

**DETERMINATION FOLLOWING THE PRELIMINARY HEARING  
IN THE ROMAN CATHOLIC CHURCH INVESTIGATION HELD ON 6 JUNE 2017**

***Introduction to the Hearing on 6th June***

1. On 3 May 2017 the Solicitor to the Inquiry’s (“STI”) team circulated submissions from Counsel to this Investigation (“CTI”) to all core participants. As I stressed during the preliminary hearing on 6 June 2017, those submissions set out CTI’s proposals in relation to the topics and institutions that they suggest should be considered by me and other Panel members at the hearing scheduled to commence on 27 November in relation to the Roman Catholic Church. I had, at that stage, not taken any decisions about the topics referred to in the submissions.
2. Within the Report published in December 2016 I set out a timetable of work that the Inquiry would undertake this year. That timetable included a hearing in November/December this year in relation to the first of the two case studies currently selected in this investigation, the English Benedictine Congregation (‘the EBC’).
3. CTI’s submissions covered the following topics:
  - a. Proposed topics to be considered at the EBC case study hearing; and
  - b. Proposed selected institutions.
4. While it was not covered in CTI’s submissions, the agenda for the preliminary hearing also included an application on behalf of Howe and Co’s clients, the Mirfield 7, for the Comboni Missionary Order to be designated as a case study within this investigation.
5. On the 3rd of May 2017 the Solicitor to the Inquiry’s team also circulated a Procedural Note which provided an overview of the approach to disclosure on this investigation, including a broad timetable for disclosure. It also explained the requirement for all core participants to sign confidentiality undertakings.

6. Observations on CTI's submissions and the matters raised in the Procedural Note were invited by the Solicitor to the Inquiry's team. In advance of the preliminary hearing on 6 June 2017, written submissions were received from the following core participant teams:

- a. Howe and Co on behalf of F1 to F12 and separately F13;
- b. Imran Khan and Co on behalf of G1 to G5;
- c. Slater and Gordon on behalf of 26 complainant core participants and Jonathan West;
- d. Switalskis Solicitors on behalf of C18 and C19;
- e. Bhatia Best Solicitors on behalf of D2;
- f. Hugh James on behalf of G4;
- g. Kingsley Napley on behalf of the English Benedictine Congregation (submissions also approved by the Catholic Council for IICSA);
- h. The Commissioner of the Metropolis;
- i. Milners Solicitors on behalf of Ampleforth Abbey Trust; and
- j. Brabners on behalf of Adrian Child.

7. The Independent Schools Inspectorate, the Department for Education, the West Midlands' Police, North Yorkshire Police and Bhatia Best all indicated that they would not be providing written submissions. Haworth and Gallagher on behalf of St Benedict's School and Ealing Abbey indicated that they agreed with CTI's submissions.

#### Preliminary Hearing on 6th June 2017

8. At the preliminary hearing on the 6 June 2017, CTI, Miss Karmy-Jones QC, made oral submissions which amplified her written submissions and addressed issues that had been raised in the written submissions of core participants. Oral submissions were then advanced by core participants largely in accordance with their written submissions, although Lord Carlisle made a number of further observations on behalf of his clients that I refer to below.

## **Ruling, published 8th June 2017**

9. I considered all submissions carefully. In respect of one particular matter I agreed that I should give my decision swiftly as it was relevant to a case management conference in related criminal proceedings. Accordingly, on 8 June 2017 I gave my decisions in relation to Ealing Abbey/St Benedict's School and the English Benedictine Congregation ("EBC") case study, with reasons to follow. My decision was as follows

*"On 6 June 2017 a preliminary hearing took place in the Roman Catholic Church Investigation. One of the issues for determination arising out of this hearing is whether or not evidence should be heard in relation to Ealing Abbey/St Benedict's during the English Benedictine Congregation (EBC) case study hearing due to commence on 27 November 2017 and continue in December 2017. Related to this is the issue as to whether or not the EBC hearing should be adjourned so as to enable such evidence to be heard alongside the evidence relating to the other EBC institutions currently proposed for investigation at that hearing.*

*I have read the written submissions of Counsel to the Investigation and those received from the core participants who wished to address this issue. I also heard oral representations from Counsel to the Investigation and core participants at the preliminary hearing.*

*Having considered all of the submissions, my decision is that the EBC hearing should take place as planned in November and December 2017 and that evidence in relation to Ealing Abbey/St Benedict's will be heard but not before the relevant criminal proceedings have concluded. Reasons for this decision and my decisions in respect of any other matters will follow."*

10. I set out my reasons for that decision and my further decisions in respect of the other matters raised below.

## **Scope of Hearing in November and December**

11. In their submissions CTI proposed that the Inquiry should hear evidence in relation to Ampleforth Abbey and Ampleforth School and Downside Abbey and Downside School at the hearing planned to commence in November this year. They also proposed that Worth Abbey and Worth School be considered for inclusion, although they wished to review further evidence that had been requested in relation to that

School before providing any further submissions in that regard. I have now seen their further submissions, which I understand will be circulated with this determination. I address the position of Worth Abbey separately at paragraphs 28 to 30 below.

