

## NOTICE OF DETERMINATION ON SELECTION OF CASE STUDIES

### Investigation into the extent of any institutional failures to protect children in the care of Nottingham City and Nottinghamshire County Councils from sexual abuse and exploitation

#### Introduction

1. The scope of the investigation into the extent of any institutional failures to protect children in the care of Nottingham City and Nottinghamshire County Councils from sexual abuse and exploitation (“the Nottinghamshire investigation”) states at paragraph 3 that to “*investigate the issues....the Inquiry may identify a number of case studies.*” This determination sets out my decision on the case studies to be pursued as part of this investigation.
2. On 20 December 2017, Counsel to the Nottinghamshire Investigation (“CTI”) circulated their submissions on case study proposals to the Core Participants in the investigation and invited submissions from Core Participants. Written submissions were received from the following Core Participants:
  - a. David Hollas
  - b. Caoilfhionn Gallagher QC, Megan Hirst, and Mary-Rachel McCabe, instructed by Bhatia Best on behalf of D4-D10 and D14-D17, D20-D22, D24-D50
  - c. Leslie Thomas QC and Stephen Simblet, instructed by Uppal Taylor on behalf of L17-L40 and L43-45
  - d. Sam Stein QC instructed by Howe & Co on behalf of F37-40 and F46
  - e. David Greenwood from Switalskis solicitors on behalf of C21 (represented at the Preliminary Hearing by Sam Stein QC)
  - f. Kim Harrison from Slater & Gordon solicitors on behalf of A73 and A74 (represented at the Preliminary Hearing by Caoilfhionn Gallagher QC and Megan Hirst)
  - g. Jonathan Bridge from Farleys solicitors on behalf of N1
  - h. John Mann MP
  - i. Nottinghamshire County Council
  - j. Nottingham City Council
  - k. The Chief Constable of Nottinghamshire Police
  - l. The Crown Prosecution Service.

3. At a preliminary hearing on 31 January 2018, CTI and Counsel on behalf of many of the Core Participants made oral submissions on the proposals, largely in accordance with their written submissions. Reference to Core Participants in this determination should be taken to mean those Core Participants who have made submissions on the proposed case studies.
4. The four case study proposals put forward by CTI were as follows:
  - a. Beechwood, either:
    - i. institutional responses to disclosures of allegations of non-recent abuse ('Option A'), or
    - ii. institutional responses to contemporaneous and recent disclosures of allegations of abuse against Andris Logins, a residential care worker ('Option B').
  - b. Foster Care - institutional responses to disclosures of allegations of abuse in foster care.
  - c. Peer on Peer - institutional responses to disclosures of allegations of peer on peer abuse in residential children's homes.
  - d. Wollaton House - institutional responses to disclosures of allegations of abuse.
5. I am grateful for the constructive and considered submissions made by Core Participants in relation to these proposals. In reaching my determination I have considered all of the submissions made with great care.
6. In summary, I have decided that the following case studies will be pursued by this investigation:
  - a. A case study into the institutional responses to disclosures of allegations of child sexual abuse at Beechwood from 1967 to the present, and the barriers to disclosure of such allegations.
  - b. A case study into the institutional responses to disclosure of allegations of child sexual abuse in foster care and the barriers to disclosure of such allegations.

- c. A case study into the institutional responses to disclosures of allegations of child sexual abuse carried out by children against other children in the care of the Councils, and the barriers to disclosure of such allegations.
7. I consider that the Inquiry should not pursue a specific case study into the institutional responses to disclosures of allegations of child sexual abuse at Wollaton House.

### Beechwood

6. There is universal support amongst Core Participants for CTI's general proposal that there should be a case study focused on Beechwood. Core Participants are, however, divided as to which of the alternative proposals should be adopted, and there is concern amongst some that neither of the proposed options would go far enough.

