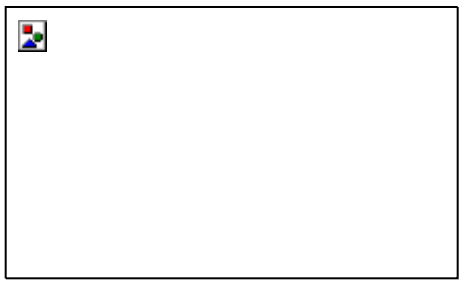


Gresham Lecture, 14 September 2010

Public Inquiries

Professor Vernon Bogdanor

Ladies and gentlemen, I would like to welcome you to this seminar on Public Inquiries, which is being held jointly by Gresham College and the Institute of Government.

Before discussing the subject matter of today's seminar, I would like to introduce the panel, and we have a very distinguished panel here. I would like to begin with Lord Bichard, who is particularly well-known, better-known perhaps, as Sir Michael Bichard. He was Chief Executive of two local authorities and Head, for some years, of the Benefits Agency, which I always thought was a hot potato if ever there was one, but there were no problems or scandals during his period there, which I think must be counted a great triumph. He then became Permanent Secretary at the Department of Education and then was, until recently, Head of the Institute of Government, and recently made a life peer. However, I think he is primarily here today because of his experience as Chair of a particular Inquiry, the Soham Murders Inquiry of 2004 into the tragic deaths of those two poor little children. He is also chaired a number of other bodies, but I think particularly interesting today will be his experience as Chairman of the Soham Inquiry.

Also with us is Lord Laming, whose career has been spent in the Social Services. He began as a probation officer, and became Head of the Social Services in Hertfordshire County Council, and held a number of other posts in the Social Services. Again, his relevance here is primarily that he's been involved in a number of inquiries, primarily relating to children who have been abused or ill-treated in some way, particularly the Victoria Climbié Inquiry which lasted from 2001 until 2003.

Lord Butler, who may perhaps be better known to many people with long memories as Sir Robin Butler, was Secretary to the Cabinet and Head of the Home Civil Service for nine tumultuous years. From 1988 to 1998, he served under three very different Prime Ministers – Margaret Thatcher, John Major and Tony Blair – and I think he probably regards one of his greatest triumphs as the transition of Government between John Major and Tony Blair. This was the first time there'd been a change of political colour in the Government of the country for 18 years but he oversaw this with great success, which was a great tribute to the Civil Service. He then became Master of University College Oxford, but his relevance to the topic we are talking about today is that he was Chairman of the Privy Council's Inquiry which reported in 2004, established by Tony Blair, to review intelligence on weapons of mass destruction in relation to the war in Iraq.

Finally, Lady Justice Smith, has been a Lady Justice of Appeal since 2002, and her particular relevance here is not so much her very distinguished legal career, but the fact that she was Chairman of the Harold Shipman Inquiry from 2001 to 2005.

I would like to just say a few brief words about the topics of inquiries before asking Lord Bichard to begin the proceedings.

There are of a number of different types of inquiries, but the ones we are mainly concerned with are of an investigative type, when something has gone very seriously wrong on some matter of government or administration, and then an inquiry is established, sometimes chaired by a judge, sometimes not chaired by a judge, sometimes with one person conducting the inquiry, sometimes with a number of people conducting the inquiry.

There have been a number of these inquiries since the War, and if you go back no further than the 1960s, those who study history may be familiar with the Denning Inquiry into the Profumo Affair, which has given salacious entertainment to generations of undergraduates studying British Government. In the 1970s, we had an inquiry by Lord Widgery, the Lord Chief Justice, into Bloody Sunday, and that I think was thought to be an inadequate inquiry because we then had another inquiry into Bloody Sunday, the longest lasting inquiry we have ever had, under Lord Saville, which reported earlier this year. After the Falklands War, we had an inquiry of Privy Councillors, chaired by Lord Franks, which seemed to exonerate the Government, though critics said that was because the Government applied spin to it. The Iraq War, has given rise to not just one inquiry, like the Falklands War, but no fewer than three inquiries: there's been, first, the Hutton Inquiry into the death of Dr David Kelly; and then there was the inquiry chaired by Lord Butler, an inquiry of Privy Councillors, into the question of the use of intelligence in the Iraq War; and thirdly, we have an inquiry, which is still continuing, under Sir John Chilcot, into the rather larger issues about the war itself.

All of these inquiries are of different kinds, but they have two main purposes: to ferret out what went wrong; and to give some legitimacy to action taken to resolve the problems.

Critics of the inquiries say that they can be somewhat unfair because, although they are inquisitorial rather than prosecutorial in nature, they can affect people's reputations very, very considerably, and that perhaps was particularly so during the inquiry chaired by Lord Bichard into the Soham Murders. That was very unusual because it did not blame just institutions and procedures for what went wrong. It specifically mentioned the Chief Constable for Humberside, who was singled out as having to take, and I quote, "personal as well as corporate responsibility" for the failings, in particular to warn people in Cambridgeshire about the record of the murderer of the two children. After that, the Home Office ordered his suspension, although the Chief Constable did not immediately resign, and that raised all sorts of large questions about the relationship between Government, police authorities and local authorities, which are perhaps relevant to the question the present Government is pursuing with regards the direct election of police commissioners. This raises very important issues I think about the rights of individuals in relation to inquiries, and therefore, I will ask Lord Bichard if he will tell us about his experiences in that regard.

Lord Bichard
An outline of issues that need to be addressed

I feel very much a junior partner on this occasion, particularly because my inquiry, the Soham Inquiry, was relatively straightforward, certainly compared to some of the others that you will hear about this afternoon. Nevertheless, it covered a tragic subject, which obtained a great deal, of public interest and attention.

I am going to cover this topic by asking some questions – not in order of importance - which are highly pertinent. One of the things I have noted on occasions is that there has not been a great deal of effort expended in this country in trying to identify and analyse the common themes. Furthermore, we have not done as much as we might have done to try and learn some lessons from these various inquiries, which is why I an event like

this is probably overdue, and it may well be that both the Institute and Gresham could find some way of capturing some of the discussion today.

My first question is: why do we need these kind of inquiries anyway, and if we do need them, what is the motivation for setting them up and does that have an impact on the way in which the inquiry develops? One hopes that, in the majority of cases, inquiries are set up to establish facts, make recommendations, prevent something from happening again and to allay public concern. However, sometimes inquiries are seen as a political mechanism to show that action is being taken to take the heat out of a political issue. Although this usually does not affect the way in which the inquiry is managed, it will affect the way in which it's perceived and its ability to bring about change. So while I think we need inquiries it is not always clear whether they are established for the right reasons.

My second question is: do we spend sufficient time defining the terms of reference for the inquiry? These can be too wide, in which case they blur the focus of an inquiry or they can be too narrow, and the Chairman of the inquiry can be challenged if they seek to explore territory which seems relevant, but which others will argue do not fall within the scope of the inquiry. Indeed, this nearly happened during the Soham Inquiry. The problem is, when an inquiry is set up, there's a great sense of urgency and there's a tendency to not pay enough attention to the precise terms of reference.

Thirdly, I wonder whether a closer relationship between public inquiries and the parliamentary process needs to be developed. This links in with my later point about the lack of legislative action taken after the inquiry has made recommendations. I wonder whether there should be a new arrangement, possibly with Select Committees – provided their independence was enhanced.

There is then the issue of holding the inquiry in public or private. Clearly, that depends greatly on the subject matter. My feeling always is that they should be open wherever possible, but I was struck by the instincts which people have to try and keep things private wherever they can. The Chairman must ensure that he fights against that and be sure that there are absolute reasons for granting privacy.

Should we be looking to establish inquiries where the Chairman is sitting alone or where there is a panel? Quite clearly, the Chairman is going to deal with difficult issues and needs appropriate support. I sat alone for the Soham Inquiry, but I had a very senior police advisor on my staff who was helping me to ensure that I did not miss some of the nuances from the police perspective. However, this can be branched out into the issue of whether or not it is better to have a sitting panel. This can be argued both ways, and a discussion would be productive. If there is a single Chair, there's clearly much less likelihood of compromise – some might regard that as a good thing, some might not – and there is a much greater clarity of accountability. If there is a panel, there's a greater likelihood perhaps of considered debate before conclusions are formed. On balance, I felt more comfortable sitting alone for my type of inquiry.

