OFFICIAL REPORT
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Finance and Public Administration Committee

Tuesday 7 October 2025

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 7 October 2025

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FINANCE AND PUBLIC ADMINISTRATION COMMITTEE
27th Meeting 2025, Session 6

CONVENER

*Kenneth Gibson (Cunninghame North) (SNP)

DEPUTY CONVENER

*Michael Marra (North East Scotland) (Lab)

COMMITTEE MEMBERS

*Ross Greer (West Scotland) (Green)
*Craig Hoy (South Scotland) (Con)
*John Mason (Glasgow Shettleston) (Ind)
*Liz Smith (Mid Scotland and Fife) (Con)
*Michelle Thomson (Falkirk East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Peter Drummond (Royal Incorporation of Architects in Scotland)
Jonathan Henderson (Scottish Fire and Rescue Service)
Patrick McGuire (Thompsons Solicitors Scotland)
Ivan McKee (Minister for Public Finance)

CLERK TO THE COMMITTEE

Joanne McNaughton

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Finance and Public Administration Committee

Tuesday 7 October 2025

[The Convener opened the meeting at 09:00]

Subordinate Legislation

Scottish Aggregates Tax (Administration) Regulations 2025 [Draft]

Revenue Scotland and Tax Powers Act (Postponement of Tax Pending a Review or Appeal) Amendment Regulations 2025 [Draft]

Revenue Scotland and Tax Powers Act (Record Keeping) Amendment Regulations 2025 [Draft]

The Convener (Kenneth Gibson): Good morning, and welcome to the 27th meeting in 2025 of the Finance and Public Administration Committee.

Agenda item 1 is an evidence session with the Minister for Public Finance in relation to three draft affirmative instruments on administration of the Scottish aggregates tax. I intend to allow around 20 minutes for this evidence session.

The minister is joined today by two officials: James Lindsay, tax design lead, Revenue Scotland; and Jonathan Waite, aggregates tax bill team leader, Scottish Government. I welcome our witnesses to the meeting and invite the minister to make a short opening statement.

The Minister for Public Finance (Ivan McKee): Good morning. The Scottish Government's intended introduction date for the Scottish aggregates tax is 1 April 2026. That is subject to the successful introduction of secondary legislation in Scotland and to United Kingdom Government legislation to disapply the UK aggregates levy in Scotland.

When the Scottish aggregates tax is introduced, Revenue Scotland, which is Scotland's tax authority for devolved taxes, will be responsible for its collection and management. That is why, in addition to the Scottish Government, Revenue Scotland is represented at this evidence session. Although Revenue Scotland might provide evidence and technical insight today in its capacity as a non-ministerial office, its attendance reflects the collaborative approach that is being taken to support the successful implementation of the tax.

As part of on-going work to commence the Aggregates Tax and Devolved Taxes Administration (Scotland) Act 2024, the three Scottish statutory instruments make provision that is required for the practical operation of the Scottish aggregates tax. That includes the provision that is required to ensure that Revenue Scotland has the power, but is not subject to any duty, to operate the register of taxpayers for the Scottish aggregates tax and can undertake voluntary registration of taxpayers from 1 December 2025.

The Scottish Government has engaged extensively with stakeholders on the regulations. We held a public consultation earlier this year on the proposed administration regulations for the Scottish aggregates tax, including the three draft SSIs that are before the committee. My officials engaged with the Scottish aggregates tax expert advisory group on the proposed administration regulations. Established in January 2023, the group has provided expertise in forming the primary legislation and continues to provide expertise on preparations for the implementation of the Scottish aggregates tax, including all secondary legislation.

The SSIs that are under consideration today include the draft Scottish Aggregate Tax (Administration) Regulations 2025, which make provision for the administration and assurance of the Scottish aggregates tax by, for example, setting out permitted methods for determining the weight of aggregate. The regulations also make provision for making returns in respect of accounting periods and for payment of tax, and in relation to claiming tax credits and payment of tax credits.

The draft Revenue Scotland and Tax Powers Act (Record Keeping) Amendment Regulations 2025 make provision for the records that must be preserved by registrable persons and certain parties made exempt from registration under the Aggregates Tax and Devolved Taxes Administration (Scotland) Act 2024.

The draft Revenue Scotland and Tax Powers Act (Postponement of Tax Pending a Review or Appeal) Amendment Regulations 2025 provide that, where a reviewer appeal is in progress, a taxpayer may make an application to Revenue Scotland to postpone payment of tax, penalties or interest in relation to a liability for Scottish aggregates tax or for Scottish landfill tax.

The intention behind the instruments is to support Revenue Scotland's effective and efficient administration of Scottish aggregates tax, which will contribute to the delivery of high-quality and

sustainable public services. I am happy to take questions.

The Convener: As no member on the committee has any questions, we move to item 2, which is formal consideration of the motions on the instruments.

Motions moved,

That the Finance and Public Administration Committee recommends that the Scottish Aggregates Tax (Administration) Regulations 2025 [draft] be approved.

That the Finance and Public Administration Committee recommends that the Revenue Scotland and Tax Powers Act (Postponement of Tax Pending a Review or Appeal) Amendment Regulations 2025 [draft] be approved.

That the Finance and Public Administration Committee recommends that the Revenue Scotland and Tax Powers Act (Record Keeping) Amendment Regulations 2025 [draft] be approved.—[*Ivan McKee*]

Motions agreed to.

The Convener: I thank the minister for his evidence today. We will publish a short report to the Parliament, setting out our decision on the instruments.

I suspend the meeting for two minutes to allow our witnesses to leave.

09:06

Meeting suspended.

09:10

On resuming—

Building Safety Levy (Scotland) Bill: Stage 1

The Convener: I refer members to my entry in the register of members' interests.

The next item on our agenda is an evidence session on the Building Safety Levy (Scotland) Bill. I welcome to the meeting Jonathan Henderson, assistant chief officer and director of prevention at the Scottish Fire and Rescue Service, and Peter Drummond, trustee of the Scottish Incorporation of Architects in Scotland and chair of its practice committee. We have around 90 minutes for this evidence session.

I thank you both for your written submissions. I would like to ask Mr Drummond about his submission. The content was excellent, but the size of the typing was a wee bit small for my liking—I had to get the magnifying glass out. In it, you said:

"Whilst Scotland's more robust regulatory framework has helped limit the extent to which we are affected, there nonetheless exist a significant number of cases where householders find themselves facing very significant remediation costs through no fault of their own."

Can you give us some examples of that?

Peter Drummond (Royal Incorporation of Architects in Scotland): I must tread slightly carefully, in as much as several of those cases are the subject of legal action at the moment and therefore there is a limit to how much detail I can go into.

I can tell committee members that, with alarming regularity, cases cross my desk and those of my colleagues at the RIAS that involve perhaps 50 to 120 houses, mainly in the big cities. They are typically medium-rise houses, and some are in what I would call the lower end of the high-rise, high-risk category, in which the original developers have treated the Scottish building regulations as if they were a mere serving suggestion. In one recent case, closer to home, householders would be potentially facing remediation bills in excess of £50,000 to £70,000 per unit, were it not for the remediation scheme.

We tend to find in such cases that the mortgages cannot be extended and the properties are in essence unmortgageable—or unremortgageable, if you will excuse my bad English. Those householders are in an invidious position.

Moreover, once we remove the cladding and go beyond the most obvious problems that one might expect of a building covered in, frankly, solid

petrol, we find that there are other problems. Fire barriers may be missing, fixings may be inadequate, and intumescent fire protection to steelwork may also be missing.

Those problems come up with alarming regularity, and I should note in passing that they affect not only private housing. It is not uncommon to see hotels and, unfortunately, buildings such as halls of residence with the same problems. It is an endemic problem that will take many years to resolve.

The Convener: Mr Henderson, do you also find that to be the case?

Jonathan Henderson (Scottish Fire and Rescue Service): Peter Drummond and I work in slightly different fields and come at this from slightly different angles, but we share his concerns. When we carry out regulatory inspections of buildings, we see many of the issues that he has outlined. I am not familiar with the level of detail or the number of buildings involved in the cases that Peter refers to, but I share his concerns.

The Convener: In your submission, you say that

"the costs of remediating dangerous cladding and other defects in and on residential buildings"

should not

"fall on leaseholders, occupiers or taxpayers. This is consistent with the 'polluter pays' principle."

However, the bill intends to raise only around 15 per cent of the cost of remediation, or about £30 million a year. The rest will come from the central capital programme, which obviously—and understandably—means that it cannot be spent on other things. Is the Government pitching this at the right level, or should the levy be higher, or, indeed, lower?

09:15

Jonathan Henderson: Thank you, convener. I think—I am trying desperately not to dodge the question, but to answer it—

The Convener: The only reason that I am asking you about that is because it is in your submission.

Jonathan Henderson: There are elements, probably in relation to the governmental position, that are maybe beyond my remit.

You will see from our submission that we have given broad support to the levy and to the concept behind it. You will also see from our submission that we do not believe that the levy alone is enough. It is about a whole-systems approach and linking into things such as compliance plans and other elements that sit alongside that.

The levy is a starting point. There are some positives in there. As outlined in our submission, our concerns are around not passing on too much of the burden to individual homeowners or, ultimately, to the taxpayer.

The Convener: Mr Drummond, will that not be very difficult? For argument's sake, let us say that 10,000 houses have been built that would qualify under the scheme, if and when the scheme is eventually agreed. If there is a £30 million levy, that would amount to £3,000 a house. Is there any way in which the burden is not going to be passed on to house buyers?

Peter Drummond: I think that you are correct, convener. The fundamental problem is that fiscal necessity requires us to raise funding to help people who are in this invidious position. I would far prefer that we take the same approach as was taken to remediation for precast concrete houses and large panel system buildings in the 1970s and 1980s, when Westminster contributed additional funds. However, I cannot see that happening. Therefore, as I mentioned in my note, fiscal necessity requires that we calculate at an appropriate level.

Where that balance is, without affecting the market, is probably more an issue for the Royal Institution of Chartered Surveyors than for the RIAS. However, yes, I suspect that it might have to be a bit higher. The RIAS considered whether it should be more of a progressive tax regime that would be focused on higher-end buildings. Beyond that, we step outwith our professional experience.

The Convener: In your submission, you say that the Treasury's apparent reluctance to underwrite the additional funds essential for a UK-wide scheme

"leaves the Scottish Government with few options other than replicating the levy approach adopted in England and Wales."

Your mentioned a progressive scheme. I note that, from my reading of the bill—this is our first public evidence session on it—it is already looking quite complex. In your submission, you say that

"a complex scheme could increase the risk of unintentional non-compliance"

as well as the cost of administration. How do you square that circle in relation to trying to make it somewhat more progressive while, at the same time, not making it too complex?

Peter Drummond: I would suggest that one would deal with it through a fairly straightforward banding system.

For example, one of the discussions will inevitably be about what we do with mid-market rent properties. Our view is that those properties will, unfortunately, have to come into the scheme. However, it is very easy to see how that might be at a lower banding, in order to avoid adding to the burden on owners, purchasers and renters.

We have to be careful, though, about overestimating how many high-end houses are built in Scotland that would come under this. High-end houses tend to be in small schemes of five to 10 houses, and tend to fall outwith the limits that exist in England, for example. I do not think that lumping a great proportion of the costs on high-end housing would necessarily produce the additional income that we would hope for. Bands can be used to finesse the scheme.

The Convener: Mr Henderson, you said that the proposed levy

"aligns with several principles of good tax policy"

but that the

"levy's proportionality could be challenged if costs are passed onto leaseholders through increased purchase prices for new homes, undermining affordability objectives."

The difficulty is that you are obviously concerned about putting up prices and, at the same time, we need the money to carry out the work.

Jonathan Henderson: If we go back to the purpose of the bill and what it is trying to achieve in the first instance, we know from the tragic events at Grenfell eight years ago that change is necessary and that it is probably not happening as quickly as it should be. From our perspective as a fire and rescue service, we know that change will have to come at a cost. As a public service, we are keen to play our part and we recognise that there is a need for us to do so.

The Convener: Earlier, Mr Drummond spoke about some of the appalling defects in modern buildings. Although the Scottish Government plans for the tax to have a 15-year lifespan, your submission says that

"the levy can never be retired",

because there will always be a need for that kind of funding.

Jonathan Henderson: Yes, our opinion is that, once a levy has been introduced, it will be difficult to take it away again. That being said, we think that there needs to be a fundamental cultural shift in the construction sector, and this would be part of it. Ultimately, that could lead us to a different normal in the future where a safety levy would not be required or where buildings are not being built to insufficient standards.

The Convener: Your submission goes on to say:

"if implemented correctly, the levy can contribute toward a market incentive for better quality building work, reducing the need for future remediation and giving buyers greater confidence in safety standards."

That is what we want to achieve. However, given that the levy would add, for argument's sake, £3,000 to the price of a house, would some builders not try to cut corners further so that they do not have to pass the cost on to customers? Could a levy have the opposite effect?

Jonathan Henderson: That is certainly a concern of ours, which we have outlined in our response. A whole-system approach is needed, of which the proposed levy is one part.

