



Statutory Inquiries Committee

Corrected oral evidence: Statutory inquiries

Monday 15 April 2024

4.05 pm

Watch the meeting

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

Evidence Session No. 6

Heard in Public

Questions 86 - 113

Witnesses

I: The Right Reverend James Jones KBE, Former Bishop of Liverpool, Church of England; Ken Sutton, Former Adviser, Hillsborough Independent Panel.

USE OF THE TRANSCRIPT

1. This is a corrected transcript of evidence taken in public and webcast on www.parliamentlive.tv.

Examination of witnesses

Bishop James Jones and Ken Sutton.

Q86 **The Chair:** Welcome and thank you very much for being with us this afternoon. Before we put questions, may I first invite you to introduce yourselves for the record?

Bishop James Jones: I was previously Bishop of Hull and then Bishop of Liverpool.

Ken Sutton: I was the secretary to the Hillsborough Independent Panel and have worked on a number of investigations since.

Q87 **The Chair:** If I can put the first question, how effective is the current legislative and governance framework for public inquiries?

Bishop James Jones: The major weakness of the framework is that it assumes that the Secretary of State will be the sponsor for a particular inquiry in their particular area. I believe that is flawed, because it compromises the independence. I will give you one major example of that. When the Prime Minister announced that there would be an inquiry into the infected blood scandal, the families who were affected were outraged that the sponsoring department was to be the Department of Health and Social Care, because they felt—and they had evidence—that the department was indeed implicated in the allegations that many of the families were raising.

Because I had been involved with Hillsborough, they approached me and asked whether I would intervene on their behalf to write to the Prime Minister and ask that the sponsorship be transferred from the Department of Health and Social Care to the Cabinet Office. As I understand it, the Cabinet Office did not want it, although Jeremy Hunt, the Secretary of State at the time, recognised the importance of what the families were saying and was sympathetic to a transfer.

In the end, Theresa May, as Prime Minister, agreed with the families' objection, and overruled it and transferred it to the Cabinet Office. I have brought with me the exchange of letters between me and the Prime Minister on behalf of the infected blood community, and I am very happy to share those with you, Chair, if they are relevant to you.

Going back to your point, to assume that the sponsor will be the Secretary of State is questionable.

Ken Sutton: The biggest difficulty for me is the prioritisation of statutory inquiries over non-statutory inquiries. In my experience of both, on different occasions one would fit. On other occasions the other would fit. The Act, either intentionally or unintentionally, has given a sense of hierarchy. This affects families in particular who think and are told that, for their inquiry to be important and seen to be powerful enough, it has to be a statutory inquiry under the 2005 Act. That compresses the consideration of which kind of inquiry would suit best.

The Chair: How would you think it best, then, to address that problem?

Ken Sutton: The problem really turns on the powers, which only statutory inquiries have, to compel evidence, either written or from people attending. That imbalance prevents the value of non-statutory inquiries being aired publicly in the way they should be. The recent case of Lucy Letby is a good example, where public opinion and the families involved were led to believe that only a statutory inquiry would be good enough. The legislation should be reviewed to redress that balance between statutory and non-statutory inquiries.

Q88 **Baroness Berridge:** After the legislation, there was a 2014 report by another Select Committee of the House of Lords. Talking about those conclusions and recommendations, which do you think are still relevant and important, and are there some that you disagree with or that are now outdated?

Bishop James Jones: I have been through the 33 points that are outstanding. I would say yes to the involvement of the chair in the appointment and dismissal of panel members and assessors, and especially in the setting up and amending of the terms of reference.

Secondly, I would say yes to resourcing the inquiries unit and making provision for lessons to be learned.

Thirdly, I would say no to limiting all inquiries in the way that Ken has just said. It says "normally" in the 2005 Act. I agree here with the Government in rejecting that view. I do that from the point of view of having chaired three independent panels, believing that there is virtue in an independent panel. It can achieve certain things that a statutory inquiry might not be able to.

Baroness Berridge: Could you outline what it could achieve that a statutory inquiry could not?

Bishop James Jones: The problem with many inquiries is that, although they are set up for the aggrieved, they fail to serve the aggrieved. Certainly in independent panels that I have chaired with the help of Ken, we have been able to blend what I could say is the forensic with the empathy. Sometimes the empathy evaporates from a public inquiry and, indeed, some families can feel that even their own lawyers do not really take them to heart. Even the geography of a public inquiry—the way the room is set out—sends a particular message about how the families are themselves alienated by the legal process.

For example, when the Grenfell inquiry first started—it has changed now—in its original layout the room was dominated by lawyers at their tables, and the families were literally squeezed to the side in chairs that were locked together and put at the back of the room, and then there was an overflow room. That demonstrated that the forensic was taking priority over the empathy.

The challenge for a public inquiry—and, indeed, what we hoped to achieve in the independent panels that I chaired—is to blend the forensic with the empathy, without compromising or prejudicing the outcome.

Ken Sutton: Just to add to that, in my experience, with a non-statutory inquiry it is possible to act more quickly. The initial period following a decision to grant an inquiry is critical for the people most closely affected. In the examples with which I have been involved, including the Hillsborough Independent Panel but also the East Kent maternity independent investigation, we were able to immediately contact the families most closely associated and make that direct connection with the inquiry, so that the families concerned had a basis for trusting that process to be listening to them and to be addressing their concerns.

I fear that, with a statutory inquiry, the paraphernalia, if I could use that term, of just getting it started and the disposition to be working through lawyers rather than directly with those concerned gets in the way of that relationship.

The Chair: Your point would be that, with a non-statutory inquiry, it is not just a question of speed but of flexibility and not making it too formal.

Ken Sutton: Yes, indeed, and the Hillsborough families still say to me, “We valued the ability to talk directly to the bishop and other members of the panel. We valued talking directly to the secretariat and not having to go through their legal teams to do that”. Their legal teams, when they came to the second inquest, were very dedicated to the families. It is not a criticism of them, but, from the families’ point of view, they said to me that they missed that direct connection.

When the process moved from the independent panel to the inquests, they did not feel that they had the same connection with that form of inquiry. Similarly, with the East Kent bereaved families, of which there were over 200, not one of them said to me that they wanted to engage through their lawyers.

