

INQUEST RESPONSE TO GRENFELL TOWER INQUIRY TERMS OF REFERENCE CONSULTATION

AUGUST 2017

TO: Grenfell Tower Inquiry, Royal Courts of Justice, Strand, London WC2A 2LL.
Also sent by email.

Introduction

INQUEST is a charity and non-governmental organisation founded in 1981 to provide expertise on contentious deaths. It is the only charitable organisation in England and Wales that provides an independent, specialist, comprehensive advice service to bereaved people, lawyers, other advice and support agencies, the media, parliamentarians and the wider public on contentious deaths, their investigations and the inquest and inquiry process. It has a particular focus on deaths in custody and detention and deaths that raise concerns about multi-agency failings and state and corporate accountability. Its evidence based casework and overview of the legal processes following contentious deaths informs its strategic policy, research and legal work. INQUEST is frequently consulted at a national and international level as a result of its expertise.

INQUEST coordinates a national network of over 250 lawyers, who provide specialist legal representation for bereaved families. This network of lawyers, the 'Inquest Lawyers Group' (ILG) is unique in providing an overview on how the coronial and wider investigation systems operate in practice. Its members have represented families in high profile inquests and inquiries including those following disasters such as Hillsborough, the Marchioness riverboat sinking, the 7/7 bombings, rail crashes and the Lakanal House fire. *'Inquest Law'* magazine is the journal of the ILG, providing a resource on the legal developments relating to the inquest system and investigation framework.

INQUEST's Executive Director, Deborah Coles has been an expert advisor to numerous government inquiries and reviews including the *Luce Fundamental review of Coroners and deaths certification*, *The Care Quality Commission review of how the NHS investigates deaths in NHS settings*, the establishment of the *Healthcare Service Investigation Branch (HSIB)*.

Most recently, Ms Coles was appointed as the special advisor to Dame Elish Angiolini the Chair of the *Independent Review of Deaths and Serious Incidents in Police Custody*, the inquiry set up by the then Home Secretary, Rt. Hon Theresa May MP, in October 2015. The report is due to be published imminently. She also advised on the *Review by Bishop James Jones into the Hillsborough disaster* set up by the Prime Minister after the Hillsborough inquests. She also sits on the cross Government sponsored Ministerial Board on Deaths in Custody.

INQUEST's overall aim is to secure an investigative process which prevents future state related deaths through the dissemination of lessons following post-death investigations, and to uphold the rights of bereaved families as victims to be treated with dignity and respect.

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The Inquiry

INQUEST wrote to the Prime Minister (copying in the Inquiry) on 3 July 2017 expressing concerns about the initial steps taken by the Chair to the Grenfell Tower Inquiry ('GTI') on 29 June and calling upon the Inquiry to open a genuine consultation regarding the terms of reference (TOR) for the Inquiry, raising key issues in an Annex to the letter. INQUEST therefore welcomed the opening of the consultation on 5 July 2017. Further, INQUEST considers that the matters touched upon by the GTI on 5 July 2017 are a sound starting basis for appropriate TOR. If INQUEST, and other individuals and groups have matters to add, that is only because a tragedy of this nature is a learning curve for all.

The Inquiry will need to have in mind that it is likely to act as the primary means by which the state discharges its duties pursuant to the Human Rights Act 1998 under both articles 2 and 3 of the European Convention on Human Rights 1950 (ECHR) to investigate the tragedy and its aftermath in order to protect not only the bereaved families and survivors, but the broader public interest surrounding the deaths. In *R (Amin) v Secretary of State for the Home Department* [2004] 1 AC 653, Lord Bingham at [31] encapsulated the purpose of the ECHR investigatory obligation as *"to ensure so far as possible that the full facts are brought to light; that culpable and discreditable conduct is exposed and brought to public notice; that suspicion of deliberate wrongdoing (if unjustified) is allayed; that dangerous practices and procedures are rectified; and that those who have lost their relative may at least have the satisfaction of knowing that lessons learned from his death may save the lives of others."*

The context here appears to INQUEST to be broadly similar to the preventable landslide on a residential neighbourhood that was considered by the Grand Chamber when deciding the case of *Oneryildiz v Turkey* (2005) 41 EHRR 20. The investigation will therefore not only need to determine whether real and immediate risks to life were known about, or should have been known about, but whether the State had in place a sufficient system of regulation, supervision, funding and accountability for public sector housing.

