HOUSE OF LORDS Library Briefing

Independent Inquiry into Child Sexual Abuse Debate on 20 December 2018

Summary

On 20 December 2018, the House of Lords is scheduled to debate the following motion moved Lord Campbell-Savours (Labour) "that this House takes note of the remit of, and arrangements for the handling of evidence by, the Independent Inquiry into Child Sexual Abuse".

The Independent Inquiry into Child Sexual Abuse (IICSA) is an independent inquiry established in February 2015 under the provisions of the Inquiries Act 2005 (the 2005 Act), having its origins in a non-statutory inquiry established in July 2014. The IICSA's terms of reference are:

> 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 consider the extent to which those failings have since been addressed; 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.

It is chaired by Professor Alexis Jay OBE and is structured around three core projects: the truth project, the research project and the public hearings project. The latter of which resembles a conventional public inquiry in which witnesses give evidence on oath and are subject to questioning. In its work the committee will be undertaking 13 investigative strands, examining both themes and institutions. The IICSA has the power to compel individuals to give evidence where it deems it appropriate, as provided for under the 2005 Act and the Inquiry Rules 2006 (the Rules).

This Lords Library Briefing provides background information on the IICSA, followed by information on the provisions of the 2005 Act and the Rules, with a focus on the taking and handling of evidence by statutory inquiries. The briefing also examines the House of Lords Inquiry Act 2005 Committee's post-legislative scrutiny work and how the IICSA has approached the handling of evidence in its work.

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Charley Coleman
13 December 2018

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1. Independent Inquiry into Child Sexual Abuse: Announcement and Background

The Independent Inquiry into Child Sexual Abuse (IICSA) was originally announced as a non-statutory panel inquiry by Theresa May, the then Home Secretary, on 7 July 2014.[1] Mrs May argued that this non-statutory form would allow the IICSA to begin its work more quickly and would be less likely to prejudice any ongoing investigations:

> The inquiry will, like the inquiries into Hillsborough and the murder of Daniel Morgan, be a non-statutory panel inquiry. That means that it can begin its work sooner and, because the basis of its early work will be a review of documentary evidence rather than interviews with witnesses who might themselves still be subject to criminal investigations, it will be less likely to prejudice those investigations.[2]

Mrs May also stated the Government would be prepared to establish the inquiry under the Inquiries Act 2005, if the inquiry panel's chair believed it necessary.[3] On 4 February 2015, the Home Secretary announced this change, saying the inquiry panel would be dissolved and a new statutory inquiry would be created.[4] Mrs May explained that she wanted the inquiry to have the power to compel witnesses to give evidence, and that there were three ways to do this:

> First, by establishing a royal commission; secondly, by converting the current inquiry into a statutory inquiry under the Inquiries Act 2005, subject to consultation with the chairman once appointed; or, thirdly, by setting up a new statutory inquiry under the 2005 Act.[5]

Mrs May concluded that:

> [A] royal commission would not have the same robustness in law as a statutory inquiry. In particular, it would not have the same clarity over its powers to compel witnesses to give evidence. I have decided not to convert the current inquiry, because doing so would not address the concerns of survivors about the degree of transparency in the original appointments process. I have therefore decided upon the third option of establishing a new statutory inquiry with a panel.[6]

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[1] HC *Hansard*, 7 July 2014, cols 23–45.
[2] ibid, col 25.
[3] ibid.
[4] HC *Hansard*, 4 February 2015, cols 277.
[5] ibid, col 276.
[6] ibid, cols 276–7.

The current chair of the IICSA is Professor Alexis Jay OBE, a visiting professor at Strathclyde University, where she chairs the Centre for Excellence for Looked After Children in Scotland.[7] Professor Jay was appointed in August 2016[8], following the resignation of the IICSA's previous chair Dame Lowell Goddard.[9] Prior to her appointment as chair, Professor Jay had been a member of the inquiry panel.

Terms of Reference and Purpose

The terms of reference for the IICSA state that its purpose is:

> 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 consider the extent to which those failings have since been addressed; 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.[10]

The IICSA's principles, as defined within its terms of reference, state that the inquiry's function is not to determine civil or criminal liability of named individuals or organisations, but it would refer any allegations of child abuse it received to the police. Its terms of reference state:

- The inquiry will have full access to all the material it seeks.
- Any allegation of child abuse received by the inquiry will be referred to the police;
- All personal and sensitive information will be appropriately protected; and will be made available only to those who need to see it; and
- It is not part of the inquiry's function to determine civil or criminal liability of named individuals or organisations. This should not, however, inhibit the Inquiry from reaching findings of fact relevant to its terms of reference.

Section 2(1) of the Inquiries Act 2005 provides that "an inquiry panel is not to rule on, and has no power to determine, any person's civil or criminal liability". Section 2(2) provides that "an inquiry panel is not to be inhibited in the discharge of its functions by any likelihood of liability being inferred from

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[7] Independent Inquiry into Child Sexual Abuse, 'Professor Alexis Jay OBE', accessed 7 December 2018.
[8] ibid.
[9] Independent Inquiry into Child Sexual Abuse, 'Statement from Hon. Dame Lowell Goddard', 5 August 2016.
[10] Independent Inquiry into Child Sexual Abuse, 'Terms of Reference', accessed 7 December 2018.

facts that it determines or recommendations that it makes". The provisions of the Inquiries Act 2005 and the Inquiry Rules 2006 are discussed in section 2.1 of this briefing.

