

Aberfan: no end of a lesson

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Executive Summary

- The fortieth anniversary of the Aberfan disaster (21.10.66), in which 144 people, mostly children in school, were killed by the slide of a colliery waste tip, has been widely marked.
- At least ten lessons from Aberfan are still relevant today, viz:
 - Transparency matters.
 - Governments should protect consumers, not producers.
 - Voters in safe seats are marginalised.
 - Don't let politicians run quangos.
 - Impose serious penalties on negligent corporations.
 - Don't have local authorities that are too small.
 - Regulators must neither share the culture of the regulated...
 - ... nor exist in a private world of their own.
 - Be consistent about risk.
 - Give them the rest of their money back.

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If you are over 50, you know where you were and what you were doing on October 21 1966. There are only two other days like it: the day Kennedy was assassinated, and the day Diana died. Four TV documentaries and extensive newspaper coverage of the 40th anniversary of the Aberfan disaster have told new generations what happened. Below I summarise first what was known immediately; next, what became known when the Tribunal of Inquiry reported in August 1967; and thirdly what became known when official papers on Aberfan were opened under the then 30-year rule in 1997.

Immediately. Tip no. 7, which was 500 feet above the village of Aberfan, near Merthyr Tydfil, started to slide at 9.15 am on Friday October 21 1966. It was the last day before half-term at the Pantglas schools below. The valley was in low cloud, so that nobody saw the slide. Everybody heard it but it was coming too fast to outrun. It first hit a farm, killing everybody in it. Then it engulfed Pantglas Junior School, killing 109 children and five teachers. Only a handful of the children aged between 7 and 10 survived. The tip comprised colliery waste, liquefied by the springs underneath. The liquefied flow slide of about 100,000 tons lost energy and solidified again after hitting the school and neighbouring houses. They were buried as completely as Pompeii. A total of 144 people died.

The Rt. Hon. Lord Robens of Woldingham, chairman of the National Coal Board, arrived 36 hours later, having first gone to Guildford to be installed as Chancellor of Surrey University. He announced that the cause of the disaster was an unknown spring underneath the tip. This was immediately challenged by villagers who had known it all their lives. Prime Minister Harold Wilson, who had reached Aberfan 24 hours before Robens, ordered an inquiry under the Tribunals of Inquiry Act 1921, headed by a judge assisted by an engineer and a planning lawyer.

A year later. The Inquiry reported in August 1967. Its report is unsparing, passionate, and strangely poetic. The disaster was entirely the fault of the National Coal Board (NCB). Tip no. 7 had been located on top of springs which are shown on the Ordnance Survey map. The Aberfan tip complex had slid in 1944 and 1963. The physical evidence of these slides was clear to the naked eye, although the NCB spent many days at the Inquiry denying that the 1963 slide had occurred. It had no tipping policy, and its engineering experts had given no guidance to local workers. The Area Civil and Mechanical Engineers were at war. Neither of them inspected the tip, although the Mechanical Engineer claimed to have done so after Merthyr Council complained about 'Danger from Coal Slurry being tipped at the rear of the Pantglas Schools'. The disaster was a 'terrifying tale of bungling ineptitude'. Nevertheless, the top management of the NCB tried to give the impression at the Inquiry that they had 'no more blameworthy connection ... than the Gas Board'. The Board had wasted up to 76 days of inquiry time by refusing to admit the liability that they had privately accepted before the inquiry started. The Tribunal called this 'nothing short of audacious'. This may be the strongest

language ever used in a Tribunal Report about a UK public body. A section of the report condemns the behaviour of Lord Robens. In a fine piece of official prose:

For the National Coal Board, through its counsel, thus to invite the Tribunal to ignore the evidence given by its Chairman was, at one and the same time, both remarkable and, in the circumstances, understandable. Nevertheless, the invitation is one which we think it right to accept.

Of all tribunal reports known to me, only the 1996 Scott Report on arms to Iraq has used comparable language about senior public servants.