12. There were no submissions from any core participant, either orally or in writing arguing that those institutions should not be included for consideration.
13. CTI noted that the Inquiry intends to adopt a proportionate approach to each of its hearings. That reflects the approach that I set out in the Report of the Inquiry's internal review that was published on 16 December 2016. The Inquiry has wide terms of reference and this investigation, in particular, is broad in the number of institutions that may potentially be considered. I agree. It is neither necessary nor proportionate for the Inquiry to consider the circumstances of each individual institution connected with the Catholic Church in England and Wales in order to fulfil our terms of reference and the scope of this particular investigation; the Panel and I consider that we are able properly to examine the extent to which the Catholic Church in England and Wales has failed in its duty to protect children from sexual abuse, the extent to which those failings have been addressed and what further action should be taken better to protect children in future through a number of case studies together with some general evidence about the Catholic Church following those. I also consider, in my discretion, that this is the appropriate way of delivering this aspect of the Inquiry's terms of reference in a manner that is consistent with my obligation under section 17(3) of the Inquiries Act 2005 to act fairly while avoiding any unnecessary cost whether to public funds, to witnesses or others. We consider that the institutions selected so far provide an appropriate range of topics for consideration in the hearing scheduled to commence in late November 2017.
14. In considering the selection of institutions, CTI made submissions in respect of two further EBC institutions, namely Ealing Abbey and its affiliated school, St Benedict's, and Fort Augustus Abbey and Fort Augustus School, the latter being in Scotland. There is, understandably, considerable strength of feeling amongst a number of complainant core participants, and also from Mr Jonathan West in relation to these two topics, and we heard submissions in respect of both institutions, which I address separately below.

(i) Ealing Abbey

15. There has been an ongoing investigation by the Metropolitan Police Service (MPS) into a former senior figure within Ealing Abbey and St Benedict's School. That individual is alleged to have abused a number of children who attended St Benedict's School across a number of years, and charges have now been brought. A trial date has been set for October of this year. CTI and STI have been liaising with the Crown Prosecution Service and the MPS in relation to that trial which is presently estimated to last for a period of approximately 3 months. If that criminal trial remains effective, it is highly likely that it will overlap with any hearing held by this Inquiry in its EBC Case Study, which is due to commence on 27 November 2017. Accordingly, and so as to avoid any potential risk of prejudice to the criminal proceedings, CTI proposed that evidence in relation to Ealing Abbey and St Benedict's School should not be considered during the November hearing. Instead, they submitted that I should consider whether or not evidence in relation to Ealing Abbey and St Benedict's School should be heard after that, following the conclusion of the criminal proceedings.

16. I note that CTI were not submitting that Ealing Abbey and St Benedict's School should be excluded from this investigation as a whole, nor were they suggesting that I make any immediate decision as to the status of Ealing Abbey and St Benedict's School in the wider Inquiry. Further, CTI did not at any stage in oral or written submissions suggest that I had already taken such a decision. Rather, CTI were proposing that a decision about the status of those institutions should be deferred until the conclusion of the criminal proceedings simply for the reason of avoiding prejudice

*Core participants' submissions*

17. I note that no core participant submitted that the Inquiry could, or should, consider evidence in relation to Ealing Abbey and St Benedict's School within any hearing in November/December if the criminal trial proceeds at that time.

18. Mr Chapman, on behalf of C18 and C19, submitted that the evidence in relation to EBC should not be divided, but should be heard in one go. He submitted that in order to do so, the entirety of the hearing in relation to the EBC should be adjourned until March 2017. He submitted that evidence in relation to Ealing Abbey should then be included in that hearing. He went further, and suggested that proceeding with any

hearing in November/December in relation to the EBC, even without the inclusion of Ealing Abbey and St Benedict's, may prejudice the criminal trial.

19. Those complainant core participants with a direct interest in Ealing Abbey and St Benedict's School are represented by Slater and Gordon Solicitors. Submissions were made on their behalf by Mr O'Donnell. In summary, Mr O'Donnell endorsed the submissions of Mr Chapman, in particular that the EBC hearing should be adjourned. Mr O'Donnell submitted that the ongoing criminal trial may inhibit the press coverage of the Inquiry's proceedings. In support of his client's contention that evidence should be heard about these institutions, albeit at a later stage, Mr O'Donnell pointed to the fact of the apostolic visitation, an emergency inspection by the Independent Schools Inspectorate, an inquiry conducted by the Charity Commission and the independent inquiry Ealing Abbey commissioned which was conducted by Lord Carlile QC.
20. On behalf of the Commissioner of the Metropolitan Police Service, Mr Beer QC took a different stance. He noted that the defendant in the criminal trial was due to make an application to adjourn that trial at a hearing listed on the 8th of June. I understand that following that hearing, the criminal trial currently remains listed to start in October. However, the thrust of Mr Beer's position was that I did not need to wait for the outcome of that application. He submitted that I could and should decide at the preliminary hearing or shortly thereafter whether or not it was appropriate for Ealing Abbey and St Benedict's to form part of the November/December hearing. The thrust of his submission was that the adjournment of the criminal trial to a date next year would not alleviate the problem because the difficulties associated with disclosure of material which may also be used in the criminal trial to core participants in this investigation, who may also be involved in the criminal trial would still remain. In addition he submitted that media coverage resulting from the Inquiry considering issues related to Ealing before the criminal trial may in itself give rise to potential for adverse or prejudicial publicity. Mr Beer submitted that even if I did decide to adjourn the entirety of the EBC hearing until early in 2018, that would not be sufficient. This he said was not least because of the inherent uncertainty there is as to the length of any criminal trial, and the precise date when such proceedings might conclude, and also given his submission that disclosure to core participants of material in relation to Ealing Abbey/St Benedict's would have to wait until such conclusion.
21. Lord Carlile QC on behalf of Ealing Abbey and St Benedict's supported CTI's submissions. He noted the uncertainty regarding the length of the criminal trial, and

submitted that the new governance structure of St Benedict's School, brought in as a result of his Review, was a matter of public record and that even without considering matters in relation to Ealing Abbey in detail, it would nevertheless be possible for it to compare that structure with those of other Benedictine boarding schools at the hearing in November/December.

