



Statutory Inquiries Committee

Corrected oral evidence: Statutory inquiries

Monday 26 February 2024

4.20 pm

[Watch the meeting](#)

Members present: Lord Norton of Louth (The Chair); Lord Aberdare; Lord Addington; Baroness Berridge; Baroness Chakrabarti; Lord Davidson of Glen Clova; Baroness D'Souza; Lord Faulks; Lord Grantchester; Lord Hendy; Lord Wallace of Tankerness.

Evidence Session No. 3

Heard in Public

Questions 27 - 46

Witnesses

I: Dr Emma Ireton, Associate Professor, Nottingham Law School, Nottingham Trent University; Dr Alastair Stark, Associate Professor, University of Queensland; Dr Nathan Critch, Teaching Associate, University of Birmingham.

USE OF THE TRANSCRIPT

1. This is a corrected transcript of evidence taken in public and webcast on <https://parliamentlive.tv/>.
2. Any public use of, or reference to, the contents should make clear that neither Members nor witnesses have had the opportunity to correct the record. If in doubt as to the propriety of using the transcript, please contact the Clerk of the Committee.
3. Members and witnesses are asked to send corrections to the Clerk of the Committee within 14 days of receipt.

Examination of witnesses

Dr Emma Ireton, Dr Alastair Stark and Dr Nathan Critch.

Q27 **The Chair:** Good afternoon and welcome to this session of the committee looking into statutory inquiries. This afternoon we have three witnesses, two in person and one online from Australia. Before we get under way, I invite each of you to introduce yourself for the record.

Dr Emma Ireton: I am an associate professor at Nottingham Trent University. I worked as a solicitor in practice on public inquiries before going into academia. My research and publications focus on public inquiry law and procedure.

Dr Nathan Critch: I am a teaching associate and researcher at the University of Birmingham. I have recently completed my doctoral research on public inquiries in British governance, and I have published on inquiries in the academic journal *British Politics* and for the *Conversation*.

Dr Alastair Stark: I am a public policy lecturer from the University of Queensland School of Political Science. I have written two books on inquiries. One focuses on policy learning post crisis and the other on policy design and public inquiries.

Q28 **The Chair:** Thank you very much. I will begin with the opening question, which is to invite you to identify in the Inquiries Act 2005 the most helpful and the least helpful provisions in ensuring that statutory inquiries are effective and efficient.

Dr Emma Ireton: The key thing that we are looking at is whether they create a suitable framework so that they give the inquiry enough powers inquiry to fulfil its terms of reference without being overly prescriptive and constraining the ways in which the inquiry works. The Act is generally considered to be good legislation in that it provides a suitable framework. Section 17 in particular is a strength, in that the procedure and conduct be such as the chair may direct, so it is at the discretion of the chair. Part 3 is the need to act with fairness and with regard to avoiding incurring unnecessary cost. That is key. There is also the distinguishing fact of the powers of compulsion under Section 21 and the presumption that the inquiry will be held in public under Section 18.

On what is less helpful, what has not been addressed yet in the evidence is the powers the Act gives to the Minister and the potential for interference with the independence of the inquiry. When the Act came in, there was a lot of concern that this would undermine confidence and people would refuse to participate in inquiries. That has not happened, and there has been no interference, but it remains a concern. These are the powers: the Minister can terminate the appointment of the chair or panel members, restrict public access, and withhold material from publication. So that may well be something to look at. Also, on the rules, the warning letters, Rules 13 to 15, are an issue, because they fetter the discretion.

Finally, it is important to look at how well the statutory inquiries work within the context. Before the Act kicks in, there is that time when the Minister makes decisions about whether there will be an inquiry in the first place, whether it will be statutory or non-statutory, the terms of reference and so forth. That influences how well the inquiry runs, and then, of course, issues of implementation afterwards.

Dr Nathan Critch: I very much agree with what Emma said. On what is helpful, in general the Act strikes a good balance between providing a framework and a set of guidelines, so that new inquiries do not have to rewrite the rulebook from scratch but avoid being too prescriptive and allow for innovation in how inquiry procedure adapts and moves forward.

My research was more on the political dynamics of inquiries, so I too want to touch on the question of whether the Act grants too much ministerial control. The 2014 House of Lords Select Committee report concluded that ministerial overreach has not taken place, but what is important is that there is a perception that it might take place, that there is a risk of that. I think that damages the legitimacy of inquiries, because the legitimacy of inquiries is ultimately tied to their independence. So any suggestion that the independence is being curtailed is unhelpful.

Dr Alastair Stark: In terms of the most important provisions, when I have gone over the Act I would say that Section 18, on the public provision of information—making public inquiries public—always stands out. Section 21, on the powers to produce evidence, seems, as Emma said, to be the heart of the thing. Section 37, on immunity from suit, is also very important; it is a really important dimension of a lot of inquiry proceedings. I agree with the previous witnesses about it being broadly a good framework that allows the process to begin and take place.

The question of effectiveness is an interesting way to frame it. I do not necessarily think that major changes to this piece of legislation will improve effectiveness. If the committee will allow a quick sporting analogy, if you were to ask the 20 Premiership managers who manage football teams in England at the top level what would improve the effectiveness of the teams, none of them would say the Football Association regulations. The question of effectiveness is completely different.

The Act is a good platform, a good framework, a good means of getting it started, but changing it radically will not necessarily improve effectiveness. The sources of improvements in effectiveness are found in the design and the procedure, and I know we will get to those questions later. So, to me, the Act is good: it is robust, solid and does what it should do, and it gets the game started. But if you want to improve the effectiveness of inquiries, you have to look beyond it.

Q29 **Lord Addington:** Which of the conclusions and recommendations of the House's 2014 report on the Act are still relevant and important? Are there any conclusions and recommendations from the report that you disagree with or that you think should be updated?

Dr Emma Ireton: I think it is all relevant, because there has been no substantial change since 2014. On the recommendations in particular, the recommendation for a central inquiries unit is very important. The way in which inquiries run is very much affected by the discretion of the chair under Section 17 and the decisions made as to how the inquiry runs. Any decision is only as good as the information on which it is based.

I think there has been a failure to capture knowledge of best practice and using that to inform future inquiries. There are some very good examples of best practice in many inquiries, but they have not necessarily all been transferred forward, so sometimes there is a repetition of weaker practice, because that is just the way it has already been done. This is at least as important as looking at the legislative framework.

Recommendations 13 to 16 about the lessons learned papers, updating the Cabinet Office guidance, contact details of secretaries, and the new central inquiries unit are very important, and they are very important as a repository of best practice for future inquiries—in other words, not being prescriptive or assisting in making the decisions. Those decisions have to be made by the chair and the inquiry team, but that information has to be made available so that they benefit from the collation of previous best practice and having that available.

The central inquiries unit and lessons learned papers from inquiries are very important—that is one of the few things where it would be helpful to be prescriptive, actually—as is making available the collation of protocols, rulings and directions from previous inquiries. There is currently no training for new secretaries to inquiries or chairs or people participating, or for those who are returning. There is no updating on best practice and things that have gone on. There are ongoing meetings of secretaries, and they are sharing best practice, but more could be done with those and maybe with meetings with previous chairs and so forth.

It is important that the unit has a public-facing role. There is a huge amount of knowledge and expertise in practice and those who work on public inquiries, and there is quite a low level of understanding outside that among the public and participants who are new to inquiries about what they are and what they can do. The mismatch between what participants and the wider public thought they would deliver and what in their role they have the power to deliver can cause them distress and disappointment. The collation of best practice cannot be just inward-looking; it has to be made available more widely.

