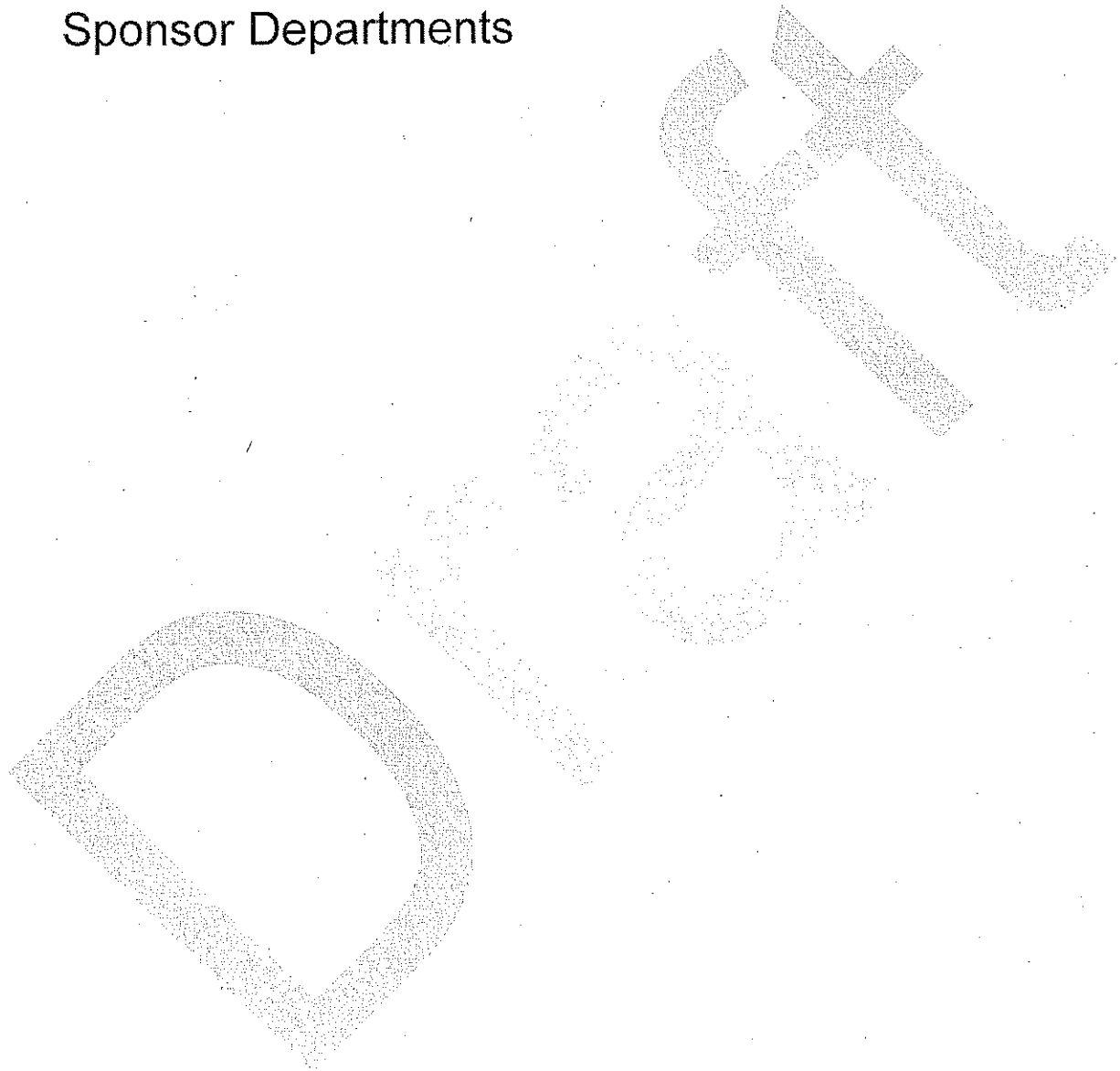




CabinetOffice

Inquiries Guidance

Guidance for Inquiry Chairs and Secretaries, and
Sponsor Departments



This document offers best practice guidance for all types of inquiry commissioned by Government – whether statutory or non-statutory, public or private. It is split into three parts: guidance for sponsor departments; guidance for Inquiry Chairs; and guidance for Inquiry Teams. The guidance cannot cover every circumstance and is not binding on inquiry teams. Cabinet Office advice should be sought in cases of doubt.

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INTRODUCTION

This document offers best practice guidance for all types of inquiry commissioned by Government – whether statutory or non-statutory, public or private. It is split into three parts: guidance for sponsor departments, guidance for Inquiry Chairs, and guidance for Secretaries and their teams.

Sponsor departments should forward the guidance to the Chair and the Inquiry Team as soon as possible after they are appointed.

The guidance cannot cover every circumstance and is not binding on inquiry teams. Cabinet Office advice should be sought in cases of doubt.

Contact details and a list of where to find key documents are included at the end of this guidance. It should be read in conjunction with the other guidance listed there.

The Propriety and Ethics Team in the Cabinet Office can provide further advice (telephone 020 7276 1898 or e-mail proprietyðicsteam@cabinet-office.gsi.gov.uk).

This guidance will be reviewed periodically.

CHAPTER 1: GUIDANCE FOR SPONSOR DEPARTMENTS

ESTABLISHING AN INQUIRY

This section of the guidance provides advice to departments sponsoring individual inquiries. It is relevant throughout the course of an inquiry and regardless of its type – whether statutory or non-statutory, public or private. Departments will find further advice in the chapters for the Inquiry Team and for the Chair.

The majority of statutory inquiries will be held under the Inquiries Act 2005, although some other legislation continues to apply. Those involved with an inquiry should familiarise themselves with all relevant legislation. The Inquiries Act 2005 consolidates much of the previous legislation and codifies past practice for inquiries. It covers the setting up of inquiries, appointments to them, their procedures and powers, the submission of evidence and the publication of reports. Refer to the explanatory notes to the Inquiries Act 2005 and the Inquiry Rules 2006 (SI 2006/1838).

FORMS OF INQUIRY

Early advice should be sought from the Cabinet Office Propriety and Ethics Team and the Treasury Solicitor's Department before any commitment is made to establish an inquiry.

An inquiry may be set up for one, or more, reasons. These include: to establish the cause of a major disaster, accident or other event involving significant damage or loss of life; to make recommendations as to how to learn lessons from such an event; to investigate serious allegations of general public concern which require thorough and impartial investigation, and for which ordinary civil or criminal processes may not be adequate or appropriate.

Under the *Ministerial Code*, the Prime Minister should be consulted in good time about any proposal to set up a major public inquiry (see paragraphs 4.10 and 4.11).

When considering whether to establish an inquiry it may also be appropriate to consult other Ministerial colleagues and, depending on the circumstances and issues involved, the devolved administrations and outside bodies such as special interest groups or individuals directly affected by the issue or issues in question (including a previous administration in some cases).

Before deciding to establish an inquiry, Ministers should be clear on its intended purpose and there should be robust

reasoning behind the decision. Advice to Ministers on setting up an inquiry should cover the public interest to be served by holding an inquiry. It should also cover costs. These matters should help shape the inquiry and the scope of its terms of reference.

Ministers face a large number of calls for inquiries. Inquiries require a great deal of time and resources, and can place a considerable strain on those involved. It is important that inquiries are only considered where other available investigatory mechanisms would not be sufficient.

There may be circumstances in which the subject-matter of the inquiry is so sensitive that the public interest – for example, in the protection of national security or international relations – requires some modification of the general approach recommended in this guidance so as to ensure that the inquiry functions in a way that protects the sensitive information provided to it.

Before deciding whether to hold an inquiry, Ministers need to be very clear that the inquiry is affordable within the department's existing provision and that the benefits of the inquiry – both in the short and longer term – are likely to outweigh the estimated costs of the inquiry.

Departments should seek advice from the Cabinet Office Propriety and Ethics Team on the different forms of inquiry and the merits of the different options. Possible forms of inquiry include inquiries conducted under the

Inquiries Act 2005, statutory public inquiries under other legislation, non-statutory ad hoc inquiries (public or private), Committee of Privy Counsellors or Royal Commissions. This guidance will not in its entirety be appropriate for all circumstances and all types of inquiry, and Cabinet Office advice should be sought at an early stage.

THE INQUIRY TEAM

Chair and Panel

The responsible Minister will appoint the Chair (and panel, if any). The Minister may seek advice from professional, regulatory or other bodies in the appropriate field. The impartiality of the Chair should be beyond doubt. The sponsor department should send this guidance and copies of any relevant legislation to the Inquiry Chair on their appointment.

Depending on the circumstances, the Chair and panel may need to be legally qualified or have expert professional knowledge. Thinking through what type of Chair is required is critical. In some cases, but by no means always, this could be a judge or senior barrister. Other types of chair to consider include someone with experience in the field. For some inquiries individuals with experience of running or working in large organisations may be more suitable.

Before appointing any panel members the Minister should consult the Chair. It may be

useful to appoint panel members if there is a need for diversity of professional backgrounds among Inquiry members.

A balance will need to be struck to ensure that those appointed are knowledgeable and interested in the issues, but that they have no conflict of interest with the subject of the inquiry. While availability and willingness to undertake the task are important factors, because of the likely sensitivities involved, **the department should not approach any individual until the Minister has been consulted.**

The Lord Chancellor and Secretary of State for Justice should be consulted where there is a proposal to appoint a judge or legal officer (see the *Ministerial Code* paragraph 4.11).

Departments should fully brief the Chair before their appointment is announced. The Chair should also meet with the Treasury Solicitor as soon as possible to discuss general issues relating to inquiry practice and procedure.

Secretary and Team

The Secretary, usually on secondment or loan from the civil service, works for the inquiry, not the sponsor department.

The department should ensure that the Secretary and Inquiry Team are appointed as early as possible. The department's HR function should give priority to providing

assistance to the inquiry and be as flexible as possible in making appointments.

Occasionally, the role of Secretary to the inquiry may be combined with that of the Solicitor. This might be the case for a non-statutory ad-hoc inquiry, led by a Chair (where there isn't a panel).

Legal Support

Where necessary, the Inquiry Team will deal directly with the Treasury Solicitor's Department to recruit a Solicitor, usually from the Government Legal Service (GLS).

Exceptionally, the Chair may decide that it would not be appropriate for the Solicitor to come from the GLS, in which case a Solicitor external to Government will need to be recruited. Because of the cost implications involved the Chair must consult the sponsor department on this approach before agreeing to it (see pages 23-24).

The appointment of counsel is similarly a matter for the inquiry (see chapter 3 page 23). Under the Inquiries Act 2005 the sponsor department agrees remuneration and expenses to be paid to counsel. The Attorney General's panel counsel rates provide a useful guide.

The sponsor department will normally use departmental lawyers for legal support in relation to its role as sponsor of the inquiry and, if relevant, its role as a party to the inquiry.

TERMS OF REFERENCE

Chapter 1: Guidance for sponsor departments

The Minister responsible for setting up an inquiry, whether under the Inquiries Act 2005 or otherwise, is responsible for setting the terms of reference. Carefully considered terms of reference can be the key to a successful inquiry. The Minister should consult the Chair and is required to do so in respect of an Inquiries Act 2005 inquiry.

The terms of reference should be a clear statement of the inquiry's purpose and scope. The terms of reference should go no wider than is necessary to fulfil the specific purpose of the inquiry. If they are drawn too widely focus may be lost and delay caused. Legal advice should always be sought before the terms of reference are announced.

