FPA/S6/25/18/2

Finance and Public Administration Committee
18th Meeting, Session 6
Tuesday 27 May 2025

Inquiry into the cost-effectiveness of Scottish public inquiries

Purpose

1. The Committee is invited to take evidence from the following witnesses in relation to the Committee's inquiry into the cost-effectiveness of Scottish public inquiries—

   Panel 1
   - Rt Hon. Lord Hardie, Former Chair, Edinburgh Tram Inquiry
   - Rebecca McKee, Senior Researcher, Institute for Government
   - Dr Emma Ireton, Associate Professor, Nottingham Law School, Nottingham Trent University

   Panel 2
   - Michael Clancy, Director of Law Reform, Law Society of Scotland
   - Laura Dunlop KC, Convener, Law Reform Committee, Faculty of Advocates
   - Richard Pugh KC, Compass Chambers

Inquiry remit and approach

2. The Committee agreed on 1 April 2025 to carry out an inquiry into the cost-effectiveness of Scottish public inquiries, with the following remit—

   - to foster greater understanding of the current position with public inquiries in Scotland, including their number, timescales, extensions to remit, costs, categories of spend and outstanding recommendations
   - to enhance clarity around the purpose, framework and decision-making process for establishing public inquiries and their terms of reference, and whether any improvements are required
   - to establish if public inquiries in Scotland deliver value for money, the extent to which spending controls are necessary, and how they might be implemented while maintaining the independence and effectiveness of inquiries
   - to identify examples of good practice (in Scotland or elsewhere) which ensure cost-effectiveness
   - to identify alternatives to the Scottish inquiry model, including how such alternatives may work, deliver outcomes and value for money.

3. The inquiry will not make recommendations on the merits or otherwise of individual Scottish Government decisions on whether to hold a specific public inquiry, or recommendations made by individual public inquiries.

4. The Committee ran a call for views from 4 April to 9 May 2025. Fifteen submissions have been received, as well as two written submissions from witnesses in support of their oral evidence, which are available under correspondence to the inquiry. The questions asked in the call for views are attached at Annexe A. Published responses are available on the Committee's webpage and a summary of those responses has also been published.

5. The Committee has also written to the Scottish Government and current public inquiries (Scottish Child Abuse Inquiry, Scottish Hospitals Inquiry, Scottish Covid-19 Inquiry, Eljamel Inquiry and Sheku Bayoh Inquiry) seeking additional information. Responses to these letters have been received from the Eljamel Inquiry, the Scottish Covid Inquiry and the Sheku Bayoh Inquiry.

6. A SPICe briefing providing background information on the area has also been published, to inform the evidence sessions for this inquiry.

Previous evidence sessions

7. The Committee took evidence from Professor Sandy Cameron CBE, who was a panel member of the Independent Jersey Care Inquiry, at its first evidence session for this inquiry on 20 May 2025. The following key issues were discussed—

    - Professor Cameron considered there were other ways of undertaking a statutory inquiry than having a quasi-judicial process, which leads to higher costs as legal staff involvement is needed for redaction of documents, taking statements and during the public hearing process. Judge-led inquiries can be overly legalistic.
    - An alternative approach would be to have a more inquisitorial and engaging model.
    - Judges don't always have knowledge of policy areas which is particularly important when drafting recommendations.
    - It is not known if people are satisfied with inquiry processes, findings and recommendations – "we don't test this out".
    - In terms of controlling costs, the Independent Jersey Care Inquiry (IJCI) had put in place checks and balances to control costs but had "arguably failed miserably". It was noted there could be negative consequences of setting a budget as this could curtail an inquiry. Prof Cameron could see the benefit of having to make a case for any significant increases if a budget were to be set.
    - The issue of opportunity costs was discussed, with Prof Cameron highlighting the costs to public bodies of participating in inquiries at a time when their budgets are already under pressure.

- He was in favour of setting timescales but with flexibility to accommodate extensions.
- Having a public inquiries unit could help with standardisation of the approach to public inquiries by providing support and training. It was suggested this could be delivered by a university.
- Professor Cameron questioned whether the public would see justice being done through having a lengthy inquiry and some victims may pass away before the end of an inquiry. He said that there has been limited research into the public's views on public inquiries.
- On the number of recommendations arising from the inquiry he was involved with, a decision was taken by the panel to keep the number small at the outset to ensure they were deliverable.
- Uniquely, although the IJCI had no power after the conclusion of the Inquiry, the Panel agreed to undertake follow-up on the progress of the recommendations two years after their making. This had been successful and welcomed. Though participants were keen for this to take place again in another two years, it was considered that it was time for the state to take responsibility for implementation.
- In response to a question about growing demand for public inquiries and whether this is due to failures in the delivery of public services, Professor Cameron was of the view that if an issue arose, public bodies should acknowledge and address it at an early point and certainly before the need for a public inquiry. If a public body did find itself the subject of an inquiry, at least they could point to the action they had taken.

8. Following the evidence session Professor Cameron provided some references including:

    - The Aims and Outcomes of Public Inquiries into the Care and Protection of Children: Should they be undertaken differently? Sharon Vincent, Kim Holt, Nancy Kelly and Emma Smaile Published in Child Abuse Review July 2020.

9. Professor Cameron also explained that in the case of the IJCI, the Chair and the Panel members were appointed through a selection process. Potential candidates were sought by a consultancy firm in London and interviews were conducted in London by the Greffier of the States of Jersey (the Clerk to the Parliament). Once the Chair had been appointed, she then participated in interviews along with the Greffier to appoint the two Panel Members. The Panel were then sworn in by the Bailiff - the chief judge in Jersey.

Written submissions of 27 May witnesses

Background

10. Written submissions were received from four witnesses appearing at the Committee's meeting on 27 May are attached at Annexe B. Some key issues raised in each of these submissions are summarised below.

The Rt Hon. the Lord Hardie KC

- **Types of inquiry:** There are many different types of Inquiry within the category of public inquiries, e.g. mandatory and discretionary Fatal Accident Inquiries, non-statutory Inquiries and ad hoc Inquiries into specific incidents. At the stage of addressing an issue of public concern Scottish Ministers should consider all the available options as well as statutory inquiries and should select the model that will address the issue most appropriately and most effectively.
- The principal difference between a statutory and a non-statutory inquiry is that the chair does not have the statutory powers of compelling witnesses to give statements or to attend as witnesses at public hearings or compelling the production of documents necessary to fulfil the terms of reference of the inquiry.
- **Non-statutory and statutory inquiries:** The then First Minister (FM) announced that the Edinburgh Tram Inquiry (ETI) would be a non-statutory inquiry, chaired by Lord Hardie, that the terms of reference had been agreed and that the FM looked forward to a "swift and thorough inquiry". Lord Hardie was not consulted on the possibility of concluding a swift and thorough investigation that would satisfy the agreed terms of reference and noted this announcement raised public expectations about an early conclusion. Further he had not been asked for his views on establishing a non-statutory inquiry. The creation of a non-statutory inquiry prevented him from accessing material held by the City of Edinburgh Council and resulted in the refusal of key witnesses to co-operate with the inquiry. Also, as a non-statutory inquiry there was not adequate protections for the Chair and Inquiry staff regarding lawsuit and defamation. He recommended the options of both statutory and non-statutory inquiries are retained and that Ministers should decide on the appropriate option depending on the issue of public concern.
- **Budget and timescale:** Although not asked in the call for views, Lord Hardie explained it would have been difficult to agree a timescale or budget without being aware of the approximate number of prospective witnesses from whom statements might be required or the volume of documents to be considered. The alternative would be to fix a budget and timescale in the likely event that either or both would need to be revised upwards as the

investigation progresses. This approach might however undermine public confidence in the Inquiry.

- From the outset of the ETI the Secretary liaised with the sponsor department, agreed an annual budget, provided monthly returns and reported on progress.
- **Public inquiry costs:** Suitable premises had to be found for the ETI (see chapter 2 of the ETI report). Use of surplus Creative Scotland premises were offered. The Scottish Government paid the rent and they appeared to have modern office facilities. For almost 6 months staff at ETI struggled with inadequate IT connections which frequently failed. The effect on staff morale was significant and there was a considerable waste of time and money during that period.
- Early tasks included appointing a Secretary, staffing the office with document coders, an IT manager and others. Many staff were agency workers while others were civil servants who transferred to ETI. Due to civil service procedures the delay in civil servants, including the Secretary, moving to ETI resulted in delay to the initial progress of the Inquiry. The process of setting up the Inquiry with accommodation, staff and other resources gave the impression of reinventing the wheel but there was little or no guidance to assist with this stage of the Inquiry.
- Lord Hardie used resources that had already been funded by the public purse in the interests of economy. Not all inquiries have adopted a similar approach. If the expenditure on resources already funded by the public purse was deducted from the cost of ETI, the cost at that time would have reduced from £13.1 million to £8.7 million. In his report, Lord Hardie recommended that both the total cost and net cost should be publicly disclosed. This would aid comparison with other inquiries.
- In response to expensive legal costs incurred through the redaction of documents, Lord Hardie advised “Where redacted documents are submitted to the Inquiry the chair should refuse to accept them and should require the person, using the powers under section 21 of the Act if necessary, to produce an unredacted copy and to seek a ruling that redactions should be made to it. Only the chair may redact documents if satisfied that there is an issue of privilege or confidentiality”.
- **Potential changes to legislation:** In response to concerns expressed that proceedings at public inquiries are often adversarial and the involvement of lawyers in the redaction of material results in an increase in the costs of the inquiry, Lord Hardie states Rule 9 of the 2007 Regulations allows the chair to limit, and even exclude, the cross-examination of witnesses and draws attention to the Direction he issued that required core participants to give prior notice of questions that they wished to raise with any witness and to explain the significance of the proposed questioning to the remit of the Inquiry. Only if it was considered to be more efficient was the legal representative of a core participant permitted to ask questions of a witness in relation to the points that had been approved.

- He also issued a Direction advising participants that there would be no opening statements avoiding extra time at public hearings as well as the time and effort by legal representatives. He suggests the Committee may wish to consider amending Rule 10 to exclude the opportunity of anyone making an opening statement.
- Some respondents have criticised the requirement to issue warning letters to persons or organisations who may be criticised in the Report – sometimes referred to as the "Maxwellisation process" – Rule 12. Rule 12(7) prohibits the inclusion of any criticism of a person unless the chair has sent that person a warning letter and the person has been given a reasonable opportunity to respond to the warning letter. This process takes a considerable amount of time. This requirement extends the time of the Inquiry and increases the cost. If the committee considered that the requirements of Rule 12 should be removed, it would need to consider what alternative provision should replace it to ensure that persons or organisations subject to criticism are afforded an opportunity to refute or to mitigate that criticism.
- **A dedicated public inquiries unit:** Lord Hardie recommended in his report that "Scottish Ministers should undertake a review of public inquiries to determine the most cost-effective method of avoiding delay in the establishment of an inquiry, including consideration of establishing a dedicated unit within the Scottish Courts and Tribunals Service [SCTS] and publishing regularly updated guidance for people involved in the establishment and progress of public inquiries". A similar recommendation was made in the 2014 House of Lords report for the establishment of a unit, which the then Government rejected on arguing that such a unit was "not appropriate or necessary…. given the relative infrequency of the establishment of new inquiries and their duration".
- A dedicated inquiries unit was subsequently established within the Cabinet Office in 2019. The Committee may wish to consider the proposal to include such a unit within SCTS.
- **Public inquiry recommendations implementation and monitoring**: The 2024 House of Lords Committee Report also recommended the formation of a Joint Parliamentary Committee to monitor government responses to inquiry recommendations and hold the government to account for implementing accepted recommendations. The Committee may wish to consider a similar approach.

