

Independent Inquiry into Child Sexual Abuse (IICSA)

Adele Eastman | 10 July 2015



A non-statutory Independent Panel Inquiry into Child Sexual Abuse was announced in July last year. The Home Secretary, the Rt. Honourable Theresa May MP, explained that the Inquiry was being set up "because of the growing evidence of organised child sexual abuse, conducted over many years, and serious allegations about the failure of some of our most important institutions to protect children from this disgusting crime." The fact that the Inquiry got off to a difficult start is well documented. Its previous two Chairs, Elizabeth Butler-Sloss and Fiona Woolf, both resigned in the wake of concern raised over their perceived links to the establishment. The Inquiry's panel was also subsequently disbanded.

However, it was given a fresh start. On 4 February 2015, the Home Secretary announced that she would be setting up a new statutory inquiry - under the 2005 Inquiries Act, and appointing Justice Lowell Goddard, a New Zealand High Court Judge, as Chair of the newly constituted Independent Inquiry into Child Sexual Abuse. The statutory Inquiry was established on 12 March 2015, when the Home Secretary also announced the newly appointed panel members Malcolm Evans OBE, Ivor Frank, Professor Alexis Jay OBE, and Drusilla Sharpling CBE. Justice Goddard took up her position on 13 April 2015.

The Inquiry officially opened yesterday, when Justice Goddard gave an opening statement and, following nearly four months of preparation, provided further detail regarding its aims, structure and approach. In her opening statement, Justice Goddard emphasised that "this is the largest and most ambitious public inquiry ever established in England and Wales." She described the task ahead as "daunting." The Inquiry is calling for information from victims and survivors of child sexual abuse, as well as "from those involved or formerly involved in the care of children, and from institutions under investigation." Justice Goddard confirmed the Inquiry has no cut-off date, and that it "may require inquiries to be made about events occurring many years or even decades ago." She explained that it is her "sincere hope and expectation that it will be possible to conclude the Inquiry's work before the end of 2020." In the meantime, the Inquiry intends to publish regular annual reports, containing recommendations, starting from 2016. It will also publish more frequent updates on its work as it progresses.

Terms of Reference

Purpose

The Inquiry's Terms of Reference (set out in full below) are certainly broad. The Inquiry will:

- consider the extent to which State and Non-State institutions in England and Wales have failed in their duty of care to protect children from sexual abuse and exploitation;

“
[The Inquiry] will...have all the powers it needs to penetrate deeply into the institutions that have failed children in the past...
”

Ben Emmerson,
QC, counsel to
the Inquiry

- consider the extent to which those failings have since been addressed;
- identify further action needed to address any failings identified;
- consider the steps which it is necessary for State and non-State institutions to take in order to protect children from such abuse in future; and
- publish a report with recommendations.

The Inquiry will consider information from published and unpublished reviews, cases and investigations concluded to date, and the experience of victims and survivors of child sexual abuse. It will liaise with ongoing inquiries, including those currently being conducted in Northern Ireland and Scotland. It will advise on any further action needed to address any institutional protection gaps within current child protection systems on the basis of the findings and lessons learnt from the Inquiry, and will disclose any documents (where appropriate and in accordance with relevant protocols) which were considered as part of the Inquiry. It will produce regular reports and an interim report by the end of 2018, and to conduct the work of the Inquiry in as transparent a manner as possible.

Scope

The scope of the Inquiry is also wide ranging. It includes government, local authorities, police, schools (independent and state), health services, prison services, churches and religious organisations, political parties, and the armed services. As highlighted by Justice Goddard yesterday, "the Terms of Reference include all state and non-state institutions, not solely those with direct child protection responsibilities."

At the same time, Operation Hydrant, a dedicated national police team established last summer, is coordinating multiple historical child sexual abuse investigations around the country, involving people of public prominence and/or abuse which has taken place in an institution. These investigations include the above sectors, as well as the entertainment and sports industries. A team from Operation Hydrant is liaising closely with the Inquiry – sharing information to support its work. The officer leading Operation Hydrant has indicated that the number of victims could run into the hundreds of thousands. In 2015 alone, he anticipates that an estimated 116,000 reports of child sexual abuse will be received – a 71% increase since 2012; roughly 45% of these are allegations of sexual abuse from the past (an increase of 166%), with 55% relating to current cases. Hundreds of institutions are reported to have been identified by victims of non-recent abuse as places where they suffered abuse.