A few weeks later, the Rt Hon Lord Robens offered to resign. The Minister, Richard Marsh, refused to accept his resignation. The Commons debated the disaster in October 1967. The debate was painful and inconclusive. A succession of Welsh mining Labour MPs tried and failed to come to terms with what the NCB, regarded as the jewel in Clement Attlee's crown, had done. There were only two good speeches: one by Leo Abse, the only non-miner to represent a seat in the Valleys, and one by the Conservatives' brand-new Power spokesman, Margaret Thatcher. Abse called the exchange of letters between Robens and Marsh a 'graceless pavane ... a disgraceful spectacle'. Thatcher forensically pointed out that the Tribunal Report itself states that one of the remaining Aberfan tips stood 'at a very low factor of safety'. She asked why the A.H. Kellett, Chairman of the NCB in South Wales, had stayed at a conference in Japan when the disaster occurred. She asked why on earth W. V. Sheppard, the Coal Board's Director of Production, had come to be promoted to the main Board after the Tribunal had severely criticised him for his ignorance of tip stability. To her two excellent questions, answer came there none.

In the same month, the writer Laurie Lee reported:

Fragments of the school itself still lie embedded in the rubbish – chunks of green-painted classroom wall.... Even more poignant relics lie in a corner of the buried playground piled haphazardly against a wall – some miniature desks and chairs, evocative as a dead child's clothes, infant-sized, still showing the shape of their bodies. Among the rubble there also lie crumpled song-books, sodden and smeared with slime, the words of some bed-time song still visible on the pages surrounded by drawings of sleeping elves.

By 1970, the NCB had still not paid the compensation due to Merthyr Council for destroying its schools. However, it had raised its initial offer of £50 compensation to each bereaved family to £500. Bereaved families were being supported out of the Disaster Fund, which at £1.75m was the second largest in real terms ever raised in the UK. Only the Princess Diana memorial fund has ever outstripped it: if the death of Diana is not classed as a disaster, then Aberfan is the biggest disaster fund ever.

Thirty years later. The Aberfan papers were released slightly early, on New Years Day 1997. I spent the two days of the Press preview intensively studying them. I had earlier

trawled the local archives in Merthyr and Cardiff. At the same time, a research team from the University Hospital of Wales was exploring the 30-year incidence of post-traumatic stress disorder (PTSD) among disaster survivors.

After thirty, and now forty, years, these archives retain the power to shock. Space precludes extensive quotation, for which see our book *Aberfan: government and disasters*. Here are some gobbets.

- The Rt Hon. Lord Robens' offer of resignation was bogus. He had demanded pre-publication sight of the report in his capacity as a Privy Councillor. With ten days' notice (compare the two hours that Opposition spokesman Robin Cook was given to read the Scott report), Robens saw that the report was, as Harold Wilson wrote on his copy, 'devastating'. He immediately orchestrated a campaign of support for himself among branches of the NUM. Board and union worked together on this. Robens went on a tour of the coalfields to denounce nuclear power. No prizes for guessing who supported him most warmly on that. A month later, he determined the wording not only of his 'resignation' letter, but, unbelievably, of Marsh's reply rejecting his resignation. He demanded the removal of a sentence inserted by Marsh's private office that pointed out that the whole Coal Board, not merely Robens, were vulnerable. Marsh meekly removed the sentence from his reply to the Rt Hon Lord Robens. Marsh had threatened to sack Kellett and Sheppard, but did not carry out that threat. These documents prove that Leo Abse's 'graceless pavane' was a deadly accurate description.
- The insurance staff of the NCB told Robens that £500 per dead child was a 'good' offer, and that only the 'hard core' were agitating for more.
- The Charity Commission intervened when it should not have done, and failed to intervene when it should have done. It tried to prevent the Disaster Fund trustees from building the arched memorial in Aberfan cemetery, and from making flat-rate payments to bereaved families: they must first satisfy themselves that bereaved parents had been 'close' to their deceased children. The Trustees defied the Commission on both points. However, the Commission was silent in 1968 when the Wilson government raided £150,000 from the disaster fund to pay for removing the remaining Aberfan tips. Those tips belonged to the National Coal Board. They violated the Board's own criteria for tip safety. Yet the Board refused to remove them and lied about the cost. Paying for their removal is not a lawful use of charitable funds. Wales Secretary Ron Davies paid back £150,000, in £1997, to the Fund at the change of government in 1997.
- Government at all levels, from Merthyr Council to the national government, was in the thrall of the NCB. Ministers thought Robens was indispensable because only he could slim down the coal industry without provoking massive strikes. He knew that they thought that: hence his power plays. The Ministry of Power, further up the Whitehall pecking order than the brand new Welsh Office, sponsored and protected the NCB. A contractor claimed that he could remove the tips for a fifth of what the NCB said it would cost, providing that he was allowed to sell the coal they contained. The Minister was advised to reject his offer because:

1. 'the sale of the coal is a problem' because it would undercut the NCB's price;
2. the contractor had a reputation for leaving tips 'in a shambles. NB, NCB will confirm this'. The main author of the Ministerial briefing, who went on to a long and very eminent Civil Service career, apparently did not check the dictionary meaning of 'shambles'.

The University of Wales study showed that a high proportion of survivors were still suffering from post-traumatic stress disorder after 35 years, when compared with a control group of pupils who had attended the same secondary school but who did not come from Aberfan. In the days leading up to 21 October 2006, the fortieth anniversary, most media coverage was sensitive, and as requested the media did not attend the two ceremonies held in Aberfan on that day.

Some of the causes of Aberfan were specific to the now-disappeared South Wales coalfield, and others were remedied by legislation. Only in South Wales were colliery tips dumped on slopes; all have now gone or been stabilised. The legislation under which Aberfan was not a notifiable accident (because no colliery workers were killed) was amended. A new framework for health and safety legislation was drawn up in 1972 by the Robens (yes, really!) Committee, and has remained in place ever since under the Health and Safety at Work Act 1974.

Other lessons remain. Here are ten of them; there are others.

Ten lessons from Aberfan.

- 1 *Transparency matters.* It should not have taken thirty years for some of the above facts to be revealed. Soon after the disaster, the Attorney-General suppressed comment on its causes, arguing that such comment would be contempt of the Tribunal. This had the effect of shielding the Coal Board from answering the right questions, which were already being raised by diligent journalists. However, the Tribunals of Inquiry Act 1921 proved its value, as did the government's offer to help the bereaved families with legal representation. Their counsel, Desmond Ackner, forced the NCB to admit liability. The Rt Hon. Lord Robens found, like politicians in the Scott inquiry thirty years later, that bluster and evasion may work in politics, but it does not work in a tribunal. A man whose entire family was wiped out in the disaster described Ackner's cross-examination of Robens as 'like balm to my soul'. The 1921 Act has now been superseded by the Inquiries Act 2005. I share the anxiety that the Public Administration Select Committee expressed in its report of February 2005, *Government by Inquiry*, that the 2005 Act gives the commissioning Minister more powers to suppress inconvenient evidence than did the 1921 Act.
- 2 *Governments should protect consumers, not producers.* The corporatist climate of the 1960s, in which the NCB was virtually a government department, blinded civil servants to the enormity of its behaviour and blunted

attempts to hold it responsible. The Ministry of Power thought that people should not be allowed to sell coal more cheaply than the NCB. Not only that, but the Ministry of Power and the Welsh Office opposed any idea of forcing the NCB to pay the cost of removing the tips, arguing that as the NCB was losing money anyhow, the only effect would be for it to lose more money. Thus nobody was alerted to the true price of coal. Government should be on the side of consumers of coal (and anything else), not of its producers.

3 *Voters in safe seats are marginalised.* Aberfan was rock-solid Labour: therefore Labour governments had an incentive to ignore it, and Conservatives had no incentive to pay special attention to it. The ‘median voter theorem’ implies that only voters in marginal seats can expect to be heard.

