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BRIEFING PAPER

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Public Inquiries: non-statutory commissions of inquiry

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Summary

The call for a 'public inquiry' into an event of major public concern or into a controversial public policy issue is a common occurrence. The term 'public inquiry' refers to inquiries set up by Government ministers to investigate specific or controversial events.

Public inquiries can take a statutory and non-statutory form. Statutory inquiries are held predominantly under the *Inquiries Act 2005*. Details of the 2005 Act, and those held under its predecessor are set out in Standard Note 06410. The subject of parliamentary inquiries is covered in Standard Note 6392: Parliamentary Commissions of Inquiry.

This Briefing Paper examines non-statutory inquiries, including: non statutory *ad hoc* inquiries, committees of Privy Counsellors and Royal Commissions. A number of recent high profile inquiries, including both the Butler and Chilcot inquiries on the Iraq war, have been held as non-statutory inquiries. One of the main reasons for holding a non-statutory inquiry is that matters of intelligence may need to be examined in private.

Non-statutory inquiries were used regularly in the 20th Century instead of statutory inquiries to investigate controversial events of national concern. For example, both the Profumo Inquiry (1963) and the Maze Prison Escape Inquiry (1983-1984) were non-statutory inquiries. This paper focuses only on the most prominent recent examples of non-statutory inquiries, such as the Deepcut Review (2004-2006) and the Harris Review (2014-2015), and the Committee of the Privy Council inquiries of Butler (2004) and Chilcot (2009-2016).

Non-statutory inquiries can provide greater flexibility than statutory inquiries for those responsible for determining an inquiry's procedures. The main differences between statutory and non-statutory inquiries are as follows. First, a non-statutory inquiry has to rely on the voluntary compliance of witnesses. Secondly, it cannot take evidence on oath. Thirdly, statutory inquiries held under the *Inquiries Act 2005* operate under a presumption that hearings will take place in public.

The National Archives maintains a list of the archived websites of recent statutory and non-statutory inquiries.

1. Background

The purposes of public inquiries

Public inquiries have long played an important role in public life. There are many different types of public inquiry, but in this context the term "public inquiry" refers to inquiries set up by Government ministers to investigate specific or controversial events. Lord Howe identified the following six functions for such public inquiries:

- 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;
- Accountability, blame and retribution – holding people and organisations to account, and sometime 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.[1]

In the 18th and 19th centuries, parliamentary committees were often tasked with investigating the conduct of government and its officials. In the 20th century, the practice developed of appointing judges to chair independent public inquiries to investigate events of public concern.[2]

Statutory or non-statutory?

Statutory inquiries are normally held under the *Inquires Act 2005*. They can also be held under other statutory provisions, for example the Office of Inquiry into Child Sexual Exploitation in Gangs and groups was held under section 3 of the *Children Act 2004*. Non-statutory inquiries take three main forms: non-statutory *ad hoc* inquiries, inquiries by a Committee of the Privy Council and Royal Commissions.

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1 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

2 For a full analysis of the development of public inquiries, see Public Administration Select Committee, 'Government by Inquiry' (2004-2005 HC 51-I 606) p7-16

Non-statutory inquiries have been used for a variety of reasons. Until 2005, the statutory framework for independent public inquiries was determined by the *Tribunal of Inquiry (Evidence) Act 1921*. Analysis by the Public Administration Committee (PAC) demonstrated that after the 1970s, non-statutory *ad hoc* inquiries became increasingly common. The perception was that inquiries under the 1921 Act were a "heavy handed" and a "clunking instrument".[3] In 2004, the PAC suggested that non-statutory inquiries tended to be used when Government or Public Bodies are under investigation.[4] The PAC report also explained that the boundary between different forms of inquiry is often difficult to distinguish. For example, a non-statutory inquiry such as the Scott inquiry can appear to operate similarly to a statutory inquiry except for the fact that it does not have the statutory powers to compel witnesses to attend.[5]

Non-statutory inquiries have survived the enactment of the *Inquiries Act 2005* and repeal of the 1921 Act. Professor Adam Tomkins has argued that there should be a presumption that the *Inquiries Act 2005* should be used.[6] Lord Justice Beatson has argued that it is "important for there to be careful consideration of the justification for not using the procedure so recently established by Parliament as the appropriate one for inquiries".[7]

