1

INTRODUCTION

A. The Need for and Function of Public Inquiries 1.01
(1) Introduction 1.01
(2) Establishing the facts 1.02
(3) Accountability, blame, and retribution 1.04
(4) Learning lessons 1.05
(5) Restoring public confidence 1.06
(6) Catharsis 1.07
(7) Developing policy 1.08
(8) Discharging investigative obligations 1.09
B. Early History 1.11
C. The Decline of the Role of Parliament 1.15
D. The Tribunals and Inquiries (Evidence) Act 1921 1.19
E. The Royal Commission on Tribunals of Inquiry 1.37
F. Sir Roy Beldam's Review, the Public Administration Select Committee, and the Consultation by the Department for Constitutional Affairs 1.51
G. The Inquiries Act 2005 and the Inquiry Rules 2006 1.59

A. The Need for and Function of Public Inquiries[1]

(1) Introduction

Can the description of the public inquiry as 'the organizing of controversy into a form more catholic than litigation but less anarchic than street fighting'[2] be improved? Perhaps not. Far grander rationales have, however, been advanced over the years to justify or explain the function of the inquiry in public life. Identifying the need for, and function of, public inquiries in the United Kingdom is important. Calls for an 'independent/judicial public inquiry' are made with increasing frequency (and sometimes pitch), often in Parliament or by the media.[3] They often **1.01**

[1] This book does not consider planning inquiries (including all inquiries into land use developments, highways, and other transport proposals), inquiries conducted by specialist investigation branches into air, rail, and marine accidents, or inquiries conducted by specialist regulatory bodies (such as the Health and Safety Executive).

[2] Stephen Sedley QC, 'Public Inquiries: A Cure or a Disease?' (1989) 52 MLR 469.

[3] Sheila Jasanoff, a leading American scholar, has suggested that in the recent past the public inquiry has become 'Britain's favoured mechanism for ascertaining the facts after any major breakdown

follow some particularly controversial event or series of events, especially those where life has been lost and State agencies have been involved in some way.

(2) Establishing the facts

1.02 The first function of the inquiry is often said to be establishing the facts. Lord Howe has described this purpose as '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'.[4] It is certainly the case that the modern model of the public inquiry often has as its central (but not only) question: what happened?

1.03 Historically, the establishment of the facts was often the limited purpose of the inquiry, with responsibility for the interpretation of those facts, making findings of culpability, and advancing recommendations for change being left to others—such as Parliament, minister, and/or the courts. More recently, however, public inquiries have been required to do all of these things, perhaps as Parliament and ministers have been unwilling, or unable, to do so themselves.

(3) Accountability, blame, and retribution

1.04 Public inquiries may serve to ensure accountability in at least two ways. First, in the broadest sense, they serve the cause of public accountability in the sense that the decision to institute a public inquiry is an aspect of ministerial responsibility and the minister is responsible or accountable to Parliament. Secondly, and more directly, they may identify wrongdoing, blameworthy conduct, or culpability by individuals, organizations, and organs of the State.

(4) Learning lessons

1.05 In written evidence submitted to the House of Commons Public Administration Committee in 2004, the Government claimed that the 'the primary purpose of an inquiry is to prevent recurrence'[5] and that the 'main aim is to learn lessons, not to apportion blame'.[6] It is generally recognized, however, that public inquiries do not make *decisions* as to what action should be taken in the light of their findings of fact—they instead make *recommendations* for such action.[7]

or controversy': 'Restoring Reason: Causal Narratives and Political Culture' in S Jenkins, *Thatcher and Sons* (London: Allen Lane, 2006) 218.

[4] G Howe, 'The Management of Public Inquiries' (1999) 70 *Political Quarterly* 294.

[5] HC 606-ii, GBI, Ev 29, para (iii).

[6] Ibid, para 4.6.

[7] See, eg Bradley and Ewing, *Constitutional and Administrative Law* (London: Longman, 13th edn, 2003) 683.

(5) Restoring public confidence

A clear aim of public inquiries is to attempt to restore the confidence of the public, or a section of the public, in a public authority or the Government. Put another way, a significant purpose of some inquiries is to seek to allay public or Parliamentary disquiet about an event or series of events (a 'scandal'). **1.06**

(6) Catharsis

Inquiries provide an opportunity for reconciliation and resolution, by bringing protagonists together and forcing them to face each other's perspectives and problems. **1.07**

(7) Developing policy

Inquiries can (but very seldom do) isolate expertise, resources, and time for an apolitical and in-depth consideration of novel or wide-reaching matters of policy or legislation.[8] **1.08**

(8) Discharging investigative obligations

Articles 2 and 3 of the European Convention on Human Rights impose upon the State a procedural obligation to hold an effective public investigation by an independent official body where one or more of the substantive obligations set out in Article 2 or 3 has been, or may have been, violated and it appears that agents of the State are, or may be, implicated in some way.[9] A public inquiry is sometimes the means by which this procedural obligation is discharged. **1.09**

This country has, over the years, struggled to find a format for the investigation of events of significant national concern or interest that consistently delivers results that are widely accepted, allay public concern, and help positively to shape and improve policy making and legislative reform. Clement Atlee's words in 1949: 'If any other alternative method could be suggested [to a tribunal], I am sure we should all be glad to consider it'[10] were substantially echoed 40 years later by Edward Heath in 1982: 'The plain fact is that we have never succeeded in finding the perfect form inquiry'.[11] **1.10**

[8] It is to be noted that this purpose was not identified by the Public Affairs Select Committee in its taxonomy of purposes in its report *Government by Inquiry*, First Report of Session 2004–05, HC 51-I, para 12 (adopted by the Irish Law Commission in its *Report on Public Inquiries Including Tribunals of Inquiry* (LRC 73-2005) para 2.17). This omission was noted by the New Zealand Law Commission in its report *A New Inquiries Act* (NZLC R102, 2008) para 22.

[9] See Ch 2, para 2.185.

[10] HC Deb, vol 460, col 1851 (3 February 1949) (speaking in the debate on the report of the Lynskey Tribunal).

[11] HC Deb, vol 27, col 494 (8 July 1982) (speaking during the debate to approve the appointment of the Franks Committee).

B. Early History

1.11 From the mid-seventeenth century until 1921 Parliament generally performed the function of conducting investigations into governmental failures and the misconduct of ministers or other public servants. These investigations often related to the mismanagement of war and stood as the precursors to impeachment. Parliament was the 'grand inquest of the nation' and, as the Prime Minister, Lord North, put it in 1774, was under a duty to 'undertake the very difficult, the very painful, the very meritorious task of watching our Ministers; of reprehending them; of blaming and calling them daily to account'.[12] In this way Parliament held ministers of the Crown to account—and this was in a time long before the formal doctrine of ministerial accountability was developed in the nineteenth century.

1.12 The usual forum for such investigations was a Parliamentary Select Committee of Inquiry. An early example shows that entrusting such investigations to Parliamentarians was (and perhaps is) not always wise.[13] In the late seventeenth century the Republican opposition made allegations that the Royal Navy was riddled with popery and that the Duke of York, the Lord High Admiral, had wasted public funds. The motive was clear—to prevent the Duke from succeeding to the throne. In 1679 a Select Committee of the House of Commons was appointed to investigate the allegations. The Duke of York having gone into voluntary exile, abroad, the Secretary for the Navy, one Samuel Pepys, was left to face the allegations. The Select Committee found Pepys guilty of piracy, popery, and treachery. The only evidence against him was from professional informers. He had not been allowed to cross-examine them. Pepys was nonetheless committed to the Tower of London. The papers were referred to the Attorney General in order that Pepys might be prosecuted. The Attorney found, however, that there was insufficient evidence to try Pepys. He was released.

1.13 Experiences such as these occasionally led to Commissions of Inquiry being set up. The most notable (in part because Parliament would later come to remember it when the system of Parliamentary Select Committees of Inquiry fell into disrepute) was the Parnell Commission. Charles Stewart Parnell was the Leader of the Irish Nationalists and a prominent Parliamentarian. In 1887 serious allegations were made against Parnell.[14] Parliament acted with speed and enacted the Special

[12] P Thomas, *The House of Commons in the Eighteenth Century* (Oxford: Clarendon Press, 1971) 14–15.

[13] The Royal Commission on Tribunals of Inquiry (Cmnd 3121) paras 6, 7, was subsequently to cite this inquiry as an illustration of the 'serious disadvantages of the parliamentary procedure'.

[14] On 6 May 1882 two leading members of the British Government in Ireland (Lord Cavendish, the Chief Secretary for Ireland, and TH Burke, the Permanent Under-Secretary for Ireland) were stabbed to death in Phoenix Park, Dublin by the Irish National Invincibles. In March 1887, *The Times* published a series of articles, 'Parnellism and Crime', in which Home Rule League leaders were

Commission Act 1888. The Act appointed a Special Commission, consisting of Commissioners the Rt Hon Sir James Hannen, the Honourable Sir John Charles Day, and the Honourable Sir Archibald Levin Smith. They were commanded 'to inquire into and report upon the charges and allegations'. In addition to special powers given by the Act itself, the Commissioners were given all of the powers and privileges of the High Court in order properly and efficiently to conduct their business. These included powers to enforce the attendance of witnesses, to examine witnesses on oath, to compel the production of documents, to punish persons guilty of contempt, and to issue a commission or request to examine witnesses abroad[15] and to issue warrants of arrest.[16] Equally, however, the Act incorporated mechanisms to safeguard the interests of those who appeared before it. Thus, the Commissioners had power to order that any document in the possession of any party appearing at the inquiry should be inspected by any other party,[17] the parties at the inquiry could appear by counsel or solicitor,[18] any witness appearing before the Commissioners could be cross-examined by any other party,[19] and any evidence given by a person in the course of the Commission was not admissible against the person giving it in any civil or criminal proceedings (except for perjury).[20]

The Parnell Commission was seen as a great success.[21] **1.14**

accused of being involved in murder and outrage during the land war. *The Times* produced a number of facsimile letters, allegedly bearing Parnell's signature—in one of the letters Parnell had excused and condoned the murder of TH Burke in Phoenix Park. The newspaper had paid £1,780 for a letter supposedly written by Parnell to Patrick Egan, a Fenian activist, that included the sentence: 'Though I regret the accident of Lord F Cavendish's death I cannot refuse to admit that Burke got no more than his deserts'. It was signed 'Yours very truly, Charles S. Parnell'. On the day it was published, Parnell described the letter in the House of Commons as 'a villainous and barefaced forgery' (HC Deb, vol 313, cols 1129–237 (18 April 1887)).