As with *Oneryildiz* and other tragedies of such proportions what is then required of the state is beyond the ordinary. Lord Judge made this point in his judgment that ordered new inquests in the Hillsborough case (*AG v HM Coroner for South Yorkshire (West)* [2012] EWHC 3783 (Admin) [10]): *"Without minimising the importance of a proper inquest into every death, where a national disaster of the magnitude of the catastrophe which occurred at Hillsborough on 15 April 1989 has occurred, quite apart from the pressing entitlement of the families of the victims of the disaster to the public revelation of the facts, there is a distinct and separate imperative that the community as a whole should be satisfied that, even if belatedly, the truth should emerge."*

In addition, the tragedy has involved an extraordinary destruction of peoples' home and private lives in circumstances that were prima facie preventable and were known to be preventable. The destruction is sometimes even more profound, as it is with the bereaved who have no bodies left to bury. That being the case, Article 8 ECHR is also relevant to Inquiry's function. Having regard to *"the particular circumstances of the case and notably the serious nature of the decisions [at stake]"* the ECHR would recognise investigatory obligations under Article 8 (*McMichael v UK* (1995) 20

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EHRR 205 [87]). Moreover, the agonising delay in identifying both the dead and any remnants of their remains requires the State to act proactively in order to minimise the damage to the grieving process (*Pannullo and Forte v France* (2002) 36 EHRR 42 [35] and [38-40]).

The duties of any investigation in this context must also be informed by the reality that both the bereaved and the survivors are dealing with a range of pressures that make many of them vulnerable. INQUEST has established that prior to the tragedy many people were affected by discriminatory attitudes and responses and treated detrimentally because of their perceived socio-economic background or status as residents in a block containing social housing. Since the tragedy INQUEST has seen first-hand the impact and consequences of the fire on those affected and how so many survivors are not only suffering from homelessness, but also enhanced poverty and physical and/or mental ill-health. For those who have suffered a traumatic bereavement, it has been exacerbated by the delay in the identification of their loved ones, the inability to engage in normal post death rituals and the impact of cultural beliefs on this. Others are suffering trauma as a result of what they have been through and witnessed.

A resounding concern of the affected community is the lack of dignity and respect they have been afforded by local and national government before, during and after the tragedy, such that throughout their voices have simply not been heard. They are victims and need to be treated humanely. As a matter of common law and Convention values, an inquiry must treat the dignity of the bereaved and the survivors as a core value, which has been described as constituting the “*very essence*” of the ECHR (*Pretty v United Kingdom* (2002) 35 EHRR 1 [65]) and one of the ‘*fundamental values underlying our legal system*’ (*R (on the application of A and B) v Secretary of State for Health* [2017] 1 WLR 2492 [93]; and *R (A, B, C, X and Y) v East Sussex County Council* [2003] EWHC 167 (Admin) [86]).

In the present context, the bereaved and surviving families need robust advocacy by specialist lawyers with expertise in client care for traumatised people and who can work collaboratively with each other to represent the best interests of their clients. They also need empathy and understanding by all of those who deal with them, even if disagreements arise. Drawing upon nearly 40 years’ experience of working in the field of controversial death, INQUEST strongly advises the Inquiry to find ways to address anger and mistrust, rather than fear it. The best thing the Inquiry could do to assuage the profound anger, anxiety and anguish is to hear those voices and to adopt terms of reference, underlying values and procedural protocols that will respect them. This would both encourage and enable not only the participation by the bereaved and survivors in the inquiry process, but also harness their positive contribution to the quality and credibility of its outcome. Bereaved people are not just a collective group but individuals with unique personal stories, needs, differences and experiences. Playing a meaningful role in the inquiry to try and ascertain how and why the fire happened is important for bereaved people and other survivors who cannot properly begin to grieve until they have found out the truth behind their loss.

In the special circumstances of the Grenfell Tower fire, INQUEST is also aware of an important group of residents in the immediate surrounding area of the building that were profoundly affected by the tragedy, but in notable instances took steps to prevent it in the months and weeks

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before. The Inquiry needs to be accessible to all and include access to translators where appropriate to ensure that no one is prevented from effective participation.

