



OFFICIAL REPORT
AITHISG OIFIGEIL

Finance and Public Administration Committee

Tuesday 17 June 2025

Session 6



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FINANCE AND PUBLIC ADMINISTRATION COMMITTEE
21st Meeting 2025, Session 6

CONVENER

*Kenneth Gibson (Cunninghame North) (SNP)

DEPUTY CONVENER

*Michael Marra (North East Scotland) (Lab)

COMMITTEE MEMBERS

*Ross Greer (West Scotland) (Green)

*Craig Hoy (South Scotland) (Con)

*John Mason (Glasgow Shettleston) (Ind)

*Liz Smith (Mid Scotland and Fife) (Con)

*Michelle Thomson (Falkirk East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

John Campbell KC

John Sturrock KC

CLERK TO THE COMMITTEE

Joanne McNaughton

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Finance and Public Administration Committee

Tuesday 17 June 2025

[The Convener opened the meeting at 09:30]

Scottish Public Inquiries (Cost-effectiveness)

The Convener (Kenneth Gibson): Good morning, and welcome to the 21st meeting in 2025 of the Finance and Public Administration Committee. The first item on our agenda is an evidence-taking session on the cost-effectiveness of Scottish public inquiries.

I welcome to the meeting John Sturrock KC and John Campbell KC. We have received apologies from Craig Hoy, who will be a few minutes late because of traffic.

I thank both witnesses for their short, sharp and helpful submissions to the committee's call for views, and I will move straight to questions, kicking off with Mr Sturrock, methinks. In answer to the second question on the transparency of public inquiries in our call for views, you said that there is

"insufficient transparency and scrutiny in particular around control over timescales and costs."

How can that be improved?

John Sturrock KC: Through the provision of more information, one would have thought, from the start.

The Convener: About anything specific?

John Sturrock: From the start of the process, there could be more information on the framing, if you like, of the scope, the budget and the understanding of potential timescales, and through the currency of the process there could be regular reporting and updates. I understand that some inquiries provide reports on timing, costings and so forth. At the end of the process, one would certainly expect there to be a proper analysis of the costs and length of time that the inquiry has taken.

I do not have a particular background in public inquiries, but I certainly find the whole thing to be opaque. I am concerned about the large sums of public money that are spent, about which there seems to be relatively little discourse, accountability or transparency. The provision of more and regular information would be the short answer to the question.

The Convener: You have largely hit the nail on the head as to why we are having our investigation, if you want to call it that. "Opaque" is a pretty good word to describe it, given a lot of the evidence that we have received so far.

Mr Campbell, you have taken a different tack on the same question. You have said:

"I see no merit in publishing individual remunerations ... Publication of overall accounts after the event would appear to be a necessary part of the process."

Professor Sandy Cameron, who was the first witness to give evidence to the committee in our inquiry, said that there is a view that there appears to be no motivation and no incentive to keep an inquiry to time and to budget. If information on remuneration were to be published, would that help to focus minds a wee bit more?

John Campbell KC: Good morning, and thank you for the opportunity to appear.

With respect to Professor Cameron, I do not agree with him. One can speak only from experience. Twenty years ago, when we set out to conduct the inquiry on the Scottish Parliament building, we had no idea what the inquiry would cost, because it depended on the level of co-operation from three parties—the contractors, the professional teams and the civil service, all of which were asked to provide information to a non-statutory inquiry.

Not all of those parties were as co-operative as one would have liked. At the start, we offered rates of remuneration to the two lawyers involved, which they accepted. Those rates were not published initially, but they were accepted by the then Scottish Executive—I beg your pardon; I mean the Scottish Office—and we worked to those rates. The secretary for the inquiry kept a running total of the costs of the inquiry, and he gave us that information monthly.

For example, I had to send my solicitor to Barcelona to take statements from the architect's team, which added costs that we did not anticipate at the start. We knew a month later what all of that had cost, and the chairman and the secretary knew the overall month-by-month cost. We must remember that the Parliament inquiry itself was about cost overruns, so the fact that we looked as if we might have an overrun ourselves came quite close to home.

We knew from month to month what everything was costing, and when that got close to the target—or looked as if it was getting close to the target—we went back to the Scottish Executive and said that we were not there yet because we had certain things to do but that the cost so far was X and we would like the Executive to sanction X plus 10 per cent or whatever. In the event, that worked out well. We had guessed £1 million and

we came in at £900,000 and something, and we finished on time despite having to go to Barcelona.

It was not a perfect method and it certainly was not public. I have brought you a copy of the report so that you can see what a nice short one looks like.

The Convener: You do not get many public inquiry reports that are as short as that.

John Campbell: We had a notional in-house target of 250 pages and we were not a million miles off that.

The team knew what the cost was month by month and we decided that we would not publish that, because there were no questions about that in those days—that is, 20 years ago. The figures were published after the inquiry was over, but we were subject to running scrutiny by the Auditor General, who was a friend of the inquiry and was very helpful in organising our cost records so that we could see what we were doing. I think that that was transparent, but it was inwardly, rather than publicly, transparent.

The Convener: Okay, but I suppose that the Scottish Government could say that it practices inward transparency. To be perfectly honest, I think that if ministers said that in the chamber, there would be a howl from Opposition parties—and probably from members of the governing party, too, including me.

John Campbell: I am talking about the inquiry team, not the Scottish Government. We kept quite a lot of things from the Scottish Government until we were ready to talk about them.

The Convener: Right. There is certainly a clamour for transparency in this age, because this is public money that we are talking about. I do not know whether you have seen the *Official Report* of last week's meeting or whether you watched the meeting, but we uncovered one very stark issue. What causes the greatest concern is the opportunity costs, not the overall sum of money. For example, the police have talked about the huge impact on finances and staff resources. We can look at stress and all sorts of other issues if we wish, but those are the two main issues that the police have faced.

We might look at all of that and say that there should, perhaps, be a separate fund for public inquiries so that money is not taken out of the specific service that an inquiry relates to. However, if the inquiries that are going on under the current system progress, and if an inquiry that was expected to take one or two years takes five or 10—or even longer—there is surely a great need for transparency, given that the budgets seem to be open-ended. A number of individuals have pointed out that it is difficult to think of

another area of public life, including in life-or-death areas such as the health service, where there are no budgetary or timescale parameters.

John Campbell: I agree. There is a case for transparency with a long inquiry or with one that unwittingly stretches out. The problem is that, if you have a King's counsel on £1,000 a day, some newspaper will publish a figure six months later that is just a number of days times £1,000, and it is meant to look bad, because everyone hates lawyers. However, those rates are not actually near commercial rates. I am using £1,000 as an example, but the rates offered for public inquiries are not commercial rates and, indeed, are well below them.

I do not know whether there is a solution to that. People have a right to know, so, if that is your proposition, I respectfully agree. People are interested, as is right, and the press should get the information, but how that is treated by the inquiry management should be looked at.

The Convener: Mr Campbell, you say in your submission that the process for setting and monitoring costs for public inquiries

"is adequate in the correct hands."

Do the huge time and budget overruns that we have seen in many inquiries mean that they were not in the correct hands?

John Campbell: When a minister commissions—I am sorry, convener. I am talking too much.

The Convener: No, I am asking you a question and you are answering it. That is fine.

John Campbell: When a minister commissions a public inquiry, he or she would do well to sit down with the chairman who is appointed and with responsible officials to do a bit of cost planning, just as you would if you were building a public building or undertaking some other public endeavour. The minister should then expect the figure to go up. Just look at where we are sitting—that is what happened with this building.

The minister has to take responsibility for that, because he or she commissioned the inquiry. A chairman can rightly expect the minister to speak up on his or her behalf if cost overruns happen. For example, the Scottish child abuse inquiry has stretched for many years beyond what was initially anticipated and the decision has been taken to see it through to the end. The same was true of the Edinburgh tram inquiry; it grew arms and legs, and again the decision was taken to see it through to the end. That is a responsibility of ministers.

The Convener: Indeed, but where is the justice in that? The child abuse inquiry has cost £96 million so far and has taken 11 years. Some of the

people for whom the inquiry was directed at delivering justice will be long dead by the time that it reports. An inquiry might grow arms and legs and go on and on, but how does that deliver for the people for whom it is meant?

John Campbell: The child abuse inquiry has dealt with that question by issuing interim reports. In a small inquiry such as the Scottish Parliament building inquiry, there was no need to do that. We considered it, but we thought that it would be a waste of time to pause.

You are asking me two questions, one on cost and the other on justice for victims.

