



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Finance and Public Administration Committee

**Tuesday 25 November 2025**

**Session 6**



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**FINANCE AND PUBLIC ADMINISTRATION COMMITTEE**  
**32<sup>nd</sup> 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:**

Kate Forbes (Deputy First Minister and Cabinet Secretary for Economy and Gaelic)

Marion McCormack (Scottish Government)

Don McGillivray (Scottish Government)

Emma Thomson (Scottish Government)

**CLERK TO THE COMMITTEE**

Joanne McNaughton

**LOCATION**

The Robert Burns Room (CR1)



# Scottish Parliament

## Finance and Public Administration Committee

*Tuesday 25 November 2025*

*[The Convener opened the meeting at 09:02]*

### Scottish Public Inquiries (Cost-effectiveness)

**The Convener (Kenneth Gibson):** Good morning, and welcome to the 32nd meeting in 2025 of the Finance and Public Administration Committee. We have one public item on our agenda today, which is our final evidence session on the cost-effectiveness of public inquiries.

We are joined by Kate Forbes, MSP, Deputy First Minister and Cabinet Secretary for Economy and Gaelic, and Donald McGillivray, director of safer communities. Just arriving are Emma Thomson, solicitor at the Scottish Government legal directorate, and Marion McCormack from civil courts, justice transformation and inquiries.

I welcome you all to the meeting, and invite the Deputy First Minister to make a short opening statement.

**The Deputy First Minister and Cabinet Secretary for Economy and Gaelic (Kate Forbes):** Thank you, convener, for the opportunity to give evidence today. The committees always hold interesting evidence sessions, but I have followed this one with particular interest in the past few weeks, because the issue is really important.

The committee will know that public inquiries play a vital role in establishing what has happened, restoring public trust and recommending improvements. However—I know that this has been a theme of your inquiry—they also need to deliver value for money, and I welcome the committee's consideration of how best to achieve that.

Decisions to hold public inquiries are never taken lightly. We always consider alternatives, such as non-statutory reviews, independent panels or other mechanisms that might be quicker, more flexible and less costly. Those options are then carefully assessed in light of the circumstances of each case, and as part of that we try to engage directly with affected parties, such as victims and survivors, to understand their perspective.

The legal framework for public inquiries is set by the United Kingdom Inquiries Act 2005 and the Inquiries (Scotland) Rules 2007. Under the 2005

act, ministers are required to meet the costs of holding inquiries and chairs have a duty to avoid unnecessary costs. The costs of an inquiry are largely shaped by the independent chair's decisions on how it should be run, but the scope and remit that are established by ministers set the parameters in which those decisions are made. The terms of reference that are agreed at the outset is the key lever that ministers have to ensure that an inquiry is cost effective and that it delivers timely outcomes. We need to strike a careful balance at that point, by offering clear direction but not compromising the inquiry's independence.

I know that the committee heard calls for indicative timescales to be set for inquiries, and setting expectations for duration could be one way of reassuring those affected and it could help to manage public expectations. We must also be mindful of ensuring that inquiries have the time that they need to investigate thoroughly and to follow up on evidence that emerges.

Once an inquiry is established, it is completely independent of ministers. A sponsor team in the Scottish Government provides the budget for the inquiry and maintains regular contact with the inquiry team. We have also produced guidance to support the establishment and operation of inquiries that sets out ways of delivering value for money on aspects such as procuring information technology and agreeing leases, although those are ultimately operational decisions for the chair.

Every public inquiry incurs unavoidable costs, including staffing, accommodation, legal services and engagement, but decisions on those matters are taken by the chair. Other drivers of cost are more challenging to predict, such as the length of time that is taken to gather evidence, the number of hearings and the complexity of drafting reports. Some inquiries require the provision of trauma-informed support for victims, witnesses and inquiry staff. As the committee has heard during evidence, inquiries can also generate costs for other public bodies and core participants.

Under the 2005 act, there is no fixed mechanism for monitoring the implementation of recommendations made by inquiries, but our practice is to publish a response to the inquiry's final report, setting out which recommendations are being accepted. A team in the Government is then responsible for overseeing the delivery of those recommendations. When recommendations are directed at a public body, it is also normal for that body to respond to those recommendations.

Public inquiries are specifically designed to support an independent, thorough and trusted investigation of the facts. I recognise, however, that there might be tensions between building confidence that an inquiry has the necessary time

to conduct a thorough investigation and follow evidence where it might lead and delivering value for money. We must therefore strike a careful balance, offering clear direction without compromising the inquiry's independence. I am interested in the committee's conclusions on getting right that balance.

The committee will also be aware of the Public Office (Accountability) Bill, which seeks to strengthen transparency, frankness and candour obligations in public inquiries. The reforms aim to ensure that inquiries, whether statutory or non-statutory, are supported by clear duties on public bodies to provide full and accurate information, while giving chairs additional powers to compel evidence and enforce candour without the need for a full statutory process. That could make non-statutory inquiries a more viable and cost-effective option in some cases.

The bill also gives ministers the power to extend the duty to more types of investigations. For those who do not comply with the duty, the bill sets out clear criminal sanctions. It is a UK Government bill, but we have been working constructively with the UK Government on it, and we want to work with the Cabinet Office to consider the wider policy and operational framework around inquiries, following the report on those issues from the House of Lords.

I am very happy to answer questions. I have a team of officials with me, particularly for when it comes to the detail of any specific inquiries, because not all of them sit directly under me.

**The Convener:** Thank you very much. That was helpful and it generated quite a lot of questions that I want to ask. I am not going to ask all the questions that I want to ask, because I know that my colleagues are quite keen, and I do not want to tread on their toes, but I might come in after them, as well as before them.

I want to start with the guidance for public inquiries. I understand that it was laid in August 2024, but, despite having started an inquiry a couple of months before being informed of its existence on 30 May, the committee was then advised that the guidance would not be ready until October, and it has only just been published. Why has it taken 14 months to publish that guidance?

**Kate Forbes:** As you say, the guidance was laid in Parliament on 5 August 2024, and it sets out a number of areas that the committee is interested in. My apologies if that was not brought to the committee's attention appropriately.

On the guidance itself, it deals with complex issues. It is intended to address the tension that exists in relation to the operational independence of inquiries. You will appreciate that I engage with the chairs of public inquiries and, in my

engagement, I must be really careful and clear about where the chair is fully operationally independent to make his or her own decisions.

**The Convener:** I appreciate that, but given the fact that we started our inquiry in April, it seems a bit odd that the Government only sent us the guidance six months later. One would have thought that the Government would have not only told us about the guidance, which it took two months to do after we started the inquiry, but sent it to us earlier. We did not receive it until October. In fact, members were sent it only late last week. That is a bit unsatisfactory, is it not?

**Kate Forbes:** I apologise for not sending you the guidance on a more timely basis. I do not know whether any of my officials have anything else to add, but my apologies for not drawing your attention to that guidance earlier.

**The Convener:** Thank you. One of the things that prompted our inquiry was concern about the cost of public inquiries, and that aspect has been covered in the media over the past 24 hours in particular. Since 2007, public inquiries in Scotland have cost £258.8 million. Over the same period, public inquiries in the UK have cost more than £1.5 billion. Such inquiries are becoming increasingly expensive.

One of the issues that I want to ask about is the opportunity cost. The Scottish Police Federation gave evidence to the committee in the spring. It was not very happy, to put it mildly, about the impact of inquiries on its ability to deliver services. If, for example, an inquiry falls under the responsibility of the police, it comes out of their budget. The Sheku Bayoh inquiry alone has cost the police more than £25 million. As you know, with the resignation of Lord Bracadale, that inquiry remains uncertain. The SPF said that the £25 million figure is equivalent to the cost of 500 police officers for a year.

When inquiries are started, what cognisance is taken of the impact that they will have on the services of the relevant organisation? The Emma Caldwell inquiry will also impact on the police. Certain politicians in the Parliament are also calling for an inquiry into grooming gangs. If that goes ahead, we could end up with three inquiries, all impacting on police resource.

**Kate Forbes:** I am very conscious of that, and I heard the evidence that the SPF gave on that issue. Often—we have all been through this—the demands for an inquiry do not just come from within Government. There is often a widespread call for an inquiry from across the parliamentary chamber and beyond. The issues that you have just identified are matters that we all need to be cognisant of when calling for an inquiry or deliberating over whether a public inquiry is the

best vehicle for examining an issue. In my opening remarks, I went through some of the alternatives.

You mentioned the costs of inquiries. Costs are determined to a large extent by how an inquiry is run by an independent chair. That is why we do not set a fixed budget or a cost limit for an inquiry. You can see in a debate such as this why doing so might be attractive, but as soon as you start broaching that publicly, it undermines the thoroughness with which an inquiry might want to pursue an issue and it starts to infringe on its independence.

In terms of the opportunity costs for public bodies, I saw the evidence that NHS Scotland gave to you. It is for public bodies to determine whether to apply to be core participants in some cases and the extent of legal representation that is required, so there are some areas that are for public bodies to determine. However, I disagree with you in the sense that the costs are not just for the inquiry itself; they include those of other public bodies that might be involved.

We are in the midst of a budget process. I am engaging with the Cabinet Secretary for Finance and Local Government on what level of budget I believe that I will need for inquiries. However, those budgets are entirely demand led. That means that, although there may be forecasts at this point in proceedings, those forecasts will inevitably be revised. Sometimes, they will also be revised in terms of an inquiry's length—that is, how many more years an inquiry might last. It is, therefore, not just about the annual cost but about how long the cost lasts for a public body.

09:15

**The Convener:** Sweden has managed to struggle by since 1982 by having a two-year timescale on inquiries, and there does not seem to have been any collapse in public support for that. Sweden also manages to keep the cost of its inquiries down to a fraction of ours. Its Covid-19 inquiry cost less than £2 million and was sorted within around eight months. There is absolutely no need to have inquiries that go on year after year. How does that deliver justice for people?

The point about the opportunity cost is that there are people in our society who will not be getting the policing services that they need and deserve because resources have been diverted to inquiries. To be frank, it seems that, whenever I hear ministers talk about arguments for or against inquiries, I never hear any talk about the opportunity cost; there is always another reason why an inquiry should or should not take place.

If we are going to have big inquiries that take years and have a huge impact, is there an argument for having a central fund for inquiries so

that they are not always impinging on front-line services? People can say, "Well, if the police got something wrong, it should come out of their budget", but it is not the police directly who are impacted—it is the public who are impacted, because they do not have those officers in their communities if they have been redirected elsewhere.

We heard compelling evidence about the officers who are left on the front line being overwhelmed, because so many of their colleagues have been tied up in the Sheku Bayoh case, for example. That case involved 68 detectives or some other ludicrous number, for an incident in which—as Michael Marra pointed out—15 or 20 people were involved.

That is the issue. Justice is not just one-sided—it should not focus only on those who are calling for an inquiry and those who are delivering it. It is also about wider society and the impact that it has in that regard. If other societies and countries can deliver cost-effective, timeous inquiries, why cannot we? Why is it the only area of the public sector in which there is such an approach to the budget?