The IICSA's terms of reference outline the methods by which it would go about its work. This included that the inquiry would:

- Consider all the information which is available from the various published and unpublished reviews, court cases, and investigations which have so far concluded;
- Consider the experience of survivors of child sexual abuse; providing opportunities for them to bear witness to the inquiry, having regard to the need to provide appropriate support in doing so;
- Consider whether state and non-state institutions failed to identify such abuse and/or whether there was otherwise an inappropriate institutional response to allegations of child sexual abuse and/or whether there were ineffective child protection procedures in place;
- Disclose, where appropriate and in line with security and data protection protocols, any documents which were considered as part of the inquiry;
- Conduct the work of the inquiry in [as] transparent a manner as possible, consistent with the effective investigation of the matters falling within the terms of reference, and having regard to all the relevant duties of confidentiality.[11]

The terms of reference give examples of state and non-state institutions, including:

- Government departments, the Cabinet Office, Parliament and ministers;
- Police, prosecuting authorities, schools including private and state-funded boarding and day schools, specialist education (such as music tuition), local authorities (including care homes and children's services), health services, and prisons/secure estates;
- Churches and other religious denominations and organisations;
- Political parties; and
- The armed services.[12]

The IICSA extends to England and Wales, but should it identify material related to the devolved administrations it would pass this to the relevant

[11] Independent Inquiry into Child Sexual Abuse, 'Terms of Reference', accessed 7 December 2018.
[12] ibid.

authorities. The full terms of reference of the IICSA are reproduced in appendix I of this briefing.

Structure

The IICSA consists of its chair, Professor Alexis Jay OBE, and a panel of three members, Professor Sir Malcom Evans KCMG OBE, Ivor Frank and Drusilla Sharpling CBE.[13] It also has a legal team with Brian Altman QC as its counsel and Martin Smith as its solicitor. The IICSA has established a victims' and survivors' consultative panel, consisting of eight members, which assists and advises the inquiry. A victims' and survivors' forum allows for any victim or survivor to register to join the forum and receive updates on the work of the inquiry. The IICSA will arrange for the forum to hold open public meetings four times a year.[14]

The IICSA is divided into three core projects, the truth project, the research project and the public hearings project:[15]

- The **truth project** is a means by which individuals can communicate their experiences to the inquiry; for example in a private session with a facilitator in person, by phone, or in writing.[16] The IICSA explains that accounts are not "tested, challenged, or contradicted" and that the information supplied is anonymised and considered by the chair and panel members when reaching their conclusions and making recommendations.[17]
- The **research project** works across the inquiry's 13 investigation strands. The project aims to collate "what is already known about child sexual abuse and finds out the gaps in our knowledge".[18] Through the project the IICSA carries out new research, including analysing information received through the truth project. Additionally, the research project "quality assures internal inquiry data so that its use can be defended".[19]
- The IICSA's **public hearings project** "resembles a conventional public inquiry, where witnesses give evidence on oath and are subject to cross examination".[20] The IICSA has said

[13] Independent Inquiry into Child Sexual Abuse, 'Who We Are', accessed 7 December 2018.
[14] ibid.
[15] Independent Inquiry into Child Sexual Abuse, 'How We Work', accessed 7 December 2018.
[16] Independent Inquiry into Child Sexual Abuse Truth Project, 'What's Involved', accessed 7 December 2018.
[17] Independent Inquiry into Child Sexual Abuse, 'How We Work', accessed 7 December 2018.
[18] ibid.
[19] ibid.
[20] ibid.

the hearings would last for approximately six weeks and would relate to "case studies [selected by the inquiry] from a range of institutions that appear to illustrate a pattern of institutional failings". The IICSA has explained that:

> A hearing may relate to a particular individual who appears to have been enabled to sexually abuse children in institutional settings. Or it may relate to an institution that appears to have demonstrated repeated failings over a number of years. Evidence is likely to be taken from both representatives of the institutions under investigation, and from victims and survivors of sexual abuse.[21]

Whilst the inquiry has stated that it does not have the power to convict or to award compensation, "it will use its fact-finding powers fully to make findings against named individuals or institutions where the evidence justifies it".[22] The IICSA selected its 13 investigations on the basis of the panel's selection criteria.[23] It has said that the investigations would fall into two categories:

(a) Institution specific, involving inquiries into particular institutions or type of institution;
(b) Thematic, concerning a series of broad areas where multiple institutions may play a role in protecting children from abuse.[24]

In selecting situations suitable for investigation, the panel will apply the following criteria:

(a) The situation appears to the panel to involve credible allegations of child sexual abuse in an institutional setting, or by a person who has exploited an official position in order to perpetrate child sexual abuse;
(b) Institution(s) appears to the panel, on credible evidence to have facilitated or failed to prevent child sexual abuse, whether through an act, policy or omission; or
(c) Institution(s) or a person acting in an official capacity, appears to have failed to respond appropriately to allegations of child sexual abuse.[25]

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[21] Independent Inquiry into Child Sexual Abuse, 'How We Work', accessed 7 December 2018.
[22] ibid.
[23] The 13 investigations are listed in appendix II of this briefing, as at 10 December 2018.
[24] Independent Inquiry into Child Sexual Abuse, 'Criteria for Selection of Investigations', accessed 7 December 2018.
[25] ibid.

