Cost-effectiveness of Scottish public inquiries – Summary of written evidence

Background

1. The Finance and Public Administration Committee launched an inquiry into the cost-effectiveness of Scottish public inquiries in April 2025. As part of its evidence gathering, the Committee held a call for views between 4 April and 9 May 2025. The list of questions asked in the call for views is attached in the annexe to this paper.

2. The Committee's call for views received 15 responses, from both organisations and individuals, which have been published on the Scottish Parliament's consultation platform.

3. This paper summarises the key issues raised in the responses to the call for views and is intended to support the Committee's evidence sessions on the inquiry and subsequent report.

4. A number of submissions point to recommendations made by the House of Lords Statutory Inquiries Committee in 2024. That Committee was appointed by the House of Lords "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). Its recommendations were highlighted by stakeholders as being particularly relevant to the purpose of this inquiry.

Introduction

5. In her submission to the Committee, Dr Emma Ireton, Associate Professor of Law at Nottingham Law School, Nottingham Trent University, specialising in public inquiry law and procedure, states that—

> "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."

6. Dr Ireton categorises inquiries into three types, with many inquiries taking a hybrid form, requiring different approaches across different tasks or phases:

   - 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

- 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.
- 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.

7. The Faculty of Advocates divides inquiries into "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)."

Current model and legislative framework

8. Since 2007, Scottish public inquiries have been established under the (UK-wide) Inquiries Act 2005. Inquiries must also comply with procedural rules, which are set out in The Inquiry Rules 2006 (for inquiries set up by UK Ministers) and the Inquiries (Scotland) Rules 2007. The Committee sought views on the adequacy of the current legislative framework and decision-making processes.

9. In its response to the 2024 Report, the UK Government stated that: "The 2005 Act and the wider governance structure of public inquiries must be improved".

10. Dumfries and Galloway comments, in its submission to the Committee, that

> "There is a lack of clarity as to what public inquiries can achieve. This is not altogether surprising given the objects of the 2005 Act: "to make inquiries swifter, more effective at finding facts and making practical recommendations and less costly, while still meeting the need to satisfy the public's expectation for a thorough and wide-ranging investigation." The Act is supposed to make inquiries swifter, but also to satisfy public expectations for a thorough and wide-ranging investigation. Accordingly, there is an inherent tension in these objects, which renders it imperative that Ministers adopt a highly proactive role in relation to TORs [Terms of Reference], with particular emphasis on indicative timetabling, deadlines and production of interim reports."

11. Dr Ireton notes that "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')".

12. She adds that "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", and that "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".

13. Dr Ireton highlights the following issues affecting public inquiries:

- Lack of clarity over role and mission creep
- 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")
- Adversarialism ("often driven by public and participant expectations, legal culture, and uncritical repetition of previous inquiry practice without sufficient reflection")
- Lack of central repository for best practice
- Poor engagement from government departments and public bodies
- Failure to implement recommendations

14. She argues that "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."

15. Gillian Mawdsley comments that "when it works, the public inquiry system can be very effective". She provides the example of the Ibrox Disaster, which led to a public inquiry with recommendations that were implemented through the Safety at Sports Grounds Act 1975. She highlights, however, that the current system requires reform. Setting a clear remit and accounting publicly for the expected length and timescales at the start of an inquiry are crucial. "There must be a much greater and clearer outline of roles and function of any public inquiry with much effective management of expectations. Whether that needs to be contained within legislation is not certain or issued by way of guidance is a matter for discussion".

16. The Law Society's view is that "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." In addition to more general recommendations explored later in this paper, the Law Society highlights in particular issues with "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." It adds that the "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."

17. Dr Ireton's submission highlights that statutory inquiries, with their powers of compulsion, are increasingly seen as the 'gold standard', with non-statutory inquiries viewed "with suspicion and as an attempt to avoid scrutiny or accountability". She suggests that "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."

