

# The Independent Inquiry into Child Sexual Abuse

Richard Horwell QC and Maria Strauss 17 December 2015

On 10 July 2015 Farrer & Co published [a note](#) about the opening of the Independent Inquiry into Child Sexual Abuse. Since then, on Friday 27<sup>th</sup> November 2015, the Inquiry has published a [formal update statement](#) and a number of other notes relating to specific investigations which can be found [here](#).

In broad summary, the formal update demonstrated that the Inquiry had taken a large step forward. Specific institutions have been identified as part of the first phase of the Inquiry's investigations and we expect that early in the New Year other investigations and specific institutions will be identified. Twelve investigations spread across two categories have been commenced as follows:

1. Institution specific. Certain institutions including local authorities, Churches and religious charities and the residential school sector as a whole have been named as part of the Inquiry's first phase of work. Those inquiries will begin immediately and most will culminate in public hearings.

For institutions that were not identified in phase one, other investigations will be announced in which it is likely that other institutions will be named by the Inquiry. There is no indication of the date of further announcements other than the Inquiry expects to publish timetables relating to the first twelve investigations before the New Year. The Inquiry is able to publish statements at any point.

2. A series of thematic investigations which in broad terms will exam abuse facilitated by the internet, sexual exploitation of children by organised networks and how institutions here including voluntary organisations based in England and Wales are protecting children abroad. They will consider the adequacy of existing services for providing support and reparations to victims and survivors.

Our key observations from the publications of the Inquiry so far are as follows:

1. Much detail has been given in the statements published on 27<sup>th</sup> November 2015. This should give institutions an opportunity to build and take advice on what is requested in those statements. This should help with their response to the Inquiry, particularly for those who have been identified in the first 12 investigations. Those who have been identified will now urgently need to consider and agree their plan for interacting with the Inquiry.
2. Interesting themes are emerging such as possible differences between institutions who are responsible for abuse and others who are being investigated for cover-ups.



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Twelve investigations are proposed for this first phase. They will all begin with immediate effect and most, if not all, will culminate in public hearings. They represent only the start of the Inquiry's investigations...  
”

Justice Lowell Goddard

3. Justice Goddard, the Inquiry team and institutions will have to liaise about a number of issues but the structure of certain institutions (eg Churches) will need careful explanation at the outset.
4. Much has already been written about legal remedies, reparations and civil justice. This aspect is apparently in response to multiple reports from victims and survivors of:
  - a. Inadequate support services;
  - b. "Obstructive insurance companies";
  - c. A civil justice system that may fail to deliver genuine reparation;
  - d. Adequacy of compensation schemes including the Criminal Injuries Compensation Authority.

The Australian Royal Commission has published over 600 pages on redress and civil litigation and so it is expected that the Goddard Inquiry will look at these issues carefully. We expect that insurance companies will play a key part in those discussions.

5. A series of expert reports will be commissioned on public policy which will feed into the recommendations. Changes in public policy will affect many institutions.

There are a number of steps that institutions can and should take in light of the Inquiry. How an institution responds depends on its size, structure, safeguarding history and whether or not it was identified as a key investigation in the Inquiry's first phase of work.

In general, institutions, whether they were named or not, should be pro-active in considering their response to the Inquiry. One urgent consideration for institutions is determining whether or not to 'self-refer' to the Inquiry.

For institutions that have been identified, they can expect timetables relating to the investigations to be published before the New Year and preliminary hearings on procedural matters to commence in February 2016. Those institutions will now be taking advice and preparing applications for 'core participant status'. Those institutions who were identified need to carefully plan for and interact with the Inquiry team.

We advise these steps for all institutions whether or not they were identified in phase one of the Inquiry's work:

1. **It is vital that you read all statements from the Inquiry.** This is a fundamental first action. There is much detail in the statements that were released. For example, although the residential schools sector has been named as a key part of the first investigation, other schools may be contacted by the Inquiry. Paragraph 14 of the update statement Justice Goddard states *"we recognise that sexual abuse has occurred in non-residential schools, and alongside our investigation, we will be*

*commissioning sector-wide research into sexual abuse within the broader educational sector, including examining the experience of children with disabilities and special educational needs".*

