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Public Administration
Select Committee

Government by Inquiry

First Report of Session 2004–05

Volume I

*Report, together with formal minutes and
annexes*

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The Public Administration Select Committee

The Public Administration Select Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration, of the Health Service Commissioners for England, Scotland and Wales and of the Parliamentary Ombudsman for Northern Ireland, which are laid before this House, and matters in connection therewith and to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service; and the committee shall consist of eleven members.

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Annette Brooke MP (*Liberal Democrat, Mid Dorset and Poole North*)
Mrs Anne Campbell MP (*Labour, Cambridge*)
Sir Sydney Chapman MP (*Conservative, Chipping Barnet*)
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Hon Michael Trend, CBE MP (*Conservative, Windsor*)
Brian White MP (*Labour, Milton Keynes North East*)
Iain Wright MP (*Labour, Hartlepool*)

The following member was also a member of the committee during the parliament.

Mr Kevin Brennan MP (*Labour, Cardiff West*)

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The committee is one of the select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 146. These are available on the Internet via www.parliament.uk.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/parliamentary_committees/public_administration_select_committee.cfm. A list of Reports of the Committee in the present Parliament is at the back of this volume.

Committee staff

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Contents

Report	<i>Page</i>
Summary	3
1 Introduction	5
2 Background	7
A tradition of inquiry	7
Definitions	7
Why is a review needed?	7
What are inquiries for?	8
Development of the independent public inquiry	10
The Tribunals of Inquiry (Evidence) Act 1921	12
Developments since the Salmon Commission	16
The Overseas experience	16
3 The Judiciary	19
4 Inquiry Process and Principles	27
Inquiry form	27
Value of a panel	28
Panels and independence	30
Terms of reference	31
Public versus private	34
Fair play	38
Access to papers and persons	39
Length of inquiries	43
Inquiry costs	45
Inquiry value	46
Ownership and publication of the report	48
Learning lessons	49
Guidance and support	54
Towards some key principles	57
Principles of good inquiry practice	59
5 Accountability and reform	60
Inquiries and Ministerial Accountability to Parliament	60
A New Model for Inquiries	61
The Government's Inquiries Bill: Strengths and weaknesses	62
Abolishing the 1921 Act	63
The need to amend the Inquiries Bill.	64
Criteria and taxonomy	65
Types of inquiries	67
Politically Sensitive Inquiries	67
6 Parliament's Role	70

2 Government by Inquiry

Where should Parliament have a role?	70
Select Committees: Redressing the balance	70
Limitations on Select Committees	71
i. Government cooperation	71
ii. Perceptions of partisanship	71
iii Structure and role	72
Finding a parliamentary alternative	73
A Parliamentary Commission of Inquiry	74
The precedents	74
Rhodesian Oil Sanctions Special Commission	74
7 Ensuring a role for Parliament	77
The failure to call inquiries	77
Parliament as initiator: using the Liaison Committee?	78
Policing the Ministerial Code	79
Conclusion	81
Annex 1: Inquiries into matters of public concern: 1900–2004	86
Annex 2: Inquiries Bill [HL]—Draft New Clauses & Amendments	96
Annex 3: The Salmon Principles	98
Formal Minutes	99
Witnesses	100
List of written evidence	101
Reports from the Public Administration Select Committee since 2001	102
Volume II, Written Evidence, HC 51-II	

Summary

This Report considers the effectiveness of inquiries established by Ministers to investigate events that have caused public concern. It examines the reasons for establishing these investigatory inquiries, which in recent years have ranged from the Hutton and Butler inquiries into issues surrounding the decision to go to war in Iraq to the Bloody Sunday inquiry and the Budd inquiry into the events in the Home office surrounding the resignation of David Blunkett as Home Secretary. The Report recommends that Ministers should justify their decisions whether to hold an inquiry or not on the basis of a published set of criteria.

The Committee believes that there is a need for regular review of the operation of such inquiries; they must be seen to be fair and efficient in discovering what may have gone wrong and in recommending what is needed to put things right. Such a review is particularly timely because the Government has recently introduced a Bill to regulate the establishment and conduct of such inquiries.

The Report lists a number of functions of inquiries and examines how effectively they discharge them under present arrangements, in particular with regard to how lessons may be learnt and recurrences avoided. It asks why the costs of such inquiries should vary so much. It also examines the political, constitutional and practical implications of the frequent use of judges to head inquiries, including the impact on judges' independence and reputation for political neutrality. It recommends that the Lord Chief Justice or the Senior Law Lord should be equally involved with Ministers in all decisions about the use of judges in inquiries.

The Committee welcomes many of the provisions in the new Inquiries Bill, especially its rationalisation of the many statutes which currently regulate such inquiries. However, it expresses its concern that the Bill creates wide powers for ministers to restrict access to inquiries; the Report endorses the presumption of openness contained in the Tribunals of Inquiry (Evidence) Act 1921, which has governed the conduct of many, but not all, major inquiries over the years. The 1921 Act would be repealed if the new Bill becomes law.

The Committee expresses its concern at the long-term diminution in Parliament's role in the process of public inquiries, and makes recommendations for improvements to parliamentary scrutiny. It also proposes a new mechanism which would enable Parliament to initiate inquiries in cases where Ministers may be unwilling to do so, including the establishment of a Parliamentary Commission of inquiry, composed of parliamentarians and others. In addition, the Committee repeats its earlier proposals for using the Parliamentary Ombudsman in the investigation of breaches of the Ministerial Code.

The Report makes a number of recommendations on practical matters, endorsing the Government's proposal for the establishment of a small support unit for inquiries. The Committee also recommends the setting of a broad budget figure near the start of inquiries. Any increase in costs over that figure would have to be publicly explained.

The Committee recommends that the presumption should be that inquiry chairs should handle publication of reports and that publication arrangements should ensure fairness to all concerned, and allow adequate time for parliamentary consideration and debate.

1 Introduction

1. This report examines the tradition of setting up inquiries into matters of public concern; it considers some principles of good inquiry practice and explores the case for greater parliamentary involvement in the process, including possible changes to the Inquiries Bill currently before Parliament.¹ The Committee heard oral evidence from 19 witnesses and received 27 written submissions. The table below provides, for easier reference, a list of those chairs of, and secretaries to, inquiries who provided contributions. A number of published papers were also sent to us by their authors for our attention. We also took evidence on our visit to Washington from 18–23 April 2004. We are very grateful to all those who provided evidence. The Department for Constitutional Affairs (DCA) submitted a comprehensive memorandum as part of its own consultation exercise into effective inquiries. The Committee and the Department have worked together to ensure that both exercises, while separate, have complemented one another. The consultation responses were copied to the Committee, and officials have worked with Committee staff to ensure that there was no duplication of effort on factual information. We are particularly grateful to our specialist adviser Professor Diana Woodhouse whose expertise and interest in the related fields of public law, ministerial accountability and inquiries have proved very valuable. We would also like to thank Chris Sear of the House of Commons Library for his help in analysing past practice of public inquiries.

Table 1: Chairs and Secretaries who contributed to the Inquiry

Inquiry (commissioning department in brackets)	Year Set up	Chairman	Secretary
An inquiry into the application for indefinite leave to remain (Home Office)	2004	Sir Alan Budd	
Review of intelligence on weapons of mass destruction (WMD) (Foreign and Commonwealth Office)	2004	Lord Butler of Brockwell	
An independent inquiry arising from the Soham murders (Home Office)	2004	Sir Michael Bichard	
Investigation into the circumstances surrounding the death of Dr David Kelly (Department for Constitutional Affairs)	2003	Lord Hutton	Lee Hughes
Victoria Climbié Inquiry (Department of Health)	2001	Lord Laming	
Foot and Mouth Disease 2001: Lessons to be Learned Inquiry	2001		Alun Evans

¹ Inquiries Bill [*Lords*], [Bill 7 (2004–05)]

6 Government by Inquiry

Inquiry (commissioning department in brackets)	Year Set up	Chairman	Secretary
(Department of the Environment, Food and Rural Affairs)			
Bristol Royal Infirmary Inquiry (Department of Health)	1998	Sir Ian Kennedy	
Ashworth Special Hospital Inquiry (Department of Health)	1997		Dr Tim Baxter
The Allitt Inquiry (Department of Health)	1993	Sir Cecil Clothier QC	
Inquiries into the circumstances of the death of various children and others and the first Ashworth Inquiry (Various Local Authorities and Department of Health)	1985–96	Sir Louis Blom-Cooper QC	
The Ely Hospital (Cardiff) Inquiry (Department of Health)	1967	Lord Howe of Aberavon	

2 Background

A tradition of inquiry

2. The tradition of the public inquiry has become a pivotal part of public life in Britain, and a major instrument of accountability. Some of the basic principles on which British inquiries are based are reflected in practice elsewhere, including in the Republic of Ireland, Israel, Australia and New Zealand. In the United States, with its powerful Congressional committees, the British system is viewed as a model of robustness, and admired as a reflection of a political culture where investigations can be undertaken without a need for legislation to bring them about.

Definitions

3. The term ‘independent public inquiry’, as it has come to be used in this country, is a loose one. It is applied equally to investigations surrounding accidents in transport or other industries and to commissions of independent expert advisers producing proposals for public policy reform. It is also applied to everyday inquiries such as those held under planning legislation or company law. Our investigation is concerned with none of these.

4. We have instead concentrated on those inquiries set up by ministers to investigate specific, often controversial events that have given rise to public concern. In the aftermath of such events there are invariably demands for a ‘full and public inquiry’, and often for a ‘judicial inquiry’. These are judicial in so far as they are often chaired by a leading judge (notably the Hutton, Phillips, McPherson, Saville, Bingham, and Scarman inquiries). But other major inquiries have not been judicial in this sense (e.g. Sir Ian Kennedy’s chairmanship of the Bristol Royal Infirmary Inquiry, Dr Iain Anderson’s Inquiry into Lessons to be Learned from Foot and Mouth, Sir Michael Bichard’s Inquiry into the Soham murders or Lord Butler’s investigation into intelligence on WMD in Iraq).

5. The term ‘public’ is also used imprecisely. As the Rt Hon Frank Dobson MP explained to us, “... two of the inquiries that I referred to which had looked into quite important scandals within the NHS and had far-reaching consequences, were not public inquiries”.² Moreover the investigatory process may be statutory, on the basis of the Tribunal of Inquiry (Evidence) Act 1921 or other subject specific legislation, such as the NHS Act 1977 or the Police Act 1996, or conducted by means of *ad hoc* procedures based entirely on the prerogative power with the active cooperation of government and other public bodies.

Why is a review needed?

6. Given this inquiry tradition, why is there a need to review their operation? Nearly forty years ago, the Royal Commission on Tribunals of Inquiry chaired by Lord Justice Salmon (henceforth referred to as the ‘Salmon Commission’) examined the process in depth and concluded that, “... it is essential in the national interest to retain the Tribunal of Inquiry (Evidence) Act 1921, albeit with the amendments and safeguards recommended in this

² Q 639

report”.³ Lord Howe told us he was “... astonished that you are still looking at this topic, because it should have been wrapped up, in my view, had earlier advice been followed”.⁴

7. However other witnesses believed that all was not well. Sir Liam Donaldson, Chief Medical Officer, considered that “there is a pool of information about things that go wrong in the public health services from which we need to learn. At the moment inquiries probably cover a relatively small amount of that pool”. He went on “Essentially it is not enough to have inquiries; you have got to have some other system of analysis or investigation which will lead to learning”.⁵ Mr John Gieve (now Sir John), Permanent Secretary at the Home Office, believed that “the pressure for [public inquiries] is increasing all the time, and there is a risk that we overdo it and go over a lot of events which are very similar where there are not a lot of new lessons to be learned, but I accept that as an inevitable development over several years”.⁶

8. The Government considers that inquiries have been successful overall but concedes that there have been cases where inquiries have been marred by arguments about procedure, or have taken much longer or cost more than expected. It therefore “... believes that there is a strong case for considering what steps could be taken to make inquiry procedures faster and more effective and to contain cost escalation”.⁷ It has now introduced legislation to this end.

9. We welcome the fact that the Government is taking the effectiveness of inquiries seriously. It is right to keep this important instrument of accountability and learning in public administration under review to ensure it is functioning well. Inquiries continue to be as much the subject as the source of criticism in public life, particularly where they have been established to examine the actions of government. It is timely to review matters. Modernisation must address not just procedures but the wider issues as well: why have inquiries; how valuable are they; when should we have them; of what kind; and what should happen to ensure we learn their lessons?

What are inquiries for?

10. There can be little doubt that inquiries matter greatly to the public, especially those directly affected by the events under investigation. The fact that people are prepared to resort to legal action in relation to inquiries, successfully such as over the Shipman Inquiry or the Mubarek Inquiry, or unsuccessfully as over Foot and Mouth Disease (FMD), is testament to this. For the Government “the primary purpose of an inquiry is to prevent recurrence”.⁸ It is also their view that, “the main aim is to learn lessons, not apportion blame”.⁹ They believe that inquiries have “helped to restore public confidence through a thorough investigation of the facts and timely and effective recommendations to prevent

³ *Report of the Royal Commission on Tribunals of Inquiry*, Cmnd 3121, November 1966, para 47, p 22.

⁴ Q 398

⁵ Q 559

⁶ Q 560

⁷ HC 606-ii, GBI 09, Ev 20, para (iii)

⁸ *Ibid.*, para 4.6

⁹ *Ibid.*, para 10.2

recurrence of the matters causing concern. Many inquiries have helped to bring about valuable and welcomed improvements in public services”.¹⁰ Lord Laming, who carried out the Victoria Climbié Inquiry, told us that inquiries:

“[...] provide an assurance that the facts surrounding an alleged failure will be subjected to objective scrutiny. They are expected to reach judgements on why terrible events happened. They often make recommendations on how such events might be prevented in future. They may give relief to some and allow the expression of anger and outrage to others. They are often disturbing and painful events. They should improve our understanding of complex issues. At best they change attitudes, policies and practice. That being so they occupy an important place in our society”.¹¹

11. For ministers it is more cynically alleged that inquiries may involve kicking an issue into the long grass, blaming predecessors in government, making a gesture, or simply buckling to public pressure to do something. Sir Ian Kennedy QC told the Committee that “it has to be borne in mind that there is a somewhat perverse motive sometimes in setting up a public inquiry”.¹² As Lord Heseltine put it to us “... No Government wants inquiries; they are usually in circumstances where the government is in trouble [...] They are not popular things for governments”.¹³

12. Sir Ian Kennedy identified six functions for an inquiry: the recognition and identification of different, genuine perceptions of the truth; learning; healing; catharsis; prescribing; and accountability. Lord Howe, who gave evidence to us from his experience of different roles in several public inquiries, identified six similar functions which have been summarised as follows:¹⁴

- **Establishing the facts**—providing a full and fair account of what happened, especially in circumstances where the facts are disputed, or the course and causation of events is not clear;
- **Learning from events**—and so helping to prevent their recurrence by synthesising or distilling lessons which can be used to change practice;
- **Catharsis or therapeutic exposure**—providing an opportunity for reconciliation and resolution, by bringing protagonists face to face with each other's perspectives and problems;
- **Reassurance**—rebuilding public confidence after a major failure by showing that the government is making sure it is fully investigated and dealt with;

¹⁰ *Ibid.*, para (iii)

¹¹ HC 606-iii, GBI 03, Ev 76

¹² Q 667

¹³ Q 615

¹⁴ Geoffrey Howe, “The management of public inquiries”, *Political Quarterly* 70, (1999); pp 294–304, summarised in Kieran Walshe and Joan Higgins, “The use and impact of inquiries in the NHS”, *British Medical Journal*, Vol 325, (19 October 2002), pp 896–7

- **Accountability, blame, and retribution**—holding people and organisations to account, and sometimes indirectly contributing to the assignation of blame and to mechanisms for retribution;
- **Political considerations**—serving a wider political agenda for government either in demonstrating that “something is being done” or in providing leverage for change.

Development of the independent public inquiry

13. Parliament’s role in holding ministers to account was well established long before the development of a more formal doctrine of ministerial accountability in the nineteenth century. Parliament was the “grand inquest of the nation”, whose Members had a duty, as Prime Minister Lord North described it in 1774, to “undertake the very difficult, the very painful, the very meritorious task of watching our Ministers; of reprehending them; of blaming and calling them daily to account”.¹⁵

14. There are some instances in the seventeenth century of committees conducting inquiries into government failures, often related to possible impeachments, for example those on the mismanagement of the Second Dutch War in 1667–8, and of the war in Ireland in 1689. From at least the premiership of Sir Robert Walpole, inquiries by select committees into the conduct of the government and its officials, as well as of private corporations and individuals, were a commonplace.¹⁶ Famous examples included the inquiry of 1844 into the conduct of the Post Office and the Home Secretary into the opening of letters addressed to (among others) the Italian nationalist and radical, Joseph Mazzini.¹⁷ The demand for a select committee of inquiry was often a matter of intense party political controversy. In 1908 the American political scientist, Lawrence Lowell, described the considerations involved in the choice of body to conduct an inquiry:

“the question often arises whether inquiry shall be conducted by a committee of the House, or by a commission appointed by the government. When the matter is distinctly political a committee of the House is the proper organ; but when the judgment of outside experts is needed the other alternative is obviously preferable, several members of Parliament being often included in such cases. Naturally enough, the ministry and the members chiefly interested in pushing an inquiry do not always agree about the matter”.¹⁸

15. As this suggests, parliamentary inquiries were frequently resisted by governments. Gladstone complained in 1855 that while:

“a Committee is extremely well fitted to investigate truth in its more general forms, by bringing every possible form of thought to bear on the points before it ... it is also well fitted for overloading every question with ten or fifteen times the quantity of

¹⁵ Peter D G Thomas, *The House of Commons in the Eighteenth Century* (Oxford, 1971), pp 14–15

¹⁶ *Ibid.*, p. 265

¹⁷ On which, see Alpheus Todd *On Parliamentary Government in England*, 2nd edn. (2 vols, London, 1887), I, pp 432–3.

¹⁸ Abbott Lawrence Lowell, *The Government of England* (2 vols, New York, 1909), I, 267, n. 3

matter necessary for its consideration; and therefore as ill as possible calculated for those rapid searching and decisive inquiries which have practical remedies rather than the arriving at general propositions for their main business”.¹⁹

16. Some demands for inquiries produced particularly significant confrontations between government and opposition. The vote of the Commons to appoint a committee to “inquire into the condition of our army before Sebastopol, and into the conduct of those departments of Government whose duty it has been to administer to the wants of the army” resulted in the resignation of the government of Lord Aberdeen in 1855. The Committee was ultimately appointed in the teeth of Gladstone’s resistance, who felt that such an inquiry “is incompatible with real confidence on the part of Parliament in those who hold executive office, and entirely incompatible with the credit and authority which ought, under all circumstances, to belong to the Ministers of the Crown, whatever party or political creed they possess”.²⁰

17. Even as late as 1924 the Conservative and Liberal parties in the House successfully pressed a demand for a parliamentary select committee to investigate the circumstances leading up to the withdrawal of proceedings recently instituted by the Director of Public Prosecutions against a Mr Campbell of the Workers Weekly on charges of sedition after alleged involvement by the Government. Ramsay MacDonald’s administration promptly resigned rather than accept what it termed an unfair and mean proposal for a committee where his party would be in a minority.²¹

18. The decline in the use of select committees to investigate alleged ministerial misconduct is sometimes associated with the outcome of the investigations of the Committee on the Marconi Wireless and Telegraph Company Agreement of session 1912–13. The Committee was set up to inquire into the allegations that the Government corruptly favoured the Marconi Company in the construction of a chain of state owned wireless telegraph stations throughout the British Empire and that certain of its prominent members had improperly benefited from the transaction. At the end of the investigation the Committee, and then the House, divided on strictly party lines.

19. This has been seen as the defining moment when parliamentary committees gave way to independent committees or tribunals of investigation. Certainly a near contemporary subsequently portrayed it that way. In his autobiography G K Chesterton was moved to write about these events that “... the affair [Marconi] had concluded as such affairs always conclude in modern England, with a formal verdict and a whitewashing committee...”.²² However, its impact was, in his view, profound and rather than follow “the fashion to divide recent history into Pre-War and Post-War conditions” it would instead be better “to divide them into the Pre-Marconi and the Post-Marconi days”.²³

¹⁹ Quoted in William Anson, *The Law and Custom of the Constitution* 5th edn. (3 vols, Oxford, 1922), I, 398

²⁰ *Ibid.*, I, 399

²¹ CJ, 8 October 1924, Col 635.

²² Gilbert Keith Chesterton, *The Autobiography of G K Chesterton*, New York 1936 p 209

²³ *Ibid.*, p 202

The Tribunals of Inquiry (Evidence) Act 1921

20. The 1921 Act was framed with simple intent. In that year the Leader of the House, Bonar Law, acceded to an inquiry into the destruction of papers relating to contracts in the Ministry of Munitions.²⁴ He proposed a committee chaired by a judge, and assisted by a business man and an accountant. It was only in response to one Member who felt that unless the Committee was empowered to take evidence on oath “its findings [...] will not have the weight in the country which they ought to have ...” that Bonar Law, despite noting that an earlier inquiry had managed perfectly well without statutory powers, proposed a general rather than a particular statute dealing with this. This was eventually enacted as the Tribunals of Inquiry (Evidence) Act 1921.²⁵ The Act sought to retain a connection with its parliamentary roots not only through the requirement for a Resolution of both Houses but also in its terminology where the requirement for an “inquiry into a definite matter [...] of urgent public importance” is redolent of the wording for a motion for an adjournment of the House on “a specific and important matter that should have urgent consideration”.²⁶

21. Nonetheless, over the years, 1921 Act inquiries themselves became increasingly the subject of concern because of the perception that the reputations of individuals, often ministers and Members of Parliament, were being destroyed in a forum which did not offer the customary legal safeguards. This concern was crystallised in a Private Member’s Bill of March 1965 which sought to repeal the 1921 Act. Its sponsor, Leslie Hale MP, scathingly referred to the 1921 Act as “a bastard Bill, which provides a method of procedure never known in the law in England since we have our present system of justice” and its result was that “mud attached to colleagues of high repute”.²⁷ In response, the following July, Harold Wilson announced the Salmon Commission saying “anxiety about the working of the Tribunals of Inquiry (Evidence) Act 1921 has been expressed on every occasion on which a report of a tribunal set up under the Act has been debated in the House”.²⁸ Significantly, Wilson revealed he had considered a select committee rather than a royal commission given that “after all, there is Parliamentary responsibility here”.²⁹

22. We have carried out some analysis of inquiries since the beginning of the Twentieth Century. The full results are tabulated at Annex 1. The analysis suggests a trend, from the primacy of parliamentary committees and royal commissions up to the second decade of the century to the dominance of 1921 Act inquiries until the 1970s, then the predominance of *ad hoc* or subject specific statutory inquiries subsequently. The trend is depicted in the graph below. More significantly from Parliament’s point of view, the gradual distancing of Parliament from the investigatory mechanisms over this period has also been reflected in less rigorous parliamentary procedures following inquiry reports. The practice of having debates on substantive motions following 1921 Act reports gradually gave way to debates on motions for the adjournment, ministerial statements and, on occasion, opposition

²⁴ Text of the Act reproduced at Cmnd 3121, Appendix A

²⁵ CJ, 22 February 1921, Col

²⁶ Tribunal of Inquiry (Evidence) Act 1921, Section 1 para 1 and see, for example, Standing Order No 24

²⁷ CJ, 30 March 1965, Cols 1402-04

²⁸ CJ, 22 July 1965, col 1842

²⁹ *Ibid.* col 1843

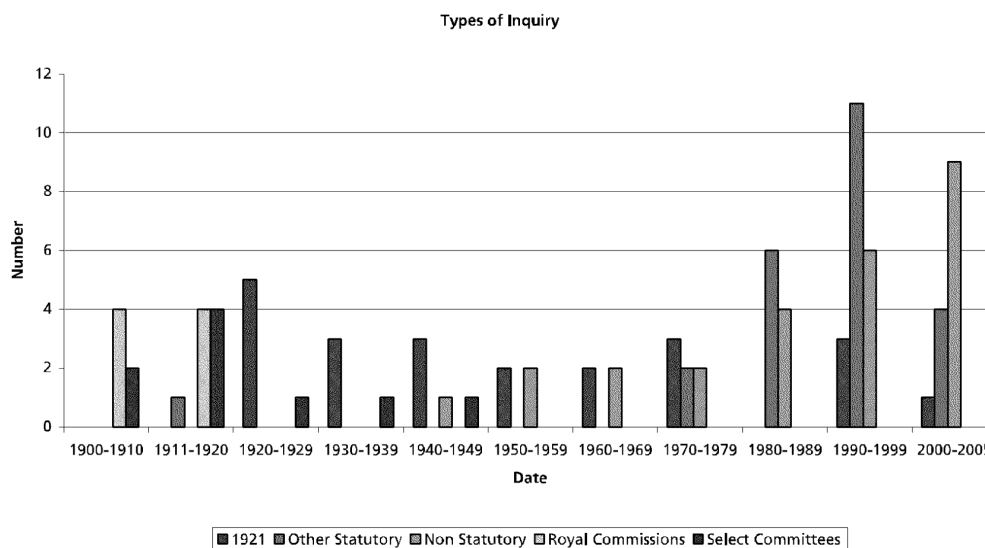
supply days.³⁰ Our research has therefore revealed a long-term diminution in Parliament's role in the process of public inquiries. We regard this as a serious development, and one which needs to be addressed urgently.

³⁰ CJ, 16 February 1972, Col 426

Table 2: The changing nature of Parliamentary Handling of Inquiry Reports

[Note: Most reports have been the subject of ministerial written or oral statements]

Name	Date	Legislative basis	Debate
Unauthorised disclosure of information relating to the Budget	1936	Tribunal of Inquiry (Evidence) Act 1921	Debate on substantive motion
Bribery of Ministers of the Crown or other public servants in connection with the grant of licences etc.	1948	Tribunal of Inquiry (Evidence) Act 1921	Debate on substantive motion
Vassall Tribunal - The circumstances under the Official Secrets Act were committed by William Vassall	1962	Tribunal of Inquiry (Evidence) Act 1921	Debate on substantive motion
Profumo Inquiry	1963	Non-statutory	Debate on motion for the adjournment
Aberfan Inquiry - The Disaster at Aberfan	1966	Tribunal of Inquiry (Evidence) Act 1921	Debate on substantive motion
The circumstances leading to the cessation of trading by the Vehicle and General Insurance co Ltd	1972	Tribunal of Inquiry (Evidence) Act 1921	Debate on Estimates
Brixton Disorders	1981	Police Act 1964, s. 32	Debate on motion for the adjournment
Falkland Islands Review	1982	Non-statutory	Debate on substantive motion
Maze Prison Escape	1983	Non-statutory	Debate on motion for the adjournment
Kings Cross Underground Fire	1987	Regulation of Railways Act 1871 s.7	Debate on substantive motion
The Piper Alpha Disaster	1988	The Mineral Workings (Offshore Installations) (Public Inquiries) Regulation 1974	Debate on motion for the adjournment
Hillsborough	1989	Non-statutory	Opposition day debate
Inquiry into the supervision of the Bank of Credit and Commerce International	1991	Non-statutory	Debate on motion for the adjournment
Public Inquiry into export of defence equipment and dual-use goods into Iraq	1992	Non-statutory	Debate on motion for the adjournment
BSE Inquiry	1997	Non-statutory	Debate on motion for the adjournment
Stephen Lawrence Inquiry	1997	Police Act 1996, s.49	Debate on motion for the adjournment
Bristol Royal Infirmary Inquiry	1998	NHS Act 1977, s.84	Debate on motion for the adjournment
Sierra Leone Arms Investigation	1998	Non-statutory	Opposition day debate
MV Derbyshire Inquiry (2)	1998	Merchant Shipping Act 1995, s. 269	Westminster Hall adjournment debate
Royal Liverpool Children's Hospital Inquiry (Alder Hey)	1999	NHS Act 1977, s.2	Westminster Hall adjournment debate
Equitable Life Inquiry	2001	Non-statutory	Debate on a motion for the adjournment
Victoria Climbié	2001	Children Act 1989, s.81; NHS Act 1977, s.84; Police Act 1996, s.49	Opposition day debate
Investigation into the circumstances surrounding the death of Dr David Kelly	2003	Non-statutory	Debate on motion for the adjournment
Review of Intelligence on weapons of mass destruction	2004	Non-statutory	Debate on Iraq on motion for the adjournment



23. The 1921 Act is now portrayed, by some, as providing a heavy handed inquiry mechanism, best avoided if at all possible, which brings in its train a panoply of procedural requirements and a posse of attendant lawyers. Sir Andrew Turnbull, the current Cabinet Secretary and Head of Home the Civil Service, calls it "... this rather clunking instrument of the 1921 Act, which assumes everything is in public, with full legal representation and so on..."³¹ But the assumption that the 1921 Act leads inevitably to inquiries becoming slow and costly exercises, in part because of their public nature, is not borne out by the evidence. In 1996 the Council on Tribunals, reviewing public inquiry procedures following the publication of the Scott Report on Arms to Iraq, stated that:

"It may be the experience of previous inquiries under the 1921 Act particularly that of the Crown Agents inquiry itself, had led to the perception that such inquiries would inevitably take much longer and involve greater expense, particularly if the Salmon principles were strictly adhered to. However that does not seem to be necessarily so, as was shown by the Aberfan inquiry"³²

24. Our analysis supports this view. No 1921 Act inquiry up until the Crown Agents inquiry of 1978 had lasted more than a year. Of the four inquiries set up under the 1921 Act since 1990, one—the Bloody Sunday Inquiry set up in 1998—is still to report and is estimated to cost some £155m. The Shipman Inquiry was established in 2000 and made its final report last week and is estimated to cost £21m. The North Wales Child Abuse Inquiry also took four years but, on the other hand, the Dunblane Inquiry only took four months. Other statutory inquiries in this period include the Mirror Group Inquiry which lasted ten years at a cost of £8.6m and was held in private; the Ashworth Inquiry, two years and £2.5m; the Bristol Royal Infirmary Inquiry, three years and £14.5m; the Victoria Climbié Inquiry, two years and £3.8m; and the so-called "Three Inquiries" into medical

³¹ Q 46

³² The Annual Report of the Council of Tribunals for 1995–96, *Advice to the Lord Chancellor on the Procedural Issues arising in the Conduct of Public Inquiries set up by Ministers*, HC (1995–96) 114, para 6.4

practitioners, already two years in the running and estimated to cost £5m and also held largely in private.

