



# INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

## ACCOUNTABILITY & REPARATIONS INVESTIGATION NOTICE OF DETERMINATION ON THE SCOPE OF THE CASE STUDIES

### **Introduction**

1. This is my determination on the scope of the five case studies that form part of the accountability and reparations investigation ('the Investigation').
2. The scope of the Investigation is as follows:<sup>1</sup>
  1. *The Inquiry will investigate the extent to which existing support services, compensation frameworks and the civil justice system are fit to deliver reparations to victims and survivors of child sexual abuse. The investigation will incorporate case specific investigations and a review of information available from published and unpublished reports and reviews, court cases, and previous investigations in relation to the delivery of reparations to the victims and survivors of child sexual abuse.*
  2. *The Inquiry will consider the experiences of victims and survivors of child sexual abuse and investigate:*
    - 2.1. *what amounts to adequate reparation in the case of child sexual abuse, including a consideration of what weight should be attached to the right to an independent and impartial investigation, the right to truth, accountability, compensation, guarantees of nonrecurrence, and support services;*
    - 2.2. *to what extent support services, the civil justice system, and/or alternative compensation frameworks (including the criminal courts and the Criminal Injuries Compensation Authority) have delivered each*

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<sup>1</sup>

<https://www.iicsa.org.uk/investigations/reparations-for-victims-and-survivors-of-child-sexual-abuse?tab=scope>



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*of these elements to victims and survivors of child sexual abuse, including consideration of:*

- a. the adequacy of support services provided by public, private and charitable organisations;*
- b. the extent to which the current civil litigation framework may have obstructed the delivery of some or all elements of reparation;*
- c. the extent to which the current model of insurance, and/or the practice of insurance companies, may have obstructed the delivery of some or all elements of reparation;*
- d. the extent to which other factors may have obstructed the delivery of some or all elements of reparation;*
- e. the extent to which any of the factors above may also have obstructed the implementation of effective safeguarding measures by institutions.*

**3. To investigate the issues set out above the Inquiry will identify case studies including, but not limited to, the experience of victims and survivors of sexual abuse at Forde Park Approved School and children's homes in North Wales.**

**4. In light of the investigations set out above, the Inquiry will publish a report setting out its findings, lessons learned, and recommendations to improve child protection and safeguarding in England and Wales.**

3. The first part of the Investigation's work comprised the publication of Issues Papers on the Civil Justice System and on Criminal Compensation, followed by seminars to explore some of the themes that arose in the various submissions received in response to those papers.<sup>2</sup>

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<sup>2</sup> The two Issues Papers, together with the responses, can be found on the Inquiry's website here: [Civil Justice System Issues Paper, submissions in response](#) and [Criminal Compensation Issues Paper, submissions in response](#). The Inquiry's update reports on the two seminars may be found on the Inquiry's website [here](#) and [here](#).



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4. The second part of the Investigation comprises five case studies, the scope of which is as follows:
  1. *The description of scope for the Inquiry's investigation into accountability and reparations states that it will examine two specific case studies: North Wales children's homes and Forde Park Approved School.*
  2. *The Inquiry has decided to add three further case studies in order to obtain as broad a range of evidence as possible. The additional case studies are: St Leonard's children's home, St Aidan's & St Vincent's children's homes and the Stanhope Castle Approved School. The selection of these case studies does not prevent the inclusion of additional case studies at a later date.*
  3. *The accountability and reparations investigation focuses on the aftermath of child sexual abuse. The Inquiry is limited by its terms of reference to considering experiences of child sexual abuse. It is not able to examine other forms of child abuse.*
  4. *We will be seeking evidence on the following issues in the four case studies:*
    - a. *The process of making a civil claim for damages;*
    - b. *Criminal compensation schemes (criminal compensation orders; Criminal Injuries Compensation Authority (CICA), formerly Criminal Injuries Compensation Board (CIBA) awards); and*
    - c. *Support services for victims and survivors who have disclosed child sexual abuse, whether or not they were involved in a criminal or civil case.*
  5. *The investigation will not examine or resolve disputed factual issues relating to the underlying allegations of child sexual abuse.*



