

UK Public and Parliamentary Inquiries

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The Nature of Public Inquiries

Public inquiries are convened to investigate significant events of national importance.

Public inquiries are often set up to investigate matters such as large scale loss of life, serious health and safety issues, the collapse of major companies, and regulatory failures.

For example, recent inquiries have addressed issues such as the culture, practices and ethics of the press; the UK's role in the Iraq War; and the circumstances in which patients treated by the National Health Services were given infected blood and blood products.

The purpose of public inquiries is to make factual findings, and to provide recommendations about how the events that prompted the inquiry can be avoided in the future.



Although the terms of reference for each inquiry will differ, most public inquiries seek to address some or all of the following key questions:

- What happened?
- Why did it happen?
- Who is responsible?
- How can we prevent it happening again?

Many inquiries focus on the actions of government or other public bodies. However, some inquiries will examine the conduct of companies and their directors or managers.

The Legal Framework for Public Inquiries

The legal framework for any public inquiry, including the powers and responsibilities of the inquiry, will depend on how the inquiry is established.

Statutory inquiries

Statutory inquiries are conducted in accordance with the Inquiries Act 2005 and the Inquiry Rules 2006. These include detailed evidential and procedural provisions, such as a power to compel witnesses to give evidence or produce documents relevant to the inquiry. Statutory inquiries tend to be held in public, but restrictions on public access may be imposed in some circumstances.

Non-statutory *ad hoc* inquiries

Non-statutory *ad hoc* inquiries are not subject to detailed evidential and procedural rules, so they rely on the cooperation of those involved. Non-statutory inquiries may be held in public or private.



Committees of Privy Counsellors

Committees of Privy Counsellors are a type of non-statutory *ad hoc* inquiry, so they also rely on the cooperation of participants, and they are not subject to detailed evidential and procedural rules. A committee of Privy Counsellors may be appointed where the subject-matter of the inquiry relates to sensitive issues of national security, as the composition of the committee allows for review of confidential and classified material that cannot be disclosed or discussed in public.

Royal Commissions

Royal Commissions are a type of non-statutory *ad hoc* inquiry, and they tend to focus on broad matters of policy rather than specific incidents or events.

Select Committee Inquiries

Select committees are cross-party groups of Members of Parliament or peers — or sometimes both — who are charged by Parliament to scrutinize the work of the UK Government or to investigate particular policy issues or events.

In the House of Commons, select committees generally focus on the spending, policies and administration of specific government departments. However, some have a cross-departmental remit, such as the Public Accounts Committee.

House of Commons select committees regularly conduct inquiries and *ad hoc* evidence hearings. Select committees have several powers that are relevant to these investigatory activities — including the ability to send for persons, papers and records — which are set out in House of Commons standing orders rather than legislation.

However, unlike the position with statutory public inquiries under the Inquiries Act 2005, there is no meaningful penalty for non-compliance with select committee requests. Generally, select committees rely on cooperation by witnesses who might otherwise face reputational harm.

In the House of Lords, select committees do not shadow government departments, but there are several permanent thematic select committees covering issues such as economic affairs, international relations, and science and technology. Those permanent committees conduct their own inquiries in relation to issues within their area of specialism.

In addition, the House of Lords occasionally establishes special inquiry committees to focus on discrete topics. For example, the Select Committee on Artificial Intelligence was established in a prior parliamentary session to consider the economic, ethical, and social implications of advances in artificial intelligence.

Select committees tend to be more overtly political than public inquiries, and this is often reflected in the form and tone of questioning. Examination of witnesses is led by the parliamentarians themselves, not by legally-qualified counsel.



Parliamentary Commissions of Inquiry



Parliament also has the power to establish commissions of inquiry, distinct from the usual select committee inquiry process.

For example, in 2012, both Houses of Parliament approved the establishment of a Parliamentary Commission on Banking Standards, with a mandate to:

- report on the professional standards and culture of the UK banking sector;
- assess the lessons to be learned about corporate governance, transparency and conflicts of interest; and
- make recommendations for legislative and regulatory action.

The Commission included Members of Parliament and peers from the House of Lords.

It also benefited from a team of parliamentary and specialist staff that was far larger than the teams that usually support select committees.

The Commission was granted several investigatory powers, including the right to:

- send for persons, papers and records;
- examine witnesses on oath;
- appoint specialist advisors; and
- invite specialist advisors, including counsel, to examine witnesses.

Reputational and Legal Risks

Public and parliamentary inquiries are almost always high-profile, and they can give rise to several reputational and legal risks.

Public and parliamentary inquiries often attract media attention and stakeholder scrutiny. For participants, involvement in public and parliamentary inquiries can be intense.

Depending on the nature of the issues that are being considered by an inquiry, there is a risk that the inquiry may lead to subsequent litigation, or to investigations by law enforcement authorities or regulators.

Similarly, as inquiries almost always lead to recommendations being provided to the UK Government, parliamentary and public inquiries can have significant policy implications. Past inquiries have led to changes to legislation in a range of areas, from health and safety laws to restrictions on firearms.

It is important to consider these issues in advance of participating in any public or parliamentary inquiry, as an effective strategy will take into account:

- the legal framework for the inquiry, including any obligations relating to production of evidence or testimony;
- the political and policy context to the inquiry, including the extent of any media interest in the subject-matter of the inquiry; and
- the relationship between the inquiry and related litigation, law enforcement, and regulatory risks.



Five Practical Tips for Public and Parliamentary Inquiries

1. Obtain legal advice at the outset

Early legal advice is essential to ensure that you understand the nature and powers of the inquiry, develop a comprehensive strategy, and potentially benefit from the protection of legal professional privilege with respect to preparatory work.



2. Know your rights

The legal rights of participants will depend on the legal framework under which the inquiry is established. For example, in statutory public inquiries under the Inquiries Act 2005, so-called “core participants” have more extensive rights than other participants.

3. Consider document retention and production issues immediately

If a public or parliamentary inquiry may require production of evidence, consider putting in place immediate document retention and preservation measures for existing documents, and restrictions on new communications relating to the subject-matter of the inquiry.

4. Prepare witnesses

Appearing as a witness in a public or parliamentary inquiry can be nerve-wracking, even for experienced public speakers. Careful preparation is essential to ensure that witnesses are not blind-sided by unexpected lines of enquiry, are familiar with the facts on which they are being questioned and have appropriate strategies for replying to requests for privileged or confidential material.

5. Anticipate related reputational and legal risks

Don't assume that the public or parliamentary inquiry will be the only investigation into the matter at issue. Consider whether there are associated litigation, law enforcement, regulatory and policy risks, and develop a response strategy accordingly.

Key Contacts

For further information and advice on the issues addressed in this briefing, please contact the following members of our UK Public and Parliamentary Inquiries Team:



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