### *Option A*

7. Seven Core Participants support Option A although in some cases with important qualifications which they invite me to take into account.
8. In written and oral submissions, Ms Gallagher QC submitted that:
  - a. Option A *"would in principle encompass all sexual abuse committed at Beechwood, regardless of the abuser"*.
  - b. It *"would provide a far broader level of accountability for victims and survivors"* than Option B.
  - c. Option A would not go far enough, limited as it is to *'reporting and responses since 1998 or 2010'* thereby, in Ms Gallagher QC's view, excluding a number of complainant CPs and complainants more generally.
  - d. As presently drafted, Option A would also have the consequence of *"fundamentally"* shifting scrutiny from the Local Authorities to the Police and prosecuting authorities. As such, *"this could result in the alienation of complainant CPs who suffered abuse in Beechwood and who hold the Councils principally responsible"*.
  - e. Option A excluded *"consideration of failures to proactively safeguard from abuse or to reduce barriers to reporting"*.
9. At the preliminary hearing on 31 January 2018 Ms Gallagher QC proposed that Option A should be amended and extended:

*“[Beechwood] should be considered both in relation to barriers to disclosing abuse and institutional responses to disclosures. It should be non-recent abuse, but it should not be limited to 1998 onwards. It should be non-recent abuse from 1967.”*

10. Mr Simblet also urged that Option A should be broadened and was critical of Option B as too narrow in that it does not go back beyond the 1980s and provides little scope for accountability. In his oral submissions, Mr Simblet noted that the nature and purpose of Beechwood had changed over time. He suggested that as a consequence, the barriers to disclosure would have been different in the 1970s to those that existed in the 1980s. He supported Ms Gallagher QC’s proposed revision to Option A.
11. Written submissions from Mr Stein QC noted that a review of the Logins case would still be possible in an Option A case study. In his oral submissions to the Inquiry, Mr Stein QC drew attention to what he described as *“the danger...that by only looking at events...from post-1998”* the emphasis would be on ‘complaints’, and submitted that *“...attention should be paid to survivors of abuse and their accounts of what has happened to them”*.
12. In supporting a broader Option A, John Mann MP identified the issues that he considers needed to be addressed in the case study,

*“By looking at Beechwood from 1967 onwards there is a time series, a whole range of different elected representatives. How do they make decisions? How do they see their role? What do they intervene in? Why shouldn’t one of those people have felt confident going to them? That seems to me in terms of what you might come out at the end of all this work, to be something that is both practical and challenging in terms of what could actually be happening....That’s why Nottinghamshire gives...looking at Beechwood from ‘67 - a very interesting insight into the power relations within the institutions”*.
13. Nottinghamshire County Council considered that Option A *“has the benefit of a wider focus”*.
14. In their written submissions, Farleys submitted that Option A *“will allow a more in depth study of the culture of abuse that was prevalent at Beechwood’ throughout the time that N1 was at Beechwood”*.

*Option B*

15. Two Core Participants, Nottingham City Council (“the City Council”) and the Chief Constable of Nottingham Constabulary (“the Nottinghamshire Police”), were supportive of Option B.
  
16. In written submissions provided by Mr Ford QC, the City Council identified five factors in support of Option B. These can be summarised as follows:
  - a. Option B would be manageable in the time available;
  - b. It would deal with both historical and contemporaneous responses and would therefore be less narrow than Option A;
  - c. It would be dealing with proven allegations;
  - d. It would avoid the need for constraint in the evidence available to the inquiry (under Option A) regarding ongoing civil litigation, given Andris Logins’ conviction;
  - e. Option B would still enable the inquiry to consider “*all of the issues relevant to all aspects of the scope [of the investigation]*”
  
17. In written and oral submission made by Ms Leek QC, the Nottinghamshire Police submitted that Option B is “*a more manageable, proportionate and effective way*’ in which to address the issues raised in the scope of the investigation. The case study would “*allow the inquiry to review from a police perspective not only the earlier investigation but the recent investigation that led to [Logins’] conviction*”. The case study would be able to assess “*current methodology*” so as to be able to make recommendations. It was noted that pursuing Option A could lead to a risk of prejudicing current police investigations or pending criminal trials, and that in general there needed to be an overriding objective to take care to avoid prejudicing any ongoing investigations and criminal proceedings. In oral submissions, Ms Leek QC submitted that the Police were “*not wedded*” to Option B, and said “*we merely highlight its benefits...we do understand the benefits of Option [A]*” but expressed concern as to whether it could be managed in the time available.
  
18. In written submissions provided by David Greenwood, C21 expressed no preference between Option A and Option B. The same position was taken by the Crown Prosecution Service.