Another crucial issue is: how is the balance between speed, expedition, and the proper consideration of the facts maintained? Inquiries are established because of serious public concern which needs to be met, needs to be addressed as quickly as possible, sometimes, actually to avoid something similar happening in the short term. Those who are involved are under a great deal of stress, and I think there's a responsibility to end that as quickly as possible. I did chair the Soham Inquiry, but I was also on the other end of an inquiry when I was Chief Executive of Brent. Therefore, I understand the pressure placed on those on the other side of the inquiry fence, and that was certainly something which affected the way in which I managed the Soham Inquiry. The families were under huge levels of stress and wanted this chapter of the tragic events to be brought to a close. Of course, the police and the social workers also felt under pressure as careers were threatened. There's a lot of pressure to try and deal with the issues expeditiously but there is this responsibility to ensure that there is proper consideration. I think that if the public and the media get the impression that actually you are trying to move things forward too quickly, then that can be fatal to the inquiry's credibility. It's a very difficult balance

to strike. I do not know how exactly to do so. All I can say is that we tried, from the outset, to establish what we thought was a reasonable balance, put that into the public domain, and try and keep to it, and not allow that timetable to continually slip.

There's another question about how the Chairs, Secretaries and Panels of these inquiries are appointed. If you look at the different kinds of inquiry, it would be almost impossible to produce a job description, but I have not seen any attempt to articulate the criteria you might employ when selecting a Chair and the requisite skills. In my case, there was not any help, advice or guidance, let alone training available, after the appointment was made. Previous good and bad practice was not made easily available, even though it can be found. I have to say the appointment of the secretariat, which, for me, was absolutely crucial, was equally random, although I have to say I put together a quite outstanding team in a very short period of time from the nominations I received. I've always reflect that we often spend so much time recruiting and selecting people and, so often, we get it wrong yet I had just seven days to recruit the secretariat, and they were absolutely sensational. Therefore, I think we could look at providing guidance for the Chairmen and also improving the selection process. I took the view that to be effective as a Chair, you needed to have the confidence of all those who were interested in the subject of the inquiry, and I went to some lengths to ensure that the two families, the police, and the third parties, were confident in my suitability to carry out that job. This stood me in very good stead during the course of the inquiry so I think perhaps that seeking such reassurance is worthwhile.

There is also the technical issue of whether or not to use counsel. John Chilcot has decided not to use counsel, which has made me feel weak for having done so, on a much more straightforward inquiry. For me, it worked very well, because I had someone to hand who was skilled at cross-examination. We talked every day, before and after every session, we agreed a strategy, and he employed me, and I employed myself, as chair, to maximum effect during the Inquiry. I was able to ensure, for example, that the contribution of witnesses was absolutely clear before we moved on, and sometimes reinforced a conclusion which the evidence seemed to suggest - moving the discussion forward. With counsel, I felt more able to reflect on the evidence as it unwound, to plug any gaps, and to concentrate on what was being said, and to concentrate on how it was being said, which can be really, really important in understanding what is happening in front of you. Others may feel differently, but there are disadvantages and advantages in distinguishing between the roles of Chair and the roles of investigator.

Of vital importance is the question of media management. Yet again, almost every case is different. I found it a really interesting experience. I've always found the media totally easy, but it seems to me that if we were going to spend – or I was going to spend six months of my life on this inquiry, then I needed the media to really understand the issues. So far as possible, to help them provide informed commentary, which is what they did, we regularly briefed them during the course of the inquiry. Furthermore, we gave them the very best technology that was available to enable them to report and to listen to the proceedings. I gave them very exhaustive briefing before the final report was published. They were almost uniformly responsible and provided informed reporting. However, it was a straightforward inquiry, and I think others may be much more sceptical about whether you can achieve that level of responsibility and positive coverage in a more complex, politically-fuelled environment.

It is important that there is action as a result of all of having an inquiry, rather than just having it for show. I was particularly concerned, as some of you will remember, to ensure that something did happen, and therefore decided to commit to a follow-up report, six months after the initial report was produced, reviewing the extent to which the recommendations had been implemented.

I also persuaded Government to report to the House regularly on progress against those recommendations. I think that was a success. I was surprised that nothing similar, as far as I knew, had been done before.

I also tried to ensure that the number of recommendations was kept to an absolute minimum, with particular emphasis. I felt that sometimes priorities for change had been lost in other inquiries because of a plethora of detailed proposals, which had too little focus and too little clarity. Therefore, I invested a disproportionate amount of time in drafting the final report, and I even employed, for a period of time, a writer to help ensure that it was readable and comprehensible, and had as much impact on the layperson as possible.

I have two final points. The first regards the scope given to interested parties to comment before the report is published. For the Soham inquiry, we gave a time-limited window - about 21 days – to all of those who were commented upon in the report to respond and to let me know if they had any concerns about the accuracy. The obvious advantage of this is that it ensures that the report is probably is as accurate as it can be, and so avoids accusations of getting the facts wrong. It also enables the Chair to take account of what are the likely flashpoints and disagreement are going to be. The disadvantages are that the Chair discloses their hand, if that is a matter of concern. They can be accused, more seriously, of tempering their findings to avoid conflict. There is the potential for leaks – we were having this discussion before we came here – and there is danger that individual parties will see the opportunity to take anticipatory action to reduce the criticisms that they might face from the public, and obviously there's potential for legal action. I had many judicial reviews sitting on my desk in the three weeks before the report was published but they were all eventually withdrawn. We did manage, therefore, to handle the dangers, the disadvantages, effectively, and I think I found we gained a great deal by providing that period for comment.

Lastly: why do inquiries seem to have so little impact? The reality is that, too often, they have nowhere near the kind of impact that you would want. Since the Maria Colwell Inquiry in 1973 in Brighton, there have been about 170 similar inquiries. This is deeply depressing, and it's particularly depressing when you remember that most of those inquiries said many similar things: a failure in sharing of information and communications, and a failure to focus on the child.

I have tried to touch on some of the things I think we might be able to do to ensure that, where possible, lessons are learned, but there is a remarkable reluctance to learn and adapt to change within too many professions.

Lord Laming
Minimise the hazards by securing the basics

I would like to begin by congratulating Gresham College for organising what I regard is an important event. I say it is important not in any way to ingratiate myself to Gresham College, but because I believe that inquiries are a very important vehicle in open, democratic society, as long as they are clearly independent, transparent and fair, and that goes to the heart of some of the things that I wish to discuss. Inquiries are important because there are organisations that are, day-by-day, making decisions or taking actions which affect huge number of people, for good or ill, and have the potential to use powers effectively, or misuse power, to the considerable disadvantage of the citizens.

Now, many of people of course argue that there is no place for inquiries. I have to say that has been my experience with successive governments, because, they argue that there are so many other ways in which grievances or concerns can be dealt. There is the protection of the law. People have access to national and local elected representatives; they have access to the media which is very powerful; they have access to the relevant professional and regulatory bodies; they have access to ombudsmen, etc. all of which is true, and no doubt, in many instances, these bodies perform an entirely useful role and achieve the aims for which they are intended. However, there are some issues that are of deep concern, not just to the individuals directly affected, but to the general population. These undermine the confidence of the population in the services that are being delivered, or in the decision-making processes, or it is alleged that powers are being seriously abused. In those

situations, it is very important that we have in place mechanisms whereby we can not only explore, in great detail, the issues, but we can go some way to restoring the confidence of the general public in the processes that have been established. Sometimes, for this to happen, it is necessary that some processes are amended or changed very considerably. Sometimes this happens and sometimes it does not.

However, I do not believe that we should allow the development of a line of thinking which argues that all inquiries are unnecessary, hugely expensive, time-wasting, and make conclusions which could have been obtained in other ways. In fact, while many inquiries are called for, relatively few are agreed. There are very few inquiries established each year, and that is an indication, in my view, that those which are established have fulfilled a number of tests. There have been calls for some inquiries which I thought had merit but were turned down. It is not the case that we are overwhelmed with inquiries or that there is evidence that inquiries are unnecessary. I think that there are some issues that are so important that they should be subjected to an independent tribunal created specifically for that purpose.

There are those who claim that all inquiries take a long time and are hugely expensive. I do not believe that this is unavoidable and Lord Bichard has just given a very good illustration of an inquiry which did not take a long time; was not, I imagine, hugely expensive; but it was important because it was a grave matter that was being considered. It was important for us all that those matters were considered very carefully.

Now, it seems to me - and Lord Bichard has already raised some of these questions – very important that, if there is to be an inquiry, that there are some fundamental issues that need to be considered long before there is a public announcement. The detail, the Chair and the conduct of the inquiry should be finalised before any announcement, because, in my experience, some of the inquiries that have caused most concern have done so because of inadequate preparation and inadequate clarity.

