact-gathering and truth-finding; recognition for 'victims'; healing of wounds caused by social incidents; and engagement with practical methods of implementation of recommendations.

We have also found in our research into Public Inquiries, many examples of Inquiries which have been seen to have failed to achieve what they were intended to do. There are examples of Inquiries not being held when there are particular interest groups/relatives of victims who want such an Inquiry (for example the initial lack of an adequate inquiry into the Hillsborough Disaster which led ultimately to the need for the Hillsborough Independent Group Panel over 20 years later); or a formal process has called for a Public Inquiry to occur only for nothing to happen (for example, the initial refusal to hold a Public Inquiry into the death of Alexander Litvinenko despite the request for one from the coroner at the inquest into his death).

Further there are inquiries which have been accused of failing to treat victims appropriately during the hearing; been overly adversarial as opposed to inquisitorial in their tone; been unable to establish workable recommendations; and even to have failed to hear critical evidence. Additionally, despite being called 'Public' Inquiries, inquiries are frequently seen as failing to involve the Public.

Inquiries are frequently criticised for having overly limited or obfuscated terms of reference; and when they do conclude there are many examples of Inquiries being criticised for having no effective impact. It can be observed that frequently recommendations are either too easily rejected (The Leveson Inquiry) or are never actually implemented.

Finally, there is still even in the aftermath of the Inquiries Act 2005, criticism of Public Inquiries as taking too long and costing too much. And there are claims linked to this viewpoint that there are simply too many inquiries. In January 2014, complaints were made about the fact that there were more than 30 separate investigations in operation in regard to the child abuse offences of Jimmy Savile. As well as the trauma and practical inconvenience witnesses face in dealing with these multiple inquiries (potentially having to face the harrowing experience of providing 30 separate accounts of the occasion on which they were abused) there is also the difficulty that the Inquiries may find conflicting conclusions rendering the process inconsistent and unjust and thus discreditable. This is not to mention the time and public cost involved which can ultimately add to the voices questioning the very efficacy of the Inquiry model as a mechanism for delivering truth, justice and social or organisational reform.

Much of our early reflection on these issues was further reinforced by the work we undertook to explore the issues further, including carrying out a survey of 2000 members of the public to gauge their attitudes towards public inquiries, convening a task force of eminent individuals in this field to explore methods for changes and our holding of a major Symposium on our recommendations at the Royal Society in 2013. Further information about the research we carried out can be found at Appendix One.

Overall our major points for reform of the Public Inquiry process arising from the review process we undertook can be summarised as:

- 1 Emphasising the importance of clarity of the goals and nature of the Public Inquiry process for participants, chairs and the wider public;
- 2 Providing a stronger focus on victims and participants' well-being and understanding, and dedication towards ensuring that key voices, including those of the public at large, are appropriately heard;
- 3 Encouraging the use of alternative process techniques to simplify and speed up the process of the Public Inquiry as well as better meet the goals of the process;
- 4 Ensuring that the recommendations that are produced by the Inquiry are valid and workable and more likely to be implemented;
- 5 Enabling the Inquiry to capture information about technique and best practice so that lessons can be learnt and passed on for future Inquiries.

Against this background, we wished to offer a collaborative and helpful contribution to the better workings of inquiries rather than just another opinion piece. This led to the 'toolkit' idea that is set out in this document. It is not designed to answer the basic mechanics of the inquiry process, for example on issues such as budget management, so much as to identify areas which can prove difficult and are not captured in much of the public or judicial commentary on the process. We wanted to create a 'travelling draft' as lawyers describe it, of a core framework for considering design of the difficult areas of inquiry processes. By testing some of these ideas, and encouraging others to engage with and refine our suggestions over time, we hope we can gradually make a major impact on the effectiveness of inquiries. At the very least, we wish to make the process less of a 'random walk' for future chairs of inquiries, in considering what options are available to them to ensure a full, fair and meaningful process which can capture the core purposes behind most inquiry processes.

This guide is written in the following format. We have addressed key issues that can occur at each stage of the inquiry in a chronological format (i.e. from the start of the Inquiry through to its conclusion) and on which additional thought needs to be given. For each topic we explain the issue and then provide suggestions based on our experience and our task force's suggestions of ways of resolving the issues.

The guide can be read sequentially or it can be read in individual sections if you want to focus on a particular issue. At the end of the main section of the guide are chapters on process issues in general as well as wider policy issues. The guide concludes with checklists which can be used to review the main options available to a Chair and there are appendices of the methodology that CEDR used and the recommendations for reforms that we initially proposed.

Over time we aim to provide more updates to this guide on our website as a continuing project and would recommend readers of this guide also consult www.cedr.com/foundation for the latest updates.

Finding the right Chair

AND OTHERS



Any Public Inquiry will need to have people to fulfil the following roles:

1 Chair of the Inquiry

The lead person in the Inquiry, the Chair, will both run the Inquiry and make findings afterwards. This person is both the facilitator of the process and decision maker. This person will need to have the following qualities in five categories. Not only will a Chair need to have these qualities but s/he will also need to be able to demonstrate them in running the Inquiry:

Integrity

- Fairness
- Honesty
- Independence - no connection to the events or parties
- Impartiality (perceived and actual)

Leadership Skills

- Charisma/leadership qualities
- Experience as a Chair (not necessarily through Judicial experience alone, but in other roles such as for example, chairing meetings)
- Ability to control large and small groups
- Ability to handle process effectively
- Endurance
- Assuredness/belief/confidence in own ability

Analytical skills/ability

- Analytical ability
- Legal awareness (but not necessarily a legal qualification)
- Perspective of the broader context of issues

Communication skills

- Facilitation and mediation skills
- Excellent communication skills (both orally and in writing)
- Active listening skills
- Compassion/empathy - ability to handle emotion and reflect concern
- Ability to deal with different personalities
- Understanding of how to work with the media

Interest in issues and active awareness of surrounding factors

- Interest in subject matter
- Knowledge of subject matter (or ability to learn up on it quickly)
- Media awareness
- Diversity awareness
- Cultural awareness

2 Lead Counsel to the Inquiry

A key position, this person will lead the evidence for the Inquiry and will ask the questions that the Chair wants to ask. Counsel will need to have the following qualities/skills:

- Excellent communication skills
- Presentation skills
- Legally trained
- Ability to handle process effectively and efficiently
- Ability to handle sensitive information and to question around this

3 Junior/Other Counsel to the Inquiry

- Legally trained
- Experience in handling sensitive information
- Process management capabilities

4 Solicitor to the Inquiry

- Legally trained
- Ability to handle large amounts of sensitive information
- Organisational and project management skills
- Team working

5 Secretariat/Secretary to the Inquiry

- Fairness (and ability to demonstrate this)
- Impartiality
- Honesty
- Integrity
- Organisational skills
- Ability to deal with different personalities
- Ability to represent the Inquiry to Government/Ministers etc.
- Ability to put witnesses at ease and familiarise them pre-hearing so that they are able to give good evidence

- Ability to organise other staff
- Budgeting ability
- Able to liaise well with Chair and assist as appropriate
- Compassion/empathy
- Diversity awareness
- Cultural awareness
- Excellent communication skills
- Legal awareness
- Media awareness
- Perspective
- Interest in the subject matter
- Knowledge of the subject matter (or ability to learn up on it)
- Endurance

6 Other Inquiry Staff

There will need to be staff tasked with:

- Organising the physical running of the Inquiry including a workable calendar/timetable for witnesses; the venue etc.
- Running the Inquiry website
- Press/media relations
- Dealing with legal aspects as they arise
- Dealing with witness arrangements and people management of witness and representatives of the public

7 Panel Members

Sometimes it may be useful to consider additional 'wing members' to assist a Chair, usually those whose background or capabilities might complement or support the Chair's effectiveness such as industry experts. Panel roles can vary from being 'wing' members of a tribunal to those of occasional advisers for the Chair in his or her reflections.

Selecting an effective Chair (or other Panel members)

Ideally the selection of an Inquiry Chair should be an open process whereby both those involved in the selection and the wider public can see how the selection was made; what the criteria were and why the person was considered suitable. As far as possible, ad hoc procedures or selection should be avoided. This is frequently difficult if it is necessary for an Inquiry Chair to be selected quickly either to satisfy a political need or to appease public sentiment/clamour. At the least a process should be adopted which can be subsequently justified and made retrospectively transparent. It is also possible to put out notices about the selection process to indicate that progress is being made rather than rushing to a conclusion.

Below is a suggested method of selecting an Inquiry Chair. Whilst recognising that it may not be practicable for this exact method to be used on every occasion that a Public Inquiry occurs, we would still encourage the principles of this process (accountability and openness) be reflected in whatever selection procedure is used.

How to carry out an effective process

- 1 Initially, a selection panel will need to be appointed. This panel should be made up of those who can be readily perceived as being independent and separate from those involved in the process to show impartiality. Ideally, the panel will have representatives not only from those who are commissioning the Inquiry but also assistance from the Secretariat for the Inquiry; a former Inquiry Chair and members of the Public/Professional bodies.
- 2 If it can be seen that the Inquiry has potential to criticise the Commissioning Body (likely in many Inquiries) then it needs to be made clear that those from the Commissioning Body do not hold sway over the selection process and that it is fair and independent.
- 3 Selection can be made from a relatively small pool of potential appointees, those who have experience of Chairing. A recommendation that we have made is for training of potential Inquiry Chairs in the key skills that we refer to later in this guide. This training could be given to those who may potentially lead a Public Inquiry such as judges, Chairs of professional panels, lay Chairs etc.
- 4 Once a pool of potential appointees is drawn up based on skills required and approached to be invited to interview, these interviews should be held as soon as practicable.
- 5 Interviewees should be assessed against set criteria with questions designed to assess their ability to deal with effective processes, difficult witnesses, information handling, analysis etc. Particular care should be taken in Public Inquiries that potential appointees have no perceived conflicts of interest or experiences/affiliations which might subsequently cast doubt on their impartiality and independence.

- 6 There also needs to be a review of the written ability of the applicant and the extent to which they have previously written a report of this nature. A starting from scratch approach should be avoided.
- 7 After selection of the appropriate person, an announcement should be made of their selection and why they have been picked etc. Additionally, if necessary the new Chair should be provided with as much background material as possible and potentially training in certain areas: for example how, to handle emotions/facilitate difficult conversations etc. If there is particular specialist knowledge that would greatly benefit the Chair of the Inquiry as background (for example, in a death in custody Inquiry, how prisons in general function, or about how a specialist piece of machinery operates or process occurs), then it may be appropriate for the Inquiry Chair to take part in this sort of induction prior to commencing the Inquiry proper. (Though practical matters or further issues arising in an inquiry, may make later study visits/workshops more appropriate.) Any training should be recorded and documented. Similarly it is important for a Chair to be part of the final selection process of any potential Panel members.

IN SUMMARY

- An Inquiry requires an individual to chair who shows capabilities of integrity, leadership skills, analytical skills/ability, communication skills and interest in the subject matter.
- As open a process as possible should be used in recruiting an Inquiry Chair or other Panel members so that the process can be seen to be fair and appropriate.
- Where considerations of public urgency necessitate a short circuiting of a full selection procedure, the rationale and process for selection should be retrospectively transparent and justifiable.

“An independent study commissioned by CEDR found just 27% of the 2,000 people polled had confidence in the Inquiry system while 58% believed they were too costly.”

HUFFINGTON POST, 23 MAY 2012

Matching
the Terms
of Reference
to outcome
and success



What are the Terms of Reference relevant to an Inquiry?

Terms of Reference are absolutely critical to an Inquiry as they define its purpose and parameters, and provide the Inquiry Chair with the authority to probe particular areas and lines of Inquiry. However, frequently, terms of reference can be too limited in their scope; become misunderstood or misinterpreted by those who need to refer to or understand them, or they can become misaligned with an evolving public debate or with the inquiry's own evolving sense of the key issues.

Why are Terms of Reference so important?

A major difficulty in compiling terms of reference is that because they come so early in the process, they can contain discrepancies in the issues that are considered or foreseen as being important early on compared with the issues that emerge as important later in the process. Additionally, it is often the case that terms of reference do not fully relate to all of the groups who might be affected by a Public Inquiry because those who are creating the terms of reference are not aware of or aligned with potentially affected groups (especially if that group is not vocal) or how the terms of reference might come to be interpreted/misinterpreted. Further, there can be an issue whereby the terms of reference do not factor in potential outcomes of a Public Inquiry in the way that they should. If there is a potential outcome which has been linked to a starting point of consideration for the Inquiry, then it makes the Inquiry much stronger in that regard: for example, an Inquiry which specifies that it will consider all mechanisms for change management in a prison system including the ability to consider whether or not certain prisons should be closed, is in a much stronger position to recommend that prisons be closed than an Inquiry which has not had that specific point mentioned in its Terms of Reference.

What needs to be considered when drafting terms of Reference?

The Inquiries Act 2005 starts with the premise that an Inquiry can be called by a minister where 'it appears to [him/her] particular events have caused, or are capable of causing, public concern' or 'there is public concern that particular events may have occurred'. The key point here is that the test is related to 'public concern'. This is an open definition and it is difficult to think of what major event could be considered not to be able to cause public concern. Private Inquiries and Public Inquiries which are not commissioned under the Inquiries Act 2005, alternatively, can be set up to cover any topic. The only limitation in what a Private Inquiry could cover is that of practicality in that a Private Inquiry is unable to compel witnesses to attend or give evidence.

An Inquiry can therefore consider a vast array of different topics. Major recent Inquiries have covered diverse areas ranging from such topics as deaths in custody, failures of child or patient protection, through to complex political controversies over the Iraq War, the media and phone hacking, and banking practices.

For a Public Inquiry under the 2005 Act, the terms of reference will be set by the Minister under whose Department the Inquiry is held and there may be limited scope for the Chair of the Inquiry to be involved in defining what the Inquiry's terms of reference are. However, we would argue that it should be possible for the Inquiry Chair to suggest ways that the Inquiry's terms of reference might be improved. This power should therefore be reserved for the Chair in an initial inquiry phase, even if provisional terms have been drafted as part of a ministerial effort to allay public concern quickly.

There will be specific things that an Inquiry will not be able to do. A key point that is made at s2(1) Inquiries Act 2005 is that 'An Inquiry Panel is not to rule on, and has no power to determine, any person's civil or criminal liability'. This is slightly tempered by s2(2) which states that, 'But an Inquiry panel is not to be inhibited in the discharge of its functions by any likelihood of liability being inferred from facts that it determines or recommendations that it makes.' This issue is likely to limit certain terms of reference and how the Inquiry functions. Although an Inquiry may not be able to determine whether or not someone is criminally responsible for an action, it may well go extremely close to so doing and witnesses who know that they are going to be criticised are likely to be contrite and guarded in the evidence that they provide to the Inquiry. There are examples of sanctions being taken against individuals as a direct result of an Inquiry - for example following the Azelle Rodney Inquiry, a Police Marksman (E7) who was found by the Inquiry to have had 'no lawful justifications' for shooting Azelle Rodney, is likely to face criminal prosecution. The Inquiry was subject to an unsuccessful judicial review application by E7 in relation to the fact that the conclusions that the Inquiry Chair found were 'irrational', [as reported in *The Guardian*, 5 August 2013]. An Inquiry therefore needs to be aware of what impact its findings and recommendations may have before it creates its terms of reference so that it is able to cover these possibilities (subject to the s(2)(1) constraint noted above).