[15] Special Commission Act 1888, s 2(2).

[16] Ibid, s 2(1)(i)–(iv).

[17] Ibid, s 3.

[18] Ibid, s 2(3).

[19] Ibid, s 6.

[20] Ibid, s 9.

[21] The Commission sat for 128 days between September 1888 and November 1889. In February 1889, one of the witnesses, Richard Piggott, admitted to having forged the letters; he then fled to Madrid, where he shot himself. Parnell's name was fully cleared and *The Times* paid a large sum of money by way of compensation after Parnell brought a libel action. In an out-of-court settlement Parnell accepted £5,000 in damages. While this was less than the £100,000 he sought, the legal costs for *The Times* brought its overall costs to £200,000. When Parnell re-entered Parliament after he was vindicated, he received a standing ovation from his fellow MPs. The Commission did not limit itself to the forgeries, but also examined at length the surrounding circumstances, and in particular the violent aspects of the Land War and the Plan of Campaign. In July 1889 the Irish Nationalist MPs and their lawyers withdrew, satisfied with the main result. When it eventually published its 35 volumes of evidence it satisfied for the most part the pro- and anti-nationalist camps in Ireland. Nationalists were pleased that Parnell had been heroically vindicated, in particular against *The Times*, which had become a supporter of the high Tory Prime Minister Lord Salisbury.

Unionists conceded that Parnell was innocent, but pointed to a surrounding mass of sworn evidence that suggested that some of his MPs had condoned or advocated violence, in such a way that murders were inevitable.

C. The Decline of the Role of Parliament

1.15 In 1912 the Postmaster General accepted a tender by the Marconi Company to construct a chain of state-owned wireless telegraphy chains throughout the British Empire. Allegations and rumours soon followed that the Government had corruptly favoured the Marconi Company and that prominent members of that Government had profited from the deal.

1.16 A Parliamentary Select Committee of Inquiry was set up to investigate the allegations and rumours. The Committee was made up of Members of Parliament from the Government Benches (the ruling Liberal Party) and the opposition (the Conservative Party). The Liberals were in the majority as, of course, was the position in Parliament.

1.17 The majority report by the Liberal members of the Committee exonerated the Government. The minority report by the Conservative members of the Committee found that members of the Government had been guilty of gross impropriety. The reports were debated in Parliament. Predictably, the House of Commons divided along strictly party lines.

1.18 Writing in his autobiography on the subject, Chesterton wrote, 'the [Marconi] affair had concluded as such affairs always conclude in modern England, with a formal verdict and a whitewashing committee'.[22] It was this unsatisfactory outcome that led to the replacement of Parliamentary Committees with public inquiries.

D. The Tribunals and Inquiries (Evidence) Act 1921[23]

1.19 In 1921 serious allegations were made by a Member of Parliament that papers relating to contracts awarded by the Ministry of Munitions had been destroyed by officials in that department.

1.20 On 22 February 1921 the Leader of the House, Bonar Law, agreed to the demand for a public inquiry and a proposal that it should be held pursuant to statute.[24] Bonar Law had proposed a committee chaired by a judge and assisted by a businessman and an accountant. One Member of Parliament, however, felt that unless the committee was empowered to take evidence on oath 'its findings . . . will not have

[22] G Chesterton, *The Autobiography of GK Chesterton* (New York: Sheed and Ward, 1936) 209.
[23] For a full account of the history and procedure of tribunals under the 1921 Act see GW Keeton, *Trial by Tribunal: A Study of the Development and Functioning of the Tribunal of Inquiry* (London: Museum Press, 1960).
[24] CJ (1920–21), cols 881, 882.

the weight in the country which they ought to have'. Bonar Law accordingly proposed a general statute that could regulate such inquiries.

1.21 The Tribunals and Inquiries (Evidence) Act 1921 was enacted very shortly thereafter. The Act was introduced as a Bill on 4 March 1921 and received Royal Assent on 24 March 1921.[25]

1.22 The Act provided that if both Houses of Parliament resolved that it was expedient that a tribunal be established for 'inquiring into a definite matter described in the Resolution as of urgent public importance', and in pursuance of such resolution a tribunal is appointed either by the Crown or by a Secretary of State, then such a tribunal shall, for certain purposes, have all the powers, rights, and privileges that are vested in the High Court.[26] Thus, inquiries instituted under the 1921 Act were independent of Parliament, but their institution depended upon Parliamentary resolution (and indeed upon governmental willingness to find time to debate a motion that might lead to such a resolution).[27]

1.23 The 1921 Act permitted the tribunal to enforce the attendance of witnesses, to compel the production of documents, to examine witnesses under oath, and to issue a commission or request to examine a witness abroad.[28] If a person summoned to attend as a witness failed to attend, or if such a witness did attend but refused to take the oath or to answer a question that the tribunal could legally require him[29] to answer, or refused to produce a document that the tribunal could legally require him to produce, then the chairman of the tribunal was empowered to certify the offence to the High Court (or, in Scotland, to the Court of Session), which was empowered to punish the matter as if it was a contempt of court.[30] The 1921 Act empowered the tribunal to authorize, or refuse to authorize, any person appearing before it to appear by counsel, solicitor, or otherwise.[31]

[25] CJ (1920–21), col 2169 and CJ (1920–21), col 2849.

[26] Tribunals of Inquiry (Evidence) Act 1921, s 1(1).

[27] When the 1921 Act was first introduced into Parliament, cl 1(1) read as follows: 'Where, in pursuance of a Resolution passed by, or an undertaking given by a Minister of the Crown to, either House of Parliament, a tribunal (other than a Committee of either House, is established for inquiring into . . .'. This envisaged a tribunal being established in one of two ways, the first pursuant to a resolution of either House of Parliament, and the second subject to an undertaking given by a minister to either House of Parliament that he would establish a tribunal. During the debates on the 1921 Act, concern was expressed about the second method of establishing a tribunal of inquiry. It was argued that this would in practice render Parliament's role in the establishment of inquiries meaningless. It was argued that the nature and extent of the powers of tribunals were such that Government should not be able to establish them of its own accord and that the consent of Parliament should be obtained prior to their establishment. This argument was accepted and the second method of establishing a tribunal was omitted from the 1921 Act: see HL Deb, col 758 (22 March 1921).

[28] Tribunals of Inquiry (Evidence) Act 1921, s 1(1)(a)–(c).

[29] Where the male version of a noun or the male pronoun is used but where the word does not refer to a particular individual, the reference should be taken to include members of both sexes.

[30] Tribunals of Inquiry (Evidence) Act 1921, s 1(2).

[31] Ibid, s 2(b).

1.24 The Act made express provision as to whether inquiries under it should be held in public or in private. Significantly, the 1921 Act included a presumption, albeit a weak one, that an inquiry should be held in public. Thus, section 2(a) of the 1921 Act provided:

> A tribunal to which this Act is so applied as aforesaid . . . shall not refuse to allow the public or any portion of the public to be present at any of the proceedings of the tribunal unless in the opinion of the tribunal it is in the public interest so to do for reasons connected with the subject matter of the inquiry or the nature of the evidence to be given.

1.25 It will be noted that, although the 1921 Act is modelled in part on the Special Commission Act 1888, it failed to include any provision equivalent to section 2(3) (orders for parties at inquiry to allow other parties to inspect documents in their possession) or section 9 (provision for cross-examination by parties appearing at the inquiry and provision for non-admissibility of evidence given at the inquiry in civil or criminal proceedings, save for perjury).

1.26 The Act similarly contained no provisions concerning the procedure to be adopted by the tribunal, the making of rules of procedure or practice, the payment of costs or the immunity of the tribunal in respect of facts and matters set out in its report. In the 84-year currency of the 1921 Act, the following 24 inquiries were held under its provisions:[32]

No	Name of Inquiry	Tribunal Members	Year	Publication
1.	Destruction of documents by Ministry of Munitions Officials	Lords Cave and Inchape, Sir William Plender	1921	Cmd 1340
2.	Royal Commission on Lunacy and Mental Disorder	H Macmillan	1924	Cmd 2700
3.	Arrest of Major RO Sheppard	J Rawlinson	1925	Cmd 2497
4.	Allegations made against the Chief Constable of Kilmarnock	W Mackenzie	1925	Cmd 2659
5.	Conditions with regard to mining and drainage in an area around the County Borough of Doncaster	Sir H Munro	1926–28	
6.	Charges against the Chief Constable of St Helens by the Watch Committee	C Parry, T Walker	1928	Cmd 3103
7.	Interrogation of Miss Irene Savidge by Metropolitan Police at New Scotland Yard	Sir JE Banks, H Lees-Smith, J Withers	1928	Cmd 3147

[32] See, for the first 19 inquiries held under the 1921 Act (between 1921 and 1978), Butler and Butler, *Twentieth-Century British Political Facts 1900–2000* (Macmillan, 8th edn, 2000) 325–6.