I would suggest that there are seven things that need to be considered. The first is the clarity of terms of reference, the second is the powers to be given to the inquiry, and I want to give an illustration in a moment about an inquiry that I chaired that had no powers and the problems that that caused, and then an inquiry that I chaired that had a huge number of powers given to me by Parliament.

The third thing that needs to be considered is whether it is possible to get access to all the relevant documents and the possible witnesses – this is important because most inquiries take place quite a long time after the event which is being investigated. If there's been a criminal trial, a criminal investigation and then a trial it is usually two years after the event that the inquiry is established, and by this time, there will have been substantial developments. It is necessary to be clear about whether or not an inquiry will have access to the right documents.

Lord Bichard has referred to whether evidence should be taken in private or in public, in particular, what criteria is to be employed about making that decision; why that is so; and whether or not that is capable of being conducted in a flexible way.

The fifth point is whether or not the inquiry will be adversarial or inquisitorial because, if it is adversarial, it takes on an entirely different style and also it lengthens the procedures very considerably from if it is inquisitorial.

The final two points are about the continuing public issuing of the evidence as the inquiry is proceeding, the points that Lord Bichard has touched upon about people having access to the whole of the evidence; and, finally, the publication of the report. Now, these matters need to be settled because these are exactly the kind of areas where there is a very, very strong vulnerability to judicial review, and also other ways of challenging the whole basis of the inquiry.

The first inquiry that I chaired followed the killing of a young man by a woman with a long history of serious mental illness, and it was done in circumstances that attracted a huge amount of media attention. The media attention was so great that it was felt that the issues had to be explored in some detail. That inquiry was set up jointly by the local authority and the health authority, and they set it up, in consultation with me, and their contribution was admirable. But, it did not take long after the inquiry was established for me to realise that, although the terms of reference and many other details had been settled, I had no powers whatsoever. The assumption had been made that because the witnesses were currently employees of one of the authorities or the other, in the public sector, they would willingly come and give their evidence, and that I would easily have access to all the relevant documents, including medical notes. That was a huge lesson for me, in that I quickly realised that the only thing that I had at my disposal, were my personal powers of persuasion. It took a long time to secure agreement about representation, about witnesses, and about whether or not, and by whom, witnesses could be represented, and whether the inquiry would be conducted in one way or another. There were long negotiations before these matters were settled. It would have been so much easier had further thought been given to this at a much earlier stage.

Indeed, since this experience, I've taken an interest in some other inquiries – from a distance – and noticed that some inquiries have run into similar problems. Previous employees have declined to make any contribution to the inquiry, even though they held extremely important posts in the organisation that was being inquired into, and would be regarded as key witnesses.

Whilst I was finalising the publication of the report of that inquiry away from London, following the murder, or the manslaughter, of this young man, I got a call to persuade me – I have to say, looking back, I ought to have been a bit stronger on some points – to go to Manchester to set up an inquiry on the implications of the activities of Harold Shipman, the GP who murdered so many people. Other people had apparently done a great deal of work on this matter, and because the trial was about to conclude, there was thought to be great urgency to announce the inquiry, its terms of reference and all the other important details. I had not been in Manchester for very long when I realised, all too clearly, that the terms of reference that I had been given and the kind of inquiry that I was about to conduct, was not the kind of inquiry that the relatives of the victims of Harold Shipman wanted to have. Over a period of months, whilst we pressed on with our task, a major judicial review, took its course, and eventually prevailed. The Government was criticised in that judicial review, and the inquiry that I was commissioned to undertake came to an abrupt end. I was very pleased indeed that Lady Justice Smith then very successfully completed an inquiry, which was actually the inquiry that the relatives wanted and needed.

This was a clear lesson that there is no benefit to be gained by skimping thought, care and attention in setting up a review before the public announcements are made and being clear exactly what the purpose of the inquiry is for.

I say that also because, in many inquiries with which I have taken an interest, the terms of reference have been challenged, either because they are thought to be too narrow, too narrowly drawn, or because they do not address the central points that people want to have pursued. Indeed, in the Victoria Climbié Inquiry, had I attempted to address the whole range of items that were put forward by various people, it would turned less of an inquiry and more into a Royal Commission, as it battled with the whole basis of social care services, the establishment, the responsibilities of local government and the regulatory framework. Therefore, I think it is important to recognise that there is a huge difference between people with an interest in an inquiry and people who are interested parties to an inquiry.

While on the Victoria Climbié Inquiry I had a preliminary meeting to set out how I proposed to conduct the inquiry, and went through the whole process in detail. I asked the interested parties if they would register their interest with the solicitor to the Inquiry, and I was taken aback at the queue that formed. However, the queue formed because people had not sufficiently distinguished between people with an interest in the

Inquiry – and these might have been legitimate and very broad interests - from being an interested party to the Inquiry, whereby you are a possible witness to the Inquiry and need to discuss the legal representation that you would have in that process. Some of the inquiries that are seen to ineffective might have been, in some way hampered by the lack of clarity about the terms of references and the powers that have been given.

I was rather surprised that the Victoria Climbié Inquiry was set up as an independent statutory inquiry, and Parliament gave me very wide powers that I did not expect to have to use for one minute. They were very wide powers that were given to me, but in the event, sad to say, every one of those powers that had been given to me was actually used, and therefore it was important to actually anticipate the possibilities of the need for these powers to be given.

Victoria Climbié was a seven year old girl who lived in this country only for 10 months. She came from the Ivory Coast and she spoke only French, but despite the fact that she lived in this country for only 10 months, she was known to no fewer than four separate Social Services Departments, three Housing Departments, two different Child Protection Units of the Police Service, and in addition, she was admitted to two different hospitals because the Accident & Emergency staff suspected that she was being deliberately harmed. In addition to that, she was referred to a centre, specialist children's centre, managed by the NSPCC. Now, it was precisely because every one of the key services that one could think of had been involved with Victoria, and yet failed to protect her from absolutely dreadful abuse and the most awful death, that it called into question whether or not the system as a whole was working or whether this was typical of its shortcomings. So there was a very strong feeling that we had to examine what happened to Victoria; the part played by each of the key services; and why this child had not been protected. More particularly, the terms of reference required us to make recommendations as to how the system might be improved and how an experience of this kind might be better prevented in the future.

Now, because Victoria was known to all of these different agencies, the Inquiry was set up under three different Acts of Parliament: the National Health Service Act of 1977; the Police Act of 1996; and the Children Act of 1989. That made it somewhat unusual in that, in effect, it was three inquiries but with the evidence taken simultaneously.

The delay following the death of Victoria to the actual start of the Inquiry meant that the time lapse was very significant, and it was extremely difficult to get hold of the key documents in the original form and to track down witnesses. There were many potential witnesses, considering all of the services which had had contact with Victoria. The Police inquiry was extremely complex – whatever the failings of the Police in child protection, the Police inquiry was quite remarkable, in that, they had the death of a child in this country, who had been given a false name, and who they did not know where this child had come from, but because of extremely skilled work they actually managed to discover that this child had come from the Ivory Coast. They also managed to track her parents down from a small place outside the main city of Abidjan. All that took time, and then assembling the evidence for the trial took time, and then the Inquiry was time-consuming.

For the Inquiry there were 4,000 relevant documents, 277 witness statements and oral evidence from 159 witnesses. We had to use inquiry agent to track down 26 witnesses, and we took oral evidence by video link from cooperative witnesses, who were, by then, resident in Australia, New Zealand, South Africa and the USA. Sadly, one witness that we would have really liked to have heard from was never traced, and another witness had to be prosecuted for failure to cooperate with the Inquiry, a very key witness.

Unfortunately, threat of legal action had to be taken against a number of authorities who failed to produce all the documents that we wanted to have. That was not necessarily due to a lack of on their part. For example, in one local authority, Victoria had no fewer than five unique reference numbers to her files, and in another authority, documents were found in a redundant filing cabinet just as it was being removed to be taken to the

dump, and in another authority, I had been assured that we had all the documents, until a witness, in the course of evidence, revealed a very important document that had hitherto not been known.

Due to the range of witnesses and the evidence, we had 30 different legal teams, and for that reason, it seemed to me absolutely essential that the inquiry was conducted in an inquisitorial way. Had every legal team had the right to cross-examine every witness, it would have extended the length of the Inquiry enormously. Fortunately, the legal teams agreed that the Counsel to the Inquiry would take the witness through their witness statements, and that they could put to Counsel to the Inquiry any points of particular concern they wanted examined in detail, and if, at the end of that, they felt that they had not had those matters considered as carefully as they wished, they could ask me to pursue these matters, as I did.