Finally, in constructing Terms of Reference - but also in determining later process design - it is vital to remember Public Inquiries normally contain several 'purposes'. The exact chemistry of ingredients will vary with different Inquiries, but it is helpful to consider how an Inquiry might satisfy these purposes. The key purposes can be classified as:

- 1 Investigating past incidents to establish what has happened
- 2 Allaying public concern
- 3 Addressing the particular concerns of those who have been directly 'harmed' by events
- 4 Establishing whether there is a need for reform/change, and if so in which respects and in what manner
- 5 Reporting to commissioning bodies for them to take responsibility and take action to prevent future recurrences or improve future outcomes

GOOD TERMS OF REFERENCE SHOULD:

- Be clear.
- Identify the issues which are going to be explored and what is to be determined.
- Ideally identify what is not going to be considered (this is particularly important if a major group thinks that something is going to be considered or determined when it in fact cannot be, for example if an Inquiry is not going to determine somebody's criminal liability or impose sanctions).
- State the ways in which the Inquiry will be conducted (for example if it is going to work under certain rules or follow certain procedures).
- State the groups likely to be affected by or particularly involved in the Inquiry and name 'interested parties'.
- Provide assurances of appropriate fairness, legitimacy, legality, stakeholders to be consulted and confidentiality/publicity.
- Give an indication of planned timescale for the Inquiry.
- Give an indication of budgeting for the Inquiry.
- Give an indication of who will take responsibility for overseeing potential implementation of recommendations.

NINE GROUPS THAT A PUBLIC INQUIRY MUST CONSIDER

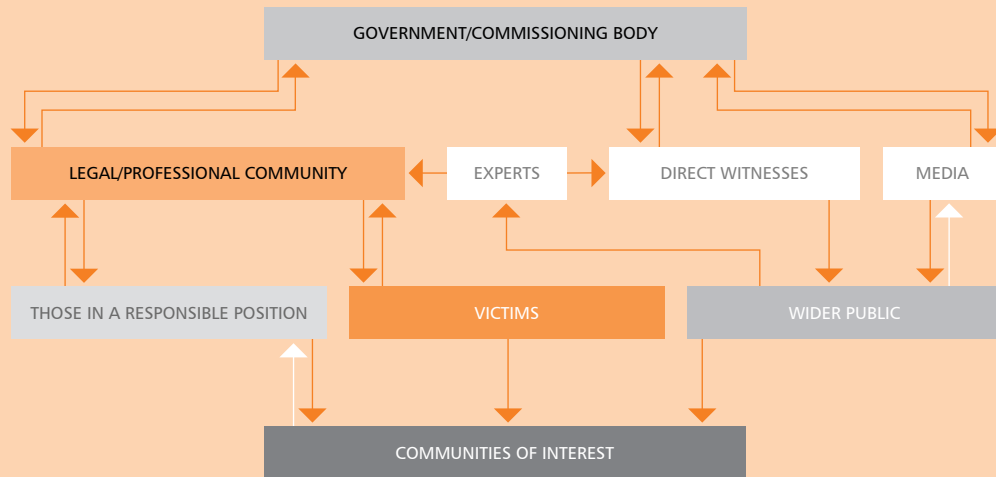
There are nine groups affected by any Public Inquiry, all of whom should be considered when compiling terms of reference and in process design.

It is worth considering what each group will expect, what they would like to see and what they would not expect from a Public Inquiry and then determine whether or not the terms of reference will satisfy these groups. In conducting this exercise, it will of course not be possible to meet everyone's aspirations (nor would this necessarily be appropriate), however, it is important that the inquiry team is actively aware of what these groups might want at an early stage.

The nine groups are:

- 1 Government/commissioning body
- 2 'Victims'
- 3 'Those in a responsible position'
- 4 Direct witnesses to the particular incidents
- 5 Experts who may draw inferences/conclusions from the direct witness evidence
- 6 Legal/professional community
- 7 Communities of interest
- 8 The media
- 9 The wider public

These groups interact in the following way:



As can be seen by the above diagram, the nine groups are interconnected. The first group that is connected with an Inquiry is the Government or Commissioning Body. They will have set up the Inquiry and will be both held directly responsible for whether or not the Inquiry has achieved what it is intended to do and against whom ultimate responsibility for what has happened is likely to be levelled. As explored further below, the commissioning body may well be under extreme pressure itself for solutions to be found and so may want the Inquiry to demonstrate not only its impartiality but also its robustness and ability to make tough decisions and find responsibility. The government/commissioning body may also, but not necessarily, be a party that gives evidence to the Inquiry. This may present it with a challenging perspective and so it will be necessary for the Inquiry team who will have been selected by the government/commissioning body to demonstrate that there is no conflict of interest.

The second and third groups are those who will give evidence at a Public Inquiry and who can be seen to be directly concerned in the incidents giving rise to public concern. Firstly, there are those who can be described as in 'the responsible position' for whatever reason, leading to the incidents or state of affairs triggering public concern. Secondly, there are those who perceive themselves as the 'victims' from this state of affairs. Both of these groups will have their own particular desires for what is included in the terms of reference and it may be that groups either want something to be included so that a topic is specifically covered or they want something to be excluded from coverage.

The fourth and fifth groups are separate from these groups and will be witnesses (direct and expert) who have no explicitly invested interest in outcome. That is not to say that they will not be under pressure to present their evidence in a way that agrees with a particular side's view or more generally public sentiment about an incident. These witnesses will need encouragement to give their evidence in a way which is truly open and explicit.

Interaction between 'victims' and those in a 'responsible position' and between those groups and those responsible for the Inquiry, including the commissioning body is often filtered through the legal/professional community who will represent them at the Inquiry and also make representations on their behalf outside of the Inquiry as attempts are made to resolve an issue. The legal/professional community will modify the way that the Inquiry is conducted and the way in which answers are presented and analysis framed. This will include the 'indirect' expert witnesses who are asked to draw inferences from the factual evidence. The legal/professional community are also likely to be the group who have the most direct resource to monitor whether or not recommendations from the Inquiry have been followed up etc.

On the other side of the table are the wider public and the media. The wider public will have an interest in the Public Inquiry but this is likely to be only at key times, e.g. when it is set up, when certain key witnesses give evidence; and when the Inquiry report is published and recommendations are made. The Public's understanding of what happens is likely to be filtered through what the media portray the Inquiry as achieving. The Media are likely to consider a Public Inquiry in a variety of ways and may have their own agenda. Not only can the Public Inquiry be considered to be a scrutiny of the affected groups but the way that the Public Inquiry is run, can itself, be analysed to see how it can be argued the government/commissioning body has demonstrated its handling of the crisis.

Finally there may be communities of interest such as say, local community organisations in an Inquiry on race riots, who see themselves as significantly affected by the outcome of the Public Inquiry but who have not been directly involved either as a named responsible party or as a group of victims. These interest groups' views are important if not vital to an Inquiry and indeed it may be seen that whether or not an Inquiry is successful depends on whether or not these groups' needs have been addressed and their ways of working understood (because of the practicalities of implementation and recommendations). In working with these groups, therefore there are certain issues that need to be addressed in ensuring that these groups' interests are appropriately identified so that the terms of reference and Inquiry can be conducted appropriately to address all the relevant points.

The particular considerations that the various groups may have:

GROUP

INTEREST IN PUBLIC INQUIRY

GOVERNMENT/
COMMISSIONING BODY

The Public Inquiry will have been set up by this group in order to investigate an area of concern which the Government consider cannot be resolved by any other method. There will always be political issues associated with a Public Inquiry and representatives of the Government may also be called as witnesses. The Government will also ultimately have control over how the report is received, distributed and implemented.

VICTIMS

Victims have a clear interest in the Public Inquiry in that in some way they or incidents affecting them or those close to them have led to the Public Inquiry. However, it is important to note that they are a disparate group and that not all victims will want the same things from the Public Inquiry. Many will be concerned with their own particular circumstances and may have little interest in wider failings or the broader picture. Alternatively, there will be some people who will be extremely interested in seeing a complete picture and having as much detail about all of the events as possible, for understanding or to prevent a repeat occurrence.

THOSE IN A
RESPONSIBLE POSITION

Those in a responsible position are the people and organisations that may be seen as being responsible for the issues that have caused the Public Inquiry. They are extremely likely to be alert to criticism or damage to their reputations and the potential for the Public Inquiry to raise issues that they don't want to be raised. At the same time, a Public Inquiry has a potential benefit to these parties in allowing them to show what they did; explain themselves etc., identify flaws in process or thinking. Additionally, it may allow these groups to gain a greater understanding of events and other people.

LIKELY TO WANT MENTIONED
IN A TERMS OF REFERENCE

- ◆ Accountability
- ◆ Practical methods for dealing with future problems
- ◆ Analysis of what happened
- ◆ Visibility that the issue has been dealt with
- ◆ Appropriate costs
- ◆ Efficient procedure
- ◆ Protection of sensitive material

- ◆ Accountability
- ◆ Practical methods for dealing with future problems
- ◆ Analysis of what happened
- ◆ Visibility that the issue has been dealt with
- ◆ Scope for the Inquiry chair to consider issues beyond the strict definition of the terms of reference and petition for a widening of the terms of reference
- ◆ Recognition of the impact of events on them
- ◆ Manageable process, recommendations, media coverage
- ◆ Process for identification of what and who is to blame and for acknowledgement for the harm done
- ◆ Possible remedial measures

- ◆ A final resolution
- ◆ A fair process which is not focussed on apportioning blame
- ◆ An analysis which is not purely 'hindsight judgement' based
- ◆ A clear procedure that is set out and which is not going to be deviated from/subverted
- ◆ Manageable publicity and sensible recommendations

UNLIKELY TO WANT MENTIONED
IN A TERMS OF REFERENCE

- ◆ Scope for the Inquiry Chair to make maverick recommendations including those not derived from evidence the Inquiry has received
- ◆ Scope for the Inquiry Chair to consider issues beyond the strict definition of the terms of reference
- ◆ Free rein for the Inquiry Chair to use any mechanisms that s/he sees fit
- ◆ Open-ended costs

- ◆ Scope for the Inquiry Chair to make maverick recommendations
- ◆ Free rein for the Inquiry Chair to use any mechanisms that s/he sees fit
- ◆ Ability for the Inquiry Chair to ignore issues that this group considers relevant

- ◆ Scope for the Inquiry Chair to make maverick recommendations.
- ◆ Overemphasis on blame
- ◆ Scope for findings which allow future legal suits etc.

The particular considerations that the various groups may have:

GROUP

INTEREST IN PUBLIC INQUIRY

DIRECT WITNESSES TO THE 'PARTICULAR INCIDENTS'

These witnesses can be seen as being third party witnesses to the incident and are giving evidence to the Inquiry on the basis of neither being victims nor responsible for the events. It is important that the Inquiry does not, however, consider that these people are unaffected by the events of the Inquiry, nor that they are under any pressure to give evidence in a particular way. These witnesses may well see it as their duty to give evidence; they may be interested in the outcome of the Inquiry; alternatively they may be reluctant to have to give evidence. All of these witnesses are likely to see the Inquiry as being an opportunity to discharge their duty to provide evidence.

EXPERTS WHO MAY DRAW INFERENCES/ CONCLUSIONS FROM THE DIRECT WITNESS EVIDENCE

These witnesses will be giving evidence to the Inquiry normally on behalf of a group; however, their duty remains to the Inquiry not to the particular group. In dealing with experts, it is important to recognise their expertise whilst also considering their own particular interests and concerns with the Inquiry.

MEDIA

This group's interest in the Public Inquiry is to find a Public Interest story and present the Inquiry in a way which allows them to tell a story and provide compelling evidence. They are unlikely to be interested in overly procedural matters and are more interested in content than other methods.

LIKELY TO WANT MENTIONED IN A TERMS OF REFERENCE

UNLIKELY TO WANT MENTIONED IN A TERMS OF REFERENCE

- ◆ A final resolution
- ◆ A fair process
- ◆ A clear procedure explaining what is going to happen
- ◆ No victimisation on the basis of other evidence

- ◆ Scope for the Inquiry to recall witnesses
- ◆ Scope for the Inquiry Chair to use any mechanisms that s/he sees fit

- ◆ Analysis of what happened
- ◆ Opportunity to consider details from an intelligent and informed perspective
- ◆ Important changes that affect broader issues and expert opinions

- ◆ Ability for the Chair to ignore issues
- ◆ Overemphasis on blame

- ◆ Accountability/a way of finding someone responsible
- ◆ Analysis of what happened
- ◆ Exposure of hidden material/etc.
- ◆ Visibility that the issue has been dealt with
- ◆ A clear 'trial' of questions in the public arena caused by incident(s)
- ◆ Televised proceedings

- ◆ Possibility that unable to find criminal/civil sanctions
- ◆ Any curtailment of access to documents or what they can report

The particular considerations that the various groups may have:

GROUP INTEREST IN PUBLIC INQUIRY

COMMUNITIES OF INTEREST

This is a large group and covers not only interest groups (who may be very aware of the issues raised and be extremely interested in what the Inquiry can determine) but also those groups who may not be directly aware that the Inquiry is happening, but for whom the outcome of the Inquiry is important. Indeed these communities of interest may contain members who are not even aware that they are members yet (For example, an investigation into how asylum seekers are held, may concern those who are unrepresented asylum seekers, interest groups working on behalf of asylum seekers, and also those who are yet even to claim asylum but who will use the services in the future and so will be concerned by the outcome).

WIDER PUBLIC

The Wider Public are likely to be concerned with the broader picture in relation to the incidents and concerns triggering the Inquiry and what the major conclusions are. They are also likely to want costs to be kept down.

LEGAL/PROFESSIONAL COMMUNITY

The Legal/Professional community are likely to be concerned that the Inquiry is conducted fairly and according to strict process so that it achieves an efficient outcome. They will also be concerned that the Inquiry allows them to protect/promote the concerns of their particular clients. Also that the process shows them in a good light to clients and/or the public.

LIKELY TO WANT MENTIONED IN A TERMS OF REFERENCE

UNLIKELY TO WANT MENTIONED IN A TERMS OF REFERENCE

- ◆ Accountability
- ◆ Practical methods for dealing with future problems
- ◆ Analysis of what happened
- ◆ Visibility that the issue has been dealt with
- ◆ Quick procedure
- ◆ Scope for the Inquiry chair to consider issues beyond the strict definition of the terms of reference
- ◆ Scope for the Inquiry chair to make recommendations that go beyond the strict definition of the terms of reference if they are of wider benefit
- ◆ Ability to intervene to protect other professional or industry interests or reputation

- ◆ Free rein for the Inquiry Chair to use any mechanisms that s/he sees fit
- ◆ Scope for the Inquiry Chair to make maverick recommendations
- ◆ Low costs
- ◆ Narrow focus

- ◆ Accountability
- ◆ Practical methods for dealing with future problems
- ◆ Analysis of what happened
- ◆ Visibility that the issue has been dealt with
- ◆ Low costs
- ◆ Quick procedure
- ◆ A mechanism by which it can be felt that the truth is out and that justice has been done

- ◆ Scope for the Inquiry Chair to make maverick recommendations
- ◆ Scope for the Inquiry Chair to consider issues beyond the strict definition of the terms of reference
- ◆ Free rein for the Inquiry Chair to use any mechanisms that s/he sees fit

- ◆ Accountability
- ◆ Clarity of procedure
- ◆ Practical methods for dealing with future problems
- ◆ Analysis of what happened
- ◆ Visibility that the issue has been dealt with
- ◆ Appropriate procedure
- ◆ Rights of clients protected despite inquisitorial format

- ◆ Scope for the Inquiry Chair to consider issues beyond the strict definition of the terms of reference
- ◆ Over-analysis on cost control

CREATING EFFECTIVE TERMS OF REFERENCE

FOR THE COMMISSIONER AND CHAIR

The following practical steps can be taken into consideration when creating the Terms of Reference:

- Canvas the 'big picture'.
- Identify some boundaries.
- Decide if there are other ways to throw light on certain topics.
- Define best process.
- Concentrate on a few key priority areas.
- Include necessary flexibility for the Chair regarding process and recommendations, possibly also for amending terms of reference.
- 'Mind map' (using a diagram of) what the issues are and what all possible outcomes are that an informed reader from the General Public would want to know and what issues and outcomes all of the above groups would be concerned with.