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5. On 13 April 2018 the Inquiry circulated the written submissions of Counsel to the Investigation ('CTI') to the Core Participants ('CPs') in the Investigation. These set out CTI's views as to:
  - a. The general issues that should form the primary focus of the case studies;
  - b. The specific issues that should be explored in each of the case studies;
  - c. The approach to be taken in respect of the three-week public hearing due to commence on 26 November 2018.
6. Written submissions in response to CTI's proposals were received from the persons listed in Appendix A below. With some exceptions, each of those persons – whom I shall call 'the CP advocates' – made oral submissions in response to those of CTI at the preliminary hearing on 8 May 2018. Oral submissions were also made at that hearing by the persons listed in Appendix B.
7. I am grateful for all of the written and oral submissions I have received, which I have considered carefully and taken into account when reaching my determination.

## **The general issues to be investigated in the case studies**

8. CTI proposed that the following issues should form the primary focus of the case studies:<sup>3</sup>
  - What the concepts of accountability and reparation mean to victims and survivors
  - Knowledge of and access to civil litigation and criminal compensation (from the Criminal Injuries Compensation Authority ('the CICA'))
  - Insurance – i.e. the nature of insurance cover and how this affects access to and the outcome of civil litigation
  - The management of child sexual abuse litigation – including the administration of group litigation
  - The process of civil litigation – in particular:

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<sup>3</sup> CTI written submissions §13.



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- o Limitation – i.e. the imposition of statutory time-limits on the process of claiming damages in the civil courts
  - o The assessment of damages – i.e. the process by which claimants are required to prove their injuries and the quantification of damages for the abuse and its consequential effects
  - o The settlement of cases by agreement
  - The process of criminal compensation – i.e. CICA awards and criminal compensation orders
  - Access to support services
9. They also make five general points, which for ease of understanding I will quote in full:<sup>4</sup>
- (1) The list of issues identified is intended to be the focus of the Inquiry's work. But it is not exclusive and some flexibility is required. Other issues may become apparent or gain greater prominence during the individual case studies. If this occurs, the Inquiry may wish to include them within the scope of its investigation.
  - (2) The first of the issues identified above - what the concepts of accountability and reparation mean to victims and survivors - will inevitably arise and be considered in all of the case studies. It is at the heart of the work of the investigation and obtaining a broad range of views is of obvious benefit to the Inquiry.
  - (3) Two of the issues - support services and the processes of criminal compensation - have not been allocated to particular case studies. This is because the investigation of those issues will require the Inquiry to consider the experiences of individuals rather than groups of victims and survivors. Therefore the issue will arise to the extent that the individual witnesses in each case study provide significant evidence.
  - (4) Some specific issues - such as the management of civil litigation and legal issues (e.g. limitation) - will be investigated in multiple case studies. The purpose of this

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<sup>4</sup> CTI written submissions §14.



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is to obtain a broad range of evidence, practice, and opinions on those issues as possible.

- (5) The operation of the criminal justice system is not included as an issue. As we stated at last preliminary hearing, we anticipate that criticisms may be made of the actions of individuals and organisations working within that system. In the interests of fairness, those individuals and organisations may need to be given the opportunity to respond to those criticisms. But it does not follow that the Panel will need to address such matters in their report or express their views upon them.
10. Most of the CP advocates agree with CTI's proposals. However, the following points were also advanced:
    - a. Mr Simblet emphasised the need to ensure that the Inquiry hears about present, not just past practices, in respect of civil litigation. He also asked that this Investigation draw upon the findings in other investigations.
    - b. Mr Collins also highlighted the importance of understanding how the conduct of civil litigation has changed since the events with which the case studies are concerned. He asked the Inquiry to consider adding further case studies to exemplify this.
    - c. Mr Khan encouraged the Inquiry to add the examination of the criminal justice system, including the police, to the scope of the case studies.
    - d. Mr Stein submitted that the Inquiry should undertake a detailed investigation of the factual circumstances in each of the case studies, including the abuse that took place and subsequent actions of the police, local authorities, insurers and the Home Office.
    - e. Mr Hough made three general points. He underscored the need for the Inquiry to obtain evidence about present civil litigation practice. He stressed the importance of the issues of criminal compensation and support services, and the need to hear evidence from victims and survivors about those issues. Finally, he pointed out the difficulty of trying to resolve disputed factual issues about the conduct and



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long and complicated pieces of litigation, i.e. the group actions that arose in respect of several of the institutions in question.

