



HOUSES OF PARLIAMENT

Joint Committee on Human Rights

Oral evidence: Hillsborough law, [HC 1740](#)

Wednesday 19 July 2023

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3 pm

Members present: Ms Harriet Harman (Chair); Lord Alton of Liverpool; Joanna Cherry; Lord Dholakia; Lord Henley; Baroness Kennedy of The Shaws; Baroness Lawrence of Clarendon; Baroness Meyer; Bell Ribeiro-Addy.

Questions 15 - 25

Witnesses

[II](#): Anna Morris KC, Barrister, Garden Court North Chambers; Pete Weatherby KC, Barrister, Garden Court North Chambers.

Examination of witnesses

Anna Morris KC and Pete Weatherby KC

Chair: We will now turn to our second panel. We will be hearing evidence from Anna Morris KC. Anna is a specialist in inquests and inquiries, and she is a barrister at Garden Court North Chambers in Manchester. She is currently representing a group of people affected by the vaccine in the Covid-19 public inquiry. She also represented a number of families in the Manchester Arena inquiry and at the Hillsborough inquest. Welcome, Anna, and thank you for coming to give evidence to us today. We also have Pete Weatherby KC from Garden Court North Chambers, who is a human rights barrister who specialises in public inquiries and inquests, criminal, public, prison and police law, and was one of the drafters of Andy Burnham's Private Member's Bill, the Public Authority (Accountability) Bill 2017. Thank you both very much for joining us to give evidence this afternoon. Our first question to you will be from Joanna Cherry.

Q15 Joanna Cherry: Good afternoon. We heard from the last panel about the inequality of arms and the lack of a level playing field at inquests. One of the main elements of the Hillsborough law is ensuring funding for a bereaved family at inquests. I am a practitioner at the Scottish Bar, or was, and we have the same problem at fatal accident inquiries in Scotland, where institutions of the state come all lawyered up and the families have to fight very hard to get legal aid for counsel. Do you think that having a rule that ensured funding for bereaved families at inquests would strengthen protection for life under Article 2? If so, how would it do that?

Anna Morris KC: Yes, is the short answer. The Article 2 positive duty to have an effective investigation is served in a number of ways by coroners' courts. Coroners' courts hear inquests that can last a day, a week or a month, and improving the participation of the families not only improves the investigation quality but arguably will improve the quality of the investigations that take place within the coronial jurisdiction, helping them to identify issues more quickly and identifying learning that can prevent future deaths more quickly.

Looking at grassroots inquests, we have heard a lot about some of the very significant historic inquests, but the coroner's court is the main way that the state discharges its Article 2 obligation daily up and down the land in England and Wales. It does it by conducting enhanced investigations, Middleton investigations, where there is an arguable breach of Article 2. It also does them in much smaller ways by engaging in fact-finding investigations. Coroners can name interested persons, which can be state bodies, and can designate them as interested persons by making a finding that that state agency or an individual employed by it has in some way caused or contributed to the death. That is outside of an Article 2 inquest.

In those cases currently, there is no non-means-tested funding for families. Across the jurisdiction, there are inquests taking place where there are state bodies represented, lawyered up to use the colloquial, and families are going into those forums traumatised, bereaved and confused. Even those who have the ability to read complex medical records, for example, simply cannot come into that room with equality, so that is an injustice that we see across England and Wales daily.

Those inquests are an important part of how the state complies with Article 2, not just because of fact finding but also because a coroner has a duty to make reports to those state bodies where they feel that there is a continuing risk of future deaths. Those are called prevention of future death reports. Even on, if you like, short inquests, not to belittle their significance to the families or to broader justice, there is an Article 2 engagement happening there every day, every hour, at every coroner's court. It is that inequality of arms not just in these significant historic inquests that we have touched upon, but daily in these smaller inquests where the state is also being highly represented. That inequality of arms is a real issue and we see it at the grassroots level as practitioners.

Joanna Cherry: It is not just impacting the bereaved families in the inquest in hand; it is impacting other families who might be affected by future disasters and incidents because without legal assistance the bereaved families do not have the equality of arms to bring to the coroner's attention matters that he or she might rule on and make reports on that might prevent future disasters.

Anna Morris KC: Exactly. There are two points there. Looking at the systems obligation of Article 2, identifying systemic problems, systemic failings, of course, a coroner is well placed to do that. They hear cases every day that may deal with a particular trust, a particular prison, a particular police force. However, families also bring key insight into those investigations. They were there and part of that care plan. They may have been there at the point of arrest. They may have been there at the point of treatment. Reframing families not just as someone who can go into a coroner's court and offer registrable details but seeing them, as we have heard about, as victims, as whistleblowers, as traumatised individuals and, as this committee said before, as human rights defenders, they can assist a coronial investigation and inquiries in identifying what happened. As the Hillsborough families and the Hillsborough survivors will tell you, they know what happened because they were there. For example, if a line of inquiry that a coroner is conducting says, "Let us hear about the care plan in March" the family will know what meetings there were in March. They will be able to help with those lines of inquiry; better investigations, more effective investigations, cheaper investigations because you have someone else assisting you in getting to the truth of what happened.

