



INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

FINAL DETERMINATION RESTRICTION ORDER APPLICATION

Introduction

1. On 1 October 2018 the Inquiry will commence its public hearing in the investigation into the extent of any institutional failures to protect children in the care of Nottingham City and Nottinghamshire Councils from sexual abuse and exploitation. In connection with this investigation, the Inquiry has gathered evidence from a range of individuals and organisations, including Nottinghamshire Police.

Application by the Chief Constable of Nottinghamshire Police

2. On 19 September 2018 the Chief Constable of Nottinghamshire Police applied for a restriction order pursuant to section 19 (1) (b) of the Inquiries Act 2005. 'Annex A' to the application contains a list of the documents in respect of which the application is made. The Chief Constable considers that some of the information contained in those documents is sensitive. 'Annex B' to the application comprises schedules which identify the sensitive information and explain why the information is considered sensitive. The application states that Annex B itself is sensitive. In general terms, the Chief Constable considers that disclosure or publication of the information will risk prejudice to the course or outcome of ongoing criminal investigations or prosecutions such that a restriction order should be made in the public interest.
3. The application states that the Chief Constable does not seek for the restriction order to apply to Nottinghamshire County Council, Nottingham City Council or the Crown Prosecution Service because there is a shared interest in those organisations being able to comment on each other's evidence in a way that will best assist the Inquiry.

Provisional determination

4. On 20 September 2018 the application was circulated to core participants in this investigation, together with my provisional determination indicating that I was minded



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to grant the application. Enquiries were made with media representatives to find out if they wished to make submissions. Written submissions have been made to the Inquiry on behalf of complainant core participants represented by Uppal Taylor and complainant core participant represented by Slater and Gordon, Bhatia Best and Instalaw opposing the application.

Consideration of submissions

5. The police's application relates to 15 documents, in relation to which it is requested that certain passages within the documents are redacted. Nottinghamshire Police do not propose that the documents in their entirety are not disclosed to core participants, but rather that some passages of those documents are redacted. The documents concerned are listed in Annex A to the application. Annex B to the application set out the specific paragraphs and references contained in the documents listed in Annex A that the police request are removed on the grounds of sensitivity, the reason for that sensitivity, including the nature of the risk and how it arises. Annex B has been considered by the Inquiry, but has not been circulated to core participants as it is submitted by the police that the Annex itself is also sensitive given that it contains information relating to ongoing police investigations.
6. Whilst I appreciate that Annex B has not been circulated to core participants, I am aware that the redactions requested relate to just three alleged perpetrators who are currently the subject of ongoing investigation and in my view, the extent of the application is limited. This is particularly so given that the application concerns just some parts of 15 documents in the context where the Inquiry has disclosed 2,239 documents to core participants.
7. The open application, which has been circulated to core participants, states that the restriction is being sought on the grounds that disclosure of the material would prejudice the course or outcome of any ongoing criminal investigation or prosecution into matters relating to the information proposed for release (category f, paragraph 11(f) of the Inquiry's Protocol on the Redaction of Documents).



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8. In this regard, I note that the Inquiry has always made clear that it must conduct its work in a way that does not risk prejudicing ongoing police investigations and the possibility that redactions will need to be made to material for reasons of ongoing investigations before material is disclosed to core participants has always been anticipated. This position is highlighted in the Inquiry's Protocol on the Redaction of Documents ('the Redaction Protocol'), which states:

"It is of obvious and paramount importance that the work of the Inquiry does not risk prejudicing those investigations or any subsequent criminal proceedings. It is considered that, properly managed, the Inquiry can take its work forward without giving rise to such a risk. However, the Inquiry's approach will need to be tailored and subject to ongoing review to ensure no such risk is created." This is one of the reasons provided in the Inquiry's Protocol on the Redaction of Documents for why documents or parts of documents provided to the Inquiry may be withheld from wider dissemination and / or redacted prior to disclosure to core participants or inclusion in evidence.

