



Children in Custodial Institutions investigation

PROVISIONAL DECISION IN RESPECT OF MEDOMSLEY

Introduction

1. On 27 November 2015, the then Chair indicated that the Children in Custodial Investigations (CICI) investigation would investigate “*the many hundreds of allegations of child sexual abuse at Medomsley Youth Detention Centre in County Durham*”, because “*the apparent scale of abuse at Medomsley demands a rigorous inquiry into how such allegations, if true could have gone uninvestigated and the offending undetected for so long.*” Accordingly, an investigation into Medomsley was included in the scope document for the CICI investigation when it was published.¹
2. In the Report of the Review of the Inquiry’s work that I commissioned on taking up position as Chair, the Inquiry said that it would continue to liaise closely with Durham Constabulary in relation to Medomsley Detention Centre. Subject to further liaison with Durham Constabulary, we would then be able to determine the nature and extent of the public hearing to follow. In the autumn of 2017, I decided that in light of ongoing potential criminal prosecutions relating to Medomsley, the CICI investigation would instead at that stage focus on recent (post-2009) issues within custodial institutions. This was confirmed publicly in an Update Note published in October 2017² and in the Inquiry’s Interim Report published in April 2018.³
3. The Inquiry conducted public hearings on recent issues within custodial institutions in July 2018 and published its investigation report, including several recommendations, on those issues on 28 February 2019.
4. The position regarding any future criminal prosecutions relating to Medomsley remains unclear. However as the Inquiry is now setting dates for its final phase of public

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<https://www.iicsa.org.uk/investigations/sexual-abuse-of-children-in-custody-including-medomsley-youth-detention-centre?tab=scope>

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<https://www.iicsa.org.uk/key-documents/3151/view/sexual-abuse-children-custodial-institutions-october-2017-update-note.pdf>, at paragraphs 8-9

³ <https://www.iicsa.org.uk/reports/interim/annex-a>



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hearings, it is now necessary to decide whether the Inquiry will proceed with an investigation into the events at Medomsley. This is my provisional decision on that issue.

The CICI investigation to date

5. Although the focus of the first phase of the CICI investigation was on post-2009 issues, some applications for Core Participant status were made by several individuals who described sexual abuse many years earlier. Where these applications related to any of the six institutions that had been selected for closer examination during the investigation, I granted Core Participant status.⁴
6. No applications for Core Participant status were received from individuals describing child sexual abuse in custody since 2009, nor was any direct evidence from such individual complainants adduced before the Inquiry.
7. As a result, at the July 2018 public hearings the Panel and I heard evidence from some of those Core Participants who described non-recent abuse perpetrated at institutions in the 1960s/1970s. This included testimony from several men who were abused as children at Stanhope Castle from 1960, and one who later went to Medomsley where, according to the witness, boys were being sexual abused. Another witness referred to his suffering numerous incidents of sexual abuse from around 1973 at Forde Park.⁵

The report of the first phase of the CICI investigation

8. The report on the post-2009 investigation was published on 28 February 2019.
9. In announcing the report, I said that “*The harrowing accounts of non-recent child sexual abuse within custodial institutions were some of the worst cases this Inquiry has heard*”,⁶ reflecting observations within the main body of the report.

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<https://www.iicsa.org.uk/key-documents/5424/view/2018-02-22-notice-determination-howe%2Bco-group-application-cici-investigation.pdf>

⁵ See the ‘pen portraits’ section of the later report here:

<https://www.iicsa.org.uk/reports/cici/pen-portraits-children-custody>

⁶ <https://www.iicsa.org.uk/news/inquiry-publishes-report-children-custodial-institutions>



10. The report linked the complainant evidence of non-recent sexual abuse with the current custodial context in several ways:
 - (i) It recognised that the children in custody were then, and continue to be, among the most vulnerable in society, experiencing unhappy and disrupted childhoods, and often involved in regular offending, some of it of a violent or sexual nature;
 - (ii) It noted that the culture of these institutions, particularly their closed nature and focus on containment and control, has not provided an environment that protects children from either physical or sexual abuse; and
 - (iii) It acknowledged the practical evidence the non-recent complainants gave, that was relevant to current issues concerning the youth justice secure estate. For example, the complainants spoke of the need for children to access their family, friends and peers to report abuse, and other witnesses testifying on current issues explained the various ways in which access to friends and family was restricted in the modern youth justice secure estate. Similarly, the complainants stressed the need for children to have access to independent professionals, and other witnesses suggested that young people were currently expressing similar views, but there were problems with support mechanisms in place.⁷

