

Independent Inquiry into Child Sexual Abuse

Martin Smith
Solicitor to the Inquiry

Your ref:

Our ref:

Please ask for: Samuel Barker

Date: 31 March 2020

Direct Line:

Email:

Dear Sirs

Child Protection in Religious Organisations and Settings

We refer to your correspondence dated 27 March 2020.

Whilst we appreciate these are unprecedented times for the Inquiry, we are unable to agree that a virtual hearing is appropriate for these hearings.

We are instructed to object to the proposal for the hearings to proceed virtually not only on a practical level but as it tends to undermine the importance of the investigation and will no doubt appeal to institutional core participants (such as the CCJW) for this reason.

The Inquiry's task in these hearings is already monumental given the number of core participants and the extremely narrow hearing window allocated to adduce evidence in a robust manner. The potentially negative effect of such narrow hearing window with the deluge of information already submitted to the Inquiry and such little time to question witnesses in relation to this was raised by legal representatives for core participants in opening statements. Centrally, the concern is the narrow hearing window will allow for only a broad brush approach to be taken and given the complexity of the issues involved, this may result in the investigation being too high level. A virtual hearing only adds to the likelihood of this occurring and certain religious organisations being able to avoid proper scrutiny.

Fiona Scolding QC's opening statement revealed the enormous level of work already undertaken by the Inquiry and its legal team, which arises out of the level of disclosure provided and the detail of the various core participant witness statements. Such a level of disclosure naturally results in inconsistencies and of course, core participant groups being opposed on important issues which will affect the outcome of these hearings if both sides are not critically examined through oral evidence.

The effect of being questioned alone by video link rather than at the hearing centre in person, before the panel, other core participant groups, witnesses and the public no doubt has an effect on the pressure which can be exerted on the witness when his/her answer is evasive or inadequate.

It might be technically workable but the real question ought to be – will these measures be effective? This does not simple mean effective for the purpose of adducing the evidence but effective for critically examining the witnesses' position as outlined in the witness statement,

particularly where there is a contradiction, opposition or an inconsistency. We submit this will not be achieved by video link and the potential effect of not obtaining the best evidence will impact the Inquiry's ability to properly achieve its mandate, which is to make recommendations to better protect children from the risk of sexual abuse in religious organisations and settings, a matter of grave importance.

Further, the Inquiry's own note acknowledges the virtual hearing process will inevitably make the hearing a little clumsier than usual. This will no doubt cause delay in what is already a timetable which is far too narrow but in addition to this, it detracts from the formality, gravitas and seriousness of such a hearing.

The Inquiry is dealing with subject matter of the utmost seriousness, child sexual abuse. We do not for one minute suggest the Inquiry is not appreciating this fully but the consequence of resorting to a virtual hearing does deprive survivors of one crucially important element – to be able to face the organisation which failed them in person. This is contrary to principles of open justice. Simply watching the evidence via video link, assuming the survivor has the capacity to do so given certain areas in the UK do not have the benefit of high speed broadband, is not satisfactory.

We are unable to agree that the benefit of moving forward via a virtual hearing outweighs the benefits of having the hearing take place in person. Prioritising a timely hearing for the sake of expediency may come at the sacrifice of a detailed and forceful examination of witnesses and the need for survivors to be able to be in the room when the organisation which failed them is being examined.

Our team's experience with virtual hearings during the Jersey Care Inquiry leaves us with no confidence in the process being able to work effectively, no matter how well intentioned. The legal representatives were consistently left playing catch up during the evidence and any attempt to engage was naturally several steps behind.

To respond to each point raised in paragraph 9 of the Inquiry's note, we say:

- a. The Group does not agree in principle for the hearing to be held remotely (for the reasons outlined above);
- b. Some members of the Group who are in more rural locations may encounter problems with broadband connections;
- c. The Group has outlined the reasons it objects above. Non-availability is not a central issue. Another issue is that virtual hearings will be very difficult for those giving evidence in a "hot tub" environment, both logistically (difficulties with a number of separate video links) and practically (the witnesses being able to interact and know who is going to speak etc via body language); and
- d. The Group agrees a live stream is required for principles of open justice.

If, despite the Group's strenuous objection, the Inquiry is minded to proceed remotely then the Group must put forward a submission in the strongest possible terms that the time allocated to Sarah Davies, Duncan Corbett and Lloyd Evans to give evidence must be extended by 60 minutes and the time allocated to Paul Gillies must be extended by 90 minutes.

The Group refers to its previous submissions that the current timetabling of Mr Gillies is insufficient given the extent of material which needs to be covered and the direct contradictions in evidence. This will be even more pronounced if the examination proceeds virtually.

Finally, if the Inquiry decides to proceed digitally then core participant groups ought to be permitted to make submissions that witnesses be recalled if their evidence is so affected by the video link that it renders the entire process ineffective.

We appreciate the time the Inquiry has put into considering an alternative option. We object to the prospect of a remote hearing due to the importance of these hearings. Notably this area of religious organisations and settings has not been previously examined and we must not lose the opportunity to do this properly for the sake of expediency.

We look forward to hearing from you.

Yours faithfully

A handwritten signature in cursive script that reads "Hugh James". The signature is written in black ink and is positioned below the typed name.

HUGH JAMES