The Convener: Yes, but the question is: how can justice be delivered for people if there is no time limit—which implies a cost limit—and an inquiry just goes on and on? The two are directly related. It is like having an operation. If it is postponed for five years, how is that helpful to an individual?

John Campbell: Rigorous programme setting and rigorous, disciplined questioning are one solution. You should not allow yourself to go down rabbit holes.

I am sorry—that is a terrible metaphor.

The Convener: It is all right. You are not the first to use it.

John Campbell: You should not allow yourself to be dragged away from the core purpose of the remit. All of those things are linked. It is a bit like a chain necklace: every link has to close, and you start with your remit. I seem to remember that we started with a sentence of 170 words from the minister's office. We thought that that was not the best approach, so we spoke to the officials and had it made more concise and focused.

The Convener: Mr Sturrock, you have said that there should be

"a clear 'business plan' / budget to cover planned activities / project scoping carried out at the outset".

Given the number of inquiries that there are in Scotland and the United Kingdom, one would have thought that that would happen, but it does not seem to have had any impact on the duration of inquiries to date. How can that be tightened up to provide clarity for all concerned?

John Sturrock: From listening to the conversation so far, it seems that there are two different issues at play. One is the provision of information about cost and whether that cost is justified.

The second issue is the nature of the process that is being undertaken. That takes us to the design of the public inquiry process. Even in the way in which things are done at present, it seems

that there is huge scope for more work to be done at the beginning of an inquiry on the design of the process, the issues that are to be addressed, the overall purpose of the process and, within that, the timescale within which the inquiry might take place. Of course, as John Campbell said, those aspects will always be subject to change as more information becomes available.

09:45

However, that is looking at things in the present context. I think that I am here because I have a different perspective to offer. Just by way of background, I left the practice of law 23 years ago because I wanted to pursue a different way of finding solutions to things, so I pursued mediation as my professional career. In a way, the macro experience that I had is mirrored by the micro experience of public inquiries. I left behind the process of litigation and all its adversarialism, forensic approach to detail, cost and consumption of time. My experience during all those years was that there are sometimes different and more effective ways of arriving at outcomes more quickly and more cost effectively.

I translate that to the world of public inquiries and I ask myself—and I ask you—whether some of the issues that public inquiries deal with in a conventional way could be addressed in a more cost-effective and time-effective way that might produce—to use your words, convener—more just outcomes, although one must be clear about the purpose of the inquiry and whether justice is one of its potential outcomes.

If I may, I will draw on my own experience, which dates back to 2018 and 2019—not 2019 and 2020, as I said in my submission. I was asked by the then Cabinet Secretary for Health and Sport to carry out a review into allegations of bullying and harassment in NHS Highland. Those were serious issues involving hundreds of people and a management culture and board governance issues that the subsequent report revealed were perhaps applicable to many other public sector organisations in Scotland. The review was carried out in 18 weeks and the report was submitted within three months.

It is not perfect; there are trade-offs in a situation like that, of course. However, to take Dr Ireton's criteria of "timely, credible and impactful", the report was produced and made available within a timeframe that was relevant to the issues and that enabled the organisation and individuals to deal with the issues that arose within the timeframe in which the concerns had arisen.

I say that not to promote myself in any way or to promote that particular approach for all situations,

but because it suggests that public inquiries could be conducted in different ways.

The Convener: Yes, I was impressed that your report on NHS Highland came in for less than £150,000, and it seems to have been successful.

In your responses to our call for views, you gave quite a substantive response on culture, talking about

“a likely consequence of a culture”

in which the people who want the inquiry want

“to look back to find fault or allocate blame ... rather than to look forward and to learn lessons about what worked ... and how things could be done differently or better in the future.”

In the past 24 hours, we have seen the news from south of the border about grooming and a specific inquiry. In Scotland, there is a clamour for another public inquiry to be held into reinforced autoclaved aerated concrete that makes it clear that they want a statutory, or judge-led, inquiry, which will take a considerable period of time, I imagine. Is there any way that we can turn the Titanic away from the iceberg and persuade the public, for example, or, indeed, ministers who instruct public inquiries that, although there will always be a role for public inquiries, there is a better or different way forward?

John Sturrock: I suspect that it is an education process. You used the words “Titanic” and “iceberg”—

The Convener: People want a Ferrari rather than a Ford, if you know what I mean.

John Sturrock: I was thinking of tankers and tugs. In a sense, inquiries are tankers and, once they have started to move, they are difficult to pilot and navigate. To use Dr Ireton’s words again, flexibility, nimbleness and tailored approaches are what a tug can do, to use that metaphor again. It requires education about what public inquiries are intended to do and to be. My understanding is that public inquiries are not designed primarily to find fault; they are designed to find out what happened and why, what could have been done differently and, very importantly, what can be done differently in the future, which is a very different skill set.

Just last night, I came across a very good paper by the Centre for Effective Dispute Resolution—my colleagues in London—all about a new approach to public inquiries. I will send it to the clerks. My colleagues make the very clear point that a distinction exists between fact finding, evidence gathering and looking to the past—which might be well within the province of a judicial process, although even those aspects might be forensic, overly detailed and lengthy—and the curation, if you like, of solutions for the future, perhaps based on the evidence of what has happened in the past but considered creatively.

They suggest that it might be quite a different approach and need quite different facilitation.

In response to your question, convener, it is about education, understanding and clarity about the purpose of inquiries, and ministers perhaps being a bit more focused and clear about what they hope to achieve with inquiries and what the public is entitled to expect from them.

John Campbell: I wonder, convener, whether I could offer you two slightly different perspectives.

The Convener: Of course.

John Campbell: Twenty years ago, we did not understand mediation as John Sturrock has propounded it as well as we do now. You will remember the death of Dr David Kelly 20 years ago and the subsequent public inquiry chaired by—

The Convener: Chilcot—

John Campbell: No, by Lord Hutton, who was a Northern Ireland judge.

The Convener: Oh—yes.

John Campbell: That happened at about the same time as the Holyrood issue was brewing. I was sent to London to watch Lord Hutton in action for a couple of days. He had decided that his counsel should be the only person asking questions. Anybody could attend, by counsel or solicitors, but they would not be allowed to ask questions unless counsel to the inquiry said that they could. That put counsel to the inquiry in a pretty strong position. It just so happens that I know him—he now sits on the English bench. What he said to counsel for the BBC, for example, was, “No, we don’t want to hear about that,” or, “Yes, we do want to hear about that. You’ve got half an hour.” Lord Hutton, who was pretty steely, ruled that process with a rod, which is how he got through it so quickly. That is one perspective.

When Lord Fraser appointed me, we sat down and discussed whether we would adopt that method and style. I said to him that he was bound to be judicially reviewed if he adopted that style, because he would be keeping lawyers out. He said to me, “That’s fine. If that’s what the court says we have to do, we’ll do it.” However, he added, “Nevertheless, I want you to write a short speech explaining why you’re going to be the only one asking questions. And let’s see if there’s a judicial review.” Well, it was not even threatened. Everybody meekly said, “Oh, all right. Fine. We’ll do that.” So, for nine months, I got very tired of the sound of my own voice, because I was the only one speaking. That is one perspective. It certainly speeded things up, because I could decide what I wanted to talk about on a particular day with a particular witness.

The Convener: Other witnesses have suggested something very similar, so there is probably a strong view that that is a fairly sensible approach.

John Campbell: I mentioned two perspectives, convener. The second perspective takes us away from the notorious public inquiry to another form of public inquiry, which involves planning. Since the Holyrood inquiry, I have probably done 100 planning inquiries, at least. When I started doing them, it was all cross-examination and lawyers showing off. We spent days and days cross-examining witnesses on the minutiae of planning decisions, not necessarily to the greater benefit of the public, because everything costs money.

As time has gone on, the rules have evolved and the planning industry now has things called hearings—rather like this meeting—where the tables are arranged in a circle or a square and the reporter in charge is the person who sets the agenda. A good reporter will circulate in advance—a week or two; not very long—the points that he or she wants to discuss, to allow parties to prepare to answer his or her questions. In that way, evidence is gathered much more quickly than can be done with cross-examination. However, there are topics that merit cross-examination, either because they are technically difficult or because they are notorious. I can see from reading Lord Hardie's report on the Edinburgh tram inquiry that there were occasions when the witnesses were sitting in a very hot seat and cross-examination was entirely appropriate because they were being asked to answer difficult questions.

There are many occasions in planning inquiries when the evidence is in issue but is not hot and does not require cross-examination. A reporter asks a question about a relatively benign area—for example, a national scenic area—and the parties around the room can be asked, one at a time, to say what they think about a particular issue. The reporter takes a note and moves on to the next point. That gets through evidence quickly.