Below, INQUEST provides answers to the points set out in the GTI's request for views on the TOR, using those questions as a guide only as indicated by the GTI.

What do you think the Inquiry should cover?

As indicated above, INQUEST welcomes and endorses the consultation document in as much as the need was recognised to 'examine all relevant circumstances leading up to and surrounding the fire at Grenfell Tower, its spread to the whole of the building, and its effect on residents' and that this 'will necessarily mean investigating' a list of important matters including 'the broader implications of the fire for the adequacy and enforcement of relevant regulations.' However, beyond and above this, the wider social context of the tragedy must also be taken into account and inform the terms of reference and how the Inquiry operates. Arguably, part of this will involve an overview of social housing policy in Britain since 1945 and the place of Grenfell Tower and its surrounding area in that history. Therefore, building on the Inquiry's approach, INQUEST has reflected on this wider context and the views of the survivors and a range of local representative community groups, which has informed the proposal below.

Further, INQUEST regards the question of what the inquiry should cover to be intimately connected to the procedures it adopts and the underlying principles that underpin how it approaches its task. Therefore, in any published terms of reference, we urge the Inquiry to articulate from the outset those essential underlying principles and minimum procedures that will guide it:

Purpose

To establish and report on the causes of the Grenfell Tower fire, ensure that the necessary changes are made to prevent similar deaths in the future and that shortcomings in the aftermath of the tragedy are not repeated.

Underlying principles

The voices and experiences of those affected must be at the heart of this Inquiry and inform every stage of the process. The Inquiry must:

- A. Recognise and address the pain, trauma and individual and community damage caused by the tragedy and the lack of public trust and confidence in the state institutions involved;
- B. At all times ensure that bereaved people, survivors and affected residents have a full and central role in the inquiry process;
- C. Ensure all those affected are treated with dignity and respect;
- D. Examine the role played by institutional racism, discrimination and inequality;
- E. Establish truth and accountability;
- F. Ensure visibility of its processes and its decision making.

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Terms of Reference

The Inquiry should investigate the following:

1. The background leading up to and surrounding the fire:

- a. The provision of social housing and its relevance to Grenfell Tower and the surrounding area;
- b. The design, planning, development, construction, modification and fire safety of the building, including the procurement and tendering processes;
- c. The role and oversight of public bodies, their agents, contractors, inspectors and auditors;
- d. The concerns raised by affected local residents and the extent to which those concerns were adequately addressed;
- e. The action taken by local and central government in response to warnings about safety risks in similar social housing;
- f. The extent to which the human right of residents to live in adequate and safe housing was respected.

2. The fire, its cause/spread/impact, and the immediate emergency response:

- a. The building and its materials;
- b. How the fire started, why it spread so fast and the preventative measures in place – fire alarms, sprinkler systems, fire doors etc.;
- c. The situation faced by those inside the tower and the advice provided to them;
- d. The immediate emergency response;
- e. Allowing the fire to burn out and the impact upon forensic evidence, the respect for the dignity, integrity and identification of victims and the impact on the bereaved and their families;
- f. A record of those who lived in the building before the fire, identifying those who have died, and explaining in the fullest possible terms whether there is justification for any on-going delay in producing a full list of fatalities;
- g. An audit of relevant recommendations and reports emerging from inquiries/inquests, expert reports into fire safety and the response of the relevant authorities to those recommendations and reports.

3. The aftermath of the fire, including:

- a. The adequacy of the support and help made available to bereaved people, survivors and affected residents;
- b. The role that discrimination, inequality or institutional indifference played in the systemic failures in the aftermath and the response at a local and national level;
- c. The support role that voluntary organisations, non-state individuals and agencies were required to play;
- d. Why the recommendations and best practice learning from inquiries into previous disasters and mass fatalities regarding the treatment of survivors, bereaved people and affected community were not implemented.

In relation to each of the above paragraphs the Inquiry should consider the relevant content, compliance, enforcement and adequacy of applicable local and national policies, legislation and practices and regulatory controls.

Process

For the sake of their own dignity and wellbeing and in light of the State's obligations under the Human Rights Act 1998, bereaved people, survivors and affected residents should be granted the right to ask questions in public of relevant witnesses, including through their own lawyers. The Chair should be assisted by a diverse group of panel members and/or assessors who hold the necessary relevant expertise and the confidence of bereaved people, survivors and affected residents. This must include expertise in working with traumatised people, equality and diversity issues and lived experience of social housing.