*My decision*

22. Having considered all submissions carefully, I agree with Mr Beer QC and others that in light of the imminent hearing within the criminal proceedings, I should make my decision in respect of this issue now.
23. I consider that the Inquiry should hear some evidence in relation to Ealing Abbey and St Benedict's school in this case study. No one, however, contended that it would be appropriate for the Inquiry to do so in the November / December at the same time as the criminal trial. Given the defendant's previous seniority at St Benedict's School I agree that it would be inappropriate to do so, and accept CTI's submissions, supported as they were by Mr Beer QC and Lord Carlile QC that to do so may risk prejudicing the criminal trial. I also note Mr Beer's observations in relation to the difficulties that even a comparatively short adjournment may create in respect of disclosure.
24. Having decided that the Inquiry should hear some evidence in relation to these institutions, the issue then is whether it is more appropriate for me to adjourn the entirety of the EBC case study hearing until the conclusion of any criminal proceedings or proceed and come back to that part of it at a later stage.
25. By way of background, this investigation is one of 13 that the Inquiry is currently undertaking. I am determined that the Inquiry should make substantial progress by 2020 and this necessarily involves allocating time for public hearings on this and other investigations throughout this period. The Inquiry has already prepared and made public its work programme to March 2018. Further, having listened carefully to the submissions made by CTI and a number of the core participants about the uncertainty inherent in the timeline of criminal proceedings, and the fact that acceding to the application for an adjournment may well cause significant delay beyond the suggestion of just a few months made by Mr Chapman. Having considered the matter carefully I consider that it would not be appropriate to delay the hearing beyond November/December pending conclusion of the criminal trial. I

consider that the aspects of the case study as outlined by CTI, namely an introduction to the Roman Catholic Church and the English Benedictine Congregation, followed by evidence in respect of Ampleforth, Downside may be heard at that time without causing any prejudice to the criminal trial.

26. These are the reasons for my decision on the 8 June 2017 that the EBC hearing should take place as planned in November and December 2017, and that evidence in relation to Ealing Abbey/St Benedict's should be heard in due course. The next question is then when will the Inquiry hear evidence in respect of Ealing Abbey and St Benedict's? In my view that should not take place until the conclusion of the criminal trial, or following any plea, at least.

27. Whether it would be appropriate for this Inquiry to consider evidence in relation to Ealing Abbey/St Benedict's prior to the conclusion of any appellate proceedings, should there be any, will be a matter I shall have to consider at the appropriate time. The Solicitor to the Inquiry's team will liaise with the Crown Prosecution Service and the MPS so that the Inquiry is kept updated about the progress of the criminal proceedings.

(ii) Worth

28. CTI have now reviewed the material that relates to Worth Abbey and School, together with additional material more recently received, and now propose that these institutions should not be included in the hearing in November/December. CTI submit that the evidence in relation to Ampleforth and Downside, which will be supplemented with evidence in respect of Ealing Abbey/St Benedict's at a later stage, may well provide myself and the Panel with sufficient evidence to cover the thematic issues relating to the EBC in a proportionate way, and that Worth Abbey and Worth School may not materially add to the themes and issues to be addressed during the EBC case study hearing this year.

29. They submit that the selection of institutions should be kept under review as the investigation progresses. Further, that once the hearing in November/December 2017 has been concluded, I should consider whether it is necessary or appropriate to hear further evidence in relation to Worth Abbey and School, and if so, whether it should form part of the second part of the case study in respect of the EBC, ie at the same time as Ealing Abbey and St Benedict's School.



30. I am minded to agree that this is an appropriate and proportionate course to take, but will consider any submissions from any CPs that are received on this specific topic within 14 days before making a final decision on the matter.

(ii) Fort Augustus

31. Fort Augustus was a school in Scotland that was affiliated with the EBC. Prior to the first preliminary hearing in relation to this investigation on 28 July 2016, the former Chair designated 6 individuals whose experiences relate to Fort Augustus as core participants. Each Notice of Determination set out the Inquiry's reasoning for their designation as core participants as follows

*“Although the abuse alleged by xx is alleged to have taken place in Scotland, his alleged abusers were affiliated to the English Benedictine Congregation, which is an organisation based in England and Wales. There is also evidence of the movement of monks between Abbeys affiliated to the Congregation (including between England/Wales and Scotland). I therefore consider that xx has a significant interest in the matters under investigation, specifically the case study relating to the English Benedictine Congregation...”*

32. The notices stressed that the fact that an individual had been granted core participant status did not of necessity mean that their individual evidence, or evidence in connection with their experiences would necessarily be heard each notice providing as follows:

*“I should emphasise that the Inquiry is obliged to take a proportionate approach to its investigations and will not be in a position to investigate fully the circumstances of every core participants' experience.”*

