

Appendix 1

Hillsborough Independent Panel

terms of reference

The Hillsborough disaster was a personal tragedy for hundreds of people and an event of major national and international significance in the subsequent minimisation of safety risks at football matches and similar sporting events.

As such, Government and local agencies in South Yorkshire are committed to maximum possible public disclosure of governmental and other agency documentation on events surrounding the disaster.

The Hillsborough Independent Panel has been appointed to oversee this disclosure process, consulting with the Hillsborough families and statutory agencies where necessary, and to carry out the associated activities outlined in the panel remit below.

Exceptionally, the independent panel will be provided with access to Hillsborough documentation held by Government and local agencies relevant to events surrounding the tragedy in advance of the normal 30-year point for public disclosure.

The fundamental principles will be full disclosure of documentation and no redaction of content, except in the limited legal and other circumstances outlined in a disclosure protocol.

The remit of the independent panel will be to:

- oversee full public disclosure of relevant government and local information within the limited constraints set out in the accompanying protocol;
- consult with the Hillsborough families to ensure that the views of those most affected by the tragedy are taken into account;
- manage the process of public disclosure, ensuring that it takes place initially to the Hillsborough families and other involved parties, in an agreed manner and within a reasonable timescale, before information is made more widely available;
- in line with established practice, work with the Keeper of Public Records in preparing options for establishing an archive of Hillsborough documentation, including a catalogue of all central Governmental and local public agency information and a commentary on any information withheld for the benefit of the families or on legal or other grounds;
- produce a report explaining the work of the panel. The panel's report will also illustrate how the information disclosed adds to public understanding of the tragedy and its aftermath.

Protocol on Disclosure of Information

1. This protocol sets out the disclosure arrangements for information relating to the Hillsborough disaster.

Scope of information

2. The scope of the disclosure process is intended to cover all documentation held by central government, local government and other public agencies which relates directly to events surrounding the Hillsborough tragedy up to and including the Taylor report, the Lord Stuart-Smith review of Hillsborough papers in 1998-99 and the private prosecution in 2000. The relevant agencies include the police, ambulance service, fire service, coroner and Sheffield City Council.

Archiving and Cataloguing

3. In order to assist the work of the panel and in view of the volume of documentation, each agency holding relevant documentation will make arrangements for all papers in their possession to be archived and catalogued, prior to disclosure to the panel.

Principle of full disclosure

4. The fundamental aim is to provide full disclosure of documentation to the panel and, subsequently, to the Hillsborough families and then the wider public, taking into account legal and other considerations set out below.

Pre-1997 Government information

5. Some information held by central government is covered by the convention on the release of papers of a previous administration (as set out by the Prime Minister on 24 January 1980). This does not apply to all information from before May 1997, but to documents indicating the views of ministers, such as Cabinet material or policy advice to ministers. The convention requires that such information cannot be disclosed without first consulting representatives of that administration.

6. The Government will consult representatives of the previous administration about the release of information covered by the convention, and will release such information only in accordance with that convention.

Exceptions to public disclosure

7. The vast majority of information held by central and local government and other public agencies will be disclosed. A limited number of exceptions will apply, which for example are expected to include:

- (a) information covered by legal professional privilege;
- (b) information which public bodies are legally prohibited from disclosing (including information provided in confidence by third parties);
- (c) information indicating the views of ministers, where release would prejudice the convention of Cabinet collective responsibility.

8. In all of the above cases, the decision to withhold information will be considered on a case-by-case basis by the holding agency. Wherever possible, information that cannot be disclosed to the public will be disclosed on a closed and confidential basis to the panel and a description of the information provided for public disclosure. Where disclosure to the panel is not possible (which will be the case for a very small number of documents), the holding agency will be asked if they could provide a description of the information for the panel which can be made available to the public in the same form.

Redaction of individuals' identities

9. Where it is appropriate and necessary, it is expected that the Panel will recommend that the identities of certain categories of individuals will be redacted from information prior to disclosure to the public. These are expected to include the identities of:

- (a) members of the public who have provided written observations on events associated with the tragedy;
- (b) civil servants who were not members of the Senior Civil Service at the time the document was produced;
- (c) police officers who were constables or other ranks up to and including sergeant at the time the document was produced;
- (d) other junior public employees who were not in a position to determine their agency's response to events prior to, during or in the aftermath of the tragedy.