On things that perhaps are less relevant or are to be revisited, recommendations 10 and 11 have probably been superseded now, because they are about consultation. That has become quite common practice, so they seem quite dated.

On other aspects and recommendations, the important thing to bear in mind is that all inquiries are about balance, and when you change one thing it affects something else. Every decision made will have that in mind. You have the inquisitorial nature of the inquiry, but then you have

to have some adversarial elements, which are the legal safeguards in ensuring that the participants have a role. Participants and the public, and so forth, generally want wider, broader terms of reference, but if you have those you have a more costly, slower public inquiry and it takes longer to get to the recommendations.

It is about finding points of balance, and those points of balance are all the way through. We have legal representatives to safeguard the interests of witnesses, but if we have too many, it can interfere with the working and the cost of the inquiry. Every decision and recommendation made will be to address one aspect, but you need to bear in mind the balances of the trade-off in terms of other aspects and the effect it will have.

One example of that is recommendation 7 on a panel or a single chair. That is phrased in terms of there being a single chair, unless there are strong arguments to the contrary. There are pros and cons to a single chair and to a panel, and they will have been taken into account. With a panel you have the wide range of specialist expertise, and arguably they can appear more independent. The downside is that it can be difficult to find a panel of people with the right expertise who are available for the time that is necessary. There can be issues with the dynamics of working together and it can slow the inquiry down.

My understanding is that that recommendation and that presumption were to address concern about the length and cost of inquiries and how long it is before the recommendations are made, but that has to be borne in mind against the flipside, which is what you miss out with a panel. That one could go either way depending on where you decide the priorities are for what you feel needs to change.

Dr Nathan Critch: I agree wholeheartedly with the recommendation about a central inquiries unit, but Emma covered that pretty comprehensively. I wholeheartedly agree that that would be really useful.

On what is relevant and important and should be revisited, I thought that the committee's recommendation that the Government use the Act as the default when holding inquiries made sense. The justification for rejecting that recommendation was essentially that sometimes non-statutory inquiries can be more informal and more open, and people can feel more comfortable testifying before a non-statutory inquiry because they are there voluntarily, but statutory inquiries use the power to compel witnesses only as a last resort.

Whether inquiries are comfortable and open is not simply a matter of whether the inquiry is held under the statutory framework. It is a matter of the whole nature of the inquiry process and how it takes evidence. I do not think that that justification is a particularly strong one for not using the Act as a default. It seemed that the very rationale of the Act was to provide a framework that would bring everything under one roof, and I think that that still makes sense as a rationale.

On the point about single-member panels as a default, part of the legitimacy of inquiries is to do with their efficiency and cost. Single-member panels are arguably better, because one person alone can work more efficiently, but stakeholders in recent inquiries have often called specifically for multi-member panels, sometimes with calls for the stakeholders themselves to have representation on the panel so that they can steer where the inquiry goes. Again, agreeing with Emma, that is more of an issue of balance and balancing legitimacy versus efficiency and so on. So the recommendation to use single-member panels as a default is possibly less relevant and could be revisited.

Dr Alastair Stark: I will slightly diverge from the other witnesses on recommendation 1. Nathan made the good point that the compulsion dimension of the Act as a last resort is rarely used, but when you run a statutory inquiry through the Act there is a tendency to make it a legal judicial process. There is also a tendency for those legal judicial inquiries—often unintentionally—to lean in towards adversarial processes. Those do not necessarily relate just to the compulsion of evidence but to the reliance on hearings, and sometimes they lapse into cross-examination, even when counsel try not to. I always remember a very confused public servant in New Zealand asking me why he was made to swear on a Bible and be cross-examined when his role was simply to explain a regulatory system to a royal commission. He was confused and perplexed, and he said that he could have explained it quite easily and succinctly with a few PowerPoint slides.

We have known at least since the Scott report and the metrics structural affair, if the committee can remember back to those days, that public servants will be honest but not forthcoming when they think they are engaged in an adversarial proceeding, and it runs against the grain of good policy learning, so I am very wary of a default that leads us down an adversarial path. Although I agree with Nathan, and I was not particularly happy with the Government's grounds for rejecting, I think we should be very wary about defaulting into a legal judicial model, because it can run against the grain of lesson learning.

Recommendations 1 and 33 are still, for me, in open debate. On recommendation 7, on multiple members or single members of the inquiry panel, I am a big believer in methodological pluralism inquiries. Multiple logics and rationalities are a good thing and can be made to work. I am an even bigger believer in a real dose of real-world policy knowledge at the top of inquiries to make recommendations implementable. The pros and cons that Emma and Nathan have touched upon are real. Chairs do fall out, inquiries do take longer, but if you can frame the legal judicial logic and provide a degree of ballast around it with expert chairs and real policy knowledge, that is very powerful in getting recommendations implemented.

I really like an inquiries unit. I think we need to be continually refreshing best practice and looking comparatively, so I really liked all those recommendations. There is a section that breaks the recommendations

after recommendation 22, which asks how the procedure of inquiry hearings can be improved. I would ask instead what inquiry hearings are useful for. Is their purpose learning? If that is the case, there is a big question mark over all forms of formal hearing.

The recommendations that I love and endorse are 31 and 32 on a statutory duty to respond when recommendations pertain to specific bodies, and responses should be published within three months, with reasons given when recommendations are not pursued. Recommendations can die in the public sector wilderness. They do not have to be actively killed off by Machiavellian Ministers or mandarins. They simply wither on the vine. Public sectors are busy, resources are limited and objectives do not always relate to inquiries. Unless significant attention is given to the implementation phase, which there very rarely is in these kind of reflections, recommendations will continue to die in the wilderness. Recommendations 31 and 32 speak to me as part of a wider agenda of getting the implementation side of the inquiry process some serious attention.

Dr Emma Ireton: I wonder whether it would be helpful to say something about the statutory/non-statutory distinction, because sometimes the terminology used differs depending on the context, which can make it unclear. If we are talking about a full statutory inquiry, there is little difference between a non-statutory inquiry and a statutory inquiry other than the powers of compulsion, the presumption that it be heard in public, and taking evidence on oath, provided that the warning letter rules go, because that adds a cost to it. Other than that, I would be comfortable with the presumption, because it gives the same process the powers should they use them.

That is when it comes down to terminology. There are other processes that are sometimes referred to as non-statutory inquiries, but they may be more restricted processes. That would include independent panel inquiries and independent investigations, which are sometimes rolled into the terminology of a non-statutory inquiry, if that makes sense. They can be more focused; they could be policy focused, streamlined, they may not have the hearings and so on. Chilcot was non-statutory, but it was the same effectively as a statutory inquiry. In practice, those types of full non-statutory inquiries model their procedure on statutory inquiries. So there is not that difference, but there is in the other perhaps more innovative forms that might be appropriate on certain occasions.

Q30 **Baroness Berridge:** Dr Critch, since the publication of that 2014 report, has the use and operation of the 2005 Act changed? In particular, it would be helpful to know at this point whether you have done any research into the public confidence in inquiries since 2014.

Dr Nathan Critch: There are two things to note about how inquiries have changed since 2014. In general, in the contemporary period, inquiries are becoming more and more digital. They use digital tools in lots of different ways. There is remote giving of evidence and remote viewing of inquiry procedures. Inquiries store their oral and documentary

evidence online and they engage digitally with stakeholders. I do not think the 2014 report dealt with that in any great detail, and the 2005 Act has not grappled with just how digital inquiries have become.

Although lots of inquiries are embracing digital technologies in lots of different ways, they are not doing that to the greatest extent possible. Digital technologies in government have been hailed as a way of opening up policy-making to stakeholders, but inquiries have not found the right formula to use digital technologies in the best way. It would be useful if this investigation into how inquiries are working today looked into that.