Q89 **Baroness D'Souza:** Would you say that the original or the chief purpose that is articulated for a particular inquiry influences the way in which it should be set up, and that there are certain times when a statutory inquiry, with all its legal paraphernalia, is important, depending on the aim of the inquiry? Forensics could be the aim, for example.

Ken Sutton: I would not support the suggestion that a non-statutory inquiry could not be both forensic and empathetic. The East Kent maternity investigation was very forensic in looking at what had happened in those 200 or so cases. In fact, it was more expert than a statutory inquiry would have been, because it was able to draw upon the expert resources of a panel, not just a single person. It is not a choice between empathy and being forensic. In certain circumstances, different forms of inquiry would fit the requirements more, not so much because

the aim would be different but because the circumstances would be different.

Baroness D'Souza: In a sense, you are saying that family satisfaction is of prime importance.

Ken Sutton: Public confidence is fundamental. It is very hard for public confidence to be achieved if the confidence of the people most closely affected is not provided by the form and the conduct of the inquiry itself.

Q90 **Lord Faulks:** You both used the expression "forensic", and I want to just drill down a bit on that. "Forensic" can be a shorthand for a rather formal legal-type process. If a number of lawyers are involved or there is a judge chairing it, there is a danger that an inquiry can simply mimic a case, as it were. Do you mean "forensic" in the sense of a thorough and, if necessary, dispassionate examination, which can be sometimes achieved by a non-statutory inquiry, without all the paraphernalia of a forensic-type trial?

Ken Sutton: Yes, that is exactly what I mean.

Bishop James Jones: I agree.

Q91 **Baroness Chakrabarti:** You make a very compelling case, on one side of the equation, for the benefits of empathy and perhaps a bit of informality that come with a non-statutory approach. Just to explore the other side of the equation, what about occasions where there has been repeated obfuscation by state authorities in particular? That is why we need to have a public inquiry in the first place. How can we square the circle, with the informality, the empathy and the flexibility that you are describing on the one hand, and the need to require those who have obfuscated and not answered questions to make full and frank disclosure? How might we try to square that circle?

Bishop James Jones: The terms of reference become key at this point. This often differentiates an independent panel from a public inquiry. Having had discussions with people involved in setting up public inquiries, I have heard stories of terms of reference being drafted at very short notice, at the last moment. What characterises the Hillsborough Independent Panel and the Gosport Independent Panel, both of which I chaired, is that a lot of time was put into drafting the terms of reference, beginning with meeting with the families.

Ken had a team of people who met with the families to listen to what the questions were that they were asking. The brilliance of this is that, once you have then done that proper consultation with the families and found out what their concerns are—the obfuscations, for example, which may be one area that you will want to examine—you then draw up your terms of reference to cover the very areas that the families have registered with you.

At that point, having identified these key areas of concern among the aggrieved, you then appoint experts in those fields, so that, when you

access the documents for your independent panel, you have a team of experts in those fields who are able to interpret these documents and explain what was and was not going on. You apply the expertise of these experts to the very areas that are of concern to those who have been affected by the tragedy or whatever it is that you are inquiring into.

Ken Sutton: I would add that the scope for obfuscation is there with a statutory inquiry as well. The dynamics of a statutory inquiry play to how the position of public authorities can be constructed and outlined in the context of formal forensic—in the other sense of the word—proceedings.

I am thinking back, Bishop, to the work of the Hillsborough Independent Panel, where we were able to discover things through what you might call the informality of it, which would never have emerged through a statutory inquiry—I can provide examples of that—because they were revealed in conversations that were more private. Documents were revealed to the Hillsborough Independent Panel that would never have surfaced through a statutory inquiry, because they were held by individuals, for example, who would never have been interested parties in a statutory inquiry.

Q92 **Baroness Berridge:** Can I just ask you to draw out a bit more on what you have described about looking at the documents, Bishop Jones? We are now aware that there are often millions of documents in these inquiries and that very specific firms can be employed literally to just go through them in a very automated way. You were mainly talking about understanding institutional culture—what was happening in that institution at the time. Does that have an effect on disclosure and the ability to understand from the documents what is or is not relevant for an inquiry to look at?

Bishop James Jones: In both cases, we accessed approximately a million documents. It is clear that people do not want to share their documents. I know that this is tangential now, but if we think of the proposal for the independent public advocate, it seems to me that one of the things that the IPA should be doing in the immediate aftermath of a tragedy is informing all the agencies that are implicated in the tragedy and telling them, “No documents hereon should be destroyed”.

If you were to ask me whether the 2005 Act should be changed at all, one of the things I would ask for is that independent panels be covered by the 2005 Act, so that independent panels also have the authority to say to people, “You can’t destroy documents”.

Q93 **Baroness D'Souza:** Apart from the fact that the public may feel that only a statutory inquiry will be good enough, what are the main pluses of a statutory inquiry as compared to a non-statutory one? You have talked a lot about the advantages of the flexibility of non-statutory. What comes up for statutory inquiries that is of overriding importance?

Bishop James Jones: Having never chaired a statutory inquiry, I am not an authority to answer your question. Clearly, I am here to speak about the advantages of an independent panel. The fact that the public

themselves ask for a judge-led inquiry more often than not is one of the strengths of a public inquiry.

It also means a lot to the public that you can compel people to appear before the inquiry. I would have thought that was its major advantage, and that having a judge, the public imagine, chairing a statutory inquiry will make sure that nobody escapes the scrutiny of the inquiry. That is probably its best advantage.

Baroness D'Souza: But that is not necessarily the case, in your view.

Bishop James Jones: No. That does happen, but as Ken and I are trying to show, there are other options for scrutinising how people have behaved in a public tragedy. Forgive me if I carry on speaking of the virtues of an independent panel as to a public inquiry, but the Institute for Government has done a lot of work on this and has shown that the recommendations of many public inquiries remain on the shelf. They are simply not followed through.

The families and the public have expected that a judge will preside over a public inquiry, people will be held to account and then things will change. The problem is that things do not change. The evidence is there. Although I do not have it at my fingertips now, the Institute for Government would give you that.

Lord Aberdare: It has done.