The panel will select situations which:

(a) Appear to it to be typical of a pattern of child sexual abuse occurring in the sector or context involved;
(b) Appear to be practically capable of detailed examination through oral and written evidence;
(c) Appear to involve no significant risk to the fairness and effectiveness of any ongoing police investigation or prosecution;
(d) Appear likely to result in currently relevant conclusions and/or recommendations. The panel will also have regard to the need to ensure that the selection of situations for examination takes account of the needs of particularly vulnerable children and those from socially excluded or minority groups.[26]

2. Statutory Inquiries

2.1 Inquiries Act 2005 and Inquiry Rules 2006

The IICSA was established as a statutory inquiry under the Inquiries Act 2005 (the 2005 Act). The 2005 Act makes statutory provisions under which an inquiry may be established and managed.[27] Amongst these provisions, the 2005 Act sets out requirements for the constitution of the inquiry, how proceedings should be administered and the submission and publication of the inquiry's reports. This section of this briefing gives an overview of those provisions which relate primarily to the provision or acquisition of evidence by an inquiry under the 2005 Act.[28]

Inquiries may be established under the 2005 Act in relation to a case where it appears to a minister that:

(a) particular events have caused, or are capable of causing, public concern, or
(b) there is public concern that particular events may have occurred.[29]

Section 2(1) of the Inquiries Act 2005 provides that "an inquiry panel is not to rule on, and has no power to determine, any person's civil or criminal

[26] Independent Inquiry into Child Sexual Abuse, 'Criteria for Selection of Investigations', accessed 7 December 2018.
[27] Inquiries may be established through other means, for example Royal Commissions. Further details can be found in: House of Commons Library, *Public Inquiries: Non-Statutory Commissions of Inquiry*, 1 June 2016.
[28] The House of Commons Library has published a briefing covering the Inquiries Act 2005 more generally, issues arising from the holding of statutory public inquiries, and notes on statutory inquiries that are currently open; see: House of Commons Library, *The Inquiries Act 2005*, 30 January 2018.
[29] Inquiries Act 2005, s 1(1).

liability". Section 2(2) provides the qualification that "an inquiry panel is not to be inhibited in the discharge of its functions by any likelihood of liability being inferred from facts that it determines or recommendations that it makes".

Regarding powers to take evidence and procedure, section 17 of the 2005 Act states that:

> (1) Subject to any provision of this act or of rules under section 41, the procedure and conduct of an inquiry are to be such as the chairman of the inquiry may direct.
> (2) In particular, the chairman may take evidence on oath, and for that purpose may administer oaths.
> (3) In making any decision as to the procedure or conduct of an inquiry, the chairman must act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others).

Section 19 provides for restrictions to be imposed on attendance at an inquiry or disclosures or publication of any evidence or documents given, produced or provided to the inquiry. Such restrictions may be given 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.[30]

These can only specify restrictions that are required by a statutory provision, enforceable EU obligation or rule of law, or as the minister or chair:

> [C]onsiders 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 subsection (4).[31]

Subsection (4) includes considerations such as the extent to which any restriction on attendance, disclosure or publication might inhibit the allaying of public concern.

Under section 21(1) of the 2005 Act, the chair may by notice require a person to attend the inquiry to give evidence or produce relevant documents within their possession:

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[30] Inquiries Act 2005, s 19(2).

[31] ibid, s 19(3)(b).

(1) The chairman of an inquiry may by notice require a person to attend at a time and place stated in the notice:
  (a) to give evidence;
  (b) to produce any documents in his custody or under his control that relate to a matter in question at the inquiry;
  (c) to produce any other thing in his custody or under his control for inspection, examination or testing by or on behalf of the inquiry panel.

Section 21(2) provides similar powers without requiring attendance at the inquiry, for example through the provision of a written statement. Subsection (3) provides that notices under subsections (1) or (2) must explain the consequences of non-compliance and tell the recipient what they should do if they wished to claim an inability to comply, or argue it was not reasonable "in all the circumstances" to require them to do so, the latter being provided for under subsection (4). Subsection (5) provides that the chair must consider the public interest in the information that the notice sought to obtain for the inquiry, also having regard to its likely importance.[32]

Section 22 provides that a person can only be required to provide information under section 21 if they could be required to so if the proceedings of the inquiry were civil proceedings:

(1) A person may not under section 21 be required to give, produce or provide any evidence or document if:
  (a) he could not be required to do so if the proceedings of the inquiry were civil proceedings in a court in the relevant part of the United Kingdom, or
  (b) the requirement would be incompatible with an EU obligation
(2) The rules of law under which evidence or documents are permitted or required to be withheld on grounds of public interest immunity apply in relation to an inquiry as they apply in relation to civil proceedings in a court in the relevant part of the United Kingdom.

Inquiry Rules 2006

The Inquiry Rules 2006 (the Rules) supplement the 2005 Act's provisions. The Rules are made under section 41 of the 2005 Act and "act as a statutory guide for the chairman and provide assistance in managing and conducting the proceedings" of an inquiry and consist of 34 rules.[33] The Rules "set out procedures for applying for publicly funded legal representation, requiring

[32] Powers under section 21.

[33] Explanatory Memorandum to the Inquiry Rules, para 2.1.

rates and the extent of work to be agreed in advance".[34] The Rules also set out requirements for recognising 'core participants', legal representatives and the procedures governing the provision of both written and oral evidence. The explanatory memorandum to the rules states that they "assist the chairman in controlling oral proceedings and prevent extensive and costly cross-examination procedures".[35] For example rule 10 states that:

> (1) Subject to paragraphs (2) to (5), where a witness is giving oral evidence at an inquiry hearing, only counsel to the inquiry (or, if counsel has not been appointed, the solicitor to the inquiry) and the inquiry panel may ask questions of that witness.

