



Investigatory inquiries and the *Inquiries Act 2005*

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The *Inquiries Act 2005* made significant changes to the system of public inquiries in the UK including the repeal of the *Tribunals of Inquiry (Evidence) Act 1921* which had formed the main basis for statutory inquiries over some 80 years. The 2005 Act provides a statutory framework for inquiries into matters of public concern, and this note lists the inquiries established under the *Inquiries Act 2005* and, provides some assessments of the impact of the Act.

This note does not encompass routine administrative inquiries into, for example, planning or social security matters, nor specialist inquiries such as transport accident or companies act investigations. It does however discuss some alternative ways of establishing inquiries into matters of public concern, other than those set up under the 2005 Act, as well as some of the issues raised by public inquiries such as the need to keep the cost of inquiries under control.

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1 Introduction

The call for a 'public inquiry' into an event of major public concern or into a controversial public policy issue is a common occurrence. Until 2005, the main statutory provision for setting up inquiries was the *Tribunals of Inquiry (Evidence) Act 1921*. This legislation was replaced by the *Inquiries Act 2005*. The Act provides a statutory framework which may be used by ministers wishing to establish an inquiry with full powers to call for witnesses and evidence.

The *Inquiries Act 2005*, which consolidated and updated inquiries legislation, received Royal Assent on 7 April 2005 and came into force on 7 June 2005. There was some criticism that the Act represented a strengthening of ministerial control over statutory inquiries. In part, this was because the main legislation available to set up inquiries prior to the 2005 Act, the *Tribunals of Inquiry (Evidence) Act 1921*, had given Parliament a formal role in establishing inquiries. However, it should be noted that the 1921 Act had not been widely used – only 24 Inquiries were established under the Act – and there is provision in the 2005 Act for Ministers to inform Parliament about the establishment and development of inquiries.¹

The Joint Committee on Human Rights had expressed concern that certain aspects of the new legislation risked compromising the independence of an inquiry, potentially breaching Article 2 of the European Convention on Human Rights where the subject matter of the inquiry concerned the right to life. These included the power of a minister: (a) to bring an Inquiry to a conclusion before publication of the report (s.14), (b) to restrict attendance at an Inquiry or to restrict disclosure or publication of evidence (s.19), and (c) the 'default position' on publication whereby a minister may become responsible for publishing the conclusions of an Inquiry and for determining whether any material should be withheld in the public interest (s.25).² Sir Menzies Campbell commented as follows on the Act in his evidence to the Public Administration Select Committee:

Worse than that, Chairman, it gave ministers responsibilities or powers in relation to the duration of the inquiry, who might attend it, it allowed ministers to say, "It is time this inquiry came to a conclusion." I think that is a reaction to Saville, and there may be questions of management, but we should not allow questions of management to intrude upon the principle of Parliament being able to hold the Executive to account.³

The Government's view had been put by the Minister, Baroness Ashton of Upholland, in a press release issued when the *Inquiries Act* came into force:-

The Act consolidates existing inquiries legislation, fills gaps and codifies best practice from past inquiries. For the first time in statute the Act lays down all key stages of the inquiry process - from setting up the inquiry, through appointment of the panel to publication of reports.

The Act does not, as has been suggested, radically shift emphasis towards control of inquiries by Ministers. Instead, it makes clear what the respective roles of the Minister and chairman are, thereby increasing transparency and accountability.

¹ Inquiries could also be established under various other Acts, for example, the Stephen Lawrence Inquiry was established under section 49 of the *Police Act 1996*. Over 30 such legislative provisions were repealed by the *Inquiries Act 2005*.

² Joint Committee on Human Rights, *Fourth report session 2004-05*, HC 224 2004-05

³ House of Commons Public Administration Select Committee, *Parliamentary Commissions of Inquiry*, HC 473 2007-08, pEv2

It also stipulates that proceedings will be in public unless restrictions on access are imposed by either the Minister or the chairman. Unlike previous legislation, it specifies the grounds on which access can be restricted.

The Act does not give Ministers any power to decide what evidence an inquiry should hear. It gives inquiries full powers to seek out information within their terms of reference.

The Act says that inquiry final reports must be published in full unless there are clear reasons for withholding material and lays down what these reasons can be. Once an inquiry ends, any restrictions on public access to any material or evidence will be subject to the Freedom of Information Act.

Reform of inquiries legislation was long overdue and this Act will enable inquiries to get to the truth more quickly and cost-effectively."⁴

The Ministry of Justice, in its post-legislative assessment of the Act, noted some of the concerns and particular concerns about the way in which the Inquiry Rules were working. The report concluded:

Having assessed the operation of the Inquiries Act 2005 by reference to all thirteen inquiries either set up under the Act or converted into 2005 Act inquiries, we believe that overall the Act has been successful in meeting its objectives of enabling inquiries to conduct thorough and wide ranging investigations, as well as making satisfactory recommendations. We do, however, take the view that the Act can only enable effective inquiries if the inquiry is conducted by a chairman with the appropriate skill set and who is supported by an appropriately experienced inquiry team. We have no evidence of any serious suggestion that the Act should be repealed in any substantive way. The overwhelming evidence, however, is that the Inquiries Rules as currently drafted are unduly restrictive and do not always enable the most effective operation of the Act.⁵

The report also includes detailed information on the costs of public inquiries. The Government has stated that "The factors that the Government will be taking into account include consideration of the potential duration and cost of an inquiry."⁶

2 The provisions of the *Inquiries Act 2005*

The Inquiries Act:

- makes provision for Ministers to:
 - set up formal, independent inquiries relating to particular events which have caused public concern, or where there is public concern that particular events may have occurred;
 - set the terms of reference;
 - appoint a chairman to conduct the inquiry;
 - appoint additional panel members and assessors where appropriate;

⁴ DCA, "Statutory inquiries are modernised with commencement of Act", *News release 140/2005*, 7 June 2005

⁵ [Memorandum to the Justice Select Committee: Post-legislative assessment of the Inquiries Act 2005](#), Ministry of Justice, October 2010

⁶ HL Deb 15 June 2011 c198WA

- inform the relevant parliament or assembly of the above by oral or written statement.
- Provides for an inquiry chairman to determine the procedures to be adopted, and to have powers to require the production of evidence, the attendance of witnesses and the taking of evidence on oath.
- Enables the establishing minister or the chairman, or both, to be able to place restrictions on public access to the inquiry where appropriate;
- Places a duty on the chairman to deliver a report to the commissioning minister, and on the minister to arrange for publication and the laying of the report before the relevant parliament or assembly;
- Gives powers to the ministers of the devolved legislatures as well as UK ministers the power to set up inquiries under the Act;
- Contains provisions on inquiries established jointly by two or more ministers, including cross-border inquiries within the UK;
- Gives members of an inquiry immunity from civil proceedings;
- Makes arrangements for payments of expenses of witnesses including legal representation where appropriate;

Further information can be found in the explanatory notes to the Act⁷ and in a Library research paper on the Bill.⁸

The *Inquiries Act 2005* does not preclude an investigation under the Act taking place at the same time as a judicial inquiry, but there are strong public policy reasons why this is rare due to concerns about prejudicing criminal prosecutions.

The *Coroners and Justice Act 2009*⁹ included a provision that states that senior coroners must suspend an investigation under the Act into a person's death if (a) the Lord Chancellor requests the coroner to do so on the ground that the cause of death is likely to be adequately investigated by an inquiry under the *Inquiries Act 2005* that is being or is to be held, (b) a senior judge has been appointed under that Act as chairman of the inquiry, and (c) the Lord Chief Justice has indicated approval to the Lord Chancellor, for the purposes of this paragraph, of the appointment of that judge. However further provisions allow the coroner to continue their investigation if there are exceptional reasons for doing so.

2.1 Rules of procedure

Draft rules of procedure for UK inquiries were issued for consultation by the then Department for Constitutional Affairs in March 2006. The new *Inquiry Rules* came into force on 1 August 2006.¹⁰ The increasing cost of public inquiries, most notably the substantial expenditure on the Bloody Sunday Inquiry, was an important factor behind the drive to update inquiries legislation. This is reflected in the rules which require, for example, that the hourly rates of remuneration for publicly-funded legal representation, and the nature and estimated duration

⁷ *Inquiries Act 2005: Explanatory Notes*, <http://www.opsi.gov.uk/acts/en2005/2005en12.htm>

⁸ Chris Sear, *The Inquiries Bill [HL] 2004-05*, HCL Research Paper 05/21, 10 March 2005

⁹ Cap 25, 2009

¹⁰ *The Inquiry Rules 2006*, SI 2006/1838, <http://www.legislation.gov.uk/uksi/2006/1838/contents/made>

of the work, must be agreed in advance. The explanatory notes state that the rules cover the following areas:-

- the designation of core participants to the inquiry;
- the appointment of legal representatives;
- the taking of evidence and procedure for oral proceedings;
- the disclosure of potentially restricted evidence in certain limited circumstances;
- the issuing of warning letters (to witnesses where the chairman believes that they will be subjected to criticism during inquiry proceedings);
- arrangements for publishing reports and records management;
- the determination, assessment and payment of awards.

Scotland has issued separate rules under the Act, the *Inquiries (Scotland) Rules 2007*.¹¹

2.2 Inquiries held under the Act

In 16 November 2004, Paul Murphy, announced details of the inquiries to be held into the deaths of Robert Hamill, Billy Wright and Rosemary Nelson. These, too, were cases involving alleged collusion which had been examined by Judge Cory. Subsequent announcements by Mr Murphy's successor, Peter Hain, indicated that two of these cases (those relating to Billy Wright and Robert Hamill) would be converted to inquiries under the *Inquiries Act 2005*. Brief details of these inquiries are set out below.

Death of Billy Wright

Inquiry into the death of Billy Wright at the Maze Prison on 27 December 1997. Public inquiry chaired by Rt Hon Lord (Ranald) MacLean of the Court of Session in Scotland. Inquiry established under section 7 of the *Prison Act (Northern Ireland) 1953*. Peter Hain announced by written statement on 23 November 2005 that he had agreed to the request from the Inquiry's chairman that it be converted to one under the *Inquiries Act*.

