



Responding to COVID-19 and the Coronavirus Act 2020

Submission to the Public Administration and
Constitutional Affairs Committee's Call for
Evidence

July 2020



**UK Anti-
Corruption
Coalition**

Introduction

In April 2020, the UK Anti-Corruption Coalition published a joint statement on the Covid-19 pandemic noting that maintaining trust and confidence in public institutions, government decision-making, business and the rule of law would be crucial to managing the Covid-19 pandemic and ensuring a successful recovery.¹ A formal public inquiry is an important opportunity to maintain this trust and confidence and ensure that decisions taken in response to the pandemic have been, and will be, made in the public interest.

We welcome the opportunity to input to the structure of this public inquiry.

Question Responses

- *What form is the most appropriate for an inquiry into the UK response to the Coronavirus pandemic? Should it be a statutory inquiry and, if not, what form of non-statutory inquiry should be held?*

We argue that both statutory and non-statutory approaches are needed.

While the statutory inquiry should investigate whether the government's statutory obligations were fulfilled, for example regarding issues surrounding health and safety at work, there is a risk that the narrow definitions and legal focus of a statutory inquiry exclude the general public from fully participating. Given the extent of the pandemic's impact, non-statutory approaches should also be strongly considered to provide a more inclusive parallel to a statutory inquiry. For example, this could draw on the experience of Ireland's Citizens' Assemblies on same sex marriage and abortion or build on local participatory responses to the pandemic, such as the West Midlands Combined Authority's Citizens' Panel.²

- *How should the balance between comprehensiveness and timeliness be managed? Can a single inquiry be both comprehensive and timely?*

While the inquiry should be thorough, it should prioritise timeliness so that it is able to inform governance during the remainder of the Covid-19 crisis and recovery.

To facilitate this balance, the inquiry should publish interim reports as quickly as possible to ensure that any immediate, necessary changes can be made.³ This is particularly important for this inquiry given the number of unknowns about the virus and the potential for a second wave. It is crucial that the Government learns quickly about the best ways to manage its response to the pandemic.

- *Should the purpose of the inquiry be on accountability or more forward-looking, focussed on lesson learning and improving policy?*

We would argue that a focus on accountability does not preclude lesson learning or improved policy; rather, one may inform the other.

We recommend that the inquiry into the handling of the Covid-19 crisis includes a particular focus on **public contracting and procurement** and **conflicts of interest**. While we appreciate the emergency nature of spending decisions and the need to find new suppliers, practices have emerged that have raised concerns:

¹ UK Anti-Corruption Coalition, 'UK Anti-Corruption Coalition – Covid-19 Statement' (April 2020) <https://www.transparency.org.uk/publications/uk-anti-corruption-coalition-covid-19-coronavirus-statement/>

² Rebecca McKee, 'The Citizens' Assembly Behind the Irish Abortion Referendum', Involve (May 2018) <https://www.involve.org.uk/resources/blog/opinion/citizens-assembly-behind-irish-abortion-referendum>; 'Citizens' Panel to help guide Covid-19 recovery', West Midlands Combined Authority (June 2020) <https://www.wmca.org.uk/news/citizens-panel-to-help-guide-covid-19-recovery/>.

³ Emma Morris and Marcus Shephard, *How Public Inquiries Can Lead to Change*, Institute for Government (December 2017) <https://www.instituteforgovernment.org.uk/sites/default/files/publications/Public%20Inquiries%20%28final%29.pdf>.

- Among offers from 16,000 suppliers, three of the biggest beneficiaries for personal protective equipment (PPE) included companies specialising in offshore property, pest control and a confectionary wholesaler.⁴ A judicial review has been requested over one of those awards so far.⁵

Providing accountability on these issues is important for the public, many of whom will have lost loved ones and all of whom will have contributed to these payments through taxes. Establishing how and why these decisions were made is essential for building more resilient and robust practices and policies for the duration of the pandemic and for future emergencies.

The inquiry should examine whether public officials followed established rules and good practice when carrying out emergency procurement, particularly for medical supplies, PPE, testing, and track-and-trace technology, as well as how UK procurement rules and disclosure requirements should be improved to better respond to emergencies like this in the future.

