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CURRENT AFFAIRS

**ANALYSIS
PUBLIC INQUIRIES**

TRANSCRIPT OF A RECORDED DOCUMENTARY

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Frank Dobson MP
Former Secretary of State for Health

Sir Ian Kennedy
Chairman of Health Commission
Chair of Bristol Inquiry

Neil Garnham QC

Lord Laming
Chair of Climbie Inquiry

HEADLINE: The mass murderer, Dr Harold Shipman, definitely killed at least 215

people and, according to an official report, there were possibly another 45 victims.

ALEXANDER: It was here at the Royal Courts of Justice in London, in June 2001, as the lawyers of the families of those murdered by Harold Shipman, we won the right to have a Public Inquiry. That process later unearthed the extent of Shipman's crimes and exposed systemic failings in the NHS. Over the last few years, Public Inquiries following human tragedy have become part of the fabric of our public life, but do they do any good? My name's Ann Alexander and in this week's Analysis, I'll be asking those at the very heart of the Inquiry process, some speaking publicly for the first time, about the effectiveness of the system, how it really works, and whether lessons are actually learnt for the future.

DAME JANET SMITH: The way in which Shipman could kill, face the relatives and walk away unsuspected would have been dismissed as fanciful if it had been described in a work of fiction.

ALEXANDER: That was Dame Janet Smith who chaired the Shipman Inquiry. In this programme, I talk to the insiders who work within the Inquiry process and ask does the system really work? Richard Lissack QC has been involved in nine inquiries and is the editor of a forthcoming book entitled, believe it or not, 'Public Inquiries'.

LISSACK: Usually Inquiries are born of some sort of major disaster or matter of real controversy where there is suspicion in part of the community involved - be it farmers in Foot and Mouth, be it parents whose babies died at Bristol Royal Infirmary, be it families whose relations were murdered by Harold Shipman, be it victims of rail crashes. They seek from that Inquiry the solace of three things: one, transparent independence from government and state; two, they seek independence in the chair - they look to the chair to be independent; three, they look to the fact that it will be held in public with proper scrutiny open to all as being a powerful guardian of the truth coming out.

ALEXANDER: I'll be turning to those central issues later. But, first, how does an inquiry come about? In the early 90s, 29 babies died after heart surgery at the Bristol

Royal Infirmary. One of them was Daniel Willis who died following surgery for a congenital malformation when he was just seven days old. His mother, Michaela Willis, initially accepted his death was inevitable; but later, when the scandal broke, she started questioning how and why her son had died. She contacted the hospital, but they refused to talk to her.

WILLIS: Even now, I still don't actually really understand *why*. We were told that there was an investigation under way. All we wanted to know was to have answers why people were saying actually there's something wrong. And, ironically, we couldn't even get a lawyer to represent us in those days. We had to go to a licensing lawyer who was a friend of ours.

ALEXANDER: What did you expect a lawyer to do at the beginning when you first thought about taking legal advice?

WILLIS: We didn't want to pursue a medical negligence claim or anything like that. It was just we wanted somebody to open doors for us, so we thought the only way was actually to go via the legal route.

ALEXANDER: So, in other words, you weren't seeking compensation; you wanted an explanation?

WILLIS: Absolutely, always. We never wanted to blame anybody. We actually just wanted to find out what had happened.

ALEXANDER: She went on to set up the Bristol Children Heart Action Group with other parents. They weren't satisfied that simply disciplining the doctors involved was good enough. They believed there were systemic failings which had to be identified and addressed and wanted a full Inquiry. Following public pressure and a media campaign, Frank Dobson, the Secretary of State for Health, finally agreed to sit down and talk to them. He takes up the story.

DOBSON: My abiding memory of that meeting is not really about the discussions we had. But at the end, after I'd said to them, "Well you go back to Bristol and talk to your lawyers and then come back to me about what form of Inquiry *you* think we

should have” and everybody’s getting up to go and one of the women who’d come on the delegation came up to me and said, “Mr Dobson, do you mind if I kiss you?” And I said, (*laughing*) “Ooh no, I like being kissed” and she gave me a big smacker on the lips. And she said, “You’re the first official person who’s actually sat down and listened to what we have to say.” And I think one of the curious things is that if someone in an official position had sat down a year or two before and listened to what the parents had to say, there might never have been an Inquiry into the scandal in Bristol.