10. Where individual identities are redacted, an indication of the individual's position or status will be given to the public. In addition, where it is necessary to achieve consistency of identification, it is expected that the panel will recommend that individuals are given anonymised identifiers (for example, "officer A" or "official C").

Lord Chancellor's Advisory Council

11. In any cases where the independent panel believes there to be a public interest in obtaining access to any withheld or redacted information, and where the holding agency disagrees, the matter will be referred to the Lord Chancellor's Advisory Council on National Records and Archives (an independent body tasked to oversee decisions on the release of public documents). The Advisory Council will then provide independent, impartial advice on the reasons given by departments or agencies for retention of information.

Consultation with Hillsborough families

12. The independent panel should consult and reflect the views of the Hillsborough families when co-ordinating the publication of distressing or personal information regarding those who died.

Public disclosure process

13. The independent panel should ensure that disclosure takes place initially to the Hillsborough families and other involved parties, in an agreed manner and within a reasonable timescale, before information is made more widely available. No disclosure should take place to any other involved party before disclosure is made to the Hillsborough families.

14. It is expected that the disclosure process will take place on an incremental basis over a period of at least two years.

Report on the work of the independent panel

15. The independent panel will be responsible for producing a report on its work. The detailed content of the report will be a matter for the independent panel, but the government envisages that it will cover:

- (a) a description of the terms of reference and work of the panel;
- (b) an overview of the information reviewed by the panel and publicly disclosed;
- (c) an overview of the information provided to the independent panel on a closed basis, based on the summary description provided to the independent panel;
- (d) an overview of the withheld information, based on the summary description provided to the independent panel;
- (e) how the information disclosed adds to public understanding of the tragedy and its aftermath.

Hillsborough Archive

16. The independent panel should liaise closely with the Keeper of Public Records (who holds statutory responsibility to authorise a place of deposit as suitable for housing public archives) in making recommendations regarding options for establishing a designated Hillsborough document archive, including such matters as the location, conservation and format of records to be retained in the archive.

Confidentiality of closed information

17. Information that is provided to the independent panel on a closed basis shall remain confidential to members of the independent panel and the secretariat and shall not be made public. Members of the independent panel will be required to sign a confidentiality agreement regarding disclosure of that information.

Secretariat and practicalities

18. The work of the independent panel will be supported by a secretariat consisting of officials from the Home Office, Ministry of Justice and The National Archives. The costs of the secretariat will be met by the Government.

19. The independent panel is expected to meet in London, Sheffield and Liverpool. Frequency of meetings will be for the independent panel to determine, but it is initially expected to meet monthly.

20. Members of the independent panel will receive a daily allowance at rates to be published, and repayment of actual travel and subsistence expenses in accordance with Home Office rules for senior civil servants.

Appendix 2

Disclosure process

Introduction

When the Home Secretary announced the establishment of the Hillsborough Independent Panel on 15 December 2009 he also published the terms of reference and a protocol which would govern its work (see Appendix 1).

Based on the protocol, this appendix sets out how the Panel approached its task, the issues relating to the process that arose during the Panel's work and how issues were addressed.

The Panel and the secretariat

The members of the Hillsborough Independent Panel were announced by Alan Johnson, then Home Secretary, on 26 January 2010.¹ They were: The Right Reverend James Jones, the Bishop of Liverpool (Chairman), Raju Bhatt, Christine Gifford, Katy Jones, Dr Bill Kirkup CBE, Paul Leighton CBE, QPM, Professor Phil Scraton, Peter Sissons, Sarah Tyacke CBE.

All members of the Panel signed confidentiality agreements. A Panel secretariat was established and met with interested parties including the families of the deceased and other victims. Following these early discussions with the families, work started on identifying potential contributing organisations including local agencies in Sheffield, other public authorities, private companies and individuals and bodies corporate.