One of the main criticisms has been that it might take longer. I do not think that is right. Proper representation for families makes investigations more effective and arguably saves costs. We have heard about the

contaminated blood inquiry this morning. The risk of not doing inquests properly and not having proper representation is that you then have to remedy a huge traumatic effect on a number of families, communities and countries. It costs hundreds of millions of pounds. That equality of arms starting at that grassroots level is incredibly important to the state's obligations under Article 2, in my view.

Pete Weatherby KC: Can I add two points to that? The first one is that Hillsborough is the paradigm example of where legal representation is absolutely required, as we heard from Bishop Jones and Andy Burnham. The Hillsborough miscarriage of justice was largely caused by their inability to be on a level playing field with the state bodies at the first inquest. The false narrative and the altering of the evidence, as we now know happened, was facilitated by that lack of representation.

As Anna says, that then leads to not just the trauma and terrible consequences of the miscarriage of justice itself; it then has to be re-run. When we get to the second inquests, the families achieve some semblance of justice through the second inquests because the families were given a level playing field in terms of lawyers. In a way, the system has got better through that ad hoc process that occurred with the second inquests, but in fact at the coalface, day to day, the amount of funding that is available for legal representation for families is incredibly small. It is called the exceptional case funding, exceptional being the underlined and highlighted word there. There are very few times where families are actually represented at inquests, so the problem persists. That is why we have included it in the Hillsborough law.

Joanna Cherry: If someone was to suggest that the availability of legal aid by way of exceptional case funding somehow meets the requirements of Article 2, would you agree with that?

Anna Morris KC: No, I would not agree with that. Exceptional case funding, as Pete said, is granted in only a very limited number of cases. For example, there were 36,000 deaths reported to coroners last year, 2022, of which there were about 750 cases that would fall automatically within Article 2. That is a tiny number of cases where exceptional case funding would have been granted automatically.

There are a huge number of inquests where Article 2 is arguable and specialist lawyers review material on disclosure and engage in legal arguments and pro bono hearings to seek the coroner's ruling on Article 2, which will then have the consequent effect of ECF being granted. For the remainder of those inquests, there is still only legal help available if the Legal Aid Agency is persuaded that there is a risk of Article 2 being breached. It is those gaps of inquests I have just touched upon, where the state is still represented because it has been given interested person status, where the coroner thinks that something may have gone wrong with the state's care but they are not Article 2, where there is still no non-means-tested legal aid.

Joanna Cherry: What is the solution? The bishop told us in the last

panel about Theresa May creating a bespoke scheme for the second Hillsborough inquest. What do you think the solution is to this lack of funding except in exceptional cases? Do you think that we should have a change to the legal aid scheme to make it clear that funding should be available to families at all inquests or just at certain inquests?

Pete Weatherby KC: The reason we have drafted it the way we have in the schedule to the Bill is to give a level playing field. People refer to that as parity and that is a shorthand. It is not parity; it is a proportionate approach.

Chair: Mr Weatherby, can I pause you there and ask you to explain what is in the schedule to the Bill in terms of how you would have aimed to achieve that equality of arms in the funding?

Pete Weatherby KC: Yes. The Bill is a duty of candour now, so it codifies the duty of candour as a principle. It then concentrates on how to make that work: a legal toolkit, if you like, to make sure it works in practice. Then, as part of that, it includes a schedule to amend the current public funding provisions to give families the right to representation in cases where the state or public authority has legal representation proportionately. In the position where the state is involved in an inquest to any significant degree, the discussion would be the amount of work that one side or the other has to undertake. They would then get funding proportionately. That is what I mean by a level playing field. It would not mean the same amount of resources in every case. It would mean more to the families in some cases and more to the public authorities in other cases because of the amount of work to be done.

Joanna Cherry: Who gets to decide what is proportionate?

Pete Weatherby KC: The way that it is drafted it would be reliant on the Legal Services Commission, as I think it is now called. It would go to the director. The way we have drafted it is that, in the normal course of any inquiry or inquest, where there is funding you put in basically a case plan. You would do that and then there would be a discussion about what was proportionate.

Joanna Cherry: Is there an appeal against an initial decision on what is proportionate or not?

Pete Weatherby KC: I think that would be something for later in the drafting, but there is built into it a review mechanism, yes. In fact, that is already present in some of the funding provisions in the Inquiries Act, which shows that it actually works. We have not reinvented the wheel.

Anna Morris KC: Would it be helpful to have some examples of cases that currently do not receive exceptional case funding where the state has been involved? For example, at the moment exceptional case funding is not available for cases involving healthcare in state detention, self-inflicted deaths of voluntary patients who are under community mental health teams or in the direct care of a mental health trust, deaths in

supported accommodation run by local authorities where the person has been placed there by a public authority or safeguarding provisions, and Armed Forces veteran suicides, both mental health trusts and Ministry of Defence. I represented a family last November where a veteran took his own life after returning from two tours, one in Iraq and one in Afghanistan. In that inquest, we heard from the chief psychiatrist in the MoD and two experts on PTSD post-service. The family had to crowdfund their representation in that room. The Lancashire Police were also represented in that inquest.