Paragraphs (2) to (5) of rule 10 provide particular discretion to the chair on this:

> (2) Where a witness, whether a core participant or otherwise, has been questioned orally in the course of an inquiry hearing pursuant to paragraph (1), the chairman may direct that the recognised legal representative of that witness may ask the witness questions.
> (3) Where—
> (a) a witness other than a core participant has been questioned orally in the course of an inquiry hearing by counsel to the inquiry, or by the inquiry panel; and
> (b) that witness's evidence directly relates to the evidence of another witness,
> the recognised legal representative of the witness to whom the evidence relates may apply to the chairman for permission to question the witness who has given oral evidence.
> (4) The recognised legal representative of a core participant may apply to the chairman for permission to ask questions of a witness giving oral evidence.
> (5) When making an application under paragraphs (3) or (4), the recognised legal representative must state—
> (a) the issues in respect of which a witness is to be questioned; and
> (b) whether the questioning will raise new issues or, if not, why the questioning should be permitted.

Rules 13 to 16 concern the issuing of 'warning letters'. Such letters may be sent by the chair to any person:

> (a) he considers may be, or who has been, subject to criticism in the inquiry proceedings; or

[34] Explanatory Memorandum to the Inquiry Rules, para 2.1.
[35] ibid.

(b) about whom criticism may be inferred from evidence that has been given during the inquiry proceedings; or

(c) who may be subject to criticism in the report, or any interim report.[36]

Core participants are persons given special status under the Rules. The chair may so designate someone at any time during the course of the inquiry, providing they consent. Rule 5 sets out provisions for the designation of individuals as core participants; for example, the chair must consider whether "the person played, or may have played, a direct and significant role in relation to the matters to which the inquiry relates". Core participants may have access to particular treatment by the inquiry, on consideration of the chair. The House of Lords Inquiries Act 2005 Committee explained that:

> The main advantages of core participant status often derive from decisions of the chairman on practice and procedure. Thus Lord Justice Leveson allowed core participants to see in advance, under strict rules of confidentiality, copies of statements that witnesses had provided and which would form the basis of their evidence. For those who were not core participants, the witness statements only became available when published on the inquiry website after the conclusion of the evidence of the witness.[37]

2.2 House of Lords Inquiries Act 2005 Committee: Post-Legislative Scrutiny

On 11 March 2014, the House of Lords Inquiries Act 2005 Committee published its post-legislative scrutiny report.[38] In its report, the committee argued that inquiries into matters of major public concern were now "an integral feature of the governance of this country".[39]

Overall the committee did not hear "any suggestion that the [2005] Act as a whole requires radical surgery".[40] However, the committee made a total of 33 recommendations which covered the breadth of the 2005 Act. This section of the briefing focuses on those conclusions and recommendations related to the handling of evidence by inquiries under the act.

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[36] Inquiry Rules 2006, rule 13.

[37] House of Lords Inquiries Act 2005 Committee, *The Inquiries Act 2005: Post-Legislative Scrutiny*, 11 March 2014, HL Paper 143 of session 2013–14, p 70.

[38] ibid.

[39] ibid, p 6.

[40] ibid, p 86.

Inquisitorial Model

The committee examined the issue of whether inquiries should be inquisitorial or adversarial. The committee argued that nothing "should prevent an inquiry from seeking evidence which will allow it to perform its central task of eliciting the truth".[41] The committee drew a distinction between what it described as the adversarial system used in court procedures and the inquisitorial nature of an inquiry, arguing that the truth was a by-product of the court system:

> Rule 1.4 of the Civil Procedure Rules 1998 imposes on the civil courts of England and Wales a duty of active case management. Nevertheless litigation, whether civil or criminal, is basically adversarial, in the sense that evidence is presented by the parties in furtherance of their case rather than requested by the court. Witnesses are examined and cross-examined to the same end. Court procedure is designed with this in mind. The truth, if it emerges, does so as a by-product of the adversarial litigation.[42]

The committee referred to the provisions in section 2 of the Inquiries Act 2005—that an inquiry's role was not to rule on or determine any person's civil or criminal liability and that it should not be inhibited in the discharge of its functions by any likelihood of liability being inferred from the facts that it determines or recommendations that it makes.[43] In its report, the committee quoted the views of Jason Beer QC, a witness before the committee,[44] who argued that an inquisitorial model:

> Allows the inquiry to remain focused on its terms of reference […] It allows the inquiry to focus on the issues that are of concern to it, to the chairman or the panel members, because an inquisitorial model has the inquisitor at its centre. Lastly, it allows often contentious and difficult issues to be examined and determined in a relatively dispassionate environment, without the extra heat that is brought to an affair when people are adversaries to each other.[45]

The committee concluded that it agreed that the inquisitorial procedure was preferable in an inquiry and that the 2005 Act provided for this:

> We agree with our witnesses that an inquisitorial procedure for inquiries is greatly to be preferred to an adversarial procedure, and we

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[41] House of Lords Inquiries Act 2005 Committee, *The Inquiries Act 2005: Post-Legislative Scrutiny*, 11 March 2014, HL Paper 143 of session 2013–14, p 66.
[42] ibid.
[43] ibid.
[44] Jason Beer is also the editor of *Public Inquiries*, 2011.
[45] House of Lords Inquiries Act 2005 Committee, *The Inquiries Act 2005: Post-Legislative Scrutiny*, 11 March 2014, HL Paper 143 of session 2013–14, p 66.

