

Inquiry Law webinar series

Session 3: Challenging (& Challenge Proofing) Inquiries

Monday 9 June 2025

The recording can be accessed [here](#).



Your speakers for today



Fiona Scolding KC
Chair



Galina Ward KC



Public Inquiries Series

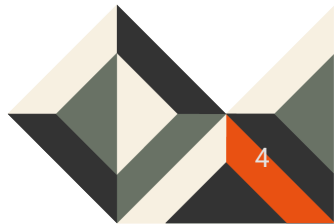


Fiona Scolding KC
(Chair)



Challenging S21 Notices, Contempt Of Court and Warning Letters

- (A) When can you challenge s21 notices?
- (B) What happens if you don't answer a s21 request?
- (C) What is the warning letter process?
- (D) Tips for responding to warning letters



S21 notices

- Provides the legal basis to compel evidence
- Can be the production of documents
- Or “any other thing in his custody or under his control for inspection, examination, or testing by or on behalf of the inquiry panel”
- Or to provide written or oral evidence to the inquiry
- Must be given a written notice to produce such evidence :
 - (a) Explaining the consequences of not complying
 - (b) Indicate if they want to challenge the notice



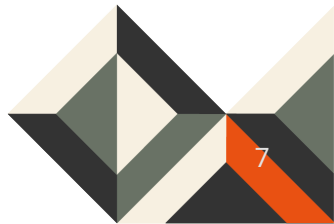
S21 notices (privilege and other substantive claims)

- No. 2 in this series dealt with claims of privilege, confidentiality, public interest immunity, self-incrimination (slides will be sent to all attendees at this inquiry tonight along with a link to all three seminars)
- Other grounds to object could include:
 - (a) Timing
 - (b) Does not have the relevant evidence or someone else better placed to provide the evidence
 - (c) Disproportionate to be asked to provide the quantity or nature of evidence (s17(3)) must have regard to the need to avoid unnecessary cost)
 - (d) Asking for evidence outside the terms of reference – so no vires
 - (e) Evidence is not relevant.



S21 – how do you apply?

- Must make a formal application to the Chair
- Notice can be varied or revoked by the Chair
- The Chair must consider the public interest in the information being obtained by the inquiry, having regard to the likely importance of the information.



S23 – Damage to economy

Only other exception is s23

Crown, FCA or Bank of England can say that there is information held which to avoid a risk of damage to the economy should not be disclosed.

Panel undertakes a balancing exercise in respect of the public interest in information being revealed outweighs the risk to the economy.



S19 – restriction notice

- If there are concerns about confidentiality, data protection, or jigsaw identification then the inquiry can make a restriction notice
- This relates only to attendance at any inquiry or disclosure, or publication of evidence or documents given to the inquiry or provided to this.
- In some cases, a minister gives the chair a restriction notice
- IN other the chair can make a restriction notice at any time.
- Only can be as required by law or to fulfil the terms of reference, or necessary in the public interest.



Considerations under s19

- Would restriction inhibit the allaying or public concern?
- Risk of harm or damage that could be avoided or reduced by such restriction?
- Conditions as to confidentiality, subject to which a person acquires information that he is giving or has given to the inquiry
- Extent to which not imposing a restriction would be likely to cause delay or impair the efficiency of the public inquiry.
- Harm or damage includes
 - (a) Death or injury (can be psychological injury)
 - (b) National security
 - (c) Economic interest of UK
 - (d) Commercially sensitive information



Obvious examples where s19 may be needed

- Medical records – any other form of personal, medical information or social services records, etc.
- Information which may lead someone subject to an anonymity order in crown or civil proceedings to be identified (usually children, those who have reported sexual offences, national security)
- To meet someone's protected characteristic – eg disability
- Commercial information (eg pricing of contracts, tenders etc.)
- National security (may need to discuss this in a closed material procedure session)



What happens if you don't comply with s21?

S35 of the Inquiries Act – offence of failing “without a reasonable excuse” to comply with s21.

- (Also, offence to conceal evidence, alter it, destroy such)
- Any claim must be instituted by the chair of the inquiry (s35(5))
- Need the consent of the DPP
- S35(7) – on conviction up to 51 weeks in prison or a fine (up to £1,000).
- Has this ever been instituted? (Can't find any evidence of such)



S36 of the Public Inquiries Act 2005

- Where someone either fails to comply or breaches a notice under s19 or s21 or threatens to do so, can send the matter to (in England) the High Court to undertake enforcement action.
- So that would be application for contempt of court under the Contempt of Court Act 1981
- All the relevant procedural safeguards would apply as set out under CPR 81
- So proven to the criminal standard: right to legal aid: need for clarity in drafting the applications etc.
- Powers same as for all contempt proceedings (so could be imprisonment)



Has this ever happened?