One could argue that the same goes for social security to a degree, as it is also demand led, but the budget for inquiries appears almost limitless. A inquiry can cost £5 million or £50 million. What will the Sheku Bayoh inquiry cost in the end—maybe £100 million? At the end of the day, who will justice be delivered for, if, indeed, justice is seen to be delivered? Is it for the policewoman who was assaulted, or for the family of Mr Bayoh? That is just one inquiry.

With regard to the Emma Caldwell case, her mother has said that she will be dead by the time the inquiry concludes, so who is justice being delivered for?

**Kate Forbes:** Before I answer the points that you raise, I make it clear that, in my answer, I am not discussing any particular inquiry. I think that it is important, before I give my thoughts in response, to say that this is not a reflection on any independent inquiry. I am the sponsor for some of these inquiries, and I do not want to undermine their chairs.

**The Convener:** I appreciate that.

**Kate Forbes:** I am certainly not coming to the committee in a position of defensiveness, and I welcome the committee's consideration of the issue in its inquiry, because I think that these matters merit very serious consideration.

I talked about our annual engagement with inquiries on the budgeting for those inquiries. In my budget alone, if one area of demand-led budgeting continues to grow and grow, there is

nowhere else for it to go, so some of the other areas in my portfolio must be squeezed. There may not be a direct correlation between some areas in my portfolio and inquiries, but if that demand-led budget increases significantly—and because of the independence of the inquiries—I am under an obligation to meet those costs irrespective, so long as the chair understands their statutory duty to avoid unnecessary costs. That is the situation that the Government is in.

You will understand that, in other portfolios—where, for example, there is a sponsor team for Police Scotland or NHS Scotland, as there is—there will be similar conversations going on about the budget requirements and forecasts, and meeting their obligations, and public inquiries will be part of those conversations.

All that is to say that I am extremely interested in what the committee concludes in its recommendations. If we are going to move forward and make any changes—as you will appreciate, I am always up for implementing recommendations that committees come up with—I think that, with regard to inquiries in particular, which are so often backed on a cross-party and cross-societal basis, we need to have a cross-party discussion about weighing up those tensions.

**The Convener:** Okay, but when people clamour for a public inquiry, they do not think that it will be five or 10 years before they get an outcome. When an inquiry takes five or 10 years, a lot of people are dissatisfied, first, at the length of time it has taken and, secondly, with the fact that recommendations are not always implemented. It might be that one Government brings in an inquiry to get something off its desk, but it is another Government that ends up in office when the report comes in.

With regard to practicalities and saving money, I think that there should be indicative timescales, because there should be a disciplined approach to public inquiries, as there is everywhere else. The national health service has to work to budgets, even in areas where it is saving people's lives, so I do not see why inquiries cannot have at least a strong indicative budget and timescale.

Let us look, for example, at some ways that we could save money. First, there seems to be a reinvention of the wheel; numerous witnesses have talked about that. When an inquiry is called, there does not seem to be any central body or resource for people, facilities or training so that the inquiry can get started. When an inquiry is agreed, it might take a year or 18 months before it even starts, because there is all that faffing around at the start.

A second area is solicitors. We know about the huge amount of money that solicitors are paid in this regard, but my understanding is that solicitors and counsel who rely on funding from the Scottish Government are on a reduced hourly rate and have their fees pored over. That is right, because it is public money. However, other bodies that are also publicly funded, such as health boards, understand that they are paying their counsel commercial rates.

It seems to me that one way to save money would be for all lawyers who are paid out of public funds, whether directly or indirectly through the Government, to be subject to the same hourly rates and careful scrutiny of fees. Would that be a way forward as a start?

**Kate Forbes:** I think that there are three questions there, and I want to answer them all.

You started by saying that the public do not realise, when they ask for a public inquiry, that it may take five or 10 years. I would be astonished if the public are not aware of how long public inquiries take, because it is quite obvious, if we look at any recent examples, that such inquiries are not quick—

**The Convener:** But they do not necessarily think that that is going to happen with their inquiry. They think, perhaps, that theirs will be an open-and-shut case.

**Kate Forbes:** The point is that public inquiries are unique. You are right to say that, often, people call for public inquiries thinking that that is the only route to establish the facts, and actually it is not. It becomes the ultimate means of confirming what has happened, whereas—as I said in my opening statement—there may be a more flexible and cost-effective, but nevertheless thorough, alternative to a public inquiry.

Another point is that, although there are public inquiries that have taken a considerable amount of time, it immediately becomes obvious when we look at why that is the case. While I am not casting any comment on the Scottish child abuse inquiry, if we consider the thorough approach that that inquiry has taken, not just to the generalities of the issue but in looking at what happened in individual institutions, which has formed different modules of the inquiry, it immediately becomes obvious why it has taken the time that it has.

It is actually an indictment of us, as a society, that there is so much to investigate with regard to historical child abuse in Scotland. There have also been demands for specific consideration of other institutions such as Fornethy house, and that has now become part of the child abuse inquiry.

When we are talking about some of the points, we have to start to apply them to the inquiries that

are currently live. There is a tendency to say that any new rules should apply to future inquiries but not to current inquiries, because everybody feels passionately about the inquiries that are currently taking place.

On solicitors' fees, I will hand over to Don McGillivray, if that is okay.

Your second question was about training and expertise. I understand the point that you are making. The same sponsor team now works on various inquiries. Instead of a new sponsor team being set up for a brand-new inquiry, with that team having to go through the process of learning how to do things, the same sponsor team is working on the Sheku Bayoh and Emma Caldwell inquiries. That team draws on a lot of the learning, so we avoid the issue that you mentioned of a new team having to learn how to do things differently.

I ask Don McGillivray to come in on solicitors' fees. That is a common and recurring question.

**Don McGillivray (Scottish Government):** I hope that my colleague from the Scottish Government's legal directorate will keep me right. The power in the 2005 act relates to fees paid by the inquiry. The legal power that ministers have for setting fees relates to the costs for core participants who are funded by the inquiry. The power does not extend to core participants who fund their own legal costs. For those bodies—such as Police Scotland, in the case of the Sheku Bayoh inquiry—there is the normal public sector duty to get best value, through getting the most competitive rates that they can find for the legal costs they incur. As I understand it, that is the legal framework.

**The Convener:** That is a flaw in the legislation, is it not? The taxpayer can be paying two separate rates for counsel in the same inquiry.

**Don McGillivray:** The legislation could be changed, but it is my understanding that it would take primary legislation to change the situation as it stands.

**Emma Thomson (Scottish Government):** We could explore what could be changed through secondary legislation. There are inquiries rules that cover awards of expenses, so we could consider that avenue.

**The Convener:** We are talking about UK legislation, so how much room for manoeuvre does the Scottish Government have on such issues?

**Kate Forbes:** I have spent a lot of time with folks to understand the limits on what I can do as a minister. I have had to go through that process because there have been calls for changes to an inquiry's terms of reference and concerns about costs, so I am very conscious of the limitations

within which I operate, given that the legislation is fixed.

We could go through the process of changing the legislation. If there was an appetite in the Parliament to make fundamental changes, particularly off the back of the committee's recommendations, I think that the Government would be open to considering such changes. That would need to be done on a cross-party basis. There is scope for changing the legislation, but primary legislation would be needed.

**The Convener:** In his evidence, John Sturrock KC said that there is a need for

“education, understanding and clarity about the purpose of inquiries”,

with

“ministers perhaps being a bit more focused and clear about what they hope to achieve with inquiries and what the public is entitled to expect from them.”—[*Official Report, Finance and Public Administration Committee*, 17 June 2025; c 8.]

**Kate Forbes:** I would query that because during the drafting of an inquiry's substantive terms of reference—which is, in essence, the primary way for ministers to set the direction of travel—we engage extensively with affected parties, particularly victims and survivors, before settling on what the inquiry's scope should be. After that point, the inquiry becomes visibly independent of Government. An inquiry's scope is clearly defined in its terms of reference.

Obviously, the public, victims, survivors and other parties will have expectations, so perhaps the second element to John Sturrock's question is about education. We believe that an inquiry's scope and terms of reference will be very clear. Indeed, if a chair felt that they were not clear, they would be pretty quick to raise that with me.

I believe that the terms of reference and the scope that are set in my engagement with chairs is pretty clear. In relation to education, however, we perhaps need to be clearer with the public about the purpose. I think that the purpose is very clearly defined in the terms of reference, and most people who are intimately involved in the inquiry will know what it is. If there is a challenge with the wider public, we can always do more to communicate. Ultimately, the bottom line is to have a thorough, independent review of the facts, often with recommendations to avoid the incident happening again. That is generally the gist of inquiries.

09:30

**The Convener:** A lot of people think that an inquiry is a silver bullet, but obviously it is not.

In giving evidence, Thompsons Solicitors said that inquiries do not always have to be led by

judges. Indeed, they are not always led by judges in other countries. Thompsons said that a judge does not have to be involved in a bricks-and-mortar inquiry—the trams inquiry being one example, which was led by a judge, although it did not necessarily have to be. That is an obvious area where a judge does not have to be involved. What are your thoughts on that?

A judge sits for 205 sitting days and deals with 34 trials in that time, on average. If there are three judges sitting on inquiries, as is the case now, that means that more than 100 trials are being delayed. There is an opportunity cost. Justice for one individual or group of individuals through a public inquiry could come at the cost of several hundred other people getting justice in other areas of Scottish life. I do not ever hear anybody say that, including ministers. I do not think that the public are aware of that, and I certainly was not aware of it before this committee inquiry started. It is a question of balance, and I am not convinced that we have that.

**Kate Forbes:** I am happy to confirm on the record that there is no requirement for a proposed chair to be a judge. If the proposed chair is a Scottish judge, we first need to consult the Lord President, but there is no requirement for a proposed chair to be a judge.

I am trying to speak candidly here while being sensitive. I often hear demands for a judge from those who are supportive of an inquiry being established, but I say again that there is no requirement for the proposed chair to be a judge.

**The Convener:** There is no requirement, but there seems to be considerable pressure for them to be a judge.

**Kate Forbes:** Expectation.

**The Convener:** We heard the same point even from people in the legal profession who gave evidence, who, one would argue, clearly have an interest.

Another issue is transparency about the costs of inquiries. John Sturrock wrote:

“There is insufficient transparency and scrutiny in particular around control over timescales and costs.”

We were also told:

“there is no consistency in the way inquiry costs are recorded making meaningful comparisons very difficult.”

I go back to the Sheku Bayoh inquiry again. I understand that significant compensation was paid to members of the family. I do not know whether it is in the public domain how much was paid out or who it was paid to, but surely that should be in the public domain, because it is taxpayers’ money.

**Kate Forbes:** I will make one quick point on transparency, and I will then ask Don McGillivray to come in.

Transparency is an iterative process between us and the inquiry. I have talked about the process of budget setting. We push hard to have comprehensive forecasts and to be informed as quickly as possible if there are any changes, so that we can manage our budgets in light of that.

**Don McGillivray:** I am not 100 per cent sure of what you are talking about, convener, in terms of compensation paid to the Bayoh family. It may be that you are referencing a separate civil case that they took against Police Scotland, which is unconnected to the public inquiry.