The Panel met for the first time in Liverpool on 4 February 2010 and on 35 occasions between then and 12 September 2012. Most Panel meetings took place in Liverpool but the Panel also met in Sheffield and in London. At its first meeting, anticipating the volume of work and the timescale within which it was required to report, the Panel established sub-groups to focus on the key elements of its task. These sub-groups were:

Task 1: Disclosure

The Bishop of Liverpool
Christine Gifford
Professor Phil Scraton
Paul Leighton
Dr Bill Kirkup

Task 2: Research and report

Professor Phil Scraton
Dr Bill Kirkup
Paul Leighton
Katy Jones
Raju Bhatt

1. www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100126/wmstext/100126m0001.htm

Task 3: Permanent Archive

Sarah Tyacke
Christine Gifford

Task 4: Consulting families

The Bishop of Liverpool
Katy Jones
Dr Bill Kirkup
Paul Leighton (as required)
Peter Sissons (as required)

Consultation with Hillsborough families

The terms of reference oblige the Panel to disclose documents and other material ‘initially to the Hillsborough families and other involved parties ... before information is made more widely available’. This is the principle of ‘families first’.

From the outset the Panel committed to consultation with bereaved families throughout its work. Contact has been made with at least one family member of all who died at Hillsborough, including families not affiliated to any of the representative groups.

At its first meeting in February 2010, Panel members met with representatives of the three representative groups: the Hillsborough Family Support Group (HFSG); the Hillsborough Justice Campaign; and Hope for Hillsborough. In April 2012, Panel members also met with members of some families not affiliated to the groups. Regular contact has been maintained with the groups and with individual families while the Panel has continued its work. The Panel has continued its commitment to meeting the representative groups.

Disclosure process

Scope

Disclosure includes all documentation held by central government, local government and other public agencies relating to the context, circumstances and aftermath of the Hillsborough disaster.

The Panel has also accessed documents and other material from private individuals, corporate bodies and non-governmental organisations.

In total, the Panel reviewed over 450,000 pages of documentation from 84 organisations and individuals, in addition to audio-visual material.

Audio-visual material

The Panel has digitised a significant volume of audio-visual material from the time of the disaster. The Panel has recommended, in Part 3, that this material is permanently preserved at The National Archives. Two edited video clips – one illustrating the layout of the Leppings Lane end of Hillsborough Stadium and one showing the events leading to the opening of Gate C – have been published in Part 1 of the online version of this Report.

Duplicated material

In a project of this complexity it is inevitable that some documents provided by contributing organisations will duplicate those provided by others. In such cases duplicated material is referenced once, but it will be inevitable that some references are duplicated.

Documents discovered as part of the Panel process but not published on the Panel's website

To ensure transparency, the Panel has maintained a full audit of documents and material considered relevant for publication. Descriptions of all this material can be found in the master catalogue.

Extremely sensitive personal data

The Panel recognises that the disclosure of material relating to the deaths of 96 people necessarily involves sensitive personal data. The Panel discussed this issue with bereaved families within the HFSG, and their view was that all such information should be disclosed. While the Panel acknowledges the wishes of the bereaved families represented within the HFSG, a view which we believe to be shared by most of the bereaved families, some very sensitive personal data has not been disclosed to the public out of respect for those who died. Arrangements are in place, however, for individual families to receive unredacted information relevant to their family member(s) should they wish to do so on an individual basis after the publication of the Report.

The Panel required access to sensitive personal data that belonged to others involved in the disaster, including members of the emergency services, survivors and those who assisted at the scene. To access this material, an order was sought under the Data Protection Act 1998. The order was laid before Parliament on 20 May 2012 and formally 'made' on 25 July 2012.

Where disclosure does not 'add to public understanding', such sensitive personal data has been redacted from the disclosed documents.

Contributing organisations

Relevant contributing organisations and individuals were identified by the Panel and asked to undertake detailed searches for documents and other material concerning the disaster. There were several occasions when organisations were asked to conduct a second search and on a number of occasions this resulted in further information.

Some bereaved families responded to a request from the Panel for information.

In accessing for disclosure the significant amount of information not previously in the public domain, contributing organisations were asked to waive any entitlement to confidentiality and legal professional privilege. All public sector organisations approached by the Panel allowed unrestricted access to their documents and other material. The Panel is able to commend their response. In contrast, one private sector organisation, the Royal Sun Alliance Insurance Company (which was the insurer for Sheffield Wednesday Football Club in 1989) refused to waive its entitlement to privilege, thus denying the Panel access to its material. Strenuous efforts were made to persuade the company to allow the Panel confidential access to the relevant material, but it maintained its refusal. This is a matter of considerable regret to the Panel.