The terms of reference should always make clear:

- To whom the inquiry should report;
- Exactly what purpose the inquiry is to serve; and,
- Whether the inquiry is being invited to review policy in a given area as well as the facts of a particular case.

The terms of reference may also specify whether the inquiry is to make recommendations.

Those involved in the events triggering the inquiry will inevitably have views on what the terms of reference should be, as may others. Ministers may, but are not obliged, to consult

such individuals or groups. Care is required not to create expectations which may not be met by the eventual terms of reference.

The responsible Minister may want to stress the need for discipline in the management of the inquiry, for example by setting a budget and a target date bearing in mind the scale of the task involved and after consulting the Chair.

Announcement

To reduce any need to amend in future, the terms of reference should only be announced after full consideration, including discussion with the Chair.

If the events under inquiry took place, even in part, under a previous administration former Ministers should be consulted before the announcement.

Under the *Ministerial Code*, when Parliament is in session the most important announcements of Government policy should be made in the first instance in Parliament. If Parliament is not in session when the inquiry needs to be announced a general public announcement should proceed, with a written statement made to Parliament when it returns.

A statement, either oral or written, providing the terms of reference and names of the Chair (and panel) should be made in both Houses of Parliament. The Ministerial statement should (and must if the inquiry is

held under the Inquiries Act 2005) be made as soon as practical. A press notice should be prepared to coincide with the statement.

Management of the announcement can have a long-term impact on the public's perception of the inquiry. Careful thought should be given to the language used in the announcement as it can help establish the tone of the inquiry.

Comments made by Ministers at the time of the announcement can add extra authority to the Chair, but care must be taken not to impinge on a Chair's independence or ability to interpret and fulfil the terms of reference. Once an announcement has been made, Ministers should refrain from comment, treating the issues under inquiry as though *sub judice*. This should not prevent Ministers from explaining the purpose of the inquiry or from answering questions in Parliament on procedure, or correcting false statements made by third parties.

TIMING

Concurrent Proceedings

There are various factors that might affect the start date and length of an inquiry.

Inquiries cannot and should not be a substitute for existing legal procedures. The responsible Minister should be made aware of any other proceedings which may have a bearing on the scope and handling of the inquiry. These could include criminal proceedings, coroners' inquests (or in

Scotland, fatal accident inquiries) and routine accident investigations.

An inquiry's findings have no legal effect. If other proceedings have taken place, their outcome may affect the remit of the inquiry. Where no other proceedings are planned, the role of the inquiry should not be expanded simply to compensate for this.

Criminal Proceedings

Any criminal proceedings would normally precede an inquiry. The fact that criminal proceedings are pending may lessen pressure to hold an inquiry, but there may still be a need for an inquiry in order to identify ways to prevent a recurrence of a situation or event. Ongoing criminal proceedings can also delay the start of an inquiry or publication of its report.

In cases where co-operation from a witness may be affected by concerns of potential criminal proceedings an approach can be made to the Attorney General to seek a limited undertaking. If granted, such an undertaking is generally in the form of the Attorney General agreeing that no criminal proceedings will be commenced against an individual based (only) on the evidence he or she gives to the inquiry.

Other Investigations

The outcome of any technical, professional, internal disciplinary or other internal investigation can help determine whether a full inquiry is needed and, if so, what its focus

should be. The information gathered during such investigations can also be used to inform any subsequent inquiry.

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CONTACT WITH AN INQUIRY

LIAISON ARRANGEMENTS

When an inquiry is to be established there will usually be a clear 'lead' Government department. This department will act as the sponsor department for the inquiry. Where the work of more than one department is involved it may be necessary to designate a lead department, or to establish a cross-government Liaison Unit to manage contact with the inquiry. These arrangements should be put in place as soon as possible.

Where a department sponsors an inquiry and is also a party to the Inquiry, the tasks of sponsoring the inquiry and liaising with the inquiry on their requests for witnesses and evidence should be managed in a way that recognises the potential for conflict of interests: this may be done by setting up separate teams to act as Sponsor Unit and Liaison Unit.

Liaison Unit

Where the department sets up a separate Liaison Unit within the department its functions are likely to include:

- Acting as a conduit for all information requests relating to the inquiry;
- Supporting departmental witnesses by providing them with access to papers, advice and, where appropriate, support (including legal representation) in

preparation for evidence to hearings (and after the hearings);

- Controlling and monitoring the transfer of information to both the inquiry and to witnesses (including any necessary check for national security and consequent redactions);
- Providing briefing for Ministers and others in relation to the inquiry;
- Handling the receipt and possibly publication of the inquiry report; and
- Coordinating the Government's response to the report and ensuring that work is taken forward to implement any recommendations.

Core participant status

For Inquiries Act inquiries, it may be necessary for the Government to consider whether an application should be made under Rule 5 of the Inquiry Rules for core participant status. Consideration should be given to this as soon as an inquiry is established and the position should be kept under review. The benefits of core participant status are set out in the Inquiry Rules – see for example rule 11 on opening and closing statements, it has also been the practice of some inquiries to allow core participants advanced sight of evidence.

An application for core participant status can only be made by a "person" (for example a

Minister or an official) who satisfies one of the tests set out in Rule 5(2). See <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Further-Ruling-on-Core-Participants-Government-4-May-2012.pdf> as a recent example.

PAPERS

Responding to Information Requests

Where required, an inquiry will approach departments directly for access to original papers and/or for the submission of prepared material. As soon as an inquiry is established, the Permanent Secretary of the sponsor department should put processes in place to start collecting relevant evidence (whether digital or paper), suspending the usual process of archiving and destruction of papers, and ask other departments likely to be involved to do the same.

Departments should meet requests from the inquiry as quickly and efficiently as possible. Departments should identify all relevant papers in advance and keep a central record of the papers and other written evidence submitted by departments to the inquiry.

Departments should be as open as possible in providing all relevant papers to an inquiry. The department may need to make special arrangements with the inquiry for the storage of papers and to ensure that certain papers are not made public. For some inquiries, it may be advisable to formalise these arrangements in a published protocol. The inquiry may still be able to refer to such

documents by paraphrasing or selectively quoting. While documents should normally be made available in their entirety to Inquiry staff, redaction may be necessary before such documents can be published or made available to third parties, and departments should agree redaction criteria with the Inquiry at an early stage.

Access to Departmental Papers

Departments must ensure that appropriate arrangements are made to safeguard the security and integrity of any documents or other information provided to the inquiry. These arrangements must be agreed by the department and the Inquiry.

Departments should keep a record of the access that has been granted to their papers.

Individuals granted access to papers may make notes and may be provided with copies of documents on request, in accordance with the department's normal policies for handling classified material. A record/register must be kept of documents which have been copied. Before notes are made or copies taken of classified documents, the department must be satisfied that suitable arrangements exist for their security and that appropriate undertakings have been given about handling. For particularly sensitive documents, notes or copies should be retained in the department. When an inquiry is complete all notes and copies should be returned to the relevant department.

Before access is granted to departmental papers for the purposes of the inquiry, the inquiry staff concerned must have the necessary security clearance. Priority should be given to processing such requests for security clearance.

Departmental Security Officers should be consulted in case of doubt about any of these arrangements.

Papers of a Previous Administration¹

If an inquiry is likely to require access to papers which date from previous administrations, the Cabinet Secretary will need to write, in line with the convention on access to papers of a previous administration, to the relevant former Prime Minister and Ministers to seek their agreement to these papers being made available. This should be done where practicable before the inquiry is announced.

Papers of a previous administration should not be made available to current Ministers other than as a result of the process of the inquiry.

Access to Departmental Papers by Former Ministers and Officials

In line with long-standing convention, former Ministers and officials may, on request, be given access to papers which they saw when they were in office and about which they may be required to give evidence. Departments

may assist former Ministers and officials by reminding them of the aspects in which they were involved as well as the sequence of events, and by selecting and identifying documents relevant to those issues. It will, however, be for them to decide how to respond to the inquiry.

Former Ministers and officials who consult departmental papers should be reminded that they remain subject to the Official Secrets Acts and their continuing duties of confidentiality.

Record Keeping

The inquiry must have regard to relevant legislation and agree arrangements for handling and managing documents and records with the Departmental Records Officer of the sponsor department. This should be in accordance with guidance from The National Archives, who can also be contacted directly if additional advice or support is required. See The National Archives' guidance, *Public Inquiries – the Management of Records*.

The inquiry should seek advice from the Departmental Records Officer of the sponsor department on what records they expect to receive at the conclusion and build this into their file plan. An inquiry must give adequate notice to the Departmental Records Officer of the winding up of the inquiry, so that appropriate arrangements for its records can be made.

¹ See Directory of Civil Service Guidance: Volume 2, pp8-10.

The inquiry is responsible for handing over an orderly set of records to The National Archives and/or the relevant Departmental Records Officer, who is then responsible for passing any documents to The National Archives as appropriate. Throughout the inquiry an adequate records management system should be in place and all staff in the inquiry team should be aware of these processes and follow them. Before passing documents over, the inquiry is responsible for assessing records to determine whether they should be retained for the long-term or, if they were supplied by a third party in confidence, returned to the originator.

FINANCE

Inquiries are funded by their sponsor department and sponsor departments remain accountable to Parliament for inquiry expenditure (although if an Inquiry's remit covers more than one department the sponsor department may by agreement recover some of the costs from the other departments concerned). A strong working relationship and a good understanding between the sponsor department and the inquiry team are essential to managing costs.

Detailed records of inquiry costs should be maintained so that the information, when required e.g. for FOI requests or PQs, is readily accessible.

Inquiry budgets and plans should provide adequate resource for all winding up costs, as well as setting up and running costs,

including for example, data export migration and import costs.

GIVING EVIDENCE

Where they have been involved in the issues under inquiry, serving civil servants are expected to co-operate fully with the inquiry. All serving officials are therefore expected to give evidence if asked to do so. This expectation extends to former officials where it would be reasonable to expect them to co-operate, although if the Inquiry is not held under statute there is no power to enforce such co-operation. Departments should help an inquiry get in touch with officials who have moved roles or retired.

Departments have a duty of care towards their employees and former employees, and must provide a reasonable degree of support to them, including access to legal advice where appropriate, either from its own lawyers, Treasury Solicitors, or a private sector law firm. This may need to be considered on a case-by-case basis and can be discussed with the Cabinet Office.

Departmental support may also need to include supporting applications for witness screening or anonymity, although the department must satisfy itself that such measures are genuinely necessary before endorsing them. The demands on witnesses in preparing for, and participating in, an inquiry can be considerable. Inquiries and departments should seek to minimise these pressures wherever possible and be aware

that some witnesses will need support after giving evidence, particularly at the time when the report is published.

Immunity from Disciplinary Action

An inquiry has no role in relation to disciplinary action against any official or other person the inquiry may decide to criticise in their report. This is entirely a matter for their employer.

Departments should encourage witnesses to give full and frank evidence. Where appropriate, the Permanent Secretary will offer an undertaking in respect of subsequent disciplinary action confirming that, subject to certain limitations, nothing which any official provides to the inquiry by way of evidence, whether orally or in writing, will be used in subsequent disciplinary proceedings against that official. If an undertaking is offered it will apply to all public service witnesses. Any such undertaking will be confirmed in writing and may be placed in the public domain.