33. At the preliminary hearing held on 28 July 2016, Mr Emmerson QC, former Counsel to the Inquiry made the following submission:

*“The Inquiry's scope is limited to England and Wales, but because clergy involved in the Benedictine Schools have been moved between Scotland, England and Wales*

*and because, despite being in Scotland, Fort Augustus Abbey and its schools were affiliated with the English Benedictine Congregation, we will investigate failures related to that school as well. The investigation will also look at allegations made against individuals associated with Benedictines outside the order's educational institutions."*

34. Following that preliminary hearing, there was correspondence between Imran Khan and Partners and the Solicitor to the Inquiry's team in September, which I have seen. In summary, Imran Khan and Partners were, amongst other things, seeking clarification about whether the Inquiry would investigate Scottish Local Authorities or whether that would form part of the Scottish Child Abuse Inquiry (SCAI). The substantive correspondence concluded with an email from the Solicitor to the Inquiry's Team dated 14 September 2016 which was referred to at the preliminary hearing on 6 June 2017 by both CTI and Mr Khan. Mr Khan referred to the following section of that email in his submissions:

*"The Inquiry is bound by its terms of reference which specifically state that "the Inquiry will cover England and Wales". As the Chair explained in her decision, because abuse at Fort Augustus School is said to have been perpetrated by monks from the EBC, it was appropriate for her to designate your clients as core participants. When the Inquiry looks at institutional failure by the EBC, it will be examining institutional failure in England and Wales, even in respect of abuse that took place in Scotland, because that is what it is required by its terms of reference to do."*

35. There have been further developments since then, as in January 2017 the SCAI held its first preliminary hearing at which it announced that it will be investigating Fort Augustus and a number of other Catholic Orders as part of its work.
36. CTI submit that evidence related to Fort Augustus should not be adduced during the EBC case study this year. Firstly, they submit that the Inquiry's remit is England and Wales, and that events at Fort Augustus are therefore outside this Inquiry's jurisdiction. They say that Fort Augustus may only be considered by this Inquiry in so far as it relates to the failures of institutions within England and Wales, such as the various EBC institutions which may have transferred individuals to Fort Augustus. In those circumstances the Inquiry can, say CTI, consider whether there were any failures in the way such an institution dealt with Fort Augustus, for example in the way it conducted any transfer. Secondly, CTI submit that it would not in any event

be appropriate for this Inquiry to consider Fort Augustus now that the SCAI has confirmed its own intention to do so. The Solicitor to the Inquiry and CTI are liaising with SCAI, and that the Inquiry will be able to consider the outcome of the SCAI's investigation as appropriate in due course.

*Core participant's submissions*

37. Mr Enright represents one core participant whose experiences directly relate to Fort Augustus, F13. Mr Enright submits that CTI's proposal "*flatly contradicts the basis upon which F13...[was] granted core participant status in the investigation*" and that nothing has changed since the former Chair made that decision. Mr Enright submitted that CTI's proposals, if accepted, would have a chilling effect as core participants would feel that they were "effectively removed" from the Inquiry. It was no answer to say that the SCAI could deal with the matter, as the SCAI has already begun its work and there was no time for his client to play any meaningful part in it. He submitted that the English Benedictines do not recognise internal borders and "*that there is no reason why this Inquiry cannot extend its remit, if it needs to do so, to consider the actions of the English Benedictines in another part of the United Kingdom.*" It is not clear whether Mr Enright has applied for F13 to be designated as a core participant in SCAI, and if so what is the result of that application.
38. Mr Khan on behalf of G1 to G5 supported Mr Enright's submissions. He submitted that his clients had a "*legitimate expectation*" that the Inquiry would consider matters related to Fort Augustus. He also referred to "*the chilling factor*" and referred to the submissions of Mr Emmerson QC at the last preliminary hearing which he said CTI's submissions contradicted. Mr Khan, however, accepted that the Inquiry's terms of reference are limited to England and Wales, but submitted that it is not possible for this Inquiry to consider the failures of institutions in this jurisdiction without investigating the matters that give rise to his clients' concerns. submitted that the email from the Solicitor to the Inquiry's team dated 14 September 2016 supported his position.
39. Mr Khan also submits that the Inquiry should look at allegations made against individuals associated with the Benedictines outside the order's educational institutions. Mr Khan clarified that his clients did not consider it necessary to apply to the SCAI as "*they expected their allegations would be heard, ventilated and findings made*" within this Inquiry.