In February 2006, Billy Wright's father, David Wright, was granted leave in the High Court in Belfast for a judicial review of the Secretary of State's decision. Mr Justice Deeny ruled in December 2006 that the Secretary of State's decision was unlawful and failed to take into account the important consideration that the independence of the Inquiry was compromised by the power of the minister to terminate it. The judgement was subsequently reversed by the Court of Appeal in June 2007. The Lord Chief Justice, Sir Brian Kerr, said that the Secretary of State's power to stop the inquiry did not have a direct impact on its independence. He added:

The impact that the prospect of its being brought to an end by the Secretary of State will have on the inquiry's freedom of action has to be contrasted with what the inquiry panel conceived to be the greater scope for its investigation of the circumstances surrounding Billy Wright's death if the inquiry was one conducted under the 2005 legislation.¹²

¹¹ [SI 2007/560](#)

¹² Northern Ireland Court Service, *Notification of judgement in Court of Appeal*, 28 June 2007, http://www.courtsni.gov.uk/NR/rdonlyres/580626E5-2573-476E-9205-7CEB6617C7B7/0/p_pm_pr200711.doc

The Wright Inquiry reported on 14 September 2010 and this was followed by a ministerial statement.¹³ The cost of the Inquiry was £30.6m.¹⁴

Death of Robert Hamill

Inquiry into the death of Robert Hamill following an incident in Portadown, County Armagh, on 27 April 1997. This is a public inquiry chaired by Sir Edwin Jowitt, a retired member of the High Court of England and Wales. This was established under section 44 of the *Police (Northern Ireland) Act 1998*. Peter Hain subsequently announced by written statement on 29 March 2006 that he had agreed to a request from the Inquiry's chairman that it be converted to one under the *Inquiries Act*. An interim report published in March 2010 is available on the Inquiry's website.¹⁵ The cost to date has been £33m.¹⁶ The Inquiry completed its report in February 2011 but owing to ongoing legal proceedings it has not yet been published.

Various issues surrounding the Inquiry have been tested in the courts. Firstly, a number of ex-RUC officers who were expected to give evidence applied to give their evidence anonymously. This was rejected by the Inquiry Panel in August 2006 and this approach was subsequently endorsed by a House of Lords ruling in July 2007. Further legal proceedings have surrounded the decision by the Secretary of State to exclude the office of Director of Public Prosecutions for Northern Ireland from the Inquiry's terms of reference. Additional information on these matters can be found in press releases issued by the Inquiry.¹⁷

The inquiry into the death of Rosemary Nelson (a solicitor from Lurgan, in 1999 was established under section 44 of the *Police (Northern Ireland) Act 1998* and is not being held under the *Inquiries Act* (see Section 4 below).

E-coli (Wales)

The National Assembly for Wales established an inquiry under the 2005 Act to investigate the UK's second largest outbreak of *e-coli* which occurred in South Wales in September 2005. The outbreak led to the death of a five year old child, Mason Jones, and affected more than 150 people, most of them school children. The Inquiry's chairman is Professor Hugh Pennington. Its terms of reference are:

To inquire into the circumstances that led to the outbreak of E.coli O157 infection in South Wales in September 2005, and into the handling of the outbreak; and to consider the implications for the future and make recommendations accordingly.

The preliminary hearing was held on 27 June 2006. A programme of public hearings began on 12 February 2008 and ended on 19 March 2008. Closing submissions were made on 14 May 2008 and the final report of the Inquiry was published on 19 March 2009.¹⁸ The cost was £2.35m.¹⁹

¹³ <http://www.billywrightinquiry.org/>. The statement to the House by Owen Paterson, the secretary of State for Northern Ireland, is available at HC Deb 14 September 2010 c743

¹⁴ [Memorandum to the Justice Select Committee: Post-legislative assessment of the Inquiries Act 2005](#), Ministry of Justice, October 2010, p23

¹⁵ <http://www.roberthamillinquiry.org/>

¹⁶ HL Deb 24 May 2011 c727 c424-5WA

¹⁷ <http://www.roberthamillinquiry.org/press/>

¹⁸ <http://new.wales.gov.uk/ecoliinquiry/?lang=en>

¹⁹ MOJ, op cit, p23

The ICL Inquiry

This was set up on 21 January 2008 to investigate an explosion on 11 May 2004 at a plastics factory operated by ICL Plastics Ltd and ICL Tech Ltd at Grovepark Mills in Maryhill, Glasgow. As a result 9 people died and 33 were injured. The Inquiry was a joint one established by Rt Hon Peter Hain, then the Secretary of State for Works and Pensions, and the Lord Advocate, Elish Angiolini, QC. The inquiry was chaired by Lord Gill and reported on 16 July 2009 at a cost of £1.91m.²⁰

Death of Bernard Lodge

Bernard Lodge was a prisoner who committed suicide in HMP Manchester in 1998. At the inquest in 2001 there were concerns about the failure to spot his state of mind and allegations about his treatment by prison officers. The following parliamentary answer indicates how the initial inquiry has been converted into a 2005 Act inquiry:

The Parliamentary Under-Secretary of State for Justice (Mr. Shahid Malik): Barbara Stow, a former Assistant Prisons and Probation Ombudsman, was appointed to Chair an investigation into the death in custody of Bernard Lodge, who died in HMP Manchester on 28 August 1998. Public hearings were held in September and October 2008.

On 23 February 2009, I agreed to convert the Bernard Lodge investigation to an inquiry held under the Inquiries Act 2005, following representations from the Chair. The investigation was so converted in accordance with section 15 of the Inquiries Act 2005. Barbara Stow shall remain Chair and no other members are to be appointed to the inquiry panel. The terms of reference of the inquiry, as detailed in Annex 1 of the Chair's procedures dated 10 January 2008, shall remain the same. The terms of reference can be found at http://www.preventingcustodydeaths.org.uk/default/article_two_investigations/fpdc-bernard_lodge.htm²¹

The inquiry reported in December 2009.²²

Death of Baha Mousa

Baha Mousa was an Iraqi civilian who died in British military custody in September 2003. He had 93 identifiable injuries on his body and had suffered asphyxiation. Eight other Iraqis had also suffered inhumane treatment.²³ On 14 May 2008, the Secretary of State for Defence, Des Browne, announced that an inquiry would be established under the *Inquiries Act 2005* into how and why Baha Mousa died.²⁴ On 21 July 2008 Mr Browne announced that the Inquiry would be chaired by Rt Hon Lord Justice Gage who was about to retire from the Court of Appeal. The terms of reference were:

To investigate and report on the circumstances surrounding the death of Baha Mousa and the treatment of those detained with him, taking account of the investigations which have already taken place, in particular where responsibility lay for approving the

²⁰ <http://www.theiclinquiry.org/index.aspx>. For costs see *MOJ*, op cit, p23

²¹ 18 March 2009 c55WS

²² *Report of the Inquiry into the circumstances of the Death of Bernard (Sonny) Lodge at Manchester Prison on 28 August 1998*, HC 127, 2009-10, December 2009. The overall cost of the inquiry has not yet been published.

²³ This information taken from the Aitken Report - http://www.mod.uk/NR/rdonlyres/7AC894D3-1430-4AD1-911F-8210C3342CC5/0/aitken_rep.pdf

²⁴ HC Deb 14 May 2008 c60-1WS

practice of conditioning detainees by any members of the 1st Battalion The Queen's Lancashire Regiment in Iraq in 2003, and to make recommendations.²⁵

Oral hearings have now concluded and the publication date of the report is 8 September 2011. Further information can be found on the Inquiry's website.²⁶ Costs to date are £10.87m.²⁷

The Fingerprint Inquiry (Scotland)

The Inquiry was set up by Scottish Ministers on 14 March 2008 and is Chaired by Rt Hon Sir Anthony Campbell. The Inquiry's website gives the background to the inquiry:

In May 1997, David Asbury was convicted of the murder of Marion Ross. The prosecution case against him included fingerprint evidence.

In the course of the investigation into Miss Ross's murder, a fingerprint was found on the doorframe of the bathroom in Miss Ross's home. It was identified as belonging to Shirley McKie, a serving police officer involved in the murder investigation. That fingerprint became known as "Y7". In the course of the trial of David Asbury, Shirley McKie denied that the fingerprint was hers. After the murder trial, Shirley McKie was prosecuted for perjury (lying while giving evidence on oath) because of what she had said in her evidence at David Asbury's trial. The evidence before the jury at Shirley McKie's trial included evidence from defence fingerprint experts that Y7 was not her fingerprint. The jury, unanimously, found Shirley McKie not guilty of perjury.

The identification of Y7 was made, originally, by officers of the Scottish Criminal Record Office. Various fingerprint experts have expressed differing views as to whether Y7 is the fingerprint of Shirley McKie. In August 2000 David Asbury was granted interim liberation pending an appeal against his conviction for murder. His conviction was quashed in August 2002. The Crown did not oppose his appeal.

Shirley McKie raised an action for damages arising from the identification of Y7 as her fingerprint. It was settled out of court by the Scottish Ministers, without admission of liability, in February 2006. The steps taken to identify and verify Y7, and the measures that might be taken to avoid any shortcomings in the identification and verification of fingerprints in the future in Scotland have not previously been the subject of a public judicial inquiry.