Peter Drummond: I entirely agree with Jon Henderson—the levy is but one leg of the stool. It is essential for the compliance plan managing system to be brought in effectively, not just as a Construction (Design and Management) Regulations 2015 tick-box exercise, in order to mitigate the chances that unscrupulous developers merely deploy their corner-cutting saw. It is also essential that we continue to review our building regulatory framework regularly. Indeed, it is fortunate that we did not go down the rabbit hole that England did after 2005. However, nonetheless, you will receive submissions about regulatory costs, expediency and delay, all of which, in my experience, are euphemisms for the corner-cutting saw. With the three legs of the stool together—the proposed levy, good building regulations, and greater scrutiny through compliance plan management—we would have a realistic chance of ensuring that these problems do not occur to the same scale again.

The Convener: I completely agree with you, but there is an issue with the scrutiny. Someone—the clerk of works, or whoever—has to check that the work has been implemented to the correct standard.

Two years down the line from a development in my constituency—I will not say which one—being fully occupied, we suddenly found out that the sewerage system had not been installed to the required standard, which is causing issues, as you can imagine. It is not just about having the regulations but about ensuring that they are fully implemented.

Mr Drummond, you said:

"Firstly, Scotland needs to preserve and build upon its existing public sector building control system. Secondly, procurement must be very substantially improved to ensure higher quality in construction."

How do we do that? Do we have the people with the skills to do that? Is that quality out there? What lead time did you have in mind for implementing that?

Peter Drummond: I am pleased to report that the Scottish Government has already started that journey. Comprehensive reviews of how we deal with consultant and contractor recruitment are on-going. So far, the fundamental issue in procurement has been a race to the bottom, which has been justified on the grounds of economic value. Procurement officers write endless contracts that demand quality, notwithstanding that the contractors disappear like my hairline when trouble appears, and it is very hard to recover that money.

Mainstream European countries tend to balance quality and cost much more effectively. You will hear evidence at some point from procurement officers that they also do that. As an RIAS representative and an expert witness, I will tell you that they do not do so adequately. It is all very well to say that there is a 30 or 40 per cent quality component, but it is about how quality is scrutinised and scored. Why is it always at the bottom? Why do we not have European systems in which we mark plus or minus from the average?

Whenever those points are raised in Government committees, someone inevitably says, "It will impact on our ability to deliver houses," yet here we are having to pick up the pieces and charge additional costs because we cut that corner. The Scottish Government needs not only to continue along the path that it has adopted for the past four and a half years but to double up on it and approach it with a degree of healthy scepticism so that we have a robust procurement system at all stages in the process.

My final point—I have an obvious conflict of interest in saying this, so do excuse me—is that the contractors who have led us to the greatest problems are those that have dispensed with clerks of works, architects and site engineers, and that tell us that building contractors, some holding a magic licence, can deliver the quality. Yet, time and again, those are the projects where problems come up. If we look at the local authorities that maintain traditional procurement and traditional roles—our housing associations have been very good at maintaining clerks of works—those are the areas where fewer problems occur. We have to walk away from the 1980s mantra of "the market knows best" and look at the outcomes and certainties that we can achieve from a robust European-type procurement system.

The Convener: That is very helpful, thank you. To switch between witnesses a bit, I will address Mr Henderson. In your submission, you said that you

"do not agree that major refurbishments should be excluded from the levy"

and that

"Excluding them may create loopholes, particularly where extensive retrofit or upgrade work is carried out."

Jonathan Henderson: Yes. Peter Drummond and I have been in conversation about this, because it might be an area where we differ. In a general sense, fire safety in buildings diminishes over time. The older a building is, the less fire safe it becomes as walls move and as work is conducted on it. Building conversions generally happen from a point where the buildings might not be fully fire compliant in the first instance. Our concern is that if the levy does not cover conversions, those areas could be missed.

The Convener: Mr Drummond, do you agree?

Peter Drummond: Mibbes aye, mibbes naw. Jon Henderson is entirely correct in that some building conversions give his professional body and mine great concerns. Many of those concerns are already being addressed, as the committee is probably aware. Sprinklers are now mandatory in new flatted developments. A committee that we participate in is looking at sprinklers for future hotel and similar conversions. Such regulatory changes will already add costs to those projects.

09:30

In addition, in some but not all cases, conversions and upgrades do not benefit from the very beneficial VAT regime that new dwellings do. Our concern is that, if we raise the burden too much on conversions, we might have schemes that do not work and we will lose historic buildings. It is as simple as that.

However, there is an interesting middle ground in there, in a situation in which the building is not somewhere like Stanley Mills, and instead a more modern building is being converted. In England, we see a lot of pressure for 1970s office buildings to be converted to residential properties. That would be different.

The Convener: When I was a councillor in Glasgow in the 1990s, one of my churches wanted to convert the church into eight flats. The difficulty was that the cost of meeting the standards 30 years ago was so prohibitive that it would not have worked financially. That meant that the church had to close, because it could not be converted to anything valuable.

I understand that it is a difficult balance to strike, because we could lose a building altogether because of the costs of trying to meet all the regulations, and they are already high, so if we were to add a levy on top, that could be the straw that breaks the camel's back. However, is there any evidence that this would make a decisive difference, on top of all the other costs that one would have to meet when converting an old building?

Peter Drummond: I am going to temporarily take off my RIAS hat and put on my own practice hat, because this is the line of work that I specialise in. I would say that more than 50 per cent of such projects already fail on the rocks of financial reality. It is exceptionally difficult to meet just the baseline costs of saving a complex historic building, such as a Kirktonhall, or somewhere like that—to choose one in your constituency—and those costs can sink a project.

In the current incarnation of the fire and life safety committee, there was a very big debate about whether requiring sprinklers in hotels would push us over that edge. I will say here what I said there, which is that a number of us on that committee have had to stand up at fatal accident inquiries and explain to people why their loved ones did not come home. I would rather never have to do that again, and I certainly would not want to explain that I thought that their loved ones' lives were only worth a few thousand pounds.

The Convener: We could talk about a number of other points, but all five of my colleagues around the table are keen to come in.

Michelle Thomson (Falkirk East) (SNP): Good morning, panel. I will come to you first, Peter Drummond, and explore what you meant in one of the sentences in your submission. You said:

"The RIAS has concerns about proportionality and the use of retrospective quasi-hypothecation."

I am clear on the terms "proportionality" and "retrospective", but I wonder about the use of the term "quasi-hypothecation". What do you mean by that?

Peter Drummond: I said to my colleague who is in the gallery behind me that he dreamed up that word and, if it came up, he could dash well defend it; it is not a word that a Kilmarnock man would tend to use.

The issue is that we might go down a rabbit hole by wondering, "What if this happens?", "What if that happens?" and "What might be the best system and how do we justify it?" For the RIAS, the simple issue is that there are a significant number of people in Scotland and further afield in an invidious and iniquitous financial position, and we need to move quickly, if we can, to assist them.

Michelle Thomson: The point is that the Government states that this will be a hypothecated tax, that is, that all the money that is brought in—whether it will be £30 million remains to be seen—will be recirculated and reused. That is why I did not understand the term "quasi-hypothecation". In fairness, if it was your colleague who came up with that term, I would be entirely happy for you to write to the committee if you want to give a further explanation. It seems quite clear that it will genuinely be hypothecated. Often, it is not clear, but in this case, it seems to be clear, so is there anything else that you want to add?

Peter Drummond: I am more than happy to cuff my colleague's ear once again and send you that very letter.

Michelle Thomson: Okay.

You might not be able to give much commentary on this, but I have noticed that the Government's intention to have the tax point near point of sale works to an extent, but that excludes build-to-rent properties. Obviously, that is an entirely different business model. Do you have any reflections on the fact that it will not work for build-to-rent, by its very nature?

Peter Drummond: My preference would be that we do it at the point of application for the building control completion certificate, rather than at the point of sale. I think that that is straightforward. The building cannot be inhabited before that anyway.

Michelle Thomson: As per the English regs.

Peter Drummond: Yes, as per the English regs—well, subject to the caveat that our processes around completion are slightly different from theirs.

That is a very clear point that is well understood in the sector. In the case of projects where commercial funding is involved, that is very often the point of the final release of funds from the funder, and therefore one would expect the developer to be in cash at the time.

One might suggest that some unscrupulous developers would simply not get the completion certificates, but in reality there are time limits, and if necessary we could deal with that in a monitoring system. My experience in straightforward housing projects is that everything is delivered just in time, and there is very quick succession from the completion certificate through to sale. The building control completion certificate, as opposed to the contractual completion certificate, would be the RIAS's preference.

Michelle Thomson: You say in your submission that

"Compliant developers today should not be paying for poor practices by the construction industry of yesteryear",

and you have been very critical about corner cutting in your exchanges with the convener, but my gentle challenge is, given that, why should either the UK Government or Scottish Government pay?

Peter Drummond: Through maintaining a robust set of building regulations and an independent public sector system, the Scottish

Government has discharged its regulatory duties, unlike the situation in other parts of the UK, but you are correct—some of the developers that gave us these hospital passes are no longer with us. Many others were single project vehicles and therefore are legally no longer with us, even if their parent companies might still be. The challenges of recovery from the villains of the piece are probably too great.

That is why I go back to fiscal necessity. I would rather that better developers today—more scrupulous developers—did not have to pay for it, but I just cannot see a way round making everybody pay for it. Our hands are, in effect, tied. The Scottish Government may get brickbats for it, but I have yet to see a better suggestion.

Michelle Thomson: On that point, Mr Henderson, you mention in your submission special purpose vehicles, which there has been quite a discussion about. You say that they are currently a concern. The Government is aware of the potential risks around the use of SPVs, but it would be useful to hear a bit more of your thinking. You only allude to it in your submission.

Jonathan Henderson: I will come back to a couple of points to link back to some of what Peter Drummond said. Our concern is unscrupulous developers in a general sense, people looking to avoid the levy, and, going back to the procurement conversation, putting profits above absolutely everything else.

This might be a long-winded answer, but I hope that I will cover your question. As the convener said previously, I am the director of prevention. I look after community safety engagement, building safety legislation and community preparedness. Some of the objectives that are set upon me as an individual are about driving down fire fatalities in Scotland, including supporting things such as the promise and targeting fire safety at the people who are at most at risk.

We find that the people who are at most risk are, as you can expect, people who are living in poverty. Any answers that I give today will be couched in that—I am trying to link them back to my day job. Ultimately, I am looking for the levy not to be passed on to individuals who might not be able to afford it in the first place; I am looking for individuals who are already in poverty not to be taken advantage of. That is the crux of our submission.

Michelle Thomson: The poor had no lawyers, if you like.

I turn to Mr Drummond. SPVs will be used, and there could be cases where unscrupulous builders set up multiple SPVs. To allude to Mr Henderson's point, it would become very costly to track that back at some point in the future. How realistically can that practice be stopped and tracked with the powers, given that the regulation of such business structures resides with Westminster?

Peter Drummond: As many committee members will be aware, the Building Safety Act 2022 purported to extend liability in Scotland to 30 years. There is debate about whether it has done so competently, but that is another issue. Under those circumstances, any competent solicitor will be advising their property developer clients to use single project vehicles and to fold them within a relatively short period of time. Although it is a legal matter for others, our position is that that practice is almost impossible to stop. Doing so would require fundamental change at Westminster—which is unlikely, given vested interests. Therefore, I do not think that we can sensibly do that, short of upending large parts of our legal system.

Collateral warranties could be asked for, but their cost is eye-watering as well, and it is rare to get such a warranty for more than 10 years. In fact, many of the design and build projects that are now giving us cladding problems had collateral warranties that have now expired. Other projects fail where the collateral warranty introduces unfair terms around strict liabilities and so on. Unfortunately, the genie is out of the lamp, and we have to look at alternative measures, such as the levy.

Michelle Thomson: In your submission, you commented that the levy could ultimately reduce supply and that hotels could take priority, although that would be in certain areas, where there would be evidence of demand. Are you still concerned that it could reduce housing supply, given squeezed margins, in rural areas in particular?

Peter Drummond: Yes, but the other option is for the burden to fall on those who already own the buildings and have no way of dealing with the issue. I hesitate to use the phrase "least bad option", because that would suggest that I am not supportive of the bill—I am, as is my institute. I think that the levy is the most pragmatic option. Special care is required in the islands, and the same argument could be made for the west coast, parts of the Highlands and parts of the south-west. However, in all fairness, those are not the parts of Scotland that left us with the legacy of problem buildings, so an exemption for them makes sense to me.

Inevitably, there will be complaints from developers that there will be an impact on low-rise and high-volume house building. Many of those developers will tell you that they had no hand in this boorach, but some of them did, through single project vehicles, and therefore I am less sympathetic than I might have been. However, some people will get caught in the crossfire.

Michelle Thomson: My last question is for Jonathan Henderson. You had quite an exchange earlier with the convener about why we are where we are, in which you mentioned a whole-system approach. You also alluded to the need for culture change in your submission. To what extent—if at all—do you think that the levy might start that process, or does the issue go much deeper than that?

09:45

Jonathan Henderson: I agree with what Peter Drummond said and, to use his analogy, I agree that the proposed levy is one leg of the stool. It is not a game changer in itself, but it does make a difference.

Peter and I were both on the Grenfell ministerial working group, in which we talked a lot about the culture of the building industry and the deregulation that led to Grenfell. We are keen to see that addressed. I do not think that that will change overnight, although things are improving. As I said previously, we are eight years down the line from Grenfell, so we should expect to see some improvements by now.

Michelle Thomson: Do you want to make any comments, Peter?