18. Dr Ireton recommends:

    - replacing the mandatory warning letter process with a discretionary process,
    - simplifying the procedure for expenses, and
    - 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.

19. Glasgow City Council adds that "the legislative framework for public inquiries in Scotland could benefit from certain updates to improve flexibility, transparency, and efficiency. Key improvements would include: Clearer criteria for establishing inquiries; a more flexible and streamlined decision-making process, especially for urgent or high-profile cases; stronger oversight from Parliament and independent bodies and more timely, transparent, and publicly accountable inquiry processes".

Assessing value and cost-effectiveness

20. The Law Society states that "it is difficult to assess the effectiveness of the current model unless parameters or goals are set in the ToR [Terms of Reference] which provide for a means to make such an assessment." The Law Society highlights paragraph 13 in the 2024 Report: "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."

    The Faculty of Advocates notes that ToR appear to have been getting longer, which "probably reflects greater specification of the work to be undertaken". It highlights the succinct, general statement of purpose underpinning the Piper Alpha and Dunblane inquiries, "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."

21. Dumfries and Galloway Council warns that pre-terms of reference "analytical submissions and argument involving core participants should not favour forensics at the expenses of empathy."

22. Dr Ireton notes that "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." She adds that public expectations over an inquiry's ability to deliver accountability, justice, catharsis, and redress are increasingly unrealistic,

> "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."

23. Expectation management, public trust and the appropriateness of a particular type of inquiry is raised in several submissions. Gillian Mawdsley stresses "recognition that the inquiry is not going to be a panacea for all wrongs is vital." Her submission also highlights guidance in the Explanatory Notes to the 2005 Act, which states that "the non-statutory position adopted in recent inquiries has been for the Minister to decide, in consultation with the chairman, to fund those participating in the inquiry who are considered to have such a direct interest in the inquiry that they require representation but who may be unable to pay for representation themselves. […] The chairman automatically has the power to pay costs, but the Minister can place qualifications on that power. The Minister will generally set out any broad conditions under which payment may be granted, and the chairman will then take the individual decisions."

24. The number of core participants is generally highlighted as a major cost driver, and "funding awards for legal representation often form the most significant part of the total cost of an inquiry." (Dr Ireton's submission).

25. The Law Society highlights that the final cost figures for inquiries do not include the costs to government departments r other public bodies, which will have to bear their own expenses, including instructing counsel, solicitors and officials.

26. As also highlighted by NHS National Services Scotland (NSS), “inquiries are resource intensive for participants, both financially and in terms the time and resource required to assemble and share documentation and in attending to give evidence.” Its submission shows that NSS has spent £3.1 million since 2021/22 in responding to public inquiries. Their Central Legal Office (CLO) have provided around £9 million in legal services to NHS Scotland Boards for public inquiries since 2021, including the cost of Counsel.

27. A related point is made by Gillian Mawdsley, who argues that “value for money can only be assessed if its total monetary expenditure can be quantified and the figures are transparent which they are not”. She adds that the available figures on inquiry costs only outline “the tip of the iceberg”. Hidden costs include an overlap with business as usual and the existing funding for services such as the Crown Office and Procurator Fiscal Service (COPFS) and the Scottish Courts and Tribunals Service (SCTS) (“the fact that a judge and indeed their staff may not be available for other work, such as civil or criminal business, causing delay”).

28. Further, “value for money can be assessed in discerning its inquiries’ impact-where the effect of the public inquiry has resulted in change”. Changes must be seen in public interest terms and not just that of the bereaved relatives, and recommendations must be effected, with measurable impact. Too often, she notes, “no changes are accepted and where they are, they are not undertaken in a timely manner, leading to public dissatisfaction and erosion of confidence.[…] Accordingly, the holding of the public inquiry must be seen and understood as a proportionate response to the circumstances being examined that arose. It must achieve that balance at the outset or too often it will then go on fail the test of public (as opposed to the family) opinion. It should resist any external pressures to hijack the inquiry while seeking to reassure and promote the confidence of those that lie at the heart of the inquiry.”