*My decision*

19. I have considered all of the submissions made in relation to Beechwood carefully: in my view, there are compelling reasons to include Beechwood as a case study in this investigation and I note that this is widely supported by Core Participants.
20. As advanced by Nottinghamshire Police and the City Council, there are pragmatic reasons for selecting Option B - in effect that there would be no risk of prejudicing ongoing investigations or trials, and that it would be a more manageable investigation within the time available at the hearing. Whilst I can see the merit in these submissions, I agree with the concern expressed by many that such a case study into Beechwood would be too narrow and would risk excluding consideration of broader issues relevant to the scope of this investigation. I also see the force in the suggestion that Option B, by limiting the institutional response to allegations concerning Andris Logins, would or could be seen to exclude the experiences of a significant number of complainants of child sexual abuse at Beechwood, both Core Participants and those who for entirely legitimate reasons have chosen not to come forward.
21. I anticipate that for many who were at Beechwood, Option B, focusing as it does on a successful recent prosecution, may not be representative of their experiences. In this regard, I note Ms Gallagher QC's submission that Option B would take no account of those who were unable to disclose their abuse at Beechwood over a significant period of time. In particular, I also note Mr Simblet's submission that the barriers to disclosure are likely to have been different during the period when Mr Logins was at Beechwood compared with other periods. The same is likely to be true of the institutional responses.
22. There are two important aspects within this investigation that I was reminded of in the submissions made by CTI and on behalf of complainant Core Participants. The first concerns barriers to disclosure of abuse, which Mr Sadd noted in oral submissions was an issue that was likely to emerge in evidence across all of the possible case studies in this investigation. I accept Ms Gallagher QC's submission on the importance of this issue and consider that this case study should explore possible barriers to disclosure of allegations of abuse at Beechwood throughout the period that it was in operation.
23. The second is the importance of considering the experiences of victim and survivors of child sexual abuse when exploring the issues set out in the definition of scope for the investigation. It would of course be neither practical nor achievable to hear oral

evidence from all those who allege sexual abuse at Beechwood at the public hearings. In this regard, I note that in CTI's submissions, it was proposed that were Option B (the Logins' case study) to be selected, *"summaries of the accounts of those who allege sexual abuse at Beechwood by other members of staff would be produced. These accounts would sit alongside the oral evidence and form part of the Beechwood case study."* I consider that such summaries will be an important part of the Beechwood case study and should include complainants' experiences of disclosure: if they were not able to do so at the time, why that was the case; if they did do so, to whom they disclosed and why and what happened having done so.

24. Having taken into account all of the submissions from Core Participants carefully, and for the reasons set out above, I consider that this case study should look at **the institutional responses to disclosures of allegations of sexual abuse in relation to Beechwood since 1967 and the barriers to disclosure of such abuse.**

#### Foster Care

25. CTI's proposal that this investigation should include a case study into the institutional responses to disclosures of allegations of child sexual abuse in foster care received widespread support from Core Participants. In particular, I note:
- a. As with other case study proposals, complainant Core Participants represented by Ms Gallagher QC submitted that one of the pressing issues in foster care was the consideration of barriers to reporting and proposed that the case study be widened to include this issue.
  - b. Mr Simblet and Uppal Taylor Solicitors expressed the strong support of the complainant Core Participants whom they represent for this proposed case study, and also anticipated that they would be able to assist the Inquiry given the amount of work that they had done in pursuing the case of Armes v Nottinghamshire County Council to the Supreme Court.
  - c. Nottinghamshire Police agreed with the proposal, but suggested that a handful of test cases should be selected for this case study in order to keep it focused. They suggested that within each test case, the Inquiry should consider the chronology of complaints made, to whom and what was done as a result, referrals to police, decisions to prosecute or not and the reasons for

it. They suggested that another element might be complaints that were not made at the time and why they were not made.

26. I have taken into account all the Core Participants' submissions in relation to this case study and have also given careful consideration to CTI's written submissions.

27. Having done so I have reached the decision that this investigation should pursue **a case study into the institutional responses to disclosure of allegations of child sexual abuse in foster care and the barriers to disclosure of such allegations.**

#### Sexual abuse between children

28. CTI's proposal to conduct a case study into the institutional responses to disclosures of allegations of peer on peer sexual abuse in residential children's homes received support from Core Participants, with some expressing understandable caution as to how the case study would be configured. Having carefully considered the submissions made, I consider that there should be a case study on this topic.

29. The case study was originally proposed by CTI using the term "peer on peer sexual abuse". This was intended to describe child sexual abuse carried out by children against other children. In the current safeguarding advice issued by the Department for Education and the Nottinghamshire Councils' safeguarding procedures, amongst others, what has so far been described as 'peer on peer sexual abuse' is described instead as 'harmful sexual behaviour'. The issue of terminology for this form of sexual abuse is something that the Inquiry intends to consider further as part of this investigation.