Peter Drummond: I have seen some improvements; I am not sure that I would go much further than that.

Michelle Thomson: Convener, I reference my entry in the register of members' interests.

Craig Hoy (South Scotland) (Con): Good morning. Mr Drummond, in your submission, you mentioned what you might find when you remove the cladding, and you called it "known unknowns". At this point in time, on roughly what percentage of buildings that have cladding that needs to be remediated do you anticipate that you would find that further works need to be undertaken—for safety or wind and water tightness, for example?

Peter Drummond: Very close to 100 per cent.

Craig Hoy: As we start to look at more buildings, we will find that shortcomings and deficiencies might be present in other buildings that do not have cladding. To what extent should the fund be for remediating what is effectively sloppy or, perhaps, dangerous workmanship? As it is, those who are in buildings that have the cladding might see further such remediation work, but those who do not have the cladding will effectively have to live with a dodgy build. Is that what will happen?

Peter Drummond: My view is that, in due course, we will have to widen the scope of the fund. It worries me that during my career—it is difficult for me to say this because I still like to think that I am in my 30s—about every 10 to 15 years, there has been yet another building construction quality scandal.

When I was a student, the issue was large-panel-system buildings. After that, it promptly became precast reinforced housing—known as Doran housing, which many of us are familiar with. Then, reinforced autoclaved aerated concrete raised its head, now it is cladding, and cavity wall and retrofit will be next, along with an abundance of other things.

It seems to me that the industry and, to a certain extent, the UK has been incapable of delivering high-quality homes for an extended period, so I am afraid that there is a chance that these situations will happen again, and that there will have to be a discussion about whether the building safety fund is widened in due course to cover other similar situations in which, through no fault of their own—I must stress that—owners find that systemic failure has left them in the lurch.

Craig Hoy: On how we got here, the finger has been pointed at disreputable builders, but there are other professional services that wrap around those firms, so I want to talk about your own code of conduct. You said that there are situations whereby clerks of works and architects are not present throughout the build phase, but surely, if you are commissioned to design a building, your industry's code of conduct will say something about making sure that you go right through the cycle of the construction process. What does it say about that?

Surely, morally, architects cannot take a large fee—or perhaps a small fee, depending on the nature of the building that they are working with—and then say, "I have designed the building, and I will walk away from it now." Do you not have a moral obligation to stay throughout?

Peter Drummond: I will break my answer down into two or three parts. The first thing that I would say is that, in design and build contracts, which make up the vast majority of the construction contracts that are giving us problems, the developer will not engage any members of their design team after the building warrant stage, and that stage is big-picture stuff. I will go one step further and say that, on mass housing developments, the developers will very often not employ qualified architects. They have to employ a chartered engineer; they need to do so to get a structural engineer's registration certificate, which is part of the building warrant process, but again that is done on a limited service.

Clerks of works are now almost exclusively in the domain of housing associations; nobody else uses them because they are too expensive.

It sounds like I am ducking the issue, but the sad fact is that professionals do not tend to be involved at the stages where things go seriously wrong.

You also asked me about the code of conduct and I will widen that out. I am in a fortunate position in that the RIAS is not the regulator for the architectural profession; it is the London-based Architects Registration Board, and nothing in the code requires an architect to work a full project. I am also a chartered building engineer, and there is nothing in the Chartered Association of Building Engineers code, either. As the only architect in a family of structural engineers, I am confident in saying that there is nothing in the IStructE code either.

It goes back to protection of function. In any event, you must be a chartered engineer to call yourself a chartered engineer; likewise, for architects. However, anybody can do those jobs; they do not have to be trained. All those roles are now highly regulated, but the unscrupulous developer can just walk to the plan drawer around the corner and get something knocked together. That happens more often than you would think.

I have to be cautious about the final thing that I am going to say because I act for a regulator in a high-profile case. I can assure Mr Hoy that, on those occasions when architects have been responsible and their names have crossed my desk, they have been prosecuted to the utmost extent possible.

Craig Hoy: Does remedying that need legislative intervention?

Peter Drummond: We need to look at prescription of function, and not just for architects I hasten to add—there is quite a big basket of professionals such as engineers, technologists and clerks of works in there. We must also look at how those professionals engage with the process. If we continue to see a situation in which we are all thrown out of the door immediately the building warrant is granted, that will be disappointing.

Craig Hoy: I recently completed an extension on my home, and I advise anybody who is watching not to do that while you are living in the property. The building standards team is coming round today and, hopefully, I will get a completion certificate. All the way through, I have taken photographs and worked with my architect and builder.

Was there a wholesale failure of the building standards process when the buildings were being built? If you are saying that the material that is on the outside of them is just one part of a whole series of unfortunate issues with a lot of those properties, where is the onus on the building standards system to prevent buildings being built in such a deficient way?

Peter Drummond: That is really a question for Local Authority Building Standards Scotland, but I think that I can answer it. Legally, there is no duty on the verifier, or the building control authority as the rest of us would have it, to carry out full checks on a building. I also suspect that they would not have the resources to do it. The duty on building control authorities is one of reasonable inquiry, which traditionally means three or four site visits. On the other hand, if it is a safe developer who is doing the building with a full team of architects, the authorities might do fewer visits, while they will do more if it is troublesome.

In comparison, the judgment in the English case McGlinn v Waltham Contractors sets out the duty of reasonable inspection. Essentially, it requires the architect, engineer, technologist and the clerk of works to be on site every week and to be—if you will excuse the phrase—up to their oxters in the trial pits, checking that things are being built properly. No local authority can afford to devote staff time to that level of inspection. Ultimately, it comes back to the duty on the owner, who is the relevant person in the act, to deliver the quality, and that takes us back to the compliance plan regime.

As currently envisaged, the compliance plan regime requires the building owner to evidence that all stages have been done to the reasonable satisfaction of an independent compliance plan manager. I stress the word “independent” because some people do not like that word when we are talking about who the compliance plan manager should work for. That is where the third leg of the stool comes in.

It would be brilliant to think that building control authorities could be involved to the same level, but I would hate to think what the building warrant application fees would be like. Remember that a design team might be charging a 10 per cent fee on a project.

Craig Hoy: Fine. Mr Henderson, different submissions to the committee have taken different positions on the fairness, equity and proportionality of such a scheme, given that it seems to be falling on a relatively small number of shoulders. However, at the end of the day, it will probably be house buyers who will pay some of the remediation costs for prior builds.

You have said that you recognise that there are some issues with proportionality, and you mention the case of leaseholders. Given that there is a significant variation of opinion in the range of submissions that we have had, if it is to be a permanent part of the landscape, as you identify, would the best way to deal with it be through

general taxation rather than a specific tax that falls only on a certain section of the construction industry?

Jonathan Henderson: Yes, possibly. As I have said, I do not think that the levy alone is a solution; it is part of a whole-system approach. From our point of view, somebody will have to pick up that bill. To go back to a previous point, in general when it comes to prevention, we prefer that the bill does not fall on those who are most at risk in society, because that would push them into further risk and make them more likely to need the services of the Fire and Rescue Service. Somebody needs to meet that bill.

Craig Hoy: The Scottish Government is raising more than ever through land and buildings transaction tax, and now we have the additional dwelling supplement, so some taxes in Scotland are specifically about property. Presumably, there could be hypothecation through such a mechanism—which would mean that, effectively, those who interface with the housing market in Scotland are taxed, rather than, necessarily, a first-time purchaser who has had no connection with the remediation work that was required.

Jonathan Henderson: Again, that is possible.

You made a point earlier about the morals of the industry and what is morally the right thing to do. Although I do not disagree with that point, I do not think that what is the right thing to do morally has necessarily got us to where we are now. There needs to be greater regulation, and our view is that we would like the private sector to pick up its fair share of the costs.

Craig Hoy: It would argue that it is doing so at present. Submissions from Homes for Scotland and others show that, when it comes to the total amounts that they are paying in, what they might be required to put into the levy is significantly less than what they might actively be paying now.

My last point is on the definition of "rural". There is an exemption for island properties. There seems to be a case for rural properties, too. I do not know whether either of you has a view as to how we might help the Government to get to a definition of "rural" in order to be able to advocate for an exemption—which you highlight as being an issue in relation to rural properties, particularly when it comes to affordability, given that less development might happen in rural areas. I think that you identified that, Mr Henderson, because of the lower margins in developing in rural areas.

Peter Drummond: I think that there was a similar discussion two years ago in respect of the proposed heat in buildings legislation and the need for back-up power supplies in what I will broadly call the remoter areas of Scotland. If I recall the discussions at that stage, we thought that we might have to paint with a broad brush and define those areas as the Highlands and Islands. That is perhaps a little unfair on people down at the bottom end of Dumfries and Galloway, and other pockets, but, to my mind, Highlands and Islands is probably still a fair stab at it.

However, we could have a lower threshold on the number of units. Very rarely do we see large schemes in those areas that would come within the scope of the provisions anyway, which is another argument as to why perhaps some sort of bottom-end threshold makes sense.

Jonathan Henderson: I tend to agree with Peter. Each organisation probably uses a slightly different definition of "rural", so perhaps they should be mashed together.

Craig Hoy: I said to Liz Smith that, under the Scottish Government's current definition, Gilmerton, on the fringes of Edinburgh, is a rural area, although it is mostly under concrete now.

You are both very close to the industry. You said that you think that this levy, or tax, depending on how you look at it, will probably have to remain in some form and function into the future. What is potentially the next cladding scandal that we should be alert to at the moment? Is there something that the industry is already looking at and getting a bit concerned about—potentially in relation to safety, Mr Henderson?

10:00

Jonathan Henderson: Peter Drummond has already made reference to some future building issues that we are likely to face. I am unsure as to whether those might be on the scale of the cladding scandal. He also referenced the almost cyclical nature, as we have seen, of issues such as RAAC and others. He is probably better versed on those matters.

From our perspective, we carry out fire safety audits, risk inspections for our own purposes and operational inspections of buildings so that we are familiar with the layout. We do various different types of inspections across buildings and we attend incidents. It is fairly common for us to see substandard construction work in big and high-profile developments. During a recent incident that we attended on Princes Street, we came across construction work that we were not at all happy with, which could have had significant impacts on us as a responding crew.

Peter Drummond is probably better versed in the specifics of the industry and what might be coming next, but I can say that, although we are not seeing scandalous issues, we are still seeing substandard construction that is causing issues for us and for the people of Scotland.

Peter Drummond: I have done that terrible thing of just writing a quick list of points that have crossed my desk as an expert witness. I fear that if I were to run through the list, it would panic anyone watching, never mind committee members.

If I were a betting man—and I am not—I think that, within the next 10 to 15 years, we will see questions about structural fire protection to steel buildings, which we predominantly do with intumescent, fire-resistant paint coatings, which is tested up to only about a 15-year lifespan. By that time, the steel is in the building, so how can you get to it to renew it?

I will also mention lightweight rainscreen cladding systems. I will not give any brand names, because I cannot remember which are still solvent, but there are a number of student residences and flatted schemes in Glasgow, Edinburgh and Aberdeen that involve very lightweight aluminium honeycomb systems, which would allow you to break into the building with a craft knife and a mash hammer. I have doubts about their longevity.

I will draw a very broad brush around insulation and retrofit. Poor-quality design schemes have been going on since the 1990s under the green deal and others—although not exclusively; there are good schemes in there as well. A lot of people are suffering with damp and mould, which have already come to the surface as a result of that.

In addition, we have the issues that we have talked about already, such as RAAC and large-panel systems, although large-panel systems were largely remediated by the city councils in the 1970s and 1980s, if I remember correctly. Fortunately, there is not a lot of RAAC in housing, although my heart goes out to the many hundreds of people who face that challenge.

Having thought about it for two minutes, that is a list of what I call structural failures—being failures related to the structure of the system, as opposed to straightforward "they forgot to put the foundations in" kind of problems that happen as well. However, there are other bogeymen just around the corner.

The Convener: It is no wonder, John, that you want to spend so much of your time in a tent.

John Mason (Glasgow Shettleston) (Ind): I do live in a flat, as it happens, most of the year.

Mr Drummond, the RIAS submission says that using a per square metre charge will involve quite a lot of "cost and complexity". Would it be better to use a calculation that is based on value rather than square metres?

Peter Drummond: The trouble with square metres is that you need a very clear system to calculate the charge. Is it the internal or external footprint of the building—or the flat, as the case may be? Are you including a proportion of common areas—your landings, stairs and closes? Are you going to count usable floor space? Are you counting your cupboards and things like that? Are you going to count only what our parents and grandparents would have called the apartments within a flat or a house, and miss out the other parts? People being people, they will attempt to work their design around the most expeditious route for their wallet.

If you have a very clear system for calculation that cannot be gamed—I think that "gamed" is the appropriate word here—we could live with that. My heart goes out not just to the person in each developer's office who is trying to work it out but to whoever is trying to check it for Revenue Scotland.

You could do it by banding, but the market bounces up and down, as we know. That presents challenges that perhaps the RICS rather than we would be better to advise on. We are simply sounding a note of caution—"Careful now! Down with this sort of thing!"—on the need to be careful about how we calculate the levy to ensure that it is a robust and straightforward system.

John Mason: You are highlighting a problem, but you are not advising that we should base the levy on value. It seems to me that, if an apartment flat in one place was sold for twice as much as an apartment flat in another place, the owner should pay twice as much levy. That would seem logical.