Cabinet Office Guidance

The Cabinet Office's Inquiries Guidance makes it clear that there is no presumption for statutory over non-statutory *ad hoc* inquiries. The guidance explains that all three forms of inquiry covered in this briefing are possible when the Government is considering how an inquiry should be run:

> Departments should seek advice from the Cabinet Office Propriety and Ethics Team on the different forms of inquiry and the merits of the different options. Possible forms of inquiry include inquiries conducted under the Inquiries Act 2005, statutory public inquiries under other legislation, non-statutory ad hoc inquiries (public or private), Committee of Privy Counsellors or Royal Commissions.[8]

Since the enactment of the *Inquiries Act 2005* non-statutory inquiries have still regularly been used: for example, the non-statutory *ad hoc*

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3 Ibid p15; In 1966 a Royal Commission on Tribunals of Inquiry, under the chairmanship of Lord Justice Salmon, reviewed the 1921 Act. The Commission recommended amendments to the 1921 Act and set out the "six cardinal principles" for the treatment of those taking part in inquiries (known as the "Salmon principles"). Concerns over the 1921 Act eventually led to reform in the form of the *Inquiries Act 2005*.

4 Ibid p67

5 Ibid p67

6 House of Lords Select Committee on the Inquiries Act 2005, 'The Inquiries Act 2005: post-legislative scrutinty' (2013-2014 HL 143) p25

7 Ibid

8 Cabinet Office, *Inquiries Guidance* p3

inquiry into the Independent review of self-inflicted deaths of young adults in custody aged between 18 and 24 (Harris Review) established in 2014, and the committee of the Privy Council inquiry into whether Britain was involved in the improper treatment of detainees (the Detainee Inquiry) established in 2010.

Non-statutory inquiries remain an important option for Government departments as they provide flexibility on procedure, and enable a less formal and adversarial form of inquiry than a statutory inquiry. They are also often used when security issues, or other sensitive issues, mean that evidence needs to be heard in secret.

Who should be the chairman?

A judge or a retired judge is often appointed to be the chairman of statutory and non-statutory inquiries. Judges are recognised as being independent, and have experience of listening to witnesses and dealing with procedural complexities. On the other hand, a potential disadvantage is the risk of damaging judicial independence by involving judges in matters of political controversy. Further, a judicial approach may not always be appropriate for all types of inquiry.[9]

Judges are not always appointed as the chairman of non-statutory inquiries. For example, in 2013 Dr Bill Kirkup CBE, a consultant and former Associate Chief Medical Officer was appointed as the chairman of the non-statutory inquiry into the serious incidents in the maternity department at Furness General Hospital (the Morecambe Bay Investigation). Sir John Chilcot and Lord Butler of Brockwell, both retired senior civil servants, were appointed to chair the Iraq Inquiry (the Chilcot Inquiry) and the inquiry on intelligence on weapons of mass destruction (the Butler Inquiry) respectively.

9 See the quotation from Sir John Chilcot on p18

2. Non-statutory *ad hoc* inquiries

Non-statutory *ad hoc* inquiries, which may be held in public or in private, are not bound by procedural rules but neither do they have the power to compel the attendance of witnesses or the production of documents. They are therefore essentially reliant on the cooperation of those involved. Non-statutory inquiries are often used when Government or public bodies are under investigation. Some of the reasons given for using a non-statutory approach include: to facilitate a more inquisitorial and less formal approach; and to enable an inquiry to take evidence in private. This section notes some of the most prominent recent non-statutory *ad hoc* inquiries.

2.1 The Scott Inquiry

The Inquiry into the Export of Defence Equipment and Dual-Use Goods to Iraq and Related Prosecutions was established in November 1992,[10] reporting in 1996. As a non-statutory inquiry, it did not have powers to compel witnesses, but the Government indicated that it would be prepared to convert the inquiry into a 1921 Act inquiry if necessary.[11]

The inquiry, led by Lord Justice Scott, was set up following the collapse of the Matrix Churchill trial, where three senior executives of the company had been charged with evading export controls on arms to Iraq. Their defence had been that the Government was aware of their activities. The inquiry's terms of reference were to examine Government policy on defence and dual-use exports to Iraq, whether Ministers had acted in accordance with that policy, and the use of Public Interest Immunity (PII) Certificates.[12] Witnesses were cross-examined by Counsel to the Inquiry Presiley Baxendale QC. They did not have their own legal representation. Scott examined several senior ministers and civil servants.

