

Finance and Public Administration Committee
Cost-effectiveness of Scottish Public Inquiries
Written submission from John Campbell KC

1. How effective is the current model of public inquiries in Scotland, and to what extent does it deliver value for money?

In my opinion, effectiveness may be judged by a number of metrics, so it depends upon the lens through which one is looking. An investigatory inquiry needs to look for answers. A politically motivated inquiry may be judged through the eyes of those who commission it, and by the informed public. An inquiry arising from a state of affairs judged to be negligent, or careless, or incompetent should identify lines of responsibility and recommend measures against recurrence. An inquiry into wasted public money may seem like an audit. There are other examples.

2. Is there sufficient transparency around the purpose, remits (including any extensions), timescales, costs and effectiveness of public inquiries and what, if any, improvements are required?

It is the Chairman's responsibility to ensure that the processes he or she devises are transparent. Internet streaming helps. I see no merit in publishing individual remunerations. Professional people have a charging rate, and so long as this is known in advance to those in charge of the budget, it is possible by means of management accounting to keep track of expenditure. Publication of overall accounts after the event would appear to be a necessary part of the process.

3. Are the current legislative framework and decision-making processes for establishing public inquiries adequate, and what, if any improvements are required?

Yes. The 2005 Act is adequate, but a Chairman must have the discretionary freedom to establish and regulate processes to suit the case, for example to limit the participation of parties, or their legal representation by means of time limits, or limitations on participation, or questioning, or the use of written submissions. It is often forgotten that an inquiry is investigatory, and not a Court case.

4. Are the processes for setting and monitoring costs for public inquiries adequate? What measures should be put in place at the establishment of a public inquiry to ensure value for money and prevent time and cost overruns?

Yes, the process is adequate in the correct hands. Strict Project Management and in house Management Accounting by a skilled person / people is required. The use of digital technology has become essential, and greatly assist the disposal of business.

5. What is the best way to ensure cost effectiveness of public inquiries while maintaining their independence?

This question repeats some of the above. Cost effectiveness or VFM is so often measured by deemed public acceptability, often guided by Press headlines. That is the wrong measure. Perhaps obviously, a clear remit is an essential starting point. Once the remit is settled, the parties identified, and the preparation time set aside, it is possible to reach a preliminary view about cost effectiveness. That interim conclusion may change over time. The best measure is not overall cost, but the effectiveness of the methods of examination and inquiry, given the importance of the questions and the solutions or answers found by the Inquiry in its report.

6. What, if any, measures should be put in place to ensure recommendations made by public inquiries are implemented in a timely way?

Implementation is not for the Inquiry. It is for the legislature or other commissioning body to determine whether, or how, recommendations are implemented. One suggestion is an annual half day debate in the Scottish Parliament on (for example) *“This year’s Inquiries and their recommendations.”*

7. What alternatives to the current model of public inquiries should be considered when particular events have, or could cause, public concern?

The status of an Inquiry can place events which have, or could cause public concern in a spotlight. That is often because an Inquiry is seen as an adversarial process. A quiet Examination and questioning by an Inquiry Chairman can be effective and is often used in Planning cases, yet cross examination is undoubtedly the most effective method of securing evidence and admissions of negligence, wrongdoing, mistake or culpability. A model which combines careful written submissions with detailed questioning by knowledgeable representatives (who are often, but not always, Counsel) and a Chairman can take time, but almost always yields results.

Are there examples of good practice from other countries that Scotland could learn from?

Probably there are. I do not think we learn much from England & Wales, despite having the same legislation. Inquiries seem, in the public’s mind to take an inordinate length of time, but that is a feature not confined to that jurisdiction. Inquiries are dominated by lawyers, whose instinct is to be thorough. A Chairman would be criticised for rushing, just as for taking time for mature reflection.

The careful taking of evidence in any format takes time. It is acknowledged to be difficult to confine inquiries to a strict remit, a strict budget, or a strict programme; lines of questioning can lead to digressions from the Remit, or

indeed to relevant avenues of further inquiry. Time and money are saved by maintaining a strict focus on the reason for the Inquiry, and by refusing to allow the inquisitorial purpose to be diverted to a blame-game.

A model employed with some success (e.g. Hutton, Fraser) is to secure the appointment of a 'Counsel to the Inquiry' or perhaps two. Questioning of witnesses would be confined to those Counsel alone, unless a party's representative first asks for, and then justifies his intervention on a particular topic. That intervention would be vetted, and then subjected to a time limit. Counsel to the Inquiry would be at liberty to refuse or allow a request for participation.

Rapidity in delivering findings is important. Interim reports are often useful, in a long and complicated matter (e.g. Blood, Child Abuse, Hospitals).

Finally, Inquiry participation is *very* hard work. An Inquiry Team should be large enough to manage the data, but not so large as to be unwieldy. When sitting, four days each week is sufficient to yield worthwhile results unless urgency dictates otherwise.