The limitations on any undertaking will be that:

- It does not apply to anyone who is found to have deliberately misled the inquiry or omitted important information in their evidence;
- It does not apply in relation to allegations of misconduct which are so serious that it would justify summary dismissal for gross misconduct. In disciplinary proceedings for

gross misconduct, such evidence from officials may be used;

- If there is evidence from other sources then disciplinary investigations and proceedings, including in relation to allegations of misconduct falling short of gross misconduct, may be instituted and pursued; and
- The department cannot provide immunity against prosecution for criminal offences (though see pages 6 and 48 for information about the Attorney General's undertaking).

A witness may be protected in other ways during the course of an inquiry. The inquiry may excuse a witness from disclosing particular documents or they may be allowed to give evidence in private.

Legal Proceedings against Officials

In line with the usual protection offered to civil servants, it may be appropriate to offer a commitment that the Government would provide legal representation if serving or former officials were sued for damages as a result of actions carried out in the course of their Government employment, provided it is satisfied that they were not acting outside the scope of such employment. In such cases, representation would be by the Solicitor acting for the Crown, and any damages and/or liability for costs would be met from public funds. Section 12.2 of the Civil Service Management Code provides guidance.

Witness Expenses

If an inquiry is held under the Inquiries Act 2005, the Chair has the power and authority to make awards in respect of reasonable expenses, including legal expenses relating to legal representation. Section 40 of the Inquiries Act 2005 'Expenses of witnesses etc' provides further details. Ministers may place qualifications on the expenses which may be awarded by an inquiry under the Inquiries Act 2005.

For inquiries which are not held under the Inquiries Act 2005, inquiries have no power to order the payment of witness or other legal costs from public funds, but they are able to make recommendations to Government.

The department should, at the outset, establish costs protocols with the Inquiry Team, especially in relation to legal costs. Where the Chair considers that public funding is appropriate, a recommendation will be made to the Secretary of State in the sponsoring department. The Minister will decide, in principle, whether public funding should be made available. Once a decision has been made, the authority to decide on specific bills should be delegated to the inquiry.

The same rules on propriety and expenditure apply for the reimbursement of travel and subsistence costs incurred on the part of civil servants or Ministers (both current and former) giving evidence to an inquiry as for any other departmental activity (see page 46).

LEGAL INDEMNITY FOR THE INQUIRY

The Inquiries Act 2005 provides a statutory indemnity to an Inquiry Team including its Chair. Other inquiries may seek assurances in respect of possible legal action taken against them as a consequence of their work. Such an assurance would be on the basis that the Government would take over responsibility for defending any proceedings and for the conduct of them.

If agreed, any such procedure should be cleared with the Treasury and, under Managing Public Money requirements, must be notified to Parliament if the contingent liability is in excess of £250,000. This notification takes the form of a departmental minute presented to Parliament giving details of the liability created and explaining the circumstances. Guidance on how to structure the departmental minute is set out in paragraphs 5.4.3-5.4.4 and Annex B of *Managing Public Money*.

http://www.hm-treasury.gov.uk/d/mpm_ch5.pdf

http://www.hm-treasury.gov.uk/d/mpm_annex5.5.pdf

CONCLUSION OF AN INQUIRY

REPORT

Drafting an inquiry report is a matter for the Chair supported by the Inquiry Team. The inquiry's terms of reference should specify to whom the report should be delivered.

Some inquiries manage the entire process of production and publication directly, while others handle publication through the sponsor department. Sections 24 and 25 of the Inquiries Act 2005 set out the responsibilities of the Minister and Chair with regard to submitting and publishing reports of inquiries conducted under that Act.

Where Ministers are to publish the report, the Parliamentary Clerk in the sponsor department should liaise with the Parliamentary authorities to arrange for the report to be laid before both Houses.

Advance Copies

Departments should agree with the Inquiry arrangements for publication, including the handling of advance copies and the length of the interval between presentation of the report to the Minister and publication, which should be no longer than is necessary to allow the Minister to prepare a statement on publication. Prior to this point, departments should be asked to undertake limited sensitivity checking where necessary (see page 39).

The responsible Minister will be expected to respond to the report and other parties may be subject to considerable media attention.

An advance copy must be given to the responsible Minister if the report is to be published as a House of Commons document. Where an advance copy is given to Ministers and the report is to be tabled in Parliament there is a long established protocol for the Prime Minister to allow the Leader of the main opposition party access to the report prior to any statement in the House. The Cabinet Office can assist with access arrangements.

Tight security will be required for all advance copies. Advance copies may include security features to make copying difficult and should also include a copy number on each page. Where access only is permitted, it may be necessary to ensure this takes place in a controlled environment.

Parliamentary Privilege and Indemnity

The Parliamentary Papers Act 1840 gives protection to authors and printers of papers published by or under the authority of either House of Parliament. Any proceedings taken against the author of the papers can be stayed by the production of a certificate signed by the Speaker, Lord Chancellor or Clerk of either House stating that the paper was published by or under the authority of the House. More detail on the publication of papers and reporting of Parliamentary proceedings can be found at:

<http://www.parliament.uk/documents/upload/laying-papers.pdf>

Recommendations

Framing recommendations is a matter for the Chair and panel. The Government is not obliged to accept the inquiry's recommendations but will be expected to indicate in its response which recommendations will be accepted.

The Chair may find it valuable to discuss possible recommendations with those who would be responsible for implementing them. The Chair is under no obligation to consult departments, but such discussion can help inform development and implementation of the recommendations.

WINDING UP THE INQUIRY

Section 14 of the Inquiries Act 2005 defines the end of an inquiry conducted under the Act. As a guide for non-statutory inquiries, the submission of the report should mark the end of the inquiry.

The Secretary is responsible for an orderly closure of the inquiry and should retain sufficient staff to answer queries relating to the report, to finalise the budget, dispose of equipment and archive records of all types (including the inquiry website). Until it is archived, the sponsor department is responsible for undertaking ongoing maintenance of the website and maintaining the registration of the web domain (see The National Archives guidance for Inquiry

records for further assistance). Staff reports and appraisals should be completed, and also passed to staff members' parent departments.

The sponsor department and inquiry team will need to make arrangements for the return of seconded staff, finalisation of the budget, management of records and the disposal of IT and other office equipment.

Any request for the disclosure of records of a closed inquiry held by a department should be considered in the usual way under the Freedom of Information Act.

CHAPTER 2: GUIDANCE FOR CHAIRS

This chapter offers general guidance for Chairs regardless of the type of inquiry - whether statutory or non-statutory, public or private.

LEGISLATION

The majority of statutory inquiries are held under the Inquiries Act 2005, although some other legislation may apply. If the inquiry is to be conducted on a statutory basis a copy of the relevant legislation should be provided to the Chair by the sponsor department. The Chair should familiarise him/herself with this and all other legislation applicable to the inquiry, including the Inquiry Rules 2006 (SI 2006/1838).

Non-statutory inquiries

Inquiries that do not require legal powers can be established on a non-statutory basis. Subject to any parameters set by the Minister, the Chair will have a greater degree of discretion over the conduct of a non-statutory inquiry.

DUTIES OF CHAIR

The Inquiries Act 2005 places the following duties on the Chair to:

- Consider the draft terms of reference before the final decision is taken by the responsible Minister (Section 5);
- In determining the procedure for, and conduct of, the inquiry, to have regard to fairness and the need to avoid unnecessary cost (Section 17);
- Consider public access to proceedings or evidence of the inquiry (Section 18);
- Request provision of evidence or production of documents relating to matters within the inquiry's scope (Section 21); and
- Deliver a report of facts determined and, where required, recommendations to the responsible Minister (Section 24).

Under the Inquiries Act 2005 it is for the Chair to make decisions as to the procedures he/she wishes to follow, subject to the framework provided by the Act and the Inquiry Rules 2006.

The Chair should hold regular meetings with the Inquiry Team to give direction and to:

- Agree the work;
- Set and review progress against the timetable;

- Monitor expenditure against the agreed budget and provide regular updates to the sponsor department;
- Decide how to communicate with departments, the public and/or press; and
- Monitor progress with writing the report.

IMPORTANT EARLY ISSUES

The Chair should, preferably before the public announcement, meet the key figures with an interest. Key issues to consider at these meetings with the key figures are set out below.

Responsible Minister

The responsible Minister in the sponsor department sets the terms of reference and some of the other parameters for the inquiry, following consultation with the Chair. Even though an inquiry will be independent and distanced from Government, the Chair will need to maintain an appropriate relationship with the responsible Minister. Questions for the Chair to consider include:

Terms of Reference: Has the objective of the inquiry been stated clearly enough? Are the parameters clear?

Panel: Are the Minister's proposals on how the inquiry should be constituted suitable? Will it be sufficient to have the Chair alone or will additional panel members or specialist advisers be required? Any issues about potential conflicts of interest for the Chair or

panel members must be raised at the earliest opportunity. A public statement may be necessary.

Sponsor department's Permanent Secretary

Contact with the sponsor department is important for policy background. The Permanent Secretary also has to account for the inquiry's spending/resources.

Terms and conditions: Arrangements vary for each inquiry and the department will need to set clearly the Chair's terms and conditions. A public statement may be necessary and there may be media or Parliamentary interest.

Team: The sponsor department will arrange a team to support the inquiry. The inquiry team is central to delivery and the Chair must have confidence in the persons selected, particularly for the Inquiry Secretary and Solicitor posts. While technical knowledge might be relevant, other important skills are likely to be needed including the capability to manage the work programme and resources, to advise on the key issues and their wider context, to produce analytical and research material, and to draft portions of the report.

The Chair should be sure that key appointments to the team are available for the duration of the Inquiry. For the duration of the inquiry the Inquiry team will report to the Chair, not the department from which they are seconded. The Secretary will be the inquiry's main contact with the sponsor

department and should ensure that the inquiry obtains the resources and support that it needs.

Timetable: At the outset, a timetable for the inquiry should be agreed with the sponsor department, setting out each stage of the inquiry from setting up through to publication of the report. This may sometimes be set out in the terms of reference.

Inquiry Secretary

Administration: The Secretary will quickly have to establish an office. This will require the Chair giving clarity about the Inquiry's expectations and requirements. Agreeing the budget with the sponsor department is key.

Procedure: Inquiries are often criticised for taking too long or for costing too much. Initial decisions on procedure can help to avoid this. This is likely to include preparing a preliminary work plan. The work plan could include the Inquiry's approach to:

- The general approach, including how much of the inquiry, such as any hearings, will be public or private;
- Any other current and related inquiries including inquests, police or other investigations and possible prosecutions;
- Obtaining and reading key documents and background papers;

- Visiting any sites of significance to the inquiry;
- Gathering and reading witness statements;
- Carrying out any Salmon or Maxwell process or issuing warning letters (see pages 46-48);
- Hearing and testing oral evidence;
- Preparing a draft report; and,
- Preparing and publishing the final report.

It is important that these processes form part of a regular dialogue with the sponsor department.

Press Officer

There will inevitably be press interest in the Inquiry's processes. The Chair (and panel) will need to be prepared to handle the media. Depending on its scale the inquiry may need access to its own press officer.

Early contact should be made with the press office of the sponsor department to discuss their handling of the inquiry and related queries.