25. Similarly non-statutory inquiries include the Scott Inquiry into export of defence equipment and dual-use goods into Iraq which lasted four years and cost £7m; the BSE Inquiry which lasted three years and cost £27m; and the Equitable Life Inquiry, held in private, which lasted two and a half years and cost some £2.5m. It would be wrong to conclude therefore that the use of the 1921 Act *per se* necessarily leads to costly and time consuming inquiries.

Developments since the Salmon Commission

26. Since the Salmon Commission reported in 1966 there have been significant developments both in the balance of constitutional arrangements and in the regulation of the public sector. In 1967 the Parliamentary Commissioner Act [CHECK TITLE] created the post of Parliamentary Commissioner (or Ombudsman) which has subsequently developed a wider role, notably with regard to access to government information. Parliamentary standards are now policed on behalf of the Standards and Privileges Committee by a Parliamentary Commissioner for Standards. Rights, obligations and duties concerning ministerial accountability in particular have become enshrined in a whole range of legislation, codes and official guidance including: the Freedom of Information Act 2000; the Data Protection Act 1998; the Ministerial Code; the Civil Service Code; and official guidance on giving evidence to select committees (the Osmotherly rules) and on answering Parliamentary Questions. The period has also seen the growth of judicial review and the Human Rights Act 1998 which have allowed courts to test legislation and ministerial actions.

The Overseas experience

27. As part of our inquiry we visited Washington in April 2004 and met with Senators, Congressmen and staff from Congressional Committees as well as with officials from the 9/11 Commission and the General Accounting (now Accountability) Office (GAO) and political commentators. Unsurprisingly inquiries in the US were also seen to have more than one goal: to find facts, to recommend action, to prevent repetition of mistakes and to bolster the accountability and legitimacy of various parts of government. Although it was thought it would be hard to draft legislation which would cover all types of inquiry, it could be possible to classify inquiries that had already taken place to provide a menu to choose from in the future. However, in the end the political environment was seen as much more important than the precise legal basis for an inquiry.

28. As in the UK, inquiries took on a variety of forms. The Executive Branch often conducted internal inquiries within its own agencies such as the CIA panel under Admiral Jeremiah on the India/Pakistan nuclear tests which reported to the Director of Central Intelligence. Agencies themselves had Inspectors General who investigated allegations of abuse or misconduct and occasionally conducted investigations reporting to the head of the Agency and Congress as part of its oversight function. An example of this was the investigation into the bombings in East Africa which led to a review of Embassy security.

29. The President can also convene commissions or other informal bodies, such as President Eisenhower's foreign advisory board whose reports were seldom made public. Although there was a strong history of presidential commissions to look at policy issues they were much rarer with regard to examining events. The Robb/Silberman Commission on intelligence with regard to WMD was a notable exception.

30. The Judicial Branch was not usually involved except in certain cases surrounding criminal investigations. The use of judges to chair inquiries was generally considered unconstitutional by the US Supreme Court which in *Mistretta v United States* stated "The legitimacy of the Judicial Branch ultimately depends upon a reputation for impartiality and non-partisanship. That reputation may not be borrowed by the political Branches to cloak their work in the neutral colors of judicial action".³³

31. Congress also has the ability to set up a variety of inquiries but we found that the popular image of a strong bi-partisan Congress was not entirely accurate. Part of their strength was that, if members investigated a problem, they were in an excellent position to legislate to tackle it. It was also seen as important for accountability and honest government that Congress should be seen to exercise its powers and call the Executive to give evidence in public. Public appearances by senior figures in the Administration, such as Condoleezza Rice, the National Security Adviser in front of the 9/11 Commission (albeit not a Congressional Committee) was seen to be of real impact.

32. Inquiries on specific matters could be set up by Congress often through interested chairs but these often had limited investigative powers, limited resources and, since they were often established by appending to an Appropriation Bill, no power to subpoena.

33. Congressional committees were seen to carry out an excellent task in their traditional role of oversight but beyond this matters became more partisan and they were thought to function less well. It was possible for these bipartisan committees to look at what were often politically charged events but in so doing the tendency was to turn the investigation over to lawyers who were good at the orderly presentation of facts, and developing the contours of the story but less so at assessing the political nuances. Inevitably constituency interests on domestic issues and the economy tend to dominate members priorities and time.

34. Committee powers were also circumscribed for example by Executive Privilege or the need to secure a majority vote to subpoena recalcitrant witnesses, as well as by their own terms of reference This limited their ability to conduct wide ranging inquiries as, for example on 9/11, where the Joint Congressional Inquiry was remitted to the Intelligence Committees of both Houses to ensure a joint view because the bulk of the subject matter was thought to deal with intelligence. It thereby excluded certain key areas such as transportation issues relevant to the investigation.

35. The calibre and motivation, and number, of staff were key issues. The House Committee on Intelligence for example had 36 staff with a background in intelligence, the law, and the military. The Intelligence Committees of both Houses had hired dedicated staff, experts in various fields in addition to writers and investigators for their joint inquiry

³³ 488 US 362 (1989) at 407.

on 9/11. Support was also available to Congress from the GAO who also provided staff on loan to the 9/11 Commission and provided the Commission with reports including one on Homeland Security.

36. We also received evidence from the Law Reform Commission of Ireland. The Tribunals of Inquiry (Evidence) Act 1921 is also part of the Irish body of law but, given their differing constitutional arrangements has continued to be used to investigate matters of public concern. Nonetheless the Commission explained that legal code presently governing tribunals of inquiry is made up of six separate and inconvenient-to-use statutes. They have made proposals for:

“a comprehensive draft Bill that not only consolidates the existing legislation but also incorporates a number of substantive changes. Among these is a requirement that a tribunal of inquiry should be under a legal obligation to comment on its terms of reference within four weeks of beginning its work. In addition, various methods are proposed for fast-tracking judicial review proceedings taken in respect of decisions of tribunals of inquiry. The Commission also proposed that an express power should be given to the relevant minister or the Government, acting on foot of a resolution of both Houses of the Oireachtas, to terminate a tribunal of inquiry where it has been sitting for some time and seems unlikely to bear fruit”.³⁴

37. As with the UK a key factor has been the debate about how far it is necessary to erect legal safeguards in an inquisitorial process to ensure due process and fairness which in turn add to cost and delay. The Commission recommended that in order to balance the competing interest between fair procedures and “the entitlement to constitutional justice” was to have “legislation [...] providing for private, low-key inquiries which concentrate on the wrong or malfunction in the system and not on the wrongdoer”.³⁵

38. The Commission was also concerned to minimise legal costs by:

- engaging representation at the right level for particular tasks;
- better timetabling and sequencing;
- re-calculating legal costs and expenses in a way more appropriate to pay for guaranteed employment for several months or years, rather than at a daily rate;
- remuneration for work done rather than simply on a daily basis;
- and that, where possible, legal representation should be pooled, where parties might have interests in common.³⁶

³⁴ HC 51-II, GBI 05, Ev 7

³⁵ *Ibid.*, Ev 8

³⁶ *Ibid.*

3 The Judiciary

39. With notable exceptions, when matters of public concern require investigation, governments have traditionally tended to establish judicial inquiries. This tendency was described in earlier days as ‘Government by Radcliffery’, Lord Radcliffe being a frequent chairman of inquiries during the middle part of the twentieth century. During the Twentieth century around 30% of departmental and statutory inquiries were chaired by a judge. Since 1990, out of the 31 notable inquiries 58% have been chaired by a serving judge and 65.5% have been chaired by a serving or retired judge.³⁷ The Salmon Commission recommended an amendment to the 1921 Act requiring that the chairman of any tribunal should be a person holding high judicial office. This would, he believed, give assurance that the inquiry was being conducted impartially, efficiently and judicially, and ensure that findings continued to achieve the same measure of public confidence and acceptance that they had in the past.³⁸

40. The use of senior judges was supported by the Council on Tribunals in 1996. It commented “it is usual to ask a senior judicial figure or other eminent senior lawyer to head an inquiry. In addition to their legal expertise, judges, by their experience, are well equipped to assess evidence, and their independence and impartiality will command public confidence”.³⁹ A similar view was expressed by Lord Woolf, the Lord Chief Justice, who considered that “the fact that an inquiry is conducted by a judge or with a judicial chairman enhances the confidence of the public as to the impartiality and thoroughness of the inquiry”.⁴⁰ The Government also supports the use of judges to chair inquiries, considering that “their experience and position makes them particularly well suited to the role. [...] The judiciary has a great deal of experience in analysing evidence, determining facts and reaching conclusions, albeit in an adversarial rather than an inquisitorial context. The judiciary also has a long tradition of independence from politics, and judges are widely accepted to be free from any party political bias”.⁴¹

41. Three main reasons have been identified for the frequency with which judges have been chosen to chair inquiries. First, they are valued for their skills in what has become a quasi-judicial forum. Lord Hutton told us that “a judge is very well-versed in some aspects of running an inquiry, which flows from his experience of conducting cases in court”.⁴² This was because “they are used to hearing witnesses, they are used to assessing evidence, they are used to defining issues, they are used to analysing facts and relating them to issues [...] Judges are also well versed in ruling on procedural matters, whether a question is fair, whether it is relevant”.⁴³ Dr Tim Baxter, secretary to the Ashworth Hospital Inquiry, also noted that a judicial chair has “particular experience and a capacity to keep proceedings

³⁷ Jack Beatson, *Should Judges conduct public inquiries?*, paper based on 51st Lionel Cohen Lecture, Jerusalem, 1 June 2004 (DCA website).

³⁸ Cmnd 3121, p 29, para 72

³⁹ HC (1995–96) 114, para 5.15

⁴⁰ HC 51-ii, GBI 22, Ev 183

⁴¹ HC 606-ii, GBI 09, para 5.2.

⁴² Q 110

⁴³ Q 92

under control in inquiries where the parties are represented”.⁴⁴ Lord Woolf accepted that while it used to be the case that judicial skills were acquired mainly within an adversarial system, not always appropriate to inquiries, “most civil litigation has now changed and judges can be expected to conduct inquiries in a more informal and expeditious manner than is appropriate for some litigation”.⁴⁵

42. Second, they have been appreciated for their independence and impartiality and thus the authority which they can bring to the proceedings, what Professor Jowell calls “symbolic reassurance”.⁴⁶ Senior judges, who have security of tenure, are independent from government, in the sense of not relying on ministers for position or advancement. As Lord Woolf told us, a judge “does not owe anything to the government of the day and is therefore fully independent”.⁴⁷ Judges are thus seen as ideally suited for investigating matters in which government has a stake. They are also seen as impartial, in the sense of being apolitical, and therefore not likely to favour any political party or interest group. As Lord Hutton said, “They [...] have the reputation of being politically dispassionate. They are not concerned by political considerations”.⁴⁸ They can, in the words of Lord Falconer of Thoroton, Secretary of State for Constitutional Affairs, look into issues “dispassionately—away from politics, from trying to establish the point of view of a particular political persuasion, from trying to damage the political party in power or to score political points [...]”.⁴⁹ He told the Committee that what is required is “authoritative conclusions. [...] By authoritative I do not mean necessarily ones that everyone agrees with but ones that the public knows have been reached by somebody who is utterly independent, objective and dispassionate in the inquiry that he or she has done”.⁵⁰ Professor Bogdanor even went so far as to argue that “it is difficult to see how anyone other than a judge could chair such an inquiry, which could result in the resignation of a minister [...]”.⁵¹ Judges can also remove, or at least reduce, the political heat, which is important if the facts are to be uncovered. In short they play “a significant part in [...] a major function of inquiries: the organising of controversy into a form more catholic than litigation but less anarchic than street fighting”.⁵²

43. Third is their availability. An advantage for government of using judges to chair inquiries is that they are available, in the sense that they can be transferred relatively easily from their ordinary judicial duties, and this transfer is without apparent extra cost. There is undoubtedly an issue about finding individuals, outside the judiciary and the legal profession more generally, who are both suitable and available to chair inquiries. The continued use of judges was confirmed by Lord Falconer who explained that the reason for there being at least twelve judges in the proposed Supreme Court was “to allow continued

⁴⁴ Q 353

⁴⁵ HC 51-ii, GBI 22, Ev 183

⁴⁶ HC 51-II, GBI 17, Ev 39

⁴⁷ Q 732

⁴⁸ Q 92

⁴⁹ HL Deb, 4 February 2004, col. 786.

⁵⁰ Q 186

⁵¹ *Ibid.*

⁵² Stephen Sedley QC, ‘Public Inquiries: A Cure or a Disease?’ *Modern Law Review*, 52 (1989), 469 at 472.

release of members of the Court to undertake other functions such as chairing of public inquiries”.⁵³

44. Yet none of these reasons seem to us totally compelling. Professor Jowell argues that judges operate in the context of “guidance of principle derived from similar previous cases. Political controversies, however narrowly confined, normally involve a wider set of relevant issues ... and a different set of principles to those found in the law reports”.⁵⁴ Mr Justice Beatson noted that the ‘skills’ argument is strongest where the task of the inquiry is solely to find facts. It is less compelling where issues of social or economic policy with political implications are involved”.⁵⁵ Judges are also unlikely to have the professional expertise of someone like Lord Laming who told us:

“I would like to suggest that there are few judges who have managed a big workforce, managed a public agency, managed big budgets in competing priorities, dealt with the party political machine, both locally and nationally, dealt with trade unions going about their perfectly legitimate business and dealt with the media day by day”.⁵⁶

45. Such skills and experience may be more useful to the chair of an inquiry, established to investigate an issue close to the centre of government, than those possessed by judges. This is supported by Sir Michael Bichard. He recognised that “a judge is likely to be as good as anyone at getting to the truth ... if you are just looking at someone to try and get to the facts” but had reservations about the use of judges.⁵⁷ He told us that:

“Very often we are talking about public sector bodies of which a judge has no experience at all. We are talking about accountability. In order to hold public servants to account, I think you need to understand a little of the context within which they are working, though you can get some of that from an assessor and an adviser, but it is second-hand. I do not think a judge is necessarily the best person for that. If you are talking about healing, whether you are talking about healing between some of the parties or actually healing the public confidence, which often this is about, I am not sure a judge has particular qualities to enable him to do that. If you are talking about learning and improving for the future, I am not sure a judge is the best person to do that”.⁵⁸

46. Graham Mather commented that “judges visibly run out of steam as they contemplate the interaction of the facts they have disinterred with the incoherent complexities of Cabinet government and collective responsibility, British style”.⁵⁹ Lord Woolf made a related point when he told the Committee, “today, judges do not often have any insight into the workings of the public service”.⁶⁰ Hence Mr Justice Beatson concludes: “Given the political nature of the British constitution, judicial skills may not necessarily be the most

⁵³ Department for Constitutional Affairs, *Constitutional Reform—A new Way of Appointing Judges*, July 2003, p 3.

⁵⁴ “The wrong man for the job”, *The Guardian*, 3 February 2004

⁵⁵ *Should Judges conduct public inquiries?*, p 15

⁵⁶ Q 278

⁵⁷ Q 679 [Sir Michael Bichard]

⁵⁸ *Ibid.*

⁵⁹ HC 51-II, GBI 20, Ev 40

⁶⁰ Q 712

appropriate where an inquiry concerns the relationship between the government and Parliament”.⁶¹ These reservations are reflected in the view of Lord Hutton’s Report expressed by another of our witnesses, Sir Louis Blom-Cooper QC, who wrote: “Perhaps it might be said that the Report reflected absolutely Lord Hutton’s qualities as a judge, meticulous and superb in the analysis of details and evidence, but more evidently questionable on matters of wider judgment”.⁶²

47. The notion of judges as above the political process has also begun to be challenged. The growth of public law in recent years has made this more apparent as judges have come to play an increasing role in determining cases which raise political and constitutional issues. By their nature such cases are controversial and therefore are subject to criticism by the media and politicians. Cases such as Pinochet, the conjoined twins and the anti-terrorism legislation have also resulted in the media seeking to position the judges along conservative-liberal and activist-deference spectrums and discussing their religious, educational and ethnic backgrounds. Such information, or speculation, suggests that judges are not neutral or impartial, if by this it is meant that they are without ideological commitment or social outlook, and this is confirmed by the views expressed in publications and public lectures by some senior judges.

48. The authority of the judiciary, itself seen as a valuable import into an inquiry, risks being damaged by its aftermath. Those who do not agree with an inquiry’s conclusions may not perceive it as independent and objective, regardless of whether the chair is a member of the judiciary. The authority that judges are said to lend to an inquiry may therefore not be sufficient for its conclusions to be accepted. Inquiry reports are, in any case, only advisory or recommendatory and their authority can be undermined by attempts to discredit their findings. This is particularly true in politically sensitive inquiries. If their reports fail to conclude that ministers and senior officials are to blame, they may be heralded as a ‘whitewash’ by political opponents and the media and the judge criticised, as Lord Hutton was, for interpreting his terms of reference too narrowly, for being too establishment-minded, and for showing a lack of understanding of the political context. If they are critical of ministers and senior officials, they may, like Lord Scott, be accused by government supporters of being anti-government and having a lack of understanding of how government and the political process work.

49. Such criticisms have the potential to damage the reputation of the individual judge, and Mr Justice Beatson considers that “perceived deficiencies [...] whether procedural or substantive, will follow a judge back to the bench”.⁶³ This is supported by JUSTICE which, in response to the Government’s consultation on inquiries, noted that: “There is a danger that a judge who has chaired a politically controversial inquiry will be perceived differently by sections of the public when he returns to his judicial role”.⁶⁴ Lord Hutton conceded that there was a risk, although he did not think it “a very serious risk” that if he continued as a judge after the inquiry, people might have seen him differently, in a way that could jeopardise the reputation of the judiciary.⁶⁵ As Professor Jowell suggested, this may have a

⁶¹ *Should Judges conduct public inquiries?*, p 17

⁶² Comment, Public Law [2004] 472–76 at 476

⁶³ *Should Judges conduct public inquiries?*, p 29

⁶⁴ *Response to Department for Constitutional Affairs Consultation*, CP(R) 12/04.

⁶⁵ Q 94

“corrosive effect on public trust in the judiciary”.⁶⁶ Mr Justice Beatson took a similar line arguing “If the authority of reports and their judicial authors is regularly undermined, the risk of damage to the authority of the judiciary itself is more than fanciful”.⁶⁷ Lord Woolf made a similar point in his Memorandum when he stated:

“I have no doubt that it is preferable that judges should not conduct some inquiries. The subject matter of the inquiry may be so political that it would be damaging to the judiciary for a judge to be involved. In addition, the question of whether there should be an inquiry at all may be highly controversial and if a judge is appointed the judiciary, as a result of the appointment, may be seen as siding inappropriately with the Government”.⁶⁸

50. He told the Committee that if an inquiry was:

“[...] highly political, then it may be that the Chief Justice would say that to get a judge to do something which is obviously of such party-political significance would be undesirable because it would expose the judge to having to adjudicate on issues which would not be appropriate for a judge to adjudicate on, which would not be issues that a court would adjudicate on”.⁶⁹

51. The former Attorney General, Lord Morris of Aberavon, talking about the Scarman and McPherson inquiries months before Hutton, put the warning in more colourful terms: “When a judge enters the marketplace of public affairs outside his court and throws coconuts, he is likely to have the coconuts thrown back at him [...] If one values the standing of the judiciary [...] the less they are used the better it will be”.⁷⁰

52. Nor is the use of judges cost free either from the House of Lords, as now, or from the Supreme Court in future. Extra judicial activities impact upon the workings of the courts. They are only possible because retired law lords are prepared to make up for any shortage of sitting judges. It was because “Placing a serving judge on an inquiry prevents him from being deployed on his normal judicial duties” that Lord Woolf is demanding the right to say whether a particular judge can be released to conduct an inquiry.⁷¹ He illustrated the consequences by reference to the Bloody Sunday Inquiry: “A judge like Lord Saville could be expected to make a real contribution in the House of Lords to the development of our law but we have been deprived of that for five or six years”.⁷²

53. The problem of available resources is not new. Bonar Law was asked to reconsider his intention to appoint a judge to the Ministry of Munitions Inquiry of 1921 (which had prompted the 1921 Act itself) “in view of the arrears of work to be dealt with in the Law Courts and the fact that it was not even possible to spare judges to go all the recent circuit...” and to “... leave those overworked and underpaid officials to do their own work,

⁶⁶ “The wrong man for the job”, *The Guardian*, 3 February 2004.

⁶⁷ *Should Judges conduct public inquiries?*, p 34

⁶⁸ *Government by Inquiry*, Minutes of Evidence (14 December 2004) HC 51-ii, Memorandum.

⁶⁹ Q 712

⁷⁰ HL Deb, 21 May 2003, Col. 883

⁷¹ HC 51-ii, GBI 22, Ev 182

⁷² Q 774

and choose a chairman for the new Committee from some equally distinguished but less busy class”.⁷³ The additional factor today is that, while historically many major inquiries were chaired by High Court judges, the pressure is now greatest on the judicial work of the House of Lords and Court of Appeal because, in the case of inquiries of major national importance involving central government, the trend has been to appoint judges from those courts. Effectively there has been “grade inflation”.⁷⁴ Lord Falconer was more relaxed about this. In his evidence to us he said “If you want a sitting judge, i.e. somebody who is sitting as a current judge, I think the figures are something like 102 High Court judges, 34 Appeal Court judges and 12 judicial Members of the House of Lords. That is 146 senior judiciary and that is not counting those in Northern Ireland and Scotland. There are enough people”.⁷⁵

54. There is, additionally, an important argument against judges chairing inquiries, based on the separation of powers and closely allied to judicial independence. While this principle lacks constitutional force in the UK at present, it does have a particular validity in the case of the law lords, given the proposed establishment of a UK Supreme Court through the Constitutional Reform Bill. Such a development is a recognition that the nature of judicial responsibilities and the requirements of judicial office have changed. The expansion of judicial review, the incorporation of the European Convention on Human Rights (ECHR) through the Human Rights Act 1998, and the devolution legislation (i.e. Scotland Act 1998, Government of Wales Act 1998, and Northern Ireland Act 1998) are likely to increase the number of constitutional issues that come before the courts. These could include such matters as alleged infringements of human rights by legislation or executive action and disputes about the division of power between the Scottish and Westminster Parliaments. Such cases give senior judges a larger constitutional, and hence political, role and make it even more important that they are not only independent and impartial but are seen as such. On its visit to the United States the Committee encountered the established view there that it was constitutionally and politically inappropriate for judges to undertake inquiries.

55. Professor Jowell, concerned about the impact on the judiciary, believes that it is “wrong in principle for serving judges to chair inquiries of a ‘political nature’”.⁷⁶ This view is supported by Lord Laming who, in evidence to the Committee, wondered “whether or not it is always helpful for senior members of the judiciary to be involved in some inquiries which are so closely associated with the party-political machine [...]”.⁷⁷ Mr Justice Beatson, while recognising that there may be situations where it is appropriate for a judge to chair an inquiry, asked “Even if it is constitutionally permissible for [judges] to be used in highly politicised situations, is it constitutionally appropriate?”.⁷⁸ The logic of this constitutional development was reflected in Lord Woolf’s position that “the Chief Justice of the day should have an equal say with the Lord Chancellor as to whether a judge should be

⁷³ CJ Vol 138 25 February 1921 Col 1309

⁷⁴ *Should Judges conduct public inquiries?* p. 19

⁷⁵ Q 189

⁷⁶ HC 51-II, GBI 17, Ev 39

⁷⁷ Q 330

⁷⁸ *Should Judges conduct public inquiries?* p. 5

deployed”.⁷⁹ This accords with the concordat agreed between the Lord Chief Justice and the Lord Chancellor, whereby the deployment of the judiciary is for the Lord Chief Justice. In Lord Woolf’s view, “the Lord Chief Justice of the day is in a singularly appropriate position to see the advantages and disadvantages to the judiciary if an inquiry is to be conducted by a judge and is also in the best possible position to assess the impact on the judicial system of any individual judge being deployed elsewhere”.⁸⁰ He explained that in coming to a decision on this, he would have two concerns. First, “the judge may be required to do something else”; second, “the inquiry may not be an inquiry in which the Chief Justice thinks it would be advisable for a judge to be involved”.⁸¹ Where the request is for a judge from the Appellate Committee of the House of Lords, Lord Woolf told the Committee that “the appropriate person to say, according to my thesis, as to whether a judge should be involved, would be the senior law lord”.⁸²

56. Despite the view expressed by Lord Woolf, which has the full support of the Judges’ Council, the Inquiries Bill provides for ministers to determine who should chair an inquiry (clauses 3 & 4). If this is to be a judge, clause 9 requires that the Lord Chief Justice should be consulted. This, according to Lord Woolf, is not sufficient. He told the Committee “the Chief Justice should be able to say no. In these days of separation of powers, the Executive should not, in my view, be able to tell a judge what he is going to do and select the judge who is going to do it. This is a retrograde step”.⁸³ Professor Robert Stevens highlighted the irony of a government arguing, on the one hand, for the establishment of a Supreme Court and Judicial Appointments Commission and the abolition of the office of Lord Chancellor, on the grounds that “the judiciary and politics live in totally different systems and never the twain shall meet”, while, on the other, continuing to “offer the judges on the sacrificial altar of public inquiries, which inevitably have a greater or lesser political content”.⁸⁴

57. We recognise the value of using senior judges to chair some inquiries. Their training and experience give them important transferable skills, and they provide reassurance that an inquiry will be independent and fair. Their use is most appropriate in fact-finding inquiries which are at a distance from government. Inquiries into issues at the centre of government are however, by their nature, politically contentious, as well as requiring an understanding of how government works. Criticism of their reports in such cases may undermine the impact of the inquiry and the judiciary as an institution, as well as being detrimental to the reputation of the individual judge.