Dr Emma Ireton, Nottingham Trent University

- **Terms of Reference:** Insufficient clarity about the purpose of an inquiry at the point it is established often leads to heightened expectations, and pressure to expand its remit. This contributes to 'mission creep', escalating cost and expanded timescales.
- **Inquiry effectiveness:** Effectiveness should be judged against the specific terms of reference, which may be focused on producing

actionable policy recommendations, conducting a thorough investigation into past events, or contributing to public understanding and the historical record.

- **Public inquiry approaches:** There is a strong case for greater use of shorter, focused, statutory inquiries, which deliver thematic learning and policy recommendations within 12 to 24 months. This would allow lessons to be acted on before policy priorities shift, or events recur.
- **Core participants:** The number of designated core participants is a major cost driver, and funding awards for legal representation often form the most significant part of the total cost of an inquiry. Inquiries have taken varied approaches to managing these, including some limiting the number of core participants and making greater use of joint legal representation for groups of core participants.
- **Best practice and transparency**: There is no well-resourced, central mechanism for pro-actively collecting, analysing, and sharing procedural learning from past inquiries. As a result, good practice is often lost, poor practice repeated, and time and money wasted reinventing the wheel. A Public Inquiries Hub/Centre for Excellence should be established as a central repository for procedural learning.
- As a starting point, Scotland should establish a publicly accessible online resource for all Minister-convened inquiries. It should provide a link to each inquiry's official website, publish inquiry reports and government's formal responses, and provide all available updates on progress of implementation.
- **Government department and public bodies**: A lack of preparedness, late disclosure, and defensiveness from government departments and public bodies significantly increase costs and delay progress.
- Preventing time and cost overruns is not solely the responsibility of inquiries. The actions of government departments, public bodies, and others engaging with a public inquiry play a significant role and can contribute significantly to rising costs and extended timelines, undermining inquiries' effectiveness and public confidence. Organisations should be prepared, adequately resourced, and ready to engage constructively and openly.
- **Public inquiry recommendations implementation and monitoring**: The value of a well-run inquiry is fundamentally undermined where its recommendations are accepted but are not then implemented in a timely manner or at all. There is no formal mechanism in Scotland to ensure that recommendations are implemented, either promptly or at all. Follow up often falls to survivors, families, and campaigners. Government departments and public bodies should be required to respond formally to recommendations within a set timeframe, indicating which are accepted or rejected (in whole or in part), and should provide a formal implementation plan, to allow for scrutiny and follow up.

- Various potential monitoring models are suggested, such as a National Oversight Mechanism (like INQUEST in England and Wales), Audit Scotland, or a parliamentary committee. Australia is pointed to as a strong model of scrutiny with annual evidence-based reports to Parliament clarifying which recommendations have been implemented, which have stalled and why, enhancing accountability and driving action.
- **Public inquiry costs:** Currently there is no consistency in the way inquiry costs are recorded making meaningful comparisons very difficult. Also, there is little transparency around how timescales and budgets are planned. Indicative timelines should be set in consultation with the Chair once they have had an opportunity to assess the likely scope and complexity of the work.
- Despite the scale of public investment, and their importance, there has been remarkably little evidence-based work commissioned on what inquiries cost, how they manage those costs, and how spending compares against original budgets. Inquiries are often established, heavily resourced, and concluded with minimal formal evaluation or system-wide learning.
- **Guidance for Scottish Government:** Whilst rigid criteria could fetter ministerial discretion on holding a public inquiry, publishing high level guidance, e.g. on identifying an inquiry's core purpose and focus, assessing the need for statutory powers, and selecting a proportionate model aligned to purpose, scale, and cost, would improve transparency and consistency.
- **Potential changes to legislation:** The Inquiries (Scotland) Rules 2007 are overly prescriptive in certain aspects. Revising the Inquiries (Scotland) Rules 2007 to allow greater procedural discretion would allow chairs of statutory inquiries to adopt more streamlined and proportionate approaches, closer to matching the flexibility of non-statutory inquiries, while retaining powers of compulsion if needed.
- **Alternative models and international examples:** There is no single 'perfect' model for public inquiries. Scotland's current system has strengths worth preserving. Australia's Royal Commissions operate under a legislative framework similar to the Inquiries Act 2005. However, they face less intense public and political pressure to broaden their remit and expand participant roles. In 2013 New Zealand introduced a tiered system of statutory inquiries: government inquiries, public inquiries, and Royal Commissions. All tiers have the same legal powers, but differ in scale, complexity, resources, and reporting lines, though New Zealand's reforms were aimed at moving away from overreliance on non-statutory inquiries, as well as reducing timelines and cost, by diversifying statutory models.

Law Society of Scotland

- **Terms of reference (ToR)**: It is difficult to assess the effectiveness of the current model unless parameters or goals are set in the ToR which provide a means to make such an assessment. The House of Lords 2024 report states “There are examples of public inquiries that have had to be re-constituted because of the decisions taken during the early stages of establishing the inquiry”.
- The Scottish Covid Inquiry ToR were established through public engagement, consultation, including with families of the bereaved and the Chair of the inquiry. These were set out on 14 December 2021 and revised on 9 June 2022. The Hon. Lord Brailsford replaced the Hon. Lady Poole as Chair of the Scottish COVID-19 Inquiry on 28 October 2022. Amended ToR also come into effect on 28 October 2022.
- It is noted that the UK (the Langstaff or UK Infected Blood Inquiry) and Scottish Governments (the Penrose Inquiry) investigated similar issues. Another example of similar inquiries are the Scottish Child Abuse Inquiry and the Child Sexual Abuse Inquiry. Examination of the Scottish Inquiry ToR showed physical and psychological abuse are included rather than the sexual abuse which the UK inquiry exclusively considered. This has expanded the nature of the evidence heard considerably in Scotland.
- **Information management:** The key to effectiveness of any public inquiry depends significantly upon the preservation and availability of relevant information. Governmental use of WhatsApp, other social media and data, and the deletion of this data as part of the public record, means that such material will not be available to the UK and Scottish Covid Inquiries. This will reduce the efficacy of those Inquiries and, unless the deletion of such data is prohibited by law, future Inquiries too.
- **Public inquiry costs:** It is difficult to assess cost in advance of an inquiry. There may be a corelation between the length of the Inquiry and its cost. Inquiries dealing with complex issues may also be longer and consequently more expensive. Reference was made to the 2024 report that noted every new inquiry had to start from scratch working out details of appointment of staff, procurement of office premises and a venue for public hearings, establishing a website, preparing budgets, procurement procedures, arrangements for electronic handling of documents, transcripts of evidence, and many other basic matters. Ways to avoid such costs to establishing a statutory or non-statutory inquiry quickly and economically could be to have a ‘bank’ of appropriately skilled people to staff an inquiry, creating protocols for the development of websites and IT requirements, accounting practices and handling of evidence and documents.
- Under the 2005 Act there are provisions to control costs: Evidence and procedure, section 17(3); Restrictions on public access etc, section 19(4)(i) & (ii); and Expenses of witnesses etc 40(2) & (3). These statutory provisions are only a framework for controlling costs. Cost control should not be judged on rules which apply to business enterprises.

- Ministers could specify a reporting date in the ToR coupled with the use of a project management tool such as a Gantt chart with relevant milestones able to demonstrate scheduled and actual progress of the Inquiry. Periodic regular reports from the Inquiry could keep the issue of avoiding delay in sharp focus.
- **Potential changes to legislation:** The basic legislative framework is adequate, however with reviews in the UK and Scottish Parliaments some amendment may be needed to improve the way in which Inquiries work.
- There are issues in the legislation which the UK Joint Committee on Human Rights raised during the passage of the bill leading to the 2005 Act. These included compatibility with ECHR of the power of Ministers to issue restriction notices (section 19(2)(a)), to withhold material from publication (section 25(4)) and to withdraw funding from the inquiry (section 39(4) and (5)). In the last 25 years there may have been changes in understanding about the ECHR and possible decisions of the European Court of Human Rights (ECtHR) which would allow for a re-examination as to whether these provisions should remain in the 2005 Act.
- There is no provision to require Ministers to explain why they did not commission an Inquiry on a matter of public concern. This should be remedied if the Act is to be amended.
- **Best practice:** The House of Lords 2024 report found that “Since 2019 the Cabinet Office has run an Inquiries Unit, whose remit is for the whole of the UK, including Scotland, to help share best practice.”. Inquiries should follow the guidance issued by the Inquiries Unit to ensure that they do not “reinvent the wheel” by for example having difficulties acquiring a venue and sourcing IT systems. The creation of “Lessons learned” papers would be useful in this respect.
- **Alternative models:** Commonwealth jurisdictions often have a similar structure to the UK and some of the same issues. Models listed are those in Canada, Australia, New Zealand, Ireland, Hong Kong, and EU member states.

Faculty of Advocates

- **Terms of reference (ToR):** Effectiveness has to be measured against a goal. For these purposes it is suggested this should be judged against the aims of the specific inquiry. For example, finding out what happened and identifying steps that can be taken to prevent recurrence. Assessing value for money is inherently challenging due to the varied nature of each situation. Significant delays or substantial cost increases can undermine public confidence in the process’s effectiveness.
- ToRs vary greatly in length and detail. They appear to be getting longer according to the Institute for Government’s 2017 Report ‘How Public Inquiries can lead to Change’. The increase in length of ToRs probably reflects greater specification of the work to be undertaken. Though it is noted that both the Piper Alpha and the Dunblane shootings Inquiries

had succinct, general statement of purpose and were not subject to significant cost or overrun.

- **Public inquiry costs:** There is often a trade-off between time, cost, and quality. It is generally understood that prioritising two of these factors can reduce control over the third. For example, producing a high-quality report within a relatively short timeframe may lead to more challenges in managing costs. Moreover, given what may be at stake for individuals and organisations, the setting of what would be an appropriate cost is, at best, a highly subjective exercise.
- Repeated postponement of an anticipated delivery date may sap confidence in an inquiry. However not setting any reporting date removes one tool for minimising delay. The sponsoring Minister should consider including an indicative deadline in the ToR, keeping in mind the particular purpose and aim of the inquiry.
- **Judge-led inquiries:** There are differing views about the need to entrust inquiries to serving or retired judges. The independence brought by judges is important. Judges are well-equipped to formulate a detailed narrative and have long experience of interrogating facts, which contributes to effectiveness.
- **Interim reports:** The publication of one or more interim reports can serve various purposes. For example, an outline narrative report, based on documents and expressed in neutral terms, can reduce the need for extensive oral hearings to ascertain what happened. Also, an interim report may identify changes which are urgently required to systems or processes to prevent recurrence and/or offer staggered publication of inquiry conclusions.
- **Public inquiry recommendations:** For recommendations to be implemented, they require to be well-informed and deliverable. Depending on how technical the subject-matter of an inquiry is, a non-specialist chair may need other independent input at this point. Alternative ways to draft recommendations including holding seminars which the Institute for Government described as having broadly positive results. There could be good reasons for not implementing particular recommendations but, if so, an explanation of what those are would promote transparency.
- **Potential changes to legislation:** Reference is made to the UK Government's 10 February 2025 response to the 2024 House of Lords Report. The UK Government stated that "the 2005 Act and the wider governance structure of public inquiries must be improved". Also, that "While the Government cannot commit to making primary or secondary legislative changes at this time, it is actively considering whether wider changes are needed to the frameworks around inquiries, and will clarify whether it intends to implement these recommendations alongside wider reforms in due course".
- **Alternative models:** Other modes of inquiry in Scotland are highlighted. These include the Fatal Accident Inquiry (FAI). The holding of an FAI is mandatory in some circumstances and discretionary in others. There can be controversy around the decision to hold (or not hold) a discretionary inquiry, and disappointment at how long it may take for the inquiry to begin. But the process, and the parameters of the

outcome, are understood. An example of a well-received and widely praised investigation was carried out by the late Professor Alison Britton into the prior review of effects of mesh implants.