**The Convener:** That is not connected to the inquiry, but was it not as a direct result of the inquiry that it—

**Don McGillivray:** No—it is a separate civil case.

**The Convener:** Okay—I stand corrected if that is the case, although my understanding was that it was because of the inquiry that the police made their decision. Even if that is the case, however, the amount should be in the public domain, should it not? Is it going to be in the public domain?

**Don McGillivray:** In civil cases there are sometimes agreements between the parties on what is made public from a settlement.

**The Convener:** The police are representing the public. It is the public purse. It is not their money; it is our money.

**Don McGillivray:** It is. That is for the police to answer for, in some senses, but I think that it is the civil case that you are referring to, which is separate from the public inquiry. It is not the public inquiry that paid out compensation.

**The Convener:** Okay. In terms of responding to inquiries, one issue is that, sometimes, after it has taken many years for an inquiry to come up with recommendations, months—if not years—elapse without them being implemented. I see that you are smiling at that.

**Kate Forbes:** I am smiling because, sometimes, inquiries conclude after changes have already been made.

**The Convener:** Of course, and, sometimes, changes are made before inquiries even start. One argument that Police Scotland made was that some of the concerns that were raised about, for example, the Emma Caldwell inquiry had been addressed, with changes being implemented, before the inquiry even began. That is one of the reasons why the police are harrumphing about that particular inquiry.

Fatal accident inquiry recommendations have to be responded to within eight weeks. Would it be sound if something similar were introduced for public inquiries? Even if that were not done through a legalistic mechanism, it would be good practice if Governments of whatever shape and size responded to recommendations within eight weeks. They would not necessarily have to say that they will implement every recommendation—although that would be great for those on whose behalf the inquiry had been set up—but it would certainly be good if the Government had to respond to Parliament within eight weeks.

**Kate Forbes:** I should say that there are other ways of approaching the issue. For example, there can be an interim report, which can ensure that early recommendations are given to the Scottish Government as soon as they are available, without the Government having to wait for the final report. That would mean that the Government could prepare a response to concerns that have been identified, thereby offering affected parties more transparency on progress against timescales.

The most recent inquiry that I have had to respond to is the UK Covid inquiry. It came with very clear timescales attached and with an obligation on me to report back to the chair and, as someone who is accountable to Parliament, to identify the recommendations that we accepted and those that we did not, and to monitor the progress on the implementation of those recommendations.

With the Covid inquiry, the fact that a report comes out after each module means that we are not waiting for the conclusion of the inquiry and then having to implement all the recommendations for all the modules. Can you imagine doing that? Thankfully, that is not the approach that it has taken, and it is not the one that we are taking.

Module 1 was published with clear recommendations, and we responded to the chair within months. We have a clear outline of what we are implementing, what we have already implemented and what is a requirement for other parties—in this case, the UK Government—to do, as we are co-ordinating on a four-nations basis. That is a good example of how to respond to and implement recommendations quickly.

**The Convener:** Most of our witnesses said that having interim reports is a progressive step. I know that the Scottish child abuse inquiry has interim reports, and I certainly think that they are very helpful.

I have just skimmed the surface, so I will let colleagues in now to question you in greater depth. All are keen to come in, and I will first bring in Michelle Thomson.

**Michelle Thomson (Falkirk East) (SNP):** Good morning, and thank you for joining us for this part of our inquiry. I welcome your interest.

I want to ask some more questions about cost, governance and ethics. If I refer to specific inquiries, it is because they form the most useful examples—I am very clear about the scope of our inquiry.

You have already referenced section 17 of the Inquiries Act 2005, particularly in relation to the need to avoid any unnecessary cost to public funds. However, my concern is that there is surely a fundamental conflict of interest in that provision, in that the chair is responsible for controlling the costs but is also the person who authorises spending. By any measure, there is a lack of independent oversight and the accountability mechanisms are weak—you have recognised that inquiries have a demand-led budget and that the most that you can hope for is to have sight of costs. There is considerable ambiguity around the meaning of what would be an “unnecessary” cost, and, of course, that ultimately comes down to the chair’s judgment. The risk of scope creep is also a major concern.

Do you agree that the 2005 act needs reform? What are your ideas for resolving the tension between the chair’s independence and the need to improve accountability in relation to funding? That seems to be quite critical.

**Kate Forbes:** That line in the 2005 act about the chair being under an obligation

“to avoid any unnecessary cost”

puts a serious requirement on the chair to avoid unnecessary costs. While the chair is determining matters such as staffing, leases and so on, they also need to consider that requirement to avoid any unnecessary costs.

When I am engaged in a conversation with a chair of an inquiry—which is not a conversation that seeks to compromise the independence of the inquiry—I can labour the need to avoid unnecessary costs. We can also provide some clear steers. We can provide guidance on ways to deliver value for money, including in relation to agreeing leases, procuring IT and appointing staff. However, you are right to say that it is ultimately for the chair to decide. The chair is bound by the requirement to avoid unnecessary costs, and it is for them to make the decisions.

In responding to your question, I have merely confirmed the facts as they are. Again, if the committee were to make a recommendation on that, the risk would be that, as soon as we set strict budgets, we could be perceived as interfering in the independence of an inquiry. I look forward to seeing how the committee thinks that

we should navigate our way through respecting the independence of an inquiry while, at the same time, keeping costs manageable.

**Michelle Thomson:** That is the line that has been taken by a variety of witnesses. However, I refer back to the convener's comment about how other countries manage to do inquiries. There are precedents that we can consider. There are countries where the public has a high degree of trust in inquiries, which are considered to be authentic, and there is cost control. If other countries such as Sweden can do it, why can we not do it in Scotland and the UK?

**Kate Forbes:** We will reflect carefully on that point. Going into the next parliamentary session, there will probably be an opportunity to carefully consider the committee's recommendations and look at what changes the committee thinks should be made in line with the approach that other countries take. I strongly believe that this issue needs to be progressed on a cross-party and cross-parliamentary basis.

**Michelle Thomson:** Thank you for that answer—I do not disagree.

In the letter that you wrote to us on 30 May, you reiterated the alternatives to public inquiries could take place over

“shorter timescales and/or at less overall cost than public inquiries.”

You added:

“Such considerations would be part of a decision-making process, alongside other relevant factors.”

Given that, will you walk us through the decision-making process as to why the Sheku Bayoh inquiry should continue in its current form? Who made that decision and why? What assessment have you made about the cost, given that it has cost the public purse £26.2 million in direct costs thus far?

**Kate Forbes:** I will go through that in some detail and as carefully as I can, because many of the issues are live. The Sheku Bayoh public inquiry was set up to get answers for the family of Mr Bayoh about his death and to identify lessons and improvements for the future. That inquiry has now run for several years. It was moving towards closing statements and the focus was then going to be on drafting the report.

09:45

If memory serves me, there were approximately 120 days of evidence. Obviously, the committee cares strongly about value for money, so it is important that that evidence is used to inform a report. Restarting a process—whatever such a process might look like—would be

counterproductive, given that we want a conclusion that carries the confidence of all parties.

**Michelle Thomson:** I accept what you have said, except that we have circled, slightly. My concern is that we could be looking down the barrel of another £26.2 million and associated costs. Given that we recognise the role of the chair, any new chair may say, “Well, that is how Lord Bracadale chose to do things, but this is how I choose to do them.” Surely, that is the countering concern to what you have outlined.

**Kate Forbes:** The immediate priority is to appoint a new chair to enable the inquiry to complete its work. My strong and unwavering view is that it is in the public interest for the inquiry to come to a conclusion promptly. In my very useful discussions with the Lord President, with whom I must consult, there has been a shared perspective of bringing the inquiry to a conclusion as promptly as possible and for the recommendations then to be implemented as swiftly as possible. I have grave reservations about starting an entirely new process, whether it is a public inquiry or something else. That would undermine the principles that I have just outlined, which concern the need to bring the inquiry to a conclusion promptly.

**Michelle Thomson:** I hear what you are saying but, again, there is a conundrum. Appropriately, you call to a higher power—that the issue involves public funds—and you seek to put your view that it would be appropriate for the inquiry to be brought to a conclusion. However, the Government thereby runs the risk of accusations of meddling in the independence of the chair. I cannot see how that circle can be squared within the current legislation and provisions.

**Kate Forbes:** Let us start with our legal requirements, which are that the death of Sheku Bayoh needs to be reviewed and investigated.

In 2019, the then Cabinet Secretary for Justice set out to the Parliament that the Lord Advocate, as head of the system for the investigation of deaths in Scotland, had concluded that a fatal accident inquiry into the death of Sheku Bayoh would not allow all the issues that required to be investigated to be addressed. We then had several years of examining the issues. To go back to 2019 and, essentially, dismiss years of evidence would be counterproductive to the original legal requirement under which we operate.

When it comes to the options that are in front of me, I want the inquiry to conclude promptly. That is in everybody's interest. I think that it needs to conclude in a way that uses all the evidence that has been given over several years, and the chair who will be appointed will need to consider that evidence, manage closing statements and draft a

report. I see no alternative, despite some discussion in the public domain about alternatives. When it is broken down into the facts, including the legal obligation under which we must operate in relation to a death such as Sheku Bayoh's and the costs of the last 100-plus days of evidence, I cannot see how it is possible to come to any conclusion but that a chair should be appointed who examines the evidence.

I see no reason for the chair who is appointed to have to take all 100 days' worth of evidence again. I do not think that anybody believes that that is required. Those 100-plus days are all recorded and can be viewed.

I do not know whether any member of my team wants to correct anything that I have said.

**Michelle Thomson:** You are being clear but we are not comparing apples with apples. I am not suggesting that there will be another £26.2 million of costs; I am suggesting that it is the right of the chair—and I do not want to labour this point—to make an assessment of the evidence that has been gathered thus far. I am not suggesting that the entire thing would be run again but there is at least the possibility that they might wish to further interrogate certain pockets of it. That, as a minimum, is a possibility. I am pointing out that, in terms of cost control and accountability, the conflict of interest at the heart of the 2005 act is largely unresolvable.

**Kate Forbes:** On that, I agree with you in full. I thought that you might have been asking whether a fatal accident inquiry, which has been suggested by some parties, would be a more cost-effective route, so I was laying out why I did not think that that would be the case. However, you are absolutely right that a new chair will operate within the same guidance as any other chair, which is that they will set the parameters and the Scottish Government will be required to fund that.

**Michelle Thomson:** I want to talk a little more about the perception of bias. We would all agree that it was unfortunate that Lord Bracadale met Sheku Bayoh's family five times in secret and that that led to the threat of legal action by the chief constable of Police Scotland, the threat of a judicial review by the Scottish Police Federation and, ultimately, Lord Bracadale's resignation. His actions led to the perception of bias, whether or not that was the case, so I was surprised that the First Minister recently met Sheku Bayoh's family but not the police officer Nicole Short, who was punched and stamped on the back of the head by, from her perspective, a man high on drugs who was wielding a knife, which left her permanently disabled and unable to work again.

