House of Commons Library

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7 March 2022

Non-statutory public inquiries

Summary

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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.

What is a non-statutory inquiry?

Statutory inquiries, nowadays, are held predominantly under the Inquiries Act 2005 but occasionally under other Acts. Details of the 2005 Act and inquiries held under it, are set out in another Library briefing paper:

- Statutory public inquiries: the Inquiries Act 2005

If a public inquiry is "non-statutory" it has still been established by a Government Minister, but otherwise than under an Act of Parliament.

Types of non-statutory inquiry

This paper gives background to and examples of three different types of non-statutory inquiry, explaining the key differences between them. These are:

- 'Ad hoc' public inquiries;
- Committees of Privy Counsellors; and
- Royal Commissions.

Implications of an inquiry being non-statutory

Holding a non-statutory public inquiry provides greater flexibility on procedure rules. This can make it easier to hear (privately if necessary) evidence that is sensitive for national security reasons (for example). In some situations, this can better secure the cooperation and candour of core participants, such as the intelligence services, police or military.

However, non-statutory inquiries cannot compel witnesses (a) to give evidence under oath or (b) to produce other evidence relevant to the inquiry's work. There is therefore a greater risk that uncooperative witnesses or core participants will impede a non-statutory inquiry's progress.

Notable non-statutory inquiries

Many historic public inquiries were non-statutory, such as the Profumo Inquiry (1963) and the Maze Prison Escape Inquiry (1983-1984). In the early 21st century, several high profile inquiries, including the Butler Inquiry and Chilcot Inquiry on aspects of the Iraq war were also non-statutory inquiries.

Since the 2005 Act was passed, non-statutory inquiries have become slightly less common. Two recent exceptions are the Daniel Morgan Independent Panel and the new inquiry into matters related to Sarah Everard's murder.

There are other recent examples of non-statutory inquiries or reviews being converted to statutory inquiries in order to strengthen their evidence powers. The Independent Inquiry into Child Sexual Abuse, the Brook House Inquiry and the Post Office Horizon Inquiry were all products of converted non-statutory inquiries or similar internal investigations.

Parliament's role

Public inquiries are not the same as parliamentary inquiries. The latter are carried out by a parliamentary committee either on its own initiative or at the behest of one or both Houses (e.g. the Parliamentary Commission on Banking Standards). Some have suggested that Parliament should have a more active role in commissioning public inquiries. For more on this, see:

- Public Administration Select Committee, Parliamentary Commissions of Inquiry (PDF), HC 473, 30 May 2008
- PACAC, Lessons still to be learned from the Chilcot Inquiry (PDF), HC 656, 16 March 2017
- Commons Library, Parliamentary Commissions of Inquiry

Other forms of government-led review

Sometimes Ministers, departments or agencies will establish reviews into operational matters or policy areas within their responsibility. A recent example is the Independent Review of Administrative Law commissioned by the Lord Chancellor and chaired by Lord Faulks, supported by a panel of academics and legal practitioners.

These entities will often be led by external or independent figures, who make a call for evidence and then report findings to a Minister, who may then publish the report. Such exercises will sometimes be referred to as "inquiries" but they are not "public inquiries". Similarly, some public inquiries can sometimes (confusingly) be referred to as "reviews".

1 Background

1.1 What are public inquiries for?

Public inquiries play an important role in public life. There are different types of public inquiry, but in this context "public inquiry" refers to those inquiries set up by Government ministers to investigate specific or controversial events. Lord Howe identified 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 often investigated the conduct of government and its officials. In the 20th century, judges would often be appointed to chair independent public inquiries, investigating events of public concern.[2]

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 (PDF), HC 51-I 606, 3 February 2005, p7-16

1.2 Different forms of public inquiry

Statutory public inquiries

Since its enactment, statutory public inquiries have normally been held under the Inquires Act 2005. They can also be held under other statutory provisions however, including bespoke ones. See for example the:

- Office of Inquiry into Child Sexual Exploitation in Gangs and Groups, held under section 3 of the Children Act 2004; and
- Northern Ireland Historical Institutional Abuse Inquiry, held under Inquiry into Historical Institutional Abuse Act (Northern Ireland) 2013

Non-statutory public inquiries

Non-statutory inquiries – those commissioned by a Government Minister, but which do not take place under the authority of an Act of Parliament – take three main forms:

- non-statutory ad hoc inquiries;
- inquiries by a Committee of the Privy Council; and
- Royal Commissions.

This paper explains what each of these types of non-statutory inquiry are, how they differ from statutory enquiries and each other, and provides some examples of each type of inquiry.

1.3 Defining a "non-statutory public inquiry"

It might not always be clear whether something non-statutory is an ad hoc public inquiry, or some other form of review or investigation. This is not always helped by the name given to certain investigatory or consultation exercises. For example:

- **Panel** is sometimes used to emphasise that an inquiry's work is being undertaken not just by its chair, but by a group of people, perhaps with different areas of expertise or experiences;
- **Review** is sometimes used in reference to public inquiries, but not all reviews (e.g. internal departmental reviews) are public inquiries;
- **Inquiry** is itself used to refer not just to public inquiries but to other forms of investigation.

1.4 Historic use of non-statutory public inquiries

Non-statutory inquiries have been used for a variety of reasons. Until 2005, the main statutory framework for independent public inquiries was the

Tribunal of Inquiry (Evidence) Act 1921. Analysis by the Public Administration Committee (PAC) in 2005 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 were under investigation.[4] The PAC report also emphasised that, a non-statutory inquiry like the Scott Inquiry (Arms to Iraq) could appear outwardly to operate like a statutory inquiry except that its witnesses and document gathering was entirely voluntary.[5]

1.5 Commissioning public inquiries post-2005

Non-statutory inquiries have continued to be commissioned despite the passage of the Inquiries Act 2005. There is some evidence, however, to suggest they are now less common. A National Audit Office report (PDF) suggests 10 of the 37 public inquiries announced between 2005 and 2017 were non-statutory.[6] However, only one non-statutory inquiries was launched after 2014. In the same period, nine new 2005 Act inquiries were announced.

Two notable non-statutory inquiries launched after the 2005 Act came into force are the Privy Council inquiry into the improper treatment of detainees (the Detainee Inquiry) established in 2010 and the ad hoc Harris Review (into self-inflicted deaths of young adults in custody) established in 2014.