Next steps

11. The Committee will continue taking evidence in relation to its Scottish public inquiries inquiry over the coming months and is expected to report its findings in November/December 2025.

Committee Clerking Team
May 2025

ANNEXE A

Cost-effectiveness of Scottish Public Inquiries inquiry: call for views

1. How effective is the current model of public inquiries in Scotland, and to what extent does it deliver value for money?
2. Is there sufficient transparency around the purpose, remits (including any extensions), timescales, costs and effectiveness of public inquiries and what, if any, improvements are required?
3. Are the current legislative framework and decision-making processes for establishing public inquiries adequate, and what, if any improvements are required?
4. Are the processes for setting and monitoring costs for public inquiries adequate? What measures should be put in place at the establishment of a public inquiry to ensure value for money and prevent time and cost overruns?
5. What is the best way to ensure cost effectiveness of public inquiries while maintaining their independence?
6. What, if any, measures should be put in place to ensure recommendations made by public inquiries are implemented in a timely way?
7. What alternatives to the current model of public inquiries should be considered when particular events have, or could cause, public concern? Are there examples of good practice from other countries that Scotland could learn from?

Note by Lord Hardie

Apart from statutory Inquiries established under the Inquiries Act 2005 ("the Act") and subject to the Inquiries (Scotland) Rules 2007 ("the Rules) there are many different types of Inquiry that may be considered to be within the category of public inquiries. These include mandatory and discretionary Fatal Accident Inquiries, non-statutory Inquiries and ad hoc Inquiries into specific incidents. An example of an ad hoc Inquiry is cited by John Sturrock KC in his answer to Question 7. He acknowledges that it was unnecessary to undertake the forensic review that might be expected in some statutory public inquiries. It is not difficult to understand why that should be so. The matter under investigation by Mr Sturrock appears to have been a discrete issue of allegations of bullying and harassment in NHS Highland. I acknowledge that a statutory Inquiry would have been inappropriate in that case and would certainly not have provided value for money, if one takes into account the cost of establishing the Inquiry, appointing Counsel and Solicitor to the Inquiry as well as the Secretariat. Equally it would be inappropriate to appoint an individual to undertake a forensic inquiry without the support of an Inquiry Solicitor, Inquiry Counsel and a Secretariat to assist the individual in establishing the facts that led to the matter of public concern.

At the stage of addressing an issue of public concern Scottish Ministers should consider all of the available options as well as statutory inquiries and should select the model that will address the issue most appropriately and most effectively.

Statutory and non-statutory public inquiries

I have assumed that the Committee is concerned principally with statutory and non-statutory public inquiries, although I would expect public bodies commissioning investigations such as that mentioned above relating to NHS Highland to expect the ad hoc inquiry to be delivered on time and within budget. That task will be much simpler in cases confined to a restricted issue dealing with current complaints.
In her submitted response Dr Ireton observes that in Scotland non-statutory inquiries remain an option but Scottish public inquiries are predominantly statutory. The principal difference between them is that in a non-statutory inquiry, the chair does not have the statutory powers of compelling witnesses to give statements and to attend as witnesses at public hearings or of compelling the production of documents necessary to fulfil the terms of reference of the inquiry.
I experienced the inadequacies of a non-statutory inquiry In the Edinburgh Tram Inquiry (ETI). The then First Minister announced that the ETI would be a non-statutory inquiry, that I would chair it, that the terms of reference had been agreed and that he looked forward to a "swift and thorough inquiry". The statement of the then First Minister merely raised expectations of the public about the early conclusion of the inquiry without the public realising that the statement had been

made without any knowledge of what would be involved in undertaking an independent, transparent and thorough inquiry into the scandal of the Edinburgh Tram Project which was a matter of significant public interest. I was not asked to comment on the possibility of concluding a swift and thorough investigation that would satisfy the agreed terms of reference.

Although I had been consulted about the terms of reference, I was not asked for my views about the creation of a non-statutory inquiry. As it transpired the creation of a non-statutory inquiry prevented me from accessing material held by the City of Edinburgh Council and resulted in the refusal of key witnesses to co-operate with the inquiry (See my letter dated 30 October 2014 in Volume 4, Appendix 2 of the ETI Report). That letter also highlighted that section 37 of the Act provided immunity from suit to the chair, solicitor to the inquiry, counsel to the inquiry and anyone engaged to provide assistance to the inquiry. It also afforded witnesses the same protection against actions for defamation as exists in court proceedings. Those safeguards were not available in a non-statutory inquiry.

In contrast the then government accepted the recommendation of the 2024 Report of the House of Lords Committee (“2024 Committee”) entitled “Public Inquiries: Enhancing public trust” that non-statutory inquiries could be an “effective and more flexible model” and “may achieve [their] terms of reference more swiftly and at lower cost”.

On balance the committee may wish to recommend the retention of both options, recognising the perceived strengths of each of them and to leave it for Scottish Ministers to decide in each case which is the more appropriate form of public inquiry.

Budget and Timescale

Prior to my appointment there was no discussion about timescale or any agreed budget. In fairness, it would have been difficult to agree a timescale or budget without being aware of the approximate number of prospective witnesses who had been involved in the project from whom statements might be required or the volume of documents to be considered. That does not mean that there was no oversight of the ETI. From the outset of the Inquiry the Secretary liaised with the sponsor department, agreed an annual budget, provided monthly returns and reported on progress.

That may be the only realistic solution when one is dealing with an event that lasted several years, involving the Inquiry in assessing an unknown volume of material and identifying and interviewing an unknown number of witnesses. The alternative is to fix a budget and timescale in the likely event that either or both will need to be

revised upwards as the investigation progresses. This approach might undermine public confidence in the Inquiry.

Costs of a Public Inquiry

Before leaving the question of budgets there is one matter that I raised in my Report of the ETI. Following my appointment as chair of ETI, I had to identify suitable premises with the assistance of the Solicitor to the Inquiry, whom I had appointed immediately following my appointment, and other civil servants unconnected with the ETI. This issue is addressed in chapter 2 of my Report. I was offered and accepted the use of premises that were surplus to requirements of Creative Scotland. The rent was paid by the Scottish Government and the office premises had the appearance of a modern office with adequate IT connections. The appearance was deceptive and for almost 6 months staff at ETI struggled with inadequate IT connections which frequently failed. The effect on staff morale was significant and there was a considerable waste of time and money during that time. In the Report I refer to the fiasco of Vodafone failing to install a cable on different occasions for different reasons and failing to link the portals to a newly installed cabinet.

Apart from accommodation it was necessary to appoint a Secretary whose early tasks included staffing the Inquiry office with document coders, an IT manager and others. Many of the staff were agency workers while others were civil servants electing to transfer to ETI. Because of civil service procedures the delay in civil servants, including the Secretary, moving to ETI resulted in delay to the initial progress of the Inquiry. The process of setting up the Inquiry with accommodation, staff and other resources gave the impression of our reinventing the wheel. There was little or no guidance to assist with this stage of the Inquiry. My first recommendation of 24 in my Report was that “Scottish Ministers should undertake a review of public inquiries to determine the most cost-effective method of avoiding delay in the establishment of an inquiry, including consideration of establishing a dedicated unit within the Scottish Courts and Tribunals Service [SCTS] and publishing regularly updated guidance for people involved in the establishment and progress of public inquiries”

That recommendation was similar to a recommendation in the 2014 Report of a House of Lords Committee on the post legislative scrutiny of the Inquiries Act 2005 (“2014 Committee”). The then government rejected that proposal, arguing that such a unit was “not appropriate or necessary….given the relative infrequency of the establishment of new inquiries and their duration”. Instead it highlighted that the Cabinet Office and Ministry of Justice provided support to departments in establishing new inquiries. Rather than creating a new unit to share best practices, it proposed strengthening existing Cabinet Office processes and forming a

practitioners' forum to facilitate regular sharing of best practices. A dedicated inquiries unit was subsequently established within the Cabinet Office in 2019. The committee may wish to consider the proposal to include such a unit within SCTS. The infrequency of the creation of public inquiries should not preclude the creation of the unit. Members of the unit could perform other duties within SCTS when they were not involved in establishing an inquiry. The existence of such a unit within SCTS would also remove any perception of a conflict of interest when the sponsor department was involved in the project that is the subject of scrutiny, as occurred in ETI. The sponsor department was the Department of Transport whose officials had been involved in the tram project.

The 2024 Committee Report also recommended the formation of a Joint Parliamentary Committee to monitor government responses to inquiry recommendations and hold the government to account for implementing accepted recommendations.

The committee may wish to consider a similar approach to allay perceptions that Reports of public inquiries sit on ministers' shelves gathering dust and result in concerns that the expenditure incurred on the relevant public inquiry was wasted public money.

Net costs of an Inquiry

Wherever possible and in the interests of economy regarding public expenditure I used resources that had already been funded by the public purse. These included the cost of accommodation which was vacant and where the Scottish Government was the tenant and had sub-let it to a government department or agency. It also included the salaries of permanent civil servants who had transferred to the ETI and whose posts in their former department were not filled. Although these costs were added to the costs of the ETI as an accounting exercise, the public purse did not incur any additional expense. I am aware that not all public inquiries have adopted a similar approach. For example some may use accommodation that is not already available within the Scottish Government's portfolio of leased but vacant property; some may also use more staff recruited from outside the civil service. In these examples the costs will be included in the costs of the inquiry and will be additional expenditure incurred by the public purse.

As I explained in my video release of the ETI Report, if the expenditure on resources already funded by the public purse was deducted from the cost of ETI, the cost at that time would have reduced from £13.1 million to £8.7 million.

That was the reason for Recommendation 4 of the ETI Report noted below:

“In reporting the cost of a public inquiry Scottish Ministers should report its net cost to the public purse, after discounting expenditure already incurred on accommodation, staff and other resources, as well as the total cost appearing in the accounts of the sponsor department.”

This recommendation would result in the public disclosure of both the total cost of £13.1 million and the discounted cost of £8.7 million. Such an approach would enable comparisons to be made with other inquiries who had chosen not to use available assets already funded by the public purse and would assist any assessment of value for money.

Inquisitorial nature of a public inquiry

Unlike judicial proceedings that are adversarial in our system, the conduct of a public inquiry is inquisitorial. In some of the responses there is a concern expressed that proceedings at public inquiries are often adversarial and the involvement of lawyers in the redaction of material results in an increase in the costs of the inquiry.
The concerns about proceedings becoming adversarial should be allayed if the chair of the inquiry applies the spirit, as well as the letter, of Rule 9 of the Rules, the relevant sections of which are reproduced below:

9.—(1) Subject to paragraphs (2) to (5), where a witness is giving oral evidence at an inquiry hearing, only–

(a) the inquiry panel;

(b) counsel to the inquiry;

(c) if counsel has not been appointed, the solicitor to the inquiry; or

(d) persons entitled to do so under paragraphs (2) to (4),may examine that witness.

