



INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

Child Protection in Religious Organisations and Settings Investigation

NOTICE OF PROVISIONAL DETERMINATION

May 2020 hearing

Background

1. The Inquiry's public hearing for the Investigation into Child Protection in Religious Organisations and Settings ("CPIROS") began on 16 March 2020. That evening, the Prime Minister announced further guidance on the management of the ongoing Covid-19 pandemic, as a result of which the Inquiry suspended its investigation hearing.
2. The national emergency has had an unprecedented effect on the life of the nation, including everyone involved with the Inquiry. The Solicitor to the Inquiry sent out a note to core participants in the CPIROS investigation on 27 March 2020 setting out proposals to hold a virtual hearing in this investigation in this changed context, including considerations as to how the public could access the hearings by way of a livestream of the evidence.
3. Submissions were sought from Core Participants by 4.30pm on Tuesday 31 March 2020, and I am grateful for the speedy response from all those who provided submissions in the light of the current circumstances. Submissions were requested upon:
 - a. Whether, in principle, the investigation hearing could and should be held remotely;
 - b. Whether there were any practical difficulties foreseen to the holding of a virtual hearing;
 - c. Whether they agreed to the Inquiry's proposal that a virtual hearing commence either in April 2020 or in May or June 2020;



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- d. Whether they agreed with the Inquiry's provisional analysis that a livestream was required and should be pursued even though, for technical reasons, the usual three minute delay to transmission (which allows any inadvertent breaches of restriction orders to be corrected) would not be possible.

Submissions

4. I received submissions from the following Core Participants:
 - a. Migdal Emunah
 - b. Southall Black Sisters
 - c. Sadia Hameed
 - d. Lisa Oakley
 - e. Yasmin Rehman
 - f. Interfaith Alliance
 - g. Lloyd Evans
 - h. Ex-JW Advocates Opposing Crimes Against Children
 - i. ThirtyOne:Eight
 - j. Shema Koli
 - k. Christian Congregation of Jehovah's witnesses ("CCJW")
 - l. Baptist Union of Great Britain ("BUGB")
 - m. United Synagogue ("US")
 - n. Union of Hebrew Congregations ("UOHC")
 - o. Liberal Judaism
 - p. Evangelical Alliance
 - q. Charity Commission
 - r. OFSTED
 - s. Home Office
 - t. Department for Education
 - u. Department for Digital, Culture, Media and Sport
 - v. Ministry of Housing, Communities and Local Government
 - w. Ministry of Justice



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5. Witnesses have not yet been approached, but Mr Juster of the Salvation Army made submissions via his solicitor who represents two core participants.

Is a remote hearing in principle appropriate?

6. The majority of submissions agreed that it would be appropriate to proceed by way of a virtual hearing, but raised various practical questions as to whether that could happen between April and June 2020.
7. Ex-JW Advocates Opposing Crimes Against Children, the Interfaith Alliance and Lloyd Evans all submitted that a virtual hearing would not be appropriate and OFSTED made similar submissions. Their concerns (in broad terms) were as follows:
 - (a) A virtual hearing would undermine the importance of the investigation, and may lead to a superficial approach to the questioning of witnesses.
 - (b) It would give witnesses a chance to be coached and/or for their evidence to be contaminated (because the Inquiry cannot control from where they give their evidence and who is with them when it happens).
 - (c) It would lessen the pressure that might be exerted on witnesses.
 - (d) It might give a perception that this investigation is less important than those where conventional hearings have been held.
 - (e) Victims and survivors should have the right to face the organisations which have wronged them and this cannot happen if the hearing is virtual.
 - (f) Research about virtual hearings raises concerns about the participation by lay people in the process and about how effective such hearings are at delivering justice (albeit that the research referred to concerns other legal contexts). In particular, concerns have been expressed at how lay people feel that their case has been dealt with, and they may not have a chance to participate as fully, or how someone being physically present can alter the method and mechanisms by which lawyers engage with each other (and speak about sensitive issues to the Chair and Panel).



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- (g) The courts have not as yet engaged fully in remote hearings for cases involving witness handling and are only doing so where such is urgent and necessary. The work of IICSA cannot be seen as urgent in comparison to court cases for example about medical treatment or removing children from their families because of abuse.
- (h) Proceeding with business as usual would place an unnecessary burden in particular on public and voluntary organisations who have increased staff absence and obstacles to being able to fully commit to preparation for the hearing.