Bishop James Jones: Forgive me if this sounds as though Ken and I are blowing our own trumpets, but by contrast, after 35 years, on 6 December last year, the Government responded to the report that I wrote called *The Patronising Disposition of Unaccountable Power*. The Government responded to every one of the 25 points of learning. The Government acted upon many of those points of learning, including signing the charter for those bereaved through public tragedy.

I would like to argue that that is a result for independent panels. Many public inquiries fall by the wayside, but here is an example of an independent panel changing government policy and changing culture, which is what we argued was required. Forgive me for not answering more about the statutory inquiry.

Q94 **Baroness Sanderson of Welton:** Thanks for coming. I declare an interest, having worked with you both well in the past. I have a quick question, going back to Baroness Chakrabarti and everything that you said, Bishop Jones, about the reason people want a statutory inquiry being that they worry about obfuscation. Ken, it would be really helpful to have examples of where you believe a non-statutory inquiry produced more evidence than a statutory one.

A very quick question to both of you on the flip side of that: did you ever find that there were examples of information that you wanted but could not get because you were non-statutory? Everybody involved in these tragedies is very used to people, as you say, Bishop Jones, destroying or

not producing evidence, and that is why people go for statutory. I would just be interested to know whether you came across that and, if you did, whether you were able to get over that hurdle.

Ken Sutton: To quote two examples from Hillsborough that speak to both those points, we asked South Yorkshire Police for the production of police notebooks and were told that they no longer existed, but they were produced for the inquest that followed on from the Hillsborough Independent Panel report, with no explanation as to why they had not been provided before. That is a clear example of where the legal authority—in that case, Sir John Goldring’s inquests—produced documents that had not been provided before.

It was of less moment than that might make it sound, because we were able to analyse the changed police statements that were provided to us and show the only possible explanation for why those statements had been changed. The panel was able to get to the truth of that, but the notebooks themselves were never provided to the Hillsborough Independent Panel.

The other example is that the panel discovered that South Yorkshire Police had accessed the Criminal Records Bureau’s records of those who had died, but only where the blood alcohol level had registered above a certain level. That document was not held and not otherwise provided, but the secretariat discovered that as part of its detective work, if you like, which would not have been produced. To be quite clear, it was not held by South Yorkshire Police and would never have been divulged in a statutory inquiry.

Q95 **Baroness Chakrabarti:** If I may say so, this is incredibly helpful, because I am now getting the sense—please correct me if I am misunderstanding—that we have problems of perception, i.e. anything that is not statutory is not serious. That is just pure perception, whether it is right or wrong, so that is an issue. On the one hand, we have issues of overjudicialisation and legal formality that can almost get in the way of both empathy and now of detective work, as you put it.

On the other hand, as you and the bishop pointed out, there are sometimes issues of the need for legal authority to prevent, for example, the destruction of evidence. It seems to me that you may be nudging us towards a recommendation of different flavours of statutory inquiry, rather than abolishing them, which could be put in the statute to create the same authority and the same legal requirement not to destroy evidence or to lie, for example, regardless of whether this inquiry is chaired by a judge or by a bishop, or is more inquisitorial or more adversarial. I am seeing nodding.

Ken Sutton: That is exactly what I had hoped to have said.

Q96 **Lord Aberdare:** There is a dimension of that that I would be interested in having clarified. We have talked about a single, judge-led statutory inquiry or a panel. My understanding is that you could have a multi-headed statutory inquiry, but are there features that you would see as

particularly relevant to deciding whether a panel with a multi-headed body might be more suitable than a single-headed body?

Bishop James Jones: There needs to be expertise held centrally about inquiries and panels. At the moment, it feels a bit ad hoc—something happens: “What do we do? Let’s have an inquiry”—rather than there being some professional care of the process of setting up an inquiry.

Although I welcome the resourcing of the inquiries unit in the Cabinet Office, I would go even further and say that we need a commission for public inquiries that holds that expertise, so that you can determine exactly what is appropriate in a given situation and can do that initial work of drawing up terms of reference through consulting with those aggrieved, finding out what the questions really are, and then deciding whether a judge-led inquiry or an independent panel would be appropriate.

Ken has already given the example of Lucy Letby. I am not sure whether we are able to say this, but when I followed it it struck me that one of the areas that should be looked at in that inquiry is hospital management. That was clearly a toxic area. As far as I know, there is no specialist appointed to help any inquiry to understand the nature of hospital management. That is one example.

If you had an independent commission for public inquiries, it would save a lot of the problems that we have encountered. The Gosport Independent Panel reported in 2018. I cannot say much more about it, because it is now the subject of the largest police investigation in the country at the moment, with Operation Magenta investigating over 700 cases of allegations of people’s lives being shortened through an excessive use of opioids without any clinical indication.

After the panel did its work and was then disbanded, Ken and I produced a lessons learned report, outlining the 12 things that we learned about doing this panel in this particular way, very much following, I have to say, the model of the Hillsborough Independent Panel, which Ken had pioneered. Again, if you are interested, I have brought a copy of that with me and am very happy to hand that over to you. At the time, I gave it to the Secretary of State and to the Prime Minister. The 12 points in that lessons learned report would be relevant to your own work.

The Chair: That would be very helpful. Thank you.

Q97 **Lord Wallace of Tankerness:** You have answered many of the questions that I wanted to ask. One of them was about how a Minister or whoever should identify which issues are suitable for statutory inquiries and which for non-statutories. Without putting words wrongly into your mouth, Bishop, you said that you got some evidence through private conversation. I just wonder how you strike the balance between gathering evidence in that way and a public inquiry. There always needs to be transparency as well, and it may relate to the kind of work that you said you did to get some of these criminal records. What would stop a

statutory inquiry getting that through diligence?

Ken Sutton: If you look at the Act itself, nothing. The problem is that the 2005 Act has led to a stereotype of a statutory inquiry, which becomes the expectation. That is the problem, as much as the terms of the Act, because I have often been told that a statutory inquiry could do the kinds of things that I would want to do through an independent inquiry, which would be to engage with the families directly and to have a variety of techniques as part of the investigation, not simply a courtroom-type environment, which inevitably becomes adversarial.