The report was laid before the House of Commons as a return to an address. This device was used to ensure that the report attracted the protection of the *Parliamentary Papers Act 1840*.[13] The report was published in 5 volumes and consisted of 1806 pages. Scott made a series of recommendations on export control procedures, the use of PII certificates and other issues in prosecutions, the use of intelligence by Government departments, and ministerial accountability. Scott concluded that government policy towards the export of non-lethal military goods was changed following the Iran-Iraq ceasefire in 1988 in

10 HC Deb 10 November 1992 c745
11 HC Deb 23 November 1992 c651
12 HC Deb 16 November 1992 c76W
13 See Erskine May, Parliamentary Practice (24th edition) p133

a way that should have been reported to the Commons. The report also made recommendations about procedures for inquiries and discussed the value of the Salmon principles on procedural fairness.[14]

The report was made available to selected ministerial recipients eight days before the publication date.[15] Previously, extracts of the draft report had been sent to individuals criticised, for comment, over a period of months before publication.[16] The Opposition were given an advance copy only at midday of the day of publication in preparation for an oral statement. The debate on the report was held on 26 February 1996,[17] and was opened by Ian Lang, on a motion for the adjournment of the House. Robin Cook, as Shadow Foreign Secretary, responded for the Opposition. The motion to adjourn was won by 320 votes to 319. The Government was subsequently subject to criticism for preparing summaries of the report for distribution on the day of publication.[18]

2.2 The Hutton Inquiry

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

> The Government has… stated that it will provide me with the fullest cooperation and that it expects all other authorities and parties to do the same. I make it clear that it will be for me to decide as I think right within my terms of reference the matters which will be the subject of my investigation. I intend to sit in public in the near future to state how I intend to conduct the Inquiry and to consider the extent to which interested parties and bodies should be represented by counsel or solicitors…It is also my intention to conduct the inquiry mostly in public.[19]

As to procedure, William Twining, Research Professor of Law at University College London, made the following observation:

> (1) It was 'inquisitorial' in that the Chairman rather than any interested parties controlled who was called as a witness, what

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14 See Standard Note 06410 *The Inquiries Act 2005* for background
15 HL Deb 13 February 1996 c503
16 HC 115 1995-6, para B2.25
17 HC Deb 26 February 1996 c589-690
18 *Times* 8 February 1996 'Ministers accused of discrediting arms-to Iraq report'
19 Hutton Inquiry, "Investigation into the circumstances surrounding the death of Dr David Kelly: statement by the Right Honourable Lord Hutton", Press notice, 21 July 2003.

> documents were produced, and, to a large extent, what questions were asked.
>
> (2) It resembled common law proceedings in emphasizing oral testimony and the examination and cross-examination of witnesses in public.
>
> (3) The style was investigative rather than contentious or disputatious: in the first stage witnesses were examined by counsel for the inquiry 'in a neutral way'; in the second stage, some witnesses whose conduct might be the subject of criticism in the report were recalled (or called for the first time) to be examined further by counsel for the inquiry, their own counsel, and counsel for other parties – all subject to the permission of the Chairmen.
>
> (4) The most striking innovation was the creation of a website on which almost all of the evidence was posted immediately, so that although the proceedings were not televised, the media and the public at large had access to almost all of the information presented to the inquiry, This meant that in theory at least everyone could make up their own minds on the basis of almost the same evidence as Lord Hutton…[20]

Twining thought that the procedure used was "well-suited to open and thorough determination of the facts about past events" but not so well-suited to "recommending changes in general policy or procedures for the future."[21]

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

> …no legal obligation upon the Government to set up the Hutton Inquiry at all. It was a purely political decision. Dr David Kelly's suicide would, in ordinary circumstances, have been dealt with by Coroner's inquest; and the recent decision of the House of Lords, adjusting the domestic legislation to Convention imperatives, would have allowed for a sufficiently deep investigation into the underlying causes.[22]

The Inquiry reported on 28 January 2004. The report was published as a House of Commons Paper, specifically as a return to the House, in the same way as the Scott Report was published, so as to prevent possible libel actions.