29. A number of submissions suggest setting clear budgets to control costs. One submission (David Mitchell) argues that Chairs should be remunerated on a fixed rate deal with incentives for timely reporting, with legal representation remunerated at a lower rate than formal court appearance and reduced rates where there is an overrun in time.

30. Orkney Islands Council states, in its submission, that “public inquiries are not effective and do not deliver value for money for Scottish tax payers […] results impact in general a minority, and the cost of the enquiry is paid by the majority”. It suggests that “if public enquires continue a clear business justification exercise should be undertaken to assess the balance of quantitative and qualitative outcomes vs the cost and time inputs make the enquiry justifiable for the whole of Scottish taxpayers.”

31. Dumfries and Galloway Council argues that “the fact that prescriptive budgeting could be viewed as eroding the independence of the inquiry, should not serve to

excuse procurement best practice being followed to maximise cost savings on hardware, software and office supplies and full advantage should be taken of the potential for remote hearings, where apposite, and reduction in hard copy paper trails."

32. Roger Mullin in his submission emphasises that "in the world of either major businesses or academia, a detailed review of project delays or failures would never be expected to take so long or be so expensive. In the world of business, learning lessons would have to deliver results in far shorter time." He adds that "inquiries appear to operate on what construction companies would understand as a "time-on-line" contract, where the contractor is paid based on the time spent on the project and the cost of materials used. But where companies would usually have very detailed reporting, negotiating and agreement required as part of such a contract, inquiries lack such rigour. The unintended consequence of this is that individuals and legal firms, paid on the basis of their time involved in an inquiry, have no incentive to be as efficient as possible and indeed will get rewarded from the public purse by maximising their time involved."

33. The Law Society, however, argues that "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." Its submission highlights provisions in the 2005 Act providing a framework for controlling costs

34. Dr Ireton states that "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." Instead, she suggests that cost-effectiveness can be achieved with:

    - Clarity of purpose and proportionate design
    - Flexible procedural framework
    - Transparent cost and timetable management
    - System-wide learning and oversight

35. John Sturrock KC suggests that "some sort of oversight of and support for the conduct of public inquiries - possibly by an independent regulator - would be beneficial, not least to inquiry chairs. […] The balance between chair independence from external interference and value for public money is a delicate one."

Transparency

36. Most submissions reflect the view submitted by NHS Ayrshire and Arran, that—

> "Purpose, terms of reference and remit are often clear at the outset but timescales, costs and effectiveness with regard to implementation of recommendations can be unclear and drift with no apparent rationale and accountability."

37. Optometry Scotland adds that "greater consistency in structure and timescales could support more effective follow-through, particularly in sectors like healthcare where delays can affect both service delivery and patient experience" and calls for:

    - Broader consultation with relevant stakeholders such as professional bodies, where inquiries impact specific services, including healthcare
    - Clearly defined terms of reference from the outset, with measurable aims
    - Regular public updates on cost and progress, to maintain confidence and encourage shared learning across sectors.

38. Dr Ireton states that "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. […] 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."

39. In addition, "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."

40. The Law Society uses the Scottish Covid-19 inquiry pre-establishment process as a case study of transparency around the purpose and remit of an inquiry. It explains that "preparatory work for the establishment of the Inquiry was well planned", including public engagement and consultation and the setting of Terms of Reference (ToRs) including 12 areas of investigation. The ToRs, initially published on 14 December 2021, were subsequently revised on 9 June 2022 and again on 28 October 2022, following the replacement of Lady Poole as Chair of the Inquiry with the Hon. Lord Brailsford.

41. The Law Society adds that "The key to effectiveness of any public inquiry depends significantly upon the preservation and availability of relevant information", with that "the deletion of this data as part of the public record […]

will reduce the efficacy of those Inquiries and unless the deletion of such data is prohibited by law of future Inquiries too."