The Liverpool Law Society was the only other organisation that considered itself unable to provide unrestricted access to all the material it held for the Hillsborough Solicitors' Group Steering Committee. Legal advice provided to the Law Society and to the Panel confirmed that the legal professional privilege which was said to attach to some of the material was not theirs to waive, and despite considerable efforts the Panel was unable to assist them to find

a way round the obstacle. The Law Society did however provide access to and arrange for the disclosure of other material held by them to which such privilege did not apply.

In keeping with the Panel's terms of reference and protocol, contributing organisations holding relevant documents and information were expected to arrange for that material to be archived and catalogued prior to disclosure to the Panel. In practice this did not happen and much of the material received by the Panel was neither archived nor catalogued. This task was carried out by a team of archivists working with the Panel.

Redaction

Processing agreements were developed with all major contributing organisations. All were asked to work within a redaction framework which established the expectations of the Panel regarding the protection of information from disclosure into the public domain. The principles established in the redaction framework held for the duration of the project. Redaction was minimal and only applied when considered necessary by the Panel. The Panel has redacted names to ensure the appropriate and necessary protection of identities of:

- members of the public who provided written observations on events associated with the tragedy
- civil servants who were not members of the Senior Civil Service at the time a particular document was produced
- police officers who were constables or other ranks up to and including sergeant at the time a particular document was produced
- junior public employees who were not in a position to determine their agency's response to events prior to, during or in the aftermath of the disaster.

The Panel accepts that inconsistencies might occur, for example where identities may have been redacted in one document and disclosed in another. This is a consequence of processing such a large volume of documents and other material.

Individual members of the Panel reviewed all redactions made by contributing organisations to ensure that they conformed to the principle of full public disclosure within the law and protocols established in the Panel's own redaction framework.

The Panel's terms of reference and protocol committed central and local government and other public agencies to the full disclosure of their documents and information relating to the Hillsborough disaster. Limited exceptions, however, were recognised:

- information covered by legal professional privilege
- information that public bodies are legally prohibited from disclosing (including information provided in confidence by third parties)
- information indicating the views of ministers, where release would prejudice the convention of Cabinet collective responsibility.

Decisions to withhold information from the Panel have been considered on a case-by-case basis by the holding agency.

No information held by government has been withheld. This includes full, unredacted disclosure of Cabinet minutes.

In all but two cases, information that could be disclosed to the public has been disclosed

on a closed and confidential basis to the Panel and a description of the information is provided by the Panel for public disclosure. Where, exceptionally, disclosure to the Panel has not been possible, the holding agency has been asked to provide a description of the information for the Panel to be made available to the public.

All redactions have been reviewed and agreed by an individual Panel member. Additional sampling of those decisions was carried out by other Panel members. Minimal material was redacted by donating organisations on the grounds of legal professional privilege or confidentiality. It has not been necessary to refer any decisions on redaction by public sector organisations to the Advisory Council on National Records and Archives (as outlined in Section 11 of the Protocol on Disclosure of Information).

Parallel disclosure

To progress the volume of material provided by the contributing organisations it was essential to digitise all documents deemed to be relevant. Donating organisations (restricted to their material only), Panel members, the Panel's researchers and members of the secretariat were given access to a secure online database of digitised material in order to facilitate the Panel's work.

Our report

The Panel's obligations regarding publishing a report were established in its terms of reference as follows:

- a description of the terms of reference and work of the Panel
- an overview of the information reviewed by the Panel and publicly disclosed
- an overview of the information provided to the Panel on a closed basis, based on the summary description provided to the Panel
- an overview of the withheld information, based on the summary description provided to the Panel
- how the information disclosed adds to public understanding of the tragedy and its aftermath.

The research and analysis underpinning the Panel's report has been led by Panel member Professor Phil Scraton and a team of researchers. All documents and other material disclosed to the Panel have been available to the research team. Individual Panel members have provided expert support to the researchers in their specialist areas. Appendix 3 provides an account of the research process and the methodology adopted.