I make no comment on the details of the case, but I would appreciate the Deputy First Minister's

thoughts on how the First Minister's meeting could lead to the perception of bias, regardless of whether that is the case, especially on top of the perception of bias with Lord Bracadale.

**Kate Forbes:** That allows me an opportunity to be really clear. The request came to the First Minister to meet the Bayoh family, and he agreed. The request has also come from other parties that you just mentioned, and he has also agreed to meet them.

**Michelle Thomson:** Thank you very much for that.

**Kate Forbes:** I add that he is not part of the inquiry.

I think that Don McGillivray has something to say.

**Don McGillivray:** You described the accusations of bias within the inquiry, Ms Thomson. The obvious point to make is that ministers are not part of the inquiry. They are not decision makers on any conclusions that the inquiry may reach. They are a step removed.

**Michelle Thomson:** That is correct, but, again, there is the circular aspect, whereby, if we are emphasising the independence of the inquiry, it is incumbent on ministers to be very careful about any perception of bias. That is the point that I am making.

On ethics, one of the long-standing Nolan principles underpinning ministerial office is integrity. Ministers

"should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends."

So, I was pleased to note that, in March 2024, the former First Minister Humza Yousaf declared an interest in his friendship with Aamer Anwar, the campaigning lawyer, who has a key role and a critical beneficiary interest in the Scottish Covid inquiry. I will put on the record what he said:

"I have a friendship with Aamer Anwar, who is representing Scotland's Covid bereaved in the UK and Scottish inquiries".

As you point out, Deputy First Minister, Mr Yousaf was Cabinet Secretary for Justice from 2018 to 2021, and the Sheku Bayoh inquiry was announced in 2019, with Mr Anwar, the campaigning lawyer, being a beneficiary of significant public funds. Mr Yousaf subsequently became First Minister in 2023, and the Emma Caldwell inquiry was announced the same year, with Mr Anwar, the campaigning lawyer, again being a beneficiary of public funds. Therefore, my question is this: if there was an ethical requirement to put the friendship on the ministerial record for

the Covid inquiry in March 2024, why was there no requirement to do so in 2019 and 2023?

**Kate Forbes:** I am afraid that I do not know the answer to the question about the requirement to declare an interest, so I am happy to go and explore the obligations on ministers. As you know, we are required to regularly review our publicly declared interests, both as MSPs and as ministers. The Cabinet secretariat requires us to regularly update that list and to ensure that it is as up to date as possible.

We all sit under that obligation, irrespective of the particular issue on our desk, if that makes sense. The register of interests should apply, irrespective of the specific decision that we are making. In all such situations, officials would have given advice to ministers. Ministers do not take decisions independently of officials. Extensive legal and other policy advice is given to ministers with regard to all the decisions that they take.

**Don McGillivray:** I reiterate the DFM's point about these cases. Thinking of the Sheku Bayoh inquiry in particular, very substantive advice was given to ministers, covering all the policy and legal considerations that they might need to take into account in reaching the decision. In her previous evidence, the DFM referred to some of the key factors that were involved in that decision. I make it clear that, in that case, ministers were given very substantive advice, which informed their decisions.

**Michelle Thomson:** The latest version of the ministerial code came in under the current First Minister, but I note that, of course, the need for integrity and to declare friendships was in place well before 2018. In that respect, it is of interest to the committee to understand what advice was proffered, so that we can understand the decision making at that point. I ask because one of the critical issues is the independence, or not, of public inquiries. We have talked about that quite a lot in terms of costs. There is also the matter of the influence of ministers and the Government, which is an important part of maintaining trust. Therefore, any further information about the advice that was proffered would be appreciated.

**Kate Forbes:** I am very happy to give further evidence in writing on the obligations under which ministers sit in relation to the declaration of interests, because it is a regular part of our obligations. It is refreshed annually at least, and, if there is any change in circumstances, the entry requires to be refreshed.

**Liz Smith (Mid Scotland and Fife) (Con):** First, I want to put on the record my involvement with the Eljamel inquiry—particularly this week, when there are two public inquiry sessions. I have submitted my formal statement to the inquiry.

Does the Scottish Government have a view on the complaint that the committee has received in evidence that one of the reasons for the increase in the demand for public inquiries is the perception that the Scottish Government or its agencies have failed, or allegedly failed, in their duty to sort out a problem before it became the subject of a public inquiry?

**Kate Forbes:** I disagree with that. In some cases, we can be very open and honest and say that ministers have not always got it right. Therefore, let us take it as read that ministers do not always get it right. However, if what you suggest were the case, the public would be aware of the alternatives to a public inquiry that might, in some cases, be better suited to the purpose of identifying the facts and that might be quicker. I had some exchanges with the convener about inquiries that last five to 10 years. There are several alternative options to a statutory public inquiry.

10:00

Statutory public inquiries are often dominant in the public debate and in the media. There is a lot of interest in them, and the increased demand will simply be a result of the public assuming that a public inquiry is the only route by which they can get a thorough review of the facts.

We take it as read that ministers do not always get it right. There will always be other alternative ways of obtaining a thorough review of the facts that are not legally constrained in the same way that public inquiries are.

**Liz Smith:** On the same theme, how would you respond to the complaints of the victims of the Eljamel situation who—without going into the details of the case—are firm in their view, which I share, that the need for a public inquiry would not have come about had we resolved the issues to do with Professor Eljamel's malpractice? That malpractice was allowed to continue by a health board that clearly knew about it at the time. Do you accept that that is a fair comment?

**Kate Forbes:** I completely understand where those who share that view are coming from. The bottom line is that there would not be a need for a public inquiry or a review if there had not been malpractice. There are a lot of issues underpinning that in relation to what health boards did or did not do, and it would take far longer to do justice to them—I will not get into those now, not least because it is for the inquiry to explore that.

**Liz Smith:** Yes, it is for the public inquiry to do that. I do not think that it is right for us to discuss the details. However, it has been put to us by a number of our witnesses that there is a public perception that is tied to the question that the

convener asked about public trust. One of the reasons that public trust has been eroded is that too many people think that the delivery of public services is not meeting their needs and, more importantly, not meeting their desired expectations. Does the Scottish Government have a view on whether that is something that concerns it?

**Kate Forbes:** Again, I do not want to dismiss that position. I say again on the record that ministers do not always get it right. The difficulty that I have with that position is that many inquiries are considering historical issues. For example, the Scottish child abuse inquiry and the Emma Caldwell inquiry are considering historical issues. The Eljamel inquiry is one of the more recent, less historical examples. However, the inquiries that are currently live deal with specific, individual cases—such as that of Emma Caldwell—as well as more general issues, as the Scottish child abuse inquiry does. The Eljamel inquiry is in between: it deals with very personal matters for individuals.

By nature, public inquiries are all different in dealing with case issues or individual issues, and in being historical or more modern, but I totally understand where you are coming from: if mistakes had not been made, there would not be a need for an inquiry. I have no argument with that.

**Liz Smith:** That is helpful. I am sure that further revelations will come forth in the public inquiry.

I want to ask about a technical issue. The UK Inquiries Act 2005 governs what happens in a Scottish public inquiry. However, we have had a bit of an issue with the terms of reference for the Eljamel inquiry, because two of the contributing pieces of evidence must come from the Health and Safety Executive and the General Medical Council, both of which are reserved bodies. That is an issue, because the Inquiries (Scotland) Rules 2007 and the UK Inquiries Act 2005 do not necessarily collaborate, as it were, on that kind of thing.

In any review that takes place of public inquiries legislation, do you think that it is important for the UK and Scottish Governments to collaborate to ensure that reserved and devolved legislation enables specific questions to be answered and allows evidence to be taken from another jurisdiction?

**Kate Forbes:** Yes, in short. I will expand on that by saying that I am well aware of the frustration that patients feel as a result of the exclusion of the HSE and the GMC from the terms of reference, because they are UK bodies and are therefore outwith the competence of the Scottish Parliament to legislate on and outwith the ambit of a Scottish inquiry.

Of course, the inquiry is free to call any witness it sees fit to call, so it can seek to recover and consider evidence from both the GMC and the HSE, as far as that evidence may inform the discharge of its terms of reference.

On collaboration, I absolutely agree. I note the UK Covid inquiry. I know that that is looking at a totally different issue, but we see evidence there of extremely effective cross-Government, cross-nation engagement and evidence giving and gathering.

We would certainly be open to exploring any recommendations from the committee on that. Any call for evidence in the inquiry to which you refer would be entirely a decision for the inquiry chair. I am, of course, confident that Lord Weir will deliver a very fair and thorough inquiry.

**Liz Smith:** I am sure that he will.

Finally, does the Government have any intention to review the 2005 legislation? In the 20-year period since it was passed, we have seen a considerable increase in the number of public inquiries, and it has given rise to some of the important issues that we are discussing as a committee.

**Kate Forbes:** I want it to come across in my evidence today that there is very much an openness to considering the committee's recommendations and what changes could be made. That is unlikely to happen before dissolution; such consideration will take place in the next session of Parliament. My strong desire is to see that done on a cross-party basis.

**Craig Hoy (South Scotland) (Con):** From some of the evidence that we have taken, there has been a sense that ministers who feel in a tight spot, as a result of pressure from the public, will often take the route of a public inquiry because, in effect, it gets the issue off of their desk and kicks it into the long grass.

Your experience of public inquiries might be different, but is there anything that can be done to create a threshold so that politicians do not simply take what could be perceived to be the easy option, which is to hand it over to a judge and to get it off of their desk?

**Kate Forbes:** I hope that the evidence taken so far today reassures you that I will always remain in a tight spot on all these matters. There is certainly no view from ministers that inquiries are a way of getting an issue “off of their desk”, to use your words.

You will have seen, particularly in the past few months, that there have been some challenges to do with elements of public inquiries. I believe strongly that it is not just the so-called pressure from the public at play; it is the very weighty,

substantive issues that are the subject of these inquiries, where victims, survivors or others want to see an independent and thorough review of the facts. I think that that is where a public inquiry comes in. I work tirelessly to ensure that I give no appearance of compromising the independence of an inquiry, because it is often that very independence that victims and survivors most want to see. It is not about giving in to public pressure. It is often about extremely difficult issues that, it is clear to see, can be resolved only through that independent route.

**Craig Hoy:** One element that apparently—according to some of the evidence that we have taken—gives the public confidence in an inquiry when it is set up is the fact that it is judge led. What is your view on that? Do you think that alternative approaches should perhaps be taken to certain inquiries?

**Kate Forbes:** As I said earlier, an inquiry does not need to be led by a judge. We are certainly open to non-judge-led public inquiries—indeed, we would welcome that. We are very conscious, in particular from our engagement with the Lord President, of just how extensive the workload on judges is. There is also the option of a panel approach, so there are alternatives.

My team might want to come in on that, because it is a really good question.

**Marion McCormack (Scottish Government):** There are opportunities open to the chair to take a panel approach, and that can be explored. That opens up an inquiry to having different views around the table when the evidence is being considered. In addition, it can cut through some of the more technical issues. Where a chair might not be acquainted with the more technical parts of the evidence that has been given, they might have panel members with the technical expertise to go through the evidence. That might help to speed up proceedings, because the chair does not have to immerse themselves in all the technical detail; they have an expert on whom they can call.

