

Transcript of Radio Ombudsman #19: Sir Robert Francis on why listening to patients is vital to improve services

In this edition of Radio Ombudsman, Sir Robert Francis, Chair of Healthwatch England, reflects on the mid-Staffordshire inquiry 10 years on and explains why speaking up is so vital, particularly in the context of COVID19. He also shares his support for the new Complaint Standards Framework and tells us why it's important to listen to, learn from and be honest with the people you serve.

Rob Behrens: Hello, everyone, and welcome to Radio Ombudsman in lockdown. My guest today is one of the giants of public life in the 21st century, Sir Robert Francis. Sir Robert, you are very welcome. Thank you for joining us.

Sir Robert Francis: It's a pleasure to be here.

Rob Behrens: Most of you will be familiar with Sir Robert's glittering career. He's a graduate of law from Exeter University, qualified as a barrister and became a QC, and he specialises in medical law. He has chaired an enormous number of very important inquiries into the treatment of patients, to do with serious mental illness. He chaired the independent inquiry into Stafford Hospital in 2010, and then a full public inquiry afterwards. We'll want to talk about this landmark public inquiry in the conversation.

Sir Robert then chaired the 'Freedom to Speak Up' review into whistleblowing, another big subject. Since then, he has gone on to take very important positions with the CQC, and in 2018 as the new Chair of Healthwatch. So, we're very lucky to have you. Could you just start off, as is the tradition with Radio Ombudsman, of telling us just a little bit about your

background, and what values were instilled in you from a young age?

Sir Robert Francis: I was born in China but had to leave that when I was two months old. My father worked in the oil industry, and actually I spent a lot of my childhood in East Africa before coming back to England to go to school. When I grew up, eventually, if I ever have, I went into law, as you said. I've been a barrister all my life, which is a peculiar life because it equips you to be entirely independent, to work for yourself and on your own. Yet here I am now chairing an organisation, and talking about strategy and implementation of operational business plans and so on. That's my overall life.

In terms of values, I admired my father a lot. He's not with us anymore, sadly. If he taught me one thing, wherever we lived, it was that you respect everyone, regardless of their background. Everyone needs to be given a chance. He got quite senior in his work, but he always said that, when you pass people on the way up, always remember you pass them on the way down as well. (Laughter) I think that's really what I've tried to live by for most of my life.

Rob Behrens: That's very interesting. Why did you study law and become a barrister?

Sir Robert Francis: Stereotypically, actually, I rather wanted to be an actor, and I was a very bad actor. I actually could never remember the lines. I used to cut people out of plays, missing cues in amateur dramatics at Exeter University.

The great thing about being a barrister is that you make up the script as you go along. You have instructions, but the words are always your own. There's the drama of it, which I enjoyed a lot - probably too much - and I got to enjoy speaking in public. So, for all those reasons, I think that's why I went into law.

As I developed a legal career, I think I also realised the capacity of the law to make a difference in people's lives. I found that part has been the most rewarding, really, of the work that I've done.

Rob Behrens: It's very interesting that you decided to specialise in healthcare issues. Was that an accident or a design?

Sir Robert Francis: Very little in my life has been by design, and certainly that wasn't. I started off doing a general common-law practice. The law is a bit like medicine in that it has become increasingly specialised over the years. I started as a generalist. I used to plod round the Western Circuit, doing crime in the Crown Courts, family law, a little bit of commercial law and so on, but some medical work began to come into my chambers.

Some of it came to me, and I found that by far the most interesting thing to do. Partly because it was often at the forefront of the development of legal principles, but mainly because it was an area in which it really made a difference to people's lives - both the patients and the doctors - what happened in these cases.

I've met some fantastic people - both as experts, as professionals, and as victims, sadly - in the course of my

career. I've been privileged, therefore, to have an absolutely fascinating life in terms of the people I've met and the work I've been able to do. I wouldn't have been able to do that, frankly, with all due respect to some of my colleagues, if I'd gone into banking or commercial law.

Rob Behrens: Did being a barrister, and the discipline that that required, help you in the very stressful inquiries, like Alder Hey, for example, or Stafford, that you engaged in, which must have been very difficult?

Sir Robert Francis: I think being a barrister helped in a number of ways. Firstly, the work that I had done, albeit on a smaller scale in my legal practice, meant that I often met people in the worst moments of their lives, both as patients or as professionals. I think that steeled me to some of the stresses involved in meeting and having to console, sometimes, but certainly listen to and be patient with, people who'd gone through very bad things indeed.