When one thinks of the initial Deepcut inquests, despite the lack of information about what had happened there, they were not legally aided. Geoff Gray had to cross-examine senior military officials about how his son had sustained two gunshot wounds to the chest in those circumstances. He was expected to do that on his own. Latterly, those inquests were reopened following costly judicial review proceedings and a judge-led inquiry and were redone as Article 2 inquests. Again, as in Hillsborough, those families had to fight for those funded inquests to take place in the most controversial of circumstances.

They are some examples of where legal aid funding has not been available. They are cases where you might say to someone on the Clapham omnibus, "Of course legal aid would be available for those families. Why on earth would it not be?" But it was not. That is a clear example of an inequality of arms.

Chair: It has a physical dimension. If in a coroner's court you have a row of KCs and behind them a row of instructing solicitors and then elsewhere in the court you have a couple of people or a group of people who do not even know where to sit—

Anna Morris KC: Quite.

Chair: —and yet, for them, that inquest is the most important: more important than to anybody else.

Pete Weatherby KC: That is what happens.

Q16 **Chair:** That is the physical representation. I will ask a question because you are both experts on this. If you talk about equality so that you do not have the people to whom it means most and who care about it most in the most disadvantaged position, if you talk about equality, there are different ways of achieving that. Have you considered alternative ways?

You can either lawyer up by bringing the families up to the state level so that the families have the same legal firepower as the police, the ambulance service, the fire service, the local authority and everybody else—who all, by the way, have their own representation; they do not share it—to have their own KCs and their own instructing solicitors, or you level down the representation that public authorities are allowed and make that somehow shared. You do not bring them up to the same height. You bring the public authorities down and make them share it across, or you have a different way of doing it, which is that you lawyer

up for the coroner so that the coroner has more legal firepower and you make sure that the public authorities, the bereaved relatives and other interested powers do not have legal representation but that the legal firepower is in the coroner asking the questions of all the people who actually know what went on. There are different ways of doing it.

What do you think about it? Public resources are tight, and this problem has always beset it. Everybody has known it is a rampaging unfairness, but nobody has ever felt the ability to marshal the resources. What do you think of those different ways of doing it?

Pete Weatherby KC: On the issue of whether you could just have the coroner or the chair of an inquiry, the answer largely is that Article 2 requires the effective engagement of the families and that means that they must have their own input into that. Although there are many excellent chairs and coroners around, it is wrong in principle to leave it to the state—to the coroner or the chair—to do the job without the engagement of the families.

If the answer is to bring the lawyering of the state downwards so that everybody is on a lower level playing field, you do achieve a level playing field, but it is muddy; it is not a good playing field.

Baroness Lawrence of Clarendon: Why not? I have sat in inquests where public authorities have been so lawyered up that the witness from the state side are six rows back and squeezed out. Why is it so necessary to have such expensive KC-type firepower?

Pete Weatherby KC: The task should be to provide the tribunal, whether it is a coroner or a jury or a chair, with the best possible assistance and evidence. Public authorities need the assistance of their lawyers to do anything that has any complexity to it in the same way as the families need the assistance of lawyers to provide the best possible process. If one were to ask coroners or chairs, the answer would be clearly that they are assisted by the lawyers in the room.

In terms of funding more widely, we are all acutely aware of the need to safeguard public funds. I am keen to highlight in the Public Authority (Accountability) Bill that we talk about that, if a duty of candour is enacted, it would be a massively saving Act. In requiring everybody to come to the process with open hands and transparency, you will cut everything down.

That might seem a little optimistic, given some of the miscarriages and so on that we have seen but, sticking with Hillsborough for a moment, we literally had the main police force involved rerunning or allowing around it the same false narrative to be run by other legal teams representing the former police officers who had been involved in the cover-up. They allowed that to happen. South Yorkshire Police had gone on public television and admitted that their officers had told "disgraceful lies", and yet during the inquests, the jury did not get to hear that while the lawyers for the former officers were allowed to rerun the lies of the past.

If there had been a duty of candour and if South Yorkshire Police had been required to put a position statement in repeating what it had said publicly to the BBC, that would have cut the legs off the false narrative that was being rerun. We can all make a guess what would have been saved. The Hillsborough inquests were two years in court. You can probably have halved that. We are talking about certainly tens of millions of pounds, possibly hundreds of millions of pounds; Anna corrects me.

Anna Morris KC: It was in excess of £100 million.

Pete Weatherby KC: That goes across the board. If the Covid inquiry had position statements, that would make the change as well. Wherever people like me argue about the duty of candour and ask coroners and judges to use the currently available provisions to do it, there is a mixture of responses but some of them embrace it.