The Inquiry's website also quotes the inquiry's terms of reference:

- To inquire into the steps that were taken to identify and verify the fingerprints associated with, and leading up to, the case of *HM Advocate v. McKie* in 1999, and
- To determine, in relation to the fingerprint designated Y7, the consequences of the steps taken, or not taken, and
- To report findings of fact and make recommendations as to what measures might now be introduced, beyond those that have already been introduced since 1999, to ensure that any shortcomings are avoided in the future.²⁸

The cost of the Inquiry as of 31 March 2010 is £3.4m.²⁹

²⁵ HC Deb 21 July 2008 c64-5WS

²⁶ <http://www.bahamousainquiry.org/index.htm>

²⁷ MOJ, op cit, p23

²⁸ http://www.thefingerprintinquiryscotland.org.uk/inquiry/CCC_FirstPage.jsp

²⁹ MOJ, op cit, p23

HIV and Hepatitis C infection from contaminated blood and blood products

In January 2009 the Scottish Executive established the Penrose Inquiry under the *Inquiries Act 2005* to investigate contaminated blood issues within Scotland, and the deaths of a number of people who became infected by contaminated blood and subsequently died. It is expected to hold substantive public hearings from early 2011. Its terms of reference and other information about the inquiry are available on its website.³⁰ The cost to date of the Inquiry is £4m.³¹

Outbreak of Clostridium Difficile in Northern Trust Hospitals (Wales)

The Inquiry was announced on 14 October 2008 and set up by the Welsh Assembly Government on 31 March 2009. The purpose of the inquiry was:

- to establish how many deaths occurred in Northern Health and Social Care Trust hospitals during the outbreak, for which *Clostridium difficile* was the underlying cause of death, or was a condition contributing to death; and
- to examine and report on the experiences of patients and others who were affected directly by the outbreak, and to make recommendations accordingly.

The Inquiry report was published on 21 March 2011.³² The overall cost of the Inquiry was £1.4m.³³

The Vale of Leven Hospital Inquiry (Scotland)

The Inquiry was set up by Scottish Ministers in April 2009 to investigate the occurrence of *C. difficile* infection at the Vale of Leven Hospital from 1 January 2007 onwards. The Inquiry will also investigate the deaths associated with *C. difficile* which occurred between 1 December 2007 and 1 June 2008. The Inquiry is chaired by Rt Hon Lord MacLean. Further information is available on the Inquiry's website.³⁴ The cost as of 31 August 2010 of the Inquiry is £1.06m.³⁵

Al-Sweady inquiry (Iraq)

The Inquiry was set up on 25 November 2009. The Inquiry's website notes that

In a written statement given on Wednesday 25 November 2009, the Secretary of State for Defence, The Rt Hon Bob Ainsworth MP announced that there would be a public inquiry in to the allegations that Iraqi nationals were detained after a firefight with British soldiers in Iraq in 2004 and unlawfully killed at a British camp, and that others had been mistreated at that camp and later at a detention facility.

The Inquiry is established under the Inquiries Act 2005 and is chaired by the Sir Thyne Forbes, a retired High Court judge. His terms of reference are:

"To investigate and report on the allegations made by the claimants in the Al-Sweady judicial review proceedings against British soldiers of (1) unlawful killing at Camp Abu Naji on 14 and 15 May 2004, and (2) the ill-treatment of five Iraqi nationals detained at Camp Abu Naji and subsequently at the divisional temporary detention facility at

³⁰ <http://www.penroseinquiry.org.uk/>

³¹ MOJ, op cit, p23

³² <http://www.cdiffinquiry.org/index.htm>

³³ <http://www.cdiffinquiry.org/appendix-14.pdf>

³⁴ <http://www.valeoflevenhospitalinquiry.org/>

³⁵ MOJ, op cit, p23

Shaibah Logistics Base between 14 May and 23 September 2004, taking account of the investigations which have already taken place, and to make recommendations".³⁶

The cost of the Inquiry as of 30 April 2011 is £5.1m.³⁷

Death of Azelle Rodney

The Inquiry's website notes that "Azelle Rodney died in North London on 30 April 2005 following an operation by the Metropolitan Police. On 30 March 2010, the Government announced its intention to establish an inquiry under the *Inquiries Act 2005* to investigate Azelle Rodney's death. On 10 June, a further statement to Parliament announced that Sir Christopher Holland, a retired High Court judge, had agreed to chair the Inquiry." The Terms of Reference for the Inquiry were also announced and are as follows:

To ascertain by inquiring how, where and in what circumstances Azelle Rodney came by his death on 30 April 2005 and then to make any such recommendations as may seem appropriate.³⁸

The projected cost of the Inquiry is £1.3m.³⁹

Mid Staffordshire NHS Foundation Trust

The inquiry was announced on 9 June 2010. It is chaired by Robert Francis QC. The Inquiry's website gives its terms of reference:

- To investigate any individual case relating to the care provided by Mid Staffordshire NHS Foundation Trust between January 2005 and March 2009 that, in its opinion, causes concern and to the extent that it considers appropriate
- In the light of such investigation, to consider whether any additional lessons are to be learned beyond those identified by the inquiries conducted by the Healthcare Commission, Professor Alberti and Dr Colin-Thome, and, if so;
- To consider what additional action is necessary for the new hospital management to ensure the Trust is delivering a sustainably good service to its local population, and;
- To prepare and deliver to the Secretary of State a report of its findings.

In light of such investigation, the Inquiry will consider: whether any additional lessons are to be learned beyond those identified by the inquiries conducted by the Healthcare Commission, Professor Alberti and Dr Colin-Thome; and, if so, what additional action is necessary for the new hospital management to ensure the Trust is delivering a sustainably good service to its local population.⁴⁰

The Phone Hacking Inquiry

The inquiry is to be chaired by Lord Justice Levesen, with a panel of experts to assist the inquiry.⁴¹ The inquiry's draft terms of reference was announced on 13 July 2011 by the

³⁶ <http://www.alsweadyinquiry.org/>

³⁷ <http://www.alsweadyinquiry.org/costs/index.htm>

³⁸ <http://azellerodneyinquiry.independent.gov.uk/>

³⁹ MOJ, op cit, p23

⁴⁰ <http://www.midstaffsinquiry.com/faq.php>

⁴¹ The membership of the Panel is available at <http://www.number10.gov.uk/news/leveson-inquiry-panel-terms-of-reference/>

Prime Minister⁴², and the final terms of reference on 20 July 2011. These split the inquiry into two parts.

Part 1

1. To inquire into the culture, practices, and ethics of the press, including:
 - a) contacts and the relationships between national newspapers and politicians, and the conduct of each
 - b) contacts and the relationship between the press and the police, and the conduct of each
 - c) the extent to which the current policy and regulatory framework has failed including in relation to data protection
 - d) the extent to which there was a failure to act on previous warnings about media misconduct.
2. To make recommendations:
 - a) for a new more effective policy and regulatory regime which supports the integrity and freedom of the press, the plurality of the media, and its independence, including from Government, while encouraging the highest ethical and professional standards
 - b) for how future concerns about press behaviour, media policy, regulation and cross-media ownership should be dealt with by all the relevant authorities, including Parliament, Government, the prosecuting authorities and the police
 - c) the future conduct of relations between politicians and the press
 - d) the future conduct of relations between the police and the press.

Part 2

3. To inquire into the extent of unlawful or improper conduct within News International, other newspaper organisations and, as appropriate, other organisations within the media, and by those responsible for holding personal data.
4. To inquire into the way in which any relevant police force investigated allegations or evidence of unlawful conduct by persons within or connected with News International, the review by the Metropolitan Police of their initial investigation, and the conduct of the prosecuting authorities.
5. To inquire into the extent to which the police received corrupt payments or other inducements, or were otherwise complicit in such misconduct or in suppressing its proper investigation, and how this was allowed to happen.
6. To inquire into the extent of corporate governance and management failures at News International and other newspaper organisations, and the role, if any, of politicians, public servants and others in relation to any failure to investigate wrongdoing at News International

⁴² HC Deb 6 July 2011 c1501

7. In the light of these inquiries, to consider the implications for the relationships between newspaper organisations and the police, prosecuting authorities, and relevant regulatory bodies – and to recommend what actions, if any, should be taken.

The Prime Minister also announced that the first part of the Inquiry would report within 12 months. The second part of the Inquiry would be considered in light of the ongoing criminal proceedings and would report jointly to the Culture Secretary and the Home Secretary.⁴³

2.3 The death of Pat Finucane

The then Secretary of State for Northern Ireland, Paul Murphy, announced on 23 September 2004 that the Government would establish an inquiry into the death of Pat Finucane, one of a number of murder cases involving alleged collusion by members of the security forces. These cases had been examined by Judge Cory following agreement between the British and Irish Governments at Weston Park in 2001. The Secretary of State said:

In order that the inquiry can take place speedily and effectively and in a way that takes into account the public interest, including the requirements of national security, it will be necessary to hold the inquiry on the basis of new legislation which will be introduced shortly.⁴⁴

The inquiry was due to be established under the *Inquiries Act 2005*.⁴⁵ However, the family of Pat Finucane opposed the establishment of an inquiry under the Act, arguing that it would give ministers an undue degree of control over the inquiry, in particular, allowing ministers to keep certain information secret. They were supported by a number of civil rights organisations, including Amnesty International and the Northern Ireland Human Rights Commission.⁴⁶ In 2006, it was reported that Peter Hain, then the Secretary of State for Northern Ireland, had decided that because of the continued objections of the family, the inquiry would not commence at that time.⁴⁷

Following the election in 2010, the new Secretary of State for Northern Ireland, Owen Paterson, confirmed that he would not set up the inquiry until he had chance to speak to the Finucane family. Nonetheless, he noted that “it is our policy not to have any more costly and open-ended inquiries.”⁴⁸

More recently, the Secretary of State for Northern Ireland (Mr Owen Paterson) has said:

In my written statement of 11 November, *Official Report*, columns 25-26WS, I set out a period of two months during which I would receive representations as to whether it is in the public interest that I should establish a public inquiry into the death of Patrick Finucane. As part of this process my officials have had a constructive meeting with representatives of the Finucane family and a further meeting will be arranged. In light of the fact that useful discussions are under way between the family and the

⁴³ See <http://www.number10.gov.uk/news/phone-hacking-inquiry-draft-terms-of-reference/>