(2) Where a witness, including a core participant, is being examined at an inquiry hearing, the chairman may direct that the recognised legal representative of that witness may examine the witness.

(3) Where–

(a) a witness has been examined at an inquiry hearing by counsel to the inquiry, or by the inquiry panel; and

(b) that witness' evidence relates directly to the evidence of another witness,

the witness to whom the evidence relates or the recognised legal representative of that witness may apply to the chairman for permission to examine the witness who has given oral evidence.

(4) A core participant or the recognised legal representative of a core participant may apply to the chairman for permission to examine any witness giving oral evidence.

(5) When making an application under paragraph (3) or (4), the core participant or recognised legal representative must state–

(a) the matters or issues in respect of which a witness is to be examined;
(b) whether the examination will raise new matters or issues; or
(c) where no new matters or issues are likely to be raised, reasons why the examination should be permitted……

It will be seen that the chair is able to limit, and even exclude, the cross-examination of witnesses that would be allowed as an entitlement in adversarial proceedings. To reinforce this Rule I issued Inquiry Direction No 10 in advance of the public hearings. This required core participants to give prior notice to me of questions that they wished to raise with any witness and to explain the significance of the proposed questioning to the remit of the Inquiry. I determined whether such questions were of assistance to my remit and, if they were, asked Counsel to the Inquiry to include these questions in his examination of the witness. Only if it was considered to be more efficient was the legal representative of a core participant permitted to ask questions of a witness in relation to the points approved by me.

Rule 10 of the Rules permits legal representatives of core participants, or core participants themselves who do not have a legal representative, to make opening and closing statements “unless the chairman directs otherwise”. I issued Procedure Direction No 7 advising participants that there would be no opening statements. That decision avoided a considerable amount of the time taken at public hearings as well as the time and effort by legal representatives, and consequent saving of expenditure, and was in keeping with the practice in Scotland of starting proceedings, except civil jury trials, with the evidence of the first witness.

The committee may wish to consider recommending the amendment of Rule 10 to exclude the opportunity of anyone making an opening statement. Such an amendment would result in a uniform practice that resulted in significant savings and would not leave the question for consideration by the chair of each inquiry.

Warning letters

Before leaving the Rules some respondents have criticised the requirement to issue warning letters to persons or organisations who may be criticised in the Report (referred to as the “Maxwellisation Process” in Mr Mullin’s response). The relevant Rule is Rule 12 reproduced below for the convenience of the committee:

12.—(1) The chairman may send a warning letter to any person where the chairman considers that–
(a) the person might be, or has been, criticised during the proceedings at the inquiry;
(b) criticism of the person may be inferred from evidence given during the proceedings at the inquiry; or
(c) the person may be criticised in the report (and any interim report).

(2) The warning letter must–

(a) state what the criticism or proposed criticism is;

(b) contain a statement of any facts that the chairman considers may substantiate the criticism or proposed criticism;

(c) refer to any evidence or documents which may support those facts;

(d) invite the person to make a written statement if the person wishes; and

(e) note that the information is subject to confidentiality restrictions.

(3) The chairman may send copies of any evidence or documents referred to with the warning letter, if the chairman considers it appropriate to do so.

(4) Where the warning letter is sent to a person by virtue of paragraph (1)(b)–

(a) paragraph (2) does not apply; but

(b) the letter must refer to the evidence or documents from which the chairman considers criticism could be inferred.

(5) Paragraphs (2) to (4) are subject to any restrictions on the disclosure of evidence, documents or information–

(a) imposed under section 19 (restrictions on public access etc.) of the Act;

(b) applying by virtue of section 23 of the Act (risk of damage to the economy); or

(c) resulting from a determination of public interest immunity.

(6) The recipient of a warning letter may disclose it to the recipient's recognised legal representative.

(7) The inquiry panel must not include any significant or explicit criticism of a person in the report (and in any interim report) unless–

(a) the chairman has sent that person a warning letter; and

(b) the person has been given a reasonable opportunity to respond to the warning letter.

It will be seen that Rule 12(7) prohibits the inclusion of any criticism of a person unless the chair has sent that person a warning letter and the person has been given a reasonable opportunity to respond to the warning letter.

Where numerous people are the subject of criticism, as occurred in ETI and will be apparent from the final Report, this process takes a considerable amount of time. Each letter must be framed by reference to the final draft Report and must specify the proposed criticism and include a reference to evidence or documents on which the chair relies for the proposed criticism. As I mentioned in my video release of the Report there were numerous warning letters and responses, many of which were substantial with one extending to several hundred pages. Each of these responses

had to be considered carefully and adjustments made to the Report to reflect any modification that I felt was justified in light of any response.

This is undoubtedly a requirement that extends the time of the Inquiry and increases the cost. If the committee considered that the requirements of Rule 12 should be removed, it would need to consider what alternative provision should replace it to ensure that persons or organisations subject to criticism are afforded an opportunity to refute or to mitigate that criticism.

Professor Cameron's submission

In relation to the experience of Professor Sandy Cameron concerning expensive lawyers becoming involved in redaction of documents, that is again a matter that the chair can prevent. An aggrieved person may wish redactions to be made to documents in the possession of the Inquiry or may even produce redacted documents. Both situations arose in the ETI. Where redacted documents are submitted to the Inquiry the chair should refuse to accept them and should require the person, using the powers under section 21 of the Act if necessary, to produce an unredacted copy and to seek a ruling that redactions should be made to it. Only the chair may redact documents if satisfied that there is an issue of privilege or confidentiality. There were several requests by core participants to redact documents. In each case I determined the application on the basis of written representations and balanced the interests of individuals against the public interest in having the material available to assist me in fulfilling my terms of reference. There was no additional cost to the Inquiry because I considered the written submissions in the course of a day when I was working at the Inquiry offices. With one exception, my decisions were accepted by the person seeking redaction. The exception was Bilfinger Berger, the contractor responsible for constructing the tramline. They petitioned the Court of Session to review my decision to refuse their application for redaction of material that they claimed was commercially sensitive. The Court refused the Petition. However, Bilfinger then appealed that decision to the Inner House (the appeal court) of the Court of Session. The appeal was unsuccessful. They advised the Solicitor to the Inquiry that they wished time to consider an appeal to the Supreme Court of the United Kingdom and an undertaking was given that we would not release the unredacted document until any appeal was determined or they intimated that they would not appeal. In the event they decided not to appeal and the unredacted document was released.

Although the litigation delayed the progress of the Inquiry it did not otherwise increase the cost of it because the Court of Session awarded expenses to ETI against Bilfinger for the original hearing and the appeal hearing.

Written Submission from Dr Emma Ireton

Introduction

This is a response to the call for views on the cost-effectiveness of public inquiries, made on 4 April 2025.

I am an Associate Professor of Law at Nottingham Law School, Nottingham Trent University, having previously worked on public inquiries as a commercial solicitor. My research specialism is public inquiry law and procedure. My publications include a co-authored book 'The Practical Guide to Public Inquiries', published by Bloomsbury, on public inquiry practice and procedure.

The observations and recommendations offered here are informed by UK-wide research, recognising that Scotland has its own Inquiries (Scotland) Rules 2007, which are very similar to those that apply in England, Wales, and Northern Ireland, the Inquiry Rules 2006.

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

The Scottish public inquiry process plays a vital role in addressing serious matters of public concern. The role of public inquiries is to establish facts, analyse those facts, and publish a report to address a matter of public concern. They scrutinise the actions of those in authority, shine a public light on events, and drive institutional and policy change in ways that other accountability processes cannot.

The Inquiries Act 2005 has been the subject of post-legislative scrutiny by the House of Lords on two occasions, both concluding that it is generally regarded as good legislation and provides a suitable framework for statutory inquiries. It grants powers to compel the giving of evidence. It does not preclude ministers from convening inquiries outside the Act, without those powers ('non-statutory inquiries').

A core strength of the current model is its flexibility. Chairs have a broad discretion to determine procedure as best suits the needs of the terms of reference. A key provision of the Act is s17, which requires the Chair to act with fairness and with regard to the need to avoid any unnecessary cost.

It is less the framework itself, but how it is being used, and additional pressures on individual inquiries, that are significantly reducing public inquiries' effectiveness, value for money, and public and participant trust in the process.

Lack of clarity over role and mission creep

Insufficient clarity about the purpose of an inquiry at the point it is established often leads to heightened expectations, and pressure to expand its remit. This contributes to 'mission creep', escalating cost and expanded timescales (see Q2).

Overly prescriptive rules

The Inquiries (Scotland) Rules 2007 are overly prescriptive (e.g. on mandatory warning-letter procedure, and core-participant designation) and can restrict the chair's discretion (see Q3). Some inquiry chairs report that this has caused unnecessary delay, lengthier inquiries, and substantial additional cost. In some cases, decisions are made out of caution to avoid the risk of judicial review, which would itself cause delay and expense.

Adversarialism

Inquiries are inquisitorial processes. However, many inquiries have adopted adversarial elements, particularly in how evidence is gathered and tested. This is often driven by public and participant expectations, legal culture, and uncritical repetition of previous inquiry practice without sufficient reflection. Better sharing of learning on best practice and the introduction of embedded evaluation (see Q4 & Q5) would help reduce unnecessary adversarialism.

Lack of central repository for best practice

There is no well-resourced, central mechanism for pro-actively collecting, analysing, and sharing *procedural* learning from past inquiries. As a result, good practice is often lost, poor practice repeated, and time and money wasted reinventing the wheel (see Q5).

Poor engagement from government departments and public bodies

A lack of preparedness, late disclosure, and defensiveness from government departments and public bodies significantly increase costs and delay progress (see Q4).

Failure to implement recommendations

The value of a well-run inquiry is fundamentally undermined where its recommendations are accepted but are not then implemented in a timely fashion or at all (Q6).

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

Lack of consensus

There will never be full consensus on the primary role of a public inquiry. Different stakeholders have conflicting interests and expectations. For government, the priority may be examining systemic failure and producing timely recommendations to inform policy. For Parliament, it might be scrutiny and accountability. For the public and affected individuals, it might be finding detailed answers about specific events, having voices heard, and justice; speed and cost-efficiency may be less important. These priorities are difficult, and sometimes impossible, to reconcile. Ministers and Chairs must balance these competing pressures and interests, under intense public and political scrutiny.

Focus, purpose, remit

Almost all inquiries incorporate elements of forensic investigation, examination of systemic failure and policy review, and giving a voice to those most affected. However, the emphasis varies depending on the terms of reference. This can be broadly categorised into three types.

1. **Policy inquiries (macro/thematic)** Focus on systemic, administrative and regulatory failures (the failings in the ‘checks and balances’) and making recommendations to inform policy reform. Detailed forensic investigation of individual events is only necessary where essential for understanding systemic failure.
2. **Forensic inquiries (incident-specific)** Examine specific events in detail to determine what went wrong and how, and are often required to make recommendations to prevent

recurrence. These include public inquiries used as a mechanism to discharge the States' investigation obligations under Arts 2 and 3 of the European Convention on Human Rights.

3. **Truth-telling inquiries** Less common. Focus on public acknowledgement of past harms, promoting understanding and creating or correcting the historical record. Recommendations may not be required.

Many inquiries are hybrids, requiring different approaches across different tasks or phases. These inquiries must still apply the most suitable focus to each task or phase, aligned with the terms of reference.

Survivors, the bereaved, and others most directly affected have a central and vital role across *all* types, whether informing thematic learning and policy recommendations, providing detailed testimony about specific events, or contributing to public understanding and the historical narrative.

