HOUSE OF COMMONS

Public Administration and Constitutional Affairs Committee

Oral evidence: Responding to Covid-19 and the Coronavirus Act 2020, HC 377

Thursday 23 July 2020

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Watch the meeting

Members present: Mr William Wragg (Chair); Jackie Doyle-Price; Rachel Hopkins; Mr David Jones; David Mundell; Tom Randall; Karin Smyth.

Questions 189-268

Witnesses

I: Emma Norris, Director of Research, Institute for Government, Dr Alistair Stark, Senior Lecturer, School of Politics and International Studies, University of Queensland, and Jason Beer QC, Barrister.

II: Dame Una O'Brien, former Permanent Secretary at the Department of Health and panel member of the Renewable Heat Incentive Inquiry, Sir Robert Francis, former Chair of the Mid Staffordshire NHS Foundation Trust Public Inquiry, Lord Butler of Brockwell, former Chair of the Review of Intelligence on Weapons of Mass Destruction, and Baroness Prashar, former committee member of the Iraq Inquiry.

Examination of witnesses

Witnesses: Emma Norris, Dr Alistair Stark and Jason Beer QC.

Q189 **Chair:** Good morning, and welcome to the last virtual public meeting of the Public Administration and Constitutional Affairs Committee before the summer recess. I am in a Committee Room in the Palace of Westminster with a small number of staff required to facilitate the meeting, suitably socially distanced from one another. Our witnesses and my colleagues are in their homes and offices across the country. The Committee is extremely grateful to all our witnesses for making time to appear before us, and I wonder if I might ask our first panel to briefly introduce themselves for the record, starting with Emma Norris.

Emma Norris: I am Emma Norris, the director of research at the Institute for Government.

Dr Stark: I am Dr Alastair Stark. I am a public policy scholar at the University of Queensland.

Jason Beer: I am Jason Beer QC. I am a barrister in independent practice, and I have appeared in a number of inquiries.

Q190 **Chair:** Thank you. I will pose this question to Emma first. When should a public inquiry be held rather than another form of scrutiny—for example, a Select Committee hearing?

Emma Norris: There is little formal guidance that sets out when a public inquiry should be held. The only justification under the Inquiries Act 2005 is the existence of public concern about an event or series of events, but in practice, public inquiries tend to be reserved for some of the most serious accidents, tragedies or other events of public concern. One of the key differences between public inquiries and other formats that can be used in these circumstances is that public inquiries tend to be very broad in scope. For instance, while independent panels often restrict themselves to establishing the truth of what happened in a particular incident or event, public inquiries tend to look at a slightly broader set of questions—what happened? Why did it happen, including culpability? How can this be avoided in future—essentially, what are the policy and other lessons?

Dr Stark: Typically, public inquiries are needed when you have significant levels of social and psychological trauma. Really significant crises rupture the frameworks and values that create normality, and when you get those ruptures, there is a need to perform healing functions. That is what public inquiries do—they get people to answer in the public domain, represent victims and reassure people that lessons have been learned. They are an absolutely essential part of the healing and learning process.

You asked, why a public inquiry and not other types? The one substantive point that I would really encourage the Committee to think about is this: do not think in terms of types and mutually exclusive models. Inquiries can be built in a bespoke way; all around the world they are built in bespoke ways. They can integrate multiple different forms of knowledge and multiple different lesson-learning processes, through a legal, judicial process, through policy analysis and through expertise. I would say that in this case, a public inquiry has to integrate all three together, or alternatively, separate out those three and co-ordinate them.

Jason Beer: I do not think there is a hard and fast rule as to when a public inquiry is appropriate and another form of scrutiny is not—for example, a lessons learned review, a parliamentary Committee, a royal commission or another form of review. I agree with what Dr Stark just said. The Committee should perhaps not think in terms of a single, unified process, because with coronavirus, the possible aims and objectives of an investigation point in very different directions, depending on the purpose for which the investigation is being carried out. A speedy lessons learned review has the advantage of being timeous and helping to learn for the future quickly, but any form of accountability or culpability exercise is going to take much longer and cannot be done any time soon. So I think

that one needs to think of the different models and therefore design possibly more than one bespoke inquiry.

Q191 **Chair:** Thank you very much, Mr Beer, because that takes me neatly to my second question, which is about knowing what the main purpose of an inquiry into coronavirus might be, whether it is, say, policy learning, or establishing culpability, or indeed a combination of both, and indeed perhaps involving a combination of inquiries. Emma Norris, by and large where is that balance between policy learning or culpability to be found?

Emma Norris: I think that both establishing culpability and policy learning are critically important to the public inquiry process, and will be critically important to any inquiry, or inquiries, into coronavirus. Exactly as Jason and Alistair have said, I would think about this in a number of *[Inaudible.]* learning ahead of a potential second wave. And given that, I would consider a rapid and non-statutory review that would take place this year, looking at how we can learn from the Government's response so far and the greater knowledge we have about the virus now, to inform the Government's response to a second wave.

I would differentiate that from a larger and statutory public inquiry, which would also be geared at learning lessons but would also focus on, for instance, establishing the truth of what has happened, to provide some of the catharsis that Alistair has described, and to look at the question of culpability.

Dr Stark: I am uncomfortable with the word "culpability"; I am even uncomfortable with the word "accountability", because that can be a medium through which blaming can prejudice learning. I am probably at the extreme end of the spectrum here. To me, it should be about lesson learning first and foremost. There is nothing about a lesson-learning inquiry that means it does not have to have explanation, and that is a form of accountability.

I have spent such a long time learning and speaking to people who have to implement inquiries in seeing how adversarial processes prejudice learning in a whole host of ways, whether it is how witnesses react on the witness stand, how forthcoming they are, or how unwilling they are to engage with recommendations and implement them.

I think you can achieve accountability without pursuing culpability, and I think the first priority has to be lesson learning for covid-25 or covid-30, and the obligation is preparing for that. I just worry about the search for culpability getting in the way.

Jason Beer: I do not have anything particular to add to those last two answers. In suggesting that an accountability or culpability exercise may need to be undertaken, I was not positively suggesting it. It was just that if that is considered necessary or desirable, then it cannot take place any time soon. A statutory model is the way in which it would have to take place, and that is a long-term exercise that is entirely inconsistent with the very proper and noble aims that Emma mentioned for a rapid review.

Chair: On that note, I will go to my colleague, David Jones.

Q192 **Mr Jones:** In practice, does it make much difference whether an inquiry is statutory a non-statutory? Mr Beer, perhaps you could start.

Jason Beer: Each carry very distinct advantages and disadvantages. A non-statutory inquiry is nimbler; it is less of a super tanker and therefore is able to move at a faster pace and at less cost. It is perhaps less hide-bound by the procedural rights given to participants in a statutory inquiry, such as the right to make opening and closing statements, to ask questions and to receive warning letters. It may be more appropriate if what is being done is more in the nature of a review in order genuinely to learn lessons.

The disadvantages are that evidence is not taken on oath, which is regarded by some members of the public as totemic to getting at the truth. There are no compulsory powers to require people to produce documents, although that may be less of an issue in respect of covid-19, where it is mainly central Government and public authorities that are the document holders or the evidence holders, so one could expect co-operation and candour without the exercise of statutory powers. I suppose sometimes it is seen by members of the public as perhaps inferior to a full statutory inquiry. In practice, a non-statutory inquiry versus a statutory inquiry does make a very significant difference in terms of length and cost.

Q193 **Mr Jones:** Ms Norris, perhaps you could add to that. *[Interruption.]* By the way, forgive me, but some workmen have decided to choose this precise moment to dismantle the scaffolding outside my window.

Emma Norris: I would add only one thing to Jason's explanation of the differences. The other semi-significant difference between a statutory and non-statutory inquiry is that statutory inquiries tend to have less procedural flexibility, in particular subject *[Inaudible]* in public. That can also be an important part of transparency and learning and is one other advantage that a statutory approach holds in a situation such as a coronavirus inquiry.

Q194 **Mr Jones:** Dr Stark, have you anything to add?

Dr Stark: Just that I completely agree with Jason and Emma's point that timing is an issue and the statutory model is slower. But we have international examples of the kind of judicial-led, lawyer-driven statutory models that are then synthesised with those other dimensions—public participatory mechanisms, short-term policy interim reports and expert panels. You can do it altogether as one. The Black Saturday bush fires royal commission here in Australia did exactly that.

The other way is to chop it up, as we have said a couple of times. The SARS royal commission in Canada is a great example: you have a judge-led, more statutory process, and then two expert panels doing the heavy lifting in terms of expertise, moving a lot quicker and being nimble.

I completely agree, though, that timing is probably the big variable that you have to think about. You have to get this moving and there have to be outputs quickly.

Q195 **Mr Jones:** To continue that discussion, some high-profile and controversial, not to say lengthy, inquiries have been non-statutory—for example, Chilcot and Hutton. Why do you think those non-statutory inquiries were established outside the Inquiries Act?

Emma Norris: There are probably two reasons why some high-profile inquiries have been non-statutory. Quite a lot of the well-known non-statutory inquiries actually predate the Inquiries Act. Whether it is the 1992 Scott inquiry into the arms-to-Iraq affair, the Hutton inquiry in 2003 into the death of David Kelly or the BSE inquiry, it is partly just because they predate the 2005 Act. The 2009 Iraq inquiry, for instance, dealt with a series of national security matters that made a non-statutory inquiry an important vehicle, because it made it easier to hold private proceedings, which is less easy in a statutory inquiry. The need to hold private proceedings makes a non-statutory inquiry more attractive.

It is also worth saying that non-statutory inquiries can be considered less confrontational and are based slightly more on co-operation, but, as others have said, there are many ways to run a statutory inquiry, so I do not think that has to be a hard-and-fast rule.

Q196 **Mr Jones:** Dr Stark, do you have anything to add?