WILLIS: We spent probably the best part of a day with him.

ALEXANDER: Did you say that you wanted to have the Inquiry in public, or was that offered to you?

WILLIS: It wasn’t offered to us. The closed one was offered to us and then afterwards we came back and said, “Actually, that’s not we want.”

ALEXANDER: And how did you know what you *did* want?

WILLIS: Because when we were being offered a closed Inquiry, it virtually excluded the families and there was virtually no involvement whatsoever.

ALEXANDER: The families stuck to their guns and in March 1999, six years after Daniel’s death, persuaded Frank Dobson to give them a full Public Inquiry.

HEADLINE: The Public Inquiry into the deaths of babies at Bristol Royal Infirmary has begun hearing evidence. Campaigners claim that more than 200 children died and that about ... (*fades under*)

KENNEDY: I was asked to chair the Inquiry by the then Secretary of State, Frank Dobson ...

ALEXANDER: Sir Ian Kennedy.

KENNEDY: ... having been recommended to him by the then Lord Chancellor, Lord Irvine.

ALEXANDER: He just telephoned you?

KENNEDY: Do you want to know the *real* story? I was working with my co-author of a book we were writing in Cardiff and I was telephoned by the Lord Chancellor then, Lord Irvine, who I know as a personal friend. And he said to me, “You’re interested in those things that were happening in Bristol, aren’t you, Ian?” And I said, “Yes, Derry.” “Well fine” and then put the phone down. I had a phonecall later saying, from him again, saying, “I’ve spoken to Frank and then it’ll be alright.” And I turned to my co-author and I said, “Who’s Frank? You know what’s all this about?” I got back to my home about 8 o’clock that evening and I had a telephone call from the private office of the Secretary of State saying how delighted the Secretary of State Frank Dobson was that I’d agreed to chair the Bristol Royal Infirmary Inquiry. And that’s often how things happen in public life.

ALEXANDER: The role of a Public Inquiry is to investigate what happened, *why* it happened, and to ensure lessons are learned by making recommendations for change. The Chairman, who may or may not be a judicial figure, has powers similar to a High Court judge. He or she investigates and reports within terms of reference negotiated with the Government and can summon anyone who may be relevant to the Inquiry or the process. It’s an enormous undertaking, often lasting many years and costing millions of pounds. Sir Ian Kennedy is Chairman of the Healthcare Commission, an academic lawyer who’d already chaired two significant Inquiries, both held in private. In a rare interview, I asked him how he prepared.

KENNEDY: On one occasion I went to the Inquiry which was being held in Methodist Central Hall about the events at Ladbroke Grove, and I was let’s say surprised because I was greeted by a very large auditorium - a room, *huge* room, at the far end of which there was a raised dais on which there was a chair to the side ... a really large chair. And there was what looked like a steel wall. And then there were

lots of chairs, maybe two hundred chairs for people to sit and listen to the Inquiry, but they had to look over the steel wall which was there. And that there were photographs of people who had died sitting on the steel wall as if trying to jump over in psychological terms, and everybody else was excluded by that wall. And the sense that this was a Public Inquiry about you and how you might feel and about how about how the public might engage with those feelings was lost. It had been converted into a theatre rather like a court, and I thought that's not how Public Inquiries should be run.

ALEXANDER: As a solicitor, I've acted for families involved in a number of Inquiries and the physical layout and atmosphere in each differs. But I hadn't realised the time and effort which some chairmen spend planning. Sir Ian Kennedy thought it was important to be personally involved. He made sure there were family rooms and bereavement counsellors. He even spent a day looking at soft furnishings and thinking about the colour of the carpets and curtains. He wanted to create an ambiance where people could feel comfortable and safe to tell their stories. This was, after all, an Inquiry about babies who'd died. But what about the wider public interest?

KENNEDY: It was very important for me to work out whom I was working for in a philosophical sense and I decided I was working for the public. If I was going to do this, it was going to be in public - not least so that I would be held accountable. But in the end, I think we organised something which was aimed at achieving a variety of disparate purposes, almost conflicting purposes. One purpose was clearly seeking after some element of truth, but another was catharsis - letting people come and tell their stories and how important those stories were. Another was the idea of facilitating healing, putting a community back together when no-one, people were not speaking to each other. And then of course you've got to learn lessons, you've got to make recommendations and you've got to hold people to account. All of those are different and you have to put them all together.