2.3 Death of Zahid Mubarek

David Blunkett, the then Home Secretary, announced on 29 April 2004 an inquiry into the murder of Zahid Mubarek at Feltham Young Offender Institution on 21 March 2000. This followed a House of Lords

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

21 Ibid, p44

22 Ibid, p51. This was one of four occasions when inquests have been adjourned under section 17A of the *Coroners Act 1988* pending the outcome of public inquiries

ruling in October 2003, that the state was "...under a duty to publicly investigate, with effective participation by Zahid's family, the death of Zahid in custody".[23] This overturned a decision by the Court of Appeal, in March 2002, that no public inquiry was necessary because a sufficient investigation had already been carried out.[24]

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

> In the light of the House of Lords judgement in the case of *Regina v Secretary of State for the Home Department ex-parte Amin*, to investigate and report to the Home Secretary on the death of Zahid Mubarek, and the events leading up to the attack on him, and make recommendations about the prevention of such attacks in the future, taking into account the investigations that have already taken place – in particular, those by the Prison Service and the Commission for Racial Equality.[25]

The Inquiry was conducted in two phases, phase one being an investigation into the events leading up to the death of Zahid Mubarek, phase two considering recommendations that could be made to minimise the risk of such a tragedy happening again. Phase one involved regular hearings but of an inquisitorial rather than an adversarial nature. The Minister had indicated that he would put the Inquiry on a statutory footing if its effectiveness were to be imperilled by a lack of co-operation. However, only four people were not prepared to give evidence and the Chairman stated that he did not consider them to be "critical witnesses."[26]

The then Home Secretary, Dr John Reid, announced by written ministerial statement on 29 June 2006 (c 19 WS) both the publication of the report and that a preliminary response to all of the Inquiry's 88 recommendations had been posted on the Home Office website. The report was published as a House of Commons Paper.[27]

2.4 The Deepcut Review

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

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

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23 *Regina v. Secretary of State for the Home Department ex parte Amin* [2003] UKHL 51

24 *Regina v. Secretary of State for the Home Department ex parte Amin* [2002] EWCA Civ 390

25 Zahid Mubarek Inquiry, Final report, June 2006 p555

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

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

The Minister stated:

> In commissioning this review I am well aware that its scope and nature may not satisfy all those, members of this House included, who have been calling for a formal public inquiry into some or all non-combat deaths in the armed forces or for a public inquiry into the deaths at Deepcut. These are very different demands. By concentrating on the circumstances of the four deaths at the army base at Deepcut this review will focus on the issue at the heart of current public concern. The review will have the full co-operation of the Ministry of Defence and, I am pleased to say, Surrey police. A review can analyse issues much more quickly than a public inquiry and would not interfere with other current investigations or proceedings. My expectation is that the rigour and independence of the review will produce value to all parties concerned. It is the right way to proceed and I would urge all those who may be sceptical of what the review can achieve to suspend their criticism and to lend it their full support.[28]

The Review reported in March 2006[29] and the Minister made an oral statement on the matter to the House.[30] The inquiry had not been conducted in public and this issue was discussed in chapter 2 of the report. Nicholas Blake saw no need for, or benefit from, a public inquiry and commented that "...the Army may have an interest in having a public inquiry into whether its procedures were sufficient to detect or deter abuse, but it is not required to have one if it broadly accepts the conclusions and recommendations of this Review.[31] Nevertheless, Lord Ashley of Stoke stated the following in a Lords debate:

> The Government have stated their belief that the Blake review puts the matter to rest. It does no such thing. The Blake review lacked the full powers of a judicial public inquiry; it failed to be awarded those powers. It had no powers of subpoena, its scope was too narrow, and its proceedings were not held in public as a judicial public inquiry would be. The families believe, and so do many of us who support them, that the only way we can really find out what happened is by judicial public inquiry.[32]

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

2.5 The Morecambe Bay Investigation

The Morecambe Bay Investigation was established by the Secretary of State for Health in September 2013 following concerns over serious incidents in the maternity department at Furness General Hospital