Also, with the modularisation of inquiries, inquiries typically now do not wait to produce one big final report but break their subject matter down into a series of smaller modules. That has been a very useful change. I think people can see the benefits of that. That also seems to have become much more the default way of operating now compared to 10 years ago, which is also important to consider.

Dr Emma Ireton: The use of the Act itself has not changed, but the inquiry process has evolved outside of that. Consultation has become the norm and is much more common, and that is without there being any change to the legislation. A much higher proportion of statutory inquiries are convened now. There is generally better engagement with participants. There is certainly better recognition of the importance of engagement with participants. We are certainly seeing certain aspects of best practice being incorporated, but it is rather piecemeal and there is no consistency to that.

Dr Alastair Stark: I will defer to my British-based colleagues on this. I have been out here in Australia since 2012 and have not closely monitored the use of the Act while I have been here, but the points that have been made are really important, again because they speak back to the rules of the game and how that links to effectiveness. Some of the trends that have been commented on are taking place regardless of the Act. Those are the influences and the effectiveness that we need to talk about when we talk about design and functioning, which are distinct from the legislation, particularly that modular approach, which I completely agree with Nathan is very welcome and important. It is good to think in pluralistic ways across the multiple things that inquiries should be doing. But I defer to my British-based colleagues on that one.

Baroness Berridge: Do you have any comments about effectiveness and about the digital changes?

Dr Alastair Stark: That is definitely something that any chair has to grapple with now. The exciting thing has not just been how it affects the generation of data and the construction of recommendations. We might get on to that later when we talk about the changing nature of design and effectiveness. In my view, there is still a role for inquiry personnel, after the inquiry room has closed down, in championing and advocating for the reports and recommendations.

One of the best examples of that is the 9/11 commission and the big changes that it managed to make with its report. There is a role for these new technologies there for sure, but, out of the two, the modular approach that Nathan mentioned is a significant and welcome change. We can see that breakdown in the Covid inquiry. If an inquiry has many moving parts, many different dimensions and many logics, we have to accept that some aspects can do some things better than others. There is a need to disaggregate. Sometimes that has been done across multiple different inquiries with different chairs, so it is nice to see it being done cohesively through modular change. That is very welcome.

- Q31 **Lord Wallace of Tankerness:** This question is primarily to Dr Stark, but I would appreciate the comments of other witnesses too. You have recently researched and written on post-event implementation, and I think we are all aware that when major events happen there is a refrain from politicians that lessons must be learned. From your research, from what you have observed from afar in the United Kingdom but also in comparison with Australia, to what extent do you think there is a post-inquiry influence on policy?

Dr Alastair Stark: I think there is a massive influence post crisis. We have to be careful that we do not generalise from the post-crisis instances. There are particular types of disasters that Executives, Ministers, Governments feel more comfortable responding to. Often these are acts of God—earthquakes, floods, fires—which they can respond to in those terms.

My research has shown that, contrary to much of the popular commentary on inquiries, which has vilified them as costly wastes of time that illuminate very little, when it comes to post-crisis learning, inquiries around the world after crisis—I have looked at inquiries substantively in the Westminster systems of the world—do produce meaningful forms of lesson learning that enhance resilience.

We do this with a bloody-minded focus on policy learning, and often a pushback on the adversarialism that I was discussing, but there is a very clear linkage between the enhancement of resilience, the reduction of vulnerability to crises and the efforts of public inquiries in Westminster systems after a crisis. That plays out predominantly in what I call instrumental policy learning, which is the proliferation of small-scale instruments that allow the next crisis to be managed.

Part of the vilification and the criticism of inquiries that we see in relation to history repeating does not relate to lesson learning or the role of inquiries at all. It relates to institutional amnesia. In other words, we learn a lot through inquiries after a crisis. We actually change and reform a lot after a crisis, particularly in the Westminster systems, as a consequence of the actions of inquiry, but we have to ensure that those lessons are in place when the next pandemic erupts, when the next flood arrives. Parliaments turn over, bureaucracies turn over, Executives change, and all Westminster systems bear the traces of amnesia that is innate to those systems.

So we often get the diagnosis wrong, and one of the reasons why inquiries are vilified is because we use this history-repeating phenomenon to say that we have not learned from the past. That is not quite correct. We often learn a lot post crisis, and we have reduced vulnerability and enhanced resilience, but in 20 or in 10 years' time, or even in five or two years' time, when the next event occurs the forces of institutional memory loss have rendered those gains somewhat meaningless.

Q32 Lord Wallace of Tankerness: From your research looking at a number of different countries and comparisons you have made, is there anything in particular that the United Kingdom might learn in order to improve our system?

Dr Alastair Stark: Yes. One of the big innovations that we see enhancing the degree to which inquiries are effective—particularly in Australia, also in New Zealand, less so in Canada—is implementation monitors. If someone was to ask me the simplest and most effective bang for your buck for one change, it would be the creation of independent implementation monitors. In my evidence to the Select Committee on public administration, I suggested that the National Audit Office could perform that role. It does not really matter who does it, but we saw great success in Australia with attaching a temporary independent office to monitor the implementation.

There are a number of different ways you can do it, and the devil is always in the detail, but one is temporary independent offices to monitor the implementation. Offices will always report to Parliament, but they are a very public, very independent and very visible force on the implementation process. The dynamics that I mentioned earlier—almost the unintentional withering and loss and death of recommendations in public sector environments—do not happen when you have an implementation monitor reporting on a three-month, six-month or 12-month basis.

We have found in Australia that not only do implementation monitors lead to a 100% success rate in implementation when they are used, but they are a good source of co-design and co-constitution. They end up working with the implementation agencies in certain ways to adapt, shape and fit recommendations so that they can travel and be implemented. Implementation monitors are a simple, easy and transferable recommendation from the antipodes.

Lord Wallace of Tankerness: That is very helpful. Thank you. Dr Critch and Dr Ireton, is there anything you want to add on the question of how effective inquiries are in changing public policy?

Dr Nathan Critch: On the extent to which they lead to change in policy, it is important to think about there being different kinds of changes. As Alastair said, it is hard to make a sweeping statement, but inquiries are good at and tend to aim at making a certain kind of change that we might call institutional fine-tuning—the improvement of existing practices and processes. They are potentially less good at and less tailored towards

paradigm-shifting change, the big-picture shifting of values and norms. They are, inherently, aimed more at the improvement of existing processes and practices, which might not be a bad thing. We might see that as the proper role of inquiries, but it is something to acknowledge and to think about: is that what we want inquiries to be aimed at?

I agree again with what Alastair said. There needs to be more focus on the post-inquiry period, which is really only the start of the process of implementation. Often the argument is made that inquiries kick issues into the long grass and no one really cares about what they have to say by the time they report. I do not think that is true. When inquiries report their findings, it is a highly politicised moment. People's attention is focused on the report. The problem, as Alastair said, is that there is no real way, there are no mechanisms in place, to monitor the implementation of inquiry findings once they have been accepted by the Government. We need to think of a way of achieving that, basically.

Dr Emma Ireton: I agree very much with both. It does not matter how good an inquiry is; if implementation is not effective, you do not get the benefit of it. It is not just changing government policy that we should focus on. It is changing it in public bodies, institutions and so on, so it is much broader than just government policy. I am aware of the work that is done in Australia with implementation monitors, and I absolutely support that. That could make a very big difference very quickly.

Q33 **Baroness Chakrabarti:** Forgive me if this question feels a little repetitive, and if you want to say, "I think I've already answered it", that is fine, but it just gives all of us another bite of the cherry. How can the design of an inquiry be improved to increase impact and implementation? That could include amendments to the Act or not, but what is it about the design of one inquiry over another that gives it more likely impact?