The Convener: You have said that cross-examination can take time but almost always yields results, but you are also saying that it does not have to be used in every circumstance and, on occasion, can be like wielding a sledgehammer to crack a nut.

John Campbell: Also, not everybody is good at it. Some people take longer than others—that is just the way of the world, I am afraid.

Time, cost and quality are the triumvirate that we are looking at here, and cross-examination takes more time. It will probably cost more money because it takes longer, but, arguably, on a controversial topic, you might get better-quality

evidence from it, although not necessarily. It is a judgment call.

The Convener: Finally, I will touch on the outcome of inquiries in terms of recommendations. A Government might feel political heat to set up an inquiry—as we have seen in the UK Parliament in the past 48 hours—but inquiries drag on for years. A different political party might end up being in office when the report from an inquiry is received, and the Government of the day might not agree to the recommendations. Often, Governments say that they will implement recommendations, but there does not seem to be any timescale or incentive to deliver them such that the people who thought, perhaps, that they would have a public inquiry or that what they were saying would be justified and compensated, or that others would be blamed or that improvements would be made—whatever the aim of the inquiry is.

Mr Campbell, you have said that it is not really for an inquiry to follow up on recommendations. However, when Professor Sandy Cameron gave us evidence on the Jersey abuse inquiry, he wrote that the recommendations that were made in the first public inquiry in Scotland in 1945 are more or less the same recommendations still being made 80 years later. Nobody has really done much about them, as they should have done, which I found quite shocking. Professor Cameron also said that, in relation to the Jersey inquiry, they went back two years later to check and ensure that the recommendations were being implemented.

It might not be specified as part of the role of an inquiry, but should the inquiry team look, after a certain time period—a year or two years, or whatever is appropriate in the case—to ensure that the recommendations that it has made are being implemented? We have heard about that issue in the media during the past 24 to 48 hours in relation to the previous inquiry into grooming. Would that be a way forward, rather than an inquiry team saying, "Right—that's us. We've produced a report and we're off"?

Mr Campbell can go first, and then I will ask Mr Sturrock something slightly different.

John Campbell: I think that your question begs a political question. When a minister appointed a chairman, he would have to be sure that that chairman was willing to follow through after the inquiry was over, to see that his recommendations had been fulfilled.

The Convener: You have said that implementation is not for the inquiry.

John Campbell: Well, I do not believe that it is. The clue is in the name. It is an inquiry into what happened and the discovery of the results of what happened, and recommendations.

10:00

With the Holyrood inquiry, recommendations were published—only about a dozen of them—and the result of that was that the procurement of public buildings in Scotland was radically modified by the promulgation of new rules, which obtain today. Neither the late Peter Fraser nor I, nor any of the inquiry team, was involved in the promulgation of those new rules. I am not sure whether Lord Hardie would have welcomed a commission to look into how well the trams were working once he had finished his work.

On the other hand, in a situation such as the one that Professor Cameron was talking about, which related to social work cases, in which members of the inquiry team acquired a great deal of expertise and knowledge in the course of the inquiry, there would be value in sending them back—as a separate commission—to see what was happening a couple of years later. I say with respect that I think that that would be a political decision.

The Convener: I appreciate that, but, if someone has been involved in an inquiry for a number of years, I would have thought that they would have an emotional commitment to making sure that the recommendations that they had made were implemented. I would have thought that they would want to apply some pressure to ensure that that was the case.

John Campbell: That would add to the cost. After all, it is not for the people who were hired as contractors—lawyers—to do the inquiry to secure implementation. I know very little about public administration, but I know quite a lot about building and the law around construction. I can use what I know about to help with the report, but I do not know enough about the machinery of Government to put all that into action.

The Convener: You have said that the Scottish Parliament should perhaps dedicate half a day a year to discussing inquiries.

John Campbell: That was just an idea that came to me. If the Scottish Parliament wishes to be informed about the progress of public inquiries in its jurisdiction, there might be merit in its holding a short debate in the chamber on how inquiries—particularly those that appear to be very expensive and to have been running for a long time—are progressing.

The Convener: Mr Sturrock, you have suggested that a parliamentary committee could be established to look at delivery. I suppose that an existing committee could do that.

John Sturrock: In my notes for this meeting, I have written down a number of questions. Are recommendations implemented? Who knows?

How is it done? What are the criteria? Looking at the big picture, it seems to me that what is required is a systematic approach, not an ad hoc approach. Overall, there should be a clear understanding of what will happen with recommendations that are made by those who report in public inquiries. That might mean that, while different approaches to the follow-through would be taken in each individual case, there would be some sort of action plan. That links to the point that you made about scrutiny. Such scrutiny would be a bit like post-legislative scrutiny.

My suggestion is that there should be a body—it could be a public inquiries hub, a know-how centre, a parliamentary committee or some other statutory body—that would have overall responsibility for the delivery of public inquiries and for the implementation of recommendations. Its remit should include the ability to seek explanations for why recommendations have not been implemented. There might be good reasons for recommendations not having been implemented many years down the line.

In my experience with NHS Highland, I recommended that a review be carried out after one year, but I am not sure whether that was conducted. I was initially involved for a while on my own initiative, without pay, in order to see whether I could help NHS Highland to consider how to implement some of the suggestions and recommendations that had been made. I now have some regret that I did not play a more active role in that regard. However, it was difficult, because I was commissioned by the health secretary to do a particular job, and the job was done. In a sense, I was functus, as they say in the law, after that.

It is a serious issue. Huge amounts of public money are being spent on public inquiries, and there is no obvious accountability for the outputs and outcomes. A lot happens, but, over the piece, what is the point of them? That goes for many public inquiries, but not all of them. I do not wish to be critical of the many public inquiries that serve a very useful purpose, but there are some serious questions.

The Convener: If there is a glaring need for change, organisations often try to get ahead of the game and try to change things as inquiries progress, so that they are not seen to be scratching themselves while waiting for five years for a report to come out.

John Sturrock: Interestingly, in my case, I submitted an interim report in early February, and by the time my final report came out, albeit that that was only 18 weeks after I started, the three most significant players had moved on, shall we say, from the jobs that they had held. That might

have been at least partly to do with what was being done at the time.

One would hope that a system could be devised whereby, with regular reporting—perhaps on an interim basis, as many have recommended—steps could be taken during the currency of the public inquiry, as lessons are being learned. One danger may be that everybody waits until the end—10, five or three years down the line—and it is then too late: the tram extension has been built. Perhaps another consideration is what could be done during the currency of an inquiry to learn from what has been said and what can be implemented along the way.

John Campbell: A chairman might say, “I don’t want to reach my conclusions until I’ve listened to everything.” That is very much a lawyer’s approach, but there is a risk with interim reports, because you may change your mind.

John Sturrock: That depends on a linear approach whereby everything has to be investigated before final conclusions can be reached. However, some people argue that you can have parallel processes—an example is the modules in the child abuse inquiry—and reach conclusions on particular topics on an interim or even a final basis as part of a sequencing of events.

The Convener: Yes, rather than a big-bang effect at the end.

I open the session to colleagues around the table.

Michelle Thomson (Falkirk East) (SNP): Good morning to both Johns. Thank you for joining us. Continuing on similar themes, I suspect, I want to explore a little more the culture of the legal fraternity in such inquiries. Of course, one makes the assumption that all lawyers operate from complete integrity and ethics. That is one view: that they provide good works. The other view, potentially, is that inquiries are a racket whereby certain law firms and lawyers have found a very good way of making money. Particularly if they build up a reputation, they can roll from public inquiry to public inquiry. I know that that sounds contentious, but I want to explore your understanding of the tension between those two positions, because there is clearly at least a possibility that such a situation may occur.

What is your thinking on that? Critically, is the legal profession able to look at itself and say, “This isn’t a great look,” if there is even a sense that that might be the case?

John Sturrock: I recognise the tension because, in the work that I do, I deal with lawyers all the time who are involved in mediations, which, if successful, will result in much lower income from

the particular piece of work than might otherwise be the case. One does not have to go so far as to suggest ill will or bad faith; one just has to examine the system.

Inherent in the adversarial system—the litigation system—is the fact that it is time consuming and costly and that it requires a certain approach to process. In some ways, lawyers who are doing their jobs need to follow it because it is the only way. As John Campbell suggested, cross-examination is required, and investigation is required to enable that cross-examination to be effective, given that that is the system within which they operate.