Converting non-statutory inquiries

Sometimes non-statutory inquiries, investigations or reviews will be converted into a 2005 Act statutory inquiry. This notably happened with:

- the Independent Inquiry into Child Sexual Abuse
- the Brook House Inquiry
- the Post Office Horizon IT Inquiry

A conversion typically happens if a non-statutory inquiry encounters difficulties compelling witnesses and key actors to supply testimony or documents. One of the main drawbacks of non-statutory inquiries is that they have no formal legal powers. Inquests (in England and Wales) and Fatal Accident Inquiries (in Scotland) though themselves statutory, are sometimes

3 ibid p15; In 1966 a Royal Commission on Tribunals of Inquiry, under the chairmanship of Lord Justice Salmon, reviewed the 1921 Act. See Cmnd 3121, 1 November 1966. 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 National Audit Office, Investigation into government-funded inquiries, HC 836, 23 May 2018, pp34-36

converted into or replaced with 2005 Act inquiries to strengthen evidence powers or widen their investigatory remit.[7]

Why are non-statutory inquiries sometimes still used?

Non-statutory inquiries remain an option for Government departments as they provide flexibility on procedure, and can 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. Statutory inquiries can also hear evidence in private but the Inquiries Act 2005 operates on a presumption that hearings will be public.

Ministers typically justify commissioning a non-statutory inquiry by saying that the absence of onerous procedure rules will speed up its progress.[8]

However, the extent to which non-statutory approaches – in reality – speed up inquiries is disputed. Adam Wagner – a barrister and who has acted in both statutory and non-statutory inquiries – has suggested that the task of developing bespoke procedure rules (rather than having an "off-the-shelf" solution) is itself resource intensive and can slow an inquiry's progress.[9]

No presumption in favour of a statutory inquiry

As a matter of official Cabinet Office guidance, there is no presumption in favour of inquiries being conducted under the Inquiries Act 2005. Instead, the form of inquiry should be addressed on a case-by-case basis:

> 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.[10]

Some observers argue there should be a presumption in favour of using the Inquiries Act 2005.[11] Lord Justice Beatson told the House of Lords post-legislative scrutiny committee on the Act 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".[12]

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7 Commons Library, Inquests and public inquiries, CBP-8012

8 In its press statement of 5 October 2021 announcing the non-statutory inquiry into policing issues raised by the murder of Sarah Everard, the Home Office emphasised the speed advantage of the inquiry initially being non-statutory.

9 Adam Wagner, Twitter thread, 5 October 2021 [accessed 16 November 2021]

10 Cabinet Office, Inquiries Guidance (PDF) , p3

11 House of Lords Select Committee on the Inquiries Act 2005, The Inquiries Act 2005: post-legislative scrutiny, HL 143, 11 March 2014, para 61

12 ibid.

Chairing public inquiries

A judge or retired judge is often appointed to chair a public inquiry. Judicial chairs are generally recognised as a good fit, being independent, and having experience of listening to witnesses and dealing with procedural complexities. For other inquiries, however, different kinds of expertise may be preferable.

In 2013 Dr Bill Kirkup CBE, a consultant and former Associate Chief Medical Officer was appointed to chair 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 War Inquiry and the inquiry on Intelligence on Weapons of Mass Destruction respectively.

Notable concluded non-statutory public inquiries since Profumo

A non-exhaustive list

Inquiry	Chair	Type	Reported
The Profumo Affair	Lord Denning	Ad hoc	1963
Falkland Islands Review	Lord Franks	Privy Council	1983
Maze Prison Escape	Sir James Hennessy	Ad hoc	1984
Hillsborough Stadium Disaster	Lord Justice Taylor	Ad hoc	1989-90
Supervision and collapse of BCCI	Lord Bingham	Ad hoc	1992
Arms to Iraq	Sir Richard Scott	Ad hoc	1996
E-coli Outbreak (Scotland)	Prof Hugh Pennington	Ad hoc	1997
Sierra Leone Arms Investigation	Sir Thomas Legg/Sir Robin Ibbs	Ad hoc	1998
BSE Outbreak	Lord Phillips	Ad hoc	2000
Thames Safety/Marchioness Disaster	Lord Clarke	Ad hoc	2000-01
Hinduja Naturalisation Affair	Sir Anthony Hammond QC	Ad hoc	2001
Foot and Mouth Outbreak	Dr Ian Anderson	Ad hoc	2002
Equitable Life	Lord Penrose	Ad hoc	2004
Holyrood Building	Lord Fraser	Ad hoc	2004
Death of David Kelly	Lord Hutton	Ad hoc	2004
Soham Murders	Sir Michael Bichard	Ad hoc	2004
Military Intelligence: Iraq and WMDs	Lord Butler	Privy Council	2004
Deepcut Review (Soldiers' Deaths)	Nicholas Blake QC	Ad hoc	2006
Death of Zahid Mubarek	Sir Brian Keith QC	Ad hoc	2006
Mid-Staffordshire NHS Foundation Trust*	Robert Francis QC	Ad hoc	2010
Human tissue analysis in UK nuclear facilities	Michael Redern QC	Ad hoc	2010
Hillsborough Independent Panel	Rt. Rev. James Jones	Ad hoc	2012
Detainees (Rendition and Torture)	Sir Peter Gibson	Privy Council	2013
Morecambe Bay	Dr Bill Kirkup	Ad hoc	2015
Self-inflicted deaths in custody	Lord Harris	Ad hoc	2015
War in Iraq	Sir John Chilcot	Privy Council	2016
Gosport Independent Panel	Rt. Rev. James Jones	Ad hoc	2018
Independent Inquiry into Ian Paterson	Rt. Rev. Graham James	Ad hoc	2020
Daniel Morgan Independent Panel	Baroness O'Loan	Ad hoc	2021

* Not to be confused with the subsequent 2005 Act inquiry commissioned in 2010 with the same chair, which reported in 2013

2 Ad hoc inquiries

2.1 Overview

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 voluntary cooperation of those involved.

Non-statutory inquiries are often used when Government or public bodies are under investigation. A non-statutory approach might be chosen out of a desire to facilitate a more inquisitorial and less formal approach. It may also make it more straightforward for an inquiry to take evidence in private.

High profile ad hoc public inquiries from the last decade or so include the Hillsborough Independent Panel, the Harris Review into deaths in police custody, the Daniel Morgan Independent Panel, and the recently announced non-statutory public inquiry into policing matters related to the death of Sarah Everard.

This section gives the background on some, though by no means all, of the most prominent and recent non-statutory ad hoc inquiries.