Of course, chairs employ experts who advise them as part of the proceedings in a public inquiry, but the panel approach is more of a collaborative space in which there can be discussions across subject areas among particular panel members.

Interestingly enough, the public inquiries that have taken place in Scotland have not, in broad terms, taken such a panel approach. It would be interesting, therefore, to see if that comes up in the committee's recommendations as an approach that might be taken up more in the future.

The alternatives to a statutory public inquiry always include more panel-type approaches. It is an interesting option to explore in the future.

**Craig Hoy:** One of the inquiries that, by common consent, might have benefited from a different approach is the Edinburgh trams inquiry. Is a judge best placed to start looking at the construction involved in lifting paving stones to lay tram tracks? Minister, you will have looked at that inquiry. What do you think went wrong with the Edinburgh trams inquiry?

**Kate Forbes:** Well, I point out that it preceded my time in the Parliament by quite some distance—

**Craig Hoy:** It is historical.

**Kate Forbes:** With regard to the approach that is taken by a chair, I think that, ultimately, the independence gives the chair the responsibility of determining the costs, the witnesses and so on. I could not possibly comment, therefore, on matters going wrong at inquiries, but it highlights some of the ironies for the public, perhaps, in the cost of an inquiry versus the cost of the matter that went wrong that the inquiry is ultimately reviewing.

**Craig Hoy:** There is a Scottish Covid inquiry and a UK Covid inquiry, so there will be some degree of duplication. There are also asymmetrical approaches taken, for example, in relation to grooming gangs at this point in time. Louise Casey recommended to the UK Government that it should conduct an inquiry, the nature of which is still not absolutely certain, and you will be aware that there is now a lot of pressure on the Scottish Government to follow suit.

Do you believe that the victims of grooming gangs in Scotland deserve and require an inquiry? Would it be better for the England and Wales inquiry to extend its scope into Scotland? What are you currently doing to consult on what next steps the Scottish Government might take in respect of that crucial issue?

10:15

**Kate Forbes:** It is an extremely important issue—of that, there is no doubt. It is a horrendous issue. Your question perhaps illustrates the impact of all the other questions that I have just been answering. In other words, there could be a call from the committee to say that there are too many inquiries, and I guarantee that, within seconds of the committee's report being launched, there would be calls for additional specific inquiries. That is why I think that we need to hold these matters quite carefully and look at the impact on reality of the theory that we are debating.

The Scottish Government, and the First Minister in particular, have responded to the call for an inquiry into grooming gangs in Scotland. I sponsor the Scottish child abuse inquiry, and I know just how much survivors have valued the independent,

thorough review of matters that took place in the dark, behind closed doors, in bringing those matters into the light.

I will not give any further views on a grooming inquiry here; suffice it to say that it is a very serious matter. There are issues on which we should not shut the door on public inquiries in general, with regard to the evidence that we are discussing today, because inquiries have an important role to play.

**Craig Hoy:** On a point of detail, you will be aware that one of the reasons that the Government has given for why it cannot support Scottish Conservatives' call for a public inquiry, when we asked for it recently in a proposed amendment to the Victims, Witnesses, and Justice Reform (Scotland) Bill, was that Professor Alexis Jay did not believe that it was necessary.

Are you aware of any subsequent correspondence between Professor Jay and the Scottish Government in respect of the interpretation of the advice that she gave?

**Kate Forbes:** I feel that that is getting into great detail on a non-current inquiry. I am happy, convener, to give evidence on current public inquiries and on the legislation that underpins public inquiries.

**The Convener:** Yes. To clarify, the committee's role is not to make recommendations on the merits or otherwise of individual public inquiries. It is to look at how such inquiries can be delivered much more effectively and efficiently, and in particular in a cost-effective way, and at whether the reasons for taking forward such inquiries are consistent, shall we say.

**Kate Forbes:** Craig Hoy asked a question that I did not answer, on potential duplication between the Scottish and UK Covid inquiries. There is a memorandum of understanding between those inquiries to minimise duplication, and I think that we could all agree that they are proceeding on quite different bases. We look forward to the findings of the Scottish inquiry, too.

**Craig Hoy:** I have one final question. To go back to a point that Michelle Thomson made about the issue of relationships with and between interested parties, it is often said that Scotland is a village in many respects, and it is therefore difficult to bring together a group in which people may not have prior relationships with others.

For example, I was at the *Herald* awards on Thursday night, as were you, and one of the lawyers referred to today was glad-handing with the First Minister and other politicians. There is a cosy situation in Scotland between decision makers, including the legal establishment.

What consideration should perhaps be given to looking outwith Scotland when we seek to bring in those who might chair or be involved with public inquiries at a senior level, for the avoidance of any doubt that there might be interested parties and interrelationships that could compromise the inquiry itself?

**Kate Forbes:** I would want to put on the record the fact that ministers have to operate within very strict parameters, and our decisions, and the process that brings us to a decision, are heavily scrutinised by the Parliament and also heavily informed by neutral civil servants. It is important to state that there are a lot of checks and balances on all the decisions that ministers make.

On the input from outside Scotland, Don McGillivray might want to say more because of recent discussions about that, but there is an obligation on Scotland to resolve the issues that arise in Scotland. At the end of the day, our solicitors, advocates and judges are intimately familiar with Scots law, which enables them to get to grips with an issue much more quickly than others would.

**Don McGillivray:** With regard to the statute, it is absolutely an option for ministers to appoint a chair from outside Scotland, whether or not that is a judge. Indeed, I think that there is a precedent with the fingerprint inquiry, which I think had a judge from Northern Ireland. Therefore, it has happened in Scottish inquiries. Some of the current inquiries deal with the Scottish justice system in one way or another, and, as the DFM alluded to, one consideration for ministers is whether the knowledge of a Scottish judge of evidence, procedure and the Scottish justice system makes it more practical to have a Scottish judge or chair, as opposed to somebody who is more used to procedure and the rules of evidence in a different country.

**Michael Marra (North East Scotland) (Lab):** For the record, I begin by echoing Liz Smith's comments due to my involvement in the Eljamel inquiry. In a similar way, I have presented my own evidence to the inquiry.

Given your statements today, Deputy First Minister, is the cost of £258.8 million too high?

**Kate Forbes:** I could tell you how to spend that money in other ways, and I could identify ways in which we could support victims, implement recommendations and avoid a lot of the harm that is the subject of some of these inquiries. Having said that, one of the hallmarks of open transparent democracy is that there is a place for independent, thorough review of the facts. It is important that that process is independent of ministers. Therefore, in answering the question of how I could otherwise spend the money, it all comes

back to ministers making decisions. It is really important that, at times, a mirror is held up, independently of ministers, to what has actually happened.

**Michael Marra:** Ministers are making the decisions about when to hold up the mirror—when to bow to the pressure. Other members have set out examples of public pressure in cases where they feel that the Government or institutions in Scottish society more broadly have not given them the answers that they require. How do you account for the recent uptick in the number of inquiries? Other members have spoken about whether that is about the Government, but, if it is not about the Government's actions—you said that you do not believe that it is—why is it?

**Kate Forbes:** I was very clear that I do not think that the Government always gets it right, but I reject the suggestion that this is just a question of bowing to public pressure. Let us look at the issues that are the subject of live inquiries. We did not set up a Scottish child abuse inquiry because of public pressure; we set it up because it is utterly ghastly what has gone on in this country for decades. You will be more familiar with the Eljamel inquiry, and I will not comment on what the inquiry will or will not do, but we did not set it up just because of public pressure. We set it up because victims/survivors and colleagues—other MSPs—believed that it was the only way to identify the facts. It trivialises these matters—I know that that is not your intention—to suggest that it is just a case of bowing to public pressure.

On your question, the reason for the growth in the number of public inquiries comes back to a lack of knowledge of and confidence in the alternatives. Public inquiries dominate the public discourse, and there is a sense that only a public inquiry will suffice and that it is the only thing that the public can have confidence in to determine the truth. In a similar way, there are usually calls for the chair of an inquiry to be a judge rather than someone in an alternative role. That comes from a slightly flawed, in my view, belief that only a judge can bring gravity to the situation. There have been a number of very high profile inquiries. We know what happened last week with the Covid inquiry—that is an obvious one.

**Michael Marra:** However, in the end, these are Government decisions. As much as we can talk about it, and you are right to highlight the very legitimate concerns of people externally making the case, in the end, it is the Government that decides to have an inquiry and not to use the alternative processes. Therefore, the issue is really not about ignorance on the part of the public; it is a decision that has been taken by the Government, and it appoints the person who leads

the inquiry. These are Government decisions, are they not?

**Kate Forbes:** There are a few layers to that. I might ask one of the team to come in on this, but, first, there are alternative processes that we employ very regularly, so there is no doubt that there are a number of other processes. A fatal accident inquiry is an obvious one, but there are others, and the team might be able to give some detail on those.

Secondly, it is important for us to ensure that survivors and victims in particular have confidence in the process. You can well understand that, if a survivor or a victim is saying that they will not have confidence unless X, Y or Z is delivered—I know that because, with all due respect, there are MSPs around this table who have communicated that directly to me—the Government wants to ensure that there is confidence in the process. We do not want to go out of our way to undermine confidence. Yes, it is our decision, but our decision is made in good faith to protect the confidence of a victim or a survivor.

Thirdly, it is the Government's decision, and I think that everyone around this table would be hard pressed to say that any of the issues that are the subject of an inquiry do not merit a thorough review of the facts, because all the issues that are being considered by public inquiries can be characterised as the most weighty and awful. I have a lot of engagement with the Scottish child abuse inquiry, and it weighs very heavily on me. I am more than pleased to say that the Scottish Government is proud to have sponsored that inquiry.

**Michael Marra:** John Sturrock KC told the committee that

“the conduct of public inquiries and the possibility that costs are out of control is another example of a more fundamental problem in Scotland—namely that our approach to decision making, complex issues, negotiation and addressing tough issues is suboptimal.”—[*Official Report, Finance and Public Administration Committee, 17 June 2025, c 32.*]

Would you care to reflect on that assessment of the Government's approach?

**Kate Forbes:** I disagree. I have just had an exchange with Liz Smith, which I think provides the evidence in response to that. That comment suggests that all the issues that are the subject of public inquiries right now are modern—as of the past few years. I go back to the Scottish child abuse inquiry. I keep picking up on that inquiry because we all understand and accept that it is the most expensive and the longest running. That inquiry is dealing with historical matters, and I know from speaking to survivors just how much they value the light being shone on the horrendous injustice that happened when they were children.

That point would hold more water and more weight if the subjects of the public inquiries were more modern and if we were, in essence, outsourcing the answers to difficult questions, but, if you look at the most expensive and longest running of these inquiries, that characterisation does not apply.