In the Manchester Arena inquiry, the judge did embrace it and he did his best on the current provisions to require the police forces and public authorities involved to put in position statements. It greatly assisted the process.

The duty of candour is not just about avoiding miscarriages of justice like Hillsborough. It is about changing the culture of inquisitorial processes. These inquisitorial processes have become adversarial. A duty of candour puts them back where they should be to be inquisitorial. We require those who have the knowledge to proactively assist those processes. The fair following wind of that is a huge saving of public money.

Q17 **Lord Alton of Liverpool:** That pre-empted what I was going to ask you about. It was on the point you were making about the savings to the public purse or the costs to the public purse.

I wonder. It would be helpful to the Committee, especially when we come to make our own recommendations or think about what has been said to us today, if you were able to let us have a little bit more. You gave us some figures just now. If we could have a little bit more detail about the savings that could be made from a financial point of view, let alone the duty of candour and all the other effects it will have, for policymakers and the Government, that is probably the most powerful argument of all. If you were able to let us have some more detail about that, it could be helpful.

Baroness Lawrence of Clarendon: Thank you. If you could write to us on that, we could add that to your evidence.

Pete Weatherby KC: We will certainly do that, yes.

Lord Alton of Liverpool: Thank you.

Q18 **Lord Henley:** I want to continue with what the Chair was asking. As you know, Bishop James suggested that more than just funding was needed to ensure that the families experience the effective participation in the inquests or, for that matter, any other tribunal that looks at these things.

Would the actual Hillsborough law do enough to ensure that effective representation or could the law itself do more?

Could I then continue with that other question I asked earlier? I am surrounded by my learned friends who probably know the answer to this, but it would be quite useful if you both let the rest of the Committee know what you see as counsel's duty to either a coroner's court or any other tribunal. They might be representing the police. Others might not be represented but they still have, as I understand it, in the criminal courts a duty to the court as a whole. Presumably the same is true in terms of their own professional ethics.

Pete Weatherby KC: Yes. Can I give two answers to that? The first is similar to Elkan's. As a barrister, I take my instructions and, within the ethical boundaries, I put forward my client's case to the best of my limited abilities.

The other answer to it is that, if there is a duty of candour, the responsibility on the lawyer representing the police or whatever is to say to their client, "Do not forget you have a duty of candour here. You have to proactively tell us where the needles in the haystacks are." Lord Justice Singh used that phrase in a case dealing with judicial review and duty of candour. He made the point that there should be a responsibility on the state to point out where the needles are and not just let the judge or the inquiry team find those needles. A duty of candour would then alter the position for me, the lawyer, and I would then have to advise my client about the requirement on candour.

Can I give you a quick example of that? Again going back to the Manchester Arena inquiry, the public MI5 evidence indicated that MI5 had some evidence about the bomber but, effectively, it was not enough for them to have prevented the bombing from happening. Having heard the closed evidence, the judge made a public report finding that that was inaccurate. If there had been a duty of candour, the lawyers involved there, one would hope, would have said—

Lord Henley: The lawyers would have said to the client?

Pete Weatherby KC: —to their client, "Are you sure about this information?" I do not know what that is and so I am not making any suggestions that anything was wrong here, but the obligation on the lawyers would be not just to put forward their client's instructions but to say to their clients, "You have a positive legal duty, enforceable at law, to proactively tell us where the needles are, not just to tell the truth."

Anna Morris KC: May I contribute on that?

Chair: Yes, please do.

Anna Morris KC: One of the main benefits of a statutory duty of candour as well is it is applicable to all agencies. Where there is a multiagency inquest or major inquiry, it is of uniform application. In Manchester, for example, there were police forces, MI5, healthcare trusts. It would be

applicable to all of them. They would all know the hymnbook, so to speak.

In complex multiagency inquests that take two or three weeks, healthcare trusts have a statutory duty of candour within their own regulations. Their culture is slowly changing towards acceptance of that and there are ramifications with the CQC if they do not comply with that. You see shifting narratives not just between family and state but between state agencies. Knowing that they have to be candid, the trusts may make concessions before the beginning of an inquest and may even settle a civil claim with a family.

For example, where there has been a death in a police custody suite and where there has been healthcare provision involved in it, you have both the police force and the healthcare provider there. The healthcare provider with its duty of candour is more likely to make an apology, to have an internal review, to publish that, to bring the family in, to settle a civil claim before the inquest starts. The police, who currently do not have a statutory duty of candour, have an opportunity, if I put it no higher than that, to shift a narrative with someone having already accepted responsibility because they are not beholden to a uniform standard. That is, again, a more grassroots example of where a duty of candour can have a huge cost saving and also inquiry effectiveness application that you would see change inquests that happen daily and not just large public inquiries.

Lord Henley: Largely by changing the culture within those public bodies or health services?

Anna Morris KC: Yes, making it a uniform public body duty of candour is a huge, radical culture shift, not just for one organisation but for all.

Q19 **Baroness Meyer:** Staying on the duty of candour, what effect would a duty of candour have on the right to silence and the right not to incriminate yourself to the extent of the guarantee under Article 6 of the European Convention on Human Rights, which is the right to a fair trial?