It seems as though many public inquiries are affected by that approach. They become very forensic and very detailed. Lawyers are employed to do a certain job. In particular, if the suggestion is that part of the inquiry’s purpose is to allocate blame or fault, naturally, inevitably and, perhaps, for professional competence, lawyers have a job to do to protect their clients, which may involve defence. It may well be that that has a similar effect of prolonging the inquiry in both cost and time. One does not have to infer ill will, as I said, but we must recognise, by stepping outside the process, what it necessarily entails and results in.

Michelle Thomson: However, you recognise my point that that could occur—that, where there is no proper financial governance as we would understand it, it is in the interest of lawyers, or some lawyers, to prolong an inquiry because there is a direct correlation with more billable hours for them, to put it simply. Indeed, many law firms reward their lawyers according to the number of billable hours that they put through on a particular—

John Sturrock: The economic system in which lawyers operate requires them to generate revenue and profit, and they look for work that will do that. If a piece of work has that effect, there will inevitably be an economic interest. I do not necessarily want to imply that there is ill will or bad faith, but, if we step back, I am concerned that economic interest is an almost inevitable aspect of lawyers doing their jobs. Therefore, we need to challenge the process to bring about change. From reading some of the evidence, it seems to me that good lawyers will understand that and will look for ways to minimise unnecessary costs, which would be the professional and ethically responsible thing to do. I know that there is a question of balance throughout.

I think that I have said enough on that point.

Michelle Thomson: Do you want to comment on that, Mr Campbell?

John Campbell: I am not sure that I have a great deal to add, except to say that the

perception that you have spoken about, which I recognise, often arises from headlines that are generated by lawyers when they speak publicly about the business of an inquiry. A strong chair should discourage that. In fact, he or she should forbid it, because the inquiry should be inward looking towards the people who are working for it.

I would not want to suggest that all advocates are paragons of virtue or that they all understand neutrality and that their only duty is to the inquiry, which means that they need to be dispassionate and neutral and so on, but that is a strong characteristic and it is well exemplified by those who work for the Crown Office. When people present cases in the High Court, they do so dispassionately. They do not say, "Isn't this a terrible case?" They do not introduce emotion into it, as they are skilled and they can take that approach. The chairman of an inquiry is entitled to look for those characteristics.

Having been the victim of it during the Holyrood inquiry, I am very sensitive to the suggestion that lawyers are involved in the process simply in order to generate better revenue as time goes on.

John Sturrock: There is a cultural issue that lawyers would do well to consider. Frequently throughout the year, major law firms announce their profits in the media and note how they have increased by X per cent compared with previous years. The numbers that are spoken about are huge, so it is understandable that members of the public and MSPs might draw certain conclusions, as the committee seeks to do. I suspect that part of the remedy is about the way that lawyers handle themselves and talk about revenue generation.

Michelle Thomson: On that note, and picking up a point that the convener has made, there are surely two bare minimums. By way of disclosure, I note that, in one of my multiple previous lives, I ran large-scale so-called transformational change programmes for corporates. As programme manager, I would collate the terms of reference and the structure. I would head the programme and multiple project managers would report to me, while a project management office would deal with the gubbins. We would have a change control process and a clear established budget. There is no way that a project with a budget of even £500,000 would not have a proper, clear governance structure to manage costs, but that is contrary to what we are talking about.

To flesh out the idea, I note that that is one route, but there will be others. We need to know to what extent lawyers understand that they are not equipped to do that sort of thing—in fairness, they need not be, as that is not their role. They bring expertise in the law and huge capacity for attention to detail. Is that generally recognised or

is there a tension in that, if that tidiness is not already in place, it may suit some law firms because, ultimately, it will result in increased billable hours and, therefore, profit?

John Campbell: In one way, project management of a public inquiry would be no different from the process that you have just described.

Turning to the minutiae of it, I would always ask myself how long I needed to keep a witness for and whether they could provide evidence in writing so that I could read it at my leisure and report on it, which would mean that I would not need to see them. I remember calling witnesses and having a pretty good idea of how long we would need them for. We would let them know in advance what we would be talking about, and at the end of the day we would thank them and tell them that they did not need to come back. There were very few occasions on which we had to bring people back because the discussion had overrun. That meant that we were able to budget quite effectively.

10:15

However, lawyers should not be put in charge of administration. That is a truism. You need a professional inquiry secretary and an administrator, and I was blessed with one who did not tell me half of what was going on, because he managed the money and left me to get on with the job.

Michelle Thomson: Mr Campbell, you mentioned the interface with Government, and you both had terms of reference set for your work. In our evidence session last week, we heard from the Scottish Police Federation that, despite it making clear its concerns about the opportunity costs, which the convener outlined, the dialogue was very limited once things were set in train.

I appreciate the tension in the situation. However, if a cabinet secretary has triggered an inquiry, they must surely have an on-going interest in its implications, even if they cannot get involved or be seen to be involved, for very good reasons that I understand. What would you expect a cabinet secretary who has instructed that an inquiry be undertaken to do during it? Would you expect interest from them during the inquiry or only once it has been completed? As the chair of an inquiry, would you expect them to tell you what you have to do and then go away and only come back years later?

John Campbell: I would expect the cabinet secretary to meet the chairman from time to time and find out whether any impediments to the process were anticipated.

I read the police evidence. I am not going to comment on it, because things have clearly arisen and it is a live case, so that would not be appropriate, but it is clear that quite a lot happened that was unexpected. In our modern culture—and this is true in planning as well—we try to avoid ambushes. You can ask firm questions, but you should not ambush the inquiry, the chairman or any witnesses with things that they are not there to talk about.

We made several mistakes in the Holyrood inquiry, and one of them was that we did not plan for long enough before we kicked off. We were under public pressure to get a witness in a witness box, and that came, I am sorry to say, from politicians. It was understandable but, nevertheless, we started before we were ready. We scrambled around looking for files and trying to think of some questions to ask rather than taking another month, reading the stuff and formulating the questions properly.

John Sturrock: In my situation, it was a non-statutory inquiry, so it was more flexible and fluid. From the get-go, I was in regular and helpful contact with the Scottish Government officials who were charged with carrying out the commission and supporting me, included on the crafting of the remit. When I thought that it was appropriate, I took it upon myself to communicate with the cabinet secretary on my progress, particularly if issues had arisen—and they did—that could have required a time extension or an increase in the scope of the inquiry. The cabinet secretary did not at any time interfere with or seek to influence what I was doing, but I regarded it as part of my role to ensure that she was kept informed of progress.

Michelle Thomson: In either of those instances, did the communication include questions about the cost and the on-going governance?

John Sturrock: In my case, there was an understanding of the cost, which was based on a day rate that had been agreed for the work. There were certain ancillary costs to do with accommodation for the process that was being carried out. Because the number of potential witnesses who came forward increased greatly compared with what was predicted at the start, it was necessary to go back and have a further conversation about the cost, particularly in relation to the number of days that I would need to allocate in order to see all the people who stepped forward, whom I thought it was part of my function to meet. That involved an adjustment of my day rate downwards. I took the view that, because a global sum had been agreed and that was the expectation, I would try to work within that envelope as far as I could. We constantly reviewed that, but I had it very much in mind that I

would try to work with the upper cap even though the review became more extensive than had been anticipated.

Michelle Thomson: What is your direct experience, Mr Campbell?

John Campbell: I have none, because my inquiry secretary was in charge of the money and he let me get on with the job. If I had to send somebody to Barcelona or undertake another investigation—a lot of the time, I was down here on the site talking to people—I just did it. If it was going to cost money, I asked him first, but usually it did not.

You will perhaps remember a side issue regarding the BBC and the production of a television programme, although it was a long time ago. That took us into obtaining separate legal advice on the confidentiality of material that had been filmed for the programme. We felt that we were so close to it that we could not give ourselves dispassionate advice, so we got advice from someone else. That was an extra cost, although it was not big. That is an example.

Michelle Thomson: I have a final question on costs. John Campbell, the convener has already asked you about this. You said in your submission that you do not see that it is necessary to publish individuals' costs, and I understand the sensitivity around that. However, if you were looking to effect change, although there might be some initial pain if somebody's costs are put in the public domain, that would very swiftly change behaviours. I am interested in your thoughts.

In all of these cases, if I were coming in to consult, I would ask what you could do to immediately make a difference and to start to shift the culture. Publishing that information seems to be one thing that could be done. Tell me a really good reason why, if we are starting to get a proper focus on costs and not just allowing for massive cost overruns, we would not actively seek to put the cost of everybody involved in a public inquiry in the public domain, in exactly the same way as our salaries go into the public domain and we must declare everything.

John Campbell: You are putting me in a position where I have to, in a sense, speak for the whole legal profession.

Michelle Thomson: I am just asking you to speak for yourself.