Broadcasting: The Chair may need to consider whether any proceedings should be broadcast. Because of the risk that this may change the way parties behave and therefore affect the operation of the inquiry, any proposals should be discussed in advance

with the sponsor department. If proceedings are to be broadcast, the inquiry will need to ensure adequate control over costs, content and appropriate licensing arrangements. See page 28-9 for guidance on copyright, and page 33 on broadcasting.

Solicitor and counsel to the Inquiry

The Solicitor to the inquiry, usually appointed from within the Government Legal Service, will be the main source of advice on legal and procedural issues. The inquiry may also appoint its own counsel and have legal expertise on the inquiry panel. This is a decision for the Chair, but the Chair should consult the sponsor department as it could have significant implications for costs.

Counsel: If it is decided to appoint counsel the Chair should discuss selection of candidates with the Solicitor, who can then make enquiries about availability and remuneration. Careful planning of legal input, for example short-term contracts or contracting out of the gathering of witness statements, can help to control costs. See page 23 for further information.

Documentation: The Chair will need to discuss requirements for documents and statements with the Solicitor at an early stage. A strategy for handling documentation, including whether to publish it, will need to be drawn up. Care will be needed throughout the inquiry to ensure that the report only includes material which is suitable for publication and that whatever is published is

adequately protected, involving the sponsor department. The inquiry's legal advisers will be able to advise.

Witnesses: The Chair will need to establish how the inquiry will take evidence. Different methods, such as putting questions after assessment of the background papers or seeking free-standing statements, will be appropriate for different situations.

Hearings: Does the inquiry need to hold hearings, either in public or in private? If so, what location would be the most effective and economical? Does the inquiry need to grant rights of representation, either legal or non-legal, and should this be at public expense?

Other issues for discussion with the Solicitor will be the application of Salmon or Maxwell principles or the issue of warning letters under the Inquiries Act 2005 (see pages 46-48).

Interest Groups

It will be important to identify the key groups with an interest in the Inquiry, and to decide how to handle relationships and the provision of information to them. Key groups may include: any survivors or victims and their families (as well as their legal representatives); those under investigation; community groups; trade unions and professional organisations; and the media and general public.

In relation to an Inquiries Act 2005 inquiry decisions as to who should be admitted as a “core participant” and on what criteria should be made at an early stage. Core participants may be appointed for whole or part of an inquiry. The Chair has the power to compel single representation of persons with similar interests in the inquiry (see the Inquiry Rules 6-8).

Consideration should be given to the potential impact that meeting any person on whom the inquiry will focus (and any comments made to them) might have on the future conduct of the inquiry.

Draft

CHAPTER 3: GUIDANCE FOR INQUIRY TEAMS

There will be a number of considerations for the Government in deciding whether to establish an inquiry. Inquiries can take a number of different forms as a result. This chapter offers general guidance for Inquiry Teams and Secretaries regardless of the type of inquiry – whether statutory or non-statutory, public or private.

The majority of statutory inquiries will be held under the Inquiries Act 2005, although some may be held under other legislation such as the Police Act 1996 or the NHS Act 1977. Those involved with a statutory inquiry should familiarise themselves with the parent legislation. The Inquiries Act 2005 creates a comprehensive statutory framework for inquiries set up by Ministers to look into matters of public concern. It consolidates much of the previous legislation and codifies past practice for inquiries. It covers the setting up of inquiries, the appointment of people to conduct them, their procedures and their powers, and the submission and publication of reports. Refer to the explanatory notes to the Inquiries Act 2005 and the Inquiry Rules 2006 (SI 2006/1838).

This chapter provides guidance to Inquiry Teams on administrative, procedural and legal issues.

ADMINISTRATIVE ISSUES

THE INQUIRY TEAM

The particular circumstances and subject matter will determine the appropriate structure for an Inquiry Team. In general, the core Inquiry Team will consist of the Chair (plus any panel members), the Secretary and supporting staff, the Solicitor to the inquiry and possibly counsel. There may also be specialist advisers such as scientific or medical advisers, depending on the issue in question. The Inquiry Team will in most cases be appointed by the sponsor department following consultation with the Chair.

In all cases, the sponsor department and Chair must make sure that there are no personal conflicts of interest between the individuals appointed and the Inquiry.

Secretary

The Inquiry Secretary will usually be seconded from within the civil service. Grading of the post will depend on the scale of the inquiry and the specific role.

The Secretary reports to the Chair and acts as the main contact between the inquiry and the sponsor department. The Secretary needs to establish quickly a relationship with the Chair and other panel members who may

be unfamiliar with inquiry procedures. It is the Secretary's job to assist the inquiry in whatever way necessary to fulfil its terms of reference. If the Chair and panel are unfamiliar with the workings of government, the Secretary may need to explain civil service procedures, rules and processes, as well as Ministerial accountability.

There is no single model for the conduct of inquiries. Secretaries should take their lead from the Chair. Their role may span administration, organisation and management, as well as advice. The key tasks for the Secretary are to:

- Establish an inquiry office, liaising with relevant service providers and the sponsor department to ensure that it is adequately equipped and that the budget is managed effectively;
- Agree arrangements with the sponsor department for the preparation, monitoring and publication of the budget;
- Make contact with the Treasury Solicitor's department to arrange for the appointment of the Inquiry Solicitor if necessary;
- Co-ordinate work with the Solicitor and counsel, if applicable, to ensure no gaps or duplication occur;
- Work with the Chair and Solicitor to produce a work plan covering issues including evidence, hearings, drafting the report, meetings and key dates (such as when to aim to send out warning letters to involved parties and planned absences by the panel or the Inquiry Team) (see the guidance for the Chair);
- Ensure the Inquiry Team is adequately staffed and resourced. This includes inducting staff in the inquiry's procedures and policies, including performance and appraisal, other HR matters such as grievance procedures, security, protection of confidentiality and health and safety;
- Devise, implement and deliver appropriate mechanisms for obtaining, handling, and secure storage of documents and evidence in line with The National Archives' guidance.
- Provide advice and support to the Chair on general policy issues and inquiry procedures;
- Liaise with interested parties to the inquiry, bearing in mind the sensitivities of any victims and bereaved relatives;
- Ensure that, where necessary, the hearing room is fully equipped and operational;
- Support the Chair in drafting the report of the inquiry, advising on structure and content;
- Arrange for the secure storage of the inquiry papers, including minutes of meetings and proceedings, within the requirements of the relevant legislation

ensuring that The National Archive's requirements are met; and

- On conclusion of the inquiry, submit a 'Lessons Learned' report to the Cabinet Office Propriety and Ethics Team. The report should include details of success and failures of the process and handling and will be used to help inform the setting up of future inquiries.

Solicitor

The Solicitor to the inquiry will usually be provided from within the Government Legal Service (GLS) and will be the main source of advice on legal and procedural issues.

Exceptionally, the Chair may decide that it would not be appropriate for the Solicitor to come from the GLS, in which case a solicitor external to Government will need to be recruited. This could have significant financial implications for the sponsor department and they should therefore be consulted. The GLS should assist with the appointment process. See pages 23-24 on recruitment.

Depending on the scale of the inquiry, it may be necessary to appoint a Deputy Solicitor. The legal team will also be supported by the Secretariat.

Where a solicitor is appointed, their key tasks are likely to include:

- Sharing past inquiry experience with the inquiry team;
- Providing legal advice and advice on procedures to the Chair (including drafting 'Salmon' letters and carrying out any 'Maxwellisation' process where appropriate), handle the evidence and in some cases perform advocacy at any hearings;
- Working with the Chair and Secretary to draft a work plan and procedures for the inquiry;
- Preparing, with counsel where appropriate, an 'Issues List' setting out the issues for consideration by the inquiry and contribute to compiling the programme of witnesses;
- Where counsel is to be appointed, taking control of the selection process, instructions and managing their remuneration and expenses;
- Managing the statement process for the Inquiry;
- Contributing to the organisation and setting up of any hearing venue, including technology requirements;
- Considering any applications for public funding. If granted agreeing and verifying bills before payment;
- Advising on any possible or actual judicial review; and
- Drafting evidential chapters for the inquiry report.

Counsel

Where complex and voluminous issues which the inquiry has to consider lie outside what the Solicitor can reasonably be expected to deal with, the inquiry may appoint counsel.

The key tasks for counsel may include:

- Advising on evidential matters;
- Presenting evidence, conducting advocacy and dealing with legal and procedural issues arising at the hearing;
- Providing legal advice to the Chair and Solicitor;
- Questioning witnesses during oral evidence on behalf of the panel or chairman;
- Interacting with counsel instructed by parties to the inquiry;
- Assisting in drafting the report; and
- Representing the inquiry in other proceedings such as judicial review.

Additional Staff

For most inquiries, the Secretary will need to recruit additional staff to provide support, which should generally be done from within the civil service. Staff will be required quickly for these posts and the sponsor department's HR should be engaged early to make this happen. Staff must have the relevant core

skills and be able to make a real contribution to the team from day one.

The inquiry is likely to require a range of skills including:

- General administration;
- IT;
- Press and media handling;
- Budgeting, planning and scheduling;
- Records management;
- Policy and analytical skills; and
- Building strong working relationships.

As line manager to the Inquiry Team, the Secretary should agree personnel arrangements for all staff, so that an objective performance assessment is maintained.

The Inquiry Team should maintain out of hours contact details for the whole team, including addresses, phone numbers, fax and mobile phone numbers, and availability of the panel where appropriate.

Where staff are recruited to work on the Inquiry from outside the civil service this must be on merit on the basis of fair and open competition or, if not, through one of the exceptions in the Civil Service Commission's Recruitment Principles and the requirements

of the Constitutional Reform and Governance Act 2010 – see:

<http://civilservicecommission.independent.gov.uk/>.

The exceptions to the Recruitment Principles allow short-term appointments in certain circumstances. Any extensions beyond the allowed periods may only be made with the approval of the Civil Service Commissioners.

Issues may arise in relation to the employment of short-term staff, or at the end of such contracts, whether recruited through fair and open competition or otherwise. The Fixed-Term Employee (Prevention of Less Favourable Treatment) Regulations may also apply to these staff so HR advice should be sought as early as possible. It is the sponsor department that is the employer of any staff recruited externally whether through fair and open competition or otherwise (see page 31).

Inquiry Panel

In establishing inquiry procedures the Secretary should seek the views of panel members on their working preferences. Any security requirements must take precedence over an individual's preferred working style.

Where required, arrangements should be made to give IT access to the panel. Subject to appropriate storage arrangements, they may keep documents at home.

Press Officer

Very few inquiries will justify a full time press officer but press support will be needed where the inquiry is likely to have significant contact with the media. Where such a resource is justified, distance will need to be maintained between the sponsor department and the inquiry. Immediate advice on the management of communications and press officer support should be sought from the sponsor department's Director of Communications.

It is unlikely that press office support will be in place by the time the inquiry is announced. The initial publicity may need to be handled by the Secretary or someone else from within or outside the Inquiry Team on a temporary basis.

The main functions of a press officer are likely to include:

- Publicising the inquiry's terms of reference, and announcing and handling publication of the report;
- Establishing a recognisable, independent identity for the inquiry. (See pages 32);
- Drafting a communications plan;
- Managing the setting-up and design of the inquiry website. (See page 33);
- Advising the Chair and Inquiry Team on media handling including any media appearances; and

- Ensuring good communication with the sponsor department's press office, to ensure they are kept informed in advance of any major developments and events or decisions that may have an impact on the department.