Dr Alastair Stark: I have a very long list, but I will zero in on a few things. We have mentioned multiple chairs, so I will leave that to one side. Perhaps the most important for me, if I was given the option to give counsel to a chair, would be to use multiple methods of data gathering and try to push back on and question the role of public hearings. A public hearing has a lot of benefits—social, psychological, symbolic. Especially after significant failures, we need to see people publicly talking about what went on. I would tell a chair of an inquiry, "Do not confuse that with learning". Be aware that there are also multiple formats for hearings. You can do a hearing a lot of different ways and you need not have the adversarial cross-examination process. I do not like the phrase, and I am not entirely sure where it came from, but there are hot-tub formats where you take multiple witnesses at one time and ask questions in a way that allows them to co-constitute responses. That gets you away from the adversarial process.

Baroness Chakrabarti: More of a seminar format in some ways, for example.

Dr Alastair Stark: Yes. It is basically asking a question of a group—a focus group might be an analogue—and allowing them to come to a collective consensus as part of the Q&A in a hearing. You still have the publicity and the public process, but you are not firing cross-examination questions at one person. That is one way. In Australia, we have used a coronial-like format a couple of times, which has been less public, more forensic but really policy focused. It is still a hearing process, still run in that way, but with a slightly different focus and style.

Part of my point about defaulting into one legal judicial model is that that methodological pluralism demands that we think a bit innovatively about how we generate evidence. There are multiple ways to run hearings and to produce forms of policy analysis. As both Nathan and Emma said, we have started moving to the position of consultation and participation as the norm of evidence gathering, and that has to continue. The more venues an inquiry can get to and the more methodologies it can use to generate its evidence, the better it will be, with much more attention to implementation and post-publication activities, which are not spoken about in any meaningful way. There is the presumption, as we have alluded to, that if you write a recommendation it will simply speak for itself and its intrinsic value will get it implemented. We know that is not the case. Recommendations will not speak for themselves or champion themselves. We have to find the avenues that will take them to implementation.

I have many more, but that is the essence of it: much more attention to the avenues that take us to implementation and much more of that pluralism.

Baroness Chakrabarti: I am grateful for that. If you have many more and you can bear to share your notes, I am sure we would be interested in reading the long form—

Dr Alastair Stark: Yes, absolutely.

Baroness Chakrabarti: —but thank you for what you have said already.

Dr Nathan Critch: Building on what Alastair said, to reiterate, the role of implementation monitors and a focus on the post-inquiry period after the inquiry's report has been published is key to all this.

One of the recommendations of the 2014 report was that if a public body has had recommendations directed towards it, that body should have a statutory duty to respond to those recommendations. The Government accepted that, but they said that it should not be a statutory duty to respond to them but that they should be encouraged to respond to them. Maybe we could go further than that in the tracking of how public bodies are doing with implementing recommendations.

Another important issue here is that not all recommendations are necessarily directed towards the Government. They are directed towards a whole series of people involved in policy networks and people at the

coalface of service delivery, and we need to ensure that those recommendations are acted on and implemented as well.

Finally, Alastair is right to point towards the fact that there are often two different logics at play in public inquiries. There is the adversarial logic that is about blame and those kinds of things, and there is another logic that is more deliberative and inquisitorial: the logic that we ultimately need to bring out more in public inquiries if we want to focus on learning. Those two logics are in tension, but, as Alastair said, the more adversarial approach where people are scrutinised and there is an attempt to apportion blame or culpability has an important symbolic role. The public expect some of that to go on when there is a major disaster. Accountability is important, but we also need to recognise that there is a tension between accountability, blame and learning, and being more inquisitorial about things.

Dr Emma Ireton: On the inquisitorial/adversarial bit, I do not think it is down to a statutory/non-statutory distinction and powers of compulsion. Inquiries are inquisitorial. The chair is more significant in setting the tone of the inquiry and how it proceeds. Inquiries certainly are inquisitorial, and a tension comes from being inquisitorial but then having the powers of compulsion. Set against that you have the legal safeguards that give opportunities to suggest questions, and in some circumstances to seek permission to ask questions of witnesses and so forth. That is what is built in there. It is all about the balance. Then there is the recognition of the fact that core participants have expertise and experience that is very valuable to the inquiry, so they are brought in to play a role, but often they will approach it from more of an adversarial point of view because they have a position or a case that they seek to get across.

It is about juggling all these different interests and pressures, and it very much comes down to the chair and the way in which the inquiry is conducted as opposed to the framework of the inquiry itself.

Q34 **Lord Hendy:** Can I explore that a little further? In many inquiries there are tensions not just in tone but because there are other forensic fora as well as the inquiry. There are commercial companies, for example, appearing in an inquiry that are facing potential liability, which may be massive. There are individual actors who are also facing the possibility of criminal proceedings and so on. Of course, for everybody who has been involved in a disaster, there is the risk of reputational damage. Those people have real interests to protect, and it is very difficult to say to them, "This isn't inquisitorial".

Dr Emma Ireton: I completely agree, and that is the difficult balance that has to be found. It is the role of the chair to find a way through that, because the inquiry is inquisitorial, but at the same time you have people coming with the defensive approach that you have referred to and their legal representatives who are representing and protecting their interests. So you definitely have a conflict between wanting to protect the interests of their clients and the request of the inquiry to put that to one side and to volunteer the information for social benefit to prevent recurrence.

Lord Hendy: It is not just protective, is it? It is in their interests to make sure that participant A is held to be responsible for this rather than themselves as participant B.

Dr Emma Ireton: I completely agree. It is a very difficult balance. I know that it is outside the scope of this, but it brings the duty of candour into the debate and asking organisations to turn up and be candid while at the same time there is a conflict interest in protecting rights and public funds and so on. It is a very complex area and there is no easy solution to it, hence why the discretion of the chair is so important in navigating the balance.

Q35 **Lord Davidson of Glen Clova:** I will follow up on the point you made about the selection of a chair. We have heard that this can make a considerable change to the way in which any particular inquiry proceeds. There does not appear to be any immediate analysis of how chairs are selected, and it does seem to be rather a black box. Do you have any evidence or analysis of how chairs have been selected and what the consequences have been of their selection?

Dr Emma Ireton: There is an issue with lack of transparency around the process. It is not clear, and how they are selected is not public. There is no question that the selection of a chair is incredibly important. It is not only the skill set that they have. You can see that the inquiries that work well have chairs who are very open-minded to adopting a different, inquisitorial, approach, and to being innovative, finding new ways of approaching things, looking at best practice. There is certainly a mind-set. It also works particularly well when they are team players, because it is a team role. It is very important that the chair has a good working relationship with counsel to the inquiry, with the secretary to the inquiry and with the solicitor to the inquiry.

We do not know because it is not transparent, but looking at the role and the right person to work in that inquiry ought to be part of the selection process. It is a different environment perhaps from the judicial environment, the adversarial environment, that people might be working in. It is not possible to say that certain categories of people are the right ones. Finding the right person is a very individual thing.

Q36 **Lord Aberdare:** How can Ministers and their departments be more effective at sponsoring public inquiries? It strikes me that they have very significant powers and levers, but I am interested in whether they actually use them and, if so, whether it is a good or a bad thing. In what circumstances should or might Ministers get involved?

Dr Nathan Critch: I might make a distinction between Ministers and their departments. We need to acknowledge that often, unfortunately, a Minister in a department that is being scrutinised by a public inquiry views the inquiry through the lens that you were talking about, which is blame, reputational damage and so on. There is a sense that the Minister and the department are on trial, and that pulls us away from the lesson-learning aspects and what we might look at as effective sponsoring of

inquiries. People in departments often are more genuinely focused on what they can we learn from it.