Peter Drummond: I can see that argument, but that would be beyond the expertise of our professional institute.

John Mason: Do you have any views on that, Mr Henderson?

Jonathan Henderson: No—other than to say that, like Peter Drummond, I do not think that there is a perfect solution. I can see the logic of your point.

John Mason: You have mentioned that, when the cladding is looked at, a variety of other issues will come to light underneath the cladding, such as asbestos. In practice, how do you see the system working? If someone went to do the cladding work and discovered another problem, what would happen after that?

Peter Drummond: If the defect was directly associated with the cladding—for example, if it related to the fire protection on the supporting purlins and rails—I suggest that, at the moment, that would fall within the terms of the scheme. Where I think that the Scottish Government's officials must struggle is when they discover a structural problem behind the cladding, because I do not think that the scheme allows them to address that in any capacity.

It is much more difficult to set up a scheme that allows you to deal with incremental problems as they come to light. It is not possible to take buildings apart and find such problems on day 1. That is rarely possible. That is why, in our submission, we talk about the "known unknowns". We know that there are going to be problems. We can make provisional allowances and educated guesses based on what we know of similar buildings, but it is very difficult to refine the approach. Funnily enough, grant funders, such as the lottery funds, deal with such matters a lot more, because they are used to creeping briefs, but the situation is not one that I have ever noticed Government being well equipped to handle.

John Mason: If a problem was not covered by the scheme, it would fall on the owners and the developers to sort it out between them. If the developers were no longer involved, it would fall on the owners.

Peter Drummond: That is right, and the costs could be very serious.

John Mason: Another theme that came through in your submissions was that the levy might discourage marginal developments. Mr Henderson, you made that point in your submission. For example, it might stop developments going ahead on brownfield sites. Is that a serious concern?

Jonathan Henderson: As we say in our submission, we have concerns about that—or, rather, we think that it is worth considering. It needs to be weighed against the potential benefits of the levy, although I do not think that it would stop the levy being beneficial. However, as I said, the levy will not be a stand-alone solution; it needs to be part of a whole-system approach.

John Mason: Would the levy need to be tweaked, so that there was a higher rate for greenfield sites and a lower rate for brownfield sites? Is that the kind of solution that you have in mind?

Jonathan Henderson: Yes, potentially.

John Mason: Mr Drummond?

Peter Drummond: The additional costs on a brownfield site are entirely to do with the remediation and decontamination of the site. If a levy-type regime made an allowance such that, in effect, there was not a levy or there was recognition of those additional costs, it seems to me that that would put brownfield sites on an equal footing with greenfield sites with regard to costs.

John Mason: Another point that I think was made in RIAS's submission concerns the UK residential property developer tax, which is already in place. That has not raised as much money as was expected. Is there a risk that the building safety levy will not raise as much as we hope that it will?

Peter Drummond: I think that there is less chance of that with the levy, although I hasten to add that I am no taxation expert. First, the initial projections for the UK-wide tax seem to me to have been high from the outset. Secondly, a threshold of £25 million profit, with more conditions than you can shake a stick at, seems capable of exploitation by developers and their accountants. Thirdly, of course, market conditions have been a wee bit up and down. A levy on property completion seems less liable to those issues. As I said, people would be less able to game it. It could still happen, but it is less likely.

John Mason: Presumably, the more exemptions there are and the more tweaks there are, the more complex it becomes, and people will find ways through it.

Peter Drummond: Yes, the devil will, as ever, be in the detail.

Liz Smith (Mid Scotland and Fife) (Con): Mr Drummond, in your opening remarks you mentioned student accommodation. For clarity, were you talking about halls of residence or individual flats and houses?

Peter Drummond: I was talking about the large modern halls of residence, which, if I think of my children's university years, have anything upwards of 100 flats in them.

Liz Smith: Do you have any idea of how prevalent the problem is in halls of residence across Scotland?

Peter Drummond: Sorry, I am steering around legal privilege in response to that. It is my understanding that it is an issue. I would not know in what proportions, but the cases that I am aware of would involve significant compliance issues. I do not think that I can say much more than that, because they are live cases.

Liz Smith: Avoiding the legal issues, would I be right in thinking that a college or university estate would be responsible for payment for that?

Peter Drummond: A significant proportion of halls of residence are now built and operated by private investment companies in Scotland. As any of us who have watched the planning portals for Glasgow, Edinburgh and Dundee will know, those flats are going up with surprising speed and regularity. My understanding is that a good proportion of them are being built and operated by private providers and are not part of the university estate.

Liz Smith: As far as I am aware, there are some that are not being built and operated by private providers.

Peter Drummond: I think that you are right.

Liz Smith: By definition, that would mean that a university or college would have to be responsible.

Peter Drummond: Yes.

Liz Smith: Thank you for clarifying that, because it is quite an important point.

Mr Drummond, is it your understanding, as things are, that the Scottish Government does not have a RAAC fund?

Peter Drummond: Yes.

Liz Smith: Thank you.

Michael Marra (North East Scotland) (Lab): As has been referenced, we are many years on from the dreadful tragedy that happened at Grenfell. Mr Henderson, has the use of the materials that Mr Drummond provocatively—and rightly—called "solid petrol" stopped in Scotland?

Jonathan Henderson: To a certain extent, Peter Drummond is probably better versed in talking about current construction projects. We are seeing a reduction in the use of cladding as a whole—certainly of the most dangerous levels of cladding—across the UK, as well as in Scotland. We are seeing reductions in that, as we should be, and as I keep saying, over an eight-year period. However, I worry that there are still loopholes for those materials to continue to be exploited.

Michael Marra: What is stopping people from using them?

Peter Drummond: I am happy to take that. The Scottish Government has been criticised for it, but the ministerial working group on building and fire safety took a simple view that all combustible materials on the exterior of medium and high-risk residential projects in Scotland should be banned. Only Euroclass A1 and A2-rated cladding materials can now be used on the exterior of medium and high-risk buildings in Scotland. That precautionary approach by the minister was entirely the correct one.

10:15

There was an awful lot of jumping up and down by those with vested interests in the manufacturing sector, and many claims that they had solid petrol products that were magically incombustible. That is not a risk that I, as a designer, would be willing to take.

Does anybody use those knowingly on the outside of medium and high-risk buildings now? No, and because of that, and because insurers refuse to cover it, the use of those materials has dropped off the edge of a cliff, thankfully.

Do we still use things such as Kingspan insulation? Yes, but we use it in the right place at the right time, where it is low risk. Are there other materials that present potential problems? Perhaps, but the issue is that designers—I will stand up here for building developers and contractors—rely on test data.

One of the things that we know from Grenfell is that the Building Research Establishment and other testing bodies did not discharge their duty to adequately test materials and advise us how they operated. It remains the view of my institute that the failure of the UK to have a publicly funded independent test lab is an on-going concern.

Michael Marra: That is very useful. The mechanism by which that stopped is that the use of the materials has been banned on buildings and, at the point of completion, an inspection for a completion certificate from the local council would examine those materials and check that they are not on the banned list. Is that correct, for the layperson?

Peter Drummond: Some of the materials are very hard to determine visually. In reality, you can determine them only at the time of specification and installation. There are certain A1 and A2 cladding types that perform quite well, but one must remember to put in cavity barriers. If the cavity barriers are not in, frankly, it can go up like a chimney.

It is best to think of the materials as part of a complex system. Merely investigating or reviewing them at the end will never provide the certainty that is required, which is why the compliance plan management system would make a difference. Even if you turned up on a site and it had the name—at the risk of me getting a writ tomorrow—Kingspan all over it, you would not know whether it was one of the good or one of the bad Kingspan products, unless you knew what was there. People such as Jon Henderson and I, who have had to plough through the Grenfell evidence, know that it can sometimes be as simple as one or two extra letters at the end of the component name. It is very difficult. At the risk of breaching confidentiality, that is one of the reasons why the fire safety committee that sat from 2021 to 2023 took a view that we should just ban a whole host of materials.

Jonathan Henderson: I support that. I know that I probably keep making the same point, and to a certain degree I apologise for that, but it comes back to the whole-system approach. Time is relevant, in that when an event happens, people are shocked and we start to make progress. Then, as time goes on, we start to make less progress,

to the point where we are in danger of forgetting why we are sat here in the first place and what is driving the issues that we are trying to solve.

Michael Marra: I am broadly supportive of the direction of travel, but, Mr Henderson, you say in your submission that it is a polluter-pays principle. It strikes me that the people who made the pollution are not the people who are paying here. In many circumstances, it will be people who have changed practice and who are building responsibly. None of that dismisses the fact that we need money to do the retrofitting to ensure that we can do the remediation in the buildings.

Is it fair to say that there is not really a polluter-pays principle at the heart of the design of the tax? Is it really just a way of getting money to do something that needs to be done?

Jonathan Henderson: We likened it to a polluter-pays principle because it is something that possibly makes sense in people's minds. I agree to a certain extent that we have moved on. Some of those developers have been held to account, and some of them no longer exist. At the risk of sounding doom and gloom and repeating myself, I do not think that this issue has gone away, and it will not go away unless we continue to work on it.

I do not mean to push back too hard, but it is too easy to say that the bad people have all gone and that it is all good people now.

Michael Marra: I would tend to strongly agree with that. The evidence that we have had is that there is a cycle of defects. Substandard building practices that lead to safety concerns have emerged in cycles over the years. RAAC is probably the most prominent of those issues at the moment, certainly in my home city of Dundee, in Aberdeen and in other parts of Scotland.

I am not sure how the tax would drive culture change in the industry. As much as the issue might require revenue, we might have to recognise that the tax, in the way that it is designed, is not necessarily going to make people change their behaviour as builders.

Peter Drummond: I have two points. First, those of us of a certain age will remember having to do an "An Inspector Calls" exercise in O-grade or higher English, where everyone is to blame. The problem with cladding is a bit like that. Everyone had a hand in this. Nobody stepped forward, with the possible exception—ironically—of the building control officer at Grenfell.

This is an industry-wide problem. I would love to see a scenario in which the insulation manufacturers that, frankly, fiddled their tests, and the testing houses that let that happen, were to pay. I do not think that that is going to happen.

Builders and developers did not ask themselves difficult questions. They did not apply the degree of healthy scepticism that any specifier or builder should apply when there are extraordinary claims—all of us who did O-grade, standard grade or higher chemistry know fine what polymeric insulation is made out of. Finally, architects should have asked for more information on certification.

I am going to take the SFRS position on this—that the polluters should pay—and I think that this approach picks up a large part of what the polluters did.

Your other question is what drives change. Change occurred for five to 10 years after the Summerland disaster on the Isle of Man in the 1970s, and then everyone forgot about it. Change occurred in Scotland and Ireland after the Garnock Court fire, and then it was forgotten about in the rest of the UK. RAAC will be forgotten about in due course—in 10 or 15 years—and things will go back.

Only one thing will drive change, and that is regulatory pressure. It is all very well, as Michael Heseltine did in 1981, to talk about the cold, expensive hand of regulation, but regulation is what protects the public. There is not a building regulation in this country that is not written with the blood and tears of people who lived in substandard buildings. Therefore, to prevent these disasters from happening again, I encourage members to consider the importance of a robust and independent regulatory framework that is subject to constant review and which contains a degree of institutional memory.

Michael Marra: That is very useful, and I find myself strongly agreeing with your analysis. However, the issue that we are looking at is the design of the tax. As you have eloquently described it, it is one leg on a stool. I am trying to explore how effective that leg will be in supporting a better system.

If we were designing a tax to prevent poor practice, would it not be better for us to tie the tax in perpetuity to the people who have developed the building, rather than seeing it levied at a point of exchange?

Peter Drummond: That would seem to be an eminently sensible idea, if we could find a way to ensure that those developers would still be extant in 20 to 30 years, when the building defect was discovered, and that they would not have disposed of such assets as they had by that time.

Michael Marra: I agree that that is very challenging. I am exploring the principle of how we can ensure that we change the behaviour, within the marketplace, of people who are developers.

I come to the issue of pace. In October 2024, Scottish Government officials told the committee that the single building assessment programme, which establishes what cladding remediation work is required, is expected to

"take around 10 years ... to complete."—[*Official Report*, *Finance and Public Administration Committee*, 29 October 2024; c 17.]

That is just for the assessment programme to find out what is required. Is that an acceptable amount of time, given the state that we are in, eight years on from Grenfell?

Peter Drummond: The problem, as I understand it, is one of industry capacity. Prior to Grenfell, the number of practitioners in Scotland—and probably the north of England, too—who could handle that work could be counted not just on the fingers of one hand but on the fingers of one of my hands, so therefore not a full complement. It takes time to train up surveyors to do the work—architects are rarely involved in the initial step—and they often require to consult fire engineers. The number of appropriately qualified fire engineers in the UK and Ireland is very small indeed, and the number of them that are equipped to deal with cladding remediation is even lower.

Although the programme has been slower than any of us in the sector would have wanted, I can understand why. I would be one of a handful of architects who would probably be qualified to look at the issue, but the amount of time and work involved would be a nightmare, and I suspect that that goes for most of my sector.

Michael Marra: Mr Henderson, eight years post emergency, we are looking at another 10 years before we know the extent of the problem. That cannot be acceptable, can it?