#### *My decision*

30. Mr Hollas raised concerns about the risk of this case study shifting blame onto the survivors of child sexual abuse and thereby turning the focus away from the responses of those in authority. I am mindful of the need to manage this risk, but in light of the submissions heard, I am persuaded that this topic should be investigated. In doing so, the Inquiry will ensure that the focus of the investigation is firmly on the response of institutions to such allegations.

31. One suggestion raised by Ms Gallagher QC was that this case study should include allegations made by children in foster care of sexual abuse by other young people,

including the children of foster parents. I agree that this issue should form part of this case study and note that there may be some overlap with the case study into allegations made by those in foster care.

32. Mr Simblet raised a concern about the apparent lack of clarity surrounding the definition in the proposed case study. As CTI noted in their submissions, definitions are important in this case study, but are not straightforward. It is important that the definition seeks to set apart the focus of this case study from normal childhood behaviour or age-appropriate sexual exploration.
33. Whilst I can see that it may be suggested that any single definition risks being either too broad (in that it is likely to cover such a range of behaviour that it will make investigation of this case study a significant challenge) or too narrow (in that it may exclude certain other types of abuse which inevitably overlap with sexual abuse in this context, such as physical and emotional abuse), I clearly recognise the importance of having a working definition.
34. Using a definition which framed this case study using the criminal law (e.g. “*sexual offences committed against children in care by other children*”) would not be satisfactory, for the following reasons:
  - a. Consensual sexual activity between two young persons aged under 16 can amount to a criminal offence; and
  - b. If one young person is over 13 and the other is under 13, this will be a criminal offence, however CPS guidance on ‘Sexual Offences and Child Abuse by Young Offenders’ is that: “*If the sexual act or activity was in fact genuinely consensual and the youth and the child under 13 concerned are fairly close in age and development, a prosecution is unlikely to be appropriate. Action falling short of prosecution may be appropriate. In such cases, the parents and/or welfare agencies may be able to deal with the situation informally. There is a fine line between sexual experimentation and offending and in general, children under the age of 13 should not be criminalised for sexual behaviour in the absence of coercion, exploitation or abuse of trust.*”

As a result, the approach of the criminal law is unhelpful when considering the way in which to frame this case study.

35. As indicated in the glossary available on the Inquiry’s website, the term ‘child sexual abuse’ is taken by the Inquiry to involve: “*forcing or enticing a child or young person to take part in sexual activities. The activities may involve physical contact and*

*noncontact activities, such as involving children in looking at, or in the production of, sexual images, watching sexual activities, encouraging children to behave in sexually inappropriate ways, or grooming a child in preparation for abuse including via the internet.”*

36. For the purposes of this case study, and bearing in mind the definition of child sexual abuse above, I consider that the Inquiry should adopt the following as its working definition for this case study: *“Child sexual abuse (using the Inquiry’s own definition set out above) carried out by a child.”* For the avoidance of doubt, this case study should focus on non-consensual and/or coercive sexual activity and should be limited to those cases in which the complainant was in the care of the Councils at the time of the alleged abuse.
37. In conclusion, having considered the submissions made in respect of this proposed case study, I take the view that this investigation should pursue: **A case study into the institutional responses to disclosures of allegations of sexual abuse carried out by children against children in the care of the Councils, and the barriers to disclosure of such allegations.**

#### Wollaton House

38. In their written submissions, CTI proposed a case study on Wollaton House (‘Wollaton’), a community home on Radford Bridge Road on the outskirts of Nottingham. The rationale for proposing Wollaton was set out in the written submissions and was outlined by CTI at the preliminary hearing on 31 January 2018.
39. Of those Core Participants who addressed Wollaton in written submissions and at the hearing on 31 January 2018 only Sam Stein QC on behalf of complainant Core Participants L17-40, L43-45 and C21 was supportive of Wollaton as a case study in the public hearings provided that *“care is given to the way it is presented so that it is managed within the overall time table”*. None of the other Core Participants who made submissions at the Preliminary Hearing were supportive of this proposed case study. They gave a variety of reasons, including that there was insufficient time to do a fourth case study in the three week hearing, that a case study on Wollaton would serve no real purpose as the investigations and reports outlined in CTI’s submissions are a matter of record and that Wollaton is unrepresentative of the experiences of complainant Core Participants given that none make allegations concerning this Home.