8.	Allegations of bribery and corruption in connection with the letting and allocation of stances and other premises under the control of the Corporation of Glasgow	Lord Anderson, Sir R Boothby, J Hunter	1933	Cmd 4361
9.	Unauthorised disclosure of information relating to the Budget	Sir J Porter, G Simonds, R Oliver	1936	Cmd 5184
10.	The circumstances surrounding the loss of HM Submarine *Thetis*	Sir J Bucknill	1939	Cmd 6190
11.	The conduct before the Hereford Juvenile Court Justices of the proceedings against Craddock and others	Lord Goddard	1943	Cmd 6485
12.	The administration of Newcastle-upon-Tyne Fire, Police and Civil Defence Services	R Burrows	1944	Cmd 6522
13.	Bribery of Ministers of the Crown or other public servants in connection with the grant of licences, etc	Sir J Lynskey, G Russel Vick, G Upjohn	1948	Cmd 7616
14.	Allegations of improper disclosure of information relating to the raising of the Bank Rate	Lord Parker, E Holland, G Veale	1957	Cmnd 350
15.	Allegations that John Waters was assaulted on 7 December 1957 at Thurso	Lord Sorn, Sir J Robertson	1959	Cmnd 718
16.	The circumstances in which offences under the Official Secrets Act were committed by William Vassall	Lord Radcliffe, Sir J Barry, Sir Diner Holland	1962	Cmnd 2009
17.	The circumstances surrounding the mining disaster at Aberfan on 21 October 1966	Sir E Davies, H Harding, V Lawrence	1967	HC 553
18.	The events on Sunday, 30 January 1972 which led to loss of life in connection with the procession in Londonderry that day	Lord Widgery	1972	HC 220/72
19.	The circumstances leading to the cessation of trading by the Vehicle and General Ins Co Ltd	Sir A James, M Kerr, S Templeman	1972	HC 133
20.	The extent to which the Crown Agents lapsed from accepted standards of commercial or professional conduct or of public administration as financiers on their own account in the years 1967–74	Sir D Croom-Johnson, Sir W Slimmings, Lord Allen	1982	HC 48
21.	The shootings at Dunblane Primary School, 13 March 1996	Lord Cullen	1996	HC 201
22.	Abuse of children in care in North Wales	Sir Ronald Waterhouse, M le Fleming, M Clough	1996	Cm 3386
23.	Harold Shipman Inquiry	Dame Janet Smith	2005	Cm 6394
24.	Bloody Sunday Inquiry	Lord Saville, Hon W Hoyt, Hon JL Toohey	2010	HC 29-I–HC 29-X, Vols 1–10

1.27 The first inquiry held under the 1921 Act was conducted soon after the Act received Royal Assent: 'The destruction of documents by Ministry of Munitions officials', the members of the tribunal being Lord Cave, Lord Inchcape, and Sir William Plender.[33]

1.28 Between enactment and the Royal Commission chaired by Lord Justice Salmon in 1966,[34] a further 15 inquiries were held under the 1921 Act.[35] Of those, Lord Justice Salmon was subsequently to identify four in particular as being of special importance from a procedural perspective.

1.29 The Budget Leak Tribunal of 1936[36] was set up following rumours that substantial pre-Budget dealing in the City was the result of improper disclosures of impending changes in taxation effected by the Budget. The tribunal comprised Mr Justice Porter, Mr G Simonds KC, and Mr R Oliver KC. The Attorney General and a team of junior counsel under him appeared before the tribunal to assist it. At the commencement of the inquiry the Attorney set out in short order the effect of the information and evidence that he possessed. He examined in chief the majority of witnesses. Members of the tribunal then asked the witness questions by way of cross-examination. The witness was then further examined by counsel representing interested parties. At a late stage in the inquiry the then Colonial Secretary, JH Thomas, emerged as the probable source of the improper disclosures. Sir Alfred Butt MP and Alfred Bates had made considerable sums of money in their dealings in the City. Both were friends of Thomas. Thomas was called to give evidence at the tribunal at short notice. It seems that those representing his interests had very little time to prepare. When he appeared before the tribunal, it was directed that he be examined in chief by his own counsel. The Attorney then declined to cross-examine him, as did counsel for the other interested parties. Faced with this position, the tribunal had no alternative but to cross-examine Thomas itself.[37] The tribunal

[33] Cmd 1340, 1921.

[34] See section E below.

[35] The Royal Commission on Lunacy and Mental Disorder (Cmd 1340); Arrest of Major RO Sheppard DSO, ROAC. Inquiry into the conduct of Metropolitan Police (Cmd 2497); Allegations made against the Chief Constable of Kilmarnock (Cmd 2659); Conditions with regard to mining and draining in an area around the County Borough of Doncaster; Charges against the Chief Constable of St Helens by the Watch Committee (Cmd 3103); Interrogation of Miss Irene Savidge by Metropolitan Police (Cmd 3147); Allegations of bribery and corruption in connection with the letting and allocations of stances and other premises under the control of the Corporation of Glasgow (Cmd 4361); Unauthorised disclosure of information relating to the Budget (Cmd 5184); Circumstances surrounding the loss of HM Submarine 'Thetis' (Cmd 6190); Conduct before the Hereford Juvenile Court Justices of the proceedings against Craddock and others (Cmd 6485); Administration of the Newcastle-upon-Tyne Fire, Police and Civil Defence Services (Cmd 6522); Bribery of Ministers of the Crown or other public servants in connection with the grant of licences, etc (Cmd 7616); Allegations of improper disclosure of information relating to the raising of the Bank Rate (Cmd 350); Allegations that John Waters was assaulted on 7 December 1957 at Thurso and the action taken by the Caithness Police in connection therewith (Cmnd 718); and Circumstances in which offences under the Official Secrets Act were committed by William John Christopher Vassall (Cmnd 2009).

[36] Cmd 5184.

[37] A similar procedure was adopted when Sir Alfred Butt gave evidence.

found that Thomas had made improper disclosures of information about the Budget to Butt and Bates and that they had made use of this information for private gain. Although few doubted this conclusion, the procedure by which it had been arrived at was not satisfactory.

1.30 The Lynskey Tribunal of 1948[38] considered allegations of bribery by ministers and other public servants. The tribunal comprised Mr Justice Lynskey, Mr G Russell Vick KC, and Mr GR Upjohn KC. The Attorney General and other counsel were appointed by the Treasury Solicitor to present the evidence. The Attorney and his team examined in chief and then cross-examined the witnesses. Counsel for the other interested parties were then permitted to cross-examine the witness. If the witness was represented by counsel, he was then given an opportunity of examining the witness. Finally, the Attorney, or one of his counsel, conducted the concluding examination.

1.31 The Bank Rate Tribunal of 1957[39] concerned allegations that information about the raising of the bank rate had been improperly disclosed. The tribunal consisted of Lord Justice Parker, Mr EM Holland QC, and Mr G Veale QC. The tribunal adopted a procedure substantially the same as that adopted by the Lynskey Tribunal.

1.32 The Vassall Tribunal of 1962[40] was appointed to inquire into the circumstances in which the spy Vasssall had been employed in the Admiralty and into 'allegations . . . reflecting on the honour and integrity of persons who as Ministers, naval officers and civil servants were concerned in the case'. The Lynskey procedure was developed and refined. First, the team of counsel acting on behalf of the tribunal included an independent silk who dealt with any evidence that, because of its political character, might have been embarrassing for the Attorney General to have led. Secondly, different counsel within the Attorney General's team examined and cross-examined each witness. Thirdly, where it was possible to identify, from items in the press or in statements obtained by the Treasury Solicitor, that a witness might be prejudicially affected by questions asked of him, the witness was given advance notice of the substance of the allegations that might be made against him.

1.33 Between 1982 and 1996 not a single tribunal was established under the 1921 Act.[41] In 1996 two such tribunals were established:[42] the first, chaired by Lord Cullen, into

[38] Cmd 7616.
[39] Cmnd 350.
[40] Cmnd 2009.
[41] The last inquiry was the Crown Agents Tribunal Report of 1982 (HC 48, 1981–82). It is of note that, in addition to considering matters of substance, the tribunal also considered its own procedure in detail and made recommendations for future tribunals (ch 1 and Note). It noted that the Royal Commission's recommendations introduced elements of adversarial litigation and there were a great many adversaries (para 1.15) and disagreed with the views of the Royal Commission and the Government that the 1921 Act required amendment—suggesting instead that 'administrative steps' would be adequate to implement the Royal Commission's recommendations (Note, para 18).
[42] This led a commentator to observe that 'It appears that something is definitely stirring in the inquiry jungle': R Wintrobe, 'Inquiries after Scott: The Return of the Tribunal of Inquiry' [1997] PL 18.

the massacre at Dunblane Primary School;[43] and the second, chaired by Sir Ronald Waterhouse, into the allegations of child abuse in North Wales.[44]

1.34 More recent examples of inquiries conducted under the 1921 Act include the Harold Shipman Inquiry and the Bloody Sunday Inquiry.

1.35 In relation to the Harold Shipman Inquiry, on 1 February 2000 the Secretary of State for Health announced that an independent private inquiry would take place to establish what changes to current systems should be made in order to safeguard patients in the future, following the conviction on the previous day at Preston Crown Court of Dr Harold Shipman of the murder of 15 of his patients.[45] It had been decided that, although the inquiry would be held in private, the report of the inquiry would be made public.[46] The inquiry was to be held under section 2 of the National Health Service Act 1977.[47] The inquiry began work on 10 March 2000 under the chairmanship of Lord Laming of Tewin. It was required to report its finding and make recommendations to the Secretary of State for Health by September 2000. Certain of the families (together with certain media organizations) commenced judicial review proceedings of the decision to hold the inquiry in private.[48] The Divisional Court (Kennedy LJ and Jackson J) found in the families' favour on 20 July 2000 in relation to the main issue (whether it was lawful for the Secretary of State for Health to have decided that the inquiry should be held in private).[49] Accordingly, on 21 September 2000 the Secretary of State for Health announced by press release that Lord Laming's inquiry would be wound up and a new inquiry would be held under the terms of the 1921 Act. Both Houses of Parliament subsequently ratified this decision and set terms of reference on 23 January 2001

[43] Cmnd 3386.

[44] HC 201.

[45] HC Deb, vol 343, cols 907–19 (1 February 2000).

[46] Albeit these decisions were not made clear in the course of the Secretary of State for Health's statement to Parliament, an omission which was subsequently to draw criticism from the court that subsequently heard judicial review proceedings of the decision: see *R (Wagstaff) v Secretary of State for Health* [2001] 1 WLR 292, 299C–300A.