Training

Briefing on the issues for the inquiry should be developed for the Chair, panel and inquiry staff if they are unfamiliar with the subject in question (this could include visits). This can help clarify and contextualise specific issues.

Some large inquiries have benefited from 'training days' at certain stages during the inquiry, either as new staff join or because a new phase of work is about to begin.

The Secretary should consider if media training is required for the Chair. The inquiry press officer or sponsor department's press office will be able to advise.

ROLE OF THE SPONSOR DEPARTMENT

The Inquiry Team will need to establish good relationships with key contacts in the sponsor department, particularly the Liaison Unit and any lead policy team. The Secretary should take the lead in this and will wish to ensure that professional distance is maintained, to demonstrate the inquiry's independence.

The sponsor department will be able to assist in establishing the inquiry, for example by using their pre-existing contacts for the

supply of computer and communications equipment and to assist in recruitment.

DOCUMENTS AND FREEDOM OF INFORMATION

Detailed guidance on the management of inquiry records is published by The National Archives and should be referred to by Inquiry Teams ('Public Inquiries – the Management of Records' which includes a checklist at Annex B).

Managing Documents, Inquiry Records and Evidence

The Secretary, on behalf of the Chair, must take all necessary steps to ensure proper records management of both physical and electronic material and for the maintenance and retention of inquiry records. The Inquiry should devise a records and information management policy for the life of the inquiry, so that all members of the inquiry are aware of how records are to be arranged and managed, as well as the policy on handling external correspondence and evidence. The Secretary should consult the sponsoring department's Departmental Records Officer and The National Archives.

Any information provided is likely to become public unless agreed otherwise by the Chair in advance of its provision.

The Secretary must obtain and retain copies of relevant documents relating to the setting up of the inquiry, including:

- Terms of reference. If the inquiry needs to change the terms of reference the change will need to be published in the same way;
- Ministerial Statements;
- Letters of appointment for the Chair and any other panel members, and documentation on remuneration. The Inquiry Team will need to certify claims, so it is essential to have an accurate record of what was agreed at the outset; and
- Papers relating to any indemnity offered in relation to any legal action taken against the Chair, panel, legal team and the secretariat.

An adequate and appropriate record capable of demonstrating public accountability of the inquiry should be maintained. The inquiry should establish effective handling procedures to obtain, classify and assess documents for security and sensitivity issues, including personal data, so that they can be scanned and stored systematically and securely. To do this, documents need to be properly classified from the outset and uniquely referenced.

An inquiry is likely to have a large volume of documentation so it should prepare a 'core bundle' that can easily be retrieved and supplied to the parties to the inquiry as appropriate. This might include placing the core bundle on CD or being made available through a secure data room. Documents should only be released to solicitors for the

parties on their undertaking not to use the documents for any other purpose or to release them into the public domain until they are referred to in public at the hearings. A signed undertaking from solicitors should be sought on this basis and in some circumstances confidentiality undertakings from their clients. At the end of the inquiry the documents must be returned to the inquiry.

Effective scanning and classification of documents can save time during hearings. Where documents are to be displayed electronically at the hearing an operator will need to be present at all times, to ensure the correct document is displayed when requested by counsel.

Document scanning and consideration

Inquiries will need to scan and categorise large numbers of documents and may need to implement an electronic system to search for and locate information. This can be done by an external contractor, but only after consultation with the sponsor department and consideration of likely costs.

There are companies who undertake this work on a regular basis for large court actions and public inquiries. Sponsor departments and the Treasury Solicitor's Commercial Contracts team can provide further help (020 7210 3100). Some kind of selection exercise may then be needed to ensure that the chosen company can meet the Inquiry Team's requirements, bearing in mind procurement guidelines.

All scanned documents should be searchable through their text or by recognised fields such as author and subject.

All documents should also be coded according to subject and set criteria to mark the documents for interest and importance.

All documentation should be available to the Inquiry Team in its full form. The legal team should consider editing out personal details or irrelevant information, taking into account data protection, security and human rights issues. The redaction process can be done electronically by those responsible for scanning in the material in accordance with a policy set by the Inquiry Team. This should then be subject to quality control by the Inquiry Secretary. Redacted passages should be marked in black to indicate that editing has taken place. Care should be taken to note the reasons for the redactions and to ensure that properly redacted and unredacted documents and reasons are passed to any custodian. Guidance is available from The National Archives.

Hearing Transcripts

Where hearings are to be held, the inquiry should employ a shorthand writing company to transcribe oral evidence. Ideally, the transcription should be provided on a real-time basis so it can be used immediately by the Inquiry Team to highlight sections of evidence and write up notes, questions or memos. The sponsor department will be able to assist in setting up a contract.

Under section 18 of the Inquiries Act 2005, the Chair must take reasonable steps to ensure that members of the public are able to attend the inquiry (or see or hear a simultaneous transmission) and obtain or view a record of the evidence given, produced or provided to the inquiry or inquiry panel.

As a general rule, at the end of the hearing day, transcripts should be corrected and made publicly available the same night or, at the latest, the next morning (making sure that any necessary redaction process happens first). Copies of the transcripts should be placed on the inquiry website.

Disclosure of Documents and Freedom of Information

Inquiries that are independent of Government departments (as opposed to internal departmental Inquiries) will not be a 'public authority' for the purposes of the Act. The only exception is where the inquiry has been specifically stated, by secondary legislation, to be a public body for the purposes of the Freedom of Information Act.

Under Section 19 of the Inquiries Act 2005, restrictions may be imposed on disclosure or publication of evidence or documents so as to avoid or reduce the risk of death or personal injury and of damage to national security or international relations.

Security

The inquiry must ensure that arrangements are made for the secure handling of any classified documents. This may require the provision of a secure location for storing and referring to documents, depending on classification. The Secretary must ensure that all of those with access to the inquiry's documents are appropriately security cleared.

All inquiry staff and panel members, as well as any others given access, must be made aware that the records of the inquiry are official documents and must not be removed from its custody.

Documents released to solicitors for parties to the inquiry must be returned to the inquiry on its conclusion.

Handling of Documents on the Winding-up of the Inquiry

The inquiry team should, as soon as possible, agree appropriate arrangements for the longer term retention or disposal of the inquiry's records. This should be agreed in consultation with the sponsoring department's Departmental Record Officer and The National Archives.

An orderly set of inquiry records should be handed over to the sponsor department or The National Archives on the winding up of the inquiry.

Copyright of the Material and the Proceedings

Copyright applies to written, visual, film, sound and broadcast materials of all kinds and so will apply to most if not all of the documents and evidence received or prepared by an inquiry together with broadcast footage of its proceedings. The copyright normally belongs initially to the creator or the creator's employer. This means that individual members of the inquiry will own copyright in material that they create while working for it, people who created material that is used or considered by the inquiry will themselves own the copyright in it and broadcasters will own copyright in their footage. A failure to acquire sufficient rights in these and other materials could have an impact on publication and any subsequent re-use of the material.

Copyright and ownership of content needs to be considered early. The inquiry should therefore ensure that it acquires, either by assignment or licence, sufficient rights to publish all material that is pertinent to the inquiry. This will enable the proceedings to be published on the Inquiry website and to provide access via the UK Government Web Archive after the Inquiry has closed.

For any televised proceedings the Inquiry will need to acquire sufficient rights, either by assignment or licence to ensure sufficient future access in the interests of transparency and openness.

Members of inquiries will be required to assign the copyright of any material they produce as part of their work on the Inquiry to

the Crown. This ensures that the inquiry report can be published and re-used without any obstacles.

Section 46 of the Copyright, Designs and Patents Act 1988 provides that copyright is not infringed by anything done in relation to a Royal Commission or statutory inquiry. Therefore whilst this type of inquiry is in progress, no permission is needed to use material which is the copyright of a third party. Similarly, no permission is needed for the use of such material in any published reports of this type of inquiry. However, once the inquiry has concluded, this exception ceases to apply and any use of copyright material that is not owned by the Crown must be agreed with the copyright holders concerned. So, if licences rather than assignments have been obtained from copyright owners it is essential that they cover use of material that is preserved among the records of the inquiry.

Subject to the Inquiries Act 2005 where applicable, before transferring its records to the sponsor department, the inquiry should ensure that an effective assessment of the inquiry's records is conducted, with a view to taking decisions on which records are to be retained for the long-term and which records should be returned to the owner. Duplicates and copies should be destroyed and originals returned to the owner for retention or destruction. Documents that should be returned to their owner are likely to include personal statements, medical records, coroner's reports, and classified information

not belonging to the department. A complete audit trail must be maintained for all documents destroyed or returned to the owner. When a document is returned to the owner no copies should be retained without their consent.

Prior to returning documents to Government departments Inquiry Teams can helpfully flag documents that are likely to fall within the following FOI exceptions:

- S23 – Information supplied by or relating to bodies dealing with security matters;
- S24 – National Security – Information that if disclosed would be likely to cause damage to national security;
- S27 – International Relations – Information that if disclosed would be likely to prejudice relations between the United Kingdom and any other State;
- S38 – Health and Safety - Information that if disclosed would endanger an individual;
- S40 – Personal data under Data Protection Act;
- S41 – Information received in confidence; and
- S42 - Information covered by legal professional privilege.

Data Protection

Inquiries should register under the Data Protection Act 1998. The Data Protection Act 1998 requires every data controller who is processing personal data to notify the Information Commissioner unless they are exempt. Failure to notify is a criminal offence. The Information Commissioner maintains a public register of data controllers. Individuals can consult the register to find out what processing of personal data is being carried out by a particular data controller.

The Information Commissioner's website contains guidance on the detailed requirements for compliance with the Data Protection Act 1998. www.ico.gov.uk

If necessary, Inquiry Teams should consider seeking legal advice when requests for personal data are received.

COSTS AND BUDGETS

Inquiries are resourced by public funds. Under the Inquiries Act 2005 the Chair must have regard to cost in deciding on the conduct of the inquiry. Chairs of other inquiries should have similar regard.

Inquiries are funded by their sponsor department which remains accountable to Parliament for inquiry expenditure. A good working relationship and an understanding between the sponsor department and the Inquiry Team are essential to managing costs.

In line with normal rules on accounting for the use of public funds, the inquiry will be required to make public a summary of their accounts. This is usually done in the inquiry's report.

The sponsor department should specify the financial regime to which it expects the inquiry to conform and in some cases may wish to consider whether a full-time member of staff should be seconded to the inquiry. The inquiry must establish a separate cost centre and account code, and a process for ordering goods and services and processing and paying invoices.

Sponsor departments may allocate a set budget for the inquiry, or may require the Chair to publish an estimated budget and to provide regular updates on progress against the estimate. In either case, the Chair should prepare a preliminary budget for approval by the sponsor department within a reasonable timeframe agreed with the sponsor department. In approving preliminary budgets, the sponsor department may take advice from the Treasury or from other departments. This process will not fetter the independence of the inquiry, but will ensure that public funds are properly planned and accounted for. As a starting guide, estimates should be prepared in the following categories:

- Total amount the sponsor department is likely to be required to pay;

- Administration – size of the Inquiry Team, grading, payments to the panel or experts;
- Travel costs – including training and visits for the Inquiry Team;
- Accommodation costs – office and space for evidence sessions;
- Running costs – stationery, postage, facilities, equipment;
- Telecommunications – fixed and mobile phones, faxes, pagers;
- IT system – equipment, website, simultaneous transcription, licences, out of hours support, document management;
- Legal costs – including expenses and remuneration for any inquiry legal staff;
- Publication costs – preparation, e.g. design, editorial, typesetting, proof reading etc;
- Information Management costs – including maintenance of documentation for as long as required;
- Expenses; and
- Any other significant expenditure, including contingent liabilities.