Dr Stark: Just that the event is really crucial. There are post-crisis inquiries where the focusing event is, let us say, natural in some way—an earthquake or epidemic—versus a Chilcot or a Saville when you are dealing with conflict and much greater degrees of politics. That obviously has an influence on the timing and the pace at which you can go. Again, the SARS commission and the natural disaster royal commissions that I have looked at move quicker. They do move quicker. Some of them are 18 months. They can do that because there is a real impetus to address those big disasters and big crises.

Q197 **Mr Jones:** Mr Beer, do you have anything to add?

Jason Beer: I think history is the answer. After the Crown Agents inquiry in 1982, there were no statutory inquiries for 14 years and the preference was to go for non-statutory inquiries. I think that that was largely because of the cumbersome nature of the 1921 Act, which led to the creation of the 2005 Act. Of the inquiries that you mentioned—I noticed this in particular because of the similarity in subject matter—the BSE inquiry conducted by Lord Phillips and the foot and mouth inquiry conducted by Dr Anderson were both non-statutory inquiries. I think the answer is that there was a rather inadequate piece of legislation in place, and hence there was the reach for non-statutory inquiries rather than anything else.

Q198 **Mr Jones:** You have suggested two inquiries in the case of coronavirus—a short one and a long one. I guess the shorter one would, of necessity, have to be non-statutory. What about the longer one? Do you take the

view that that should be a statutory inquiry, or still non-statutory?

Jason Beer: I am agnostic about that. There are advantages and disadvantages to each of them. Everything that a statutory inquiry can give can be given with appropriate adjustments in a non-statutory context. The main reason for statutory inquiries, I think, is the procedural and fair trial rights—if one can put it that way—that they guarantee to core participants, but those can equally be given as a gift in a non-statutory inquiry.

Q199 **Mr Jones:** Ms Norris, are you equally agnostic about that?

Emma Norris: Yes, I agree entirely with what Jason has described. There are advantages and disadvantages to both. If I absolutely had to choose, I would probably say that an inquiry into coronavirus should be statutory just because, while I am sure that the Government would be keen to co-operate with an inquiry, having the power to compel the release of relevant documentation, particularly given the seriousness of the issues that will be examined, could not hurt. But there are advantages to the non-statutory model that any statutory inquiry would want to learn from, should the Government choose to go down that route.

Q200 **Mr Jones:** Dr Stark, what is your view?

Dr Stark: I am broadly agnostic. I agree with Emma that the compulsion to get to evidence is the biggest argument for having a statutory inquiry, but I also completely agree with Jason that it depends on what the chair and the inquiry do. The headline of statutory and non-statutory pales into insignificance in terms of where the chair really takes the inquiry and what he does with it. The greatest hits for me are non-statutory—Anderson, Pitt and others that were really policy focused.

Mr Jones: Thank you very much.

Chair: We will now hand over to David Mundell.

Q201 **David Mundell:** How significant is the choice of the inquiry chair?

Dr Stark: I am happy to answer that one really quickly. It is absolutely essential. It is the No. 1 choice for me and it will absolutely influence almost everything. It is crucial that it is given to the right person. The right person for me, given my previous statements about integrating those different dimensions—legal, judicial, policy and expert—is someone who can see beyond their own professional borders. The best judges to have led inquiries are those who are prepared not to be judges all the time, who look beyond the principles and norms of their professions and integrate.

Likewise, the experts have to look beyond their own language and authority, and the same applies for the policy analysts and the public service dimension. We need to get the best out of both worlds. A chair has to drive that, with an ability to see beyond their own profession.

Jason Beer: I would agree with that. The advantages of judges are often described as being their impartiality and independence. They are totally

separate, constitutionally and institutionally, from Government. Therefore, they bring authority to the proceedings. They are valued for their analytical and fact-finding skills, and they are available—they are sitting there ready.

Those advantages need to be put into perspective, however, and in an inquiry such as this, I would not immediately reach for a judge. If in fact the issues are not neat, fact-finding exercises—why did a plane crash, why did a ferry capsize, and those kind of issues—but are instead broader issues of social policy, which the coronavirus inquiry might be, a subject-matter expert, or experts, may be better. In particular, that is the case where culpability issues either are not in play or are playing second fiddle to the important work of shaping future responses.

Emma Norris: I completely agree with Jason's description of why judges can be very attractive choices to chair public inquiries. One potential downside that I want to mention, however, is that, quite rightly, by the nature of their training and experience, judges tend to see the end of a public inquiry as a hard point of separation after which their involvement will cease. Placing such a wall between an inquiry and its aftermath can mean that it loses one of the most effective advocates for its recommendations.

In some cases, non-judicial chairs have had more continued involvement in an inquiry after it has reported. For example, Baron Laming, a former social worker who chaired the inquiry into the death of Victoria Climbié and the review of child protection in the wake of the Baby P case, developed detailed implementation plans as part of his role. Lord Bichard, who chaired the Soham inquiry, went so far as informally to reconvene the inquiry six months after it had reported to monitor the state of the recommendations.

That is not to say that a judicial chair could not do that, and I am sure that there are examples of them doing so, but on balance there are some downsides to judicial chairs as well. There are things that other individuals can offer.

Dr Stark: May I reinforce that point, because it is so important? I have interviewed judges who have been excellent for all the reasons that Jason gave, but when I have asked them about implementation and what they thought about it during the inquiry, they have looked at me as if I were abnormal, telling me that it was not their job to think about implementation, because of the separation of powers. That kind of attitude will not get you any lessons learned.

Implementation has to be front and centre, it has to be thought of in the way that Emma has spoken about, and we have to be thinking about it from day one—how can we make this implementable; and what structures will we put in place, not just for the implementation stage, which is crucial, but for how we remember these lessons in five, 10 or 20 years?

It is not the case that inquiries do not learn lessons and that things are not implemented; it is the case that we forget—Parliaments and bureaucracies turn over, the agenda moves on and we forget. That is why we see repetitions of failure. We need to institutionalise the implementation, and to find ways to do that. Whoever chairs this inquiry has to be doing that from day one. It is such an important point.

Chair: Forgive me for interrupting the panel, but thank you for that. I ask Karin Smyth to come in at that juncture.

Q202 **Karin Smyth:** Wouldn't your point, Dr Stark, about very much recognising from the beginning how anything becomes implemented, not be better dealt with in the terms of reference and scope?

Dr Stark: You can directly use the terms of reference to tell the chair that they must be thinking in that way. You can definitely do that. But if you get the wrong chair, it still will not be adequate. What has to come out of the inquiry in recommendations is a very clear strategy for both implementation and institutionalisation. As Emma mentioned, there are very easy wins to be made in terms of reducing the excuses for non-implementation and reducing the reasons for forgetting. We can do that quite easily if we have the right machinery and the right people thinking about it early on.

So you could include it in the terms of reference. My thinking around terms of reference is that they should remain broad and be winnowed down as you go, but it is crucial that you get the right person who can do that thinking about implementation as the inquiry does its job.

Jason Beer: Can I briefly add my voice of agreement to that? Emma said a couple of answers ago that there are, no doubt, some cases of judges participating in the implementation of recommendations. I cannot in fact think of any. If you look at all the really good examples of where a chair of an inquiry has participated in holding Government and public authorities to account after the inquiry for implementing his or her recommendations, they are all civil servants, essentially. They are all non-judges. This is not to do my colleagues on the Bench out of a job as chairs of an inquiry, but when they finish a case, they, like me, want to tie the red tape up, put the case back on the shelf and move on to the next one. Quite aside from the constitutional difficulties of a judge—even a retired judge—holding Government to account for implementation of recommendations, they just do not want to do it.

Q203 **David Mundell:** In your collective experience, how have chairs been chosen? Are the mechanisms appropriate, or should there be a different, more transparent mechanism? Mr Beer, I liked your concept that judges can just be pulled off the shelf, so to speak, with that being the ease with which they could be selected. Has that driven selection in the past? We have seen in some inquiries, particularly into historic child abuse, significant difficulties in getting and maintaining a chair.

Jason Beer: I think the answer is that probably none of your three present witnesses know the precise mechanics of how a chair came to be

chosen. I do not want to speak for others, but I suspect that is the case. I suspect that one of the advantages I mentioned of judges, which is quite high on the Minister or Prime Minister's list when deciding who to select, is the facility that gives to say, "I've brought in somebody independent and impartial, and it is over to them."

I agree that perhaps there ought to be some slight increase in accountability or transparency over the selection of chairs, but there is a ministerial code, published, I think, by the Cabinet Office in May 2010, which says that any Government Minister wishing to open an inquiry must consult the Prime Minister in good time about the proposal to do so and the selection of the chair. I think that is probably the only guidance we have got on this issue; there isn't anything greater.

Q204 **David Mundell:** Do Dr Stark or Ms Norris have anything to add?

Dr Stark: I have spoken to Secretaries of State who have appointed chairs, and Jason is right: it seems to be a hunch and conversation in ministerial offices. Typically, a phone call goes out to someone, or several people, and they say yes or no. In my experience of speaking to sponsoring Ministers and the chairs themselves, there is no real logic other than gut instinct. Quite how you build a formula to get the right person in when you need a bespoke, boutique, lesson-learning exercise that fits that crisis is beyond me, I'm afraid.

Emma Norris: I have nothing to add to the points that Jason and Alastair have made, which I agree with.

Q205 **David Mundell:** Finally, in some inquiries, in addition to the chair, as we have heard, there are panels or expert committees to advise during the course of it. What is your experience of how that has worked, and what are the advantages and disadvantages of such an approach?

Emma Norris: Personally, I think panels that bring in a broader range of expertise are almost always helpful, particularly when an inquiry is dealing with a large scope that spans multiple subject areas. That will clearly be the case with any inquiry into coronavirus, which will have to consider issues of healthcare, regulation, epidemiology and governance—such a broad and challenging set of issues that you absolutely need a panel that can bring in as broad a set of expertise as possible to advise the chair. There is plenty of precedent for that, from the BSE inquiry to the Butler review, the Iraq inquiry and the recent RHI inquiry; they have all used panels precisely to provide deep understandings of the range of subject matter that the inquiry has to consider.