⁴⁴ Northern Ireland Office, *Statement by Secretary of State Paul Murphy MP on Finucane Inquiry*, News release, 23 September 2004, <http://www.nio.gov.uk/media-detail.htm?newsID=10299&keywords=finucane>

⁴⁵ For further information on the operation of the Act see Library Standard Note SN/PC/2599, *Investigatory inquiries and the Inquiries Act 2005*, 25 October 2010

⁴⁶ See for example *SUBMISSION TO THE UNITED NATIONS' HUMAN RIGHTS COMMITTEE UNDER THE INTERNATIONAL COVENANT OF CIVIL AND POLITICAL RIGHTS (93rd Session 7-25 July 2008): Shadow Report on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland*, by the Northern Ireland Human Rights Commission, and *UK: Briefing to the Human Rights Committee*, Amnesty International, June 2008

⁴⁷ See eg *Inquiry scrapped*, North Belfast News, 25 April 2008

⁴⁸ HC Deb 30 June 2010 c850

Government, I have decided, with the agreement of the family, to extend the period during which I will receive representations by two months. When this further period has concluded it remains my intention to consider the family's views carefully and in detail, along with any other relevant representations I receive, before taking a decision as to whether or not it is in the public interest to hold a public inquiry into the death of Patrick Finucane.⁴⁹

This would appear to be the current situation as there has been no subsequent statement, although in a parliamentary answer on 22 June 2011 Lord Empey said that the Government “would announce their decision soon”.⁵⁰

2.4 The impact of the Act

Writing about the Bloody Sunday inquiry, John Robins in *New Law Journal* said “New labour brought in the ... Act to ensure that the perceived excesses of Saville never be repeated. The legislation allows ministers powers to make appointments to inquiry panels, block scrutiny of state actions as well as suspending inquiries.” It was this potential for ministerial intervention in inquiry procedures that led to the Finucane family refusing to support an inquiry under the Act (see next paragraph); and by giving ministers such a clear role in making appointments to the panels, and in choosing the Chair of the inquiry, it is arguable that the *impression* can be given that Ministers choose such candidates to run inquiries because it suits them rather than the outcome of the inquiry. However, it should be noted that “there was a lot of scepticism, but where the act has operated no minister has tried to interfere with the process.”⁵¹

Sir Louis Blom-Cooper, writing in *Public law*,⁵² was concerned about the judicial nature of the Saville Inquiry and was clear that the *Inquiries Act 2005* did not allow inquiries to take on such a judicial role: “The public inquiry is an outcrop of public administration, and is not within the legal system. Like any other ministerial or public authority, it is amendable to judicial review. That was the clear law relating to public inquiries pre-2005, and is now declared statutorily in s.2(1) of the *Inquiries Act 2005*.”⁵³ This in turn should assist inquiries in keeping costs down.

As can be seen above, both Scottish and Welsh Ministers have also used their powers under the Act to establish inquiries.

The Ministry of Justice has published a post-legislative scrutiny report on the operation of the Act which gives detail on costs of inquiries and an analysis of the issues relating to the Act.⁵⁴

2.5 The possibility of judicial review

Following the setting-up of the Phone Hacking Inquiry (see above), the Cabinet Office published advice issued by Gus O'Donnell, Cabinet Secretary, in 2010 to the then-Prime Minister Gordon Brown. The advice dealt with the possibility that a Minister's decision to hold a public inquiry could be open to judicial review:

Section 1 of the Act provides that:

⁴⁹ HC Deb 11 January 2011 c12WS

⁵⁰ HL Deb 22 June 2011 c316 WA

⁵¹ [Bloody Sunday: the verdict](#), *New Law Journal*, Vol 160, no 7424, 2 July 2010,

⁵² What went wrong on Bloody Sunday: a critique of the Saville Inquiry? *Public Law*, January 2010, pp61-78

⁵³ *Ibid*, p64

⁵⁴ [Memorandum to the Justice Select Committee: Post-legislative assessment of the Inquiries Act 2005](#), Cm 7943, October 2010

“A Minister may cause an inquiry to be held...in relation to a case where it appears to him that-

- Particular events have caused, or are capable of causing, public concern, or
- There is public concern that particular events may have occurred”.

The first point to note is that this section is permissive. The Minister *may* cause an inquiry to be held if he is satisfied by either of the conditions in section 1. In particular, he would need to be satisfied that the case is one where there is public concern. A decision to hold an inquiry under section 1 could be challenged by an interested party by way of judicial review and that challenge could be upheld if the court determined that the decision to hold an inquiry was unreasonable bearing in mind the nature and the level of concern, or that the Minister had taken into account irrelevant considerations in deciding to hold the inquiry.⁵⁵

3 The Tribunals of Inquiry (Evidence) Act 1921

Before the *Inquiries Act 2005*, statutory tribunals of inquiry were established under the *Tribunals of Inquiry (Evidence) Act 1921*. Such inquiries were independent of Parliament, although their establishment depended upon parliamentary resolution and upon the willingness of the Government to find the necessary time to debate such a motion. The Salmon Commission proposed that such tribunals should “...always be confined to matters of vital public importance concerning which there is something of a nation-wide crisis of confidence.”⁵⁶ The tribunals were designed to replace an earlier system of investigation by parliamentary committee into matters of urgent public concern after that system was discredited by the unsatisfactory outcome of an inquiry by a Commons committee into the Marconi Affair in 1913.

3.1 The Act

The Act can be summarised as follows:

- It allowed for a tribunal to inquire into a matter of urgent public importance;
- A resolution of both Houses of Parliament was required to set up such an inquiry;
- The tribunal would have all the powers of the High Court, or Court of Session in Scotland, as regards examination of witnesses and production of documents;
- Anyone defaulting in attendance on being summoned, refusing to take an oath or to produce a required document, or taking any other action which would, in a court of law, be a contempt of court, could be punished as if he had been guilty of contempt of the court.
- A witness before any such tribunal would be entitled to the same immunities and privileges as if he were a witness (in civil proceedings) before the High Court or the Court of Session
- Proceedings were normally to be held in public unless the tribunal judged that it was not in the public interest to do so.

⁵⁵ <http://www.cabinetoffice.gov.uk/sites/default/files/resources/cabinet-secretary-advice-judicial.pdf>

⁵⁶ Op cit, p16

Bradley & Ewing in their *Constitutional & Administrative Law* (Longman, 13th ed., 2003) wrote:

The task of a tribunal of inquiry is to investigate certain allegations or events with a view to producing an authoritative account of the facts, attributing responsibility or blame where it is necessary to do so. Tribunals of inquiry do not make decisions as to what action should be taken in the light of their findings of fact, but they may make recommendations for such action. The chairman is normally a senior judge, assisted by one or two additional members or expert assessors (p683).

A list of the first twenty inquiries held under the Act, spanning the years 1921 to 1978, is given in David and Gareth Butler's *Twentieth-century British political facts 1900-2000* (Macmillan, 8th ed, 2000, pp 325-6). The system then virtually fell into abeyance until a revival in the late 1990s. The last four inquiries to be held under the Act were as follows:-

- Dunblane School Inquiry (set up 21 March 1996);
- Child Abuse in North Wales Inquiry (set up 20 June 1996);
- Bloody Sunday Tribunal of Inquiry (set up 19 January 1998);
- Harold Shipman Tribunal of Inquiry (set up 23 January 2001).

3.2 The Bloody Sunday Inquiry

The Bloody Sunday Inquiry was set up in 1998 following pressure from families involved in the events who believed that the original inquiry into the events of Bloody Sunday – the Widgery Inquiry – had not uncovered the truth about the events. The Bloody Sunday Inquiry was announced by the Prime Minister in a statement to the House of Commons on 29 January 1998, the basis for the new inquiry being that new evidence, which had not been available to Lord Widgery, was now available. The Inquiry was set up under the *Tribunals of Inquiry (Evidence) Act 1921*, with motions to approve passed in the Commons on 30 January 1998 and in the Lords on 2 February 1989.

The Tribunal's terms of reference were to inquire into:

...the events of Sunday, 30th January 1972 which led to loss of life in connection with the procession in Londonderry on that day, taking account of any new information relevant to events on that day.

The Inquiry was chaired by Lord Saville with two other judges - the Hon Mr William L. Hoyt and the Hon Mr John L. Toohey – accompanying him.

It has broken all records in terms of length and cost. Evidence-taking began in March 2000 and the hearings from the main body of witnesses were not completed until February 2004. The 42-day opening speech by counsel was the longest on record. The inquiry interviewed and received statements from around 2,500 people and 922 of these were called to give oral evidence. Lord Saville's report was finally published in June 2010 in ten volumes numbering over 5,000 pages.⁵⁷ The Inquiry was the most costly ever at approximately £192m.⁵⁸ Nonetheless, the Inquiry's conclusions have led to the outcome of the Inquiry being considered a success:

⁵⁷ *Report of the Bloody Sunday Inquiry*,

⁵⁸ An estimated £15 million of net additional costs arose from the transfer of the hearings to London. For further information see <http://www.bloody-sunday-inquiry.org/questions-and-answers/index.html>

The firing by soldiers of 1 PARA on Bloody Sunday caused the deaths of 13 people and injury to a similar number, none of whom was posing a threat of causing death or serious injury. What happened on Bloody Sunday strengthened the Provisional IRA, increased nationalist resentment and hostility towards the Army and exacerbated the violent conflict of the years that followed. Bloody Sunday was a tragedy for the bereaved and the wounded, and a catastrophe for the people of Northern Ireland.⁵⁹

The Prime Minister, David Cameron, made a statement in the House on 15 June 2010 in which he agreed with the Inquiry's conclusions and said:

the conclusions of this report are absolutely clear: there is no doubt; there is nothing equivocal; there are no ambiguities. What happened on Bloody Sunday was both unjustified and unjustifiable. It was wrong.⁶⁰

There were concerns from those involved that there would be considerable delay once the report was presented to the Secretary of State for Northern Ireland because of the need to have the report checked for security issues. However, the Inquiry came to an agreement with the Government that this process would be done before the report was finished, in order to allow publication to take place as soon as possible after it was presented to the Secretary of State.⁶¹