I think also a barrister's life allows you to deal with the isolation that comes with the responsibilities of running inquiries, because that was just part of my daily life. Finally, a barrister's training helps you analyse evidence, to find out what the evidence is, put it all together and use it to come to a conclusion. So, I think in a number of ways - different ways, really - it helped me get through what, as you say, was an exciting, worthwhile, but sometimes a very stressful process.

Rob Behrens: Thank you. We'll come back to that, but at the moment you're Chair of Healthwatch. Could you tell the listeners a bit about what that involves?

Sir Robert Francis: Yes. Healthwatch England is a national body which supports a network of local Healthwatches, of which there are, I think, 152 around the country. Every local authority has one in its area. Healthwatch, as a family, has the role of being the independent consumer champion of patients and service users in the health service, but is funded by the government.

We might come back to funding later, but basically our role is to go out and find out what people's experiences have been of services, what they think about them, and how they think they might be improved, and then make sure that what people are saying is on the table where people are making decisions. We're both locally and nationally.

As Chair of Healthwatch, it's my job, partly, to do things like I'm doing today, which is to raise its profile. It has, perhaps, not had the profile it needs to do its work completely effectively in the past, and to lead the strategy in terms of the focus and the priorities of what we do.

If I give you some examples of what we have done recently, we undertook a major consultation exercise for the government in relation to the NHS Long Term Plan, which resulted in us being able to bring the views of 85,000 people to the table, to help shape that plan.

Once that had been done, we went out and consulted, again, all local Healthwatches locally as to how the plan could be implemented locally. So, we proved, I think, our worth in

relation to helping the service improve itself by the way it listens to people.

Rob Behrens: I'd like to ask two follow-up questions on that. First of all, how have you managed to survive the pandemic at Healthwatch?

Sir Robert Francis: Surprisingly well, actually - largely, of course, through the dedication and commitment of the people who work for us, but Healthwatch England just disappeared from the office, into our homes. We have carried on meetings as if we'd always done it that way, and it has been marvellous.

I think communications with local Healthwatch again have been easy because, to some extent, Healthwatch is a bit of a virtual organisation anyway and is spread around the country. So, we're used to communicating virtually. What we miss, of course, is the contact with each other which you can only do if you're in the same room, but I think we've done pretty well in just keeping going with business as usual, actually.

Added to it, of course, has been the need to keep abreast of the rapid developments because of the pandemic, and ensuring that the other part of our role, which is making sure information is available to the public, has been available. That, as probably you've realised, has been a challenging task when the information has been changing on, sometimes, a daily basis.

Rob Behrens: One of the themes of your career is the importance of user involvement in policymaking. That's what the Patients

Association, which you chair, does, and to some extent CQC as well. So, you must consider this to be fundamental to effective public management.

Sir Robert Francis: I do, and I think we... I think, slowly, the central powers that be are learning that they ignore what people think and experience at their peril, and that the best services are created and designed in conjunction with the people those services are designed to help.

Increasingly, it has realised that, if you don't listen to people, they don't get the services they want, they become discontented, even more than they were before. They then start wanting to hold people to account, so, yes, I do think it's absolutely vital.

It's the main reason, of course, I was delighted to accept the job of being Chair of Healthwatch, because it is such a central part of improving the health service - to listen to patients - as it is, of course, for doctors to listen to their patients when they're sitting in front of them in a consulting room.

Rob Behrens: You recently launched the 'Because We All Care' campaign with the CQC. Could you tell us a little bit about that, please?

Sir Robert Francis: The idea of this is to promote the facilities and the resources available for people to tell CQC - and, indeed, Healthwatch - about their services and what they think about them. I think that we need to remember that our health service, the NHS - 'our NHS', as politicians keep on calling it, and, of course, it's

not theirs, it's ours - brings with it huge benefits, but it also brings with responsibilities.

I think one of those responsibilities is for us all to recall that we all can have - and should have - a say, and speak up about things that we find that are good, things that we find aren't so good, and, in that way, to help put things right. If we're silent, we're letting things deteriorate, whereas, if we speak up, things can only improve.

Rob Behrens: We know from work that PHSO has done, and other people as well, that actually service users are, quite often, very reluctant to say what they think. That applies to staff as well, but certainly to service users. That is a challenge which bodies like Healthwatch and the Patients Association have to address. Do you think we've gone any further in being successful at that?