11. I agree that the Inquiry should use the case studies to better understand present practices, both in respect of the systems of civil justice and criminal compensation. The overriding purpose of this Investigation is to make robust, workable, recommendations for the improvement of those systems and services. Understanding how they operate now will underpin that purpose. I will therefore ensure that relevant evidence on those issues will be sought; including, where appropriate, from victims and survivors, claimant and defendant lawyers, and insurers. In light of this, in my view there is no need for further case studies to be added for the specific purpose of addressing those issues.
12. I also endorse the additional points made by Mr Simblet and Mr Hough (as summarised above), which will be borne in mind as the Investigation proceeds. However, I reject Mr Stein's primary submission that the Inquiry should conduct a detailed investigation into the facts pertaining to each of the case studies. As the scope document states, 'The investigation will not examine or resolve disputed factual issues relating to the underlying allegations of child sexual abuse.' This reflects the fact that the function of the case studies is to illustrate, in detail, past and present practices in respect of the issues of civil litigation, criminal compensation and support services.
13. It is a prerequisite of any investigation into those issues that child sexual abuse has taken place; and accounts of that abuse have therefore been sought from each of the victim and survivor witnesses in each case study. But for the case studies as a whole to fulfil their function, it is not necessary for the Inquiry to make specific determinations as to what abuse occurred, including who perpetrated it and which individuals and organisations should have stopped it from happening.
14. Instead the Inquiry's focus will be on the aftermath of the abuse, including matters such as whether victims and survivors sought accountability and reparation for their abuse and, if so, whether they were successful in doing so. Investigation of these issues will necessarily involve looking at how such accountability was or was not sought and achieved. In some cases, an examination of the actions of local police services will be



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required, as their actions may be relevant, for example, to the question of whether civil and criminal compensation was sought and obtained.

15. But I reject the submission of Mr Stein and Mr Khan that the case studies, and thereby the Investigation as a whole, should examine the operation of the criminal justice system, including the disputed actions or omissions of the police. These matters are outside its scope (see the §2 above). However, as CTI have indicated, in the interests of fairness, individuals and organisations working within that system may need to be given the opportunity to respond to criticisms that are made against them during the course of the case studies.<sup>5</sup>
16. Additionally, the work of the case studies must remain proportionate. The five case studies are only one part of the work of the Accountability and Reparations Investigation, which is itself only one of 13 investigations that are being conducted by the Inquiry. It would take several years for the Inquiry to undertake comprehensive investigations into the factual circumstances pertaining to each of the case studies, including all of the allegations of child sexual abuse that have been made at multiple institutions over a period of several decades. Although I am mindful that that is what many of the victims and survivors want – particularly those who have never achieved proper justice and accountability for their abuse – such a task is not proportionate given the time and resources that are available. Instead, the Inquiry must focus on those issues that will best advance the overriding, forward-looking, purpose of this Investigation.
17. In conclusion, the general issues to be examined in the five case studies will be those set out in CTI's submissions.

## **The specific issues that should be explored in each of the case studies**

18. CTI propose that the case studies should focus on the following specific issues, with the five caveats that I have already identified (at §9 above):<sup>6</sup>

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<sup>5</sup> CTI written submissions §14(5).

<sup>6</sup> CTI written submissions §§16-27.