58. With developments in public law, Human Rights Act considerations about impartiality, and the proposed establishment of a Supreme Court, which involves the institutional separation of the judges from the House of Lords, care needs to be exercised in the future use of judges for such work, particularly those from the highest court, and especially in relation to politically sensitive inquiries. **We agree with Lord Woolf’s concerns over the current provisions in the Inquiries Bill and recommend that decisions about the**

⁷⁹ Q 711

⁸⁰ HC 51-II, GBI 22, Ev 183

⁸¹ Q 712

⁸² Q 711

⁸³ Q 722

⁸⁴ R. Stevens, ‘Reform in Haste and Repent at Leisure: Iolanthe, the Lord High Executioner and Brave New World’ (2004) *Legal Studies* 1 at 34–35.

appointment of judges to undertake inquiries should be taken co-equally by the Government and the Lord Chief Justice or senior law lord.

4 Inquiry Process and Principles

Inquiry form

59. Inquiries can and have taken various forms over the years: the use of sole chairs such as the Scott, Hutton and Bichard Inquiries; a committee or panel such as the BSE or Butler inquiries; or a chair with assessors such as the Climbié Inquiry. Our evidence considered two aspects: whether particular forms were more advantageous in terms of ensuring the required experience was available to an inquiry and whether independence of an inquiry was more easily assured by one form over another.

60. Senior officials explained some of the practical considerations in putting together an inquiry membership. Sir Brian Bender, the Permanent Secretary at the Department for Environment, Food and Rural Affairs, described how “in the case of foot and mouth, the perceived need was someone who understood systems, understood crises and would address systems issues”.⁸⁵ Sir John Gieve saw:

“The comparative advantage in appointing lawyers is that they know about evidence, about questioning, adversarial questioning, and so on; so they are the experts in the process. In a number of cases we have tried to appoint advisors or panels alongside them who can bring a bit of specialist knowledge, and sometimes that works very well”.⁸⁶

61. Sir Liam Donaldson noted a problem of availability: “with non-lawyers you are often faced with somebody who is at or near retirement, because otherwise people would be taken out of circulation for a year or sometimes two years at once; so there is a dearth of opportunity to get younger people, who might be absolutely in touch with the issues”.⁸⁷

62. Single chairs, whether lawyers or not, can be successful. For example, Sir Michael Bichard brought direct personal experience from across a wide area of local and central government, in a notably effective inquiry. Dr Iain Anderson, chair of the Foot and Mouth Disease 2001: Lessons to be Learned Inquiry, is another example of a single chair. The secretary of the inquiry, Alun Evans, was “not particularly convinced that having assessors or panel members would have assisted the process”. Nonetheless:

“In terms of expertise we identified fairly early on the areas we thought our inquiry was lacking which was, one, on high-level economic analysis and, two, on statistical analysis. [...]. Very early on we brought in two leading academic experts on these two disciplines to advise on those areas, and that worked admirably well for us [...]”.⁸⁸

63. Lord Hutton’s perspective on his inquiry was simple: the matters he was being called upon to decide were straightforwardly about facts. There was no need for a commission

⁸⁵ Q 611 [Sir Brian Bender]

⁸⁶ *Ibid.* [Sir John Gieve]

⁸⁷ Q 611 [Sir Liam Donaldson]

⁸⁸ Q 384

because first, “in this country [...] a single judge does decide issues of very great importance in civil cases. [...] Judges are used to trying very grave issues on their own”. Secondly because:

“A commission can be a somewhat unwieldy body in considering perhaps somewhat confined issues. For example, in questioning a witness, there are certain disadvantages, if one is trying to find out the truth about a matter that a person is questioned by a succession of questioners because coherence is sometimes lost; the thrust of a line of questioning is sometimes lost and I think it is advantageous that a person is questioned at an inquiry by counsel to the inquiry”.⁸⁹

64. But he conceded that “if one was going into wider political implications, then there would be advantages in having a commission or a body of people sitting”.⁹⁰ He also agreed that “Experts are of assistance” although he “thought it was preferable that he [the psychiatric expert] should give that assistance by giving evidence so that the public could hear his views, rather than that he act as an assessor to give views, as it were, to me in private”.⁹¹ It is the personality of the chair and the experience which they bring or can draw upon which matters crucially to the outcome of an inquiry. Panels can therefore hold certain advantages over single member inquiries in this regard.

Value of a panel

65. Bonar Law was clear in setting up the first 1921 Act inquiry into the Ministry of Munitions that, to ensure confidence, he needed “a Committee consisting of a judge [...]. There ought also to be a well-known business man [...] and the third member [...] should be a good public accountant”.⁹² The Council on Tribunals was convinced about the value of additional experts:

“Wing members can provide a breadth of experience which can be brought to bear on the subject matter of the inquiry. They can also enhance public confidence in the fairness of the process and in the inquiry’s conclusions. They can afford the inquiry chairman helpful support and some protection against errors of judgement in matters of both substance and procedure”.⁹³

66. It went on to advise that consideration should also be given to the appointment of assessors, particularly on technical issues in a specialist field.⁹⁴ Lord Howe started:

“from the premise, [...] that ‘wingmen’ [...] will almost always be desirable, partly for the reason that they bring wisdom beyond that of the single Chairman on the subject in question but also because they function in a *quasi* jury fashion. [...] I found myself, in the Ely Inquiry in particular, enormously helped by the presence of outsiders, not just on the technicalities, but on the human questions and how best to

⁸⁹ Q 131

⁹⁰ Q 133

⁹¹ Q 101

⁹² CJ Vol 138 22 February 1921 col 881

⁹³ HC (1995–96) 114, 5.16

⁹⁴ *Ibid.*, 5.17

handle things, and I quote, I think, a most impressive tribute: Lord Bingham in his BCCI Report [...] pays tribute to the valuable help they gave him in his role as a judge (as well as in their role as experts), a sounding board on whom you can test your opinions[...].⁹⁵

67. Lord Butler believed his Committee had “worked out very well, certainly from my point of view and I think from the public’s point of view. [...] It contained two Members of Parliament from the main two parties [...] and three other people, including me, who had experience of intelligence and government. I think that was a knowledgeable, well balanced committee and it worked satisfactorily”.⁹⁶ Lord Norton endorsed this perception that the Butler Inquiry would:

“[...] enjoy a greater deal of support and protection by virtue of the fact that it is drawn up by that particular body, rather than resting on one individual. So people cannot say, ‘It is all Lord Butler, he is getting his own back,’ or anything of that nature, because he has a team, a panel in effect, that is making the recommendation, and I think that therefore strengthens the position of the inquiry in a way it would not be strengthened if it was just dependent upon one person”.⁹⁷

68. Lord Laming explained how he:

“[...] decided when I was charged with this responsibility, [...] that I needed to have the best possible advice that I could get. That was not me in any way wanting to shirk my responsibilities; I just felt, [...] that I needed to have good advisors around me. Therefore, I appointed four people who had experience that I do not have. I wanted to have four people who were sitting with me as professional assessors who today currently have up-to-date experience of managing front-line services and for delivering front-line services because it is a long time since I was in the front line”.⁹⁸

69. Support for ‘wing members’ or a panel also came from Graham Mather who argued for two lay assessors; British Irish Rights Watch who stated that “once a matter is sufficiently serious to warrant an inquiry, then three heads are better than one”; and Sir Robin Ibbs who noted that “It is undesirable for a chairman to be on his (or her) own. Just one colleague can give a useful contrast in experience and views; more colleagues may be appropriate depending on the circumstances”.⁹⁹ Mr Justice Beatson also argued that “the benefits of ‘wing-members’ or expert assessors to a judicial or other chairman should not be underestimated”, while Lord Norton, who is sceptical about the use of judges as chairpersons, believed that a panel of at least three people “allows for someone with a legal background to be appointed”.¹⁰⁰

⁹⁵ Q 398

⁹⁶ Q 521

⁹⁷ Q 432

⁹⁸ Q 287

⁹⁹ HC 51-II, GBI 20, Ev 42 and *Response to Consultation*, CP 12/04.

¹⁰⁰ *Should Judges conduct public inquiries?* p. 18 and HC 606-v, GBI 13, Ev 106

Panels and independence

70. In terms of independence Lord Heseltine gave us a jaundiced view of the process, suggesting that if you have to have an inquiry “Reach your conclusion and then choose your chairman and set up the inquiry”.¹⁰¹ The setting up of the Butler Inquiry, for example, met with controversy. The Liberal Democrats, dissatisfied with its terms of reference, refused to participate. The Conservatives, having initially agreed to take part, subsequently expressed their own doubts about the scope and withdrew. Their nominee, however, remained part of the Committee in a personal capacity. Lord Butler explained to us, that his Committee “found ways of dealing with the political tensions because there were just two Members of Parliament on it who were already members of the Intelligence and Security Committee and who already were trusted to look at these extremely sensitive intelligence papers”.¹⁰²

71. However, others saw panels as a means of underpinning an inquiry’s independence. Lord Norton thought:

“[...] several members [...] makes it less easy for government to manipulate, and so, I suppose, you could counterpoise Hutton with, say, Butler in terms of the composition. That is why, I think, if you have a common framework, so you have a panel of say three to five, it makes it less easy for government to, if you like, determine the outcome simply by the choice of a particular individual”.¹⁰³

72. Lord Howe agreed: “I think that the case for having this framework, this template, by which all the decisions should be taken about composition and conduct, and so on, is to some extent to protect governments from themselves. [...] I think that governments need to be protected from the temptation to rig the inquiry, in other words”.¹⁰⁴

73. The Government is seeking to introduce a requirement of impartiality and suitability for panel members through its Bill. There must be a concern that such a provision will lead to challenges, particularly in politically sensitive inquiries. Lord Falconer was doubtful about this argument, since “whether it leads to legal challenges or not you have got, in order to make an inquiry of the sort that we are talking about worthwhile, to convince people that the person or people you have appointed are independent and are suitable because nobody is going to pay much attention to an inquiry that is not perceived to be independent of the parties being looked at”.¹⁰⁵ **We agree with and endorse the view that the use of ‘wing members’ brings expertise, reassurance, support and protection to inquiry chairs. We particularly recommend the use of panels in politically sensitive cases as a non-statutory means of enhancing the perception of fairness and impartiality in the inquiry process. We also recommend that where judges are seen as the most appropriate chair, they should usually be appointed as part of a panel or be assisted by expert assessors or wing members.**

¹⁰¹ Q 615

¹⁰² Q 539

¹⁰³ Q 417

¹⁰⁴ Q 418

¹⁰⁵ Q 252

Terms of reference

74. The Government in its evidence to us explained that the “Terms of reference are a crucial factor in determining its [an inquiry’s] ambit, length, complexity, cost and, ultimately, its success”.¹⁰⁶ The Council on Tribunals in its examination of the issues post-Scott warned that:

“[...] care should be taken to ensure that the terms of reference go no wider than is necessary to fulfil the specific need which the Minister has in mind when setting up the inquiry. If the terms of reference are too wide, this may result in unnecessary cost and delay, and may introduce questions which merely confuse the essential issues”.¹⁰⁷

75. The Salmon Commission considered that terms of reference “should be drawn as precisely as possible”. Inquiries were not intended to satisfy idle public curiosity in pursuit of general allegation and rumour. However, the Commission added that “It is essential that Tribunals should not be fettered by terms of reference which are too narrowly drawn”. It emphasised the importance of the Tribunal taking an early opportunity to explain its interpretation of its terms of reference and more significantly did not rule out the possibility that reinterpretation might be necessary “in light of the facts that have emerged”.¹⁰⁸

76. Our evidence emphasised the value of the chair of an inquiry being involved in agreeing the terms of reference. Sir Ian Kennedy described them to us as “your relationship with the minister or with the government”. He added that “Of course it is for government to indicate what they want you to look into but it is perfectly open to the chairman to say, ‘I am not going to do it if that is what you want me to do’”.¹⁰⁹ Sir Liam Donaldson told us that “...the civil servants, drawing in ministers at the end of the process in consultation with the Chair of the inquiry, would usually draw up the terms of reference”.¹¹⁰ And Sir Brian Bender added that “...certainly the terms of reference cannot be finalised without the agreement of the Chair”.¹¹¹ Lord Falconer acknowledged that it is for the chair of an inquiry to negotiate his terms of reference. Speaking hypothetically about the Hutton Inquiry he said that “If he had said in order to get to the truth of what happened leading up to Dr Kelly’s death, I [Lord Hutton] need different forms of terms of reference, I would have readily agreed”.¹¹² Lord Butler was not directly involved in agreeing terms of reference but “[...] was satisfied that they would enable the inquiry to do the things which I thought it would be necessary at that stage for it to do”.¹¹³ The significance of being able to agree the wording of the terms of reference was underlined by Sir Michael Bichard “[...] the very first thing I did was to involve myself in a discussion about the terms of reference”. The reason was telling:

¹⁰⁶ HC 606-ii, GBI 09, Ev 23

¹⁰⁷ HC (1995–96) 114, para 5.19

¹⁰⁸ Cmnd 3121, pp 30–31, para 77–79.

¹⁰⁹ Q 654

¹¹⁰ Q 565

¹¹¹ Q 566

¹¹² Q 183

¹¹³ Q 450

“You will regret it hugely if you do not do that [be clear on terms of reference] when you come to make recommendations or draw conclusions and find that actually you are excluded from doing so because of your terms of reference, and the lawyers [...] are then threatening you with judicial reviews and injunctions. So, get it right at the beginning”.¹¹⁴ Terms of reference are therefore “[...] not something just to be nodded through”.¹¹⁵

77. It is not always so apparent that terms of reference act as a constraint. Sir Brian Bender, taking the BSE Inquiry as an example, recalled:

“that Lord Phillips was perfectly able to explore the areas he felt appropriate without feeling totally constrained by three and a half lines in the terms of reference” and it was a question of “some shared knowledge and understanding at the outset with the Chair of not only what the terms of reference are but also what they mean, and then clearly the Chair has, by definition, discretion along the way to use those terms of reference to explore the areas that they think are appropriate”.¹¹⁶

78. Sir John Gieve also believed terms of reference were usually drawn widely enough to avoid difficulties of interpretation. In recent inquires he had been involved with:

“They [the terms of reference] have been quite permissive. Generally: ‘Here is an incident. Look into why it happened and what are the lessons for the future.’ Most terms of reference have something like that in them, and there is no problem about them”.¹¹⁷

79. We pursued the matter of the coherence between the issue under investigation and the precise terms of reference with Sir John Gieve and Sir Alan Budd. Sir Alan Budd explained the difference between the central allegation, the misuse of ministerial office, and his specific remit:

“I distinguished between what I think of as an introductory sentence setting out the background to my inquiry [...] and the terms of reference. What I was entirely guided by and limited myself to were the terms of reference. I did not regard myself as bound by that introductory background however. That, to me, was background—that is what had happened—and I was asked a specific question which I did my best to answer”.¹¹⁸

80. If the terms of reference are to be satisfactory, deliberation and agreement are vital. Lord Laming has told us that “Spending time on refining the Terms of Reference is essential if later challenges are to be avoided”.¹¹⁹ He recounted his experience of the first Shipman Inquiry when such a shared view about terms of reference was absent:

¹¹⁴ Q 650

¹¹⁵ Q 651

¹¹⁶ Q 567

¹¹⁷ *Ibid.*

¹¹⁸ Q 801

¹¹⁹ HC 606-iii, GBI 03, Ev 77

“[T]he basic conflict was that there were those who wanted a full-blown public inquiry, which was wide-ranging in respect of the activities of Dr Shipman but, more than that, the activities of the agencies from the day on which virtually he began to practise until his conviction. They wanted a full-blown inquiry to look at a wide range of things. What I was asked to do was something much more narrow, which was to look at the safeguards that exist in the system in respect of what GPs do with their patients and to see how those safeguards could be strengthened. As I said, the Secretary of State was judicially reviewed and he lost and so an inquiry was set up very much along the lines requested by the people who brought the successful judicial review”.¹²⁰

81. Sir Liam Donaldson reinforced the point about consultation since:

“[...] effectively, within a broad umbrella of terms of reference, the specific areas of initial inquiry are usually on the basis of some discussion with those most involved and the stakeholders, as well as, if it is a legally based inquiry, counsel for the inquiry having gone through all the documents and picked out the key issues”.¹²¹

82. Robert Francis QC and the General Medical Council suggested a wider consultation, with ministers, the chairperson, Parliament and others with a particular interest in the inquiry engaging in a dialogue about the terms before the inquiry commences.¹²² The Committee on the Administration of Justice argued that when an inquiry is established “precisely because of a lack of trust, or a need for closer scrutiny, of the exercise of ministerial functions [...], it seems unlikely that an inquiry composed by appointees of the Minister and working to terms of reference established by the Minister, could ensure the necessary legitimacy and credibility”. On such occasions “we would concur with any move to consult on the terms of reference before finalising them”.¹²³

83. Lord Hutton gave us a significant insight into the impact of wider discussion on terms of reference from the opposite standpoint:

“I think there was so much public debate and public concern that, if there had been public discussion or a period of time to consider the terms of reference, it would simply have enhanced the public concern and one might have had a public debate about what the terms of reference should be. I might have been drawn into that, I might have been asked to express my views and I do not think that would have been beneficial”.¹²⁴

84. It should be possible both to have a degree of discussion and deliberation on terms of reference and then to agree precise language. In their evidence to us the Government conceded there could often be a case for announcing the final terms of reference after a set period, perhaps of a few weeks, to allow for discussion and preliminary investigation, and to enable individuals or organisations with an interest to make representations to the

¹²⁰ Q 282

¹²¹ Q 568

¹²² HC 51-II, GBI 06, Ev 11 and *Response to Consultation*, CP 12/04

¹²³ *Ibid.*

¹²⁴ Q 29

Minister setting up the inquiry.¹²⁵ Sir Ian Kennedy drew “a distinction between the principle you would wish the inquiry to look into and the precise words you use, which may need some adjustment. I think it would be appropriate for a committee such as this to say, ‘If there were an inquiry, we would be insisting it look at X, Y and Z’”.¹²⁶ Sir Louis Blom-Cooper QC could “not see why, if the terms of reference are agreed between, say, the minister and the chairman, that should not go before Parliament for Parliament’s approval. It seems to me Parliament is perfectly entitled to say, ‘Minister, you have got this right’, or ‘You have got this wrong’”.¹²⁷ Lord Howe believed that on consulting about the terms of reference “I think that any prudent Government would want to do that, [...] and, if one has the possibility of parliamentary access to that as well, [...] I think you are more likely to get it right. But there is still going to be an element of discretion in the hands of the Chairman with these wingmen [...]”.¹²⁸

85. It is essential that the terms of reference enjoy broad consensus and are drawn up in a way which allows full and proper examination of the facts and do not fetter the inquiry in its task. We recommend that the chair of an inquiry should have the ability to negotiate the precise terms of reference before agreeing to undertake the inquiry. We also recommend that the Inquiries Bill should provide specifically for a short period of consultation after any announcement to ensure that the final terms of reference meet the expectations of a particular inquiry. This should include appropriate parliamentary involvement.

Public versus private

86. Lord Salmon’s observation on public versus private evidence gathering was succinct: “Secrecy increases the quantity of the evidence but debases its quality”.¹²⁹ The Council on Tribunals considered that “In principle, it seems right that an inquiry into a matter of public concern should itself be conducted in public, unless there is a strong public interest in the inquiry, or part of it, being held in private for reasons such as national security. [...] Aside from any other consideration, public hearings go a long way towards reassuring the public that the subject matter of the inquiry has been fully investigated and that there has been no ‘cover-up’”.¹³⁰ However it went on to suggest that on certain occasions there might be advantages in holding inquiries in private as long as its report was published: “Sometimes it may be easier to elicit the truth when questioning is not conducted in the full glare of publicity”.¹³¹ The Government’s memorandum adduces four main reasons for sometimes holding proceedings in private: national security; statutory barriers to disclosure and legal and commercial confidentiality; personal privacy, unnecessary intrusion or distress to witnesses; and simpler, faster procedures.¹³²

¹²⁵ HC 606-ii, GBI 09, Ev 24

¹²⁶ Q 668 [Sir Ian Kennedy]

¹²⁷ Q 668 [Sir Louis Blom-Cooper]

¹²⁸ Q 430

¹²⁹ Cmnd 3121, p20, para 40

¹³⁰ HC (1995–96) 114, para 7.4

¹³¹ *Ibid.*, para 7.5

¹³² HC 606-ii, GBI 09, Ev 39

87. This is also a question on which the courts have been asked to intervene with greater frequency. The decision of the Secretary of State for Health that the initial Shipman Inquiry, chaired by Lord Laming, should sit in private was successfully challenged by victim's families. They argued this contravened Article 10 of the ECHR as an unjustified governmental interference with the reception of information that others wish or may be willing to impart. Ministers then set up a new inquiry under the 1921 Act. Subsequently other judgements have upheld Ministerial decisions to hold inquiries in private, including the Persey case on the Foot and Mouth Disease 2001: Lessons to be Learned Inquiry in 2003. The judge ruled that there was no legal presumption of openness and the decision was one essentially for ministers. The speed and cost of a public inquiry, the frankness of witnesses, the purpose of the inquiry (fact-finding or lesson-learning) and the fact that Article 10 of the ECHR does not require the State to facilitate freedom of expression by providing an open forum were factors which influenced the decision. However, the Freedom of Information (FoI) Act 2000 creates a "right to know" and a public interest test on the disclosure of even certain exempt categories of information.

88. The original text of the 1921 Act gave power to the tribunal to exclude the public but was amended so that the eventual Act creates a presumption in favour of openness subject to a public interest test. The Government's new Inquiries Bill creates a new power for Ministers or chairs to impose indefinite restriction notices or orders on public access to the proceedings and the evidence of an inquiry. The Bill also makes the obligation of public access subordinate to this power of restriction. This subverts the presumption of openness in the 1921 Act.

89. The evidence we received suggested that, in certain circumstances, holding sessions in private might be necessary. Sir Cecil Clothier QC (Allitt Inquiry) told the Committee: "The unquestionable advantage of this method was that in the absence of friends, colleagues, parents, press and other embarrassments, witnesses gradually began to speak with a frankness which was at times startling".¹³³ Frank Dobson MP also told the Committee:

"[...] two of the inquiries that I referred to which had looked into quite important scandals within the NHS and had far-reaching consequences, were not public inquiries. They were conducted in private. Nobody challenges that they got to the bottom of the thing, and nobody so far as I know has challenged the processes, and none of the patients or their friends or supporters, even their lawyers, have ever said that those inquiries were in any way inferior to a public inquiry", adding "I do think that there is quite a bit of merit in many circumstances in a private inquiry with a published report".¹³⁴

90. Lord Howe concurred: "I am not arguing for secrecy, but there is a case to be made for the hearing to be conducted in secret in many of those more intimate cases as long as the public know it is going on, as long as they know they can give evidence, as long as the result is going to be published".¹³⁵ Dr Iain Macdonald, former Chief Medical Officer in the Scottish Office, and a witness in the BSE Inquiry, was attracted by a two part inquiry process:

¹³³ HC 51-II, GBI 14, Ev 29

¹³⁴ Q 639

¹³⁵ Q 398

“the first phase, concerned with establishing facts, could be held in private, while the second phase could remain public if that is necessary or expedient. In a privately held first phase, witnesses would be freed from the burden of knowing that in answering questions in public they are also providing material for tomorrow’s newspaper headlines. That undoubtedly influences how a witness responds, or does not respond, in public and it would be idle to pretend otherwise”.¹³⁶

91. Sir Liam Donaldson set out the dilemma clearly:

“The first is that there is a concern that if it is not in public the full truth will not come out, the second is that if you do not hold it in public then there is no public scrutiny of people’s actions, as compared to the inquiry’s own scrutiny, and the third is that the public do not get the chance to hear various people’s opinions on the events, which the inquiry does get the chance to hear. I think the trouble is that it always sounds very bad publicly to say that you will not have a public inquiry, because it sounds as if you are trying to withhold the truth or facts from people and you are protecting people from being properly examined in the way that they are in a public hearing with the media reporting on events, and so on”.¹³⁷

92. He agreed with the view that public inquiries would not necessarily elicit the full evidence.¹³⁸ In his view:

“the absolute key element in that is the independence of the Chair. If you appoint the right person who is independently minded, although it does not, as I say, look acceptable to the public, you could have a win-win in that they delve much deeper than they would have done in a public inquiry and they put it all out in a public report afterwards”.¹³⁹

93. Alun Evans was of a similar view. He explained how the Foot and Mouth Disease 2001: Lessons to be Learned Inquiry:

“... was not a public inquiry, [but] we had to do everything we could to give the image and reality that this was going to be a full, open and independent inquiry and I think we managed that. Certainly the judgement of the High Court was that the integrity and independence of our chairman could not be questioned and that argument went away”.¹⁴⁰

94. Lord Butler reiterated the question of trust in independent chairs of an inquiry: “As Privy Counsellors, we were able to look into the details of intelligence which, for perfectly good and important reasons, cannot be made public. We have to be trusted on that. If you do not trust us on that, that machinery has failed, but I think you can trust us on it”.¹⁴¹

¹³⁶ HC 51-II, GBI 11, Ev 28

¹³⁷ Q 583

¹³⁸ Q 583

¹³⁹ Q 585

¹⁴⁰ Q 353

¹⁴¹ Q 507

95. There is also a significant cost imperative in deciding whether to have a public or private inquiry. Sir Liam Donaldson told us:

“the bottom line is that a public inquiry will cost you £20 million and a private inquiry will cost you £3 million, and then six months as compared to two and a half to three years. Those factors, although they sound rather crude nuts and bolts things when you are talking about victims, are an important thing to bear in mind when you are looking at public funds which could be used for other beneficial purposes”.¹⁴²

96. However, others were in favour of as full openness as possible. Lord Hutton recalled how:

“I decided at a very early stage [...] before the evidence was given, that I wished the inquiry to be in public, that I wanted the public to hear every word that was spoken and to see every document that was put in evidence. [...] My intention always was that the transcript could be published, that the media could publish every word [...]”.¹⁴³

97. Lee Hughes, secretary to the Hutton Inquiry, amplified this in written evidence: “I gave evidence to the Inquiry on 21 August 2003 in which I stated that we followed, as far as practicable, the exemptions in the Code of Practice on Access to Government Information when deciding what information should be disclosed or withheld”.¹⁴⁴ He went on to note that:

“both the Code and the [FoI] Act have a public interest override on exemptions. In the case of the Inquiry there was widespread consensus that the public interest in disclosure was very great and therefore there was a great deal of information disclosed, on public interest grounds, where in less exceptional circumstances, an exemption might apply”.¹⁴⁵

98. Sir Louis Blom-Cooper QC believed that the argument “about people being more candid in private than in public has its real dangers. Indeed, people will say things in private when other people have not heard it, and they say things which go beyond what they ought to be saying. It is very easy to use the occasion for ‘scape-goating’”.¹⁴⁶ Sir Ian Kennedy also did

“... not accept the point being made to you about the truthfulness of witnesses. [...] My view is a constitutional point that if it is in private, you cannot hold the chairman and the panel to account because you have not seen the evidence. It is all very well, they may get someone, but how can you know that they are behaving properly? You have a fundamental obligation to behave in public”.¹⁴⁷

¹⁴² Q 584

¹⁴³ Q 58

¹⁴⁴ HC 51-II, GBI 16, Ev 34

¹⁴⁵ *Ibid.*

¹⁴⁶ Q 671

¹⁴⁷ Q 672

99. We recognise that circumstances may sometimes require Inquiries to hold all or part of their proceedings in private. Ensuring the independence of the inquiry will serve to reinforce trust in such circumstances. Although the 1921 Act provides for a presumption of openness we are concerned that the Government's new Inquiries Bill creates wide powers for ministers to restrict access to inquiries, making public accessibility subject to restriction notices. This subverts accepted presumptions of openness and public interest and we recommend it should be reversed.

