

How To Be An Effective Advocate At A Public Inquiry



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Presenters

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Pete is a human rights barrister who practices domestically in public inquiries, inquests, criminal, public, prison and police law. He specialises in cases involving miscarriages of justice, freedom of expression, extradition and 'terrorism', and he has a particular expertise in statutory interpretation. To view Pete's full bio, please click [HERE](#).

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*All advocacy must be tailored to its
context*

This does NOT mean...

- ❖ Criminal advocacy is an adversarial bloodsport
- ❖ Civil advocacy is adversarial but more lawyerly because there is usually no jury
- ❖ Inquests and inquiries are inquisitorial, AKA everyone being nice to each other

Good advocacy is never rude or bullying ... but on occasion it is direct and fearless

In the modern world, many highly acrimonious criminal cases, concerning heinous crimes, involve little challenge to evidence given the availability of CCTV, ANPR, cell siting, and telephone data evidence. On the other hand, some notorious recent inquests and inquiries have involved public servants and corporate witnesses trying to avoid accountability, even to the extent of apparently lying on oath. In such circumstances inquisitorial advocacy requires close forensic scrutiny and confrontation.

All advocacy starts from instructions and the best interests of the client

Advocates advise and then follow their instructions, always staying within ethical boundaries. That is not always straightforward. In the context of inquiries into controversial deaths, the bereaved occasionally lose perspective, and public authorities often lose sight of their purpose: to act in the public interest.

Know your tribunal

- Judge or jury?
- What matters are they to consider?
- Read the court, don't needlessly upset it

Advocacy is the art of assisting your tribunal toward the conclusions which meet the outcomes required by your instructions.

Who are the other stakeholders?

In a public inquiry there may be many. Talk to them. Understand their perspective. Determine where there may be common ground and where you may have allies.

Ignore the 'I' in inquiry!

- Preparation is all
- Inquiries can be vast and complicated: teamwork is key
- Assembling your team: diversity and empowerment

Pre-Inquiry hearings: get a head start for your clients

- craft the process
- influence which witnesses are called
- gain the confidence and attention of the tribunal

Rule 10: Asking questions

The default position at an Inquiry is that the Inquiry advocates lead and ask most of the questions. A number of recent inquiries have taken the place of inquests. Where that is the case, sensible Chairs use their discretion liberally to allow supplementary questions by other advocates. In other complex and controversial inquiries, that should also be the position. R10 should be construed as a provision to assist rather than inhibit the process. Where a chair does restrict questioning, advocacy does not end, it just becomes written.

Don't be afraid of technology: Justice delayed can be justice denied

Advocates are rightly suspicious of trial by video link. In this jurisdiction we have an oral tradition and a default position that legal processes are done in person with everyone in the same room. Remote processes must be justified. But where they are, they can be effective. The deficits include assessing the witness, and reference to documents, but again, with a little thought this can be done. In the context of the worst public health crisis in 100 years, clients may prefer remote hearings to no hearings. Client instructions are key.

Any Questions?

Thanks for watching!

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