What we do about this is a difficult question to answer. We have already talked about some of the answers to it. One is that maybe we need to move away from a sense that people are on trial when they enter into inquiries and move towards an inquiry process that feels more like a collective lesson-learning, deliberative exercise that a Minister can take part in and feel that they are engaged in learning, not one in which they feel that they are engaged in some sort of examination or cross-examination where their political careers might be at stake. Again, the political context matters. In the most politicised cases, the best attempts of the inquiry to take the heat out of things typically fall short because the nature of the issue is so contentious that there is only so much that the inquiry can do.

Baroness Chakrabarti: When the inquiry process kicks the heat into the long grass, surely the heat is reduced, which is sometimes the political motive for having the inquiry.

Dr Nathan Critch: Yes. The point I was trying to draw out is that there are often different motivations at play for the calling of inquiries and engaging with inquiries. Some people engage with them more in a genuine spirit of lesson learning, and some people utilise inquiries or attempt to utilise inquiries to secure more narrow political objectives. That gets in the way of what we might call effective sponsorship of inquiries. Some people advocate for the calling of inquiries as a delaying tactic. As I said earlier, I am not sure that always works all that well, because often the publication of an inquiry's report refocuses attention on the issue in question.

The crux of the issue, as I see it, is that people have different objectives when engaging with inquiries, and some of them are quite narrowly political. That is an obstacle, and we need to think about ways to get people to engage with inquiries substantively and in the spirit of learning, not use them for narrow political purposes.

Lord Aberdare: My impression was that Ministers tend to stand back and let the inquiry get on with the job. Are there times when they more actively intervene and play a role? Dr Ireton, you were both nodding and shaking your head at different points.

Dr Emma Ireton: Once the inquiry is under way, it is an independent inquiry and there should be no interference in it. It is important that the sponsoring department recognises that it has a supporting role to an independent inquiry. It can raise issues where the sponsoring department is involved in helping to staff inquiries. It is important to remember that there have been issues where that balance has not worked so well, because the inquiry needs to have a say over the skill set and the people it needs for the inquiry as opposed to just being imposed on the inquiry. Also, with budgeting and so forth, it is very important that there is that supportive role once the inquiry gets going.

Q37 **Baroness D'Souza:** Is there any way in which it might be possible to codify the design of an inquiry in order to exclude the purely political gain of trying to assuage the political damage that might have occurred and include something about a justice element? Every inquiry is completely different, I know, but there are similarities. Could you have a design that mandates that there must also be an element in it of justice for victims and survivors, that it is not purely in order to restore the reputation of a department, for example?

Dr Nathan Critch: That is a difficult balance to strike, and we have talked about that throughout the session. There are the two different logics at play in inquiries. There are a lot of things that inquiries can do to move away from narrow politics and move towards what stakeholders and victims care about. Some of the things that Alastair and Emma have said about how the inquiry takes evidence, whether it takes evidence in more of a courtroom style or whether there is a more deliberative methodology or different methodological pluralism at play in the inquiry, are very important. All of this is worth thinking about.

Ultimately, though, we should also be mindful that the inquiry can only do so much. Some issues that inquiries look at are incredibly politicised and contentious, so attempts to empty out the inquiry of the more narrow political considerations are, unfortunately, bound to fall short in some ways in those instances.

Q38 **Lord Grantchester:** I have a follow-up question to that about the power to change a non-statutory inquiry into a statutory inquiry. What has your experience and research shown about that? Does that tend to be about political challenge that things are not going right? Is there much of the conversion process that would lead us to any conclusions about powers?

Dr Nathan Critch: I do not have much to say about that.

Lord Grantchester: It does happen.

Dr Emma Ireton: There are two points at which that might happen. There is the conversion from non-statutory to statutory where the non-statutory does not have the powers necessary, or there are issues of national security and so forth and they need the powers of compulsion and request them. That is really controversial. When the request is made, it is usually granted.

Lord Grantchester: It could be political obstruction to the inquiry.

Dr Emma Ireton: Yes. The other point is that, right at the very beginning, where a matter of public concern arises, there might be a decision or an indication that it will be a non-statutory inquiry, and that is where you see campaigns and pressure in the media calling for a statutory rather than a non-statutory inquiry. There are a number of occasions where that has tipped the balance and made the difference to there being a statutory rather than a non-statutory inquiry.

Q39 **Lord Faulks:** Further to that, on one occasion at least the courts were

asked to interfere. In a case called Wagstaff, they ordered that there should be a change in the form of the inquiry. Various attempts to do that have failed since then, but I suppose the courts have a residual role in that position.

You have already answered the question I was asked to ask, but I want to build on some of your answers about lessons learned and not getting too bogged down in an adversarial approach. Very often, judges are appointed to do this job, and judges are used to conducting things in a certain way, barristers are used to cross-examining in a certain way, and there is the scenario, which Lord Hendy pointed out, with multiple parties with interests to protect. It is very difficult to get away from almost a hearing as if it were allocating blame in a civil case.

Is there any way you can suggest that there should be procedural guidelines to try to re-emphasise the role of an inquiry to inquire, to find out, to be inquisitorial, maybe to ask the chair actively to consider the possibility of hot-tubbing, as Dr Stark said, alternative means of deciding things other than inquiries, and reiterating the fact that it is not about fault finding; it is about finding out for the future? Can this be incorporated in some guidance that would perhaps help?

Dr Emma Ireton: That brings us back to this idea of a central inquiries unit and the capturing and disseminating of best practice, building training in there and so forth. There is too much of people coming in with a clean sheet and reinventing the wheel. There is an awful lot of knowledge and expertise out there. We have had hot-tubbing for a long time. There is lots of innovative practice and lots of very good practice. There is lots of very good inquisitorial inquiries and approaches.

If we have this repository of best practice, that is a starting point before people get going as to what has worked well in previous inquiries and what has worked less well. Ideally, each time there is a new inquiry we want to build on the best practice of previous inquiries and have constant improvement rather than this piecemeal hit and miss depending on who you have picked the phone up to or who has worked on which inquiries in the past. There is a lot of good work going on, but it is capturing and getting that consistency going forwards.

Dr Alastair Stark: This is crucial. I completely agree with the idea of having best practice set out and a repository of best practice available for chairs, but we moved through the chair question pretty quickly. It is the number one, most important decision. You must, as has been said, have a chair with an open mind. Chairs become chairs of inquiries and people are invited on to inquiries because they have been successful, so what do you do if you have been successful? You bring with you the professional history that has given you success and you do what you have always done. This is why we get one-dimensional inquiries and open cross-examination and adversarial processes.

We need a combination of chairs who have genuine open-mindedness to different methodologies, in conjunction with the advice that was just mentioned. That is the key. As has just been said, there are lots of

innovative ways. The SARS commission was a very successful commission. Canada used an accident investigation board methodology, and in its words it traded anonymity for candour. There were public hearings, but those were designed to do the cathartic, emotional side of the heavy lifting. It got its evidence in private interviews through the accident investigation board process, the result of an open-minded chair with a knowledge of different practices doing something different.

People bring the logic of action that has given them success in their professional career and they are very reluctant to change what has given them success. Of course, all the pressure of the inquiry means that it is difficult to take a risk. We can build things that can help that process and reassure chairs that it is not a risk to do things differently, or at least in a way that is not adversarial.

Q40 Baroness Berridge: Dr Stark, you say that the most important question is the chair, but there are also firms that have become specialist in this area. Even with advice, or the plural methodologies that you mention, could there be the same getting stuck in the model, because the same people, the secretariat or the lawyers, are moving from one inquiry to another?