42. Commenting on the establishment of inquiries, Roger Mullin highlights the proposal made by the Public Administration and Constitutional Affairs Committee of the UK Parliament in its report of March 2017 reflecting on the Chilcot Inquiry, that: "In future, there should be a full debate and vote on an amendable motion, setting out the precise terms of reference, an estimated timeframe and a proposed budget for the Inquiry. Before such a debate, Parliament should establish an ad-hoc Select Committee to take evidence on the proposed remit and to present formal conclusions and recommendations to the House."

Implementation of recommendations

43. As suggested by Dumfries and Galloway Council in its submission, "too often inquiries are failing to meet their aims because inquiry recommendations are not subsequently implemented, despite being accepted by the Government, which often faces significant implementation challenges due to cost constraints, feasibility issues, and resistance from stakeholders. Weak enforcement mechanisms and shifting government priorities mean that many proposals are delayed, watered down, or ignored."

44. Dr Ireton notes that there is no formal mechanism in Scotland to ensure that recommendations are implemented, with follow up often falling to survivors, families, and campaigners. She suggests that "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".

45. Additionally, "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." She suggests a number of potential oversight mechanisms, including:

    - 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
    - Existing publicly funded audit offices
    - Parliamentary oversight committees
    - Scrutiny and implementation monitors

46. The suggestion of an online tracker to monitor the implementation of recommendations is supported by most submissions and was also raised in the 2024 Report.

47. The Faculty of Advocates suggests that the actual exercise of framing recommendations could be separated from the fact-finding stage, as was the case with the Piper Alpha inquiry. “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.” The Faculty adds that, while implementation will be primarily the responsibility of government, it could be monitored by those who were involved in the inquiry, by a separate body entrusted with the role or by a parliamentary committee.

48. John Sturrock KC recommends that a Parliamentary Committee or statutory body could be established to oversee implementation of recommendations, with annual reviews of progress, while NSS suggests setting up oversight and assurance groups such as the one set up by the Scottish Government after the UK Infected Blood inquiry to review the implementation of recommendations.

49. Most submissions agree that a requirement could be introduced for Government and public bodies to report on the implementation of recommendations by a specific deadline, including an explanation where a recommendation is not being accepted or no action is being taken.

Suggestions and potential improvements to the current model

50. Several submissions highlight recommendations made in the 2024 Report to improve the effectiveness of public inquiries. The Law Society suggests Ministers should consider:

- 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;
- 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;
- including an indicative deadline for the final inquiry report in the terms of reference (with ministerial approval to extend the deadline); and
- 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).

Format

51. Dr Ireton highlights a “growing concern that too many inquiries default to overly legalistic, forensic models, even where a thematic approach would be more proportionate and cost effective.” John Sturrock KC adds—

> “The emphasis on a judicial, detailed forensic approach can, it seems, lead to an overly legalistic approach generally. This is understandable if the chairs are judges whose experience is of the adversarial court system and if the main advisers and representatives are lawyers familiar with that system.” He further explains “"it is almost always the case that a senior judge, usually but not always nearing retirement, is appointed as chair. There are good reasons for this of course: independence, experience, authority, ability to absorb and analyse detail. But what other skills might be needed for these extraordinary exercises? Subject-matter expertise? Ability to cut through detail and identify key points? Delegation? Management of time? What about facilitation or inquisitorial skills, the ability to draw out the real underlying issues, key differences and common ground quickly, in a non-confrontational environment? Should the pool for possible chairs be expanded? Or, at least, might there be a case for specialists, with differing skills, to co-chair?”

52. Scottish inquiries tend to be led by judges and Gillian Mawdsley comments that “Judges are well placed to provide conclusions following their fact finding […] They do represent that necessary independence which is required but they may not be the best placed on all circumstances to make recommendations - as they do need, as the article above highlights, to recognise the culture in which the recommendations need to sit.” Her submission also highlights other recommendations considered by the House of Lords in their 2024 Report, such as the use of hearing rooms and pen portraits for better engagement with those affected.

