



INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

NOTICE OF DETERMINATION

CORE PARTICIPANT APPLICATION

1. On 24 March 2017 the Inquiry invited anyone who wished to be designated as a core participant in the investigation into the extent of any institutional failures to protect children in the care of the Nottinghamshire Councils from sexual abuse and exploitation to make an application to the Solicitor to the Inquiry by 21 April 2017.
2. On 26 January 2018 an application for core participant status was made by Bhatia Best solicitors on behalf of D51. I made a provisional ruling that I was minded to decline the application on 8 February 2018. I received written submissions on behalf of D51 renewing her application on 2 March 2018. This notice sets out my final determination of the application.
3. I have carefully considered the written application for core participant status made on behalf of D51 on 26 January 2018 and the written submissions dated 2 March 2018. I have reminded myself of the statutory criteria that govern the determination of core participant status in Rule 5 of the Inquiry Rules 2006. In determining each person's application, the matters listed in Rule 5(2) must be considered, but the list is not exhaustive and I may also take into account other relevant matters. In considering these factors, I retain discretion as to whether I designate a person as a core participant. D51 relies in particular on Rule 5(2)(b) which directs me to consider whether a person has a significant interest in an important aspect of the matters to which the inquiry relates.
4. D51's original application stated that she was sexually abused by her father from the age of 6 or 7 years old until she was 15 years old. It stated that she was also abused by a number of other men with the involvement of her father. The application explained that although D51 was never removed from her family home, social services were involved with the family and that one page of D51's social care records



INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

indicates that in June 1990 she was placed under voluntary supervision after a non-accidental injury.

5. It stated that it was not known how long D51 remained under voluntary supervision, but that it seemed highly likely that she would have been sexually abused during this period given the regularity and frequency of her abuse throughout her childhood. The application submitted that, in light of her experiences, D51 is a person with a significant interest in an important aspect of the matters to which this investigation relates.
6. I provisionally declined the application on the basis that I did not consider that D51 was a child *'in the care of'* Nottingham City Council or Nottinghamshire County Council as, although she was placed in voluntary supervision in 1990, she did not appear to have been subject to a care order. On the basis of the information provided in the application, I noted that she was presumably placed in voluntary supervision in 1990 under the Children and Young Persons Act 1969. I referred to the fact that under that Act, had a voluntary supervision order been made the local authority would have supervised D51, but would not have had parental responsibility and therefore D51 would not in the formal sense have been subject to a care order.
7. Further, and notwithstanding the issue of whether she was in the care of the Councils, D51's application stated that she *'cannot confirm with certainty that she was definitely abused during the period of voluntary supervision'* but that *'it seems highly likely to have been the case given the regularity and frequency of her abuse throughout her childhood'*. In my provisional determination, I noted that whilst I can fully appreciate the difficulties in recalling the precise dates on which abuse occurred given the passage of time and for other reasons, I needed to exercise caution in granting core participant status to those who are uncertain as to whether or not they may have been abused during the relevant period.
8. In relation to the issue of whether or not D51 was in care, it is submitted in the renewed application that I have adopted an overly narrow approach to the meaning



INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

of the phrase *'in care'* and that *'it is inconsistent with the approach taken to other children who were under the supervision of local authorities whilst not being subject to care orders, e.g. when fostered despite not being the subject of a care order.'* It is submitted that this *"narrow approach would mean that children who are currently 'looked after' under the Children Act 1989, for example, would be considered to be outwith the definition of 'in care', and would conflict with the Chair and the Inquiry's underpinning aims in relation to accountability and lesson learning."* It is further submitted that even if D51 was not in care in the formal sense, *"this does not prevent her from having a 'significant interest in an important aspect of the matters to which the inquiry relates' within the meaning of Rule 5(2)(b)."* It is said that her significant interest *"would stem from the very closely analogous situation in which she was in at that time to children who may have formally been the subject of a care order."*

9. On the issue of whether D51 suffered sexual abuse during the period of voluntary supervision, it is submitted that requiring D51 who is said to be *"a vulnerable woman with a history of horrific abuse, who has not yet had sight of her full records or had legal advice on their content"* to establish with certainty whether she was abused in the relevant period is a wholly flawed approach. It is suggested that this approach is at odds with the wording of Rule 5(2) which at Rule 5(2)(a) refers to the question of whether someone played or *may have played* a significant role and at Rule 5(b) *"refers to a significant interest and does not require proof positive at preliminary stage."*
10. I have carefully considered these submissions. I accept that it is not necessarily helpful to adopt too narrow a definition in accordance with the legislation that was in force at any particular period in time to whether a child was *'in care'* and that there should be a broader consideration of the applicant's factual background when considering the issue of whether I should exercise my discretion to designate them as a core participant in this investigation.
11. In this respect, I consider it important to be guided first by the overall terms of reference for the Inquiry. The Inquiry's overall terms of reference require it to



INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

consider the extent to which institutions have failed to protect children from sexual abuse and exploitation. Where an individual alleges that they were abused as a child within the family home by an individual with no connection to a particular institution, and that they did not report their abuse to any institution at the time, I consider that there needs to be a clear suggestion of an institutional failing in order to fall within the scope of this Inquiry.

12. Bearing in mind the overall terms of reference for the Inquiry, the focus of this investigation, as set out in the definition of scope and subsequent submissions made at the preliminary hearings on 11 May 2017 and 31 January 2018, and my determination in relation to the case studies to be pursued at the substantive hearing in October this year, is on those children in the care of the Councils who have been placed at children's homes and/or foster homes. It is necessary to ensure that this investigation remains focused and proportionate and it will be evident from my determination on case studies and the submissions made by Counsel to the Investigation at the preliminary hearings to date that it is not intended that investigation will investigate the extent of any failures of the Nottinghamshire Councils to protect children from sexual abuse in the family home.

13. When considering the issue of whether D51 has a significant interest in matters to which this investigation relates, I have done so with the Inquiry's terms of reference and the intended scope of the investigation in mind. I am very sorry to read of the serious and prolonged sexual abuse that D51 suffered in her family home and I thank her for coming forward to the Inquiry. However, bearing in mind the Inquiry's focus on institutional failures and the stated focus of this investigation, I am not satisfied that D51 has a significant interest in the matters to which this investigation relates. As particularly highlighted by the recent selection of case studies in this investigation, the focus of this investigation is on children in the care of the Nottinghamshire Councils who have been removed from the family home and placed in children's homes or with foster carers.



INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

14. Putting aside the issue of whether D51 was sexually abused during her period of voluntary supervision by the Councils in 1990, I do not agree that D51's position as a child who was abused in the family home by a family member and others associated with that family member, and who was for a relatively short period under voluntary supervision by the Councils, is sufficiently analogous to a child in a residential children's home or foster setting in which they suffered sexual abuse, to give rise to a significant interest for the purposes of Rule 5(2) so as to justify designation as a core participant in this investigation.
15. For these reasons, and in exercise of my discretion, I do not therefore designate D51 as a core participant in this investigation.
16. I will keep the scope of the investigation and the designation of core participants under review as the Inquiry progresses and further invitations to apply for core participant status may be made as the investigation proceeds. I should add that I shall consider on its own merits any application that D51 may make in future to be designated as a core participant in any other investigation.

Professor Alexis Jay OBE
Chair, Independent Inquiry into Child Sexual Abuse

1 May 2018