The need for clarity and focus at the outset

Inquiries are often convened quickly, under significant public and political pressure for action. Insufficient attention to defining their purpose and scope can result in poor management of expectations and pressure to expand remits. This contributes to diluted focus, 'mission creep', unrealisable expectations, increased costs, and extended timelines.

There are also, increasingly unrealistic expectations over a public inquiry's ability to deliver accountability, justice, catharsis, and redress. While public inquiries may contribute to some or all of these outcomes, this is not their core function. They have a specific role, and finite budget and timescales. They sit alongside and complement, but are distinct from, other accountability mechanisms.

Public statements promising an inquiry will 'leave no stone unturned' or deliver justice and individual accountability 'where other processes have failed' are unhelpful and risk misrepresenting an inquiry's remit and terms of reference. Media coverage, statements by the minister, and advice from participants' legal representative can create or reinforce unrealistic expectations, even where an inquiry itself has made a very clear statement of its purpose.

Scale, proportionality, and timeliness

Inquiries with a different focus or objectives require different timelines, staffing, and resourcing. There is growing concern that too many inquiries default to overly legalistic, forensic models, even where a thematic approach would be more proportionate and cost effective.

There is a strong case for greater use of shorter, focused, statutory inquiries, which deliver thematic learning and policy recommendations within 12 to 24 months. This would allow lessons to be acted on before policy priorities shift, or events recur. Amending the Inquiries (Scotland) Rules 2007, to restore greater discretion to chairs, would support this. (See Q3.)

Transparency around timescales and cost

Currently there is no consistency to how inquiries record costs, making meaningful comparisons very difficult. There is also little transparency around how timescales and

budgets are planned. Indicative timelines should be set in consultation with the Chair once they have had an opportunity to assess the likely scope and complexity of the work. Public inquiries are inquisitorial in nature, and new material or emerging lines of inquiry may justifiably require adjustment of original timescales, whilst remaining within its term of reference. Setting unrealistic timescales can undermine confidence in the inquiry process when they are not met.

Transparency around effectiveness

There is also limited transparency of how inquiry effectiveness is assessed. Implementation of recommendations is just one measure and cannot meaningfully capture the full value of all public inquiries. Effectiveness should be judged against specific terms of reference, which may be focused on producing actionable policy recommendations, conducting a thorough investigation into past events, or contributing to public understanding and the historical record.

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

The current legislative framework:

Inquiries Act 2005, s1 grants ministers broad discretion to establish statutory public inquiries. Non-statutory inquiries remain an option, though Scottish public inquiries are predominantly statutory. The process for deciding whether to convene an inquiry, its form, and setting its terms of reference lacks transparency.

In the absence of published criteria or guidance, these decisions can appear inconsistent or arbitrary. There are opposing views over whether there should be published criteria. Whilst rigid criteria could fetter ministerial discretion, publishing high level guidance, for example on identifying an inquiry's core purpose and focus, assessing the need for statutory powers, and selecting a proportionate model aligned to purpose, scale, and cost, would improve transparency and consistency (see Q7).

There is an, often polarised, debate about the relative merits of statutory versus non-statutory inquiries. There are successful examples of both. In reality, this is often a debate about types of process rather than the significance of powers of compulsion. Some hold a strong preference for detailed, lengthy, highly legalistic, forensic statutory inquiries, and others for shorter, nimble, more flexible non-statutory inquiries, free from the prescriptive constraints of the Inquiry Rules, though without powers of compulsion.

Increasingly, participants see statutory inquiries, with powers of compulsion, as the 'gold standard'. Non-statutory inquiries have become viewed with suspicion and as an attempt to avoid scrutiny or accountability. Simply advocating greater use of non-statutory inquiries is currently unlikely to gain public or participant support.

Revising the Inquiries (Scotland) Rules 2007 could help bridge this gap. Greater procedural discretion would allow chairs of statutory inquiries to adopt more streamlined and proportionate approaches, closer to matching the flexibility of non-statutory inquiries, while retaining powers of compulsion if needed.

Targeted reform to the Inquiries (Scotland) Rules 2007

- Replacing the mandatory warning letter process (rules 12-14, particularly rule12 (7)) with a discretionary process, (in line with approaches already in place in some other jurisdictions) and relying on the common law and S17 statutory duties of fairness.
- Simplifying the procedure for expenses under rules 19 to 28.
- Amending rule 4 to ensure the rules on designation of core participant status does not unduly restrict the chair's discretion to control costs, whilst still complying with the duty of fairness.

Greater use should be made of collecting and sharing lessons learned from past inquiries on warning letters, designation of core participant status, funding decisions, and other key procedural decisions affecting cost and effectiveness (see Q5).

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

Setting and monitoring costs

There is currently no transparency to how public inquiry costs are set, nor any consistency to how individual inquiries record costs, making meaningful comparison and monitoring very difficult. Despite the scale of public investment, and their importance, there has been remarkably little evidence-based work commissioned on what inquiries cost, how they manage those costs, and how spending compares against original budgets. Inquiries are often established, heavily resourced, and concluded with minimal formal evaluation or system-wide learning.

Cost-effectiveness starts with early clarity of purpose and scope. At the outset, there should be a clear articulation of the inquiry's objectives, and indicative timelines and budgets agreed in consultation with the chair.

Focus on core participants and legal costs

The number of designated core participants is a major cost driver, and funding awards for legal representation often form the most significant part of the total cost of an inquiry. Inquiries have taken varied approaches to managing these, including some limiting the number of core participants and making greater use of joint legal representation for groups of core participants. However, there is no structured mechanism for capturing, analysing, and disseminating learning, meaning good practice is lost and poor practice may be repeated.

Structured internal evaluation and learning

Inquiries should embed independent, structured evaluation and reflective practice from the outset. While many inquiries conduct some form of internal review, this is often informal and inconsistent. A more structured approach, including gathering insight from the inquiry team, core participants, legal representatives and other engaging with the inquiry, and reporting to

the Chair, can support real-time adaptation and ongoing cost control. This internal learning should also feed into lessons learned reports to inform future inquiries.

The role of government departments and public bodies

Preventing time and cost overruns is not solely the responsibility of inquiries. The actions of government departments, public bodies, and others engaging with a public inquiry play a significant role. Public inquiries are convened because something has gone seriously wrong, often involving failures in government and public bodies. In such circumstances, scrutiny is essential, and criticism is both expected and necessary.

Government departments and public bodies must not retreat into defensiveness or disengage while awaiting the inquiry's outcome. From the outset, they must be prepared, adequately resourced, and ready to engage constructively and openly. Defensiveness, reluctance to cooperate, and delays in disclosure, all contribute significantly to rising costs and extended timelines, undermining inquiries' effectiveness and public confidence.

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

Central Inquiries Hub/Centre for Excellence

Cost effectiveness cannot be achieved by controlling decisions of the Chair and inquiry team. The discretion of the Chair must be maintained so that the most appropriate, inquiry-specific decisions can be made, but with meaningful support. Establishing a well-resourced Public Inquiries Hub or Centre for Excellence on public inquiries in Scotland, to act as a central repository of learning and procedural innovation, and to provide induction for new chairs and information on cost management, would help reduce duplication, promote consistency, and ensure that every inquiry builds on the lessons of its predecessors.

Ensuring cost effectiveness while maintaining independence can be summarised into four categories:

1. **Clarity of purpose and proportionate design**

- Clear articulation of an inquiry's primary focus at the outset to guide proportionate design and procedural decisions (see Q2).
- Greater use of shorter, thematic inquiries, reserving full forensic models for cases requiring examination of specific events (see Q2 & Q3).

2. **Flexible procedural framework**

- Amend the Inquiries (Scotland) Rules 2007 to restore discretion to chairs over warning letters, core-participant designation, funding decisions and expenses (see Q3).
- Incorporate flexible, streamlined practices from non-statutory into statutory models (see Q7).

3. **Transparent cost and timetable management**

- Agree indicative budgets and timelines with the Chair at the outset;

- Use standardised cost recording across all inquiries to allow for meaningful comparison and oversight.

4. **System-wide learning and oversight**

- Establish a Public Inquiries Hub/Centre for Excellence as a central repository for procedural learning.
- Embed independent, structured evaluation and reflective practice within an inquiry from the outset, to support real-time adaptation, improvement, and cost control, and to inform future inquiries (see Q4).
- Require early, open, transparent engagement from government departments and public bodies. Their cooperation is essential to controlling costs and meeting timelines.

The Chair's discretion is fundamental to an inquiry's independence and efficiency. Experience shows that rigid, prescriptive rules increase costs and delays. By removing unnecessary constraints from the Inquiries (Scotland) Rules 2007, sharing lessons in best practice, improving cooperation from government departments and public bodies, and embedding a continuous lessons approach, cost effectiveness can be delivered while independence is maintained.

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

Weakness of the current process

While implementation is not the sole measure of an inquiry's value, delay, or failure to act on accepted recommendations, fundamentally undermines its value and purpose. Currently, there is no formal mechanism in Scotland to ensure that recommendations are implemented, either promptly or at all. Follow up often falls to survivors, families, and campaigners. Constitutionally, judicial chairs are unable to oversee implementation and, while some non-judicial chairs in UK inquiries have chosen to take on a role in reviewing progress of implementation after publication of their report, most chairs conclude their involvement once the final report is published.

Central transparency

As a minimum first step, Scotland should establish a publicly accessible online resource for all minister-convened inquiries. It should provide a link to each inquiry's official website, publish inquiry reports and government's formal responses, and provide all available updates on progress of implementation. This would allow the public, media, and stakeholders to monitor developments and hold decision makers accountable when action stalls. It should also provide information, in an accessible form, on what public inquiries are, their role, and how they work.

Formal response to recommendations

Government departments and public bodies should be required to respond formally to recommendations within a set timeframe, indicating which are accepted or rejected (in whole

or in part), and should provide a formal implementation plan, to allow for scrutiny and follow up.

Oversight mechanisms

There are several models of potential oversight mechanisms.

National Oversight Mechanism (NOM): a publicly funded independent body proposed by INQUEST, to collate, analyse, and follow up on all recommendations arising from inquests and inquiries in England and Wales, and publish an annual, lessons learned report. A similar model could be adopted for Scotland.

Existing publicly funded audit offices: The Northern Ireland Audit Office is currently monitoring implementation of recommendations of the Renewable Heat Incentive Inquiry and reporting publicly on progress. Audit Scotland might play a similar role where the subject matter of an inquiry is relevant to its remit and expertise.

Parliamentary oversight committees: A parliamentary committee could be tasked with receiving regular reports on implementation and monitoring progress across inquiries.

Scrutiny and implementation monitors

It is important to note that oversight mechanisms only work when grounded in rigorous, bottom-up *scrutiny*. If the data reported is inaccurate or exaggerated, oversight adds little value and may even obscure failings.

Australia offers a strong model for scrutiny of implementation. Independent implementation monitors, with relevant policy and sector expertise, have been appointed on the recommendation of individual inquiries, to track progress and report annually to Parliament. These evidence-based reports clarify which recommendations have been implemented, which have stalled and why, and enhance accountability and drive action.

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7. What alternatives to the current model of public inquiries should be considered when particular events have, or could cause, public concern? Are there examples of good practice from other countries that Scotland could learn from?

The importance of context

There is no single ‘perfect’ model for public inquiries. Countries such as Australia and New Zealand face many of the same challenges as Scotland: managing costs, delays, adversarialism, and conflicting stakeholder expectations. While good practice from elsewhere offers valuable learning, Scotland’s current system also has strengths worth preserving.