Unlike Lord Bichard, I started with four specialist assessors: one was a specialist police officer, one was a paediatrician, one was a specialist nurse manager, and the other was a specialist social service manager. The assessors rotated as to where they sat according to the nature of the witness. So, when there was a police officer, the police assessor sat closest to me; when it was a nurse, similarly, the nurse; and they could prompt me and prompt any questions that I want to ask, but I alone asked the questions.

Due to the wide interest in the Inquiry, we employed Live-Note, which, as you know, is the system whereby it comes up live on the screen in front of you, and everybody had that, including the media. Like Lord Bichard, we paid a great deal of attention to meeting the media's concerns and interests, and not only did we have LiveNote, but, in order that everybody did not have to sit through every day of the Inquiry, all of the evidence was put on a website. Through a contract that we employed, the evidence was put on the website before eight o'clock each evening, so everybody had that day's evidence before the end of the day.

Due to the inquisitorial nature of the Inquiry and the inevitable concern amongst some groups that they might be favoured above another or one may be disadvantaged in respect of the other, I have to say that the assessors and I lived a monk-like existence throughout the Inquiry. We did not wish to bump into anybody with any interest, either directly or indirectly, with the subject matter of the Inquiry, because, as Lord Bichard has already indicated, it is very important in an inquiry to keep all of the different interests on board and not to generate a feeling of suspicion or concern that matters are not being handled transparently and fairly.

Therefore, I had absolutely no contact whatsoever with any Government official or any Government minister until after the report of the Inquiry had been sent to the printers. I wanted to be absolutely clear that the Government had no influence whatsoever on the outcome of the Inquiry. I have to say, the Government played very fairly and the help that they gave me, was in arranging for the presentation and publication of the Inquiry..

It is clear from all that I have been saying and I think this supports what Lord Bichard has said, is that throughout an inquiry of this kind, you have to actually have in mind the steps that have to be taken to retain the confidence of all of the parties. These are not just the parties directly involved in the inquiry, but the media, the wider public, and the concerns that have been expressed. It is all too easy for the conspiracy theory to develop in an inquiry.

Lord Bichard indicated the way in which he dealt with people who criticised the result of the inquiry. For those of you who are technical about these matters, I have to say, the Salmon principles of how you communicate possible criticisms seem to me to be totally unworkable, and therefore each inquiry has to, I think, form a way of making sure that they keep on board, as it were, the interested parties, without holding up the whole proceedings all over again.

How should we judge whether an inquiry is successful or not? I suggest there are four key questions. First of all, did the inquiry satisfactorily address the terms of reference in a fair, robust and effective way? Secondly,

do the report and its conclusions fit full-square with the evidence that was given to the inquiry? Third, was the task handled efficiently, timely, and in accord with value for money? Fourthly, did the inquiry help restore public confidence, and did it have an impact on future performance or procedures?

I believe that inquiries are important, we should take them seriously, and this is why this conference today is very important. We should consider having an inquiry when an issue is wider than individual grievance and may undermine the confidence of the public in our systems. These inquires need to be conducted openly, transparently, and efficiently. All the evidence of the Victoria Climbié Inquiry was taken in public, except once, when I was concerned that another child, not directly related or involved with the Inquiry, could be easily identified, and therefore all of the parties understood that that was a reasonable base for taking that bit of evidence in private.

Finally, and I say this with some hesitation, who chairs the inquiry is quite important. Obviously, judges have tremendous skill and experience that equip them and qualify them well for chairing inquiries, but I am a great believer in separation of powers and I uphold strongly the sentiment of the Supreme Court, and I believe it is very important the Judiciary stands separate from the Executive. Therefore, I think it is very important that, whereas some inquiries are admirably suited to being chaired by a judge, as in the Shipman case, there are other inquiries where I think judges run the risk of crossing the line which embroils them in party political matters which are best avoided by members of the judiciary.

Lord Butler
My experience of Inquiries as inquisitor and victim

I chose the title of "My experience of Inquiries as inquisitor and victim", and there is a wide range of those, some of which, indeed, I started off as inquisitor and felt that I finished up as victim! We have heard a lot of accounts, all of which I identify with, about the experience of people conducting inquiries. I was also involved quite a lot in the setting up of inquiries, and it may be useful if I give an insight into government's thought process when setting up an inquiry.

I was very conscious, when I think back on the inquiries that I was involved in, in the great variety of them, and certainly, there is "one size fits all" in who is appointed, what powers they are given and how they conduct the inquiry.

I will briefly mention again the range of inquiries. Firstly, where there is need for advice on a subject for the Government, or there's need for public discussion of it, where there's no question of culpability then a Royal Commission is appropriate. I took part in the Royal Commission on the Second Stage of the Reform of the House of Lords, which was an issue of that sort.

Secondly, there are cases where there are questions of culpability, but also of lessons to be learned for the future, where it is not necessarily the Central Government that is involved but public authorities, and the Climbié Inquiry and the Soham Inquiry I think would be good examples of that.

The third, where it is the Central Government that is in the dock, and there is serious public concern about the culpability of the Central Government, and a notable example of that, burned on my experience, was the Scott Inquiry.

There is the next category where there are allegations of criminal activity by those in authority, and examples of those would be Cash for Peerages or fraudulent expense claims by Members of Parliament, and there, it is cut and dried. These are questions for the police. There may be public inquiries associated with them, but first of all, one's got to allow any criminal investigation to take place and any criminal procedures to be completed before you get into that.

Finally, which I was also much troubled with, are allegations of misbehaviour by Ministers, people in authority, short of criminal activity, but requiring resignation if they are established, and the ones that are burned onto my heart are Al Fayed's allegations against Neil Hamilton and Tim Smith about Cash for Questions and, separately, against Jonathan Aitken.

Now, these, from the point of view of the Government that is considering what to do about them, raise various questions about the way in which a public inquiry should be set up.

First of all, it's clearly necessary that the person or people carrying out the inquiry should, as far as possible, have relevant expertise and access to evidence, or at least access to expertise, and Lord Laming said how, despite his very wide experience in the social services, he also, very wisely, reinforced himself by having expert assessors who could support him. Secondly, in considering who should conduct an inquiry, it's essential that they should, particularly where there's public concern, have sufficient independence or standing to command public confidence in their conclusions. Thirdly, it is important to have somebody who can be counted on to have the experience and knowledge to be fair to those involved, both the aggrieved and those in the dock. So, in deciding who should carry out an inquiry, those are the sort of considerations that the Government will have in mind.

Then, secondly, the government must decide the powers that the inquiry should have: the powers to compel witnesses or to get access to production of documents, whether witnesses should be required to give evidence on oath. These powers were previously provided by something called the Tribunals of Inquiry Act 1921, and I will come on to say there are disadvantages in using that, and so the question is whether it needs that sort of formality or, as has very often been the case, you have informal inquiries, short of a statutory inquiry, but you're satisfied that nonetheless you can get evidence, that witnesses can give evidence and you can get access to documents. So that is the second consideration: the powers of the inquiry.

The third is the speed of the inquiry and, related to that, cost. Long inquiries cost more and also may fail to reassure the public because people have lost interest by the time that they report.

Fourthly, the government needs to work out whether there should be evidence given in public, and in general, particularly when the whole purpose of the inquiry is to reassure the public, there are very strong arguments, obviously, that the evidence should be given in public. There are some cases where that cannot be done: my review of intelligence, for obvious reasons, was one, another might be when the anonymity of witnesses needs to be protected.

Now, one of the big issues for Government in relation to the powers was the formality of the 1921 Act. Early in my career, I was involved in an inquiry under the 1921 Act, which was the Crown Agents Inquiry into the collapse of the crown agents that took place between 1974 and 1981. This was a long, drawn-out inquiry, conducted by a judge, with legal representation of witnesses, and it took seven years. I remember vividly that it reported during the Falklands War and the report did not even get onto the front page of the newspapers – in fact, it was barely reported at all. People had lost interest. It had cost a lot, and that rather put the Government off using the 1921 Act, and so, from 1981 into the 1990s, Government tried to achieve the same result by more informal means, like the Franks Inquiry into the Falklands War, which was done without using those sort of compulsory powers to compel witnesses, to compel evidence, and to take evidence on oath.

