



FACULTY OF ADVOCATES

Response to Scottish Parliament's Finance and Public Administration Committee Inquiry into the Cost-Effectiveness of Scottish Public Inquiries

The Faculty of Advocates is grateful for the opportunity to contribute to the examination by the Scottish Parliament's Finance and Public Administration Committee of the cost-effectiveness of Scottish public inquiries. Individually and collectively, members of Faculty have extensive experience of such processes, going back over many years.

We answer the questions posed by the committee as follows:

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.¹ 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 2017.² 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

¹ <https://www.gresham.ac.uk/watch-now/public-inquiries-the-shipman-inquiry>

² [How public inquiries can lead to change](#). See figure 3, at page 14 of the Report, where the increase is presented as a graph.

appears undesirable, given their overall responsibility for the task. There is also consensus that those affected as victims and their families should have input.³

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'.⁴ 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.⁵ 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.⁶

³ See, for example, the IFG report at page 15 and the reiterated recommendation 11 in the House of Lords Statutory Inquiries Committee 2024 Report, [Public inquiries: Enhancing public trust](#).

⁴ Institute for Government addendum to its 2017 Report 'How Public Inquiries can lead to Change', addendum set out at <https://www.instituteforgovernment.org.uk/article/comment/inquiry-everyone-forgot>

⁵ The Inquiry Rules 2006 and the Inquiries (Scotland) Rules 2007.

⁶ [UK Government Response to House of Lords Statutory Inquiries Committee Report](#)

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.⁷

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.⁸ 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.⁹

⁷ Ibid, at page 3 of 11

⁸ Contemporary inquiries require complex infrastructure, with many ongoing costs. In itself, delay will thus generate increased spending. To spend more in order to achieve expeditious conclusion may be more cost-effective. This appears to be the point made in the quote that follows.

⁹ [Public inquiries: Enhancing public trust](#) at paragraph 59.

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'.¹⁰ In Chapter 2 of Volume 1 of that Report, Lord Cullen records the considerable technical input utilised in the inquiry.¹¹

¹⁰ <https://www.thechemicalengineer.com/features/piper-alpha-the-disaster-in-detail/>

¹¹ <https://www.hse.gov.uk/offshore/piper-alpha-disaster-public-inquiry.htm>

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.¹²

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.¹³ 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.¹⁴

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

¹² <https://covid19.public-inquiry.uk/recommendation-monitoring/>

¹³ See, for example, chapter 4 of the IFG report and chapter 4 of the House of Lords Committee report; notes 2 and 3 above respectively.

¹⁴ Appendix 4, Table 1

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.¹⁵ This was well received, and widely praised.

Edinburgh, May 2025

¹⁵ Professor Alison Britton, June 2023 [Transvaginal Mesh Case Record Review](#)