40. Mr Chapman, on behalf of C19 in particular, also relies upon Mr Emmerson's comments and upon the fact that Fort Augustus is named within the published definition of scope for this investigation. He says that the fact that his client and other impacted core participants will receive disclosure etc is not good enough when the institution which directly concerns them is not being selected.
41. Mr O'Donnell, on behalf of his clients, submits that this Inquiry needs to consider the circumstances in which any monks were sheltered by Fort Augustus and whether or not they were sheltered in circumstances where they had access to children. He considers that to be within the remit of this Inquiry.
42. Ms Gallafent on behalf of the EBC supported CTI's proposal. She submits there is a proper distinction to be made between investigating an institution in another jurisdiction and investigating an alleged failure on the part of an institution in England and Wales that arises from a decision to transfer an individual either to or from another institution wherever that may be, whether in Scotland or indeed anywhere else in the world. If it is alleged that that institution in England and Wales failed in some way by the transfer then that is a matter which is appropriate for this Inquiry to consider. She agrees with CTI that it would not be appropriate to look at the substance of the allegations as to what actually occurred in Fort Augustus as that falls outside England and Wales. Ms Gallafent QC also submits that her clients are concerned about there being duplication if both this Inquiry and the SCAI consider matters related to Fort Augustus, and a risk of disparity between each Inquiry's conclusions. She submits that CTI's proposal strikes the appropriate balance, with this Inquiry considering failures in relation to institutions in England and Wales but leaving the SCAI to consider institutional failures relating to Fort Augustus, which is an autonomous monastery. (The autonomy of each Benedictine institution was also a point made by Mr Enright in relation to his submissions on the Comboni Missionary Order, which I address below).
43. CTI submitted that when Mr Emmerson QC was speaking in July 2016 it was subject to the caveat that the scope of the Inquiry was limited to England and Wales and that the context of his words shows that he was specifically referring to the movement of individuals. CTI also relies upon the email dated 14 September 2016 in support of her contention that the position of the Inquiry's legal team has not changed.

*My Decision*

44. It is clear from the submissions of the legal representatives of complainant core participants that there is considerable strength of feeling amongst a number of their clients in relation to this topic. It is also clear that some core participants support the submissions made by CTI. I have considered all submissions with great care.
45. The Inquiry's terms of reference provide that "*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*". I accept CTI's submission that when Mr Emmerson was making his submissions at the preliminary hearing on 28 July 2016, he was doing so in the context of that provision in the Inquiry's terms of Reference. As CTI has pointed out, the very first words of the passage quoted make this plain.
46. I consider that it is clear that Mr Emmerson was submitting that despite being in Scotland, because Fort Augustus Abbey and its schools were affiliated with the English Benedictine Congregation, and because there was or may have been movement between them, this Inquiry would investigate the failures **of the English Benedictine Congregation in moving or transferring individuals** to that school as well. He cannot have been suggesting that this Inquiry would investigate the events taking place within the Scottish institutions themselves, or into the administration of those institutions within Scotland, as doing so would fall outside the Inquiry's terms of reference and accordingly be unlawful.
47. In any event, the fact that the SCAI has now decided to investigate Fort Augustus Abbey and School as part of its Inquiry makes it wholly inappropriate for this Inquiry to do so, not least because it might lead to both inquiries hearing different evidence and reaching different conclusions. The dangers inherent in two separate statutory Inquiries carrying out the same investigation must be obvious, and such a course would run the risk of unfairness to all parties as well as duplication of effort and therefore unnecessary cost to the public purse and others.
48. As far as the email of the 14 September 2016 is concerned, I consider that the following sentence relied upon by Mr Khan does not support his argument in the way that he suggests - "*When the Inquiry looks at institutional failure by the EBC, it will be examining institutional failure in England and Wales, even in respect of abuse that took place in Scotland, because that is what it is required by its terms of reference to do.*" Bearing in mind what I have already said above, it is clear from that sentence

that, were the Inquiry to encounter allegations of abuse that took place in Scotland, it will consider these, but only in relation to any institutional failure by the EBC in England and Wales towards any individual in its care, or towards the relevant institution in Scotland. That is entirely consistent with the Inquiry's terms of reference.

49. Accordingly, it is clear to me both that the Inquiry could only ever consider Fort Augustus in the context of failures of institutions based in England and Wales and that the Inquiry has consistently explained this position throughout this investigation. Having carefully considered the matter, I accept CTI's submissions that evidence relating to Fort Augustus should not be adduced during the EBC case study this year. The Inquiry will be able to take into account the SCAI's findings in relation to Fort Augustus insofar as they relate to its remit in due course. This is a matter that we can return to as necessary as the SCAI progresses. Should it transpire that there is relevant evidence of movement between the institutions being considered in the case study this year, namely Ampleforth, Downside, and possibly Worth and Fort Augustus, the Panel and I will consider questions of relevance and admissibility as necessary.

(iii) Topics to be considered at the November/December hearing

50. Submissions on this topic were made by Mr Khan on behalf of his clients. He was seeking the inclusion of a number of matters within the topics and themes proposed by CTI. CTI addressed the submissions and was able to have discussions with Mr Khan during the hearing. I am grateful to them both for taking a practical approach and working to resolve matters in that way. CTI explained that the topics set out within their submissions are, for the moment, guidelines and that they will be kept under review. CTI was also able to clarify that certain matters were included within topics already listed. Mr Khan considered that their discussions had been productive. Accordingly, it is not necessary for me to make a decision in respect of this aspect of Mr Khan's submission and the matter will be kept under review.

### **Findings of Fact**

51. CTI submitted that the focus of this investigation is institutional response to allegations of child sexual abuse and so it was not necessary or appropriate for the

Inquiry to investigate all underlying factual circumstances in order to make findings in relation to an institution's handling of an allegation of sexual abuse.