Inquiries should not enter into contracts in their own right and should use the sponsor department's existing agreements instead. If

the inquiry needs facilities that the department cannot provide, the department should establish new contracts on the inquiry's behalf (this also applies where staff are recruited externally who will be employed by the sponsor department).

Expenses

The Chair, panel and others engaged to provide assistance to the inquiry are entitled to reasonable travel expenses.

The Chair will need to assess witness costs and award reasonable expenses, provided that they were incurred solely to enable the witness to give evidence to the inquiry. Serving officials should claim any necessary expenses direct from their departments.

ACCOMMODATION

The location of an inquiry will depend in large part on the nature of the issue to be investigated. Where the issue is area-specific, such as a major accident, there are strong arguments that the inquiry should be located as close as possible to the locality affected. For matters of more general public concern, a major central city may be more appropriate. For public inquiries, access by those affected should be considered. For some inquiries, security concerns will need to be considered in deciding the inquiry's location.

There are advantages in co-locating inquiry offices with any venue for evidence sessions. This can lead to better management of the

inquiry and may reduce accommodation costs. However, office space may also be found within the sponsor department but only if this would not be perceived to compromise the Inquiry's independence.

A number of factors should be considered when choosing the inquiry venue. Considerations will differ but factors are likely to include:

- Care should be taken to avoid premises associated with any organisation likely to be a subject of the inquiry or, depending on the subject of the inquiry, with the sponsor department;
- The venue must meet the security needs of the inquiry, and must be capable of secure storage for inquiry papers and electronic records;
- Requirements for a hall in which the main hearings can take place. A valid fire certificate to reflect seating arrangements in the main hall if required;
- Ability to cable for any electronic systems (an example might be LiveNote);
- Space for private, secure and appropriately equipped office space for the Chair, panel and secretariat;
- Support rooms for the parties involved in the inquiry and their counsel;

- Space for transcript writers, sound engineers, IT support and media;
- Reception area for the general public, with toilet facilities;
- Accessibility, including for disabled people; and
- Cost.

Clear signage should be used, giving direction for visitors. A sign to remind people to turn off mobile phones in the hearing room might be useful.

The inquiry should have a policy for handling visitors. Visitor arrangements need to be able to deal with busy and quiet days, as well as visitors who may stray away from public areas. Visitors, including witnesses and legal representatives, should sign a register and be issued with an appropriate visitor badge on entrance to the inquiry venue. For very high-profile witnesses this may be unnecessary. Take advice on baggage scanning requirements.

A risk assessment should be conducted to assess security requirements. Advice on security arrangements should be sought from the sponsor department, or from the Cabinet Office Government Security Secretariat by email: GSS@cabinet-office.x.gsi.gov.uk

Some inquiries will need to anticipate demonstrations or disruptions. Contact the Public Order Unit in the Home Office on 020

7035 1451 for advice on protests and demonstrations.

CORPORATE IDENTITY

A corporate identity for the inquiry should be devised as soon as possible and preferably before announcement. Cost and time pressures mean that devising a logo for the inquiry involving artwork will not be justified.

A simple approach using colour and the inquiry title is likely to be the most appropriate design. Care should be taken to avoid colours with unhelpful associations such as those used by political parties and any bodies likely to be involved in the inquiry. Fonts that cannot easily be enlarged, reduced or reproduced in black and white should be avoided.

The inquiry's website must be accessible and conform to government website guidelines (see page 33), which includes avoiding colour combinations which cause problems for visually impaired people.

INFORMATION TECHNOLOGY

The day-to-day information systems required by the Inquiry Team should be organised and set up by the sponsor department. The sponsor department will arrange for the provision of all necessary hardware, software, e-mail and internet connections and facilities for a dedicated website for the inquiry.

The inquiry is likely to require its own secure network, a dedicated website, planning and financial software packages, an electronic document management system and a system to record and publish oral evidence.

The main server will need to have the facility for working at both the hearing venue and the inquiry office, and between the solicitors' offices and the hearing room to enable discreet contact during the course of the hearing between the Panel, and the inquiry's solicitors and counsel. Proprietary software is available which can assist with this.

Broadcasting

The inquiry may require a video link between the hearing room and one or more other off-site venues for those who cannot attend the main venue. Such a facility is not intended for broadcast and should be run live.

The Chair may want to broadcast proceedings. Because of the risk that this may change the way parties behave and therefore affect the operation of the inquiry, any proposals should be discussed in advance with the sponsor department. If proceedings are to be broadcast, the inquiry will need to ensure adequate control over costs, content and appropriate licensing arrangements. As stated on page 31, inquiries should not enter into contracts in their own right.

Website

The Internet site should be branded with the inquiry's corporate identity. It should be easy to navigate and designed as a permanent feature – the site will remain in place for a number of years after the inquiry finishes.

The internet site host will need sufficient capacity to expand to handle the varied volume of traffic that the site will receive at certain points, for example, during hearings or on the day of the report's publication.

The website address should be "dot org", rather than "dot gov" in line with its independence, but it should otherwise adhere to government website guidelines [\[insert new link when available\]](#)

The website is an effective means of making information widely available and it is important that the inquiry defines its policy on openness. The inquiry should assess information and place relevant material on the website. Where redacted information is published on the website an unredacted copy must be maintained.

To save time responding to queries the website should include information about the inquiry process such as hearing timetables, press releases and operational notes. It is helpful to have a web presence in place as soon as the Inquiry is announced.

It may be useful to view other inquiries' websites for ideas on style and structure. Some examples are at Annex A. The UK Government Web Archive (managed by The

National Archives) preserves all public inquiry websites. The inquiry should ensure that the website has been structured in a way which enables the archiving of the website. The National Archives can advise on this and on website copyright issues.

PROCEDURAL ISSUES

STAGES OF THE INQUIRY

Announcement

In line with the requirements of the *Ministerial Code* (paragraph 4.10) Ministers need the consent of the Prime Minister prior to the setting up of major inquiries. Once consent is obtained, Ministers must ensure that, where possible, important announcements are made to Parliament in the first instance.

If the Inquiry relates to issues of a previous Administration, former Ministers must be consulted in advance of the announcement.

The Ministerial announcement of the inquiry is a matter for the sponsor department, but the Inquiry Team will need to work closely with the sponsor department on timing and to agree the text. It is recommended that the Chair make a public statement immediately following the Minister's announcement. The media may want to use this as a photo opportunity. The Chair may offer a short prepared statement, but a Q&A session is unlikely to be appropriate so early in the inquiry's work.

Planning

The Chair and Inquiry team should meet as early as possible to agree processes and a work schedule for the inquiry. Every inquiry will be different but the key stages are likely to be:

- **Setting up** - This will include initial staffing of the Inquiry Team, establishing IT, finding premises for hearings and/or offices, agreeing inquiry procedures.
- **Active phase** - This will include preliminary hearings, obtaining information, analysing and assessing it and taking statements.
- **Oral evidence** - This may need to be managed in phases. Oral evidence should be for the purposes of clarifying/adding to written statements and resolving any conflicts in factual evidence.
- **Analysis and writing the report** - This should cover proofing and publication processes as well as distribution. The sponsor department is responsible for a number of actions during this phase, including whether the responsible Minister will make a statement to Parliament.
- **Winding up** - This will involve deciding on an end point for the inquiry, the secure packaging and transfer of papers to The National Archives or the sponsor department. It will also be necessary to deal with staff management issues.

To ensure focus in carrying out the inquiry and to give clarity to those who might be affected by the issues in question, the inquiry should prepare and consider publishing a provisional timetable. The provisional timetable should be shared with the sponsor department who may wish to contribute to the timetabling process, for example by flagging

up significant events that the inquiry will need to take account of. Where a target date for publication of the report was not included in the inquiry's terms of reference, the Chair should agree a target date for publication with the sponsor Minister.

If at any time the Chair revises the provisional timetable a revised version should be submitted to the sponsor Minister as soon as possible. The Chair should consider publishing the provisional timetable and any updates within a reasonable time following submission to the sponsor Minister.

A provisional timetable should, at the minimum, include:

- Dates of milestones for witness statements;
- Dates of oral proceedings; and
- The proposed date for publication of the report or the proposed date for delivery of the report to the Minister.

Hearing Arrangements and Evidence

There will usually be a preliminary hearing, often in public, fairly soon after the setting up of the inquiry. At the preliminary hearing it is usual to invite evidence, set out basic procedures and, where appropriate, provide for core participants, representation and public funding.

Upon commencement, an Inquiry usually issues a statement inviting people and groups to submit evidence. This should include a statement to say that any evidence given will be subject to licensing terms permitting use as required by the inquiry, permanent preservation in the archive and public access (depending on confidentiality provisions).

Once background documents have been obtained, the inquiry can begin to commission written statements or oral evidence. Being specific when commissioning statements can help to limit the number of witnesses who need to give evidence in person. Thorough review, analysis and assessment of the material in the early stages may save months of oral hearings further on. An inquiry should resist being pressurised into early oral hearings.

The Inquiry Rules 2006 contain more detailed provision on the conduct of oral proceedings for inquiries held under the Inquiries Act 2005. Where held, oral hearings will normally open with a statement from the Chair or counsel for the inquiry. There may then be short statements from interested persons. Questioning and cross-examination should be strictly kept to a minimum. Once the oral evidence is complete, time may be set aside for closing statements on behalf of the interested parties.

The transcript of each hearing should be circulated as part of the hearing bundle and aim to be posted on the inquiry website the

same day. Witnesses should be given the opportunity to correct the transcript if necessary but only genuine transcription errors should be amended. If the witness wishes to correct an inadvertent false statement he or she may submit a written statement of correction for publication.

The inquiry may need to take general evidence on current and future developments in relation to the area where the incident the inquiry was set up to examine occurred. Previous inquiries have also found it useful to undertake visits, for example to the area affected by the inquiry. Public meetings and seminars on particular topics have also been used.

The media should, in general, be granted access to hearings. There are exceptions to this rule where the public interest in protecting sensitive information outweighs the interest in transparency, for example where it may only be possible to determine the facts in private or the issues involved are security sensitive.

DEALING WITH WITNESSES

Demands on witnesses for preparing and participating in an inquiry can be considerable. Many factors, such as the adequacy and availability of public records, and the reliance on factual evidence and opinion from witnesses, will have an impact on the procedures an inquiry may wish to adopt.

A witness schedule should be drawn up to feed into the inquiry timetable and to make optimum use of available sitting times for the oral hearings. Experience suggests that it is helpful to set up folders containing all letters, requests, statements and questions specific to each witness.

There is likely to be considerable pressure placed on some witnesses by the media. To ensure fair treatment the inquiry should take account of this in deciding how to handle witnesses, for instance by allowing access to and from the premises by side doors.

INQUIRY REPORT

While drafting the report is the formal responsibility of the Chair, he/she may ask other members of the Inquiry Team to assist. The Chair must be content that the report is consistent with evidence given and decisions taken throughout the inquiry, that it gives a proper evidential base to recommendations and that the contents do not go beyond the inquiry's terms of reference.

For inquiries conducted under the Inquiries Act 2005 each panel member must sign the report. This does not preclude the submission of notes of dissent where Panel members consider them necessary.