In practice, that does not happen. Very rarely does a statutory inquiry step aside from a theatrical courtroom process, and that is the problem. Apart from anything else, it gives a voice to only a certain type of person who can act in that. On the Hillsborough Independent Panel, we engaged with each of the Hillsborough families, but very few of them would have welcomed the opportunity to be a part of that very public occasion. Most of the work of the Hillsborough Independent Panel with the families was private, and properly so, but recorded very fully in the reports. Nothing that I have said is a secret. Everything that I have said today is in the report.

The culture of statutory inquiries needs to be varied in the way you were describing a moment ago, so that there is a better understanding of when different types of inquiries would fit the bill. The day after the Grenfell Tower disaster, I was asked and I advised that there should be a statutory inquiry in that case, because it was clear to me that that was a serious event, and no other form of inquiry would be heard by the families as recognising the significance of what had just happened.

Then you move into, "How should the inquiry be conducted?" which is a different issue. Again, we offered views on where that inquiry should be held, and points, including yours, Bishop, about how the families should be participating in the inquiry in a way that put them, not the legal process, centre to it.

Bishop James Jones: Again, referring to the independent public advocate, they will inevitably have a role. I want to welcome the Government's change of mind over the IPA, because they have now agreed that it should be a standing appointment. Originally, they proposed that the Secretary of State would decide whether there would be. My own experience is that in the immediate aftermath of a disaster is when the families need support.

I am glad that the Government recognised that that is the case, so I imagine that, although the post is yet to be shaped, the IPA would have an input into those who make the decision about the public inquiry and what sort of inquiry it is, because the IPA will have followed the families from the moment of their tragedy and through their trauma, and will have some understanding of the narrative and be able to advise on what things need to be investigated. I know that it is not yet law, but I would

draw your attention to that appointment being made and how that will affect this discussion.

Q98 **Baroness D'Souza:** Would that IPA be a member of the suggested commission?

Bishop James Jones: Which commission?

Baroness D'Souza: You suggested that there should be a commission set up to decide what kind of inquiry.

Bishop James Jones: The idea of the commission is that Ken and I have been thinking about this for a long time. We are proposing the independent commission. At the moment, that has not been factored into the IPA, nor has the IPA been factored into the commission. Since the landscape is changing, it is important that we realise that this is another opportunity.

Baroness D'Souza: The reason I ask is because this is coming up with the Victims and Prisoners Bill. As you say, it is not law yet. Would there be some advantage in suggesting, in its passage through the Lords, that it should be part of an independent commission?

Bishop James Jones: It should be registered that there will be an opportunity, should there be an independent commission, for the IPA to contribute to thinking about the inquiry. In fact, when I appeared before the Justice Select Committee, I made the very point that this should be noted.

Q99 **Lord Addington:** This is primarily directed at Bishop Jones; it is very odd to think of you as Bishop Jones as opposed to the Bishop of Liverpool. Which of the recommendations in your report, *The Patronising Disposition of Unaccountable Power*, are most relevant to this inquiry? How effectively are your recommendations being responded to and implemented?

Bishop James Jones: I have answered some of those questions already, but it gives me an opportunity to say that. We were able in both independent panels to recognise the trauma of the families. There is the tragedy, but then there is living with the tragedy. The tragedy is an event or events, whereas trauma is a process that people go through.

I am not sure that we always understand the nature of the trauma that people are experiencing when we set up these inquiries. For example, we find them still very angry. We find them very distrustful of people and authority. We find them distrustful of bodies or panels of inquiries that have been set up by government, because their experience of government has been that they have been let down.

I will give you one example. It is no secret that, after public tragedies, different groups emerge. We imagine that, when there is some terrible event, all those who have been affected would be united by that tragedy, but the opposite is the case. I remember the late Peter Sissons, who was

on the Hillsborough Independent Panel. He was from Liverpool and had great affection for Liverpool. He was surprised that there were three different groups. When he asked me why that was and why they could all not just be united in their search for truth and justice, I said to him, "Peter, many marriages do not survive grief, so why should friendships, especially if they are forged out of grief?"

Little, trivial things can upset people, and people can retaliate. Before you know where you are, you have overlaid one difficulty with another and it is very difficult to disentangle. Again, through Ken's leadership, instead of trying to bring all three groups together we said that we should recognise that three separate groups existed and endeavour to work with them separately.

Interestingly, I found that in my engagement with the families—this was never part of my job description—I was drawing upon my pastoral expertise rather than, if you like, the forensic expertise that other people brought to the table. After we produced *The Patronising Disposition of Unaccountable Power*, the first people to contact us were Grenfell United. They said, "We've read it, and we're now going through what the Hillsborough families went through".

I want to emphasise that, without compromising the forensic or the legal processes, we need to recognise that, when you engage with traumatised people, certain things are required. That should be flagged up, which I hope an IPA and an independent commissioner for inquiries would recognise.

Lord Addington: I just want to be clear about this, because it is something that anybody who has worked in groups outside, when dealing with the state, absolutely recognises. There are dozens of things around education, et cetera. Anything that has been done where people feel the state has failed them mirrors, to a greater or lesser extent, what you just said. Should the machinery of government recognise that? Why did they not have a better reaction to it?

Bishop James Jones: It is because of a lack of understanding and a lack of putting yourself in the shoes of the people who have suffered, but also because, when you go into a situation to seek to help and people are angry with you, your own human reaction is to recoil.

Again speaking personally, I found that one of my tasks as chair of a panel was that, when families expressed anger at it, the panel did not recoil. It understood why they were angry, because the anger can sometimes be very vicious. Indeed, we had a recent experience. Ken and I are involved in reviewing the pathology of Hillsborough. We met recently with a family who had been really difficult. In this very last meeting, they were lovely.

Those of us who are called into these situations to engage, to find remedies and to effect change have to understand that that anger is real. Just the other day, I was asked by Michael Gove if I would chair his

meeting with the Grenfell community. After the meeting, I was led to say to this very angry room, "You're right to be angry". Just saying that meant a huge amount to a substantial number of people in the room.

Why do we not do it already? Some people do. I would give the infected blood inquiry as a great example of that. We do not do it because we need greater human understanding of what tragedy and trauma does to people.

Lord Addington: So a less legalised, forensic response would get a much better result and a much better interaction.

Bishop James Jones: It could do.