- Consider canvassing opinion from leaders of relevant interest groups as to what issues they think helpful to determine. This may take the form of an open meeting to consider the Terms of Reference (not necessarily wholly public but certainly consulting key stakeholders).
- Establish early on if there are certain issues that cannot be determined or can only be considered in a limited way, e.g. criminal liability. Decide if this is going to be a difficulty for the Inquiry and work out how the Terms of Reference can cover this problem, also what other proceedings might become necessary or overlap and how this might affect the Terms of Reference and process of the Inquiry.
- Establish what issues cannot be considered by the Inquiry but may be of interest to certain groups (e.g. an Inquiry may be limited to making recommendations which only relate to a particular institution at a particular time rather than multiple institutions. Campaigners may want the Inquiry to make wider findings about an entire system rather than recognise that the Inquiry is necessarily limited. Good Terms of Reference will make clear if the Inquiry would not be able to make this finding.)
- Consider making sure that the terms of reference allows for sufficient flexibility to allow the Inquiry room for manoeuvre when the Inquiry starts but that it keeps a clear set aim.
- Consider carefully all words used in the Terms of Reference so that it is clear that it is understood what they mean. If a term is not obvious, it may be necessary to provide definitions attached to the Terms of Reference.
- It would be useful to have a period of time after the launch of the Public Inquiry (say a month) where the terms of reference are in draft form only, to allow for reflection of the terms and for a newly appointed Chair to influence wording, and for changes to be made if necessary. This could also allow for key groups who were not already consulted by the Inquiry commissioner to make any suggestions they have to the Inquiry which might influence the direction of the Terms of Reference and what the Commissioning Body wants the Inquiry to consider.
- In having draft Terms of Reference, there are two different ways of doing this. The first is to have it on a relatively informal basis, where it is noted in the Terms of Reference that they are not final Terms of Reference until a certain date. This allows the Inquiry Chair after consideration with the relevant Secretary of State or Secretariat of the Inquiry to amend the Terms of Reference (or agree the current Terms of Reference) by a certain date. This would allow the Inquiry Chair only with the consent of the Secretary of State to change the terms of reference to reflect public opinion as s/he sees it but does not compel the Terms of Reference to change. Alternatively, this process can be done on a more formal basis whereby there is a formal consultation process for the terms of reference and groups are invited to submit their comments on the terms of reference by a certain date, after which time all feedback will be considered and the terms of reference amended following

a report on the submissions. This would necessarily take a period of time and come at a cost which makes such an option appear initially less attractive (it would be necessary to ensure that the feedback and consideration was considered in an effective and appropriate way). However, the argument for doing so is that it would enable the Inquiry to state that it had considered and was reflecting public concern, providing it with a stronger remit and helping to prevent criticism later on that the Inquiry had failed to serve its purpose or that another Inquiry is required.

- Finally, consider whether certain issues (e.g. acknowledgement) would benefit from a parallel or separate process allowing the Inquiry itself to be more precisely focused in terms of investigation and/or recommendation.

IN SUMMARY

- Be clear and precise as to what the Inquiry will cover and that this report will inform understanding and meet the needs of the various stakeholders.
- Consider stating clearly what the Inquiry will not do.
- Consider a one month consultation period on draft Terms of Reference for consultation with the stakeholders or a potential Chair/Panel.
- Craft communications and process with key stakeholder groups in mind.

Independence, objectivity and fairness

THE CHALLENGE
OF IMPARTIALITY

-INDEPENDENCE-



What do independence, objectivity and fairness mean in relation to a Public Inquiry?

Central to the remit for a Public Inquiry is the need for the qualities of independence, objectivity and fairness to be applied in relation to the subject matter and people or organisations involved and therefore for impartiality to be observed. This is both in relation to the Inquiry in general as a process which is managed to demonstrate these characteristics, as well as specifically that the Inquiry Chair demonstrates these qualities in hearing and commenting on evidence. The salience of these characteristics in Public Inquiries explains why so often there are calls for Inquiries to be conducted by judges as they play a role which is, in itself, defined by such traits.

Independence, objectivity and fairness are familiar words that are often used in judicial and quasi-judicial contexts but it is important to define what we mean by these terms when we use them.

Independence - the Inquiry and its principal members should be separate from the organisations that are involved with the events that have led to the Inquiry or its commission, and the Inquiry should be able to reach its conclusions without the need for deference to any other party as to how to reach that conclusion (that is to say that the Inquiry is able to conclude what it wants of its own volition, not that it is steered by others into a particular conclusion or recommendation).

Objectivity - The Inquiry and the Inquiry Chair should be seen to consider the evidence presented to it from a basis which reflects rational objective criteria, whilst recognising the potentially prejudicial perspectives that can be associated with witness testimony, e.g. hindsight, bias, a self-serving nature etc. They need to be seen to be 'approaching the case with an open mind'.

The Inquiry must not, in reaching its conclusions, be seen as coming from any subjective or partisan viewpoint. This quality of independence can also apply to considerations of which witnesses and evidence to call.

Fairness - In its dealings with witnesses and in its considerations of the evidence, a Public Inquiry must be seen as being fair to those involved in that it deals with evidence in a way that is consistent and balanced across all witness testimony. The process for choosing witnesses should be open and rationally based. This requires the Inquiry to consider the evidence in a manner which can be seen to have considered the interests of all and follows the rules of natural justice including transparency of decision making and appropriate balance in hearing different viewpoints.

Why is it particularly important to show these aspects?

By actively demonstrating the above mentioned qualities when conducting a Public Inquiry, the Chair signals a couple of key principles; 1) that there is an effective review process over the events of concern, and 2) that the public can have confidence in the Inquiry process and the outcome and recommendations that follow. By working in this way, the Public Inquiry is able to move the events on for stakeholders, from past uncertainty, through fair, objective reflection, using a considered, trustworthy process.

Recommendations are also much more likely to be supported if they can be shown to have been developed in a demonstrably independent, objective and fair way than if these concepts are only implicit - or even lacking - in the conduct of an Inquiry.

How can these qualities be demonstrated?

- The starting point for demonstrating these qualities is that they should be the default position for how an Inquiry Chair acts throughout the Inquiry and that they should always be evident in how a Chair is acting. Selection of an appropriate Chair whose manner supports the qualities is a vital first step.
- Further to this, therefore, an Inquiry Chair should be mindful to avoid any situation where s/he is being asked to act in a way which the Chair perceives as being in contradiction to these principles. At the start of the Inquiry and at the start of the Inquiry report, explicit reference should be made to the fact that the Inquiry is being conducted under these principles. Further, the Chair should deal with any areas that are likely to arise in the Inquiry, where these principles could have the potential of being compromised, or perceived as being compromised, and be explicit in outlining his/her approach to these challenges.
- During the Inquiry, the Chair should work with the Inquiry team and any panel members/assessors working with him/her to check regularly that the Inquiry is being conducted in a way which maintains these principles. This may at times during a sensitive Inquiry require recall of certain witnesses or an open consultation on process with groups of key stakeholders.
- In thinking about the questions that will be asked of participants, the Chair and the Inquiry team should use techniques such as considering what is being discussed from different concerned groups' points of view to determine that the questions are being asked in a way that is independent, objective and fair.
- The Chair should reassure any witness of these principles if they seem unsure in giving their evidence, or if they openly challenge the Inquiry's fairness and impartiality.
- The Chair should enunciate the process in opening the inquiry and for the procedural hearing and at new key stages.

When is it particularly important to demonstrate these qualities?

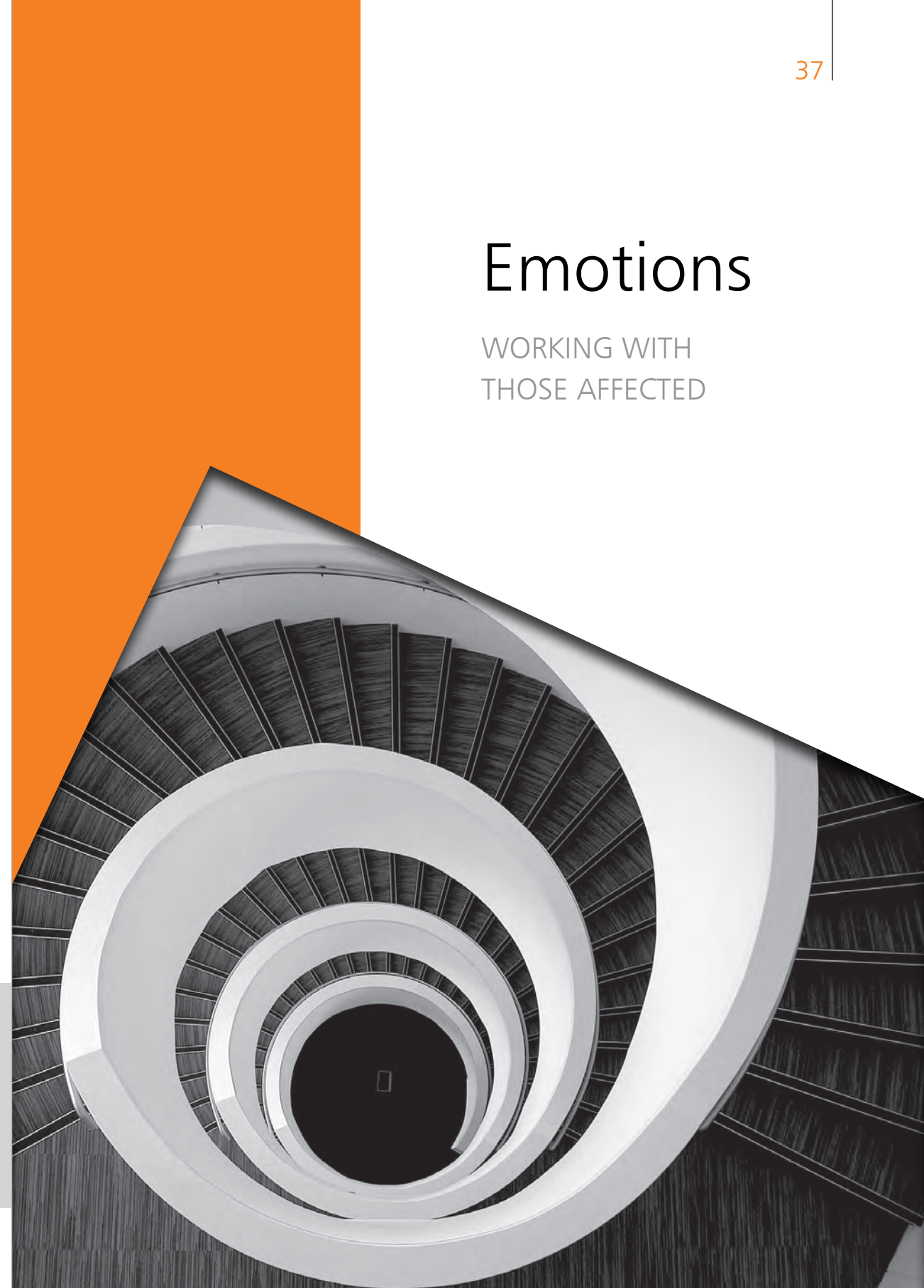
- It is particularly important to demonstrate these qualities when there has been criticism of a previous Inquiry or investigation into events for failing in these areas; when the events themselves concern allegations of corruption, fraud, cover-ups etc.; where it can be seen that the commissioning body has a vested interest in a particular outcome occurring.
- It is also particularly important to be mindful of these parameters and how to manage them when seeking to adopt innovative practices in Inquiry process.

IN SUMMARY

- An Inquiry Chair should ensure that the qualities of independence, objectivity and fairness are practised and demonstrated throughout the Inquiry, particularly if there is a context or practice where there could be a perception that these qualities might be lacking.

Emotions

WORKING WITH
THOSE AFFECTED



What is the issue for Process Management?

There is always emotion involved in Public Inquiries because emotion is intrinsic in matters of public concern, and sometimes this can be in intense form due to the fact that likely 'victims' of some kind associated with serious incidents will be involved in the Inquiry process. This will also include those who are portrayed as 'perpetrators' or feel that they are going to be represented in that way. Even those who have a relatively minor role within the Inquiry may still feel that they need to have their emotions heard and dealt with, or feel under stress because of the formal nature and significance of the process and/or its media exposure.

In dealing with these emotions, it is important to note that they do not occur only when a witness is giving evidence, but that some listening to the Inquiry may become distressed at other evidence they hear or in anticipation of giving evidence. Therefore, it is important that the Inquiry has the means to be able to direct victims and members of the public to appropriate resources and support groups at times other than during the formal evidence giving.

Why is it important to deal with emotion?

There are several reasons why it is beneficial to anticipate how to deal with the emotion in an Inquiry:

- **Emotion is important in itself as an issue.** It is often important for a witness's own confidence in the Inquiry process that they feel that a significant emotion is recognised as well as helping the Inquiry to understand the importance of what the person is feeling about a situation and perhaps why. It can be a vital part, sometimes the vital part, for the witness in the enunciation of their story.
- **Emotion and its management can also change the way a story is told or events remembered and affect readiness for a solution.** It can also obfuscate the issue and the solution to the problem. And it can influence perceptions of the fairness or objectivity of an Inquiry process. Whilst people are focussed on emotion, they are less able to understand a problem, find a solution or listen 'objectively' to others. It is extremely difficult to consider something to have finished/been resolved, if you still feel emotional about it to the same degree. Pent-up emotion is a serious obstacle to progress or moving on from previous incidents.

Is it practical to deal with emotion in a Public Inquiry?

It may not seem so, but emotions can be respected in the way statements are made, witnesses are treated and examined, and conclusions are drawn and reported.

How does one deal with emotion?

There are various techniques for handling emotion but a key framework CEDR recommends is to remember the three Rs - **Recognise, Respect, and Respond**.

■ Recognise the emotion

The first task when someone is being emotional is to recognise that it is occurring. This may sound obvious and it will, of course, be obvious in particular circumstances. However, there are different ways that people express themselves and somebody who is extremely reticent, or who is sighing, clenching their fists, etc. can be indicating as much emotion (albeit in a different way) than those who are loud in their protestations. Silence, nervousness or highly judgmental language may equally reflect a presence of strong emotions.

◆ Tackle the emotion by directly naming it to the witness and asking them to explain why they feel that way? e.g. "[Witness name], you [sound as if you might be/clearly are] very upset about [issue]. Might we ask you to explain to us what it is that has upset you?" That allows the witness to feel that they have been heard and to be free to have their emotions expressed. Frequently, after being allowed to have such an expression, the witness will be significantly calmer and less emotional in their further evidence.

■ Respect the emotion

The person has a right to feel the way that they are feeling and express this (assuming that the emotion is not being displayed in an abusive way) and it is important for those dealing with that to appreciate that fact and respect the emotion. An important thing to remember is that the emotion that the person is displaying is not how the person is always going to act or even necessarily what their general feelings are on something. Rather it is how they feel at that particular moment in time. We all change how we act and we have all acted 'poorly' at particular times. Be generous to the person displaying that emotion in your attempts to understand it. Recognise it as a signal of serious intent and concern.

◆ Alternatively, keep quiet and give the witness time to express themselves in their own way. Stay patient and calm with such a witness. The last thing that an extremely upset witness needs is to be hurried through or asked questions that are out of alignment with their current feelings. Equally, an empathetic hearing - recognising the fact of emotion and being generous with time to hear it out, without judging its validity in the context - can make it easier for a witness to find their way through the evidence they want to give.

◆ Consider if a witness box and examination by counsel for the Inquiry should be preceded or supplemented by other process routes not normally used in 'court trials' but available to Inquiry Chairs. For example, can a family be allowed to talk together about their experience to give a collective account with less associated stress and confusion? Is there scope for a pre-examination conciliation process between 'victims' and alleged 'perpetrators' so that

■ Respond to the emotion

Deal with the emotion in a respectful and constructive way. There are various methods of doing this that are appropriate depending on the circumstance:

pent-up emotions and pre-established ideas can be reviewed in a less threatening and more human context before giving formal evidence?

- ◆ If necessary, it may be appropriate for the witness to be given time out to reflect further on what they want to say, if they are 'freezing' during formal examination.

- ◆ If it is clear or likely that the witness is going to be extremely emotional before they give evidence, consider whether it would be helpful to have a member of the Inquiry team talk them through the process and the likely areas of questioning before they give evidence. (This should be done under the guidance of the Inquiry Chair.) Similarly a helpline available to have someone to talk to or a post-session debrief, may be useful following the giving of traumatic evidence.

