

NOTICE OF DETERMINATION

RESTRICTION ORDER PURSUANT TO SECTION 19(2)(b) CONCERNING COMPLAINANT CORE PARTICIPANTS

1. On 15 August 2016 I made a Restriction Order in order to protect the identity of complainant core participants ('complainant CPs') involved in the Inquiry's investigations and on 24 August 2017 I issued a notice of variation of the Restriction Order.
2. In October 2017 the Inquiry received submissions on behalf of 44 complainant core participants represented by Bhatia Best solicitors in the investigation concerning the extent of any institutional failures to protect children in the care of the Nottinghamshire Councils from child sexual abuse and exploitation in which they applied for a variation to the terms of the Restriction Order in accordance with section 20 of the Inquiries Act 2005.
3. On 9 February 2018, having considered those submissions, I made a provisional determination that it would be appropriate to amend the terms of the Restriction Order dated 15 August 2016 and the variation of the Restriction Order dated 24 August 2017 to some extent, although I did not agree that it is necessary to amend the terms more widely than the revised Restriction Order that was attached at Annex 1 to the provisional determination. My provisional determination was provided to core participants in all of the Inquiry's investigations.
4. In summary, I proposed to amend paragraph 7 of the Restriction Order to make clear that the Restriction Order prohibited disclosure or publication of any information that identifies or tends to identify any complainant CP as a *complainant CP*. This amendment was proposed in order to reflect the purpose of the Restriction Order which is to protect an individual being identified as a complainant of child sexual abuse by reference to their involvement in the Inquiry as a complainant CP. The amendment would allow information relating to the complainant CP, such as his name and address

or image to be published in other ordinary contexts so long as it did not identify the fact that he or she was a complainant CP in the Inquiry's proceedings.

5. I also proposed amendments to paragraph 8 which introduced further exemptions to this general prohibition and permitted a complainant CP to disclose his or her own identity as a complainant CP in certain limited circumstances. These are, in summary, for the purposes of obtaining medical services and emotional support, to law enforcement agencies in connection with a criminal investigation and to legal advisers in proceedings not related to the Inquiry.
6. In response to my provisional determination, further submissions were received from Bhatia Best ('the Bhatia Best submissions'). Submissions were also made by Imran Khan and Partners on behalf of their complainant core participant clients ('the IKP submissions'), Uppal Taylor on behalf of their complainant core participant clients ('the Uppal Taylor submissions') and on behalf of the Child Migrant Trust ('the Child Migrant Trust submissions')

Uppal Taylor submissions

7. Uppal Taylor are concerned that the proposed amendments to paragraph 7 offer less protection to a complainant CP. They submit that the "*suggested amendments would not prohibit the disclosure or publication of confidential information relating to a CP where that disclosure or publication does not identify them or tend to identify them "as a complainant CP".*"
8. I understand Uppal Taylor's concern to protect the anonymity of their clients and confidential information relating to their experiences. I am committed to taking all possible steps to ensure that complainants of child sexual abuse are not identified by virtue of their participation as a complainant CP in the Inquiry's investigations. The protection that the Inquiry is able to provide by way of its Restriction Order is necessarily limited to protecting the person's identity in connection with their involvement in the Inquiry's process as a complainant CP. However, the Sexual Offences (Amendment)

Act 1992 offers a wider protection to complainant CPs in circumstances not concerning their involvement with the Inquiry. If, for example, their identity and personal experiences of child sexual abuse were published, online or otherwise, and as a result they were potentially identifiable, this would amount to an offence under the Sexual Offences (Amendment) Act 1992.

9. The Uppal Taylor submissions go on to say that “*the suggested amendments offer no protection to a complainant CP where their identity, experiences or some other confidential information becomes known to another, for example, another CP - particularly when that CP has not signed the undertaking.*” They submit that it is information relating to their personal experiences, rather than their involvement as a CP, which is most likely to be of interest to the media or published by others on the internet.
10. In this respect, it is important that I make clear that the Inquiry will not share confidential information relating to a complainant CP with any person who has not signed a confidentiality undertaking. Before the Inquiry discloses information to core participants it applies redactions and ciphers in accordance with its Protocol on the Redaction of Documents (Version 2). This includes redacting and, if necessary, ciphering the names of victims and survivors of child sexual abuse. If, despite those protections, an individual comes to know of a complainant CP’s identity or experiences through material that has been disclosed by the Inquiry that information will be subject to the Inquiry’s confidentiality undertaking, unless or until it is made public by the Inquiry, again, with appropriate redactions and/or ciphers applied. Of course, any disclosure of the identity of the individual as a CP would be a breach of the Restriction Order. In addition, any publication or disclosure of a complainant CPs identity (without any reference to their CP status) or information about them in that situation would amount to a breach of the Inquiry’s confidentiality undertaking and would be taken very seriously by the Inquiry. In addition it is also very likely to be a breach of the Sexual Offences (Amendment) Act 1992.
11. Having carefully considered Uppal Taylor’s submissions in relation to the proposed amendments to paragraph 7 of the Restriction Order, I consider that it is important to