Sir Robert Francis: I'd like to think we have, but we've got a long way to go. It seems to me that a principal reason that service users don't want to raise concerns is the fear that there will be some adverse consequence to them if they're still accepting a service.

But also, more generally - and this, I think, comes through reports that Healthwatch has written, and indeed your own report - they won't speak up if they don't think it's going to make any difference. It's a big thing to speak up and say that you don't think the service was very good, for whatever reason. You feel exposed. You're not going to take the time, the effort - and the stress, sometimes - of doing that, unless you think it's going to have a result.

I think too often that there hasn't been a result. Certainly that was true with Staffordshire when I was inquiring into that, but, even when something is done, the service is not terribly good at telling people that something has happened as a result of what they have done and contributed by speaking up.

So, I think those are the challenges. I think that what we're talking about today, the framework, is a method that's going a long way towards giving people the confidence that, if they have something to say, it will be listened to, and something will happen as a result.

Rob Behrens: You've very kindly been a supporter of the concept of the Complaint Standards Framework. Do you agree with us, with me, that complaints handling in the NHS is very variable and has lacked investment and leadership over a long period of time?

Sir Robert Francis: Yes. I think witness to that is, firstly, or the evidence to that is firstly what I found at Mid Staffordshire and what I had to say about complaints there, which did lead to a favourable response from the government, but Healthwatch and the Ombudsman have been writing reports on this subject since 2014, I think.

Then we, ourselves, went out and did a report this year on consistency and found that there is a lack of consistency in how different trusts run their complaints system. There's a lack of consistency of what information is available about them. None of this, really, helps individuals have confidence that, if they make a complaint, that something will happen.

I'd say that's very much why we at Healthwatch, and I in particular, welcome this Framework as being a real step forward, if it can be embedded and implemented throughout the country.

Rob Behrens: There's a real dilemma here, which you know all about and have led the way on, really. That is that, of course, the people who have to conduct the complaints are not the leaders of the organisation. They're well down the pecking order. They feel, in my experience, that they don't have status to be able to challenge clinicians. They're not invested in, in the way they need to do, to do their job.

That's true, and that needs addressing. But you also make the point you did, in a very good interview you did with Shaun Lintern, that leaders and senior managers in the health service have to own system and have to speak out when things go wrong. There has been, really, a great reluctance for that to happen.

Sir Robert Francis: I agree with that. Complaints, taking those points in order, complaints handling has never, in my view, been given a sufficient priority, either in terms of funding, training, or the status of the people who are responsible for doing it. It requires board-level leadership, frankly, to make sure that improves.

It also requires role modelling by leaders so that everyone in an organisation - and, indeed, the public - see that, when something has gone wrong, that they are ready to accept that it has gone wrong, are willing to do something about it, and demonstrate that they've done something about it.

If that happens, then it is much more likely that people in the lower levels of the organisation will follow that lead, as opposed to the depressing sight that one too often sees of the complaints process being considered as a means of trying to find a defence and a reason to, in effect, reject a complaint, or to ignore it.

That's not what a complaint should be about. A complaint is actually a gold nugget of information that the organisation should exploit. The person who raises it should be thanked for what a contribution they're making to the improvement of the service. That's true whether the complaint is actually found to be completely justified or not completely justified.

Rob Behrens: I think you've done more than almost anyone else to raise the issue of the need to disclose when things go wrong, particularly in the health service. One of the outcomes of that has been the Speak Up Guardian. That has clearly made a difference to people's ability to articulate their concerns to organisations, but has it really made a difference to whistleblowing per se?

Sir Robert Francis: Again, I think the picture is variable. The great thing about Freedom to Speak Up Guardians is that they are people, or should be people, who have the authority - not by rank but by respect, shared by the staff and the leadership - to open doors, to ensure that what should be happening about a concern is happening, and to pursue it in that way. I'd actually quite like to see a similar principle being applied to complaints by members of the public.

You asked whether things have got better. I think it depends. The National Guardian's Office has recently issued a report which shows there has been a rapid increase in the number of cases that Freedom to Speak Up Guardians are undertaking. This suggests that it's a system which people in organisations where this is happening believe that something will happen if the Freedom to Speak Up Guardian is involved.