When is dealing with emotion particularly important?

- 1 Where the Inquiry's subject matter relates to death, personal injury, allegations of abuse, negligence, etc., there are more likely to be concerns of a deeply personal nature.
- 2 Where there are issues to do with blame which are not going to be resolved by the process itself. For example, where the Inquiry process is not going to be able to find anyone criminally liable. It may be that the parties want this to be achieved even though it cannot be.
- 3 Where there have been delays in the amount of time in getting to the Inquiry process or other complexities making it a confused process for participants.
- 4 Where there are a number of divergent perspectives and no simple answer to the issues of public concern raised - even experts bring underlying emotions of good/bad to their thinking!
- 5 Finally, it needs to be borne in mind that the 'perpetrators' are also likely to be in a state of strong emotion, and not only 'victims'.

IN SUMMARY

- Emotion is likely to be a major feature of any Public Inquiry and a Chair will need to respond to it appropriately and have the personal skills to do so.
- People show emotions in a variety of ways and a Chair should be aware of how emotions are expressed or repressed.
- In dealing with emotions, Chairs should use the 3 Rs techniques - Recognising the emotion; Respecting the emotion displayed; and then finally Responding to it appropriately with effective communication skills.
- Adjustments to the process of the Inquiry - such as group meetings, preparation for giving evidence, post evidence debriefs - may be called for where emotions are particularly marked.

Difficult topics

WHAT PEOPLE DON'T WANT TO HEAR OR SAY



What is the difficulty/complication?

Frequently in Public Inquiries, people will need to discuss issues which are difficult for many reasons. The issue may be connected to, or associated with, very strong emotions; they may feel that there is potential blame associated with giving evidence, which can lead to negative consequences; they may find that it is simply a difficult topic to discuss because they do not know what the answer is or they are unsure what their opinion should be. Chairs may find the answers they receive to questions on difficult topics to be evasive or limited. In this regard, it can be difficult for the Chair to know that s/he has actually established the facts around a specific issue and so the Inquiry may potentially be denied a perspective or opinion which would be helpful at an early stage.

Why is it important to address difficult topics?

An Inquiry is likely to particularly need to investigate these difficult issues and reach a conclusion. Beyond the Inquiry's need to give a full and fair account of a particular incident, however, is the additional point that it is beneficial for those giving evidence to address these difficult topics at an early stage. This is because these topics are likely to come up again if there is unsatisfactory exposure. It will also be unhelpful if those involved do not answer the question at the Public Inquiry and then find that they are going to have answer the question later or their evidence is queried by the media for example.

When is addressing difficult topics/conversations particularly important?

- When strong emotions are present or likely to be present, particularly when the subject of the Inquiry is related to matters where there is a strong personal attachment or involvement.
- Where delays in arriving at the Inquiry have caused frustration in participants and, subsequently, have raised a general level of anxiety of those involved and about the process as a whole.
- When there is a sense that blame may attach as a consequence of answers given.
- Where it is problematic as to how best to give an account of a complex set of circumstances or relationships or organisational responsibilities.

How does one deal with this difficulty/complication?

- Provide context. Give participants enough information so that they know the purpose of forthcoming questions and the values of open disclosure including acknowledgement of uncertainty.
- Take a best guess as to what the witness might be thinking when you believe that s/he would like to say more but still does not feel safe. For example:

"I believe we have heard from other witnesses that junior staff felt under pressure. My question is not to apportion blame but to see if you agree a) that the pressure was real; and b) that it did have consequences for patient treatment?"

A 'priming' comment like this may allow the witness to give a fuller response.

- Acknowledge that what you are about to discuss may be difficult or painful for the witness to hear or answer. Acknowledge emotions, particularly if a key element. (See previous section).
- Avoid moving into detail too quickly. Start from an open question and avoid questions which contain assumptions or immediate conclusions.

For example, contrast:

"Why wasn't the hospital adequately staffed on November 11, 2008?"

with:

"What were the reasons for the hospital's staffing levels on November 11, 2008 being lower than normal?"

The second question has no implication in the way it is phrased nor is there potential criticism of the person within the question.

- Show that you have actively listened to the responses to questions through paraphrasing and summarising. Develop a conversation rather than simply moving from one closed question to the next which can create a tone of interrogation.
- Take care that your body language does not signal what you are thinking about responses to your questions.
- As in a courtroom investigation, check for collaborative evidence or testimony on uncertain or difficult issues.
- Consider a group discussion format as an evidence method which may bring out the 'whole picture' more readily and quickly. (See next section).
- In reporting evidence, articulate where there might be alternative scenarios/assumptions where there has been evidence that is not particularly clear.
- Be patient!

“Public Inquiries should avoid mock trial image, says a new study: The Centre for Effective Dispute Resolution also suggests Public Inquiries often promise more than they can deliver.”

THE GUARDIAN, 21 MARCH 2013

Working with groups



What is the difficulty/complication?

Inquiries tend to have large numbers of witnesses, representing a variety of groups. Sometimes these people may be better represented as groups rather than individuals (for example several relatives of a dead person or members of a hospital management committee). The problem comes that either the Inquiry traditionally opts to interview all of these people in a serial order which can be time-consuming and ineffective, or the Inquiry does not call certain witnesses. Whilst it can be important in certain situations to determine what certain individuals thought or remembered, at other times it should be remembered that it can be of benefit to have group discussions to create a more holistic picture of 'the truth'.

Why is it important to work with people in groups?

In groups, people are able to correct or quickly supplement each other's evidence and collectively come together to present a full story. If in a group, tense witnesses may give more relaxed testimony. If a group of experts, other experts may be immediately able to refine or explain language descriptions or correct nuances of interpretation or provide alternative inferences from factual evidence.

Further, working with people in groups facilitated in a skilful way, can encourage those who are shy to give evidence which is helpful and to tell their story openly. Additionally, if the alternative is that these people are not called as witnesses at all then there is the potential that they will feel unrecognised and unheard in the Public Inquiry process. This can be a significant problem in enabling these people to find their own sense of resolution from the process.

Finally, working with people in groups can make the process significantly more efficient and cost-effective.

How does one work with groups?

There are specific techniques which should be considered as an alternative to serial witness evidence gathering and which will work differently with different groups:

- **Group Review** This is a process whereby groups of people are brought together in a group to present their evidence. As a group the Chair or counsel for the Inquiry can ask them various questions which are a trigger for informative exchange of views. It owes its origins to an Australian technique known as 'hot-tubbing' whereby multiple witnesses, usually experts, are brought together to give their evidence in a group discussion format. This is useful because it allows witnesses to clarify detail, language and possibly memory together. For example, where a family has a sense that their relative suffered alleged neglect in a hospital where the relative has died. As the Inquiry is not trying to determine anyone's civil or criminal liability (instead it is trying to determine what happened and make recommendations for the future), it has the ability to hear evidence in a format which would not necessarily be possible in such a trial because witnesses can remind each other of a sequence of events. Therefore, it's possible for the family to discuss what happened and remember details together (for example what time they arrived at the hospital to visit a patient) and develop together an idea of what happened. This can be a considerable aid as it means that the Inquiry team can consider together what the evidence from the family is and it may indeed be more revealing.

- **Expert Groups** In a similar manner it may be possible to bring experts together and have them openly discuss and critique the evidence. (This was the first application of group review). Whilst there is obviously benefit in having experts before a hearing compare their evidence to reach a consensus on what they agree on and what the major points of difference are, it can also be of considerable benefit to have experts give witness testimony together collectively. Not only does it give the Chair a greater understanding of how to compare these evidence strands, it also allows for the witnesses to clarify their points/thinking and also potentially amend it based on what others are saying, or to explore nuances in their approach. It is also an extremely efficient way for the Chair to cut out jargon and find a way of having the evidence presented in a way that makes it the most comprehensible and immediately comparable.

- **Focus Groups** If there are large communities of interest connected with an Inquiry such as professional or industry sector bodies, it may be appropriate to run focus groups or seminars, and/or conduct surveys etc. through a polling company in order to gain broader perspectives. Not only would this enable an Inquiry to know what the wider public perspective or stakeholder group view might be, but it also gives an understanding of what percentages of people thought particular points were important, as well as potentially being able to be used to define/refine the 'industry standard'. This makes it easier to justify an Inquiry making certain recommendations if they match what the 'public' think. It can also be an important stage in winning over or influencing groups who have to implement or live with recommendations from the Inquiry.

It also potentially allows those who have certain key interests to be targeted following the Inquiry with further information and suggestions about the recommendations that are important to or would benefit them. This process is already widely used in major infrastructure and major planning examinations and Inquiries. It is challenging for the Chair to ensure that evidence is properly tested but it is a very productive and time-saving way of elucidating the facts which can be agreed, and in challenging opinions.

When is working with groups particularly important?

Working with groups can be particularly important when there are a large number of parties involved and there is a need to give understanding to individuals but the practicalities of so doing make this not possible or not so efficient. Similarly, there can be an issue where much of the information from various witnesses is likely to be extremely similar. Whilst an easier method may be to have a sample from such a group or to use representatives etc., it can also be more helpful for those involved to feel that their view has been heard to be actively consulted together in regards to their evidence.

Alternatively, there is benefit to having people together in groups when there are a large number of people giving evidence which is likely to be both similar and contradictory and it is more protracted to test this by sequential testimony - for example, where there are multiple experts or similar.

Working with groups may also be vital if the recommendations from the Inquiry have to be adopted by professional communities or organisational players such as trade bodies.

IN SUMMARY

When working with groups the Inquiry should:

- Consider how groups of experts or family groups can be brought together to give their evidence, saving time and helping them consider what they are saying in a way where they can correct each other and/or draw collective conclusions or emotional comfort.
- Consider how to use groups to test the water on stakeholder views and particularly options for policy recommendations.

In the Public Interest



What is the difficulty/complication?

A primary purpose of a Public Inquiry is to alleviate public concern over an event by investigating it appropriately and making apposite recommendations. It is therefore important that the Public Inquiry process actually remembers that the public are following the Inquiry and will need to find out what is happening whilst the Inquiry is in progress and after it has concluded. The traditional route of defining 'Public Inquiry' as one of simply making the Inquiry room open to the public (whilst this should occur) is not enough. Thought needs to be given to how to create active engagement.

Why is it important to ensure that the Inquiry respects the public interest?

As noted above there are several groups who are interested in the outcomes of a Public Inquiry including communities of interest and the wider public. Ultimately an Inquiry's purpose is related to matters that have caused or are capable of causing public concern and therefore it is expected that the Public should be at the centre of everything that is being resolved. It is important therefore for the Public to have good access to the Inquiry in terms of being able to hear evidence, have the Inquiry consider public sentiment in terms of the questions that are asked, and involve the Public in the conclusions to the Public Inquiry.

How does one improve public engagement?

There are several methods that can be used to improve and facilitate public engagement.

- The simplest is for those conducting the Inquiry to determine beforehand what the interests of the public are in regards to the Public Inquiry, and create questions that will address these specific issues to enable it to be seen that the public's views are incorporated. In treading this line, it should probably be established that in general the public's perception of what it is vital to consider should be followed unless it is inappropriate to do so for some other significant reason which is explained by the Chair in writing to be posted on the website of the Inquiry as to why it is not appropriate. For example, if there was a public perception that some sort of cover up operation had occurred in relation to an incident, questions about this should be asked by the Chair so that there is a public record of the answers, even if the Chair personally thinks that a cover up did not happen or is extremely unlikely. The Chair's conclusion can dismiss this possibility but the questions will have been asked and thus the Public Interest will have been satisfied. More commonly, the questions that are of Public Interest are likely to be ones that the Chair thinks are relevant and so there is likely to be some agreement by the Chair as to the questions and how they could be phrased. This is important as it will show that the Chair has approached the topic with an open mind which is critical to public perception.

- In order to determine what questions are important to the public, there are several mechanisms that could be used. The first phase of testing will often be in the exchanges of comment that occur prior to final Terms of Reference being drawn. Later there can be a call for questions and see what is received with the most frequent, and those that are considered particularly pertinent, being asked by the Chair. Alternatively, the Inquiry could use other data gathering techniques such as surveys or focus groups or citizen juries or similar to determine what the public sentiment is. It may also be possible to use representatives from particular interested communities to sit as assessors with the Chairs and with whom the Chair can consult in terms of what their particular views are and what questions might need to be asked. In using representatives from communities, these would need to be agreed by those whom they represent and they would need to agree to appropriate terms of engagement with the Inquiry process.
- There should be consideration of whether it is possible to have a public panel as a sounding board or focus group to consider the evidence of the Public Inquiry and to assist the Chair. These panels could take various forms. At their most involved, they could involve bringing in a 'citizens' jury' style panel who would listen to the evidence alongside the Inquiry panel and be able to provide feedback to the Inquiry Chair on how they see the evidence. This obviously has some difficulties in terms of composition, remuneration/transparency, independence, etc. However, for some private Inquiries it may be worth constructing a group of this sort in order to ensure a more tangible sense of public engagement. A more practical mechanism may be to have an advisory panel from a major stakeholder group such as core 'victims' to be consulted on the Inquiry process and areas to highlight on a regular basis, whilst starting with a clear ground rule of the need to preserve the Chair's authority to take his/her own independent line.

Informing the public via the media and the Inquiry website

- A critical conduit of the information about the Inquiry is the media. An Inquiry should have ideally a media professional on the team who is able to create press strategy so that those working on the Inquiry know how it is presenting information to the media and then on to the public. Important aspects of this press strategy should be an understanding of the importance of clarity about the way in which a Public Inquiry works in general and how this Public Inquiry works; what the Terms of Reference are for this Inquiry and what its potential outcome will be; and how evidence will be gathered and what mechanisms there are for the public to get involved. The next section of this Guide has information on how to handle the media.
- There should be provision of a standardised press release explaining briefly what a Public Inquiry is in general and why they get commissioned, whilst also explaining what is happening with the particular Public Inquiry. This should also be clearly explained on the website of the Public Inquiry.

Further, there needs to be monitoring of media reporting so that inaccurate reporting can be dealt with. It would be useful for the Secretariat to have a review with the Chair of the Inquiry prior to its commencement of how s/he wants to deal with comments in the media and what they want to do when things are reported inaccurately (i.e. what level of inaccuracy needs to be reached for a clarification to be put out? What types of issues? Who needs to be thought about - vulnerable witnesses, those with potential liability?)

- We would also argue for increased use of social media by Public Inquiries - including possible use of Twitter to provide links to the Public Inquiry's official transcript for each day; links to witness testimony etc. An Inquiry should promote its website as being an official source of information and a 'go to' place about it. (Consider former examples of Inquiry websites such as The *Leveson Inquiry* website - very good at being a source for updates and information; The *Shipman Inquiry* website is an example of an extremely detailed resource. Other websites, for example *Al Sweady*, have been limited to publication of the transcripts etc. *Al Sweady* should be noted for its use of an Arabic version as well as English to increase knowledge and understanding). Essentially a key consideration for the Inquiry should be to ensure that the website is well considered by the public as a reliable resource. This would work by making sure that it is sufficiently detailed and updated, and by using an appropriate team to ensure this. Additionally, newspapers, news websites, Twitter users etc. could link to the website as a standard feature.

Key features of use of press relations/social media etc

- To make sure that the Public are kept informed about what the purpose of the Public Inquiry in question is, by specific reference to its terms of reference and how the Inquiry will end;
- To make sure that the Public understand what the roles of those involved in the Public Inquiry are and what they do. In particular they need to understand the following roles:
 - 1 Chair of the Inquiry;
 - 2 Lead Counsel to the Inquiry;
 - 3 Junior/other Counsel to the Inquiry;
 - 4 Solicitor to the Inquiry;
 - 5 Secretariat/Secretary to the Inquiry;
 - 6 Witnesses - and what their duty is (to provide information; not to protect themselves);
 - 7 Counsel for witnesses, core participants, departments etc. and specifically what their duty/role is;
 - 8 The department that commissioned the Inquiry and what their involvement is with the Inquiry (to stress the independence of the Inquiry/whether the department is going to make representations to the Inquiry; how the department will respond to the Inquiry report/their respect for the Inquiry as a process);
 - 9 Other Inquiry staff - support staff, etc., what their precise role is and confirm their neutrality;
 - 10 Any official observers, e.g. an assessor panel;
 - 11 The general public - how they can get involved/the importance of their position as readers of the report and scrutinisers so that what is recommended in the report happens;
 - 12 The media - what their role is in terms of reporting the Public Inquiry;
 - 13 Parliament.