Pete Weatherby KC: We have specifically written those safeguards into the draft at clause 3(6). The privilege against self-incrimination is expressly written into the draft of the Bill, as are other protections, national security, data protection and some level of commercial sensitivity with respect to its application to corporations. We have tried to fully understand the existing rights that must be protected and of course they are important rights.

Baroness Meyer: It is sometimes difficult as well because, for instance, if a police officer uses the duty of candour too much, maybe they would be discriminated against by their colleagues. How do you protect against that? Under the duty of candour, if a police officer is interviewed, they must say the truth and be transparent. How can they be protected—I presume they cannot—when they are back with the other police officers who might recriminate him for not supporting the whole institution of the

police.

Pete Weatherby KC: That is a real problem and part of the cultural problem that this would help to change.

Part of the duty of candour in changing the culture of it would stop what happened in Hillsborough, which was senior officers telling junior officers to tell lies. I am not overstating this. One particularly good example of many was when one of the senior officers stood over a 21 year-old woman officer who had been on the edge of the pitch and had seen everything. This is her evidence on oath. He literally ripped up her statement and dictated a new statement that she then had to write. The duty of candour provisions were quite protective of that police officer or other workers in public authorities to stand up to any senior manager who required them to put the reputation of the public authority above the truth and candour.

Q20 **Bell Ribeiro-Addy:** I want to continue with the duty of candour and how it is set out in the most recent version of the Hillsborough law and confirm whether it applies to anyone working in public authorities.

Pete Weatherby KC: Yes, it does.

Bell Ribeiro-Addy: One argument posed against it is that it exposes those individuals to potential criminal liability and infringes on their rights and so it might not be the best way to ensure candour. What are your views on that?

Pete Weatherby KC: That is why we have expressly repeated the longstanding privilege against self-incrimination. It is written into the Act so that that can be legitimately put forward by anybody that the Act would otherwise cover. Then they would be able to assert that and not be subject to penalisation based on the duty of candour. We expressly covered that.

Bell Ribeiro-Addy: There is no good basis for that claim at all?

Pete Weatherby KC: I am afraid not.

Bell Ribeiro-Addy: That is a good thing. I know that the recent UEFA inquiry into the events at the Champions League in Paris has been regarded as a dry run of the Hillsborough law. Can you talk us through that?

Pete Weatherby KC: I was on the international panel and, as the lawyer on the panel, I had a lot of input into the process. The process used the duty of candour approach. The panel was chaired by the former Minister of Sport from Portugal. It had former and serving senior police officers, people from the football world and me.

The process was that we identified who the stakeholders, the organisations who held the evidence, were. That was, again, across Europe: Switzerland, France, the UK and Spain primarily. We sent

requests for position statements to all the stakeholders. Although this was a private inquiry, there was a lot of soft power involved because there was a large amount of media interest of course and supporter interest but also broadcasters and sponsors. Everybody wanted to play a part in this inquiry. We requested/required position statements from them. Getting those position statements, which were essentially the tool of the duty of candour, allowed us to then send supplementary requests for evidence, picking up on things in those position statements one against the other, and identifying the kernels of evidence that were in dispute. Then we could pick the witnesses. Then we could go off and interview the witnesses across three or four countries.

The whole review involving thousands of pages and many witnesses was done, written and published in six months. It had to be done quickly because of the dangers that it was almost another Hillsborough. It is publicly available and the process is set out. All the evidence was published alongside it. The Committee could see if it looked at it that a lot of the tenets of the Hillsborough law were run in that UEFA inquiry rather successfully.

Bell Ribeiro-Addy: That was just six months. I am thinking of the number of different types of inquiries we may have had in the UK. What is the next shortest time that you have heard for—

Pete Weatherby KC: That is a good question. Bloody Sunday was 12 years. The current undercover policing inquiry is into its eighth year and we are about halfway. Covid is running, Lady Hallett says, until 2026. The nature of inquiries is that they run for too long, frankly.

Part of the attraction of a duty of candour is that you require everybody to be collaborative and make it inquisitorial and require them to proactively show you where the needles in the haystack are. That concertinas the process properly. It does not shorten it improperly; it does it properly.

Anna Morris KC: That is where the cost savings come in as well, not to reiterate that too much.

Also, when we talk about the prevention of future deaths as well, requiring a state body to have its house in order before it responds to an inquiry to know what it has done wrong and to identify those failings in real time not only assists an inquiry but also prevents future deaths from that week onwards. UEFA can identify failings quickly, within six months, and then not allow a repeat to happen within those six months. That is the Article 2 benefit in real time.

If an inquiry takes years to take place and then years to be completed and the state still does not come up with a clear position as to what happened within its organisation and why, it is worrying not only from an institutional defensiveness point of view but, from a public safety point of view and from a human rights compliance point of view, it is dangerous.