Regarding public contracting and procurement, the inquiry should examine:

- What steps were taken to ensure maximum transparency and oversight over spending through non-competitive procedures.
- How new sources of supply came to be considered for contracts, what due diligence was carried out on these companies and how their suitability to provide the goods or services concerned was evaluated.
- How standstill provisions were used, and whether this resulted in the evasion of normal publication rules for public contracts.

Regarding possible conflicts of interest, the inquiry should examine:

- The scale of lobbying carried out by key decision-makers for emergency contracts.
- Whether key decision-makers followed normal processes for declaring conflicts of interest.
- Whether any key decision-makers benefited financially or otherwise from contracts awarded during the pandemic.

- *How wide should the inquiry range? Should it include the devolved administrations?*

We recommend that the inquiry includes the devolved administrations. The different approaches taken by each administration offer important opportunities for comparison and learning regarding which decisions best served the public interest. The crisis has also brought to light tensions between central and devolved administrations and the inquiry should endeavour to examine these as they relate to accountability during the Covid-19 crisis.

- *What experience and qualities should the Chair have?*

At a minimum, the Chair should be independent, hold no conflicts of interest and be of unimpeachable reputation and integrity. This is vital for ensuring public confidence in the inquiry and its recommendations.

- *Should the Chair be supported by a panel? If so, what knowledge and experience must the panel include?*

At a minimum, the Chair should be supported by a panel comprising renowned experts with knowledge of best practices in public procurement and healthcare management, analytical expertise including data science, and operational expertise in dealing with complex public emergencies.

⁴ Good Law Project, 'The PPE Fiasco' (6 July 2020) <https://goodlawproject.org/news/the-ppe-fiasco/>

⁵ Financial Times, 'Britain's £5.5bn bill for procuring emergency PPE brings scrutiny' (8 July 2020) <https://www.ft.com/content/c0d439c8-18ac-499b-8115-da2bc0f18567>

- *How should the Terms of Reference be agreed? Should consultation be undertaken first and, if so, how should this be conducted?*

The Terms of Reference should at least be agreed by relevant parliamentary committee chairs. If a consultation is undertaken this should prioritise timeliness to prevent delays to the inquiry.

- *What role should Parliament play? How much input should it have and how far should it have an oversight role?*

In a context where the executive has centralised power and acted outside normal rules that promote accountability (for example, rapid creation of numerous statutory instruments, direct and rapid contracting) - albeit justified with given reasons - it is particularly important that the legislature plays a full and expansive oversight role during the inquiry.

Parliament should play a key role in overseeing the implementation of recommendations established by the inquiry through relevant Select Committees. The Institute for Government recommends that:

“Departments should update the relevant select committee on implementation progress on an annual basis for at least five years following an inquiry report. In instances where the information provided is unsatisfactory, select committees should move to hold full hearings as soon as possible.”⁶

- *What mechanisms are there to ensure that the recommendations of any inquiry are implemented?*

The inquiry should require that the government respond to its recommendations with a comprehensive and transparent action plan against which it can be publicly held to account. The inquiry should consider successful approaches for implementation used in previous inquiries:

- Keeping the number of recommendations at a manageable level.
- A seminar process for developing recommendations which involves expert witnesses and those with policy expertise to ensure that recommendations are robust, implementable and effective.⁷
- Consider convening the Inquiry panel after publication of the final report to track the implementation of recommendations.⁸

⁶ Emma Morris and Marcus Shephard, *How Public Inquiries Can Lead to Change*, Institute for Government (December 2017) <https://www.instituteforgovernment.org.uk/sites/default/files/publications/Public%20Inquiries%20%28final%29.pdf>.

⁷ For example, this approach was taken with the Bristol Royal Infirmary Inquiry and the Mid Staffordshire NHS Foundation Trust Inquiry. See Emma Morris and Marcus Shephard, *How Public Inquiries Can Lead to Change*, Institute for Government (December 2017) <https://www.instituteforgovernment.org.uk/sites/default/files/publications/Public%20Inquiries%20%28final%29.pdf>.

⁸ For example, the Soham Inquiry reconvened for this purpose six months after its report publication. Emma Morris, ‘How to run the Grenfell Inquiry’, *Institute for Government* (September 2017) <https://www.instituteforgovernment.org.uk/blog/how-run-grenfell-inquiry>.

The UK Anti-Corruption Coalition brings together the UK's leading anti-corruption organisations who, through their work, witness the devastating impact of corruption on society.



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