- Also don't forget that s10 of the Contempt of Court Act 1981 provides that a court may not require someone to disclose a source of information contained in a publication "for which he is responsible" unless it is established to the "satisfaction of the court" that such is necessary in the interests of justice, national security or the prevention of disorder or crime.
- Also, the inquiry as a public body would have to consider the HRA 1998 – and the rights under Article 10
- Threat to Johnny Mercer in Afghan inquiry (not disclosing confidential sources)
- Re: Ian Paisley Jr [2009] NIQB 40 . Useful summary of the relevant legislative background.
- Required that Ian Paisely hand the information over in 17 days.



Warning letters

S13 of the Inquiry Rules 2006

- Sent to anyone who may be or has been subject to criticism in the inquiry procedures
- About whom criticism may be inferred from evidence given during the proceedings
- Who may be subject to criticism in the report or any interim report.
- Must not include “explicit or significant” criticism in the report without providing a warning letter.
- Must state what the criticism is, and the statement of facts which substantiate the criticism and any evidence.



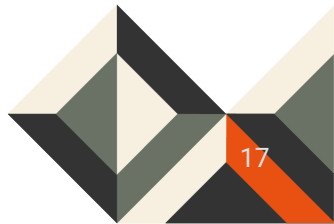
How do you respond to a warning letter?

- Not compulsory to respond – may not wish to do so
- Thoughts about responses:
 - (a) Should you provide further new evidence (nothing to stop you, but will the Inquiry take it into account – issues of fairness/reasonableness of submission of further information at this stage but very fact dependent) ?
 - (b) Can you find evidence disclosed and/or in existence (eg by scouring the document management system) which refutes the allegation?
 - (c) Can the relevant conclusion be inferred and/or is it evidenced?
 - (d) Should it have been put at any inquiry hearing?



Duty of confidence and warning letters

- Other than legal representatives, can only disclose the warning letter to those whom the inquiry has approved
- Need to ask for a waiver
- Obligation of confidence ends when the report is signed (e.g. when published)
- Can be sued for breach of confidence.



Judicial Review of Inquiries



Galina Ward KC



What can you judicially review?

- Procedural decisions
- Notices under the 2005 Act
- The final report
- Response to recommendations



Inquiries Act 2005, section 38

- (1) An application for judicial review of a decision made—(a) by the Minister in relation to an inquiry, or
- (b) by a member of an inquiry panel,

Must be brought within 14 days after the day on which the applicant became aware of the decision, unless that time limit is extended by the court.

(2) Subsection (1) does not apply where an earlier time limit applies by virtue of Civil Procedure Rules or rules made under section 55 of the Judicature (Northern Ireland) Act 1978 (c. 23).

(3) Subsection (1) does not apply to—

- (a) a decision as to the contents of the report of the inquiry;
- (b) a decision of which the applicant could not have become aware until the publication of the report.

In this subsection, “*report*” includes any interim report.



Procedural decisions

- Anonymity: *R v Lord Saville of Newdigate, ex p B (No 2)* [2000] 1 WLR 1855; *R (Associated Newspapers Ltd) v Leveson* [2012] EWHC 57 (Admin), [2012] ACD 23
- Grant of core participant status: *R (EA) v Chairman of the Manchester Arena Inquiry* [2020] EWHC 2053 (Admin), [2020] HRLR 23
- Admission of expert evidence: *Greater Glasgow Health Board v Chairman of the Scottish Hospitals Inquiry* [2025] CSOH 12



Orders under the 2005 Act

- Section 19: *BBC v Chair of the Scottish Child Abuse Inquiry* [2022] CSIH 5; *R (Metropolitan Police Service) v Chairman of the Inquiry into the Death of Azelle Rodney* [2012] EWHC 2783 (Admin), [2013] ACD 3
- Section 21: *R (Cabinet Office) v Chair of the UK Covid-19 Inquiry* [2023] EWHC 1702 (Admin)
- Section 40: *R (Traveller Movement) v Chair of the UK Covid-19 Inquiry* [2024] EWHC 3283 (Admin), [2025] 4 WLR 45



Judicial review of report

- Warning letters and procedural fairness
- Injunctions against publication



Enforcing recommendations




- Monitoring by Chair
- Duty on Government to respond?
- Statutory Inquiries Committee Report – *Public inquiries: Enhancing public trust*



Thank you

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