53. In practical terms, the Faculty of Advocates also suggests “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”.

54. David Mitchell comments that “most of the big findings” could be captured more quickly by reasonably competent “facilitators” rather than the typically lengthy courtroom style enquiry, being led by the legal profession.” He adds that the objective should be to learn lessons, with any legal liabilities investigates as a separate activity to the immediate need to capture improvements. A tighter setting of the initial scope would help capture findings in a reasonable length of time. Some of the findings surfacing during the inquiry could be followed by the main organisation under scrutiny (Health Board, Local Authority), rather than as part of the inquiry itself. “Any such issues could be formally handed off for Organisational review against a timeline set by the Enquiry Chair and / or Government.”

55. He further suggests considering whether, for some topics, inquiries could be chaired by other professionals from different part of the country (“Could a CEO from one Health Board be a chair for an Enquiry that involves another? You might also consider a different construct involving say a Committee of “retired

professionals" who could act more like a jury who could be allowed to ask questions").

Timescales

56. Dr Ireton argues that "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."

57. The Law Society suggests that "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."

58. The Faculty of Advocates adds that "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 […] Inquiries which are conducted more quickly will also be more cost-effective."

59. As evidenced above, many submissions support the use of a defined timescale and budget envelope at the outset of a public inquiry. Optometry Scotland argues that, while maintaining independence is crucial, it does not preclude cost-conscious planning. Suggestions for improvement include

    - Leveraging professional bodies and sector expertise to inform inquiry work more efficiently
    - Incorporating defined, time-limited phases with progress reviews to maintain pace
    - Ensuring transparency around both methodology and expenditure to reinforce public trust

60. In addition, Roger Mullin raises concerns in relation to the impact of the Maxwellisation process (a convention whereby individuals criticised in official reports have the right to see and respond to criticisms before publication) on costs and timescales of public inquiries.

Interim reports

61. The publication of interim reports, as recommended by the House of Lords 2024 Report, is supported by most submissions. As explained by the Faculty of Advocates, "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."

Duplication and learning

62. The Law Society submission highlights the following statement from the House of Lords Select Committee 2014 report on 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."

63. It suggests that "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." It further suggests that following guidance issued by the UK Government Inquiries Unit and the creation of "Lessons learned" papers could contribute to cost-effectiveness by ensuring inquiries do not "reinvent the wheel".

64. Dr Ireton also highlights that "there is no structured mechanism for capturing, analysing, and disseminating learning, meaning good practice is lost and poor practice may be repeated". Inquiries, she notes, "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", with the creation of a Central Inquiry Hub/Centre for Excellence suggested as a "central repository of learning and procedural innovation."

65. Several submissions raise concerns regarding duplication where there are separate UK and Scotland inquiries covering the same topic, and NHS Ayrshire and Arran comments that "it may be valuable going forward to ensure that consideration of any Scottish Public Inquiry takes specific and deliberate account

of any UK wide inquires on the same subject matter to be clear what the value is of establishing a separate Scottish Inquiry".

66. In addition to the above, Glasgow City Council makes a number of suggestions for further improvement of the public inquiry model, including

    - Project management techniques to track progress and ensure efficiency
    - Strategic use of technology and streamlined processes to reduce administrative overheads
    - Clear accountability structures to ensure that cost management is effectively carried out.

67. NSS suggests that an independent advisory body could be established to support Parliament in deciding whether a public inquiry should be held. Such a body, it explains, "could advise on inter alia the risks and opportunities a public inquiry could offer in the circumstances involved, and opportunities for lessons learned. They could consider whether public inquiries would be effective and value for money in the circumstances, collate evidence from previous investigations to consider whether there would be benefits from a public inquiry being held, and advise Parliament accordingly. Such a body could also support the administration of public inquiries to ensure consistency of approach and conduct in inquiries, holding inquiries to account for their conduct, and providing oversight over costs incurred".