4 *Don’t let politicians run quangos.* The Rt Hon. Lord Robens was a politician to his fingertips. That is why the Conservative government appointed him to run the coal industry in 1960. Except when cornered by Ackner, he did what politicians do: he spun his way out of trouble. His survival (and the survival of his entire Board) in the face of the Tribunal Report is truly remarkable. Only a politician could have done it. In an interview with Marsh recorded by Marsh’s private office, Robens implied that tipping gang chargehand should have been held liable for the Aberfan disaster.

5 *Impose serious penalties on negligent corporations.* The legal framework for corporate manslaughter already existed in 1966. The managing director of a local firm had been prosecuted in 1965 for allegedly instructing a welder to cut up a disused river bridge starting in the middle. The welder had done so and was drowned when the bridge collapsed. The prosecution failed because it could not prove that it was the managing director who had given the order. But two of the counsel who subsequently appeared before the Aberfan Tribunal had also appeared in that case, with reversed roles. The prosecuting counsel in 1965 was counsel for the NCB at the Tribunal. The defence counsel in 1965 was counsel for the teachers’ unions (who had lost five of their members) at the Tribunal. Why then did they not consider the possibility of prosecution of the NCB? Partly because the idea was too mind-stretching; partly because it is always difficult, in a large organisation, to prove that a directing mind (*mens rea*) was behind a piece of criminal negligence. The Law Commission recommended in 1996 that a specific offence of corporate killing should be introduced. The Labour Party accepted this proposal and put it into its 1997 General Election manifesto. It still has not been implemented. This may be ascribed to corporate lobbying. But there is a real problem, which the failed prosecution of P&O for the *Herald of Free Enterprise* disaster at Zeebrugge in 1987 reveals. Both Aberfan and Zeebrugge revealed corporations whose culture was criminally negligent. But there was no document that would have passed the *mens rea* test. No member of the Coal Board wrote ‘Tips on springs on the sides of mountains are dangerous but what the hell’.

Therefore the best route is probably to impose serious fines on corporations for violations of health and safety law. That happened after the Clapham and

Paddington (Ladbroke Grove) rail accidents. Survivor groups complain that even seven-figure fines have little financial impact on negligent companies. That is true; but at least they have a reputational impact.

Civil law is less help than one might expect. The NCB had strict liability to compensate those who suffered pecuniary loss from the slide of a tip: that is, it would have faced this liability even if it had not been shown to be negligent. This doctrine (known to lawyers as *Rylands v. Fletcher*, after the 1868 case that established it) has perverse consequences. If a corporation is liable whether it is negligent or not, it has no incentive not to be negligent. Furthermore, injuring people is expensive; killing them is cheap. A line of cases has settled that damages for bereavement are nominal, and that there is no ground for (e.g.) a bereaved parent to claim damages for the loss in support in their old age that they would otherwise have expected to get from their lost child.

Even injury claims are difficult, when they relate to psychological injury which may take thirty or more years to be revealed. As far as I am aware, no Aberfan survivor or parent has successfully sued the NCB or its successor body for causing them post-traumatic stress, although many display what the psychiatrists call ‘florid’ symptoms of it.

- 6 *Don't have local authorities that are too small.* In 1966 Merthyr Tydfil was the smallest unitary local authority in Wales (and the fifth-smallest in England or Wales), with a population of 57,000. Against the ‘state within a state’ (in the words of one of Marsh’s private secretaries) that was the NCB in South Wales it was powerless. NCB officials lied when they said they had inspected the Aberfan tips. What more could the council have done to force them to take responsibility for the tips? That the NCB had not paid over compensation for the destruction of Pantglas School as late as 1970 is very revealing, especially in the light of *Rylands*. An authority larger than Merthyr would have had more power to make a fuss about the appalling way in which its citizens were being treated. As it was, all the council’s services were damaged for months and years after Aberfan, which took up most of its senior officers’ time from the day of the disaster for at least the next year.

It is therefore a bit worrying that the present-day unitary Merthyr Council is smaller than it was in 1966. Wales, with a population of 2.5 million, has 22 local authorities, each therefore with an average population of about 100,000. Merthyr, now as in 1966 one of the most deprived, has a 2001 Census population of only 55,981.

