

## How to handle public inquiries

Public sector managers would benefit from more training before giving evidence to public inquiries



Hugh Grant giving testimony to the Leveson inquiry into press intrusion. Photograph: Reuters

The phone hacking scandal has rocked the public landscape, drawing comparisons with Watergate in terms of its effect on our national psyche.

Parliamentary inquiries are ongoing, and the Leveson inquiry has commenced. But listening to recent testimony, one would be forgiven for asking, what the point is of a public inquiry if its participants remain subject to an ongoing criminal investigation.

Witnesses at recent parliamentary hearings have refused to answer questions, purportedly to avoid prejudicing ongoing criminal investigations. But while answers given under oath at a preliminary stage of a criminal investigation could potentially interfere with witnesses, constitute or lead to the concealment of evidence, or even raise false allegations of criminal conduct – all possible crimes in and of themselves – and while witness would therefore be well advised not to answer certain problematic questions under oath, these are likely to be the selfsame questions which go to the very heart of public understanding of relevant events, demonstrating how the inquiry process and the criminal process sometimes conflict with one other.

Criminal investigations are about ascribing fault, not finding truth; juries are asked to be sure, not absolutely certain, of guilt, and juries cannot convict unindicted persons. Whereas the purpose of public inquiries is to get as close to the truth as possible. Inquiries often seek to lay the specifics of blame to one side though crucially evidence gathered during the process may lead to subsequent criminal exposure: whether to prosecute soldiers with whom fault was found by the Bloody Sunday inquiry, for example.

Public sector managers and staff are routinely called upon to give evidence to inquiries, and specific training should be provided where parallel criminal investigations are ongoing, particularly where that investigation has criminal implications for the witness. Further complications arise where some aspects of a criminal investigation have concluded, but the inquiry process raises others; for example, any further, frequently-demanded public inquiry into the death of Baby P, whose killers are already in prison, could potentially raise additional questions about the broader institutional culpability for his death.

Persons under oath can never be compelled to expose themselves to criminal

prosecution, and a genuine effort to learn the truth of terrible events should not be transformed into a witch hunt. Public sector staff should be alert to the protection of their own rights, and to the sorts of questions that they can, cannot and must answer, during any inquiry. Carefully tailored legal advice and institutional support is essential.

Moreover, if public managers are involved in the decision to launch an inquiry or parallel criminal investigation, they should consider whether the public interest requires that one of these processes take precedence, as the Leveson inquiry has done in its staggering of different stages of its investigation.

There will be a natural tendency to want to deal with all aspects of a scandal at once. The public demands both answers, and responsibility; the hacking of the phones of a murdered schoolgirl and of soldiers who died for their country demands no less. But it will nevertheless be important to rise above populism and properly identify short term goals: does the public interest demand the truth, or the assignment of fault? It may be that we simply cannot do both at once.

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