

## Overview of an Inquiry under the Inquiries Act 2005

*What is an inquiry? What is its purpose? How does it work?*

*Disclaimer: this note is intended to provide a general overview of public inquiries. As such, not all of the following information will apply to the Lampard Inquiry.*

### **What is a public inquiry?**

Public inquiries are investigations into issues of public concern. They can be set up for different reasons but are usually established following significant events, or after a major disaster has taken place. Inquiries investigate the surrounding circumstances of the event, gather evidence from those who were affected and make recommendations to try and prevent similar occurrences from happening in the future.

Public inquiries are inquisitorial in nature, rather than adversarial. This means that they seek to investigate what has happened and identify where improvements can be made, rather than allocate blame for anything which may have gone wrong.

Public inquiries are set up and funded by the government. However, once established, they are independent.

The Chair (sometimes assisted by a panel) is responsible for the running of an inquiry and makes all decisions relating to how its investigations will progress. The Chair is supported by a secretariat and legal team, who assists them in all aspects of the Inquiry's work. Once investigations are concluded, the Chair will produce a report setting out findings and will make recommendations to try to prevent what went wrong from happening again.

Public inquiries can have either statutory or non-statutory status. A statutory inquiry is an inquiry which has been established under the Inquiries Act 2005. In contrast to non-statutory inquiries, statutory inquiries have various powers which enable them to obtain evidence.

The Lampard Inquiry is a statutory inquiry. It was formerly known as the 'Essex Mental Health Independent Inquiry' from 26 May 2021 until 27 October 2023; during this time, it was a non-statutory inquiry. On 27 October 2023, the Department of Health and Social Care issued a formal notice, converting it to a statutory inquiry.

### **What are 'Terms of Reference?'**

Terms of Reference outline the scope and purpose of an inquiry, setting out exactly what will be investigated.

The minister who establishes an inquiry is responsible for fixing the Terms of Reference, although this is usually done in discussion with the Chair. Sometimes, inquiries will ask those affected by the matters it is investigating and members of the public to provide views on what should be considered, through a public consultation process.

Terms of Reference may be accompanied by an explanatory note that defines key phrases and/or provides further background and context where necessary. There may also be a List of Issues, which sets out in further detail exactly what matters the inquiry will investigate.

The Lampard Inquiry ran a public consultation from 1 November to 28 November 2023. The final Terms of Reference were published on **10 April 2024** and can be found here [\[insert link to final TORs\]](#).

### **Who runs an Inquiry?**

The Chair of the inquiry is the person in charge and is responsible for making all key decisions. The Chair is appointed by the minister when the inquiry is established (who may also appoint a panel to work with the Chair if this is considered necessary). Sometimes in statutory inquiries, Chairs are former judges or are legally qualified. However, there is no requirement for this. Several inquiries have been chaired by people who do not have a legal background but have particular skills or expertise.

Once appointed, a Chair is responsible for running the inquiry to fulfil the Terms of Reference. The Chair is also responsible for establishing the procedures which will determine how the inquiry will operate.

An inquiry Chair will be supported by a team. Key roles include the Secretary, Solicitor, and Counsel to the Inquiry. The Chair may also wish to appoint any number of assessors or experts, who have subject area expertise relevant to the work of the inquiry. These individuals can be called on in various ways to assist the Chair with their investigations, for example to provide advice or input in relation to technical matters or to provide expert evidence.

Baroness Kate Lampard CBE is the Chair of the Lampard Inquiry. Her appointment was announced by the then Secretary of State for Health and Social Care, Steve Barclay, on Monday 4 September 2023. Baroness Lampard is supported by an Inquiry team whose details can be found on the [Lampard Inquiry website](#).

### **What are 'Core Participants'?**

A Core Participant is an individual, organisation or entity that is granted special status and afforded rights and responsibilities within the inquiry process.

The Inquiry Rules set out that to be a Core Participant, a person must have played a significant role or have a direct interest in the matters to which the inquiry relates. Alternatively, that they are likely to someone who may be subject to significant criticism. No one can be forced to be a Core Participant; they can only be designated to be a Core Participant by the Chair with their consent.

Core Participants are able to make opening and closing statements, have access to relevant documents, and ask permission for a question to be put to a witness during inquiry hearings.

A Chair has discretion in designating Core Participants, but they must use this discretion fairly and with regard to avoiding unnecessary costs.

It is not necessary to be a Core Participant in order to engage with an inquiry, or to provide evidence to an inquiry. Witnesses may also make an application to an inquiry to pay their legal costs in responding to any request for evidence.

More information on the Inquiry's approach to legal expenses for Core Participants and witnesses will be published on the Lampard Inquiry website in due course.

## **Disclosure**

Disclosure is the process through which an inquiry obtains information and/or evidence from any person or body who is likely to hold relevant material (often called material providers). This forms a large part of an inquiry's work. Disclosure can be made on a voluntary basis. Although, usually, the inquiry will write to individuals and organisations to request that specific documents or information is provided.

The Inquiry Rules 2006 set out the process for written requests for evidence under Rule 9. If someone does not comply with a request for evidence made under Rule 9, the Chair may issue a notice under Section 21 of the Inquiries Act 2005. Failure to comply with a Section 21 Notice is a criminal offence, unless someone has a '*reasonable excuse*' not to do so.

When material is received by an inquiry it is reviewed and assessed for relevance, processed (at which point redactions may be applied), and then may be disclosed to Core Participants or included within hearing bundles. The content may then be referred to in oral hearings and published on the inquiry website.

Documents may be subject to redactions (blacking out of text) where there are matters which are sensitive, relate to privacy or are irrelevant to what the inquiry is investigating.

The starting position of a statutory inquiry is that as much information as possible should be made public. However, the Chair has the power under the Inquiries Act 2005 to make orders which restrict evidence from being made public or shared

more widely. This can relate to specific details (such as a name or other private information), documents or exceptionally whole categories of documents if they are particularly sensitive.

## Hearings

Inquiries will usually hold hearings to consider evidence and in order for the Chair to question witnesses and obtain a better understanding of the issues.

Inquiry hearings are usually public and open to anyone to attend. However, the Chair can also restrict attendance at hearings (known as private hearings) if they consider this to be conducive to the inquiry fulfilling its Terms of Reference.

Counsel to the Inquiry is responsible for asking questions of witnesses and the focus of hearings is fact-finding (rather than adversarial). Lawyers acting for Core Participants may request that Counsel to the Inquiry ask questions on a particular area or theme, but it is for the Chair to decide whether this is appropriate.

## Report

At the end of an inquiry, the Chair will produce a report which sets out their findings, conclusions and recommendations for the future. Some Chairs also publish interim reports to update on the progress of investigations or make recommendations that can then be monitored as the inquiry proceeds.

A Chair cannot make findings of blame, or civil or criminal liability. However, they can make criticisms of organisations or individuals, and refer matters on to other organisations (such as the police or professional regulators)

Prior to publication of a report, there is a process known as 'Maxwellisation'. This is a legal practice under Rule 13 of the Inquiries Rule 2006 whereby anyone who is subject to significant or explicit criticism must be notified of it and provided with an opportunity to respond. This is done through a 'warning letter'. A Chair cannot include the criticism in their report unless a warning letter has been issued and the person or organisation facing the criticism has been afforded a fair and reasonable opportunity to respond.

Baroness Lampard remains committed to publishing her final report as soon as possible, while ensuring thorough investigations. She does not intend to publish interim reports.

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