2.2 Scott Inquiry - The Arms to Iraq (1992-1996)

The Inquiry into the Export of Defence Equipment and Dual-Use Goods to Iraq and Related Prosecutions (the "Arms to Iraq Inquiry") was established in November 1992,[13] 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.[14]

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.[15] Witnesses were

13 HC Deb 10 November 1992 c745
14 HC Deb 23 November 1992 c651
15 HC Deb 16 November 1992 c76W

cross-examined by Counsel to the Inquiry Presley 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.[16] The report was published in 5 volumes and consisted of 1,806 pages. Scott made a series of recommendations on export control procedures, the use of Public Interest Immunity (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 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.

The report was made available to selected ministerial recipients eight days before the publication date.[17] Previously, extracts of the draft report had been sent to individuals criticised, for comment, over a period of months before publication.[18] 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,[19] 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.[20]

2.3 Hutton Inquiry – Death of David Kelly (2003-2004)

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

16 See Erskine May, para 13.6. The Parliamentary Papers Act 1840 "privileges" papers published by order of Parliament, meaning legal proceedings cannot be brought (mainly, but not necessarily, for libel) with regard to anything contained in it, or in connection with its publication. The 1840 Act overturned the judgment in *Stockdale v Hansard* (1839) 9 Ad & Ell 96 in which the Queen's Bench held that mere printing of material did not privilege it if it contained defamatory material.

17 HL Deb 13 February 1996 [Business Of The House: Debates This Day] c503

18 Report of the Inquiry into the Export of Defence Equipment and Dual-Use Goods to Iraq and Related Prosecutions, HC 115, 15 February 1996, para B2.25

19 HC Deb 26 February 1996 [Scott Report] cc589-690

20 The Times, Ministers accused of discrediting arms-to Iraq report, 8 February 1996

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.[21]

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 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…"[22]

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."[23]

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

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21 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.

22 William Twining, 'Some wider legal aspects', in WG Runciman ed, Hutton and Butler: Lifting the lid on the workings of power, 2004, p42

23 ibid, p44

> ...no legal obligation upon the Government to set up the Hutton Inquiry at all. It was a purely political decision. Dr David Kelly's suicide would, in ordinary circumstances, have been dealt with by Coroner's inquest; and the recent decision of the House of Lords, adjusting the domestic legislation to Convention imperatives, would have allowed for a sufficiently deep investigation into the underlying causes.[24]

The Inquiry reported on 28 January 2004. The report was published as a House of Commons Paper (a "return to the House") in the same way as the Scott Report was published, to prevent possible libel actions.[25]

2.4 Death of Zahid Mubarek (2004-2006)

David Blunkett, the then Home Secretary, announced on 29 April 2004 an inquiry into the murder of Zahid Mubarek at Feltham Young Offender Institution on 21 March 2000. This followed a House of Lords ruling in October 2003, that the state was "...under a duty to publicly investigate, with effective participation by Zahid's family, the death of Zahid in custody".[26] 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.[27]

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.[28]

The Inquiry was conducted in two phases: phase one investigated the events leading up to the death of Zahid Mubarek; phase two considered 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

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24 ibid, p51. This was one of four occasions when inquests had been adjourned under section 17A of the Coroners Act 1988 pending the outcome of public inquiries

25 Report of the Inquiry into the Circumstances Surrounding the Death of Dr David Kelly C.M.G., HC 247, 28 January 2014

26 *R (Amin) v Secretary of State for the Home Department* [2003] UKHL 51

27 *R (Amin) v Secretary of State for the Home Department* [2002] EWCA Civ 390

28 Zahid Mubarek Inquiry, Final report, 29 June 2006 p555

give evidence and the Chairman stated that he did not consider them to be "critical witnesses."[29]

The then Home Secretary, Dr John Reid, announced by written ministerial statement on 29 June 2006 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.[30] The report was published as a House of Commons Paper.[31]

2.5 The Deepcut Review (2004-2006)

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

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

The Minister stated:

> In commissioning this review I am well aware that its scope and nature may not satisfy all those, members of this House included, who have been calling for a formal public inquiry into some or all non-combat deaths in the armed forces or for a public inquiry into the deaths at Deepcut. These are very different demands. By concentrating on the circumstances of the four deaths at the army base at Deepcut this review will focus on the issue at the heart of current public concern.
>
> The review will have the full co-operation of the Ministry of Defence and, I am pleased to say, Surrey police. A review can analyse issues much more quickly than a public inquiry and would not interfere with other current investigations or proceedings. My expectation is that the rigour and independence of the review will produce value to all parties concerned. It is the right way to proceed and I would urge all those who may be sceptical of what the review can achieve to suspend their criticism and to lend it their full support.[32]

29 ibid. paras 2.38 to 2.40
30 HC Deb 29 June 2006 [Zahid Mubarek Inquiry] c19WS
31 Report of the Zahid Mubarek Inquiry (PDF), HC 1082, 29June 2006
32 HC Deb 15 December 2004 c133WS

The Review reported in March 2006[33] and the Minister made an oral statement on the matter to the House.[34] 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."[35]

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.[36]

The Government's response to the Review was published in June 2006.[37]

2.6 Hillsborough Independent Panel (2009-2012)

Background

On 15 April 1989, at an FA Cup Semi-Final match between Liverpool and Nottingham Forest held at Hillsborough Stadium in Sheffield, 94 fans died in a crush, with an estimated 766 people suffering non-life-threatening injuries. In the days and years that have followed, a further 3 deaths have been attributed to the events that took place on that day.[38]

A judge-led public inquiry into the Hillsborough Stadium Disaster, led by Lord Justice Taylor, was carried out between 1989 and 1990. The Taylor Report, which came in the form of an interim report in 1989 (PDF) and then a final report in early 1990 (PDF), attributed primary responsibility for the deaths to a failure of police operations. Lord Justice Taylor was especially critical of senior officers in South Yorkshire Police, who had been "defensive and evasive witnesses" in front of the inquiry and shown no willingness to accept

33 A Review of the circumstances surrounding the deaths of four soldiers at Princess Royal Barracks, Deepcut, between 1995 and 1992, HC 795, 29 March 2006

34 HC Deb 29 March 2006, c853-

35 The Deepcut Review, Frequently asked questions

36 HL Deb 19 April 2006, c1115

37 The Government's Response to the Deepcut Review (PDF), Cm 6851, 13 June 2006

38 David Conn and Robyn Vinter, Liverpool fan's death ruled as 97th of Hillsborough disaster, The Guardian28 July 2021

culpability for the events that unfolded.[39] He also concluded that the allegations that supporters had contributed to the disaster through drunken disorderliness and attempting to gain entry without tickets were unsubstantiated.[40]

Among the final Taylor Report's recommendations was the phasing-out of standing areas in the top two divisions of English football and the top division of Scottish football.[41]

Separately to the Taylor inquiry, a coroner's inquest was conducted into the events of 15 April 1989. The jury at that coroner's inquest controversially returned the finding that the deaths had been "accidental".[42] This effectively prevented, at that time, criminal charges from being brought in respect of the (then) 95 fans who had died.