Is there any type of evidence that you think is essential for the Inquiry to obtain?

In this section INQUEST elaborates on why we have suggested the above terms of reference and additional core features. INQUEST also answers this question with some broader points, including the need for the Chair to sit with appropriate panel members and/or assessors.

To say that the investigation must leave no stone unturned is an essential starting point. There must be publicly accountable learning. As with events like Hillsborough or the inquiries into the killing of Stephen Lawrence, Zahid Mubarek, and Baha Mousa, it is necessary in terms of public confidence and justice going forward for the various chapters of the inquiry to cover both the cause and the wider circumstances that contributed to the tragedy and what recommendations can be made to avoid repetition and the safeguarding of lives in the future.

From that, it follows that the Inquiry must identify each and every individual and organisation who must bear responsibility and accountability for this tragedy and the mishandling of the aftermath. Clearly this requires an investigation of the acts and omissions that contributed to immediate causes and underlying circumstances. INQUEST understands the Inquiry to already accept this feature of its task. These factors are dealt with in considerable parts of the above proposed TOR.

In public meetings, INQUEST has detected a reticence on the part of the Inquiry to examine the aftermath. The shortcomings in the immediate response to the tragedy are relevant to investigating the unreasonable failure to recognise the risk of it occurring in the first place. But the Inquiry will now be well aware: for many bereaved and survivors the fire itself and its aftermath are linked in the tragedy they have suffered. Both stages need to be investigated. Both stages carry important public interest concerns.

The Inquiry will therefore need to examine the extent to which both the circumstances of the fire and the failings in responding to its aftermath were partly determined by social and economic factors. Many of the residents were individuals without rights or with limited opportunity to exercise their rights, because of poverty, social exclusion, immigration status, sub-tenancy, or a combination of these and other factors. This is now a community in need of healing, with a considerable gulf between rich and poor; and a real belief of people being treated as second class citizens, that poorer people count for less.

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INQUEST has suggested a form of words above that would enable the Inquiry to acknowledge that endeavor as intrinsic to both its overall purpose and its underlying principles. INQUEST is conscious that the Chair when he first came to the task, was cautious about promising too much or unfairly inducing expectations that he might not be able to deliver. However, to express guiding principles that recognise the loss that has occurred and the healing contribution that a process of public accountable learning could make, is not a false promise or an illegitimate or undeliverable expectation.

INQUEST also believes that the Inquiry must focus on whether institutional racism, discrimination, inequality and cultural attitudes were responsible for what occurred: to what extent did the victims not count, or could have counted more? How might societal attitudes evolve in the future in this respect? These concerns are inescapable as far as many of the core participants are concerned. To leave them out would be to ignore potential social and institutional causes of the fire and the shortcomings of the response to it. INQUEST has therefore suggested that they form a recognised part of the TOR.

With those core premises in mind, INQUEST suggests that the Inquiry needs to establish the wider historical, social and political background leading up to the events prior to the fire and in relation to other tower block fires and any recommendations which had followed. This will require suitable expert evidence to be obtained and documents to be secured that covers the history of the tower block: from inception and planning as a local authority housing development, to its commission, design, transfers of ownership, subsequent modifications and inspections and so on. INQUEST does not suggest that every chapter/issue must be afforded the same level of detail, or that the same level of witness evidence is required throughout. Provided there is sufficient public ventilation and participation, INQUEST does regard it as necessary to place Grenfell Tower into an over view history of social housing policy and how changes in the welfare state have altered the safety of those who have resided under its auspices.

All previous Coroners' recommendations on other tower block fires across the UK will need to be secured: this will involve an audit and review of Coroners' recommendations including Rule 43/PFD reports, the formal responses to the reports and the actual follow up pursuant to those responses etc. It should also include any governmental and / or parliamentary knowledge, response and oversight of recommendations and actions in response to those cases and relevant surrounding issues.