Dr Alastair Stark: Absolutely. It is a big industry and people make a lot of money. Once they are on the train, people are reluctant to get off it. Again, that is one reason why we see one-dimensional templates being used across the board. So yes, that is a problem. The open-mindedness of the chair is the defining feature, because the chair carries the can and has to be strong enough to take responsibility for doing things differently.

In terms of some of the advice and resources that exist, there are lots of resources now for doing ethnographic or anthropological research, for example, that brings in the lived experience of people affected by events. That is easy to get now, and it is easy to operationalise in an inquiry alongside these things. Things are becoming easier also a consequence of those industries and organisations doing that work.

It still requires us to break free of this, and I guess this is the fundamental point for me: we have to see inquiries as more than legal judicial entities pursuing accountability. Some of the innovations, the modular working and some of the participatory work that is going on in the Covid inquiry is doing exactly that. This was my appeal to the public administration Select Committee: simply to start seeing the default as lesson learning rather than accountability.

To go back to the previous question about accountability and the public-facing dangers, the quote that has always stuck with me comes from a Dutch scholar, Paul 't Hart, who says that in these moments we see data as ammunition in a battle for survival. That is still the case in inquiries. We have data, but it is used as ammunition to survive, to blame others, to vilify people and to seem heroic, and that is not learning. I am convinced that this default into the legal judicial process under the guise of the very real virtues of accountability takes us towards adversarialism

and undermines lesson learning. Part of that template is exactly creating that default.

- Q41 **Baroness Chakrabarti:** This is very persuasive and compelling. We can do hot-tubbing. We can, frankly, sing “Kumbaya” together and learn lessons together. I am being deliberately provocative. The concern I have is that some lessons cannot be learned without facts being found. You call it data, I call it facts, but we know what we mean. We cannot run away from the fact that some inquiries are called in the first place, regardless of political motives, because something is seen to have gone incredibly wrong. There is a public outcry and there are individual victims concerned.

I take your point that there is a balance to be struck between the calm candour that might come from your hot-tubbing and lessons learned, but there are still facts that at the end of the day have to be found to some extent. Have you seen best practice of blending two approaches, perhaps beginning with the more informal, less adversarial approach but leaving that approach for a later stage if necessary? Is there a way in which one could move through the gears, if you see what I mean?

Dr Alastair Stark: Yes. On the “Kumbaya” point, there are some inquiries that need to have teeth, that need to be quite aggressive, where cross-examination is warranted. I am not shying away from that and saying that those should not exist. I am saying that those should be the exception rather than the norm in the first instance.

The methodological pluralism and the division of labour in an inquiry are precisely part of that division of labour. The best panel I ever saw was a judge, a former ombudsman, doing the front-of-house hearings, real inquisitorial policy analysis, and a public sector commissioner making sure that everything was implementable. That was a fierce combination and division of labour. It did not eradicate the hearing process, although in that case they were innovative. There was simply a division of labour. You can still have the front-of-house, public, real pursuit of facts, but not at the expense of the other parts. You have to be very clear about that. What I am counselling against is getting into this default of a one-dimensional process.

Baroness Chakrabarti: That is very helpful. Thank you.

Dr Emma Ireton: Perhaps I have a less cynical view than Dr Stark on this. A lot of this is already happening. I do not recognise the default as being judicial and adversarial, as reflecting current practice. I think there is a lot of good practice. All inquiries are balancing these. Some are doing particularly well. There is good practice, and that is very much in the forefront of the thinking. We are looking at how we can improve and build on that. I do not recognise such a bleak picture, by any means.

I recognise that the point about having different firms and different groups of solicitors, but the teams that work on inquiries are committed to inquiries and best practice. In my experience as an academic, every practitioner I have spoken to on an inquiry team has been very generous

in talking about what has worked well in their inquiries and what they would like to pass on to other inquiries.

I do not think it is a cynical, deliberate, protective, competitive thing at all. By nature, perhaps, we do what we do, and if we had a central inquiries unit that made that information accessible so that we could see what other inquiries do, we could build on what is already good practice for inquiries.

Dr Nathan Critch: I am glad that we have come back to the point about inquiry chairs. On the earlier question about what criteria we use to select inquiry chairs, typically someone who has a judicial background is picked. On the question of the different logics at play and how we encourage methodological pluralism, judges are picked for a particular reason. Because they have a sense of legitimacy, they are seen to be objective and impartial and used to gathering evidence and fact-finding.

However, that typically implies a certain approach to fact-finding, and it is important to acknowledge that there is no need for, and it is not stipulated that, the chair of an inquiry be someone with a judicial background. Indeed, we could have inquiries where there are people in the inquiry team or the inquiry panel who have judicial backgrounds and other people who have different expertise and backgrounds. There are other figures in public life besides judges who carry legitimacy and are seen to be objective and are used to gathering evidence. Perhaps that is something to consider when deciding what different approaches and skills that would bring to the table.

Lord Davidson of Glen Clova: Could you give us some examples of these paragons outside the judiciary?

Dr Nathan Critch: Some inquiries into scandals in healthcare have been chaired by people who had some medical expertise background, which seems to be appropriate. Academics, although not just academics, have particular knowledge bases and are used to gathering evidence and engaging with different stakeholders and so on. There are lots of different groups of people who could be considered in that respect. I am just suggesting that maybe the defaulting towards a judge and only a judge will not necessarily always give you the best outcome.

Lord Addington: It seems to me that you are saying that the legal skills—that is, the ability to sit back, try to analyse and come back in—may not be the only thing that is required on certain occasions.

Dr Nathan Critch: Yes.

Lord Addington: You must try to identify in the beginning the fact that legal skills are not what is required of a certain subject, or that they at least have to back up the legal skills with background knowledge. Witnesses may not be enough by themselves.

Dr Nathan Critch: Yes. Again, what Alastair said is true. There are some inquiries where you want a more aggressive—if you want to use that

term—approach, a more fact-finding approach, more cross-examination of witnesses, where a purely judicial chair is appropriate. There are other issues that require different skills and approaches, and where you might consider people with different expertise and skills.

- Q42 **Baroness D'Souza:** I want to ask about the role of victims and survivors, which I know is a tricky area. At its most basic, any public inquiry is concerned with establishing what happened and that it should not happen again. Thereafter, there are, as you have written, Dr Ireton, irreconcilable differences and interests.

With most cases of public inquiries, would the implementation of the majority of the recommendations justify or serve to confer justice for the victims and survivors? I know there are lots of suggestions as to how they should be involved, but what are the minimum requirements that victims and survivors should have, given that there is a clear issue of justice in any public inquiry?

Dr Emma Ireton: That is difficult, because public inquiries have a role that sits alongside other aspects in the justice system. Public inquiries are not primarily about justice for the survivors and the bereaved. They are, as you say, about finding what went wrong, learning lessons and making sure that it does not happen again, which is why it is such a big ask for survivors and the bereaved to give their experience and expertise to assist in ensuring that there is no recurrence of what happened.

In the paper you refer to, I said that it is very important that everybody understands the role of an inquiry and that expectations of finding criminal or civil liability in the inquiry are not raised. That will not happen. That is not the role of the inquiry or the forum for it. Before anybody becomes involved in and gives evidence to an inquiry, they need to understand what will be asked of them and not to be oversold on what they might achieve from it. They certainly want answers to questions. They certainly want to make sure that there is no recurrence of what happened. Justice in civil and criminal liability is the role of the courts. Then, there is other regulatory action and disciplinary action. We need to be cautious about expecting the inquiry to deliver everything.