9. For reasons of transparency, the Inquiry has asked Nottinghamshire Police to apply for a Restriction Order in this respect in connection with this investigation.
10. Submissions have been made on behalf of complainant core participants represented by Slater and Gordon, Bhatia Best and Instalaw and complainant core participants represented by Uppal Taylor. These submissions raise a number of issues in relation to the application and my provisional determination, which I have considered carefully.
11. Both submit that it has not been possible for them to make meaningful representations given the limited information made available to core participants. It is said that the application provides no further reasons as to why the restrictions are being sought beyond that the "disclosure of the material would prejudice the course or outcome of any ongoing criminal investigation or prosecution into matters relating to the information proposed for release", that no reasons have been provided as to



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why the material should not be shared with core participants (as opposed to members of the press and public), and that there is limited time available to respond.

12. Having considered the matter carefully, except for what follows, I am satisfied that it is not possible to disclose more of the information contained in Annex B of the application without defeating the application itself. What I can make clear is that this application relates to three alleged perpetrators who are currently the subject of the ongoing police investigations. The passages that the police request are redacted are passages relating to those perpetrators. In this regard, I note the police set out in Annex B, in relation to each redaction sought, the risk of harm or damage by reference to the Inquiry's Protocol on the Redaction of Documents, and provide a justification as to why the specific extract would cause the damage specified. In all cases, the damage relied upon is risk of prejudice to the course or outcome of any ongoing criminal investigation or prosecution into matters relating to the information proposed for release.

13. I note the submissions made on behalf of complainant core participants represented by Slater and Gordon, Bhatia Best and Instalaw with regard to the police previously withholding information from them on the basis of ongoing police investigations, which in their view had subsequently appeared not to be justified. As I made clear in my provisional determination, Counsel to the Investigation has liaised with the Chief Constable's legal representatives prior to the making of the application to ensure that the reasons for the application are as fully explained as possible and that as much information as possible can be disclosed and published. Having done so, Counsel to the Investigation have indicated that they consider that the restriction order sought is necessary in the public interest and that the proposed restrictions go no further than is necessary in the public interest.

14. I am satisfied that Counsel to the Investigation has properly scrutinised the application made by the police and the justifications provided. I note that in some instances, this process has led to the police reviewing the extent of the redactions sought over particular passages and revising their application in favour of greater disclosure to all core participants.



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15. In relation to the concerns raised that no reasons are provided as to why complainant core participants should not have sight of this material, particular reference is made to the fact that the Chief Constable does not seek for the restriction order to apply to the Nottinghamshire County Council, Nottingham City Council or the CPS. The reason provided by the police for this is that there is a “shared interest in these organisations being able to comment on each other’s evidence in order to best assist the Inquiry.”

16. I do not agree with the suggestion that in doing so “the message is that these organisations are trusted and can see any and all of the ‘sensitive’ information, whereas complainant CPs, victims and survivors, and their legal representatives, cannot”. There are a number of other core participants in this investigation, such as the Department for Education and Ofsted, who are in the same position as complainant core participants.

17. I consider that it is justified for the police to seek to restrict disclosure of this limited information to core participants and the wider public given the concerns raised around prejudice to ongoing police investigations. I refer above to the Inquiry’s Redaction Protocol which envisages that redactions may need to be made to material before disclosure to core participants for this very reason. I note also that although I referred in my provisional determination to any evidence relating to the material identified in Annex B only being given in a closed session, in fact I do not intend on there being any closed sessions of the hearing to hear this evidence. The purpose of the restriction order is to permit disclosure of material to core participants in a manner that does not prejudice ongoing investigations. For the avoidance of doubt, it is not intended to refer to the restricted extracts of the material during the course of the hearing. The reference to hearing the evidence in closed session in my provisional determination was intended to be a fail safe in case there was any inadvertent disclosure of these matters in open session, but in light of the concerns raised in submissions about this, I have amended this reference in my final order.



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18. In relation to the submissions made as to the time available to respond, I note that whilst the application was made by the police on 19 September 2018, the Inquiry has been involved in discussions with Nottinghamshire Police for some months in relation to the ongoing police investigations. As I have already stated, the management of the Inquiry's investigations and hearings around ongoing police investigations must be carefully navigated and involves detailed discussion with the police forces concerned in any particular investigation.