52. CTI also submitted that the approach set out by Mr Altman QC during the preliminary hearing held in May in relation to the Cambridge House, Knowl View and Rochdale investigation (and as initially proposed in relation to the investigation into the late Lord Janner of Braunstone QC) was that which this investigation should also follow. This was as follows”

*“A finding of fact may be made in relation to individuals alleged to have sexually abused children and also in respect of individuals who failed to appropriately respond to any allegation of abuse, but only where relevant to this Inquiry's overall terms of reference, where there is an evidential basis for such findings in the terms of reference and where they can be fairly made in all the circumstances.”*

53. Mr Khan submits that complainants' accounts are important to establish the extent of the abuse that was prevalent and the extent of the failings in addressing it. Mr Khan goes further, however, and submits that *“the Inquiry cannot focus on institutional responses to allegations of child sexual abuse to the exclusion of any fact-finding unless those accused (the Institutions) are not going to challenge the allegations and evidence from the victims...if the evidence is to be challenged, then findings of fact must necessarily be made.”* He also submits that the Inquiry is committed to making findings of fact.

54. In his written submissions, Mr Chapman suggested that *“It will be necessary to collate details of the actual facts of assaults and who knew what and when”*. In his oral submissions he clarified that his submission on behalf of his clients is that *“if there are factual challenges to assertions made by core participants, complainants, then there will need to be evidence and fact findings in relation to those”*.

55. In her written submissions, Ms Griffiths QC on behalf of Adrian Child submitted that it is necessary to test the truth of the allegations of abuse.

56. In their submissions, in summary CTI agreed that complainant accounts of abuse were relevant, and that the Inquiry should hear something of the allegations that have been made. Miss Karmy-Jones QC submitted that there were a number of ways in which this could be achieved. It was not necessary to test the accounts of every individual who made an allegation, nor to make findings of fact in relation to

allegations made, and the focus of this Inquiry was the failings of the institutions dealing with allegations, and the making of recommendations for the future, not the truth of the allegations themselves.

### *My decision*

57. I agree that the accounts of the complainants are important to establish the nature and extent of abuse, and the failings in how any allegations were addressed. However, I agree with CTI that there is a distinction between this and conducting a fact finding exercise in respect of each allegation made. I agree with CTI that the approach to be adopted by this investigation is that outlined, most recently, by Mr Altman QC. I consider that it is not necessary at this stage to decide whether or not it will be appropriate to make findings of fact in relation to some of the allegations made within the context of this investigation.

58. I also agree with CTI that this is a large and potentially wide ranging investigation. Its focus must be on the institutional response to allegations of child sexual abuse, and not on the veracity of the allegations themselves, as examining the extent of institutional failure to protect children from sexual abuse is the Inquiry's remit. There may be failings in responding to an allegation made even if ultimately that allegation were to be found to have been untruthful or was not proven. It simply would not be possible in the context of this investigation for the Inquiry to hear evidence relating to each and every allegation of child sexual abuse in connection with the institutions selected for particular scrutiny during the public hearings and thereafter to make findings in relation to each and every one of them. To do so in a way that is fair to all those involved would entail undertaking quasi criminal trials. Not only is the standard of proof in an Inquiry different, but doing so would significantly extend the length of our public hearings. I bear in mind that the timescale for the trial in relation to the single individual formerly connected to Ealing Abbey is listed for three months. In contrast, in compliance with my duty under section 17(3) of the Inquiries Act 2005 I am determined to conduct the Inquiry's investigations proportionately, within a reasonable timescale and without unnecessary cost.

### **Comboni Missionary Order**



59. On 22 June 2016 the Comboni Survivors Group and 12 of its individual members applied for core participant status within this investigation. By notice of determination dated 15 July 2016, the former Chair granted those applications. In addition to their applications for core participant status, the Group and its individual members requested that the Comboni Missionary Order be made the focus of an additional case study within this investigation. The notice of determination dated 15 July 2016 provided *“At this stage I consider that it would not be appropriate for a case study into the Comboni Missionary Order to be launched. It is anticipated that the current case studies will provide detailed evidence on themes that have a wider implication in relation to the investigation as a whole. I will of course keep that decision under review.”* An opportunity to make further written submissions on the issue was provided for.
60. A renewed application was received on 11 November 2016. I considered that statements should be requested from the individual core participants whose interests relate to the Comboni Missionary Order in order for me to consider the matter further.
61. More recently, in submissions on behalf of the Comboni Survivor Group and F1 to F12 dated 24 May 2017, Mr Enright renewed his clients’ application for the Comboni Missionary Order to be designated as an additional and separate case study.
62. I have been provided with copies of each application and the witness statements given by F1 to F12 to assist me in considering this application.

#### *Core participant submissions*

63. In summary, Mr Enright submits that the case studies currently being undertaken will not enable the Inquiry to address all the matters raised within the definition of scope document for this investigation. Mr Enright’s submission was that if I decided that the EBC hearing should not go ahead in November then a hearing in relation to any Comboni case study should be heard in its place. He referred to the complexities of the structure of the Roman Catholic Church. In particular he submitted that the English Benedictine Congregation is not representative of Catholic orders operating in the UK. Religious orders ordinarily report to a Provincial Superior who is head of an Order in a particular country or region and he submitted that, in contrast, each Benedictine Abbey or House is autonomous and its members only report to their Abbot. Accordingly, he submitted that the Abbot President of the EBC has *“very little practical jurisdiction or oversight over any of the other Benedictine Houses (Abbeys)”*

and..."has little if any authority to speak for, or to direct the actions of, the independent Benedictine Houses". Further, each Catholic Order or congregation has a distinct Rule of Life that operates alongside Canon Law. Mr Enright said that the Rule of St Benedict includes "*distinct features that are particular to Benedictines*". In effect, Mr Enright submitted that the Rule of St Benedict creates and reinforces the autonomy of each of the Benedictine Houses.