One further benefit of a panel, relating to what we have talked about on policy learning, is that it can help to bring in individuals with experience of policy making and implementation at the highest level of Government, and that can help to build in that focus on policy and implementation right from the start of the inquiry, and help to ensure that the inquiry drafts really strong, robust recommendations, which are likely to be implemented. That is another important benefit that panels can bring.

Jason Beer: From a practitioner's perspective, I can say that panel members are valuable additions to an inquiry. Quite often, one finds the trickiest or hardest questions, because they are the most penetrating, are asked by the panel members rather than the judge. There is the additional important benefit, which Emma has just mentioned so I won't repeat it in detail, that their focus is entirely different from a judge's. Their instincts are entirely different from a judge's in terms of the formation of realistic and implementable recommendations.

Dr Stark: I completely agree with everything that has been said. To me, the best Royal Commissions have been judge-led, with excellent judges, with co-chairs or public service commissioners, former ombudsmen, experts or engineers, doing exactly what Emma and Jason have just spoken about. To me, it is a big choice, but it is essential, because you are synthesising different knowledges together and they have to be there to allow the inquiry to do things differently.

Q206 **Chair:** I wonder if I could put a question to Jason Beer first. Remembering that our predecessor Committee complained about a lack of parliamentary involvement in or oversight of public inquiries, in your opinion, how far and in what ways should Parliament be involved with them?

Jason Beer: This is a very difficult question, because the reason why we have public inquiries—the reasons why they are the vehicle of choice to investigate matters of public concern—is, I am afraid, that there was a belief that parliamentary Select Committees were unable to carry out those investigations, or, because they divided down party lines, were not to be trusted. That is why the Tribunals of Inquiry Act 1921 was set up. It was a taking away from Parliament the power to conduct the investigation itself that led to the whole idea of inquiries in the first place.

We are where we are in the modern age, when Parliament, public inquiries and parliamentary Select Committees coexist. I think the role of Parliament ought to be in the implementation and recommendation stage. There is a danger of its becoming involved in the micromanagement of an inquiry—holding the inquiry to account as it progresses. There would be real problems with interference with the independence and impartiality of the inquiry.

Once the inquiry is over and its report is produced, that is the time for the relevant Select Committee or Committees to stand up and hold the Government and public authorities to account for the implementation of recommendations, particularly if the inquiry itself—for example, with a judicial chair—is not going to do it. With respect to Parliament, I do not think we have necessarily seen that in the past.

Q207 **Chair:** So the question of a parliamentary commission of inquiry would not be something that you would favour, Mr Beer?

Jason Beer: I think it would require a fundamental redesign of the way that parliamentary work is carried out. The resources, abstractions and different skillsets needed to conduct an inquiry of that kind are

inconsistent with all the other important, essential work that Parliament has to carry out. I just don't think that it is feasible. I suppose the closest one has come is the Parliamentary Commission on Banking Standards, but that was truly an inquiry into very broad issues of policy.

If one got into the weeds of coronavirus—for example, I wrote a list of the things that it might look at: past response to pandemics, the implementation of recommendations from previous reviews, the fitness for purpose of the Civil Contingencies Act, the role of the World Health Organisation in providing timely and accurate advice to the Government, decisions as to when to restrict movement, the introduction of social distancing, the closure of schools, the closure of businesses, the provision of information to the public, the use and misuse of statistics, the role of the media, the approach taken to care homes, the availability of PPE, the availability of other medical equipment, including ventilators, the non-use of the EU procurement route, the impact on members of BAME communities, the impact on elective treatments not being carried out, decisions to lift restrictions, differences in approaches across the four nations—my list goes on and on.

When you look at the range of issues, it would take a parliamentary commission a couple of years, with all members of the commission devoting their time to that. It would require 20, 30, 40 or 50 staff to service its needs. I just don't think it is feasible.

Q208 **Chair:** Thank you for that, Mr Beer. Ms Norris, what are your thoughts on that question?

Emma Norris: I completely agree with what Jason set out. I too would place the main emphasis on Parliament's role in holding the Government to account in the aftermath of inquiries. It is worth emphasising that there is very little procedure for holding the Government to account for any of the promises made in the aftermath of an inquiry. The 2005 Act does not make any provision for the implementation of inquiry recommendations, and those recommendations are non-binding. There is a real opportunity here for Parliament, and Select Committees in particular, to play an enhanced role in holding the Government to account for implementing the recommendations that inquiries have made.

There are examples of that happening in the past. For instance, on the Mid Staffs inquiry, Sir Robert Francis invited the Health Committee to review whether his recommendations were being implemented, and there was a thorough look at that by the Select Committee. That is the kind of thing that it would be most helpful if Parliament could play a significant role in. In fact, I would go so far as to say that scrutinising the implementation of inquiry findings should become an 11th core task for Select Committees. It should be at the heart of some of the work that Parliament is doing on inquiries.

Q209 **Chair:** Thank you. Dr Stark?

Dr Stark: I agree completely that the focus should be on the oversight of the implementation. I think it should be down the road even further: it should be oversight of the oversight.

The best model for ensuring implementation is to use an implementation monitor. You can give a monitor statutory footing and they can produce reports for a five to 10-year period—three to five is the typical period—and lay those reports before Parliament. It is Parliament's job to work with the monitor to ensure that implementation takes place. In relation to those crucial institutionalising, memory-building processes, you could easily see that task being given to the NAO, reporting through the Public Accounts Committee and keeping the memory of lessons learned alive.

For me, there are institutional forms that are used around the world to ensure implementation. A monitor is one of them; it has been used with great success repeatedly in Australia. When the monitor closes up shop, inspector generals for emergency management, which we have here, take over that remembering function. But Parliament definitely plays a role there in overseeing the implementation, getting the reports of the monitor, ensuring that it is running on rails and then doing the remembering function. That is absolutely essential.

Q210 **David Mundell:** As I think you alluded to as part of your list, Mr Beer, one of the factors in this situation is that many aspects of health, care and other elements of managing the crisis are devolved. What do you and the panel therefore consider the most effective interaction between a potentially UK-wide inquiry and the devolved institutions, or the capacity to have individual devolved inquiries and how they would relate to aspects of a UK-wide inquiry? In this case, as certainly you alluded to, Mr Beer, it is a complicated landscape.

Jason Beer: Section 27 of the 2005 Act contains specific provision for United Kingdom inquiries, as they are called, and then sections 28 and following deal with Scottish, Welsh and Northern Ireland inquiries, so there is provision for conducting a UK-wide inquiry. Speaking for myself, I would have thought that that was absolutely essential.

I did not actually get to the part of my list that said that one of the issues would be the difference in approach across the four nations and whether that has been evidence-based or politically driven. That might be an issue for an inquiry—

Q211 **David Mundell:** It is a very good question. I would certainly like to ask it.

Jason Beer: Yes, that may be an issue for an inquiry. I think it would be repeating itself—history repeating itself—if we conducted four inquiries, each doing their own thing.

Dr Stark: I have some views on the politics of devolution. As Jason says, the Inquiries Act delineates a process where the Minister has to consult the devolved Administrations before a UK inquiry goes about its business. I think that should happen, and I think that a UK inquiry should set aside space to do an important comparison between the English, Scottish, Northern Irish and Welsh responses, because you have to lesson-draw through difference and comparison.

There has to be a chapter sitting in the UK inquiry that says, "How are we going to learn lessons?" There is obviously politics here; we would be naive not to think about that. I would be framing the UK inquiry in terms of lesson drawing, and I would be leaving the door open for a more substantive involvement of the devolved Administrations if they are willing to engage. Then, when they do their own inquiries, I would be expecting the same chapter to come back, as a mirror. I think it should be part of the UK inquiry. I think there is a skilful way of doing it that acknowledges the politics, and again, that is why you need a really good chair. I would not put it in the terms of reference. I would simply expect a chair to take that forward.

Emma Norris: I agree with what has already been said.

Chair: Thank you.

Q212 **Mr Jones:** I just want to pursue the issue of a UK-wide inquiry and the interface with the devolved Administrations. Given the highly political questions that will undoubtedly be asked in that connection, does that make the case for a statutory inquiry stronger? Dr Stark, perhaps you could comment on that.

Dr Stark: I believe that the lesson learning process has to be privileged, so if I was chairing this inquiry, I would be looking to really emphasise the lesson drawing element of comparison. If I was given this job, I certainly would not be interested in putting the First Minister in the witness box and attempting to cross-examine them. As I said, I think that that kind of process is rather pointless anyway; it does not lead to lesson drawing. Inquiries regularly—you see it in almost every post-crisis inquiry—contain a chapter that says, "Let's go to the Netherlands and learn about flood management," or, "Let's go to Australia and learn about fire." There is nothing to prevent a lesson drawing process of comparison. If you keep it on that level—a policy learning level, rather than the culpability and politics level—you can do some good through comparison. I guess that that is what I am saying—leave it at that level, with the option of ramping up if you can get good agreement and co-operation.

Q213 **Mr Jones:** But is that not the crucial point—if you can get co-operation? If, because of political considerations, there is less co-operation than you would like, does that strengthen the case for a statutory inquiry?

Dr Stark: I just think that if you co-opt a senior member of a devolved Government and put them on the witness stand, it is not productive. You might compel somebody to go into the witness box, but it might not then produce the lesson-learning dynamic that you want, and you might attract more of a political circus and prejudice lesson learning. There are still ways to draw lessons that do not need that. Again, the greatest hits for me are non-statutory and lesson-drawing elements. That is where I would start.

Jason Beer: I agree with what Dr Stark just said. I think it depends on your focus. If your focus, as his has been, is on lesson drawing or lesson learning, rather than a hard look at the past in accountability terms, this

issue slightly falls away. If your purpose, however, is to bring people to account, I would agree with the implication behind the question—you are not going to get full and candid co-operation without the exercise of statutory powers.

Emma Norris: I agree with Jason. While I, as I have said throughout, think it is incredibly important that inquiries focus on policy learning and that their recommendations are implemented, an inquiry into coronavirus is going to need to set out exactly what happened, and there is going to have to be an element of accountability. To ensure that it is possible for that to take place, the powers that a statutory inquiry has to compel the release of documentation and to force people to take the stand and give evidence under oath probably will be necessary as a safeguard.