Chair: It seems to me, Mr Weatherby, it is not exactly the same but there is a bit of a parallel with disclosure in civil cases. Everybody has to exchange their documents so that the judge deals only with what is in issue, not all sorts of things popping up later that have not been disclosed to each other.

Pete Weatherby KC: Yes, it is honing. It is not a game where—

Chair: Which is very much money saving and time saving.

Pete Weatherby KC: Absolutely, and also trauma and stress for the bereaved and the survivors are important factors and, as Anna says, to prevent the next disaster from happening while you are looking at the last one.

Q21 **Baroness Lawrence of Clarendon:** My question is about the independent public advocate that is envisaged by the Victims and Prisoners Bill, which is currently before Parliament at the moment. How could the proposal in the Victims and Prisoners Bill affect families getting representation at inquests?

Anna Morris KC: The first focus of the Hillsborough Bill is to ensure proper legal aid funding and proper representation. That has to be front and centre of any Article 2 focus.

The Victims and Prisoners Bill, as I understand it, makes it clear that an IPA cannot conduct illegal activity. There should not be any encroachment upon obtaining proper legal representation.

One aspect I picked up on from Bishop Jones's evidence earlier on was about how you could strengthen powers to prevent documents from going missing and so on. That can be strengthened not just through an IPA but also through strengthening the Coroners and Justice Act and about coroners seizing things more quickly.

In terms of it affecting families, there is a concern that there is not currently enough clarity as to how those work alongside. Legal representation early for families from the outset of a major incident or shortly following a death is the best course to ensure that effective coronial investigation takes place. The IPA role seems slightly different, a signposting, supportive role, but it should not prevent proper legal representation from coming at the earliest opportunity for bereaved families. Ultimately, they need that to understand the process, to digest documents and to know what will happen in terms of police investigations and coronial investigations. They are the only ones who will help families to have that voice within those processes, having as they do the obligations to the coroner's court and to the families. I would not want to see that diluted by an IPA. Would you agree?

Pete Weatherby KC: Yes. The IPA is a parallel project. It is a good and worthy project. But it needs to be carefully brought into the context of this. Even in the Bill that is currently before Parliament, the point is made that the IPA will not be a lawyer. If it is not a lawyer, there is a difficulty

in things like disclosure, which are very much matters that lawyers are more expert in. Also, in the Bill, as I understand it, the IPA will currently be an interested person at the inquest. I have a problem with that on the same basis: you need lawyers at inquests, as the Hillsborough experience shows.

We have tried to put the two projects together and that is why we produced the combined Bill, the second version of the Bill if you like, where we have tried to combine the best parts of the IPA with the duty of candour Bill. We have been putting forward that the IPA can fill a gap before you get to the legal processes. From the point of the disaster or the death, the IPA could signpost to all the services that we have discussed and could provide that bridge between the authorities and the bereaved. We need to be a bit careful in letting it go beyond that.

Baroness Lawrence of Clarendon: Listening to all the discussion about inquiries and how long each inquiry has taken over the years, I presume I should be grateful that the inquiry into Stephen's death lasted only, what, two years?

From reading the document, I found it quite interesting that the independent public advocate would have been useful for people like us. All they had was a police liaison officer, which is completely different. It is good to have something like that to support the family. They are not lawyers but, at the same time, the family needs somebody to talk to and to get messages out. This is such a good way of moving forward to have the Hillsborough inquiry and so I put that forward. That is quite excellent.

Anna Morris KC: We agree with that. As part of a package of measures for bereaved families, the IPA can signpost or the inquest can signpost to specialist lawyers and can, as you say, remove that FLO liaison requirement and provide someone with in-depth knowledge and understanding of trauma and bereavement and process. That is entirely right. But it does not remove the need for legal representation at inquests.

Chair: Thank you for adding that important point, Baroness Lawrence. Often, the police liaison will be exactly the wrong person if the other interested party at the inquest is the police.

Q22 **Baroness Kennedy of The Shaws:** I wanted to ask about the Hillsborough law, including a requirement that evidence and findings of major inquests are taken into account at any subsequent criminal trials.

Pete Weatherby KC: It is an attractive idea. I cannot think of a way of making it work.

Baroness Kennedy of The Shaws: That is why I came to it first. It seems difficult to me. I can understand the inclination to want that and yet, at the same time, they seek to do different things in attributing culpability. It is rather different. I wondered if you had thoughts about all that.

Pete Weatherby KC: Yes. We have had thoughts about it because our clients raised this because of what happened with the criminal prosecutions. They were watching the criminal prosecutions that had followed from the inquests and they would have been keen on some of the material that came out at the inquest going into the criminal prosecutions. That is where it came to.

Could I slightly change the ambit of the question? I am much keener on exploring, in a case like Hillsborough, having representatives of the bereaved having locus—having standing—within the criminal process to make representations on process. I do not mean taking part in the trial, but certain process issues might be—

Baroness Kennedy of The Shaws: Do you mean pretrial?