> conclude that the Act provides the right procedural framework for both the chairman and counsel to the inquiry to conduct an inquiry efficiently, effectively and above all fairly.[46]

Salmon Principles: Cross-Examination

The committee also considered the six 'Salmon principles'; these were principles established by the 1966 Royal Commission on Tribunals of Inquiry, chaired by Lord Justice Salmon.[47] The commission had "its origins" in the inquiry into the Profumo affair.[48] The principles related to the treatment of those people taking part in inquiries, and were:

> (1) Before any person becomes involved in an inquiry, the tribunal must be satisfied that there are circumstances which affect him and which the tribunal proposes to investigate.
> (2) Before any person who is involved in an inquiry is called as a witness, he should be informed of any allegations which are made against him and the substance of the evidence in support of them.
> (3) (a) He should be given an adequate opportunity of preparing his case and of being assisted by his legal advisers. (b) His legal expenses should normally be met out of public funds.
> (4) He should have the opportunity of being examined by his own solicitor or counsel and of stating his case in public at the inquiry.
> (5) Any material witness he wishes called at the inquiry should, if reasonably practicable, be heard.
> (6) He should have the opportunity of testing by cross-examination conducted by his own solicitor or counsel any evidence which may affect him.[49]

The committee explained that the Salmon principles were considered by Lord Justice Scott[50] in the inquiry into exports of defence equipment to Iraq, which reported in 1996.[51] The committee quoted Lord Scott as arguing that the principles "carry strong overtones of ordinary adversarial litigation" and

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[46] House of Lords Inquiries Act 2005 Committee, *The Inquiries Act 2005: Post-Legislative Scrutiny*, 11 March 2014, HL Paper 143 of session 2013–14, p 93.
[47] Subsequently Lord Salmon.
[48] House of Lords Inquiries Act 2005 Committee, *The Inquiries Act 2005: Post-Legislative Scrutiny*, 11 March 2014, HL Paper 14 of session 2013–14, p 14.
[49] ibid, p 15.
[50] Subsequently Lord Scott of Foscote.
[51] National Archives, 'Catalogue Description: Records of the Inquiry into Exports of Defence Equipment and Dual-Use Goods to Iraq and Related Prosecutions (Scott Inquiry)', accessed 10 December 2018.

as expressing concern that these could impact an inquiry's inquisitorial nature:

> In summary, in my opinion, care should be taken lest by an indiscriminate adoption and application of the six 'cardinal principles' the inquiry's inquisitorial procedures become hampered by an unnecessary involvement of adversarial techniques and of lawyers acting for witnesses and others whose interests may lie in delay and obfuscation.[52]

The committee discussed the Salmon principles in relation to legal representation for core participants and witnesses under the Inquiries Act 2005. It argued inquiries since had become increasingly inquisitorial, and less reliant on the Salmon principles.[53] The committee stated that it had considered whether the provisions of the 2005 Act and the Rules struck the right balance between the interests of the inquiry as a whole, and the fair treatment of core participants and witnesses. The committee said that it was "conscious of the fact that, although the inquiry will not be determining civil or criminal liability, liability may be inferred from what is said, and reputations may be damaged or even destroyed".[54] However, the committee said it believed the first two Salmon principles had been dispensed with by rule 10 of the Rules:

> The default position is now that only counsel to the inquiry and the inquiry panel can ask questions of a witness to an inquiry. There are qualifications to this. The chairman can direct that a witness who has been questioned by counsel to the inquiry can be questioned by his own legal representative. The chairman can allow a witness to be questioned by the legal representative of a core participant; and, within strictly defined criteria, he can allow the legal representative of a witness who is not a core participant to question another witness. But in both cases an application has to be made to the chairman, and it is the chairman's decision which is final.[55]

Consequently, the committee argued that the right of a witness to be examined by their own counsel, and to have their counsel cross-examine other witnesses, had "already gone".[56] The committee believed that this created a heavy burden on the chair, and if appropriate the chair's counsel, to "make sure that the right questions get asked, and that no important issues are overlooked because questions go unasked".[57]

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[52] House of Lords Inquiries Act 2005 Committee, *The Inquiries Act 2005: Post-Legislative Scrutiny*, 11 March 2014, HL Paper 143 of session 2013–14, p 15.
[53] ibid.
[54] ibid, pp 69–70.
[55] ibid, pp 70–1.
[56] ibid, p 71.
[57] ibid.

The committee's report said that one of its members felt that witnesses should have the right to be represented by their own counsel. However, the majority of the committee—whilst sympathising with this view—believed that with the right chair and counsel, core participants and witnesses would be "sufficiently protected by the flexibility of the procedure under the Inquiry Rules [2006]".[58] It concluded that:

> The fourth and sixth Salmon principles, which allow a person the opportunity of being examined by his own solicitor or counsel, and of testing by cross-examination any evidence which may affect him, are over-prescriptive and have the effect of imposing an adversarial procedure on proceedings which should be inquisitorial. They should no longer be followed. Reliance should be placed on the chairman who has a duty to ensure that the inquiry is conducted fairly.[59]

Subsequent Use of Evidence

Whilst the role of an inquiry is not to determine civil or criminal liability, the committee examined how much weight evidence given to an inquiry should have in any subsequent proceedings. The committee believed it inevitable that evidence given to an inquiry could be relevant to such proceedings. The committee referred to evidence it received on this point:

> Lord Cullen of Whitekirk said: "It is inevitable that what turns up in the inquiry will be material that could lead to the founding of a claim," and Lord Gill agreed: "Certainly some of the findings that I made in my inquiries were plainly significant in relation to the civil claims. I understand that in some of the civil claims that are still going through the court, claimants are referring to some of my findings. That is inevitable. I do not see that that can be avoided." Nor is it necessarily a bad thing, for as Dr Mackie said, "it does seem a terrible waste to run through a whole inquiry process and to then contemplate starting from the outset again with litigation or civil liability proceedings." Sir Stephen Sedley thought that "Lord Justice Taylor's findings at the first Hillsborough Inquiry could very well have stood as prima facie evidence of liability in the litigation that followed."[60]

However, the committee also referred to evidence given to it by law firm Herbert Smith Freehills[61] which argued that the testing of evidence before an inquiry may be more limited than in civil proceedings and that in consequence the inquiry was not in the same position as a court as regards