amend paragraph 7 as proposed in my provisional determination in order to allow a person's identity to be published in ordinary situations and to ensure that the Restriction Order is achieving its aim of protecting the identity of complainants of child sexual abuse who are engaging with the Inquiry as complainant CPs. I am satisfied that the amended Restriction Order, together with the Inquiry's confidentiality undertaking and the wider protection offered by the Sexual Offences (Amendment) Act 1992, are sufficient to protect the identity of those engaging with the Inquiry as complainant CPs.

Bhatia Best and Imran Khan and Partners Submissions

12. Both Bhatia Best and Imran Khan and Partners submit that the proposed amendments to paragraph 8, in which I set out the extent to which a complainant CP may disclose his or her own identity as a complainant CP, are still too restrictive. I consider their submissions in detail below.
13. The Bhatia Best submissions raise two general concerns in relation to my provisional determination. First, it is said that the wording of the proposed amendments to the Restriction Order would in some places benefit from greater clarity. Secondly, it is submitted that *"the scope of permissible disclosures proposed by the Provisional Determination remains too narrow, both for reasons of principle and practice, and that a broader approach is required."*
14. I have first considered the issue of whether a broader approach is required. The amendments I propose to the Restriction Order permit the disclosure of a complainant CP's own status as a core participant in three limited circumstances. These are, in summary, for the purposes of obtaining medical services and emotional support, to law enforcement agencies in connection with a criminal investigation and to legal advisers in proceedings not related to the Inquiry. In all but the last of these scenarios, disclosure is only permitted on the basis that it is made by the complainant CP themselves on the understanding that the person to whom they are making the disclosure is bound by the terms of the Restriction Order. In the last scenario, the disclosure may also be made by a legal advisor to another legal advisor on the written instruction of the complainant CP.

In many of the proposed scenarios the individuals to whom disclosures would be made will be subject to either professional or at least ethical obligations of confidentiality.

15. It is submitted by Bhatia Best that “*the limited categories of disclosure which would be permitted*” by the amendments proposed are too narrow and there are other situations in which it would be appropriate for a complainant CP to disclose their own status as a CP. They provide a number of further scenarios in which a complainant CP might wish to make such a disclosure, but which they submit on the current wording of the proposed Restriction Order would not be permitted. They submit that the Inquiry should therefore adopt a principled approach to the circumstances in which disclosure would be permissible rather than a scenario based approach. It is said that the purpose of the Restriction Order is to provide protection to the complainant CPs so it is they who should have control over the disclosure of their own CP status.
16. I have considered whether I should adopt this broader approach and it is my view that there are inherent risks in doing so. The purpose of the Restriction Order is to protect the anonymity of those who are complainant CPs in the Inquiry’s investigations and in order to do so the Inquiry has adopted a simple approach that the identity of an individual as a complainant CPs should, subject to limited exceptions, not be disclosed to any person or published by any person. I note that this general prohibition has to date been effective in achieving its purpose of protecting the anonymity of complainant CPs.
17. It is of concern to me that, if a broader approach was adopted and a complainant CP permitted to disclose their identity as such to any person or organisation and in any circumstances, they may not realise the implications for them in doing so. Some of the Inquiry’s investigations, for example, have a very small number of complainant CPs and it may be possible for the person to whom they have disclosed to work out the cipher that has been assigned to them when combined with other material in the public domain. If the cipher has been applied to other material disclosed by the Inquiry, the person to whom they have disclosed may be able to find out further details about the complainant CP’s personal circumstances than the CP had intended to disclose when sharing their status as a core participant.