ALEXANDER: Another key job for the Chairman is to assemble the legal team to run the Inquiry. Neil Garnham QC was part of the legal team in the Ladbroke Grove Inquiry. It examined how and why 31 people were killed and hundreds injured in the Paddington rail crash in 1999. He was also Leading Counsel in another Inquiry, into the death of eight year old Victoria Climbié who suffered appalling cruelty and abuse at the hands of her relatives. The first was chaired by a judge and the second wasn't,

but does that matter?

GARNHAM: I had very firm views when I was first instructed in the Climbie Inquiry that it was much, much better to have a judicial Inquiry because I'd seen one brilliantly conducted in Ladbroke Grove by a very good Chairman who really knew his stuff and was able to deal with the lawyers in a lawyerly sort of way. So when I was told we had effectively a lay Chairman dealing with Climbie, I was apprehensive. Having got to know Lord Laming, however, I changed my view completely because he approached the problem in a very different way. He dealt with it by managing a team and that was his skill - managing people was what he was good at. And so he got the job done by getting different people to do different aspects of the work that needed to be covered and the net result was a very effective Inquiry.

ALEXANDER: Another responsibility for the Chairman is to control the costs of the Inquiry, which is, after all, taxpayers' money. Critics point out they seem to go on forever and they seldom result in positive change. Several people I spoke to in making this programme were damning of the continuing saga of the Bloody Sunday Inquiry in Northern Ireland. It opened more than ten years ago and has so far cost a staggering £150 million. Indeed, this is often cited by ministers as a reason not to hold a Public Inquiry. Lord Laming is a former Chief Inspector of Social Services and chaired the Climbie Inquiry. Did he accept that they can be a waste of public money?

LAMING: I think that too much is made of the cost of Public Inquiries. As long as the business is conducted in an efficient and speedy manner and that the recommendations that come from an Inquiry can improve the quality of life for everyone in society and give us greater confidence in services, I believe that there should be more rather than fewer Public Inquiries.

ALEXANDER: How much do they cost then? I asked Sir Kennedy about the Bristol Inquiry.

KENNEDY: Just less than £14 million over three years to produce one large report and one smaller report. It's important to know that we didn't spend the allocation that was made available. We under spent. In fact we gave money back. We spent the money judiciously.

ALEXANDER: They are complex, multi-million pound operations. And whilst lawyers and ministers might know what a Public Inquiry looks like, for the families involved it's a very different story. Did Michaela Willis know what she was embarking on?

WILLIS: In hindsight, I actually had no idea. I mean I thought I knew what I was asking for, but I actually really had no idea at all. All I knew what we were calling for was something where the families would actually have a say and be included in the process.

ALEXANDER: Of course how could she be expected to know what it was like? It's a complicated process. For example, there are different ways in which the evidence can be taken. Inquiry Chairmen don't allow the ping pong of adversarial jousting. In some Inquiries, each Counsel does question his own witness and cross-examine others, much like in a conventional court of law; in others the process is far more inquisitorial with all of the questions asked by Counsel to the Inquiry. This is not only a huge burden on that individual, but can also antagonise participants, especially the families. It's the responsibility of their own Counsel to justify and explain to them how it's going to work. This can be a difficult challenge, as Richard Lissack recalls.

LISSACK: It can be a real problem. And I can still remember the very large meeting I had with 600 or so of the individuals with who I was appearing generally at which I was taken to task over the fact that: "Well how can we have confidence if you can't ask any questions on our behalf? How do we know there really ... there's not going to be a cover up? How do we know it's not going to be swept under the carpet?"

ALEXANDER: I myself have been at many similar meetings. They're filled with uncertainty, anger and hostility. The more inquisitorial process was used by Sir Ian in the Bristol Inquiry. I asked Michaela Willis what she felt about the families' own lawyers not being able to ask questions themselves.

WILLIS: That was, I have to say, quite tiresome. I mean there were some very, very difficult meetings with various counsels. But I think the one thing that there probably wasn't, there were some families who wanted to have the opportunity to speak and

didn't. I think that was probably the bit that probably didn't come across because only a certain amount of families needed to be spoken to to get the general picture. But also the fact that the families weren't allowed to have access either to the chair, it is bureaucratic really and almost as if the system is still apart from either the legal representatives or the families themselves.