Fair play

100. The Salmon Commission was established in response to continuing dissatisfaction with the fairness of the procedures under the 1921 Act. It was asked to decide “whether the inquisitorial method followed by Tribunals under the Act is so objectionable in principle that the Act should be repealed”,¹⁴⁸ and it declared that: “The inquisitorial procedure is alien to the concept of justice generally accepted in the United Kingdom”.¹⁴⁹ The Salmon Commission therefore sought to inject the “longstanding and effective safeguards” of legal proceedings through six cardinal principles.¹⁵⁰ Since then inquiry chairs have tended to interpret the Salmon principles ‘flexibly’, moving back towards more inquisitorial procedures. It was Lord Scott who most famously sought to re-write the Salmon principles in the light of his own inquiry. This issue has yet to be satisfactorily resolved. The Council on Tribunals, asked specifically to examine procedures post-Scott, somewhat fudged it in stating “We believe that the differences between the two sets of recommendations are largely ones of terminology and emphasis”.¹⁵¹

101. Only Lord Howe, sharply critical of the Scott inquiry, argued for retention of the full Salmon principles. He told us:

“The pendulum has swung between Salmon and Scott and back again, but I think the interesting thing is that Salmon recommended granting legal representation quite extensively on the basis of his principles, and Lord Scott criticised that because it was introducing confrontation into inquisitorial tribunals. It was actually designed to do so—that was the purpose of Salmon. The Salmon Principles are set out in order to create fair play. We do need to introduce these principles there within reason, and where it is appropriate”.¹⁵²

102. We received extensive evidence from a variety of chairs on the ways their various inquiries had sought to mitigate the Salmon principles. Sir Louis Blom-Cooper QC wanted “[...] to get away from the court room. [...] All that lawyers do is to bring all their expertise of the legal system into the inquiry room, and that simply increases the costs”.¹⁵³ He added that:

¹⁴⁸ Cmnd 3121, para 24, p 15

¹⁴⁹ *Ibid.*, p 16, para 28

¹⁵⁰ *Ibid.*

¹⁵¹ HC (1995–96) 114, para 4.15

¹⁵² Q 397

¹⁵³ Q 649

“If I thought that my professional colleagues actually regarded their function as primarily assisting the inquiry, then I think I would be in favour of legal representatives asking questions. The trouble is that lawyers who are representing parties will behave as they behave in the court room and they will be adversarial, and that is fatal”.¹⁵⁴

103. Sir Michael Bichard explained that “We did not have cross-examination. I merely gave that particular party’s representatives an opportunity, at the end of evidence, to come back on any points and clarification”.¹⁵⁵ Sir Ian Kennedy was against using judges as chairs “because I think a public inquiry should not be a court, and judges tend to be familiar with courts and turn things into courts” and he was against cross examination because it meant lawyers rather than witnesses were heard.¹⁵⁶ For Lord Laming “the so-called Salmon principles are problematic and not altogether helpful”.¹⁵⁷ Lord Hutton commented that:

“The criticism of the Salmon Report is that, whilst the thrust of the principles is correct, that one should be fair towards witnesses, that they should be represented by counsel, that they are given notice of criticisms of them, the Salmon Report sets it out in rather rigid terms. I think I would agree with Lord Laming in this sense, that the Salmon principles are not to be applied inflexibly or rigidly and they have to be adapted to the circumstances of the particular inquiry”.¹⁵⁸

104. Most of these inquiries adopted a similar process: using counsel to the inquiry to act as the conduit for questions from other interested parties and, in some cases, allowing very limited cross-examination in a second, post fact-finding stage. The Government expressed its strong belief “[...] that inquiries should be investigatory. The introduction of adversarial elements into the inquiry process, which are likely to increase costs and have potential to cause delays, should be avoided wherever possible. Adversarial elements should not be a significant feature of a process in which the main aim is to learn lessons, not apportion blame”.¹⁵⁹ The Inquiries Bill is in some ways an attempt to redress the worst excesses of the Salmon principles which have reached their nadir in the Saville Inquiry. **The time has clearly come to reformulate the Salmon principles. We recommend that the procedures followed by inquiries in the last ten years should be reviewed. In particular there should be a re-evaluation of how to ensure fairness within the inquisitorial process while minimising the adversarial, legalistic element of inquiries. Good practice in this field could be codified, possibly through the rule making powers contained in the Inquiries Bill.**

Access to papers and persons

105. One mark of a good inquiry is its ability to pursue the paper trail. Most inquiries begin by creating a “core bundle” of written evidence as the basis for their investigation and the

¹⁵⁴ Q 678

¹⁵⁵ Q 675

¹⁵⁶ Q 654

¹⁵⁷ HC 606-iii, GBI 03, Ev 78

¹⁵⁸ Q 129

¹⁵⁹ HC 606-ii, GBI 09 para 10.2

hearing of oral evidence and calling of witnesses. Lord Butler in his evidence to the Public Service Committee in 1996 believed "... the tradition of accountability, of recording, in the British Government and in the British Civil Service, goes very deep... When Sir Richard Scott looked for the story [on arms exports to Iraq], in all the areas, it was there, a full audit trail, and I think that is a very valuable asset of the British Government that we want to maintain".¹⁶⁰ He reasserted that belief when he appeared before us.¹⁶¹

106. However, a number of recent inquiries have lamented the absence of proper records. Sir Anthony Hammond's inquiry into the Hinduja passport affair recommended that Departments review the working practices in their private offices to see whether there should be more regular monitoring of telephone conversations between Ministers and better written records of telephone calls between offices. Such a review might extend to record keeping generally e.g. of minutes issued from and received by private offices, and might take into account the impact on record keeping of the widespread introduction of electronic communications, such as e-mail. He recognised that a balance has to be struck but believed that, if resources needed to be increased, the case for doing so should be seriously examined. Lord Hutton, pressed by the Committee on this point, told us that, "[...] there did not appear to be minutes of discussions in Downing Street but I simply had to proceed on the material which was before me, which is what I did".¹⁶² Lord Butler too was also critical in his report of "the informality and circumscribed character of the Government's procedures",¹⁶³ although in his subsequent evidence to us he said this to us on the matter of record keeping:

"I think the situation that was revealed by Lord Hutton of the events over the disclosure of Dr Kelly's name was not very satisfactory, I think that is the case and I think that lesson was drawn. As for the meetings of which we had details and we then looked for the record of those meetings on the very important events of the lead up to war, where one would have expected there to be minutes there were minutes".¹⁶⁴

107. Most recently Sir Alan Budd's report examining the allegations that the then Home Secretary speeded up a visa application for personal reasons stated that "There is no audit trail in IND [the Immigration and Nationality Directorate] to allow me to properly examine the process that led to the changing of the decision on 6 May, and in that respect the procedures were not followed".¹⁶⁵ In his evidence to us he was more specific:

"I think what I would have expected to find would have been an audit trail—which was the expression I used—which would have recorded the fact that this was an inquiry raised by a minister in a case in which the minister had an interest and I would have expected to have found that on the file of the applicant, Ms Casalme,

¹⁶⁰ Public Service Committee, Second Report of Session 1995–96 HC 313-iii, Q 805

¹⁶¹ Q 474

¹⁶² Q 113

¹⁶³ Butler report para 611

¹⁶⁴ Q 476

¹⁶⁵ *An inquiry into an application for indefinite leave to remain*, HC 175, p 20, para 4.38

which recorded this interest, recorded the retrieval of the file and recorded the change in the decision”.¹⁶⁶

108. Sir John Gieve reported to us that:

“In the light of the Hammond report and in the light of further guidance which Andrew Turnbull [the Cabinet Secretary] sent round more recently about record keeping in private office, we have a private office handbook, we have rules on what people should keep. [...] and part of the job of the managers of private office is to sample the work of different private offices and private secretaries to make sure it happens”.¹⁶⁷

109. However, he thought that:

“[...] all [of] government has had a particular problem in maintaining the full trail since the introduction of the widespread use of electronic communication. [...] The whole of the Civil Service has had problems about getting consistent rigorous practice around that. The introduction of Freedom of Information, for example, is going to put an additional pressure on us to get that right”.¹⁶⁸

110. In addition, with the imminent entry into force of the FoI Act 2000, there was a flurry of press speculation at the end of last year about the degree to which unusually large numbers of papers were being disposed of under records management reviews. Maintaining accurate records of events is vital to ensure the audit trail at all levels of government. It is important the spirit of the FoI Act is not to be undermined. When Sir Andrew Turnbull gave evidence to the Committee last March the issue of record keeping came up. He expressed his own surprise at the absence of any codification about minuting meetings. He said he was giving some thought to establishing some “general principles” on why information should be kept. One reason he suggested was “because it enables us to maintain an audit trail of accountability [...]”.¹⁶⁹

111. The Cabinet Secretary, having given thought to the matter as he promised us, duly produced guidance on record keeping last summer. Yet guidance is only of value in so far as it is properly applied. **We welcome the production of guidance by the Cabinet Secretary on record keeping and recommend that that it should be published alongside other FoI material such as the publication scheme, and that the level of compliance with it should be regularly reviewed.**

112. Papers not only have to exist, but also to be produced for inquiries. The 1921 Act, other subject specific legislation and now the Inquiries Bill provide inquiries with powers to compel the production of documents and for taking evidence on oath. Lord Laming, despite being vested with statutory powers, gave us three examples where all the documents were not produced, either through incompetence or judgements about their relevance.¹⁷⁰ Lord Norton believed that “There is the legal implication if you then lie under

¹⁶⁶ Q 815

¹⁶⁷ Q 892

¹⁶⁸ Q 893

¹⁶⁹ HC (03-04) 423-i, Q39

¹⁷⁰ Qq 290-5

oath, but I would have thought the mere fact of taking the oath itself actually imposes—even without thinking about the legal considerations—a burden on the individual. So I think it would impose an important discipline...”.¹⁷¹ Lord Falconer conceded that “Separately from crime, giving evidence under oath carries with it some degree of marking the solemnity of what you are doing and making it clear that this is a matter of real importance”.¹⁷²

113. Some of our witnesses however did not think that taking evidence on oath would have made any material difference to the information they obtained, largely because with the mass of papers and evidence from other witnesses meant anyone lying risked being caught out. Sir Alan Budd thought an oath would “not have made any difference at all”.¹⁷³ Sir Ian Kennedy explained that “[...] regardless of whether one thinks it is right or wrong to tell the truth, there are contingent reasons in favour of doing so because you are very likely to be found out if you do not”.¹⁷⁴ Sir Michael Bichard agreed with him “that actually when you have 2,000 documents, [...] several dozen witnesses and several weeks of hearings, you are likely to get caught out. I think people know that and that does bring some pressure on them”.¹⁷⁵

114. Along with other witnesses Lord Hutton was unconvinced of the value oath-taking would have had in his inquiry “Many of the witnesses were cross-examined and fairly and thoroughly cross-examined. I had to assess their evidence, and I do not think I would have been greatly helped if they had been on oath, no”.¹⁷⁶ Lord Falconer tended to Lord Hutton’s view “[...] in relation to whether or not an oath would have made any difference on this particular occasion because, remember, I do not think anybody was minded to lie in relation to what happened and also there were huge amounts of documents, e-mails, et cetera, et cetera, et cetera. It was pretty possible to put together the basic facts from the documents that were visible. There were gaps obviously and there were bits that were not documented but huge amounts of it were”.¹⁷⁷ Lord Butler, like Lord Franks in 1982 and unlike Lord Hutton, used ‘certification’, asking permanent secretaries “to lend their names, to give their authority, to an assurance that we have had all the papers that we need”,¹⁷⁸ as a means of assuring his Committee that all relevant documents had been made available. He thought it “an effective, informal way of doing it”.¹⁷⁹ His inquiry unearthed one particularly significant piece of new evidence, the withdrawal of intelligence assessments in the summer of 2003, which was not revealed to any of the preceding inquiries nor passed to Lord Hutton.

115. We pursued this process of certification with senior officials. Sir John Gieve explained that “What we do is to send out instructions and employ staff to try and find all the papers.

¹⁷¹ Q 442

¹⁷² Q 218

¹⁷³ Q 844

¹⁷⁴ Q 674

¹⁷⁵ *Ibid.*

¹⁷⁶ Q 115

¹⁷⁷ Q 218

¹⁷⁸ Q 525

¹⁷⁹ *Ibid.*

That can be more or less easy, but the instruction goes out to co-operate with our inquiry, and people not doing so will be asked why”.¹⁸⁰ In subsequent written evidence Sir Brian Bender noted “major problems in locating all papers for an inquiry like BSE which looked at more than 10 years of events”. His predecessor issued instructions to the department to identify the relevant files, list them and send them to a central point. The department provided all possible papers and devoted much effort to hunting papers which initially were thought to be missing. However while he “would never like to be in a position of being required to certify that every document had been found [i]t would be [...] reasonable [...] of a Permanent Secretary to certify that the right systems for locating documents have been used”.¹⁸¹ Sir Liam Donaldson agreed with him that:

“certification may not be the answer, although as he suggests, any commitment could focus on having provided all the available papers rather than every document that has existed. In this department this process should become better in time as we move towards electronic filing of all documents, which should help avoid misplacing papers as well as in the search for what is relevant”.¹⁸²

116. A number of our witnesses saw the administration of an oath or affirmation as immaterial to the eventual outcome of their inquiries. It also increases the adversarial element of this essentially inquisitorial procedure. However, on occasion, it is not enough to rely on or expect the full cooperation of witnesses and administration of the oath carries a particular significance. **Therefore we welcome the powers in the Inquiries Bill enabling chairs to administer an oath and other powers of compulsion. We recommend that, in addition to the appropriate statutory powers, inquiries dealing with public bodies should require the permanent heads of such bodies to certify that rigorous systems have been applied for the discovery of documents and noting any problems. This ‘certificate’ could form part of the ‘core bundle’ of inquiry documents.**

Length of inquiries

117. Asked to define what made an unsuccessful inquiry Sir Brian Bender suggested, “... one that has lasted five or six years—”.¹⁸³ The Government memorandum asserted that “The cost of an inquiry is invariably linked to the length of time it takes—put simply, lengthy inquiries are more expensive. An inquiry that is unnecessarily long and costly not only wastes money, it also considerably weakens its outcome”.¹⁸⁴ It is often asserted that the announcement of an inquiry removes the immediate political pressure on a government, enabling it to get on with other business or buy time for a beleaguered minister who may hope that, by the time it reports, public interest will have diminished, he will have moved to another position in government, or he will be able to claim that remedial action has already been taken. Professor Jowell commented:

¹⁸⁰ Q 607

¹⁸¹ HC 606-vii, GBI 25, Ev 149

¹⁸² *Ibid.*, 27, Ev 151

¹⁸³ Q 597

¹⁸⁴ HC 606-ii, GBI 09, Ev 37

“Hutton reported after a mere eight months, but mostly when the judge eventually reports matters have moved on, perhaps even into a new government. Or interest in the issue has waned. Lord Saville’s inquiry into the events surrounding the ‘Bloody Sunday’ killings has been going on for almost a decade. As a result, ... Parliament has not been troubled, or the government embarrassed, by having to revisit those grim events”.¹⁸⁵

118. Although as Lord Heseltine observed it can also be “extremely difficult for government because, having set up an inquiry, you cannot say that the findings are unfair or wrong because you do not know what they are going to be. Therefore, you have to say rather hopeless things about waiting for the outcome of an inquiry [...]”.¹⁸⁶ It is, however, important that the establishment of an inquiry should not, in the words of Lord Norton be “employed as a means of deflecting or undermining the capacity for Parliament to engage in scrutiny itself”.¹⁸⁷

119. Currently inquiries tend to be open-ended. The Inquiries Bill introduces certain saving measures such as limiting scope for judicial review and imposing obligations on chairs to have regard to costs, and gives Ministers certain powers to end and suspend inquiries, but is silent on expected duration. Setting a time limit for inquiries is difficult. Sir Alan Budd explained how his “[...]” was supposed to be a very short inquiry which [would] end quickly; it was not a short inquiry and to make it end quickly it was only possible because my colleagues and I were working more than 16 hours a day to complete it”.¹⁸⁸ However Lord Howe described how the BSE Inquiry did announce a timeframe, although this was subsequently extended:

“At least it gave a time frame, and it has to be subject of review because you cannot tell in advance how long it is going to take. In my Ely case there was a built-in time frame because, not being a Judge, being then a practising QC, and having the presence of consultant psychiatrists and other people, we had our own mental time table, we cannot spend more than X weeks on this”.¹⁸⁹

120. Similarly the Butler Inquiry was asked to report by the Parliamentary Summer Recess, a period of just under six months. In the view of Lord Norton:

“It is good to have a time frame, not fixed in stone, partly for political reasons so that other bodies know, the public know when it was likely to report. Also another political reason is so that the issue does not become a dead one because it has dragged on for so long. I would have thought there were practical reasons for doing it as well, in terms of not only the support mechanism but those in the inquiry”.¹⁹⁰

121. In judicial inquiries, as Lord Woolf told us, tying up a judge indefinitely in such a task would deprive the Bench of their service. Sir Michael Bichard, whose inquiry lasted barely

¹⁸⁵ ‘The wrong man for the job’, *The Guardian*, 3 February 2004

¹⁸⁶ Q 620

¹⁸⁷ HC 606-v, GBI 13, Ev 106

¹⁸⁸ Q 796

¹⁸⁹ Q 436 [Lord Howe]

¹⁹⁰ Q 436 [Lord Norton]

six months, spoke to us about keeping momentum and of how “[a] sense of urgency was maintained throughout”.¹⁹¹ He was, however, vehemently against imposed deadlines:

“[...] because I think as soon as you do that then people are going to accuse you of tailoring the inquiry to hit that deadline. They will accuse you of not having taken time to consider particular pieces of evidence because you are up against a deadline. I have said to you how important I think maintaining momentum is but to fix an artificial deadline at the outset would be disastrous”.¹⁹²

122. Sir Ian Kennedy agreed, but Sir Louis Blom-Cooper QC entered a note of dissent. He believed:

“that the moment terms of reference are framed and the chairman is chosen, you can make a rough estimate of how long it will take. In all my recent inquiries, I have always asked for a deadline, with the caveat that if it extends beyond that, then you go back to the minister and say, ‘Would you please extend my time?’ I think it is quite important to let the public know how long the inquiry is likely to take and when they will get their report. That is very important”.¹⁹³

123. We acknowledge that setting arbitrary deadlines can only be counterproductive in a process which is intended to establish the facts, provide public reassurance and in many cases have a healing and cathartic effect. Nonetheless this is not incompatible with announcing an estimated duration on the model of the BSE or Butler Inquiries. Such a timescale would be non-binding and open to being revisited in light of developments and we so recommend.

Inquiry costs

124. The Regulatory Impact Assessment (RIA) attached to the Government’s consultation document on inquiries suggests that the scale of costs of certain inquiries is weighing heavily on Ministers’ minds and is one of the spurs to the proposed reform. Section 4 in particular details some of these costs. A telling figure is the £300m spent on inquiries since 1990. With no statutory or other cap on expenditure, “Inquiries have to rely on the ability of Chairmen and cooperation of the parties, rather than legislation under which they have been established to ensure an effective result”.¹⁹⁴ The RIA goes on to suggest that even small savings of about 5% would save some £1m a year on average.

125. On the basis of the DCA’s table, the cost of inquiries since 1990 averages about £7m per inquiry (excluding the Bloody Sunday Inquiry whose estimated costs double the average to £14m).¹⁹⁵ In addition there will be separate costs to a department itself in terms of direct and opportunity costs such as the need to handle the Inquiry and its aftermath, and the redeployment of staff away from other duties.

¹⁹¹ HC 51-i, GBI 21, Ev 162

¹⁹² Q 681

¹⁹³ *Ibid.*

¹⁹⁴ Department for Constitutional Affairs, Final Regulatory Impact Assessment: Inquiries Bill, November 2004, www.dca.gov.uk

¹⁹⁵ HC 606-ii, GBI 09, Annex A

126. The new Inquiries Bill contains certain provisions on costs. The Chair is obliged to have regard to the need to avoid unnecessary costs in how he conducts an Inquiry; Ministers are not obliged to fund activities that he has certified to the panel as being outside the inquiry's terms of reference; and the Minister is required to publish the total amount spent in respect of the inquiry. It also seeks to reduce the time limit for judicial reviews of decisions that could delay an inquiry.

127. In contrast the US system may involve Congressional legislation which not only establishes the inquiry but determines its budget as well. For example the Act establishing the 9/11 Commission provided for a budget of \$3m.¹⁹⁶ While we would not advocate such a legislative approach here, because it is neither practicable nor in keeping with our legislative conventions, we are attracted by the principle. **We recommend that Ministers should announce a broad budget figure fairly early on at the start of an inquiry. Any increases over the announced limits would then need to be publicly explained at the end of the inquiry when final costs are published.**

Inquiry value

128. A separate but related consideration is that inquiries are expensive mechanisms which impact not just on costs but more widely in terms of resources and time. Sir Liam Donaldson for example described how:

“the cost of investigations and inquiries has a significant impact on the work of professionals both in terms of their time spent preparing for and giving evidence and on their morale. This applies to all grades and professions of staff. [...] But [having an inquiry] must be balanced against the significant impact such proceedings have on individuals as well as on the ability of an organisation like the NHS to function effectively when it is subject to increasingly costly and time-consuming inquiries which often divert staff from their normal duties”.¹⁹⁷

129. Sir Brian Bender also acknowledged some impact:

“In terms of resources the diversion from other activities can be important, particularly for some individuals. It was for this reason that it was agreed with Dr Anderson that he should not start the FMD Inquiry's questioning of witnesses until the outbreak was completely over and appropriate attention could be given to addressing the needs of the Inquiry. However, beyond those directly involved (and that may well include the Permanent Secretary) the resource diversion, if set within the context of a large modern department, is not necessarily significant”.¹⁹⁸

130. Inquiries therefore need to be used with care and their prospective outcome needs to be of corresponding value. The Government has argued for a real benefit:

“Effective inquiries procedures can help restore and maintain confidence by providing reassurance that measures are being taken to prevent recurrence of

¹⁹⁶ Public Law 107-306 107th Congress Section 611.

¹⁹⁷ HC 606-vii, GBI 27, Ev 151

¹⁹⁸ HC 606-vii, GBI 25, Ev 149

damaging events. Maintenance of such confidence is becoming increasingly important in advanced economies where failure to do so can impose large costs on the economy and public. [...] A well run system for inquiries can help reduce the cost burden generated by losses of confidence by making swift, valuable recommendations”.¹⁹⁹

131. A number of our witnesses spoke about their concern to ensure that their inquiries provided good value for money. For example Lord Hutton “was aware of the importance of conducting the inquiry with expedition and keeping the costs within reasonable limits”.²⁰⁰ For Lord Laming one mark of a successful inquiry “Was the task handled efficiently and timely so that it passed the test of value for money?”²⁰¹ For Sir John Gieve one criterion of success was “Did it do it cheaply and quickly?”²⁰²

132. Sir John in his written evidence to us pointed to the variety of inspectors and regulators to which his Department was subject.²⁰³ Sir Liam Donaldson argued for a variety of ‘learning’ tools. He told us about:

“[...] the safety system which we have initiated in the NHS, which is one of the first in the world, tries to learn lessons, rather like the airline industry, and has the presumption that, in general, a lot of things that go wrong are honest failures, they are systems failures, you need to learn from them, but if they were constantly challenged by the threat of inquiries for all such incidents, the whole system would grind to a halt”.²⁰⁴

133. Nonetheless research carried out on inquiries in the NHS argues that increasing demand for public inquiries, at least in the NHS, “probably reflects a lack of public confidence in the alternative models of inquiry [...]”,²⁰⁵ and highlights the tendency to see public inquiries as the gold standard against which other forms of inquiries should be judged. It demonstrates that, depending on the type of investigative method, the costs and resources required will vary hugely, with full public inquiries the most costly. It suggested that “it might be appropriate to think of inquiries as case studies in organisational failure”.²⁰⁶ As such it believes “that frameworks developed for evaluating the quality of case studies may help in both designing and reviewing inquiries”.²⁰⁷ The Centre for Effective Dispute Resolution also proposed thinking more widely about the use and impact on inquiries and that: “research should be encouraged into past inquiries with a view to assessing the outcomes achieved, the other processes that were required to create practical outcomes, and some broad cost-benefit analysis”.²⁰⁸ The calculations on costs and the

¹⁹⁹ Final Regulatory Impact Assessment

²⁰⁰ Q 158

²⁰¹ HC 606-iii, GBI 03, Ev 78

²⁰² Q 601

²⁰³ HC 606-vii, GBI 19, Ev 136

²⁰⁴ Q 654

²⁰⁵ The use and Impact of Inquiries in the NHS, p. 899

²⁰⁶ *Ibid.*, p 898

²⁰⁷ *Ibid.*

²⁰⁸ HC 51-II, GBI 08, Ev 23

assertions about the value of inquiries provided by the Government do not seem to provide a sufficiently authoritative picture of the cost benefit of this form of investigation. **We recommend that while it is compiling central guidance on the calling, use and procedures of inquiries, the Government should consider whether research should be undertaken by an appropriate body, such the National Audit Office, into the value for money which inquiries represent. This should assess their outcomes and evaluate alternatives.**

Ownership and publication of the report

134. Sir Ian Kennedy was clear about the importance of the “ownership” of a report:

“[...] you have to decide whose report it is. That is an absolutely critical question. [...] Why do I say that? It is because if it is an independent public inquiry at some point you have to say, ‘This is my report and that of my colleagues, which I own and am giving to you and to the public at the same time’, rather than, ‘It is something I give to you, Minister, and now you may do with it that which you wish, including perhaps not publish it at all’. I think that needs to be clarified. My advice would be if you feel that you are doing something and it is important to persuade others, you have to have some agreement on that”.²⁰⁹

135. With regard particularly to inquiries held in private, ensuring publication of the report in full is one of the key measures of public confidence in its outcome. The Inquiries Bill provides that a report of an inquiry must be delivered to the Minister; lays a duty on either the Minister or the chair to arrange publication and requires that a report must be published in full subject to public interest tests. It is important that ministers should not manipulate the publication date of an inquiry report for their own ends or undermine a parliamentary debate on its findings by limiting access to it, as was notably the case with Sir Richard Scott’s report on Arms to Iraq. Recent practice has been good, with chairs keeping a tight hold on availability of the report to all the parties and making their own press statements on publication. Even so Lord Hutton admitted he was “[...] very unhappy and very disappointed” at the leak of his report despite “the solicitors [...] put[ting] into operation a number of measures which we hoped would ensure that there was no leak”.²¹⁰ Such practices undermine the notion of an inquiry as a mechanism which aids ministers in fulfilling the requirement of ministerial responsibility and Parliament in holding government to account, as well as being unfair on those who may be named in a report.

136. We welcome the requirement in the Inquiries Bill for reports to be published in full. We recommend that the presumption should be for chairs to handle publication. This should be reflected in the Bill. Publication arrangements should ensure fairness to all those concerned and the Government should allow adequate time for Parliamentary consideration and debate.

²⁰⁹ Q 654

²¹⁰ Q 126

Learning lessons

137. As we have seen preventing recurrence through learning lessons is a key success criterion for inquiries. Yet we came across much evidence that lessons are not always learned. The Foot and Mouth Disease 2001: Lessons to be Learned Inquiry for example reported that:

“between 1922 and 1967 there were only two FMD-free years in the whole of Great Britain. Four epidemics were so severe that they prompted official Government reports in 1922, 1924, 1954 and 1968, [...]. There is a high degree of continuity in the central themes of these reports. [...] That is why we say that it is perhaps easier to identify lessons than to learn and act upon them”.²¹¹

138. Research published in the British Medical Journal (BMJ) in 2002 noted that the recommendations of the inquiry into Ely Hospital, Cardiff in 1967 “eerily parallel the findings of [...] the Bristol Royal Infirmary [Inquiry], published in 2001”.²¹² It concluded that “The consistency with which inquiries highlight similar causes suggests that their recommendations are either misdirected or not properly implemented”.²¹³ We undertook a comparison of the recommendations in the Franks Review after the Falklands War²¹⁴ and the Butler Inquiry (see below). Like the Butler Inquiry, the Franks Review considered questions about the use of intelligence and machinery of government in the run up to the invasion. Although it is stretching the point somewhat to draw too close a parallel some of the comments and recommendations made in 1983 bear a striking similarity to those of Butler.

Falkland Islands Review and Review of Intelligence on WMD: a companion

At paragraphs 311–313 of the report the Franks Review explained the difficulties and reasons why the intelligence agencies could not have provided earlier warning of the invasion. Butler likewise described the limitations on intelligence sources from Iraq, “a major underlying reason for the problems that have arisen was the difficulty of achieving reliable human intelligence on Iraq.” (Para 443)

When he looked into whether the intelligence assessment machinery had worked effectively Franks was “surprised that events in the first three months of 1982...did not prompt the Joint Intelligence Organisation to assess the situation afresh”. (Para 315). Butler was also “...surprised that neither policy-makers nor the intelligence community, as the generally negative results of UNMOVIC inspections became increasingly apparent, conducted a formal re-evaluation of the quality of the intelligence and hence of the assessments made on it.” (Para 362).