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[58] House of Lords Inquiries Act 2005 Committee, *The Inquiries Act 2005: Post-Legislative Scrutiny*, 11 March 2014, HL Paper 143 of session 2013–14, p 71.
[59] ibid, p 72.
[60] ibid, p 78.
[61] London solicitors who have represented a number of core participants in inquiries, including Trinity Mirror plc in the Leveson inquiry.

fact finding. Herbert Smith Freehills argued that "this can be unfair and unnecessarily damaging to participants, particularly where allegations of wrongdoing/misconduct are asserted".[62]

The committee said that it believed that it was right that evidence given to an inquiry, and findings based upon it, could be used as evidence in subsequent proceedings.[63]

Appointment of Legal Counsel

The committee also considered the appointment of legal counsel by the inquiry chair, agreeing "with the majority of [its] witnesses that for an inquiry of any length the appointment of counsel to the inquiry is essential".[64] It also recommended that:

> A provision should be added to the [2005] Act stating that the chairman, and only the chairman, may appoint one or more barristers or advocates in private practice to act as counsel to the inquiry.[65]

Assistance to Witnesses and Core Participants

The committee concluded that the inquiry chair and counsel to the inquiry should meet those affected by the inquiry as a matter of course and there should be a dedicated team or named members of staff responsible for liaising with witnesses. It also argued that an inquiry's secretariat should ensure that witness and core participants "are handled sensitively, so that victims and families do not come into contact with those they believe to be responsible for any harm". [66]

Warning Letters

The committee expressed concern about rules 13–15 of the Rules 2006 which relate to warning letters sent to those who will or may be criticised in the inquiry's interim or final report. The committee heard evidence from a number of former chairs of inquiries that the process of issuing warning letters, and of those criticised responding to them (a process sometimes referred to as Maxwellisation) could add to the length and cost of an inquiry.[67] The committee felt that fixed rules regarding the use of these warning letters were unhelpful and "the provisions of the Rules on warning

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[62] House of Lords Inquiries Act 2005 Committee, *The Inquiries Act 2005: Post-Legislative Scrutiny*, 11 March 2014, HL Paper 143 of session 2013–14, p 79.
[63] ibid.
[64] ibid, p 68.
[65] ibid, p 69.
[66] ibid, p 74.
[67] ibid, pp 74–5.

letters are highly detailed and go far beyond what is necessary".[68] The committee recommended that rules 13–15 of the Rules should be revoked; the report provided suggested wording for a single new rule.

Government Response

The Government responded to the committee's report in June 2014.[69] It rejected the committee's recommendation 24, that the fourth and sixth Salmon principles be dropped because it argued, like the committee, that rule 10 of the Rules already effectively excluded them:

> This Rule sets out the limited scope for allowing a person involved with an inquiry the opportunity to be asked questions by his or her own legal representative, and to test by cross-examination evidence which may affect that person. Rule 10 also provides the chair with wide discretion to ensure that an inquiry is conducted fairly.[70]

The Government also disagreed with recommendation 23, that the 2005 Act should be amended such that the chair, and only the chair may appoint counsel to the inquiry. The Government stated that:

> The Government rejects this recommendation because ministers will want to retain control of such issues which affect departmental budgets and the terms of reference of an inquiry.[71]

The House of Lords debated the committee's report on 19 March 2015.[72] In July 2015, the Government wrote to the chair of the House of Lords Liaison Committee, as part of the committee's review of the work of the Inquiries Act 2005 Committee.[73] The Government stated that in light of arguments advanced in the debate on 19 March 2015 it accepted that the process of Maxwellisation and its related rules "should be reconsidered to see whether greater clarity can be given to both chairmen and those that may be criticised in inquiry reports". The letter further stated that:

> Rules 13 to 15 will therefore be revived as we take forward work to amend the Inquiry Rules 2006 which Lord Shutt's committee recommended. The changes to the Rules are in hand and other

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[68] House of Lords Inquiries Act 2005 Committee, *The Inquiries Act 2005: Post-Legislative Scrutiny*, 11 March 2014, HL Paper 143 of session 2013–14, p 74.
[69] Ministry of Justice, *Government Response to the Report of the House of Lords Select Committee on the Inquiries Act 2005*, June 2014, Cm 8903.
[70] ibid, p 14.
[71] ibid.
[72] HL *Hansard*, 19 March 2015, cols 1134–79.
[73] Ministry of Justice, 'Letter to the Chairman of Committees', 21 July 2015.

> recommendations that require primary legislation will be made when a suitable legislative vehicle becomes available.[74]

The committee had also asked the Government to respond to its conclusion that inquiry findings, based on evidence, should be available for use in subsequent proceedings. The Government stated that:

> This was not one of the committee's recommendations and consequently not a point on which we consulted. We would be happy to look into this proposal but [we hope the committee] understands that we would need to work through the detail before coming to a position.[75]

Lord Shutt of Greetland asked an oral question on 28 June 2018 about what plans the Government had to look again at the committee's recommendations. Baroness Vere of Norbiton, a Government Whip, responded saying that:

> The Government agree with the Select Committee's conclusions in its report published in March 2014 that the Inquiries Act 2005 and Inquiry Rules 2006 are fundamentally sound, providing a robust and effective framework for the conduct of public inquiries, but that some worthwhile improvements can be made.[76]

At the time of writing such changes had not been made to the legislation.