Baroness D'Souza: Implementation, therefore, is crucial for victims and survivors at the very least.

Dr Emma Ireton: Implementation is crucial, because you often hear particularly from them that they want to make sure that this does not happen again and that people do not suffer in the way they have suffered. For them to have suffered, to have engaged with a process like this, which can be very challenging, it is very important, as you say, that there is implementation, that they are heard during the process and that what they have to say is taken on board and forms part of the lessons learned and the recommendations, and that there is implementation, or it is all done for nothing.

- Q43 **Lord Grantchester:** Moving to the duty of candour that you recommended, it was even proposed this afternoon as an amendment to

the victims of justice Bill that is going through the House at the moment. The Government seem to be very resistant to it, yet there must surely be a way to bring it in, in certain inquiries maybe. There may be technical difficulties I am yet to understand that explain why the Government are so resistant to it. Can anything more be said that could be useful to us?

Dr Emma Ireton: That is a very difficult area, because there is a balance between candour and defensiveness. There will always be a tension, and the decision made will depend on priorities and which side of the argument they are on in that respect. It is deemed to be more manageable. It is not a straightforward question to answer. There are very strong arguments in favour of a duty of candour, I understand.

Lord Grantchester: There seems to be an understanding among the general public that people take an oath, and then somehow, because there is no duty of candour, people are being obstructive in some way.

Dr Emma Ireton: It is because of that backdrop of potential other proceedings and being aware that what you say will have an impact outside the position of the inquiry. In the simplest terms, you would not expect someone to turn up to court and volunteer, "I know I'm being prosecuted for this, but have you thought about XYZ, because I did that, too?" That is almost what you are expecting people to do at an inquiry when you expect them to be completely open. There are public bodies that have responsibilities to taxpayers. It is very complicated to resolve that. I am sorry that I cannot give a straight answer on that one, but there are very strong arguments in favour of a duty of candour.

Q44 **Lord Henty:** I have represented the bereaved and injured in a whole number of tragedy inquiries, and my experience of them, particularly the bereaved, is one of the points you made before the last question, which is that they want to feel that their loved ones did not die in vain and that this will not happen again. Of course, there are people among them who feel that some individual or body is responsible for the whole tragedy, but by and large I think people share the objectives that you, Dr Ireton, laid out at the beginning for the purpose of an inquiry: they want to know what happened and they want recommendations that will be implemented to prevent it happening again.

There are two small points I want to make. One is the consequences of Rule 10. On paper, no questions are to be asked by any core participants without the leave of the chair. Sir John Saunders gave evidence to us last week. He said that that is all very well, but he is much more lenient with the bereaved and injured and the victims than possibly other core participants. Is that your experience too, Dr Critch and Dr Ireton?

Dr Emma Ireton: Rule 10 is another example of where a balance needs to be found between the two. The pros of counsel to the inquiry asking all the questions are that it can be more focused, quicker and cheaper. You get your recommendations sooner so that you can implement them and bring about change. It reduces the adversarial nature.

The cons are that there is a real risk that not all relevant issues will be taken into account because of the expertise and experience of core participants. There is no question that they feel frustration and marginalised if they are not permitted to ask any questions at all. There are many examples of where that and the balance have worked well with the questions predominantly being asked by counsel to the inquiry and then some questions being asked by the core participants.

It is about getting that balance right, and that comes down to the decision of the chair in the context of a particular inquiry. It will be influenced by the nature of that inquiry and the participants to that inquiry. It is important to get that balance right and to try to navigate between those two extremes.

Lord Hendy: It comes down to the chair again, does it not?

Dr Emma Ireton: It comes down to the chair. Justice had a working party group that looked into a number of things, and this was one of them. It came back to the point raised by one of your previous witnesses that where there was an inquest the participants would have been able to ask questions. It could be converted into an inquiry to access and see documents that they would not otherwise be permitted to see, and then they lose that right to ask questions. It has recommended that Rule 10 be amended to allow legal representatives for core participants to ask questions where Articles 2, 3 and 4 of the European Convention on Human Rights are engaged. The wording is in that report, but there should be a discretion to refuse certain questions or to put a time limit on it. That is one side of the balance.

The previous House of Lords Select Committee recommended going the other way and taking it out of the wording of Rule 10 on asking questions and just leaving that completely silent and down to the discretion of the chair, should they decide to. It is almost like a default against. You have both sides of the argument there. It is about finding that balance.

Lord Hendy: Where would you have put it?

Dr Emma Ireton: I would put it in the middle and allow the discretion.

Dr Nathan Critch: This is an important point. To return to the initial question, for people directly affected by crises, disasters and so on, outcomes and implementation are important, but it is also about feeling like you are participating in a process that is valuable to you. Too often when you read some of the official guidance on inquiries and the role that survivors play, it is couched in quite narrow terms. There is a discussion of catharsis and so on, but it is also about feeling like you are being listened to, that you are playing an active role and that your interests and questions are the ones being asked by the inquiry. Again, without that, survivors start to feel that the inquiry is quite distant from them and does not reflect their interests. It is a lot to ask of people to participate in these inquiries, and ultimately the legitimacy of inquiries hinges on how

people who are directly affected view them. It is important that the process reflects their interests and their questions.

Baroness D'Souza: Working with torture survivors, what is important is not the reparation they might get but simply to have acknowledged publicly the wrong that has been done to them.

Dr Nathan Critch: Yes.

Baroness D'Souza: That in itself is very important.

Dr Nathan Critch: Yes.

Dr Alastair Stark: I am a big believer that the additional participatory processes that we have seen have been great. They and the whole constitution and creation of terms of references, and empowered forms of community consultation, have allowed people to be heard in empowered ways. In New Zealand, after the Christchurch mosque shootings, some sophisticated community reference groups were created to engage with the community in significant ways. Obviously, the rubber meets the road at implementation. That is so important to the outcomes. It does not have to be in detail, but seeing the implementation happening and seeing champions and government making it happen is symbolically important.

On the affected asking questions, it is probably worth commenting that most inquiries have an official model and a lot of backroom conversations, a lot of contact with people affected, a lot of informal relationships behind the scenes that allows that to happen.

Finally, coming back to my theme, I have seen inquiries in Australia in particular where counsel saw their role as representing victims and pursuing justice, and they have turned up the heat and made things more adversarial than they should have been. It created an internal conflict in inquiries because of a sense that that was the role. As Emma says, it is not necessarily always about justice through representation and certainly through the public hearing. There are other ways to get that through participatory means, outcomes and implementation.

Lord Hendy: We have not spoken about the steps that can be taken to make the victims and survivors a core part of the inquiry. I just want to run through with you some of my own experience and see whether this is something you recognise from other inquiries. The inquiries that I have been in have always asked the bereaved to give evidence by way of an account of the life of the person who had died. This is very important for the purposes of catharsis mentioned earlier. Most of the victims, of course, give evidence about what happened during the dreadful incident or whatever it was.

The other factor that I thought was quite important is the facilities provided for the victims, the bereaved and the injured. They, like most core participants, will have their own room, but it has to be big enough. If you have 300 people, obviously they will not all turn up at the same time, but there needs to be sufficient accommodation for them, privacy to talk

to their lawyers, and food and drink that the other commercial core participants will provide for themselves. In some inquiries, there is a prayer room where they can go for peace and quiet, and perhaps a social worker, because these things are so stressful for those going through them. Have you come across that sort of thing?

Dr Emma Ireton: Yes, completely. On the pen portrait that you describe and the description of the deceased and so forth, it is important to keep in mind from the beginning what it is about and the people who were at the centre of it all.