Commenting on the relationship between the different agencies, Franks believed there was a “need for a clearer understanding of the relative roles of the assessments staff, the Foreign and Commonwealth Office and the Ministry of Defence, and for closer liaison with them” (Para 317). Butler accepted “the need for careful handling of human intelligence reports to sustain the security of sources. We have, however, seen evidence of difficulties that arose from the unduly strict ‘compartmentalisation’ of intelligence. It was wrong that a report which was of significance in the drafting of a document of the importance of the dossier was not shown to key experts in the DIS who could have commented on the

²¹¹ Iain Anderson, Foot and Mouth Disease 2001: Lessons to be Learned Inquiry, HC (2001–02) 888, p 22

²¹² The Use and Impact of Inquiries in the NHS, p 895

²¹³ *Ibid.*, p 899

²¹⁴ *Falkland Islands Review*, Cmnd 8787, January 1983

validity and credibility of the report. We conclude that arrangements should always be sought to ensure that the need for protection of sources should not prevent the exposure of reports on technical matters to the most expert available analysis.” (Paragraphs 452)

139. Graham Mather in his evidence claimed “that inquiries neither effectively attribute responsibility [...] nor adequately redesign malfunctioning systems...”.²¹⁵ Sir Liam Donaldson was also critical of the ability of inquiries to provide effective and timely learning and construct realistic recommendations. He told us:

“I think the way in which recommendations of inquiries are framed is very critical. In my experience, whilst the recommendations of inquiries are very helpful, sometimes the inquiry does not have the expertise to redesign the system that it is inquiring into, and very often they try to do that. You are sometimes stuck with recommendations which, as a manager or a policy-maker, you know would not work, but, at the same time, you want to take on board the inquiry's findings”.²¹⁶

140. Our evidence suggested that there was a need for an audit system for ensuring that relevant recommendations had been implemented, particularly with regard to behavioural and cultural change, not just the letter of the recommendations. Further, ideas and potential recommendations should be tested out prior to finalising reports to ensure they were feasible and workable. The Government stated that “the systems for following up the recommendations of inquiries will necessarily vary from one inquiry to another, and it would not be appropriate to put in place a single formal system”.²¹⁷ It also told us that “An inquiry is asked to make recommendations to the Minister who commissioned it. When the Minister receives these recommendations, it will be for him to determine how they should be addressed”.²¹⁸ Robert Francis QC however was critical that “Much lip service is paid to inquiry recommendations when they are published, but often there is little continuing monitoring to ensure that, once officially accepted, recommendations are actually implemented”.²¹⁹ He suggested an audit on the implementation of recommendations and their effectiveness.²²⁰ Although a number of our witnesses were dubious about the powers and feasibility of an inquiry re-forming itself to check up on progress, Sir Michael Bichard announced at the end of his inquiry on the Soham murders on 30 March 2004 that he would reconvene after a period of time to assess the implementation of his recommendations. He told us:

“I have introduced that [a six-month review]. I have written to those involved and I am waiting for their response, simply because I have seen too many inquiries with excellent recommendations not followed up, and I did not want that to happen. These are serious matters. I have given up six months of my life; lots of other people have given up a lot of their time. It just seemed to me it was important that we

²¹⁵ HC 51-II, GBI 20, Ev 40

²¹⁶ Q 559

²¹⁷ HC 606-ii, GBI 09, Ev 42 para 22.3

²¹⁸ *Ibid.*

²¹⁹ HC 51-II, GBI 06, Ev 16

²²⁰ *Ibid.*

reviewed it. The feedback I am getting from senior civil servants is that that has focused people and that probably more has happened than would otherwise have been the case”.²²¹

141. Sir Ian Kennedy agreed that:

“[...] one of the fundamental features missing in the current approach to public inquiries is any procedural mechanism for following things up. The moment that the inquiry ends and the report is delivered, the inquiry is *functus officio*; it has ceased to have any standing. I would recommend, [...] that there may be a requirement for a procedural device emanating from this committee or others whereby the government is asked, or the relevant minister is asked, after six or twelve months, simply what is being done, which of course concentrates minds”.²²²

142. Some of the most illuminating evidence on this came from senior officials. Sir John Gieve, Sir Brian Bender and Sir Liam Donaldson all emphasised the need to ensure that necessary cultural change had taken place rather than simply taking a ‘tick box’ approach to recommendations. Measuring such change in behaviour was not simple according to Sir John Gieve: “it is sometimes quite difficult to encapsulate in a pithy sentence a change in behaviour and you can get into a tick-box mentality. It is very difficult to avoid”.²²³ Certain mechanisms were suggested by these officials. The usual channels were described to us by Sir John Gieve:

“You can ask [the Permanent Secretary] questions; you can ask ministers questions; you can have access to huge amounts of information under the Freedom of Information Act; you have the National Audit Office which comes in and inspects us. [...] There are actually quite a large number of ways in which you can get information [...] but a common sense point is that [the allegation of misuse of ministerial office] was emblazoned all over the news, it was a point of obsessive interest for three weeks. I cannot imagine a minister anywhere in government or a private office anywhere in government which is not being extremely careful on these points”.²²⁴

143. He also noted that for the Bichard Inquiry: “We have an interdepartmental group that is reporting to ministers on that” and recalled “that since the Lawrence Inquiry the Secretary of State has chaired [...] a group to follow through recommendations”.²²⁵ This echoed the post-Ely Policy Group which the minister responsible Richard Crossman set up following Lord Howe’s inquiry in 1966.²²⁶ Sir Brian Bender suggested that one useful route “could be through a select committee saying, ‘let us look at this three or five years on and have a short inquiry, investigation, into whether not only has the Government done what it said it would do, but whether it has changed the world’. You would have to set some time

²²¹ Q 653

²²² Q 654

²²³ Q 603

²²⁴ Q 914

²²⁵ Q 603

²²⁶ Q 445

period. There is no point doing it a year later. One would need to look back on it retrospectively”.²²⁷

144. Lord Butler thought “there ought to be a follow-up to inquiries. What we have said in our report is that we hope that the Intelligence and Security Committee, which is a parliamentary committee set up in this field, will look into the issues that we raise”.²²⁸ Lord Laming hoped, “Parliament would see a role in taking forward the issues, not just on the floor of the House, but in select committees and the like, to take forward the issues which emerge from inquiries”.²²⁹ Lord Norton believed that:

“Once the Report is done it is up to the Minister to act on the Report, it is then for Parliament to call the Minister to account [...]. The Committee has the Report by its side and it can check what the Minister has done. It is fundamentally a question for Parliament because the Inquiry itself does not have a democratic legitimacy to come back and challenge the Minister on what has happened. It is fundamentally a role for Parliament”.²³⁰

145. Alun Evans was clear that there needed to be:

“[...] some type of process within the lead government department or departments which ensures that inquiries are live even when the subject matter which they have dealt with is not in the public domain. That is a fairly straightforward management mechanism. One of the recommendations we made on foot and mouth was that every two years Defra [Department for Environment, Food and Rural Affairs] should do a review of the state of exotic animal diseases”.²³¹

146. He suggested “[...] either a public statement or public document on their website every year or two years on the progress of an inquiry or it could even report back to parliamentary committees”.²³² Frank Dobson MP thought that “a good role for select committees would be in checking up on whether inquiry recommendations had been followed up, and if not why not”.²³³

147. There is a strong case, we believe, for select committees to take on a specific responsibility as part of their ‘core tasks’ to follow up inquiry reports. This could be included in Task No. 9: To examine the implementation of legislation and major policy initiatives. If inquiries are to have the impact hoped for when they are set up their lessons must endure. There should be a robust audit mechanism established as part of any inquiry process to ensure lessons have been learned. This audit process has to go further than simply ticking off the list of recommendations and must determine whether there has also been the requisite behavioural and cultural change. **We recommend that departments should have a duty to report on the implementation of recommendations at regular**

²²⁷ *Ibid.*

²²⁸ Q 537

²²⁹ Q 307

²³⁰ Q 445

²³¹ Q 363

²³² Q 364

²³³ Q 635

intervals, and in any case within the first two years of the end of an inquiry. These reports should cover the extent to which recommendations have been met and describe the wider cultural changes which have been brought about as a result. Select committees are well placed to undertake this kind of assessment on the outcome of an inquiry on the basis of such departmental reports as part of their core tasks, and we recommend that the Liaison Committee should support the inclusion of such work in select committee work programmes.

148. Testing recommendations to ensure practicality was also seen as a key issue. Sir Michael Bichard described for us how:

“[he] used the period from the end of the evidence to the publication of the report just to try and test out whether the kinds of recommendations that I was likely to make were regarded as feasible, nay, even reasonably affordable, and therefore spent that time building a little bit of a consensus around the recommendations so they were not immediately rubbished when they were produced. I know you have to handle that very carefully so that you are not getting yourself in to a situation where your recommendations are being constrained by what you are hearing, but if you have the possibility of a couple of options around the way forward and one of them is going to be achievable and get support and the other is not and there really is not anything in your mind between the two, I just think it makes commonsense to go for the one that is going to be likely to be implemented”.²³⁴

149. This echoed Lord Laming’s evidence that:

“I think the terms of reference were absolutely essential in that I think it gave the inquiry an authority to take the issues that emerged during phase one in respect of Victoria [Climbié] and to test out those issues nationally against a whole range of organisations and people from different backgrounds. I was very keen that the recommendations of the inquiry should not be based solely upon one girl in one part of north London, terrible though that was, and therefore I was very keen that phase two had an authority about it”.²³⁵

150. Sir Ian Kennedy said he had reflected a lot upon this because of his commitment to openness. He had concluded that making recommendations involved moving from the process of finding facts and establishing the story to forming judgment:

“There is no reason why, in working out the options for your judgment, you should not test them with people who might have good judgment themselves. They would not only be members of Her Majesty’s Government—far be it; they might be from a whole spectrum of people who have to put whatever you might recommend into operation, let us say about collecting data in a particular way. You would talk to people from the Royal Statistical Society and ask, ‘is this just mad, or might it work?’ They come back and say, ‘If you do it that way, it might work’. Then you go away and think about that, and it is to help you make judgments”.²³⁶

²³⁴ Q 682

²³⁵ Q 301

²³⁶ Q 685

151. Dr Tim Baxter described how “Besides taking a lot of evidence from experts on personality disorders, we also ran several [...] closed seminars of experts to try and get more access to differing views, and at those events people were presented with the emerging findings and thoughts of the inquiry panel and were able to input their views”.²³⁷ Sir Liam Donaldson hoped that:

“[...] in some areas of inquiries' findings and recommendations they may be prepared to say, ‘We are minded to make these recommendations for change. We would now like to have some public discussion before we finalise our recommendation’. Then somebody could say—it need not be us, but some local service provider or a patient group—‘That will not work. Why don't you do this instead?’ but that is not something that is built into the inquiry process”.²³⁸

152. In the opinion of Sir Ian Kennedy “[...] if you are going to make any recommendations which are likely to serve the public interest by being listened to, then you must have some understanding of the system into which they are to be inserted”.²³⁹ Lord Heseltine explained how he undertook his own checks of select committee recommendations: “I checked whether the recommendations made sense, and whether we could do them—should we do them, and would I get colleagues' agreement to do them?”.²⁴⁰ In contrast Lord Hutton revealed that “I did not ask for advice on the conclusions from anyone”.²⁴¹ **If they are to be successful, recommendations need to be workable in practice. We recommend that inquiries should be expected and enabled to test out potential recommendations and proposals prior to finalising their reports, although nevertheless, chairs of inquiries should not allow this process to undermine their independence in any way.**

Guidance and support

153. Despite the number of inquiries which have been held in recent years we were struck by the absence of any real guidance or support which exists for inquiry chairs and secretaries. The BMJ research found the same: “There are no rules or guidelines on how to run an inquiry—each one is different, shaped by its chair and context—and few arrangements exist to carry learning about the inquiry process over from one inquiry to another”.²⁴² This operates at two levels: the obvious nuts and bolts requirements which Dr Tim Baxter summarised as “finance, IT, accommodation, legal, setting up an inquiry” and Alun Evans called the “back office function”.²⁴³ Beyond this are questions of procedural guidance which chairs in particular would find a useful starting point, although as Dr Tim Baxter rightly pointed out there would be differences of detail “because of the particular matter in hand and obviously the personality of the Chairman [...]”.²⁴⁴ The Cabinet Office

²³⁷ Q 386

²³⁸ Q 588

²³⁹ Q 682

²⁴⁰ Q 633

²⁴¹ Q 125

²⁴² The Use and Impact of Inquiries in the NHS p 898

²⁴³ Q 339

²⁴⁴ Q 374

has put together guidance on inquiries which we understand is subject to further revisions. It was barely mentioned by our witnesses. Dr Tim Baxter told us “I think the Cabinet Office has got guidance on inquiries, but I did not have time to try and search it out. There is knowledge if you know where to look”.²⁴⁵ Sir Michael Bichard “...was struck when I came to this task at just how little advice and expertise there was available”.²⁴⁶ Sir Ian Kennedy confirmed that “...there is not a great deal of advice and you do, as it were, have to make it up as you go along unless you think it through first”.²⁴⁷

154. Lord Hutton was more positive:

“There is a lot of guidance on the conducting of an inquiry. I looked, for example, at the Salmon Report by Lord Justice Salmon in 1966 as to how a tribunal should be conducted. He set out six principles. I read a lecture by Sir Richard Scott, who has conducted his inquiry and that contained some very helpful guidance. There was a very helpful statement by Lord Scarman at the start of the Red Lion Inquiry, which I read, which states that it is for the chairman to run the inquiry and to decide what witnesses will be called and matters of that sort”.²⁴⁸

155. Dr Tim Baxter described this rather *ad hoc* approach: “They probably all go back to Salmon and read the Salmon six principles and think, ‘Yes, this is a good guide’. He added: “It is a moving, dynamic area and certainly it is an area where Government should be concerned to keep the learning up-to-date”.²⁴⁹ We agree.

156. Our own inquiry has stimulated the Government to take action on these practical and procedural matters and the momentum should be maintained. Alun Evans confirmed:

“It was only after our various inquiries that your inquiry started off and it was only after the Department for Constitutional Affairs consultation paper that anyone in Government drew together all the various inquiries there had been and looked at issues such as legal powers, scope, funding and staffing, etcetera. So I think this whole process is helpful”.²⁵⁰

157. He welcomed giving evidence because “since serving as Secretary for the [Foot and Mouth Disease 2001: Lessons to be Learned] inquiry, one felt one learnt quite a lot of use from the inquiry and this has been the first formal opportunity I have had to talk to anyone about it, so that is interesting in itself”.²⁵¹ It was a feeling echoed by Dr Tim Baxter of the Ashworth Inquiry: “It is a learning experience and one you tend to only want to do once, but it is one where you would want to pass on your experience to others. So I very much welcome this opportunity”.²⁵² Lord Norton saw a need for “developing best practice, developing a framework and then you learn; [...] developing, if you like, institutional

²⁴⁵ Q 359

²⁴⁶ Q 653

²⁴⁷ Q 654

²⁴⁸ Q 110

²⁴⁹ Q 360 [Dr Baxter]

²⁵⁰ Q 360 [Mr Evans]

²⁵¹ Q 336 [Mr Evans]

²⁵² Q 336 [Dr Baxter]

memory and generating the best practice from that”.²⁵³ For Lord Howe is was about “institutional wisdom; departmental memory, so to speak”.²⁵⁴

158. In their evidence to us the Government suggested maintaining a small, dedicated Inquiries Unit, which could co-ordinate the setting-up and running of new inquiries, advise on possible candidates to chair inquiries, and also provide assistance with the practical tasks involved in establishing an inquiry. The Unit could also take on a wider role in ensuring that lessons are learnt from the conduct and procedures of previous inquiries; develop and maintain general guidance for the use of inquiry members and staff, keep abreast of best practice and set up an advice network, and put new inquiry secretaries in touch with people who had previously served in this role and were ready to give the benefit of their experience.²⁵⁵ Sir Brian Bender conceded that:

“One needs a source of expertise to turn to. The ideas that are being explored at the moment are having a standing unit to give advice so that each department that is faced with this is not inventing a wheel. I think that is right, but I am not sure I personally recommend going a step further and saying you need a standing group of staff who can always be called upon”.²⁵⁶

159. Alun Evans believed such a unit “[...] would have taken a lot of weight off my job as Secretary and it would also have meant in our case that we could have started some of the work on the inquiry earlier than we did”.²⁵⁷ For Dr Tim Baxter, “just getting those kinds of things set up without in any way undermining that we were an independent inquiry would have made my life much easier, although quite how you create that organisationally is another matter”.²⁵⁸

160. Inquiries have traditionally been staffed largely by civil servants, but as Dr Tim Baxter conceded “There is nothing magical about civil servants doing this work, but I think it does call on what you might call classic Civil Service skills [...]”.²⁵⁹ Alun Evans agreed that “other people could do the job, but it involves a number of elements. Obviously there is the administrative element, there is the written element, there is the scrutiny and investigative element and there was certainly in our case as well the communication skills one needed to handle the high level of interest in the inquiry”.²⁶⁰ Nonetheless issues of loyalty can arise. Dr Tim Baxter explained that “If you move to be secretary to a judicial inquiry, your primary loyalty is to the chairman of that inquiry [but] there are tensions because one is dealing from time to time with colleagues back in one’s own department and you have to remember where your primary loyalty is, but I did not feel it was an insurmountable problem”.²⁶¹ Alun Evans observed on this: “I think in practice—and I would not build too

²⁵³ Q 415

²⁵⁴ Q 411

²⁵⁵ HC 606-ii, GBI 09, Ev 28

²⁵⁶ Q 569

²⁵⁷ Q 342 [Mr Evans]

²⁵⁸ Q 342 [Dr Baxter]

²⁵⁹ *Ibid.*

²⁶⁰ Q 347

²⁶¹ Q 343 [Dr Baxter]

much into this—some of us were so aware of the potential danger of the charge that we were not independent that it made us even more concerned to make sure that we were so and would challenge the departments as and when necessary”.²⁶²

161. We heard from various witnesses that effectively they each had to start from scratch with their inquiry. Chairs usually make opening statements about procedure, record their rulings along the way and give lectures about it all afterwards. During our visit to the US we were given copies of a Senate handbook which brings together the rules of procedure of every major Senate Committee investigation since Watergate.²⁶³ If inquiries are to be expeditious, the burdens on chairs and secretaries of many of the administrative functions associated with the initial establishment of an inquiry should be minimised as far as possible. A support unit could help with this. We also believe that any support unit should be demonstrably independent of government and should make use of expertise contained in the offices of the Comptroller and Auditor General, the Parliamentary Ombudsman and, perhaps the Committee Offices of the House of Commons or the House of Lords. **We should not keep reinventing the inquiry wheel. We welcome the concept of a support unit but recommend the Unit’s size and role should be limited and proportional to the relative infrequency of large inquiries and to the degree of guidance and advice which can be made available through other means. The accumulated experience of past inquiries, such as the procedural elements of inquiry reports, subsequent lectures, presentations and internal notes as well as official guidance should be consolidated and made available on a publicly accessible website. Given its small size we further recommend that such a support unit should be co-located with a central government department such as the Cabinet Office or the Department for Constitutional Affairs. However, in recognition of the need for independence for inquiries the unit should operate independently of its host department and should include secondees from bodies versed in investigatory processes such as the NAO, the Ombudsmen community and Select Committee staff.**

Towards some key principles

162. Despite much talk about Salmon, Scott and the so-called “Maxwellisation” process (the opportunity for parties to refute criticisms made in the draft report), the principles and practices during the inquiry process have been confined to ensuring fairness and protecting parties. No wider principles exist. The Council on Tribunals concluded that the infinite variety of circumstances only allowed for “a number of objectives that should be borne in mind when an inquiry is being established [...]”. It had four: effectiveness, fairness, speed and economy.²⁶⁴ Sir Ian Kennedy presented us with a set of guiding principles. His approach entailed:

- rigour—including the best evidence and the best advice;
 - openness—evidence available to all and information facilitated by electronic and other means;
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²⁶² Q 343 [Mr Evans]

²⁶³ Authority and Rules of Senate Special Investigatory Committees and other Senate Entities, 1973–97, US Congress, 1998

²⁶⁴ HC (1995–96) 114, paras 2.3–2.9

- accessibility—in particular with regard to practical arrangements and the inquiry’s environment;
- accountability—through openness and feedback; fairness and appropriate procedures, in particular through inquisitorial rather than adversarial processes;
- service—to different groups from the general public through the media to lawyers;
- emphasis on what the inquiry is or is not about.

163. We also asked witnesses about what made for a successful, or unsuccessful, inquiry. Dr Tim Baxter felt “it has to contribute to the sense of—we see the problem, we have set out a way forward, we are mending the reputation”.²⁶⁵ For Alun Evans the inquiry’s recommendations “[had to] stack up, it makes sense, it is readable and seems to tackle the problems it set out to do”.²⁶⁶ Lord Falconer identified the first Bloody Sunday Inquiry as the obvious unsuccessful inquiry because:

“It was done in six weeks. There was a very profound sense that it was an unsatisfactory and unfair inquiry and one of the reasons for the second Bloody Sunday inquiry was that it did not adequately, from the point of view of the public, and in particular the public in Northern Ireland, address the issues that had led to the deaths of the people on that day”.²⁶⁷

164. Frank Dobson MP “judged the Scott Inquiry to be a success in the sense that the outcome of it carried sufficient weight to be generally accepted”.²⁶⁸ He added that “It may upset some people, but if the report itself carries with it acceptance by the people who have been investigated and acceptance by the news media and the public that it has just about got at the truth, then that must be the best definition of a successful inquiry”.²⁶⁹ Lord Laming had four criteria against which to judge the success or otherwise of an inquiry:

- was the Inquiry conducted in a way that was fair to everyone and, in particular, were all witnesses handled by the same standards?
- Does the Report and its findings easily relate to the evidence? Is it a coherent whole?
- Was the task handled efficiently and timely so that it passed the test of value for money?
- Did the Report have an impact on policy and practice?²⁷⁰

165. Officials took a longer view. Sir Liam Donaldson said “it is a longer term judgment. It is whether the inquiry has improved and changed things and, in some circumstances, made them safer as a result of its existence”.²⁷¹ For Sir Brian Bender “The real question of success would be if one looked back a few years later and not only said ‘What did the inquiry

²⁶⁵ Q 396 [Dr Baxter]

²⁶⁶ Q 396 [Mr Evans]

²⁶⁷ Q 246

²⁶⁸ Q 619

²⁶⁹ Q 620

²⁷⁰ HC 606-iii, GBI 03, Ev 78

²⁷¹ Q 598 [Sir Liam Donaldson]

recommend?’ but also, ‘Is it evident that the lessons have been learned’ in terms of the then current behaviour, and so on, or was it a rather good report that the Department or the Government gave a response to and it is now lying on a shelf’.²⁷² Sir John Gieve gave us three success criteria for an inquiry,

“Did it reach the right conclusions? Did it satisfy the public? Did it do it cheaply and quickly? [...] I think the question of whether it then changed things is the ultimate test, but that is obviously a test of the Government and subsequent governments as much as of the inquiry itself’.²⁷³

166. Drawing on the foregoing and in the light of the experience now available of the inquiry process, we believe it should be possible to draw up a set of principles defining good practice for an inquiry. We recommend the following principles as a basis for discussion and an exercise:

Principles of good inquiry practice

Inquiries should:

- Adopt panels as the preferable form as they ensure expertise, provide public reassurance and reinforce independence;
- Have terms of reference which enjoy the widest possible consensus and are subject to a period of appropriate deliberation and discussion;
- Have a presumption of openness;
- Set budget limits, publish costs and explain overruns;
- Set time limits in the original announcement and justify extensions publicly;
- Build in procedural lesson—learning and evaluation of the inquiry process;
- Have rigorous, perhaps parliamentary, audit of recommendations and lessons;
- Test emerging findings and proposals for feasibility and practicality;
- Ensure fairness but minimise the use of Counsel for the parties; and
- Ensure access to papers and people by legal/subpoena powers or other informal assurance systems.

²⁷² Q 598 [Sir Brian Bender]

²⁷³ Q 601

5 Accountability and reform

Inquiries and ministerial accountability to Parliament

167. Under the doctrine of ministerial responsibility ministers are accountable to Parliament for their own actions and those of their departments. This requires them to give information and explanations and to respond through remedial action and, in extreme cases, resignation to concerns and criticisms raised in Parliament. In its Report on the Role of the Civil Service, the Treasury and Civil Service Committee noted that the system of ministerial accountability depended “upon two vital elements: clarity about who can be held to account and held responsible when things go wrong; and confidence that Parliament is able to gain the accurate information required to hold the Executive to account and to ascertain where responsibility lies”.²⁷⁴ After the ‘Arms to Iraq’ inquiry, Lord Scott indicated that he “would reverse the order in which these ‘two vital elements’ are stated” arguing that “[t]he key to ministerial accountability must surely be the obligation to give information”.²⁷⁵ The focus on giving information was supported by the Public Service Committee (this Committee’s predecessor) in 1996.²⁷⁶ It is also found in the March 1997 Resolution on Accountability of both Houses, which states “It is of paramount importance that Ministers give accurate and truthful information to this House and its Committees [...]. Ministers should be as open as possible with this House and its Committees [...]”.²⁷⁷

168. Giving information is essential to the accountability process. However, its provision is not an end in itself but a means by which government can be held to account. Thus it is inextricably linked with responsibility, the other “vital element”. Inquiries, set up by ministers in response to public concern, are important in both respects. First, they provide the information required by Parliament. As the Government notes, “their findings can be used to inform wider Parliamentary debate or scrutiny of the relevant policy area”.²⁷⁸ Second, they may identify or clarify who is responsible. As Professor Bogdanor states of the Crichton Down (1954), Profumo (1963), Arms to Iraq (1996) and Kelly (2003) inquiries, their “constitutional purpose was to assist Parliament in pinning responsibility onto a minister”.²⁷⁹ Lord Butler explained how his inquiry found that “No single individual was to blame. [...] After that, I think it is a matter for you in Parliament and for the public to reach their conclusions about where blame, if they want to place it, lies. What we did was to give an account of what happened”.²⁸⁰ In extreme cases, there may be a need for a minister to tender his or her resignation. The resignation of Sir Thomas Dugdale, after publication of the report on Crichton Down, provided the sole example of this occurring. The Budd Inquiry into the allegation made against the then Home Secretary that he misused his official position now provides a second.

²⁷⁴ Treasury and Civil Service Committee, Report of Session 1993–94, HC 27-I, para 132

²⁷⁵ ‘Ministerial Accountability’ in *Government Accountability: Beyond the Scott Report* (CIPFA, 1996) p. 5.

²⁷⁶ HC (1995–96) 313, para 26

²⁷⁷ HC Deb, 19 March 1997, cols 1046–79 and HL Deb, 20 March 1997, cols 1055–62.

²⁷⁸ HC 606-ii, GBI 09, Ev 41

²⁷⁹ Response to Consultation, CP 12/04.