Structure

Previous inquiry reports can provide guidance on structure. Issues to consider include:

- Producing an executive summary and perhaps a separate volume of findings. This can be useful to assist accurate press reporting;
- How much background material to include in the report and whether to include it in hard copy form or CD; and
- How to handle criticisms in the report. Some inquiries have simply stated criticisms where they occur and others have included a specific section drawing attention to findings. The Inquiry should consider whether the public interest requires that individuals should be named. (See pages 46-48 on Salmon and Maxwellisation procedures.)

Drafting Practicalities

If appropriate, the inquiry's IT system may need to be capable of supporting the production of a large report. Initial drafting is typically done in Microsoft Word, but as the draft progresses it is sensible to use a professional package.

Where the report is extensive the inquiry should consider recruiting an editor or copy-editor to devise and implement a style. To avoid problems with merging sections it is advisable to decide on a drafting style and work from a template as soon as drafting starts. Consideration should be given to professionally indexing the report.

The Treasury Solicitor's Department can provide someone not involved with the inquiry to read the draft report as an 'informed person' especially where the inquiry does not have its own solicitor. In particular, they can provide independent advice on the use of evidence (see contact list).

Documents should be accurately referenced, preferably in the text rather than in footnotes, as this improves convertibility into web-based publications.

Drafts must be kept secure and the inquiry should control access. While security issues are important, limiting the number of people who can work on the report will slow the process.

The communications team in the sponsor department may be able to provide support to the production of the inquiry's report, for example design, editing and typesetting through to publication.

If a report is a Parliamentary Paper then it will be published by The Stationery Office who also can be contacted for advice.

Framing Recommendations

Framing recommendations is entirely a matter for the Chair and panel. The Government is not obliged to accept the inquiry's recommendations but will indicate in their response which recommendations will be accepted.

The Chair may find it valuable to discuss possible recommendations with those who would be responsible for implementing them (and consider making this public whilst it is taking place). This process should not involve negotiation but it can inform development of the recommendations. The report should indicate that such discussions have occurred.

Inquiries should bear in mind the effect that any recommendations might have on individuals. In particular, inquiries should follow the principles set out below on warning letters.

Legal issues

Consideration should be given to the need to comply with other relevant legislation when drafting the report: for example, the human rights implications for individuals concerned (which may include compatibility with Article 2 and Article 8 of the Human Rights Act).

If there is any possibility that a person's rights under either Article could be endangered, or national security prejudiced, by anything contained in the text, consideration should be given to allowing an expert from the department concerned to read relevant parts of the report in draft, having made an undertaking not to disclose or discuss it with any other person in their department, and to report any concerns to the Chairman (see pages 13 and 41).

Publication

The inquiry's terms of reference should specify to whom the report should be delivered. Sections 24 and 25 of the Inquiries Act 2005 set out the responsibilities of the Minister and Chair with regard to submitting and publishing reports of inquiries conducted under the Act. Under the Act Ministers may delegate publication of the report to the Chair of an inquiry.

The sponsor department should make clear early on arrangements for delivery of the report. This should include practical arrangements for publication, whether any interested persons (including any victims or their families) will have prior access and on what terms, and how press queries will be handled. Parliamentary requirements should be considered alongside. This will not fetter the inquiry's independence but will give clarity to the inquiry and interested parties.

Where Ministers are to publish the report the Parliamentary Clerk in the sponsor department will need to liaise with the Parliamentary authorities to arrange for the report to be laid before both Houses and placed in the libraries of both House.

If a report is to be laid as a House of Commons paper, the House of Commons requires the report to be published by The Stationery Office Limited (TSO). If the report is to be laid as a Command Paper, or neither as a House of Commons paper nor a Command Paper. The National Archives can provide guidance on ensuring that the report is widely available at publication and after.

Many inquiry Chairs choose to read a prepared statement on the day the report is published, rather than do interviews, to ensure that the full report stands for the work of the inquiry. Others have taken the view that media coverage would be valuable in broadcasting the key findings. The approach will depend on the subject matter and previous procedure of the inquiry.

Published reports are subject to statutory legal deposit requirements. In addition, reports should carry an ISBN and their bibliographic details provided to the retail book trade and library community.

Published reports must carry a copyright and re-use statement. This should appear on the reverse of the title page. The National Archives can supply an appropriate copyright statement for both Crown copyright and other material. Crown copyright material is available for re-use under the Open Government Licence.

Where reports are supported by other media, such as CDs or memory sticks, if practicable the media should have a shortened copyright statement, for example '© Crown Copyright', printed on it.

Published reports should be available on the web through a website included in the UK Government Web Archive and meet government web guidelines (usually on the inquiry's own website). In addition, print on demand copies should be available to order.

and purchase for publication and afterwards through TSO.

Advance Copies

Where a Chair is publishing the report advance copies should normally be given to the responsible Minister in order to allow him or her to prepare a statement to Parliament on the day of publication. The may also, in certain circumstances, be given to other parties to assist with the response.

Where the responsible Minister has delegated responsibility for publishing the report to the Chair, under the Inquiries Act 2005, the Chair must submit the report to the Minister before publication. For inquiries conducted under the Inquiries Act 2005, the Inquiry Rules 2006 specify that advance copies of the report must be provided to core participants in all circumstances, but regard must be had to Parliamentary convention where the Minister is publishing.

When the report has been provided to Ministers in advance of publication, and the text has previously been checked for human rights and national security sensitivities (see page 38), the official(s) who made the check should satisfy themselves that any concerns have been properly dealt with. If not, the matter should be discussed with the Chairman in advance of publication.

Where advance access is given to Ministers and the report is to be tabled in Parliament there is a long established protocol for the

Prime Minister to allow the leaders of the main opposition parties access to the report prior to any statement in the House. The Cabinet Office can assist with access by opposition parties.

Tight security will be required for all advance copies. Advance copy reports normally include security features to make copying difficult and should also include a copy number on each page. Where access only is permitted, it may be necessary to ensure this takes place in a controlled environment.

Individual undertakings should be obtained from each person to whom an advance copy is provided or access permitted specifying the conditions of use. A model undertaking can be used:

"I [name] hereby agree and undertake to [inquiry chair] that in consideration of receiving/being given access to his report before its publication, I will keep wholly confidential and not disclose, copy or otherwise communicate or give any indication of any part of the contents of [inquiry chair's] report into [subject matter] to any person or organisation whatsoever, save for the other individuals named in the attached schedule (who have given an undertaking in similar terms) until the conclusion of [inquiry chair's] statement on his report on [date] / until the after publication of the report on [date] at [time]."

Accessibility

Depending on the audience for the report consideration should be given to ensuring accessibility of its recommendations.

Parliamentary Privilege and Indemnity

The Parliamentary Papers Act 1840 gives protection to authors and printers of papers published by or under the authority of either House of Parliament. Any proceedings taken against the author of the papers can be stayed by the production of a certificate signed by the Speaker, Lord Chancellor or Clerk of either House stating that the paper was published by or under the authority of the House.

More detail on the publication of papers and reporting of parliamentary proceedings can be found at:

<http://www.parliament.uk/documents/upload/laying-papers.pdf>

If the author(s) of the report choose to make further statements or publish other material or articles beyond the report that was published in Parliament, those additional comments will not be protected in the same way (see also page 48 on indemnities for the inquiry).

WINDING UP THE INQUIRY

The Secretary is responsible for an orderly close down of the inquiry. Sufficient staff should be retained to answer queries relating to the report, to finalise the budget, to dispose of equipment, to archive records and

to put the website into its final form. Staff reports and appraisals should be completed.

The Secretary is responsible for writing a 'lessons learned' paper on their experience so that central guidance can be refreshed, and should consult with the solicitor and the Chair in doing this. The paper, which should focus on the process of the inquiry and difficulties that were experienced and overcome, should be submitted to the Cabinet Office and the sponsor department within two months of the inquiry finishing. The Secretary should draft the paper so as to include any significant points of interest for government or for future inquiries. As a minimum the paper should include information on:

- Any relevant statute and powers as well as the terms of reference;
- Timetable and description of different stages of the inquiry, including any private or public elements;
- Overall cost and a breakdown including pay rates for the Chair, panel, lawyers and any experts engaged;
- Location;
- Relationship with the sponsor department;
- IT and Information Management;
- Staffing structure;

- Publication, including the form and detail of any prior access given; and
- Any particular difficult issues faced by the inquiry or areas on which the inquiry would have benefited from guidance, and offer advice for future inquiries.

Section 14 of the Inquiries Act 2005 defines the end of an inquiry conducted under the Act.

LEGAL ISSUES

LEGISLATION

The Inquiries Act 2005 sets out a legislative framework for the efficient management of inquiries, called by Ministers, into events that have caused public concern. The Inquiries Act 2005 replaces much of the previous legislation on inquiries including the Tribunals of Inquiry (Evidence) Act 1921 and a great deal of subject-specific legislation. Not all inquiries are conducted under the Inquiries Act 2005 and some inquiries operate on a non-statutory basis or under other statutory powers.

The Inquiries Act 2005 contains powers to compel witnesses and documents, and appropriate sanctions for non-compliance, as well as measures designed to help keep costs under control.

COSTS

Legal costs for the inquiry will fall into three categories - the inquiry's own expenses for counsel and solicitor, awards of expenses in relation to legal costs to parties and participants who are publicly funded, and individual witness support (which in the case of Government witnesses is likely to be borne directly by the relevant department).

The same duties and expectations are placed on the Chair in regard to legal costs as with the overall inquiry spend. The responsibility to manage costs effectively is not a drive to curtail the inquiry's work but it is right that

inquiries' use of public funds is scrutinised and questions about value for money should be expected.

Appointment of counsel

The Chair, supported by the solicitor, is responsible for any appointment of counsel to the inquiry. The Chair will need to consider, based on the scale and complexity of the inquiry, whether if counsel is to be appointed it would be appropriate to appoint Queen's Counsel or whether a more junior counsel would be adequate. On occasion, a junior or second counsel may be required. The Chair may decide that the inquiry does not justify use of counsel on a full-time basis.

The inquiry should be able to demonstrate that some form of evaluation was carried out, to ensure both that the person appointed is the most suitable for the role and value for taxpayers' money. The Solicitor should determine the particular skills and experience required from counsel and make preliminary enquiries about availability. The Chair may decide to meet all counsel being considered. Where this is the case, a record of any such meetings should be taken.

For an Inquiries Act 2005 inquiry the sponsor department is responsible for agreeing counsel's remuneration and expenses. In other cases the Solicitor should contact the relevant counsel's clerks to discuss levels of remuneration and payment arrangements, such as the basis on which rates will be calculated. Remuneration should be

discussed with the sponsor department. The Solicitor should agree a costs protocol before work commences and contact the Treasury Solicitor's Department (020 7210 3254) to discuss.

In discussing remuneration and expenses it should be made clear that full information regarding both will be set out in the inquiry's report and expenditure information may be contained in any Ministerial statement to Parliament. Arrangements should be confirmed in writing.

While the Chair has oversight on costs for the inquiry, the solicitor should assess bills for legal work on a day-to-day basis. Fee notes and bills should be delivered monthly for payment one month in arrears. All bills should specify the hourly rate and a narrative descriptor added to the time spent on each piece of work. Entries such as 'refresher' are insufficient. Inadequate bills should be rejected and, if necessary, not paid until such time as they are acceptable.