As for facilities and buildings, a lot of work and thought is given to the needs. Again, it is frustrating, because a number of inquiries do that very well, and then, with the reinvention of the wheel, you will get one that does not. You think that that lesson has been learned and that should be the bare minimum. I am sorry to keep coming back to this, but it is about capturing that best practice. Every inquiry when it is set up should think about facilities and how it engages with participants, and that should form a good baseline for all future inquiries.

Dr Nathan Critch: On the question of facilities and so on, I mentioned earlier that in the contemporary period the digital aspects of an inquiry matter. A lot of people who are directly affected by disasters cannot always participate in the inquiry in person or, in fact, do not want to because it is a tremendously stressful and difficult thing to do. In that case, the options of remote participation and engagement become very important, but that can be done in a number of different ways, which are more accessible and user friendly or less accessible and user friendly. That matters a lot in thinking through the venue and those questions.

Dr Alastair Stark: Those specific questions, which are slightly different from the fact-finding and the forensic reconstruction of events and which memorialise, are crucial. I spoke a little while ago about public sector organisations' amnesia, but those questions memorialise communities and individuals and provide social memory, which is very important in the catharsis and the social psychological healing.

Yes, the facilities are crucial. That is what I mean when I talk about a public inquiry that everyone sees and an inquiry that is a backroom inquiry. Dedicated people are definitely part of that. People who are dedicated to giving pastoral care to the groups affected are crucial, not just because of the benefit that victims get from them, but because they are another conduit and relationship that helps to build connections, which are important for learning and other outcomes.

Q45 **Lord Davidson of Glen Clova:** One criticism—Dr Stark said vilification—directed at public inquiries is that they are too long and too costly. Do you have evidence to back up that popular judgment and, if so, can you think of any ways in which one could abbreviate the inquiry or reduce the cost, bearing in mind that it all has to be consonant with the expectations of the public and the participants? It is a difficult question.

Dr Emma Ireton: On cost, it is difficult currently to compare costs between inquiries, because costs are not necessarily recorded consistently. When an inquiry is set up, you cannot compare them all directly. Also, the scale and nature of inquiries is so different that it is very difficult to compare them.

They are certainly very costly. There are things that can be done to reduce the cost. It is often said that the expense of setting up an inquiry can be quite wasteful, with the reinvention of the wheel, IT systems and processes. That is an obvious way in which to address the cost of the inquiry, and similarly for best practice. The quicker the team can get up to speed and adopt good and cost-effective practice from previous inquiries, the more it will help. It can reduce the length or the number of preliminary hearings in getting started in the first place.

Terms of reference have an impact too. Sometimes inquiries are so costly because they are huge undertakings. Often there is a pressure from participants or the public to broaden terms of reference, and inevitably the broader the terms of reference, the more costly they will be and the longer they will take. A decision needs to be made at that time.

On the inquisitorial/adversarial nature of the inquiry, depending on the size of the teams of the inquiries, they can take a more proactive inquisitorial approach and control things more by taking their own evidence and requesting certain documents rather than putting out a general request for documents. There can sometimes be a document dump where everyone just lands on the inquiry and leaves them to work through that. There can be controls in those respects. The more core participants there are, the greater the cost. The more legal representatives there are, the greater the cost. Inquiries have taken different approaches to the number of core participants and the use of joint representation.

On legal representation, sometimes engagement with an inquiry at certain points is perhaps more of a watching brief for the hearing. Sometimes you question whether the counsel for core participants always need a KC, a junior counsel and a solicitor for the monitoring sections. I know previous witnesses have also spoken about technology and how monitoring can now be done by live streaming. That can save costs too.

There are a number of ways in which we can learn from previous inquiries and reduce cost. If there was a consistent way of recording costs of inquiries, that would help in comparing costs and doing that analysis, which does not exist currently.

Dr Nathan Critch: One thing that can be done to speed up inquiries and reduce the cost is to narrow the terms of reference, but there are obvious trade-offs involved in that, as we have talked about. If we want stakeholders to be consulted on the terms of reference and the inquiry to address the issues that matter to them, the terms of reference become broader and the number of core participants increases. I would be cautious about narrowing the terms of reference too much or not allowing

for that broader remit. Often the issues that inquiries examine are inherently complex and multifaceted, so they take a long time to investigate thoroughly and properly.

What matters for speed is not so much how quickly the inquiry concludes but how quickly it starts to produce results and how quickly the people involved start to see that progress is being made. On that, we have talked about the modularisation of inquiries, breaking the inquiry down into different tranches and units, which expedites the process of learning lessons and making recommendations. It does not just happen right at the end of the inquiry. How quickly the inquiry makes progress is more important than how quickly it finishes, in a way.

Lord Davidson of Glen Clova: Dr Stark, you used the term “vilification”.

Dr Alastair Stark: Yes, and I do think it is vilification. Saville and Chilcot are used as examples here of the norm and inquiries move more quickly than that in a general sense.

On how to speed them up, I am a bit of a broken record here, but I think it is about rejecting the one size fits all at the start. Sometimes you will need the painstaking forensic reconstruction of the past, and that will be determined by the nature of what is being investigated, the political climate and the nature of the political environment. There are many other cases where you do not necessarily need forensic, detailed reconstruction of the past and you can move towards lesson learning and co-constituting dialogues about the future. That reduces the burden on inquiries, but inevitably there will be some that require that and will take time.

It is the public spotlight that really makes inquiry chairs reluctant to speed up. Interim reports are very interesting in that regard. Many chairs do not like them because they feel rushed to produce, but they are so important for victims, for the politics, for calming down or reducing the political spotlight on inquiries.

Ultimately, it comes back to the formative moment when we decide that an inquiry is required. We should be looking at different designs and best practices and have cognisance that some will move more quickly than others.

Lord Davidson of Glen Clova: It was suggested, and it is only a suggestion, that at the very beginning one might set out a budget and a timeframe. That does not seem to quite fit with what you are suggesting, but I would be interested in your response.

Dr Alastair Stark: That is always what happens. A budget and a timeframe are always set out. Those can be attached to different models. At that moment, where you have a tabula rasa and you have options, you can choose what modes of investigation you want and what logics you bring to the table. Again, this relates to chairs and panels. Some of those methodologies move more quickly than others. One of the best reports

was that of Michael Pitt. He was an engineer. He moved quickly and pragmatically and produced an inquiry very quickly. That is a lot different from the logic of judges, who are trained to immerse themselves in detail. All those choices are open, and they are all attached to different timelines and different budgets.

Q46 The Chair: Thank you very much. If this committee could make just one recommendation to improve the Inquiries Act, what would it be? Dr Ireton, what would you say we should recommend?

Dr Emma Ireton: A well-funded central inquiries unit that would gather best practice and disseminate best practice and learning.

Dr Nathan Critch: I also say the creation of a central inquiries unit. Potentially, that would not need to be done within the confines of the Act. As well as sharing best practice, an independent central inquiries unit could also be involved in things like public education as to what inquiries are for and what they are meant to achieve. This question of tracking of implementation might also be addressed through some central inquiries unit or body.

Dr Alastair Stark: It is implementation monitors for me. I agree that a best practice unit would be a huge step forward, but a small step would be to work out some models of implementation monitors that the Cabinet Office might accept.

The Chair: I thank all three witnesses, with a special commendation to Dr Stark, who has been with us since 2 am to 4 am his time. You are very resilient and we are extremely grateful. Thank you for the evidence you have given to us this afternoon. If there is further material that you would like to put forward in light of what you have said, please feel free to get in touch with us. Indeed, if you are agreeable, we may get in touch with you with further questions, because it is clear from many of the points you have made that there is quite a lot we could usefully follow up on. That would be extremely helpful to the inquiry. For the moment, I thank all three witnesses very much.