Inquiries & Investigations

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Welcome

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Inquiries & Investigations: Functions and Powers

Shane Murphy SC
Ensuring a fair hearing

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Why?

- Constitutional justice (also called natural justice)
- Article 6 of the European Convention on Human Rights
- Article 47 of Charter of Fundamental Rights of the European Union
Summary of requirements

• The principle against bias
  • Be, and be seen to be, unaffected by conflicts of interests and impartial

• The right to be heard
  • Person affected must have notice of decision
  • Person must be facilitated to make the best possible case
Practical Tips

• To help ensure no conflict of interest, avoid:

• Where the decision will affect a friend or relation

• Where the decision-maker has a financial interest in its outcome

• Where the decision-maker is a director of an organisation affected by the outcome of the decision

• Where the decision-maker is a member of a group campaigning for one outcome or another

• Where the decision-maker’s spouse or civil partner has an interest in the outcome
**Practical Tips**

- To help ensure no conflict of interest, avoid:
  - Participation in more than one stage or in more than one capacity in the decision-making process
  - Prejudgment
  - Doctrines of waiver and necessity may be of assistance
**Practical Tips**

- To ensure adequate notice of your decision given:
  - Notify that a decision adverse to the person is in contemplation
  - Detail the grounds upon which the decision is to be taken
  - Inform of all information relevant to the issue
  - Set out the possible consequences of the decision – sanctions etc
- Oral hearings
  - No hard and fast rules
Practical Tips

• Other things to think about:
  • The right to call witnesses and cross-examine and to make representations
  • The right to legal representation
  • The duty to give reasons
  • Publication
Disclosing information and data protection

- Data controllers
  - S 2(1)(a) DPA – personal data must be processed fairly
  - S 2(1)(c) DPA – process data only for purposes compatible with purpose for which it was collected
Disclosing information and data protection

- DPA restrictions on processing do not apply if:
  - S 8(b) – investigating offences
  - S 8(e) – required by or under any enactment or by a rule of law or order of a court
Disclosing information and data protection

- Fair processing of non-sensitive personal data
  - S 2A(1)(c)(ii) – processing is necessary for the performance of a function conferred on a person under an enactment
  - S 2A(1)(c)(iv) – processing is necessary for the performance of any other function of a public nature performed in the public interest by a person
  - S 2A(1)(d) – processing is necessary for purposes of “legitimate interests” of data controller
Disclosing information and data protection

• Fair processing of **sensitive** personal data:
  • Satisfy a S 2A condition **AND**
  • S 2B(1)(vi)(II) – processing is necessary for the performance of a function conferred on a person by or under an enactment
  • S 2B(1)(vi)(III) – processing is necessary for the performance of a function of the Government or a Minister of the Government
Disclosing information and data protection

- ECJ decision in *Bara & Oths* C-201/2014
- Guidance Notice prepared by the Data Protection Commissioner on Data Sharing in the Public Sector
Data sharing arrangements must:

- Have a basis in primary legislation
- Be made clear to individuals, including their purpose
- Be proportionate in terms of their application and the objective to be achieved
Disclosing information and data protection

- Data sharing arrangements must:
  - Have a clear justification for individual data sharing arrangements
  - Share the minimum amount of data to achieve the stated public service objective
  - Have strict access and security controls; and
  - Ensure secure disposal of shared data.
Disclosing information and data protection

• Note that some types of inquiries may need legislation to allow for data sharing, eg:
  • Data Protection Act 1988 (Section 2B) Regulations 2011
Thank you

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Introduction and Context

- Range of processes under discussion
- Individual provisions/incidents of particular processes
- Mainly applicable to inquisitorial processes before a tribunal or other body
- Some concepts apply to all types of process
Concepts

- Confidentiality
- Immunities
- Privileges
Confidentiality

- Conduct of the process
- Reporting or broadcasting
- Materials pertaining to process
- Bar to provision of information to process
- Inclusion in report/published materials
**Immunities and Privileges**

- Immunity against defamation proceedings
- Additional immunity of expert witnesses
- Legal professional privilege
- Privilege against self-incrimination
- Public interest immunity/privilege
- Without prejudice privilege
Conclusion and Final Comments

• Variety of immunities, privileges and confidences to be considered

• Specific processes have their own specific rules and legal incidents

• General caution against seeking or providing information or documentation on a voluntary basis
Thank you

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Q&A
Thank you