A country’s culture, political environment and public expectations shape how inquiries function. Simply transplanting a model from another jurisdiction, risks importing new problems without addressing existing ones, and thereby also undermining confidence in the public inquiry process.

Many of the pressures on public inquiries in Scotland stem from how inquiries are used, and how expectations are managed, rather than from the overarching structural framework.

International examples and lessons

Australia's Royal Commissions operate under a legislative framework similar to the Inquiries Act 2005. However, they face less intense public and political pressure to broaden their remit and expand participant roles. Notably, ministers, inquiries, and the media commonly refer to them as 'policy', 'forensic' or 'truth-telling' inquiries to define their primary focus (though almost all inquiries have elements of all three to differing degrees). This common terminology helps to support understanding of an inquiry's role and objectives from the outset. Scotland would benefit from adopting a similar approach.

In New Zealand, concerns about cost, legalism and adversarialism of statutory inquiries led to increased use of non-statutory inquiries. These were quicker and more flexible, but lacked powers to compel the giving of evidence, leading to their effectiveness being questioned in some circumstances. In 2013, reforms introduced a tiered system of statutory inquiries: government inquiries, public inquiries, and Royal Commissions. All tiers have the same legal powers, but differ in scale, complexity, resources, and reporting lines.

This model creates a hierarchy of procedural and resourcing intensity for statutory inquiries. If combined with reform of the overly prescriptive Inquiries (Scotland) Rules 2007, a similar model could help ministers in Scotland select inquiry models, and set funding, in a way that is proportionate to the complexity and gravity of the subject of the inquiry.

Managing perceptions of legitimacy and accountability

However, there is a very important contextual difference between reform in Scotland and New Zealand. New Zealand's reforms were aimed at moving away from overreliance on non-statutory inquiries, as well as reducing timelines and cost, by diversifying statutory models. However, Scotland has seen the opposite trend: large, detailed, forensic statutory inquiries have become the default. Across the UK, non-statutory inquiries are increasingly perceived as inferior and decisions to establish non-statutory inquiries seen as attempts to avoid full scrutiny and accountability, even though, in the right circumstances, they can offer distinct advantages.

To shift this perception, much greater public and stakeholder understanding is needed of the purpose and focus of different inquiries (whether that be informing thematic learning and policy recommendations, providing detailed testimony about specific events, or contributing to public understanding and the historical narrative) and of the benefits of tailoring inquiry models to that focus. Quicker, more focused inquiries must not be seen as lesser processes, but as appropriate tools, tailored to their task.

Introducing a formal hierarchy of types of statutory public inquiry before addressing the need to shift perceptions, risks reinforcing the view that some inquiries are inherently less legitimate than others, or that some matters of public concern are treated less seriously than others. This risks resistance from participants, the media, and the public, and could undermine trust in the inquiry process.

The priority is to start convening more focused, streamlined statutory inquiries, informed by best practice from past statutory and non-statutory inquiries and assisted by amendment of the Inquiries (Scotland) Rules 2007, together with strong engagement with stakeholders from the outset, to clarify the purpose, manage expectations, and foster constructive engagement. Demonstrating that such inquiries can deliver timely, credible, and impactful outcomes would help build public confidence and lay the groundwork for any future formal tiered system.

Preserving flexibility and the Chair's discretion

Any reform must preserve the built-in flexibility of the current process and the discretion of inquiry chairs to determine the procedure of an inquiry. Once an inquiry has commenced, the chair is best placed to make procedural decisions to fulfil the terms of reference. This flexibility and procedural discretion are a core strength of the current system and essential to maintaining the independence, effectiveness, and credibility of public inquiries. This would allow Scotland to preserve the strengths of its current model while evolving toward a more proportionate, purpose-driven, and efficient inquiry system that maintains public trust.

Written submission from the Law Society of Scotland

Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors. We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society. Our Constitutional Law and Human Rights Sub-committee welcomes the opportunity to consider and respond to the Committee's inquiry into the Cost-effectiveness of Scottish public inquiries. We have the following comments to put forward for consideration.

General Comments

Introductory Comments

Whilst most Inquiries in Scotland are carried out under the *Inquiries Act 2005* some take place under ministerial or parliamentary authority. Statutory Inquiries are longer and can be more expensive. An Inquiry which was Ministerial in origin and approved by the Parliament was the Bonomy Report of the Infant Cremation Commission which was carried out by Lord Bonomy: Report of the Infant Cremation Commission - June 2014 .This Inquiry was achieved with a small team of administrators. Lord Bonomy met the affected families and produced 64 recommendations which were accepted by the Scottish Ministers and implemented by the Burial and Cremation (Scotland) Act 2016. It is worth bearing in mind that the Inquiry was commissioned in April 2013 and reported in June 2014.

The House of Lords Statutory Inquiries Committee was appointed by the House of Lords on 24 January 2024 "*to consider the efficacy of the law and practice relating to statutory inquiries under the Inquiries Act 2005*" and published its report Public inquiries: Enhancing public trust on 16 September 2024 (the 2024 Report).

The Committee identified that "*There are broadly two main types of public inquiry. Statutory inquiries are established with the authority of a specific Act. This is normally the Inquiries Act 2005 but could also be one of a small number of other statutory provisions, which vest ministers with the power to establish an inquiry in response to a specific set of circumstances…There is a second group of inquiries, often referred to as "non-statutory inquiries", which include independent departmental reviews, independent panels and ad hoc inquiries. They are not set up under the authority of an Act of Parliament, and their chief distinction from statutory inquiries is that they do not have the power to compel the production of evidence.*"

The Inquiries Act 2005 applies in England, Wales, Scotland and Northern Ireland and empowers UK, Scottish, Welsh and Northern Ireland Ministers to cause an inquiry to be held.

Since 2005 the following Inquiries have taken place in Scotland:

a. The Stockline/ICL Joint Public Inquiry (established 2004)
b. The Penrose Inquiry (infected blood products causing Hepatitis C and HIV) (established 2009)
c. The Vale of Leven Hospital Public Inquiry (C-difficile) (established 2009)
d. The Edinburgh Tram inquiry (established 2014)
e. Scottish Child Abuse Inquiry (established 2015)
f. Sheku Bayoh Inquiry (established 2019)
g. The Scottish Hospitals Inquiry (ongoing – Queen Elizabeth University Hospital, Glasgow and Royal Hospital for Children and Young People, Edinburgh)] (established 2020)
h. Scottish Covid 19 Inquiry (established 2022)
i. Inquiry into Professor Eljamel (established 2023)
j. The Emma Caldwell Inquiry (established 2024)

Cost-effectiveness of Scottish public inquiries – Call for Views Questions

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

Our Comment

It is difficult to assess the effectiveness of the current model unless parameters or goals are set in the ToR which provide for a means to make such an assessment. We agree with the 2024 Report which asserts at paragraph 13:

"The decisions taking during the establishment of an inquiry are key to its subsequent conduct and therefore its overall efficiency and effectiveness. There are examples of public inquiries that have had to be re-constituted because of the decisions taken during the early stages of establishing the inquiry. "

Section 1 of the 2005 Act provides that Scottish Ministers (and Ministers of the other administrations in the UK) have significant discretion in causing an Inquiry to be constituted:

"A Minister may cause an inquiry to be held under this Act in relation to a case where it appears to him that—:

(a) particular events have caused, or are capable of causing, public concern, or

(b) there is public concern that particular events may have occurred."

The most wide-ranging and complex public inquiry which has taken place in Scotland is the Scottish Covid 19 Inquiry.

Preparatory work for the establishment of the Inquiry was well planned, for example it is clear from the letter from the then Deputy First Minister John Swinney to the then chair of the Scottish Covid 19 Inquiry, Hon Lady Poole dated 14 December 2021 that the Scottish Government had undertaken consultation prior to announcing the Inquiry. The letter refers to "public engagement on a draft COVID-19 Inquiry Establishment Aims and Principles paper took place during August and September (2021)." The letter also refers to the Government engaging "regularly over recent months with family groups, including those who have been bereaved." and to the publication of an analysis report of the engagement: Scottish COVID-19 Inquiry: Analysis of the public and stakeholders views on the approach to establishing the public inquiry - gov.scot. Finally, the Deputy First Minister thanked Lady Poole: "for the discussions the First Minister and I have been able to have with you in preparation for the role.".

That letter also identifies certain issues which the Government consider important in the holding of the Inquiry, respect for human rights, pursuing the Inquiry in an inclusive and fair way and the need to report as quickly as is practicable. The Government also recognised the following essential aspects of the Establishment phase: "recruiting an inquiry team and putting in place premises and infrastructure…planning for the next stage of the inquiry, the investigatory stage including commissioning research and a period of reflection on the Terms of Reference (ToR) (which are set by Scottish Ministers).

In reply, Lady Poole said: "The inquiry will work independently to establish the facts in an open and transparent way in order to determine what lessons can be learned for the future. There is a great deal to be done in a short space of time. I will continue to give considerable thought as to how best to conduct the inquiry to ensure it fully achieves its aims, including a careful and thorough examination of the Terms of Reference.": Scottish COVID-19 Inquiry - gov.scot.

The ToR covered 12 areas of investigation, each being a strategic element of the handling of the pandemic, to identify lessons to be learned and recommendations as soon as practicable: Covid Public Inquiry - gov.scot. Furthermore, the Scottish

Government also committed to working with the UK Government to develop the approach to the UK-wide inquiry and expected the chair of the Scottish public inquiry to coordinate with the chair of the UK-wide one: UK Covid-19 Inquiry.

The terms of reference for the Scottish Covid-19 inquiry were set out on 14 December 2021 and revised on 9 June 2022. The Hon. Lord Brailsford replaced the Lady Poole as Chair of the Scottish COVID-19 Inquiry on 28 October 2022. Amended terms of reference also come into effect on 28 October 2022.

The UK Covid-19 Inquiry Chair, Rt Hon. Baroness Hallett DBE was appointed in December 2021. Following a public consultation, the Chair wrote to the Prime Minister to recommend changes to the draft Terms of Reference. The final Terms of Reference were received in June 2022.

The key to effectiveness of any public inquiry depends significantly upon the preservation and availability of relevant information.

The UK and Scottish Covid Inquiries have demonstrated the governmental use of WhatsApp, other social media and data. The deletion of this data as part of the public record means that such material will not be available to the Inquiries. This will reduce the efficacy of those Inquiries and unless the deletion of such data is prohibited by law of future Inquiries too.

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

Our Comment

The example of the Scottish Covid 19 Inquiry pre-establishment process gives some insight into the extent to which there is transparency around the purpose and remit of an inquiry.

It is more difficult to assess cost in advance – there may be a corelation between the length of the Inquiry and its cost. Inquiries dealing with complex issues may also be longer and consequently more expensive than those which do not. For example, on 1 September 2024:

a. the Scottish Child Abuse Inquiry (established 2015) had cost £85m,
b. the Sheku Bayoh Inquiry (established 2019) had cost £20.1m
c. the Scottish Hospitals Inquiry (established 2020) had cost £19.2.
d. the Scottish Covid 19 Inquiry (established 2022) had cost £26.1 Scotland's public inquiries have cost nearly £200m - BBC News

It is important to note that the final cost figures for Inquiries do not include the costs to government departments, core participants or other public bodies. They have to bear their own expenses, including instructing counsel, solicitors and officials.