Appendix 3

Research process and method

Introduction

In terms of the broader context and immediate circumstances in which they occur and their short-term and longer-term aftermath, disasters involving multiple deaths and injuries are complex events impacting on the bereaved, survivors, rescuers, their families and their communities. To understand that complexity, in terms of causation and investigation, it has been suggested that disasters and their consequences should be considered as a sequence of distinct but inter-related ‘phases’.

A three-part medical analogy is often used: ‘incubation’ phase; ‘acute’ or ‘crisis’ phase; ‘recovery’ phase. ‘Incubation’ considers the build-up during which the potential for disaster grows and develops, often hidden from view yet inevitable once certain circumstances coincide. The ‘acute’ or ‘crisis’ phase occurs as that potential, often quickly and irretrievably, becomes reality. The ‘recovery’ phase extends from rescue through to resignation.

While it is helpful to consider the progression of a disaster, its context and its aftermath as self-contained time periods, these periods cannot be precisely delimited, since human actions and reactions, involving the dynamics of personal, group and organisational responses, are not straightforward. Identifying phases that encompass a definable time-span, nevertheless, helps in analysing, planning for and responding to disasters.

Previous research into the context and consequences of the Hillsborough disaster considered eight phases: the historical context; the immediate context; the immediate circumstances; the ‘moment’; rescue and evacuation; the immediate aftermath; the short-term aftermath; the long-term aftermath. This enabled an analytical approach to the key factors that contributed to the disaster, to what happened on the day and in the immediate aftermath, and to the investigations and inquiries that followed. As a framework this approach was adopted by the Panel in its analysis of the disclosed documents and other material and is reflected in the structure of the Report.

Terms of reference and scope

Within its terms of reference (see Appendix 1) the Panel was obliged to write a report demonstrating ‘how the information disclosed adds to public understanding of the tragedy and its aftermath’. To achieve that end the Panel negotiated access to documents held by a diverse range of organisations and individuals (see Appendix 2).

The scope of material sought and disclosed covered: the decade prior to the disaster, focusing on the condition of the stadium and the arrangements for crowd safety and crowd management; the circumstances leading up to the FA Cup Semi-Final being held at Hillsborough in 1989; the ‘moment’ of the disaster; the immediate aftermath; the investigations and inquiries that followed.

Once accessed, the documents and other material were catalogued and processed within the digital archive. While hard copies remained in key sites (The National Archive; the Sheffield Archives; the Liverpool Record Office) or with their rightful owners, the digital archive provides a single, coherent repository of all disclosed documents.

The cataloguing process was time-consuming because many of the documents provided by the contributing organisations or individuals had not previously been catalogued or filed.

Research process

Within the first months of the Panel’s work it became apparent that the sheer volume of documents would require a fully developed programme of research to provide an analytical review on which the Panel’s Report could be based.

The research team was Dr Janet Clark, Dr Jo Doody, Dr Shaun McDaid and Ms Gemma Ní Chaoimh. Appointed by the Panel, the team was managed by Panel member Professor Phil Scraton and based at the School of Law, Queen’s University Belfast. Other Panel members also contributed significantly to the research process in accord with their specialist knowledge and professional expertise. The team was supported by members of the Panel’s secretariat.

Research methodology

As stated above, a priority for the Panel’s work was to show how the disclosed documents contribute to public understanding of the disaster. It was important, therefore, to review ‘what was known’ in the public domain, from previous investigations, inquiries and research into and publications about the disaster. This review forms Part 1 of the Report.

Part 2 is concerned with ‘what the disclosed documents add to public understanding’, reflecting the context, circumstances and consequences of the disaster and its investigation. It also responds to the questions asked and issues raised by bereaved families in consultation with the Panel.

Having established the key focuses for the research, the Panel accessed, digitised and researched the documents accordingly. This involved a methodical content analysis of all documents and other material disclosed to the Panel. The documents, therefore, provided the foundation for the extensive, cross-referenced data that then formed the detail of the Report.

The Panel read all the disclosed documents in unredacted form. Redaction of documents, or their removal from public access, has been agreed by the Panel only in exceptional circumstances (see Appendix 2). The main reason for redaction or non-disclosure is privacy relating to personal information, particularly medical records. Names of junior members of staff within organisations have also been redacted.