Practical concerns raised about the hearing

- 8. Many raised practical questions about holding hearings remotely. These can be divided into (a) timing (b) technology (c) personal circumstances.

(a) Timing - April 2020

- 9. Most submissions opposed a hearing in April 2020, largely because of a lack of time to organise diaries and because many of them were responding to the pandemic by working with their organisations to keep urgent and vital services ongoing. Most, however, said that if suitable preparation time was given, and a hearing was scheduled later in the year (many indicating after June or in the Autumn) then a virtual hearing could take place.
- 10. Several Core Participants submitted that the same concerns about a hearing in April would also apply to a hearing in May. Some said that a hearing may be possible in June, whilst others said that no hearing should be listed until after June, and ideally in the autumn or in late 2020.
- 11. Government agencies (save for the Ministry of Justice) due to give evidence submitted that they would not be available for hearings in May and June 2020 because they are heavily engaged in responding to the pandemic, for example



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organising and running critical services such as schools, or managing mortuary services.

- a. OFSTED said that its staff may also not be available, as they have been seconded to undertake “frontline” work with vulnerable children or in schools to provide assistance.
- b. The United Synagogue said that its Chief Executive is very busy running services for the US community including spiritual and practical advice and would find it difficult to be diverted from this.

12. They submitted that proceeding with the hearing would unnecessarily require parties to divert key resources from the response to Covid-19, which was not in the public interest and may prevent them from fulfilling their statutory duties. These operational pressures would also make it impossible for witnesses and Core Participants properly to prepare to give evidence or to commit to giving evidence at any given time at a hearing.

13. They also submitted that the inability of key witnesses properly to prepare for their evidence, and of Core Participants properly to prepare for their participation in the hearing (e.g. by reviewing the evidence and formulating Rule 10 questions) would impede the fairness and quality of the hearing, and also do a disservice to complainants, victims, survivors and the general public.

(b) Technology

14. Core Participants submitted that there would need to be proper preparation and support for any virtual hearing. In particular, some organisations indicated that their witnesses did not have access to broadband at home, or that their connection was weak or unsuitable for video streaming services. Some wanted to know more about if such technology would be compatible with their internal security systems. Others wanted to be able to practice and identify practical problems which may arise.

15. Submissions also focussed on what might happen if participants “dropped out of the hearings” and how they could catch up and participate effectively. Submissions also



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identified concerns about how solicitors for Core Participants could interact with the Core Participants around the hearing, and interact with members of the Inquiry team. Submissions were made as to how the hearing could be made to be more effective by amendments and alterations to the running of the day and the nature of the proceedings.

(c) Personal circumstances

16. There were also concerns that personal and emotional support could not be provided virtually, in particular to victims and survivors.

17. Some Core Participants raised concerns about having the facilities within their homes to be able to participate in giving evidence, particularly given the sensitive nature of some of the content. Some raised concerns that they would be giving evidence whilst trying to parent and educate their children who would also be able to hear unsuitable content.

18. Some raised concerns about being able to travel to an office in May where they could give evidence remotely, not being able to do so at home. Some did not have technological facilities. Some also raised concerns that various witnesses may be unwell and so would be unable to participate, in particular given that the rate of infection is expected to still be high in May and June.

19. Submissions were also made that there would be an indirectly discriminatory impact on women participating in the hearings, as they are likely to continue to bear a disproportionate burden of childcare with schools being closed. It was said there may also be an indirectly discriminatory impact on those with disabilities, who may experience greater disadvantage in being required to use remote technology.

Livestream

20. As to the necessity of a livestream, the following issues were raised:



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- (a) Most Core Participants making submissions on this topic considered that a live stream was appropriate and a reasonable way of fulfilling the duty under section 18 (1) of the Inquiries Act 2005.
- (b) Some submitted that it would be unacceptable to proceed with hearing sensitive evidence without the three minute broadcasting delay. Reference was made to previous hearings in the Inquiry when it has been necessary for broadcasting to be stopped when sensitive details have been inadvertently disclosed, and therefore the risk of identification of complainants was not simply a theoretical one. Several Core Participants suggested that the Inquiry may be able to delay the transmission of the evidence in order to protect identities, and still act in accordance with its obligations under section 18(1) Inquiries Act 2005. This could apply to all of the evidence, or solely to the particularly sensitive evidence. Some Core Participants proposed there being no live stream but instead that hearings be recorded and the recording made available later, perhaps the same day, after it had been ensured there had been no inadvertent disclosure.