Of course, when the Government is in the dock, you can usually achieve that, because the Government agrees to cooperate and it agrees to instruct its employees to give evidence and to provide documents, but that does not extend, as Lord Laming and Lord Bichard have said, necessarily to public authorities. Local authorities and the police might not cooperate sufficiently, and so statutory powers are again required, and that was the principal argument for introducing the 2005 Act, which gave powers like those in the 1921 Act, but, as Lady Justice Smith has said, was criticised because it gave too much power to Ministers. Under the 1921 Act, there had to be a parliamentary say, Parliament had a role in approving inquiries; that was taken away by the 2005 Act, and Ministers have power to set up and appoint, without reference to Parliament. They also have the power to keep evidence secret, cut inquiries short, ban witnesses, and, for the reasons Lady Justice Smith said, the Act been subject to a lot of criticism on that ground, and I would share that criticism.

Now, when the Government is setting up such enquiries, therefore, it is difficult to get a trade-off between these various things. What has not been mentioned today, and for perfectly good reasons, is the role of Parliament in conducting inquiries. Since it is the role of Parliament to hold the Executive to account, you might expect that people would look to Parliament to conduct inquiries, but where, particularly, there's a question of culpability of the Government, people do not trust Parliament or Parliamentary Select Committees, to do it, because they are partisan and they usually have a majority of the governing party. They were discredited as long ago as 1906 by an inquiry into the Marconi scandal, and it has never been possible really to use Select Committees since then. Parliament would like to play a bigger part, but all the history suggests that it's not effective, and even the Parliamentary Committee on Standards, which looked into the case of Neil Hamilton after I did, was not successful and did not manage to reach an agreed conclusion. Therefore, unfortunately, although Parliamentary Select Committees do really quite good work on areas of policy where they get the Executive to explain its thinking, they are not a good and not a suitable machine for investigatory inquiries where there is a question of culpability.

So, why do we so often turn to judges? I think that the reason for that is that there are not many other categories of people who command such confidence in their independence and also confidence in their fairness. So, very often, I think, the Government finds itself imposing on judges, and Lord Saville is a perfect example, who spent his whole time as a Law Lord conducting the Saville Inquiry – he's never sat as a member of the Supreme Court because the whole of his time since he was appointed a Law Lord was on the Saville Inquiry into Bloody Sunday. We very often, turn to judges, but if I may say, Lady Justice Smith, there are sometimes disadvantages to judges because they are very concerned, rightly, on having fair procedures - fair procedures often take a great deal of time - and they are also very much concerned with turning over every stone. The history of judicial inquiries is that they take very much longer than anybody expects at the outset, and my examples of that would be the Saville Inquiry, the Scott Inquiry, and even the Philips Inquiry on BSE took much longer and cost more than the Government expected. Another problem for judges is we often give them inquires where the issue is very highly politically charged, into areas which are quite a political minefield and in which they do not feel comfortable and that was true of Richard Scott on the Scott Inquiry.

We then have the next category of minor scandals. I was charged, and I do not remember it with any great pleasure, when there were Al Fayad's allegations about Neil Hamilton and Tim Smith and about Jonathan Aitken, and the issue here was whether they'd misbehaved in a way that caused their resignation. I got Tim Smith to confess at the outset that he had taken money to ask questions; and circumstantial evidence against Neil Hamilton was very strong because he had similarly asked a whole lot of questions at the behest of Al Fayad, he denied that he'd had money for it, and nobody ever managed to prove the contrary, including me; and then Jonathan Aitken, who I made the mistake of saying I believed his story about who paid for him at the Ritz, and that story turned out, in court, to be untrue.

What I would say really about all these public inquiries is that there are a series of trade-offs. There are trade-offs about who you ask to conduct it, about the powers that you give, and those are a trade-off against the cost and the time, and the Government has got to consider that in each case. Nothing is fully satisfactory, but when

questions of culpability arise, and I think there has been a trend, certainly during my career, for more inquiries to be demanded by the public, because something's gone wrong and they want to identify who's responsible for it, I think it does then become a greater emphasis on formal procedures, and that may require involvement of lawyers and that may then take a good deal of time. That is why I was particularly interested in what Lord Bichard said about his review, when he had people applying for judicial review. On my review about the intelligence, we had to give, as a matter of fairness, people to have the chance to comment where there was anything that might be taken as damaging to their reputation, and we were threatened for a time with the introduction of their lawyers. It cannot really be refused when people's reputations are at stake, and that looked like delaying us and taking a longer time.

Finally I would like to say a couple of things about the review I did on intelligence, where some of the things that have been said today have really struck a chord with me.

Lord Laming said that it is important to establish, at the beginning, what the purpose of an inquiry is, and my review on intelligence on weapons of mass destruction was a case where there was very great ambiguity about what the purpose of the inquiry was. It was a review that the Government did not want to have. They'd just had Lord Hutton's Inquiry into the death of David Kelly, and Tony Blair said he was not going to have any more inquiries into Iraq, but President George Bush, in the States, felt himself compelled to set up an inquiry into why, after the war had been started because it was believed there were weapons of mass destruction, no weapons of mass destruction had been found, and when an inquiry was set up in the United States, Mr Blair decided to set one up in the UK.

It was perfectly obviously to me; at the time it was set up, what the political motivations were. There were a lot of political motivations which did not match at all what the real public interest in it was. This was an investigation into something that had gone wrong: the intelligence had said there were weapons of mass destruction, and there had turned out not to be. It could be said that the subject of the inquiry was very technical: why the intelligence people had made such a mistake. Of course, that was not really what interested the public; they wanted to know whether they had been misled by the politicians.

Other aspects of the Inquiry which were clear to me showed how it was politically motivated. We were asked – we were set up in February, we were asked to produce a report by July. The American inquiry was set up also in February, and asked not to report until March a year hence. Why was there a difference? The difference was that, in the United States, they were going to have a presidential election that autumn, and they did not want to have the report till after it. In Britain, they were going to have an election the following May, and they wanted to have the report long enough before the election for it to have been forgotten by the time that the election took place. That was completely transparent!

The terms of reference, also, were not just about Iraq. They were about intelligence on weapons of mass destruction "in countries of concern". There are about 40 countries of concern in the world about nuclear weapons, and what the Government really wanted us to do was also to deal with where there were success stories, and there had been success stories about intelligence on weapons of mass destruction, in Libya particularly, in North Korea, and Iran, to some extent, and so we did that, but there was only public interest in Iraq. So, this is, I think, a case where the Inquiry has to recognise at the outset – and Lady Justice Smith made this point – what the public are really interested in. If it is a case where the public needs reassurance then I think the inquiries have to play a little fast and loose with their terms of reference, and deal with things that the public are really interested in.

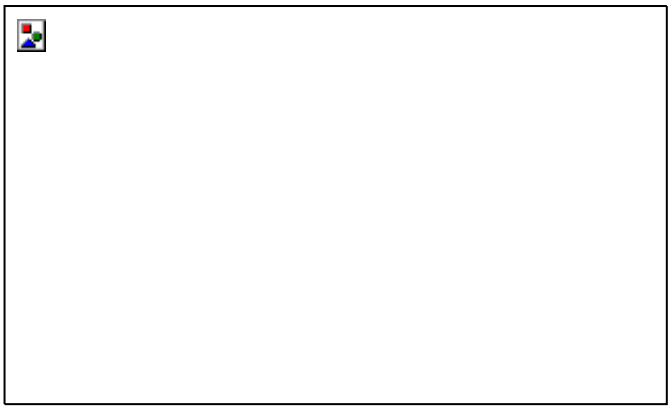
The Chilcot Inquiry, which is now going on, but has not been completed yet, and perhaps it's unwise therefore to comment on it, but where it seems to me that they are getting it exactly right is that they have terms of reference which are hugely wide: it's everything that happened from before the Iraq War until 2009. The number of documents on that must be vast! When I did my Inquiry, just into the narrow subject of

intelligence, even on Iraq, there were 50,000 intelligence reports that we had to look at! The number of documents covering all aspects of the Iraq War must be huge. Wisely the Chilcot team had some public meetings, which the bereaved could come to and said, "What is it you really want to know? What is it that you want to learn?" They are concentrating on that, and they will also, I am sure, cover lessons to be learned by the military in post-war planning and so on.

I do think that the Chair must be discerning in an inquiry. Particularly, they must take into account the requirements of the public when it is something in which, as is very often the subject of a public inquiry, the confidence of the public needs to be restored, and that points also, very strongly to public hearings in public.

When the Government originally announced the Chilcot Inquiry, Gordon Brown initially announced that the hearings were to be in private, and that seemed to, certainly me, and I think to most observers, to be entirely defeating the purpose of a further inquiry into Iraq. The purpose of it really was a sort of truth and reconciliation process, and if there was any purpose at all in having a further inquiry, it was so that the bereaved particularly, but others who felt that the Government had misled them into war, could see the people responsible for it being questioned in public. I am sure, even at the end of that, not everybody will be satisfied. There will be people who think that the Chilcot Inquiry should have asked questions which they did not ask. However, there will be, I think, much more movement towards closure, because people have seen the process taking place in public.