Extensive primary data was drawn from the documents, then further analysed and cross-referenced to present a detailed narrative within each chapter. Inevitably the chapters also

rely on documents and material already in the public domain in order to provide a coherent, analytical narrative.

Regarding the circumstances and immediate aftermath of the disaster, cross-referencing of content was developed chronologically to construct a comprehensive sequence of events, reflecting the exchange of information between organisations prior to and after the disaster. This included detailed consideration of the decisions taken by relevant organisations regarding crowd management, crowd safety and structural modifications within the stadium throughout the 1980s.

The Panel also focused on issues concerning rescue and the emergency response. In examining the emergency response to the disaster, the Panel's approach was consistent with the analysis of disclosed documents as conducted for other chapters. Cross-referencing of a wide variety of sources in chronological order constructed a comprehensive sequence of events as the disaster unfolded. This enabled eye-witness accounts to be located in context.

Occasionally, timings of events in statements or other documents conflict with timings derived from radio transcripts. In these instances the transcripts, which are timed verbatim records of every telephone call and radio transmission, were considered definitive.

Disclosure and access to documents

The initial phase of the research was conducted on hard-copy original or photocopied documents held in Sheffield or at the Home Office. The next phase of the content analysis was conducted by accessing the digitised versions of documents held on a secure site.

While all documents disclosed to the Panel are not referenced specifically in the Report, each document has been reviewed and analysed as part of the research process. The Panel is aware that some documents include personal opinions of individuals, and statements about individuals, where those concerned have not had the opportunity to respond to comments or criticism. In reading the disclosed documents it is important to be sensitive to this situation.

Medical evidence

The assessment of the evidence on causation of death, central to the preliminary hearings or mini-inquests, was based primarily on the records of the post mortem examinations carried out on the deceased. These records are personal medical records, and as such have been treated as confidential by the Panel.

Because of the significance of this evidence and the concerns raised by bereaved families, the Panel's medically qualified member scrutinised the records, summarising their content in aggregate. This scrutiny revealed features previously the subject of comment in individual cases but that had not been assessed. The Panel received the helpful advice of a highly experienced and senior professor of forensic pathology.

The disclosed post mortem reports revealed a broad pattern of evidence of prolonged survival in a substantial proportion of the deceased (see Chapter 5). The outcome for those alive but unconscious due to partial asphyxiation was dependent on what happened to them during this period, including the prompt availability of properly equipped first-aid personnel and correct positioning.

The material disclosed to the Panel included the schedule of original data that had been used for an analysis which resulted in a claim that there was a link between later arrival in the ground and a raised blood alcohol level amongst the deceased. Initially, the Panel replicated the original analysis. Prompted by the results it carried out further analysis of the original data, the results of which are described in detail in Chapter 5.

Factual accuracy checking

A process of factual accuracy checking was conducted with South Yorkshire Police, the South Yorkshire West District Coroner, Yorkshire Ambulance Service and Sheffield City Council as the main contributing organisations. Each organisation was provided with sections of text showing extracts from the documents it provided to ensure that the text was a factually accurate representation.

The contributing organisations met with Panel members to discuss the text, but were not given hard copy or online access outside the meetings. In keeping with the principle of 'families first', under which the bereaved families are the first to access the Panel's Report, the contributing organisations were not provided with the Panel's interpretations of the documents.

Where appropriate, and based only on factual accuracy rather than interpretation, modifications were made to the text. Objections raised that were considered as matters of interpretation were discounted. The Panel is grateful to the main contributing organisations for their participation in this process.

Appendix 4

Retained tissue following post mortem examination

During the Panel's scrutiny of documents relating to evidence from the pathologists who carried out the post mortem examinations, it became clear that in ten cases tissue had been removed for further examination. This is an essential part of any post mortem in which the findings are not immediately clear and microscopic examination is necessary for confirmation or clarification.

In accordance with standard practice at the time, relatives were not informed that tissue removal could form part of the post mortem examination, nor were they offered the choice of what should be done with removed tissue material after examination. Under the Human Tissue Act 2004 this is no longer permissible, and as a consequence to remove and dispose of tissue without informing relatives is unlawful.

Guidance for those responsible for such repositories stressed that, following widespread publicity about the practice, it was for relatives to approach hospitals to enquire whether any material had been retained. This guidance was followed correctly in the case of each of these ten Hillsborough post mortems.