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28 HC Deb 15 December 2004, c133WS

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

30 HC Deb 29 March 2006, c853-

31 The Deepcut Review, *Frequently asked questions*

32 HL Deb 19 April 2006, c1115

(FGH).[33] The Morecambe Bay Investigation was commissioned by the Department of Health but worked independently. The Investigation was chaired by Dr Bill Kirkup CBE, and was supported by an expert panel. The Investigation covered the period between January 2004 and June 2013. The report was published on 3 March 2015.[34] The report concluded that the maternity unit at FGH was dysfunctional and that serious failures of clinical care led to unnecessary deaths of mothers and babies.

2.6 The Harris Review

On 6 February 2014 the then Justice Secretary, Chris Grayling, announced, in a written statement to the House of Commons, an independent review into Self-inflicted Deaths in Custody of 18-24 year olds (the Harris Review):

> The Government are committed to the safety of offenders and in particular to reducing the number of deaths in custody. Although there are already comprehensive investigations into individual deaths we recognise there is benefit at this time in collating lessons that may be system-wide. The purpose of the review will be to make recommendations for reducing the risk of future deaths in custody. Although the review will focus on 18 to 24-year-olds it will identify learning that will benefit any age group.
>
> The review will be conducted by the Independent Advisory Panel on Deaths in Custody.[35]

The review was chaired by Lord Toby Harris, supported by an expert panel, and lasted between April 2014 and March 2015. The review's report was published in July 2015 and presented to Parliament by the Secretary of State for Justice.[36]

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33 It should be noted that the House of House of Lords Select Committee on the Inquiries Act 2005, states that the Ministry of Justice do not regard Morecambe bay to be an inquiry but an investigation. The Committee responded that this was an distinction without a difference see :'The Inquiries Act 2005: post-legislative scrutiny' (2013-2014 HL 143) p26

34 The Report of the Morecambe Bay Investigation (March 2015)

35 HC Deb 6 February 2014 c36WS

36 The Harris Review, 'Changing Prisons, Saving Lives' July 2015 Cm 9087

3. Committee of Privy Counsellors

A Committee of Privy Counsellors is essentially a variation on the non-statutory *ad hoc* form of inquiry although its composition allows for security information to be seen by the Committee that the Government could not otherwise make available.

The Franks and Butler Inquiries, and the Inquiry into Iraq, are examples of this type. When announcing the establishment of the Franks inquiry, the then Prime Minister Margaret Thatcher set out the case for using a Committee of the Privy Council to conduct an inquiry:

> Such a committee has one great advantage over other forms of inquiry. As it conducts its deliberations in private and its members are all Privy Councillors, there need be no reservations about providing it with all the relevant evidence – including much that is highly sensitive – subject to safeguards upon its use and publication.
>
> A Committee of Privy Councillors can be authorised to see relevant departmental documents, Cabinet and Cabinet Committee memoranda and minutes, and intelligence assessments and reports, all on Privy Councillor terms. Many of these documents could not be made available to a tribunal of inquiry, a Select Committee or a Royal Commission.[37]

3.1 The Falkand Islands Inquiry (Franks)

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

> Following the consultations with the right hon. Gentleman the Leader of the Opposition and leaders of other opposition parties, the Government have decided to appoint a Committee of Privy Councillors with the following terms of reference:
>
> To review the way in which the responsibilities of Government in relation to the Falkland Islands and their dependencies were discharged in the period leading up to the Argentine invasion of the Falkland Islands on 2 April 1982, taking account of all such factors in previous years as are relevant, and to report.
>
> I am glad to be able to say that the Right Hon the Lord Franks, OM, GCMG, KCB, CBE, has agreed to be the chairman of the committee.[38]

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37 HC Deb 8 July 1982 cc469-70

38 HC Deb 6 July 1982, c51W

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

The reasons for establishing a committee of this nature were set out by the Prime Minister in a Commons debate on the Falkland Islands Review on 8 July 1982.[39] The debate was held on a substantive motion. During the debate, the then Leader of the Opposition, Michael Foot, indicated that he had put forward the names of two Privy Counsellors for the inquiry.[40]