- To make sure that the public understand the process of the Public Inquiry and what the timetables are for hearing evidence. More specifically, it is important that the Inquiry does not 'go silent' at any point from commission through to report publication. The Inquiry should explain on its website what is happening at all points. For example:
 - ◆ On the launch of the Inquiry, it can say that the Inquiry has been launched and that a Chair has been appointed and provide the speech/statement of the Minister who created the Public Inquiry. It should then specify what is happening at this stage (i.e. the appointment of other Inquiry staff) and provide proposed timetables for hearing of evidence and then eventually report publication.
 - ◆ It should then be made clear at all points up to the start of the Inquiry what is happening. Ideally these should be at least monthly updates.
 - ◆ When the Inquiry starts, the website should be updated daily (if not more often) with new material. The Inquiry website should explain in an easily accessible format what has taken place. Web streaming (if permissible) should be enabled.
 - ◆ It would be beneficial if the Inquiry provided weekly summaries (i.e. on a Friday when often a hearing is not sitting) - of what has occurred that week and a summary of the evidence. This should be presented in an entirely neutral format and can be presented as a series of web links, e.g. *On Monday 11 April, evidence was given to the Inquiry by [Witness name] starting at [*]. Counsel for the Inquiry asked questions [*] then other counsel etc. [*with hyperlinks to the appropriate pages of the transcript].*
- ◆ At the beginning of each week, there should also be a brief paragraph provided on the front page of the website naming what is going to happen in the Inquiry on each day of the coming week.
- ◆ If the Inquiry conducts site visits or holds seminars to consider key issues such as to test potential recommendations, a summary of this activity and who was involved.
- ◆ When the Inquiry team retires to write the report, there should be an update on the website about the fact that this has happened; an estimate of the time taken to complete the report and a rough outline as to what exactly completing the report involves and time estimates (e.g. amount of time spent reviewing all the material; time taken to draft the report etc.). There should also be an explanation of what the other support staff are doing during this period and the amount of help that will be given to the Chair. For example, it needs to be made clear to the public that the support staff will provide help in terms of typing/structuring but not writing the actual content of the report. If this is not the case, it should be made clear precisely who has influence over how the report is written; what their roles are and what their status/independence is; and there should be an explanation of who is not shaping how the report is written (e.g. the Minister who commissioned the Inquiry, his/her department etc.). Potentially as well the Inquiry Chair should express what is not going to be taken into consideration (for example, media speculation/inadmissible evidence). Finally, it should be stated on this page as a reference a reminder of what the Inquiry has been created to look at and what is going to happen in that regard.

- ◆ Prior to reporting the Inquiry, there should be information provided about what the final timetable is for release of the report, including about any embargoed period/lock in when the department/major figures/press etc. are going to be able to read the report before its final publication. It is also beneficial to explain the purpose and reasoning for any embargoed period/lock in.
- ◆ On reporting the Inquiry, there needs to be a press release issued etc. with the report, explaining the entire Inquiry process and what the report is about, possibly answering anticipated concerns.
- ◆ It may be beneficial in some cases to publish information about what the response is from those who have been criticised.
- ◆ Finally, the Inquiry website could be used to record progress and updates in relation to what has happened post the Inquiry and how it's being dealt with.

When is it particularly important to have public engagement?

Overall, there needs to be a continued focus from all involved about the 'victims', the concerned public and their attitudes in relation to this. There needs to be an understanding of the fact that 'victims' views particularly need to be respected and understood and that the Inquiry is happening because it is recognised that they have suffered.

Frequently, it is the case that these people have been subject to a completely unacceptable situation which has caused them severe suffering, including an uncertain or difficult period of comment before an Inquiry is arranged. One aspect of the Public Inquiry's role (certainly a reason for its creation) is that it is a public recognition of this suffering and the unacceptable state of affairs which has occurred. It is an important part of the catharsis process that the section of public involved has been given an opportunity to have their story told, plight heard and their recommendations for change put forward. This happens with almost every Inquiry with the Inquiry preface (or equivalent which explains what's happening) expressing regret for what has happened etc.

What is important is that this message remains clear to all involved in the Inquiry throughout its investigations and that the highest standard of professionalism and sensitivity is deployed by all while retaining appropriate independence and objectivity.

Handling the media



Handling the media

It is crucial that as soon as possible the Inquiry is capable of dealing with media enquiries and can respond swiftly. Thanks to social media (and 'industry sources') the media tends to learn about situations quickly. One should assume they will be in contact instantly that the Inquiry is announced (or new details emerge) whatever the hour. Not having clear lines of communication is likely to exacerbate the situation. If a journalist cannot get a quick response from the Inquiry office they are likely to track down the Inquiry Chair's home number and call their family at home (particularly out of hours).

Having someone (or even a press team) tasked with dealing with enquiries is essential but so is making sure that all those working on the Inquiry staff understand the process for enquiries. By having awareness of a process you can both avoid off-the-cuff remarks to journalists (that might prove embarrassing) and channel journalists quickly to the right point of contact.

The person responsible for handling the media (and press team if there is one) should have a core message they are able to deliver about the Inquiry and any other pertinent issues. This core message - which may often be used as a statement to the press - would preferably be drafted jointly between the person responsible, who will ideally have good experience of working with the press, and the inquiry chair.

Talking to the media and interviews, prior to, during and after the Inquiry

Having identified the media's first point of contact the Inquiry should identify a spokesperson (or spokespeople - one of whom may or may not be the Inquiry Chair). It may well be useful that the media's first point of contact is an authorised spokesperson, although it is often appropriate that limits be put on what they say - mainly delivering the approved message.

Never do interviews on the spur of the moment - always make sure that the interviewee understands the context, who the audience will be and if possible know what some of the questions might be.

The truth is at an interview there is often little that can be said, but an interviewee should emphasise four things in every interview:

- Show they care about the people (or person) involved
- Show that the Inquiry is taking its independent role and conduct seriously
- Provide re-assurance about what the Inquiry will do
- Encourage the public to follow the process and become more engaged with it if they feel that they can add value to it.

Press information

Decide what information you can and want to give journalists about the Inquiry and the issues it is considering and produce a pack for media outlets. This pack should contain any essential facts or background information which puts the Inquiry into context and ensures the media get their core facts correct. Be aware that you may be sometimes asked for photographs to accompany the story.

When necessary provide updates to the pack (or bulletins or press releases) in order to keep journalists informed because the more you are the provider, the less they will need to find information from potentially unreliable sources.

The spokesperson must be honest but not conjecture or accept responsibility for subjects outside of the Inquiry's remit or their knowledge and try to only talk about things where they have direct control or responsibility. The key is to be courteous and helpful while sticking to the points. Try to communicate as outlined above and where possible talk about any positive steps.

Journalists can become very forceful when pursuing a news story (it is part of their job) particularly where there might be someone to blame. Whatever happens you must remain approachable and professional at all times; otherwise your attitude might become part of the story. You will want to come across looking, sounding and behaving professionally at all times that you are dealing with the media.

Off the Record

Everything you ever say to or in front of any journalist is potentially on the record, to assume otherwise is very risky.

Facilities for journalists and whether to hold press conferences

As well as having a clear line of communication for the media, prepared spokespeople and good information when setting up the Inquiry, you need to consider what facilities you may want to physically provide onsite. To some degree this will be determined by the venue used. If your Inquiry takes place at an established venue, for example the Royal Courts of Justice in London, Glasgow City Chambers or the Welsh Assembly there will already be many facilities in place, such as outside broadcast points, Wi-Fi or processes such as press accreditation and passes. If your Inquiry is being held at a venue where this has not happened before you need to make sure that your press team are equal to the challenge of handling this to avoid potential chaos and frustration from journalists.

There may be occasions when elements to be considered by the Inquiry are private or confidential. In these instances either a clear embargo on reporting should be made or the press and public excluded from a hearing. If either of these options are considered it is important to be as clear as possible with the media as to why this decision has been taken and what the implications are (for example for how long any embargo might be in place).

Having a press conference is not essential but can be useful when there is a huge level of press interest as one can communicate to all the media in one go. To ensure things run smoothly you will need a host to outline any rules and make introductions. Any presentations should be short (so set a time limit although realise these things can start late) and allow time for questions. When there are a handful of broadcast journalists you can allow time for interviews (although not if there will be so many it will take up the rest of the day). All of the above elements for handling the media should come into play at a press conference - how you behave, good background information and having a core message.

IN SUMMARY

- Be prepared for media enquiries by having a dedicated person or unit dealing with them.
- When giving interviews, remember to reinforce the message that the Inquiry
 - a) cares about the issues;
 - b) is investigating them fairly and impartially; and
 - c) will reach a carefully considered outcome.
- It is of benefit to provide a basic briefing pack on the Inquiry to journalists every time you work with them.

Creating effective follow-on

FROM RECOMMENDATIONS
TO OUTCOMES



What is the difficulty/complication?

Many Inquiries come up with a series of detailed recommendations for ways of preventing a recurrence of the events leading to public concern, but for a variety of reasons, these recommendations are never successfully translated into successful outcomes. Recommendations which are made but are not implemented ultimately can be seen to have failed. An Inquiry will have failed to achieve one of its core purposes, if what it concludes is not implemented. Therefore it is in a Public Inquiry's best interests that the report produced is comprehensible, comprehensive, practicable and has scope for engagement with, and commitment from, those tasked with enacting the recommendations contained within it.

One obvious corollary of such a goal is that there needs to be a mechanism for ensuring that the recommendations that are made are tracked to see if they are implemented.

How does one improve the effectiveness of and implementation of recommendations?

- Some of the earlier considerations we have outlined for dealing with groups or stakeholders can assist both in formulating effective recommendations and building an early engagement with inquiry issues or developing thoughts. Starting with a clear purpose to the Inquiry therefore will both allow for and enable far more effective recommendations and action plans later.
- The most critical point of any Inquiry is necessarily the publication of its conclusions and recommendations. Whilst there are considerable benefits (as we have outlined above) of carrying out the processes of the Inquiry in terms of reference to victim recognition etc., the ultimate success or failure of an Inquiry will be determined from whether it has clearly produced an analysis of what happened and produced workable recommendations for review. Ultimately, if an Inquiry is to have any impact, its conclusions will need to be reasoned, comprehensive, real world aware, succinct and practical. Further, we would stress that the conclusion of the Public Inquiry should not just be the publication of a report alone but also with the Chair of the Inquiry presenting the report and stressing the most important elements of it. Further there should be a mechanism following an Inquiry to check whether or not its recommendations have been implemented and to support the implementation of recommendations. The most appropriate person to check this implementation may be the Commissioner of the Inquiry.
- An Inquiry report will necessarily be both backwards and forwards looking. It will both have to explain what happened, and why, as well as establishing what recommendations can be made for the future.

- The first major purpose of an Inquiry report is to explain more fully what happened and why. This calls for the kind of clear investigative techniques and forensic examination typically associated with the court system - thus the frequent call for a judge to chair an Inquiry. It is also however, necessary to consider who the various readers are of the work. It should be considered how to write the report in order to meet the needs of stakeholder groups, and ensuring engagements with their evidence and with any recommendations. Conclusions and recommendations will have more impact and force if they are written from a position of recognising the particular perspectives of those for whom the Inquiry has been conducted. Unlike other settings where the messages that are written in a judgement or conclusion will be filtered through lawyers etc. before being understood by the client, with a Public Inquiry the conclusion will be read by members of the public who may lack legal understanding/education. Whilst bearing that in mind, the reader written to should be considered to be an intelligent reader who has no knowledge of the situation. Unless the Inquiry is a Private Inquiry and only intended for a readership who have the requisite technical knowledge, anything that is vaguely technical should be explained briefly for the reader so that he/she can understand what is being said. A well-written Public Inquiry report should be comprehensive enough in its coverage that the reader is able to follow the conclusions of the report and how the recommendations have been developed without needing to consult external documents or read external materials for understanding. For similar reasons, a good Executive Summary at the front of the Report is vital.
- The report needs to identify at the beginning what its remit is and the extent of knowledge and understanding that the Inquiry team have needed to be able to reach a conclusion. In drawing conclusions as to what happened it should be determined where it was possible for the Inquiry to make firm conclusions and where it was not.
- If a particular factual scenario is in dispute then the Inquiry should determine whether it is necessary for the Inquiry to make conclusions in relation to that particular factual scenario or not. It may be that it is not relevant (i.e. either factual scenario would still be a fault) or that in the Inquiry's opinion it makes no difference to what is determined. In either of these circumstances it is still worth the Inquiry stating why it makes no difference but explaining that it has taken it into consideration. If the factual scenario is something that the Inquiry is able to determine and is important to only one of the parties (for example certain campaigners may see a particular factual scenario as important), then the Inquiry should state the factual scenario it finds whilst acknowledging that it is non-determinative. Reasons for doing this are a) that it prevents difficulties later where the Inquiry is criticised for not having considered an important element; and b) it provides 'closure' to those who consider the matter important and shows that the Inquiry is being conducted as a matter of public interest rather than from an overly legalistic or detached perspective.

- In determining a situation which favours one party's views of events over the other it should be noted that there is this discrepancy and it be explained why one party's explanation of the situation may have been singled out for attention. It should also be explained why a particular scenario has been favoured over another. If it is considered that one party has lied or been economical with the truth about the situation this needs to be considered extremely carefully before being found as a conclusion.
- In writing recommendations, thought needs to be given to how to provide practical recommendations which are actually capable of or indeed likely to be performed. If a recommendation is likely to be difficult to achieve or unwanted by the group that are tasked with carrying it out, then steps should be taken to ensure that the recommendation is broken down and is actually a series of practical doable steps. Thought should be applied to how engagement can be assured. Few organisations are likely to say that they do not want to carry out a recommendation but quite a few will say that the recommendation is impossible or difficult to carry out. If this is the case or could be presented as being the case, no matter how valuable the recommendation is, it simply will not happen. If a recommendation is particularly onerous this should be acknowledged and the importance of the recommendation emphasised. Additionally, it may be worth thinking about how you can build some flexibility into the way that the recommendation is carried out. This means that a recommendation is more likely to be performed and by allowing an element of choice to the process it allows the party who is being asked to change their systems to consider that they have retained an element of control.
- When writing recommendations, it is worth considering if they can be placed in an order or hierarchy identifying which are the most critical to be carried out. Whilst emphasising that all of the recommendations should be implemented, this provides an additional impetus to priority recommendations and makes them more likely to be implemented. A body that ignores the recommendation is ignoring something that has been designated as important. Equally attention needs to be given to the number of recommendations - the higher the number, the less likely there will be effective implementation.
- Finally the effectiveness of recommendations may also arise from the way an Inquiry process has been conducted. If there is ongoing and effective engagement with key stakeholder groups, understandings may already have been developed - both as to what is practicable on the one hand, and on the other hand, what has to be changed by those accountable to prevent recurrence of failings in systems. In some instances, reforms may already have been prompted by the focus and process of the Inquiry, rather than delayed for a formal recommendation stage.