Provisional Determination

21. I have carefully considered the submissions received which raise many valid issues and concerns. This is an unprecedented situation, and requires flexibility, ingenuity and co-operation. Things which would have been unthinkable just a month ago are now seen as routine. While understanding the challenges the current situation presents, the Inquiry has an important public interest function and I consider it important that it also should reflect the changed landscape and make what progress it can with its work despite the current situation.

A virtual hearing in principle

22. Whilst my preference, and that of all Core Participants, would be to hold hearings in the usual way at Pocock Street, I consider that the Inquiry must make progress where it is able to do so. Any delays to the Inquiry's timetable impact on the Inquiry's



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ability to fulfil its Terms of Reference and make recommendations for the better protection of children from sexual abuse. I have therefore given careful consideration to whether a virtual hearing, with participants joining from their own remote location, is feasible.

23. A public inquiry is not the same as a court hearing, but guidance from the courts has shown that, in principle, a remote hearing would be fair. I note that the Lord Chief Justice has identified that arrangements are being put in place in respect of conducting all manner of hearings remotely in all kinds of cases, including trials. The Family Division and the Court of Protection, both courts which deal with cases of the utmost sensitivity and privacy have identified that where practicable, remote hearings should take place.
24. The various pieces of research referred to in particular by OFSTED relate to different sorts of hearings in very different contexts to those of a public inquiry and to the feeling that individuals who are the subject of such hearings feel disengaged by the process. This may have been understandable given the logistical set up of the information technology in that case, but is different here. Concerns raised in articles about recent cases about a feeling of not being heard or listened to or considered are also all matters which, with sensitivity and sympathy, can be overcome.
25. Research in this area is limited and also very context dependent (both upon who is using the technology, what technology is used and what other legal support/advice is available and how the hearings are then structured), as well as in some cases finding the hearings clear and easy to navigate. I place little reliance on the research conducted in other contexts and with different technology, except as a guide to potential pitfalls which need to be avoided in the Inquiry's virtual hearings.
26. I do not consider that the questioning of the witnesses, or the process of asking for other material under Rule 10 will be materially affected by holding the hearing remotely. There is no greater risk of contamination of evidence than there is in any



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other context. Steps will be taken to remind witnesses of the oath or affirmation they make when giving evidence and the consequences of breaches of those promises.

27. Many of the criticisms raised in submissions about remote hearings are contingent upon remote hearings in adversarial litigation in the courts. The Inquiry is different: it is an inquisitorial process, has the ability quickly to implement a technological solution which is sophisticated; does not have the limitations on technology that it can deploy, can act flexibly and is only dealing with a small number of hearings.
28. I recognise that asking people to give evidence at home, in particular if they are giving evidence of a sensitive nature, may be difficult. The Solicitor to the Inquiry will seek, on a case by case basis, to take steps to try and accommodate any particular difficulties that witnesses or Core Participants face.
29. I have considered whether female participants in the hearing who have children would be particularly adversely affected by conducting a virtual hearing from their homes, when they have childcare responsibilities. In the current climate it seems to me that many fathers, and people of both sexes caring for elderly relatives living with them, might also be similarly affected. On balance, however, I consider that the need for the Inquiry to continue with its important work in the public interest justifies proceeding with a virtual hearing. I note that virtual hearings are being conducted in many other parts of the justice system as it is considered that this is an appropriate and proportionate response to the unique circumstances of this pandemic. To the extent that any witness or Core Participant is particularly affected by these issues, the Inquiry's team will work with them to mitigate any impact, as far as is reasonably practicable.
30. I consider the various logistical or practical concerns are capable of being overcome, and the Inquiry will deal with any particular issues on a case by case basis.

Livestream



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31. The inability to operate the usual three minute delay to the livestream is the most significant concern posed by a virtual hearing. I have carefully considered if the absence of a delay mechanism would prevent a hearing going ahead. I consider that it does not.

32. I have already made a restriction order protecting the identity of complainant Core Participants, which can be found [here](#). In advance of each public hearing I make restriction orders covering the redactions and ciphers applied in that investigation. In our conventional public hearings, if one of these orders is breached during a witness's evidence, the three minute delay enables the livestream to be stopped, so that the restricted evidence is not broadcast. In some instances, it is then necessary for me to make a fresh restriction order covering the evidence inadvertently given. This process also ensures compliance with the provisions of the Sexual Offences (Amendment) Act 1992.