The costs of the Inquiry - £192m - has proved to be one of the most controversial aspect of the Inquiry, and one that will undoubtedly impact on the conduct of future inquiries. Ken Clarke, Justice Secretary, has said that there was "no doubt that the kind of sums we spend now on inquiries have vastly exceeded anything we could have contemplated when I was in practice". Part of the growth in such costs has been because of the growing practice of using lawyers, and often very senior lawyers, to represent those appearing at the inquiry, or to provide support for the inquiry. The *New Law Journal* notes that Evershed were paid £13m top provide 32 lawyers and support staff for the Saville inquiry, and that leading QCs were paid upwards of £4m each to work on aspects of the inquiry.⁶² The Commons Northern Ireland Affairs Committee has drawn attention to the resource implications for the Police Service of Northern Ireland of its participation in public inquiries into past events (estimated at more than £6m over the next two years). Citing the cost of the Bloody Sunday Inquiry, the Committee stated that the high annual cost of such inquiries is unsustainable:

The cost of inquiring into the past is an issue that, at some point, will have to be faced. Such inquiries cannot become a permanent feature of life in Northern Ireland. We recommend that the NIO take further steps to control the costs of Northern Ireland's statutory inquiries and that inquiries other than those already under way or announced should only be established if agreed by the Northern Ireland Assembly.⁶³

Sir Louis Blom-Cooper, writing in *Public law*,⁶⁴ was concerned about the judicial nature of the Saville Inquiry:

"The public inquiry is an outcrop of public administration, and is not within the legal system. Like any other ministerial or public authority, it is amendable to judicial review.

⁵⁹ Report of the Bloody Sunday Inquiry, Vol. 1, para 5.5

⁶⁰ HC Deb 15 June 2010 cc739-742

⁶¹ [Bloody Sunday report plan changed](#), *BBC News website*, 19 March 2010

⁶² See [Was the Bloody Sunday report value for money?](#) *BBC News website*, 15 June 2010

⁶³ House of Commons Northern Ireland Affairs Committee, *Policing and Criminal Justice in Northern Ireland: the cost of policing the past*, HC 333 2007-08, P5

⁶⁴ What went wrong on Bloody Sunday: a critique of the Saville Inquiry? *Public Law*, January 2010, pp61-78

That was the clear law relating to public inquiries pre-2005, and is now declared statutorily in s.2(1) of the Inquiries Act 2005.”⁶⁵ .

This in turn should assist inquiries in keeping costs down. Sir Louis continued: “If Lord Saville during his protracted proceedings, ever entertained worries about the escalating costs of his Inquiry, there is little, if any evidence to show that that ... the prospectively high cost was a factor operating to determine the scope of the Inquiry.”⁶⁶ A take note motion was debated in the House of Lords on 13 October 2010. Lord Shutt of Greetland, Deputy Chief Whip in the House of Lords, noted in his introductory remarks that

“ The report’s conclusions and my right honourable friend the Prime Minister’s Statement received global coverage and the reaction was overwhelmingly positive. The Taoiseach generously recorded how the, “brave and honest words of prime minister David Cameron in the House of Commons will echo around the world”.

Nonetheless, despite the success of the Inquiry itself, he went on to note that

“The Government’s overall position is clear: there will be no more open-ended and costly inquiries. The Bloody Sunday inquiry was initially forecast to last for two years and to cost £11 million; it ended up lasting 12 years and costing more than £191 million. Public inquiries do not provide any guarantee of satisfaction for victims’ families. The response to the recent report of the Billy Wright inquiry was much more polarised and showed that even an inquiry lasting six years and costing £30 million can be accused of not having answered critical questions.”⁶⁷

However, he further said that

While the Government’s general position is clear, that is not to say that we do not recognise the sensitivities in specific cases and the need to look at each case on its merits. My right honourable friend the Secretary of State for Northern Ireland is meeting a number of families who have brought their cases to him and will consider their views in a detailed and measured way.”⁶⁸

Responding to the debate, Baroness Royall of Blaisdon, Opposition Leader of the House of Lords, agreed that the report was ‘vital for the Bloody Sunday families’ but questioned the impact of the Government’s statement that future inquiries would no longer be ‘open-ended’ and ‘costly’:

The Saville inquiry has established the truth. That is what it set out to do and its value is immeasurably large. However, from these Benches, we argue that this value can be truly realised and sustained only once certain questions have been answered. In his Statement marking the publication of the Saville inquiry, the Prime Minister told the other place that there would be,

“no more open-ended and costly inquiries into the past”.-[*Official Report*, Commons, 15/6/10; col. 741.]

So what now of the inquiry into the death of Pat Finucane? What about the deaths of the 11 civilians at Ballymurphy in 1971, an incident where some of the soldiers on duty on the day were the same service personnel who were to be in Londonderry six months later? What about an inquiry into the Omagh bombing? To focus on the

⁶⁵ Ibid, p64

⁶⁶ *Public Law*, op cit, p77

⁶⁷ HL Deb 13 October 2010 c520

⁶⁸ Ibid

Ballymurphy case, in the context of the announcement that this is the end of the line for public inquiries, will the families find it slightly confusing that the Secretary of State recently met those who lost their loved ones at Ballymurphy? Perhaps it raised expectations of success in their call for just such an inquiry.⁶⁹

The Ministry of Justice, in a memorandum to the Justice Select Committee, noted that there was no provision to control the costs of the inquiry under the 1921 Act. As a result “lessons learned from inquiries such as the Bloody Sunday Inquiry have resulted in pragmatic control measures being introduced” in the 2005 Act.⁷⁰

3.3 Harold Shipman Inquiry

A further example of this process was the inquiry established to investigate the crimes of Dr Harold Shipman. On 1 February 2000, the Secretary of State for Health (Alan Milburn) announced that an independent private inquiry would take place to establish what changes to current systems should be made in order to safeguard patients in the future, following the conviction of Dr Harold Shipman for the murder of 15 of his patients. This would be held under section 2 of the *National Health Service Act 1977*. Although it would be held in private its report would be made public. The Inquiry, under the chairmanship of Lord Laming of Tewin, began work on 10 March and was charged with reporting its findings and recommendations to the Secretary of State for Health and the Home Secretary by September 2000.

Many of the families and sections of the British media sought a judicial review in the High Court, which found in their favour and recommended that the Secretary of State for Health reconsider his decision that the inquiry should be held in private. On 21 September 2000, Mr Milburn announced that the original inquiry would be wound up and that, subject to parliamentary agreement, a new inquiry would be held in public under the terms of the *Tribunals of Inquiry (Evidence) Act 1921*. Dame Janet Smith was chosen to chair this Inquiry. On 23 January 2001 a motion was put to both Houses establishing a public inquiry under the 1921 Act. The then Minister of State, John Hutton, said in his opening comments:

On 21 September, my right hon. Friend announced that there would be a public inquiry under the 1921 Act into the issues surrounding the crimes committed by Harold Shipman. The tribunal will be wide ranging and cover different responsibilities, including those that fall outside the health service's remit. Tribunals under the 1921 Act generally hold all or most of their meetings in public and have all the powers of the High Court in respect of calling witnesses and the production of documents. They may take evidence on oath and they provide absolute privilege in respect of defamation.⁷¹

The Inquiry published six reports, the final one of which was published in January 2005.⁷²

4 Inquiry into the death of Rosemary Nelson under the Police (Northern Ireland) Act 1998

Death of Rosemary Nelson (a solicitor from Lurgan, in 1999). Public inquiry chaired by Sir Michael Morland, a retired member of the High Court of England and Wales. This was established under section 44 of the *Police (Northern Ireland) Act 1998* and is not being held

⁶⁹ HL Deb 13 October 2010 c521

⁷⁰ *Memorandum to the Justice Select Committee: Post-legislative assessment of the Inquiries Act 2005*, Ministry of Justice, October 2010

⁷¹ HC Deb 361 cc850-66

⁷² Available on the Inquiry's website at <http://www.shipman-inquiry.org.uk/>

under the *Inquiries Act*. Revised terms of reference were announced in a written ministerial statement on 24 March 2005.⁷³ The report was published 23 May 2011⁷⁴ and the cost of the inquiry was £46.5m.⁷⁵

The Commons Northern Ireland Affairs Committee has drawn attention to the resource implications for the Police Service of Northern Ireland of its participation in public inquiries into past events (estimated at more than £6m over the next two years). Citing the cost of the Bloody Sunday Inquiry, the Committee states that the high annual cost of such inquiries is unsustainable:

The cost of inquiring into the past is an issue that, at some point, will have to be faced. Such inquiries cannot become a permanent feature of life in Northern Ireland. We recommend that the NIO take further steps to control the costs of Northern Ireland's statutory inquiries and that inquiries other than those already under way or announced should only be established if agreed by the Northern Ireland Assembly.⁷⁶

5 Non-statutory *ad hoc* inquiries

Non-statutory *ad hoc* inquiries, which may be held in public or in private, are not bound by procedural rules but neither do they have the power to compel the attendance of witnesses or the production of documents. They are therefore essentially reliant on the cooperation of those involved. Such inquiries are sometimes known as 'departmental inquiries'. The Public Administration Select Committee in its report on *Government by Inquiry* noted that these have tended to be used "...mainly where Government or public bodies are under investigation."⁷⁷ The then Department for Constitutional Affairs had this to say about such inquiries:

In recent years, a number of important inquiries have been conducted on an *ad hoc* basis, without statutory powers (eg. Scott Inquiry into export of defence equipment to Iraq, BSE Inquiry, Hutton Inquiry). Lack of statutory powers has not significantly impeded the work of any of these, because the individuals involved have co-operated with the inquiry. This will not always be the case. Some inquiries need to be set up on a statutory basis, because they need powers to ensure the co-operation of witnesses and the production of evidence. The Government believes that it can be very helpful to have a statutory framework that allows appropriate powers to be deployed, if necessary, in support of an inquiry. Even where the legislation is not used, its existence can provide a powerful tool for ensuring co-operation with the inquiry. In the opening statement to his current inquiry, which has arisen from the Soham murders, Sir Michael Bichard said:

*"The Inquiry does not have statutory powers, but if I find that that hinders me in any way in my investigation or if I believe that an individual or organisation is not co-operating fully, then I will return to the Home Secretary and ask for such statutory powers, and he has made it clear to me that they will be made available".*⁷⁸

⁷³ <http://www.rosemarynelsoninquiry.org/>

⁷⁴ <http://www.rosemarynelsoninquiry.org/>

⁷⁵ HL Deb 24 May 2011 c727 c424-5WA

⁷⁶ House of Commons Northern Ireland Affairs Committee, *Policing and Criminal Justice in Northern Ireland: the cost of policing the past*, HC 333 2007-08, P5

⁷⁷ Op Cit, p67

⁷⁸ DCA, *Effective inquiries: a consultation paper...*, May 2004, p10

5.1 The Hutton Inquiry

The Hutton Inquiry was announced by the Prime Minister on 21 July 2003, following the apparent suicide of the MOD scientist, Dr David Kelly. Lord Hutton was asked to conduct the investigation, and his terms of reference were “urgently to conduct an investigation into the circumstances surrounding the death of Dr Kelly”. The Inquiry might be termed ‘judicial’ in that it was headed by a Judge and sat in the Royal Courts of Justice, but Lord Hutton did not have powers to compel the attendance of witnesses and production of documents. Nevertheless, he said in his opening statement:

The Government has... stated that it will provide me with the fullest cooperation and that it expects all other authorities and parties to do the same. I make it clear that it will be for me to decide as I think right within my terms of reference the matters which will be the subject of my investigation. I intend to sit in public in the near future to state how I intend to conduct the Inquiry and to consider the extent to which interested parties and bodies should be represented by counsel or solicitors...It is also my intention to conduct the inquiry mostly in public.⁷⁹

Useful information on many aspects of the Inquiry is provided on its website.⁸⁰ As to procedure, William Twining, Research Professor of Law at University College London, has commented that the Hutton Inquiry was a mixture of “civil and common law approaches with the following characteristics”:

- (1) It was ‘inquisitorial’ in that the Chairman rather than any interested parties controlled who was called as a witness, what documents were produced, and, to a large extent, what questions were asked.
- (2) It resembled common law proceedings in emphasizing oral testimony and the examination and cross-examination of witnesses in public.
- (3) The style was investigative rather than contentious or disputatious: in the first stage witnesses were examined by counsel for the inquiry ‘in a neutral way’; in the second stage, some witnesses whose conduct might be the subject of criticism in the report were recalled (or called for the first time) to be examined further by counsel for the inquiry, their own counsel, and counsel for other parties – all subject to the permission of the Chairmen.
- (4) The most striking innovation was the creation of a website on which almost all of the evidence was posted immediately, so that although the proceedings were not televised, the media and the public at large had access to almost all of the information presented to the inquiry, This meant that in theory at least everyone could make up their own minds on the basis of almost the same evidence as Lord Hutton...⁸¹

Twining thought that the procedure used was “well-suited to open and thorough determination of the facts about past events” but not so well-suited to “recommending changes in general policy or procedures for the future.”⁸²

In the same book Michael Beloff, President of Trinity College Oxford, commented that there was:

⁷⁹ Hutton Inquiry, “Investigation into the circumstances surrounding the death of Dr David Kelly: statement by the Right Honourable Lord Hutton”, *Press notice*, 21 July 2003.

⁸⁰ <http://www.the-hutton-inquiry.org.uk/>

⁸¹ William Twining, *Some wider legal aspects*, in WG Runciman ed, *Hutton and Butler: Lifting the lid on the workings of power* (British Academy, 2004) p42

⁸² *Ibid*, p44

...no legal obligation upon the Government to set up the Hutton Inquiry at all. It was a purely political decision. Dr David Kelly's suicide would, in ordinary circumstances, have been dealt with by Coroner's inquest; and the recent decision of the House of Lords, adjusting the domestic legislation to Convention imperatives, would have allowed for a sufficiently deep investigation into the underlying causes'.⁸³

The inquest into Dr. Kelly's death by the Oxfordshire Coroner had been adjourned while the Inquiry proceeded. This was one of four occasions when inquests have been adjourned under section 17A of the Coroners Act 1988 pending the outcome of public inquiries.⁸⁴ In March 2004, the Oxfordshire Coroner announced that the inquest would not be reconvened.

The Inquiry reported on 28 January 2004. The report was published as a House of Commons Paper, specifically as a Return to an address of the Honourable the House of Commons. This procedure is often used for inquiry reports and provides the explicit protection afforded by the Parliamentary Papers Act 1840 against possible libel actions. The report did not include the hearings transcript which was to remain on the website and also be handed over to the National Archives at Kew for electronic/paper preservation.

5.2 Death of Zahid Mubarek

David Blunkett, the then Home Secretary, announced on 29 April 2004 an inquiry into the murder of Zahid Mubarek at Feltham Young Offender Institution on 21 March 2000. This followed a House of Lords ruling in October 2003, that the state was "...under a duty to publicly investigate, with effective participation by Zahid's family, the death of Zahid in custody. This overturned a decision by the Court of Appeal, in March 2002, that no public inquiry was necessary because a sufficient investigation had already been carried out."⁸⁵

The Inquiry chairman was Mr Justice Keith. The terms of reference were:

In the light of the House of Lords judgement in the case of Regina v Secretary of State for the Home Department ex-parte Amin, to investigate and report to the Home Secretary on the death of Zahid Mubarek, and the events leading up to the attack on him, and make recommendations about the prevention of such attacks in the future, taking into account the investigations that have already taken place – in particular, those by the Prison Service and the Commission for Racial Equality.

The Inquiry was conducted in two phases, phase one being an investigation into the events leading up to the death of Zahid Mubarek, phase two considering recommendations that could be made to minimise the risk of such a tragedy happening again. Phase one involved regular hearings but of an inquisitorial rather than an adversarial nature. The Minister had indicated that he would put the Inquiry on a statutory footing if its effectiveness were to be imperilled by a lack of co-operation. However, only four people were not prepared to give evidence and the Chairman stated that he did not consider them to be "critical witnesses."⁸⁶

The then Home Secretary, Dr John Reid, announced by written ministerial statement on 29 June 2006 (c 19 WS) both the publication of the report and that a preliminary response to all of the Inquiry's 88 recommendations had been posted on the Home Office website. The

⁸³ Ibid, p51

⁸⁴ HC Deb 10 July 2006, c1617W

⁸⁵ Zahid Mubarek Inquiry, *Frequently asked questions*, <http://www.zahidmubarekinquiry.org.uk/articlef949.html?c=372>

⁸⁶ Zahid Mubarek Inquiry, *Final report*, June 2006, paras 2.38 to 2.40

report was published as a House of Commons Paper.⁸⁷ The cost of the Inquiry was subsequently estimated at £5.2 million.⁸⁸

5.3 The Deepcut Review

An independent review into the deaths of four young soldiers at Deepcut Barracks, Surrey during the period 1995 to 2002, was announced by the Armed Forces Minister, Adam Ingram, on 15 December 2004. The review was conducted by Nicholas Blake QC. The terms of reference were:

Urgently to review the circumstances surrounding the deaths of four soldiers at Princess Royal Barracks, Deepcut between 1995 and 2002 in light of available material and any representations that might be made in this regard, and to produce a report.

The Minister stated:

In commissioning this review I am well aware that its scope and nature may not satisfy all those, members of this House included, who have been calling for a formal public inquiry into some or all non-combat deaths in the armed forces or for a public inquiry into the deaths at Deepcut. These are very different demands. By concentrating on the circumstances of the four deaths at the army base at Deepcut this review will focus on the issue at the heart of current public concern. The review will have the full co-operation of the Ministry of Defence and, I am pleased to say, Surrey police. A review can analyse issues much more quickly than a public inquiry and would not interfere with other current investigations or proceedings. My expectation is that the rigour and independence of the review will produce value to all parties concerned. It is the right way to proceed and I would urge all those who may be sceptical of what the review can achieve to suspend their criticism and to lend it their full support.⁸⁹

The Review reported in March 2006⁹⁰ and the Minister made an oral statement on the matter to the House.⁹¹ The inquiry had not been conducted in public and this issue was discussed in chapter 2 of the report. Nicholas Blake saw no need for, or benefit from, a public inquiry and commented that "...the Army may have an interest in having a public inquiry into whether its procedures were sufficient to detect or deter abuse, but it is not required to have one if it broadly accepts the conclusions and recommendations of this Review."⁹² Nevertheless, Lord Ashley of Stoke stated the following in a Lords debate:

The Government have stated their belief that the Blake review puts the matter to rest. It does no such thing. The Blake review lacked the full powers of a judicial public inquiry; it failed to be awarded those powers. It had no powers of subpoena, its scope was too narrow, and its proceedings were not held in public as a judicial public inquiry would be. The families believe, and so do many of us who support them, that the only way we can really find out what happened is by judicial public inquiry.⁹³

The Government's response to the Review was published in June 2006 as Cm 6851.

⁸⁷ *Report of the Zahid Mubarek Inquiry*, HC 1082 2005-06

⁸⁸ HC Deb 24 July 2006, c1186W

⁸⁹ HC Deb 15 December 2004, c133WS

⁹⁰ *A Review of the circumstances surrounding the deaths of four soldiers at Princess Royal Barracks, Deepcut, between 1995 and 1992*, HC 795 2005-06

⁹¹ HC Deb 29 March 2006, c853-

⁹² The Deepcut Review, *Frequently asked questions*

⁹³ HL Deb 19 April 2006, c1115

6 Committee of Privy Councillors

The committee of privy councillors is essentially a variation on the non-statutory *ad hoc* form of inquiry although its composition makes it a rather special and prestigious body. It also allows for security information to be seen by the Committee that the Government could not otherwise make available.