Q214 **Tom Randall:** Alastair Stark, you touched on terms of reference a moment ago. Could you tell us how terms of reference for public inquiries are typically established?

Dr Stark: In a variety of different ways. Jason could probably speak a little bit more to the specific procedures. I guess my point around terms of reference is that they should be quite broad and they should give chairs the capacity to take the inquiry where they want. We should also be prepared for the terms to change, contingently, as things develop. Typically, terms are drafted in conjunction with chairs, with constitutional lawyers and formalised, but in almost all cases that I have looked at in royal commission terms, they change in their dynamic.

Jason Beer: Again, it is slightly shrouded in mystery. Having been on the inside on some inquiries, generally what happens is the chair gets given the terms of reference, and then very shortly afterwards they are made public. Although the public statement says the terms have been agreed with the chair, the extent to which there can be meaningful participation in their formation has been relatively limited. It tends to be a fait accompli.

I have long advocated a cooling-off period between, on the one hand, the announcement of the fact of the inquiry and the announcement of who the chair and panel are going to be, and on the other hand, the setting of the terms of reference. That cooling-off period ought to allow the chair to play a meaningful part in settling the terms of reference. They can get their feet under the table, get familiar with some of the core material and play a proper part in the formation of the terms of reference, rather than their being foisted upon him or her. So I think there is a valuable space there for chair participation.

I am not convinced about the idea of a consultation period. That happened in a very recent inquiry, the Grenfell Tower inquiry, and from my sense from the outside, that led to increased delay and frustration, rather than any meaningfully better terms of reference.

Tom Randall: Emma Norris, do you want to come in on this?

Emma Norris: I agree with what Jason has set out. It would absolutely make sense to provide some more flexibility around setting the terms of

reference to allow a chair to familiarise him or herself with the material and to play a meaningful role in the setting of the terms of reference.

I think that there could be room for some limited consultation with affected groups on the terms of reference. I completely take Jason's point on the Grenfell Tower inquiry, but I think, for instance, on the Paterson inquiry, there has again been some limited consultation with affected families that has proved relatively effective. So yes, I think there should be some flexibility around setting the terms of reference.

It is worth saying that, at the moment, legally there is room to change the terms of reference as the inquiry progresses, even if that mechanism is not used as often as it might be.

Q215 **Tom Randall:** You have noted the increasing detail of inquiry terms of reference. Do you think they are becoming too prescriptive?

Emma Norris: I am not sure they are becoming too prescriptive, because I think we want to be in a place where terms of reference are added to and amended according to consultation and according to the knowledge of the chair and the panel and so on. I think there is always a balance: the longer and more detailed the terms of reference become, the likely longer that an inquiry is.

Whether or not you want a long inquiry depends on what you are attempting to achieve in an inquiry. If you are looking for a quick lessons learned exercise—the kind of rapid review that I have described—then clearly you want a set of terms of reference that is relatively constrained and focused. If you want to run a much fuller and broader-scoped public inquiry, looking at a very wide set of issues and attempting to create catharsis, find truth and so on, then I think it is entirely acceptable to have a very broad set of terms of reference, which inevitably implies a longer inquiry. So I think it depends on your aims.

Q216 **Jackie Doyle-Price:** We have already touched on this slightly, but clearly there is a tension between having an inquiry that reports promptly, when people are still engaged in the conclusions, and having an inquiry that is totally comprehensive, which obviously takes a considerable amount of time. What is the appropriate balance, particularly in view of the coronavirus? Perhaps I could start with Dr Stark.

Dr Stark: Typically, you now get interim reports, which are now a standard feature of almost all inquiries. Some produce one, some actually produce two, and then you have the fuller reports across time. Inquiry personnel don't often like interim reports, because they put a huge amount of pressure on their shoulders to produce something very quickly, but they are absolutely essential, especially in a context such as this.

For example, we are seeing a resurgence in Australia, and big questions around the different dimensions of resurging outbreaks and so on, so you need the legitimacy that comes with a rapid response, as Emma said. You need a quick interim report, and I would dedicate personnel and an inquiry specifically to that, and you need the legitimacy that comes with a rapid

response, to show people that you are working and can produce quickly, because there are big questions.

Different inquiries use interim reports in really different ways. The Pitt review into the 2007 summer floods used an interim report purely as a consultation document, to signal the direction of travel that they were going to implement. Others use it as a quick smash of authority. The SARS commission did that. They can be used in a whole variety of ways, but they are now essential and a regular feature of all inquiries. That is typically how it is addressed.

I like Emma's suggestion of hiving off and doing something potentially unique and on its own, which would take the pressure off an inquiry, because that race to produce something does cause a lot of problems internally. Also, if you produce an interim report in three months and get it wrong, you start to lose legitimacy.

Emma Norris: I agree with Alastair. Normally, the way that you get that balance between timeliness and comprehensiveness is through the interim report mechanism. I do not think, in the case of an inquiry into coronavirus, that that will be appropriate, or at least sufficient in and of itself, because even getting the inquiry set up and then producing an interim report is still going to take us well into 2021, and I just don't think we have time to wait that long to gather initial lessons from the first wave. That is why I favour a slightly different approach this time, establishing a separate, non-statutory rapid review to do that really rapid lesson learning before then moving into a full statutory public inquiry.

A slightly different point about timeliness is that other things can be done on the organisational side to allow inquiries to establish themselves slightly more quickly. In the conversations that I had and in the research we have done at the institute with, for instance, inquiry chairs and inquiry secretaries, they have really emphasised just how much time they have to put into the basic organisational set-up of the inquiry—finding office space, setting up the IT, getting administrative staff into that space. This is often something that they are essentially left to do themselves, and they do not get a lot of central support on it. That can take a huge amount of time, and I do not think it is necessary for those leading inquiries to spend so much time on those type of activities, given the experience that Government have in setting up inquiries. I think there is a greater role for the inquiries unit in Cabinet Office in providing support on some of those organisational aspects, which would allow an inquiry to get running more quickly.

Jason Beer: I think it is very difficult to manage the balance between comprehensiveness and timeliness. I would go as far as to say that, in relation to an issue such as covid-19, it is not realistically possible for both to be achieved in a single inquiry. The average public inquiry takes three years from announcement of terms of reference to promulgation of a report. With inquiries of this complexity, with this breadth of issues, that will take much longer than three years. That timescale is much too slow to accommodate the very important purposes of a coronavirus inquiry to

discover and to analyse information that will assist the Government, Public Health England and NHS England to face the remainder of the pandemic. That is why we are all respectfully suggesting two or more inquiries—one forward looking and focusing on lesson learning and the improvement of policy, and the second potentially concerning accountability so as to break that Gordian knot between timeliness and comprehensiveness.

Q217 **Jackie Doyle-Price:** Further to that, Jason Beer, we have alluded to the high cost of these inquiries. They can almost develop a life of their own and their duration can go on and on. I can see there is clearly a very good case to be made for having a number of separate inquiries to really get to the bottom of this and to learn lessons promptly, but that being done, how do we control the long duration of some inquiries that, frankly, develop a life of their own? By the time they draw their conclusions, it has been conducted at great cost and the world has moved on. How do we manage that outcome?

Jason Beer: I would say the following half a dozen things. First, it needs good terms of reference that do not require an inquiry to investigate matters that are not truly essential. The second thing is terms of reference that contain an imperative as to time. If you look at terms of reference, many of them do not contain that. Most of them do not say, "You must record in x months' time." It is very rare indeed for that to occur.

The third thing would be a facility to take into account existing investigations and reports without having to go over the same ground again, so that the conclusions or evidence of those is adopted into the inquiry and the wheel is not reinvented again. The fourth thing is the use of experts to carry out investigations and report back to the inquiry, synthesising a wide body of material, rather than calling in all the primary witnesses. The expert goes out, collects the material and synthesises it, and then brings it back to the inquiry, rather than calling in, as I have had to in the past, 50 people to establish the primary facts.

Lastly—this I have some difficulty in saying—I suppose that one way of reducing the length and therefore the cost of inquiries would be to restrict the extent of the participatory rights of individuals and organisations. There is a real fairness issue to them there. Inquiries conducted where only counsel to the inquiry ask the questions can lead to unfairness, or at least a very strong feeling of unfairness among those whose interests are very directly affected by the subject matter.

Q218 **Jackie Doyle-Price:** Just as a follow-up to that, from what you said it is almost as if the rules of the game are as important as the terms of reference. Going through the process of how you will gather evidence and setting some parameters for that, and then the novel concept of setting a timeline for an inquiry—perhaps those need to be front and centre at the same time as terms of reference are being set.

Jason Beer: Yes, I would certainly agree to putting a date by which the report must be produced. Recent experience—I think you are going to hear from Dame Una later today—is that an end point was put in the

terms of reference of the inquiry of which she was a panel member, and that had to be extended. That can occur, of course, but I do not think that is a reason not to do it in the first place. I think it focuses minds and permits a chair to use that term of reference content to drive the inquiry forwards. It is not often done in my experience in modern inquires.

Jackie Doyle-Price: Thank you. Emma?

Emma Norris: I think Jason has provided a really comprehensive list of the ways in which you might ensure that inquiries report earlier and thus save money. One that I would really pick out and emphasise is the point about having a robust set of terms of reference that specify an end date for the final report. That is absolutely critical to ensuring that an inquiry reports in a time period when it can still have influence—when the policy and regulatory environment in which it sits has not moved on so much that the findings become, if not irrelevant, then not as related to context as they might have been had it reported earlier.

Jackie Doyle-Price: Thank you. Dr Stark?

Dr Stark: I think it has been comprehensively covered by the other panel members. It is a question for practitioners.

Jackie Doyle-Price: Thank you.

Chair: At this juncture, may I thank the three members of our first panel—Jason, Emma and Alastair? I am incredibly grateful for your time this morning and for your contribution to this session; I thank you all.

Examination of witnesses

Witnesses: Dame Una O'Brien, Sir Robert Francis, Lord Butler of Brockwell and Baroness Prashar.