In establishing the causes/spread of the fire, and the immediate emergency response to it, the Inquiry must investigate precisely what happened on the night of the disaster. This must focus on discovering how the fire started and why it spread so fast with such devastating consequences. What happened in connection with preventative measures – i.e. fire barriers, alarms and sprinkler systems – that were either not present, or were ineffective? How did this compromise escape and rescue? Why was there conflicting advice given to residents by emergency services? In light of the problem of victim identification and the impersonal and invasive processes that lead to an identification there must be questions about how long the fire was able to burn for and the effect on forensic evidence.

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When considering the aftermath of the fire, evidence should be secured regarding the adequacy of the help and assistance provided to bereaved people, survivors and affected residents and the admitted failures in this regard on the part of the state, local and national. To this end there should be a review of previous inquiries into disasters and recommendations and actions in response to these. In this very year, both the state and civil society have shown an extraordinary response to major terrorist attacks. The Grenfell Tower fire produced a far more chaotic, dysfunctional and incompetent reaction. There needs to be a review of the humanitarian assistance/disaster management guidance on emergency planning and disaster response at a local level and the guidance and lines of responsibility at a central government level. Examination of the aftermath and evidence based recommendations can help inform the development of a new strategy for resilience in major disasters announced in the Queens Speech on 21 June 2017.

The profiles and details of those deceased that have already been placed in the public domain suggest that Grenfell Tower housed people from a variety of socio-economic backgrounds, black and minority ethnic communities and faiths. The Inquiry should look to gather the stories, not only of the dead and the survivors that lived in the building, but also the people, groups and organisations that lived and worked around it; and who have been affected it by the manner and aftermath of its demise. In this way, the Inquiry will create a record of those who have suffered, but also discover ways in which local communities can positively interact within themselves and with wider parts of society.

The Inquiry must ensure an appropriate mental health response for survivors and the bereaved during the course of the Inquiry and thereafter and ensure a safe and private space when considering a venue and support throughout the duration of the Inquiry.

Looking to the future, there are going to be questions that this Inquiry can investigate that go to the provision of social housing and the cost of property. Should it be high rise at all; how can the safety be maintained, but the cost not be invidious? The population is growing, the disparities in wealth are increasing. If the Inquiry does not at least address some of these questions, then it is unlikely that the political process will.

INQUEST notes the lack of diversity of the Inquiry team and Secretariat which is deeply concerning given the diversity of the affected community. The Chair should be assisted by panel members and/or assessors who have the confidence of non-state core participants, reflecting their experience, standing and diversity. INQUEST therefore proposes the appointment of panel members and/or assessors, to reflect the ethnic, cultural and religious diversity of the community affected and to draw in the appropriate levels of expertise necessary to meet the needs of the Inquiry. In circumstances where the relationship between the state and individual is already strained there must be an attempt to bridge areas of tension and division. There is instructive learning to be had from the Lawrence Inquiry panel members and Hillsborough Independent Panel. These have included senior clergy, academics, leading experts on equality and race relations and community representatives. Panel members must have skills in working and engaging with traumatised people and experience of local community work, especially work with those who live in social housing. Only in this way, can the skills, reputation and experiences of the present Chair and Inquiry team be positively complimented by fellow panel members.

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INQUEST also notes the appointment of three eminent QCs to work as counsel to the GTI, but would urge the Inquiry to consider the appointment of at least one junior counsel who is particularly associated with representing bereaved families as core participants/interested persons in other controversial inquiries/inquests. Such an addition would enjoy credibility and coalesce as the best combined skill set.

What should the Inquiry deal with in its interim report? What should be left for the main report, so the interim report can be published quickly?

INQUEST proposes that the Inquiry reports to the Prime Minister as soon as practicable in two stages or phases:

Phase 1 should address the matters identified at paragraph 2 of our proposed TOR above, with a view to reporting urgently within 3 months on the immediate measures necessary to prevent any future recurrence of a similar tragic fire and its consequences. The Phase 1 report should in addition include a review of the terms of reference, making any recommendations as to their variation by the Prime Minister where necessary.

The Phase 1 report should also include clear and transparent findings on the numbers of people in occupation of Grenfell Tower on the evening of 13 June 2017 and those who perished on 14 June 2017 or thereafter as a result of the fire or were injured, with a clear list of the deceased and injured and the nature of the injuries, bearing in mind the controversies surrounding these issues.¹

Phase 2 should address the matters identified at paragraphs 1 and 3 above, with a view to reporting within 18 months on the medium and long term measures necessary to prevent any future recurrence of a similar tragic fire and its consequences.