The Franks and Butler Inquiries, and the Inquiry into Iraq, are examples of this type:

6.1 The Falkland Islands Inquiry (Franks)

In a written answer on 6 July 1982 the then Prime Minister, Margaret Thatcher, announced that a review of the actions of the Government in the period leading up to the invasion of the Falkland Islands would be held. She stated:

Following the consultations with the right hon. Gentleman the Leader of the Opposition and leaders of other opposition parties, the Government have decided to appoint a Committee of Privy Councillors with the following terms of reference:

To review the way in which the responsibilities of Government in relation to the Falkland Islands and their dependencies were discharged in the period leading up to the Argentine invasion of the Falkland Islands on 2 April 1982, taking account of all such factors in previous years as are relevant, and to report.

I am glad to be able to say that the Right Hon the Lord Franks, OM, GCMG, KCB, CBE, has agreed to be the chairman of the committee.⁹⁴

The other members of the committee were two former Labour cabinet ministers (Lord Lever of Manchester and Merlyn Rees MP), two former Conservative cabinet ministers (Lords Barber and Watkinson) and a retired permanent secretary (Sir Patrick Nairne).

The reasons for establishing a committee of this nature were set out by the Prime Minister in a Commons debate on the Falkland Islands Review on 8 July 1982. She said:

Such a committee has one great advantage over other forms of inquiry. As it conducts its deliberations in private and its members are all Privy Councillors, there need be no reservations about providing it with all the relevant evidence – including much that is highly sensitive – subject to safeguards upon its use and publication.

A Committee of Privy Councillors can be authorised to see relevant departmental documents, Cabinet and Cabinet Committee memoranda and minutes, and intelligence assessments and reports, all on Privy Councillor terms. Many of these documents could not be made available to a tribunal of inquiry, a Select Committee or a Royal Commission...

There are several precedents for a Government setting up a Committee of Privy Councillors to look into matters where the functioning of the Government has been called into question. And sensitive information and issues are involved.

I will refer to just one. A conference of Privy Councillors was established in November 1955 to examine security procedures in the public services as a result of the defection of Burgess and MacLean. The results of the inquiry were reported to the House by the then Prime Minister on 8 March 1956, although he stated that it would not be in the

⁹⁴ HC Deb 6 July 1982, c51W

public interest to publish the full text of the report or to make known all its recommendations.⁹⁵

This debate was held on a substantive motion, which can be accessed online. During the debate, the then Leader of the Opposition, Michael Foot, indicated that he had put forward the names of two Privy Counsellors for the inquiry⁹⁶

The Review took evidence in private from a number of witnesses including the Prime Minister. The report was published in January 1983 as Cmnd 8787.

6.2 The Butler Inquiry into intelligence on weapons of mass destruction

The Franks Inquiry template was used for the Butler Inquiry which was established in the wake of the Hutton Inquiry report into circumstances surrounding the death of Dr. David Kelly. In a statement to the House of Commons on 3 February 2004, Jack Straw, the Foreign Secretary, announced that the Prime Minister had decided to establish a committee to review intelligence on weapons of mass destruction.⁹⁷ The Chairman was to be the former Cabinet Secretary, Lord Butler, and the Committee was to be made up of privy councillors. It was given the following terms of reference:

- to investigate the intelligence coverage available on WMD programmes of countries of concern and on the global trade in WMD, taking into account what is now known about these programmes.
- as part of this work, to investigate the accuracy of intelligence on Iraqi WMD up to March 2003, and to examine any discrepancies between the intelligence gathered, evaluated and used by the Government before the conflict, and between that intelligence and what has been discovered by the Iraq Survey Group since the end of the conflict.
- to make recommendations to the Prime Minister for the future on the gathering, evaluation and use of intelligence on WMD, in the light of the difficulties of operating in countries of concern.

Mr Straw went on to say that the Prime Minister had asked the Committee to report before the summer recess, and that it would follow the precedent in terms of procedures of the Franks Committee. It would have access to all intelligence reports and assessments and other relevant Government papers, and would be able to call witnesses to give oral evidence in private. It would also work closely with the US inquiry and with the Iraq Survey Group.

The Committee consisted of Lord Butler of Brockwell, Sir John Chilcot, Field Marshal Lord Inge and two MPs, Ann Taylor and Michael Mates. Ann Taylor was already a privy councillor but the other four members were sworn in as members of the Privy Council on 11 February. There was no Liberal Democrat member, the reason for this being explained by the party's foreign affairs spokesman, Menzies Campbell:

As the Foreign Secretary said in response to the right hon. and learned Member for Devizes, the remit is confined to intelligence and weapons of mass destruction. It deals neither with the workings of government, nor with political decision making based on intelligence. Does the Foreign Secretary understand that following the public response to the Hutton report, an inquiry that excludes politicians from scrutiny is unlikely to

⁹⁵ HC Deb 8 July 1982 cc469-70

⁹⁶ <http://hansard.millbanksystems.com/commons/1982/jul/08/falkland-islands-review>

⁹⁷ HC Deb 3 February 2004, c625

command public confidence? Let me put on record once again that we have never doubted the Prime Minister's sincerity in these matters. However, should not the Prime Minister and others, given the special circumstances of this case, be willing to submit to scrutiny of their competence and judgment in the discharge of their responsibilities?

The Foreign Secretary mentioned the Franks report. Does he remember the remit of the Franks committee? It was to "review the way in which the responsibilities of Government . . . were discharged . . . taking account of all such factors . . . as are relevant". Why can we not have a remit of that breadth to deal with the matters with which we are concerned? Indeed, why can we not have a remit with sufficient breadth to allow the members of the committee to examine the whole of the Attorney-General's advice?⁹⁸

The Conservative Party initially supported the inquiry but Michael Howard wrote to the Prime Minister on 1 March 2004 announcing the withdrawal of this support because Lord Butler was said to be choosing to interpret his terms of reference in an "...unacceptably restrictive fashion". Michael Mates stated that he would remain a member.

The Committee had announced on 12 February 2004 that it would meet in private and that it would take oral evidence from a number of witnesses invited to attend but that it would also welcome evidence from anyone with information that might assist it in considering its remit. Witnesses would be questioned by the Committee, not by legal counsel.⁹⁹ The report was published on 14 July 2004.¹⁰⁰ As in the case of the Hutton Inquiry, the Prime Minister received the report the day before, and the Leaders of the Conservative and Liberal Democrat parties received the report at 6am on the day of publication. Lord Butler made a statement at 12.30pm on the day of publication followed, at 1.30pm, by a statement to MPs by the Prime Minister.

6.3 The inquiry into Iraq

On 15 June 2009 the Prime Minister, Gordon Brown, announced that there would be a privy counsellor inquiry into the Iraq conflict:

With the last British combat troops about to return home from Iraq, now is the right time to ensure that we have a proper process in place to enable us to learn the lessons of the complex and often controversial events of the last six years. I am today announcing the establishment of an independent Privy Counsellor committee of inquiry which will consider the period from summer 2001, before military operations began in March 2003, and our subsequent involvement in Iraq right up to the end of July this year. The inquiry is essential because it will ensure that, by learning lessons, we strengthen the health of our democracy, our diplomacy and our military.

The inquiry will, I stress, be fully independent of Government. Its scope is unprecedented. It covers an eight-year period, including the run-up to the conflict and the full period of conflict and reconstruction. The committee of inquiry will have access to the fullest range of information, including secret information. In other words, its investigation can range across all papers, all documents and all material. It can ask for any British document to be brought before it, and for any British citizen to appear. No British document and no British witness will be beyond the scope of the inquiry. I have asked the members of the committee to ensure that the final report will be able to

⁹⁸ Ibid, c631

⁹⁹ Review of Intelligence on Weapons of Mass Destruction, "Butler review invites evidence", *News release*, 12 February 2004, available on the Inquiry's website at <http://archive.cabinetoffice.gov.uk/butlerreview/index.asp>

¹⁰⁰ *Review of Intelligence on Weapons of Mass Destruction: Report of a Committee of Privy Counsellors*, HC 898, 2003/04, available at <http://www.archive2.official-documents.co.uk/document/deps/hc/hc898/898.pdf>

disclose all but the most sensitive information—that is, all information except that which is essential to our national security.¹⁰¹

In response to the statement there were some criticisms of the process being adopted, in particular the decision to hold the inquiry in private.¹⁰² There has also been criticism that Opposition parties were not offered the opportunity to comment on the terms and procedures of the inquiry before the announcement on 15 June. This was a point made by David Cameron, Leader of the Conservatives, and Nick Clegg, Leader of the Liberal Democrats in their initial responses on 15 June.¹⁰³

PASC issued a report on 18 June, which recommended splitting the inquiry into stages, and holding sittings in public wherever possible, according to the discretion of the inquiry members, rather than the Government. PASC also called for a debate and a free vote in the Commons on the inquiry.¹⁰⁴

The BBC news reported that Mr Brown has indicated to the chairman of the inquiry, Sir John Chilcot, that he would be able to hold public sessions if Sir John thought it appropriate.¹⁰⁵ The BBC also reported comments by Lord Butler to be made in the House of Lords to the effect that the Government was “putting its political interests ahead of the national interest”. The Inquiry was launched on 30 April 2009.¹⁰⁶

7 Royal Commissions

Royal commissions, like non-statutory departmental inquiries, are *ad hoc* investigatory or advisory committees, established by Government initiative (albeit with greater formality) and without statutory powers to compel the attendance of witnesses or the production of documents. Bradley and Ewing state:

For substantial matters where greater formality is considered appropriate and where time is not of the essence, a royal commission may be appointed instead. This requires a royal warrant to be issued to the commissioners by the Sovereign on the advice of a Secretary of State. Apart from the formality and greater prestige of a royal commission, both commissions and departmental committees carry out their inquiries in a similar manner.¹⁰⁷

Royal commissions are normally used to consider matters of broad policy rather than to investigate a particular event or series of events. The Salmon Report commented that: “The tempo of even the most expeditious Royal Commission is altogether too slow for the requirements of an investigation into matters with which the Act of 1921 is concerned.” The average duration of an *ad hoc* royal commission is between two and four years.¹⁰⁸ There are also standing royal commissions such as the Royal Commission of Environmental Pollution, established in 1970 to advise on environmental issues.