- 7 *Regulators must neither share the culture of the regulated...* ‘We found that many witnesses’, reported the Tribunal, ‘... had been oblivious of what lay before their eyes. It did not enter their consciousness. They were like moles being asked about the habits of birds’. This failing extended to HM

Inspectorate of Mines and Quarries, which escaped unaccountably lightly (perhaps because it was not Ackner but his junior who cross-examined the chief inspector for South Wales). They had passed the tips on their daily business for years. They had never noticed the danger signs that are barn-door obvious to the naked eye in pre-1966 photographs: bulges, slides, erosion, water coming out of the toe of Tip 7. Inspectors, like the technical staff of the pits themselves, were in 1966 mostly men who had risen from the ranks. They therefore shared the culture of those they regulated. The social hierarchy of a British coal mine awarded alpha status to those who did the dirty, skilled, and dangerous work underground. Surface workers were second-class and lower-paid. The Health and Safety Executive obliquely recognised that colliery inspectors were too close to those they inspected when they merged the Mines and Quarries Inspectorate with others in the 1990s. The model for independent inspection should perhaps be the Railway Inspectorate, which since the 1840s has always recruited its staff from non-railway engineers (mostly retired military engineers).

- 8 ... *nor exist in a private world of their own*. The Charity Commission was not only unhelpful to the largest disaster fund in British history, but it actively obstructed it. Reading their archives gives the impression that charity law was a private game for charity lawyers. How else can one account for the minute that runs:

before any payment was made each case should be reviewed to ascertain whether the person had been close to their children and were thus likely to be suffering mentally?

Such magnificent insensitivity was helped by a widespread perception that donors were 'irrational' – that their gifts reflected their own sorrow rather than any material need of the disaster survivors. But it is not for a regulator to disparage the motives of charitable donors.

- 9 *Be consistent about risk*. Human brains seem poorly equipped to make consistent evaluations of relative risk. People overrate the probability of unlikely but catastrophic events such as nuclear explosions and underrate the probability of everyday events such as road accidents. For decades now, lobbyists have said that nuclear power generation is unacceptably dangerous. It may or may not be. The proper question is: what form of power generation is the least dangerous? Coal killed 144 people at Aberfan, and has killed thousands of miners over the years. Oil killed 167 people at Piper Alpha in 1988. Nobody can be shown to have died as a result of UK nuclear accident, although the Windscale fire of 1957 may have caused some premature deaths.
- 10 *Give them the rest of their money back*. In July 1997, Ron Davies, the first Secretary of State for Wales under Tony Blair, returned £150,000 to the Aberfan memorial funds to compensate for the Wilson's government raid on them for removing the tips. He acknowledged my research as one of the motivating factors, but he did not need my prompting. As he has recently said,

it was a very easy decision. He had long thought that the money had been stolen. His action was widely welcomed, but a minority of commentators asked then why had he not returned the £1.5 million that more accurately represents £150,000 of 1966 money plus interest forgone. In 1997 there were fears that a large windfall would turn the fund back into what Laurie Lee had called it: 'sprawling over the village like some great golden monster which no one could tame or put to use'. Nine years on, there is no reason for such fears. An endowment of £1.5 million is not a golden monster. It would yield about £60,000 a year. That is actually rather a modest endowment to maintain the two most important memorials in Wales – the Aberfan cemetery and the memorial garden on the site of Pantglas Junior School. As Ron Davies's decision was one of the first acts of Tony Blair's government, returning the rest of the Fund's money should be one of the first acts of either Gordon Brown's or David Cameron's.

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For further reading

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National Archives, Kew: classes BD 11, BD 52, POWE 52, COAL 73, PREM 13, CAB 130.

Glamorgan Record Office: Aberfan Disaster Fund papers.

Merthyr Public Library: Aberfan disaster collections, see handlist at

<http://www.nuffield.ox.ac.uk/politics/aberfan/arcintro.htm>.