

The Scottish Parliament's Finance and Public Administration Committee Investigation –

Cost-effectiveness of Scottish Public Inquiries

Written Submission by Patrick McGuire, Thompsons Solicitors

Relevant Experience

I have considerable experience of the operation of Public Inquiries. I have assisted four groups of victims of disasters and mass-wrongs to successfully campaign for Public Inquiries to be set up and acted as their Recognised Legal Representative (RLR) at those Inquiries. They were:

- The victims and families of those killed as a consequence of the ICL Stockline disaster
- The victims and families of those who died as a consequence of the C.difficile outbreak at the Vale of Leven Hospital
- The victims and families of those killed as a consequence of the contaminated blood scandal
- The patients and families of child patients who were harmed as a consequence of flaws in the construction and design of the Queen Elizabeth Hospital and the Royal Hospital for Sick Children

I also represent 6 different Core Participant (CP) groups at the Scottish Covid-19 Inquiry, and my firm also represented former pupils of private schools in Edinburgh at the Scottish Child Abuse Inquiry.

Thompsons were, and in the on-going Inquiries referred to above are, funded by an award of public expense under the relevant legislation and Inquiry protocols to represent our client groups.

The Importance of Independence and Meaningful Participation

I have extensive first hand experience of the vital role that Public Inquiries can serve in relation to victims of disasters and mass-wrongs obtaining answers and believing lessons have been learned through a procedure in which they have confidence because it is independent and is one in which they have had meaningful participation to help shape the outcome of the Inquiry. The victims must have that confidence in the Inquiry or it would be a waste of time and money. As said, the confidence comes from two components, both of which must be demonstrably present:

- Independence from the Scottish Government and the Scottish Parliament; and
- The victims actively and meaningfully participating in the Inquiry

The first point ought to be self-evident. It is acutely important when 'the state' in the broadest sense potentially bears the responsibility of the wrongs being investigated by the Inquiry. That is the case in relation to all of the Public Inquiries referred to above. It is also true of the following Public Inquiries:

- The Campbell Inquiry (fingerprints)
- The Edinburgh Tram Inquiry
- The Sheku Bayoh Inquiry
- The Eljamel Inquiry

That is to say, every Scottish Public Inquiry.

The second point has been argued forcefully by the Equalities & Human Rights Commission (ECHR) in their submission to the Grenfell Inquiry and their wider publications. The ECHR advocate that victim groups must have active and meaningful, not illusory, participation in Inquiries.

Unavoidable and Necessary Cost of Meaningful Participation

Active and meaningful participation means that victims groups must be legally represented and, in turn, that such representation comes at a cost to the public purse. The level of legal representation and the cost of that representation will, of course, vary with the complexity of the subject matter of the Inquiry but none of the above should be new or surprising. The Inquiries Act 2005 and the Inquiries (Scotland) Rules 2007 create statutory rights of participation in and representation (at the public expense) at Inquiries for (victims) groups granted CP status by the Chair of the Inquiry.

Inevitable but not Unlimited Cost of Legal Representation

In short and in summary if Public Inquiries are to serve any meaningful purpose for victims of disasters and mass wrongs that comes at an inevitable and unavoidable cost to the public purse of providing legal representation to those groups.

With that said, the public funding of such representation is by no means a 'blank cheque'. In my considerable experience I can advise that every Chair to every Public Inquiry in which I have acted as RLR have set out strict guidelines as to which work undertaken by RLRs will fall to be paid by the public purse; and have also forensically assessed all work undertaken by RLRs and discounted any work that does not meet the Chair's strict criteria.

Realpolitik

Setting up a Public Inquiry is a political decision, not a legal one. None of the above should be a surprise to any Scottish Minister who has set up a Public Inquiry or any civil servant advising said minister. Public Inquiries are inevitably expensive. The real issue that the Committee may wish to consider is whether every Inquiry set up was justified given the inevitable cost of setting up the Inquiry rather than whether there is a case to impose cost restrictions on Inquiries that are in the public interest and set up under the current legalisation.

A Cautionary Tale

I will conclude with a cautionary tale in respect of the profoundly damaging impact that taking an overly cost based approach to Public Inquiries can have upon an Inquiry's finding of facts, learning lessons and securing the confidence of victims. I have acted in two Public Inquiries in respect of the contaminated blood scandal. The first was a Scottish Inquiry – the Penrose Inquiry. The second was the UK wide Inquiry – the Infected Blood Inquiry – chaired by Sir Brian Langstaff. At the very first public preliminary hearing of the Scottish Inquiry Lord Penrose said that "every penny" spent on the Inquiry was a penny taken away from the NHS budget. This statement immediately lost the confidence of victims and that confidence was never regained. It further informed the Chair's attitude to the entire Inquiry process including the limited extent to which he permitted the victims to participate and resulted in an anaemic Report with a single recommendation. In stark contrast, Sir Brian Lanstaff put the victims of the contaminated blood scandal at the heart of his Inquiry. The victims were encouraged to fully, actively and meaningfully participate in the Inquiry and they did. The result was a Report that exposed decades of cover up by the NHS, civil service and government and resulted in an unequivocal apology from the Prime Minister, who described the scandal as a "decades long moral failure" of the state and creation of the Infected Blood Compensation Scheme. The Scottish Inquiry failed to expose any of these facts. To echo the language of Lord Penrose, because of the

Chair's attitude to costs and efficiencies every penny spent on his Inquiry was arguably a penny wasted.