Q219 **Chair:** Seamlessly, with the aid of technology, I welcome the four members of our second panel. I ask those new panel members to bear in mind that they are in charge of unmuting and muting themselves—that great responsibility rests with them. Will they introduce themselves, starting with Baroness Prashar, please?

Baroness Prashar: Good morning. I am Baroness Usha Prashar. I am an independent Member of the House of Lords and I was a member of the Iraq inquiry.

Dame Una O'Brien: Good morning. I am retired a permanent secretary of the Department of Health and I have played three roles in public inquiries: I was the secretary to the Bristol inquiry 20 years ago; I have sponsored inquiries from within Government and helped to set up a public inquiry; and I have just completed three years as a panel member on a public inquiry in Northern Ireland.

Sir Robert Francis: Good morning. I am Robert Francis. I am a barrister, although recently retired from full-time practice. I think I am here because I chaired the two inquiries into the Mid Staffordshire affair—one was a non-statutory inquiry, followed by the public inquiry—but I have also appeared at various other inquiries in various forms: I have been counsel for interested parties and, indeed, chaired various smaller inquiries of one sort or the other.

Lord Butler: I am Robin Butler. I am a Member of the House of Lords and former Cabinet Secretary and head of the civil service. I chaired the review of intelligence on weapons of mass destruction following the war in Iraq. Not only I have had experience of chairing that review but, like Dame Una, while I was in government I was involved in the setting up of a lot of public inquiries.

Q220 **Chair:** Inquiries have to balance the search for facts, accountability and improving policy. Will each of you briefly explain, with reference to the inquiries in which you have been involved, how successfully you did that and what the balance was?

Baroness Prashar: The Iraq inquiry had very wide terms reference. Our purpose was to examine the policy for Iraq from the year 2001 to 2009 and identify lessons for the future. Our terms of reference were very wide indeed, and we of course endeavoured to do that, and I think we did that very comprehensively.

Q221 **Chair:** What was the balance between the search for the facts, the accountability and improving policy?

Baroness Prashar: Our objective was to identify lessons to be learned and to influence policy, and I thought that we did that very comprehensively.

Q222 **Chair:** Thank you. Dame Una?

Dame Una O'Brien: The inquiry into cardiac surgery at Bristol Royal Infirmary, which reported in 2001, was perhaps at the time one of the largest ever inquiries into the NHS. It played a significant role in influencing policy on patient safety and the way in which surgeons use data. If I reflect back over 20 years, the most important thing that the inquiry did was to establish a definitive chronological account of exactly what happened. Many parents of children who died had huge questions as to what had happened to their children and, by sharing all the information in public, the inquiry was able to answer the questions that the parents and families had. That is the most important thing that it did.

The renewable heat incentive inquiry, which reported just on 13 March, also played an important role in addressing some critical questions as to whether or not there had been corruption in relation to a green energy scheme, and by addressing that question it enabled policy makers and others to move on from the disputes that had arisen around that scheme.

In my judgment on those inquiries, the focus on chronology, facts and a detailed account of exactly what happened, which has led to the dispute, was a very important role of both of those inquiries.

Q223 **Chair:** Sir Robert, what is the balance between facts, accountability and improving policy?

Sir Robert Francis: In the first inquiry, the focus was very much on hearing the voice of the victims. There had been an informal investigation before, which had established fact, but it had not allowed the impact on the victims to be heard. I think that was a theme through both inquiries and became part of the lessons to be learned—in other words, one must listen to the victims.

I was really dealing with the systemic issues arising—what were the systemic causes of a particular disaster? In that sense, there was more of a focus on looking at what happened and why it happened, rather than on whose fault it was. I would say that was the focus. I think the result of that was that it did lead to policy change and lessons to be learned, which I believe are still referred to 10 years later.

Q224 **Chair:** And Lord Butler, please?

Lord Butler: In the inquiries that I was involved in setting up, we certainly made mistakes. I think the most common mistake was to yield to public pressure in setting the terms of reference too widely, so that the Government did not appear to be covering anything up. Very often, that was what led to delays. Sometimes, we also made the wrong choice for the person to chair the inquiry. Those are the things I remember most that went wrong.

Q225 **Mr Jones:** Lord Butler, can I just come back on your last answer? You probably heard the evidence from Dr Stark earlier, in which he suggested that the terms of reference should be set as broadly as possible. Would you therefore take issue with that suggestion?

Lord Butler: Yes, I would. Perhaps I may take the analogy of the Scott inquiry, which was the thing that was in my mind. The Scott inquiry was set up because there was a suggestion that the Government had tried to put innocent people in jail by giving false evidence to a court case. That was the issue that needed to be determined. The Opposition and the public pressed that the terms of reference should be extended to the whole question of the sale of arms. The Government, in order not to look as if they were concealing anything, yielded to that, with the result that the Scott inquiry took three years, which was far longer than it needed to resolve the original question.

Q226 **Mr Jones:** My next question is for you, Lord Butler, and for Baroness Prashar. You were both involved with non-statutory public inquiries. In your view, did the lack of the powers that you would have had under the Inquiries Act have a detrimental impact upon the conduct of those inquiries? Lord Butler first.

Lord Butler: No, I don't think it did, because with the review that I was involved in, the Government and particularly the intelligence agencies were themselves concerned about why the intelligence had turned out to be so wrong, so they were inclined to co-operate.

In getting the evidence—the documents—we followed the precedent of the Franks inquiry into the Falklands, whereby we got the permanent secretary of each Department to give a personal undertaking that all relevant documents would be produced. Since all the documents belonged to the Government, that was effective in getting all the evidence we needed.

Q227 **Mr Jones:** And were there any advantages to working outside the terms of the Act?

Lord Butler: Yes, there were. Of course, it dealt with highly classified matters, so that was possible. The other great advantage is that, while we were appointed in February and given until July to complete the report, we were able to act very completely and so complete the report in that time.

Baroness Prashar: We were a committee of Privy Counsellors. Therefore, it was a non-statutory inquiry. I do not think that inhibited us in any way, because the methodology was developed by the chairman. It enabled us to have a very inquisitorial inquiry, where we could get the witnesses we wanted. In agreeing some protocols with Government Departments and witnesses, we ensured that we got the information that we wanted. In that sense, it did not in any way inhibit us.

Sir Robert Francis: Can I just add my perspective? My non-statutory inquiry was extremely valuable, because it enabled me to talk to people privately in a way I could not have done—I could not have got the information I did—in a public inquiry. On the other hand, the advantage to the public inquiry was that I had powers of compulsion. I only had to use them once, and I never had to use them in relation to Government Departments, but I am not sure what co-operation I would have got without them.

Chair: That is very helpful. Thank you.

Q228 **Jackie Doyle-Price:** You have just pre-empted my question, Sir Robert, about the extent to which the Inquiries Act, and the parameters under which you can run an inquiry, can be a constraint. But you have also suggested that it gave you greater powers of compulsion, too. Overall, to what extent was the Inquiries Act a constraint on how you ran your inquiries, and otherwise with your non-statutory inquiry?

Sir Robert Francis: I think that if they are well managed—I am not saying for a moment that I did manage mine well—you have to remember that the Act does not constrain you. The procedure is entirely a matter for the chair. However, there are certain presumptions. Properly, there is a presumption of a public hearing. There are presumptions in relation to how you give people a fair hearing, if they are going to be criticised.

In my inquiry—the last one—that put a delay into the inquiry that was much greater than I expected. It took six months or more to go through what we would call the Salmon letter process. I suspect that there are better ways of giving people a fair chance to have their say, if they are going to be criticised. Those methods are probably more expensive. They tend to be more legalistic, involving more lawyers, but all that can be cured with a firm hand. Some inquiries do better than others in that respect.

Q229 **Jackie Doyle-Price:** Dame Una, do you have anything to add to that?

Dame Una O'Brien: Yes. I agree with what Sir Robert has said. In my experience, the procedure that the chair adopts has a fundamental influence on the amount of time the inquiry takes. Additionally, the way the chair manages the inquiry on a day-to-day basis influences the amount of time that it takes. The points that came up at the end of your previous hearing about the interconnection between the terms of reference and procedure and then the personnel who have responsibility for the inquiry—getting that golden triangle right provides a crucial infrastructure for the timing and efficacy with which the inquiry does its work.

On the point made a moment ago about statutory or non-statutory, I very much agree with Lord Butler about the role of the permanent secretary in giving an assurance that all the documents have been handed over—I signed one of those myself in the past—but in the modern age, there are WhatsApp messages and text messages between people that are not part of the departmental document system. That is why in an inquiry such as one on covid-19, which will involve looking at the role of national institutions and individuals within them, formal statutory powers could definitely help to ensure that all relevant material is handed over to the inquiry.

Q230 **Jackie Doyle-Price:** Just to be a bit provocative, it is almost as if you are saying that the behaviour of the chair, and the leadership that the chair brings to the inquiry, is probably more important than any process or legal framework. Am I paraphrasing you rather starkly?

Dame Una O'Brien: All those things matter. You cannot overstate the significance of the choice of the chair, with the authority, impartiality and depth of experience that that individual brings to leading the entire machinery of the inquiry. He or she is also the public face of the inquiry. A significant category that we have not touched on sufficiently yet is what the public expect and what they public want. When they look to a public inquiry, they want to see a figure conducting it who they can believe in and they know to be a person of integrity. So I do think the choice of that individual is really important.

Sir Robert Francis: Could I just add to that? Virtually no chair of a public inquiry will ever have had experience of chairing one before. One of the advantages of a lawyer—the few advantages—is that they will have conducted investigations or forensic examination of things in the course of

their daily lives. That is an advantage; there are, of course, disadvantages.

Q231 **Rachel Hopkins:** Sir Robert, that last comment feeds nicely into my question to you and Lord Butler: how were you appointed, and do you know why you were selected?

Sir Robert Francis: My straightforward answer to that is no. I received a telephone call and was given an hour to decide whether to chair the first inquiry. It turned out to be a life-changing decision. You may want to ask Dame Una O'Brien about it as she was permanent secretary at the time.

