

The Post Office Horizon IT Inquiry: a Statutory Inquiry FAQ and jargon buster

This is a guide intended to help JFSA members in understanding the JFSA's participation in the forthcoming statutory public inquiry.

The JFSA will be represented at the Inquiry by Howe + Co, who helped force the Business Minister to re-establish the toothless non-statutory inquiry into a powerful statutory Inquiry. Howe + Co are experts in public inquiries; they represent many of the victims in the Grenfell Tower Inquiry and National Child Abuse Inquiry. If you want any further detailed advice, please contact one of Howe + Co's specialist inquiry solicitors.

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- What is a Statutory Inquiry?

A **Statutory Inquiry**, simply, is a powerful form of public inquiry, established under the Inquiries Act 2005, and operates under the rules set out in that Act.

A **Public Inquiry** is a way of independently assessing the facts, events and circumstances which gave rise to a particular failure or problem. They also examine the background of that failure, and make recommendations about how bodies or organisations can improve their performance or prevent a failure or problem from reoccurring. A public inquiry will investigate key issues, taking into account evidence from the documents and witnesses to the facts.

A statutory public inquiry, as opposed to a government review or non-statutory inquiry, is a more formal process (with set legal rules about evidence and witnesses, for example).

- What are core participants?

A **core participant** is an individual, organisation or institution that has a specific interest in the topics to which the Inquiry relates. They have specific rights and roles as set out in law. Core participants have special rights in the Inquiry process.

Core participants' special rights include receiving early disclosure of documentation, including documents not made public, being legally represented and making legal submissions to the Chair, suggesting lines of questions to witnesses, suggesting evidence to be obtained, and receiving advance notice of the Inquiry's report(s).

It is not necessary to be a core participant in order to provide evidence to the Inquiry.

- Who decides whether I am a core participant?

The Inquiry's Chair will decide who can be designated as a core participant, based on the applications made to him. He makes decisions according to legally-defined rules, but has wide discretion and can take a large number of factors into account.

- What is the role of Sir Wyn Williams?

Sir Wyn Williams is the Chair of the Inquiry. Sir Wyn retired from his role as a High Court judge in 2017 and has undertaken a number of similar judicial and legal roles since his retirement. In conjunction with the Inquiry's dedicated lawyers, he will be the head of the investigation and will be responsible for the procedures of the Inquiry and responsible for drafting its report(s). The Chair's role is comparable to a judge in a legal case, but with a duty to properly and fully investigate the issues to which the inquiry relates.

The Chair of an inquiry is responsible for making key decisions on the setting up and operation of an inquiry. Those decisions relate to:

- an inquiry's procedural rules;
- the granting of core participant status to individuals and organisations;
- which witnesses to call;
- requiring that documents be disclosed to the inquiry;
- finance and timetables of the inquiry; and
- recommendations, and interim recommendations.

The Chair will also be involved in the selection and appointment of panel members (below).

- **Who are the Chair's panel, and how are they selected?**

We do not yet know who may be appointed to the panel. The Inquiries Act 2005 permits an inquiry to sit with a panel. The JFSA can make representations to the Chair as to who panel members should be.

Whilst the decision on panel members is ultimately a decision for the government minister, that minister is under a legal duty to consult with the Chair on panel members' appointment.

The Prime Minister withdrew a proposal to appoint a panel member to the Grenfell Tower Inquiry, after Howe & Co objected on behalf of their core participant clients about the panel member's professional history. Now, the Grenfell Tower Inquiry's panel contains an architect and health and safety practitioner, as well as a panel member with experience in social housing and local government.

- **What are the powers of the Statutory Inquiry?**

One of the most significant advantages of a statutory inquiry over a non-statutory inquiry are the powers that are granted to it.

A statutory inquiry has the ability to compel witnesses to attend and give evidence, as well as power to require a company, body, individual or institution to provide documents to it. A non-statutory inquiry has no powers to compel anyone unwilling to comply or engage with it.

A statutory Inquiry can commence criminal action against any person or organisation that refuses to cooperate with it.

Additionally, a statutory inquiry has the power to take evidence under oath (which comes with the consequences for lying under oath). Further, a statutory inquiry gives the Chair a power to reimburse expenses in connection with inquiry business (which can include participants' reasonable legal costs, travel and accommodation, expert evidence etc). The power to reimburse can be a significant benefit for participation in an inquiry.

- **What is the aim of the Statutory Inquiry?**

The aims of the Statutory Inquiry are set out in its Terms of Reference. Last week the JFSA forced the Department of Business to change and widen the Terms of Reference.

The Terms of Reference are ultimately the responsibility of the Minister responsible for the Inquiry, in this case the BEIS Minister. In practice, the Terms of Reference are usually set based on the recommendations of the inquiry's chair or proposed chair.