**Michael Marra:** Okay. That is a reasonable argument.

To take the point about issues being kicked into the long grass a step further, you said that you do not think that it would be appropriate to get into the details of the Eljamel inquiry, but you are not the sponsor of that inquiry. Is there not a risk that these inquiries shut down the Government's ability to deal with some of the substantive issues? On the conduct of the Government, the First Minister said on the record recently that he cannot comment on civil court cases, which is simply untrue—it is completely untrue. There must be a sense that the Government has candour and the ability to talk about issues that are of interest to the public, rather than putting them into a semi-private domain.

10:30

**Kate Forbes:** I will separate public inquiries from civil cases for a moment, because the answer on each will be slightly different.

To an extent, you are right—for example, if a report is written many years after a public inquiry has started, it means that ministers are waiting much longer for the recommendations that are meant to come from that thorough review of the facts. However, with inquiries where there is a regular output of recommendations, the situation is very different. An example is the Covid inquiry. We are five years on from the start of Covid; we have had two reports and the Government has already begun to implement the recommendations from the first report, as it has an obligation to do. That is the Government moving at some pace in terms of a direct response to the inquiry's recommendations.

The situation is very different with an inquiry that runs for several years without any interim reports produced, and where it takes significantly longer for recommendations to be forthcoming.

I can comment on any inquiry—I do not want to undermine the evidence that an inquiry is taking, but I am happy to comment on it.

Don McGillivray wants to come in, if you do not mind.

**Don McGillivray:** There is evidence of public authorities listening carefully to the evidence that is given to public inquiries as those inquiries go along, and changing their practice and addressing

some of the issues as they arise. One example that springs to mind is the Sheku Bayoh inquiry, to go back to it again. A couple of years ago, the previous chief constable declared that Police Scotland was institutionally racist and discriminatory. I think that that was in very large part because of some of the evidence that came out in the inquiry, and some of the procedures that the chief constable put in place to consider those issues through an independent group.

There is evidence that, as inquiries go along, the evidence that is heard influences the policy and practice of public authorities.

**Michael Marra:** I am interested in the issue of sponsorship—where a minister is a sponsor of a particular inquiry. As a committee, we might reflect on how useful that is. Would it be better if Parliament, rather than ministers, sponsored an inquiry and had a central committee that took decisions about monitoring its activity?

**Kate Forbes:** That is a very interesting suggestion. There are some examples of accountability lying with Parliament. I guess that you would have to think through the challenges—for example, the obligations around funding. With some of the bodies that are currently accountable to Parliament, there is an obligation to top slice Scottish Government budgets, so there would have to be some process of accountability for costs. As it is, I am able to challenge some figures because I know that the money will be coming out of my budget, but if there is a difference between the body that is accountable and the body that covers the costs, there are risks there. Nevertheless, those risks could be considered and managed.

In addition, the Parliament would have to be really careful about how it managed public pressure, for the reasons that we have just outlined. It is currently the case that officials heavily inform the process, and there is a degree to which they are one step removed from public pressure in a way that politicians are not.

**Michael Marra:** On your point about pace, we are five years on from the Covid inquiry, and two interim modules have been produced. You cannot really be satisfied with the pace of response if we are trying to learn lessons about a global pandemic, given that we might have another one in a month's time.

The convener mentioned Covid inquiries elsewhere. The Covid inquiry in Australia was completed within two years, with a full set of recommendations. A pandemic could happen again, and we have already heard that 23,000 lives were lost during the Covid pandemic as a result of the suboptimal—to say the least—response from the Government. Surely the inquiry

should happen an awful lot quicker so that we can learn lessons quickly. The system that we are using is not meeting the public need.

**Kate Forbes:** The Covid inquiry started in 2022, I think—2023, in fact—so it is probably unfair to say that we are five years on—

**Michael Marra:** Sorry—those were your words.

**Kate Forbes:** Indeed—absolutely.

**Michael Marra:** My point is that we are five years on from what happened, and it might happen again next month. It is about how quickly we can get the answers and learn the lessons that are required.

**Kate Forbes:** Of course, the period of time between issue and inquiry is much longer for most of the other inquiries, but I think that that point stands.

**Michael Marra:** Do you think that there is a case for having a central office with centralised experience and standard operating procedures to provide the secretariat and back-room capability for each inquiry, in order to bear down on costs?

**Kate Forbes:** We have tried to do that through the approach that we have taken to sponsorship—for example, the same team is now sponsoring several inquiries. In the spirit of your question, I think that there is merit in taking such an approach by using the same team.

My only caveat is that, again, I stress that the subject matter of public inquiries is very varied. A sponsorship team might be intimately familiar with establishing an inquiry and the rules and regulations within which it operates, but the situation for a team sponsoring an inquiry in the justice space is very different from the situation with the Covid inquiry, which is very health specific. Being too prescriptive might undermine certain elements of the process. Nonetheless, on the sentiment of what you say about having one team that understands inquiries, your point is well made.

**Michael Marra:** We should not have two different judges, across a period of years, learning how to book rooms and what IT systems to put in, should we? That is ridiculous.

**Kate Forbes:** There is a lot of support for that view. I spend more time these days looking at leases for public inquiries rather than at other things, because they are being extended, so I understand that point.

**Michael Marra:** That tells its own story.

As the convener mentioned, we heard in evidence that judges should not necessarily be involved in bricks-and-mortar inquiries, as they are described, and you gave some indication that you

think that the chair certainly does not have to be a judge. However, the people whom the Scottish Government appoints are judges. At what point is the Scottish Government going to say, when an inquiry comes forward, “Actually, a specialist in this area or somebody with specific or generalist knowledge is more appropriate than a judge to deal with this issue”? The proof will be in whether the Government does that.

**Kate Forbes:** Yes—and I would hope that Labour and the Conservatives would back me in doing it and that we could ensure that there was confidence across the board.

I will ask Marion McCormack to talk about the process for identifying who can chair an inquiry.

**Marion McCormack:** When we consider the advice to ministers in relation to setting up a public inquiry, including the terms of reference and the most suitable skill set that we would want in a chair, we consider all the options, including a non-statutory public inquiry.

There are good examples of where there have been independent reviews—as I would call them—with a public hearing element. An independent review is almost like a statutory public inquiry, because there are public hearings, but it is not a statutory inquiry. We have, in the past, set those up using a QC or a judge, but we have, during that process, also explored whether there were other people who could fill those positions. For instance, the review into the impact of the policing in communities during the miners strike was conducted by John Scott, who was a QC. We look at different alternatives when each opportunity presents itself to consider whether a public inquiry should be held.

As we mentioned earlier, the person does not need to be someone from the Scottish pool of candidates, but there are things to consider. A public inquiry in Scotland considers Scottish matters, so we would want someone who could understand what those matters might be.

**Michael Marra:** I hear a lot of useful context there, and I hear your points, minister. However, you said that it does not need to be a judge and you could appoint someone else, but you do not do that. You come to the same position, which is that there is going to be a judge-led public inquiry.

You said that if you took a different approach, you would not want criticism of that from the Labour Party, the Conservative Party or other people. Is there a weakness in your confidence in your own arguments as to why you might not take such an approach? Are you worried about what I, or Liz Smith or Craig Hoy, or somebody else, might say, rather than saying, “This is the right approach to get the job done and come to the right

answers"? Running right through that is the question of leadership.

**Kate Forbes:** First, if I did not want criticism, I would not have been doing this job for about 10 years; that is an obvious point.

Secondly, I value your point in that regard enormously, Mr Marra, and I will probably print it out and put it on my door so that I see it every time that I go to the chamber. You are absolutely right that leadership, in the face of everybody else asking you to do something else, is important.

You will be delighted to know that I am not committing to another inquiry at this table today. However, if and when that happens—let us be honest: it is likely to happen at some point in the next few years, or decades—I think that there will be an opportunity to do things slightly differently, and we are certainly up for working with Parliament in that vein.

**Michael Marra:** Can I ask one last brief question, convener?

**The Convener:** Yes.

**Michael Marra:** Thank you, convener—I appreciate it.

When you are engaging in these considerations, there may well be a lot of media coverage, as there was around the Sheku Bayoh inquiry. That inquiry was about something that happened in Kirkcaldy on one afternoon, and affected around 20 people directly—it is, of course, incredibly serious and worthy of investigation. The Covid inquiry was huge in scope and affected the entire country. However, there is a one-size-fits-all approach to inquiries.

Will the problems in the Sheku Bayoh inquiry be a point of reflection that the Cabinet will discuss after the inquiry concludes, in order to be able to say why the system is or is not working? In that inquiry, the system clearly has not worked; we can talk about all the different ways in which it has collapsed and the problems that it has had, setting aside the case for the inquiry itself. Will the Government discuss that and try to reflect on it?

**Kate Forbes:** First, I acknowledge the job that Lord Bracadale did. It is extremely difficult when the core participants all fundamentally disagree with one another, and the fact that he was able to manage that over the past few years is commendable, whatever else has happened in the past two months.

Your point about a one-size-fits-all approach is interesting. There are alternative vehicles available, such as fatal accident inquiries, to explore these issues. The Sheku Bayoh case is different from the other cases that you identified, because there are very few cases that we are

legally obliged to review, and that is one of them. The question how to do that inquiry is different from the question whether we should have reviewed the matter, because we are under a legal obligation to review it.

With the Covid inquiry, there was—as you will know—widespread appetite to explore the matter. Nonetheless, those two examples are very different. I come back to the original question, about the extent to which a chair is independent with regard to their ability to design a process around the core issue. The Covid inquiry had a responsibility to listen to a very broad range of witnesses. That does not necessarily apply to the Sheku Bayoh inquiry, which is much tighter. That aspect will inform and influence the costs of the inquiry.

I know that the child abuse inquiry has been doing an investigation into specialist schools, including deaf schools, and that requires a major focus on British Sign Language interpreters and so on. There will inevitably be variation among inquiries. We can deal with that either through Parliament being superprescriptive and requiring each issue to fit a mould, or by giving responsibility to an independent chair.

The committee will have to wrestle with that and weigh up the issues. I think that the politician's instinct is always to try to micromanage a problem out of existence. With these matters, however, there is a reason why chairs are independent of ministers to do what they believe is appropriate for their inquiry.

**The Convener:** The point is, though, that the Sheku Bayoh inquiry, as Michael Marra pointed out, covers only a small number of people in one town and a certain incident, whereas the Scottish Covid inquiry covers a lot of people—the whole of Scotland—but so far the latter is still less expensive than the former. I make that point with regard to the purpose of the work that we are doing as a committee.

10:45

**John Mason (Glasgow Shettleston) (Ind):** We have covered a bit of ground already, so I shall perhaps build on some of that.

Let us turn to the idea of having a fixed cost and a fixed timescale at the beginning of an inquiry, which is what seems to happen in other countries. I understand, Deputy First Minister, that you and I have a similar accountancy background. Audits are carried out by independent organisations—usually accountancy firms—or by Audit Scotland, and they have quite a tight timescale. Most people would say that audits are independent, whoever is carrying them out. Why is there such a fundamental difference in that we can audit

complicated organisations such as banks within a few weeks, whereas the legal profession takes so long to carry out these inquiries?