Monitoring of recommendations

- It is worth thinking too about subsequent surveillance of recommendations and how this might occur. At the moment, there is no requirement that a body implement any recommendation made by a Public Inquiry. There may be pressure on the body to implement from certain groups, but there is no legal mechanism requiring any organisation to implement a recommendation of a Public Inquiry. Nor are government departments obliged to act, although a statement would normally be expected from the relevant minister. It is this lack of legal compulsion which led to CEDR originally suggesting the introduction of an Implementation Action Plan for recommendations whereby organisations would be required to indicate how they had responded to a recommendation within 12 months of the publication of the final report. This would mean that recommendations could not just be ignored by organisations but rather they would be required to comment on how they had implemented a recommendation and if they had not implemented a recommendation their reasoning for not doing so. It would also allow the organisation responding to the Public Inquiry to detail timescales for implementing recommendations and ways in which this can be checked and clarified by the Inquiry Chair or the body responsible for the Inquiry.
- Alternatively if the Inquiry Chair does not want to police the recommendations then s/he should consider whether there is an alternative body that could be identified to oversee the recommendations or if potentially such a group could be created by combining core participants or by alternative methods. A section of the Inquiry Report recommendations can endeavour to address this issue of effective monitoring subsequent to the Inquiry report.
- A Chair if using the above method should think about what s/he will do if recommendations are not implemented. The most obvious - and probably easiest - thing to do is for the Chair to make a public statement saying which of his/her recommendations have been implemented and which haven't and if s/he is satisfied with the ways that the recommendations have been implemented or the reasoning provided for not implementing a recommendation. If s/he is not happy with the way that the recommendation has been carried out or the reasoning for not implementing a recommendation, then s/he can make a statement to this effect. In some circumstances this of course may be difficult either politically or because the Chair's role has effectively ended once the report is issued.
- It may be practical and to be encouraged for the commissioning department to report back a year after the report has been delivered about what actions have been taken in relation to the report in the preceding year.

- Finally, an Inquiry follow-up could note where it has had successes as well as failures with the recommendations. If there has been a major change in an organisation's practice as a result of an Inquiry's report and recommendations and this is of major benefit to the public, then it would be positive for the Inquiry to recognise this achievement and publicly comment on it. A criticism of the Inquiry process is that it has no effect so it is important that positive results are communicated to the public and understood. As with some of our other recommendations, this is news that could be communicated well by an Independent Inquiries Office or the commissioning department. Indeed it may be of benefit with Government commissioned Inquiries, for the Government to produce an annual report of all the outstanding recommendations across all of their Inquiries and what the Government proposes to do about these.

Reviewing process issues

PLANNING
AND TECHNIQUES



What is the difficulty/complication?

If we have one lesson that we have learnt from our years working in dispute resolution, negotiation and thought leadership, it is this: be aware of the significance of process and the importance of good process design. Its true significance can be lost in the heat of debates or inquiry about the substantive issues at the heart of the Inquiry.

This section aims to look at the ways in which planning of Public Inquiries can be done so that it allows for the most efficient and effective use of time and resources. Within the design phase of the Public Inquiry there should also be the opportunity to improve the process of the Public Inquiry itself by using process experts and skills to define the best way of conducting a particular Public Inquiry.

- As a very basic principle thought should be given as to how many Public Inquiries need to occur into any event. There has been justified criticism recently of the number of Inquiries that occur through different agencies into the same set of events - for example, it is stated that there are 30 separate inquiries and investigations into the allegations of abuse by the television personality Jimmy Savile. Whilst it may be necessary for all of the various agencies to conduct these investigations to see what happened, it is clearly not the most efficient way to reach a conclusion to have 30 separate investigations where their conclusions and material considered are likely to be similar or alternatively worryingly inconsistent.

By having so many different investigations into the incidents, it is likely to make the investigations more, not less, harrowing for the victims of Savile's actions as well as creating the foreseeable problem of producing different conclusions and conflicting recommendations and mismatched follow-up.

For example, if the police are called as a core participant in multiple inquiries and receive different conflicting recommendations from each Inquiry, they will either have to decide on which recommendation to go with (creating a dangerous position of having a potential hierarchy of Inquiry) or ignore the recommendations, rendering the process ineffective. If Jimmy Savile had been alive, he would potentially have been able to argue that the number of alternative investigations into his behaviour prevented him from being able to defend or represent himself appropriately and that he had been denied due process. The Crown Prosecution Service would not be able to bring 30 separate criminal procedures against an individual simultaneously for the same issues but rather would be required to run them together. Therefore, it seems odd that Inquiries do not follow the same procedure to prevent over-analysis and unnecessary cost.

Thus it is worth considering whether it is possible to run Inquiries together with multiple agencies and share resources.

- Equally, it may be useful to consider whether there can be multiple processes or focussed Inquiries running at once within the same umbrella Inquiry. For example, it might be possible to have a conciliation process running for victims and responsible players under the umbrella of a single Inquiry at the same time as the investigatory processes. If it is possible to separate out these processes it can be helpful for those affected rather than have them wait for the outcome of the Inquiry to begin having these conversations with those that they perceive as 'perpetrators'. And often by that stage when the 'ashes are cold', there may be only legal action left to consider (itself a way in which Inquiry processes can move on to become protracted civil procedures).
- A mechanism of doing this is to hold town-hall style meetings between those involved where the Inquiry Chair both explains the process of what is happening and allows those who are attending the Inquiry to state what it is that they want separate from the Inquiry. That way these processes can be established for them if necessary.
- One process which has worked in previous Inquiries (e.g. The *Stephen Lawrence* Inquiry) is to use mediators or a facilitator to liaise between the Inquiry and communities of interest. This can enable communities affected to have their opinions heard but it also removes the need for an individual citizen to have to follow every single moment of the Inquiry hearing to feel that they have a purpose and ability to contribute to the discussion. A more recent innovation in Inquiries has also been to hold 'seminars' on specialist issues or for purposes of considering recommendation options.
- Thought needs to be given to scheduling and the timing of producing witness statements so that it is convenient to those who are attending the Inquiry and those who are running it. This will obviously be the job of the Secretariat in liaising with witnesses as to when they attend but the overall structure should be considered by the Inquiry Chair. In particular an Inquiry Chair needs to think about when they want to broadly hear from different core participants and what the level of questioning should be. There can be a utility to mixing up the order of core participants from likely different perspectives so that the Inquiry does not go into a default litigation mode with a view of there being one side of the story and then the other.

Style and tone of the Inquiry

- The default style of many Public Inquiries although intended to be inquisitorial is the (adversarial) courtroom. Design thought should be given to whether this is optimal for an Inquiry or Inquiry issue rather than following blindly the assumption of judicial manners.
- The most appropriate style may use multiple different techniques. If you choose to run the process in a traditional courtroom style (or even in an actual courtroom) be at least conscious of the fact that you have chosen to do it like that and your reasoning for so doing. If you are not sure why you are doing it in that style, and especially if you don't think that that style is the most appropriate, then you should reconsider which other formats might be available and appropriate.
- Avoid if possible the temptation for the Inquiry to enter traditional legal Examination-in-Chief and Cross Examination mode. Not least because a true Inquiry should follow an inquisitorial model rather than adversarial. If the Inquiry is trying to get as much information as possible, there is little benefit in getting people to feel that they need to be guarded in what they present or for them to face a staccato line of questions. The ideal way of conducting an Inquiry is to allow witnesses to say what they want to say as well as asking them questions to 'supplement' the information. In that way the witness can feel that they have contributed exactly what they wanted to contribute and the Inquiry does not miss vital points from thinking that it has not heard evidence that it should have done. Core participants will invariably prepare their own witness statements which will be submitted to the Inquiry but it may be beneficial for minor witnesses to also be asked to consider before they appear what it is that they want to say and to send a limited preparation. Within mediation, we limit parties' position statements in length which encourages parties to focus on what they really want to say and prevents rambling. We also encourage people to express themselves and what they want to say about the situation at the beginning of the process. This is an extremely useful exercise as it prevents the party from saying that they were unable to express how they really feel about the process and by 'venting' their emotion early on they may be more able to answer difficult questions later on more directly. It also helps with the commencement of the reconciliation process.
- There are certain other techniques that can be used which are of help to the Public Inquiry Chair. The first of these is explicitly to encourage parties to consider the views of others. This can be done by asking the witness to put themselves in the other person's shoes and ask what they would do in the situation presented to them. The technique again allows parties to identify not only whether what they are requesting is reasonable but also look at what practically could be done. This is especially important for considering recommendations. For example, a relative of someone who has died in an alleged police malpractice incident may want the police to change their entire method of doing something. However, if that participant is presented with the fact that that cannot pragmatically be achieved, then the relative might either change their position to suggesting something which is more practical, state that they do not have the knowledge to

make a recommendation or contend that it is still important in spite of the practical problems presented. If recommendations and points are considered in this more reflective way then there can be a deeper focus on possibilities for resolution before the Inquiry chair has to sit down and make final decisions.

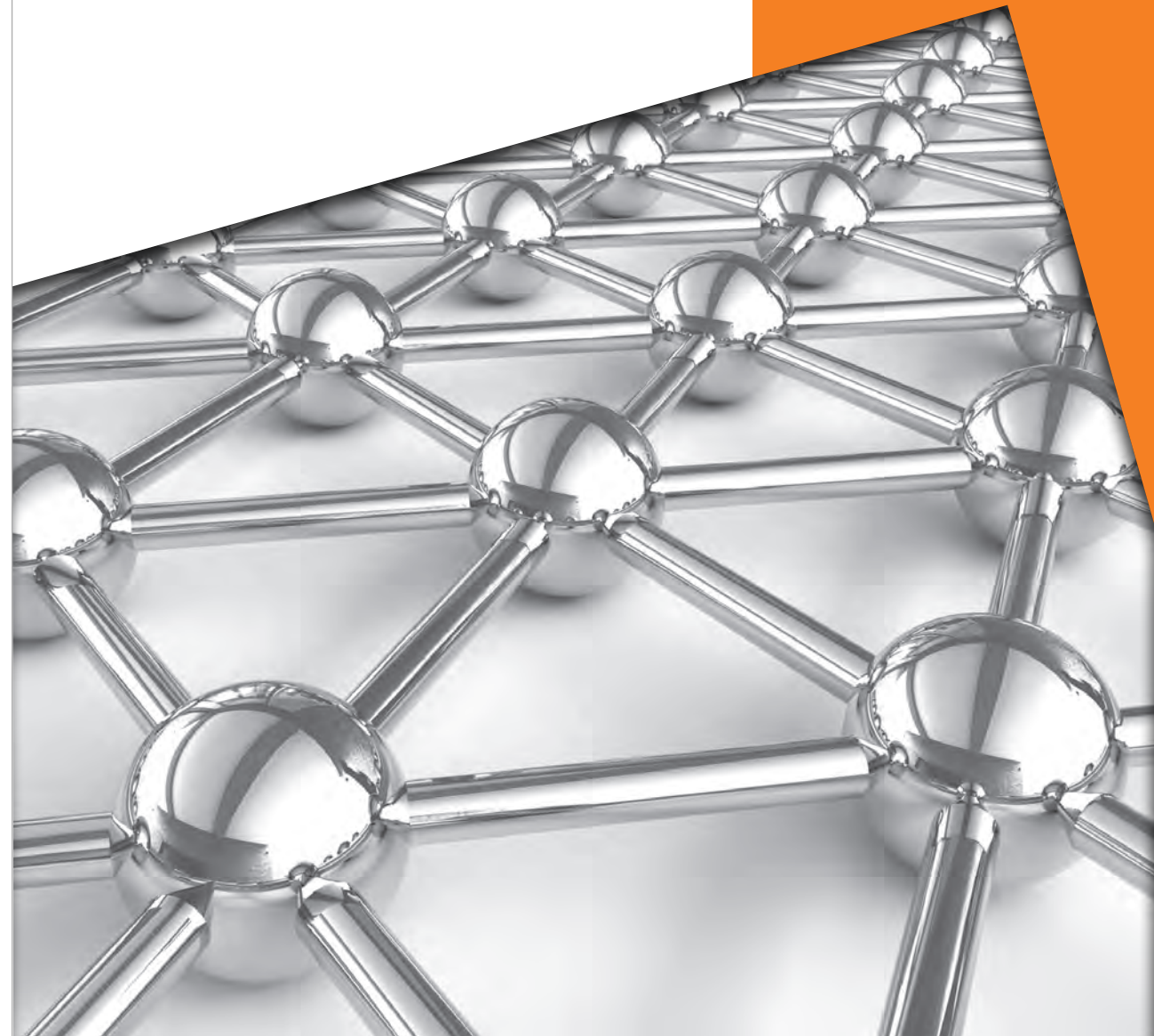
- If many witnesses are from the same location or the location is part of the 'situation' it may be easier to move the Inquiry to their location for interview rather than move participants to you. Choosing a space where people feel comfortable can aid memory, encourage honesty and make witnesses feel less intimidated.
- Additionally, there needs to be recognition by the Inquiry Chair of the distinction between opinion, fact and emotion and how the Inquiry needs to understand all three concepts. Within a Public Inquiry, it is likely that the evidence will need to cover determining what has happened, the impact on the witness in terms of how they feel about the events that have happened (in many ways this is clarifying and establishing why the events were capable of causing public concern) and the impact that the events have had upon them as well as gauging their opinion as to what should happen next and how to resolve the problems that have occurred. Factual accounts should be considered and used to build up an understanding of what occurred for the completion of the narrative part of the report. To an appropriate extent factual evidence can be challenged during the Inquiry to make sure that the factual determination is accurate. Witnesses' feelings about the event and the impact on them should be respected and can be used to determine why the Inquiry is important, the impact that it has had on public feeling and where action priorities might be. Finally, in terms of considering opinions as to what happens next, these should be respected by the Inquiry panel and can be explored with appropriate witnesses. Whilst it should be for the Panel to come to its own decisions in terms of what recommendations are made, there are no reasons why it cannot accept suggestions from witnesses for how something should be considered. There may also be scope to consider separate process stages for the three dimensions of 'evidence' suggested here.
- One of the striking aspects of the Public Inquiry system within the UK is that the report that is produced at the end of the process can often come as something of a surprise to the general public and participants. With the exception of the use of 'Salmon letters' where the Inquiry informs a participant that they are likely to be the subject of criticism within the report, there is frequently little indication of what the conclusions of the report or the proposed recommendations are before they come out. This secrecy has three unfortunate consequences: firstly, it raises anxiety levels of participants regarding the report before it comes out; secondly, it makes recommendations less likely to be implemented as key parties' practical capabilities may be disregarded; and thirdly, it delays the timing for recommendations to be implemented as they necessarily cannot be implemented or worked on before the publication of the report. The effect of this is to cause delay in bringing in important changes.

- We would propose therefore that the Inquiry Chair considers options for allowing the public and participants to know the direction of their thoughts before the report is published and for potentially a more explicit canvassing of ideas and options. A mechanism that we initially proposed for this is the 'first pass model'. This model operates where after the first 20% of time and evidence has elapsed in the Inquiry, the Chair outlines initial thoughts on what s/he has reviewed so far and completes an interim report, potentially making any early provisional or tentative recommendations. There is obviously a difficulty with doing this in that it can appear that the Chair has not considered all of the evidence that will come before him/her before making a decision. However, the intention with this approach is to give an early indication of where the thoughts of the Chair are going - not to provide a final report. The 'first pass' process is particularly useful where the Public Inquiry can separate out overarching issues which might underpin the more detailed ones, e.g. broad funding/staffing issues in health cases - which may involve a different set of players from the more personal and detailed issues. Also, it can highlight areas where a fuller professional or public debate can begin before formal recommendations arrive, in order to allow adjustment time.
- Producing an initial report would also allow the Inquiry Chair to use process options such as focus groups or panels (made up potentially of representatives of participants, experts in the field, appropriate lay advisers, or members of the public) to review the options and conclusions that the Chair was making and provide their own comment. This would be a way for the Chair to explore his or her thoughts in a process which meant that he/she was able to clarify their thinking and produce recommendations refined by iterative dialogue before they produce the final report.

Management and Budgeting

A core aspect of a good Inquiry process rests with the capabilities of an effective Secretariat who will project manage much of the logistics of the Inquiry, assist in liaison with lawyers, witnesses and the media, develop IT systems and assist in management of budgets. Chairs may not be required to oversee much of the detail of this, but clearly should contribute to effective and efficient management of the process by assisting in selection of experienced managers, developing strategic objectives, holding regular management meetings and tracking time and budget usage. While a Chair must oversee these aspects, their particular focus should lie on more strategic process questions we have highlighted such as witness examination issues and key stakeholder management.