John Campbell: We operate in a marketplace, so the setting of rates is a negotiated process. Personally, I would have no problem with that information being published, but people are sensitive about that. I think that the report of the inquiry should show the cost of the inquiry broken down in that way, but not necessarily for

individuals, because that information is personal data.

Michelle Thomson: But it is public money—that is the difference.

John Campbell: It is public money. If a law firm is employed, for example, over a period of years to help to run an inquiry, I think that the law firm would have to expect the total cost to be published.

In the world that we live in now, there is not a really good reason not to have the cost of a public inquiry in the public domain, but people are sensitive about it for personal reasons. That is particularly true in a long-running case, in which the numbers could get very large.

Michelle Thomson: I think that you maketh my point.

John Campbell: Yes. I am not necessarily disagreeing with you, but I am saying that it is a very sensitive and difficult area.

The current culture is to seek to keep financial matters private, so far as one is concerned. However, if you step into the public domain, as you have done as a politician and as the Crown counsel does—we all know what Crown counsel earn and what civil servants earn—there is probably a case that your situation should not be very different, or in any way different, from the situation of others in the public domain. I think that I am persuaded.

Michelle Thomson: That speaks to a cultural issue, does it not, John Sturrock?

John Sturrock: I remember being worried that the figure of less than £150,000 would seem enormous and therefore should not be made public. It is funny—all things are relative.

My concern is that the premise that behaviour change and cost reduction would be achieved through the publication of costs—earnings, if you like—might be wrong. I am not sure that that would necessarily be the result. If the public inquiry is being chaired effectively and the chair is competent at managing time, which might be the fundamental issue, the cost of the lawyers, to take that example, would be a function of the requirements of the inquiry and, if properly chaired, the requirement of the chair in functioning. I want to look at it from the other end of the telescope and say that we should be careful, because pursuing a particular approach might not achieve the behaviour change—it might not be the lever that needs to be pulled to achieve that change.

Michelle Thomson: What would be the lever?

John Sturrock: I go back to the education, the training and the competence of the chair or chairs

or whoever it is that manages the process. There is an issue about whether it should be a retired judge, for example, or whether other people should be involved. John Campbell has referred to the important role of the secretary to the inquiry. There is a question around the skills and competencies that are required to run an effective public inquiry in the modern era, with all that that entails.

Michelle Thomson: That leads back to the Government.

John Campbell: If I may, I will just say one more thing. In the public mind, cost is often seen as being equivalent to value. If a junior counsel who is on a daily rate does nothing all day except take notes, that is not necessarily seen as valuable, but it might be very valuable, because they will contribute to the next day's questions in a private discussion—there is a value that people do not see. On the other hand, if the person who is asking the questions makes a mess of it, that is seen as bad value and people say, "Oh, get rid of them." We have seen poor performances in the televised inquiries and have said, "I wouldn't have done it that way." You know what lawyers are like—they are much bitchier than anybody else.

Michelle Thomson: I would dispute that, as a politician, but do carry on.

John Campbell: They will criticise each other's performance in a way that is wholly unjustified, because you never quite know until you get to your feet what form or inflection the question is going to take—sometimes there is no question at all.

Michelle Thomson: Thank you.

Liz Smith (Mid Scotland and Fife) (Con): I will begin by putting on the record that I am representing some former patients of Eljamel in the public inquiry. Will either of you give a view on why you think there is an increasing demand for public inquiries?

John Campbell: Speaking from experience, the First Minister was—no, let me start again.

There is a view that a public inquiry might be a device for getting a difficult problem off a politician's desk. There was something of that in the Holyrood inquiry. The late Margo MacDonald, of blessed memory, rather bullied Jack McConnell into starting the inquiry before the building was finished. None of us understood that the commissioning of a public inquiry would set the professional teams on edge with each other when what was really needed was for people to be working together. We saw that with the surveyors, the architects and so on.

I do not know, but I think that the clamour for a public inquiry is probably driven by the press.

Liz Smith: Mr Sturrock, do you have a view?

John Sturrock: I have just sketched out two or three thoughts. We have moved to having an even greater culture of blame seeking and fault finding than ever before, and we look for someone on whom the responsibility, in a negative sense, can be foisted when things go wrong. When almost anything goes wrong now, someone like that has to be found. That may be one aspect.

10:30

The second aspect may be the increasing loss of trust in public institutions, which the evidence suggests is manifest. A third aspect may be a lack of understanding of the purpose and nature of public inquiries, perhaps not least among those who commission them. A fourth aspect may be that inquiries might be seen as an easy and reflexive way of dealing with a difficult problem. In her submission, Emma Ireton used the phrase “uncritical repetition”. She used that expression in the context of how an inquiry was conducted, but it might also be a feature of how those commissioning an inquiry respond to difficult issues.

The issue may involve a combination of all those factors and, no doubt, many more.

Liz Smith: You have both mentioned the NHS Highland inquiry. I know that that was done slightly differently to other public inquiries, but did you feel that, at the end of the day, those people who had been clamouring for a public inquiry felt more satisfied than has been the case with other public inquiries, where people have been dissatisfied with the result?

John Campbell: I was not involved with the bullying inquiry at all.

John Sturrock: There are two aspects to the issue. One is that we conducted a survey towards the end of the process to find out how people felt about it. An overwhelming majority felt that it had been a useful exercise, that they had been listened to, that the issues that they wanted to raise had been raised, and so on. That information is all in the report that I prepared.

Subsequently, steps were taken by and in NHS Highland to do at least three things. First, what was called the healing process was instigated, which allowed those who had suffered to take part in an engagement in which their concerns—and often traumas—were addressed and in which corresponding compensation could be paid, where that was appropriate. Secondly, there was a change in the approach to management in NHS Highland, which had been a critical issue and one of the causes of the problems—it took two chief executives to get there, but it changed quite

significantly. Thirdly, there was a recognition that board governance, which had been ineffective, needed to change, and steps were taken, including the appointment of a new chair and the adoption of new approaches to training. I think that that reflects a Scotland-wide approach.

I very much doubt whether the changes addressed all the issues that everyone had, and you will still hear people in NHS Highland, with whom I have some on-going contact, saying that there is still a bullying culture and that there is still harassment.

Liz Smith: It is an important question to ask, because, as you rightly set out, there are other ways of doing inquiries and other witnesses have told the committee the same thing. If the committee ends up recommending that there should be a change in the focus of some inquiries, we must ensure that there is sufficient evidence to prove that the type of inquiry that NHS Highland was subject to can work just as well as a judge-led inquiry that goes on for a long time.

I cannot remember whether it was Mr Campbell or Mr Sturrock who rightly said at the beginning of the meeting that public inquiries are not entirely about what the people who demand the inquiry want. An inquiry is about drilling down into what happened and why, but there is also a more difficult second part, which is about what should be done to address those issues in future, and, as Mr Sturrock rightly pointed out, that requires a different skill set. None of that is about blame, which is, I think, what a lot of people are looking for. Therefore, if we are going to address public concerns, along with those of Government about the costs and efficiency of public inquiries, we must look at the different ways in which they might work.

I am interested in your views on whether, for very difficult cases, it is better to have a judge-led inquiry—for which the public often have a great deal of respect because the judge is independent and well trusted by it—or whether the inquiry might be done in another, slightly less adversarial way. Do you have any comments on that?

John Campbell: With respect, I do not think that the commissioning of a judge-led inquiry necessarily means that it will be an adversarial process, although it might be. I take your point about the trust that a judge might almost automatically engender in the public, but it is not unheard of that people other than judges, such as senior counsel or doctors, are asked to do inquiries—Alexis Jay is not a lawyer at all and conducted a successful inquiry in England.

Your question takes us not necessarily to the matter of the appointment of a judge or a person of eminence but to a question about the form that

the inquiry should take. If the inquiry is about something relatively simple, such as a cost overrun from £50 million to £471 million for a Parliament building, you simply need to know how that took place, but something that is much closer to people's emotional hearts will require a different form of inquiry. The point that John Sturrock has made is that litigation style is not necessarily the best method to get to an understanding of what happened.

Liz Smith: To pick up the points that you have both made, in the current environment, there is—sadly, in my opinion—an increasing mistrust in some public bodies because they are not as efficient as they should be and, therefore, are not dealing with some cases effectively. The Government and its agencies are not able to get the answers that they should get to genuine questions, and that is the main reason why the demand for public inquiries is increasing.

That trust element is interesting. The public are looking for trust, and I sometimes think that people trust a judge-led inquiry because they feel that it is the right form for an inquiry to take. However, you are suggesting—again, rightly—that there are other ways of doing inquiries. It is just about how—

John Campbell: Sorry to interrupt. You need a figurehead—

Liz Smith: Whom the public trust—

John Campbell: You need a champion to enshrine that public trust.