Q232 **Rachel Hopkins:** I will come to Baroness Prashar and Dame Una in questions later. Lord Butler, how were you appointed, and do you know why you were selected?

Lord Butler: I received a telephone call in a car when driving just outside Mexico City. I imagine I was appointed because I had had experience of intelligence when I was working in government and because I was regarded as politically impartial.

Q233 **Rachel Hopkins:** As chair, you were supported by a committee. How were the committee members chosen? Were you involved in that at all?

Lord Butler: It was a highly political context, you remember—the dispute over how intelligence had contributed to the decision to go to war in Iraq. This was to be an all-party inquiry with two other people on it. The first thing that happened was that the Liberal Democrats refused to take part. The Conservatives did name somebody but withdrew their support when they found that the inquiry's purpose was to learn lessons, not to establish culpability. But the Conservative nominee, Michael Mates, decided to continue, so I had a Conservative Member and a Labour Member. Then I had two people with the relevant experience: Lord Inge—Field Marshal Inge—and Sir John Chilcot.

Q234 **Rachel Hopkins:** How did you set about using your committee during the process?

Lord Butler: I think the essential thing was that it was a very political context and my main aim was to hold the committee together on matters on which they could all be united. Of course, the fascinating question was why the intelligence which the Government gave as a justification for military action in Iraq had turned out to be baseless; everybody was interested in that, and that was the thing that we concentrated on.

The terms of reference also included the words "the use of intelligence". That led us on to how the Government had used the intelligence, and that was politically more contentious, but we stuck to the facts; we just gave facts about how the Government had used the intelligence, and that enabled the committee to stick together, including the Labour member of it.

Q235 **Rachel Hopkins:** Moving across to Baroness Prashar, what was your role as an inquiry, committee or panel member?

Baroness Prashar: As I said, we were a committee of Privy Counsellors and we worked very much collectively as a team. We met and went through the documents, read the papers and deliberated, and of course we had public hearings and we were allocated questions at them. So there was complete involvement of the committee as a whole, and of course we were very much concerned with establishing accurately what happened, so it was very much evidence-based and about looking deeply into what led to the invasion and what happened afterwards. It was a thorough investigation in all aspects, to gather information and evidence to help us establish that.

Dame Una O'Brien: I worked with Sir Patrick Coughlin, who was the chair of the RHI inquiry, and with one other panel member, Dr Keith MacLean, who was the energy expert, and I was the panel member with expertise on the civil service. We were involved in every aspect of the inquiry before the hearings in reading evidence and providing thoughts and comments to the chairman and the counsel for the inquiry. During the hearings we were invited by the chairman always to ask our questions in public of each of the witnesses towards the end of their testimony, and behind the scenes we worked with the barristers to feed them thoughts and questions on witness statements. Finally, we were fully engaged and involved in the report, and, critically, picking up on the point from your previous hearing, very much in helping to shape the recommendations, coming, as we had so recently, from practice in government. So I would say there was comprehensive involvement, but very much at the behest of the chair, and a good chair will involve his or her panel to that degree.

Q236 **Rachel Hopkins:** How were you appointed? You say you were a senior civil servant expert; do you know why you particularly were chosen?

Dame Una O'Brien: The inquiry I have just completed was managed under the umbrella of the Northern Ireland Government and the process of my appointment came via the Cabinet Office. The authorities in Northern Ireland came to the view that they wanted two people from outside the jurisdiction to sit alongside the judge, as we brought an external perspective. They engaged the propriety and ethics team in the Cabinet Office to help them find people who had the time and the expertise, and then there was a discussion; I went to meet the judge, and it was for him to decide whether or not to recruit me.

Q237 **Rachel Hopkins:** Baroness Prashar, do you know why you were appointed?

Baroness Prashar: As I have said, I got a telephone call asking me whether I would serve on the inquiry. I suspect they were looking for people who were independent and non-partisan. As it was about public policy and processes of Government, I suspect the fact that I had been the First Civil Service Commissioner affected that because it gave me a very good inside view of how the Government operate. I suspect those were the reasons why I was appointed.

Q238 **Rachel Hopkins:** I have a final question for Sir Robert. You have written

about the daunting task of chairing an inquiry without the support of a panel or committee. Do you think that your inquiry would have benefited from having one?

Sir Robert Francis: I have often reflected on that. Of course I could have asked for a panel to sit with me. I decided not to do that for two reasons. One was I thought that the breadth of expertise probably required would mean an unmanageable panel. Secondly, I was concerned about whether people of the appropriate calibre would be available and have the time, which was going to be two years or more, to do the job. What I replaced that with was experts—I had a number of expert advisers—and assessors. I convened two panels of assessors for two purposes. One was looking at the facts on which I needed advice, but, most importantly, I convened a separate panel to look at the recommendations. They were advisers to me rather than participants in the writing of the report and I found that extremely valuable. The daunting part of it was, as I suspect any chairman would find, the harrowing meetings that I had, in both the inquiries, with the victims and the families on their experiences. I was able, of course, to share all that with the very capable inquiry team that I had, but that did not make it less daunting.

Q239 **Rachel Hopkins:** On final reflection, were there any aspects of that inquiry where you felt that it may have been improved with the support of a panel or committee, or were your arrangements helpful anyway?

Sir Robert Francis: In that respect, I think I did just as well as if I'd had a panel, and probably better. I do not think I could have replaced what I had with a panel. What could have been done better, and your academic witnesses have alluded to this sort of thing, is dividing up the inquiry and having some parallel processes. One in particular that we need to explore in these sorts of inquiries are ways in which people who have been directly affected by whatever the disaster is can receive some sort of resolution. I do not mean remedy, but resolution in terms of, I suppose, catharsis, which might be one word, or of reconciliation sometimes with what has happened. The child abuse inquiry has explored that a little and any covid inquiry would need to do the same.

Rachel Hopkins: Thank you very much.

Q240 **Chair:** I wonder if I could pick up that cue—if I can call it that—that came from Sir Robert in the course of this series of questions and direct a question to Dame Una, because she was permanent secretary at Health at the time. Notwithstanding Sir Robert's excellent qualities, Dame Una, why was he asked to undertake such an inquiry from your perspective at the Department?

Dame Una O'Brien: Without going into the detailed discussions, what usually happens is that there is a conversation between the legal advisers to the Department, the Secretary of State, the permanent secretary and the Cabinet Office. That would normally be how the process would work in appointing a chairman of an independent inquiry. There are very clear expectations now on the part of the Cabinet Office and indeed of the Prime Minister that any significant inquiry—the decision to hold one and how it

should be chaired—must be a part of the conversation between the Cabinet Office and No.10. A number of names would have been put on the table, but what one is always looking for, particularly in an inquiry as specific as that of Mid Staffordshire, which was very much to do with a set of terrible events that had happened in hospital, is somebody with the legal experience and somebody who understands the health world and health law in its broadest possible sense. Sir Robert is one of a handful of barristers who have that deep experience.

Before individuals are approached, there is also the question of: do we know these people who have time who might be willing to do it? That is the way that it normally works. At the very top level of a public inquiry these days, I am sure that there is also a conversation with the Treasury solicitor, potentially with the Attorney General and perhaps even with the Lord Chief Justice if a judge is going to be approached. Indeed, I think that would be the way that any such conversation took place between senior members of the judiciary in order to select a judge. It would not just be a phone call from a Department to a judge; that would never happen—as far as I know anyway.

Q241 **Chair:** That is extremely helpful. I wonder whether, in passing, you might make a comment on the fact that Sir Robert, in that instance, was given an hour to make up his mind and decide. Do you have any comment to make upon how long a person should be given time to consider the offer made to them?

Dame Una O'Brien: Clearly an hour was not good enough. It is the scale of the commitment. Sir Robert said that it was life changing, and it really is, particularly if it is so all-consuming as a covid inquiry could be. You are asking someone to put aside family commitments and other plans that they might have had. Certainly, I would advocate more time, but once the ball starts rolling from within Government, you need a decision, because you obviously want to approach other people if your lead candidate decides that he or she cannot do it.

Chair: Thank you. That is extremely helpful.

Sir Robert Francis: May I intervene there with one ask? Any appointment for something as important as this, it seems to me, these days requires a process and more transparency. We go through a rigorous process for appointing judges, and I appreciate that that would have to be concertinaed in relation to this, but I would ask you to look at that.

Chair: Thank you.

Q242 **David Mundell:** May I ask all the witnesses what, if any, was the nature of your relationship with Parliament during your inquiry?

Sir Robert Francis: I will start. Initially, rather to my surprise, I had quite a lot of engagement with constituency Members of Parliament. Their major preoccupation, understandably, was that the inquiry should take place in Staffordshire—there was some difficulty in finding premises and so on. So there was that sort of engagement.

I of course called a number of Members of Parliament as witnesses, to find out about how far Members of Parliament dealt with such issues. At the end, as has been said by another witness, I recommended that the Health Committee followed the implementation of recommendations. But there was no direct involvement other than that.

Baroness Prashar: For the Iraq inquiry, of course the decision to set up an inquiry was partly asked for by Parliament. Sir John Chilcot, in developing the methodology for the inquiry, was informed by his discussions with the leaders of the Opposition and the Chairs of the relevant Select Committees. There was involvement with the inquiry at that stage. Other than that, during the course of the inquiry, he kept the relevant people informed of course. That was the level of involvement.

Lord Butler: If I may add, I had no involvement with Parliament in the course of the inquiry; the involvement of Parliament came with the debate on the report subsequently.

Dame Una O'Brien: In relation to the Bristol inquiry, which started in 1998, the local Members of Parliament were instrumental in bringing it about. They presented to the Department of Health at the time the scale of evidence from the families, so I think that Members of Parliament played a critical role there and were very interested to hear about the progress of the inquiry and to follow up on its recommendations in their individual ways. But as regards the course of the inquiry, I do not recall any direct involvement. Of course, for the Northern Ireland inquiry the Assembly was not sitting while we were in session, so there was no real interaction other than that individuals were called to give evidence.