Wider policy issues



From our work on Inquiries, we have several recommendations which do not fit specifically into an Inquiry process model but relate to wider policy issues.

We include these here as a prompt to further creative thinking about the design of the Public Inquiry process as a legal-political model given that Inquiries are so vital as a social audit, and growing in frequency as a political instrument.

Independent Inquiries Office

We think it would be useful to create a central Inquiries Unit, a unit we have given the name Independent Inquiries Office, and which would have the role of being a central administrative facility for Public Inquiries, providing expertise in essentials such as how to set up a Public Inquiry, factors that need to be considered etc., but would also be a repository for information about previous Public Inquiries, as well as being a watchdog for whether or not Inquiry recommendations have actually been implemented.

There are few official resources for Public Inquiries in general and it is critical that those organising Public Inquiries and the interested public have access to as full a provision of resources as possible. In conducting an Inquiry it is of benefit to future Inquiries for the Inquiry to keep as complete and open a record of how it has conducted itself so that it can report on lessons it has learnt about the process to assist those organising future Inquiries and to allow for interested parties to review the methodology that led to a conclusion as much as to just read the final conclusion and recommendations. We have found that most Inquiry Chairs have this desire and are keen to share their views with others, however, there is currently no mechanism for this, meaning that every new Inquiry has to start essentially from scratch. This is ultimately a waste of both financial and non-financial resources, and causes delay to the progress of the Inquiry and possibly to the effectiveness of some Inquiries. An Independent Inquiries Office which acted as a repository of experience and lessons learnt would be a great benefit. Further, we would argue that the Independent Inquiries Office could be a go-to resource for members of the media, researchers and the public to find out about past Inquiries. Although the subject matter of Inquiries can be diverse, the question of Inquiry process and management has many common features. Equally it can be argued that such an office could potentially serve a useful 'social audit' role similar to the National Audit Office's financial caretaking on behalf of the public.

Increased training for Chairs

A second recommendation that we would make is that of increased training for potential Inquiry Chairs in process techniques and the mechanisms that they can consider when conducting Inquiries. Effective training would ensure that those who are tasked with the difficult duty of chairing a Public Inquiry are aware of the possible process methods that can be used in order to improve Chairs' knowledge and confidence in using different skills. There are some arguments for providing at least a taster training in this area for judges who might be considered as potential Inquiry Chairs. However, a more proportionate approach would be to ensure there is an intensive induction session available for a newly appointed Chair.

Greater public engagement

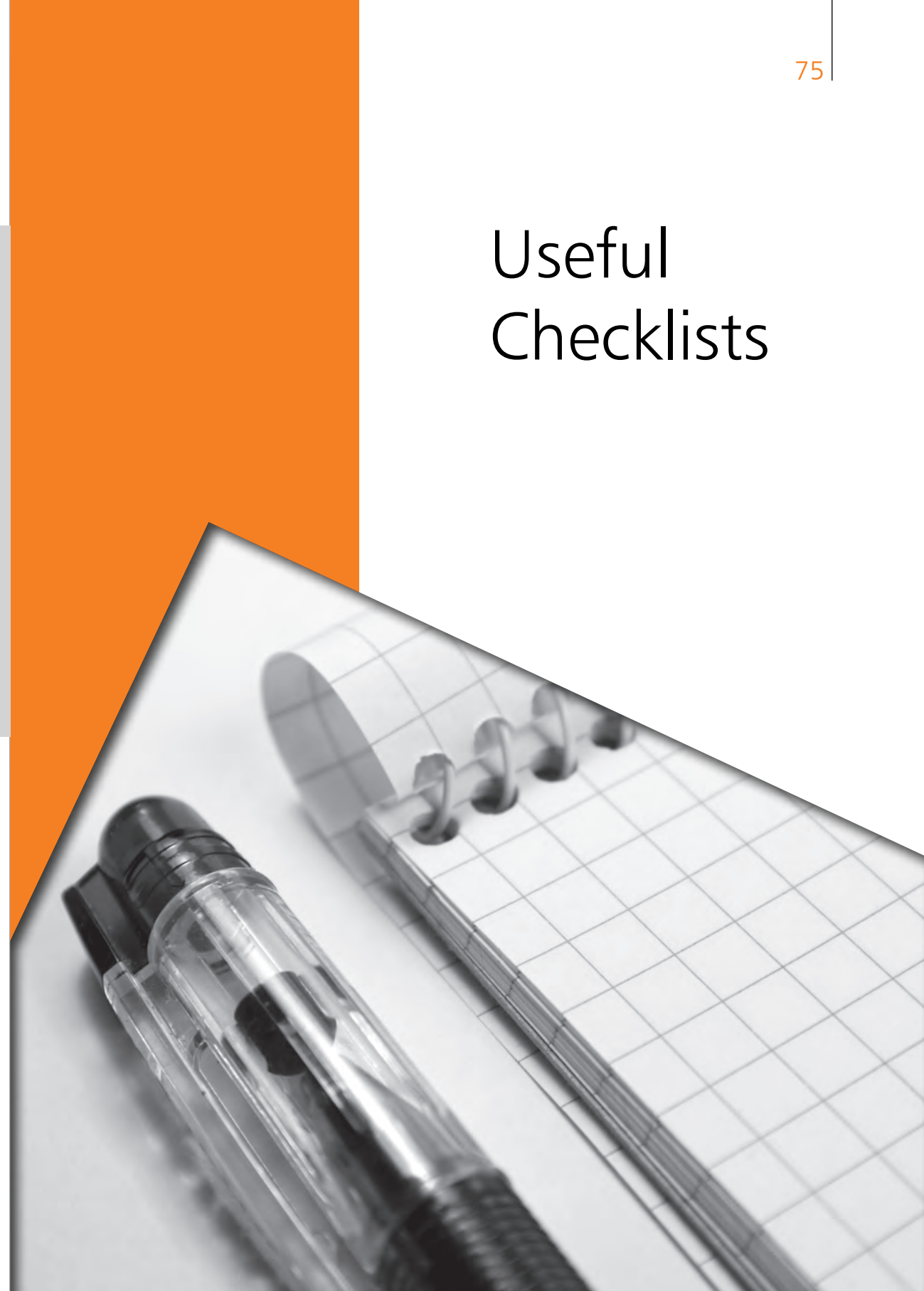
As a final recommendation for engaging with the public we would encourage teaching about Public Inquiries to take place across the different tiers of education. It would be beneficial if some of those involved in Public Inquiries would consider participating in future training programmes and sharing their knowledge and experience. Some of our suggestions for training include:

- Public Inquiries should be referred to within UK schools, for example Citizenship lessons which currently teach the key concepts: 1) 'Democracy and Justice'; 2) 'Rights and Responsibilities'; 3) 'Identities and Diversity - Living together in the UK'. The topic of Inquiries would probably most closely fit in as a lesson in 'Democracy and Justice', and could be formulated in a simulative case study or role play format.
- Promotion of Public Inquiries on legal/governmental and political courses (Higher Education and Vocational Training). At the moment there is no direct training about Public Inquiries on the Bar Professional Training Course/Legal Professional Training Course. Both could be encouraged to make reference to it as something that lawyers should know about and that requires different skills. The way to encourage this would be to go through the Bar Standards Board/Solicitors Regulatory Authority. There should be some useful experience in the Planning Bar as barristers who work in this area are used to engaging with various forms of Inquiry. A survey of UK politics courses suggests that it is not covered in any great detail if at all.
- Additionally, it would be good to promote Public Inquiries as an option for continuing professional development for barristers and solicitors after they are qualified.
- It would also be beneficial to provide information about what a Public Inquiry is to new members of the Civil Service (or at least provide access to such material). It should also be included as something discussed as part of any appropriate training course for current civil servants who might be involved in an Inquiry as Secretariat. This would potentially allow for greater accountability.

“With uncapped time frames and expenditure, Inquiries have in some cases racked up multimillion-pound costs for taxpayers - most controversially with the £200m price tag for the Savile Inquiry, which took more than 10 years to report - raising questions over proportionality. In response, the Centre for Effective Dispute Resolution (CEDR) has launched an ‘Inquiry into Inquiries’ in co-operation with Lord Woolf to address these issues in the hope that they can put forward policy recommendations to ensure that, ‘where you are going to have an Inquiry, the Inquiry should be regarded as much closer to the end of the story’ says CEDR chief executive Karl Mackie.”

LEGAL WEEK, 1 JUNE 2012

Useful Checklists



	BEFORE THE INQUIRY	DURING THE INQUIRY	AFTER THE INQUIRY
PICKING AN EFFECTIVE CHAIR	<ul style="list-style-type: none"> ◆ Carry out an appropriate process using principles of capability for purposes of the Inquiry ◆ Announce the Inquiry Chair at an appropriate time 	<ul style="list-style-type: none"> ◆ Let public know about how Chair was selected via website 	<ul style="list-style-type: none"> ◆ Share methodology with other commissioners/future Inquiries
CREATING AN EFFECTIVE TERMS OF REFERENCE	<ul style="list-style-type: none"> ◆ Write Terms of Reference in draft ◆ Consider all groups ◆ Consult within short window ◆ Publish final draft 	<ul style="list-style-type: none"> ◆ Clarify Terms of Reference at start and what is and isn't going to be covered ◆ Publish on website ◆ Maintain as reference point 	<ul style="list-style-type: none"> ◆ Share best practice ◆ Encourage commissioning department to report on implementation
INDEPENDENCE, OBJECTIVITY AND FAIRNESS	<ul style="list-style-type: none"> ◆ Ensure that qualities of independence, objectivity and fairness are expressed clearly in statements regarding the Inquiry prior to its start and applied 	<ul style="list-style-type: none"> ◆ Reiterate the qualities at the start of the Inquiry as well as for any witnesses who show particular concern ◆ Demonstrate in actions 	<ul style="list-style-type: none"> ◆ Make sure that the Inquiry's conclusions and recommendations are presented in a way that is clear, independent, objective and fair
HANDLING EMOTIONS	<ul style="list-style-type: none"> ◆ Prepare people beforehand ◆ Work out where sensitivities lie ◆ Handle room/waiting room layout sensitively ◆ Separate the personal issue from people's interests/policy questions ◆ Explore methods of acknowledging emotions while retaining objectivity 	<ul style="list-style-type: none"> ◆ Work with people in an empathetic manner ◆ 3 Rs - Recognise, Respect, Respond ◆ Consider process choices for managing group emotions effectively 	<ul style="list-style-type: none"> ◆ Incorporate recognition in report ◆ Encourage where appropriate implementation that stays alert to emotional recovery needs
WORKING WITH GROUPS	<ul style="list-style-type: none"> ◆ Work out who the various groups are ◆ Determine strategy for managing an inquiry ◆ Explore process for group management 	<ul style="list-style-type: none"> ◆ Use focus groups or seminars ◆ Use other techniques, e.g. group review ('hot-tubbing') ◆ Consider parallel facilitation/mediation work 	<ul style="list-style-type: none"> ◆ Send recommendations to particular groups ◆ Encourage in report continuing engagement with groups on whom implementation depends
DIFFICULT TOPICS	<ul style="list-style-type: none"> ◆ Identify what are likely to be difficult conversations/topics in advance and methods of handling 	<ul style="list-style-type: none"> ◆ Provide context to those being asked difficult questions ◆ Avoid leading questions or those which imply blame ◆ Use active listening skills to receive the responses ◆ Explore from different angles 	<ul style="list-style-type: none"> ◆ Identify what were difficult topics to be addressed in the report and how these were handled ◆ Consider use of interim tentative recommendations or directions, to begin policy or practice debates outside formal Inquiry

	BEFORE THE INQUIRY	DURING THE INQUIRY	AFTER THE INQUIRY
IN THE PUBLIC INTEREST	<ul style="list-style-type: none"> ◆ Set up the website so that it has effective explanations and continuing relevance ◆ Engage with others/panels etc. 	<ul style="list-style-type: none"> ◆ Maintain website and update etc. ◆ Consider use of juries/public panels 	<ul style="list-style-type: none"> ◆ Clear press releases ◆ Engage implementation of public reporting
WORKING WITH THE MEDIA	<ul style="list-style-type: none"> ◆ Identify a key spokesperson for the Public Inquiry who media enquiries can be directed to 	<ul style="list-style-type: none"> ◆ Provide appropriate facilities for journalists ◆ Give interviews under the core principles of <ol style="list-style-type: none"> a) showing interest/caring for the people involved; b) showing that the Inquiry is taking its role and conduct seriously; c) providing clarity and reassurance about what the Inquiry will do ◆ Update website regularly 	<ul style="list-style-type: none"> ◆ Provide an appropriate press release with any Inquiry report ◆ Explain how media enquiries will be answered/dealt with now the Inquiry has concluded
CREATING EFFECTIVE FOLLOW THROUGH	<ul style="list-style-type: none"> ◆ Consider potential recommendations even when the Terms of Reference are being drafted so that the Terms of Reference will leave scope for effective recommendations 	<ul style="list-style-type: none"> ◆ Test out potential recommendations with others in focus groups etc. ◆ Write the report so that it has a set of clear targets 	<ul style="list-style-type: none"> ◆ Make sure that there will be effective engagement with recommendations and that there is an implementation plan/clear path ◆ Ensure priority actions are highlighted
REVIEWING PROCESS ISSUES - PLANNING AND TECHNIQUES	<ul style="list-style-type: none"> ◆ Use an effective project planning system to put in place a way of separating out the various elements and making them progress through in ordered manner 	<ul style="list-style-type: none"> ◆ Track project plan by phases, budget targets, regular reviews,etc. 	<ul style="list-style-type: none"> ◆ Share best practice and lessons learned ◆ Highlight innovations that can be tested in other contexts
FINANCIAL MANAGEMENT AND LOGISTICS	<ul style="list-style-type: none"> ◆ Plan spending ◆ Book appropriate venue ◆ Use the guidance and make sure have planned for effective support etc. 	<ul style="list-style-type: none"> ◆ Keep an eye on how things are going and make sure that logistics are done/the Inquiry is run appropriately ◆ Provide public information on key targets and progress, and reasons for diversion if necessary 	<ul style="list-style-type: none"> ◆ Report on how much the Inquiry has cost ◆ Provide report on areas where you feel you could have saved money/cut costs/ have helped/lessons learned

The most all penetrating spirit before which will open the possibility of tilting not tables, but planets, is the spirit of free human inquiry. Believe only in that.

DMITRI MEDELEEV, SCIENTIST, 1934-1907

Appendix



What did CEDR do to investigate the Public Inquiry process?

In 2012, the CEDR Foundation undertook a bold task of re-evaluating the Public Inquiry process with an aim of seeing if the process could be improved. Our starting point was a realisation of ‘the inquiry’ as a process for many public contexts. Our objective was to develop recommendations for how the Public Inquiry process could be made simpler, more effective and more responsive to the ‘public’ both in terms of helping enable reparative processes between those affected by the events that led to the Public Inquiry being commissioned and those who are perceived as being responsible; as well as more generally working with the wider public to increase their understanding.

In order to reach our recommendations, we carried out a period of consultation and research. We started our research, by cross-comparing different Public Inquiries conducted in the UK over the last 30 years to analyse their effectiveness, the methodologies that they used and their perception from those involved in them and the wider public. We also looked at equivalents to the Public Inquiry process in other parts of the world, including the USA, Canada, France, Australia, New Zealand, Ireland and others. Our conclusions on this point are that there does not appear to be any country which has a particularly better way of managing its Public Inquiries processes to an extent that we would recommend adopting their model.

In March 2012, CEDR conducted a survey into Public Opinion of the Public Inquiry process by polling 2,000 members of the public. Of the 2,000 citizens polled, less than a third said they had confidence in the system. More than half of those surveyed found them too long and too costly, and did not believe recommendations were implemented. Over two thirds wanted more involvement from members of the general public, while over half thought politicians had too much influence. The survey results provide striking evidence of a widespread lack of confidence among the general public in the Inquiry process and of the impoverished nature of the ‘public’ dimension within the traditional Inquiry process

Further to this, we set up a working group of experts in the Public Inquiry field, (including former Inquiry Chairs, civil servants, lawyers, academics and others), chaired by Former Lord Chief Justice, Lord Woolf and CEDR’s Chief Executive, Dr Karl Mackie CBE, to discuss the issues that they had experienced when conducting Public Inquiries, identify the problems that are endemic to the Public Inquiry process and discuss recommendations for reform.