Liz Smith: The issue involves marrying together those two difficult issues with an opportunity cost and Government efficiency, and they do not quite fit together. That is one of the big challenges for the committee as to how we go forward.

John Sturrock: There are a number of issues at play here. A question for you, not for me, is whether a non-practising QC—as I was when I led the NHS Highland review—is more or less effective in relation to credibility, reliability and trust than a judge would be. That is the first point. John Campbell has made the point that the chair does not need to be a judge; the question is really about the attributes of a particular individual and whether they would result in public confidence.

The second point—which, again, John has already made—is that the fact that a process is judge-led does not mean that it needs to be overly litigious, adversarial and forensic. A judge could have done what I did if they had the skills, competences and permissions to do it in that way.

There is a trade-off in all that. The issues of time, cost, quality, justice and outcomes were mentioned by Laura Dunlop a few weeks ago, and John has mentioned them again today. Those

aspects will always be in tension or in balance, and you must work out a proportionate response to the situation. Last night, I wrote down the question, “What will be sufficiently effective?” Please do not look for perfection in any or all those options. The question is who, what, how, when and where will work most effectively for those particular circumstances.

Liz Smith: That is really helpful.

John Campbell: You might find a ready analogue in the planning theatre. When a case comes in on appeal, it is sent to a reporter, who has discretion under the rules with regard to how he or she will conduct the inquiry. Do they do it in writing? Can they be satisfied just to go and have a look and not to receive any evidence? Do they need a hearing on some topics but not others, or do they need a full-blown inquiry, with cross-examination and people being beaten up in the witness box because the issue is highly controversial? A combination of those approaches can be adopted, at the reporter's discretion. The reporter decides what method he or she will use, and the report comes out more quickly or more slowly, depending on which method the reporter picks. However, the point that I want to leave you with is that the topics are at the chair's discretion. That is good planning: you should divide the issue into topics and decide how you want to deal with each topic.

John Mason (Glasgow Shettleston) (Ind): I thank you both for your answers so far. I particularly enjoyed some of them—I liked the one about having a target of 250 pages for the report. That is the first time that any of our witnesses have said that they set a target for the report. That is one of my questions. How definitely can we set targets at the beginning? I asked one of our previous witnesses what would happen if we told him that he had two years and £5 million and that he should just do the best job that he could with that. His answer was, “I wouldn't do it.” He did not like the target being that tight. Am I being unfair to suggest that that could happen, Mr Sturrock?

John Sturrock: That is exactly the situation in which I found myself. I was given three months by the then Cabinet Secretary for Health and Sport to carry out my particular process. I regarded that, therefore, as my target and my responsibility to fulfil if I could. There was a relatively minor extension of that because, as I said earlier, a much larger number of people were involved. However, one of the by-products of that was that there were certain people whom I could not see. There came a point when we agreed that there was a cut-off in terms of those who had contacted me, and we would ensure that there was an ongoing process so that others who had not had an opportunity to meet me could, in the future, have

their concerns addressed. There was a clear, time-bound approach to it. It seemed to me that, for the purposes of that initiative, where what people wanted was some sort of outcome reasonably quickly, it was perfectly appropriate to do that, so I was perfectly comfortable with that. I would take a different view, therefore, from Lord Hardie, who I think took the view that you described.

John Mason: I think that he did, yes.

John Sturrock: There may be a perfectly good reason for his taking that view, given the nature and circumstances of his inquiry.

John Mason: Mr Campbell, it has been argued that, if we set a very tight timescale and cost, that would undermine the independence of the chair. Do you agree?

John Campbell: I suppose that a sensitive chair might say so. You would have to leave the door ajar in case something came up that the chair wanted to investigate. As a principle, though, I do not see anything too difficult about what you are proposing. When you go to court, a judge will often say, “You’ve got half an hour.” I spoke earlier about timing witnesses. Watching Lord Hutton, I think that it would have been a brave man or woman who went over the half hour.

That is perhaps not quite answering your question. You cannot begin to budget for an inquiry unless you sit down with a programme and work hard at that programme before putting numbers on it. You then come to a final figure. If an inquiry chair is told, “You’ve got £1 million and nine months”—or whatever the figure is—if the chair employed my monthly or weekly checking of rolling costs, they would be able to control that. It requires the discipline of an auditor, which I would not pretend to be. Most people would say not to employ lawyers to do administration—employ people who are good at administration.

10:45

John Mason: Well, we will create some more jobs for accountants, perhaps. That is a fair answer.

Earlier, you used the phrase that an inquiry can grow arms and legs. I take the point that something new can come up that nobody knew about, and that is outwith our control—but if an inquiry does grow arms and legs, is that the chair’s responsibility? Is it the ministers’ responsibility? Is it because the terms of reference were not tight enough?

John Campbell: It may be not that the terms of reference were not tight enough but that it is wholly unexpected. I do not want to stammer through this—if something comes up that is

unexpected, it is for the chairman to decide whether he or she wants to look into it. If you want to look into it, necessarily it is going to take time and, therefore, necessarily it is going to cost a little more money—or perhaps a lot more money—than you had budgeted for.

John Mason: How does the chair make that decision? You say that it could be that the chair would like to look into it.

John Campbell: It is about whether it has relevance to the remit. Drawing the remit tightly—or not tightly, as the case may be—is what would determine that.

The risk is that there will be public disfavour if you say, “I am not looking at that—it is not for us today.” The public may howl at you and say that you should have looked at it. However, that is an unanswerable question, I am afraid.

John Sturrock: I make the quick observation that you have to be careful about the use of language. The expression “grows arms and legs” is pejorative, if you think about it. It is easy to use that phrase and imply that what has happened ought not have happened. However, the discovery of new, perhaps unknown issues that fall squarely and relevantly within the terms of reference of the inquiry will inevitably and necessarily involve more time and money being expended. It is how that is controlled and managed that is the issue.

John Mason: Yes. While you are speaking, I would like to go back to the NHS Highland inquiry, which others have asked you about. I thought that some of the phrases that you used in your written submission were very interesting. You said that it was a “safe space”, that things were “discussed confidentially”, that it was not “forensic” and that there was no “legal advice or representation”. You were asked about people’s satisfaction with that and you sounded positive. Did you receive any comeback on those points, such as that people would have wanted it in public or would have wanted a lawyer?

John Sturrock: Not during the currency of the process itself. The issue of Maxwellisation arose—I know that the committee has discussed that. My report in its draft form was sent to a number of people who were explicitly or implicitly criticised; at that stage, concerns were raised about process, fairness and so forth, which I was required to address and did address. To that extent, there were some concerns expressed—and I hope that they were addressed appropriately—but, as far as I am aware, apart from those, nothing else was raised significantly about that particular approach.

John Mason: So, people accepted that.

Liz Smith asked you about how things have changed over the years. In your submission, you said:

“The present culture could lead to less openness and more defensiveness”.

If that is the culture that we are in nowadays, that concerns me a bit. If there is a statutory public inquiry, do you think that people will be less open and more defensive, whereas in your type of inquiry, in the hospitals, people were more open and less defensive?

John Sturrock: The way in which I conducted it—perhaps because I am now accustomed to facilitating dialogue rather than engaging in forensic examination of evidence and cross-examination—was very much to give people the opportunity to tell their story in an open way that, sometimes, they had not had before. That was possible only by providing the safety of a confidential space.

John Mason: Do you think that that would not have happened if it had been in public?

John Sturrock: It would have been interesting to see what would have happened. Take the example of Desmond Tutu’s Truth and Reconciliation Commission. We should consider some of those other processes, whether they become the main way in which some matters are dealt with or ancillary parts of a process—you can have parallel processes with different things happening at different times.

I think, but I do not know, that it might not have been so easy for some of the people with whom I spoke to be as candid as they were with me if the inquiry had been conducted in public. There are pros and cons to that, because there are issues about due process and fairness. My approach was to give people the opportunity to say what they had to say and then, as far as I could, articulate in my report what had been said having always checked with them that I could use a particular quotation. I used extensive quotations so that people felt that they had been heard and that their issues were expressed.

John Mason: Did you tend to use quotations without saying who said them?

John Sturrock: Absolutely. That was just my general approach. There might have been circumstances in which I referred to particular individuals, but my general approach was to capture sentiments rather than particular points that were made by particular people. I did that extensively, which turned out to be powerful because there were, ultimately, more than 300 people who expressed a view and people felt that they had been heard.