Structure of Inquiry

The Inquiry has the power to compel the attendance of witnesses and the production of evidence. The relevant legislation (Section 21, Inquiries Act 2005) empowers Justice Goddard, by notice, to require a person to:

- provide documents in their custody or under their control
- provide a written statement

- produce any other thing for inspection, examination or testing; and
- attend to give evidence.

In a nutshell, as emphasised by Ben Emmerson, QC, counsel to the Inquiry, it will have "all the powers it needs to penetrate deeply into the institutions that have failed children in the past, and to identify those institutions that are reportedly continuing to fail children today."

Yesterday Justice Goddard stated that "it is...an offence for a person, during the course of an Inquiry, to destroy, alter or tamper with evidence that may be relevant to an Inquiry, or deliberately to do an act with the intention of suppressing evidence or preventing it being disclosed to the Inquiry." She confirmed that she has written, with retention instructions, to a total of 243 institutions (copies of her letters are available on the Inquiry's website). Justice Goddard added "No institution – whether they have received a letter or not – can be in any doubt of the extent of their duty to preserve records for the Inquiry, or of the consequences of failing to do so." **We would advise institutions to take immediate steps to prevent the destruction of any files or data relating to children in their care or the staff who looked after them, and for the time being to suspend any routine destruction of such files under data protection legislation.**

The Inquiry has divided the institutional sectors covered by its Terms of Reference into five broad workstreams, each of which will be led by the Chair, or a member of the Inquiry Panel, as follows:

- Allegations of abuse by people of prominence in public life – led by Justice Goddard;
- Education and religion – led by Professor Malcolm Evans OBE;
- Criminal Justice and law enforcement - led by Drusilla Sharpling CBE;
- Local authorities and voluntary organisations – led by Professor Alexis Jay OBE;
- National and private service organisations – led by Ivor Frank.

The Inquiry will be guided by three principles: it will be comprehensive, inclusive and thorough. The Inquiry's work will be divided into three core projects:

- The Research Project: led by an expert Academic Advisory Board, it will involve a comprehensive literature review to collate, for the first time, analysis of all the published work addressing institutional failures in child protection;
- The Truth Project: will enable victims and survivors of child sexual abuse to share their experiences with the Inquiry, with the option of doing so in a private session with a member of the Inquiry. Their accounts will not be tested, challenged or contradicted. The process will have no direct legal consequences. The Inquiry will not make individual factual findings on the

basis of what is said during the private sessions. However, the information will be recorded, anonymised and aggregated for the purpose of analysis and will feed directly into the Inquiry's research and analytical work. This is expected to enable the Inquiry to piece together a broader picture of the scale and nature of institutional child sexual abuse in England and Wales; and to enable the Inquiry to reach conclusions about why such crimes went unreported, and undetected, for so long. The first Truth Project sessions are likely to start in October 2015;

- The Public Hearings Project: will resemble a conventional public inquiry, where witnesses give evidence on oath and are subject to cross examination. The Inquiry will select case studies from a range of institutions that appear to illustrate a wider pattern of institutional failings. At least five institutions will be chosen for each of the workstreams above. Evidence is likely to be taken from both representatives of the institutions under investigation and from victims and survivors of sexual abuse. Each hearing will last for approximately six weeks and up to 30 separate hearings are expected to be held. Collectively, the evidence heard in the range of case studies will assist the Inquiry in drawing conclusions about the patterns of child protection failings across a range of institutions in England and Wales.

The Inquiry does not have the power to convict abusers of criminal offences or to award compensation to victims and survivors. However, it will use its fact-finding powers fully to make findings against named individuals or institutions where the evidence justifies it. The first Public Hearings are likely to start in 2016.

Collectively, the evidence obtained by the Inquiry across each of the three projects will inform its overall conclusions and recommendations.

Justice Goddard has emphasised the central part that victims and survivors of child sexual abuse are expected to take - their experiences "will be the core currency of the Inquiry." A Victims and Survivors' Consultative Panel (VSCP) has been established – comprising 8 individuals nominated by victims and survivors. The VSCP will provide advice and guidance to the Chair and panel; its work is expected to commence soon. In addition, a broader less formal network of victims and survivors has been set up – a forum to "allow for wider participation in the work of the Inquiry."