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

On 25 January 1983, Mrs Thatcher moved the amendable motion: "that this House takes note of the Report of a Committee of Privy Counsellors on the Falkland Islands Review".[41] The Speaker selected the amendment in the name of the leader of the opposition. After two days of debate the amendment was defeated on a vote, and the main question was put and agreed to.[42]

3.2 The Butler Inquiry

In a statement to the House of Commons on 3 February 2004, Jack Straw, the Foreign Secretary, announced that the Prime Minister had decided to establish a committee to review intelligence on weapons of mass destruction.[43] The Chairman was to be the former Cabinet Secretary, Lord Butler, and the Committee was to be made up of Privy Counsellors using the Franks Inquiry template. It was given the following terms of reference:

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

39 http://hansard.millbanksystems.com/commons/1982/jul/08/falkland-islands-review
40 http://hansard.millbanksystems.com/commons/1982/jul/08/falkland-islands-review
41 HC Deb 25 January 1983 c789
42 HC Deb 25 January 1983, c992
43 HC Deb 3 February 2004, c625

> on WMD, in the light of the difficulties of operating in countries of concern.[44]

Mr Straw went on to say that the Prime Minister had asked the Committee to report before the summer recess, and that it would follow the precedent in terms of procedures of the Franks Committee. The Inquiry would have access to all intelligence reports and assessments and other relevant Government papers, and would be able to call witnesses to give oral evidence in private.

The Committee consisted of Lord Butler of Brockwell, Sir John Chilcot, Field Marshal Lord Inge and two MPs, Ann Taylor and Michael Mates. Ann Taylor was already a privy councillor but the other four members were sworn in as members of the Privy Council on 11 February. The Conservative Party initially supported the inquiry but Michael Howard wrote to the Prime Minister on 1 March 2004 announcing the withdrawal of this support because Lord Butler was said to be choosing to interpret his terms of reference in an "...unacceptably restrictive fashion".[45] Michael Mates stated that he would remain a member. There was no Liberal Democrat member, and the party's foreign affairs spokesman Menzies Campbell cited the restrictive remit as the reason.[46]

The Committee had announced on 12 February 2004 that it would meet in private and that it would take oral evidence from a number of witnesses invited to attend but that it would also welcome evidence from anyone with information that might assist it in considering its remit. Witnesses would be questioned by the Committee, not by legal counsel.[47] The report was published on 14 July 2004.[48] As in the case of the Hutton Inquiry, the Prime Minister received the report the day before, and the Leaders of the Conservative and Liberal Democrat parties received the report at 6am on the day of publication. Lord Butler made a statement at 12.30pm on the day of publication followed, at 1.30pm, by a statement to MPs by the Prime Minister.[49] The statement was followed by questions, and the debate ended at 2.46pm.

A further debate on the report was held on Tuesday 20 July 2004, on a motion for the Adjournment of the House. The Prime Minister opened the debate by saying: "I shall start with the Butler report and then move on to a more general discussion of Iraq".[50] At the end of the debate, Tam Dalyell divided the House (described by Michael White of *The*

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44 Review of Intelligence on Weapons of Mass Destruction: Report of a Committee of Privy Counsellors, HC 898, 2003/04 p1

45 BBC News, 'Tories withdraw from WMD inquiry' 1 March 2004

46 HC Deb 3 February 2004, c631

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

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

49 HC Deb 14 July 2004, c1431

50 HC Deb 20 July 2004 c195

Guardian as "a clutch of mainly Labour anti-war MPs staged a symbolic vote against the procedural motion to adjourn the house").[51] The vote was lost by 41 votes to 255, and the motion for the Adjournment lapsed.[52]

3.3 The Iraq Inquiry (The Chilcot Inquiry)

On 15 June 2009 the Prime Minister, Gordon Brown, announced that there would be a privy counsellor inquiry into the Iraq conflict, including the run-up to the conflict and the full period of conflict and reconstruction:

> With the last British combat troops about to return home from Iraq, now is the right time to ensure that we have a proper process in place to enable us to learn the lessons of the complex and often controversial events of the last six years. I am today announcing the establishment of an independent Privy Counsellor committee of inquiry which will consider the period from summer 2001, before military operations began in March 2003, and our subsequent involvement in Iraq right up to the end of July this year. The inquiry is essential because it will ensure that, by learning lessons, we strengthen the health of our democracy, our diplomacy and our military.[53]