John Mason: However, the downside is that somebody reading the report, such as a victim, would not be able to pin down that they could blame a particular person.

John Sturrock: If that is a downside. I made it very clear from the outset that I was not engaged in a blame game. As it happened, you could infer from my report—sometimes explicitly—that criticisms of certain people, such as the chief executive or the chair of the board, were being made. Where appropriate and where it seemed to be helpful in a forward-looking way, I made reference to groups or specific individuals. However, that was not the primary purpose. The primary purpose was to give people the opportunity to be heard, to diagnose what had been going on and to make a number of recommendations about how things might be done differently in future.

John Mason: Mr Campbell, is the range of options that we are hearing about the way we should go forward?

John Campbell: I am hearing about those with great interest, although the Holyrood inquiry considered cost and money. The cost escalated because a lot of people made poor estimates to begin with or did not follow the rules and incurred cost without it being anticipated in advance. Something as simple as moving a door handle or a tap in a bathroom can cost £30. Multiply that by the number of bathrooms in the building. I will not go into more stories, but there are lots of anecdotes like that in which additional costs were necessitated by contractors’ requirements that had not been anticipated.

The Convener: Thirty pounds? They have just spent £3.6 million on a new door for the House of Lords.

John Campbell: A facilitative atmosphere was not helpful for such an inquisition. However, if I was doing it again, I would do it in a room like this one, not in a litigious courtroom, which is what we had. We borrowed the courtroom from the Scottish Land Court in Grosvenor Crescent. It was very much set up as a court, with the little camera winking in the corner because the whole thing was streamed on the internet, so people were on their best formal behaviour—I hope that they were, anyway.

John Mason: Did that make them less open and less candid?

John Campbell: Yes, undoubtedly. You saw people going into the box and checking where the camera was.

Craig Hoy (South Scotland) (Con): Good morning, gentlemen. A number of the points that I

was going to raise have already been covered, so I will not duplicate them.

Mr Sturrock, I have a question on the implementation of recommendations. Obviously, the public's expectation is that an inquiry will be wide reaching and fair and will reach conclusions. However, there seems to be an implementation gap. Why is there such slow and scant implementation of some of the more fundamental recommendations that come out of public inquiries?

John Sturrock: I suspect that one issue is the passage of time. By the time that an inquiry's report comes out, it is yesterday's news, in effect, and there is not the same imperative or momentum behind effecting change. Secondly, the length of any report might, in a busy world, put people off digesting it and thinking through the implications. Thirdly—this is entirely understandable—it might well be the case that the recommendations that have been made are not acceptable to those who would implement the decisions. They might be too expensive, they might not be appropriate or they might already have been addressed. There could be a multitude of reasons.

However, the point is that we do not know—I do not know; I do not know whether you know—what the process is for determining what has happened with, for example, the tram inquiry. I have no doubt that the report was accepted and that comments were made about it, but we do not know what has happened, what is going to happen or what the reasons are for what is happening.

Craig Hoy: In your submission, you suggest three potential ways of toughening up the accountability for implementation: a parliamentary committee could be established, a statutory body could be given that responsibility or a ministerial accountability panel could be set up, as has happened in relation to fatal accident inquiry recommendations. All those suggestions appear to have some merit. Have you given any thought to which of those might be the most effective way of approaching the implementation of public inquiry recommendations?

John Sturrock: To be honest, I have not. However, I think that the idea of some sort of statutory body having a role in the oversight of public inquiries is an attractive one. A number of witnesses have spoken about that. Oversight of implementation could be one of the functions of that body. Otherwise, I would have thought that parliamentary scrutiny would be the optimal way to proceed. It would be necessary to be very clear about which committee was charged with that function, in the same way as scrutiny ought, I would imagine, to be given to whether legislation

has been applied down the line and how effective it has been.

Craig Hoy: Mr Campbell, it was mentioned earlier that you suggested that there could perhaps be an annual parliamentary debate on the progress of public inquiries. One of the frustrations of many MSPs is that we have annual debates on a number of things, such as targets that have been missed, and we then have the same debate the following year, but it does not get to the root cause of the problem that we are trying to solve.

Would there be any merit in revisiting the original legislation on public inquiries with a view to providing an element of compulsion or a mandatory implementation mechanism that would make it incumbent on Government not only to set up public inquiries but to formally respond in a timely manner, by identifying actions to solve the problems and to prevent the same mistakes from being made again in the future?

John Campbell: I think that there is a dilemma when it comes to a Government responding to a report on a public inquiry and implementing recommendations, because one is often a political response and the other is usually an administrative response.

The procurement of public buildings might provide a good example. When the report on the Scottish Parliament building project was published, there was a discussion in Parliament but it was largely a courtesy debate in which the chairman was thanked and so on. However, the practical result of the inquiry was the promulgation of new procurement rules. We were in the European Union at the time, so everything was fashioned around the EU procurement rules. Nevertheless, Scotland got its own new set of rules. I would like to say that no public project has gone over budget since then, but, of course, that is not the case.

I am attracted by the idea of establishing an inquiries unit within the Government as a repository for expertise. A previous witnesses spoke about that—it might have been Lord Hardie. That would enable expertise to be gathered and kept and then used the next time. There are different kinds of inquiry, as we have teased out today. There are those with a high emotional content, which involve death, tragedy or personal issues, and those that involve money, which is cold and neutral.

The idea of accumulating expertise in one place is an attractive one. Whether that should be established as part of the Parliament or as part of the Government, I cannot say. However, there is no point in reinventing the wheel every time, which is what we seem to be doing. When the now Lord President, who was then Mr Paul Cullen, was

commissioned to look at subsidence in Gilmerton—it was a short, sharp inquiry—he started by devising his own rules for the inquiry.

If he had had the benefit of the assistance of a skilled unit, he might have saved some time. I think that we would have saved time, too, at the Holyrood inquiry, because we literally started with an empty room and no papers. It was a case of, “Who do we ask for papers?”, “How does the information technology work,” and, “Should we be here at all—should we be in a different room from the chairman?” We were all in one place, which sometimes did not feel that comfortable. If you want to talk about the chairman and he is in the room, you cannot do that.

11:00

Those questions sound rather petty when I spell them out like that, but those are the mechanics of the day-to-day process, because it is a tough gig running an inquiry, as I think Laura Dunlop said. It is hard work, and you do not get many weekends off.

Craig Hoy: There is a sense, which was referred to earlier, that ministers are very keen to get the issue off their desk and that that is why they will pass it on to a public inquiry. There is a view that the report then sits on the minister’s desk eight years later, gathering dust, and nothing happens with it. A method that forced the Government to adopt the recommendations of an inquiry would, I presume, have two effects: inquiries would be more effective in the sense that actions would flow from them, and ministers might also be less keen to establish them if they thought that they would be held accountable for the recommendations. Should we look at that?

John Campbell: I see that point, but what if the minister does not like the recommendations or they are contrary to party policy?

The Convener: It might also be a different Government by that point.

John Campbell: Yes, it could be a different Government with a different political drive. You cannot force ministers—

Craig Hoy: It might actually want buildings that go millions of pounds over budget, in other words. *[Laughter.]*

John Campbell: No, that is not what I mean at all.

John Sturrock: However, the point here might well be the point that we started with, namely transparency. The least that you are entitled to is a very clear explanation of what has or has not happened in consequence of the recommendations that the inquiry made and why.

Craig Hoy: That is great. Thank you.

Michael Marra (North East Scotland) (Lab): Thank you, both, for your very compelling and full evidence. Mr Sturrock, on the time-cost effectiveness balance, I want to draw you more on the cost, which various members have touched on and which is part of the basis of the committee’s inquiry. I think that the bill for public inquiries is now running at more than £230 million. As people who have participated in such inquiries, do you both recognise that the costs are out of control?

John Campbell: Yes.

John Sturrock: You could build a ferry for that.

Michael Marra: That is a fair point, but certainly not two ferries. The—

John Campbell: Forgive me for interrupting, but a simple yes does not quite do it, because the answer is yes, but why? Michelle Thomson might say that there are too many lawyers involved and that they are all milking the process for whatever they can. The chairman might say, “Actually, I need these lawyers, because they are all helping me.” Some are in England, some are in Scotland. I think that we are a bit more expeditious in Scotland.

English public inquiries seem to take a very long time and involve a very large number of people. I do not know how big a team Lady Hallett has, but my team was far too small and we were literally exhausted by the end of it. In fact, we gave up working five days a week because we were all on our knees with tiredness, and Peter Fraser said that it should be four days a week. Lord Hutton said, “Nobody works on this inquiry after 5pm—you’re all going home.” Mind you, they started early in the morning, but he was very clear about that. When it came to writing the inquiry report, he locked himself away with the proceedings and wrote it himself. We did not do that—I am wandering slightly away from your question—because the writing of the report was pretty much a collective effort.