Pete Weatherby KC: Either pretrial or during the trial in the absence of the jury, but certain things occurred during the trial that the families would have liked to have a say in. I am not an expert in the civil jurisdictions in Europe but, as I understand it, in some of the civil jurisdictions victims have standing to make representations at least on the process. That would be quite a good change.

Baroness Kennedy of The Shaws: That is interesting. Maybe we can explore it further. You will get a lot of resistance from the criminal Bar, I can assure you, to the idea of—

Chair: Can I butt in before you go on to the next question? Presumably another opportunity is after conviction and before sentence.

Pete Weatherby KC: It is, but there were not any convictions.

Baroness Kennedy of The Shaws: That does not help, you see, with getting some of the material into the courtroom.

Chair: No, it does not, but it draws together—or perhaps it does not. Helena, go with your next question.

Baroness Kennedy of The Shaws: It would not, you see, Chair, respectfully, because of the problem that they are reliant on the evidence that has been put before the actual criminal trial. I understand the dissatisfaction from the families' point of view. Things that they learned and that were present in the coroner's court somehow seemed to be absent when it came to the criminal trial of those standing in the dock. I understand that whole dissonance, but there would be problems within it. We might have to have further discussions about how the process issue you suggest might be addressed.

There is another question. I mention that because of the fair trial issues that arise under the European Convention on Human Rights. The proposed Hillsborough law would introduce a code of ethics for public authorities. We all like codes of ethics and we all wish that more people abided by them. What would be the legal effect of such a code in existence?

Pete Weatherby KC: None.

Baroness Kennedy of The Shaws: That is the reality?

Pete Weatherby KC: It is not proposing a statutory, binding code of ethics. The overall scheme here is trying to change the culture. Over the years, the process has failed to change the culture. There has to be some hard law. There has to be a codification of the duty of candour. There has to be a toolkit to enforce it with compliance. Also, there should be a requirement to have a code of ethics so that the body of the police force or the public authority, whichever, is concentrated on that culture issue and embedding it within that.

Baroness Kennedy of The Shaws: It becomes another tool to support the duty of candour because the ethics surrounding it would be about the interests of victims and so on.

Pete Weatherby KC: Yes. There has been a discussion about whether the whole duty of candour could in fact be achieved non-statutorily with a charter, for example. The bishop has put that forward. I completely endorse that. It is not enough. It does not work. Only two of the authorities in Grenfell signed the charter.

Baroness Kennedy of The Shaws: The reality is that you need both hard law and soft law to make human rights work. If you are to respect somebody's dignity, it is about culture, but you need some hard law to make it real.

Pete Weatherby KC: With respect, I completely agree.

Anna Morris KC: You can see that work within the NHS context. NHS England, if I am not mistaken, has issued a code of practice as to how the duty of candour applies, which includes a quite specific example, such as, "You must tell a patient when treatment has gone wrong", making it specific to the culture inherent within that organisation, which would allow each agency to reflect on how its own individual organisations and where the areas of candour might come up. It is different for a police force than it is for a trust, for example. The culture change starts with that reflection and that codification.

Also, once you have it codified, it is easier to test against. Where have you failed in your duty of candour? You did not apologise to that person after the false arrest. You have a specific ground of challenge, then, when you think the duty of candour has failed, more than just the statutory provision.

Baroness Kennedy of The Shaws: There is a weaving together of the two. Thank you very much.

Joanna Cherry: I do not completely understand. It seems to me that the duty of candour is absolutely central to everything here. I do not completely understand how it is policed.

What are the consequences for people breaching that duty? How do you find out that somebody has breached the duty of candour? In a sense, it seems to me, you will not find out until it is too late, almost. What are the consequences for them of breaching it?

We see this pattern again and again, in my life, anyway, from Bloody Sunday onwards, of the state and the establishment closing ranks and telling lies at the expense of people who, frankly, are usually working class and do not have any of the status or the wherewithal to challenge that. The duty of candour is a great idea, but human nature being what it is, how do we police it? How do we enforce it?

Pete Weatherby KC: That is the whole project. Clause 3 establishes offences and penalties. There has to be a big stick in the background. We describe it as a backstop. We hope it is successful and will never need to be used.

Andy spoke about the Manchester Arena inquiry and what the former Chief Constable of Greater Manchester Police said to the Kerslake report. He ended up in the public inquiry accepting that he had made "a very grave error" in what he had said to Lord Kerslake. Effectively nine or 10 months after the bombing, he had in trenchant terms told Lord Kerslake that the police had done things that, frankly, they had not and he should have known that nine months down the line.

I query, if there had been a duty of candour, whether he would have said that. I more than query it. He would not have said that and his lawyers would have said to him, "Hang on a minute. This is not right. You cannot do that."

Codifying it in law and the toolkit that is referred to that is in there that gives chairs, judges and ordinary citizens the power to enforce it through going to the inquiry or the inquest or, indeed, the High Court to require it is its strength. The offences are the backstop.