64. He also referred to the Inquiry's Archdiocese of Birmingham case study, submitting that it is geographically limited and could only "*at the very best...provide the Inquiry with 20% of the evidence it is seeking.*" In addition there were 83 religious Orders operating within the Archdiocese of Birmingham none of which reported to the Bishop or Archbishop of the Diocese.
65. Mr Enright also questioned the ability of the CCIICSA to provide evidence to the Inquiry and to speak with authority on behalf of the various orders, congregations and dioceses in England and Wales. However, for the reasons set out below, I consider that this is a separate matter which does not directly impact upon my decision in respect of this particular application.
66. Further, Mr Enright put forward a number of individuals who he submitted should be invited to become core participants or be asked to provide evidence to the Inquiry. The issue of whether those individuals should be asked to participate in the Inquiry will be considered in due course but, again, those matters are only indirectly linked to my determination of his clients' present application.
67. In contrast to the EBC, Mr Enright submitted that the Comboni Missionary Order was representative of the Catholic Orders within England and Wales. He stated that it has "*the normal structure of a Catholic Order*" by which I understand him to be referring to the fact that its members report to a Provincial Superior, Father Martin Devenish, who in turn reports to the "*Superior General, who is in constant liaison with the Permanent Secretary General of the Union of Superior Generals.*" Currently, the Permanent Secretary is Father David Glenday. Mr Enright explained that Father Devenish and Father Glenday were pupils at St Peter Claver Seminary College. The College closed in 1984.
68. Mr Enright also submitted that the fact that Father David Glenday was a contemporary of some of the core participants at St Peter Claver Seminary College, has previously been the Province Superior and the Superior General and since 2009

has been the Permanent Secretary General of the Union of Superior Generals “provide[s] the most compelling reasons why the Inquiry should designate this institution and Order as an additional case study.”

*My decision*

69. CTI submitted that the Inquiry should keep the matter under review, certainly until the Benedictine aspect of the investigation is concluded. Having considered the arguments made and having been provided with the statements of the Comboni Core Participants, I consider that I do not need to wait until the conclusion of the first part of the EBC case study, but can make a decision now. I consider that the information that the Comboni core participants offer may well be of assistance to the wider Roman Catholic limb of the Inquiry, and so some evidence in relation to the Comboni Missionary Order should be heard during the course of the wider investigation.
70. In making this decision, I must take a proportionate approach to the Roman Catholic investigation, and to the Inquiry as a whole. I bear in mind the size of this investigation, and the fact that there are a large number of other institutions that are not presently included. There are currently two case studies. The EBC will be considered at a hearing later this year, and evidence in relation to Ealing Abbey thereafter. The Inquiry is also planning for the Archdiocese of Birmingham case study. However, I consider it is not necessary for there to be a distinct and separate case study in relation to the Comboni Missionary Order. I welcome the involvement of the Comboni core participants in the Inquiry, and will use their evidence in a focused way to inform the issues in the wider investigation, including the ongoing protection of children in particular in the context of religious orders, and in considering recommendations for the future. I expect that the Inquiry will be assisted by the Comboni core participants’ views on those topics, based on their wider experiences, and I will ask that those now be sought, in particular as to how they consider it possible for the Inquiry to learn from that Order when deciding how best, in the context of the Roman Catholic Church, better to protect children from sexual abuse.
71. There is much to be considered in the context of this investigation and it would be wrong to preempt the issues that may be brought into focus by the work conducted over the next few months. Accordingly, I do not anticipate being in a position to make

a final decision about how the Inquiry should address evidence in relation to the Comboni Missionary Order until the investigation has progressed further.

72. I note that a number of individuals have been suggested as potential witnesses. The Inquiry will consider those suggestions together with others made when the Inquiry seeks observations on proposed witness lists in connection with each part of this investigation in due course.

### **Disclosure and timetabling**

73. A number of core participants provided submissions on the proposal contained within a procedural note circulated to all CPs in advance of the hearing, that the Inquiry would provide disclosure of documentation relevant to the EBC hearing by the end of October 2017. I do not refer to all submissions here but I have considered them all carefully. Mr Khan, on behalf of his clients proposed that the date for completion of disclosure should be brought forward by a month. Mr King agreed with Mr Khan that the completion of disclosure two months prior to the hearing commencing would provide a little more time for core participants to review the material. Mr Kelly QC, on behalf of Ampleforth, asked for a fixed date for disclosure, proposing end of July. Ms Gallafent QC on behalf of the EBC and CCIICSA set out the stages of disclosure as she understood them to be. She submitted it was important that the process of disclosure was not rushed.

74. CTI submitted that preparing documents for disclosure was a vast and time-consuming process involving the careful consideration and application of redactions. CTI echoed Ms Gallafent's submission that disclosure could not be rushed and that bringing forward the proposed timetable would be counter productive.

75. Mr Khan expressed concern that avenues of inquiry may be missed and that his clients may be able to assist the Inquiry to obtain material if it was aware of what the Inquiry already held.

76. Finally, submissions were made on the scope of disclosure that should be made to core participants. CTI proposed that the Inquiry provide disclosure to core participants of documents relevant to their interest in this investigation. Other than Mr Collins, who indicated that there should be full disclosure of all potentially relevant material to all core participants, regardless of their particular interest, there was no

disagreement with CTI's proposals in relation to the scope of disclosure to core participants.