There were suggestions, even in the late 1990s, that important evidence had been withheld from the Taylor Inquiry and the coroner's inquest, preventing a full and considered view from being reached on the role and culpability of the police. A review was conducted by Lord Justice Stuart-Smith shortly after the 1997 General Election. He controversially found that new information regarding concealment of evidence by the police would not have significantly impacted Lord Taylor's original conclusions.[43]

Setting-up an Independent Panel

Despite the findings in the Taylor Report that responsibility for the disaster lay principally with the police, contrary narratives blaming Liverpool fans for the crush persisted in the ensuing two decades. Critical aspects of the events of 15 April 1989 and the police response thereafter, remained unresolved. This was despite a coroner's inquest into the deaths, internal police disciplinary proceedings, judicial review proceedings, the Stuart-Smith review, and criminal investigations.

One of the challenges faced by the families and survivors of the disaster was that key documentation relating to the incident was not in the public domain. As the Hillsborough Independent Panel itself would later say in its report:

> Despite [a] range of inquir[ies] and investigation[s], many bereaved families and survivors considered that the true context, circumstances and aftermath of Hillsborough had not been adequately made public. They were also profoundly concerned that following unsubstantiated allegations made by senior police officers and politicians and reported

39 The Hillsborough Stadium Disaster, Interim Report (PDF) , Cm765, August 1989, para 280
40 ibid. paras 196-208
41 The Hillsborough Stadium Disaster, Final Report (PDF), Cm962, January 1990
42 Paddy Shennan, Hillsborough inquests: a look back at the original Sheffield hearings of 1990/91, Liverpool Echo, 29 March 2014
43 BBC News, Hillsborough inquiry by Blair Government criticised, 25 October 2011

> widely in the press, it had become widely assumed that Liverpool fans' behaviour had contributed to, if not caused, the disaster.[44]

Following a long-running campaign ("Justice for the 96") and representations made to the Home Secretary, the Hillsborough Independent Panel (HIP) was announced in December 2009.[45] The HIP was chaired by the then Bishop of Liverpool Rt. Rev. James Jones. The panel was given five tasks in its terms of reference, to:

- oversee full public disclosure of relevant government and local information within the limited constraints set out in the disclosure protocol;
- consult with the Hillsborough families to ensure that the views of those most affected by the tragedy are taken into account;
- manage the process of public disclosure, ensuring that it takes place initially to the families of the victims and other involved parties, in an agreed manner and within a reasonable timescale, before information is made more widely available;
- in line with established practice, work with the Keeper of Public Records in preparing options for establishing an archive of Hillsborough documentation, including a catalogue of all central governmental and local public agency information and commentary on any information withheld for the benefit of the families or on legal or other grounds
- produce a report explaining the work of the panel and the extent to which disclosure adds to public understanding of the tragedy and its aftermath.[46]

In January 2010, the Home Secretary made a written statement confirming the appointment of seven further panel members.[47] It met for the first time in February of that year.

Was the Independent Panel a public inquiry?

The remit of the Independent Panel was, in important respects, different from a conventional public inquiry. It did not take oral evidence in hearings, nor did it cross-examine those who provided evidence. Instead, it was made partly responsible for securing access to, making sense of, and ultimately disclosing official documents into the public domain.

The Hillsborough Independent Panel's role was, in part, to help the Government ensure a responsible disclosure of documents in light of the fact

44 The Report of the Hillsborough Independent Panel (PDF), HC 581, 12 September 2012, p4
45 HC Deb 15 December 2009 [Hillsborough Disaster] c112WS
46 ibid.
47 HC Deb 26 January 2010 [Hillsborough Independent Panel] c50WS

that it was waiving what was then the "thirty-year rule" on relevant confidential documents being made available to the National Archives.[48]

The Report

The panel report (PDF), which had 12 distinct chapters addressing different aspects of the disaster and the institutional response to it, was published in September 2012.[49] The House of Commons debated the report on 22 October 2012.[50]

Like the Taylor report, the Independent Panel concluded that the policing operation was primarily responsible for the circumstances giving rise to the crush, and identified failed opportunities to learn from previous safety incidents both at that football ground and others.[51] It deprecated attempts by the police and others at the time and subsequently to suggest that drunken or disorderly behaviour by fans was a contributing factor to the incident: something for which there was "no evidence".[52] The emergency services response also attracted some criticism as to its efficacy, but no quantifiable link could be made between that and the number of lives lost.[53]

Beyond the incident itself, the Panel concluded that there was evidence of a cover-up by the police. It highlighted evidence of tampered witness statements and a concerted PR campaign to deflect blame away from the police and towards the fans involved in the crush.[54] It also found serious deficiencies in the original coroner's inquest and the coroner's subsequent statements to the Stuart-Smith review.

The Panel found that the original coroner's inquest, which arrived at a conclusion that the deaths were "accidental", had focused on irrelevant factors such as the blood alcohol levels of those who died, and had generalised about the medical evidence regarding cause and time of death. It had also failed to take into account crucial evidence from after 3.15pm on the day of the incident, which would have shed light on the extent to which many of the deaths could have been avoided even after the crush had taken hold.[55]

Aftermath

The new evidence uncovered, and conclusions reached, about the coroner's inquest proved highly important. The Attorney General took the exceptional step of asking the High Court to quash the original inquest's findings, a

48 From 2013 onwards, the 30-year rule has been gradually shortened. By 2022, official documents will instead become public after only 20 years. See National Archives, Transparency: the 20-year rule

49 The Report of the Hillsborough Independent Panel (PDF), HC 581, 12 September 2012

50 HC Deb 22 October 2012 [Hillsborough] c719

51 The Report of the Hillsborough Independent Panel (PDF), HC 581, 12 September 2012 Chapters 1-3

52 ibid. Chapters 5, 11 and 12

53 ibid. Chapter 4

54 ibid. Chapters 11 and 12

55 ibid. Chapters 5 and 10

request that was granted in December 2012.[56] This gave rise to a fresh set of inquests, and the jury reached a 7-2 majority verdict in favour of "unlawful killing" in April 2016.[57] This led to further criminal investigations, and the charging and trial of the match commander David Duckenfield. He was subsequently acquitted on 95 counts of gross negligence manslaughter in November 2019.[58]

Several individuals were charged with perverting the course of justice by altering some 68 police witness statements. However, they were acquitted in May 2021. The presiding judge concluded that, because the original Taylor inquiry had been non-statutory, the provision of falsified or misleading testimony could not, as a matter of criminal law, constitute "perverting the course of justice" as evidence had not been given on oath.[59]

2.7 The Morecambe Bay Investigation (2013-2015)

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 (FGH).[60] 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.[61] 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.