The Medomsley criminal proceedings

11. Seven former members of staff at Medomsley were charged with offences in the summer of 2018. Of these, five were convicted, after a trial at Teeside Crown Court in March 2019. All five were convicted of misconduct in a public office, and two were also convicted of offences involving (physical) assault. Although charges had been brought for indecent assault,⁸ no defendant was convicted of this type of offence.
12. As indicated above it remains unclear whether there will be any further criminal prosecutions relating to Medomsley.

⁷ See section E.10, paragraphs 109-114 and 118-129 here: <https://www.iicsa.org.uk/reports/cici/part-e-institutional-response-child-sexual-abuse-custody/e10-enabling-children-disclose-sexual-abuse>

⁸ ie. the equivalent of what is now sexual assault under the Sexual Offences Act 2003



Recent correspondence relating to Medomsley criminal proceedings

13. In April and May 2019, Ben Hoare Bell solicitors (BHB), acting on behalf of over 400 people who had been detained at Medomsley, wrote to the Home Secretary and myself calling for a public inquiry into all aspects of abuse that had occurred there. They referred to the significant cause for public concern about not only sexual abuse, but also the widespread and sustained physical and psychological abuse suffered by children and adults detained there.⁹ The solicitors referred to evidence that allegations of abuse began to emerge shortly after Medomsley opened and examples of missed opportunities to intervene.¹⁰
14. BHB explained that although case files were not available for all their clients, they had been able to examine files for 334 of them.¹¹ All 334 had experienced physical abuse and just under a fifth suffered some form of sexual abuse.¹² They estimated that over 1,600 survivors in total have alleged abuse at Medomsley and that more complainants are coming forward.¹³
15. BHB argued that if this Inquiry were to proceed to investigate only sexual abuse of victims under 18 (abiding by the current Terms of Reference), there should be an explanation to all complainants of how it would be able adequately investigate the “*completely dysfunctional and abusive regime of sexual, physical and psychological abuse..... that may well have led to or failed to prevent the sexual abuse of children*”.¹⁴
16. They went on to make clear their position that “*an effective inquiry into the prison cannot be carried out without consideration of both the physical and the sexual abuse suffered by those who were aged over 18 at the time*”.¹⁵
17. BHB argued that the treatment of the detainees amounted to a breach of the right to protection from torture and inhuman or degrading treatment enshrined in Article 3 of the

⁹ 11 April 2019 letter, pp.1-2

¹⁰ 11 April 2019 letter, pp.4-5

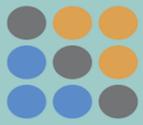
¹¹ 11 April 2019 letter, p.7

¹² 11 April 2019 letter, p.8

¹³ 11 April 2019 letter, p.10

¹⁴ 11 April 2019 letter, p.2

¹⁵ 11 April 2019 letter, p.3



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European Convention of Human Rights, which required investigation.¹⁶ However BHB accepted that this Inquiry “*does not currently meet this obligation*”.¹⁷

Consideration of the issues

18. The Inquiry’s criteria for selecting institutions suitable for investigation are, in summary, that: **(a)** there are credible allegations of child sexual abuse; **(b)** the institution appears to have facilitated or failed to prevent child sexual abuse including by omission; or **(c)** an institution or person acting in official capacity appears to have failed to respond appropriately to allegations of child sexual abuse.¹⁸
19. There have plainly been a large number of credible allegations of child sexual abuse made in relation to Medomsley and so criterion **(a)** is met. There is also evidence to satisfy both criteria **(b)** and **(c)**. Accordingly an investigation into Medomsley continues to fit the criteria for investigation as it did when an investigation into it was announced in 2015.
20. I am very conscious of the large scale and serious nature of the abuse alleged at Medomsley, which is apparent from the submissions made to the Inquiry as summarised above and from the criminal prosecutions and convictions. It is also clear to me that there is a large number of complainants who feel strongly that there needs to be some form of Inquiry. Finally, I am conscious of the indications the Inquiry has given in the past that it would investigate the Medomsley issue.
21. However, I consider that there are fundamental limits to the ability of this Inquiry to fully investigate events at Medomsley. In accordance with its Terms of Reference, the Inquiry can only properly focus on the institutional response to **(a)** sexual abuse; **(b)** of children.
22. As to **(a)**, not all those detained at Medomsley were children (ie. under 18): rather as an institution it detained those aged from 17-21. The Inquiry’s Terms of Reference would preclude it from investigating the abuse of those aged 18 or over unless the abuse