*My decision*

40. I do not agree that case studies in the Inquiry's investigations should be limited only to those matters which relate directly to the experiences of complainant Core Participants. There will of course be individuals who have not applied for core participant status who have made allegations child sexual abuse whilst in the care of the Nottinghamshire Councils and the institutional response to those allegations may be relevant to the scope of this investigation.
41. I take the view that the evidence in relation to internal disciplinary investigations and police investigations which arose from Wollaton and the political responses to the those investigations are likely to provide a valuable perspective on institutional responses to disclosures of abuse and how these were addressed over time. I am attracted by Ms Gallagher QC's suggestion that Wollaton could be approached "*through written documentation*" and will give this further thought.
- 42. I therefore conclude that Wollaton should not be a case study to which time should be specifically dedicated in the public hearings in October 2018.**

**Further proposed case studies raised by Core Participants**

*Child sexual exploitation*

43. In his written and oral submissions, Mr Stein QC invited the Inquiry to consider child sexual exploitation ("CSE") in Nottinghamshire as a separate case study within the investigation. He proposed that the investigation considers two specific areas: "*was there a permissive culture for child sexual abuse in the statutory bodies in Nottingham?*" and whether there was "*apparent official toleration of child prostitution at an institutional level.*"
44. I recognise that these are issues of great concern and that they should not be ignored. The Inquiry does however have a dedicated investigation looking specifically at 'Child Sexual Exploitation by Organised Networks' and that investigation will examine how effectively or otherwise institutions have responded to CSE by organised networks. Although not specifically focused on Nottinghamshire, I anticipate that the findings and recommendations arising from that investigation will be of general application to all geographical areas.

45. I therefore consider that this investigation should not have a separate case study relating to CSE. It is of course possible that issues surrounding CSE will be examined as part of the case studies looking at Beechwood, foster care and sexual abuse between children.

#### **Skegby Hall, Amberdale, Ranskill Gardens and Aston Hall**

46. Submissions were made by some Core Participants that the investigation should include case studies on other children's homes either in addition to CTI's proposals or instead of Wollaton House.

47. In written and oral submissions, Mr Simblet proposed a case study on Amberdale, noting that "*very serious things happened at Amberdale*". Mr Simblet also proposed that Ranskill Gardens would be of greater benefit than a case study on Wollaton House. In written submissions, David Hollas suggested that the case studies be widened to include Skegby Hall. Skegby Hall was also mentioned by John Mann MP in oral submissions.

48. As above, I have determined that Wollaton House will not be a case study at the public hearing in October 2018. Having considered all the submissions made, I am of the view that there will only be sufficient time at the public hearing to hear evidence relating to three case studies.

49. I recognise the significance of the experiences of those who allege abuse at Skegby Hall, Amberdale and Ranskill Garden (and other homes which have not been selected as individual case studies). The Inquiry will be looking at ways of adducing aspects of complainant core participant experiences relating to homes other than Beechwood.

50. Ms Gallagher QC indicated at the preliminary hearing that her client, Mickey Summers, wished to make submissions that Aston Hall, a psychiatric hospital in Derbyshire, should be a specific case study. It was agreed that these submissions would be made in writing and these were received by the Inquiry on 20 February 2018. It has been submitted that, although located in Derbyshire, children in the care of the Nottinghamshire Councils were sent to Aston Hall for assessment and that it 'was effectively treated as an Annex to care homes in Nottinghamshire'. It has been submitted that the Councils, or at least some of their officials, were 'implicated in the abuse that took place' there.

51. For the reasons set out above, I consider that the Inquiry should hear evidence relating to three case studies at the public hearing. I note that no other Core Participant has submitted that Aston Hall should be a case study and I am not

persuaded that a case study into Aston Hall, a hospital that is not located within the Nottinghamshire area, should take precedence over a case study concerning Beechwood, foster care or sexual abuse between children. This does not however prevent evidence relating to Aston Hall from being considered in the context of the wider investigation if considered relevant.

### **Broader aims of the Nottinghamshire investigation**

52. In the course of oral submissions from Counsel acting on behalf of complainant Core Participants, reference was made to the broader aspects of the scope of the investigation. Notably the Inquiry was encouraged to ensure that the investigation addressed the concerns of complainant Core Participants and that the investigation should consider the *“cultural, systemic factors and whether there adequate systems to prevent such abuse or indeed if some aspects of the system facilitated it”*. I recognise the importance of these issues and am confident that they will be addressed and explored in the selected case studies.

**Professor Alexis Jay OBE**

**28 February 2018**