56 Owen Gibson, High court quashes Hillsborough inquest verdicts, The Guardian, 19 December 2012

57 BBC News, Hillsborough inquests: Fans unlawfully killed, jury concludes, 26 April 2016

58 David Conn, How David Duckenfield's trial left Hillsborough families distraught again, The Guardian, 28 November 2019

59 *R v Metcalf, Denton and Foster* (PDF), Ruling on Submissions of No Case to Answer, 26 May 2021, para 47

60 It should be noted that in the House of House of Lords Select Committee on the Inquiries Act 2005, the Ministry of Justice said it did not regard Morecambe bay to be an inquiry but an investigation. The Committee responded that this was a distinction without a difference. See The Inquiries Act 2005: post-legislative scrutiny (PDF) , HL 143, 11 March 2014, p26

61 The Report of the Morecambe Bay Investigation (PDF), March 2015

2.8 The Harris Review – Self-inflicted deaths in custody (2014-2015)

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.[62]

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.[63]

2.9 Daniel Morgan Independent Panel (2013-2021)

Daniel Morgan, a private investigator, was murdered in southeast London on 10 March 1987. Despite five criminal investigations focusing on the murder nobody was successfully prosecuted. This led to calls for an inquiry from Daniel Morgan's family, as part of a long campaign for those responsible for his murder to be brought to justice.

On 10 May 2013, in a written statement to Parliament, the then Home Secretary, Theresa May, announced that the Government was setting up the Daniel Morgan Independent Panel (DMIP) to review police handling of the murder investigation.[64] She appointed the retired Lord Justice of Appeal, Sir Stanley Burnton as the chair of the panel, but for personal reasons he resigned the position in November 2013. He was replaced in July 2014 by Baroness Nuala O'Loan, a former Police Ombudsman in Northern Ireland.

The remit of the Panel was, as its website put it, "to shine a light on" the circumstances of Daniel Morgan's murder, its background and the handling of

62 HC Deb 6 February 2014 c36WS

63 The Harris Review, Changing Prisons, Saving Lives (PDF), Cm 9087, 1 July 2015

64 HC Deb 10 May 2013 [Daniel Morgan] c18WS

the case over the period since 1987. In so doing the Panel sought to address matters relating to:

- police involvement in Daniel Morgan's murder;
- the role played by police corruption in protecting those responsible for the murder from being brought to justice and the failure to confront that corruption; and
- the incidence of connections between private investigators, police officers and journalists at the News of the World and other parts of the media, and alleged corruption involved in the linkages between them.

Eight years to a final report

The DMIP took just over eight years to publish its final report, which was laid before Parliament on 15 June 2021.[65] This was a longer period from announcement to conclusion than the infamously drawn-out Chilcot Inquiry and makes it the longest running inquiry process, whether statutory or non-statutory, in the 21st century.

Criticisms of the Metropolitan Police

The Panel was highly critical of the Metropolitan Police. It concluded:

> The family of Daniel Morgan suffered grievously as a consequence of the failure to bring his murderer(s) to justice, the unwarranted assurances which they were given, the misinformation which was put into the public domain, and the denial of the failings in investigation, including failing to acknowledge professional incompetence, individuals' venal behaviour, and managerial and organisational failures. The Metropolitan Police also repeatedly failed to take a fresh, thorough and critical look at past failings. Concealing or denying failings, for the sake of the organisation's public image, is dishonesty on the part of the organisation for reputational benefit and constitutes a form of institutional corruption.[66]

One recommendation made by the DMIP was that law enforcement agencies, including the police, should be made subject to a "statutory duty of candour". It urged the Home Office to bring forward legislation to implement this.[67]

The Chief Commissioner of the Metropolitan Police, Dame Cressida Dick, denied that the force is institutionally corrupt and denied the findings of the Panel that the Met had obstructed its investigation.[68]

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65 Report of the Daniel Morgan Independent Panel (PDF), HC 11-I, 15 June 2021

66 ibid. para 60

67 ibid. para 60 and Chapter 10

68 BBC News, Daniel Morgan: Cressida Dick denies institutional corruption, 16 June 2021

2.10 Death of Sarah Everard – Policing matters (2021-present)

Background

In late September 2021, a serving Metropolitan Police Officer was given a whole life sentence for the kidnap, rape and murder of Sarah Everard. It emerged that the officer in question had presented himself as an off-duty police officer, and had used the pretence of Covid-19 public health restrictions to purport to "arrest" Sarah Everard as part of her kidnap.

Concerns were also raised about his previous conduct while serving in both the Metropolitan Police and Kent Police. The implication was that the police could and should have done more, both to prevent a dangerous individual from continuing to serve as a police officer, and to have mitigated the risk of harm arising either specifically to Sarah Everard or to the public at large.

Non-statutory inquiry announced

Following the sentencing decision, the Home Secretary announced via a press release in October that she would be setting up a non-statutory public inquiry.[69] The press release indicated the likely remit of the inquiry:

> The first part will examine [the murderer's] previous behaviour and will establish a definitive account of his conduct leading up to his conviction, as well as any opportunities missed, drawing on the Independent Office for Police Conduct's (IOPC) investigations, once concluded.
>
> The second part will look at any specific issues raised by the first part of the inquiry, which could include wider issues across policing – including vetting practices, professional standards and discipline, and workplace behaviour.

The Government has explained the decision to hold a non-statutory inquiry adding:

> Given the need to provide assurance as swiftly as possible, this will be established as a non-statutory inquiry, but can be converted to a statutory inquiry if required.

In November, the Home Secretary announced that the Scotland's former Lord Advocate Dame Elish Angiolini would chair the inquiry.[70] The terms of reference for the first part of the inquiry were published by the Home Secretary on 10 January 2022. The Angiolini Inquiry has yet to set out its

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69 Home Office, Press release: Inquiry launched into issues raised by Couzens conviction, 5 October 2021

70 Home Office, Press Release: Home Secretary appoints chair to Sarah Everard inquiry, 22 November 2021

intentions for how phase 1 will be carried out (including the gathering of evidence or holding of hearings).

Linked Investigations and Reviews

The public inquiry will take place against the backdrop of several other police investigations and reviews, and supplementary to the criminal proceedings that concluded with sentencing.