18. The submissions refer to the diversity amongst the complainant CP group in terms of educational background, literacy and mental health status. There will also, in my view, be diversity in terms of use of social media and other online forums. I can see that whilst some complainant CPs will limit disclosure of their CP status to a select number of individuals in particular circumstances, others may choose to share it more widely without fully understanding the implications of doing so.
19. For this reason, I take the view that in order for the Restriction Order to achieve its purpose of providing anonymity to complainant CPs, the circumstances in which disclosure of an individual's own CP status can be made should be limited to those set out in the amended Restriction Order circulated with my provisional determination at Annex A. If further specific circumstances arise in which a complainant CP wishes to disclose his or her own identity as a complainant CP, these can be considered on a case by case basis by the Inquiry and where appropriate, the Inquiry will confirm in writing that it will not seek to enforce the Restriction Order in those circumstances.
20. Bhatia Best also submit that the Restriction Order is also too narrow in the extent to which it allows disclosures to be made by a person acting on behalf of a complainant CP. In my provisional determination, this is limited to legal advisers acting on the instruction of the complainant CPs. Bhatia Best submit that there may be instances in which it would be in the best interests for the complainant CP for a disclosure to be made by a third party, for example, for the purposes of obtaining support for a complainant CP who is not in a position to make the arrangements themselves. In my view, this is something that again can be considered by the Inquiry on a case by case basis. For example, and using the scenario put forward by Bhatia Best, the Inquiry may consider that it would be possible for a third party to make arrangements for support without it being necessary to refer specifically to the nature of the individual's role in the Inquiry's proceedings.
21. Both the Bhatia Best submissions and the IKP submissions comment on the requirement in the amended Restriction Order that the disclosure is made on the

understanding that the person to whom they are making the disclosure is bound by the terms of the Restriction Order and/or a duty of confidentiality. The Bhatia Best submissions welcome the intended aim of this requirement which is to prevent onward disclosure of a complainant CPs identity, but suggest that the obligation on the complainant CP making the disclosure is unclear on the current wording. It is suggested that it could be amended to specify that a complainant CP “*must tell the recipient of the disclosure that the law prohibits them from sharing the disclosed information with any other person.*”

22. It is suggested in the IKP submissions that paragraph 8(a) of the amended Restriction Order, that is the requirement for the disclosure for the purposes of obtaining support to be made on the understanding that the recipient understands that they are bound by the Restriction Order, places a “*considerable and impossible onus*” on a complainant CP. They give the example of a complainant CP who in a distressed state may disclose his or her identity as a complainant CP without first ensuring the recipient of the information understands that they are bound by the terms of the Restriction Order. They also question what would happen in the event that there was a dispute about whether the recipient had been told of the terms of the Restriction Order or in the event that the recipient of the information does not agree to be bound by the Restriction Order. In relation to disclosures to legal and medical professionals and/or law enforcement agencies or prosecuting authorities, they say that it would assist if the Inquiry could provide a declaration that can be used for the purpose of them confirming their understanding that they are bound by the terms of the Restriction Order.
23. I have considered the submissions made in relation to the requirement that any disclosure is made on the basis that the recipient understands that they are bound by the terms of the Restriction Order. In my view it is an essential requirement to ensure that the recipient is informed that onward disclosure of the individual’s status as a complainant CP is not permitted. I consider that the means by which this is achieved is a matter for the complainant CP who may wish to seek guidance from their legal representatives in this respect. One way in which this might be achieved would be by the complainant CP drawing the recipient’s attention to the Restriction Order on the

Inquiry's website. It is not in my view necessary for the Restriction Order to specify that a written declaration is required before making a disclosure, but a complainant CP may choose to do so for their own purposes.

24. IKP also submit that the prohibition on wider disclosure by a legal adviser to the Court or any party in the proceedings without further reference to the Inquiry is too onerous. I do not agree. In my view, the risks in permitting wide disclosure of an individual's status as a complainant CP in such proceedings include that a person's identity as a complainant CP, and in some cases their cipher, may inadvertently be put in the public domain, whether by publication of court documents or by reference in open court. I consider it essential that further reference is made to the Inquiry before disclosure of a complainant CP's status is made in such proceedings so that the Inquiry can, where appropriate, inform the Court of the terms of the Restriction Order. On this matter, Bhatia Best suggest that there should also be a requirement for further reference to be made to the complainant CP concerned before such a disclosure is made. I would assume that a legal adviser in making any disclosure to the Court or other parties would be doing so on the instruction of the complainant CP having explained to them the risks with regard to their anonymity in the Inquiry's proceedings. It is not therefore necessary in my view for the Restriction Order to specify this.
25. For the reasons provided above, I consider that the approach and scope of the amended Restriction Order annexed to my provisional determination is appropriate. I take the view that a complainant CP and their legal advisers should be careful to ensure that their own status as a CP is disclosed to as few people as possible in the limited circumstances set out in the Restriction Order (or subject to any express agreement provided by the Inquiry). This is to ensure that a complainant CP's identity as such is not shared so widely by them so as to inadvertently render their anonymity in the Inquiry's proceedings as ineffective.
26. In the event that I decided to maintain the approach set out in the provisional determination, Bhatia Best submit that the amended Restriction Order should be further amended in several places to provide greater clarity around: the extent of the disclosure