²⁸⁰ Q 500

169. More usually, the requirement is for ministers to respond to the findings of an inquiry by giving full explanations and, where appropriate, by taking remedial action to ensure that any mistakes identified are not repeated and recommendations are implemented. Lord Norton stated that “Ministerial accountability is retained in that ministers establish the inquiries and—while they may not have ownership of the reports—are answerable for action taken, or not taken, in the light of those reports”.²⁸¹ A similar point was made by Sir Brian Bender, who believed there should not be too much separation between an inquiry and the minister. “Ministers are ultimately accountable to the public and to Parliament. It seems to me that separating it out calls into question to some extent their accountability to the electorate and Parliament”.²⁸² Robert Francis QC also considered that providing “the result of the inquiry is made available to Parliament, either directly, or through general publication, they can only enhance democratic accountability by making facts known which might otherwise remain unknown and enabling politicians to make judgments”.²⁸³

170. Inquiries, which Graham Mather describes as the “ultimate backstop of accountability”, can therefore be seen as an adjunct to ministerial responsibility.²⁸⁴ They are not a substitute for political accountability, which is to, and through, Parliament, but a mechanism which can aid the process. Parliament can hold the minister accountable not only for the inquiry’s findings but also for giving effect to any recommendations that are made. As Lord Norton told us “it is up to Parliament to act on the information that been put in the public domain through the inquiry”.²⁸⁵ This includes “call[ing] the Minister to account... [and] check[ing] what the Minister has done”.²⁸⁶ It is therefore important that inquiries are not seen as a substitute for ministerial responsibility. They provide factual information and may identify where responsibility lies but they do not hold the government, or individual ministers, to account. This is Parliament’s role or in Sir Michael Quinlan’s analogy an inquiry provides the searchlight to assist Parliament’s anti-aircraft batteries.²⁸⁷

A new model for inquiries

171. The consultation paper “Effective Inquiries” was published by the Government on 6 May 2004.²⁸⁸ It took the form of a response to our Issues and Questions paper and underpinned the evidence given to us by Lord Falconer on 25 May 2004. In the paper the Government told us it believed, “that there is a strong case for considering what steps could be taken to make inquiry procedures faster and more effective, and to contain cost escalation”. It wondered “whether current legislation provides a suitable basis for appropriate and effective inquiries” and thought that, “one option would be to create a new statutory framework for [...] inquiries set up by Ministers to look into matters that have

²⁸¹ HC 606-v, GBI 13, Ev 105

²⁸² Q 606

²⁸³ Response to Consultation, CP 12/04

²⁸⁴ HC 51-II, GBI 20, Ev 40

²⁸⁵ Q 426

²⁸⁶ Q 446

²⁸⁷ Sir Michael Quinlan, ‘Lessons for Governmental Process’ in Hutton and Butler—Lifting the Lid on the Workings of Power, W.G. Runciman ed. (OUP/British Academy, 2004) p 123

²⁸⁸ “Effective Inquiries” Department for Constitutional Affairs February 2004 and HC 606-ii, GBI 09

caused or have potential to cause public concern”.²⁸⁹ The Government has now introduced legislation in the House of Lords.

172. The main feature of this new model for inquiries envisages a wider general power for Ministers which would revoke and replace existing powers under the 1921 Act and in subject specific legislation such as the NHS Act 1977 and the Police Act 1996 under which inquiries such as Climbié and Lawrence have been held. Ministers would still be able to call *ad hoc* inquiries. It redefines the current conventions that it is for chairs of inquiries to determine how they will proceed.

173. Under the terms of the Inquiries Bill, Ministers would have the power to be able to commission inquiries, when they are necessary and to choose its panel membership and terms of reference in each case. However there would now be a statutory requirement for the Minister commissioning an inquiry to have regard to the need for impartiality and expertise in panel members. In addition, the Minister, as well as the Chair, would have a power to determine whether some or all of the inquiry should be taken wholly or partly in private. Ministers would gain the new power to suspend or end an inquiry or suspend its funds if the consider the terms of reference have been exceeded. There would be no requirement for the chairman to be a judge, but nor is this excluded.

174. There would also be other measures to help ‘streamline’ inquiries, such as an obligation on the inquiry panel to have regard to the costs to all those involved, and a reduced time limit on applications for judicial review of decisions relating to inquiries. The report of the inquiry would be published to the extent practicable with either the Minister or the chair able to take responsibility for this. The cost of the inquiry would also be published. Statutory inquiries would have the power to require witnesses to attend or to provide documents or other written evidence. Failure to comply or hinder the inquiry would become summary offences. The Lord Chancellor would have the power to determine rules of procedure for inquiries.

The Government’s Inquiries Bill: Strengths and weaknesses

175. Putting the exercise of prerogative powers such as the initiation of inquiries onto a statutory footing is generally a highly desirable goal for which we have already expressed support.²⁹⁰ In so far as the intention of the Inquiries Bill is to provide a more cost-efficient and effective way of conducting inquiries through a comprehensive statutory power which consolidates the 1921 Act and other subject specific legislation and fills in the gaps, it is welcome. However, the Bill as it stands raises a number of serious concerns:

- a) By abolishing the 1921 Act it finally removes the opportunity for formal parliamentary involvement in inquiries.
- b) It strengthens the Executive’s position by enabling ministers not just to decide on the form and personnel of an inquiry before it has begun but also influence its operation. For example in creating powers to end or suspend inquiries (clauses 12 & 13), as well as

²⁸⁹ HC 606-ii, GBI 09 Ev 20

²⁹⁰ Fourth report of Session 2003–04, *Taming the Prerogative: Strengthening Ministerial Accountability to Parliament* HC 422

to withdraw funding in cases where ministers believe an inquiry is going beyond its terms of reference, it calls into question the independence of inquiries and means that ministers rather than chairs, as now, are the interpreters of the terms of reference. In so doing the new legislation subverts the safeguards which were introduced when the original 1921 Act was debated.

- c) The legislation does not address the wider questions we posed at the beginning of this report about the purpose and nature of inquiries.
- d) As a result it does nothing to address the broader, more constitutional, issues about the circumstances in which Ministers should call an inquiry and determine its terms of reference and form. There is an assumption that one size fits all despite the acknowledgment of the wide variety of circumstances which apply.

Abolishing the 1921 Act

176. The 1921 Act was enacted very rapidly. Bonar Law agreed to the demand for an inquiry and a proposal for statutory underpinning on 22 February 1921.²⁹¹ The Bill was introduced on 4 March and received Royal Assent on 24 March²⁹². Nonetheless in the space of barely two weeks of Parliamentary consideration, a number of significant issues were dealt with and resolved. The original text of the Bill provided for the establishment of an inquiry either by a Resolution of either House or by a ministerial undertaking; a power to the tribunal to exclude the public and the power to commit a person to gaol for three months for contempt. In the ensuing debate, the Bill received some important amendments which, as the table below shows, are in marked contrast to the proposed provisions of the Government’s current Inquiries Bill.

Tribunal of Inquiries (Evidence) Bill 1921	Inquiries Bill 2004
— the power of ministers to set up an inquiry under the act by means of an undertaking was removed;	— the draft legislation would restore this while at the same time removing the requirement for a parliamentary Resolution;
— the power to commit a person directly to prison for contempt was qualified by referral to a High Court for punishment;	— the new legislation introduces summary offences for non-compliance with an inquiry;
— the power to sit in private was overturned in favour of a presumption of openness subject to a public interest test.	— ministerial restrictions may apply, subject to which chairs are required to ensure reasonable public access to the evidence.

²⁹¹ CJ (1920–21) Cols 881 and 882

²⁹² CJ (1920–21) Cols 2169 and CJ (1920–21) Col 2849

177. In addition there are certain points of detail which puts the new Bill at odds with the trend of evidence that we have been receiving. For example, there is no obligation on Ministers to consult on terms of reference despite the Government telling us that they “can see that there could often be a case for announcing the final terms of reference after a set period, perhaps of a few weeks, to allow for discussion and preliminary investigation, and to enable individuals or organisations with an interest to make representations to the Minister setting up the inquiry”.²⁹³ The Government also conceded that, “Inquiries can assist Parliament, because their findings can be used to inform any wider Parliamentary debate or scrutiny of the relevant policy area”,²⁹⁴ but the Bill removes one of the most direct means by which Parliament can influence the terms of such debate.

The need to amend the Inquiries Bill.

178. We are deeply concerned that the Government’s Inquiries Bill threatens the last remaining role for Parliament in the inquiry process. Nonetheless it also provides an opportunity to update the current provision contained in the 1921 Act to reflect our recommendations for parliamentary involvement. To achieve this we propose that Clause 1 should be amended by means of an additional sub-clause to provide that, where the public concern relates to the conduct, actions or inactions of government—ministers or officials, the Minister will cause an inquiry to be called on the basis of a Resolution of both Houses of Parliament. We set out a suggested amendment at Annex 2. Individual motions for the Resolution could provide for: the form the inquiry should take; its terms of reference; any powers considered necessary; follow-up to the inquiry’s report, including a requirement that the report will be debated in Parliament on a substantive motion; and remission, as appropriate, to a select committee for auditing, in due course, of the degree to which an inquiry report’s recommendations have been implemented and changes wrought. This procedural framework should itself ideally be enshrined in a Resolution which would contain a presumption in favour of a parliamentary commission (see paragraphs 208–215 below) as the most appropriate form for an inquiry of this kind. **Accordingly we recommend that Clause 1 should be amended to provide for parliamentary resolutions where the events causing public concern which may have occurred involve the conduct of ministers. We further recommend that the procedural framework for an inquiry called under this new sub-clause which we have described should be the subject of a Parliamentary Resolution once the Bill has passed into law.**

Criteria and taxonomy

179. In its written evidence to us the Government has said that “There is no standard blueprint for the type of circumstances in which an inquiry might be needed. Matters triggering inquiries are, by their nature, difficult to foresee” adding that “A common theme tends to be that the subject matter of the inquiry has exposed some possible failing in systems or services, and so has shaken public confidence in these systems or services, either locally or nationally”.²⁹⁵ Speaking in the Lords second reading debate on the Inquiries Bill, the Parliamentary Under-Secretary for the Department for Constitutional Affairs,

²⁹³ HC 606-ii, GBI 09, Ev 24

²⁹⁴ *Ibid.*,

²⁹⁵ *Ibid.*, Ev 21

Baroness Ashton of Upholland, believed it was difficult to identify criteria “partly because of the wide difference in the nature of inquiries. They are fundamentally different”. She was, “not sure whether we would capture everything that needed to be considered”.²⁹⁶ Sir Louis Blom-Cooper QC concurred, “I think it is not possible to define whether a public inquiry should be set up or not. My general approach has always been: if there is a national scandal or a national disaster and public opinion will only be allayed by having an independent inquiry, then that should satisfy the criteria for setting it up”.²⁹⁷

180. Advice is therefore unclear. Frank Dobson revealed (and Sir Liam Donaldson confirmed) “that I was strongly advised not to hold a public inquiry. I felt this was partly because many involved knew it was likely to reveal an embarrassing ‘can of worms’”.²⁹⁸ Sir Liam Donaldson acknowledged the difficulties but thought “we should have a try at it [establishing criteria], because at the moment it is just being done on judgment, experience and intuition, and I think it would be very helpful not least to have an auditable process: because increasingly we have judicial reviews calling for inquiries when departments might think that the inquiry is not the appropriate mechanism”.²⁹⁹

181. Some of those who gave evidence to us did try and come up with a checklist of criteria. Lord Norton told us that:

“There should, in effect, be a checklist for determining whether an inquiry is the most appropriate mechanism. The checklist would cover such questions as: Is the problem clearly defined? Does it have clear implications for public policy? Is the level of public concern sufficient as to justify triggering a public inquiry? Is there any established alternative available? Have other possible avenues been exhausted? Do the potential benefits of an inquiry justify the costs? These criteria could, if necessary, be embodied in a schedule to any new legislation [...] governing the establishment and conduct of public inquiries”.³⁰⁰

182. Alun Evans, secretary to the Foot and Mouth Disease 2001: Lessons to be Learned Inquiry thought the “suggestion of some type of menu which goes through a process of thinking does it fit within this, does it fit within that or is the inquiry not appropriate, would be worth doing”.³⁰¹ He saw:

“a number of elements which might call you to have a public inquiry: first, that something has demonstrably and seriously gone wrong, a big failing somewhere; second, that in a part of that there were either political, administrative or managerial failings or all three; and third, that the public or parts of the public have suffered harm in some way as a result of that failing. I think those type of areas would be the ones where you would then say do we need an inquiry separate from government to look into why this happened?”³⁰²

²⁹⁶ HL Deb, 9 December 2004, Col 1013.

²⁹⁷ Q 665

²⁹⁸ HC 606-vii, GBI 18, Ev 152

²⁹⁹ Q 571

³⁰⁰ HC 606-v, GBI 13, Ev 105

³⁰¹ Q 360

³⁰² Q 361 [Mr Evans]

183. Dr Tim Baxter, secretary to the Ashworth Inquiry, added another: where “there is a reputation issue for the future of that area of public life”.³⁰³ Sir Ian Kennedy offered us further possible criteria: public confidence and trust in government or a public service cannot otherwise be restored; the integrity of system of justice is under challenge; misfeasance by government; a major disaster with loss of many lives; an issue of significant importance which also raises matters of wider public concern; value is added, i.e. issue cannot be examined as appropriately in any other way that is less expensive, less elaborate, and more speedy; or where new or poorly understood issues of major public concern are involved.³⁰⁴

184. Sir Ian Kennedy proposed “a gateway review, [...] that you would have to go through before you are going to commit large amounts of public money to a particular way of looking into something because you would have to be satisfied that more efficient, more effective, more timely or less expensive means had been considered and found wanting”.³⁰⁵ While it is possible that an inquiry would not be called even where many of the criteria are met, we believe the time has come for setting out what such criteria are in order to improve clarity about the circumstances in which decisions to call inquiries are taken. **We recommend that Ministers should justify their decisions whether to hold an inquiry or not on the basis of a published set of criteria and propose the following as a possible basis for this:**

- Can the nature of the problem be clearly described (e.g. a serious financial or economic loss, a major accident possibly involving fatalities, serious physical harm or death to one or more persons; a serious and demonstrable failure of public policy)?
- Was it likely that political, administrative or managerial failings were a factor?
- Are there clear implications for public policy including new or poorly understood issues?
- Is there a high and continuing level of public concern over the problem?
- Is there likely to be an adverse impact on public confidence in this area which cannot otherwise be satisfactorily resolved?
- Are any established alternatives available (e.g. the legal system; the complaint and redress system; internal and external regulatory systems)?
- Have these alternatives been exhausted or are they considered insufficient or inappropriate to meet the level of public concern?
- Do the potential benefits outweigh the estimated costs (financial and other) of an inquiry?

³⁰³ Q 361 [Dr Baxter]

³⁰⁴ Private presentation

³⁰⁵ Q 670

Types of inquiries

185. It follows from the above that, once the decision is taken to hold an inquiry, the next question must be: what sort of inquiry to have? The traditional taxonomy of inquiries is well understood. At the top of the tree is the tribunal of inquiry under the Tribunal of Inquiry (Evidence) Act 1921, which the Salmon Commission proposed should “always be confined to matters of vital public importance concerning which there is something in the nature of a nation-wide crisis of confidence”.³⁰⁶ Below this are other statutory public inquiries which either impose obligations on Ministers to set up an inquiry or provide powers for them to do so. Schedule 3 to the Inquiries Bill sets out the scale of legislation concerned. There are also non-statutory or *ad hoc* inquiries, held either in public or private and essentially reliant on the cooperation of those involved. These have therefore tended to be used mainly where Government or public bodies are under investigation. Other variants include the now rare Royal Commissions; Committees of Privy Counsellors, which have resembled traditional inquiries as with the Franks and Butler reviews and over the years have included such topics as ‘D notices’, Ministerial Memoirs and review of the Anti-Terrorism, Crime and Security Act 2001 stipulated in the Act itself; and Departmental Inquiries, which tend to consider various matters of policy. In addition to all these there are the parliamentary select committees.

186. A problem is that one form of inquiry is often indistinguishable from another with regard to the nature of the investigation, its sensitivity, and therefore how best to constitute its membership and terms of reference. In its guidance on inquiries the Council on Tribunals noted that “Ministers sometimes decide to set up a judicial inquiry without invoking the 1921 Act, notwithstanding the fact that the subject matter of the inquiry would fall within the Salmon criterion. The Scott Inquiry is an example. Such inquiries do not seem to differ from the 1921 Act inquiries save in respect of their powers”.³⁰⁷

Politically Sensitive Inquiries

187. The categorisation of inquiries for the purposes of defining which should be the subject of our proposed principles and criteria should be straightforward. The Council on Tribunals was given a clear definition in their terms of reference when they were asked to provide guidance on inquiries after Scott, “inquiries set up by Ministers to investigate particular matters of public concern”.³⁰⁸ Although this definition is perfectly workable it does not deal with the matter which was of concern to Lord Woolf among others and which we are concerned to define more closely, i.e. those inquiries which for various reasons are considered to be politically sensitive. The concern for Lord Woolf was that “Whilst some inquiries are appropriate for a judge to sit on, other inquiries are of a highly politically sensitive nature and it is not appropriate for a judge to be involved. The Lord Chief Justice should be entitled to say not only who, but whether, a judge should conduct the inquiry at all”.³⁰⁹ It is a matter of concern to us too that where inquiries are “politically sensitive” Parliament should be able to exercise a legitimate role.

³⁰⁶ Cmnd 3121, p 16, para 27

³⁰⁷ HC (1995–96) 114, para 5.9

³⁰⁸ *Ibid.*, para 1.7

³⁰⁹ HC 51-ii, GBI 22, Ev 182

188. Sir Ian Kennedy also saw circumstances where calling a public inquiry was not only inappropriate but even damaging:

“We have had Scott, we have had Hutton, we have had Butler, all of which were chaired by eminent people whose eminence was more highly regarded before than after, as it were. The moment they said whatever they said, they were in areas of clearly partisan politics where it struck me that whatever they were going to say, some would inevitably, for reasons that they perceive to be good, disagree. It follows that you would not necessarily advance public understanding and you would bring into disrepute the procedure of public inquiries”.³¹⁰

189. He thought the BSE Inquiry illustrated:

“...the distinction I am trying to draw between where you are talking about the actions of government or a department and the actions of local authorities and all sorts of other disparate organisations. In my view, BSE does illustrate that where you have other players besides government, and lots of people were engaged, that may argue for it fitting within a public inquiry where it is not merely a government department having failed or not failed to meet whatever the government objectives might be. It is really a lot about the science and how much you knew, at what point you knew, and whether we can know it all. It was good to put that into the public domain”.³¹¹

190. His conclusion, with reference to the Budd Inquiry, was that the “notion of a public inquiry, as we have experience of it [...] is not a device which is suited to looking at *l'affaire Blunkett*. It is a matter for Parliament or others to find ways of looking at it”.³¹²

191. Sir Michael Bichard portrayed it as a continuum:

“[At one end are] circumstances of fact which are not government-related, and may not even be local government-related, but they are issues of fact. Going a bit further along the continuum, there are issues of fact which also will cover issues of competence, but mostly official competence, whether it is central or local. [...] If you go a bit further along the continuum, you will get facts with strong political overtones. If you go to the other end of the continuum, and you are actually talking about politically contentious issues with some facts, I think you should become more cautious about setting up an inquiry the further along that continuum you go. If you get to the far end of the continuum, then my view is it is a matter for Parliament to deal with these issues rather than to set up a public inquiry of the kind that we are representing here”.³¹³

192. Inquiries which could be considered to have a strong political element would include, for example, the Budd Inquiry, the Butler Inquiry, the Hutton Inquiry, the Sierra Leone Inquiry, the Franks Review, the Profumo Inquiry, and the Crichel Down investigation. A

³¹⁰ Q 655

³¹¹ Q 656

³¹² Q 657

³¹³ Q 663

number of definitions have been offered for such inquiries. Sir Michael Quinlan described them as "...investigation into the doings of central government in major matters"³¹⁴. Lord Scott, giving evidence to our predecessor committee said of his inquiry:

"[It] was not an inquiry of the cataclysmic event type. It was not a Hillsborough, it was not an Aberfan, it was not a King's Cross inquiry where an event has happened and an inquiry is instituted to find out about it. It was an inquiry into the conduct of government in a particular area".³¹⁵

193. Lord Heseltine talked of them "inquiries by government into the central machinery".³¹⁶ Sir Ian Kennedy provided a simple categorisation: Type A: those that involve the action or inaction of government, present or past. Type B: those that do not directly involve the action or inaction of government.³¹⁷ We acknowledge that this is not a straightforward exercise but it is clearly necessary to distinguish between those inquiries which may result in the conduct or actions of ministers being criticised directly and those which do not. **We recommend the development of clear criteria for calling inquiries and a simple categorisation establishing a distinction between those which are politically sensitive and those which are not, on the basis of our exemplars, to ensure that calls for judicial public inquiries and the appropriate involvement of Parliament can be properly assessed and decisions on form can be taken on that basis.**

³¹⁴ "Lessons for Governmental Process" p 118

³¹⁵ HC (95-96) 313-III Q 398

³¹⁶ Q 627

³¹⁷ Private presentation

6 Parliament's Role

Where should Parliament have a role?

194. Despite Parliament contracting out much of its inquiry function in 1921 the idea that Parliament should retain a role in investigating at least those cases relating to the conduct of Ministers and members of the House has survived. Even if not necessarily by means of select committees. For example in 1936 in the debate on the resolution to establish the Budget Leak tribunal under the 1921 Act which eventually led to the resignation of two MPs (one a minister), the Leader of the Opposition, Clement Attlee believed the affair to be a “House of Commons matter”, it was the Government who were “in the dock” and it was a question of accountability for Parliament to address.³¹⁸ Giving evidence to the Public Services Committee in 1996 Lord Scott, believed that, “[...] It would be a remedy to a number of the problems that there are, as it seems to me, at the moment in regard to Ministerial accountability, if Select Committees were treated in the same way as my own Inquiry was treated. [...] If it had been the case that Select Committees had been able to obtain all the advantages of documents and evidence and witnesses who had it to give that I was able to obtain, I do think a Select Committee might have been a better form for the Inquiry to have taken”.³¹⁹ We believe that in those inquiries where public concern is centred on the conduct, actions or inactions of government and ministers, Parliament should be directly involved.

Select Committees: Redressing the balance

195. Since 1979 select committees have grown as an important tool for investigation and parliamentary scrutiny of the government can be a distinctive part of the discovery process. They also embody the concept of representation which inquiries set up by ministers do not. Despite the frustrations and limitations of its inquiry into the war in Iraq which caused them to publish a special report, the Foreign Affairs Committee was the first of what eventually became four investigations into the issues and the Government cites it as one of four independent inquiries into the matter.³²⁰ We ourselves carried out a short inquiry examining a series of events which occurred in the former Department for Transport, Local Government and the Regions between September 2001 and May 2002 relating to communications and special advisers which led eventually to a wholesale review and reorganisation of the Government Information and Communication Service.

196. Select Committees have undertaken, with some success, a post-hoc assessment of the outcome of Inquiries. For example the Health Committee examined Lord Laming following his report into the death of Victoria Climbié and made a series of recommendations. Our own predecessor committee on Public Services looked at matters

³¹⁸ Barry Winetrobe, ‘Inquiries after Scott—the return of the tribunal of inquiry’, Public Law, 1997, p 28

³¹⁹ Public Service Committee, Second Report of the Session 1995-96, *Ministerial Accountability and Responsibility*, HC 313-III Q 398

³²⁰ Foreign Affairs Committee, First Special Report of Session 2003-04, *Implications for the work of the House and its committees of the Government's Lack of Co-operation with the Foreign Affairs Committee's Inquiry into the Decision to go to War in Iraq*, HC 440

of ministerial accountability after the Scott Inquiry which led to the 1997 Resolution on Ministerial Accountability and the ongoing scrutiny of unanswered PQs.

197. Select Committees have also proved adept at filling in gaps in those cases where government has refused or felt unwilling to hold an inquiry. The Trade and Industry Committee's investigation into the BMARC and export licences to Iraq followed Lord Heseltine's clear indication that he and his department would cooperate with any investigation which the committee might undertake. At present the Defence Committee is inquiring into Duty of Care as part of the continuing controversy over the deaths of soldiers in Deepcut Barracks. Moreover in recent years, and despite the growth of *ad hoc* inquiries set up by ministers, when matters become highly political (often in relation to intelligence) Government has resorted to quasi-parliamentary devices in the form of Privy Counsellor Committees made up largely or entirely of Parliamentarians from both Houses most recently over the Butler Inquiry.

Limitations on Select Committees

198. Essentially the work and structure of select committees are geared towards scrutiny of the Government and departments rather than towards specialised investigations into particular events. Our witnesses did not perceive the select committee system as the right vehicle for Parliament to retake a role in these types of inquiries for three main reasons.

i. Government cooperation

199. The so-called Osmotherly Rules which govern the relationship of Ministers and civil servants with committees place a limit on witnesses and information to which they may have access and, in reality, no government could provide unrestricted access to persons and papers on a continuing basis and hope to conduct their business in an effective manner. As Lord Butler put it "...it is inevitable the governments will have their secrets and should have their secrets".³²¹ But even attempts to investigate into particular matters have been frustrated or blunted by the Government's refusal to cooperate fully. The paper published last January by the Liaison Committee provides recent examples of refusals from Ministers for access to persons and papers.³²²

ii. Perceptions of partisanship

200. The Salmon Commission's assessment of "[t]he record of such [select] Committees appointed to investigate allegations of public misconduct [was], to say the least, unfortunate..." and therefore to go back to their use would in its view have been "...a retrograde step". Being politically partisan and made up according to party strength in the House, "it may tend in its report to reflect the views of the party having the majority of members..."³²³ This perception still holds in many quarters. Lord Howe thought "...that history has played a very big part. Marconi has dominated our historic school of instruction, so to speak, and the 1921 Act filled that gap... I think they [select committees]

³²¹ Q 534

³²² Scrutiny of Government: Select Committees after Hutton, Note by the Clerks, www.parliament.uk

³²³ Cmnd 3121, p 18 para 35

are much less suitable for the personal guilt type of inquiry, which Marconi was”.³²⁴ Speaking about the failure of the select committee to follow up on the Westland Affair, Lord Heseltine set out the problem in blunt terms, “Parliament is actually run by a government and the whips are very powerful and Members of Parliament are very ambitious. If you tell me how to turn human nature on its head—I have no way of coping with that”.³²⁵ Frank Dobson agreed “So long as we have a parliamentary democracy, that dilemma will be permanently present, and we will not get the degree of independence that the United States Senate or House of Representative committees manage to establish”.³²⁶ He also believed that the need to ensure due process would lead to “a transformation of the whole [select committee] system”.³²⁷ Lord Hutton was concerned “... whether in highly-charged political matters if a decision was made which, [...] might result in the downfall of a government, there would be the risk that there would be suggestions that the decision was come to by Members of the Committee having regard, at least to some extent, to political concerns. I think that is a possible disadvantage”.³²⁸ Lord Butler explained the problem. “I think there is a difficulty for select committees in this respect and that is [...] that select committees inevitably bring in the party political aspect and governments are less confident about revealing very sensitive papers to select committees that contain members of other political parties”.³²⁹ He emphasised the point that “the government will be a bit more wary of committees that contain an almost equal number of their political opponents”.³³⁰

iii Structure and role

201. The Salmon Commission looked at the option of reverting to select committee investigations in his review of the 1921 Act but considered it a defect that committees did not normally hear Counsel and many “... of its members will have had no experience of taking of evidence or of cross-examining witnesses”.³³¹

202. Lord Howe concurred:

“...the other problem about Parliament is that, [...] parliamentarians are not accustomed to truth-seeking interrogation, they are more inclined to grand-standing as interrogators, and they are very seldom able to ask a question, which is often the most important one, ‘Perhaps now you would be kind enough to answer the question I originally put’, because you have got twelve competing interrogators. Each is given a ration of two or three sentences, and then another bounds after a different rabbit. I think they are ill-constructed for truth-seeking inquiries”.³³²

³²⁴ Q 402

³²⁵ Q 647 [Lord Heseltine]

³²⁶ Q 647 [Mr Dobson]

³²⁷ *Ibid.*

³²⁸ Q 149

³²⁹ Q 532

³³⁰ Q 539

³³¹ Cmnd 3121, p 19, para 35

³³² Q 403

203. Lord Hutton was of a similar view:

“a disadvantage in the [select committee] system is that if a witness is being examined on a particular point, the fact that various members of the committee put various questions to him in succession means that there is not a consistent line of questioning. It might be more effective if only one person had a longer time to put a series of questions and [...] whether in some cases it would be advantageous for a committee to instruct counsel, particularly when they want to investigate a particular point, to follow a particular line of questioning”.³³³

204. He was also concerned about practical constraints on Members “It [an inquiry] is very time-consuming. I suppose there is a question whether the members of the select committee would have time to do that”.³³⁴

Finding a parliamentary alternative

205. Sir Michael Bichard was forthright “I think the current system around select committees [...] [is] flawed. I do not know what else really exists to inquire into the kinds of things [political events] that I was putting at the far end of the continuum, so I am not sure that anything does yet exist”.³³⁵ Lord Norton considered:

“the tendency is for Parliament to engage in scrutiny, public policy and not really to have a tradition or have the mechanisms for fault-finding. If you look at the occasions when it has tried it through a parliamentary committee, it has not really worked, so it has not really acquired that structure and therefore that tradition”.³³⁶

206. Sir Ian Kennedy thought that “...it is open to Parliament to take a much greater role in many of the things. It would have to win back the confidence, however, that it can do it responsibly”.³³⁷ He added that “I think we are left with you guys getting it straight, with the greatest respect, because I think it is a matter for Parliament properly organising itself in many of these issues”.³³⁸ Lord Norton, too, thought “Parliament cannot look to somebody else to give it power to make those changes. If you are not willing to push for those changes, then you are not going to deliver them”.³³⁹

207. But if Parliament is to undertake this sort of investigation effectively it will need to overcome the perceptions about its limitations. These include: constraints on Members’ time to devote to an inquiry in addition to their other duties in the House and in constituencies; sufficient resources to support Members in this task; ensuring due process; flexibility of form to handle differing circumstances; the requirement to concern themselves with those classes of inquiries properly and directly within the purview of

³³³ Q 145

³³⁴ Q 146

³³⁵ Q 665

³³⁶ Q 401

³³⁷ Q 666

³³⁸ Q 659

³³⁹ Q 609

ministerial accountability to Parliament and to overcome perceptions of partisanship. We believe that history shows it can be done.