Jonathan Henderson: I think that you have heard my general frustration with the pace of all post-Grenfell work. Peter Drummond mentioned fire engineers. I am involved in some work evolving from the ministerial working group. I was at the Ministry of Housing, Communities and Local Government last week, speaking to the expert advisory panel about the fire engineering recommendations. The timescales that are being talked about and the time that it has taken for that to come to fruition is frustrating. Although I believe that there have been changes for the good and that we are in a better place than we were, I am frustrated by the pace of change.

Michael Marra: As of August this year, 600 expressions of interest have been made to the cladding remediation programme, but there has been work on only two buildings in Scotland. Given the scale of the emergency that you have both described, you cannot think that that is acceptable, can you?

Jonathan Henderson: It is fair to say that I would like things to move faster than they are moving.

Michael Marra: Mr Drummond?

Peter Drummond: I agree.

Michael Marra: Valid comparisons have been made with the rest of the UK in relation to building regulations, and the culture and politics around all of that. In the rest of the UK, 5,190 buildings have been identified, remediation work has started on 2,490 and, of those, work on 1,767 has been completed. Do you have any idea why there is such a difference—between two and 1,767?

Jonathan Henderson: My background is that I was born and raised in Shetland. I was in the fire service in England for the past 19 or so years, predominantly across Lincolnshire and Humberside, and moved back to Scotland in the past year or so. From conversations that I have been involved in on efforts to progress the building safety regulator work, it is clear that things are far from perfect down south, too. The frustration that I am expressing on behalf of SFRS and NFCC—the National Fire Chiefs Council—would be the same south of the border as it is north of the border.

Michael Marra: Could you explain the disparity in the figures? It is good that you have cross-border expertise, but could you explain why there is a difference in the number of projects that are being undertaken and the completion rate?

Jonathan Henderson: Sorry, Mr Marra. I do not have an answer at this point, but if you are happy to provide the figures, I am happy to look into the details.

Michael Marra: It would be useful to the committee, because we have talked about hypothecation—the purpose of the tax. This is really a tax to raise money to do this work. We want that work to be done, so it is good for us to be able to understand the barriers to that work being completed.

I put on the record my involvement in the Grenfell inquiry, through the Leverhulme research centre for forensic science.

The Convener: That concludes questions from the committee. Do the witnesses have any final points to make? Are there any issues that they feel we did not cover in our questioning this morning?

Peter Drummond: No.

The Convener: In that case, I thank you for your evidence this morning, which is very helpful to the committee in its deliberations.

10:29

Meeting suspended.

10:54

On resuming—

Scottish Public Inquiries (Cost-effectiveness)

The Convener: The final item on our agenda is to take evidence on the cost-effectiveness of Scottish public inquiries. I welcome to the meeting Patrick McGuire of Thompsons Solicitors Scotland. Good morning, Mr McGuire, and thank you for your written submission. I want to express how glad I am that you accepted the invitation to give evidence—it is greatly appreciated by the committee.

We will move straight to questions. I will start by quoting a question that was raised by Professor Cameron, who was one of the first people to give evidence on this matter. You may have seen what he said:

> "It has to be recognised that inquiries are a source of substantial income for some large legal firms and as such the question arises as to the extent to which they are motivated to keep costs to a minimum and within budget."

Patrick McGuire (Thompsons Solicitors Scotland): That is quite a question.

The Convener: You must have known that it was coming up—come on.

Patrick McGuire: One may have anticipated it.

That question needs to be broken down into several component parts. It begins with the point that threaded its way through my submission, which is that public inquiries are a force for good. The victims of mass wrongs are the only people I have ever represented in public inquiries—you will have seen from my paper how many public inquiries I have represented such groups in—and it is essential for their participation in a public inquiry that, as the Equality and Human Rights Commission said so forcefully in relation to the Grenfell inquiry and otherwise, those victims' involvement must be real and must not be illusory, and that necessarily involves their having legal representation. That legal representation comes at a cost—that is inevitable and I do not think that anyone should pretend otherwise. Nor should there be any embarrassment about the fact that, if someone is representing a group, they should be paid fairly for doing so.

For two reasons, I flatly deny the suggestion that law firms allow costs to run away with them. First, having been involved in so many public inquiries, I am acutely conscious that I am being paid by the public purse, and that comes with a heavy weight of responsibility. Secondly, as I set out in my paper, the suggestion that there is some kind of blank cheque for the law firms that represent core participants is simply incorrect. Every single public inquiry has cost protocols, and it is the chair of the inquiry—the independent judge—who sets those protocols, decides on the work that can and cannot be done, and forensically scrutinises every single bill of costs that is submitted. They regularly knock back work that is undertaken.

There absolutely are controls on the work that is done by solicitors who represent core participants. That is not allowed to run away with itself; every single bill of costs is assessed and scrutinised by the chair.

The Convener: No one is casting any aspersions on you or on Thompsons, but there is a strong case whereby legal costs seem excessive—certainly to laypeople. For example, Police Scotland's direct costs in supporting the Sheku Bayoh public inquiry—I understand that you were not involved in it—are £25,409,629, of which £18,087,494 is directly attributable to legal costs. So far, the cost of that inquiry, which has run for six years, is £51 million. The Scottish Police Federation has said that the police contribution to that is equivalent to employing 500 police officers for a year.

Although justice for the alleged victims in any public inquiry is important, the opportunity cost is something that we, as representatives of the Scottish Parliament, have to consider. Is that public inquiry more viable than, for example, another 500 police officers on the streets—or whatever else? We are not saying that we should throw the baby out with the bath water and that there should be no public inquiries. The committee is not saying that that public inquiry should not have happened or that another one should have. We are asking how we can deliver the same level of justice or, indeed, better justice more efficiently and effectively and at lower cost to the public purse.

We have seen in the evidence that some inquiries go on for some time—I just mentioned the Sheku Bayoh inquiry, which has gone on for six years. They go on for years and there is a law of diminishing returns—in terms of public interest, apart from anything else. Public interest goes down, the reason for holding the inquiry becomes more obscure and the cost goes up.

In weeks to come, we will be looking at systems in other countries but, given your wide experience, I would like to hear your views on the level of justice that you are seeking. I am aware of the points that you have made about, for example, the inquiries into infected blood—you believe that one was inadequate, while the other was done more thoroughly and produced a better outcome. With the system that we have, how can we become more efficient and effective in delivering what everyone wants—that is, better outcomes?

11:00

Patrick McGuire: That is a very difficult question, and, again, there are several points to make. It might assist the committee to reflect on the fact that at least three different sets of legal costs—four, in fact—impact in some way on the public purse in conducting a public inquiry.

First, there is the cost of the inquiry staff and chair; that is one set of costs that you cannot get away from. Secondly, there is the cost of providing representation to core participants, such as those whom I have represented over the years. Thirdly, there is the cost to public bodies of choosing to become core participants in the public inquiry, and they must bear the cost of that representation from their own budgets. I apologise—there are only three costs.

The point is that all three of those costs are, to my mind, unavoidable. The secretariat and the public inquiry staff must be paid, and the core participants must be represented. As for the public bodies, whether it be the national health service, Police Scotland or those involved in all the other public inquiries that have taken place, that is ultimately their choice. Police Scotland, for example, could choose not to be a core participant and could simply allow the inquiry to run itself. That is unlikely to happen, but the point is that that is its choice, just as it was the choice of the Scottish Government to be a party to the infected blood inquiry, and just as it was the choice of various NHS arms to become involved in those inquiries, too—

The Convener: So—

Patrick McGuire: I apologise for going on, convener.

The Convener: I understand—we just have a lot to get round. My question was very long, and I apologise for that, too.

Some witnesses have told us that a number of things can be done to make inquiries more efficient and effective, such as having a proper secretariat that has built up some institutional memory of how inquiries are successfully conducted, instead of having to reinvent the wheel, as we seem to do with every inquiry.

Tens of thousands of documents often have to be duplicated, but why does a trained lawyer have to do that? Can it be done by a paralegal or someone else? Would that reduce the cost? Apparently, it has a significant impact on the overall cost of any inquiry to have qualified lawyers copying 100,000 documents. All that I am saying is that, even with the system that we have and even if you accept that the system as it is should continue, there must be ways of reducing the costs to the public purse. After all, the cost of an inquiry might ultimately mean fewer officers on the street. It does have an impact.

Patrick McGuire: That is very fair. What I bring to the committee is my knowledge of representing core participants, and that is why my submission is all about the fact that that cost cannot, I think, be diminished in any way, if public inquiries are to achieve what they need to achieve for the victims of mass wrongs.

That said, I completely agree with your point about having a secretariat with institutional knowledge. I also agree with the point that, to be frank, flows from that, which is that, if we had a secretariat with that sort of institutional knowledge, why would we pay a two-year-qualified solicitor to photocopy things? I am being a bit pejorative—of course, that is not going to be the case—but it is a very fair point.

I have seen the benefit of that, to an extent, with the Scottish Covid inquiry, which appointed—albeit some months in, if not slightly longer than that—a chief executive, in the form of Ian Duddy, who has a lot of experience in these things and did an excellent job of making things run more smoothly. I accept entirely that both of those suggestions are very good.

The Convener: Do you have any other suggestions? Given your detailed involvement in some very high-profile public inquiries, have there been any areas where you thought, “Do you know what? We could have done that more efficiently, more effectively and more timeously”?

Patrick McGuire: It is difficult. I read Lord Gill’s submission, in which he tells us how well he did at controlling his budgets and at bringing the inquiry to a conclusion as quickly and as efficiently as he did. Having been involved in that inquiry, I would say that it came very close to the bone at being at the expense of the participants being fully represented. It just perhaps managed to allow full participation, but it was close.

Secondly, I am sure that the committee will recognise that the compass of the ICL Stockline inquiry was very small. The subject matter was not large.

The Convener: Sure.

Patrick McGuire: I will say no more than that about Lord Gill’s comments, but I think that it was easier for him to achieve that than it would be for, say, the chair of the Scottish Covid inquiry. It is important to recognise that public inquiries come in different shapes and sizes and have different scopes and compasses. The issue is therefore difficult.

That said, I think that the burden ultimately rests—as you have alluded to—on the secretariat and the chair, and different chairs take different

approaches. I know that the question has been asked whether the chair needs to be a judge rather than, say, a sheriff, but I would say that it should 100 per cent be a judge, if we want public confidence in the inquiry. Frankly—I mean no disrespect to those on the shrieval bench—sheriffs just do not cut it.

Some have asked whether there should be oversight of the judge. I understand the point, but I think that it would be difficult to achieve that. After all, the judge must be independent—indeed, it is the single most important thing that a judge must be in a public inquiry. How can any institution oversee an independent judge and bring pressure to bear on them? I struggle with the concept, although I understand the point. Everywhere you turn to try to find cost savings, you will find that doing so is really difficult, although the point about the secretariat is a very good one.

The Convener: New Zealand and Australia managed to bring in Covid inquiries in the space of a year or so for £5 million, whereas the UK one has already cost more than £200 million and the Scottish one has cost more than £34 million. I have not been aware of any real outcry in Australia and New Zealand that the process was not adequate, although we will be investigating that in the weeks ahead.

I understand what you say about judge-led inquiries being a gold standard, but the fact is that we have only 36 senior judges in Scotland. The Lord President has explained that appointing a judge has a substantial knock-on effect. A judge will sit for 205 sitting days, which equates to 34 criminal trials; currently, three judges are chairing inquiries, which means that there are 10 per cent fewer sitting days to hear cases. That means that other people are being denied justice.

The argument seems to be that the public inquiry subsumes everything else. For example, when there is an inquiry into a health board, the board has to redirect money from hip operations, heart surgery or whatever it happens to be, and that work gets delayed or has to be reduced, because of the impact on funding. The question that I am asking is why public inquiries should be in a situation where there seems to be no limit on the amount that is spent. The Sheku Bayoh inquiry, for example, has cost £51 million so far and counting.

Every other area of the public sector—health boards, local authorities, colleges, all other aspects of justice and so on—has to work within a budget, but you seem to be arguing that all of that goes out the window for a public inquiry, and that it is more important than anything else that happens in the public sector, including having police in the streets and operations being carried out in our hospitals. That seems to be the implication, because I am not hearing any ways in which we can really do things better, other than my suggestion in relation to the secretariat and all that stuff.

Patrick McGuire: I am not sure that it is fair to say that I said that public inquiries should take precedence over everything else and the rest of the public purse be damned—

The Convener: But hold on—you are saying that there should not really be any financial limit. There is no other area of the public sector that I am aware of that has an unlimited budget. I suppose that you could say that welfare is demand led but, other than that, everyone else has a specific budget that they have to adhere to.

Patrick McGuire: I am saying that, to achieve a public inquiry's two most basic functions of ensuring that the victims have confidence and that those who are affected by the act are being investigated and put under the microscope, the victims need to be legally represented, and a cost is inevitably associated with that. I have already said that that cost is not unlimited. The cost to the solicitors who represent the core participants is scrutinised by the chair, and it is limited.

Equally, it is not fair to say that the other associated costs are unlimited. The chairs are expected to keep an eye on budgets and to act accordingly, and we have to trust that they are doing that. I am not really sure what we are saying, if we are saying that we do not trust them to follow that through, because one of their core functions is to ensure that the inquiry is delivered in the quickest time possible while covering the subject matter and the terms of reference as fully as possible. That burden rests on the chair of the public inquiry.