[47] This provided as follows:

> Without prejudice to the Secretary of State's powers apart from this section, he has power:
> (a) to provide such services as he considers appropriate for the purpose of discharging any duty imposed on him by this Act; and
> (b) to do any other thing whatsoever which is calculated to facilitate, or is conducive or incidental to, the discharge of such a duty.
>
> This section is subject to section 3(3) below.

Section 2 of the National Health Service Act 1977 was repealed from 1 March 2007 by the National Health Service (Consequential Provisions) Act 2006, s 6, Sch 4.

[48] Alongside challenges to (i) the legality of setting the inquiry up under s 2 of the National Health Service Act 1977 having regard to the width of the inquiry's terms of reference and (ii) a decision by the Secretary of State for Health to leave it to Lord Laming to decide whether families should receive legal representation at public expense and a decision by Lord Laming that they should not receive such legal representation at public expense.

[49] The detail of this decision is examined in Ch 6.

(House of Commons)[50] and 29 January 2001 (House of Lords).[51] Dame Janet Smith DBE was appointed chairman of the inquiry and the work of the inquiry began in February 2001. The public hearings into Phase 1 began on 20 June 2001. The public hearings into Phase 2 began on 7 May 2002. The Inquiry's First Report was published on 19 July 2002. It published six reports in total.[52] Its Final Report was published on 27 January 2005. The inquiry therefore took some five years to complete at a cost of approximately £23 million.[53]

1.36 The Bloody Sunday Inquiry was announced by the Prime Minister in a statement to the House of Commons on 29 January 1998.[54] Resolutions of the House of Commons made on 30 January 1998 and of the House of Lords on 2 February 1998 that 'it is expedient that a Tribunal be established for inquiring into a definite matter of urgent public importance, namely the events on Sunday 30th January 1972 which led to loss of life in connection with the procession in Londonderry on that day, taking account of any new information relevant to events on that day' led to the setting-up of the inquiry,[55] under the chairmanship of Lord Saville[56] on 2 February 1998. The opening statement from Lord Saville was made on 3 April 1998. Oral hearings commenced on 27 March 2000 with the 42-day opening speech by counsel to the inquiry. The first witness to give oral evidence was heard on 28 November 2000 and the inquiry finished hearing the main body of witnesses on 13 February 2004. In June 2004 two additional witnesses were heard and there

[50] HC Deb, vol 343, cols 851–66 (23 January 2001).

[51] HL Deb, vol 621, col 454 (29 January 2001).

[52] The First Report (*Death Disguised*) was published on 19 July 2002. It considered how many patients Shipman killed, the means employed, and the period over which the killings took place. The Second Report (*The Police Investigation of March 1998*), published on 14 July 2003 (Cm 5853), examined the conduct of the police investigation into Shipman that took place in March 1998 and failed to uncover his crimes. The Third Report (*Death Certification and the Investigation of Deaths by Coroners*) was published on 14 July 2003 (Cm 5854) and considered the present system for death and cremation certification and for the investigation of deaths by coroners, together with the conduct of those who had operated those systems in the aftermath of the deaths of Shipman's victims. The Fourth Report (*The Regulation of Controlled Drugs in the Community*) was published on 15 July 2004 (Cm 6249), and considered the systems for the management and regulation of controlled drugs, together with the conduct of those who operated those systems. The Fifth Report (*Safeguarding Patients: Lessons from the Past—Proposals for the Future*) was published on 9 December 2004 (Cm 6394) and considered the handling of complaints against general practitioners (GPs), the raising of concerns about GPs, General Medical Council procedures, and its proposal for revalidation of doctors. The Sixth Report (*Shipman: The Final Report*) was published on 27 January 2005 and considered how many patients Shipman killed during his career as a junior doctor at Pontefract General Infirmary between 1970 and 1974, considered a small number of cases from Shipman's time in Hyde, which the inquiry became aware of after the publication of the First Report, and also considered the claims by a former inmate at HMP Preston regarding alleged claims by Shipman about the number of patients he had killed.

[53] HC Deb, vol 431, col 790W (24 February 2005).

[54] HC Deb, vol 305, col 502 (29 January 1998).

[55] The inquiry's terms of reference were to inquire into 'the events of Sunday, 30th January 1972 which led to the loss of life in connection with the procession in Londonderry on that day, taking account of any new information relevant to events on that day'. These terms of reference were, save for the last 12 words, the same as those of Lord Widgery's inquiry.

[56] Sitting with the Hon William Hoyt OC and the Hon John Toohey AC.

were further hearings regarding written submissions from the interested parties. Counsel to the inquiry gave a two-day closing speech beginning on 22 November 2004. One further witness was heard in January 2005. The inquiry took some 2,500 witness statements. It sat for 427 days and heard 922 witnesses. The inquiry produced its report on 15 June 2010. The inquiry therefore took some 12 years to complete—at a cost of some £192 million (making it the most costly in the history of inquiries).[57]

E. The Royal Commission on Tribunals of Inquiry

1.37 On 28 February 1966 the Royal Commission on Tribunals of Inquiry was appointed. The Commissioners were the chairman, Lord Justice Salmon, Viscount Stuart of Findhorn, Baron Goodman, Wilfred Heywood, John Butterworth, and Henry Wade.[58] The Royal Commission was established, in summary, because of criticisms as to the operation of the 1921 Act, and also as to alternatives to inquiries under the 1921 Act such as Lord Denning's Profumo Inquiry.[59] Indeed, in 1965 Leslie Hale introduced a 10-minute rule Bill to repeal the 1921 Act. He described the 1921 Act as 'a bastard Bill, which provides a method of procedure never known to the law of England since we have had our present system of justice . . . which was born in sin, passed without due consideration and is continuing to live in iniquity'.[60]

1.38 The Commissioners were appointed 'to review the working of the Tribunals of Inquiry (Evidence) Act 1921, and to consider whether it should be retained or replaced by some other procedure, and, if retained, whether any changes are necessary or desirable; and to make recommendations'.

1.39 The Commissioners took oral evidence (in public) from 40 witnesses, including three former Lord Chancellors, the then Lord Chief Justice, the then Master of the Rolls, past and serving members of the judiciary, the Law Officers, former members of tribunals of inquiry, journalists, and Parliamentarians. The Commissioners received written evidence from 32 individuals and organizations, including the Bar Council, the Law Society, the National Council for Civil Liberties, Justice, and academics. The Commission obtained information on comparable forms of inquiry from the United States, Norway, France, Sweden, Denmark, Canada, Australia, India, and Hong Kong.

[57] It was originally forecast to last two years and to cost £11 million.

[58] Dick Taverne QC MP was originally a Commissioner, but resigned on 7 April 1966 on his appointment as Joint Parliamentary Under Secretary of State for the Home Department.

[59] See para 1.47 below.

[60] HC Deb, vol 709, cols 1402, 1404 (30 March 1965).

1.40 The Commission reported in November 1966.[61] The inquiry came to the following main conclusions:

(1) that the 1921 Act should not be repealed;
(2) that the 1921 Act instead required amendment; and
(3) that all tribunals of inquiry should adhere to six principles that ensured the fairness of proceedings.

1.41 The detailed conclusions of, and recommendations made by, the Commission are so fundamental to the subsequent development of the law (both in their observance and in their breach) that they are set out below, together with a short commentary explaining the Commission's reasoning:

> (1) There is a need for standing legislation to permit the setting-up whenever necessary of an inquisitorial tribunal and for this purpose the Tribunals of Inquiry (Evidence) Act 1921, subject to certain amendments and safeguards, should be retained.

1.42 The Commission found that history demonstrated that occasionally cases arose of alleged 'lapses in accepted standards of public administration and other matters causing public concern' that could not be dealt with by the ordinary civil and criminal processes but nonetheless required investigation. The Commission found that, although some of the criticisms of the 1921 Act were well-founded, they were not such as would justify its repeal and replacement with some other provision.

> (2) The Act should not be invoked for matters of local or minor importance, but confined to circumstances which occasion a nation-wide crisis of confidence.

1.43 The Commission found that the scope of inquisitorial powers conferred on a tribunal by the 1921 Act was such that the ordinary citizen caught up in such an inquiry is necessarily exposed to the risk of having his private life uncovered and to the risk of having baseless allegations made against him (in either case perhaps causing distress and injury to his reputation). The use of the 1921 Act should accordingly be confined to matters of vital public importance which occasion a nationwide crisis of confidence. The Act should never be used for matters of local or minor public importance. The Commission observed that some of the inquiries listed above and conducted under the powers of the 1921 Act could better have been conducted under other powers, such as the newly enacted Police Act 1964[62] or the Shipping Casualties and Appeals and Rehearing Rules 1923, or even as Departmental inquiries.

[61] Cmnd 3121.

[62] Of the 15 inquiries set out in para 1.26 above, 5 concerned alleged misconduct by the police service—had it been in force, a local public inquiry could have been conducted in relation to each matter under s 32 of the Police Act 1964 (repealed and replaced by s 49 of the Police Act 1996, itself repealed by s 49(2) of and Sch 3 to the Inquiries Act 2005).

(3) The following cardinal principles should be observed to minimize the risk of personal hurt and injustice to any person involved in the inquiries—

(i) Before any person becomes involved in an inquiry, the Tribunal must be satisfied that there are circumstances which affect him and which the Tribunal proposes to investigate.

(ii) Before any person who is involved in an inquiry is called as a witness, he should be informed in advance of allegations against him and the substance of the evidence in support of them.

(iii) (a) He should have adequate opportunity of preparing his case and of being assisted by legal advisors.

(b) His legal expenses should normally be met out of public funds.

(iv) He should have the opportunity of being examined by his own solicitor or counsel and of stating his own case in public at the inquiry.

(v) Any material witnesses he wishes called at the inquiry should, if reasonably practicable, be heard.

(vi) He should have the opportunity of testing by cross-examination conducted by his own solicitor or counsel any evidence which may affect him.