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- North Wales children's homes: civil litigation – the litigation process, insurance cover, statutory time-limits (limitation), and the assessment of damages, and how these issues impacted on the experiences of victims and survivors
  - Forde Park: civil litigation – the litigation process, the management of the cases, how they were settled, and how that settlement was perceived by victims and survivors
  - St Leonard's: civil litigation – the litigation process, the management of the cases, how they were settled, and how that settlement was perceived by victims and survivors
  - St Aidan's and St Vincent's: civil litigation – the litigation process, limitation, and how this impacted on victims and survivors
  - Stanhope Castle: knowledge of and access to civil litigation and criminal compensation
19. The CP advocates generally endorsed the inclusion of these issues and made helpful suggestions for how and where the Inquiry should focus its work. It is not necessary for me to summarise all of their submissions. However, the following matters deserve mention.
- a. North Wales: Mr Simblet asked that the Inquiry look at the entirety of the Bryn Alyn litigation and include evidence from its other investigations in reaching its determinations. Mr Stein submitted that the Inquiry should look at the actions of the local police and social service, the Jillings and Waterhouse Inquiries, and the obstacles to civil litigation. Mr Hough stated that the Inquiry should include a summary of the civil litigation and the issues that arose within it.
  - b. Forde Park: Mr Stein urged the Inquiry to investigate the responsibility of the Home Office and the police.
  - c. St Leonard's: Mr Stein again urged the Inquiry to investigate the responsibility of the Home Office and the police.
  - d. St Aidan's and St Vincent's: Mr Hough again stated that the Inquiry should include a summary of the civil litigation and the issues that arose within it. Mr Garsden



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advocated the inclusion of additional issues within the case study, including the impact of civil litigation on the mental well-being of victims and survivors.

- e. Stanhope Castle: Mr Stein repeated his submission that the Inquiry should investigate the responsibility of the local council, the police and the Home Office.
20. I agree with Mr Hough's suggestion that summaries of the civil litigation would be beneficial. The Investigation legal team will consider how best this should be done. However, I am not prepared to accede to Mr Stein's request that the scope of the case studies include examination of the responsibility of the police, local authorities and the Home Office (where relevant). Nor do I consider it necessary for the Inquiry to review the findings of previous independent inquiries. Those issues are beyond the scope of the Investigation, for the reasons already given.
21. In conclusion, the Inquiry will investigate the issues identified by CTI in their submissions, while remaining flexible, so that further issues may be added should it be necessary and proportionate to do so.

## **The public hearings**

22. The public hearings will commence on Monday 26 November 2018 and conclude by Friday 14 December 2018. As CTI have indicated,<sup>7</sup> as soon as practicable the Inquiry will circulate a provisional list of witnesses and will seek the views of CPs on that list. Disclosure of relevant documents will also be given to CPs via the Relativity database on a rolling basis in the weeks prior to the hearings.

**Professor Alexis Jay OBE**

**8 June 2018**

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<sup>7</sup> CTI written submissions §30.

**Appendix A**

**Written submissions by CP advocates received in response to CTI's submissions dated  
13 April 2018**

- Sam Stein QC and David Enright (Howe+Co) on behalf of F16 - F24, F36, F51, F43, F26, F27, F30 - F34, F50, F35, F41, F42, F47, Z7 and Nigel O'Mara
- Uppal Taylor on behalf of L1-L6, L12, L41, L42
- Alan Collins (Hugh James) on behalf of J1-J3
- Peter Garsden (Simpson Millar) on behalf of B19
- Weightmans LLP on behalf of Municipal Mutual Insurance (MMI)
- Jonathan Hough QC on behalf of Royal & Sun Alliance (RSA)
- Herbert Smith Freehills on behalf of Zurich Insurance
- Jason Beer QC on behalf of Devon & Cornwall Police



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## Appendix B

### Oral submissions made by CP advocates

- Sam Stein QC on behalf of F16 - F24, F36, F51, F43, F36, F27, F30 - F34, F50, F35, F41, F42, F47, Z7 and Nigel O'Mara
- Stephen Simblett (Counsel) on behalf of L1-L1, L12, L41, L42
- Alan Collins on behalf of J1-J3
- Imran Khan on behalf of G8
- Peter Garsden on behalf of B19
- Nigel Fleming QC on behalf of Zurich Insurance
- Jonathan Hough QC on behalf of RSA
- Chris Webb Jenkins on behalf of MMI
- Ann Studd QC on behalf of Metropolitan Police Service
- Paul Greatorex (Counsel) on behalf of Devon County Council