I do not therefore think that it is fair to say that the costs are unlimited. On the point that you make that the money that is being spent on a public inquiry can be spent elsewhere, I quoted in my submission and will repeat the words of Lord Penrose, who said on the opening day of the first preliminary hearing that every penny spent on the inquiry was a penny taken away from the NHS. He sat as the chair of an inquiry into the infected blood scandal—for it was such, as we finally found out when we saw the full picture through the UK-wide inquiry. He sat in front of a room full of victims of the infected blood scandal and uttered those words, and it was appalling. It set the standard for the rest of that public inquiry.

The Convener: I understand what you are saying about that particular issue, but I do not think that he meant to say it with that level of insensitivity. Although it is not said, people still think it—it is still in the background, and there is an element of reality to it.

One of the frustrations is that a Government—whether it be the UK Government, the Scottish Government or whatever—sets up a public inquiry because, frankly, it is politically expedient to do so. It gets the matter off the minister's desk and kicks it into touch, and the minister will not be in office in five or 10 years, when the inquiry is concluded. Then we get the recommendations, which the Government says it will look at, and another year or two elapses, so there is surely still an element of frustration for the people who have been victims of the wrong that the public inquiry was set up to right. Could there be a situation in which the recommendations would have to be implemented? It would be difficult, because some recommendations might take time and would not be implemented overnight. What should the mechanism be to ensure that the recommendations are implemented rather than just left to the Government?

I recall that the Plotnikov inquiry, which took place about 24 or 25 years ago, made 42 recommendations but, two years after it concluded, only one recommendation had been implemented. After all the evidence that has been given, all the emotion for the people who were the victims, all the money that has been spent and all the time that has elapsed, we get recommendations and then nothing happens. What can we do to enhance the delivery of those recommendations?

Patrick McGuire: I recognise and completely agree with the point that you have made. It is interesting—I hope that this is not a parenthesis—that Sir Brian Langstaff, who was the chair of the infected blood inquiry, did something very novel to try to ensure that that did not happen. When he produced his report, he sent a letter to the minister saying that he was not able to say that the inquiry had fulfilled its terms of reference. When a chair says that the inquiry has fulfilled its terms of reference under the statute, that is it—he or she can do no more. He did that so that he could keep the inquiry open and continue to hold the Governments' feet to the fire, to ensure that his recommendations were followed through—and we have seen that, because the compensation scheme is up and running. There were issues with how the scheme operated, and the chair took another two weeks' worth of evidence about that and produced an additional report. That is one way of doing it, but it is unusual and he used that method because he had no other mechanism for doing it.

11:15

There absolutely should be a better mechanism. It strikes me that there should be some body—the Parliament itself, or a committee and then the full Parliament—that the relevant minister must report to timeously, which would involve the minister saying, "I have the report, and here are the recommendations that we are going to obtemper and the timeframes within which we are going to do that." That would allow committee members to ask questions if they do not like what they have been told, and it could lead to a debate in the chamber. That would be a good approach to the issue that you have highlighted.

The Convener: I will let colleagues come in, but I am really enjoying our discourse. The Scottish child abuse inquiry has cost more than £100 million and has been on-going for 11 years, but the inquiry team has produced interim reports so that people can see what is happening in the inquiry. It is not one of those inquiries that seem to be sealed off and from which you then get a big splurge at the end. Should that mechanism be routinely introduced to inquiries, so that victims of an injustice can see that progress is being made?

Patrick McGuire: This is not the most parliamentary language, but I am a big fan of interim reports, because they achieve exactly what you said. There are some occasions when producing them is not possible. It would have been difficult with the infected blood inquiry, because the chair wanted to do it all at once and it was one big jigsaw piece. However, where it is at all possible, it should absolutely be adopted as a way to, as quickly as possible, share the lessons that have been learned and share potential interim recommendations. That goes back to your previous discussion about how recommendations might be implemented, notwithstanding the fact that the inquiry would continue.

The Convener: Thank you for that.

Michelle Thomson: Good morning. Thank you very much for joining us. I will ask you some questions that reflect more on the integrity and reputation of the legal sector around public inquiries. Today, you will stoutly defend things where you deem it appropriate, and I have no issue with that. However, I want to explore with you situations in which a conflict of interest, or a potential conflict of interest, could ultimately affect the legal profession's reputation.

I ask you to bear in mind the fact that we see that a lot as politicians. If a person says, "I would never do that," that does not necessarily mean that it could never happen. For example, we have seen lawyers use the media to whip up demand for a public inquiry. In some instances, they have done so very successfully, because it has helped to trigger an inquiry. They have brought out people who have been terribly wronged, whose view is that there should be an inquiry, and stories run about it and so on.

That seems to be quite a departure from how your firm does things. In the first instance, what is your perception of how you can add your voice on whether there should be a public inquiry, as opposed to going direct to the media and using it? What is your sense of that as a company?

Patrick McGuire: As I said in my submission, I have previously worked with groups to campaign for public inquiries and have done so successfully. Our approach has never been to go straight to the media; we have always campaigned hand in glove with members of the Parliament who agree with us and our victims' groups that a public inquiry is needed. If what we were doing was inappropriate or involved a conflict of interest, that would have applied equally to the parliamentary colleagues working with us, but that has never been the case. Some groups began at the public petitions committee, which resulted in questions being asked; others had questions asked in the chamber.

Ultimately, and inevitably, that type of campaigning has led to press interest, and it would be foolish not to utilise that as part of the campaign to hold a public inquiry. I can see why going straight to the press might rile, but, at the same time, I am not in a position to—and would never—criticise somebody who, if they firmly believe that there is a need for a public inquiry, does that. I make the point about the realpolitik of all this: ultimately, it is surely up to the minister who decides to determine whether the case has been made, if the campaign groups have made their best fist of it. If their case was not a good one, the minister would just say no, and that would be that.

Michelle Thomson: There are quite a few points to pick up on, but let me be absolutely clear. You see it as appropriate to do your campaigning—we accept that, when an issue has come to light, campaigning is absolutely legitimate; nobody has any issue with that—through the mechanisms of the Parliament, including the public petitions committee, which you mentioned, and through members, in order to create that groundswell of opinion, instead of going direct to the media. What are your reflections, from an ethical perspective within the legal profession, on a situation in which a lawyer who is a close friend of a Government minister is able to use that route to seek a public inquiry?

Patrick McGuire: I suppose that there are two sets of ethics to consider in that question. I assume that it is a real situation, but let us imagine it as a university exam question. I would say that there are two sets of ethics to consider—that of the solicitor and that of the minister, who may or may not be able to make the decision. The ministerial code is as much to be considered in this question as the rules of the Law Society of Scotland. In this hypothetical situation, are there any breaches of the Law Society of Scotland rules? Probably not—I cannot think of any off the top of my head. Of course, you will say that ethics and a code of conduct are not always one and the same. I would not want to take my answer any further than that, to be honest with you.

Michelle Thomson: We have raised this question before. The Law Society of Scotland said that it was not clear whether it would simply be a case of the lawyer exercising their freedom of speech. Compass Chambers said that it is not a relevant conflict of interest if the lawyer is advancing their client's position. I took from that response that it is somewhere that it did not want to go.

Going back to the reputational and ethical aspects of it, there can often be a perception of a conflict of interest regardless of whether there is. I am trying to explore the question of removing that perception. There might well be a tipping point. Nobody is suggesting that rules have been broken—that is not the point. I am more trying to advance the question of perception. Can I take it that it is not the normal route—certainly for your company—to go direct to the media instead of lobbying Parliament? Do you have experience of how other law firms bring a matter to the public's attention?

Patrick McGuire: Because there is such a small pool of law firms that do this, it is very difficult to say what is normal and what is not. All that I can talk about is the path that I have normally followed, which I think is an effective and appropriate way to campaign for such things. It is very difficult to say what is normal and what is not.

I should say that our discussion was around ethics. I struggle to see it being a conflict of interest per se, because, as you alluded to, either Compass Chambers or Michael Clancy said that they were still always pursuing the interests of their client. The conflict of interest would arise if you were doing something that was in conflict with your client's interests. Whatever else that hypothetical question might involve, I do not think that it strays into the area of conflict of interest.

Michelle Thomson: Yes, Michael Clancy said that it was unclear whether a lawyer would be exercising their freedom of speech. Compass Chambers said that it would not represent a conflict of interest if the lawyer was advancing their client's position.

I will link it to the financial element. Lawyers will be advocating for their client's position. We could make a case that the more successfully they advocate for that position over the maximum length of time, the more appealing it is for them.

The convener has already raised our perception of the lack of financial controls. A lawyer could attach themselves to an inquiry that they were able to trigger through successful use of the media. If the inquiry was on-going for a long period of time and the lawyer potentially sought to extend its scope, thereby increasing the length of time that the inquiry would take, the result would be huge fees for the lawyer concerned, which is an appealing position. Can you understand from a public perception point of view why that sort of example would pique the committee's interest and, ultimately affect the perception of the success or desirability of public inquiries?

Patrick McGuire: I fully recognise your point and the narrative that you have described. I would temper it slightly by pointing out that, in the scenario that you have painted, a minister set up the inquiry in the first place and decided whether to extend the scope. The chair of the inquiry has to decide how deep they need to dive into the evidence and, therefore, how long the inquiry should take. The chair will scrutinise, or not, the monthly bills and costs of the hypothetical solicitor and they will determine how much money they will make. I apologise for repeating myself, but, in my experience, every bill that Thompsons Solicitors has ever submitted has been forensically and fully scrutinised, and they have certainly not been paid in full every time.

Michelle Thomson: To finish on this point, I will ask about culture. Chairs will vary. I raised the question previously—apologies, but I have forgotten who was giving evidence—and I think that the witness alluded to the fact that he would take a dim view of the kind of scenario that I have set out. I respected what he said.

To what extent is there a culture in which some lawyers do not like to challenge other lawyers? If you are coming from a position in which ethics and propriety should be at the very heart of what you do, which you would sign up to from the start of your career, that culture would make it quite hard to challenge someone. What is your experience of being challenged by a chair on your submissions to various inquiries?

Patrick McGuire: In terms of submissions?

Michelle Thomson: I mean fee submissions. I should have been clear.

Patrick McGuire: Indeed—thank you. I have never been on my feet, metaphorically, before the chair of a public inquiry.

The short answer is that, yes, that has happened regularly, going all the way back to the ICL public inquiry. I have spoken previously about Lord Gill's approach. The one novel thing that the solicitor to that inquiry did was allow work to be undertaken on a block basis. For example, if they released a set of disclosure documents, they would say, "You should take no more than X hours to read this." That was done in advance.

11:30

What has happened in every inquiry since then is that the disclosure will be released, the bill of costs will be submitted and it will then be pored over line by line. Comments will be made such as, "Hang on—cumulatively, it's taken five hours to read all this." The language that tends to be used is that it is "disproportionate" or "unreasonable". Those words come up all the time, because inquiries have a law accountant whose job it is to pare back as much as they can. That results in the type of discourse that you are talking about, which involves people saying, "That was too much—justify yourself," or, "That was too much—don't even bother justifying yourself, because we're not paying it." That is absolutely fine—that is the way that it goes.

The Scottish Covid inquiry has appointed a gentleman called Stewart Mullan, who has a background as a law accountant, to pore over every bill of costs before the chair even sees it. He has spent his whole life arguing over judicial accounts, and I can tell you that he is absolutely ferocious.

Michelle Thomson: That is good to hear. That is heartening for the committee, notwithstanding the huge sums that have been spent thus far.

John Mason: You were asked about Lord Penrose's statement, in which he said that every penny spent on the contaminated blood inquiry was a penny less for the NHS or front-line services. That might have been a bit insensitive, but would you agree that it was a true statement?

Patrick McGuire: I suspect so. I am genuinely not avoiding the question, but I do not know for certain that the NHS budget was the only budget that was used for that public inquiry. I am not evading the question, but I do not know whether that was the case. If there is evidence that that was the case, of course I have to accept that the statement is true.

John Mason: It came out of public sector spending, so some of it might have been found from the colleges budget, some of it might have been found from the schools budget and some of it might have been found from the NHS budget.

Patrick McGuire: It is 100 per cent true to say that it came from the public purse.

John Mason: Fair enough.

You said that all the different parties have to have lawyers. I wonder whether that is the case. Could we have a more inquisitorial approach and

a less confrontational approach in public inquiries? I am also on the Education, Children and Young People Committee, which is looking into children's hearings. There is a strong argument to be made that an inquisitorial approach should be taken in that system, with information being found out by asking the children and the families, rather than by the two parties having lawyers. Do you think that we could have public inquiries without having lawyers on both sides?

Patrick McGuire: My first point is that the public inquiry system would probably be better described as a hybrid system. It is not fully adversarial, nor is it fully inquisitorial. I know from my experience of representing victims of mass wrongs that there is probably a sweet spot in that respect. I cite what the Equality and Human Rights Commission has said, which could not be clearer: core participants must have meaningful, not illusory, participation. That cannot happen if they are represented only by the inquiry team, because, inevitably—

John Mason: I am sorry—can they not represent themselves?

Patrick McGuire: My answer would be no, because in every public inquiry that I have been involved in, the evidence has been deep, dense and complicated.

John Mason: Would the chair ask them unfair questions? Surely the chair should adapt the questions to what the participant can deal with.