1.44 The Commission stated that it considered it of the *highest* importance that these principles should *always* be *strictly* observed.[63] Such is their historical importance, they are discussed below in detail.[64] It appears to have been largely because of the development of these principles that the Royal Commission felt able to recommend that there should be no statutory rules of procedure—because of the need for flexibility and to avoid delay caused by alleged breaches. The then Government accepted this proposal.[65]

(4) Investigation by Royal Commission would not afford a practicable alternative to procedure under the Act of 1921.

1.45 The Commission recognized that Royal Commissions were not best suited to carry out investigations into the facts of a particular case: they are too slow, have no real powers of compulsion, and are best reserved for making recommendations on broad questions of policy.[66]

[63] Cmnd 3121, Ch IV, para 48.

[64] See Ch 9, paras 9.05–9.18 below.

[65] White Paper (Cmnd 5313, 1973).

[66] Royal Commissions are a form of non-judicial and non-administrative governmental investigation, whose 'origins are lost in hazy mists of the incompletely recorded past' (H Clokie and J Robinson, *Royal Commissions of Inquiry: The Significance of Investigations in British Politics* (Stanford: Stanford University Press, 1937) 24). In the eleventh century, William the Conqueror appointed Royal Commissioners to investigate land title information in English counties for verification and publication in the *Domesday Book* (R Sackville, 'Law Reform Agencies and Royal Commissions: Toiling in the Same Field' in B Opeskin and D Weisbrot (eds), *The Promise of Law Reform* (NSW, Australia: The Federation Press, 2005) 274, 278). Royal Commissions were used frequently in the Tudor and early Stuart eras and then declined in popularity over the next 200 years. The nineteenth century saw a marked increase of inquiry activity, with over 350 Royal Commissions established by the Government between 1831 and 1900. Since that time, particularly in the second half of the last centrury, Royal Commissions have fallen into disuse. In the period 1951–76

(5) Investigation of allegations of public misconduct should be free of political influence and Select Parliamentary Committees of Inquiry would accordingly be inappropriate for dealing with circumstances hitherto dealt with under the Act.

1.46 In two paragraphs of its report,[67] the Commission dismissed entirely the notion that Parliament could be trusted to investigate allegations of public misconduct. It said that it would be a retrograde step to return to the pre-1921 Act position. Its reasons were threefold. First, the reports of tribunals established under the 1921 Act, 'no doubt because of their excellence and the standing and political impartiality of their members', have invariably been accepted without question by Parliament (cf, said the Commission, the divisions that habitually followed Select Committees). Secondly, Select Committees rarely hear counsel and some, if not all, of its members have no experience of taking evidence or of cross-examining witnesses (cf the experience of the majority of 1921 Act tribunals: the chairmen were often judges or lawyers and counsel could always be trusted to attend). Thirdly, a witness before a Select Committee may not be entitled to claim absolute privilege in relation to the evidence he gives (cf, said the Commission, the position under 1921 Act tribunals—a witness enjoys the same immunities and privileges as if he were a witness before the High Court or Court of Sesssion).[68]

(6) No Government should in future set up a tribunal of the type adopted in the Profumo case to investigate any matter causing nation-wide public concern.

1.47 The Profumo Inquiry was set up by the Government following the Secretary of State for War's admission that a statement he had made in the House of Commons denying that he had had a liaison with Christine Keeler was untrue. The inquiry was not established under the 1921 Act. It was a non-statutory inquiry. It was conducted by the then Master of the Rolls, Lord Denning. He conducted the inquiry entirely in private. Witnesses were not permitted to hear the evidence of other witnesses. There was no opportunity for any witness to test the evidence of any other witness. As the Salmon Commission subsequently put it, Lord Denning 'had in effect to act as detective, solicitor, counsel and judge'.[69] Despite recognizing that such a procedure had many defects, the Commission noted that Lord Denning's

some 26 Royal Commissions were set up (excluding continuing or standing commissions such as the Royal Commission on the Historical Monuments of England and the Royal Commission on Environmental Pollution). Subsequently, the Royal Commissions on Criminal Procedure (Cmnd 8092, 1981), on Criminal Justice (Cm 2263, 1993), and on the Long Term Care of the Elderly (Cm 4192-I, 1999) were established. In examining the evolution of Royal Commissions in the UK, it has been observed that the rise and decline in the rate of inquiries commissioned by the Crown corresponds with the decline and rise of the supremacy of the UK Parliament. In the twentieth century, departmental committees have taken over the role once performed by Royal Commissions in the UK: G Gilligan, 'Royal Commissions of Inquiry' (2002) 35/3 Australian and New Zealand Journal of Criminology 289, 290–1.

[67] Paragraphs 35, 36.

[68] Tribunals of Inquiry (Evidence) Act 1921, s 1(3).

[69] Royal Commission on Tribunals of Inquiry (Cmnd 3121, 1966) Ch II, para 21.

report[70] was generally accepted by the public. The Commission explained that this was only because of 'Lord Denning's rare qualities and high reputation' or the 'exceptional qualities and standing of Lord Denning alone'.

1.48 Based on the Royal Commission's report, in 1973 a White Paper was produced which generally accepted the spirit of the Royal Commission's conclusions, including the six cardinal principles,[71] and set out various proposals for legislative reform.[72] These proposals were never taken forward.

1.49 Since the Royal Commission's report, it has become the vogue to rely on one or more of the six cardinal principles as if they set out immutable standards of fairness that must be honoured in every public inquiry. Such an approach is in error—as Sir Thomas Bingham MR put it in *R v Secretary of State for Health, ex p Crampton* (CA, 9 July 1993):

> while the rationale of the six cardinal principles is undoubtedly sound and anyone conducting an inquiry of this kind is well advised to have regard to them, the Royal Commission Report itself has not been embodied in legislation and numerous inquiries have been conducted, and satisfactorily conducted, since 1966 without observing the letter of those principles.

1.50 This approach was given further support[73] by the 'Advice to the Lord Chancellor on the procedural issues arising in the conduct of public inquiries set up by Ministers' provided by the Council on Tribunals[74] in 1996.[75] The Advice arose from a consultation exercise initiated by the Lord Chancellor in the light of the report by Sir Richard Scott of his Inquiry into Exports of Defence Equipment to Iraq.[76]

[70] Cmnd 2152, 1963.

[71] Albeit the White Paper noted that the conclusions of the Royal Commission, in particular as to the six cardinal principles, should be used as 'guidelines to be followed whenever it is practicable to do so, [but] there will be circumstances in which certain of the principles will be capable of being observed only in the spirit and not in the letter': Cmnd 5313, para 17.

[72] Cmnd 5313.

[73] See also n 62 above.

[74] The Council on Tribunals was an advisory, non-departmental public body established in 1958 following the publication of the *Franks Report on Administrative Tribunals and Enquiries* in 1957 to keep under review and report on the constitution and working of tribunals under its supervision and, where necessary, to consider and report on the administrative procedures of statutory inquiries. At the time of the publication of its 1996 Advice it was regulated by the Tribunals and Inquiries Act 1992. Its remit, as it related to inquiries, was contained in s 1(1)(c) of the 1992 Act, which permitted it 'to consider and report on such matters as may be referred to the Council under this Act, or as the Council may determine to be of special importance, with respect to administrative procedures involving, or which may involve, the holding by or on behalf of a Minister of a statutory inquiry, or any such procedure'. The Council was abolished on 1 November 2007 and replaced by the Administrative Justice and Tribunals Council by s 44 of and Sch 7 to the Tribunals, Courts and Enforcement Act 2007. It has been announced that the Administrative Justice and Tribunals Council will be abolished in Autumn 2011 following the Government's review of arm's-length bodies.

[75] The Advice was published by the Lord Chancellor on 21 November 1996: HL Deb, vol 575, cols 149–50.

[76] Lord Chancellor's Department P N 49.96, 26 February 1996.

The consultation exercise invited views on the recommendations contained in Sir Richard Scott's report about the conduct of public inquiries set up by ministers to investigate particular matters of public concern. Following the consultation, the Lord Chancellor asked the Council on Tribunals to consider and advise on the procedural issues that arise in the conduct of such inquiries, having regard to the recommendations in Sir Richard Scott's report and to the views expressed upon consultation. In its Advice, the Council concluded that it was wholly impracticable to attempt to devise a single set of model rules or guidance that would provide for the constitution, procedure, and powers of every inquiry. Instead, the Council advised that such issues should be addressed by taking into account, for each inquiry, the objectives of effectiveness, fairness, speed, and economy. The advice examined a number of issues to be addressed by those responsible for setting up an inquiry, including issues relating to the constitution, powers, and procedures of the inquiry. Amongst the issues covered was the weight to be accorded to the six principles indentified by the Royal Commission. The Council said as follows:

> 3.4 It is important to note that these six principles are recommendations and are not rules of law. Moreover, they are recommendations about the procedure to be adopted for Tribunals of Inquiry under the 1921 Act rather than before inquiries generally. These points are worth emphasising because a number of commentators over the years have referred to the six principles as though they were rules of procedure to be strictly applied to public inquiries generally. However, the Salmon Report was concerned solely with the workings of Tribunals of Inquiry under the 1921 Act and with safeguarding the position of persons appearing before those Tribunals.

F. Sir Roy Beldam's Review, the Public Administration Select Committee, and the Consultation by the Department for Constitutional Affairs

1.51 The genesis of the Inquiries Act 2005 appears to have been a recommendation made in February 2000 by Sir Anthony Clarke in the Thames Safety Inquiry that 'The time has in my opinion come to set up a statutory framework for inquiries generally to replace the various statutes which govern them at present'.[77]

1.52 In 2002 the Lord Chancellor's Department (as it then was) asked Sir Roy Beldam and Judith Bernstein to consider in particular whether there was scope for combining civil and other proceedings with a public inquiry, in particular:

(i) To consider the inter-relationship between, and sequencing of, public inquiries, technical investigations, criminal investigations and other legal proceedings arising from the same or connected circumstances;

[77] *Thames Safety Inquiry—Final Report* (Cm 5448, 2000) para 13.27.