As the House of Lords Select Committee on the Inquiries Act 2005 stated in its 2014 Report: *The Inquiries Act 2005: post-legislative scrutiny* : "A major cause of the unnecessary length and cost of inquiries has been that the secretariat of every new inquiry has had to start from scratch working out details of appointment of staff, procurement of office premises and a venue for public hearings, establishing a website, preparing budgets, procurement procedures, arrangements for electronic handling of documents, transcripts of evidence, and many other basic matters. As a result, some inquiries have bought new custom-made IT systems costing millions of pounds more than the systems used by other inquiries of comparable length." Microsoft Word - Inquiries Act 2005 report FINAL (page 7 and see paragraphs 181-193).

Ways to obviate such costs could be considered such as developing, in advance of any Inquiry being commissioned, a "bank" of appropriately skilled people to staff an inquiry, creating protocols for the development of websites and IT requirements, accounting practices and handling of evidence and documents. Having an effective website is as Lord Gill said to the post legislative scrutiny Inquiry "is also a huge benefit in a well-run inquiry. It is a medium of communication with the parties and it also enables everything to be on the record." (Q198).

These preparations could be available for statutory and non-statutory Inquiries alike and could be deployed swiftly and economically.

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

Our Comment

The current legislative framework for statutory inquiries includes the Inquiries Act 2005. Inquiries must also comply with procedural rules, which are set out in The Inquiry Rules 2006. The rules apply to all inquiries established by UK Ministers. Consequently, they apply to inquiries set up by UK ministers, even where the inquiry is based in one of the devolved areas. The Inquiries (Scotland) Rules 2007 were also made by the Scottish Ministers under powers in section 41 of the 2005 Act. The basic legislative framework is adequate but the Act having been the subject of reviews in both the UK and Scottish Parliaments is clearly in need of some amendment to improve the way in which Inquiries work.

The 2024 Report made a number of recommendations which touch on effectiveness therefore in setting up an inquiry, Ministers should consider:

a. statutory and non-statutory inquiry formats, and whether inquiries should be judge-led or non-judge/expert led, with either a single chair or a panel, on a case-by-case basis;
b. where appropriate, consulting with and involving inquiry victims or survivors on an inquiry's terms of reference, and provide guidance to those setting up inquiries on options for involving those groups;
c. including an indicative deadline for the final inquiry report in the terms of reference (with ministerial approval to extend the deadline); and
d. including a requirement that inquiries provide regular, public updates on their work and consider publication of interim reports (particularly where the inquiry is likely be lengthy).

There are issues in the legislation which the Joint Committee on Human Rights raised during the passage of the bill leading to the 2005 Act. These include compatibility with ECHR of the power of ministers to issue restriction notices (section 19(2)(a)), to withhold material from publication (section 25(4)) and to withdraw funding from the inquiry (section 39(4) and (5)). In the last 25 years there may have been changes in understanding about the ECHR and possible decisions of the ECtHR which would allow for a re-examination as to whether these provisions should remain in the 2005 Act.

Furthermore, the Act provides Ministers with wide discretion to commission an Inquiry but there is no provision to require Ministers to explain why they did not commission an Inquiry on a matter of public concern. This should be remedied if the Act is to be amended.

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

Our Comment

As regards costs there are statutory provisions affecting costs in the 2005 Act. For example, under section 17(3): "In making any decision as to the procedure or conduct of an inquiry, the chairman must act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others)."
Section 19(Restrictions on public access etc) also engages controls on delays and costs. Under this section restrictions may be imposed on attendance at an inquiry or disclosure or publication of any evidence given or provided to an inquiry. A restriction notice must

specify such restrictions as the Minister or chairman considers to be conducive to the inquiry fulfilling its terms of reference or to be necessary in the public interest. The Minister or Chairman must have regard under section 19(4)(d) to "the extent to which not imposing any particular restriction would be likely— (i) to cause delay or to impair the efficiency or effectiveness of the inquiry, or (ii) otherwise to result in additional cost…"

An award in respect of legal representation is with in the province of the Chairman under section 40(2) and (40 where the payment of the award is subject to "such conditions or qualifications as may be determined by the Minister and notified by him to the chairman.".

These statutory provisions are only a framework for controlling costs. Cost control is a practice with which business are very familiar comprising identifying and reducing business expenses to increase profits. However, Inquiries are not-for-profit bodies. Their objectives are to publish recommendations for change, to prevent the reoccurrence of an event of public concern. Accordingly, they should not be judged on rules which apply to business enterprises.

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

Our Comment

The 2024 Report found that "Since 2019 the Cabinet Office has run an Inquiries Unit, whose remit is for the whole of the UK, including Scotland, to help share best practice.". One way to ensure cost effectiveness while maintaining their independence is to follow the guidance issued by the Inquiries Unit to ensure that inquiries do not "reinvent the wheel" by for example having difficulties acquiring a venue and sourcing IT systems. The creation of "Lessons learned" papers which can inform those involved in mounting Inquiries in the future is a way in which matters such as cost-effectiveness and independence are brought into to sharp focus when commissioning a new Inquiry.

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

Our Comment

Ministers could state a reporting date for the Inquiry in the Terms of Reference. That practice coupled with the adoption by the Inquiry of a project management tool such as a Gantt chart with relevant milestones would be able to demonstrate scheduled and actual progress of the Inquiry. Periodic regular reports from the Inquiry could keep the issue of avoidance of delay in sharp focus.

7. What alternatives to the current model of public inquiries should be considered when particular events have, or could cause, public concern? Are there examples of good practice from other countries that Scotland could learn from?

Our comment

All public inquiries have the same core role: to establish facts, analyse those facts, and produce a report on a matter of public concern with recommendations to ensure that the same issues do not recur.

Alternatives to Scottish Inquiries under the 2005 Act could include:

a. inquiries under other legislation for example under section 14 of the Health and Safety at Work etc. Act 1974 or under section 69 of the Financial Services Act 2012.
b. Non-statutory inquiries such as Royal Commissions
c. Parliamentary Inquiries

Even within the scope of 2005 Act Inquiries in other jurisdictions of the UK there can be variations which differentiate one inquiry from another when both are dealing with connected matters of concern. For example, in relation to the impact of infected blood and infected blood products, and inquiries into child abuse.
Two separate statutory inquiries were commissioned by both the UK (the Langstaff or UK Infected Blood Inquiry) and Scottish Governments (the Penrose Inquiry) to investigate similar issues. It was noticeable that the Langstaff Inquiry covered the whole UK whereas the Penrose Inquiry focussed on Scotland. Both Inquiries considered infections arising from treatment by the NHS with infected blood and blood products. Another example are the Scottish Child Abuse Inquiry and the Child Sexual Abuse Inquiry. A close examination of the Terms of Reference provides the key to understanding the similarity between these Inquiries: Statutory Inquiries: differences in scope in different UK jurisdictions | MFMac The Scottish Inquiry ToR includes physical and psychological abuse rather than the sexual abuse which the UK inquiry has exclusively considered. This has expanded the nature of the evidence heard considerably in Scotland.

Considering the Inquiry framework outside the UK, Commonwealth jurisdictions have often a similar structure to the UK and some of the same issues:

a. **Canada** where the Inquiries Act 1985 provides that the Governor General may, whenever the Governor in Council deems it expedient, cause inquiry to be made into and concerning any matter connected with the good government of Canada or the

conduct of any part of the public business thereof. Where an inquiry as described in section 2 is not regulated by any special law, the Governor in Council may, by a commission, appoint persons as commissioners by whom the inquiry shall be conducted: Inquiries Act

b. **Australia** Public inquiries have a long history in Australia. They are those discrete, temporary, ad hoc bodies, appointed by executive government with clear terms of reference, their membership drawn from outside of government and with public processes of review and reporting. Public inquiries are not parliamentary committees, departmental working parties, private consultancies, or reviews commissioned by permanent advisory bodies as these lack external independent membership and open processes: Public Inquiries: What are they and do they matter? - IPAA .The Inquiries Act 2014 in Victoria introduced a flexible system, offering three statutory options: a Royal Commission, a Board of Inquiry and a Formal Review. To reduce expenses, the Act also restricted inquiries form incurring costs unless authorised in their constitutive document and within the limits set in that document. The precise role varies significantly between inquiries, depending on their subject matter and terms of reference. While most UK and Australian inquiries incorporate elements of all three, to varying degrees, they can each be categorised as being primarily forensic, policy, or truth-telling. This distinction is currently recognised in Australia but not in the UK.2396730_Ireton.pdf

c. **New Zealand** Concerns had been growing in New Zealand in the early 21st century that formal inquiries had become excessively complex and adversarial, requiring greater use of legal representation and contributing to increased costs and delays. This in turn led to a rise in the use of non-statutory ministerial inquiries (established by individual ministers) as these were seen as a faster, more cost-effective alternative to statutory inquiries, and following a more investigative rather than adversarial approach. However, because they lacked statutory powers to compel witnesses their ability to address effectively complex issues was called into question. The Inquiries Act 2013 No 60 (as at 23 December 2023), Public Act Contents – New Zealand Legislation states the purposes of the legislation (a) providing for the establishment of both public and government inquiries to inquire into matters of public importance; and (b) recognising and providing for Royal commissions established under the Royal prerogative; and(c) enabling those inquiries to be carried out effectively, efficiently, and fairly: see Public inquiry reform in New Zealand | Institute for Government

d. **Ireland** In Ireland, there are several kinds of public inquiry. The Oireachtas has the power to establish tribunals of inquiry to investigate certain matters of public importance. If the Government considers that a particular issue of controversy or dispute is of such public importance that a public inquiry is necessary, it can

propose a resolution to set up a tribunal of inquiry under the Tribunals of Inquiry (Evidence) Act, 1921.These tribunals are not permanent but are commissioned to investigate specific matters. They are usually chaired by judges or senior lawyers. On completion of the investigation, the tribunal submits a report to the Oireachtas, which may contain recommendations.

e. **Hong Kong** The Commissions of Inquiry Ordinance empowers the Chief Executive in Council to appoint at discretion one or more Commissioners referred to as a Commission to inquire into the conduct or management of any public body, the conduct of any public officer or into any matter whatsoever which is, in his opinion, of public importance: Cap. 86 Commissions of Inquiry Ordinance.

f. **Member States of the European Union** The EU carried out a comparative study on "Committees of Inquiry in National Parliaments" reporting in 2020. The study gathered information from 20 Member States' parliaments. The survey looked into the legal and administrative framework in which Parliamentary Committees of Inquiry (PCIs) operate in the EU Member States' parliaments. It focused on the investigative powers PCIs have at hand to assist national parliaments in exercising parliamentary control. The survey also examines the role of Member States' PCIs in guiding the action of the government, enhancing transparency and eradicating contraventions and maladministration. Most EU Member States' parliaments can set up PCIs, and the legal basis for their establishment is often enshrined in the Constitution. PCIs evaluate possible maladministration or corruption in the implementation of law by, in particular, requesting information and documentation from the government, administrative authorities, and, in some cases, private bodies, and by hearing witnesses or experts. The remit of PCIs at national level often covers everything in the "public interest" and therefore seems, at a first glance, broader than that of a PCI set up by the EU Parliament, the latter being competent to examine "alleged contraventions or maladministration in the implementation of Union law". In fact, instead of focusing on maladministration, many PCIs at national level often investigate large-scale scandals and catastrophes, such as financial crimes, corruption, paedophilia, smuggling and the reasons for mass tragedies. On the other hand, also in Parliament, PCIs have had a broad spectrum of investigations, focusing, for example, on racism and xenophobia, bovine spongiform encephalopathy (BSE) crisis, emission measurements in the automotive sector, money laundering and tax avoidance. However, many PCIs at national level cover also those fields of competence for which Parliament might establish a temporary special committee: Committees of Inquiry in National Parliaments - Comparative Survey.