In some exceptional cases a costs assessor may be needed to consider disputes. In such cases, the procedure set out in the Inquiry Rules 2006 (which set stringent timetables) should be followed, even where the inquiry is not being conducted under the Inquiries Act 2005. If necessary, this process should be concluded as quickly as possible for the sake of clarity and for the budget. It will be more difficult to resolve an issue many months after the work has been done. Costs assessors will be funded by the sponsor

department. The funded party must agree in advance that they will be bound by the costs assessor's decision. Sponsor departments must put in place mechanisms for payment of remuneration and expenses within the required timeframes.

For very large or complicated inquiries, a costs solicitor may be required, who would be appointed and paid for by the inquiry.

Public Funding

Legal Aid is not available for inquiries. In general, legal support should be available for any individual against whom allegations may be made in the course of the inquiry and/or who may be the subject of criticism. Support may also be appropriate for others.

The inquiry may be asked to consider requests for public funding from interested persons outside of government.

As a guide to general policy, in response to a question on 29 January 1990, the Attorney General stated that:

"In general, the Government accept the need to pay out of public funds the reasonable costs of any necessary party to the inquiry who would be prejudiced seeking representation were he in any doubt about funds being available. The Government do not accept that costs of substantial bodies should be met from public funds unless there are special circumstances".

The inquiry is not obliged to agree to public funding. Circumstances where it is unlikely to be appropriate include where the applicant's interest in the inquiry is insufficient to warrant public funding, or they belong to an organisation which should pay their own costs, or there is an umbrella group which could adequately represent their interests which is already being funded.

Some witnesses may be neither publicly nor privately funded. Such witnesses will usually be involved only to give a statement and it is for the Chair to determine the manner of taking the statement. It will not always be necessary for a lawyer to be involved in the drafting of a statement. Where, exceptionally, an external solicitor is involved in taking a statement at the inquiry's expense, terms and rates must be agreed in advance.

For inquiries conducted under the Inquiries Act 2005, the power for the Chair to make awards is set out in the Act and may be subject to qualification by Ministers under section 40.

For other inquiries, where the Chair considers that public funding is appropriate a recommendation should be made to the Secretary of State of the sponsor department. The Minister will then decide, in principle, whether public funding should be available. The authority to decide on specific bills will be delegated to the inquiry.

Action Groups and public funding

It is likely that one or more action groups will be involved in the work of the inquiry. An action group may have been instrumental in calling for the inquiry.

There is no reason why an inquiry should automatically fund an action group. Where funding is considered appropriate it should be limited to specifics such as statement taking and witness support. Formal applications should be made and decisions taken according to the particular circumstances.

If there is more than one action group with similar aims the inquiry will need to give careful consideration to the provision of public funds to them all. The groups should be encouraged to join together as an umbrella group. This can be difficult as each group will want to maintain their independence and identity, but the inquiry must consider ways to avoid duplication and to minimise costs. The Inquiries Act 2005 gives a Chair power to compel single representation of persons with similar interests in the inquiry.

Where public funding is granted it must be made clear that the action group is being funded to assist the inquiry with its work, not to promulgate their own views.

As with other arrangements, remuneration and expenses should be agreed in advance and in writing and, where applicable, having regard to the rules and any section 40 determination by Ministers.

Witness Expenses

Inquiries can make provision for the reimbursement of travel and subsistence costs incurred by witnesses giving evidence. This provision has not generally been extended to cover preparation time or loss of earnings. There are specific provisions in the Inquiry Rules 2006 to compensate for loss of time. This requires a different assessment to that for any assessment for loss of earnings.

The sponsor department should, at the outset, establish costs protocols with the Inquiry Team, especially in relation to legal costs.

The same rules on propriety and expenditure apply for the reimbursement of travel and subsistence costs incurred as part of civil servants or Ministers giving evidence to an inquiry as do for any other departmental activity.

Restriction Orders

Where an inquiry is held under the 2005 Act the Chair can make a restriction order imposing restrictions on attendance and on disclosure or publication of evidence or documents. A restriction order may only specify restrictions if they are required by law, or the Chair considers them to be conducive to the inquiry fulfilling its terms of reference, or otherwise to be in the public interest. The Inquiries Act 2005 sets out the matters to be taken into account in making this judgement. Restriction orders do not apply to a public authority receiving the

inquiry record as they receive the information under the Inquiry Rules 2006. It will be for that public authority to consider whether or not to release any information.

The Chair of a non-2005 Act inquiry may make similar restrictions where necessary. Whether statutory or non-statutory, the Inquiry may wish to issue a protocol setting out the approach it will adopt to these matters.

Restriction Notices

Under the Inquiries Act the Minister may also give a restriction order to the Chairman imposing similar restrictions.

SALMON REPORT, MAXWELLISATION AND WARNING LETTERS

The process set out in the Inquiry Rules 2006 should be followed to alert individuals to potential criticisms for inquiries established under the Inquiries Act 2005. Other inquiries should use a Salmon and/or Maxwell process (see below).

No single process for alerting individuals to potential criticisms will be appropriate in all cases. There may be some cases in which, by the conclusion of hearings, those who face significant criticism will be left in no doubt about the fact and nature of any criticism, but the inquiry team should generally err on the side of caution.

Individuals affected by an inquiry must be treated fairly. An inquiry can approach this in

a number of ways but the basic principles are:

- Before any person becomes involved in an inquiry, the inquiry must be satisfied that there are circumstances which affect the individual and which the inquiry proposes to investigate; and
- Before any person who is involved in an inquiry is called as a witness they should be informed of any allegations to be made against them.

Salmon Procedures

The Royal Commission on Tribunals of Inquiry 1966 (the Salmon Report) outlines the general approach on fairness taken by previous inquiries. The Salmon Report sets out that where an individual is to be questioned about allegations or criticisms by the inquiry they should be given notification, in writing, and not less than seven days before giving evidence, of the allegations to be made and evidence in support of the allegations.

Notification takes the form of a warning letter (commonly referred to as a "Salmon letter") to the individual. The Inquiry Rules 2006 contain further guidance on this issue for inquiries conducted under the Inquiries Act 2005. Warning letters are sent out before public hearings or evidence sessions commence and, as a result, may contain limited information or only set out general areas of concern. Where there is more time

for investigation and study of evidence the inquiry can produce a more precise letter.

It is common practice for the inquiry to identify a list of issues that is then sent for consultation and published as the basic framework for the investigation. The warning letter may refer to the issues list and link queries and allegations to it.

Warning letters should not be published or publicised in any way, including to Government departments and other public authorities. Inquiries should not notify Government departments which witnesses have received warning letters. Any employees, including civil servants, in receipt of warning letters are permitted, though not obliged, to discuss the contents with their employer. Specific confidentiality obligations apply under the Inquiries Act 2005.

Maxwellisation Procedures²

A 'Maxwellisation' procedure builds on and complements the approach set out in the Salmon Report, in that the individual who may be the subject of criticisms appearing in the final report sees the text of what is proposed to be published. This approach is now standard practice.

The approach was developed in relation to Department of Trade and Industry company investigations. The principles of this approach are:

- Once an inquiry has prepared a first draft of their report they normally write to the witness setting out the intended criticisms with notice of the evidence on which they are based giving a fixed period to respond;
- Where an inquiry considers it appropriate, representations made by a witness in response to proposed criticism may be included in the report either wholly or in part;
- Witnesses must formally undertake to treat draft passages of a report issued to them in confidence; and
- An inquiry is not obliged to give a witness more than one opportunity to respond to evidence or to possible criticisms nor are they required to enter into prolonged correspondence with the witnesses about the terms of criticisms or the text of their report. Further views may be sought from witnesses in respect of revised criticisms.

See the Inquiry Rules 2006 (rules 13-16).

DISCIPLINARY ACTION AND INDEMNITIES

It is the role of an inquiry to establish relevant facts and if the terms of reference so require, to make recommendations to HMG to prevent reoccurrence. Section 2 of the Inquiries Act 2005 makes clear that inquiries conducted under the Inquiries Act 2005 have no power to determine civil or criminal potential liability and must not purport to do so. Employers may use the inquiry's findings

to assess whether there are any grounds to take disciplinary action against individuals involved (the police and prosecuting authorities may also consider the report).

While an inquiry has no role in relation to disciplinary action of any individual giving evidence or whose actions may be criticised in their report, the inquiry must be alert to the fact that there may be consequences for individuals' reputations and careers and as such must be able to demonstrate fairness in its procedures and recommendations.

Undertakings

Prior to witnesses giving evidence to an inquiry their employer may consider that it is necessary, in order to encourage openness, to give an assurance that witnesses will not face disciplinary action on the basis of their evidence. In the case of civil servants this assurance can only be granted by the Cabinet Secretary or departmental Permanent Secretary on the advice of the Cabinet Secretary. Qualified undertakings to this effect have been provided in the past, but cannot give blanket immunity either from disciplinary action or even prosecution if the official's behaviour warranted such a course. If such an undertaking is granted to witnesses to the inquiry, the inquiry may choose to publish the letter of confirmation (6 and 10-11).

In cases where co-operation from a witness may be affected by concerns of potential criminal proceedings an approach can be

made to the Attorney General to seek a limited undertaking. If granted, such an undertaking is generally in the form of the Attorney General agreeing that no criminal proceedings or criminal investigation will be commenced against an individual based (only) on the evidence he or she gives to the inquiry.

Indemnities

Inquiries set up under the Inquiries Act 2005 will not need special arrangements. For other inquiries consideration should be given at an early stage to whether the inquiry should seek an indemnity in respect of possible legal action taken against those carrying out the inquiry as a consequence of their work for the inquiry. An indemnity allows those involved in the inquiry to investigate thoroughly, without fear of having to deal with personal litigation costs against them.

It is possible to indemnify the inquiry against liability for any statement made during proceedings or contained in the inquiry's report (provided the maker of the statement has not been negligent). Any assurance is given on the basis that the Government would assume responsibility for defending any proceedings and for the conduct of them which are not the result of negligence.

Any indemnity needs to be cleared with the Treasury. Under *Managing Public Money* requirements indemnities must be notified to Parliament if the contingent potential liability is in excess of £250,000. It is unlikely that

any smaller amount would be appropriate for a public inquiry. Notification takes the form of a departmental minute presented to Parliament, giving details of the liability created and explaining the circumstances. Departmental minutes must give 14 Parliamentary sitting days notice before the indemnity comes into effect. The Secretary should discuss with the Accounting Officer in the sponsor department whether and how to proceed. Guidance to the sponsor department on how to structure the minute to Parliament is in paragraphs 5.4.3 - 5.4.4 and Annex B of *Managing Public Money*.

http://www.hm-treasury.gov.uk/d/mpm_ch5.pdf

http://www.hm-treasury.gov.uk/d/mpm_annex5.5.pdf

JUDICIAL REVIEW

Decisions by the Chair, including those taken by Inquiry Team members on his or her behalf, may be liable to judicial review. The Solicitor to the Inquiry will provide advice on the requirements of administrative law in the context of the decisions that must be taken by the inquiry and its procedures.

A reduced 14-day time period for bringing judicial reviews in relation to statutory inquiries was introduced in the Inquiries Act 2005. For other inquiries, the usual three-month time limit applies. In most cases the issues under review will require action to be taken to a shorter timeframe, for example

where pending evidence or hearings are affected.

Draft