

Introduction

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

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

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

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

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

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

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

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

Lack of clarity over role and mission creep

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

Overly prescriptive rules

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

Adversarialism

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

Lack of central repository for best practice

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

Poor engagement from government departments and public bodies

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

Failure to implement recommendations

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

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

Lack of consensus

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

Focus, purpose, remit

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

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

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

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

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

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

The need for clarity and focus at the outset

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

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

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

Scale, proportionality, and timeliness

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

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

Transparency around timescales and cost

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

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

Transparency around effectiveness

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

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

The current legislative framework:

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

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

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

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

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

Targeted reform to the Inquiries (Scotland) Rules 2007

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

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

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

Setting and monitoring costs

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

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

Focus on core participants and legal costs

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

Structured internal evaluation and learning

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

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

The role of government departments and public bodies

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

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

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

Central Inquiries Hub/Centre for Excellence

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

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

1. Clarity of purpose and proportionate design

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

2. Flexible procedural framework

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

3. Transparent cost and timetable management

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

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

4. System-wide learning and oversight

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

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

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

Weakness of the current process

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

Central transparency

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

Formal response to recommendations

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

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

Oversight mechanisms

There are several models of potential oversight mechanisms.

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

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

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

Scrutiny and implementation monitors

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

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

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

The importance of context

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

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

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

International examples and lessons

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

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

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

Managing perceptions of legitimacy and accountability

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

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

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

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

Preserving flexibility and the Chair's discretion

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