¹⁶ 11 April 2019 letter, pp.6-13

¹⁷ 11 April 2019 letter, p.10

¹⁸ <https://www.iicsa.org.uk/criteria-selection-investigations-0>



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commenced when they were under 18.¹⁹ The BHB submissions estimate that 80% of those who have alleged abuse at Medomsley were 18 or over at the time of the abuse.²⁰

23. As to **(b)**, not all the Medomsley complaints describe sexual abuse: as set out above, around 80% (four-fifths) of the 334 or so complainants whose case files BHB reviewed describe physical and not sexual abuse.
24. In light of both of these factors it is clear that any investigation into Medomsley by the Inquiry could only ever consider a minority of the issues, without a radical departure from the Inquiry's Terms of Reference which I do not consider appropriate.
25. The limited investigation which this Inquiry could properly carry out could well be thought by many to fail to do justice to the breadth of concerns about Medomsley: indeed the BHB submissions argue that such an investigation would be inadequate.
26. It is also important to bear in mind the evidence from the historical custody context which the Inquiry has already heard. As set out above, within the post-2009 CICI phase, the Inquiry heard powerful evidence of child sexual abuse within the custodial estate in the 1960's and 1970's. The witnesses described the culture and environment at institutions similar to Medomsley, which were operating at the same time. One such witness (CI-A34) also described his time at Medomsley. Accordingly hearing further evidence of child sexual abuse within the custodial estate in the 1960's and 1970's is unlikely to add significantly to the Inquiry's overall evidence base.
27. Finally, it is relevant that the Inquiry has already made certain findings linking evidence from the Medomsley era with the current custodial context. The Inquiry has found that the barriers to reporting an incident of sexual abuse for a child - including the prevalence of violence, the power imbalance between staff and children, a prevailing culture of disbelief when a child complains and the child's distrust of authority figures - are strikingly similar across all institutions on which the Inquiry has reported, but are exacerbated in custodial and secure settings. Accordingly it is difficult to see how hearing further evidence of non-recent child sexual abuse within the custodial estate is likely to lead to any radically different findings by the Inquiry.

¹⁹ See the Inquiry's Terms of Reference: <https://www.iicsa.org.uk/terms-reference>, at paragraph 6

²⁰ 11 April 2019 letter, p.16



28. On balance, I consider that these three factors against continuing with an investigation into Medomsley outweigh those in favour of it, even if the position regarding criminal prosecutions was clearer. My provisional Decision is therefore that the Inquiry will not proceed to investigate the Medomsley issue.
29. Although this has not been the deciding factor I am also mindful of my duty under the Inquiries Act 2005, s.17(3) when “*making any decision as to the procedure or conduct of an inquiry*” (which would include a decision to proceed with the investigation into Medomsley), to have “*regard...to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others)*”.
30. It has long been the policy of the Inquiry that the description of scope in a particular investigation “*may be amended, supplemented or modified consistently with the Terms of Reference or subject to the Inquiry’s duty to act fairly*”.²¹ I consider that to amend or modify the scope of the CICI investigation to remove Medomsley from the Inquiry’s consideration is consistent with the Inquiry’s Terms of Reference, its duty to act fairly and my obligation to avoid unnecessary cost.

Conclusion

31. For these reasons my provisional Decision is that there will be no investigation by this Inquiry into events at Medomsley.
32. The Solicitor to the Inquiry will contact anyone who has been in touch with him about this part of the investigation and invite them to make written submissions on this provisional Decision. Any such written submissions must be provided to him by **4 pm on 31 October 2019**. If no such submissions are received, I will confirm this provisional Decision in a final Determination of the matter.

Professor Alexis Jay OBE
Chair, Independent Inquiry Child Sexual Abuse

3 October 2019

²¹ <https://www.iicsa.org.uk/description-scope-investigations>