I think that there is a long way to go. It's a new system and it hasn't solved all the problems. Are whistleblowers treated better? I think they are in the good, healthy trusts where the Freedom to Speak Up Guardian is able to ensure that solutions are found to the issues that have been raised, and also that the whistleblower gets support rather than victimisation. I'm afraid there are still dark corners where the opposite is the case and still continues to be found to be the case. It's not the whole of the answer, but it is part of the answer.

Rob Behrens: In Scotland, the Scottish Government has passed a new piece of legislation which gives the right of whistleblowers to complain to the Public Service Ombudsman, which doesn't happen in the United Kingdom. Is there any merit in that idea?

Sir Robert Francis: I think it's worth exploring, but whistleblowers already have the right to raise their concerns with national regulators, like the Care Quality Commission. I think where there is a gap - and I think I identified it in my report - is that the legal protections for whistleblowers are, and by 'whistle'... I prefer to talk about 'people who speak up', but let's talk about whistleblowers as people who've been victimised.

It is too complicated and too late. Nothing very effective can be done to provide instant protection to someone who's being treated badly. The National Guardian's Office doesn't have that power. It has the power to undertake case reviews, but those aren't really designed to deal with individual problems.

I think that there is a body - a growing body - of opinion that suggests that something more needs to be done to bring early justice and support to people who have been treated badly because they've raised a concern in good faith.

Rob Behrens: Thank you. This isn't a question. It's a comment. One of the ironies of the pandemic has been that the government called on medics to come back and help the health service in the crisis. I heard from a lot of medical practitioners who said to me, "I disclosed wrongdoing and I got banished as a result of that." I think that that's not a satisfactory position.

Sir Robert Francis: No. There were some concerning reports in the early stages of the pandemic along those lines. It resulted in a letter having to be written to all trusts and remind them that they have duties in relation to the Freedom to Speak Up.

I think it's an illustration of a wider point, if I may say so, which is that we can all strive to change culture for the better, but the test for a good culture is whether it survives emergencies and the pressure that comes through them.

I think that, when we come to review the performance of the health service and others in relation to COVID-19, one of the things to look at is whether the culture that you and I, and others like us, want to see in the health service was allowed to continue, or whether it wasn't.

Rob Behrens: Can I ask you about your reflections of the Mid Staffordshire inquiry 10 years on, because I think we've moved to a situation where holding a public inquiry now is seen to be unusual, exceptional? There is a great reluctance for it to happen.

That's certainly the case over COVID, where the government says, in theory, it wants a public inquiry but won't give any details about when it might happen, or what it would contain. Do you think there's a problem here?

Sir Robert Francis: To be honest, I think public inquiries have always been the exception rather than the rule. Generally speaking, they've always come about after a period of resistance by central government to having them.

The resistance is understandable, for two reasons. One is, as I said, being cynical, who wants their homework marked in public by a public inquiry? But seriously, they are expensive. They do, generally speaking, take a long time to come to a conclusion. Sometimes, therefore, they can actually, potentially, delay lessons being learned.

For instance, in the current crisis, it's clear to me that we need something to review how you manage the pandemic now, in order to learn the lessons before this winter, which you couldn't really do through a public inquiry, I suspect.

There is a reluctance, and public inquiries aren't necessarily the whole answer, even when they occur. They can be the beginning of a process, but very much their success depends upon what happens after the inquiry, whether the recommendations are accepted, whether they are

implemented, and whether progress is overseen in a regular and systematic way.

I'm afraid most inquiries fall down because that doesn't actually happen, either at all or for long enough. I'm happy to say, in the case of Stafford inquiries, I think that there was a fair amount of oversight and monitoring, at least for a period of time after inquiry finished. Whether it's still going on sufficiently may be for others to judge.

Rob Behrens: Okay. One of the things that you have been a consistent champion of is the idea of giving professional status to managers in the health service so that they can be called to account professionally in what they do, but we haven't got very far on that.

Sir Robert Francis: No, we haven't. Of course, part of that is about people being accountable, but actually it's also partly about giving people a status which puts them, as it were, on a level playing field with everyone else who's in the health service.

The existence of the accountability that, say, a doctor has, in terms of the General Medical Council, is not matched by anything that the management have. I just think that it would be much better for all concerned if they all came to the table as recognised professionals, albeit in their slightly different fields.

I do think it's something that needs to be looked at. Of course, various steps have happened which have, undoubtedly, improved the training and development that is offered to NHS leadership, but in terms of the structure, as a profession, I think there's still a way to go.