A Parliamentary Commission of Inquiry

208. Evaluating its own experience in the BMARC case the Trade and Industry Committee believed that detailed inquiries involving examination of a very large number of documents and witnesses posed difficulties for select committees because the demand on Members' time risked important aspects of committees' current work becoming neglected. Instead the Committee proposed that the House or committees should be able to instigate their own external inquiries in order to establish factual information on complex subjects which would otherwise occupy too much committee time. They took as their model the relationship between the National Audit Office and the Public Accounts Committee. Such a "parliamentary commission" would proceed independently of a committee. Its results would then be examined by the committee which would itself make a report to the House.³⁴⁰ The Public Service Committee when it considered the whole question of accountability and select committees as part of its post-Scott Inquiry scrutiny endorsed this proposal, noting that the procedure provided for in the Tribunals of Inquiry (Evidence) Act 1921, might be adapted to provide the necessary mechanism for this.³⁴¹

The precedents

209. Until 1921 the usual method of investigating events giving rise to public concern over the alleged conduct of ministers or other public servants was through parliamentary select committees. Even so as early as 1888 when serious allegations were made against Charles Stewart Parnell, leader of the Irish Nationalists in Parliament, a Special Commission with the powers of the High Court was set up by the Special Commission Act 1888.³⁴² Similarly when Asquith demanded a select committee to inquire into the operations in Mesopotamia and the Dardanelles in 1916, the Government appointed instead a statutory Special Commission, because "a Government may... prefer to adopt an intermediate course and to assent to the appointment of a body which, though consisting largely of members of one or both Houses, contains also an outside element, and is therefore in the nature of an independent tribunal and less likely to be influenced by party bias".³⁴³ Members of Parliament have also been appointed as members of tribunals of inquiry under the 1921 Act.³⁴⁴

Rhodesian Oil Sanctions Special Commission

210. The best and most recent example dates from 1978–9. After the Bingham Inquiry revealed the failure of the oil sanctions policy against the white minority Rhodesian government in the late 1960s and the early 1970s in particular through the use of the 'swap'

³⁴⁰ Trade & Industry Committee, Third Report of Session 1995–96, *Export Licensing and BMARC*, HC 87-I, para 171

³⁴¹ Public Service Committee, Second Report of Session 1995–96, *Ministerial Accountability and Responsibility*, HC 313-I, para 133

³⁴² Cmnd 3121, p 11–12, para 12

³⁴³ Anson, I, 400, op.cit.

³⁴⁴ Interrogation of Miss Irene Savidge by the Metropolitan Police, 1928

arrangements involving South Africa, there was pressure for a further inquiry to determine any ministerial or official knowledge. Leading the charge was the former Prime Minister Harold Wilson who sought full disclosure of papers from the current and previous administrations by means of a parliamentary inquiry during the debate on the Loyal Address in November 1978.³⁴⁵ In the debate on the second day of the Queen's Speech the Attorney General stated that the Government's view was "that ministerial responsibility and the workings of government are essentially questions for Parliament..."³⁴⁶ He went on to note that "if [...] a further inquiry is needed [...] to bring further into the open these matters of ministerial policy, ministerial responsibility, the responsibility of officials [...] that must, of course have an important bearing on the nature of any further inquiry which would be appropriate..."³⁴⁷

211. The Attorney General then rehearsed the various possible options turning last to a parliamentary inquiry "which could take the form of a Select Committee or of a joint Committee of both Houses invested with whatever powers and its procedures adapted if necessary to allow legal representation."³⁴⁸ The Attorney General saw "many attractions" in this arrangement "particularly if its role is to investigate questions of policy and ministerial responsibility—a role which such Committees are well used to playing. Such a Committee would report direct to Parliament which would be in a position to consider its findings."³⁴⁹ The disadvantages were those which Lord Salmon had described in 1966.

212. In light of the debate, the Prime Minister, James Callaghan announced on 15 December 1978 that the Government had decided to recommend to Parliament the setting up by Joint resolution, a 'Special Commission of Inquiry' comprising members of both Houses and chaired by a Law Lord who would filter Cabinet papers for relevance. The Resolution would provide the Committee with its powers including sending for papers and persons, to hear counsel, examine witnesses on oath, sit in private and appoint persons to carry out work for it. It would publish its findings but not the evidence. Its terms of reference were instructive. "To consider, following the Report of the Bingham Inquiry, the part played by those concerned in the development and application of the policy of oil sanctions against Rhodesia with a view to determining whether Parliament or Ministers were misled, intentionally or otherwise, and to report"³⁵⁰

213. In the subsequent debate on the Resolution the Attorney General explained that the terms of reference would "enable the Special Commission to concentrate upon the issue of political responsibility..." and it would be for the Commission "to investigate the way successive governments pursued the oil sanctions policy [...] to ascertain and report whether Parliament and Ministers were misled concerning that policy". If so it would have "the further task of seeking to determine the responsibility of those whether Ministers, officials, or persons outside Government, who were providing, or failing to provide, information"³⁵¹ Winding up the debate the then Leader of the House, Michael Foot,

³⁴⁵ CJ (1978–79) Col 756

³⁴⁶ CJ (1978–79) Col 976

³⁴⁷ *Ibid.*

³⁴⁸ *Ibid.*, col 987

³⁴⁹ *Ibid.*, col 988

³⁵⁰ CJ (1978–79) col 1183

³⁵¹ CJ (1978–79) col 1713–4

assured Members that in proposing the membership “The names that we propose will have to be brought before and approved by the House” adding “I believe that this is the proper way to proceed”.³⁵² In the event the Joint Resolution was agreed in the Commons without a Division but was roundly defeated in the Lords. Despite this political failure at the last hurdle, the story of the Rhodesian Sanctions commission makes a very important constitutional point. Investigation of possible ministerial failure can and should, wherever practical, be based on a parliamentary foundation and not on the foundation of ministers’ own powers.

214. Parliament has at its disposal huge expertise and a degree of resource to draw on to conduct inquiries should it wish to. The select committee system has endowed Members with an inquiry habit. Members also participate in supervisory committees based on statute such as the Intelligence and Security Committee and the Privy Counsellors required to review the Anti-Terrorism, Crime and Security Act 2001. A number of successful chairs of inquiries are also parliamentarians themselves. Specialist advisers can and are recruited to provide expertise and support and the House is of course accustomed to the Comptroller and Auditor General, the Parliamentary Ombudsman and the Parliamentary Commissioner for Standards undertaking investigations its behalf and reporting to it. Parliament itself has unfettered powers to summon person papers and records which it can delegate at will. It is entirely possible therefore for Parliament to put together an investigatory mechanism which meets the requirements we identify in paragraph 207 above.

215. The temporary Butler Committee and the permanent Committee on Standards Public Life are good examples of a mixed membership harnessing the knowledge and experience—and the political tensions—of both Houses and of outside expertise to good effect in matters of some controversy and sensitivity. Asked whether, with some modification, his committee might have been brought into a parliamentary context, Lord Butler agreed “Indeed. Four out of the five members of our committee were Members of Parliament, two Lords and two members of the Commons”.³⁵³ **The similarity in form of the Franks and Butler Committees with that of a Joint Committee is striking but, as Committees of Privy Counsellors, their nature is fundamentally different and, from a constitutional point of view, less satisfactory. We recommend that in future inquiries into the conduct and actions of government should exercise their authority through the legitimacy of Parliament in the form of a Parliamentary Commission of Inquiry composed of parliamentarians and others, rather than by the exercise of the prerogative power of the Executive.**

³⁵² *Ibid.*, col 1808

³⁵³ Q 540

7 Ensuring a role for Parliament

The failure to call inquiries

216. The Government stated “[I]t is right that the responsibility for setting up inquiries should lie with Government Ministers, both because they have ultimate responsibility for investigation and because they are responsible for deciding what is needed in the public interest as a result of their accountability to Parliament and the electorate”.³⁵⁴ This responsibility is incorporated into the Inquiries Bill, currently before Parliament. However, it may result in a failure to set up an inquiry when there is a strong, but perhaps politically inconvenient, case for doing so. For example Sir Andrew Turnbull, the Cabinet Secretary revealed that Ministers had no appetite for an inquiry over Iraq. “There was a discussion, but the idea was dismissed pretty quickly. The Prime Minister and Ministers did not want an inquiry, did not think it was necessary. They thought they had set out their case to Parliament”.³⁵⁵ As Lord Heseltine told the Committee, where issues relate to the machinery of government, ministers “will only concede the inquiry if they are forced, or it suits them”.³⁵⁶ The Government’s answer to the concern that ministers do not always yield to parliamentary and public demands for an inquiry, is that “Ministers should explain publicly any decision to establish, or not to establish, an inquiry. Ministers can be, and often are, called to justify such decisions to Parliament and this practice will undoubtedly continue. This is Ministers’ basic constitutional accountability”.³⁵⁷

217. It is right that the Government should not automatically give way to every demand for a public inquiry. The armed forces minister, Adam Ingram, originally rejected calls for an inquiry into the deaths at Deepcut Barracks saying “We cannot run the Government on the basis of public inquiries. They may be good for lawyers, but they are not good for the governance of this country”.³⁵⁸ In so doing, however, he was refusing an inquiry despite pressure from the families for one. Similarly papers released by the National Archives recently, suggest that John Major’s Government did not wish to have an inquiry into Robert Maxwell’s death for fear of offending Spain and the attendant media circus. Frank Dobson told the Committee and Sir Liam Donaldson confirmed that officials had advised against the Bristol Inquiry. For Lord Heseltine inquiries are a measure of last resort “No government wants inquiries; they are usually in circumstances where the government is in trouble, where it is felt there is something to be found beneath the bland spin-doctoring of national politics, and so governments will do their best to avoid inquiries”.³⁵⁹ This has led on occasion to a recourse to the law and, in the case of Gulf War Syndrome, the establishment of an inquiry chaired by a retired law lord, Lord Lloyd of Berwick, without Government support or cooperation.

³⁵⁴ HC 606-ii, GBI 09, Ev 22

³⁵⁵ HC (2003–04) 423-i, Q 52

³⁵⁶ Q 624

³⁵⁷ Response to Consultation, CP 12/04.

³⁵⁸ HC Deb, 24 May 2004, Col 1318

³⁵⁹ Q 615

Parliament as initiator: using the Liaison Committee?

218. As has become apparent during our investigation there is no agreement about the conditions that need to exist for an inquiry to be established. We have described the category of inquiry where there should be parliamentary involvement. We have recommended a consequent amendment to the Inquiries Bill. We have proposed the form—the Parliamentary Commission—which that involvement should take. We have also set out possible criteria for calling inquiries but as Lord Norton acknowledges:

“Even if the criteria for an inquiry are satisfied, there is no formal obligation on a minister to establish one. Parliament should, I believe, consider a mechanism—in effect, a default mechanism—by which a public inquiry can be triggered by either House of Parliament”.³⁶⁰

219. British Irish Rights Watch went further, believing that: “Minister(s) responsible for an issue giving rise to an inquiry should have no hand in setting up the inquiry” as the “temptation to indulge in a damage limitation exercise is too great”. They therefore proposed that:

“any MP or Peer should be able to move a resolution for an independent inquiry... Such a resolution would still require the support of both houses of Parliament, and we would envisage that inquiries would therefore remain rare events. However, such a mechanism would remove inquiries from Ministerial, and thus government, control. ... [T]hose outside Parliament should also be able to apply to the High Court for an order establishing an inquiry”.³⁶¹

220. Professor Anthony Barker likewise argued that it would be:

“more constitutionally proper for the House of Commons, rather than the executive, to be seen as the fount of official ‘public inquiry’ effort, broadly defined—whether on any particular public policy issues or on alleged failures or misconduct in the central government or other public services. All major commissioners, committees and other types of inquiry should, therefore, be appointed and supervised by, and should report to, the House of Commons via a new senior select committee or commission”.³⁶²

221. Dr Matthew Flinders put forward a similar proposal, arguing for “a process that facilitates the creation of an official (i.e. publicly funded) inquiry without necessarily being reliant on the support of the government of the day”. This, he believed, “would help foster public confidence. The process might take the form of a parliamentary public inquiry that reported back to a select committee or the House of Commons as a whole. The creation of an inquiry would be based on a vote in the House being supported by a certain percentage of members”.³⁶³ Yet the Government continues to argue that establishing an inquiry is a ministerial function. Moreover, while noting that “[i]t is for Parliament to consider the

³⁶⁰ *HC 606-v, GBI 13, Ev 105*

³⁶¹ Response to Consultation, CP 12/04.

³⁶² Professor Anthony Barker, ‘Public Policy Inquiry and Advice as an Aspect of Constitutional Reform’ *The Journal of Legislative Studies*, Vol. 4, No 2, (1998) pp 107–127 at 124.

³⁶³ Response to Consultation, CP 12/04.

question of whether it might establish its own inquiries”, it continues; “Many questions would arise regarding the mechanisms for appointing and funding such inquiries”.³⁶⁴ While the foregoing ideas have merit and are consistent with the argument we have advanced, giving Parliament a direct role in initiating inquiries should be a practical proposition which reflects the realities of our parliamentary system.

222. The House has appointed the Liaison Committee, which includes the chairs of all the select committees, to provide, among other things, a body of expertise to oversee the scrutiny role exercised by parliamentary select committees in respect of Ministers and their Departments. We believe, therefore, that it would provide a suitable forum for arriving at a considered view on the need for an inquiry into matters of public concern in a particular area. The Liaison Committee would act, in effect, as a filter against the risk of excessive demands for inquiries. **We recommend that Standing Order No. 145 should be amended to enable the Liaison Committee to consider the value of a proposal that a specific matter of public concern should be the subject of a formal inquiry and, if so, to report a Resolution to the House for its consideration. The House would then come to a final decision.**

Policing the Ministerial Code

223. We have considered the investigation of government conduct in particular areas which, in our view should be undertaken by Parliament by delegation to a commission. There is also the matter of the conduct of individual ministers with regard to their obligations under the Ministerial Code. We pursued the question of how to police the Ministerial Code with Sir Alan Budd and Sir John Gieve. Although he acknowledged that his “[...] inquiry clearly had implications relating to whether a minister had observed the Ministerial Code of Conduct” Sir Alan Budd regarded “the Ministerial Code of Conduct and inquiries relating to such matters as a special topic to be dealt with in a special way by special bodies whose job it is to make such inquiries”.³⁶⁵ Pressed on whether it might be simpler to have a piece of machinery akin to that of the Parliamentary Commissioner for Standards in respect of the Code, Sir Alan Budd expressed his liking for:

“the British genius for improvisation and variety and those sorts of things so that you do not have a set solution; you try to find a solution that is particularly appropriate so I am torn so far as this is concerned. However, I can see that the lines along which you are thinking may be correct, whether it is one person, a panel of people or what it is”.³⁶⁶

224. Sir John Gieve provided us with an insight into the makeshift arrangements for choosing an investigator:

“With the Prime Minister’s agreement [the Home Secretary] said he would ask me to find an independent investigator. That was announced on the Sunday. I discussed that with Andrew Turnbull [the Cabinet Secretary] as to who that might be and did he have a list of potential runners. On the Monday morning I started making some

³⁶⁴ Response to Consultation, CP 12/04

³⁶⁵ Q 808

³⁶⁶ Q 866

phone calls to the potential runners to see who was available and willing to do it. Alan Budd was available, able and willing so he got the job”.³⁶⁷ Adding “He [Sir Alan] was not the first person I rang up but in these circumstances you have a few hours in which to find someone and you cannot just go for one person”.³⁶⁸

225. The Budd Inquiry was clearly about the Ministerial Code but was not formally so. It was also set up by the Department and the Minister whose alleged behaviour was an issue. The arrangements were also hasty and haphazard. None of this is satisfactory and it is time to consider how the Ministerial Code should be properly policed.

226. In her written evidence to us the Ombudsman, Ann Abraham, argued that extending her powers into inquiries would be inappropriate and that there are a range of more appropriate mechanisms, subject to certain criteria being met. In her oral evidence she was slightly more open to the possibility. She was concerned about the potential that, “if we were to take on ministerial code-type investigations [they would risk] ... diverting attention and the attention of this Committee and the attention of the media from the issues that certainly our stakeholders say they want us to be about as an office seems to me to be a risk that certainly at present I would not want to take on”.³⁶⁹ But she added “I am not saying it is not something that the Ombudsman from time to time could not usefully do”.³⁷⁰

227. The Ombudsman and her staff have certain advantages: expertise and skills in conducting inquiries mostly into areas of Government actions; powers akin to those of a High Court judge to compel witnesses and call for evidence and statutory independence. There are other examples of Ombudsmen undertaking inquiries. Sir Cecil Clothier QC undertook the Allitt inquiry in 1993 after leaving office The Prisons Ombudsman conducted an inquiry into the fire at Yarl’s Wood Detention Centre in 2003. As Ann Abraham indicated in Wales and Northern Ireland the public service ombudsmen have additional responsibilities with regard to investigating possible breaches in local government standards.³⁷¹

228. This Committee has recommended before that, on referral from the Prime Minister, or by a resolution of the House the Parliamentary Ombudsman should be empowered to conduct independent investigations on alleged breaches of the Ministerial Code and to report to the Prime Minister and to the House.³⁷² The Committee believed then that it could provide greater transparency and accountability to the process of dealing with complaints against Ministers. An independent parliamentary mechanism for complaints, such as the Ombudsman, was seen to offer substantial benefits. It would carry greater weight than the judgement of the Minister, the Prime Minister or the Cabinet Secretary. That applied both where there is a breach of the Code but it also applies where a Minister has not transgressed and deserves to be cleared in the most transparent and authoritative

³⁶⁷ Q 869

³⁶⁸ Q 870

³⁶⁹ HC 50-i, Q 5

³⁷⁰ *Ibid.*, Q 4

³⁷¹ *Ibid.*

³⁷² Third Report of Session 2000–01, *The Ministerial Code: Improving the Rule Book*, HC 235, para 30

manner. **In light of recent events we believe that the time is now right for the Government to reconsider its view that it would be undesirable to fetter the Prime Minister's freedom to decide how individual cases should be handled. Accordingly we recommend that the Parliamentary Ombudsman should be empowered to investigate alleged breaches of the Ministerial Code and other allegations about the conduct of individual Ministers.**

Conclusion

229. It is because inquiries play an important role in the public life of this country, as part of the armoury of accountability, that they deserve to be taken seriously. This means reviewing their operation from time to time to ensure that they are working effectively and efficiently for the purposes for which they are established. That is what we have set out to do in this report. It is also why we welcome the Government's proposal to bring inquiries under a unifying statute. However we have suggested a number of ways in which we believe the Inquiries Bill can be improved. We also do not want to see Parliament removed from the picture altogether, as a consequence of the repeal of the Tribunals of Inquiry (Evidence) Act 1921. That is why we are proposing that there should be a special mechanism, called a Parliamentary Commission, established as the appropriate form of inquiry for certain major political issues involving ministers and their departments. Parliament now has to decide whether it wants to reclaim territory it has lost as far as inquiries of this kind are concerned, becoming once again the Grand Inquest of the Nation, or whether it is content to abandon the field to others, and to the executive. If it chooses the former, then this report offers a means of doing so.

Conclusions and recommendations

1. We agree with Lord Woolf's concerns over the current provisions in the Inquiries Bill and recommend that decisions about the appointment of judges to undertake inquiries should be taken co-equally by the Government and the Lord Chief Justice or senior law lord. (Paragraph 58)
2. We agree with and endorse the view that the use of 'wing members' brings expertise, reassurance, support and protection to inquiry chairs. We particularly recommend the use of panels in politically sensitive cases as a non-statutory means of enhancing the perception of fairness and impartiality in the inquiry process. We also recommend that where judges are seen as the most appropriate chairs, they should usually be appointed as part of a panel or be assisted by expert assessors or wing members. (Paragraph 73)
3. It is essential that the terms of reference enjoy broad consensus and are drawn up in a way which allows full and proper examination of the facts and do not fetter the inquiry in its task. We recommend that the chair of an inquiry should have the ability to negotiate the precise terms of reference before agreeing to undertake the inquiry. We also recommend that the Inquiries Bill should provide specifically for a short period of consultation after any announcement to ensure that the final terms of reference meet the expectations of a particular inquiry. This should include appropriate parliamentary involvement. (Paragraph 85)
4. We recognise that circumstances may sometimes require Inquiries to hold all or part of their proceedings in private. Ensuring the independence of the inquiry will serve to reinforce trust in such circumstances. Although the 1921 Act provides for a presumption of openness we are concerned that the Government's new Inquiries Bill creates wide powers for ministers to restrict access to inquiries, making public accessibility subject to restriction notices. This subverts accepted presumptions of openness and public interest and we recommend it should be reversed. (Paragraph 99)
5. The time has clearly come to reformulate the Salmon principles. We recommend that the procedures followed by inquiries in the last ten years should be reviewed. In particular there should be a re-evaluation of how to ensure fairness within the inquisitorial process while minimising the adversarial, legalistic element of inquiries. Good practice in this field could be codified, possibly through the rule making powers contained in the Inquiries Bill. (Paragraph 104)
6. We welcome the production of guidance by the Cabinet Secretary on record keeping and recommend that that it should be published alongside other FoI material such as the publication scheme, and that the level of compliance with it should be regularly reviewed. (Paragraph 111)
7. We welcome the powers in the Inquiries Bill enabling chairs to administer an oath and other powers of compulsion. We recommend that, in addition to the appropriate statutory powers, inquiries dealing with public bodies should require the

permanent heads of such bodies to certify that rigorous systems have been applied for the discovery of documents and noting any problems. This 'certificate' could form part of the 'core bundle' of inquiry documents. (Paragraph 116)

8. We acknowledge that setting arbitrary deadlines can only be counterproductive in a process which is intended to establish the facts, provide public reassurance and in many cases have a healing and cathartic effect. Nonetheless this is not incompatible with announcing an estimated duration on the model of the BSE or Butler Inquiries. Such a timescale would be non-binding and open to being revisited in light of developments and we so recommend. (Paragraph 123)
9. We recommend that Ministers should announce a broad budget figure fairly early on at the start of an inquiry. Any increases over the announced limits would then need to be publicly explained at the end of the inquiry when final costs are published. (Paragraph 127)
10. We recommend that while it is compiling central guidance on the calling, use and procedures of inquiries, the Government should consider whether research should be undertaken by an appropriate body, such the National Audit Office, into the value for money which inquiries represent. This should assess their outcomes and evaluate alternatives. (Paragraph 133)
11. We welcome the requirement in the Inquiries Bill for reports to be published in full. We recommend that the presumption should be for chairs to handle publication. This should be reflected in the Bill. Publication arrangements should ensure fairness to all those concerned and the Government should allow adequate time for Parliamentary consideration and debate. (Paragraph 136)
12. We recommend that departments should have a duty to report on the implementation of recommendations at regular intervals, and in any case within the first two years of the end of an inquiry. These reports should cover the extent to which recommendations have been met and describe the wider cultural changes which have been brought about as a result. Select committees are well placed to undertake this kind of assessment on the outcome of an inquiry on the basis of such departmental reports as part of their core tasks, and we recommend that the Liaison Committee should support the inclusion of such work in select committee work programmes. (Paragraph 147)
13. If they are to be successful, recommendations need to be workable in practice. We recommend that inquiries should be expected and enabled to test out potential recommendations and proposals prior to finalising their reports, although nevertheless, chairs of inquiries should not allow this process to undermine their independence in any way. (Paragraph 152)
14. We should not keep reinventing the inquiry wheel. We welcome the concept of a support unit but recommend the Unit's size and role should be limited and proportional to the relative infrequency of large inquiries and to the degree of guidance and advice which can be made available through other means. The accumulated experience of past inquiries, such as the procedural elements of inquiry reports, subsequent lectures, presentations and internal notes as well as official

- guidance should be consolidated and made available on a publicly accessible website. Given its small size we further recommend that such a support unit should be co-located with a central government department such as the Cabinet Office or the Department for Constitutional Affairs. However, in recognition of the need for independence for inquiries the unit should operate independently of its host department and should include secondees from bodies versed in investigatory processes such as the NAO, the Ombudsmen community and Select Committee staff. (Paragraph 161)
15. Drawing on the foregoing and in the light of the experience now available of the inquiry process, we believe it should be possible to draw up a set of principles defining good practice for an inquiry (Paragraph 166)
 16. We recommend the following principles as a basis for discussion and an exercise. (Paragraph 166)
 17. We recommend that Clause 1 of the Inquiries Bill should be amended to provide for parliamentary resolutions where the events causing public concern which may have occurred involve the conduct of ministers. We further recommend that the procedural framework for an inquiry called under this new sub-clause which we have described should be the subject of a Parliamentary Resolution once the Bill has passed into law. (Paragraph 178)
 18. We recommend that Ministers should justify their decisions whether to hold an inquiry or not on the basis of a published set of criteria and propose the following as a possible basis for this (Paragraph 184)
 19. We recommend the development of clear criteria for calling inquiries and straightforward categorisation establishing a distinction between those which are politically sensitive and those which are not, on the basis of our exemplars, to ensure that calls for judicial public inquiries and the appropriate involvement of Parliament can be properly assessed and decisions on form can be taken on that basis. (Paragraph 193)
 20. The similarity in form of the Franks and Butler Committees with that of a Joint Committee is striking but, as Committees of Privy Counsellors, their nature is fundamentally different and, from a constitutional point of view, less satisfactory. We recommend that in future inquiries into the conduct and actions of government should exercise their authority through the legitimacy of Parliament in the form of a Parliamentary Commission of Inquiry composed of parliamentarians and others, rather than by the exercise of the prerogative power of the Executive. (Paragraph 215)
 21. We recommend that Standing Order No. 145 should be amended to enable the Liaison Committee to consider the value of a proposal that a specific matter of public concern should be the subject of a formal inquiry and, if so, to report a Resolution to the House for its consideration. The House would then come to a final decision. (Paragraph 222)

22. In light of recent events we believe that the time is now right for the Government to reconsider its view that it would be undesirable to fetter the Prime Minister's freedom to decide how individual cases should be handled. Accordingly we recommend that the Parliamentary Ombudsman should be empowered to investigate alleged breaches of the Ministerial Code and other allegations about the conduct of individual Ministers. (Paragraph 228)

