

# *Inquiries & Investigations*

*Thursday 27 October 2016*

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# *Welcome*

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# *Inquiries & Investigations: Functions and Powers*

*Shane Murphy SC*



# *Ensuring a fair hearing*

*Catherine Allen*

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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



# *Disclosing information and data protection*

- 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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# *Immunities, Privileges and Confidentiality*

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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*