Potential Impact on Relevant Sectors

Given the nature of both the Inquiry, and Operation Hydrant feeding in to it, one of the possible implications for institutions with a duty of care to protect children, is that people who have suffered child sexual abuse, and those with information about institutional failings, are now being encouraged to come forward. This is likely in turn to prompt further criminal investigations and, further down the line, claims.

Various institutions across the sectors covered by the Inquiry will inevitably be contacted in due course to give evidence to it. In fact, any institution that has featured in the press in the context of a recent or historic child sexual abuse case could well be approached by the Inquiry. We think it likely that the Inquiry will focus on what action was taken at the time by the institutions to notify relevant authorities, and what steps were taken subsequently by the institutions to re-examine the

effectiveness of their procedures. Whilst it is not part of the Inquiry's function to determine civil or criminal liability of named individuals or organisations, the Inquiry may still reach findings of fact relevant to its Terms of Reference.

Recommended Action

In the circumstances, we would advise:

- all institutions to take immediate steps to ensure the preservation of all documents relating to the care of children in line with Justice Goddard's letter to institutions ([click here](#));
- all institutions to be proactive in terms of reviewing their safeguarding and child protection training, policies and procedures - to ensure that they are sufficient and water-tight; and
- any institution that has faced allegations of child sexual abuse to review any such case(s) as to whether:
 - action was taken in response to the allegations;
 - if action was taken, whether it was sufficient to address any failings on the institution's part;
 - any further action is required to address any failings identified;
 - any further action is necessary in order to protect children from such abuse in the future;
 - relevant documents relating to any incidents have been preserved (and, if so, to ensure that they continue to be); and
 - as is necessary, liaise with any insurer who may be on record to cover a claim.

Yesterday, as Justice Goddard concluded, she lay down a challenge to institutions that have, or have had, a duty of care to protect children from sexual abuse: "I urge you to take a proactive stance towards the Inquiry – to review your files, records and procedures voluntarily and to take the initiative to self-report instances of institutional failure – rather than waiting for us to come and see you. 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."

Further background information

When did the Statutory Inquiry begin?

The Statutory Inquiry began on 12 March 2015, following the Home Secretary's announcement that day ([click here](#)).

Justice Goddard started her work as Chair on 13 April 2015.

The Panel

Who is on the Panel?

On 12 March 2015, the Home Secretary announced (having disbanded the original panel constituted for the non-Statutory Inquiry) that the Chair would be supported by a Panel comprising of:

- **Malcolm Evans:** Chairman of the United Nations Subcommittee for the Prevention of Torture and professor of Public International Law at the University of Bristol;
- **Ivor Frank:** with extensive experience in family and human rights law, and expertise in child protection matters;
- **Professor Alexis Jay:** with expertise in social work and who led the important work on the Independent Inquiry into Child Sexual Exploitation in Rotherham; and
- **Drusilla Sharpling:** a qualified barrister with expertise in both policing and the Crown Prosecution Service.

The Work of the Inquiry

The Inquiry formally opened yesterday, when Justice Goddard explained, in her opening statement, the Inquiry's aims, structure and approach.

The full text and summaries can be found here:

Opening Statement

Executive Summary

Key Announcements

The Inquiry also launched a new [website](#) yesterday, and is now operating a dedicated helpline: 0800 917 1000.

The Inquiry has a delegated budget of £17.9M for the year ahead.

How is contact made with the Inquiry?

Anyone who wishes to get in touch with the Inquiry can do so via its helpline, by email, post or online.

Could a victim or survivor of child sexual abuse be compelled to give evidence to a statutory Inquiry?

A statutory inquiry has the power to compel attendance, and for the provision of documents or other material. However, Justice Goddard indicated that a victim or survivor would not be compelled to give evidence if they have indicated that they do not wish to do so.

What happens if someone discloses information relating to child sexual abuse to the Inquiry?

The Inquiry must ensure that robust safeguarding procedures are followed. Therefore, information will be shared with the police if:

- a crime has been committed or any such criminal activities may be ongoing;
- a risk of serious injury or to any person's life exists – either to the victim and/or survivor or to any other person(s), including any alleged offender(s);
- it appears there may be circumstances whereby children or vulnerable adults may be at risk of abuse from any alleged offender(s) or other person(s); or
- where the law requires such disclosure.