Written Submission from Faculty of Advocates

Information about your organisation

The Faculty of Advocates is the regulatory and supervisory body for more than 450 self-employed Scottish Advocates. It ensures that the people of Scotland, regardless of wealth, background or location, have access to the very best independent, objective legal advice. The Faculty has been at the forefront of legal excellence since 1532 and regulates the training and professional practice, conduct and discipline of Advocates.

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

Assessing the effectiveness of a model requires measurement against an express or implied goal. Many (if not most) inquiries into adverse events have at their heart the twin objects of finding out what happened, and identifying steps that can be taken to prevent recurrence. Thus, in answering this question, we will assume that effectiveness is to be judged against these aims.

The primary reason for establishing an inquiry is likely to have been serious concern, felt either by the public generally or by a group of individuals who have been directly affected by a particular state of affairs. At a basic level, inquiries can be divided into those which relate to a specific incident or incidents (such as the Piper Alpha explosion, the shootings in Dunblane and the activities of Professor El Jamel) and those which relate to how a negative or harmful state of affairs arose and/or was handled by individuals and bodies with relevant responsibilities (the Edinburgh trams project, the COVID Inquiries).

In the former type of inquiry, the task of assembling a narrative is more contained and therefore easier to discharge. In the latter, the events of concern may have unfolded over a long period of time, as with the Scottish Child Abuse Inquiry, whose reference period has been taken as commencing on 1 January 1930. The analysis of how decades-long harms came about will be complex, and may be controversial. Characterisation of factors as causative may be disputed. The narrative is likely to take more time and effort to achieve. For something as fundamental as how a society cared for its children, however, such time and effort is an important contribution in itself to the recognition and permanent recording of suffering. Many would perceive a duty on the State to prepare a chronicle of such events. This aspect of the work of an inquiry must be borne in mind when ideas of value are being considered.

Turning to the other main core function, that of preventing recurrence, there may be inquiries into events whose repetition is unlikely or impossible, particularly where a substantial period of time has already passed and/or scientific developments have altered the factual context. In such circumstances, the need for a full narrative will take priority over notions of

prevention of recurrence. Even where no such background change has occurred, there may be a question of how far a particular series of events can or should provide a framework for general change. The need for critical analysis of whether the specific events investigated in an inquiry represent a useful pointer towards general change is ably discussed in Dame Janet Smith's lecture on her inquiry into the activities of Harold Shipman. Her suggestion that a parallel Department of Health review into the process of certification of death was a more useful mechanism for the identification of necessary changes than the public inquiry she chaired bears consideration.

Value for money is inevitably difficult to measure, across what is a disparate set of situations. If a narrative of troubling events can be assembled with reasonable expedition, and at not unreasonable cost, and is then accepted as independent and comprehensive, that would appear to represent value for money. But significant delay, or significant increase in cost, will jeopardise the public sense of value having been achieved. No less important is the distressing effect that delay, in particular, can have on those directly affected by the events concerned.

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

As already mentioned, part of the purpose of an inquiry is likely to be to document the event and how it happened. This may reflect the need for a society to come to terms with what has occurred, and to try to restore the confidence of citizens in their officials and institutions. This aspect of purpose is likely to be self-evident.

The remit is generally contained in terms of reference; these vary greatly in length and detail. Terms of reference appear to have been getting longer – in its 2017 Report 'How Public Inquiries can lead to Change', the Institute for Government analysed the word length of Terms of Reference for inquiries between 1990 and 2017. Sometimes the chair of an inquiry contributes to the drafting of terms. For the chair to have neither involvement in the drafting nor an opportunity of revision appears undesirable, given their overall responsibility for the task. There is also consensus that those affected as victims and their families should have input.

The increase in length of terms of reference probably reflects greater specification of the work to be undertaken. There is general belief that this is an improvement, but it is noteworthy that a succinct, general statement of purpose ('to inquire into and report on the event E on [date] and its causes, and make any observations or recommendations considered appropriate to try to prevent such similar events in future') underpinned both the Piper Alpha Inquiry and the Inquiry into the Dunblane shootings, neither of which was subject to significant cost or time overrun. Crafting broad terms may be more likely to avoid the need for extension; whilst updating terms of reference may be necessary, 'too much revision creates a drag on an inquiry'. It is likely that the most effective terms of reference are somewhere between the brief early

remits and the opposite exercise of trying to produce an exhaustive list, in advance, of every sub-topic the inquiry may need to examine.

Costs can be regularly reported, which provides some transparency as an inquiry progresses. Levels of remuneration paid to members of an inquiry team can be set from the start, and made publicly known. Of itself, however, such reporting does not afford any direct control over expenditure. We comment more fully on issues of cost and time overruns in our answer to question 4 below.

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

There is a considerable literature around the Inquiries Act 2005 and the related rules. We have not undertaken our own study of the legislative provisions, and would instead refer to the 2024 report of the specific investigation of the statutory provisions undertaken by the House of Lords Statutory Inquiries Committee referred to in answer 2 above. In Appendix 4 to its report, the House of Lords Committee re-examined the recommendations made in the 2014 report of the House of Lords Select Committee on the post-legislative scrutiny of the 2005 Act. It set out those recommendations alongside the response of the then government to them, before expressing its view of whether the recommendations remained appropriate. On 10 February 2025, the UK Government published its response to the 2024 Report, commenting:

The 2005 Act and the wider governance structure of public inquiries must be improved.

So far as concerns the particular recommendations for legislative change, we note the UK Government position:

While the Government cannot commit to making primary or secondary legislative changes at this time, it is actively considering whether wider changes are needed to the frameworks around inquiries, and will clarify whether it intends to implement these recommendations alongside wider reforms in due course.

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

The processes for setting and monitoring costs for public inquiries are largely matters for government. At a common-sense level, it is difficult to disagree with the inclusion of both a timeframe and a budget at the start. Adherence to such limits is a much more difficult issue.

In the context of project management, reference is sometimes made to the tension that exists among time, cost and quality. It is recognised that setting two of those three can lead to less control over the third. In the present context, if a report of quality is prioritised, with delivery to be achieved in a reasonably short timeframe, it may become more challenging to control cost. Moreover, given what may be at stake for individuals and organisations, the setting of what would be an appropriate cost is, at best, a highly subjective exercise.

Opinions differ on the wisdom of setting a timeframe. Repeated postponement of an anticipated delivery date may sap confidence in an inquiry, but refraining from setting any expectation for when an inquiry will report removes one tool for minimising delay. As the House of Lords Statutory Inquiries Committee observed in its 2024 Report:

When establishing an inquiry, the sponsoring Minister should consider including an indicative deadline in the terms of reference, keeping in mind the particular purpose and aim of the inquiry. A deadline should concentrate the efforts of the inquiry chair and secretariat, while also reassuring victims and survivors that redress is forthcoming. Inquiry chairs should aim to report within this time and must seek the permission of the Minister if they wish to exceed it (for example, in the event that the inquiry discovers evidence which leads to new lines of inquiry). Inquiries which are conducted more quickly will also be more cost-effective.

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

This is a practical question, to which it is difficult to give a single answer. Various steps can be taken in relation to participation, such as encouraging shared legal representation and participation only when issues relevant to a particular party are being explored. Having an inquiry team of sufficient size to allow conduct of hearings into one topic to take place at the same time as preparation of the next topic for hearings will maintain momentum.

There are differing views of the need to entrust inquiries to judges, serving or retired. The independence brought by judges is plainly of much importance. We would also observe that, with long experience of interrogating facts, judges are well-equipped to formulate a detailed narrative. This itself contributes to effectiveness.

Also of assistance is the publication of one or more interim reports. These can fulfil two distinct practical purposes. Firstly, the preparation by the Inquiry Team of an outline narrative, based on contemporaneous documents and expressed in neutral terms, can reduce the need for extensive oral hearings to ascertain what happened. Reference to documents can be advantageous when compared with mere recollection, which may be faulty. Secondly, an interim report may identify changes which are urgently required to systems or processes to prevent recurrence and/or offer staggered publication of inquiry conclusions.

The current Finance and Public Affairs Committee inquiry will assist in identifying and discussing practical methods of achieving cost effective processes.

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

Before addressing the implementation of inquiry recommendations, we offer comment on the earlier stage of the composing of such recommendations. For recommendations to be implemented, they require to be well-informed and deliverable. Depending on how technical the subject-matter of an inquiry is, a non-specialist chair may need other independent input at this point.

It may be that the actual exercise of framing recommendations could be separated from the fact-finding stage. This was the approach taken by Lord Cullen in the Piper Alpha Inquiry. His inquiry led to significant changes in the arrangements made to try to ensure the safety of people working offshore. It is noteworthy that in a paper published on 6 July 2018, The Chemical Engineer described Lord Cullen's work as a 'truly outstanding report'. In Chapter 2 of Volume 1 of that Report, Lord Cullen records the considerable technical input utilised in the inquiry.

There are other methods of generating workable recommendations. In its report, at pages 23 to 24, the Institute for Government describes the use of seminars, an approach which it describes as having 'broadly positive results'. In particular situations, it may be that composing detailed recommendations should be entrusted to a different organisation or body, particularly if a recommendation to provide redress for victims forms part of the conclusions of the inquiry.

Broadly speaking, the implementation of recommendations will be primarily the responsibility of government. It may be that there are good reasons for not implementing particular recommendations but, if so, an explanation of what those are would promote transparency, in line with the focus of question 2 above. We also observe that the UK COVID Inquiry has requested that each institution responsible for each accepted recommendation publishes the steps it will take in response and the timetable for doing so.

Implementation can be monitored by those who were involved in the inquiry, by a separate body entrusted with the role or by a parliamentary committee. The last of these ideas is regularly mentioned. How this could be achieved in Scotland is a matter of both policy and practicality, on which the Faculty does not comment further.

7. What alternatives to the current model of public inquiries should be considered when particular events have, or could cause, public concern? Are there examples of good practice from other countries that Scotland could learn from?

It may assist to differentiate an inquiry under the Inquiries Act 2005 from other inquiries or reviews, some of which may also justify the description ‘public’. Sometimes these may take place under other legislation, or they can be ad hoc. Some may include public hearings, while others may involve interviews or meetings. It is of interest that the 2024 House of Lords Committee report concluded that the 2014 recommendation that inquiries should normally be held under the 2005 Act should be discarded, saying:

The Committee has heard evidence suggesting that there can be many benefits to non-statutory inquiries. Therefore, the Committee does not feel the need to press this recommendation.

Perhaps most obviously in discussion of other modes of inquiry in Scotland, there is the Fatal Accident Inquiry. The holding of an FAI is mandatory in some circumstances and discretionary in others. There can be controversy around the decision to hold (or not hold) a discretionary inquiry, and disappointment at how long it may take for the inquiry to begin. But the process, and the parameters of the outcome, are understood.

There are also inquiries in other areas of activity, notably in relation to planning and the environment. Though these will address prospective development, rather than past events, they may also be addressing issues that cause concern. They will offer an opportunity for those with an interest to be heard.

This question also asks about examples of good practice from other countries. Though we are aware of some initiatives in other countries, the limited research we can conduct on how these were received reveals a complex picture, with no inquiry or review attracting universal praise. We therefore mention only an example from within Scotland, namely the investigation carried out by the late Professor Alison Britton into the prior review of effects of mesh implants. This was well received, and widely praised.