permitted (i.e. that it relates to 'self-disclosure' only); the requirement on the complainant CP to only make the disclosure on the understanding that the recipient is bound by the Restriction Order; the exemption for disclosure to legal advisers; and the requirements of ongoing obligations of confidentiality. Uppal Taylor also refer to the need to make clear that disclosure is only permitted where a complainant CP is talking about their own situation and request that I include a requirement for CPs to be given 28 days' notice of any future proposed amendments or proposals to revoke the Restriction Order.

27. I have considered the submissions made and I have amended the wording of the Restriction Order where I consider appropriate. Where I have not agreed with the proposed amendments set out in submissions, it is for reasons that I have already set out above. In addition, it is not in my view necessary for the Restriction Order to specify that CPs will be given notice of any proposed amendments or proposals to revoke the Order. As has been the process adopted on this occasion, CPs will be informed of any proposed amendments and proposals to revoke the Order in future if for reasons of fairness it is considered appropriate to do so. I also do not agree that it is necessary to provide clarity around what is meant by a 'legal adviser'. A common sense approach should be adopted.
28. For the reasons set out above, the Restriction Order dated 15 August 2016 and the variation dated 24 August 2017 will be amended and replaced with the Restriction Order attached **at Annex 1** of this determination. The amended Restriction Order will apply across all of the Inquiry's investigations.
29. Finally, the Child Migrants Trust submissions note that the Inquiry has also made a Restriction Order for non core participant complainant witnesses in the Child Migration Programme case study in identical terms to the one for complainant CPs. I am aware that similar Restriction Orders have also been made in respect of complainant witnesses in the Rochdale and Catholic investigations. The Child Migrants Trust submit that the issues raised in relation to the complainant CP Restriction Order are likely to apply to the complainant witness Restriction Order and so the Inquiry may want to consider making similar amendments to that Order.

30. As the Restriction Orders for complainant CPs and complainant witnesses are on almost identical terms, I agree that the Restriction Orders for complainant witnesses that have been put in place to date should be amended to reflect the same changes that I will be making to the complainant CP Restriction Order. These will be replaced on the Inquiry's website in respect of each investigation to which they relate.

Professor Alexis Jay OBE

23 March 2018

Annex A

Inquiries Act 2005 Restriction Order Pursuant to Section 19(2)(b)

Background

1. The Inquiry's terms of reference require it to consider the extent to which State and non-State institutions have failed in their duty of care to protect children from sexual abuse and exploitation; to identify further action needed to address any failings identified; to consider the steps which it is necessary for State and non-State institutions to take in order to protect children from such abuse in future; and to publish a report with recommendations.
2. As part of its public hearings the Inquiry is hearing evidence on thematic and institution-specific failures to protect children from sexual abuse. Pursuant to section 18 of the Inquiries Act 2005 the Chair must take reasonable steps to secure public access to inquiry proceedings and information, subject to any restrictions imposed under section 19 of the Inquiries Act 2005.
3. Written and oral evidence received by the Inquiry will include testimony from core participants who allege that they are the victim and survivor of sexual offences ("complainant CPs"). Many such individuals are entitled to protection of their identity under section 1 of the Sexual Offences (Amendment) Act 1992 ("the 1992 Act"). Where an allegation has been made that an offence to which the 1992 Act applies has been committed against a person, subject to any waiver of those rights, neither the name or address, and no still or moving picture, of that person shall during that person's lifetime—
 - a. be published in England and Wales in a written publication available to the public; or

- b. be included in a relevant programme for reception in England and Wales,

if it is likely to lead members of the public to identify that person as the person against whom the offence is alleged to have been committed.
4. Complainant CPs have submitted to the Chair that they would not feel able to give written evidence or, oral evidence to the Inquiry in public, unless they are able to do so anonymously. Having regard to section 19(3)(a) of the Inquiries Act 2005 those who allege they are the victim and survivor of an offence specified in the 1992 Act are entitled, by that statute, to protection of their identity as set out in paragraph 3 above.
5. For some complainant CPs it will not always be apparent that they are entitled to protection for an offence specified in the 1992 Act. Having regard to section 19(3)(b) and 19(4) of the Inquiries Act 2005, those individuals should nonetheless have the same anonymity protections as those who are entitled to protection of their identity pursuant to the 1992 Act. Protecting the identity of all complainant CPs is conducive to the Inquiry fulfilling its terms of reference and is in the public interest. If a Restriction Order were not imposed for all complainant CPs, it may impair the effectiveness of the Inquiry and discourage the participation of complainant CPs in assisting the Inquiry.