(ii) To consider the scope for mitigating the risks of delay and prejudice to the individual proceedings, including the possibility of combining some or all such proceedings within the inquiry;
(iii) To present to the Permanent Secretary to the Lord Chancellor's Department an initial report with advice on options for further work within three months from the letter of appointment from the Permanent Secretary.[78]

1.53 Sir Roy and Ms Bernstein first produced a *Review of Inquiries and Overlapping Proceedings* in May 2002.[79] That document identified the issues for consideration and ended with a series of questions for discussion. The Review then consulted those government departments and agencies with experience of inquiries and investigations.[80] Sir Roy and Ms Bernstein went on in November 2002 to publish a *Review of Inquiries and Overlapping Proceedings: Preliminary Report*.[81] The *Preliminary Report* discusses the issues, rather than provide definitive solutions to them. That said, the *Preliminary Report* summarized (as its Annex A) some suggestions for further consideration by government:

(1) Consideration is given to the introduction of rules of procedure for public inquiries, to include the powers to be given to the chairman including additional judicial powers to be made available to be conferred on the chairman when the inquiry is set up.
(2) The 'Salmon' procedure is reviewed; consideration is given to the appointment of one counsel to represent all interested parties whose interests do not conflict and to the greater use of written submissions.
(3) The factual findings of an inquiry are given a presumptive evidential status.
(4) The form of inquiries is reconsidered so that the findings about the events and actions leading to the occurrence are separated from the inquiry's recommendations, and the recommendations themselves are separated into those which can be implemented immediately, and those which are for the longer term.
(5) The criminal culpability of directors and managers of transport undertakings is brought into line with those of companies occupying or managing factories.

[78] These terms of reference are taken from the *Review of Inquiries and Overlapping Proceedings* produced by Sir Roy Beldam and Judith Bernstein in May 2002. This Review is Annex C to *Effective Inquiries* (CP 12/04).
[79] Ibid.
[80] Listed as Annex B to the *Preliminary Report* referred to below, and including Tom Luce, Coroner's Review, Cabinet Office, Legal Secretariat to the Law Officers, Lord Cullen, Scottish Executive, Treasury Solicitor, Department of Health, Home Office, Health and Safety Executive, Crown Prosecution Service, Department for Transport (with Civil Aviation Authority), Defra, Whitehall Prosecutors Group, Department for Trade and Industry, British Transport Police, Northern Ireland Office, National Assembly for Wales, Non-transport police/ACPO, Treasury, Serious Fraud Office, and Lord Saville and the Bloody Sunday Inquiry.
[81] This *Preliminary Report* was produced as Annex B to the Memorandum by the Department for Constitutional Affairs (GBI 09) that was submitted to the Public Administration Select Committee as part of its Government by Inquiry investigation.

(6) Consideration is given to the creation of the Office of Chief Investigator for Disasters.
(7) The introduction of proposals recommended by the Society for Advanced Legal Studies working group on financial inquiries is explored.
(8) Further enquiries are made into the European procedures referred to at paragraphs 38 and 39.
(9) Consideration of medical inquiry procedures should await the outcome of the Chief Medical Officer's report to Ministers.

1.54 In 2004 and early 2005 the House of Commons Public Administration Select Committee (PASC) conducted an inquiry that resulted in a report entitled *Government by Inquiry*.[82] The PASC began its investigation with the publication of an Issues and Questions Paper on 24 February 2004.[83] The PASC's stated intention was to 'consider whether, nearly forty years after Lord Salmon examined the 1921 Act, experience of the inquiry process suggests that the time is right to revisit the best way of conducting investigations into matters of serious public concern when things go wrong and what the role of Parliament should be in that, if any'.[84] The PASC wished to investigate 'whether there should be a reconsideration of the way inquiries' terms of reference are set and their chairs are appointed' and sought views on 'whether there should be greater Parliamentary involvement in the establishment of inquiries'.[85]

1.55 The inquiry took evidence from, among others, Lord Hutton, Lord Falconer (then the Secretary of State for Constitutional Affairs), and the secretaries to the Ashworth Hospital Inquiry and the Foot and Mouth—Lessons Learned Inquiry.[86]

1.56 The report was published on 27 January 2005. By the time the PASC reported, the Inquiries Bill was already before the House of Lords (it had just finished its committee stage). The PASC welcomed the Government's proposal to bring inquiries under a unifying statute but suggested a number of ways in which the Bill could be improved.[87] The Government produced a response to the report.[88]

[82] HC 51-I, Session 2004–05.
[83] See <http://www.parliament.uk/documents/upload/Inq%20iandqpaper3.doc>.
[84] Ibid, p 4.
[85] Ibid.
[86] The PASC heard oral evidence from 19 witnesses and received 27 written submissions.
[87] Ibid, para 229.
[88] *Government Response to the Public Administration Select Committee's First Report of the 2004–5 Session: Government by Inquiry* (Cm 6481, 2005).

1.57 Meanwhile, and apparently quite separately,[89] on 6 May 2004 the Department for Constitutional Affairs published a consultation paper entitled *Effective Inquiries*.[90] The consultation paper appears to have been based on a memorandum that the Department for Constitutional Affairs submitted to the PASC as part of its Government by Inquiry investigation.[91] The consultation paper was principally focused on the 1921 Act, albeit it also examined other statutory provisions that enabled inquiries to be commissioned. The consultation paper asked for views on a number of issues that might be considered for possible future legislation. Responses were requested by 29 July 2004.

1.58 Fifty-seven responses were received and the Government held three consultation seminars. An analysis or summary of responses received was published on 28 September 2004.[92]

G. The Inquiries Act 2005 and the Inquiry Rules 2006

1.59 The Inquiries Bill[93] was introduced in the House of Lords on 25 November 2004. The purpose of the Bill, according to the explanatory notes, was 'to provide a comprehensive statutory framework for inquiries set by Ministers to look into matters of public concern'.[94] Opening the debate on the Bill's second reading on 9 December 2004, the Under-Secretary of State, Department for Constitutional Affairs, explained the Bill's intentions:

> This is a Bill to reform the arrangements for conducting [independent] inquiries to make them as effective as possible . . . [the Bill] is not about inquiries conducted by Select Committee, nor is it about planning and licensing inquiries, or inquiries set up by public bodies, including local authorities. It does not attempt to specify when an inquiry should be set up. . . In the future, as in the past, Ministers will have to consider the particular circumstances and all the options available. Ministers will not call an inquiry under the Bill when there are other investigative procedures for dealing with the matter. So the Bill will not lead either to more or to fewer inquiries being called.[95]

[89] The reasons for the initiation of a consultation exercise at this time are not entirely clear, but may have included prompting by the PASC, the publicity generated by the Hutton and Butler Inquiries, the escalating cost of the Saville Inquiry, the announcement of the Government's decision to hold an inquiry into the death of Pat Finucane, and adverse publicity of the Government's decision not to instigate an inquiry into the deaths of young soldiers at Deepcut Barracks.

[90] CP 12/04.

[91] Memorandum by the Department for Constitutional Affairs (GBI 09), submitted in response to the PASC's Issues and Questions Paper.

[92] Available at <http://www.dca.gov.uk/consult/inquiries/inquiriesCPR-12-04.pdf>.

[93] HL Bill 7 of 2004–05.

[94] Inquiries Bill [Lords], Bill 7 (2004–05)–EN, para 3.

[95] HL Deb, vol 667, col 984 (9 December 2004).

1.60 The Under-Secretary of State pointed out the need for a comprehensive statutory framework for major public inquiries across the United Kingdom: there were gaps in the subject-specific legislation that might prevent effective inquiries from being conducted;[96] inquiries often span several subject areas;[97] with devolution, future inquiries might need to span both devolved and reserved business falling within the responsibility of two different administrations; the 1921 Act had been used infrequently, only for the most serious issues, and had never been updated; and, finally, concern had been expressed about the cost of some inquiries.[98] Complaints were made as to the timing of the publication and consideration of the Bill, when the PASC had not yet published its report *Government by Inquiry* and was indeed still receiving evidence and considering the issues,[99] and when there had been no opportunity for pre-legislative scrutiny of the Bill, perhaps by a committee of Parliament that could receive evidence, or perhaps by way of a White Paper.[100]

1.61 The Bill was considered at its committee stage in the House of Lords on 18 January 2005[101] and 19 January 2005.[102]

1.62 A number of amendments were made during the Bill's passage through the House of Lords, including amendments ensuring that Parliament is informed when an inquiry is set up or when its procedures are modified.[103] The Government was defeated twice on amendments in the House of Lords (both on third reading). The first defeat related to the power—but not the duty—imposed on a minister to move a motion before Parliament (or the relevant assembly) for a resolution approving an inquiry into ministerial conduct. The second defeat related to the introduction of a requirement to obtain the consent of an appropriate senior judicial figure (instead of a requirement to consult him or her) in the case of an appointment of a serving member of the judiciary to chair an inquiry. The Bill completed its passage in the House of Lords on 28 February 2005.

1.63 The Bill was introduced into the House of Commons on 1 March 2005. The Bill received its second reading in the House of Commons on 15 March 2005.

1.64 The Inquiries Act 2005 has effected significant changes to the way in which public inquiries are carried out in the United Kingdom. One of the most significant

[96] There was, for example, no power to call a statutory inquiry into a death in prison custody in England and Wales—the Zahid Mubarek Inquiry was a non-statutory inquiry.

[97] The Victoria Climbié Inquiry, for example, was instituted under three legislative regimes, each of which contained powers that varied slightly from each other.

[98] HL Deb, vol 667, col 986 (9 December 2004).

[99] See, eg the comments of Lord Howe of Aberavon: ibid, vol 667, col 991 (9 December 2004) ('it seems premature in the extreme . . . without waiting for the arrival of those conclusions . . . the matter is very serious indeed and casts a shadow over the whole of the Bill').

[100] Ibid, vol 667, col 1008.

[101] HL Deb, GC192–247 (19 January 2005).

[102] HL Deb, GC250–306 (20 January 2005).