3. Independent Inquiry into Child Sexual Abuse: Remit and Arrangements for Handling of Evidence

In the Independent Inquiry into Child Sexual Abuse's opening statement as a statutory inquiry under the 2005 Act, the then chair, Dame Lowell Goddard, expressed a commitment to objectivity in the approach of the inquiry to its work:

> An inquiry on this scale requires a focused approach, with defined objectives from the outset, and a working structure that is clear and practical. It also requires complete objectivity. That implies a commitment to hear all sides with an open mind, without any pre-judgment about the issues, and under conditions which provide a fair opportunity for all of those affected by the Inquiry to share their experiences and put their points across.[77]

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[74] Ministry of Justice, 'Letter to the Chairman of Committees', 21 July 2015, p 2.
[75] ibid.
[76] HL *Hansard*, 28 June 2018, col 238.
[77] Independent Inquiry into Child Sexual Abuse, *Opening Statement*, 9 July 2015, para 2.

The opening statement set out the structure and working methods that the panel had then decided to adopt. For example, it set out the inquiry's approach to core participants (paras 46–56) and stated that the chair's provisional view was that:

> Core participant status should be available to individuals, groups of individuals, and entities who meet the criteria laid down in the rules (that is, they have a significant role or interest in the inquiry, or are liable to be criticised). Each application will be given individual consideration but core participant status is likely to be granted to individual victims or survivors (particularly those who intend to testify); individuals and organisations that are potentially open to criticism; and to any other individual, organisation or entity that can demonstrate that it meets the criteria in Rule 5 of the 2006 Rules (whether in relation to the first part of the modular inquiry or the second).[78]

The opening statement described the public hearings project as the element of the inquiry that would most resemble that of a public inquiry.[79] In regard to institutions asked to participate in these investigations, the chair stated that:

> Institutions whose actions are called into question will be required to provide all relevant documentary evidence to the inquiry well in advance, to answer questions and to nominate individual representatives to attend to give evidence in person. Where it proves necessary to do so, [the chair] will not hesitate to issue orders under section 21 of the 2005 Act compelling the production of evidence and the attendance of witnesses.[80]

The then chair also expressed the intention "at the appropriate time" to put out a general call for evidence. [81] This would be for evidence from individuals or organisations with relevant evidence to give, or with submissions to make, in relation to the wider context and the lessons to be learned. It would not just be from those individuals and institutions immediately involved in the situation under investigation.

The opening statement said that the chair did not intend to use its powers under the 2005 Act to compel victims and survivors to give evidence of their experiences:

> While it would obviously be of assistance to the inquiry to hear as much direct oral evidence from victims and survivors as possible, they

[78] Independent Inquiry into Child Sexual Abuse, *Opening Statement*, 9 July 2015, para 52.
[79] ibid, para 38.
[80] ibid, para 39.
[81] ibid, para 40.

> must never be made to carry the weight of proving anything. The focus of attention must remain firmly on scrutinising the institutions concerned and their handling of cases of child sexual abuse.[82]

The inquiry also stated that core participants would be given the opportunity to make closing statements and file closing written submissions. It would also issue warning letters and publish reports as soon as possible:

> The inquiry panel will consider the evidence and submissions and reach findings of fact on the appropriate (flexible) standard of proof. Where appropriate, the inquiry panel will issue warning letters to those liable to be criticised. The inquiry will publish reports on each modular inquiry as soon as possible after it is completed, reflecting its conclusions about the individual case, the wider context and the lessons learned. All reports will be approved by the full inquiry panel before publication and will reflect the assessment of the Inquiry as a whole.[83]

On 3 April 2016, the then chair, Dame Lowell Goddard, issued a statement about how the inquiry was conducting its work. The statement said that this was in response to what she described as "recent media reporting inaccuracies".[84] The chair expressed a concern that this had suggested that the inquiry's worked related primarily to individuals. However, "in fact, the significant majority of the inquiry's work does not relate to individuals of public prominence".[85] The chair's statement referred to four of its investigations that had held preliminary hearings at the time and stated that any investigation of the conduct of individuals was to assist in its examination of institutional failures:

> Each of these investigations, as well as the other nine, is focused on the extent to which a range of institutions have failed, or have continued to fail, to protect children from sexual abuse or failed to respond adequately to reports of abuse. Inevitably, that focus requires an examination of the conduct of individuals to determine the extent of any institutional failures.[86]

The chair said that she would ensure that the IICSA examined all issues fairly and impartially and that the inquiry would "consider all relevant evidence, take testimony from witnesses and publish a report for each investigation which sets out in clear terms what the evidence shows".[87] She referred also

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[82] Independent Inquiry into Child Sexual Abuse, *Opening Statement*, 9 July 2015, para 42.
[83] ibid, para 45.
[84] Independent Inquiry into Child Sexual Abuse, 'Statement from the Chair of the Inquiry April 2016', 3 April 2016.
[85] ibid.
[86] ibid.
[87] ibid.

to "those who have claimed this week that the inquiry will only consider the perspectives of victims and survivors, and exclude those of others affected by allegations of child sexual abuse", stating that this view was wrong.[88] She stated that the inquiry would recognise the damage that could be caused by false accusations of sexual abuse:

> Counsel to the inquiry, Ben Emmerson QC,[89] noted at the inquiry's first preliminary hearing that the inquiry will need to remain sensitive to the particular needs of vulnerable complainants without unduly privileging their testimony. At the same time, he said the inquiry will need to recognise the damage that can be caused by false accusations of sexual abuse, without hesitating to make findings against individuals and institutions if justified by the evidence. I agree with that analysis. I am committed to ensuring that we hear all relevant testimony, including from victims and survivors as well as from those affected by false allegations of abuse. As I announced in November last year, the Inquiry intends to explore the balance which must be struck between encouraging the reporting of child sexual abuse and protecting the rights of the accused.[90]

Regarding the questioning of witnesses, the then chair stated that this would normally be done by inquiry's counsel, but that she would consider applications to ask direct questions:

> I will ensure that all relevant evidence is considered. As is standard practice in public inquiries, questions to witnesses will normally be asked by counsel to the inquiry whose role will include, where necessary, the exploration of witness credibility. Affected parties will not ordinarily be permitted to ask questions of witnesses directly, but as I said in my opening statement in July 2015, affected parties are entitled to make an application to ask direct questions and I will grant those applications if fairness requires it.[91]

Dame Lowell Goddard resigned as chair on 5 August 2016.[92] Her successor, Professor Alexis Jay, published an internal review of the IICSA in December 2016.[93] Professor Jay expressed concern that whilst the inquiry had made

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[88] Independent Inquiry into Child Sexual Abuse, 'Statement from the Chair of the Inquiry April 2016', 3 April 2016.