Q100 **Baroness Berridge:** Dealing with your comments on trauma, the incidents that we have talked about so far are an event and then trauma following. We had evidence from one of the lead campaigners on Scottish infected blood, which particularly brought to my attention the trauma that there can be on people that is created by the process to get to an inquiry. You made a comment in your report about the definition of "public disaster" and that we have moved to "major incident". Have you any wisdom for us—it might be that definition—about how the whole corporate thing, including MPs, et cetera, can respond better to avoid placing more trauma on people to get to an inquiry of whatever nature they get to?

Ken Sutton: The first point is reaching out to those people early following the tragedy or the major incident—I may come back to the language of that in a second—and making that connection. This is one reason why we favour or see virtue in a non-statutory inquiry, because that connection can be made more quickly than it can in a formalised 2005 Act inquiry, which will tend to focus on the process of establishing the inquiry rather than contacting the people most affected.

Those people will be wanting reassurance that they are being listened to, but they need to have that reassurance quickly, otherwise their confidence in a decision that might have been taken in very good faith to hold an inquiry will evaporate very quickly if there is not that direct contact.

You are right to refer to the language, because our experience is that the words matter. If you are talking to people who have been traumatised and you describe it as an incident, for example, how can you expect those people to believe that you are understanding what they are going through? If they have lost a child—or, in the case of Trevor and Jenni Hicks, both their daughters at Hillsborough—and you say to them, "We're creating an inquiry into this incident", it is not an incident for them.

The language that is used is very important. That is why we have tended to favour the language of "public disaster" and not "incident". We would never talk about "an event"—I well remember Jenni Hicks reprimanding me about that very term—because these things are not an event in the lives of the people affected; they are much deeper than that. The

language that is used is very important, and you can see how people stumble into using terms that, on reflection, are not the right terms to use.

Bishop James Jones: I would add that, when you are seeking a definition, a major incident is not about numbers. A major incident could involve the death of one person. I quite understand that you need to work out a definition. We have spent some time doing it, and it is not easy. Again, we would both be very happy to help anybody who wanted to sit down and brainstorm on this.

Adding to what Ken has said about language, people in charge of investigations will often use words like "closure". I have never heard anybody at Gosport or Hillsborough talk about closure, because how can there be closure to the love that you have for somebody you have lost? It is a totally inappropriate word. It is a word that operators use. It is not a word that people who are bereaved will use.

The other point I would make, because so many of these tragedies involve not just survivors but the bereaved, is that, again, drawing on my pastoral work, grief is a journey without destination. You do not come to the end of that journey. You live it always. As Ken has exemplified, people can speak very loosely in the presence of people who are bereaved and very much on a journey. The inquiry or the panel is a step on that journey. It is not closure. It is not the end. People who manage these things need to be sensitive to how those words sound to people who are traumatised.

Baroness Berridge: To take ourselves back, you are one or two people in Scotland. You think that something has happened. We now have social media. Would you envisage it being a role of the commission that people like that could contact the commission and say, "I think something has gone wrong here", to expedite that process? They spend many years before getting anywhere near any type of inquiry.

Bishop James Jones: It could happen in that way. I do not know for certain. What I know is that there is an irrepressibility about a major injustice. It simply will not go away. It is like hanging a sheet of wallpaper and you find that you have an air bubble. You press it, thinking that you have got rid of it, and it has appeared somewhere else. Gosport happened 30 to 40 years ago, and infected blood 40 years ago. Today is the 35th anniversary of the Hillsborough disaster. It was 34 years before the Government responded. It is about the irrepressibility of injustice.

I would also like to put this in a positive light too, because, having followed the Post Office scandal and inquiry, although depressing, it is also inspiring that these people have not given up and will not give up. Why? Because there is a basic injustice and because, with the help of some investigative journalists and some good dramatists, the public see it as an offence to natural justice. It is the public's rightful anger at the injustice that has been visited upon them that will not let this go away.

Therefore, there is an inquiry and there may be court cases, and people will want to see people held to account.

If I can quote Margaret Aspinall, she does not talk about justice. She lost her son James. She talks about accountability. Going back to Jenni Hicks, when the second inquest returned the determination of unlawful killing, she said, "If our daughters have been unlawfully killed, who was responsible? Who was accountable?" I take great heart from the British public supporting them, not initially but eventually, in wanting there to be a degree of accountability for injustice.

Q101 **Baroness Chakrabarti:** Thanks again for this very thoughtful and inspiring testimony. To follow on from that point about accountability and previous points that you have made, there will sometimes have to be something a bit more formal and a bit more judicialised, with lawyers, et cetera, involved. It seems from what you have been saying in recent minutes that there might be some learning even for those professionals. Even if they are to be legal, judicial and forensic in that way, there might be some training. For years, we have been reading about consultant surgeons who are brilliant surgeons but need to do more on the bedside manner front. You are suggesting that there are other professionals, including my fellow lawyers, who could sometimes learn as well.

Bishop James Jones: It is already happening. Again, Ken and I have been asked to address the England and Wales fire commissioners. I was in Wales at all the housing associations just recently, talking about tragedy and trauma. I have been to the College of Policing to help train the next cadre of chief constables in how to respond to tragedy and trauma. People are aware.

A major part of *The Patronising Disposition of Unaccountable Power* is that we have been calling for a change of culture. That is what is required. I know that the Hillsborough families want a change in the law, and we support that, but there is also a need for a change in culture. We begin to see that happening in different areas, but you are right that more training needs to be done.

Q102 **Lord Hendy:** I wanted to ask you about the bereaved and injured. We are concerned about what their proper role is in a public inquiry, how effective their involvement is and how their involvement can be improved. You have touched on some aspects of this, such as involvement in the terms of reference, the layout of the inquiry, informal conversations with the panel and so on. Could you give us a little more detail about arrangements for the bereaved and injured at the Hillsborough inquiry?

Bishop James Jones: I will ask Ken to speak to that, because we set up a family liaison group who exercised a really important influence over the whole process.

Ken Sutton: We met with the Hillsborough families individually at the start of that process and well before the terms of reference were settled. That was one of the purposes of those meetings. We began to talk

through how the inquiry would be conducted and how they would be able to engage with that. We said that we were always a phone call away and that, if they wanted to meet with us personally, we would always do that, and we did. That developed a way of working that I would attribute to the success of that inquiry.