Rob Behrens: We're coming towards the end, but I want to pick up on something that you raised at the beginning, which is about the resources available to the kind of bodies that you lead. We seem to be in a position where there is a huge imbalance between the resource given to the health service, on the one hand, and social care on the other.

I think you've made a point about how extensive the cuts to local government have been, which impacts on the ability to do good things when you have a crisis. Do you want to say anything about that?

Sir Robert Francis: It's felt acutely, the point you raise, by Healthwatch, because I had to write to the Secretary of State about this to highlight the issue of cuts of funding to local Healthwatch, which, as you will know, is funded by a byzantine complicated route where the Department of Health hands over some money to the Department of Communities and Local Government, who then pass it on as part of a block grant, to local authorities. So, it's not ring-fenced and, of course, is a vulnerable area. We all know how strapped for money local authorities are.

The result of that has been that, over the last six years, funding has fallen by about a third. Some local Healthwatches are now receiving less than the predecessor organisations were, which would have been in 2011. Frankly, some of them are barely able to carry on existing.

Just in our area - and I appreciate there are other good causes which are suffering in the same way - it's very difficult for local Healthwatch to do its job properly, of consulting the public and giving a profile to the public voice, if, frankly,

you've got an office consisting of two or three part-time people and not much else. So, I think it is an area that needs looking at.

As far as social care is concerned, we forget social care at our peril, as we discovered, tragically, during the pandemic. It needs to be considered in the same breath, in terms of finance, as the health service, and isn't being. I'm really worried about the future, unless promises of the government are fulfilled in relation to actually changing and reforming social care. They say they're going to do it. Let's hope they do.

Rob Behrens: We also have a problem that the Ombudsman for Social Care is different from the Ombudsman for Health. Of course, we work very closely together, but that is a 'Monty Python' situation which needs to be reformed alongside any bringing together of the services themselves.

Sir Robert Francis: Yes. We're never going to have a properly integrated healthcare service unless social care and health are talked about in the same breath. There are all sorts of different ways in which that could be brought about - most of them, I'm afraid, quite complicated. But, until the NHS considers it to be a partner with social care, and vice versa, then I'm afraid a lot of people are going to fall through the gaps in the system.

The money will be difficult. It will be difficult to make sure that the money goes and the resources go to the right place at the right time. I'm afraid that does need to change, and it needs to change urgently.

Rob Behrens: Okay, two final questions, if I may. First of all, in your long career, what has been the most difficult thing you've tried to do? (Laughter)

Sir Robert Francis: I'll leave aside the cases which were difficult, even impossible, to win in my legal career, but I don't think I've done anything more difficult in my career than the inquiry into Mid Staffordshire.

In a way, I think that's why I'm still here, as it were, in the system, trying to do things, because it was quite clear to me that I couldn't treat those inquiries as yet another case and walk away from them.

Just making recommendations is not good enough. You actually need a system which takes these things forward. I felt, if I could help without being a preacher of the gospel and trying to propagate and not promote my own work, then that was something I wanted to do.

Rob Behrens: That's a good answer. The final question is this. It follows on, really: what advice would you give to our young colleagues who come into the Ombudsman and regulatory services, in terms of the difficulties that they face at the beginnings of their career? What would you say to them?

Sir Robert Francis: Goodness. Firstly, I'd say, "Thank you," for coming to do what's very important work. But I think whatever walk of life you're in, in public service - but particularly, perhaps, in this field - you need always to put the people you serve, first.

That requires listening to them, however difficult that is, learning what's best for them. Then being honest with them about what can be done and what can't be done, and involving them.

If you can do all of those things, at the same time as following the byzantine rules that many of us are required to follow, then you will achieve something. If you just follow the rules, you are likely to fail. The rules are only there because there's a point to be made. That is to make sure that the people who use our services get a say in them, and are listened to, and are dealt with in a fair and just manner.

Rob Behrens: Thank you very much for that. Sir Robert, we're really grateful to you for coming on and sharing your views.

Sir Robert Francis: It's a pleasure.

Rob Behrens: Could I just remind listeners that the consultation on the Complaint Standards Framework, which we've been talking about, is going beautifully? It has had hundreds of submissions so far, but it's open until 18 September, so you still have a chance to make it. Thank you again, Sir Robert, and to everyone in lockdown, with the rain coming down. Have a good day and all the best.

Sir Robert Francis: Thank you. Bye-bye.