Public inquiries: back in fashion?

Public inquiries—getting at the truth or kicking the can down the road? Malcolm Bishop KC hovers between optimism & cynicism

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We all remember the date—it was 1066 and the Battle of Hastings when an arrow pierced the eye of Harold Godwinson, and William the Conqueror claimed the throne of England. Having seized his kingdom, this Norman adventurer had to find out what he was reigning over, because unless he knew that, he could not indulge the habit of every ruler of that time or this—taxing the populace. The result was the Domesday Book, an extensive inquiry into the wealth of his new realm. The first public inquiry! And it has flourished ever since.

Whether its purpose was to glean genuine information on a subject of national importance, such as the reform of the assizes system under Lord Beeching in the 1970s, or to kick a controversial subject into the long grass, as in the Iraq Inquiry, is open to debate. But this useful mechanism for bequeathing a 'hot potato' to a future administration has a long history. It became very popular in the 19th century. The notorious three-part publication by the government in 1847 into education in Wales caused uproar for disparaging the Welsh; being particularly scathing in its view of nonconformity (the Welsh Methodist revival), the Welsh language, and the morality of the Welsh people in general. Little wonder the report is habitually referred to as 'the Treachery of the Blue Books'. The habit fell out of favour with Margaret Thatcher, whose government held not a single one. But it has subsequently become the flavour of the month and no topic is worthy of serious consideration until the cry goes up for a public inquiry. The Institute for Government records that from the 1960s to 1990 there were 19 inquiries, but during the next 27 years the numbers ballooned to 69.

Some public inquiries have been nothing short of a parade of celebrities, such as the investigation into media wrongdoings—TV stars, politicians and media moguls waxing indignantly about the harm done to them, before their admiring cohort of followers. Others are less sensational, and some even make a difference.

Purpose & types

The purpose of a public inquiry is usually to answer three questions: what happened? Why did it happen? How can we stop it happening again?

There are two types of public inquiry: statutory and non-statutory. The Inquiries Act 2005 (IA 2005) now provides a uniform set of rules including the calling of witnesses, core participants, legal funding and so forth. Non-statutory ad hoc investigations tend to be more informal with relaxed rules of evidence and, importantly, the ability to sit wholly or partly in private. A statutory inquiry has stronger powers. It can compel the attendance of witnesses and by s 21, IA 2005, can order the production of documents as well as allowing the legal costs of witnesses and interested parties.

In neither category of inquiry can a witness be compelled to answer a question which might incriminate them, although this obstacle is often overcome by an assurance from the attorney general that nothing said in the inquiry will form the basis of subsequent criminal charges. But where the terms of the inquiry are vague or broad enough to encompass a wide range of issues, it may be difficult to identify whether the 'no incrimination' line has been crossed. And of course, there is little a judge can do to stop a witness or defendant blurting out some inadmissible matter mentioned in the inquiry.

Once documents are admitted, their subsequent fate depends on the status of the inquiry concerned: if it is non-statutory, documents not otherwise disclosed by the inquiry may form the basis of a successful Freedom of Information request; this does not apply to a statutory inquiry. But although giving evidence in a non-statutory inquiry is voluntary, there may be more than a whiff of compulsion if a party's absence might cause reputational or professional damage. Generally speaking, a witness who is seen to be cooperative, who answers questions straightforwardly and gives the impression of wanting to get at the truth can expect to be more favourably treated than someone who is defensive and hostile. If you have a case to put, it is better to put it as fully and frankly as you can. The tribunal may not totally accept your evidence, but at least it will appreciate that you have done your best to help.

Slow progress

Inquiries tend to go on far, far longer than expected. The Bloody Sunday investigation took more than 13 years and cost about £210m. Handling such a gargantuan task places an enormous burden on the presiding judge, most of whom sit alone and so find little difficulty in agreeing with themselves. Others sit with lay persons or expert assessors. There, the judge's task is to steer the panel towards a common conclusion. I found this the most challenging aspect, when I sat as chair of the Isle of Man inquiry into legal aid. We wanted to aim for collegiality, with a panel comprising a trade union official, a legal professional and a worker in the voluntary sector. It was important to give equal consideration to the varying views and to discuss in frank detail the areas of disagreement, with the aim of achieving the unanimity both in form and in spirit we eventually achieved.

Undoubtedly, public inquiries are back in fashion. Ongoing inquiries include the COVID-19 outbreak, undercover policing, the Post Office Horizon scandal and the infected blood transfusion disaster. Most of these have either reached a conclusion, or are at the end of the evidence stage, but the COVID-19 inquiry has barely begun. It will certainly not report during this Parliament and perhaps not during the next. A cynic may remark: 'That's surely the whole point.' I could not possibly comment! **NLJ**

Malcolm Bishop KC, barrister at 3 Hare Court (*www.3harecourt.com*) & former chair of the two-year Inquiry into the Isle of Man Legal Aid Scheme.