It requires certain skills of engagement, if I could use that term, to be able to do that. The contrast that I see with statutory inquiries is that I fear that they are scared of giving an impression of being partial towards particular groups. This is where the 2005 Act has led to something unfortunate, which is that, in the belief that you have to treat every interested party in exactly the same way, the opportunity to do what we did with the Hillsborough Independent Panel is forsaken, whether that is because the legislation would prevent it, or whether it is the culture and the expectation of how a public inquiry—particularly a judge-led statutory inquiry—would operate.

Because of the sense that statutory inquiries have that every interested party has to be dealt with in exactly the same way, you do not get that particular contact with the families. I am absolutely unapologetic about the virtues of doing that. It does not mean that the inquiry is showing any favouritism. What families in these positions want is for the inquiry to be impartial. It would have been of no service to the Hillsborough families if the independent panel had not been absolutely forensic, in the sense that we are using it, and dealing very objectively. It was only of value to the families because of the integrity of the panel process. That gives us an indication of the ways in which the contact with the families is important.

In the same way, when I was asked to be secretary to the East Kent maternity investigation, the first thing I did was meet with Sarah and Tom Richford. The loss of their baby was the index case, if you like, that led to the National Health Service eventually granting that independent investigation. I met with them before there was any process otherwise of investigation, and that established a basis for confidence in the investigation, which has carried on to this day.

Bishop James Jones: I would add that, after a public inquiry and scrutiny of private prosecutions, and when the Hillsborough Independent Panel was set up and the family liaison group was working, Margaret Aspinall said, "This is the first time that we've ever really been listened to. This is the first time that anybody has taken us seriously". That was quite an indictment, really, of all the previous processes.

Q103 **Lord Hendy:** Can I ask also about the formal arrangements in the inquiry—for example, the ability of the bereaved and injured, through their lawyers, to ask questions, say, of South Yorkshire Police? Were the three groups separately represented? How were they funded? How did all of that work?

Bishop James Jones: I will leave the funding question to Ken. The families themselves did not have direct contact with the South Yorkshire

Police, but they did have contact with us as we drew up the terms of reference that then shaped the work. The phrase I have often used is that the terms of reference were shaped but not defined by the families.

They were able to tell us the questions that they wanted answers to about how the South Yorkshire Police had behaved. We engaged with the South Yorkshire Police and their documents. The families themselves did not do it, but they did have support. Ken, you can speak about the Home Office.

Lord Hendry: Just before Mr Sutton comes in, can I take that a little bit further? When you say, "We asked the questions", do you mean you as a panel or did you have counsel to the inquiry? How did that work?

Bishop James Jones: We were a panel of nine and a secretariat of about 20. We worked as a team together. We had 34 plenary panel meetings over the three years. People worked in different areas according to the expertise of the panel members. We had archivists and specialists in information access and data protection. We had a specialist coronial lawyer. We had an assistant chief constable. We had a medical director. We had people who covered the different areas that the families had registered with us were their own areas of concern.

Ken Sutton: The panel chose to meet with the Hillsborough families on the very first day that it met, so the families could see there was no predetermination on the part of the panel to arrive at a view that was not based on what it was learning from the families.

In that way, the families came to trust that the panel process would dutifully follow up their concerns. I do not remember them ever saying to me that they wanted to contact South Yorkshire Police or any other public authority because they trusted that the process was effectively doing that and doing so impartially.

Lord Hendry: There is one final question from me. The involvement of the bereaved and injured in contributing to the terms of reference almost suggests that the bereaved and injured should be a proxy for the public interest. Clearly, the bereaved and injured will always be a central part of an inquiry into a tragedy. Is that how you see it?

Bishop James Jones: Yes, because the confidence of the families is key to public confidence. If you lose the confidence of the families, the public will then lose confidence in you.

Ken Sutton: Just to answer the question about funding, the families were not funded during the Hillsborough Independent Panel's proceedings, but they were after that, when Theresa May, as Home Secretary, decided to instruct me to ensure that there was equal public funding available for the legal representation of the families at the forthcoming inquests. That had not been the case following the disaster itself. That is one reason why the first inquests failed to arrive at the right conclusions.

I established a scheme that ensured there was proper legal representation in what is called the equality of arms. That principle is one that they are still contesting with the Government, which have moved some way, but not entirely, in the direction of achieving that.

Q104 **Lord Grantchester:** I apologise to the committee and to our witnesses for being slightly behind the pace today—it is our first day back after the Easter Recess—especially on today’s anniversary. I do appreciate that.

My question is probably more relevant to the previous question and your specific report. I come to the duty of candour. It seemed to be a very important part for the families, which to a large extent seems to have been forgotten. As we all know, the Government replied in December. At that time, in their Oral Statement, they did not accept the duty of candour from your report. At that time I took it up with the Minister and have had conversations with him since.

The duty of candour was even the first amendment from our Labour Benches in the Victims and Prisoners Bill that has subsequently gone through Parliament. For the families, it was extremely distressing to see the constant obtuse replies from public servants and witnesses who were lawyered up when giving all their answers.

Is the duty of candour still very important to you? Is it central to your report? In fact, how could we take that further forward? Could I tempt you, perhaps, with this challenge? Part of what the Hillsborough families were calling for was for the duty of candour to be extended further along the line in some way such that it was not just met with a blanket ban from the Government. Could we take it forward in some way that would further satisfy the Hillsborough families?

Bishop James Jones: One of the encouraging aspects of the debate about Hillsborough is that it has been bipartisan until now. That has been helpful to the families and survivors. You are right: there is a question about the duty of candour. The Government have sought to address it by laying upon the chief constable of each force a duty of candour in order to ensure this is rolled out within their force. That is a step in the right direction and to be welcomed.

What is also to be welcomed is that the Lord Chancellor has promised a debate in Parliament about Hillsborough. No date has yet been given to that, but I fully expect that, when that debate takes place, it will be a further opportunity for people to rehearse the arguments for a duty of candour not just on the police but on all public bodies.

We have also argued, especially in the *Patronising Disposition* report, that the duty of candour can be achieved not just by a change in the law but by a change of culture. That is why one looks to the leaders of different institutions and public bodies to bring about that change of candour within their organisations. Thank you for registering your point. We look forward to the debate taking place as soon as possible.