Independent Office for Police Conduct (IOPC) Investigations

When the inquiry was announced, there were already two confirmed IOPC investigations directly concerned with the convicted officer in question, and a further four linked investigations.[71]

Thematic Inspections from HM Inspectorate

Shortly before the sentencing of Sarah Everard's murderer, Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) published a thematic report entitled Police response to violence against women and girls: Final inspection report.[72]

When announcing the public inquiry, the Home Secretary confirmed that she had requested an additional thematic inspection, to focus on vetting and counter-corruption procedures In police forces.

Metropolitan Police review of culture and standards

The Chief Commissioner of the Metropolitan Police, Dame Cressida Dick, announced that there would be an independent review of culture and standards within the Met. This is to be carried out by Baroness Casey of Blackstock.[73]

71 Independent Office for Police Conduct, Update on IOPC investigations linked to Wayne Couzens, 4 October 2021

72 HMICFRS,

73 Metropolitan Police, Baroness Casey of Blackstock to lead review of Met standards and culture, 8 October 2021

3 Committees of Privy Counsellors

A Committee of Privy Counsellors is a variation on the non-statutory ad hoc form of inquiry. Its chair and panel are Privy Counsellors, which allows for sensitive national security information to be seen by the Committee that the Government could not otherwise make available. This is because Privy Counsellors can be briefed "on Privy Council terms" about these sensitive matters and have taken an oath or affirmation to keep the relevant information disclosed secret.[74]

Four notable public inquiries established as Committees of Privy Counsellors in the modern era are detailed in the table below:

Non-statutory inquiries convened as Committees of the Privy Council
A non-exhaustive list

Inquiry	Chair	Reported
Falkland Islands Review	Lord Franks	1983
Military Intelligence: Iraq and WMDs	Lord Butler	2004
Deepcut Review (Soldiers' Deaths)	Nicholas Blake QC	2006
War in Iraq	Sir John Chilcot	2016

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.[75]

74 See also Commons Library, The Privy Council, CBP-7460, 8 February 2016, pp11-13

75 HC Deb 8 July 1982 cc469-70

3.1 Franks Inquiry – Falkland Islands (1983)

Establishing the inquiry

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 [sic.] 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.[76]

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 at the start of a Commons debate on 8 July 1982.[77] MPs approved the Government's motion to endorse the proposed approach. The then Opposition Leader, Michael Foot, had already put forward the names of two Privy Counsellors for the inquiry.[78]

Inquiry work and report

The Review took evidence in private from several witnesses including the Prime Minister. The report was published in January 1983.[79]

On 25 January 1983, Mrs Thatcher moved an amendable motion in the House of Commons: "that this House takes note of the Report of a Committee of Privy Counsellors on the Falkland Islands Review".[80] This ensured that the House would have the opportunity to debate the findings of Lord Franks and his Committee.

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76 HC Deb 6 July 1982, c51W

77 HC Deb 8 July 1982 cc469-70

78 ibid.

79 Falkland Islands Review, Report of a Committee of Privy Counsellors (PDF), Cmnd 8787, January 1983

80 HC Deb 25 January 1983 c789

The Speaker selected the amendment in the name of the Leader of the Opposition. Had the Government's motion been amended it would, in addition to taking note of the Report, have been overtly critical of the Government's response in the months leading up to the Argentinian invasion. After two days of debate the amendment was defeated on a vote, and the main question was put and agreed to.[81]

3.2 Butler Inquiry – Iraq and Weapons of Mass Destruction (2004)

Establishing the 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.[82] 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 on WMD, in the light of the difficulties of operating in countries of concern.[83]

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.

81 HC Deb 26 January 1983, c992

82 HC Deb 3 February 2004, c625

83 Review of Intelligence on Weapons of Mass Destruction: Report of a Committee of Privy Counsellors (PDF), HC 898, 14 July 2004, p1

Composition of the inquiry committee

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". [84] 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. [85]

Inquiry work

The Committee announced on 12 February 2004 that it would meet in private. 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. [86]

Publication of report and Parliamentary scrutiny

The report was published on 14 July 2004. [87] 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. [88] The statement was followed by questions, and the debate ended at 2.46pm.

A further debate on the report was held on 20 July 2004, on a motion for the Adjournment of the House. [89] At the end of the debate, Tam Dalyell divided the House. This was described by Michael White of The Guardian as "a clutch of mainly Labour anti-war MPs [staging] a symbolic vote against the procedural

84 BBC News, Tories withdraw from WMD inquiry, 1 March 2004

85 HC Deb 3 February 2004, c631

86 Review of Intelligence on Weapons of Mass Destruction, Butler review invites evidence, News release, 12 February 2004

87 Review of Intelligence on Weapons of Mass Destruction: Report of a Committee of Privy Counsellors (PDF), HC 898, 14 July 2004

88 HC Deb 14 July 2004, c1431

89 HC Deb 20 July 2004 c195

motion to adjourn the house".[90] The vote was lost by 41 votes to 255, and the motion for the Adjournment lapsed.[91]

3.3 Chilcot Inquiry – The Iraq War (2009-2016)

Establishing the inquiry

On 15 June 2009 the Prime Minister, Gordon Brown, announced that there would be a Privy Council 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.[92]

Gordon Brown explained that the inquiry would have full access to relevant information, including secret material.[93] He emphasised that no British document or witness would be beyond scope. The final report would disclose everything except for "the most sensitive information".[94]

Criticisms of the inquiry approach

In response to the statement there was some criticism of the process being adopted, in particular the decision to hold the inquiry in private.[95] 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:

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

91 HC Deb 20 July 2004 cc284-287

92 HC Deb 15 June 2009 [Iraq] cc21-24

93 ibid.

94 ibid.

95 Jonathan Steele, Skewed and in secret, this Iraq inquiry is a scandal, The Guardian, 16 June 2009; Patrick Wintour, David Cameron says he favours a more open approach to Iraq inquiry, The Guardian, 16 June 2009; Philip Webster, Gordon Brown forced into Iraq inquiry secrecy climbdown, The Times, 19 June 2009

> 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.[96]

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:

> 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.[97]

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

> ... 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.[98]

Publication of the report

There was growing controversy throughout 2014 and thereafter as the publication date for the inquiry's report seemed repeatedly to be postponed. The Iraq Inquiry's report was eventually published on 6 July 2016. The full report and the executive summary can be accessed online. As with other Privy Council inquiry reports, the documents were published as Return to an Address.[99] This prevented report giving rise to any defamation proceedings.