[103] See now Inquiries Act 2005, s 6.

changes was to repeal the Tribunals of Inquiry (Evidence) Act 1921—the most significant Act that had regulated statutory inquiries since it was passed. The most immediate effect of the repeal of the 1921 Act was of course the removal of the direct role of Parliament in establishing inquiries, albeit that that role had only been used on 24 occasions in the 84-year currency of the Act. The 2005 Act nonetheless ensures that Parliament has *a* role to play in inquiries instituted under it: the minister (who is, in turn, accountable to Parliament) must establish the inquiry,[104] the minister who proposes to cause an inquiry to be held must make a statement to that effect to Parliament,[105] the minister who brings an inquiry to an end must lay a copy of the notice that so brings the inquiry to an end before Parliament,[106] and the minister must lay the report of the inquiry before Parliament.[107]

1.65 Related concerns were expressed by the Joint Committee on Human Rights.[108] In particular, it was suggested that some of the provisions of the Bill risked compromising the independence of an inquiry, risking a violation of Article 2 of the European Convention on Human Rights. The provisions said to create such a risk included (i) what is now section 14 of the 2005 Act, namely the power of a minister to bring an inquiry to an end before publication of the report;[109] (ii) what is now section 19 of the 2005 Act, namely the power of a minister to restrict attendance at an inquiry or to restrict disclosure or publication of evidence; (iii) and what is now section 25 of the 2005 Act, namely the power of a minister to become responsible for publication of the report of the inquiry and for determining whether any material in the report should be withheld in the public interest.

1.66 Similar views were expressed by judicial and other figures as the Bill progressed through Parliament. So, for example, Judge Peter Cory (a former Justice of the Supreme Court of Canada), who was appointed to conduct an independent, but paper, inquiry into six deaths during the troubles in Northern Ireland, expressed firm views as to whether an inquiry under the 2005 Act would be independent and whether, accordingly, he would be prepared to participate in such an inquiry:[110]

> it seems to me that the proposed new Act would make a meaningful inquiry impossible. The Commissions would be working in an impossible situation. For example, the Minister, the actions of whose ministry was to be reviewed by the public inquiry would have the authority to thwart the effects of the inquiry at every step. It really creates an intolerable Alice in Wonderland situation. There have been references in

[104] Inquiries Act 2005, s 1.
[105] Ibid, s 6.
[106] Ibid, s 14(4)(b).
[107] Ibid, s 26.
[108] Joint Committee on Human Rights, Fourth Report of Session 2004–05, HC 224.
[109] But see now the decision of the Court of Appeal of Northern Ireland, *Re an application by David Wright for Judicial Review* [2007] NICA 24, which held that the existence of such a power did not ineluctably mean that an inquiry lacked independence.
[110] See Judge Cory's letter to Congressman Chris Smith of 15 March 2005: <http://www.patfinucanecentre.org/cory/pr050315.html>.

> the press to an international judicial membership in the inquiry. If this new Act were to become law, I would advise all Canadian judges to decline an appointment in light of the impossible situation they would be facing. In fact, I cannot contemplate any self-respecting Canadian judge accepting an appointment to an inquiry constituted under the new proposed Act.

1.67 Lord Saville of Newdigate, who chaired the Bloody Sunday Inquiry, was consulted by the Department of Constitutional Affairs about the Inquiries Bill, as it then was, and expressed his views in a letter of 26 January 2005. He had had a meeting with officials but wrote to their minister, Baroness Ashton, *inter alia*, in the following terms:

> There is, however, one matter that seems to me of such importance that I should write to you. This concerns the present provisions of Clause 17 of the Bill, giving the relevant minister the power to impose restrictions at any time before the end of the inquiry on attendance at the inquiry, or on the disclosure or publication of any evidence or documents given to the inquiry.
>
> I take the view that this provision makes a very serious inroad into the independence of any inquiry; and is likely to damage or destroy public confidence in the inquiry and its findings, especially in any case where the conduct of the authorities may be in question.
>
> As a judge, I must tell you that I would not be prepared to be appointed as a member of an inquiry that was subject to a provision of this kind. This is because I take the view that it is for the inquiry panel itself to determine these matters, subject of course to the right of those concerned to challenge in court any ruling that it may make or refuse to make. To allow a minister to impose restrictions on the conduct of an inquiry is to my mind to interfere unjustifiably with the ability of a judge conducting the inquiry to act impartially and independently of Government, as his judicial oath requires him to do.

1.68 Lord Saville recorded that his two colleagues, both retired senior Commonwealth judges, agreed with him that they would not be prepared to accept appointment to an inquiry.

1.69 Mr Dermot Ahern, the Irish Minister for Foreign Affairs, on 8 March 2006 introduced a motion before Dáil Éireann calling on the Government of the United Kingdom to amend the Inquiries Act 2005. In the course of his remarks he said:

> The UK Inquiries Act does not meet the standard set by Judge Cory, nor the understanding reached at Weston Park. Many difficulties exist with the new legislation. An inquiry held under it will not be regarded as sufficiently independent or transparent, given the potential use of restriction notices and the potential degree of ministerial control.

1.70 The spokesman for the other parties represented in Dáil Éireann made remarks agreeing with this all-party motion. The equivalent inquiry being held in the Republic with regard to the murder of Superintendents Breen and Buchanan is being held under the Tribunals of Inquiry (Evidence) Act 1921.[111]

[111] See <http://www.smithwicktribunal.ie>.

1.71 Finally, in a press release dated 20 April 2005, Amnesty International made a plea

> urging all judges, whether in the United Kingdom or in other jurisdictions to decline appointments as chairs or panel members to any inquiry established under the recently enacted Inquiries Act 2005, including an inquiry into allegations of State collusion in the murder of Patrick Finucane. The organisation is also urging the Act's repeal.

1.72 A further press release was made claiming that concern had been expressed about the 2005 Act by a very wide range of bodies including the General Councils of the Bar of Northern Ireland, England and Wales, and Ireland, and the Law Societies in those three jurisdictions, the US House of Representatives, the International Commission of Jurists, the Haldane Society, and many others.

1.73 The Inquiries Act 2005 received Royal Assent on 7 April 2005. Sections 51 to 55 came into force on that date, with sections 1 to 50 and the Schedules coming into force on 7 June 2005.[112] In the period before enactment, and after it, there was a substantial body of criticism of parts of the Act, most of which focused on the perceived strengthening of the role, and powers, of ministers (to the detriment, it was said, of Parliament and the independence of inquiries themselves). Some commentators adopted what might be said to be too general an approach in relation to these matters—resulting in them either being for or against the 2005 Act as a whole. Often, such positions overlooked significant facts and matters, including the following:

(1) First, the use of what were said to be the most significant new powers given to ministers is always subject to the supervisory jurisdiction of the High Court on a claim for judicial review.
(2) Secondly, in relation to the relinquishment by Parliament of some of the functions that had been bestowed upon it by the Tribunals and Inquiry (Evidence) Act 1921, this was merely a reflection of the fact that the Act had fallen out of use in modern times—indeed, between enactment and repeal it had only been used on some 24 occasions.
(3) Thirdly, on analysis, only a very small number of provisions of the 2005 Act can really be described as being controversial in any way—the vast majority of them seek merely to consolidate or codify existing statutory or common law powers.
(4) Fourthly, in some respects the 2005 Act *reduces* the powers of Government, rather than strengthening them—so, for example, by section 18, inquiry proceedings must be in public unless restrictions on public access are imposed either by a minister or the chairman of the inquiry. This is an improvement on the previous position, whereby the decision as to whether an inquiry should

[112] Inquiries Act 2005 (Commencement) Order 2005 (SI 2005/1432).

be in private or public could be taken by a minister at the very beginning of the inquiry; now the grounds on which private or closed hearings may take place are clearly specified and narrowly regulated.

1.74 By section 41 of the Act power is given to the 'appropriate authority'[113] to make rules dealing with matters of evidence and procedure in relation to inquiries, the return, or keeping, after the end of the inquiry, of documents given to or created by the inquiry, and awards of expenses under section 40 of the Act. Such rules were made in the case of inquiries for which a UK minister is responsible by the Inquiry Rules 2006,[114] which were made on 11 July 2006 and came into force on 1 August 2006.[115] The Rules followed the promulgation of a discussion paper by the then Department for Constitutional Affairs,[116] and a consultation on *Draft Inquiry Procedure (UK Inquiries) Rules* was conducted by that Department from 1 March 2006 to 23 May 2006.[117] The response to the consultation was produced on 17 August 2006.[118]

1.75 The discussion paper noted that there are some areas of inquiry procedure and practice that are not suitable for statutory provisions but would be more appropriately addressed in guidance. It continued:[119]

> Guidance will be of use in providing practical advice to the inquiry team on how to take forward the organisation and running of the inquiry. It might cover issues such as the role of secretary, solicitor and counsel, media handling, finding suitable accommodation and IT systems, all incorporating suggestions based on the experience of previous inquiries. Guidance will supplement the procedures set out in rules and provide some general approaches to conducting an inquiry that can be tailored to the needs of individual inquiries. Guidance on inquiries is currently being updated by the Cabinet Office and will continue to be taken forward in parallel with the Inquiries Bill with a view to publishing updated guidance following the passage of the Bill.

1.76 Notwithstanding the statement by the Department for Constitutional Affairs[120] that such updated guidance would be published, this has not to date occurred.[121]

[113] This means the Lord Chancellor in relation to inquiries for which a UK minister is responsible (s 41(3)(a)), the Scottish Ministers as regards inquiries for which they are responsible (s 41(3)(b)), the National Assembly for Wales as regards inquiries for which that Assembly is responsible (s 41(3)(c)), and the First Minister and deputy First Minister acting jointly, as regards inquiries for which a Northern Ireland minister is responsible (s 41(3)(d)).

[114] SI 2006/1838.

[115] Ibid, r 1.

[116] Department for Constitutional Affairs, *Inquiries Bill—Rules of Procedure* (2006).

[117] HL Deb, vol 679, col 21WS (1 March 2006).

[118] *Draft Inquiry Procedure (UK Inquiries) Rules—Response to Consultation CP(R) 04/06.*

[119] *Inquiries Bill—Rules of Procedure* (n 116 above) para 6.

[120] Repeated in the *Response to Consultation* (n 118 above) p 16.