ALEXANDER: It's important if the evidence is being taken in this way that everyone involved feels their questions are being properly and fairly put to the witnesses and that no stone is left unturned. There is usually an opportunity to submit a written statement, but not everyone is called to give evidence in person. How then did Neil Garnham manage this onerous task and at the same time involve the families and satisfy all of their concerns?

GARNHAM: For many of us involved in the Inquiry, it's a job of work. For the victims' families, it's the living out of a nightmare. There is a difficulty that the Inquiry process will never entirely assuage the grief that victims' families feel and it is likely that victims' families will come away from Public Inquiries feeling that they haven't done all that they, the victims, would have liked to have been done. But having said that, sensitively handled Inquiries can go some way to helping the families of the victims come to terms with what's happened, and I think particularly of the Climbie family. Ladbroke Grove was harder I think for the victims, at least for some of them, and I'm quite sure that some of the families of the victims at Ladbroke Grove would have felt that more could have been done to engage them in the process.

ALEXANDER: Those who were angry, how did that come across?

GARNHAM: There were undoubtedly families involved who were angry at the actions of some of the railway companies involved, and actually I'm not sure that anger is a bad thing. The fact that there were people who had lost their sons and daughters or their partners or their parents in that disaster was the reason why we were all there.

ALEXANDER: For families such as these it's hardly surprising they should react like this, although he clearly empathises with them. Some families I've spoken to have been critical because they wanted more direct access to the Chairman. In reality,

the chances are that they will often have waited years and, entirely justifiably, still see themselves as the real victims. They felt the Chairman should have been ‘on their side’. I asked Sir Ian Kennedy what he thought about that.

KENNEDY: Well it was my job and the Inquiry’s job not to bond with anybody, but to make everybody understand that we were listening and we were going to be fair, whether it was to the doctors or parents. And there was a story that when I opened the Inquiry, I was confronted by two rows of parents all wearing t-shirts saying ‘save our surgeons’ and they were the ones who were supporting the surgeons - mostly adult patients. And at the back of the hall, rather intimidated by this sight, were the parents of children who’d died and the antipathy was palpable. And when I closed the formal hearings of the Inquiry, I had a visit from the leaders of the two groups of parents - would I accompany them to lay a wreath at the doors of the Bristol Royal Infirmary? That was a remarkable transformation of their mutual understanding of their positions. I said I couldn’t because it was inappropriate for me, but I was delighted that they were able to do so.

ALEXANDER: After the formal hearings are closed, the Chairman then has the daunting task of writing his report. He has listened to all the witnesses, examined huge numbers of documents - almost a million pages in Bristol - and analysed all of the evidence. At the end of the process, how did the families feel?

WILLIS: Ultimately we wanted some change to happen. We wanted a Public Inquiry, not actually envisaging what it really was, and I think by far it exceeded most of those expectations with the recommendations it made.

ALEXANDER: Michaela Willis was satisfied, but what about the recommendations she mentions? What happens after the report has been published and the media coverage has died down? What then? Richard Lissack.

LISSACK: The only way the public can have any confidence that it hasn’t been a great, big waste of time is by pursuing government to do what is recommended to be

done. Because, as you know, at the end of every Inquiry that is delivered to Parliament, the Government says you know we accept this, we accept that, and as soon as parliamentary time permits, we will make judges along these lines and those lines.

DOBSON: Recommendations are recommendations. They aren't the law.

ALEXANDER: Frank Dobson.

DOBSON: And I've always taken the view that any Secretary of State would be foolish to say in advance that they would without fail implement all the recommendations of *any* form of Inquiry. It is quite possible that in a list of a dozen recommendations, one of them was daft.

ALEXANDER: For those caught up in life changing events, the implementation of the Inquiry's recommendations is critical. Michaela Willis is now Chief Executive of the National Bereavement Partnership and through her work is observing first hand what has changed.

WILLIS: There were an awful lot of recommendations and certainly in some of the jobs that I do now, you can actually see that quite a few of the recommendations have been implemented. However, I think with the change of political will and the change of politicians along the way that some of them have fallen by the wayside.

ALEXANDER: And how do you think that that could be improved on another occasion?