It is usual for the Chair to consult on the contents of the Terms of Reference, including with those who are or who may be core participants (see below for core participants). Once the Chair has considered the representations placed before him by the relevant interested parties, he will make a recommendation to the Minister.

The JFSA will be seeking to press Sir Wyn Williams to widen the Terms of Reference further and to interpret the current Terms of Reference so as to ensure that the Objectives of the JFSA are fully and properly investigated.

- **How will it work?**

At this stage, it is too early to say exactly how the Inquiry will operated day to day. It is likely that the Inquiry's business will be conducted through a mixture of written submissions and live, in-person (or remote) hearings.

We will be meeting with the Chair to discuss this and the JFSA's concerns shortly.

Some inquiries, dependent on their nature, divide and sub-divide their work into separate topics. Core Participants are usually given the chance to make written submissions on a topic, and subsequently make oral submissions at a hearing through their nominated barristers. The Inquiry will call for witness evidence (through witness statements) from the Core Participants, on their general experiences, or more specific questions to direct the evidence sought.

The witness evidence will be considered by the Inquiry's legal team, and some witnesses will be called to give live evidence. This means that, for example, we can expect to hear witness evidence from staff from the Post Office and Fujitsu, as well as from relevant government departments. We also can expect that subpostmasters will be asked to provide witness statements, and that the Inquiry will want some subpostmasters to appear live.

Lawyers for core participants are given advance access to documents and the witness statements of other core participants. Prior to a witness appearing before the Inquiry, core participants are able to submit specific lines of questioning for each witness based on their role and their witness statement.

- **Who can attend?**

Public inquiries are just that, public. The manner in which the hearings take place is dependent on how the Chair constitutes the inquiry, but the Inquiry proceedings will be accessible to the public.

Whilst COVID restrictions will undoubtedly impact whether public hearings can take place, the Inquiry's business will be publicly accessible. Public inquiries are usually livestreamed on YouTube, and the transcript of each day's proceedings are published online along with any evidence heard.

- **What evidence will the Statutory Inquiry consider?**

The evidence considered by the Inquiry will be dependent on the nature of the Terms of Reference set. However, the Inquiry and the Inquiry's chair has broad powers to request documents, and legally demand them if necessary. We can expect a wide range of evidence to be considered by the Inquiry, including documents provided by core participants and evidence from experts.

- **Will I have to pay for legal representation?**

No. The Inquiry rules set out that legal representation can be paid for from public funds if certain legal tests are met. Howe + Co are experts at obtaining funding for its clients in Inquiry proceedings, and they will assist the JFSA members in obtaining funding for legal representation.

- **Will I be liable for any costs if I complete the Core Participant form?**

No, you will not be liable for any costs by completing and returning the form.

By completing the form, you agree to instruct Howe & Co to represent you before the Inquiry. At the start, that work will include applications for core participant status, and an application for public funding. You will not be liable for the costs any work done as part of the Inquiry process. Howe & Co will not seek to recover any legal costs from you.

- **Will I be able to claim any money, such as expenses, as a core participant?**

Yes, subject to your being granted core participant status, the rules do allow the Chair to reimburse expenses incurred in Inquiry business. That is subject to a number of legal tests, with which we are able to assist you.

Inquiries, generally, reimburse the costs incurred by core participants as part of their participation in the Inquiry, for example if they are called to give evidence.

- **Can evidence presented to the Inquiry be challenged, and if so how?**

Yes. One of the most important roles of core participants, and their legal team, is to consider and challenge evidence presented to the Inquiry by institutions such as the Post Office, Department of Business and Fujitsu.

Where a witness appears to give evidence to the Inquiry, core participants are given advance disclosure of their evidence. Core participants are then able to suggest questions to be asked of the witness or to have their own advocate ask questions of the witness.

Where institutions or organisations, such as the Post Office, provide evidence, core participants will be provided it in advance. You will then be entitled to suggest questions of those witnesses, through your legal team.

Other than suggested questions and proper consideration of disclosure, along with your legal team, core participants make legal submissions to the Inquiry at various points in the Inquiry's processes. That legal argument is often based on evidence, including disputing evidence provided by other core participants.

Additionally, the documents provided to the Inquiry by core participants, including you, can be used to challenge or dispute evidence currently before the Inquiry.

The more members of the JFSA who agree to be core participants, the stronger our voice.

- **When will the Inquiry report?**

By July, we expect Sir Wyn to publish an interim report, based on the work he and the Inquiry have completed to date.

The Inquiry is currently scheduled to deliver its final report in 18 months. However, the JFSA and Howe + Co will be pressing the Inquiry to deal with important issues and issue interim reports as the Inquiry progresses, rather than waiting to give all of its findings and recommendations in its single final report.