Alternative models of inquiries in Scotland

68. The Centre for Effective Dispute Resolution, quoted by Dumfries and Galloway Council, highlighted that "best practice in how an Inquiry is run does not differ on whether it is a statutory or non-statutory inquiry."

69. The Law Society notes that whilst most inquiries in Scotland are carried out under the Inquiries Act 2005, some take place under ministerial or parliamentary authority. Their submission provides an example of inquiry which was Ministerial in origin and approved by the Parliament: "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".

70. As explained further in the Law Society's submission, alternatives to Scottish inquiries under the 2005 Act 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

71. Gillian Mawdsley also suggests considering the role of Fatal Accident Inquiries (FAIs), "a process unique to Scots Law of investigating deaths, though somewhat arcane", conducted by the judiciary at the instruction of the Lord Advocate. Her submission explains that FAIs, which are governed by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016, have a narrower remit, but could have been conducted in cases such as Piper Alpha or Sheku Bayou. In the case of Dunblane, for example, both an inquiry and an FAI were held. She warns the public inquiry process may be further complicated by the Scottish Government proposal to introduce a form of inquiry as a domestic homicide or suicide review, under part 2 of the Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill.

72. John Sturrock KC provides the example of a review he was commissioned to conduct into bullying and harassment in NHS Highland as an alternative to larger scale public inquiries. The review was commissioned in December 2019, with the report submitted in March 2020 and published in May 2020, at a cost of less than £150,000 and led to a number of changes within NHS Highland.

73. Alternatives are also suggested by Glasgow City Council, while noting that "the traditional public inquiry model remains a powerful tool for examining significant events or issues of public concern". Alternative approaches include:

- Independent reviews for quicker, more focused investigations.
- Parliamentary committees to enhance political accountability.
- Public hearings or citizen assemblies for direct public engagement.
- Media-driven or expert-led investigations for faster results.
- Hybrid approaches combining public inquiry and parliamentary oversight.

74. Optometry Scotland suggests the use of co-designed review panels that involve professionals and service users proportionately as an alternative to public inquiries.

International models

75. The submissions received by the Committee note that other countries in the Commonwealth face similar challenges in relation to public inquiries, and no single 'perfect' model was identified. As highlighted by Dr Ireton, "Scotland's current system also has strengths worth preserving" and "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".

76. Dr Ireton's submission highlights Australia as an example that offers a strong model for scrutiny of implementation of inquiry recommendations. She explains that, in Australia, "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." Public inquiries in Australia also face less intense public and political pressure to broaden their remit and expand participant roles, and the use of clear terminology defining the focus of the inquiry (policy, forensic or truth-telling) helps to support public understanding of the inquiry's role.

77. New Zealand introduced reforms in 2013, creating a tiered system of statutory inquiries: government inquiries, public inquiries, and Royal Commissions. Dr Ireton explains that "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".

78. In addition to the examples above, the Law Society's submission also highlights the examples of—

- Canada - 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.

- Ireland - 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. They are usually chaired by judges or senior lawyers.

- 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.

- Members States of the European Union - Most EU Member States' parliaments can set up Parliamentary Committees of Inquiries (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 Law Society notes that the remit of PCIs at national level often covers everything in the “public interest”, however, “instead of focusing on maladministration, many PCIs at national level often investigate large-scale scandals and catastrophes”.

79. South Africa’s Truth and Reconciliation Commission model for sensitive societal healing and Finland’s ongoing parliamentary oversight model are also suggested by Glasgow City Council as international examples Scotland may benefit from.

Committee Clerking Team
May 2025

ANNEXE

Cost-effectiveness of Scottish public inquiries

Call for views

There were 7 questions in the 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?