**Kate Forbes:** The matter is too serious for me to use it to make a comment about lawyers and accountants, but you can make it for me. The issues are very different. I understood your question to be about public inquiries reviewing issues. If it was a simple question of figures, it would be a lot easier; however, such inquiries are often about a thorough review of the facts in extremely difficult circumstances. Nothing comes to a public inquiry unless it is extremely complex or extremely difficult and unless there is, to an extent, a breakdown in relationships and in trust, so the issues are far more challenging. As I said earlier, the demand for a public inquiry arises precisely because of its independence, and therefore the chair is independent.

I hope that the convener does not mind my saying this, but it goes back to his comments about cost. The total cost of the Sheku Bayoh inquiry, as shown on the inquiry website, is £26.2 million—

**The Convener:** No—it is double that if you include both sides of the inquiry.

**Kate Forbes:** —whereas the cost of the Scottish Covid inquiry is £45.5 million.

**The Convener:** The total cost of the Sheku Bayoh inquiry is £51 million if you include both sides, because there are two sides to the issue—that is what we are looking at.

**Kate Forbes:** If you want to compare apples with apples, have you taken into account the wider costs for the Scottish Covid inquiry? With regard to the point about the Scottish Covid inquiry costing less than the Sheku Bayoh inquiry, I thought that it was important to put the actual figures on the record.

**The Convener:** From the figures that I have seen, the cost of the Sheku Bayoh inquiry is over £51 million and rising. Even if it was £10 million, that would still, to me, seem like an awful lot of money for one specific incident in comparison with the complexity of Covid—although, even if we consider the Covid inquiry in that context, we might note that the Swedish Covid inquiry cost less than £2 million and took only a few months. The people of Sweden appear to be content with their inquiry, which concluded four years ago, and they are certainly more content with how Covid was handled.

**Kate Forbes:** Those are all important points, but I thought that it was important to put the actual figures on the record.

**John Mason:** Right—it is back to me. I accept that auditing a bank and investigating a death are

different issues, but I wonder whether we could learn even a little bit from the former. Almost every other career, job or profession—whatever we want to call it—is time limited. Cleaners would like to spend longer cleaning things, but they have to do it within a certain time. Auditors use the concept of materiality. Yes, they might find that somebody has stolen £100 from the Royal Bank of Scotland, but, in the scheme of things, that is not material and they will put it aside when they come to their conclusion as to whether the financial statements give a true and fair view. We seem to be going to the other extreme with some of the public inquiries, which perhaps go into too much detail and lose sight of the bigger picture and what is material. Do you think that some lessons can be learned from other professions?

**Kate Forbes:** I certainly think that there are lessons to be learned. I accept that point, which is why I believe that there needs to be action, and we will take into account the committee's recommendations. Maintaining public consent for inquiries really matters. If there is a breakdown in consent for inquiries, we have undermined the very purpose of having an independent, thorough review of the facts.

As you will know, there are currently five public inquiries going on in Scotland. There is the child abuse inquiry, the hospitals inquiry, the Sheku Bayoh inquiry, the Covid-19 inquiry and the Eljamel inquiry, and there is the proposed Emma Caldwell inquiry. In all those inquiries, it is for the chair to determine how they proceed, but the terms of reference are all quite clear.

You will appreciate that, a few months ago, a request was made to me to extend the terms of reference for one of those inquiries. I have a duty to consider such a request, so I engaged in an exercise to ascertain the views of core participants and I came to a conclusion that I would not extend the terms of reference. My point is that one cannot simply add to the terms of reference—there is a set legal process by which to do so.

**John Mason:** I suggested this to one of the judges and to other witnesses who appeared before the committee. Could we go for a model in which you say to the chair, "You've got two years and £10 million—do the very best you can within that"?

**Kate Forbes:** There is certainly scope to have those conversations.

I am always sensing when Don McGillivray wants to come in, and I think that he might want to come in on that.

I will give an example of what the risk is—I assume that this is in the public domain. One inquiry was given a fairly clear indication of timescales, but it very quickly discovered, as it

uncovered the evidence, that the issue was much more widespread than had been assumed. As a result, the scale of the inquiry significantly increased, with people looking to add modules to the work that they were doing because we were identifying that the issues existed on a much greater scale than we had previously assumed to be the case.

Don, do you want to come in on any of that? Maybe I read you wrongly.

**Don McGillivray:** The only additional point that I would make is that some of the people who call for a public inquiry are starting from a place of feeling a strong sense of injustice or feeling that they have not been told the full truth. The opening of the books and the exposing of the detail, and trying to get into the open everything that we know about what happened, why things happened and why decisions were made in the way that they were, can be a very strong driver for the people who are campaigning for a public inquiry. That is one of the reasons why the chair has such a difficult job in deciding where the line should be drawn with regard to the scale of the information that is provided by public authorities and others about what has happened.

That is one of the most difficult things about running a public inquiry. How far does a public inquiry need to go to satisfy that sense of injustice and the need to get all the detail of what happened?

**John Mason:** That brings me to another thing that I wanted to ask you about. How satisfied do you think that victims and families are with the public inquiries that have concluded? I get the impression—perhaps especially from inquiries down south, because it is bigger and there are more of them—that, at the end of an inquiry, we get the report and see the family standing outside the court, or wherever it happens to be, saying how dissatisfied they are with it all. In some cases, people are just looking for revenge or for heads to roll, and they will not be satisfied if they get anything less.

**Kate Forbes:** That is a very insightful question. The question about the level of satisfaction is, ultimately, for the survivors or the victims themselves to answer. However, I go back to a question that somebody—I cannot recall whether it was Liz Smith or Michael Marra—asked me earlier, about whether the increase in the number of public inquiries has come about because people are unsatisfied with what is happening. Don McGillivray talked about a feeling of injustice, and I think that it is about expectations. With a public inquiry, there is a lot of talk about righting the wrongs of the past. A public inquiry can shine a light on what happened, but it cannot undo the past or restore somebody, and I am very

conscious of that with regard to the public inquiries that I sponsor.

There will be a duty to propose recommendations and a duty on the Government to respond to those recommendations. In responding to the Covid inquiry, for example, we want to ensure that we are far better able to respond quickly to, and far better prepared for, the next civil contingency or emergency—which may or may not be a health pandemic—than we were in 2020. However, that does not bring 23,000 people back. I engaged extensively with the Covid bereaved. There is still grief, and, ultimately, the Covid inquiry cannot take away grief. I say that very sensitively, because it is important that it is a survivor, rather than me, who responds to the question.

We have to be clear about what the purpose of a public inquiry is. It is to shine a light, and it cannot undo the past.

**John Mason:** That takes me on to something else. Do inquiries always shine a light? We all lived through Covid not so long ago. I was on the COVID-19 Committee in Parliament for quite some time, and we had repeated statements from the First Minister and debates in Parliament, or at least questions, very regularly. It is all very well for a judge or whoever to look back and say, “Oh—you could have done something differently,” but, at the time, we were going through a big crisis that none of us had been through before. If we had put money aside to prepare for it, there would have been less money for the NHS. There is a cost to preparing for things. Is the Covid inquiry really adding anything material that we did not know?

**Kate Forbes:** That is a very difficult question to answer, because there was widespread consensus on the value of an independent review. I often wonder what a public inquiry into other national traumas over the past century would have looked like. There was a commitment from both the Scottish and UK Governments to be open and transparent and to accept an independent review into their work. As somebody who has now supplied the Covid inquiry with several written statements and who will shortly give evidence to it, I am certainly making myself open to questioning by that inquiry.

In my conversations with the Covid bereaved, they have made it clear that they value the ability to retrospectively ask questions in order to understand in greater detail what happened and, ultimately, to avoid its happening again. As someone who made decisions during that time, I know that if I had had hindsight, my job would have been much easier.

**John Mason:** We could probably go further on that, but I will leave it for now.

Let us go back to the costs of an inquiry. It has been suggested that inquiries should be inquisitorial rather than adversarial, and I wonder whether we have got the balance right. From some of the evidence that we have had, it seems that there are lawyers absolutely everywhere. There are lawyers for the victims, lawyers for the Government, lawyers for the health board and lawyers for the police—lawyers, lawyers, lawyers. I know that there has been some kind of mitigation—for example, at least two or three groups can have the same lawyers, which saves a little bit of money. However, I wonder whether the whole thing has become just too legally driven. You have been asked at length about having judges as chairs, and, in a sense, having a judge as a chair will encourage that situation, because that is what they are used to.

11:00

**Kate Forbes:** It is a fair question. Ultimately, you need to understand the breakdown of costs for an inquiry and where the costs are going. An inquiry is a weighty process that gives victims and survivors, among others, confidence that the facts will be made known and the truth will be uncovered. In the light of that weightiness, therefore, there are advocates and solicitors involved. It is very difficult for me to say otherwise.

Does anybody else want to comment on that?

**Don McGillivray:** My understanding of public inquiry procedure is that it should be inquisitorial. I think that that is the philosophy of public inquiries.

**Marion McCormack:** I would just add that the Inquiries Act 2005 makes it clear that a public inquiry is not a civil or criminal court and

“has no power to determine ... civil or criminal liability.”

It must report in terms of the facts and the evidence that it hears. In terms of the proceedings, a public inquiry is not a court of law and does not hear evidence in the same way. When a chair is appointed, they are very clear from the outset about their role and responsibility, and they will go where the evidence leads them.

On the point about having an inquisitorial rather than an adversarial approach, I think that strong chairs have brought control over some of the legal, adversarial-type confrontations that we have seen play out in some of the public inquiry hearings that have been televised. The chair will intervene if they feel that the proceedings are not unfolding along the lines of a public inquiry, and they will bring them back into the realms of a public inquiry.

**John Mason:** I totally agree that that is the aim, and that is where we should be. I am just a bit concerned that we have strayed away from that, at least in some inquiries, and the process has

become much more—and the public see it much more—like a court of law, with one side arguing their case and one side arguing the other case.

Let us turn to the issue of recommendations. You have explained a little bit how the recommendations from an inquiry are put into place. Do you think that we need more of a structure for that? Should there be a Parliament committee to look at that? Alternatively, subject committees could look at different inquiries. Does there need to be more of a process in that regard?

**Kate Forbes:** There could be. Again, there would be a different approach for different inquiries. I appreciate that that answer probably does not satisfy the committee, but I think that some recommendations will be primarily for the Government, and the Parliament can already scrutinise whether the Government has implemented a recommendation. There will often be recommendations for other public bodies, and they, too, are accountable to the Parliament.

With regard to scrutiny of the implementation of recommendations, I think that whatever format or structure the Parliament wishes to see could be developed. That is perfectly feasible, and we already see that to some extent with ministers having to account for how recommendations from module 1 of the Covid inquiry have been implemented.

Some recommendations will be for us all, as a society, and it will be harder to pin those on one organisation or body.

**John Mason:** I move on to something completely different. The 2005 act has been mentioned a few times. Do we have complete freedom to change that or introduce a new law, or are we in any way bound by the 2005 act?

