

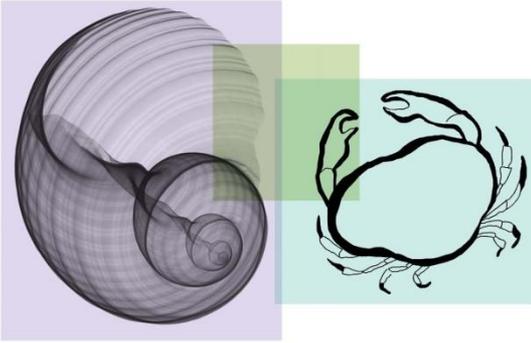
Preparing for the COVID-19 public inquiry

Our speakers today:

- **Georgia Ford**, Partner, Capsticks
- **Gerard Hanratty**, Partner and Head of Health, Browne Jacobson
- **Liz Hackett**, Partner, Hempsons

With **Miriam Deakin**, NHS Providers Director of Policy and Strategy, chairing the session

Thank you for joining us – the webinar will begin shortly



NHS Providers COVID-19 Inquiry webinar

Introduction to the legal framework for public inquiries

Georgia Ford, Partner

November 2021

Statutory public inquiries



-
- Held under The Inquiries Act 2005 (“the Act”); The Inquiry Rules 2006 (“the Rules”)
 - Held where it appears to a Minister that events “have caused or are capable of causing public concern” (Section 1 of the Act) e.g. large scale loss of life, serious health and safety issues
 - No determination of civil or criminal liability (s.2(1))
 - Legal powers to compel witness evidence
 - Legal procedures and framework for various aspects of the process e.g. appointment of chair

Appointment of the Chair



-
- An inquiry can be undertaken by a chairman alone or by a chair and one or more other members (section 3 of the Act)
 - Subject to provisions of the Act, the chair will determine procedure and conduct of the inquiry. A key decision in the inquiry process
 - Inquiry chair must have the necessary expertise to undertake the inquiry and be impartial (sections 8 & 9).
 - Most are judges

Terms of reference



-
- Must be set out before the setting up date of the inquiry (s5(1))
 - Chair/ proposed chair must be consulted on the ToRs (s5(4))
 - Defined as: a) the matter to which the inquiry relates; any particular matters as to which the inquiry panel is to determine the facts; c) whether the inquiry panel is to make recommendations; d) any other matters relating to the scope of the inquiry that the Minister may specify (section 5(6))
 - Inquiry cannot act outside its terms of reference

Core Participants



-
- Determined by the chair and governed by Rule 5 of the Rules
 - Generally organisations/ people who played a direct role in the subject of the inquiry, may be criticised or have a significant interest
 - Usually attends for all of the proceedings (or substantial parts) either personally or by recognised legal representatives
 - Various rights in respect of disclosure, questioning of witnesses, the making of submissions, review of draft report

Evidence



-
- Chair can by notice require a person/ organisation to give evidence/ provide disclosure (s.21; Rule 9)
 - Evidence be taken by interview or in a public hearing
 - Intentionally suppressing or concealing a relevant document is an offence (s.35) that can result in imprisonment and/ or fine.

Inquiry reports



-
- The final report must set out:
 - the facts determined;
 - recommendations; and
 - any other matters relevant to the terms of reference (s.24)
 - Interim reports can be provided
 - Material can only be withheld in limited circumstances
 - Report will be published in full

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NHS Providers - Covid Inquiry

How could the Inquiry approach issues?

- Public Administration and Constitutional Affairs Committee in calling for a public inquiry stated:

the public inquiry should be forward-looking and the primary purpose of any look backwards should not be to apportion blame but to understand how to ensure that the country is better prepared for any future pandemic

- Terms of Reference and Methodology will set out issues and how they will be analysed
- Manchester Arena Inquiry - ToR is chronologically focussed: *ability to prevent through to cause and mechanisms of each death*
- Independent Inquiry Child Sexual Abuse - undertook 15 investigations into different institutions
- Mid Staffordshire NHS FT Public Inquiry - examined the operation of commissioning, supervisory and regulatory organisations and other agencies - institution focussed

What could be key areas for the Covid Inquiry

- Reasonable to assume will be focussed on institutions to understand decision making
- Relevant bodies for core participant status on non-exhaustive basis are:
 - Government
 - Devolved Administrations - Wales, Scotland and Northern Ireland
 - Local Government
 - Arms Length Bodies: executive agencies (e.g. UK Health Security Agency); non-departmental public bodies (e.g. NHS England); non-ministerial departments (e.g. Office Qualifications and Examinations Regulations)
 - Public Authorities (not ALBs) (e.g. NHS Trusts)
 - Campaign groups (e.g. Covid-19 Bereaved Families for Justice)
 - Non-public organisations (e.g. those in travel, entertainment and hospitality industries)
 - Wide list given impact across the country and outside country

Potential Key Areas for Health

- Expect the ToRs, however constructed, to have Key Lines of Enquiry (KLOEs) that will focus on institutions and decision making in health
- These may well include:
 - Patient treatment and deaths [including Inequalities]
 - NHS Preparedness [e.g. collaboration, resilience, adequacy of PPE and workforce issues]
 - Guidance and decision-making during the pandemic [national, system and organisational]
 - Procurement - national and local [e.g PPE, ventilators and Nightingale hospitals]
 - Test & Trace; Tracking; Vaccines
 - Interaction between NHS and care home sector
 - Collaboration with social care and other agencies/organisations
- A wide list which can encompass many different lines of enquiry
- The aim of going through the KLOEs should be to *understand how to ensure that the country is better prepared for any future pandemic*



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Practical tips for trusts in preparing for and responding to the inquiry

Liz Hackett, Partner, Hempsons

“They're excellent - they're very professional and very experienced.”

”

Chambers 2021

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What will we cover?

- Strategic considerations
- Planning
- Practical steps
- How to support your staff

Strategic Considerations

- Objectives
 - Trust
 - Staff
 - Community
- Role and core participant status
- Resource
- IT capabilities
- Allocation of roles and responsibilities
- Support and guidance for staff
- External support

Planning

- Appointment of an inquiry lead
- Representations on the terms of reference
- Application for core participant status
- Document management team
- Information governance structures and IT capabilities
- Key decision makers
- Communication strategies
- Information sharing
- Concurrent liabilities
- Learning

Practical steps

- Early planning
- Stop Notice
- Resource allocation
- Documentation:
 - Generic themes and trust specific issues: be flexible
 - Timeline: key dates nationally and locally
 - Identifying and securing relevant documentation
 - Cataloguing and sequencing documentation
 - System and data management
 - Information governance
- Witness statements

How to support your staff

- Keep them informed
- Have clearly defined processes
- Guidance notes
- Culture of candour
- Be mindful of the added pressures

Contact

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Further information:

Hempsons COVID-19 inquiry webinar programme

- [Public inquiries and liabilities – Tuesday 16 November, 2-2.30pm](#)
- [Whistleblowing, considerations arising from a public inquiry – Thursday 9 December, 10-10.30am](#)
- [Duty of candour – Tuesday 14 December, 10-10.30am](#)

[Find out more about how we can help you prepare for the inquiry in our COVID-19 inquiry brochure](#)

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Thank you for joining us today

Please add any questions you have to the Q&A box

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