19. I note that the Inquiry informed core participants that the police and CPS had applied for a restriction order in respect of information relating to ongoing police investigations by email on 29 August. The Inquiry has been involved in further discussions with the police about the application since this date, and as a result of those discussions, the restriction order sought only applies to three alleged perpetrators. The Inquiry's position was that it would be preferable to receive one complete application from the police following their review of all material relating to ongoing investigations, rather than a number of applications on a piecemeal basis. I consider it important to note that over half of these documents which are subject to the application have been disclosed to core participants with redaction text applied "pending decision on Restriction Order application" before the final application was submitted. The reason for doing so was so that disclosure to core participants was not held up while the police and Counsel to the Inquiry went through this important process and in order to be transparent. The remaining documents have been disclosed since the application was submitted, with the same redaction text.

Final decision on application

20. There is a presumption that the Inquiry's proceedings will be conducted in public. Section 18 of the Inquiries Act 2005 provides that, subject to one matter, I must take reasonable steps to ensure that members of the public can attend the Inquiry or see and hear a simultaneous transmission of the proceedings and can obtain or view a record of the evidence and documents given. However, where it is necessary in the public interest to do so, I may make a restriction order under section 19 of the Inquiries Act 2005 preventing disclosure or publication.



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21. Section 19 of the Inquiries Act 2005 provides as follows:

- (1) Restrictions may, in accordance with this section, be imposed on -
 - (a) attendance at an inquiry, or at any particular part of an inquiry;*
 - (b) disclosure or publication of any evidence or documents given, produced or provided to an inquiry.**

- (2) Restrictions may be imposed in either or both of the following ways -
 - (a) by being specified in a notice (a “restriction notice”) given by the Minister to the chairman at any time before the end of the inquiry;*
 - (b) by being specified in an order (a “restriction order”) made by the chairman during the course of the inquiry.**

22. Section 19 (3) makes it clear that a restriction order must specify only such restrictions as I consider to be conducive to the Inquiry fulfilling its terms of reference or to be necessary in the public interest, having regard in particular to the matters mentioned in section 19 (4). Those matters are as follows:

- a. The extent to which any restriction on attendance, disclosure or publication might inhibit the allaying of public concern;
- b. Any risk of harm or damage that could be avoided or reduced by any such restriction. Harm or damage includes death or injury and damage to national security or international relations;
- c. Any conditions as to confidentiality subject to which a person acquired information that he is to give, or has given, to the Inquiry;
- d. The extent to which not imposing any particular restriction would be likely
 - i. to cause delay or to impair the efficiency or effectiveness of the inquiry, or



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- ii. otherwise to result in additional cost (whether to public funds or to witnesses or others).

23. Having carefully considered section 19 of the Inquiries Act 2005, the Chief Constable's application and the submissions made by core participants, I am satisfied that a restriction order is necessary in the public interest. I have considered the extent to which any restriction on attendance, disclosure or publication might inhibit the allaying of public concern (section 19 (4) (a)). Given the limited extent of the restrictions sought, I am not satisfied that it would, but even if it did, I consider that this would be outweighed by the public interest in not prejudicing ongoing police investigations.

24. Pursuant to section 19 (1) and 19 (2) (b) I make the following decisions in respect of this investigation.

- a. A restriction order is granted to cover the material identified in Annex B. Annex B itself will be covered by the restriction order.
- b. The material covered by the restriction order is not to be published and is not to be disclosed to any core participant other than Nottinghamshire County Council, Nottingham City Council and the Crown Prosecution Service;
- c. In the event of any inadvertent reference to the material covered by the restriction order at the hearing, the press and public and core participants will not be permitted to disclose or publish that material, the live feed will be stopped and the transcript of proceedings where the material is referred to will not be published.

25. Pursuant to section 20 (4) of the Inquiries Act 2005, I may vary or revoke this Restriction Order by making a further order in the course of the Inquiry.

26. Any person affected by this Restriction Order may apply in accordance with section 20 to vary its terms.

27. This Restriction Order continues in force indefinitely, unless the order is varied or revoked pursuant to section 20.

Professor Alexis Jay OBE
Chair, Independent Inquiry Child Sexual Abuse

28 September 2018