**Marion McCormack:** The 2005 act is a reserved UK act, so revisiting it would require the UK to decide to revisit the primary legislation. However, we have the ability to set rules around Scottish matters that ministers are overseeing in public inquiries, and we have a set of Scottish rules. We are restricted in what we can do—we can only do that around Scottish matters. In parallel, however, we are working closely with our UK colleagues because they are reviewing public inquiries in the light of the House of Lords report “Public inquiries: Enhancing public trust”. If an opportunity arose for the UK Government to revisit the 2005 act, we would work closely with it and feed into that. We could also introduce our own independent primary legislation separately, if that was thought to be the best route for us in Scotland.

**John Mason:** Would that be independent legislation to change the 2005 act, even though it is reserved?

**Marion McCormack:** I will hand over to Emma Thomson on that.

**Emma Thomson:** We can make legislation in so far as it relates to Scottish matters, so we could make our own legislation in respect of public inquiries that relate to wholly Scottish matters.

**John Mason:** Okay—I will leave it at that.

**The Convener:** That concludes questions from my colleagues. I will finish with one or two questions.

One subject that we have not touched on is consultants. When the Scottish Parliament information centre initially provided us with details of the costs of public inquiries over the past decade, we were advised that 10 per cent of the amount was spent on consultants. However, despite asking numerous witnesses and SPICe itself, we were unable to find out what that 10 per cent actually consists of.

I see that Don McGillivray is shaking his head. I wonder whether he has some information on what that is all about.

**Don McGillivray:** If I am honest, I am surprised by that number—it is not a number that I recognise. A significant part of the cost of inquiries would be the cost of counsel, who are paid fees but whom I would not describe as consultants. Inquiries often have experts. Some have panel members or assessors whom, again, I would not classify as consultants.

It is very unclear to me what that number relates to. My suspicion is that some of those categories, such as assessors and expert witnesses who are paid to prepare reports for committees, have been somehow categorised as consultants. As somebody who sponsors three public inquiries, I certainly do not recognise that figure of 10 per cent of costs going on consultants.

**The Convener:** The reason why I asked the question is that it is obviously a significant part of the £258.8 million overall cost, and it has been a bit frustrating trying to find out the detail of that over the past six months.

I turn to another issue that we have. We talked about judges, and you have referred to a sense of injustice, inquiries shining a light and so on. However, we have to remember that—as I mentioned earlier—if we have judge-led inquiries and those judges are not dealing with ordinary trials, it is the people involved in those trials for whom justice is probably being denied or delayed.

From what I can see, that issue has not been considered adequately. If the Scottish Government continues to appoint judges, even if it says that that is not necessarily the route that always has to be taken, surely that just reinforces the view that is

conveyed to the public by the media and others that only a judge-led inquiry is valid. It is reinforcing an approach that is more expensive and time consuming.

**Kate Forbes:** Having said that there are alternatives, I think that there are certainly inquiries that have benefited from being judge led. I have no current plans to establish another inquiry, so—

**The Convener:** That is a very tentative response.

**Kate Forbes:** That is despite calls already this morning—from Mr Craig Hoy—for another inquiry.

We will take all of that into account. It is worth pointing out that there are five live inquiries and one proposed inquiry. I say that because, when we are discussing issues around inquiries, we start to assume that we are talking about hundreds, whereas there are actually five plus one. Looking at their subject matter, it is clear to me that they all involve extremely challenging, complex and difficult issues.

**The Convener:** As I pointed out earlier, and as John Mason mentioned, there are significantly more UK inquiries, and the UK Government has spent about £1.5 billion.

We have not really touched on terms of reference. I think that we have to be clear and robust in setting terms of reference. We can look at the Piper Alpha and Dunblane shooting inquiries, for example. Those incidents were very traumatic for all those who lived through them and remember the details, and 167 men died on Piper Alpha and 16 children and a teacher died in Dunblane, and yet those were very short, succinct and straightforward inquiries that cost a fraction of the inquiries that we are talking about. I think that Lord Cullen's inquiry into Piper Alpha cost under £2 million and lasted for just over a year.

As Professor Cameron stated in written evidence,

“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.”

We have seen almost an explosion of legal costs. Do you find it inappropriate that some legal firms have people going on television demanding the establishment or extension of inquiries when they themselves have a direct pecuniary interest?

**Kate Forbes:** The terms of reference are the primary area where a minister can set the direction of a public inquiry. Once they have established the public inquiry and set the terms of reference, the chair alone is then responsible for deciding how the inquiry should operate. The importance of the

terms of reference therefore cannot be overstated, so I agree with you on that.

I mentioned earlier that I have had a very recent experience of receiving a request to extend an inquiry's terms of reference. With regard to the process that I went through and my ultimate decision not to extend the terms of reference, I will not exhaust the reasons here, but I encourage the committee to look at that recent example and take some confidence from the process that we undertook and our decision, despite there being very conflicting views in the public domain as to whether we should or should not extend the terms of reference. We followed our process and I am confident in the decision that we came to.

**The Convener:** What about lawyers going on television to demand the extension or establishment of inquiries?

**Kate Forbes:** I think that that is outside my remit. I have to make decisions on the basis of the evidence that is before me and the advice that my officials give me, and on the basis of engagement. To be perfectly frank, that, and nothing beyond that, is what influences my decisions.

**The Convener:** In her written evidence, Dr Ireton, who specialises in this area, said:

“there has been remarkably little evidence-based work commissioned on what inquiries cost, how they manage those costs, and how spending compares against original budgets.”

She also said that they are

“often ... concluded with minimal formal evaluation or system-wide learning.”

Is the Scottish Government going to alter that as we move forward?

**Kate Forbes:** I think that that is probably what the committee is doing right now, is it not?

**The Convener:** We will make recommendations in our report, but it will be up to the Government to act on those.

We talked about public inquiries, with their interim reports, making changes as they go along. I would hope that the Government, seeing where we are coming from, would already be looking to make some changes.

**Kate Forbes:** Absolutely. I had hoped that, in answering the committee's questions today, I would give a very strong sense of my appetite to read your recommendations and to take action as a result. I have tried quite hard not to be too defensive—whether that has worked or not is for you to determine—as though we are set in the ways that we have always done things, because I think that there is certainly room for us to learn from the committee's review.

**The Convener:** To be honest, I do not think that you have been defensive at all.

**Kate Forbes:** Good.

**The Convener:** You have been answering the questions fairly directly, which is always welcome.

John Sturrock KC, in his evidence to the committee, said something that goes along with what I, John Mason and others said earlier: there are always tensions between

“time, cost, quality, justice and outcomes”.—[*Official Report, Finance and Public Administration Committee, 17 June 2025; c 23.*]

Michelle Thomson has sent me a comment—I will give her the credit rather than trying to claim it for myself. She says that it is worth mentioning that no other public sector projects run without project management and cost control, so why should inquiries be different? In addition, sponsorship teams are encouraged to familiarise themselves with lessons-learned reports on previous inquiries and the statutory framework, but do they do so?

**Kate Forbes:** All of that is done by the chair. There is probably little value in my responding to that question—

**The Convener:** I think that there is plenty. You are the Deputy First Minister of Scotland—surely you would be someone who would be giving leadership in that area.

**Kate Forbes:** The responsibility for managing the costs, as per the Inquiries Act 2005, is on the chair.

I go back to expressing my understanding of the purpose of the question, because I am in the midst of setting budgets and I can think of a lot of things to which I would like to attribute and assign funding, but I also have to make sure that there is a buffer for the demand-led public inquiries.

**The Convener:** But the Scottish Government selects the chair. Surely, if you are looking for a chair, you will look for someone who is actually going to take real cognisance of the impact and is not going to live in some kind of bubble for the next five or 10 years.

11:15

**Kate Forbes:** Absolutely, and one point on which I would absolutely reassure the committee is that our chairs are all very conscious of their obligation in that regard. I can vouch for that, because it is the subject of conversations that I have with them. I engage periodically with the chairs of the inquiries that I sponsor, and I am very grateful for the sacrifice that some of the chairs make in managing public inquiries. It is worth noting—

**The Convener:** They do it out of the goodness of their hearts—they do not get paid vast amounts of money, no? [*Laughter.*]

**Kate Forbes:** I think that you do them a disservice if you do not recognise some of the costs to them. For some of them in particular, the added dimension of public scrutiny that comes with an inquiry is challenging. It speaks to the challenges that we have across the public sector these days in recruiting good people because of the difficulties that are inherent in a very visible role like that.

**The Convener:** Okay. Michelle Thomson wants to make a final point.

**Michelle Thomson:** I just want to pick up on one point. I do not disagree with what you have said in this respect, Deputy First Minister. I simply make this point: how can it be possible that we credit judges, who are incredibly learned in their field, with having the type of programme management skills and experience that are needed? That does not seem to be fair to them.

You made a comment earlier, which has just jumped into my head, about the issue of change control. I have been a programme manager, and there is no walk of life other than inquiries where we set someone loose with an unlimited budget and without support. We do not even have processes yet whereby we have a fixed project management office that can assist and guide these things. That is ultimately quite unfair to judges, when we look at their skill set, and it is inconceivable that that would happen in any other type of project. It just seems ridiculous.

**Kate Forbes:** Chairs are extremely well supported by secretariats. When I engage with a chair, I am engaging with the chair and the secretariat—I do not think that saying “chair and chief executive” would be particularly accurate, but there is an important role for the secretariat. You are absolutely right that chairs are largely in the chair, convening and managing, but they are extremely well supported by their secretariat, and the relationship between the secretariat and the sponsor team is extremely strong. That is probably the strongest link, unless Don McGillivray tells me otherwise, between Government and the public inquiry.

**Michelle Thomson:** That is all good, but the power ultimately resides with the chair, who signs off on the budget. That brings me back full circle to my opening remarks. The chair is not accountable to anybody. The secretariat that you mentioned is accountable to the chair and—I assume—to Government. That is the critical issue.

**Kate Forbes:** It is useful to hear members' thoughts on that. Many of the chairs are coming towards the end of their careers and they do not

actually have to do this job, so I commend our chairs for taking up the mantle in chairing inquiries into some very difficult, thorny issues.

With regard to the committee's findings and recommendations, which I look forward to reading, I caution against—if I can be so bold—any suggestion of chairs having ulterior motives. The important thing is that, when a very important issue presents itself and requires a public inquiry, we are able to find the best person for the role. I think that that will at times, but not always, require it to be a judge. For that judge to be able to make a decision—because it is entirely for them to make the decision—there needs to be an environment in which they know that we will be able to work constructively with them to get to the conclusion of the inquiry. I think that it has been a challenging period for some chairs.

**The Convener:** Deputy First Minister, I thank you and your officials for your contributions. Do you wish to make any further comments at this point?

**Kate Forbes:** No. I thank you very much, as always, for your broad questions, for your unexpected questions and for the manner in which you ask them.

**The Convener:** Thank you for that. That concludes our evidence taking on the cost-effectiveness of Scottish public inquiries. We will consider all the evidence that we have received as part of our inquiry, and publish our report next month.

That concludes the public part of our meeting, and we move into private session.

11:20

*Meeting continued in private until 12:43.*



This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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