

Cost-effectiveness of Public Inquiries in Scotland.

Background

This brief note is based on my experience of sitting as a panel member on the Independent Jersey Care inquiry between 2014 and 2017. Previously I had been Executive Director of Social Work in South Lanarkshire Council and Chairman of the Parole Board for Scotland. Following the Jersey Inquiry I was involved with my colleague Alyson Leslie in exploring the effectiveness of child care inquiries and subsequently in work with the University of Northumbria to explore the effectiveness of Inquiries into the care and protection of children. Unfortunately this work was interrupted by Covid.

Prior to the commencement of the Scottish Child Abuse Inquiry I gave a presentation to senior Scottish Government and Local Authority officials to assist with preparation for the Inquiry. In that presentation I made the comment that you could confidently predict that such inquiries will last longer than anticipated and cost more than budgeted for. That predictions demonstrated to have been correct in that the Scottish Child Abuse Inquiry has now been running for 9 years which is 5 years longer than originally expected and has cost in excess of £90m. The same pattern can be seen in relation to other public inquiries into non child care matters.

The Independent Jersey Care Inquiry (IJCI)

The inquiry was established under Jersey law to look into historic abuse of children in care which had been highlighted by the police investigation at the Haut de la Garenne children's home which attracted global media interest.

The Inquiry was originally scoped to take three months to hear evidence and around 6 months to produce a report of findings and recommendations. It was expected that the cost would be £6m. Within a few weeks of getting underway it became clear that the costs would be much higher and the timescale would be longer. In the end the panel sat for two years and the costs rose to £23m. The largest element of the costs were in relation to legal fees despite the fact that these had been negotiated to lowest possible level by the panel at the outset. The cost level was in many ways also the result of difficulty in managing the legal costs and holding the solicitors to the Inquiry to the budget. It has to be recognised that inquiries are a source of substantial income for some large legal firms and as such the question arises as to the extent to which they are motivated to keep costs to a minimum and within budget. The timescale expanded as a result of the time it took to identify witnesses and take statements and as the inquiry proceeded more witnesses came forward. The redaction of documents by expensive lawyers also added to cost and extended timescale.

The inquiry followed a quasi judicial format with witnesses appearing under oath and being questioned by Counsel to the Inquiry. Further questions were put to witnesses by the panel members. With a few exceptions all evidence was given in public. For the final stage of hearings the panel decided to introduce a new format whereby witnesses either individually or in small groups met around a table with the panel to give their evidence. This was done outwith the more formal Hearing Room but with members of the public being present. Lawyers were not involved in this process. This approach allowed for

witnesses to make their views and experiences known in a much less formal and intimidating manner but nonetheless added considerably to the information the panel were able to take into account. This method demonstrated in our opinion that alternative approaches could be adopted which nonetheless gave witnesses the opportunity to have their stories and views heard in public.

The report took around a year to write. We were agreed that we should aim to make the number of recommendations as short as possible and therefore 8 recommendations were made. In addition we stated that “a mechanism should be established to monitor and verify the implementation of the recommendations” and that a transparent way of doing this would be for the Panel “to return to the island in two years to hear from those providing services and those receiving them.” All the recommendations were accepted and the Panel returned in 2019 for two weeks during which we heard from a range of interests as to what progress was being made. A further report was published indicating where we considered good progress had been made and importantly where more progress needed to be made. This was well received particularly by survivors many of whom asked if we would return in a further two years. We declined to do this on the basis that we believed that ongoing responsibility had to lie with the States of Jersey and its citizens. To the best of our knowledge this is the only occasion on which an Inquiry Panel has reviewed and reported on progress with its recommendation.

Effectiveness.

The first UK Inquiry was held into the death of a foster child Dennis O’Neil in 1945. It was chaired by Sir Walter Monckton KC who commenced in March and reported in May. His report was 15 pages long and the recommendations he made have been repeated in every child care inquiry since then. Clearly since then Inquiries have hugely expanded both in terms of their costs and their timescales.

Measuring the effectiveness of public inquiries is problematic since it is rarely clear what it is to be measured by. There is a need therefore for further research and investigation into effectiveness. Broadly the objective of inquiries can be to give victims/survivors a voice but the extent to which victims/survivors feel this has been achieved tends not to be measured. This is part of finding out what happened and then holding institutions and people accountable. From the victim point of view the question which needs to be explored is whether they feel that justice has been served. All inquiries whether they are dealing with victims or not have a stated objective of learning lessons and avoiding the recurrence of failures in the future. There is however little measurement of the extent to which recommendations are fully implemented and whether they prove to be effective. In the case of child abuse inquiries it is the fact that very similar findings and recommendations have been made time after time since Dennis O’Neil which might be seen as an indicator that the lessons have not been learned. The IJCI uniquely went back to review progress with implementation. Should there not therefore be a process built into inquiries to review progress and report on implementation with a view to both ensuring that lessons had indeed been learned and the cost of the inquiry had delivered value.

Costs

The costs of public inquiries are very high indeed as is shown in the Committee papers with the current cost of the Scottish Child Abuse Inquiry sitting at more than £90m and the Sheku Bayoh inquiry at more than £23m. The major element of these costs lie in legal costs. Lord Saville said ‘lawyers are expensive, very expensive’. High costs such as

these must raise questions as to the opportunity costs of inquiries and whilst there is undoubtedly a need and demand for inquiries into matters of great public interest and concern questions need to be asked as to whether there should be alternative ways of giving voice and learning lessons. Whilst legal input will of course be necessary for some aspects are there not other ways of achieving the same or indeed better outcomes at less cost? Some questions which should be asked are:

Could we do it differently?

Do statements need to be taken in every case or can they be recorded differently? (In Jersey every statement required two solicitors to be involved at considerable hourly rates)

Could there be more roundtable discussion with witnesses?

Would witnesses be more comfortable with more informal approaches to enabling them to tell their stories?

Can we emphasise an inquisitorial approach rather than the more adversarial approach which lawyers often take?

Inquiries have to start from scratch. Could there be a more standardised approach to the practicalities to help reduce start up time and reduce costs.?

Are the true costs recognised?

What are the hidden costs for participants such as local authorities in e.g. preparing documents? Redaction alone can cost a great deal.

What are the opportunity costs for participants both in terms of finance but also in term of staff time?

There is a need to examine ways in which the costs of inquiries can be contained without being seen to compromise independence. Could inquiries be expected to work to set budgets and timetables as opposed to the somewhat open ended arrangements which pertain at present and which too often result in escalating costs.

There needs to be consideration as whether it is necessary to have Inquiries chaired by judges as seems to be the prevailing view. Other professionals are well able to undertake this role as is demonstrated by the fact that Prof Alexis Jay, a social work professional, chaired the major Independent Inquiry into Child Sexual Abuse. (IICSA)

Conclusions

Public Inquiries are without doubt important in giving a voice to victims/survivors in some cases and in all cases identifying what went wrong and learning lessons. The very lengthy timescales for many inquiries to reach their conclusions may mitigate against that however therefore the question of how best to manage timescales without compromising independence must be explored. Inquiries which run for many years risk losing public interest and may add pressure to witnesses who are desperate for an outcome. There is also a risk of compassion fatigue for participants.

Essentially we need to ask the questions what are Inquiries trying to achieve and could they be done differently? If we were starting from scratch could we devise a process which was more effective and less costly?

The objective of the work which I referred to above with the University of Northumbria was to explore whether a body could be established to undertake research on this topic and to develop alternative ways of dealing with issues of concern which would deliver best outcomes for victims and survivors in particular.

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