Q243 **David Mundell:** Just on that point, we were discussing with our first panel of witnesses the nature of this inquiry, which might necessarily require the involvement of the devolved Administrations and their respective Parliaments and Assemblies. Had the Northern Ireland Assembly been sitting, do you think that would have complicated your inquiry, or would it have made little difference?

Dame Una O'Brien: Everybody concerned would have wanted the Assembly to be back in session, but that is an entirely separate matter. I would not have thought it would have affected the inquiry; it was conducted independently and impartially, and I am sure we would have gone about our business exactly the same.

Q244 **Karin Smyth:** My question is addressed to Sir Robert and Lord Butler in the first instance. We have touched briefly on the terms of reference, but could you talk us through how the terms of reference for your inquiries were established?

Sir Robert Francis: Having said that I would do the inquiry, in both cases I had a discussion with the Secretary of State about the terms of reference, which were presented to me in draft. The time for consideration was limited, inevitably, and obviously I had more chance to have an input into the terms of reference for the second inquiry, because I had written a report recommending the inquiry. The only change I recall asking to be

made was in relation to the date for the report to be produced, because I told the Secretary of State that it was almost impossible for the report to be produced by the date in the terms of reference, so we added in the words "best endeavours".

Q245 **Karin Smyth:** Lord Butler, same question.

Lord Butler: The terms of reference of my inquiry were negotiated between the political parties—between the Labour party and the Conservative party, in fact, since the Liberals were not taking part in it. The point I would like to bring out, which I think did not come out in the evidence from the academics, was that a lot depends on the way in which the chair interprets the terms of reference.

My terms of reference were, on the face of it, absurd. They were to consider intelligence on weapons of mass destruction, and the phrase was "of countries of concern". That could have been a very large number of countries in the world, and it would have been impossible to have an inquiry into those that was completed in five months. We paid lip service to that, and we interpreted the terms of reference in relation to what we knew the public and Parliament were interested in, which was the intelligence on weapons of mass destruction in Iraq.

In order to be literally compliant with some part of the terms of reference, we did cover three other countries of concern, but we could not possibly have done the report taking the terms of reference seriously. It is a matter that the chair and the committee can undertake, to ensure that they address the matters that are the real subject of concern in setting up the inquiry, and which the public and Parliament are interested in.

Q246 **Karin Smyth:** Would you call it a wider consultation that you then embarked on to get to something more satisfactory? How did that happen?

Lord Butler: Within the review committee we decided that for ourselves. We looked at each other and said, "We can't possibly take these terms of reference literally, so how are we going to set about doing what we have been established to do?", and we agreed that. Nobody ever claimed subsequently, after the report, that we had not literally carried out the terms of reference.

Q247 **Karin Smyth:** Sir Robert, as you didn't have the panel, were you able to consult or talk to anyone else about those terms of reference?

Sir Robert Francis: As I said, the public inquiry's terms of reference arose out of the first inquiry that I did, in which I had effectively pushed the envelope on the terms of reference by identifying that the answers to the question were to be found not in Stafford, but in the operation of the wider system. In a sense, I started to set those terms of reference for myself, if the recommendation was accepted. That is actually what happened. Frankly, to my surprise, the recommendation was accepted for there to be a public inquiry, and the terms of reference largely allowed me to do what I had suggested should be done. In that sense, I consulted.

Because the report was published, everybody could have their say about it.

Q248 **Karin Smyth:** Would it be fair to say that your experience of the first report gave you the confidence—I don't know whether that is the right word—or justification to do that for the second report?

Sir Robert Francis: Yes, I think so. My view would be that the terms of reference gained their authority and effectiveness through consultation. I didn't agree with some of what was said in the previous panel. I think it is important that those most directly affected have a say. That doesn't mean that the terms of reference do everything they want, but if public confidence is to be had in an inquiry into something like covid, it will be necessary for it to have the scope that maintains public confidence. You can only do that if you have some form of consultation.

Q249 **Karin Smyth:** I have a similar question for Baroness Prashar and Dame Una. As panel members, did you have any input into your respective terms of reference?

Baroness Prashar: As I said earlier, our terms of reference for the Iraq inquiry were very wide, because the then Prime Minister did not wish to be seen to be covering it up or constraining it. In determining what we wanted to cover, we were given a wide range.

What we did, of course, was talk to experts and academics. The first port of call was to talk to the families of those who had died, the veterans and so on, to help inform the priorities. In that sense, we were all engaged in that exercise. We held seminars and talked to experts when determining our priorities and seeing what we needed to focus on. The chairman worked very closely with the members, and we were all engaged in that process of determining our approach and methodology.

Q250 **Karin Smyth:** Thank you. Dame Una?

Dame Una O'Brien: By the time I joined the RHI inquiry, the terms of reference had already been agreed. In fact, it was very important that the terms of reference were owned by the different political parties in Northern Ireland. My understanding is that they had a major role in shaping them.

In relation to a covid inquiry, this will be a challenge because there will be a desire, on the one hand, to make them so broad that the inquiry effectively takes years, and, on the other hand, to get some very precise answers about detailed events between January and June. I urge the Committee to look at the need for the terms of reference to focus on doing only that which a public inquiry can do.

There are many policy issues that will have to be progressed in parallel with any public inquiry. For example, we could not possibly leave all the matters to do with social care to a public inquiry. It will take too long for that to come about. We have to accept that there will be a number of things that progress in parallel with a public inquiry. My instinct would be to focus on doing the things that a public inquiry uniquely can do, using its powers to obtain documents and all the other material that I mentioned

earlier as needed, to hear from all the key players in public, and to take evidence on oath, and to use its time and authority to get at the questions and in-between spaces that no other means can. That is what the terms of reference should focus on, in my opinion.

Q251 **Karin Smyth:** That is an interesting point, particularly given what we have heard from Sir Robert about public confidence, particularly in relation to social care, through the covid crisis. You said it was because it would take too long, and we have talked about timeliness, but surely public confidence would only be assured if social care was involved in such an inquiry.

Dame Una O'Brien: I think we are in agreement, in so far as I would say that a public inquiry must address the question as to why we have had such a serious outbreak of covid in care homes. But the point I was making is that the public inquiry cannot solve the questions about how we reform the provision of social care in England. That cannot wait till the outcome of the inquiry because there are important policy matters that can and should be got on with in the meantime. But when it comes to the specific events that we have lived through, that is the place where a public inquiry, I believe, serves the public most powerfully by bringing to the fore an answer to those as yet unaddressed questions.

Q252 **Karin Smyth:** To come back to all the witnesses, we have alluded to this a little bit, but if you were able to amend the terms of reference as the inquiry proceeded, could you do that? If not, would you have liked to?

Sir Robert Francis: I do not think I felt the need to amend the terms of reference, and I think there should be caution about giving an inquiry that power, because there is always the danger of inquiries becoming self-perpetuating organisations that never come to a conclusion. But I think it is important to allow a discretion for the chair to approach the commissioning Minister for a change in the terms of reference. I think that has been done in other inquiries, and it may be necessary because there will be occasions when the inquiry should follow the evidence. But if you do not have some outside control, then public money gets spent on things that those responsible for public money are going to say could be better spent some other way. I mean, there are other priorities.

Karin Smyth: So your concern is mission creep.

Sir Robert Francis: Yes, exactly.

Q253 **Karin Smyth:** Lord Butler, what is your view? Were you able to amend the terms of reference, and if not, would you have liked to?

Lord Butler: No, we did not need to amend the terms of reference because, as I have explained, we could use them to answer the questions that we thought the inquiry was really after. We could do that within the terms of reference we had.

Q254 **Karin Smyth:** Thank you. Baroness Prashar?

Baroness Prashar: As I said, our terms of reference were very broad and we did not feel the need to change them. The broader point that I would like to make is that the terms of reference are extremely important because they actually will determine what you want the inquiry to do. So I think there is some merit in spending time at the outset in determining what you really want to achieve—what the purpose of the inquiry is—and that in turn should determine the kind of chair you are looking for and the panel members that you really want. I think that the focus on terms of reference is actually quite important.

Lord Butler: I agree.

Q255 **Karin Smyth:** Thank you. Can I come back on that, though, because that would require you to have established the panel to look at the terms of reference before appointing the chair, if I have understood you correctly?

Baroness Prashar: No, no. What I am really saying is that, in determining the terms of reference, it is important to think that through at the outset, because if you think what you want the inquiry to achieve and to do, then that will determine in turn the kind of chair you want. For covid, for example, would you want a health expert, or would you want a judge, or a politician? Obviously, that in turn determines the sort of panel members you want. That does not obviate the need to refine things as you go along, but I think it is very important to actually think through the terms of reference at the outset.

Q256 **Karin Smyth:** I am going to ask Sir Robert to come back in on that, because you were given a draft of the terms of reference at that point. That would perhaps lead to civil servants, the NHS or whichever Department was responsible having control of the drafting of them and more of their scope. With a new chair without experience of chairing, which I think you also alluded to, would that not confine the inquiry too much?

Sir Robert Francis: That is why I think there should be a process of consultation at that stage. Someone has to propose terms of reference, and the architecture of the Inquiries Act is that the Government set up an inquiry and tell the inquiry what it is going to do, so I think it is only right that that sort of framework is proposed. Whether you have to do the consultation process before or after appointing a chair, at least, might depend on the circumstance. I would have thought that, for something like covid, you would have a broad idea of the sorts of skills required in a chair, whatever the terms of reference where. If so, it would probably be prudent to appoint the chair.

On Lord Butler's point, one thing I have noticed about the terms of reference of some inquiries is that, if followed to their letter, as I am afraid they sometimes have been, the inquiry never ends. It is having to investigate things long after there is a usefulness in that investigation.

Q257 **Karin Smyth:** Finally, Dame Una, on that last question about whether you were able amend the terms of reference on the inquiries that you were involved in, and whether you would have liked to.