[121] Note in this regard the recommendation in the Ministry of Justice's *Memorandum to the Justice Select Committee: Post-Legislative Assessment of the Inquiries Act 2005* (Cm 7493, 2010) para 40: 'We also welcome the suggestion that it would be helpful to provide inquiry chairs with a clear and all

1.77 One of the main proposals to limit the costs of public inquiries was dropped following the consultation process. The majority of respondents to the consultation exercise expressed concern in relation to the proposal requiring the production of an estimated budget and timetable before the main work of an inquiry began. Among the respondents' concerns over the proposals were that 'they would be counter-productive to the work of the inquiry' and that 'if the timetable proved inaccurate [it could] damage the public's perception of the inquiry'. In the summary of responses, published on 17 August 2006, the Department for Constitutional Affairs stated:

> The Government believes that the submission of an inquiry budget and timetable accurately reflects the current practice in inquiries and that such estimates can help promote transparency in the inquiry's procedures and can keep an inquiry on track and in proportion to the matters under investigation. However, having reflected on the majority opinion of the consultees, the Government considers that these areas are not appropriate for rules, and, that in practice, their operation could prove too restrictive. The provisions have been removed from the final version of the rules.

1.78 The detail of the 2006 Rules is considered in relation to specific subjects below. It is sufficient for present purposes to note that a significant focus of the rules is the issue of controlling costs and expenditure.[122] This was no doubt because the increasing cost of public inquiries (in particular the very significant expenditure on the Bloody Sunday Inquiry) was an important driver in the desire to update inquiries legislation. In brief, however, the rules address the following issues: (i) the designation of core participants to an inquiry; (ii) the appointment of legal representatives; (iii) the taking of evidence and procedure for oral hearings; (iv) the disclosure of potentially restricted evidence; (v) the issuing of warning letters to witnesses; (vi) arrangements for publishing reports and records management; and (vii) the determination, assessment, and payments of costs.

1.79 Rules were also made in the case of inquiries for which Scottish Ministers are responsible by the Inquiries (Scotland) Rules 2007.[123] These were made on 13 December 2007 and came into force on 19 January 2008.[124]

encompassing guidance at the point of appointment. The guidance should contain information about the broader role they are being asked to undertake including administrative and management issues as well as finance, staff management and archiving of records'.

[122] Sixteen of the 34 rules are devoted to this subject.
[123] SI 2007/560.
[124] See ibid, r 1(1).

No rules have yet been issued in relation to inquiries for which the Welsh Ministers are responsible,[125] nor have any rules yet been issued in relation to inquiries for which a Northern Ireland Minister is responsible.[126] **1.80**

Since enactment, the following inquiries have been established under the 2005 Act (or converted to be an inquiry under that Act): **1.81**

No	Name of Inquiry	Initiated/Converted	Date
1.	The Billy Wright Inquiry	Converted from inquiry under Prison Act (Northern Ireland) 1953, s 7	Initiated 16 November 2004, converted 23 November 2005
2.	The Robert Hamill Inquiry	Converted from inquiry under Police (Northern Ireland) Act 1998, s 44	Initiated 16 November 2004, converted 29 March 2006
3	The E.coli Inquiry	Initiated	13 March 2006
4.	The Bernard Lodge Inquiry	Converted from non-statutory inquiry	Initiated 10 January 2008, converted 23 February 2009

[125] This is notwithstanding the fact that the E.coli Inquiry (<http://wales.gov.uk.ecoliinquiry>) was set up under the Inquiries Act 2005 by the National Assembly for Wales. On 7 December 2005 the National Assembly for Wales passed a motion ordering an inquiry to be held under s 1 of the 2005 Act. The Assembly's motion recommended that Professor Hugh Pennington be appointed as chair of the inquiry and determined that its remaining functions under the 2005 Act relating to the inquiry be delegated to the First Minister. By an instrument dated 10 March 2006 the First Minister confirmed Professor Pennington's appointment under s 4 of the 2005 Act and specified the formal setting-up date of the inquiry to be 13 March 2006. The terms of reference of the inquiry were: 'To inquire into the circumstances that led to the outbreak of *E.coli* O157 infection in South Wales in September 2005, and into the handling of the outbreak; and to consider the implications for the future and make recommendations accordingly.' In the absence of rules made under s 41 of the Inquiries Act 2005, the E.coli Inquiry issued its own 'Inquiry Procedures' document, published on 27 June 2006, the day of the inquiry's preliminary hearing (<http://wales.gov.uk/ecoliinquiry/about>). The procedures described in the document were broadly similar to the procedures set out in the Inquiry Rules 2006.

[126] The Billy Wright Inquiry (<http://www.billywrightinquiry.org>) was instituted and originally held under the provisions of s 7 of the Prisons Act (Northern Ireland) 1953. On 23 November 2005 it was converted under s 15 of the Inquiries Act 2005 to be an inquiry under that Act. Being a converted inquiry, however, the Inquiry Rules 2006 did not apply to it (see para 2.85 below). The Robert Hamill Inquiry (<http://roberthamillinquiry.org>) was instituted and originally held under the provisions of s 44 of the Police (Northern Ireland) Act 1988. On 29 March 2006 it was converted under s 15 of the Inquiries Act 2005 to be an inquiry under that Act. Similarly, therefore, the Inquiry Rules 2006 did not apply to that inquiry. The Rosemary Nelson Inquiry (<http://www.rosmarynelsoninquiry.org>) was instituted and held under the provisions of s 44 of the Police (Northern Ireland) Act 1998, so no issue about the application of the Inquiry Rules 2006 arose. The Cdiff Inquiry (<http://cdiffinquiry.org>) was instituted and is being held under the Inquiries Act 2005. On 14 October 2008, the Minister for Health, Social Services and Public Safety advised the Northern Ireland Assembly that a public inquiry would be conducted into the outbreak of *Clostridium difficile* infection that occurred in Northern Health and Social Care hospitals. In the absence of rules made under s 41 of the Inquiries Act 2005, the Cdiff Inquiry issued its own 'Inquiry Procedures' document (<http://www.cdiffinquiry.org/inquiries-procedures-8-2-10.pdf>). This document is substantially the same as that issued by the E.coli Inquiry.

No	Name of Inquiry	Initiated/Converted	Date
5.	The ICL Inquiry	Initiated	21 January 2008
6.	The Fingerprint Inquiry	Initiated	14 March 2008
7.	The Penrose Inquiry	Initiated	23 April 2008
8.	The Baha Mousa Inquiry	Initiated	14 May 2008
9.	The Cdiff Inquiry	Initiated	31 March 2009
10.	The Vale of Leven Inquiry	Initiated	1 October 2009
11.	The Al Sweady Inquiry	Initiated	25 November 2009
12.	The Mid Staffordshire NHS Foundation Trust Inquiry	Initiated (albeit preceded by non-statutory inquiry)	9 June 2010
13.	The Azelle Rodney Inquiry	Initiated	10 June 2010

1.82 In October 2010 the Ministry of Justice published a memorandum to the Justice Select Committee entitled *Post-Legislative Assessment of the Inquiries Act 2005*.[127] The memorandum provides a preliminary assessment of the Inquiries Act 2005 and was prepared for submission to the Justice Select Committee.[128] In order to conduct the assessment, the Ministry of Justice reviewed all 13 of the inquiries initiated or converted under the 2005 Act and listed above, met with inquiry chairs and teams, as well as sponsor departments and some of those affected by the subject matter of the inquiries.[129] The review also considered, by way of comparison, inquiries which were not established under the 2005 Act (such as the Iraq Inquiry), nor converted to an inquiry under the 2005 Act (such as the Rosemary Nelson Inquiry).[130] The detail of the review's preliminary findings is considered in relation to individual subjects below. In general terms, the review came to favourable conclusions as to the operation of the 2005 Act (albeit not the 2006 or 2007 Rules), namely that

> Having assessed the operation of the Inquiries Act 2005 by reference to all thirteen inquiries either set up under the Act or converted into 2005 Act inquiries, we believe that overall the Act has been successful in meeting its objectives of enabling inquiries to conduct thorough and wide ranging investigations, as well as making satisfactory recommendations. We do, however, take the view that the Act can only enable effective inquiries if the inquiry is conducted by a chairman with the appropriate skill set and who is supported by an appropriately experienced inquiry team. We have no

[127] Cm 7943.
[128] It was prepared as required by the process set out in the document *Post Legislative Scrutiny—the Government's Approach* (Cm 7320, 2008).
[129] Cm 7943, para 22.
[130] Ibid, para 23.

> evidence of any serious suggestion that the Act should be repealed in any substantive way. The overwhelming evidence, however, is that the Inquiries Rules as currently drafted are unduly restrictive and do not always enable the most effective operation of the Act.[131]

1.83 Notwithstanding the positive assessment the Ministry of Justice has accorded to the Act for which its predecessor Department was responsible, there remain significant critics of it.

1.84 Thus, despite the keen desire for there to be an inquiry into the murder of Pat Finucane, his family has consistently opposed any inquiry into his death being held under the 2005 Act. On 23 September 2004 the Secretary of State for Northern Ireland announced that the Government would establish an inquiry into the death of Pat Finucane, noting that

> In order that the inquiry can take place speedily and effectively and in a way that takes account of the public interest, including the requirements of national security, it will be necessary to hold the inquiry on the basis of new legislation which will be announced shortly.[132]

1.85 The family of Pat Finucane opposed the establishment of an inquiry under the 2005 Act, arguing that it would give ministers unacceptable control over the inquiry (in particular that it would give ministers powers to keep evidence secret). The family was supported by a number of organizations, including Amnesty International and the Northern Ireland Human Rights Commission. In 2006, the Secretary of State announced that, because of the continued objections of the family, the inquiry would not commence. More recently, new Secretary of State announced that he would not set up an inquiry until he had the opportunity to speak to the family, albeit he noted that 'It is our policy not to have any more costly and open-ended inquiries'.[133]

[131] Ibid, para 70.
[132] Northern Ireland Office News Release, 23 September 2004.
[133] HC Deb, col 850 (30 June 2010).