WILLIS: I think it would just be to see some overarching body or person that could actually ensure that all the recommendations were implemented and if they weren't implemented *why* they weren't. If the recommendations from a Public Inquiry are not going to be implemented, there is very little point in actually having it in the first place.

ALEXANDER: So does the Inquiry process need reform to make sure that once the Government accepts its recommendations, they are actually implemented? Neil

Garnham.

GARNHAM: There has to be built into the process a mechanism by which there are timetables imposed by the Inquiry report for the implementation of the recommendations and then a mechanism to ensure that that happens. Now the first of those is now commonplace - chairmen will routinely now give time limits by which they expect the relevant bodies to implement them. But the second is more difficult because the nature of the process is that the Inquiry is finished and the Chairman's job is over by the time those recommendations came to be enforced. There does need to be a follow-up process, so as to call to account the government departments or the local authorities or whoever it is, to ensure that they have done what has been expected of them and that needs to be a refinement to the process of some Inquiries.

ALEXANDER: But is there an even more important question? For an eminent chairman to undertake such a painstaking and rigorous investigation, should that be the end of his or her involvement? Wouldn't their valuable expertise and intimate knowledge of the issues be useful to inform those in government? Sir Ian Kennedy?

KENNEDY: I think there's one flaw in the notion of Public Inquiries, which is that the terms of reference should entitle the Chair of the Inquiry to revisit after let us say six months or one year and report to Parliament or to the Secretary of State what's happened and what he thinks about, or she thinks about what's happened. I did not include that in my terms of reference. I should have asked for it and in a sense it was something that I regret because it would have allowed me to hold up a mirror on behalf of the public and say actually this is what the mirror shows in the light of these things that the Government says are very good ideas.

ALEXANDER: Failure to implement recommendations is a perennial problem. The Climbié Inquiry followed 70 Public Inquiries into child abuse, many resulting in deaths, producing thousands of recommendations on how to save children's lives. Yet how many of these deaths were preventable? Since the Shipman Inquiry, I know that the Government has still not implemented many of Dame Janet Smith's recommendations, even though they formally accepted them. And there isn't even a timetable to do so. There are some reasons for this: government ministers are

reshuffled from department to department; Inquiry chairmen have no continuing responsibility and will in any event have moved on in their lives. I asked Richard Lissack what could be done about this.

(to Lissack) Is there a need perhaps for some champion to take over - an Ombudsman, for instance?

LISSACK: It would be an extremely good idea to build into the Inquiry process the idea of someone being charged with seeing through the recommendations for change. Not necessarily replacing governmental decision making, which ultimately must be what holds sway, but making sure that it doesn't just sit on a shelf for six years gathering an ever thicker collar of dust.

ALEXANDER: A Public Inquiry has several purposes. It's a catharsis for those who've suffered; it's an opportunity to learn lessons; and, most importantly, it's a means of finding out the truth, whatever that might be. Did Sir Ian Kennedy think he'd achieved that?

KENNEDY: I wanted to let all of the views come out because I had this distinct view that there were many truths, there wasn't one single truth, and I find cross-examination proceeds from the assumption that there is a truth and through questioning we'll arrive at it's black or it's white. Well in the case of the Bristol Inquiry, I am sure that the doctors believed that they explained what the risks were and I'm sure that the parents heard it entirely differently because the doctor would say 80% risk of the child being harmed and the parent would hear well there's a 20% chance she'll be alright. And those are both true. And I said at the press conference at the end of the Inquiry that if anybody in the press or elsewhere thought that any of these doctors or nurses left home every day saying, "I'm going to kill a baby today", they weren't living on the same planet as I was living on. They left home anxious to do a good job, but because of their own weak flaws perhaps and the flaws of a system, they didn't do that.

ALEXANDER: We mustn't forget that in every case whilst the individuals responsible may have been put out of harm's way, it is the evidence of systemic

failure that we must concern ourselves with. There's no doubt that the process has a beneficial effect on cultural change; it *does* inform the public. But after the media's spotlight fades, it can't be assumed that action has been taken and the failings have been fixed. That is misleading. It's up to government to decide which recommendations it accepts, but I can't see the point in having a wholly transparent Inquiry process if the shutters then come tumbling down. How many more avoidable tragedies will occur before a rigorous mechanism is put in place to make sure effective change is implemented? Until that happens, institutional and systemic failings will remain.