Dame Una O'Brien: No, not in either case. I support what has been said, particularly Jason Beer's point, so far as a covid inquiry is concerned, about a sequence whereby the chair is appointed, and then there is time for the chair, the panel and others to have a dialogue about the terms of reference. I think that could only be healthy, and it is a much better way to run it than effectively throwing some terms of reference over the fence to the chair and saying, "Here you are; get on with it." I very much support the idea of creating some space in the appointment of the chair and the agreement of the terms of reference.

Karin Smyth: Thank you. That is very helpful.

Q258 **Tom Randall:** Sir Robert and Lord Butler, I am going to ask some questions about the timing and costs of inquiries. Sir Robert, how long did it take from your appointment to begin your inquiry?

Sir Robert Francis: For the public inquiry, from memory it was about six to nine months, although I cannot remember the precise details. What surprised me was the fact that I was presented with a very capable support secretariat, but we were all starting with a blank piece of paper when it came to setting up resources, so there was no idea where we would have offices or where we were going to get equipment from. We were promised resources, and they arrived, but all that took time. The thing that took the most time, rather to my frustration, was that I determined that I needed an independent outside firm of solicitors to be solicitors to the inquiry, and from memory it took about four months to go through a competition-compliant tendering process in order to appoint a perfectly competent firm of solicitors, which I found to be quite an extraordinary waste of time. That is the sort of time it took.

It struck me that a great deal of what is required by an inquiry is the same whether you are inquiring into covid or the Iraq war—you need equipment, you need offices, you need people with certain skills. While all that could not quite be on tap, the expertise to put that in place very quickly should clearly be in place in the Cabinet Office or somewhere. Currently, to my knowledge, it is not.

Q259 **Tom Randall:** Did you feel that you had support in setting those things up?

Sir Robert Francis: Very much so. The first thing that happened was that I was asked to appoint a secretary to the inquiry, and I was given a choice of very capable civil servants. I selected one after a process of interview, and together we then went on and recruited the rest of the team, both legal and administrative. I have to pay tribute to the civil service. The support I got for both inquiries was first class, and none of what happened could have happened without them.

Q260 **Tom Randall:** In your chairing role, how much time did your role involve managing staff and resources, in both the set-up and operational phases?

Sir Robert Francis: Not a huge percentage. As I said, I had a very capable secretary who did most of that. I was really dealing only with the policy in relation to starting. Apart from my appointing counsels to the

inquiry, which was clearly a key episode, and the solicitors, the secretary dealt with putting the rest of the team together and the personnel matters and so on. I was not troubled much with administration; I was able to get on with the job of leading an inquiry and organising the actual work of the inquiry.

Q261 **Tom Randall:** Thank you. May I put the same questions to you, Lord Butler? How long did it take from your appointment to the beginning of your inquiry?

Lord Butler: As I said, we were appointed in February and we reported in July. As I remember, it went roughly like this: February, March and April were taken up by just assembling all the documents and reading the documents that were available—as I said there were 50,000 intelligence reports on Iraq alone and there were JIC reports and a whole lot of other material—and we then took oral evidence in May, the report was drafted in June and we published it in the middle of July. Perhaps the most terrifying thing was that, in respect of just assembling the material and reading it, it took a long time before we could get going and take oral evidence. We did that in a very concentrated way and, again, we had the most superb staff who did that. I cannot claim to have read all 50,000 intelligence reports on Iraq myself, but other people did. We could not have done it without that help.

Q262 **Tom Randall:** Did you find that you spent a long time managing staff or resources, or were you able to get on with the job at hand?

Lord Butler: I got on with the job at hand. The head secretary managed the staff and selected the support staff, who came from the intelligence agencies. I could leave all that to him with complete confidence.

Q263 **Tom Randall:** Thank you both.

Dame Una, you acted as a secretary to an inquiry; what did that involve and what was your impression of the resourcing of the inquiry?

Dame Una O'Brien: The single most important thing that happens for the secretary to the inquiry—apart from, obviously, the key appointments, which are, first of all, the inquiry solicitor, who is mostly drawn from the Government legal department on loan, although Sir Robert made the decision to recruit independents, which was perfectly fine, and then the appointment of counsel—is obtaining the resources from the sponsoring Department or the Cabinet Office, by which I mean money to be able to go about the business of the inquiry.

You need IT systems that can hold very large numbers of documents. Just in the Northern Ireland inquiry we had over 1 million pages of documents. The capacity to handle the material is crucial to the timing and conduct of the inquiry, because the hearings flow from the analysis of the material that comes in.

One of the biggest challenges that inquiries face are really quite petty arguments with sponsoring Departments for sufficient resources up front to be able to go about their business. It is very important that any public

inquiry into covid is given the resources it needs to be able to get on with its job; otherwise, it simply takes longer. With so many documents and other material involved, the funding of the inquiry is very important.

Q264 **Karin Smyth:** I have a question for Sir Robert about the inquiry and the series of seminars that were held on the recommendations. How did you decide who was to be involved in that process? What do you see as the benefits of doing that?

Sir Robert Francis: First, I identified some themes for different seminars; then, by invitation, I asked people who had expertise or relevant experience to come to the seminars. From memory, I kept the numbers to around 20 people in each. The process of selecting who to invite was personal, but I also had the assistance of my legal team. The seminars took place in private, but the summary of what they said was published, so there was transparency in that regard. I found them extremely valuable in setting a context in which to make my recommendations. It was after the public hearings, so the facts of the matter were in the public domain, but I found it a very useful process in translating those facts into something practical.

If I did it again, I would probably be tempted to have them in a more public session, actually. The advantage, of course, of them being in private is that people are much freer to say what they think and you get something more by nature of advice coming. The extraordinary thing was, of course, the level of consensus that came out of that in areas where there was no evidence and it was clear there was no evidence to prefer one thing from another. I remember very specifically that everyone agreed there was no evidence to back up a specific nurse-patient ratio for safety. I found it very surprising that there was no evidence about that. Things like that came out of those seminars.

Karin Smyth: Thank you, that is very helpful.

Q265 **Chair:** In a concluding set of questions from me, could I ask each of our panel members to give a word to the implementation of the recommendations of the inquiries with which you were involved, as well as any involvement thereafter—or indeed a view to involvement thereafter—with those recommendations? I will go to Baroness Prashar first.

Baroness Prashar: We took the view that, once we had finished our inquiry, the question of implementation of the recommendations was for the Government. But from my point of view, the disappointment has been that there has not been an official response to the inquiry. The other disappointing effect has been that the recommendations have not really been taken on by Parliament. I think Parliament and Select Committees have a role in holding Government to account in terms of looking at the implementation of recommendations.

I know there is the view, which was stated in the earlier session, about whether the chair should have a role in monitoring how the recommendations are being implemented. I am personally of the view

that, once the report has been done, it should be picked up by those at whom the recommendations are aimed. I would like to see a much greater role for Parliament in implementation and holding Government to account.

Q266 **Chair:** Thank you. I will put that question to Dame Una.

Dame Una O'Brien: My view is that it is unrealistic to expect the people who have chaired inquiries or been on the panel to be the continuing voice of the inquiry when it is over. If they do their job well—and one hopes that they do—it puts the analysis and view as to what needs to change out into the public domain.

Public inquiries are brilliant, but they are not completely omniscient—sometimes their recommendations do not quite fit, having sat inside government and received recommendations from various inquiries. Of course, life moves on, and they have to be reinterpreted for a changing context. That is why I really would support the suggestion that has been around for a while that Select Committees have a more formal role in following up, maybe after one, three and five years, what happens to the recommendations of a public inquiry. It would be helpful not only in terms of the public seeing that something got done but in reflecting on the overall efficacy of public inquiries if we could see the impact they had had. I do think that Select Committees are very well placed to be able to do this, but I certainly would not put the responsibility on chairs and panel members, who just could not carry the weight of that on their own.

Q267 **Chair:** Thank you. I will go to Lord Butler with those considerations.

Lord Butler: I had no formal role in the follow-up to the inquiry. A group was set up, which I subsequently learned was called BIG—the Butler implementation group. I gave various talks in the agencies, I always gave my advice when asked for it, and I gave some media interviews, but I agree with what has been said before: Parliament, through Select Committees, has a role in following up these inquiries. Where Departments and agencies have not implemented recommendations, the Select Committees should ask why they have not. In the case of my report, that would have been an ideal task for the Intelligence and Security Committee in Parliament.

Q268 **Chair:** Thank you. Sir Robert.

Sir Robert Francis: My first recommendation, of probably too many recommendations, was that the Health Committee should monitor the implementation of those recommendations. Also, the various organisations charged with implementing recommendations should report on a regular basis on their progress. The Select Committee did look at the matter on two, if not three, occasions, and various other health bodies wrote reports from time to time. As always with these things, there was no definition as to how long this should go on for, and it has sort of faded away.

As for my personal involvement, I absolutely agree with the view that it is not for the chair to take responsibility for preaching the gospel according

to his or her report. That is a bit like marking one's own homework, in my view.

I did think that it was appropriate, because I was invited, to talk to various interest groups—nurses, doctors, organisations, health organisations—about the report, and I am afraid that that took up rather more time than I expected. I spent a year doing that. Actually, because it was such a big subject and because people never read reports—they say they do, but they only read the executive summary, if you're lucky—the way to get a message across is to have a process whereby those interested are engaged with after the report, to explain what it was about and for them to take forward what is necessary.

I did not take on that responsibility as a responsibility, but as something that I thought was good to do. It led, rightly or wrongly, to me being on the board of the Care Quality Commission and now chair of Healthwatch England, so I have become slightly institutionalised—part of the life-changing effects of the inquiry. But it is not the role of the Chair to be responsible for overseeing implementation. Apart from anything else, a lot of inquiries last so long that, by the time it is finished, the Chair is of an age where—to be ageist for a moment—you really wouldn't want them to be overseeing anything anymore.

Chair: I could not possibly comment on that at all—certainly no instance of that among our witnesses this morning.

I am extremely grateful to you all for the time you have taken this morning to give us your insights and your experience, which will be invaluable to this Committee as we formulate a short report over the summer recess. I thank you again for your time, I thank my colleagues and I particularly thank broadcasting staff for their assistance in enabling these virtual proceedings to take place. Thank you all.