The Secretariat will not pass on any personal details to the Police without that individual's consent, unless there are immediate safeguarding risks.

Can information be given anonymously?

Yes – information can be provided or questions asked through the Inquiry's website without giving any personal details.

Does the Inquiry have a Freedom of Information policy?

The Inquiry is not a public authority for the purposes of the Freedom of Information Act 2000. Therefore, the Act does not apply and any requests for information made under the Act will not be considered.

The Inquiry will operate on a presumption of openness and transparency. Therefore, as much information as possible will be provided publicly, including on its website. This is subject to the Inquiry being able to receive and work with information provided to it on a confidential basis.

What documents are to be preserved?

A copy of Justice Goddard's letter to organisations on document preservation can be found [here](#). Justice Goddard said that any institution with responsibility for children should regard itself as obliged to comply with its instructions.

Terms of Reference

Purpose

1.

- to consider the extent to which State and non-State institutions have failed in their duty of care to protect children from sexual abuse and exploitation;
- to consider the extent to which those failings have since been addressed;
- to identify further action needed to address any failings identified;
- to consider the steps which it is necessary for State and non-State institutions to take in order to protect children from such abuse in future; and
- to publish a report with recommendations.

2.

In doing so to:

(a) Consider all the information which is available from the various published and unpublished reviews, court cases, and investigations which have so far concluded;

(b) Consider the experience of survivors of child sexual abuse; providing opportunities for them to bear witness to the Inquiry, having regard to the need to provide appropriate support in doing so;

(c) Consider whether State and non-State institutions failed to identify such abuse and/or whether there was otherwise an inappropriate institutional response to allegations of child sexual abuse and/or whether there were ineffective child protection procedures in place;

(d) Advise on any further action needed to address any institutional protection gaps within current child protection systems on the basis of the findings and lessons learnt from the Inquiry;

(e) Disclose, where appropriate and in line with security and data protection protocols, any documents which were considered as part of the Inquiry;

(f) Liaise with ongoing inquiries, including those currently being conducted in Northern Ireland and Scotland, with a view to (a) ensuring that relevant information is shared, and (b) identifying any State or non-State institutions with child protection obligations that currently fall outside the scope of the present Inquiry and those being conducted in the devolved jurisdictions;

(g) Produce regular reports, and an interim report by the end of 2018; and

(h) Conduct the work of the Inquiry in as transparent a manner as possible, consistent with the effective investigation of the matters falling within the Terms of Reference, and having regard to all the relevant duties of confidentiality.

Scope

3. State and non-State institutions. Such institutions will, for example, include:

(a) Government departments, the Cabinet Office, Parliament and Ministers;

(b) Police, prosecuting authorities, schools including private and state-funded boarding and day schools, specialist education (such as music tuition), Local Authorities (including care homes and children's services), health services, and prisons/secure estates;

(c) Churches and other religious denominations and organisations;

(d) Political Parties; and

(e) The Armed Services.

4. The Inquiry will cover England and Wales. Should the Inquiry identify any material relating to the devolved administrations, it will be passed to the relevant authorities.

5. The Inquiry will not address allegations relating to events in the Overseas Territories or Crown Dependencies. However, any such allegations received by the Inquiry will be referred to the relevant law enforcement bodies in those jurisdictions.

6. For the purposes of this Inquiry "child" means anyone under the age of 18. However, the panel will consider abuse of individuals over the age of 18, if that abuse started when the individual was a minor.

Principles

7. The Inquiry will have full access to all the material it seeks.

8. Any allegation of child abuse received by the Inquiry will be referred to the Police.

9. All personal and sensitive information will be appropriately protected; and will be made available only to those who need to see it.

10. It is not part of the Inquiry's function to determine civil or criminal liability of named individuals or organisations. This should not, however, inhibit the Inquiry from reaching findings of fact relevant to its Terms of Reference.

If you require further information on anything covered in this briefing please contact [Adele Eastman](mailto:adele.eastman@farrer.co.uk) (adele.eastman@farrer.co.uk; 020 3375 7581) or your usual contact at the firm on 020 3375 7000. Further information can also be found on the [Child Protection Unit](#) page on our website.

This publication is a general summary of the law. It should not replace legal advice tailored to your specific circumstances.
© **Farrer & Co LLP**,
July 2015