Gordon Brown explained that the inquiry would have full access to relevant information, including secret material.[54] He emphasised that no British document or witness would be beyond scope. The final report would disclose everything except for "the most sensitive information".[55]

In response to the statement there were some criticisms of the process being adopted, in particular the decision to hold the inquiry in private.[56] There was also criticism that Opposition parties were not offered the opportunity to comment on the terms and procedures of the inquiry before the announcement on 15 June. David Cameron criticised the way in the House of Commons was being treated by the Government: "Before the Franks inquiry—we are told that this is a Franks-style inquiry—there was a proper debate on the terms of reference of the inquiry on a substantive motion in the House of Commons".[57]

David Miliband, the then Foreign Secretary, said that the government had chosen not to use the *Inquiries Act 2005* because that legislation was a framework for inquiries to mediate between competing interests:

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51 Michael White, "Blair survives Commons Iraq debate unscathed: Blair survives Iraq debate unscathed", The Guardian, 21 July 2004

52 HC Deb 20 July 2004 cc284-287

53 HC Deb 15 June c21-24

54 Ibid

55 Ibid

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

57 HC Deb 15 June 2009, c26

> The right hon. and learned Gentleman knows well that the Inquiries Act 2005 sets out what is effectively a quasi-judicial procedure that may be appropriate for an inquiry that is set out to mediate between competing interests, but that is not what this inquiry is about. That Act also assumes legal representation for all parties concerned and restrictions on who may be questioned. For those reasons, among others, we chose the inquiry.[58]

The terms of reference of the inquiry were described by Chairman Sir John Chilcot, a retired senior civil servant, when the inquiry was launched:

> Our terms of reference are very broad, but the essential points, as set out by the Prime Minister and agreed by the House of Commons, are that this is an Inquiry by a committee of Privy Counsellors. It will consider the period from the summer of 2001 to the end of July 2009, embracing the run-up to the conflict in Iraq, the military action and its aftermath. We will therefore be considering the UK's involvement in Iraq, including the way decisions were made and actions taken, to establish, as accurately as possible, what happened and to identify the lessons that can be learned. Those lessons will help ensure that, if we face similar situations in future, the government of the day is best equipped to respond to those situations in the most effective manner in the best interests of the country.[59]

There was growing controversy throughout 2014 and after as the publication date for the inquiry's report seemed to be repeatedly postponed.

The Iraq Inquiry's report was published on 6 July 2016. The full report and the executive summary can be accessed online.

On the day of publication, 6 July 2016, the then Prime Minister made a statement to the House of Commons on the report.[60] This was followed by two hours of debate. On 13 and 14 July 2016, the Commons debated the Report of the Iraq Inquiry.[61]

On 14 September 2016, Sir Jeremy Heywood, the Cabinet Secretary, gave oral evidence to PACAC on *Chilcot Inquiry: Lessons for the Machinery of Government.* During the evidence, Sir Jeremy Heywood stated:

> In my view, by far and away the most important thing about the whole Chilcot Inquiry is: do you have a culture in which senior officials an Ministers meeting around, and external experts as well,

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58 HC Deb 24 Jun 2009, c817

59 Iraq Inquiry website: About the Inquiry

60 HC Deb 6 July 2016 cc883-922

61 HC Deb 13 Jul 2016 cc315-396 ; HC Deb 14 July 2016 cc441-518; This followed the precedent of the Falklands Islands Inquiry (the Franks Inquiry), which was subject to two days of debate in the Commons on 25 and 26 January 1983. The debate on Franks was on amendable motion, whereas the motion on Chilcot was unamendable.