Annex 1

Inquiries into matters of public concern: 1900-2004

	Name of Inquiry	Department	Year Est.	Legislative Basis	Duration (months)	Chair name	Judicial or legal expertise	Public/Private	Source
1	The Budd Inquiry	Home Office	2004	Non-statutory	1	Sir Alan Budd	No	Private	HC 175
2	Review of Intelligence on weapons of mass destruction	Foreign and Commonwealth Office	2004	Non-statutory (Committee of Privy Counsellors)	6	Lord Butler + 4	No	Private	HC898
3	An independent inquiry arising from the Soham murders	Home Office	2004	Non-statutory	6	Sir Michael Richard	No	Public	HC 653
4	Investigation into the circumstances surrounding the death of Dr David Kelly	Department for Constitutional Affairs	2003	Non-statutory	6	Lord Hutton	Judge	Public	HC 247
5	FV Trident	Department of Transport, Local Government and the Regions	2002	Merchant Shipping Act 1995, s.269	Ongoing	To be determined	No	Public	-
6	"The Three Inquiries": (i) Ayling, (ii) Neale, (iii) Kerr/Haslam, 'To assess the appropriateness and effectiveness of the procedures operated in local health services to deal with complaints about individuals listed'	Department of Health	2002	Originally NHS Act 1977 s.2; All three inquiries subsequently reconstituted under s.84 NHS Act 1977	34	All three inquiries have a panel of three (i) Anna Pauffley QC (ii) Suzan Matthews QC (iii) Nigel Fleming QC)	Judge	Private	Cm 6315
7	Victoria Climbié	Department of Health	2001	Children Act 1989, s.81; NHS Act 1977, s.84; Police Act 1996, s.49	24	Lord Laming + 4 assessors	No	Public	Cm 5730
8	Equitable Life Inquiry	HM Treasury	2001	Non-statutory	30	Lord Penrose	Judge	Private	HC 290
9	Foot and Mouth Disease 2001: Lessons to be Learned Inquiry	Department of the Environment Food and Rural Affairs	2001	Non-statutory	12	Dr Iain Anderson	No	Public	HC 888

	Name of Inquiry	Department	Year Est.	Legislative Basis	Duration (months)	Chair name	Judicial or legal expertise	Public/Private	Source
10	Review of the circumstances surrounding an application for naturalisation by Mr S P Hinduja in 1998	Prime Minister	2001	Non-statutory	3	Sir Anthony Hammond KCB, QC	Legal	Private	HC287
11	Inquiry into issues arising out of the identification of victims following major transport accidents	Department of the Environment, Transport and the Regions	2000	Non-statutory	13	Lord Justice Clarke + 2 assessors	Judge	Private	Cm 5012
12	Serious failures in the clinical practice of Rodney Ledward at the South Kent Hospitals NHS Trust 1990-6	Department of Health	2000	Non-statutory	16	Jean Ritchie QC	Legal	Private	Department of Health publication
13	Marchioness Inquiry	Department of the Environment, Transport and the Regions	2000	Merchant Shipping Act 1995, s.268	13	Lord Justice Clarke + 2 assessors	Judge	Public	Cm 4558
14	Shipman Inquiry	Department of Health	2000	Tribunal of Inquiry (Evidence) Act 1921	48	Dame Janet Smith	Judge	Public	6 reports
15	Thames River Safety Inquiry	Department of the Environment, Transport and the Regions	1999	Non-statutory	3	Lord Justice Clarke + 2 assessors	Judge	Private	Cm 4558
16	FV-Gaul Inquiry	Department of the Environment, Transport and the Regions	1999	Merchant Shipping Act 1995, s.269	67	Mr Justice David Steel + 3 assessors	Judge	Public	DETR publication
17	Joint Inquiry into Train Protection Systems	Health and Safety Commission	1999	Health and Safety at Work etc Act 1974, s.14(2)(b)	16	Lord Cullen and Professor John Uff QC (joint chairmen)	Judge/Legal	Public	HSE Books

	Name of Inquiry	Department	Year Est.	Legislative Basis	Duration (months)	Chair name	Judicial or legal expertise	Public/Private	Source
18	Ladbroke Grove Inquiry	Health and Safety Commission	1999	Health and Safety at Work etc Act 1974, s.14(2)(b)	31	Lord Cullen (+ 2 assessors)	Judge	Public	HSE Books
19	Royal Liverpool Children's Hospital Inquiry (Alder Hey)	Department of Health	1999	NHS Act 1977, s.2	14	Panel of 3 (Mr Michael Redfern QC)	Legal	Private	HC 12
20	MV Derbyshire Inquiry (2)	Department of the Environment, Transport and the Regions	1998	Merchant Shipping Act 1995, s.269(1)	23	Mr Justice Coleman (+ 2 technical advisers)	Judge	Public	DETR publication
21	Bristol Royal Infirmary Inquiry	Department of Health	1998	NHS Act 1977, s.84	33	Panel of Four (Professor Sir Ian Kennedy)	Legal (Academic lawyer)	Public	Cm 5207
22	Bloody Sunday Inquiry	Northern Ireland Office	1998	Tribunal of Inquiry (Evidence) Act 1921	Ongoing	Panel of Three (Lord Saville)	Judge	Mostly public	Ongoing
23	Sierra Leone Arms Investigation	Foreign and Commonwealth Office	1998	Non-statutory	3	Joint Chairmen: Sir Thomas Legg and Sir Robin Ibbotson	No	Private	HC 1016
24	BSE Inquiry	Ministry of Agriculture, Fisheries and Food	1997	Non-statutory	36	Panel of three (Lord Phillips of Worth Matravers)	Judge	Public	HC 887
25	Serious Breaches of security and illegal activities at Ashworth High Security Hospital in 1995-96	Department of Health	1997	NHS Act 1977, s.84	24	Panel of four (His Honour Peter Fallon QC)	Judge	Public	Cm 4194 & 4195
26	Southall Rail Accident	Health and Safety Commission	1997	Health and Safety at Work etc Act 1974, s.14(2)(b)	27	Professor John Uff QC	Legal	Public	HSE report

	Name of Inquiry	Department	Year Est.	Legislative Basis	Duration (months)	Chair name	Judicial or legal expertise	Public/Private	Source
27	Stephen Lawrence Inquiry	Home Office	1997	Police Act 1996, s.49	19	Panel with 4 assessors (Sir William MacPherson)	Judge	Public	Cm 4262
28	Public Inquiry into the shootings at Dunblane Primary School	Scottish Office	1996	Tribunal of Inquiry (Evidence) Act 1921	8	Lord Cullen	Judge	Public	Cm 3386
29	North Wales Child Abuse Inquiry	Welsh Office	1996	Tribunal of Inquiry (Evidence) Act 1921	48	Panel of three plus an assessor (Sir R Waterhouse)	Judge	Public	HC 201
30	MV Derbyshire Inquiry (1)	Department of Transport	1995	Non-statutory	10	Lord Donaldson of Lymington + 2 assessors	Judge	Private	Cm 3128
31	Deaths and injuries to children at Grantham and Kesteven Hospital in 1991 caused by enrolled nurse Beverley Allitt	Department of Health	1993	NHS Act 1977, s.2	11	Panel of three (Sir Cecil Clothier QC)	Legal	Private	Department of Health publication
32	Public Inquiry into export of defence equipment and dual-use goods into Iraq	Department of Trade and Industry	1992	Non-statutory	48	Lord Scott	Judge	Public	HC 115
33	Investigation into the flotation of Mirror Group Newspapers Plc	Department of Trade and Industry	1992	Companies Act 1985, s.432(2) and s.442	120	Sir Roger Thomas, Raymond Turner	Judge	Private	DTI report 2001
34	Inquiry into the supervision of the Bank of Credit and Commerce Hillsborough	HM Treasury	1991	Non-statutory	15	Lord Bingham + 2 assessors	Judge	Private	HC 198
35		Home Office	1989	Non-statutory	8	Lord Justice Taylor	Judge	Public	Cm 962
36	Clapham Junction Railway Accident	Department of Transport	1988	Regulation of Railways Act 1871, s7	23	A. Hidden QC + 3 assessors	Legal	Public	Cm 820

Name of Inquiry	Department	Year Est.	Legislative Basis	Duration (months)	Chair name	Judicial or legal expertise	Public/Private	Source
37 The Piper Alpha Disaster	Department of Energy	1988	The Mineral Workings (Offshore Installations (Public Inquiries) Regulation 1974 (1974/338)	16	Lord Cullen + 3 assessors	Judge	Public	Cm 1310
38 Kings Cross Underground Fire	Department of Transport	1987	Regulation of Railways Act 1871, s7	12	D. Fennell QC + 4 assessors	Legal	Public	Cm 499
39 Child Abuse in Cleveland	Department of Social Security	1987	NHS Act 1977, s.84 & Child Care Act 1980 s. 76	12	Dame Elizabeth Butler-Sloss + 3 assessors	Judge	Public [with some private sessions]	Cm 412
40 Deaths from food poisoning of 19 elderly patients at Stanley Royd Hospital, Wakefield in 1984	Department of Social Security	1986	NHS Act 1977, s.84	15	J Hugill QC	Legal	Public	Cmnd 9716
41 Crowd Safety at Football Grounds	Home Office	1985	Non-statutory	7	Sir O. Popplewell + 2 assessors	Judge	Public	Cmnd 9710
42 Maze Prison Escape	Northern Ireland Office	1983	Non-statutory	5	Sir James Hennessey (+ team from HM Inspectorate of Prisons)	No	Private	HC 203
43 Falkland Islands Review	Prime Minister	1982	Non-statutory (Committee of Privy Counsellors)	6	Lord Franks + 5	No	Private	Cmnd 8787
44 Brixton Disorders	Home Office	1981	Police Act 1964, s. 32	7	Lord Scarman	Judge	Public	Cmnd 8427
45 The extent to which the Crown Agents lapsed from accepted standards of commercial or professional conduct or of public administration as financiers on their own account in the years	Home Office	1978	Tribunal of Inquiry (Evidence) Act 1921	48	Justice Groom-Johnson + 3	Judge	Public	HC 48

Name of Inquiry	Department	Year Est.	Legislative Basis	Duration (months)	Chair name	Judicial or legal expertise	Public/Private	Source
46 Allegations of poor care, conflict and breakdown of working relationships at Normansfield Hospital for learning disabilities in Middlesex in mid 1970s	Department of Social Security	1977	NHS Act 1946, s.70	18	Michael Sherrard QC + 4	Legal	Public	Cmnd 7357
47 Red Lion Square Disorders	Home Office	1974	Police Act 1964, s. 32	7	Lord Scarman	Judge	Public	Cmnd 5919
48 The circumstances leading to the cessation of trading by the Vehicle and General Insurance Co. Ltd	Home Office	1972	Tribunal of Inquiry (Evidence) Act 1921	9	Sir A James, M Kerr, S Templeman	Judge	Public	HC 133
49 Widgery Inquiry - The events on Sunday 30th January 1972 which led to loss of life in connection with the procession in Londonderry that day	Home Office	1972	Tribunal of Inquiry (Evidence) Act 1921	3	Lord Widgery	Judge	Public	HC 220/72
50 Interrogation of Terrorists	Prime Minister/Home Office	1971	Non-statutory (Committee of Privy Counsellors)	4	Lord Parker of Waddington + 2	Judge	Private	Cmnd 4901
51 Brutality in N Ireland	Home Office	1971	Non-statutory	3	Sir E Compton + 2	Not Chair (but one member of the panel was High Court judge)	Private	Cmnd 4823
52 Ill treatment, abuse and neglect of long stay patients at Ely Hospital in Cardiff in 1967	Department of Health & Social Security	1967	Non-statutory	5	Geoffrey Howe QC + 4	Legal	Private	Cmnd 3975
53 Aberfan Inquiry - The Disaster at Aberfan	Welsh Office	1966	Tribunal of Inquiry (Evidence) Act 1921	12	Sir E Davies + 2	Legal	Public	HC 553

	Name of Inquiry	Department	Year Est.	Legislative Basis	Duration (months)	Chair name	Judicial or legal expertise	Public/Private	Source
54	Profumo Inquiry	PM	1963	Non-statutory	3	Lord Denning	Judge	Private	Cmd 2152
55	Vassall Tribunal - The circumstances under the Official Secrets Act were committed by William Vassell	Home Office	1962	Tribunal of Inquiry (Evidence) Act 1921	5	Lord Radcliffe + 2	Judge	Partly in private	Cmd 2009
56	Allegations that John Waters was assaulted on 7 December 1957 at Thurso and the action taken by Caithness Police in connection	Scottish Office	1959	Tribunal of Inquiry (Evidence) Act 1921	2	Lord Sorn + 2	Judge	Public	Cmd 718
57	Allegations of improper disclosure of information relating to the bank rate	Home Office	1957	Tribunal of Inquiry (Evidence) Act 1921	2	Lord Parker + 2	Judge	Public	Cmd 350
58	Damages and [Egyptian] Casualties in Port Said	Defence	1956	Non-statutory	<1	Sir E Herbert	Legal	Private	Cmd 47
59	Disposal of land at Crichel Down	Ministry of Agriculture, Fisheries and Food	1954	Non-statutory	6 months	Sir Andrew Clark QC	Legal	Public	Cmd 9176
60	Bribery of Ministers of the Crown or other public servants in connection with the grant of licences etc.	Home Office	1948	Tribunal of Inquiry (Evidence) Act 1921	3	Mr Justice Lynskey + 2	Judge	Public	Cmd 7616
61	To inquire into all the circumstances relating to or associated with the disclosure of Budget information by Mr Dalton, then Chancellor of the Exchequer, on Wednesday, 12th November'	n/a	1947-8	Select Committee	-	-	-	-	HC 20
62	The administration of the Newcastle upon Tyne Fire, Police and Civil Defence Services	Home Office	1944	Tribunal of Inquiry (Evidence) Act 1921	2	R Burrows KC + 2 assessors	Legal	Public	Cmd 6522

	Name of Inquiry	Department	Year Est.	Legislative Basis	Duration (months)	Chair name	Judicial or legal expertise	Public/Private	Source
63	The conduct before the Hereford Juvenile Court Justices of the proceedings against Craddock and others	Home Office	1943	Tribunal of Inquiry (Evidence) Act 1921	<1	Lord Goddard	Judge	Public	Cmd 6485
64	Prime Minister's Committee of Enquiry into Detention Barracks	Prime Minister	1943	Non-statutory	2	Mr Justice Oliver + 2	Judge	Public	Cmd 6484
65	The circumstances surrounding the loss of HM Submarine 'Thetis'	Prime Minister	1939	Tribunal of Inquiry (Evidence) Act 1921	9	Sir J Bucknill	Judge	Public	Cmd 6190
66	Official Secrets Act and its application to a Member	n/a	1937-8	Select Committee	-	-	-	-	HC 173
67	Unauthorised disclosure of information relating to the Budget	Home Office	1936	Tribunal of Inquiry (Evidence) Act 1921	1	Sir J Porter, G Simonds, R Oliver	Judge	Public	Cmd 5184
68	Allegations of bribery and corruption in connection with the letting and allocation of stances and other premises under the control of the Corporation of Glasgow	Scottish Office	1933	Tribunal of Inquiry (Evidence) Act 1921	2	Lord Anderson, Sir R Boothby and J Hunter	Legal	Public	Cmd 4361
69	Interrogation of Miss Irene Savidge by the Metropolitan Police	Home Office	1928	Tribunal of Inquiry (Evidence) Act 1921	2	Sir J E Banks KC, H Lees-Smith MP and J Withers MP	Legal	Public	Cmd 3147
70	Charges against the Chief Constable of St Helens by the Watch Committee	Home Office	1928	Tribunal of Inquiry (Evidence) Act 1921	2	C Parry, T Walker KC	One Legal	Public	Cmd 3103
71	Allegations made against the Chief Constable of Kilmarnock	Scottish Office	1925	Tribunal of Inquiry (Evidence) Act 1921	4	W Mackenzie KC	Legal	Public	Cmd 2659
72	Arrest of R Sheppard RAOC Inquiry into conduct of Metropolitan Police	Home Office	1925	Tribunal of Inquiry (Evidence) Act 1921	<1	J Rawlinson KC, MP	Legal	Public	Cmd 2497
73	Allegations of misapplication of profits made by the Army and Navy Canteen Board after acquisition of the Expeditionary Forces Canteen	n/a	1923	Select Committee	-	-	-	-	HC 117
74	Destruction of documents by Ministry of Munitions officials	Home Office	1921	Tribunal of Inquiry (Evidence) Act 1921	1	Lord Cave, Lord Inchape, Sir William Plender	Judge	Public	Cmd 1340

	Name of Inquiry	Department	Year Est.	Legislative Basis	Duration (months)	Chair name	Judicial or legal expertise	Public/Private	Source
75	Allegations against Sir John Jackson	n/a	1916	Royal Commission	4	A Chamel + 2	-	-	Cd 8518
76	The arrest and subsequent treatment of Mr Francis Sheehy Skeffington, Mr Thomas Dickson and Mr Patrick James McIntyre	n/a	1916	Royal Commission	1	Sir J Simon	-	-	Cd 8376
77	The Rebellion in Ireland	n/a	1916	Royal Commission	1	Lord Hardinge + 2	-	-	Cd 8729
78	Collection, treatment and removal of the sick and wounded during the operations in Mesopotamia	n/a	1916	Special Commissions (Dardanelles and Mesopotamia) Act 1916	8	8 Commissioners: 2 Lords, 4 Commons, 1 General Admiral (Lord Hamilton Chair)	No	Private	Cd 8610
79	The circumstances connected with the Landing of Arms at Howth, July 26th 1914	n/a	1914	Royal Commission	1	Lord Shaw + 2	-	-	Cd 7631
80	'To inquire into certain charges and allegations made in the public Press against a member of this House, namely, the Lord Murray of Elibank, and into all matters relating thereto.'	n/a	1913-14	Select Committee (Lords)	-	-	-	-	HL 66
81	Inquiry on the Putumayo Atrocities in Peru and Colombia	n/a	1912-13	Select Committee	-	-	-	-	HC 148
82	'To consider whether Sir Stuart Samuel has vacated his seat as a Member of this House in consequence of the firm of Samuel Montagu and Company, in which firm he is a partner, having entered into transactions with the Secretary of State for India in Council	n/a	1912-13	Select Committee	-	-	-	-	HC 379

	Name of Inquiry	Department	Year Est.	Legislative Basis	Duration (months)	Chair name	Judicial or legal expertise	Public/Private	Source
83	Marconi Wireless & Telegraph Wireless Agreement	n/a	1912-13	Select Committee	-	-	-	-	HC152 and 185
84	War Stores in South Africa	n/a	1905	Royal Commission	5	Sir G Farrell + 4	-	-	Cd 3127
85	Imprisonment of a Member	n/a	1902	Select Committee	-	-	-	-	HC 309
86	Martial Law Sentences in South Africa	n/a	1902	Royal Commission	2	Lord Alverstone	-	-	Cd 136
87	South African War	n/a	1902	Royal Commission	9	Earl of Elgin + 6	-	-	Cd 1789
88	South African Hospitals	n/a	1900	Royal Commission	6	Sir R. Romer + 4	-	-	Cd 453
89	'To consider and report upon allegations of Fraud and Irregularity in connection with War Office Contracts during the last Twelve Months	n/a	1900	Select Committee	-	-	-	-	HC 313

Data source: include Dept for Constitutional Affairs memorandum; British Political Facts; Waishe, K., and Higgins, J., The use and impact of inquiries in the NHS, BMJ, October 2002.

This table contains data on major inquiries held between 1900 and the present. It does not include information on every inquiry held, but those which were into major events or disasters, or where ministerial action was at the centre of events. In this sense, there is inevitably some subjectivity to the inclusion or exclusion of information.

All the inquiries held under the Tribunal of Inquiry (Evidence) Act 1921 are included in the table. However a number of these inquiries were into more minor incidents which today would probably have been dealt with in other ways or under subject specific legislation.

Annex 2

INQUIRIES BILL [HL]—DRAFT NEW CLAUSES & AMENDMENTS

Clause 1

Page 1, line 7, at end insert—

“(1A) But subsection (1) shall not apply where the events referred to involve the conduct of any Minister of the Crown”.

After Clause 1

Insert the following new Clause—

“Inquiry involving conduct of Minister of the Crown

(1) Where—

- (a) particular events have caused, or are capable of causing, public concern, or
- (b) there is public concern that particular events may have occurred, and
- (c) the events that have occurred or may have occurred involve the conduct of any Minister of the Crown,

Her Majesty may, by Order in Council, cause an inquiry to be held under this Act.

(2) An Order under this section shall include—

- (a) the terms of the instrument appointing the chairman of the inquiry;
- (b) the date that is to be the setting-up date for the purposes of this Act;
- (c) the terms of reference of the inquiry; and the names of any other members of the inquiry panel.

(3) An Order under this section may provide that the inquiry shall have all such powers, rights and privileges as are vested in the High Court of England and Wales or of Northern Ireland or, in Scotland, in the Court of Session, or in a judge of such court in respect of—

- (a) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise;
- (b) compelling the production of documents; and
- (c) subject to the rules of court, issuing commissions or requests to examine witnesses abroad.

(4) An Order in Council made under this section may be revoked, amended or varied by a subsequent Order.

(5) Before any Order in Council is made under this section, a draft of it shall be laid before each House of Parliament.

(6) An Order under this section shall not have effect unless both Houses of Parliament by resolution approve the draft or, if any modifications to it are agreed to by both Houses, shall not have effect except as so modified.

(7) Sections 7, 8 and 9 of this Act shall not apply to inquiries established under this section.

Insert a new Clause as a consequential amendment concerning an Inquiry involving the conduct of Scottish Ministers, Assembly Secretaries of the National Assembly for Wales or Northern Ireland Minister.

Clause 40

Page 21, line 17, after “inquiry” insert “not being an inquiry pursuant to section (*inquiry involving conduct of Minister of the Crown*)”.

Page 21, line 18, at end insert—

“(4A) References in this Act to “the Minister”, in relation to an inquiry pursuant to section (*inquiry involving conduct of Minister of the Crown*), are to be read as references to Her Majesty in Council”.

Annex 3

The Salmon Principles

1. Before any person becomes involved in an inquiry, the Tribunal must be satisfied that there are circumstances which affect him and which the Tribunal proposes to investigate.

2. Before any person who is involved in an inquiry is called as a witness, he should be informed of any allegations which are made against him and the substance of the evidence in support of them.

3. (a) He should be given an adequate opportunity of preparing his case and of being assisted by his legal advisers. (b) His legal expenses should normally be met out of public funds.

4. He should have the opportunity of being examined by his own solicitor or counsel and of stating his case in public at the inquiry.

5. Any material witness he wishes called at the inquiry should, if reasonably practicable, be heard.

6. He should have the opportunity of testing by cross-examination conducted by his own solicitor or counsel any evidence which may affect him.

Formal minutes

Thursday 27 January 2005

Members present:

Tony Wright, in the Chair

Mrs Anne Campbell
Mr David Heyes

Mr Kelvin Hopkins
Mr Gordon Prentice

The Committee deliberated.

Draft Report (Government by Inquiry), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 229 read and agreed to.

Summary agreed to.

Annexes agreed to.

Resolved, That the Report be the First Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Ordered, That the provisions of Standing Order No. 134 (Select committees (reports)) be applied to the Report.

[Adjourned till Thursday 3 February at 9.30am

Witnesses

Thursday 13 May 2004 (HC 606-i)

Rt Hon Lord Hutton Ev 1

Thursday 25 May 2004 (HC 606-ii)

Rt Hon Lord Falconer of Thoroton QC, Secretary of State for Constitutional Affairs and Lord Chancellor Ev 61

Tuesday 15 June 2004 (HC 606-iii)

Lord Laming CBE DL Ev 79

Tuesday 22 June 2004 (HC 606-iv)

Dr Tim Baxter, former Secretary to the Ashworth Hospital Inquiry and **Mr Alun Evans**, former Secretary to the Foot and Mouth Lessons Learned Inquiry Ev 91

Tuesday 13 July 2004 (HC 606-v)

Rt Hon Lord Howe of Aberavon CH QC and **Professor Lord Norton of Louth** Ev 107

Thursday 21 October 2004 (HC 606-vi)

Rt Hon Lord Butler of Brockwell KG GCB CVO Ev 120

Thursday 11 November 2004 (HC 606-vii)

Sir John Gieve KCB, **Sir Brian Bender KCB** and **Professor Sir Liam Donaldson** Ev 138

Rt Hon Frank Dobson MP and **Rt Hon Lord Heseltine CH** Ev 154

Thursday 9 December 2004 (HC 51-i)

Sir Michael Bichard KCB, **Sir Louis Blom-Cooper QC** and **Sir Ian Kennedy** Ev 165

Rt Hon Lord Morris of Manchester AO QSO Ev 177

Tuesday 14 December (HC 51-ii)

Rt Hon Lord Woolf of Barnes, Lord Chief Justice Ev 183

Wednesday 12 January 2005

Sir Alan Budd Ev 194

Sir John Gieve KCB, Permanent Secretary, Home Office Ev 202

List of written evidence

Mrs S Grapes (GBI 01)	Ev 1
The Reverend A Pyke (GBI 02)	Ev 1
PIELLE Consulting Group (GBI 04)	Ev 1
Law Reform Commission of Ireland (GBI 05)	Ev 7
Robert Francis Q.C (GBI 06)	Ev 8
Ann Abraham, Parliamentary and Health Service Ombudsman (GBI 07)	Ev 20
Centre for Effective Dispute Resolution (CEDR) (GBI 08)	Ev 22
Dr Iain S MacDonald CB (GBI 11)	Ev 26
David Hinchliffe MP, Chair of the Health Committee (GBI 12)	Ev 28
Sir Cecil Clothier (GBI 14)	Ev 28
Roger Masterman, University of Durham (GBI 15)	Ev 28
Lee Hughes CBE, Head of Judicial Competitions (Courts) Division (GBI 16)	Ev 34
Professor Jeffrey Jowell QC (GBI 17)	Ev 39
Graham Mather, President, European Policy Forum (GBI 20)	Ev 39
National Foot and Mouth Group (GBI 23)	Ev 42
Iain McLean, Professor of Politics, Oxford University (GBI 26)	Ev 44

Reports from the Public Administration Select Committee since 2001

Session 2004–05

First Report	Government by Inquiry	HC 51–I
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Session 2003–04

First Report	A Draft Civil Service Bill: Completing the Reform	HC 128–I
Second Report	The Work of the Committee in 2003	HC 229
Third Report	Ministerial Accountability and Parliamentary Questions	HC 355 (<i>HC 1262</i>)
Fourth Report	Taming the Prerogative: Strengthening Ministerial Accountability to Parliament	HC 422 (<i>Cm 6187</i>)
Fifth Report	A Matter of Honour: Reforming the Honours System	HC 212–I
First Special Report	Ministerial Accountability and Parliamentary Questions: Government Response to the Committee's Third Report of Session 2003–04	HC 1262

Session 2002–03

First Special Report	The Public Service Ethos: Government's Response to the Committee's Seventh Report of Session 2001–02	HC 61
First Report	Ministerial Accountability and Parliamentary Questions: The Government Response to the Ninth Report from the Committee (Session 2001–02)	HC 136
Second Report	The Work of the Committee in 2002	HC 447
Third Report	Ombudsman Issues	HC 448 (<i>Cm 5890</i>)
Fourth Report	Government By Appointment: Opening up the Patronage State	HC 165–I
Fifth Report	On Target? Government By Measurement	HC 62–I (<i>HC 1264</i>)
Sixth Report	On Target? Government By Measurement: the Government's Response to the Committee's Fifth Report	HC 1264

Session 2001–02

First Report	Public Participation: Issues and Innovations: The Government Response to the Committee's Sixth Report of Session 2000–01	HC 334
Second Report	The Ministerial Code: Improving the Rule Book: The Government Response to the Committee's Third Report of Session 2000–01	HC 439
Third Report	Special Advisers: Boon or Bane: The Government Response to the Committee's Fourth Report of Session 2000–01	HC 463

Fourth Report	Ministerial Accountability and Parliamentary Questions: The Government Response to the Committee's Second Report of Session 2000–01	HC 464
Fifth Report	The Second Chamber: Continuing the Reform	HC 494-I (<i>HC 794</i>)
Sixth Report	The Second Chamber: Continuing the Reform: The Government Response to the Committee's Fifth Report	HC 794
Seventh Report	The Public Service Ethos	HC 263-I (<i>HC 61</i>)
Eighth Report	"These Unfortunate Events": Lessons of Recent Events at the Former DTLR	HC 303-I (<i>Cm 5756</i>)
Ninth Report	Ministerial Accountability and Parliamentary Questions	HC 1086 (<i>HC 136</i>)

The response to the report is printed in brackets after the HC printing number.