So I think those are relevant, disparate observations that I can give from my experience.



14 SEPTEMBER 2010

PUBLIC INQUIRIES:
AN OUTLINE OF ISSUES THAT NEED TO BE ADDRESSED

LORD BICHARD

I feel very much a junior partner on this occasion, particularly because my inquiry, the Soham Inquiry, was relatively straightforward, certainly compared to some of the others that you will hear about this afternoon. Nevertheless, it covered a tragic subject, which obtained a great deal, of public interest and attention.

I am going to cover this topic by asking some questions - not in order of importance - which are highly pertinent. One of the things I have noted on occasions is that there has not been a great deal of effort expended in this country in trying to identify and analyse the common themes. Furthermore, we have not done as much as we might have done to try and learn some lessons from these various inquiries, which is why I an event like this is probably overdue, and it may well be that both the Institute and Gresham could find some way of capturing some of the discussion today.

My first question is: why do we need these kind of inquiries anyway, and if we do need them, what is the motivation for setting them up and does that have an impact on the way in which the inquiry develops? One hopes that, in the majority of cases, inquiries are set up to establish facts, make recommendations, prevent something from happening again and to allay public concern. However, sometimes inquiries are seen as a political mechanism to show that action is being taken to take the heat out of a political issue. Although this usually does not affect the way in which the inquiry is managed, it will affect the way in which it's perceived and its ability to bring about change. So while I think we need inquiries it is not always clear whether they are established for the right reasons.

My second question is: do we spend sufficient time defining the terms of reference for the inquiry? These can be too wide, in which case they blur the focus of an inquiry or they can be too narrow, and the Chairman of the inquiry can be challenged if they seek to explore territory which seems relevant, but which others will argue do not fall within the scope of the inquiry. Indeed, this nearly happened during the Soham Inquiry. The problem is, when an inquiry is set up, there's a great sense of urgency and there's a tendency to not pay enough attention to the precise terms of reference.

Thirdly, I wonder whether a closer relationship between public inquiries and the parliamentary process needs to be developed. This links in with my later point about the lack of legislative action taken after the inquiry has made recommendations. I wonder whether there should be a new arrangement, possibly with Select Committees - provided their independence was enhanced.

There is then the issue of holding the inquiry in public or private. Clearly, that depends greatly on the subject matter. My feeling always is that they should be open wherever possible, but I was struck by the instincts which people have to try and keep things private wherever they can. The Chairman must ensure that he fights against that and be sure that there are absolute reasons for granting privacy.

Should we be looking to establish inquiries where the Chairman is sitting alone or where there is a panel? Quite clearly,

the Chairman is going to deal with difficult issues and needs appropriate support. I sat alone for the Soham Inquiry, but I had a very senior police advisor on my staff who was helping me to ensure that I did not miss some of the nuances from the police perspective. However, this can be branched out into the issue of whether or not it is better to have a sitting panel. This can be argued both ways, and a discussion would be productive. If there is a single Chair, there's clearly much less likelihood of compromise - some might regard that as a good thing, some might not - and there is a much greater clarity of accountability. If there is a panel, there's a greater likelihood perhaps of considered debate before conclusions are formed. On balance, I felt more comfortable sitting alone for my type of inquiry.

Another crucial issue is: how is the balance between speed, expedition, and the proper consideration of the facts maintained? Inquiries are established because of serious public concern which needs to be met, needs to be addressed as quickly as possible, sometimes, actually to avoid something similar happening in the short term. Those who are involved are under a great deal of stress, and I think there's a responsibility to end that as quickly as possible. I did chair the Soham Inquiry, but I was also on the other end of an inquiry when I was Chief Executive of Brent. Therefore, I understand the pressure placed on those on the other side of the inquiry fence, and that was certainly something which affected the way in which I managed the Soham Inquiry. The families were under huge levels of stress and wanted this chapter of the tragic events to be brought to a close. Of course, the police and the social workers also felt under pressure as careers were threatened. There's a lot of pressure to try and deal with the issues expeditiously but there is this responsibility to ensure that there is proper consideration. I think that if the public and the media get the impression that actually you are trying to move things forward too quickly, then that can be fatal to the inquiry's credibility. It's a very difficult balance to strike. I do not know how exactly to do so. All I can say is that we tried, from the outset, to establish what we thought was a reasonable balance, put that into the public domain, and try and keep to it, and not allow that timetable to continually slip.

There's another question about how the Chairs, Secretaries and Panels of these inquiries are appointed. If you look at the different kinds of inquiry, it would be almost impossible to produce a job description, but I have not seen any attempt to articulate the criteria you might employ when selecting a Chair and the requisite skills. In my case, there was not any help, advice or guidance, let alone training available, after the appointment was made. Previous good and bad practice was not made easily available, even though it can be found. I have to say the appointment of the secretariat, which, for me, was absolutely crucial, was equally random, although I have to say I put together a quite outstanding team in a very short period of time from the nominations I received. I've always reflect that we often spend so much time recruiting and selecting people and, so often, we get it wrong yet I had just seven days to recruit the secretariat, and they were absolutely sensational. Therefore, I think we could look at providing guidance for the Chairmen and also improving the selection process. I took the view that to be effective as a Chair, you needed to have the confidence of all those who were interested in the subject of the inquiry, and I went to some lengths to ensure that the two families, the police, and the third parties, were confident in my suitability to carry out that job. This stood me in very good stead during the course of the inquiry so I think perhaps that seeking such reassurance is worthwhile.

There is also the technical issue of whether or not to use counsel. John Chilcot has decided not to use counsel, which has made me feel weak for having done so, on a much more straightforward inquiry. For me, it worked very well, because I had someone to hand who was skilled at cross-examination. We talked every day, before and after every session, we agreed a strategy, and he employed me, and I employed myself, as chair, to maximum effect during the Inquiry. I was able to ensure, for example, that the contribution of witnesses was absolutely clear before we moved on, and sometimes reinforced a conclusion which the evidence seemed to suggest - moving the discussion forward. With counsel, I felt more able to reflect on the evidence as it unwound, to plug any gaps, and to concentrate on what was being said, and to concentrate on how it was being said, which can be really, really important in understanding what is happening in front of you. Others may feel differently, but there are disadvantages and advantages in distinguishing between the roles of Chair and the roles of investigator.

Of vital importance is the question of media management. Yet again, almost every case is different. I found it a really interesting experience. I've always found the media totally easy, but it seems to me that if we were going to spend - or I was going to spend six months of my life on this inquiry, then I needed the media to really understand the issues. So far as possible, to help them provide informed commentary, which is what they did, we regularly briefed them during the course of the inquiry. Furthermore, we gave them the very best technology that was available to enable them to report and to listen to the proceedings. I gave them very exhaustive briefing before the final report was published. They were almost uniformly responsible and provided informed reporting. However, it was a straightforward inquiry, and I think others may be much more sceptical about whether you can achieve that level of responsibility and positive coverage in a more complex, politically-fuelled environment.

It is important that there is action as a result of all of having an inquiry, rather than just having it for show. I was

particularly concerned, as some of you will remember, to ensure that something did happen, and therefore decided to commit to a follow-up report, six months after the initial report was produced, reviewing the extent to which the recommendations had been implemented.

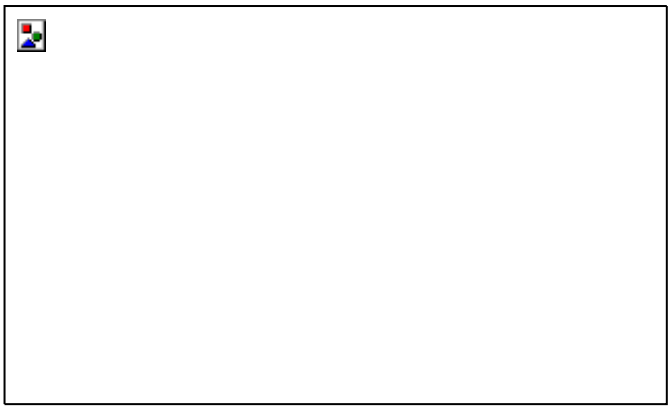
I also persuaded Government to report to the House regularly on progress against those recommendations. I think that was a success. I was surprised that nothing similar, as far as I knew, had been done before.