John Sturrock: If I may make what I think is a fundamental point, I made the remark about ferries in a jocular way, but what we see in relation to the conduct of public inquiries and the possibility that costs are out of control is another example of a more fundamental problem in Scotland—namely that our approach to decision making, complex issues, negotiation and addressing tough issues is suboptimal. That suboptimal approach is leading to far greater costs than are necessary and to poorer outcomes. There is a paradox here: public inquiries are often about those situations, but they reflect the same underlying suboptimal approach that I would identify as being problematic in Scottish decision making.

Michael Marra: That is very valuable.

I will ask you about time. I think that it is fair to say that, in his evidence, Lord Hardie offered some level of regret. It was nine years for the tram inquiry, and he said that he would much rather have spent that time with his grandchildren. Is such a system sustainable? Mr Campbell, you said that people who have worked on inquiries for years are on their knees. There is a single figure at the top, which I think you are both advocating for. That person is responsible and an advocate for the inquiry and gives a huge part of their life to it. It feels that there is almost a single point of failure there. Other members have touched on the issue of the pool of people from which we are choosing chairs of inquiries. For some people, it must feel like something that they just do not want to be involved in. Is that fair?

John Campbell: It is fair. Part of the planning process is deciding on the size of your team. Again, from my experience, ours was too small. That put pressure on me, because I was on my feet every day. I am not weeping about it, because a lot of it was very good fun and interesting, but I could have done with a junior. You get very sick of the sound of your own voice.

The serious point is that it is part of the planning. We had a team of four, but we should probably have had a team of six. Luckily, everybody was diligent and was chosen not because they knew what they were doing—because none of us did at the beginning—but because they learned very quickly.

Managing information 20 years ago involved computers, but it did not involve artificial intelligence. All our documents were on CDs, and we had a lot of them—I cannot remember how many documents, although it was nothing compared with the information that Lord Hardie had to consider.

John Sturrock: I commend to you the document from the Centre for Effective Dispute Resolution, which I referred to earlier and which covers a number of those points. I will send it to the clerk. It raises questions about the design of the process, the methodology that is adopted and the purpose of an inquiry. In particular, given your comment about single points of failure, the document raises questions about by whom and how those projects are conducted and whether it would be appropriate to have more than one individual involved in the overall conduct of such an inquiry.

If you begin to have parallel processes in which different things are happening simultaneously, for perhaps good reasons, or, as the CEDR suggests, you have a process of fact finding and then, quite separately, a process of creative solution seeking,

you could begin to disperse that and reduce the risk of failure.

Those questions are pretty fundamental, but they require you to step outside the conventional approach to public inquiries and to look at the whole thing anew and quite differently. It is about not just tinkering with the way in which the process works now but stepping back and asking, “Are there different ways in which the purposes can be achieved, and, if so, how, by whom and with what support?”

Michael Marra: You are both men of great experience in this area—I am not making a comment on age—hence why you are sitting in front of us. If somebody came to you today and asked you to lead a public inquiry, would you decide that that was a possibility for you?

John Campbell: I would not put it higher than a possibility, only because of age. Of course, if a Government minister asks you to do something for your country, there is a strong compulsion and a strong obligation to do it. I know that that is what Peter Fraser felt. Peter, who is dead now, was asked by Jack McConnell from an opposite party to chair the inquiry. He had been Lord Advocate and a member of the House of Lords, and he had had a distinguished career. I asked him one day, “Why are you doing this? You could be living in the country and shooting pheasants, or whatever you do.” He said, “Because Jack asked me to do it, and I am happy to take on the responsibility.”

John Sturrock: My answer would be yes; however, I could not contemplate doing what Lord Hardie did or what Lady Smith is doing at the moment. I would wish, as I had the privilege of doing, to be part of a discussion about how the particular inquiry in which I might be asked to be involved was conducted.

Michael Marra: My final question is about your submission, Mr Campbell, in which you wrote:

“Rapidity in delivering findings is important. Interim reports are often useful, in a long and complicated matter.”

Are interim reports underused?

John Campbell: Underused?

Michael Marra: Do we not see enough of them, given the length of inquiries?

John Campbell: I am not sure about them being underused, which depends on the case, but I suspect that the answer is yes.

I think that Lady Smith is conscious that she has been sitting there for a long time. I do not quite know how she has managed to do that, but she has done it. If you have been following that inquiry, her reports have been valuable reading. I do not know whether Lord Hardie issued interim reports. He may have done, but we certainly did not. Lady

Hallett has already issued interim reports from the English Covid inquiry. There is evidently a public interest, so I think that my answer to your question is a guarded yes.

John Sturrock: I cannot offer a view on whether interim reports are underused, but there is clearly a benefit in having regular reporting. They need not be titled as interim reports but might be periodic and look at particular issues such as the development of the process, the timescales and so on. That will all depend on circumstance.

John Campbell: To pick up on Mr Hoy's earlier question, if you could manage parliamentary time, inquiries that are in train when a debate on the issue comes round could be asked to give a progress report to Parliament. It would not be difficult for a chairman to say, "I'm two weeks away from finishing," or whatever.

Michael Marra: You obviously have not seen the Parliamentary timetable for the next two weeks.

The Convener: Exactly. We do not have years to rumble on; we get four or six-minute speeches.

I have one further question. We have seen a plethora of public inquiries, with the number increasing. The issue is not just time and cost but the overall number. Should the bar for the establishment of a public inquiry be raised? The press and individual organisations may be clamouring for inquiries, but should there be set criteria to meet before a public inquiry can be triggered, rather than a decision being made by a minister when the fourth estate and others call for it?

John Sturrock: There should certainly be a rationale for a public inquiry and an understanding of the purpose of that inquiry and of why it is necessary in that particular situation. A more articulate set of criteria could perhaps be applied. I do not know whether that exists now, but what we are craving is explanation, clarity and an understanding of why certain things are, or are not, being done. There seems to be a bit of a vacuum, in a number of respects, in the context of public inquiries in this country.

John Campbell: It would be possible to draft a set of criteria, but they would necessarily be somewhat nebulous—all motherhood and apple pie.

You ask whether the bar should be raised and whether it should be more difficult to have public inquiries. What might lie behind your question is that that is a way of saving money.

The Convener: There are a lot more inquiries now than there were 20 or 30 years ago, but there is no reason that I can discern as to why that is the case. Ministers may be more likely to trigger

inquiries than they were before, but we sometimes wonder why there was an inquiry into X when it would have been just as easy to have an inquiry into Y. The specific reasons why one inquiry happened when another did not can be rather obscure.

Michael Marra: Convener, I was remiss in not putting on the record my involvement, on behalf of constituents, in the Eljamel inquiry.

The Convener: That is fine.

That is the question that I want to conclude on.

John Sturrock: You might or might not achieve a reduction in public inquiries. If you set out clear criteria and have a clear understanding of the basis on which they are initiated, that may or may not have an impact on the number, but you will have far greater clarity and certainty.

The Convener: I think that there would have to be minimum criteria, which would not mean that an inquiry would have to be held; it would mean that any inquiry would have to meet a number of set criteria before being launched.

John Campbell: I am sorry to answer your question with a question, but do you not think that ministers, as senior politicians, would rather guard their discretionary right to have, or not have, an inquiry depending on the amount of noise?

The Convener: I am absolutely sure that they would, but, as has been mentioned, an inquiry might be used in some circumstances to get a minister out of a tight spot politically, rather than necessarily being in the long-term public good. It would be helpful if ministers could say, in a diplomatic way, that they want to consider something but that the criteria for having a public inquiry have not been met, because otherwise we could have inquiries into myriad different things, and where would we be then? We want to reach a sensible and optimal position that also defends the value of public inquiries as more than something that is just grasped at when people are concerned that the services that they thought would deliver for them have not done so.

Would either of you like to make any further points before I wind up this session?

John Campbell: I do not believe so.

John Sturrock: Thank you. It has been an interesting discussion, and it is an important issue. Thank you for the courteous and thoughtful way in which you are conducting it. It is a matter of real importance.

The Convener: I am delighted that you have both been able to come today to give evidence. It has been invaluable to our overall inquiry, which will continue after the summer recess.

John Campbell: Thank you for the invitation.

11:16

The Convener: That was the last item on our public agenda. We will go into private session after a break, to allow our witnesses and staff from broadcasting and the *Official Report* to leave.

Meeting continued in public until 11:40.

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