Q105 **Lord Aberdare:** My question is about how Ministers and their departments can be more effective at sponsoring public bodies. I was

very struck by what was almost Bishop Jones' first comment about the inappropriateness of necessarily having the obvious department as the sponsoring body. You also mentioned the role of a Cabinet Office unit.

The impression we are getting is that sponsoring Ministers and departments have considerable powers but do not necessarily exercise them. Maybe those powers should be exercisable but not necessarily by the Minister who is most directly affected.

Bishop James Jones: At the risk of repeating myself, what alarms families is that in the end, according to the 2005 Act, it is simply down to the Secretary of State to determine the terms of reference. If people have no trust in a particular department, you can understand why they feel this is not fit for purpose. There needs to be a degree of independence in order to secure the confidence of those who have been aggrieved. There needs to be an independence to the scrutiny.

As I said, the Secretary of State at the time agreed that it should be transferred from his department. If you have a Secretary of State being advised by civil servants who have been implicated in the allegations that are being made, that does not give confidence to those who have genuine questions.

Although there are some awkward customers in all these situations, my experience is that, by and large, the vast majority of people who press for these inquiries are decent ordinary people who, in good conscience and good faith, are asking questions about how their loved ones died. They have to be assured that the scrutiny of their deaths is done by someone who is totally independent.

Lord Aberdare: Turning that around to a possible recommendation that we might be making as to how to achieve that, as opposed to the situation we have at the moment, is there a way in which you would see that being most appropriately done? Who would do it?

Bishop James Jones: Again, forgive me for repeating myself, but a commission for public inquiries is the only way to do it.

Q106 **Lord Davidson of Glen Clova:** You talked about resourcing a Cabinet Office inquiries unit. That seems to be a rather nebulous institution, if an institution it be. The notion of a commission of public inquiries, as I understand you, is to be wholly independent and easily seen as that to build confidence and to avoid the distrust that comes. Is this an either/or question about whether the Cabinet Office unit should be involved? Should that be to one side, or should it be the commission that takes charge of all the organisation?

Bishop James Jones: I quoted the bit about the resourcing of the unit because it is in the 33 points arising from your review. I would go the whole hog. I would not expand your unit in the Cabinet Office. I would invest those resources in setting up an independent commission.

Q107 **Baroness D'Souza:** Following on from Neil's question, if you had a commission or a unit, whatever you might want to call it, which was

wholly responsible for holding the institutional memory of previous inquiries and their outcomes, and capable of deciding on what type of inquiry would be appropriate in a given case, setting the terms of reference and perhaps doing a lot more, it would be a substantial organisation.

The question I ask, perhaps unfairly, is about the real likelihood of such a commission being set up, particularly when you think about the potential danger of reputational risk. That is why I assume that departments wish to somehow contain some of these inquiries. There have been many attempts, including in the various reports that we have looked at that precede this particular inquiry, that the Government have skated over quite lightly. Do you have any insight as to what is likely to be acceptable?

Bishop James Jones: It is a tough question. I acknowledge that the setting up of an independent commission would involve cost. One of the points that I have made previously to the Home Secretary about public inquiries is that they need to have a present public benefit as well as being an historic review of something that has gone wrong in the past.

That might be one way of being able to determine which public inquiries should be established or which panels should be set up, because not every negative episode in our past would necessarily merit such an inquiry or panel.

Ken Sutton: If I could add to that on the costs involved, the investment in a commission for public inquiries would be recovered very quickly, because at the moment the threshold for a statutory inquiry is very low. After almost any incident or public disaster, there is going to be pressure for a public inquiry, and the Government are struggling to resist that.

If there were a better-informed and trusted route for deciding which form of inquiry would apply in which case, you could rebalance that. You would find that the inquiries that were done with less cost, such as the East Kent maternity investigation or the Hillsborough Independent Panel, were very cheap compared to a statutory inquiry.

By whichever route we get there, if we rebalance the assessment of which inquiry would apply in which case, you would be reducing the costs, which at the moment are spiralling ridiculously.

Baroness D'Souza: Were such an independent commission to be set up, as you said, James, very much in the public interest, would it have an impact on the responsibilities of public bodies in general?

Bishop James Jones: Yes. Public bodies are beginning to change, to be honest. That is my experience. The number of people who contact us about changing their organisation in the light of the Hillsborough narrative does encourage me that things are changing and that people recognise that phrase "the patronising disposition of unaccountable power". It really resonates with people, both from their own experience of having encountered an organisation that patronises them, and from

their awareness of how their own organisation might be patronising other people. There is a shift taking place, and I take heart from that.

Ken Sutton: We are really seeking to encourage authorities to be straightforward when something goes wrong, which could be well before any formal inquiry. When there is evidence of something having gone wrong, authorities should be straightforward and candid about that with the people concerned and listen to the voices of those concerned.

If you put that in the context of the Post Office or any of these cases, how much better would it have been had the public authority itself been open to challenge and proper reflection on its position rather than 10 years later having a statutory inquiry to bring about some form of accountability?

Q108 **Lord Faulks:** I would like to ask you about the recommendations that come from inquiries, whether they are non-statutory or statutory, the best way of seeing that they are actioned and what method is appropriate for monitoring them.

Before I do, I want to ask you one thing arising out of your answers. I absolutely accept what you both say, which is that, in deciding the terms of reference, it is very important that the victims, those who are affected by the tragedy, should be at the centre of those terms of reference.

Would you agree with me that, although they need to be very much at the centre in order to get public confidence, at the same time there may be matters of public interest, whether it is public health or proper policing, which arise above and beyond the individual concerns and which may not precisely be congruent with those? Would you agree that, although the victims have a significant role to play, it is most important that they do not wholly dominate the process?

Ken Sutton: Yes, absolutely. The phrase we used in East Kent was that we would consult the affected families, but they did not have a veto over the terms of reference because we knew there would be some things that needed to be in there, whether they happened to be on the families' lists or not. It is about the process of engagement and doing it in a genuine way.

Bishop James Jones: That is why I use the phrase "shaped but not defined by", because there may well be other issues that transcend the particular issues that you are addressing in this panel or inquiry.

Q109 **Lord Faulks:** To go back to what I started by mentioning—the question of recommendations and trying to make sure that there is a response to them—you compared the response to your recommendations and the lack of response to previous inquiries. Is there any secret to that?