I also tried to ensure that the number of recommendations was kept to an absolute minimum, with particular emphasis. I felt that sometimes priorities for change had been lost in other inquiries because of a plethora of detailed proposals, which had too little focus and too little clarity. Therefore, I invested a disproportionate amount of time in drafting the final report, and I even employed, for a period of time, a writer to help ensure that it was readable and comprehensible, and had as much impact on the layperson as possible.

I have two final points. The first regards the scope given to interested parties to comment before the report is published. For the Soham inquiry, we gave a time-limited window - about 21 days - to all of those who were commented upon in the report to respond and to let me know if they had any concerns about the accuracy. The obvious advantage of this is that it ensures that the report is probably is as accurate as it can be, and so avoids accusations of getting the facts wrong. It also enables the Chair to take account of what are the likely flashpoints and disagreement are going to be. The disadvantages are that the Chair discloses their hand, if that is a matter of concern. They can be accused, more seriously, of tempering their findings to avoid conflict. There is the potential for leaks - we were having this discussion before we came here - and there is danger that individual parties will see the opportunity to take anticipatory action to reduce the criticisms that they might face from the public, and obviously there's potential for legal action. I had many judicial reviews sitting on my desk in the three weeks before the report was published but they were all eventually withdrawn. We did manage, therefore, to handle the dangers, the disadvantages, effectively, and I think I found we gained a great deal by providing that period for comment.

Lastly: why do inquiries seem to have so little impact? The reality is that, too often, they have nowhere near the kind of impact that you would want. Since the Maria Colwell Inquiry in 1973 in Brighton, there have been about 170 similar inquiries. This is deeply depressing, and it's particularly depressing when you remember that most of those inquiries said many similar things: a failure in sharing of information and communications, and a failure to focus on the child.

I have tried to touch on some of the things I think we might be able to do to ensure that, where possible, lessons are learned, but there is a remarkable reluctance to learn and adapt to change within too many professions.



14 SEPTEMBER 2010

PUBLIC INQUIRIES:
MINIMIZE THE HAZARDS BY SECURING THE BASICS

LORD LAMING

I would like to begin by congratulating Gresham College for organising what I regard is an important event. I say it is important not in any way to ingratiate myself to Gresham College, but because I believe that inquiries are a very important vehicle in open, democratic society, as long as they are clearly independent, transparent and fair, and that goes to the heart of some of the things that I wish to discuss. Inquiries are important because there are organisations that are, day-by-day, making decisions or taking actions which affect huge number of people, for good or ill, and have the potential to use powers effectively, or misuse power, to the considerable disadvantage of the citizens.

Now, many of people of course argue that there is no place for inquiries. I have to say that has been my experience with successive governments, because, they argue that there are so many other ways in which grievances or concerns can be dealt. There is the protection of the law. People have access to national and local elected representatives; they have access to the media which is very powerful; they have access to the relevant professional and regulatory bodies; they have access to ombudsmen, etc. all of which is true, and no doubt, in many instances, these bodies perform an entirely useful role and achieve the aims for which they are intended. However, there are some issues that are of deep concern, not just to the individuals directly affected, but to the general population. These undermine the confidence of the population in the services that are being delivered, or in the decision-making processes, or it is alleged that powers are being seriously abused. In those situations, it is very important that we have in place mechanisms whereby we can not only explore, in great detail, the issues, but we can go some way to restoring the confidence of the general public in the processes that have been established. Sometimes, for this to happen, it is necessary that some processes are amended or changed very considerably. Sometimes this happens and sometimes it does not.

However, I do not believe that we should allow the development of a line of thinking which argues that all inquiries are unnecessary, hugely expensive, time-wasting, and make conclusions which could have been obtained in other ways. In fact, while many inquiries are called for, relatively few are agreed. There are very few inquiries established each year, and that is an indication, in my view, that those which are established have fulfilled a number of tests. There have been calls for some inquiries which I thought had merit but were turned down. It is not the case that we are overwhelmed with inquiries or that there is evidence that inquiries are unnecessary. I think that there are some issues that are so important that they should be subjected to an independent tribunal created specifically for that purpose.

There are those who claim that all inquiries take a long time and are hugely expensive. I do not believe that this is unavoidable and Lord Bichard has just given a very good illustration of an inquiry which did not take a long time; was not, I imagine, hugely expensive; but it was important because it was a grave matter that was being considered. It was important for us all that those matters were considered very carefully.

Now, it seems to me - and Lord Bichard has already raised some of these questions - very important that, if there is to be an inquiry, that there are some fundamental issues that need to be considered long before there is a public announcement. The detail, the Chair and the conduct of the inquiry should be finalised before any announcement, because, in my

experience, some of the inquiries that have caused most concern have done so because of inadequate preparation and inadequate clarity.

I would suggest that there are seven things that need to be considered. The first is the clarity of terms of reference, the second is the powers to be given to the inquiry, and I want to give an illustration in a moment about an inquiry that I chaired that had no powers and the problems that that caused, and then an inquiry that I chaired that had a huge number of powers given to me by Parliament.

The third thing that needs to be considered is whether it is possible to get access to all the relevant documents and the possible witnesses - this is important because most inquiries take place quite a long time after the event which is being investigated. If there's been a criminal trial, a criminal investigation and then a trial it is usually two years after the event that the inquiry is established, and by this time, there will have been substantial developments. It is necessary to be clear about whether or not an inquiry will have access to the right documents.

Lord Bichard has referred to whether evidence should be taken in private or in public, in particular, what criteria is to be employed about making that decision; why that is so; and whether or not that is capable of being conducted in a flexible way.

The fifth point is whether or not the inquiry will be adversarial or inquisitorial because, if it is adversarial, it takes on an entirely different style and also it lengthens the procedures very considerably from if it is inquisitorial.

The final two points are about the continuing public issuing of the evidence as the inquiry is proceeding, the points that Lord Bichard has touched upon about people having access to the whole of the evidence; and, finally, the publication of the report. Now, these matters need to be settled because these are exactly the kind of areas where there is a very, very strong vulnerability to judicial review, and also other ways of challenging the whole basis of the inquiry.

The first inquiry that I chaired followed the killing of a young man by a woman with a long history of serious mental illness, and it was done in circumstances that attracted a huge amount of media attention. The media attention was so great that it was felt that the issues had to be explored in some detail. That inquiry was set up jointly by the local authority and the health authority, and they set it up, in consultation with me, and their contribution was admirable. But, it did not take long after the inquiry was established for me to realise that, although the terms of reference and many other details had been settled, I had no powers whatsoever. The assumption had been made that because the witnesses were currently employees of one of the authorities or the other, in the public sector, they would willingly come and give their evidence, and that I would easily have access to all the relevant documents, including medical notes. That was a huge lesson for me, in that I quickly realised that the only thing that I had at my disposal, were my personal powers of persuasion. It took a long time to secure agreement about representation, about witnesses, and about whether or not, and by whom, witnesses could be represented, and whether the inquiry would be conducted in one way or another. There were long negotiations before these matters were settled. It would have been so much easier had further thought been given to this at a much earlier stage.

Indeed, since this experience, I've taken an interest in some other inquiries - from a distance - and noticed that some inquiries have run into similar problems. Previous employees have declined to make any contribution to the inquiry, even though they held extremely important posts in the organisation that was being inquired into, and would be regarded as key witnesses.

Whilst I was finalising the publication of the report of that inquiry away from London, following the murder, or the manslaughter, of this young man, I got a call to persuade me - I have to say, looking back, I ought to have been a bit stronger on some points - to go to Manchester to set up an inquiry on the implications of the activities of Harold Shipman, the GP who murdered so many people. Other people had apparently done a great deal of work on this matter, and because the trial was about to conclude, there was thought to be great urgency to announce the inquiry, its terms of reference and all the other important details. I had not been in Manchester for very long when I realised, all too clearly, that the terms of reference that I had been given and the kind of inquiry that I was about to conduct, was not the kind of inquiry that the relatives of the victims of Harold Shipman wanted to have. Over a period of months, whilst we pressed on with our task, a major judicial review, took its course, and eventually prevailed. The Government was criticised in that judicial review, and the inquiry that I was commissioned to undertake came to an abrupt end. I was very pleased indeed that Lady Justice Smith then very successfully completed an inquiry, which was actually the inquiry that the relatives wanted and needed.

This was a clear lesson that there is no benefit to be gained by skimping thought, care and attention in setting up a review before the public announcements are made and being clear exactly what the purpose of the inquiry is for.