On the day of publication, 6 July 2016, the Prime Minister made a statement to the House of Commons on the report.[100] Two hours of debate followed. On 13 and 14 July 2016, the Commons debated the Report of the Iraq Inquiry.[101]

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96 HC Deb 15 June 2009 c26

97 HC Deb 24 Jun 2009, c817

98 Iraq Inquiry website: About the Inquiry

99 The Report of the Iraq Inquiry (PDF), HC 264, 6 July 2016

100 HC Deb 6 July 2016 cc883-922

101 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.

The report concluded that the UK had initiated military action before alternative courses of action had been exhausted, and that this undermined the role of the UN Security Council. It also criticised the "far from satisfactory" process by which the Government sought to establish a legal basis for intervention and the lack of military and strategic preparedness for the aftermath of the invasion.

Subsequent Parliamentary scrutiny

On 14 September 2016, Sir Jeremy Heywood, the then Cabinet Secretary, gave oral evidence to the Public Administration and Constitutional Affairs Select Committee as part of its "lessons to be learned" inquiry into Chilcot. During the evidence, Sir Jeremy Heywood stated:

> By far and away the most important thing about the whole Chilcot Inquiry is: do you have a culture in which senior officials and Ministers meeting around, and external experts as well, feel that it is possible to offer an alternative view to the prevailing wisdom, so as avoiding group think?[102]

On 2 November 2016, the Liaison Committee (a House of Commons Select Committee made up Select Committees Chairs) 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.[103]

3.4 Gibson Inquiry – Detainees (2010-2013)

On 6 July 2010, the Prime Minister David Cameron announced there would be a judge-led non-statutory inquiry into whether Britain was involved in the

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102 Public Administration and Constitutional Affairs Committee, Oral evidence: Chilcot Inquiry: Lessons for the Machinery of Government (PDF), HC 656, 14 September 2016, Q54

103 Liaison Committee, Oral evidence: Follow up to the Chilcot Report (PDF), HC 869, 2 November 2016, Q35

improper treatment of detainees.[104] 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 was already a Privy Counsellor, and so could receive evidence on "Privy Council terms". The other two were sworn in as Privy Counsellors before their appointment to the panel.

The terms of reference of the inquiry included the following:

> 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 detention at Guantanamo Bay of UK nationals and former lawful UK residents.[105]

On 18 January 2012 the then Justice Secretary, Kenneth Clarke, made a statement in the House of Commons about the Inquiry. The Government had concluded that the inquiry would not be able fully to conduct its work while protracted police investigations were ongoing. He said:

> 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.[106]

The Detainee Inquiry report was published by the Government on 19 December 2013.[107] 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. The Government had promised, in January 2012, to hold an "independent, judge-led inquiry, once all police investigations have concluded".[108] To date, no such inquiry has been established.

104 HC Deb 6 July 2010 [Treatment of Detainees] c176
105 The Report of the Detainee Inquiry (PDF), December 2013, p4-5
106 HC Deb 18 January 2012 [Detainee Inquiry] c751
107 The Report of the Detainee Inquiry (PDF), December 2013, p4-5
108 HC Deb 18 January 2012 [Detainee Inquiry] c752

4 Royal Commissions

Royal Commissions (RCs), like non-statutory departmental inquiries, are ad hoc investigatory or advisory committees, established by Government initiative and without statutory powers to compel the attendance of witnesses or the production of documents. Formally, they are established by the Monarch (hence the name "Royal Commission") but the decision has, since the 19th century, always been taken on the advice of one or more senior Government Ministers.

Bradley and Ewing said of Royal Commissions in 2003:

> For substantial matters where greater formality is considered appropriate and where time is not of the essence, a royal commission may be appointed instead [of other forms of public inquiry]. 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.[109]

Royal Commissions have become extremely rare, with no new ones being established in the two decades after the Royal Commission on House of Lords Reform in 1999. Former Prime Minister Harold Wilson infamously encapsulated the common criticism of Royal Commissions: that they "take minutes and waste years".

A Royal Commission on criminal justice reform was announced in the 2019 Conservative Party manifesto, but at the time of writing it has not been established.

4.1 Similarity to other forms of investigation or review

Royal Commissions are normally used to consider matters of broad policy rather than to investigate a particular event or series of events.

Richard Chapman argued in 1973 that "although particular institutions may be called, for example, Royal Commissions, Commissions, Committees, or Working Parties, there is in practice little difference between them"; the

[109] A.W. Bradley and K.D. Ewing, Constitutional and administrative law, 2003, p305

"main difference" between Royal Commissions and various departmental bodies being "in matters of prestige and status".[110]

Functionally, RCs are almost – and in some cases exactly – the same as an arm's length departmental "review" of policy.[111] Both RCs and independent reviews look at a policy area. They then report their evidence, conclusions and recommendations to a Minister. The Minister then decides to what extent and when those findings are to be published and implemented.

Usually, Royal Commission reports are published as Parliamentary papers. The main difference between an RC and a departmental review is that there is a greater expectation, generally, that the former will be published. There are many examples, however, of policy reviews being published even though they lacked the prestige and formality of a Royal Commission, for example, the Independent Review of Administrative Law.

4.2 Royal Commissions and constitutional reform

During the 20th century, Royal Commissions were sometimes formed to consider constitutional matters, and in certain cases these were seen as a "response" to political events. For example, the Royal Commission on Scottish Affairs (which reported in 1954) and the Royal Commission on the Constitution (which reported in 1973) both followed periods of rising nationalism in parts of the United Kingdom.

Royal Commissions have also been used to formulate new systems of local government. The Royal Commission on London Government reported in 1923, followed by others on Local Government in Greater London (1960), Local Government in England (1969) and Local Government in Scotland (also 1969).

4.3 Criticisms of Royal Commissions

The most famous criticism of Royal Commissions is attributed to the former Labour Prime Minister Harold Wilson. His view was that they were very easy to set up, but ultimately took far too long to do their work and were an exercise in policy procrastination.

Before the general election of 1964, the Conservative Government had proposed establishing a Royal Commission on industrial relations. Launching his party's election campaign at the Trades Union Congress in September 1964, Wilson set himself against any such inquiry, declaring that a Labour government would "legislate to put the matter of legal interpretation beyond

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110 Richard Chapman, The Role of Commissions in Policy Making, 1973, p9 & p174.