The Phase 1 report must therefore produce swift recommendations to ensure there can be no chance of a repeat of this disaster elsewhere. Consideration should be given to a staged approach to recommendations to reflect differing timeframes and levels of urgency surrounding issues and concerns.

However, even at the Phase 1 stage it is also important to make sure that each of the bereaved families (who seek it) are given the opportunity to tell their story of what happened to them and who they were. This should involve the Inquiry setting up an independent pathway for people to give confidential information concerning unaccounted for residents with additional guarantees of confidentiality and protection to exist side by side with the present amnesties in this regard that have been announced by the police and the prosecuting authorities. If the Inquiry discovers room for improvement in the way in which various state agencies are operating the existing amnesties, it should also say so.

¹ If there are reasons why these findings cannot be definitive, it must be for the Inquiry to come to independent conclusions about this, and if necessary make recommendations to ensure that greater certainty on this particularly sensitive subject can be arrived at.

The Inquiry should also have a later module where it travels the country and discovers best practice on design, construction, modification, regulation, safety and checking; as well as examining the triangular relationship between public authorities, contractors and tenants.

Would you like to be kept informed of the Inquiry's work? How would you like to be contacted?

INQUEST would like to remain informed and to assist and consult further in whatever way will enable the Inquiry to conduct its affairs fearlessly, proportionately, but also acting in a manner that fully values and respects human dignity, given the essential need to abide by human dignity at the present juncture.

There are going to be important decisions on how to group core participants, how to fund their effective and adequate representation, and how to enable active involvement in the process, rather than expect them to be a passive audience of the Inquiry's work. INQUEST knows from experience from coronial inquests and public inquiries that there is both a forensic value and broader contribution associated with allowing the legal representatives of core participants to ask relevant questions in a disciplined and proportionate manner after Counsel to the Inquiry (C2I) have questioned witnesses. There are also now a number of Inquiry models, most notably that used in the Baha Mousa Inquiry, that would enable core participants to contribute to the questioning of the C2I and carry out additional questioning themselves in a time efficient fashion.

Funding

As set out in the Annex provided with the letter of 3 July 2017, and referred to in the statement made by INQUEST on 5 July 2017, funding of representation will be an issue that the Inquiry must get to grips with quickly.

It is essential that non means-tested public funding is provided to core participants to enable them to properly participate in the Inquiry on an even footing with the many well-funded public bodies and private individuals and corporations that will doubtless be involved. The Inquiry must quickly recognise core participants and agree the funding required for legal advice and representation, proportionately controlled in the usual way under the terms of the Inquiries Act 5 Act and its 2006 procedure Rules.

The need for funding for legal representation of the anticipated core participants with immediate effect on a non-means tested basis reflects the demands and needs of bereaved people from previous disasters. The need to establish entitlement to funding would be unacceptable in view of the additional obvious distress and trauma to those affected, especially those who will have to do so in the absence of official documentation and when they have lost their homes and possessions. To means test public funding while, for example, making lump sum payments (which could otherwise lead to ineligibility) would be unfair and farcical.

The scope of the core participants publicly funded for legal representation should include not only the bereaved families and survivors, but also affected residents whose homes have been directly affected by the fire (many of whom remain displaced) and civil society representatives and non-governmental organisations who have a track record of working with the residents both before and since the fire.

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From experience INQUEST is aware that vulnerable clients especially, will form relationships with particular lawyers, and be reluctant to trust new ones, let alone be willing to have lawyers imposed on them. That does not mean that responsible lawyers would avoid ensuring that shared interests between clients can be focussed through the instruction of joint counsel and that the time and expense of participation in the inquiry process must be managed through committed cooperation between lawyers and the C2I team. INQUEST is aware that firms with track records of expertise in this field are already in touch with the Inquiry on behalf of their clients.

What is important at this point is to establish TOR that both focus the task ahead and unite all parties in delivering on the success of the endeavour.

There was an appalling and preventable disaster and INQUEST will work to support all those affected in their pursuit of truth, justice and accountability. They deserve nothing less.

Deborah Coles
Executive Director
INQUEST August 2017