You raise the point that if somebody will not tell the truth, if they are bold, they might still try to do it. With respect, you are right, but history tells us that people get caught out, as they did in Hillsborough, as they did in the Grainger inquiry where the Greater Manchester Police had to write to apologise to the chair for serious non-disclosure and a senior police officer never returned to work and was charged with disciplinary offences. We have discussed the Manchester Arena.

The truth does come out. People know that. A duty of candour with a backstop offence will stop people from doing it.

Joanna Cherry: We know history tells us that the truth comes out. The difficulty has been that there have been no consequences for people for lying to inquests or inquiries. If your duty of candour becomes inactive, there will be. It will be a criminal offence. The punishment includes imprisonment.

Pete Weatherby KC: It does.

- Q23 **Joanna Cherry:** Finally, as a wrap-up question, are there any further ways in which Article 2 and 3 rights or any other convention rights would be improved by a Hillsborough law that we have not covered already? We have covered things reasonably comprehensively, but I want to make sure we have not left out anything.

Anna Morris KC: I will reiterate the point that Elkan made about the Article 3 point, which we have not touched on in this panel, and the reduction of trauma and the lack of dignity to the bereaved families as well and reducing that taking place over decades. That is certainly part of our view as well.

- Q24 **Baroness Lawrence of Clarendon:** We have been talking about the length of time of inquiries and, within that, you have the bereaved families who are a core participant. Around the core participant, because the first part of the inquiry goes on with the legal argument and all the rest of it that goes on, I suppose I am questioning, at the end of the day, why that core participant, a bereaved family, has to wait such a long time. Is consideration given to the impact of the length of time on the family—these were going on for 12 years. I do not know how to put the question any further than that. Does the legal side look at the impact of that on the core participant, which is the bereaved family, who is taking part in an inquiry?

Pete Weatherby KC: Not enough. I am conscious to whom I am answering the question, of course, because you have personal experience of it.

My experience of having represented a lot of bereaved families in all the inquiries and inquests that we have been talking about is that it is extraordinarily traumatic and stressful for them to be treated in the way they are for such extended periods of time. It has irreversible effects on their lives. There are no two ways about that. Anything that can be done to properly expedite the process—we talked about it saving public money, which is important, but it is massively important that it reduces that trauma and stress.

There are also positives. My observation is that there is some catharsis out of successful inquests and inquiries. It is important that it is stressed as well that truth and justice have a positive effect. I do not know whether that helps to answer the question.

Baroness Lawrence of Clarendon: I was not talking about myself. I was looking at Hillsborough and the families going for 12 years. This takes time. The Daniel Morgan inquest has gone on for so long. We have all that. It seems as if nobody stops to think about the family and the bereavement.

Pete Weatherby KC: May I add one more point on that? We talked about the further delay in the response to the Bishop's report. I have been to the funerals of my clients in Hillsborough in the last year. It is too late for them. This delay is unacceptable.

Baroness Lawrence of Clarendon: It is the double trauma impact of

Hillsborough.

Chair: Perhaps we can put that to the Lord Chancellor when he comes to see us after the Summer Recess to give evidence.

Q25 **Baroness Kennedy of The Shaws:** I believe you were here for the evidence of the previous session. In those 34 years since Hillsborough, the development of social media has happened. We have been talking about the ways in which a narrative is created so early on that can be totally dishonest and totally unreal. It was done at that time by the print press but nowadays, of course, it has a megaphone in the form of social media.

I wondered. In any of your considerations of how one dealt better with the horrors of these kinds of events, is the urgency of doing something now even greater?

Pete Weatherby KC: Yes. That is a good point, with respect. The quicker we can get to a proper answer, the better.

Again, one thing that saved the whole process in the UEFA example was social media. Lots of videos were going around on social media that showed what the French state and the French police and UEFA and the French football federation were saying about what had happened was wrong. That was quite useful.

Absolutely, the quicker the truth can be established or at least the hard edges of the false narrative can be junked is obviously—

Anna Morris KC: You see that in the community impact as well. In north London and in Cardiff, the need for a quick, truthful response to an incident has a huge impact on community safety and community public order and the ability of the community to trust those authorities going forward as well. We are now in hyper speed for that need to happen with that megaphone.

Chair: Thank you very much indeed. That concludes this evidence session.

As Baroness Lawrence's interventions made painfully clear, those whose human rights are most directly affected are bereaved families. In case any of the Hillsborough families have any observations on the evidence that we told them we were bringing forward today and gave them the opportunity for oral evidence, but in case they have further observations to make or want to make evidence in writing, we will reach out proactively to them to see whether they want to add to the compelling evidence that we have heard from you today.

Thank you both very much indeed for your extremely forceful evidence. We will have an opportunity to put some of the key points to the Lord Chancellor when he comes before this Committee in October to answer questions about his superintendence of human rights in the Government. We will issue a report based on this. Your evidence today and the

evidence of the earlier panel have made an absolutely clear and compelling case. We are grateful to you for that. Thank you for your work generally on these issues of human rights. We need professional practitioners to take these issues forward and we know that you do that proactively and in an empowering way. Thank you for your work. That concludes our evidence session for this afternoon.