2. Take immediate steps to ensure that you **preserve all documents** relating to the care of children and safeguarding matters as per Justice Goddard's [letter](#). Often institutions have historical documents in many different locations. We recommend that these documents are safely collated and properly preserved. We recommend that you place a note on your files that you have taken this action in light of the Inquiry.
3. In Justice Goddard's concluding remarks in her opening statement, perhaps illustrating the importance that she places on this step, she says "*above all, review your current safeguarding policies to make sure that they are consistent with best practice, and take whatever steps you can to provide a safer environment for children now*". We recommend that all institutions undertake a **full review of their current safeguarding policies and review their effectiveness** ie how they are working in practice. Many institutions are considering how to keep ahead of the Inquiry by bringing their procedures to a 'beyond compliance/gold star' standard.
4. Justice Goddard specifically asks you to **review files** to check whether action was taken in response to allegations. If it was taken whether it was sufficient to address any failings and whether any further action should be taken in respect of any cases. We recommend that you carry out a review of all cases of a safeguarding nature that the institution is aware of including those cases handled by insurance companies so that (a) you know your history in as much detail as possible (b) if you are called to the Inquiry, you will have done a substantial amount of work in reviewing past cases and (c) much can be learned from the way in which past cases arose and how they were handled and this information could be helpful when reviewing current safeguarding procedures.
5. We recommend that all institutions take steps to **know and understand their current insurance position** and their insurance history and to collate copies of historical policies. Liaise with brokers and current insurers to fill any gaps in the insurance history.
6. Consider your **strategy** for the Inquiry, whether or not you have been named, in case that you are added to future investigations. Institutions should consider the challenge set down by Justice Goddard to self-refer to the Inquiry and take specific advice on how and whether you do so. The question of self – referring requires immediate attention because statements from the Inquiry can be published without notice at any time. Institutions might be in a better position where they self-refer rather than being called to the Inquiry without notice.
7. Consider any **training** requirements. Now is a good time for institutions to identify gaps in knowledge and to update their training.
8. Ensure that your **leaders are involved** with the response to the Inquiry. The Inquiry is too large for in-house lawyers, bursars or financial secretaries to manage alone, although they will evidently play a key part. The Inquiry has

all the powers it needs to compel anyone to give evidence at the public hearing stage which could include the leaders of the institution.

9. Some of the large or national institutions, who may have a large number of people within their remit, may think of organising an **internal team** with terms of reference to help co-ordinate the response to the Inquiry. That team should be supported depending on size and history by an appropriate external team including legal and PR.
10. Institutions, especially those who will play a key part, should try to establish a **pro-active and good dialogue** with the Inquiry.
11. If a charity has been specifically identified by the Inquiry or is contacted by it or if a charity considers self-referring to the Inquiry then the trustees need to consider whether to notify the **Charity Commission by way of a Serious Incident Report**.
12. Consider **internal communications** about the Inquiry ie what instructions you will give people throughout your organisation on how the institution is dealing with the Inquiry and who should be contacted in the event of queries. Consider how to respond to approaches from victims and how best to direct victims to the relevant agencies and to the Truth Project part of the Inquiry.
13. Many institutions are now **gathering evidence** that could be relevant for the Inquiry and some will be preparing for potential public hearings.
14. Institutions need to be careful about **conflicts of interests**; for example if any particular individuals within the institution might be criticised by the Inquiry, they may need their own separate legal advice. Similarly, there may be benefits but also risks for institutions who approach the Inquiry together with other legally separate entities however closely associated they are. Trustees have duties to act in the best interests of their charity.
15. Understand and know the **procedure and mechanics** of the Inquiry. Comments on procedure can be found at paragraphs 39 and 56 of the [opening statement](#) and paragraphs 22 to 24 of the [formal update statement](#).
16. Consider **notifying your insurance company** if you were named in the first phase of the investigations.
17. **Stakeholder organisations** may wish to consider whether or not to make separate representations to the Inquiry on behalf of their sectors.

If you require further information on anything covered in this briefing please contact [Maria Strauss](#) ([maria.strauss@farrer.co.uk](mailto:maria.strauss@farrer.co.uk); 020 3375 7259), [Richard Horwell QC](#) ([richard.horwell@3rblaw.com](mailto:richard.horwell@3rblaw.com); 020 7400 6479), or your usual contact at the firm on 020 3375 7000. Further information can also be found on the [Child Protection](#) page on our website.

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