Several bereaved families enquired under this process, and all were given correct information. In two cases this was to the effect that small amounts of tissue had been retained. One family was told initially that no organs had been retained, because the enquiry was understood as relating to whole organs and not to small blocks of tissue. Subsequently, this family was given correct information that some blocks had been retained. The Panel has read the correspondence and it is clear that the initial response resulted from a misunderstanding by the pathologist concerned.

It should be noted that this sequence of events occurred in many hospitals throughout the UK when the 'organ retention' scandal first broke. Invariably, relatives' enquiries were understood to apply only to whole organs. Initial responses to bereaved relatives' enquiries then had to be corrected when it became clear that many relatives were also concerned about the retention of blocks of tissue.

After careful consideration, the Panel took the view that in the particular circumstances of Hillsborough, and bearing in mind the manifest previous failures to communicate fully and sympathetically with families, it should contact each family concerned to enquire if they would like any further information that the Panel had concerning the post mortem examination. Further information was not provided unless it was requested.

The Panel also considered that there were pressing reasons to offer families this information as soon as it had been confirmed, and not to wait until completion of the Panel disclosure process. Whatever the standards in force in 1989, the Panel considered that by current standards it was essential to contact families immediately. While sharing this information with families potentially presented them with a decision on what to do with remaining tissue material, not providing the opportunity for disclosure would amount to a failure in a duty of care.

The Panel's contact with the families concerned was on an individual and confidential basis. Regrettably, information was leaked to the media before the process was completed and the Panel was obliged to issue a statement to clarify the situation. Nine families were contacted and provided with full information on their relative's post mortem examination. Information on tissue retention was provided to those who made a request for further information. The retained material has been treated in accordance with their wishes.

A tenth set of tissue samples was more complicated. It was not identified, being labelled only as 'Hillsborough X'. It is not clear from the documentation why this occurred, because all the deceased had been positively identified at the time of the post mortem examinations. The retention of an unidentified sample was a failure of process. Because of the location of this material it is clear that it originated from one of ten post mortem examinations carried out by one pathologist, now deceased.

After careful consideration the Panel decided to approach the ten families concerned, to offer further information if requested and, if so, to offer them the possibility of a test to see if their DNA matched that in the retained material. Legal guidance was sought on the provisions of the Human Tissue Act 2004, and the Panel was advised that sampling of the retained material would be lawful as long as at least half of the families involved agreed, because on the balance of probabilities the material was more likely to relate to one of those families than not.

More than half of the families requested testing for themselves, and several of those who did not wish to be tested indicated that they had no objection to the material being used to seek a match with those who were tested. All samples were tested in parallel, and none matched the DNA in the retained material. This material will be retained for a period after the completion of the Panel's work and, in the absence of any further information, will be respectfully destroyed.

The Panel will make no further comment concerning this issue, which remains a confidential matter for the bereaved families directly involved.

Appendix 5

Freedom of information and Parliamentary debate

Freedom of information request

Prior to the appointment of the Hillsborough Independent Panel, the BBC had made a freedom of information (FOI) request to access Cabinet papers covering the days following the Hillsborough disaster. This had been refused and the BBC appealed to the Information Commissioner.

In July 2011 the Commissioner, Christopher Graham, ruled that ‘the specific content of the information in question would add to public knowledge and understanding about the reaction of various parties to that event, including the government of the day, in the early aftermath’. His ruling provoked concern that information had been purposefully withheld from public scrutiny.

He considered it irrelevant that the Panel was engaged in negotiating disclosure of documents, noting that the initial request had been made before the Panel’s appointment. The Cabinet Office appealed the Commissioner’s ruling, stating ‘the government’s view is that it is in the public interest for the process that is under way through the Hillsborough Independent Panel be allowed to take its course’, including the established principle ‘to disclose information to the Hillsborough families first’.

Given that it was negotiating the disclosure of *all* Cabinet and government documents relating to Hillsborough, the Panel was concerned to safeguard the principle of researching all disclosed documents in context. Whereas the BBC’s application covered a period of less than a month, the Panel’s commitment to disclosure extended over two decades.