111 For example, the Independent Review of Administrative Law (PDF), chaired by Lord Faulks, or the Independent Human Rights Act Review, chaired by Sir Peter Gross.

all doubt [...] I see no need for a Royal Commission" which, he added, "will take minutes and waste years".[112]

Shortly after becoming Prime Minister, Wilson established the Royal Commission on Trade Unions and Employers' Associations in 1965. Indeed, during his two periods as premier, Wilson created ten different Royal Commissions. As Pepita Barlow has observed, Royal Commissions came to be viewed by some "as diversions, attempts to defer difficult issues".[113]

Sir Alan Herbert, an inter-war Independent MP, also alluded to long timescales, remarking that "a Government department appointing a royal commission is like a dog burying a bone – except that a dog does eventually return to the bone".[114]

4.4 Decline in popularity of Royal Commissions

Ad hoc Royal Commissions were a lot more common in the 1960s and 70s. Since the 1980s, however, they have become much rarer and in the 21st century they have fallen almost completely out of use.

Part of the reason for this was the perception that Royal Commissions were a lethargic way of reviewing matters of public concern compared to other investigatory or review mechanisms. The then Government in 2006 noted in answer to a written question that the average Royal Commission lasted between two and four years.[115] The Salmon Royal Commission on Tribunals of Inquiry had said of Royal Commissions themselves 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.[116]

The last time a Royal Commission was established was in 1999, when the then Labour Government Commissioned a Royal Commission to examine options for House of Lords Reform. It reported in 2000.[117]

4.5 Standing Royal Commissions

Most Royal Commissions have been set up on an ad hoc basis, carrying out a time-bound piece of work and thereafter disbanding. However, others were

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112 Harold Wilson, Speech to Trades Union Congress, 7 September 1964.

113 Pepita Barlow, The lost world of royal commissions, Institute for Government, 19 June 2013

114 ibid.

115 HC Deb 20 July 2006 [Royal Commissions] c627W

116 Report of Royal Commission on Tribunals of Inquiry, Cmnd 3121, 1 November 1966

117 A House for the Future: Royal Commission on the reform of the House of Lords, Cm 5434, 20 January 2020

established on a "standing" basis. A standing Royal Commission on Environmental Pollution, created in 1970, was abolished by the Coalition Government in 2011.

Other examples of former standing Royal Commissions include those on:

- Historical Manuscripts (joined with the Public Record Office to form the National Archives in 2003)
- The Historical Monuments of England (1908-1999)
- The Ancient and Historical Monuments of Scotland (1908-2015)

Two standing Royal Commissions remain in existence, namely those on:

- The Ancient and Historical Monuments of Wales (established in 1908); and
- The Exhibition of 1851 (which distributes income from surplus funds associated with the Great Exhibition to promote scientific and artistic education)

4.6 A return of Royal Commissions?

The 2019 General Election gave rise to commitments, from both major parties, to establish one or more Royal Commissions. The Conservative Party manifesto committed to establish one on the criminal justice process.[118] The Labour Party manifesto promised to establish ones on (a) a public health approach to substance abuse and (b) health and safety legislation.[119]

Marcus Shepheard, a Senior Researcher with the Institute for Government, expressed scepticism during the election period that a Royal Commission was a suitable vehicle for these areas of policy review.[120] That Royal Commissions were typically composed of "academics and non-parliamentary experts", he said, greatly reduced their ability to ensure that Government adopted and followed through with policy recommendations. He suggested that the 2012 Parliamentary Commission on Banking Standards would be a much better template for these policy reviews to follow.

Royal Commission on Criminal Justice (forthcoming)

In the 2019 Conservative General Election manifesto, a commitment was made to establish "a Royal Commission on the criminal justice process".

As of November 2021, this body still has not been set up. In July 2021, Lord Wolfson of Tredgar, Justice Minister in the House of Lords, explained that the

118 Conservative Party General Election Manifesto 2019 (PDF), p19

119 Labour Party General Election Manifesto 2019 (PDF), pp44 and 62

120 Marcus Shepheard, Royal commissions are outdated and will not deliver real change, 22 November 2019

work had been "paused" because of Covid-19, but that the intention was still for it to go ahead.[121] As of November 2021, this body still has not been set up.

4.7 Previous Royal Commissions

Some Royal Commissions have had a direct impact on legislation and/or public opinion, others have not. In a 2013 piece, the Institute for Government looked at the mixed record of certain royal commissions.[122] What follows are some examples of Royal Commissions and their impact or lack thereof.

RC on Legal Services (1976-1979)

The Royal Commission on Legal Services (commonly referred to as the Benson Commission, named after its chair Lord Benson) was established in 1976 and reported in 1979, with 369 recommendations. The government took four years to respond and did not create a Council for Legal Services, as recommended. Lord Benson's proposal that the Lord Chancellor should have a junior minister in the House of Commons was only acted upon 12 years later.

RC on Criminal Procedure (1977-1981)

The Royal Commission on Criminal Procedure (established 1977) was an example of one with greater impact on policy development. Its 1981 report directly influenced legislation governing police powers in the Police and Criminal Evidence Act 1984, as well as the establishment of an independent Crown Prosecution Service in the Prosecution of Offences Act 1985.

RC on Criminal Justice (1991-1993)

The 1993 Royal Commission on Criminal Justice was "widely applauded" in some of its recommendations, and led to the establishment of the Criminal Cases Review Commission.[123]

RC on Long Term Care for the Elderly (1997-1999)

The recommendations of the Royal Commission on Long Term Care for the Elderly were not accepted by the Blair Government, largely on grounds of cost, though their suggested approach of largely free care was adopted by the devolved then Scottish Executive. Lord Sutherland, who chaired the commission, was criticized for being "hopelessly unrealistic" in his proposals.[124]

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121 HL Deb 6 July 2021 [Royal Commission on the Criminal Justice System] c1150

122 Pepita Barlow, "The lost world of royal commissions", Institute for Government, 19 June 2013

123 ibid.

124 Obituary: Lord Sutherland of Houndwood, The Times, 3 February 2018

Two members of the commission, including Lord Lipsey, a former government adviser, issued a "dissentient note" declining to support "the main plank of the report", signed by 10 colleagues.[125] A decade later, Sir Andrew Dilnot's report on the same issue broadly took the same view as the two dissenters in 1999.[126] That alternative approach was accepted, in a substantially modified form, by the Coalition government of 2010-15.

RC on Reform of the House of Lords (1999-2000)

The most recent Royal Commission, that on Reform of the House of Lords, remains part of the as yet unresolved debate on the future composition of the Upper House. It has, however, influenced and informed subsequent proposals for reform.[127]

125 Pepita Barlow, "The lost world of royal commissions", Institute for Government, 19 June 2013

126 Fairer Care funding. Conclusions and recommendations of the Commission on Funding of Care and Support (PDF), 4 July 2011

127 Pepita Barlow, "The lost world of royal commissions", Institute for Government, 19 June 2013

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