

## INQUEST, INQUIRY AND PUBLIC LAW BRIEFING NOTE

### THE COVID-19 PUBLIC INQUIRY - WHERE ARE WE NOW?

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***The PM's recent announcement that there will be an independent inquiry into the C-19 response has been welcomed but has also prompted difficult questions: what might the inquiry look like and involve? And what of those who want or are required to give evidence to it?***

The total number of C-19 associated UK deaths given by the government is in the tens of thousands. C-19's reach is a long one: lost family, friends and colleagues. Others remain profoundly affected by it; lockdowns and restrictions threaten our economy and have already resulted in the closure of businesses and the loss of jobs.

Was the Government too slow to react? Did it fail to take steps that could have restricted the spread of the virus and mitigated at least some of the effects we have experienced? Also, in which ways has the response to C-19 been most successful and why? These and many more questions are raised with increasing intensity. Inevitably, people are calling for a public inquiry.

During the height of the lockdown, government ministers accepted that time would need to be set aside in the future for reflection about the response to C-19. However, they made no commitment to a public inquiry. That may now have changed. Last month, the [Prime Minister said](#):

*"we will seek to learn the lessons of this pandemic in the future and we will certainly have an independent inquiry into what happened".*

#### **What does this mean in practical terms?**

This statement is welcome. But in certain respects, the agreement to hold the inquiry is the easy part. Further difficult and fundamental questions will hopefully now also be addressed over the coming weeks, including:

- **What kind of inquiry will this be?** There is an expectation in various quarters that it will be the type of formal, judge-led public inquiry that is typical under the Inquiries Act 2005. That is yet to be confirmed. The advantage of this kind of inquiry is that it has powers to compel evidence.
- **When will it start?** The PM has also said that now is not the "right moment to devote huge amounts of official time to an inquiry". This is no doubt because it is felt that those

resources still need to be directed at fighting the virus. The difficulty is that urgent issues, such as those relevant to stopping a second spike, need to be addressed now.

- **What will it cover?** There are many issues of significance that could be addressed. The difficulty here is that the more an inquiry looks into, the longer it may take and the more expensive it may be - and that can lead to a loss of public support. On the other hand, it may also be criticised if its remit is too narrow and it fails to look into points of public concern.
- **Who should lead it?** Options include an individual such as a judge alone or a panel of suitably qualified people (for example, the panel in the Independent Inquiry into Child Sexual Abuse consists of members who have backgrounds in social work, academia and different aspects of the law).
- **Who should be involved in deciding its terms of reference?** The Inquiries Act 2005 empowers a Minister to set up an inquiry and to determine its ToR, with a legal requirement to consult only with the Inquiry Chair in setting those terms. But should there also be wider consultation, including with the general public?

We should not underestimate how difficult questions like these can be to resolve.

### **Engaging with the inquiry**

And what of those who wish to engage with the inquiry – or may be drawn into it – once it has been set up? They might include people and organisations in the following broad categories –

- people who have been seriously affected by the virus and the issues under consideration, such as those who have lost loved ones or been ill themselves;
- the politicians most closely involved in the response to the pandemic;
- government departments, other public bodies on the frontline, such as the NHS, and individuals working within them;
- the management and staff of care homes and other privately owned businesses severely affected by C-19; and
- other companies significantly involved in the response to the pandemic, such as the major outsourcing companies, management consultants and accountants drafted in by the government to help; and private companies involved in other ways, such as the purchase and provision of PPE.

It is most unlikely that individuals in the first category will be required to engage and cooperate with an inquiry – their involvement is likely to be entirely voluntary. But the same will not be true for others. Those in the other categories may be required first to preserve and then to disclose

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documents and other information to the inquiry. Key individuals will be asked to provide witness statements and may then be called to give evidence in public at the inquiry's hearings. These individuals and organisations will all need access to appropriate support and advice.

Two articles I have recently co-authored address the significant questions concerning a C-19 inquiry:

- [Covid-19 public inquiry: Asking the right questions](#) (Law Society Gazette)
- [Calls for coronavirus inquiry will be hard to ignore](#) (The Times)

[Nicholas Griffin QC](#) heads QEB Hollis Whiteman's Inquest, Inquiry and Public Law Team. If you would like more information about a C-19 Inquiry and what it might entail, please contact [Faye Stimpson](#), clerk to Mr Griffin and the IIP Team.

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*This briefing note was produced by Nicholas Griffin QC. This note should not be taken as constituting formal legal advice. To obtain expert legal advice on any particular situation arising from the issues discussed in this note, please contact our clerking team at [barristers@qebhw.co.uk](mailto:barristers@qebhw.co.uk). For more information on the expertise of our specialist barristers in the fields of Corporate & Financial Crime, General Crime, Professional Regulation, Private Prosecutions and Inquests, Inquiries and Public Law please see our website at <https://www.qebholliswhiteman.co.uk/>.*

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