Bishop James Jones: I have thought about this, because I thought I might be asked it on the "Today" programme. Here is the answer that I prepared for that occasion. They did not ask the question, so I now have an opportunity to say it.

First, it is the tenacity of the families. We cannot underestimate that. I know the media see the people who make the most noise, but we were privileged to live alongside them for a long time. It is their dignified tenacity that, in the end, won the day.

Secondly, it is the irrepressibility of an injustice that simply will not go away. That has a lot to do with why, in the end, Parliament could not ignore their testimony.

Thirdly, I would like to lay some claim to the Hillsborough Independent Panel and to this model of having expertise around the table in nine different experts. I saw my job as chair being simply to ensure that the expertise of each expert around the table could be brought to bear on the million documents that we were accessing, analysing and using to write an account of what occurred that day. The analysis of those experts was and remains compelling to this day, even though there have been no convictions.

What I often say to the Hillsborough families is that nobody can take away from them the second inquest and the determination of unlawful killing. Whatever else has gone on in our courts, in the media or in Parliament, in the end they know that the 97 were unlawfully killed. That inquest would not have taken place without the Hillsborough Independent Panel. I can say that categorically.

It was Dominic Grieve as Attorney-General who applied to the High Court that the original inquest should be quashed. Lord Igor Judge presided at that and was quite clear in his own mind that the evidence that had been brought forward, especially by the medical expert Dr Bill Kirkup, was incontrovertible and that the inquest needed to be retried.

Without the panel, that would not have happened. It says a lot for the worth of independent panels. They are not a cure-all for everything, but they have a very important role in addressing injustice in our society.

The Chair: Three members of the committee want to put questions and will put all three together.

Q110 **Baroness Berridge:** You have spoken so eloquently about the role of families, but our society is very dislocated in terms of families now. Have you thought about people who are victims of injustice but who do not have families to make the representations that you have very much relied upon in bringing injustices to light?

Q111 **Lord Addington:** The point about family and the outrage of the general public going forward is a very strong campaigning tool in many bits of government. Certainly in my experience of special educational needs it has been driven by the tiger parents who are looking after a member of their family and who are outraged at the letting down of a child. Is it possible to encourage that at an early stage to create the head of steam that is required for somebody to take this seriously?

Q112 **Lord Aberdare:** One of the things that we have been most struck by is

the complete absence of any formal process for following up on recommendations. Once the Minister has delivered his response, there is no process. You have just made an incredibly powerful case. In a way, it goes back to the non-statutory inquiry and having a panel, the families, their tenacity, and the irrepressibility of the wallpaper air bubble.

This is perhaps outside your specific experience, but what thoughts do you have about filling the gap caused by that lack of any proper process? You have described a wonderful process of engaging families and getting belief in what the panel is doing. If the panel disappears, which in many statutory cases it seems to, what happens then?

Bishop James Jones: I will take the first one on families, and Ken can take the others. In his book, Phil Scraton, who spent years investigating Hillsborough, makes it very clear that Hillsborough destroyed families. You asked about people who are on their own. The tragedy of Hillsborough is that it wrecked not just communities but the lives of individual people. I will not go into detail now; we do not have time.

That is why groups emerged such as the Hillsborough Family Support Group, the Hillsborough Justice Campaign and Hope for Hillsborough. These three groups performed such an important role because they gave, to families intact, to families destroyed and to people on their own, the solidarity and mutual strength to carry on the fight for justice when the whole world, from the *Sun* newspaper onwards, was against them. You are right to identify families as an issue.

Ken Sutton: On the head of steam point, I would point to the point of learning recommending the charter for those affected by public disaster, the charter for bereaved in the *Patronising Disposition* report. We are encouraging organisations to adopt that charter. That is intended to lead to authorities listening when there is a concern expressed and not assuming that the thing to do is to construct a narrative designed to protect the reputation of the institution, pretty well regardless of the facts.

It is about listening and that instinct, which we want to build through the charter, where people think, "We should listen to what is being said to us. We should not assume that our organisation has done things correctly". That is what we are trying to get at through the charter, which is why we are keen to encourage that and not simply to rely on the public accountability Bill as the legal route to doing that.

On the third point, there are lessons from the way in which recommendations are often ignored. There are a couple of different dimensions to that. We have talked, Bishop, about the national oversight mechanism, which the charity Inquest has recommended. It is not acceptable for prevention of future deaths recommendations in the inquest context, for example, simply to be ignored. That is a scandal. Deborah Coles has articulated that under the heading of a national oversight mechanism, which we would support.

The inquiries themselves have to be wiser than they have been. If you produce 250 recommendations six years after the event, you should not be surprised when those recommendations are not acted upon. It is too easy just to look for a monitoring mechanism.

We reflected on this in the East Kent investigation. We decided to confine ourselves to just five recommendations, and we are making much bigger headway with the NHS. It has accepted the first of them, which is a new signalling system for maternity cases. The department has announced a review of the duty of candour, which is partly because of that report and partly because of the *Patronising Disposition* report. The other two national recommendations are being pursued because they cannot be ignored. They are not wrapped up in 250 other recommendations. There is a need for the inquiries themselves to understand what is going on and the dynamic of that.

Q113 The Chair: We would very much empathise with that view. In a way, my final question touches upon that. If we were to suggest one change to the 2005 Act that would make the implementation of recommendations more likely, what should it be?

Ken Sutton: My answer, as I may have said earlier, is to redress the balance, by which I mean not leaving what are currently described as non-statutory inquiries powerless in respect of papers and people, which makes the threshold for a statutory inquiry too low.

Bishop James Jones: I would delete "normally" in the 2005 Act.

The Chair: May I thank you both warmly for your evidence this afternoon? We are very conscious that it is the 35th anniversary of the Hillsborough disaster. We appreciate enormously all the work you have both done and the value of the evidence you have given us this afternoon.

If you would like to feed the material you have mentioned into the committee, we would be very pleased to receive it. Indeed, if there are any further points you would like to make in the light of this afternoon's meeting, again, please feel free to submit that evidence to us. In the meantime, may I put on record our very grateful thanks for all the work you have done and for being with us this afternoon? You will inform our work enormously. Thank you very much indeed.