¹⁰¹ HC Deb 15 June

¹⁰² “Skewed and in secret, this Iraq inquiry is a scandal” 16 June 2009 *Guardian*; “Iraq war: Cameron: My Government may throw open the doors on Brown’s secretive inquiry” 16 June 2009 *Guardian*; “Brown accused of choosing stitch-up Iraq inquiry” 16 June 2009 *Times*

¹⁰³ HC Deb 15 June 2009 c25-26

¹⁰⁴ HC 721 2008-09

¹⁰⁵ “Iraq probe ‘may be partly public’ 18 June 2009 *BBC News* http://news.bbc.co.uk/1/hi/uk_politics/8106456.stm

¹⁰⁶ <http://www.iraqinquiry.org.uk/>

¹⁰⁷ A.W. Bradley and K.D. Ewing, *Constitutional and administrative law*, Longman, 13th ed, 2003, p 305

¹⁰⁸ HC Deb 20 July 2006, c625W

A list of royal commissions from the beginning of the twentieth-century is given in David and Gareth Butler's *Twentieth-century British political facts 1900-2000* (Macmillan, 8th ed, 2000, pp 315-320). No *ad hoc* royal commissions were established during the 1980s and the most recent ones have been:

- Royal Commission on Criminal Justice chaired by Viscount Runciman of Doxford, established in March 1991 and reported in July 1993;
- Royal Commission on Long Term Care, chaired by Sir Stewart Sutherland, established in December 1997 and reported in March 1999;
- Royal Commission on Reform of the House of Lords, chaired by Lord Wakeham, established in February 1999 and reported in January 2000.

8 Parliamentary select committees and commissions of inquiry

The Salmon Commission noted that “from the middle of the 17th century until 1921, the usual method of investigating events giving rise to public disquiet about the alleged misconduct of ministers or other public servants was by a Select Parliamentary Committee or Commission of Inquiry.” The system was discredited, in particular by, the Marconi scandal and Salmon believed that a return to such methods of inquiry would be a “retrograde step.” Select committees were useful, and even indispensable, for many purposes “...but the investigation of allegations of public misconduct is not one of them. Such matters should be entirely removed from political influences.”¹⁰⁹

The issue is discussed in the sources noted in the introduction to this note. Since 1979, select committees have become increasingly important and effective as tools for investigating and scrutinizing government. But the Public Administration Committee (PASC) noted that select committees were not ideally suited to conducting specialised investigations into particular events. This was partly because of perceptions of partisanship resulting from the political composition of such committees, but also because of limits on the ongoing co-operation that could reasonably be expected from government, and because their evidence-taking procedures are not well suited to drawing out the truth from witnesses through the application of a consistent line of questioning.¹¹⁰ In a later report, the Select Committee said:

The Foreign Affairs Committee reported in 2004 that its inquiry into the decision to go to war in Iraq had been hampered by problems in gaining access to witnesses and documents. That Committee concluded that, in relation to its particular experience, the powers of select committees to send for persons, papers and records “...are, in practice, unenforceable in relation to the Executive”.¹¹¹

PASC had noted in its 2005 report the ‘striking’ similarity between the Franks and Butler Committees and a rather different type of parliamentary committee - the joint committee of both Houses of Parliament. It went on to recommend that future inquiries into the conduct and actions of government should “...exercise their authority through the legitimacy of Parliament” by taking the form of a Parliamentary Commission of Inquiry composed of Parliamentarians and others.¹¹² PASC’s follow-up report in 2008 returned to this theme:

¹⁰⁹ Op cit, para 35

¹¹⁰ House of Commons Public Administration Select Committee, *Government by Inquiry*, HC 51 2004-05, pp71-3

¹¹¹ House of Commons Public Administration Select Committee, *Parliamentary Commissions of Inquiry*, HC 473 2007-08

¹¹² HC 51 2004-05, p76

It is Parliament's responsibility to hold the Executive to account for its actions. Part of this involves investigating and inquiring into important matters of public concern. For example, there have been many calls for an Iraq inquiry, and the Government has clearly been reluctant to set up an inquiry of its own in the foreseeable future. Yet Parliament has not succeeded in establishing its own inquiry into the Government's actions on Iraq, even though it is the most significant issue of public concern in recent times. This signifies a fundamental problem in our current constitutional arrangements. In the past, Parliament has initiated investigations into matters as momentous as Iraq, and has been expected to do so. In relation to Iraq, the Government has conceded the principle of an inquiry. We have proposed a mechanism—the establishment of Parliamentary Commissions of Inquiry—for Parliament to instigate inquiries of its own. It is now up to Parliament to take that initiative.¹¹³

9 Independently-sponsored inquiries

9.1 Independent Public Inquiry into Supply of Contaminated Blood and Blood Products

As stated in the introduction to this paper, there is no reason why any individual or organisation may not establish an inquiry into a matter which they consider to be of urgent public concern, provided they are prepared to fund it and can persuade appropriate witnesses to attend. The Independent Public Inquiry into Supply of Contaminated Blood and Blood Products was established independently of Government and funded by private donations.¹¹⁴ Lord Morris of Manchester, President of the All-Party Group on Haemophilia, played a significant part in its establishment, but the Inquiry was chaired by Lord Archer of Sandwell, a Labour Life Peer and former Solicitor General. There is a website which provides useful background information and transcripts of the evidence taken.¹¹⁵ The inquiry reported on 23 February 2009.¹¹⁶

On the question of Government participation, a BBC report quoted a Department of Health spokesman as saying:

We have great sympathy for those who were infected with Hepatitis C and HIV and understand why they want to know how it happened and why it could not have been prevented. However, the government of the day acted in good faith, relying on the information available at the time.¹¹⁷

The DOH had already carried out a review into this matter which had drawn the following conclusions:

- Nobody acted wrongly in the light of the facts that were available to them at the time;
- Every effort was made by the Government to pursue self sufficiency in blood products during the 1970s and early 1980s;
- The more serious consequences of Hepatitis C only became apparent in 1989 and the development of reliable tests for its recognition in 1991;

¹¹³ HC 473 2007-08, p9

¹¹⁴ Independent Public Inquiry into Contaminated Blood and Blood Products, *Frequently asked questions*, <http://www.archercbbp.com/faq.php>

¹¹⁵ <http://www.archercbbp.com/index.php>

¹¹⁶ http://www.archercbbp.com/files/report/76_Lord%20Archer%20Report.DOC

¹¹⁷ BBC News, *Contaminated blood inquiry begins*, 18 April 2007, <http://news.bbc.co.uk/1/hi/health/6563669.stm>

- Tests to devise a procedure to make the Hepatitis C virus inactive were developed and introduced as soon as practicable;
- Self sufficiency in blood products would not have prevented haemophiliacs from being infected with hepatitis C. Even if the UK had been self sufficient, the prevalence of hepatitis C in the donor population would have been enough to spread the virus throughout the pool.¹¹⁸

The Department has co-operated with the Inquiry in reviewing, and making available, copies of papers held for the period 1970 to 1985 which relate to this subject.¹¹⁹ In response to a question in the Lords, Baroness Thornton, for the Government, said that the Government would consider the recommendations of the Archer report carefully.¹²⁰

The Government subsequently announced that the inquiry would be followed by a Government inquiry established under the *Inquiries Act 2005*.

9.2 Independent Public Inquiry on Gulf War Illnesses

An earlier independently-sponsored inquiry looked at the issue of gulf war syndrome. It was chaired by the retired law lord, Lord Lloyd of Berwick, and reported in November 2004. The website stated that the Inquiry had been established following “enormous efforts” by the Royal British Legion, various Gulf War veterans associations, the legal profession and parliamentarians.¹²¹ Lord Lloyd said in his opening statement on 6 July 2004 that the inquiry was being funded by an independent charitable trust which wished to remain anonymous.¹²² The report estimated the costs of the inquiry to have been less than £60,000.

The terms of reference were:

To investigate the circumstances that have led to the ill health, and in some cases death, of over 6,000 British troops following deployment to the first Gulf War, and to report.

The inquiry took evidence on ten days and heard from 35 veterans or their families, three senior members of the armed forces, three MPs, a Peer, two U.S. Congressmen and some 21 experts including six from the United States and one from Germany. The Ministry of Defence made available relevant documents but did not consider it appropriate for a government minister or serving officer to attend. Ivor Caplin, then Parliamentary Under-Secretary explained this as follows:

The Government has carefully considered the merits of an official inquiry and while we have not ruled out such an inquiry, for the present, we remain of the view that the only way we are likely to establish the causes of ill health in some Gulf veterans is through scientific and medical research.¹²³

¹¹⁸ Department of Health, “Review published on infected blood products”, *News release 2006/0076*, 27 February 2006, <http://www.gnn.gov.uk/environment/fullDetail.asp?ReleaseID=188927&NewsAreaID=2&NavigatedFromDepartment=False>

¹¹⁹ HC Deb 22 May 2007 cc69-70WS; see also introductory comments by Lord Archer at the first and second day’s hearings, <http://www.archercbbp.com/hearing.php>

¹²⁰ HL Deb 5 March 2009 c847

¹²¹ Gulf War Illnesses Public Inquiry, *FAQs*, <http://www.lloyd-gwii.com/faq.asp>

¹²² Gulf War Illnesses Public Inquiry, *Press notices*, 6 July 2004, <http://www.lloyd-gwii.com/press.asp>

¹²³ Gulf War Illnesses Public Inquiry, *Report*, p3, <http://www.lloyd-gwii.com/report.asp>