Restriction Order

6. Having regard to paragraph 9 of the Inquiry's terms of reference, the requirements of the 1992 Act and sections 19(1) and 19(3)(a) and (b) of the Inquiries Act 2005, a restriction order is imposed pursuant to section 19(2)(b) of the Inquiries Act 2005 to protect the identity of any individual designated as a complainant CP in the Inquiry's investigations.
7. The Restriction Order prohibits, except in the circumstances set out in paragraphs 8 and 9 below, the:

- a. disclosure or publication of any information that identifies or tends to identify any complainant CP as a complainant CP.
 - b. disclosure or publication of any information with the name or address of a complainant CP if such disclosure or publication would tend to identify him or her as a complainant CP.
 - c. disclosure or publication of any still or moving image of any complainant CP if such disclosure or publication would tend to identify him or her as a complainant CP.
8. The Restriction Order does not prohibit *disclosure only* of the matters falling within 7a to 7c in the following circumstances:
- a. where a complainant CP is disclosing his or her own CP status for the purposes of obtaining medical services or emotional support (whether personal or professional) provided that the person to whom they are making the disclosure is informed that he or she is bound by the terms of this restriction order;
 - b. where a complainant CP is disclosing his or her own CP status to law enforcement agencies or prosecution authorities in connection with a criminal investigation or prosecution provided that the person to whom they are making the disclosure is informed that he or she is bound by the terms of this restriction order;
 - c. Where the person making the disclosure is a complainant CP who is disclosing his or her own CP status in confidence to their legal adviser, or a legal adviser making such a disclosure to another legal adviser on their instruction, in connection with other legal proceedings in which their CP status is relevant.

This exception is limited to disclosure to a legal adviser in confidence and subject to legal professional privilege only and does not permit wider disclosure to the Court or any party in the proceedings without further reference to the Inquiry.

9. The prohibition set out in paragraph 7 above does not apply in respect of those named persons referred to in paragraph 15 and Annex A.
10. Insofar as it necessary to identify a complainant CP in public it shall be by a cipher unique to each complainant CP.
11. The Inquiry's legal team may, on behalf of the Chair, provide on terms of confidence the identity of a complainant CP to other core participants or third parties, such as the police and statutory agencies, as is necessary to assist with the work of the Inquiry.
12. This Restriction Order amends and replaces the previous Restriction Order for complainant CPs dated 15 August 2016.
13. Pursuant to section 20(4) of the Inquiries Act 2005 the Chair may vary or revoke this Restriction Order by making a further order during the course of the Inquiry.
14. Any person affected by the Restriction Order may apply in accordance with section 20 of the Inquiries Act 2005 to vary its terms.
15. The Restriction Order does not apply to the named persons in Annex A. Each of those named persons has waived their anonymity and does not seek to prohibit publication or disclosure of any information that identifies or tends to identify them.
16. The Restriction Order continues in force indefinitely, or unless the order is varied or revoked pursuant to section 20 of the Inquiries Act 2005.

Professor Alexis Jay OBE

23 March 2018

Annex A

1. Hamish Baillie
2. John Gater
3. Alan Hodges
4. Tracey Taylor
5. Timothy Betteridge
6. Anthony Hyde
7. Philip Johnson
8. Julie Macfarlane
9. Graham Sawyer
10. Cliff James
11. Andrew Kershaw
12. Paul Sinclair
13. Karen Gray
14. Mark Gray
15. Colin Watson
16. Peter Smith
17. Paul Connolly
18. Brian Hennessy
19. Bede Mullen
20. Mark Murray
21. Thomas Kirby
22. Frank McGinnis
23. Gerard McLaughlin
24. Peter Robson
25. Christopher Carrie
26. Peter Paul Hartnett
27. Jeremy Harvey
28. Eammon Flanagan
29. Daniel Mackle
30. Graham Wilmer
31. Sue Cox
32. Robert Hastings
33. David Hill
34. Oliver Cosgrove
35. Esther Baker
36. Mickey Summers
37. Robert Balfour

- 38. Dale Davey
- 39. Peter Murray
- 40. James Harding