I say that also because, in many inquiries with which I have taken an interest, the terms of reference have been challenged, either because they are thought to be too narrow, too narrowly drawn, or because they do not address the central points that people want to have pursued. Indeed, in the Victoria Climbié Inquiry, had I attempted to address the whole range of items that were put forward by various people, it would turned less of an inquiry and more into a Royal Commission, as it battled with the whole basis of social care services, the establishment, the responsibilities of local government and the regulatory framework. Therefore, I think it is important to recognise that there is a huge difference between people with an interest in an inquiry and people who are interested parties to an inquiry.

While on the Victoria Climbié Inquiry I had a preliminary meeting to set out how I proposed to conduct the inquiry, and went through the whole process in detail. I asked the interested parties if they would register their interest with the solicitor to the Inquiry, and I was taken aback at the queue that formed. However, the queue formed because people had not sufficiently distinguished between people with an interest in the Inquiry - and these might have been legitimate and very broad interests - from being an interested party to the Inquiry, whereby you are a possible witness to the Inquiry and need to discuss the legal representation that you would have in that process. Some of the inquiries that are seen to ineffective might have been, in some way hampered by the lack of clarity about the terms of references and the powers that have been given.

I was rather surprised that the Victoria Climbié Inquiry was set up as an independent statutory inquiry, and Parliament gave me very wide powers that I did not expect to have to use for one minute. They were very wide powers that were given to me, but in the event, sad to say, every one of those powers that had been given to me was actually used, and therefore it was important to actually anticipate the possibilities of the need for these powers to be given.

Victoria Climbié was a seven year old girl who lived in this country only for 10 months. She came from the Ivory Coast and she spoke only French, but despite the fact that she lived in this country for only 10 months, she was known to no fewer than four separate Social Services Departments, three Housing Departments, two different Child Protection Units of the Police Service, and in addition, she was admitted to two different hospitals because the Accident & Emergency staff suspected that she was being deliberately harmed. In addition to that, she was referred to a centre, specialist children's centre, managed by the NSPCC. Now, it was precisely because every one of the key services that one could think of had been involved with Victoria, and yet failed to protect her from absolutely dreadful abuse and the most awful death, that it called into question whether or not the system as a whole was working or whether this was typical of its shortcomings. So there was a very strong feeling that we had to examine what happened to Victoria; the part played by each of the key services; and why this child had not been protected. More particularly, the terms of reference required us to make recommendations as to how the system might be improved and how an experience of this kind might be better prevented in the future.

Now, because Victoria was known to all of these different agencies, the Inquiry was set up under three different Acts of Parliament: the National Health Service Act of 1977; the Police Act of 1996; and the Children Act of 1989. That made it somewhat unusual in that, in effect, it was three inquiries but with the evidence taken simultaneously.

The delay following the death of Victoria to the actual start of the Inquiry meant that the time lapse was very significant, and it was extremely difficult to get hold of the key documents in the original form and to track down witnesses. There were many potential witnesses, considering all of the services which had had contact with Victoria. The Police inquiry was extremely complex - whatever the failings of the Police in child protection, the Police inquiry was quite remarkable, in that, they had the death of a child in this country, who had been given a false name, and who they did not know where this child had come from, but because of extremely skilled work they actually managed to discover that this child had come from the Ivory Coast. They also managed to track her parents down from a small place outside the main city of Abidjan. All that took time, and then assembling the evidence for the trial took time, and then the Inquiry was time-consuming.

For the Inquiry there were 4,000 relevant documents, 277 witness statements and oral evidence from 159 witnesses. We had to use inquiry agent to track down 26 witnesses, and we took oral evidence by video link from cooperative witnesses, who were, by then, resident in Australia, New Zealand, South Africa and the USA. Sadly, one witness that we would have really liked to have heard from was never traced, and another witness had to be prosecuted for failure to cooperate with the Inquiry, a very key witness.

Unfortunately, threat of legal action had to be taken against a number of authorities who failed to produce all the documents that we wanted to have. That was not necessarily due to a lack of on their part. For example, in one local authority, Victoria had no fewer than five unique reference numbers to her files, and in another authority, documents were found in a redundant filing cabinet just as it was being removed to be taken to the dump, and in another authority, I had been assured that we had all the documents, until a witness, in the course of evidence, revealed a very important document that had hitherto not been known.

Due to the range of witnesses and the evidence, we had 30 different legal teams, and for that reason, it seemed to me absolutely essential that the inquiry was conducted in an inquisitorial way. Had every legal team had the right to cross-examine every witness, it would have extended the length of the Inquiry enormously. Fortunately, the legal teams agreed that the Counsel to the Inquiry would take the witness through their witness statements, and that they could put to Counsel to the Inquiry any points of particular concern they wanted examined in detail, and if, at the end of that, they felt that they had not had those matters considered as carefully as they wished, they could ask me to pursue these matters, as I did.

Unlike Lord Bichard, I started with four specialist assessors: one was a specialist police officer, one was a paediatrician, one was a specialist nurse manager, and the other was a specialist social service manager. The assessors rotated as to where they sat according to the nature of the witness. So, when there was a police officer, the police assessor sat closest to me; when it was a nurse, similarly, the nurse; and they could prompt me and prompt any questions that I want to ask, but I alone asked the questions.

Due to the wide interest in the Inquiry, we employed Live-Note, which, as you know, is the system whereby it comes up live on the screen in front of you, and everybody had that, including the media. Like Lord Bichard, we paid a great deal of attention to meeting the media's concerns and interests, and not only did we have LiveNote, but, in order that everybody did not have to sit through every day of the Inquiry, all of the evidence was put on a website. Through a contract that we employed, the evidence was put on the website before eight o'clock each evening, so everybody had that day's evidence before the end of the day.

Due to the inquisitorial nature of the Inquiry and the inevitable concern amongst some groups that they might be favoured above another or one may be disadvantaged in respect of the other, I have to say that the assessors and I lived a monk-like existence throughout the Inquiry. We did not wish to bump into anybody with any interest, either directly or indirectly, with the subject matter of the Inquiry, because, as Lord Bichard has already indicated, it is very important in an inquiry to keep all of the different interests on board and not to generate a feeling of suspicion or concern that matters are not being handled transparently and fairly.

Therefore, I had absolutely no contact whatsoever with any Government official or any Government minister until after the report of the Inquiry had been sent to the printers. I wanted to be absolutely clear that the Government had no influence whatsoever on the outcome of the Inquiry. I have to say, the Government played very fairly and the help that they gave me, was in arranging for the presentation and publication of the Inquiry..

It is clear from all that I have been saying and I think this supports what Lord Bichard has said, is that throughout an inquiry of this kind, you have to actually have in mind the steps that have to be taken to retain the confidence of all of the parties. These are not just the parties directly involved in the inquiry, but the media, the wider public, and the concerns that have been expressed. It is all too easy for the conspiracy theory to develop in an inquiry.

Lord Bichard indicated the way in which he dealt with people who criticised the result of the inquiry. For those of you who are technical about these matters, I have to say, the Salmon principles of how you communicate possible criticisms seem to me to be totally unworkable, and therefore each inquiry has to, I think, form a way of making sure that they keep on board, as it were, the interested parties, without holding up the whole proceedings all over again.

How should we judge whether an inquiry is successful or not? I suggest there are four key questions. First of all, did the inquiry satisfactorily address the terms of reference in a fair, robust and effective way? Secondly, do the report and its conclusions fit full-square with the evidence that was given to the inquiry? Third, was the task handled efficiently, timely, and in accord with value for money? Fourthly, did the inquiry help restore public confidence, and did it have an impact on future performance or procedures?

I believe that inquiries are important, we should take them seriously, and this is why this conference today is very important. We should consider having an inquiry when an issue is wider than individual grievance and may undermine the confidence of the public in our systems. These inquires need to be conducted openly, transparently, and efficiently. All the evidence of the Victoria Climbié Inquiry was taken in public, except once, when I was concerned that another child, not directly related or involved with the Inquiry, could be easily identified, and therefore all of the parties understood that that was a reasonable base for taking that bit of evidence in private.

Finally, and I say this with some hesitation, who chairs the inquiry is quite important. Obviously, judges have tremendous skill and experience that equip them and qualify them well for chairing inquiries, but I am a great believer in separation of powers and I uphold strongly the sentiment of the Supreme Court, and I believe it is very important the Judiciary stands separate from the Executive. Therefore, I think it is very important that, whereas some inquiries are admirably suited to being chaired by a judge, as in the Shipman case, there are other inquiries where I think judges run the risk of crossing the line which embroils them in party political matters which are best avoided by members of the judiciary.