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We had our second meeting with the Cabinet Office today (Tuesday 13th July). I'm afraid that it was genial but unproductive. They were limited to telling us what was already known. In particular they referred back to the PM's announcement that the Inquiry would start in March and were unable to say what that meant; they were happy for us to be involved in the consultation process but couldn't say when that would start. I'm sorry I can't be more positive at this time. Moving forward, as a Group we should continue to apply pressure to the Government to start the consultation process as soon as possible.

How is an Inquiry set up?

The Inquiries Act 2005 deals with Statutory Inquiries.

Section 1 of the Act says:



A Minister may cause an inquiry to be held under this Act in relation to a case where it appears to him that—

- (a) particular events have caused, or are capable of causing, public concern, or**
- (b) there is public concern that particular events may have occurred.**

It is clear from this that there are grounds for an Inquiry to be set up. We have been told by Boris Johnson that he will set up an Inquiry but he has not actually done this yet. More on this below.

How is the scope of the Inquiry determined?

Section 5 of the Act says:

5(1) In the instrument under section 4 appointing the chairman, or by a notice given to him within a reasonable time afterwards, the Minister must—

- (a) specify the date that is to be the setting-up date for the purposes of this Act; and**
- (b) before that date—**
 - (i) set out the terms of reference of the inquiry;**
 - (ii) state whether or not the Minister proposes to appoint other members to the inquiry panel, and if so how many.**

So it is the Minister who sets up the Inquiry who also appoints the Chair (and any panel – see below). In this case the Minister is likely to be the Prime Minister. To be clear no instrument under section 4 has been issued yet. You will see that when it is issued it will also deal with the scope of the Inquiry (the term used in the Act is ‘Terms of Reference’).

As you will know we have, with your help, drafted suggested Terms of Reference. We have been arguing that the families should be consulted on these terms. It is likely that the government will enter into an extensive consultation process at some point and, while we want consultation, we do not want it used as an excuse for delay. Our suggestion is that terms be set out now and they can always be amended later (section 5(3) of the Act specifically allows for this.)

Who sits on the Inquiry?

Section 3 of the Act says:

An inquiry is to be undertaken either—

- (a) by a chairman alone, or**
- (b) by a chairman with one or more other members.**



The Chair, and any members, are collectively called the Inquiry Panel.

We will be arguing that the Chair should sit with panel members. I do not think it would necessarily help for those members to be ‘experts’ in any particular field, partly because an expert would already have formed their conclusions on areas within their field of expertise. The advantage of panel members is to supply background which the Chair doesn’t have – often a human side which Chairs sometimes lack.

What does an Inquiry do?

Let me start with what the Inquiry will NOT do.

Section 2 of the Act states:

S.2 No determination of liability

(1)An inquiry panel is not to rule on, and has no power to determine, any person’s civil or criminal liability.

(2)But an inquiry panel is not to be inhibited in the discharge of its functions by any likelihood of liability being inferred from facts that it determines or recommendations that it makes.

What this means is that an Inquiry cannot award compensation and cannot say that any particular individual or corporation has committed a crime. It can, however, find facts from which it follows that someone would be liable or would have committed a crime.

This can lead to confusing and indeed distressing results – the best example being the [Hillsborough](#) disaster, where a Coroner in an Inquest found that a police officer's conduct amounted to an offence of gross negligence manslaughter. However, a later criminal trial acquitted him of the same charge.

An Inquiry will make findings of fact and recommendations. The recommendations are not binding on anyone and there is no effective mechanism for ensuring that the recommendations are adopted. We support and will argue for the establishment of a supervisory body which can look at Inquiry recommendations and monitor whether they are being carried out.

The Inquiry's powers are also limited by the Terms of Reference:

Section 5 of the Act:

5(5) Functions conferred by this Act on an inquiry panel, or a member of an inquiry panel, are exercisable only within the inquiry's terms of reference.

(6) In this Act “terms of reference”, in relation to an inquiry under this Act, means—

- (a) the matters to which the inquiry relates;**
- (b) any particular matters as to which the inquiry panel is to determine the facts;**
- (c) whether the inquiry panel is to make recommendations;**
- (d) any other matters relating to the scope of the inquiry that the Minister may specify**



What is the Inquiry hearing process?

Section 17 of the Act:

17 Evidence and procedure

- (1) Subject to any provision of this Act or of rules under section 41, the procedure and conduct of an inquiry are to be such as the chairman of the inquiry may direct.
- (2) In particular, the chairman may take evidence on oath, and for that purpose may administer oaths.
- (3) In making any decision as to the procedure or conduct of an inquiry, the chairman must act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others).

In effect this gives the Chair a very wide power to conduct proceedings. In particular the Chair decides who will give evidence; can decide to admit statements as evidence without calling the person who made them; can limit the questions which can be put to a witness; can decide that a witness should (or shouldn't) give evidence on oath. This isn't done in a vacuum, we will have the chance to submit to the Chair why a particular person should give evidence.

You will see the reference to ‘the need to avoid unnecessary costs’ – clearly in this case costs will be a consideration for the government. Before the first day of the hearings starts there will be a long process of obtaining relevant evidence, identifying witnesses and documents, discussing what expert evidence is needed. This is one of the reasons we are arguing that the process should get under way immediately.

What are Assessors?

The Act allows for the appointment of Assessors to help them. The assessors are experts who can help the Panel understand expert evidence – the Act refers to them having to have ‘expertise that makes him a suitable person to provide assistance to the Inquiry Panel’.

How long will it take?

It is impossible to say, unfortunately. We will do what we can to ensure the process is as quick as possible while ensuring that the Inquiry hears all the relevant evidence.

We will also want to ensure that the Inquiry identifies the issues which should be examined first and we will be looking at asking the Inquiry to issue interim reports to deal with the most urgent matters.

Looking Forward

The group has set up a meeting of the Welsh subgroup on 15th July/which will have taken place by the time you get this newsletter. The group will shortly be setting up a meeting of the Northern Ireland sub-group.

We hope to have further meetings with the Cabinet Office despite the tendency of government to close for the Summer.



Newsletter No. 3

In our next newsletter I will give a devolved territories update and explain in more detail what that is.

I will also be answering some of your frequently asked questions. If you have any questions at this stage or there are any particular areas of the Inquiry that you would like me to discuss in more detail, please contact me via email at elkanabrahamson@broudiejacksoncanter.co.uk

We have a Frequently Asked Questions resource on our website and will continue to update this as new client questions come in. View the current [FAQs list](#).

This client newsletter has been published openly as there is nothing confidential to communicate at this stage. Once the Inquiry process officially starts or there is a need for confidentiality, these client group communications will become private.

If you have lost a loved one to Covid-19, you have a right to be part of the public inquiry process. There is strength in numbers, so that as a group we can apply pressure to government and the inquiry. We represent our Covid Inquiry clients pro bono, this means at no cost or financial commitment to you. [Find out more](#).