Patrick McGuire: The core participants have a statutory right to make opening and closing statements, to consider documents in advance and to suggest lines of questioning, and all of that requires legal representation.

John Mason: But we are considering changing the statutory requirements, so none of that is fixed.

Patrick McGuire: I would say that those are the bare minimum levels of participation that participants should have. If the committee's inquiry was to recommend that those rights should be cut and if the Parliament was to enact primary legislation that removed them from the Inquiries Act 2005, that would be a sad day and a retrograde step for a Parliament that is famed for being progressive, inclusive and following what the Equality and Human Rights Commission says. It would be a sad day if the committee was to make such recommendations.

John Mason: You say that participants should be properly heard, and I agree with that, but I get constituents who, if I let them, would speak to me for five hours on their housing needs, their medical needs or whatever. I just do not have that time, and I have to restrict the time that they have to speak to me. I get the main points, they get a bit longer to explain the situation and then I have to draw the discussion to a close. A general practitioner gives people eight or 10 minutes. Should there not be a bit more control, so that the participants and the lawyers do not get to speak for as long as they want to?

I am an accountant, and audits have to be done in a certain time. You do the best that you can in three months for a million pounds or whatever the cost to do that might be. Could we not go down that route?

Patrick McGuire: There is perhaps a slight misunderstanding about what core participants do and what they bring to public inquiries. It is not just about giving them their day in court, to use that terrible euphemism, and allowing them to speak. Throughout the entire inquiry process, they receive the disclosure that the inquiry obtains. With their lawyers, they interrogate that. They make recommendations and offer ideas as to the direction of the inquiry's investigation and the questions that should be asked of the plethora of other witnesses, beyond the core participants, who will be brought before the chair to give evidence under oath.

There is no better example than the UK-wide infected blood inquiry, in which Prime Ministers and former Scottish ministers were interrogated fully by the counsel to the inquiry. The level of interrogation was partly and significantly due to the involvement of the core participants, in advance, looking at the documents, working with their lawyers and putting forward lines of questioning. A core participant does not just get heard—they do much more than that.

John Mason: I hear what you are saying, and I realise that that is what is happening at the moment. We are trying to explore whether there is a better or different way of doing it.

Patrick McGuire: I will make two points. My answer would be no. However, I am aware that there will be a closed session after I have given evidence. I think that my no will be echoed as a resounding no by those who will be giving evidence later.

John Mason: It is good for us to hear a range of evidence. I accept that.

One of your suggestions is that the victims or people who are affected should be satisfied by the inquiry or should get closure, or however you want to describe it. You have been involved in four public inquiries. Have you found that all the victims have been satisfied by the procedures?

Patrick McGuire: Yes, but, to be frank, the victims of the contaminated blood scandal were satisfied only at the conclusion of the UK-wide inquiry. If I had been sitting here with only the Penrose inquiry having taken place, I would be

saying that that victim group was not satisfied. That shows the stark contrast between a well-run public inquiry, where the victims are at the heart of the inquiry, and one that is not, and it shows the significant danger of taking an overly cost-based approach to the level of participation. There can be no better example when we compare and contrast those two public inquiries and the conduct of the two chairs.

John Mason: Were all the victims in relation to the Queen Elizabeth university hospital and the Royal hospital for children and young people satisfied by the Scottish hospitals inquiry?

Patrick McGuire: That inquiry is on-going, Mr Mason.

John Mason: Okay. What about the victims in relation to the Vale of Leven hospital inquiry? Were they all satisfied?

Patrick McGuire: Very much so.

John Mason: Were all those in relation to the ICL Stockline inquiry satisfied?

Patrick McGuire: Yes.

John Mason: The police put forward the argument that public inquiries inform public debate. Is it not a problem when they go on for so long? Take the Edinburgh tram inquiry, for example. Did that end up helping the public? Did it help anyone, really?

Patrick McGuire: I was not involved in the tram inquiry. I am probably as sceptical about it as many people in this room.

John Mason: You and I are both victims, in a sense—

Patrick McGuire: Indeed.

John Mason: —although not in the same way as if we had been in the hospital. The trams cost about £500 million, so we all paid about £100 each for them, so we are victims. However, as a victim of the tram project, I do not feel particularly helped by the inquiry taking so long.

Patrick McGuire: There is a difference between a victim in the sense that you have described and a victim in the other circumstances that we have discussed. We are not particularly aggrieved or distressed by the cost of the trams, or by the inquiry into the cost of the Parliament building.

I will make the point that I made in my paper about realpolitik. A minister may set up an inquiry cynically, for politically expedient reasons, as the convener said. That is where the issue lies. Should they be able to do that? They know what the costs will be. When a group of victims of a mass wrong campaign for and win a public inquiry—not for political expediency but because it is the right thing to do—they should be properly and fully represented at that inquiry and they should have the level of participation that the EHRC says that they should have.

John Mason: I take your point that a major decision is made when a minister agrees to a public inquiry. It just seems that, once such a decision has been made, it is a bit of an open field. I know that you do not like the term “blank cheque”. However, I asked one of the previous witnesses, Lord Hardie, what he would do if we gave him £5 million for two years and asked him to give us the best result he could in that time. He said that he would not do it. Others have said that they would. Would you agree with him?

Patrick McGuire: It comes back to comparing and contrasting the Stockline inquiry with the Covid-19 inquiry. The figure of £5 million would certainly not be enough for the Covid-19 inquiry.

John Mason: For the trams, it might have been.

Patrick McGuire: I would like to think so, but I question whether a public inquiry should ever have been set up in relation to the trams, given the cost that we all knew it would involve. I question whether there should ever have been a public inquiry into the cost of this building. I question there ever being public inquiries unless there is a real lack of public confidence and there are real victims of real wrongs. That is when there should be public inquiries, and, when such inquiries happen, they should be properly run and fully funded.

The Convener: That was a helpful comment.

Liz Smith: For the record, I am representing former NHS Tayside patients in the Eljamel inquiry.

Patrick McGuire: I apologise for interrupting, but you have just brought to mind an excellent point that is not in my paper.

Thompsons represents a relatively small number of victims of Eljamel. We, along with another firm, applied for core participant status in the inquiry and for funding at public expense. The other firm had 10 times as many clients. Lord Weir, probably correctly, made the decision to knock us back and allow only one group to be legally represented and to serve as core participants in the inquiry, which again shows that a good chair can control the funding and say no. Apologies again for interrupting.

Liz Smith: That is helpful. I was aware of that circumstance, but thank you for raising it, Mr McGuire.

Witnesses who have attended the committee have put it to us that one of the reasons for the increasing demand for public inquiries is because

of the failure of some public services. I think that it was John Campbell KC who said to us that inquiries are a convenient way for politicians to say, "Well, it's not on our desk now—it's off to a public inquiry." Do you agree that the reason for the increase is that there is evidence that more of the public services, particularly in health, are not functioning as well as they should be?

Patrick McGuire: Yes. It strikes me as almost self-evident that, because there have now been so many issues that require public inquiries, it must be the case that things are not being run as they should be. We can reflect on some of the decades-long failures and cover-ups, such as with the infected blood inquiry, but that is probably a different matter.

11:45

Liz Smith: That is certainly the case for the patients I am representing, because the issue has been going on for a very long time. However, as we try to move forward to make sure that the public inquiries that happen are as effective as possible, is there anything that we can do to understand that some of the inquiries would not be necessary if we could solve the problems that exist in the way that public services operate? Is that a difficult thing to do? Is it possible?

Patrick McGuire: Again, it is self-evident that, if public services were to be run better and there were to be fewer scandals—let us pray for none—there would be no need for these types of public inquiries.

Liz Smith: My concern is that, when public services have not been functioning as well as they should have been, particularly when that is over a long period of time, the trust of the victims and people who will be involved in a public inquiry will be diminished. They will feel a complete lack of trust, which makes it difficult for the public inquiry to try to regain that trust. For a public inquiry to work well, it is essential that the victims have trust in the process. If that trust has already been diminished because they feel that they have been let down badly by public services, it is difficult to get it back.

Patrick McGuire: I completely agree. However, I have witnessed chairs of public inquiries win that trust back. It is possible, but it is difficult. To return to my point about trams and hospital buildings, when the first draft terms of reference were prepared for both the Vale of Leven hospital inquiry and the Scottish hospitals inquiry, I made strong submissions to the effect that they read more like inquiries into the bricks and mortar and the buildings than inquiries into significant failures in the NHS. The draft terms did not have the victims at their heart. Those terms of reference were significantly redrafted and the language of victims and patients being at the heart of the inquiry was placed into them. That made a significant difference to the mindset of the people I represent at the inquiry.

Liz Smith: There seems to be a growing number of public inquiries in which it is a likely possibility that the terms of reference will have to be modified or expanded because of the fact that new information comes out through various victim statements. If victims feel that, over a long period of time, they have been undermined in the way that their cases have been approached, it is important that the terms of reference can reflect their interests as well as those of the Government minister who set up the public inquiry. Is that something that you are concerned about?

Patrick McGuire: I would not say that I am concerned. If terms of reference need to be changed for the reasons that you have highlighted, they should absolutely be changed, and that should not be seen as a criticism of the chair—or anyone else, for that matter. There is an absolute need for the terms of reference to be as you have described, which is wide and covering the areas that the victims are concerned about. If the terms of reference do not cover those types of matters, the inquiry will be lacking.

To an extent, the UK-wide infected blood inquiry, the Scottish hospitals inquiry and, effectively, the Eljamel inquiry all, within their terms of reference, look at the extent to which there was a cover-up. It can make an enormous difference to the confidence of the core participants to have something like that in a public inquiry, whereby we are ultimately saying that it was the state that got it so badly wrong and that there were decades of things not being looked at.

Liz Smith: My final point is that there are some circumstances where the terms of reference are bound by legislation in Scotland, but, in relation to some cases—I refer again to the Eljamel inquiry—there are circumstances within UK jurisdiction that are important with regard to exposing some of the details. Do you have any views about how, in such circumstances, the Scottish and UK Governments should liaise to ensure that all the points, whether they are devolved or reserved, can be brought together?

Patrick McGuire: It is certainly possible to do that, and it should be done, if at all possible. Lord Gill's inquiry into the ICL Stockline explosion was the first and, I think, the only public inquiry to have been set up by both Westminster and Holyrood. There was good liaison on that, and it was, effectively, a UK-wide inquiry that was held in Scotland. I think that the mechanism was simply that Westminster basically gave permission for Holyrood to set up the inquiry and look at

everything, and it flowed from there. That allowed a much deeper interrogation of the issues than would otherwise have been the case. There are other benefits of such an approach. For example, there has been significant liaison between the overlapping Covid inquiries, and any evidence that has been heard by the UK inquiry automatically falls into the evidence for the Scottish inquiry, which saves costs.

Liz Smith: That approach is important, so that nothing is kept under cover because of constitutional arrangements.

Michael Marra: Thank you for your evidence so far, Mr McGuire. I put on record my involvement in the Eljamel inquiry, as a representative of one of the victims.

You mentioned different categories of inquiry—a bricks-and-mortar inquiry, a service-failure inquiry and so on. Would something approaching a standardised model of operation for an inquiry help with the setting up of inquiries and address your concerns about the initial drafting of the terms of reference requiring significant amendment?

Patrick McGuire: I can see the benefit of that and of making greater guidance on those types of things available from the outset to the minister who is setting up the inquiry and the civil servants who are drafting the terms of reference. There should also be liaison between the minister and the recognised victims, while the terms of reference are in draft form. That has made a significant difference—I say "has made" because things have moved in that respect since the Stockline inquiry said, "There are the terms of reference, and there will be no more discussion." That was also the approach that was taken in the Vale of Leven hospital inquiry, although, luckily, those terms of reference were quite wide reaching, and, of course, Penrose was Penrose.

However, if we fast-forward to the Queen Elizabeth hospital inquiry, the Eljamel inquiry—Mr Marra can confirm what I am about to say—the UK-wide infected blood inquiry and the Scottish Covid-19 inquiry, we can see that, in those cases, there was a degree of discussion and interaction around what the terms of reference should be. Providing victims with that level of input at that early stage goes a long way towards building confidence in the inquiry.

Michael Marra: From your evidence, it is clear that your practice is focused on that kind of interaction with victims, particularly in relation to cases of service failure.

You mentioned bricks-and-mortar inquiries. Are there other categories that you can think of into which any of the current public inquiries and the plethora of public inquiries that we have had over the past decade might fall?

Patrick McGuire: I do not know how you would categorise the Covid inquiry, to be honest. There is clearly a victim aspect. I know that the care home relatives and core participants are here and were very much victims of the harsh lock-out approach that was taken with regard to care homes. However, there are aspects of that inquiry that are far-reaching in terms of their impact on health and safety, so I do not know how you would categorise it.

Michael Marra: That is fair. Could I venture a slight categorisation of that, in relation to the need for quick lessons to be learned? We are told that we are still highly vulnerable to another pandemic, but, as the convener referenced, the inquiries will roll on for years and years. Setting the expense issue to the side, I worry that we will not learn the lessons in time to do something differently. Is that not a concern? We have talked a lot about money, but is the issue not how long it takes for all such inquiries to have an impact on people?

Patrick McGuire: I recognise the high-level point that we want an inquiry to conclude as quickly as possible, but that has to be done in the context of all the evidence being brought to ensure that all the lessons are learned. It is difficult, and every chair recognises that problem.