From this, the group identified 11 key recommendations for reform (Listed at Appendix 2). These recommendations covered topics such as improving the start of Public Inquiries by reforming the ways that terms of reference are defined; increasing the use of alternative process options within the Public Inquiry process; increasing the Public’s understanding of and involvement with the Public Inquiry process, and changing the way that recommendations at the end of the Public Inquiry process are followed up on and dealt with.

We then held a Symposium for a larger group of experts in March 2013 to discuss these recommendations and the way that they might be progressed. As well as the experts who attended in person, the Symposium was also covered by the media, and had an interactive element with the public through Twitter and online coverage through a live blog, allowing the public to contribute their comments and questions to the discussion that occurred. From the symposium, we were able to gauge which of the recommendations were seen as valuable and how they could be taken forward and improved. We also identified certain other issues (for example, the role of the media and Inquiries, Inquiry budgeting) which required further thought.

From this evidence, we have further refined our recommendations and discussed them with senior Inquiry experts. In July 2013, Dr Mackie was called to give evidence before the House of Lords Select Committee on the Inquiries Act 2005 considering the work that CEDR has carried out and his perspective on the Inquiries model. A transcript of Dr Mackie’s session is available to be read at the House of Lords’ website (http://www.parliament.uk/documents/lords-committees/Inquiries-Act-2005/IA_Written_Oral_evidencevol.pdf)

Finally, we have conducted some additional interviews with further experts on the Inquiries process, for example Susan Bryant, Director of Rights Watch UK, enabling us to complete this final report.

RECOMMENDATIONS OVERVIEW

CEDR developed 11 recommendations for improving the performance of Public Inquiries. These were as follows:

Before the Inquiry Process

1 **Enhancing the capabilities of Chairs and Panels**

This recommendation proposes that Judges should be given increased training; the Cabinet Office should produce a Guide in Best Practice for Public Inquiry Chairs and that there should be a programme for training Chairs once they are appointed.

2 **Aligning Inquiry purposes with intelligent methodology**

A recommendation to improve the design of the Inquiry including taking on board recommendations from process experts

3 **Managing potential Terms of Reference**

A recommendation of an introduction of a one-month draft terms of reference to allow interested parties to debate what the terms of reference should be before they are finalised.

During the Inquiry Process

4 **Separate investigation from recommendation**

A recommendation to separate the Inquiry into two distinct phases - a first phase which is investigative and a second phase which is about recommendations.

5 **Beyond the inquisitorial system**

A recommendation to introduce different processes learnt from CEDR's experiences in arbitration, mediation and alternative dispute resolution into the Public Inquiry process as methodologies.

6 **Increase the recognition and use of parallel track processes**

Increasing the number of track processes so that inquiries can run in non-sequential format, including options for parallel track processes.

7 **Bringing the public into the Public Inquiry system**

A recommendation to create a Citizens' Panel who would feed back to the Inquiry's Chairs and Panels to ensure that things are better prepared.

8 **Setting parameters - the 'First Pass' Inquiry Model**

A recommendation to introduce a 'First Pass' model whereby there would be a presentation of facts after 20% of the time has elapsed.

After the Inquiry Process

9 **Implementation action plan**

A recommendation for the introduction of an Implementation Action Plan, whereby relevant parties would have to feedback how they had implemented the points made by the Public Inquiry within 12 months.

Cross Process Recommendations

10 **Building on know-how through the establishment of an Independent Inquiries Office**

This recommendation would bring in an Independent Inquiries Office to focus on Public Inquiries, building knowledge and public involvement.

11 **Enhancing public awareness of the Inquiry process**

A recommendation to increase public knowledge, awareness and understanding of the Public Inquiry process through increased academic and educational reference to Public Inquiries.

RECOMMENDATIONS IN DEPTH

Recommendations for establishing a Public Inquiry

1 Enhancing the capabilities of Chairs and Panels

Recognition needs to be given to the fact that judges tend to have a key role in the conduct and status of the Inquiry process and as such that they should be provided with increased training to enable them to manage this role better. There should be a regular education programme aimed at senior judges likely to be the source of recruitment for future Inquiry work, with contributions from former Inquiry Chairs, civil servants who have managed Inquiries, and other facilitators of the Inquiry process who have contributed significantly to Inquiry work. This programme should aim to familiarise the judges better with the different aims within an Inquiry, and the variety of techniques and options available as compared and contrasted to traditional litigation objectives and management. The Cabinet Office should produce at least every five years a Guide to Best Practice in Public Inquiries for Chairs and Panels, including a regular section on 'Innovation in Public Dialogue processes', making reference to pre-Inquiry work to be undertaken, and other aspects relating to recommendations below. Overall, Chairs of Public Inquiries (whether they are former Judges or not) need to be given greater training before they undertake a Public Inquiry so that they are aware of the various techniques that can be used and to allow for a more considered and informed application of such techniques when the Inquiry begins.

2 Aligning Inquiry purposes with intelligent methodology

We believe that much of the dissatisfaction expressed around Inquiries and their outcomes arises because the Public Inquiry 'vessel' is used to contain too broad a mix of purposes. We therefore recommend that more careful design should be undertaken, including design advice sought from process experts, at the preliminary stage of setting up a Public Inquiry, particularly focusing on key 'fault-line areas' where purpose and practice/capability may diverge. A 'purpose and design statement' should be issued at the outset of an Inquiry to indicate that there has been analysis of purpose and process choices rather than committing simply to a process based on default thinking. Further aspects of this recommendation are embodied in our specific Recommendations 4 to 8 below.

3 Managing potential Terms of Reference

Terms of Reference are notoriously a problematic area in the Inquiries field, embodying a tension between the perceived need to move quickly for political and efficiency reasons, versus the risk that the terms might be seen to be driven by narrow political agendas and issued without proper consideration. We support the introduction as standard practice of incorporating a one-month 'Draft Terms of Reference' system within which potential witnesses or stakeholders (including the public) will be able to comment and suggest amendments. A brief reasoned statement can be issued explaining the adoption of the final Terms of Reference and any obvious key alternatives that are to be discarded.

Recommendations for once the Public Inquiry has started

4 Separate investigation from recommendation

Arguably a very different methodological approach and thought process is needed when one is contemplating future possibilities and making recommendations for the future, compared with 'finding out what happened'. In their traditional position, judges are particularly suited and accustomed to working with the latter, rather than the former. Equally, working out solutions often requires a different mindset, a fresh dynamic, an appropriately attuned methodology, an informed and affected stakeholder group, and a different political awareness, from the task of forensic analysis of a calamity. Finally, an investigation conducted with a potential aura of 'blame' as an outcome, may not be the most productive setting for articulating how to prevent re-occurrences.

We therefore recommend that where there are any reasonably complex or organisational issues at stake in an Inquiry, that Inquiries are consciously split into two phases and probably that these two separate phases should have two separate Chairs or panels. The first phase should be charged with making 'findings of fact and concerns for future practice'. This report would sum up initial findings of what took place in the events that triggered the call for an Inquiry, and as a subsidiary purpose be able to outline the general direction in which future reforms might be considered to prevent a recurrence of a problem, or deal with gaps in policy uncovered in the first phase investigation.

There should then be a defined time period for the convenor of the second Inquiry stage to take the general concerns raised in the first Inquiry stage and place it in a broader, more informed

context of what practical recommendations can be issued to meet the concerns of the first phase Inquiry. There should still be an advisory role for the Chair of the first stage, and possible overlap in specialists/panel members who worked on the first stage, but the clearer delineation of purposes and separation of concerns and structure could potentially lead to more sustainable recommendations being drafted. It gives greater flexibility in drawing on the qualities from other professions for managing a 'futures' discussion. The gap between the two phases would also allow a time period for greater public and political contributions to reform debates. This structure is also aligned with other suggested reforms below.

5 Beyond the inquisitorial system

Coming as we do from a background in mediation, conflict management and alternative dispute resolution, we believe traditional Inquiries are often too bound to the 'litigation model' of evidence gathering - sequential examination of witnesses whose testimony is judged for reliability and credibility, and compared to the testimony given separately by other witnesses. This emphasis has indeed been considerably exacerbated in some recent Inquiries (*Hutton; Leveson*). (Some recent Public Inquiries have adopted an ambience of a mock 'trial' in how they conduct their proceedings due to their use of existing courtrooms, potentially triggering unfortunate habitual mind-sets amongst lawyers attending and the Chair 'on the bench'.)

In our view, many of the issues in Public Inquiries are capable of facilitated dialogue, where a facilitator helps a group of parties articulate their assessments and thoughts on a topic, and encourages them to find common ground or to identify key differences or core issues.

This approach is most useful in an Inquiry context, a) to grapple with organisational dilemmas; b) to consider recommendations for the future (phase 2 Inquiry in our model); c) to deal with grief or shock experienced by participants to calamities they have faced; and d) for experts to engage in a dialogue about what they have in common and where the real differences lie in their assessment of evidence (a process known from the Australian literature as ‘hot tubbing’). There is no rigid formula we can offer as to how and when to adopt these practices, but we would wish to encourage Inquiry Chairs and secretariats to keep them as an option, and for government to encourage their further piloting in forthcoming Inquiries. (As an example, we are aware of one Chair in an NHS Inquiry, who encouraged grieving families to meet first in private with hospital administrators, before giving formal evidence, so that they could feel the process had gone some way to meet their needs). In any case, we believe facilitated dialogue will be particularly helpful in Stage 2 Inquiries, where the focus is on future conduct and practical policy offerings. Such facilitated dialogue may in some instances also be able to encompass early discussions to address compensation for civil liability arising from the findings of a first Inquiry.

6 Increase the recognition and use of parallel track processes

Not only does the sequential nature of Inquiry hearings reflect a logic that is too bound to formal tradition, it limits the potential for working with the Inquiry as a project that has a range of purposes and sub-purposes, with potentially varying timelines and focus points. We therefore encourage the use of ‘second and third track’ approaches to managing the Inquiry process, where discrete topics are managed simultaneously rather than sequentially.

The corollary is that separate Chair and/or facilitators should be deployed - for example to convene meetings of experts rather than factual witnesses, or to work with policymakers on potential recommendations, or to ensure participants in sensitive relations with one another have opportunities to convene in more intimate settings than across a witness box, etc. Evidence gathered in Inquiries should also be available for consideration in formal legal proceedings, and even prima facie evidence of a finding of fact if that is the conclusion of an Inquiry - this would help avoid duplication of costs. Not least amongst such parallel track processes, would be the inclusion of a ‘restorative justice’ element, where those who might be perceived as ‘victims’ of the incidents leading to an Inquiry could engage in facilitated dialogue with those who appear responsible or accountable in a more informal and safe setting than that of the formal investigative hearings. Even in planning and more ‘commercial’ Inquiries, there may be significant scope for better quality of dialogue and mediated discussions as is now provided by court-annexed mediation in the legal system. At the very least, the government should encourage pilots of some of these alternatives to the formal process, and provide appropriate resources for testing new models.

7 Bringing the public into the Public Inquiry system

It is somewhat ironic that something called the ‘Public’ Inquiry, should so manifestly not engage members of the public. Part of the reason for this is that the process is owned by politicians in its initiation, usually fast-tracked through from announcement of the appointment of a Chair, and then conducted by judges or other specialists who may not place emphasis on the public engagement nature of the process.

Other barriers have been the perceived and real need for specialist understanding, the significant sensitivities at stake, and the uncertain duration of the process or likely resources available.

However despite these difficulties, we believe there is a case for extending participative democracy in the context of the public objectives of the process and the serious issues addressed in major Public Inquiries. Our recommendation, however, limits public engagement to ensure that it is focused and practical. We suggest that with every Inquiry, a ‘Citizens’ Panel is engaged. It would have very specific functions to act as a consultative focus group to support some of our other Recommendations, namely to advise the Minister and Chair a) on any issues concerning the adoption of Terms of Reference; b) to advise on the duration of the ‘first pass’ Inquiry (See Recommendation 8); c) to comment on the report’s findings and whether further work might be done; d) to act as an occasional sounding board for the Chair as to the public perception of the value of the process in their role as citizens and taxpayers, and opportunities for alternative processes (partly informed by attendance on at least some days of the Inquiry).

8 Setting parameters - the ‘First Pass’ Inquiry Model

Once under way, it can be difficult for politicians - or indeed the senior judge responsible for the conduct of the judiciary - to be seen to interfere with the conduct of an Inquiry. However this absence of control has arguably led to Inquiries taking much longer and costing much more than might be seen to be either value for money or value for informing social insight. Their powers or inclination to restrict evidence-taking, may also be limited by the fact of witnesses and others seeking to ensure their case is fully represented

or protected at the hearings. The procedural openness of such an approach, is however clearly vulnerable to ‘Inquiry drag’, where time and cost limits are easily exceeded and run out of control or beyond predicted budgets in the interest of being seen to conduct a ‘full, fair and fearless’ investigation. Proportionality needs to be re-emphasised within the Public Inquiry model.

What is needed therefore is a process which attempts to balance the urgency of the topic under consideration and the need for public efficiency, against the importance of ensuring that an issue has been adequately explored and no material gaps in understanding left.

Our tentative structural suggestion to address this issue is to adopt and paraphrase the ‘80:20 economists’ or managerial prescription. That is to say that the most important 80% understanding can be achieved in 20% of the time taken by the typical lengthy Inquiry. We recommend for major Inquiries, that there should be designed a ‘First Pass’ Inquiry model, with strict time limits (3 months, 6 months, or 12 months set at the outset by the Inquiry Secretariat team in consultation with the appointed Chair depending on their initial judgment of the scale of Inquiry involved). Its function would be to act as if it were the full Inquiry investigation and report. Part of its final report, however, would be to assess if there were any outstanding or unresolved questions, and provide some indication of how those might be addressed cost-effectively. The Minister could at this point make a judgement as to whether the first phase Inquiry (before a Recommendations stage) had sufficiently met its objectives of informing and reassuring the public - as advised by the Secretariat in consultation with the Chair and Citizens’ Panel (see above).

Recommendation for after the Public Inquiry has concluded

9 Implementation action plan

In order to ensure that the body authorising the Inquiry will take appropriate action, there should be a time period set at the outset of an Inquiry, within which the authorising body will respond to recommendations, and to explain its intentions with regards to such recommendations. The reasoning behind having such a time plan is that it would compel action from the government and demonstrate to the public that the bodies involved are being held accountable for their actions. A maximum of 12 months from the end of the Inquiry to the required response to the implement action plan would seem feasible.

Cross Process Recommendations

10 Building on know-how through the establishment of an Independent Inquiries Office

An independent Inquiries Office should be established to be the conduit for process design suggestions, based on monitoring and evaluation of Public Inquiries. Its resources should be made available not just to government but also to local authorities, planning authorities, major public agencies, who might be launching independent investigations into major issues. A know-how centre could become a focus for expertise, as well as guidance on essential methodological concepts such as when to use parallel track processes, appropriate selection criteria for Chairs and panels, the importance of role descriptions, guidance on when and how to release Public Inquiry reports, how panel chairs can handle press relations, etc. In particular such a body should encourage what one of our correspondents described as a 'known, pre-determined and visible process of due diligence' in setting up an Inquiry.

11 Enhancing public awareness of the Inquiry process

Our research suggests limited public understanding of the Public Inquiry process. A simple recommendation to ensure enhanced awareness would be to encourage schools and universities to incorporate analysis of the process as a key element of politics and government modules and programmes. Indeed the range of topics covered by Inquiries, the challenges of the methods for managing Inquiries, as well as in tackling the recommendations of Inquiries, would seem to make this an attractive and dynamic focus for intellectual and practical student work. Related to this, perhaps the Cabinet Office could produce for the press a more developed statement of how a Public Inquiry works each time a major one is initiated.

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