The Panel issued the following statement on 20 August 2011:

Following recent media coverage of the Cabinet Office’s decision to appeal the release of Cabinet Office papers concerning the Hillsborough disaster, the Hillsborough Independent Panel affirms its independence of government in carrying out its research, publishing an analytical report and establishing a comprehensive public archive of documents and other materials. The Panel is grateful for the continuing support of the Hillsborough families in taking forward its unique and important work.

The statement also included the following explanatory note:

The Panel’s terms of reference commit to maximum public disclosure of all documents and materials relating to the context, circumstances and aftermath of the disaster and to providing direction on the establishment of a public archive of those documents and materials. A guiding principle within the Panel’s Terms of Reference

is that full disclosure will be made first to the Hillsborough families followed by release to the wider public. This principle has been applied to all documents received by the Panel from organisations.

The Panel is responsible for publishing a Report that will ‘illustrate how the information disclosed adds to public understanding of the tragedy and its aftermath’. At present the Panel has received the cooperation of all organisations believed to hold relevant material, including the Cabinet Office, in securing access to documents and materials. The documents are undergoing detailed analysis by the Panel’s researchers under the direction of a Panel sub-group and led by Professor Phil Scraton, a member of the Panel.

The Cabinet Office documents are one element of a highly complex range of material accessed from organisations and digitised for eventual release into the public domain as part of the comprehensive archive. They will be analysed in that context and will form an essential foundation to the Panel’s Report scheduled for Spring 2012.

On 24 August Professor Phil Scraton commented on the Panel’s collective position:

The Panel is not a gatekeeper. Our role is not to determine what is or is not published, our responsibility is full public disclosure. Our role is not to filter information but to secure access to documents that otherwise would have been restricted for years to come. We are engaged in an unprecedented process and our priorities are the families, the survivors and the broader public interest.

In response to a letter from Andy Burnham MP, the Prime Minister affirmed the Coalition Government’s support for the work of the Hillsborough Independent Panel. He stated that ‘the Government is wholly committed to full disclosure of the Hillsborough information that it holds’, and further that ‘Cabinet papers, along with other relevant government papers, have been released to the Hillsborough independent panel’.

He continued:

I am keen to ensure that the panel and indeed the families were treated with the utmost respect in this process. We have therefore proposed that the panel will ensure that disclosure takes place initially to the Hillsborough families, prior to wider publication. There seems to me to be complete agreement on the need for full and public disclosure, initially to the families, and helping the Panel complete its important work.

E-petition and Parliamentary debate

Meanwhile, an e-petition was launched requesting ‘Full government disclosure and publication of all documents, discussions and reports relating to the 1989 Hillsborough disaster’. It received well over 100,000 signatures and Steve Rotheram, MP for Liverpool Walton, introduced a Backbench Business debate in the House of Commons on 17 October 2011.¹

1. Hansard, 17 October 2011, Col 662-724.

In her reply the Home Secretary, Theresa May, stated that the Government ‘firmly believe that the right way to release the papers is through the Hillsborough independent panel – to the families first and then to the public’. She stated:

The families should have the papers, and they should not have them filtered through politicians or the media. We therefore support the Hillsborough independent panel and today’s motion. We want full disclosure to the panel of all documents relating to Hillsborough, including Cabinet minutes. Those documents should be uncensored and unredacted. Indeed, the full unredacted Cabinet Office papers on Hillsborough have already been made available to the panel. That includes minutes of the meetings of the Cabinet immediately following the disaster.

She stated further that the ‘principle is clear: full publication and minimal redaction, and the panel seeing all of the papers, uncensored and unredacted – as the families have rightly demanded: the whole loaf, not snippets. I stand ready to do anything I can to aid the independent panel in completing its task’.

Following an extensive and moving debate the motion was carried without opposition:

That this House calls for the full disclosure of all Government-related documents, including Cabinet minutes, relating to the 1989 Hillsborough disaster; requires that such documentation be uncensored and without redaction; and further calls for the families of the 96 and the Hillsborough Independent Panel to have unrestricted access to that information.

BBC disclosure of Cabinet papers

On 15 March 2012, soon after the Panel announced that it would be presenting its Report in the Autumn of 2012, the BBC disclosed documents it had initially sought. It appears that the documents were leaked and their contents limited to the immediate aftermath, the period covered by the BBC’s initial FOI request.