33. For technical reasons this three minute delay and the above process could not operate in a virtual hearing. However, I am satisfied that specific measures can be put in place to reduce to an acceptable level (if not remove entirely) the risk of a breach of any restriction order.

34. These include not live streaming some, or all, of the evidence of those witnesses where a breach of a restriction order is a particular risk. Where evidence is not live streamed, it will be recorded and uploaded to the Inquiry's website as soon as possible thereafter, together with the transcript. In this investigation, there will only be a small number of witnesses to whom this risk may apply, as the vast majority of evidence will not involve the risk of identification of those who have been the subject of sexual abuse or who are alleged perpetrators against whom no conviction has been made.



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35. All witnesses can be reminded of the meaning and effect of any restriction order by their legal representative and the Inquiry's legal team evidence, and the need to refer to those covered by them by cipher, before giving evidence.
36. At the beginning of each hearing I will remind all those attending of the particular issues around restriction orders.
37. If there is an inadvertent breach of a restriction order I will make an immediate further order over the evidence incorrectly given.
38. Under the Inquiries Act 2005, section 18, I am required to take reasonable steps to ensure that the public and reporters can attend the hearing or see and hear a livestream of it, subject to any restrictions imposed by section 19. In the particular circumstances we currently face, I am satisfied that not having a livestream for certain witnesses, and adopting the measures set out above, strikes an appropriate balance between the need to protect individuals' identities and other sensitive information with the need to facilitate public access to the hearings under section 18.
39. I am satisfied that the restriction orders already made, or any new order it is necessary for me to impose, will enable me to manage the evidence provided during a virtual hearing to reduce the risk of any breach of a restriction order, or the provisions of the Sexual Offences (Amendment) Act 1992.
40. I am therefore satisfied that the Inquiry should hold virtual hearings, where it can, until it is able to resume its hearings in person at Pocock Street.

A virtual hearing in the CPIROS investigation in April - June 2020

41. While I understand the desire for some of the Core Participants to proceed with a virtual hearing in this investigation in April, so that the Inquiry can continue with its



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important work as originally planned, on balance I accept the weight of the submissions that to do so would not be appropriate in April.

42. I consider however, that it would be possible to hold a hearing in May 2020, where the majority of oral evidence can be heard. I accept that some witnesses may not be able to attend because they are at the “front line” of dealing with the national response to the pandemic and are required to work on their primary operational responsibilities such that they would be unlikely to be able to attend any hearing. I consider that this would relate primarily to those from central government and local authorities.
43. There are, however, a significant number of witnesses in this hearing who do not fall into this category and who have indicated that they could attend a hearing in May 2020. Some of the witnesses from the central government (such as the Charity Commission) have also indicated they could attend in May. I note that the vast majority of witnesses would already have been prepared to give evidence at the hearing in late March 2020 and had all the relevant preparatory information to do so, and so no issue arises in respect of preparation as may do in other circumstances. I anticipate it being helpful to all those who were prepared to attend the hearing in March to proceed to the resumed hearing as soon as practicable.
44. In these circumstances, I am minded to hold a hearing on the weeks commencing 11 May 2020 and 18 May 2020, where as much evidence is taken as is possible. I recognise that some witnesses will not be able to attend or may be unwell at the time of any hearing, and so will reserve a further week for hearings on 10 August 2020 for those who are unable to attend in May 2020.
45. This decision is provisional. I will consult with those witnesses who are not Core Participants and so have not made submissions before reaching my final decision on this issue.



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46. Taking into account the submissions received, I make the following provisional determination:

- a. Witnesses will be contacted by the Solicitor to the Inquiry and asked (a) whether or not they can attend on the weeks of 11 May and 18 May 2020 and what adjustments and/or considerations may need to be made to make their evidence effective (b) if they cannot attend then their reasons for this and if they could attend on the week commencing 10 August 2020.
- b. I will then make a final determination as to whether or not the hearing in May 2020 will go ahead.
- c. If I make such a determination, the hearing will be relisted to commence on **11 May 2020** for two weeks, with adjustments made to the witness timetable as issued and to be discussed with Core Participants. Further details about the practicalities of any virtual hearing that will take place will be circulated by the Solicitor to the Inquiry.
- d. A further week will be listed on 10 August 2020. This will either be in person or virtual depending upon the governmental restrictions in place at the time.

Professor Alexis Jay OBE
Chair, Independent Inquiry into Child Sexual Abuse

6 April 2020