We get closer to an answer to your point through, as the convener said, regular interim reports, which are how we square that circle. We invited the chair of the Scottish Covid-19 inquiry to issue an interim report on an aspect of the care home experience. There was a hearing on it—it was finely balanced, but he ultimately decided that it was not quite the appropriate time to issue such a report. It is what it is, but interim reports go a long way to squaring the circle that you identified.

Michael Marra: That is useful.

My closing point is that you have set quite a lot of store in your evidence about people campaigning for justice through the process and winning a public inquiry. That involves gaining impetus for change and justice, but we see a pattern in which recommendations are forthcoming many years after the initial events when some of that impetus has perhaps dissipated, because Governments face no real pressure to follow through and deliver on the recommendations that have been made. Do you worry about the lack of implementation of recommendations, and are the delay in time and the dissipation of impetus part of the problem?

Patrick McGuire: I worry about the ability of both Governments to accept or implement recommendations. I absolutely have concerns about that, and I have offered one view on how that might be approached.

The length of time might be a factor, but the level of public interest in and scrutiny of the publication of the infected blood inquiry, and the full-throated apology by the then Prime Minister, shows that it can be done. Interest can reignite, so time does not prohibit interest and implementation.

Michael Marra: Thank you.

The Convener: Earlier, we talked about the fact that there is no formal mechanism to ensure that public inquiry recommendations are implemented promptly or at all, whereas the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 sets out a requirement that those to whom fatal accident inquiry recommendations are directed must provide a response to an FAI determination within eight weeks.

Does such a time period sound reasonably sensible for public inquiries? Advocates said that it would take several months, but they did not specifically define the period length.

Patrick McGuire: Yes, something like that would be very helpful. To declare an interest, I assisted Patricia Ferguson in drafting her competing bill on fatal accident inquiries that was before the Parliament at the same time as the one that is now on the statute book. Ms Ferguson's bill went further than that because it imposed a criminal offence in the event that an FAI recommendation was not implemented without proper explanation.

I am not sure that we want to haul the First Minister before the courts, but the law certainly needs to have as much teeth as possible. I suspect that the equivalent would be a committee and then the full Parliament saying, "Explain yourself."

The Convener: Interestingly, Professor Cameron, who was involved in the Jersey child abuse inquiry, was the first witness in this inquiry of ours. He said that the public inquiries team should do what the Jersey inquiry team did, which is to revisit the situation a year or two after the inquiry's conclusion to see what had been done on the ground.

12:00

I want to ask you about the threat of a public inquiry. If, for example, the NHS or Police Scotland—or whoever might become subject to an inquiry—finds out that there has been a miscarriage of justice or an alleged miscarriage of justice, they would not just sit there staring into the headlights, waiting for the public inquiry to run them over. They will look at their systems as soon as they find out and say, "What did we do wrong? What can we change? What can we improve?" They might find that people need disciplinary action to be taken against them. Do you think that the threat of an inquiry has the impact of changing the activities of organisations?

Patrick McGuire: I do, yes. That is a very good point.

On an inquiry team revisiting a year later, I suppose that it is a bit like what Sir Brian Langstaff did in relation to the infected blood inquiry, which I described earlier. By statute, when an inquiry's report is published, that is it. Generally, the chair says that he has fulfilled the terms of his reference and he is gone. Sir Brian had concerns, and therefore he did not do that. One wonders whether, if we are going to change primary legislation at all, we should change that bit about when an inquiry closes. Perhaps the statute should say the opposite—that after the report has been produced the inquiry will stay open for a year and hear evidence at that point on whether its recommendations have been implemented.

The Convener: We are really looking at justice for victims, but, at the same time, we should ask what we can do better next time for everyone else.

Police Scotland has also suggested that "Rapid independent reviews" are done six to 12 weeks into an inquiry

"to deliver urgent lessons where speed matters most."

We have talked about having interim reports, but Police Scotland is asking how we can restore public confidence sooner than waiting five years for something to come out. I do not know how long the Emma Caldwell inquiry will take, but, as I said earlier, the Sheku Bayoh inquiry has taken six years already and does not seem to be near a conclusion, as far as I am aware. Is Police Scotland's suggestion reasonable?

Patrick McGuire: It is not unreasonable, but I do not know, off the top of my head, how that would work in practice. Obviously, the inquiry has to consider all the evidence. Would it do that by breaking things down?

The Convener: They might set out terms of reference. Police Scotland is not here today; we invited them, but they declined, unfortunately. That is one of the reasons why we are so pleased that you accepted our invitation. I mean that sincerely. It is important that we have one of the legal firms that are involved in the matter here. I really appreciate your evidence today, and I know that my colleagues do as well.

I am speculating on what Police Scotland is suggesting, but I think that it is along the lines of saying "These are the terms of reference, and over the next six to 12 weeks, this is what we are going to do straight off to try to make things better".

Patrick McGuire: Would that be—

The Convener: It would not derail an inquiry as such. Our inquiry is not about whether an inquiry should or should not take place, but about how to make inquiries more efficient and effective in delivering justice and value for the taxpayer at the same time.

Patrick McGuire: Would that be the affected public bodies saying, "Here is what we will do to improve things", or would the inquiry be saying that?

The Convener: I think that it would be the public bodies saying to the inquiry, within six to 12 weeks, "This is what we will do". However, that does not preclude the inquiry taking evidence from people subsequently.

Patrick McGuire: The first thing that the inquiry would do is hear from the bodies about what they propose to improve—to mark their own homework, for lack of a better phrase. I think that that is a very good idea.

The Convener: The issue of marking their own homework is important. The reason why the inquiry would still take place, even in those circumstances, is to ensure that the result was not, "Okay, everything is fine—we will just move on".

The last point that I will make is about capacity. I mentioned earlier that there are 36 senior judges, and if three of them are involved in inquiries, that will have an impact on trials. What do you think is the maximum number of inquiries that can run in Scotland at any one time without derailing the day-to-day delivery of justice in Scotland through ordinary criminal trials?

Patrick McGuire: That is very difficult. One may say that we are already at capacity in that respect; however, if another tragedy comes along, we cannot say no, can we? I have read—

The Convener: But that is the dichotomy, is it not? That is why I was talking earlier about opportunity costs, and why a number of other organisations and, indeed, jurisdictions—Australia, New Zealand, Canada, Sweden and Denmark, all of which we will be considering in the next two weeks—do this differently. They do not have the gold standard of a judge, because of the impact on their systems, but they are able to deliver these things in a different way.

Patrick McGuire: I thought that there was a degree of irony in the suggestion that was made. I cannot remember whether it was the current Lord President or Lord Carloway; in any case, they both made the same point, as they would, which is that there are not enough judges and, in effect, we need more. However, on the suggestion that sheriffs could preside over a public inquiry, I have made it quite clear why I do not think that that is a good idea.

What can happen—and happens regularly—is that a sheriff is appointed to act up, for want of a better phrase, as a judge, which gives more capacity to the upper bench.

The Convener: You have talked about bricks-and-mortar inquiries. I highlight the trams inquiry, which took nine years and cost £13.8 million, and then came out with a report running to 30,000 pages. Who read them?

Patrick McGuire: Absolutely.

The Convener: Should that have been led by a judge? One might argue for having a judge if there are victims involved, but is it necessary for a bricks-and-mortar inquiry?

Patrick McGuire: No—I am only speaking about groups of victims. I have been quite candid in wondering whether either inquiry that we have talked about in that respect should have been set up at all, but certainly there is no need for upper-bench judges to preside over them—none at all.

The Convener: Finally, you say in your submission:

> "The ECHR advocate that victim groups must have active and meaningful, not illusory, participation in Inquiries."

I think that we would certainly all agree with that, but when it comes to core participants, what capacity does an inquiry have in that respect? With the Covid inquiry, for example, how many potential victims can there be? A thousand, 10,000, 50,000 or even 100,000 people could theoretically give evidence about the death of a loved one; there will be a lot of overlap and duplication in what they are saying, but they will be giving their own stories. Should there be a limit on that capacity, or can just anyone who wants to be a core participant become one? Obviously, having thousands of people give evidence will not necessarily add to the quality of what is happening. It will just delay things, and cost more.

I suppose that you do not want to say to one person, "You can come to court" and to another, "But you can't". However, perhaps you should, if, at the end of the day, they are not saying anything different from what others are saying and if the inquiry is on that sort of scale.

Patrick McGuire: Sure, and on one level, I do not disagree. However, that is down to the discretion of the judge, and you would hope that he would exercise that discretion sensibly, so that, as you have said, a group on the periphery of the issue that was being explored, who were perhaps not true victims—if that is not an inappropriate way

of phrasing it—might not be granted core participant status.

I highlight my earlier point about Lord Weir's approach in the Eljamel inquiry. As I have said, I think that he made the right decision in rejecting my smaller group's application for core participant status and, as a result, our application to be funded at public expense. That is not to say that I did anything wrong by making the application, but he weighed it up and said, "This is how I propose to make best use of the public purse." That sort of thing can, and does, happen.

The Convener: My mother had dementia, but you could have a conversation with her, and she was still doing sudoku and reading the papers every day. Then there was lockdown, and six months later, she was unable even to speak. Obviously the disease was advancing, but isolation was a factor, too.

Theoretically, then, I could give evidence to the Covid inquiry; I am not intending to, of course, but the bottom line is that we are talking about a huge number of people, and it just becomes very difficult. You get what is called in economics "diseconomies of scale". The quality of the inquiry is at a certain level, but then you get so much information that the quality ends up going down, and all that happens is that the time for deliberation gets extended.

Patrick McGuire: Not just the Covid inquiry, but all the inquiries in which I have been involved have grappled with that fairly well. It is all about making representative organisations, if you like, the core participants.

The Convener: So, you have one person speaking on behalf of 50 people.

Patrick McGuire: Absolutely, and not everyone who provides a written statement to the inquiry or who says that they have a story to tell will be invited to attend open court and give evidence at a hearing. Again, what tends to happen is that a representative group of people will be picked to collectively tell a story.

The Convener: I know that this is a hard question, but is there an optimum number of core participants?

Patrick McGuire: It depends entirely on the inquiry—

The Convener: A maximum number, then.

Patrick McGuire: I mean, the Stockline inquiry was so different from the Covid inquiry.

The Convener: So, some might have only five, and others might have 50.

Patrick McGuire: Absolutely.

The Convener: I understand that, but when you get to 500 or 1,000, it becomes—

Patrick McGuire: It sounds too much.

The Convener: Okay. I am sorry, Michael—did you want to come in?

Michael Marra: The convener has highlighted an event that affected all five and a half million of us in profound ways, and the issue of how to garner the information. However, we are trying to use the same process for the Covid inquiry as we are for the tragic circumstances that happened one afternoon in Kirkcaldy and which involved about 20 people. That inquiry has been going on for six years now. Are we not trying to have a one-size-fits-all legislative approach to incredibly different things, and is that not partly why we are coming up against these challenges?

Patrick McGuire: I do recognise the point, but what I would say in response is, first of all, that the legislation—that is, the Inquiries (Scotland) Act 2005 and the Inquiries (Scotland) Rules 2007—is very much enabling legislation. The acts provide, to an extent, the bare bones, and they place a lot of discretion in the hands of the chair. Therefore, how the two inquiries that you have referred to are run will be down to the chair of each inquiry, based on those two pieces of enabling legislation.

Instead of the primary or the secondary legislation being changed, what might start to provide a solution is the type of guidance that we talked about earlier, and the institutional knowledge of the secretariat. I think that that would start to make a change.

The Convener: Thank you very much, Mr McGuire. Before you go, do you have any final points to make, or is there anything that we have not touched on that you want to emphasise at this point? The floor is yours for the last word.

Patrick McGuire: I have enjoyed the session, but there is something that I thought about only a couple of days ago, and therefore after I had made my submission. We have been on the periphery of this point for a lot of the discussion, but what happens if a campaign group is unable to convince a minister that there should be a public inquiry? At the moment, that will be it for the group, other than its continuing to campaign, which, of course, would be a fruitless exercise.

This might be judged as going against the grain of what the inquiry is looking at, but I wonder whether there should be a mechanism by which such a group is able to come to a committee of the Scottish Parliament. You might say, "Well, there's the public petitions committee", but I feel that there should be a properly constituted public inquiry committee, or some such thing, whereby the minister who has decided not to hold a public

inquiry must set out clearly in writing why the decision has been made and the decision would be open to the scrutiny either of a committee or even the entire Parliament. That would bring more openness and candour to the process. There is now a very similar process in the fatal accident inquiry legislation that you quoted from earlier, convener. Perhaps that is a final bit of food for thought.

The Convener: I am tempted to comment on that. I think that a lot of these issues are raised by members in members' business debates and in the chamber, and ministers are put under pressure in any case. After all, inquiries are not just decided; there tends to be a build-up of pressure, with a lot of public angst, media inquiries and so on. Your point is well made, though, and it is certainly one that we will consider.

Thank you very much, Mr McGuire. Again, we greatly appreciate your taking the time to come along and give evidence—it is a really important part of the work that we are carrying out. I should say that we will continue to take evidence for the inquiry over the rest of this month and into the next, and we will be reporting on our findings not in five years, but in December.

Meeting closed at 12:14.

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