

THE COVID INQUIRY: what we know so far, and how it could impact your organisation

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As the UK comes to terms with the impact of the pandemic, there is a substantial and well justified public concern about key strategic decisions that were made throughout the crisis by the UK government.

With Scotland now moving ahead with its own public inquiry and inviting views on aims and principles, many organisations in England and Wales are also making initial preparations, following the prime minister's announcement in May that a forthcoming inquiry would place "the state's actions under the microscope".

If you feel that your organisation, your stakeholders or beneficiaries, or the sector you represent were seriously impacted by the government's decision-making, you may want to think about participating in the inquiry.

In this guide, we'll tackle some of the key questions you may have about how the inquiry will work and how you can be involved.

What will the inquiry aim to do?

The idea of a statutory public inquiry is to address three key questions.

- **What happened?**
- **Who is responsible?**
- **What can we learn and how can we prevent this in the future?**

With some hotly-debated topics at the forefront of public discourse, the inquiry may seek to address issues such as: the planning phase for any pandemic; whether the country was locked down soon enough; the impact of the government's advice in relation to care homes and high mortality rates; the shortage of PPE; inequalities and disparities of outcome for BAME communities; the procurement of Covid related contracts and the roll out of the vaccination programme. These are just a few examples of topics likely to be addressed.

Although a public inquiry has no power to hold individuals or organisations liable for their actions or omissions, its findings can be used to inform subsequent criminal or civil proceedings.

How can my organisation feed into the inquiry?

The scope of the public inquiry will be determined through its **terms of reference**. These terms will dictate exactly what questions will be addressed throughout the inquiry, as well as outlining the type of feedback that the government is seeking. Your first engagement with the inquiry might be seeking to lobby Government to ensure the terms of reference hit the right issues. The terms of reference should allow for the chair of the inquiry to consult a wide range of stakeholders on the effect of the particular issues on their day-to-day operations. Stakeholders who want to play an active part in the inquiry, can formally apply to be what is known as a **core participant**.

If the actions of the government have affected your organisation significantly or you represent individuals or entities who have suffered serious impacts, you may want the right to shape the outcome of the inquiry by presenting evidence. As a core participant, you would have certain rights that members of the public do not have. You would have the ability to consider the evidence, give evidence yourself, make statements and attend hearings. You could potentially even ask questions to witnesses at public hearings.

How will core participants be chosen?

When deciding whether to allow an organisation or individual to be a core participant, the inquiry's chair should consider whether they **played a significant role in the matter which the inquiry seeks to address**. The chair will also consider if the person or organisation has a **significant interest in an important aspect of the matter**. For example, if your organisation is a charity that has had their ability to fundraise significantly reduced due to government-led restrictions, or a public body administering health or social care, you may well be accepted as a core participant.

It's likely that there will be a vast range of core participants taking part in the Covid inquiry. We've previously seen over 1,600 core participants in the Infected Blood Inquiry and 500 in the Grenfell Inquiry, for example.

The scope is likely to include groups such as charities and public authorities, bodies representing healthcare workers, bereaved families, those suffering from long covid, hospitals, scientific advisors, medical professionals, key workers and more. There will be commercial entities also to include care homes, those producing and retailing the vaccine and companies hit by the pandemic or caught up in the PPE contracts.

Other entities who are likely to become core participants include of course those who were in the driving seat in terms of policy. They will have much to say and indeed may face significant criticism during the inquiry proceedings, for example government departments such as the Department for Health and Social Care, HM Treasury, Department for Education, or the National Statistics Office which provided the government with data used to make decisions.

How can I apply to be a core participant?

Once the inquiry website sets out a timetable for registration, details of the process will be communicated including the process for application. The chair of the inquiry has a wide discretion to designate who can be considered a core participant, including being able to invite, but not compel, participants directly.

When you apply, you must set out in detail why you have a significant interest in the inquiry and if you are able to assist the inquiry in any way with disclosure or relevant information.

How should I decide if my organisation should participate?

Organisations in every sector have been profoundly affected by the pandemic. If you are recognised as a core participant, you will not only have the opportunity to shape the inquiry and how it holds the government accountable, you will also make an impact as to how policy is created going forward.

At Bates Wells, we are speaking to many clients who are assessing whether they should participate. We have a long history of working in relation to inquiries including the Independent Child Sexual Abuse Inquiry, the Grenfell Inquiry, the Leveson Inquiry, the Infected Blood Inquiry and so on.

Bates Wells is committed to ensuring that lessons are learnt by the government and that the public is better protected by future policy. If you would like to discuss the impact of the pandemic on your organisation, then please contact us. We have the expertise to help you.

Our experience

Bates Wells has the expertise to guide you successfully through the inquiry process.

Maybe you need assistance in lobbying around the scope of the inquiry, guidance on the terms of reference when they are available, help on how to prepare or whether to apply for core participant status. Maybe you will be asked to provide evidence to the inquiry. You may have questions on disclosure, legal privilege, submissions and witness statements; you want help preparing witnesses for giving evidence or responding to draft criticism.

Our specialist team not only provides support on these issues, but delivers strategic advice that goes beyond the legal necessities.

How we help

We have over twenty years' experience supporting clients through high-profile and often sensitive inquiries. Get in touch to find out how we can help you.

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Today, our clients are diverse – from corporate household names, to public bodies, to start-ups. We're also the firm of choice for thousands of charities and social enterprises. We continue to lead the market we helped to shape.

Bates Wells challenges what is possible in legal expertise delivery.

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