*My decision*

77. The Inquiry has gathered a considerable amount of material from a number of organisations in relation to this investigation. Documents continue to be received. The Inquiry has published a redaction protocol which sets out the approach the Inquiry will take to redaction of material. I am aware that reviewing the material for relevance and then applying and checking redactions and ciphers is a painstaking and time consuming process. I understand that core participants and their representatives wish to receive disclosure of documents as soon as possible. However, I agree with Ms Gallafent QC and CTI that redaction of often sensitive material obtained by the Inquiry cannot be rushed. I therefore consider that it would not be practical to set a fixed date for disclosure earlier than that already proposed namely 31 October 2017 for the disclosure to have been substantially completed.

78. In terms of the scope of disclosure to core participants, I consider that it is entirely appropriate for disclosure to be provided to core participants in accordance with their interests in this particular investigation. In conducting the Inquiry I must act with fairness and with regard also to the need to avoid any unnecessary cost. I expect that in assessing to whom disclosure should be made the Inquiry's legal team will err on the side of disclosure when there is doubt as to whether a document engages a core participant's particular interest.

79. Finally on this topic, it was suggested by Ms Gallagher QC that a schedule or schedules of irrelevant material should be provided to core participants to whom disclosure of particular documents were not made. I am not persuaded that that is appropriate in these circumstances. The consideration of relevance and what documents should be disclosed are matters for the Inquiry to decide.

### **Confidentiality Undertakings**

80. The procedural note circulated by the Solicitor to the Inquiry's team on 3 May 2017 explained that the Inquiry requires those who will need access to material made available to the Inquiry must return a signed confidentiality undertaking in advance of receiving any such material. An undertaking also needs to be provided in order for

core participants' legal representatives to gain access to the electronic document management system used by the Inquiry for disclosure.

81. I have considered carefully the submissions made by Mr Khan, Mr O'Donnell and Mr King (referring to Ms Griffiths QC's written submissions). I have also considered CTI's oral submissions on this issue.

### *My decision*

82. There is no express statutory provision requiring the Inquiry to disclose any documentation to core participants before it is adduced during the Inquiry proceedings. However, I consider that fairness requires that documents relevant to their interest be disclosed to core participants in order to enable them to fully engage with the process and to assist it with its work. Whilst the Inquiry will be applying redactions to documentation it discloses, much of the disclosed material is sensitive and would not be suitable for publication more widely. In particular, even with a careful approach to redaction, it is possible that disclosure of some documents in conjunction with other publicly available material may give rise to the commission of an offence under the Sexual Offences (Amendment) Act 1992. I am confident that CTI will consider carefully which documents to display in the hearing room during the public hearings in order to prevent such a risk.

83. It is an important part of the disclosure process that the Inquiry can provide documents to core participants safe in the knowledge that the documents provided will be held confidentially and securely unless or until it is referred to at an Inquiry hearing.

84. The undertaking does not only cover evidential material disclosed by the Inquiry. It also includes its correspondence and submissions circulated by the Inquiry team to core participants. As will have been clear from my comments at the outset of the preliminary hearing on 6 June 2017 in relation to media reporting, I was very concerned about media reporting in relation to CTI's submissions. Reports suggested that I had already taken decisions on matters that were to be the subject of submissions at the preliminary hearing. That was not the case. I have explained above that CTI's submissions were their proposals to me and all core participants have had the opportunity to provide their own observations. Indeed their proposals

were not that I should decide now not to consider certain matters but simply that I should defer my decision in relation to those issues to a later date. In her oral submissions, CTI referred to correspondence sent by the Solicitor to the Inquiry's team to Slater and Gordon, which I have seen, which provides an explanation for the request by the Inquiry that undertakings are provided and why they should cover such submissions - *"It is an important aspect of a fair process that the inquiry is able to circulate counsel's submissions on a confidential basis until they are referred to at an inquiry hearing."* CTI submitted that *"it is a common practice in legal proceedings, and it allows for those involved, such as the core participants here, to consider the submissions provided, to take legal advice, without the matter being played out and potentially misrepresented in the media before they have all had a fair opportunity to consider the matter and make any oral submissions"*.

85. I have considered Ms Gallagher QC's submissions in respect of open justice and the case to which she referred - R (On the application of Guardian News and Media) v (1) City of Westminster Magistrates Court and (2) Government of the United States [2012] EWHC Civ 420. Once evidence or submissions are made public, through their content being referred to at a preliminary or public hearing then there is no restriction, subject to any restriction order or notice that may be made under section 19 of the Inquiries Act 2005, on core participants or others making what use they wish of the information that was made public.
86. There may still however be aspects of written submissions or documents that are not, for good reason, referred to publicly which would still be covered by the undertaking.
87. Concerns have been expressed to me that this is, in effect, gagging complainant core participants. For the reasons set out above I consider that this is not the case. I still consider that in order for the Inquiry to be able to undertake its work effectively and to provide full disclosure to all core participants it is very important that undertakings are provided by all who will be provided by the Inquiry with documentation.
88. I consider that information disclosed by the Inquiry should not be provided to anyone who has not signed a confidentiality undertaking. I would therefore urge any core participant or their legal representatives who has not yet returned a signed undertaking to do so.

## **Chair, Independent Inquiry into Child Sexual Abuse**