

How ‘public’ are public inquiries?

Accessibility & accountability in inquiries must remain paramount despite the demands of COVID measures, argue **Helen Stone & Eleanor Cornish**

Public inquiries are a crucial element of the UK’s democratic system. By establishing the facts about a scandal or large-scale tragedy, they enable a wide range of institutions and individuals to be held publicly accountable. Wrongdoing is exposed, lessons are learnt, and the public’s confidence is rebuilt as the institutions (hopefully) evolve.

While they can take different forms, the most rigorous and independent inquiries are those held under the Inquiries Act 2005 (IA 2005). The importance of public access to such inquiries (and the information disclosed to them) is enshrined in IA 2005, s 18, with the default position being that individuals can attend—and see and hear—a simultaneous transmission of proceedings, unless a restriction notice or order is imposed.

IA 2005, s 19 empowers the inquiry chair to impose these restrictions. However, any such restriction must be only those required by, for example, statutory provision, or as is considered conducive to the inquiry fulfilling its terms of reference or necessary in the public interest, bearing in mind that any restrictions might inhibit the allaying of public concern.

Statutory inquiries are therefore designed to be public. However, restrictions introduced to combat the COVID-19 pandemic have significantly affected the way in which inquiries operate. Inquiries have approached their obligations in different ways, leading to questions about the effect these adaptations have on the public nature and accountability of an inquiry, not only at the current time, but also for the future.

Technological advances

Technological advances have had a huge impact on the way in which modern inquiries are run, and the extent to which they are open to the public.

Well before the pandemic, most public inquiries were using video streaming and other technological advances, enabling

them to overcome hurdles previously posed by inaccessibility, work commitments and personal circumstances.

These developments had significant benefits for accountability, not least by enabling proceedings to be viewed (and documents and transcripts to be examined) remotely. As well as benefitting the inquiry’s core participants and public, the media was, as a result, better able to raise public awareness of the matters under review.

These benefits became even more apparent during the pandemic.

Ultimately, the issues that public inquiries are considering are too important, by their nature, to simply be ‘put on hold’. There is a need to take the opportunities afforded by technology. After an initial complete shutdown, inquiries gradually reopened. Initially they relied almost entirely on technology to do so. Fact finders, lawyers, core participants, and the public joined remotely (albeit with some important exceptions, such as the Undercover Policing Inquiry, where security considerations overrode a right to general access).

The importance of attendance

However, in our experience of representing core participants in inquiries, the importance for some of being able to physically attend a hearing cannot be overstated.

Inquiries can be a significant source of community engagement and catharsis. Attending a physical space in person, sitting alongside senior representatives of powerful organisations, and together engaging in legal ritual can feel like the levelling of a playing field. If the public is no longer able to do this, there is risk of losing or degrading aspects of accountability, including transparency, integrity, and fairness.

For example, the absence of a live ‘audience’ can create the sense that a witness is able to ‘get away with it’ by not having their evidence fully interrogated. A witness’s ability to give evidence from the comfort of their sofa—and amid the familiar surroundings of their home—means they may avoid the discomfort

and self-reflection which is fundamental to fostering accountability. It is more appropriate for a witness to see and hear the impact their evidence has on those most directly affected by it.

Moreover, practical demands mean that in these situations, all involved are obliged to place a higher level of trust in those giving evidence remotely. For example, they are expected to take a witness at their word when they confirm that they are alone in a room and that they have no electronic messaging devices to hand which could be used to assist them answer questions.

There is also the issue of whether the finder of fact being remote from the witness may cause problems in assessing the credibility of the evidence. Studies are ongoing in relation to this issue, but it is fair to say that it can cause public concern that a witness cannot be fully observed by the fact finder(s) throughout their evidence.

Conclusion

An inquiry which is accessible and observable by the population at large leads to a more informed and empowered public, which will likely be more effective at holding inquiries themselves to account. The recommendations are likely to be more robust—and change longer lasting—as people beyond those immediately affected feel invested in ensuring recommendations are implemented.

The COVID-19 pandemic has underscored some of the benefits of technology in allowing inquiries to continue to operate and, to an extent (depending on the inquiry), be publicly accessible. However, it is clear that in the future there will need to be careful thought given to a move away from inquiries having both a physical hearing venue and audio-visual live streaming. IA 2005 envisages both, and we suggest that it is only in combination that public accessibility and accountability can be achieved.

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