> feel that it is possible to offer an alternative view to the prevailing wisdom, so as avoiding group think? [62]

On 2 November 2016, the Liaison Committee held an evidence session with Sir John Chilcot. In his evidence, Sir John Chilcot commented on the strength of the format of the Iraq Inquiry:

> I think for an inquiry into the workings of central Government in a very critical and controversial area, there is real advantage of having an independent committee of people with direct experience of the workings of Government in that way. I think that it would be more difficult for a judge, operating with counsel through across-examination, to arrive at well-judged conclusions in that particular individual situation…
>
> For our part, we had, right from the outset, total access to all material of any category of sensitivity at all. Much of the subsequent negotiation and argument that was required over quite a long period was about disclosure—about the ability to publish it. I think that a judicially-led inquiry would have been less well placed, frankly, to undertake those arguments—you might even say fights—and, in our case, win those particular battles.[63]

3.4 The Detainee Inquiry

On 6 July 2010, the Prime Minister David Cameron announced that there would be a judge-led non-statutory inquiry into whether Britain was involved in the improper treatment of detainees.[64] The Prime Minister appointed Sir Peter Gibson as Chair, and two Panel Members, Dame Janet Paraskeva and Mr Peter Riddell, to conduct the inquiry. Sir Peter Gibson was already a member of the Privy Council, but following their appointment the two panel members were also appointed.

The terms of reference of the inquiry included the following:

> 1. To examine whether, and if so to what extent, the UK Government and its security and intelligence agencies in the aftermath of 9/11:
>
> i. were involved in improper treatment, or rendition, of detainees held by other countries in counter terrorism operations overseas; and/or
>
> ii. were aware of improper treatment, or rendition, of detainees held by other countries in counter terrorism operations in which the UK was involved. The primary focus of the Inquiry will be the cases involving the

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62 Public Administration and Constitutional Affairs evidence session with Sir Jeremy Heywood - Chilcot Inquiry: Lessons for the Machinery of Government HC 656 2015-16

63 Liaison Committee evidence session with Sir John Chilcot - Follow up to the Chilcot Report HC 689 2015-16

64 HC Deb 6 July 2010, c176

> detention at Guantanamo Bay of UK nationals and former lawful UK residents.[65]

On 18 January 2012 the then Justice Secretary, Kenneth Clarke, made a statement in the House of Commons about the Inquiry:

> … following consultation with Sir Peter Gibson, the chair of the inquiry, we have decided to bring the work of his inquiry to a conclusion. We have agreed with Sir Peter that the Inquiry should provide the Government with a report on its preparatory work to date, highlighting particular themes or issues which might be the subject of further examination. The Government are clear that as much of this report as possible will be made public.[66]

The Detainee Inquiry report was published by the Government on 19 December 2013.[67] The report set out the preparatory work of the Inquiry, and drew attention to the particular themes and issues which the Inquiry thought needed further examination. The report did not make findings as to what happened.

65 The Report of the Detainee Inquiry (December 2013) p4-5
66 HC Deb 18 January 2012, c752
67 The Report of the Detainee Inquiry (December 2013)

4. Royal Commissions

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

> For substantial matters where greater formality is considered appropriate and where time is not of the essence, a royal commission may be appointed instead. This requires a royal warrant to be issued to the commissioners by the Sovereign on the advice of a Secretary of State. Apart from the formality and greater prestige of a royal commission, both commissions and departmental committees carry out their inquiries in a similar manner.[68]

Royal commissions are normally used to consider matters of broad policy rather than to investigate a particular event or series of events. The Salmon Report commented that: "The tempo of even the most expeditious Royal Commission is altogether too slow for the requirements of an investigation into matters with which the Act of 1921 is concerned." The average duration of a royal commission is between two and four years.[69] There are also standing royal commissions such as the Royal Commission on Environmental Pollution, established in 1970 to advise on environmental issues.

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

- Royal Commission on Criminal Justice chaired by Viscount Runciman of Doxford, established in March 1991 and reported in July 1993;[70]
- Royal Commission on Long Term Care, chaired by Sir Stewart Sutherland, established in December 1997 and reported in March 1999;[71]
- Royal Commission on Reform of the House of Lords, chaired by Lord Wakeham, established in February 1999 and reported in January 2000.[72]

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

69 HC Deb 20 July 2006, c625W

70 http://www.official-documents.gov.uk/document/cm22/2263/2263.pdf

71 http://webarchive.nationalarchives.gov.uk/*/http://www.royal-commission-elderly.gov.uk/

72 http://www.archive.official-documents.co.uk/document/cm45/4534/4534.htm

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