[89] Ben Emmerson resigned as counsel on 29 September 2016; Ben Emmerson, 'Letter to the Chair of the Independent Inquiry into Child Sexual Abuse, Alexis Jay', 29 September 2016. Brian Altman QC is now the counsel to the Inquiry; Independent Inquiry into Child Sexual Abuse, 'Counsel to the Inquiry Brian Altman QC', accessed 11 December 2018.

[90] Independent Inquiry into Child Sexual Abuse, 'Statement from the Chair of the Inquiry April 2016', 3 April 2016.

[91] ibid.

[92] ibid.

[93] Independent Inquiry into Child Sexual Abuse, *Report of the Internal Review*, December 2016.

progress it had also struggled, and had not consistently undertaken its work in a "timely, inclusive and transparent way".[94] The purpose of the internal review was to set a clear direction for the inquiry. It did not alter the inquiry's terms of reference.[95] The review came to eight conclusions:

1. That the strategic approach of the inquiry, delivering through three major strands of work—public hearings, research and analysis, and the truth project—is right but that their implementation of this approach has been too slow.
2. That the inquiry has done valuable work to date in a number of areas but must demonstrate this more clearly.
3. That the inquiry needs rebalancing to ensure sufficient attention is paid to making recommendations for the future.
4. That the inquiry's commitment to exposing past failures of institutions to protect children from sexual abuse should remain unchanged.
5. That the inquiry needs to publish a regular timetable of its activity starting with 2017/18.
6. That the governance of the inquiry needs revising to provide stronger accountability and oversight of the programme of work.
7. That those with an interest in the inquiry's work should have more opportunity to engage with it.
8. That the inquiry's relationship with victims, survivors and others should be kept under constant review.[96]

The internal review also provided updates on several of its investigations.[97] The most up to date status of the IICSA's investigations can be found on its website.[98]

The internal review also stated that the IICSA would publish an interim report.[99] This was published in April 2018.[100] The report reiterated Professor Jay's expectation that the inquiry will have made "substantial progress" by 2020.[101] On the issue of providing evidence to the inquiry, the report stated that the inquiry understood that this process could be challenging for

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[94] Independent Inquiry into Child Sexual Abuse, *Report of the Internal Review*, December 2016, p 4.
[95] ibid, p 6.
[96] ibid, p 8.
[97] ibid, Annex A.
[98] Independent Inquiry into Child Sexual Abuse, 'Current Investigations', accessed 11 December 2018.
[99] Independent Inquiry into Child Sexual Abuse, *Report of the Internal Review*, December 2016, p 4.
[100] Independent Inquiry into Child Sexual Abuse, *Interim Report of the Independent Inquiry into Child Sexual Abuse*, April 2018, HC 954-1 of session 2017–19.
[101] ibid, p i.

participants and it was therefore providing support to witnesses and core participants:

> Providing evidence at a public hearing can be a daunting and demanding experience, whether or not it is done anonymously. For this reason, the Inquiry ensures that emotional support is available to witnesses and core participants both before and after they give evidence. So far, the inquiry has provided support to 96 witnesses and core participants (excluding support that has been provided during public hearings).[102]

Core participants are those designated by the chair as people they consider to have a particular interest in the issues under investigation. Core participants usually see documents before they are used in a hearing and "can suggest lines of enquiry".[103] They can also apply to the inquiry for funding to cover legal and other costs. The inquiry has published its protocol for considering applications for core participant status and frequently asked questions.[104]

The inquiry stated that each investigation would be undertaken using a range of methods, including the use of statutory powers to obtain relevant evidence "such as gathering witness statements and reviewing official records".[105] Investigations would conclude with a public hearing and a report that would set out the inquiry's findings and any recommendations.

The inquiry's interim report made recommendations based on its findings at the time of its publication.[106] The Government stated in November 2018 that it welcomed the interim report and that it would consider its recommendations and publish a response "shortly".[107]

4. Parliament and the Work of the Independent Inquiry into Child Sexual Abuse

House of Commons Home Affairs Committee

The House of Commons Home Affairs Committee considered the work of the IICSA in a report published on 24 November 2016.[108] The committee

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[102] Independent Inquiry into Child Sexual Abuse, *Interim Report of the Independent Inquiry into Child Sexual Abuse*, April 2018, HC 954-1 of session 2017–19, pp 8–9.
[103] ibid, pp 8.
[104] Independent Inquiry into Child Sexual Abuse, *Protocol for Considering Applications for Core Participant Status*, 'Core Participant Status Frequently Asked Questions', accessed 11 December 2018.
[105] Independent Inquiry into Child Sexual Abuse, *Interim Report of the Independent Inquiry into Child Sexual Abuse*, April 2018, HC 954-1 of session 2017–19, p 8.
[106] ibid, section 7.
[107] HL *Hansard*, 28 November 2018, col 626.
[108] House of Commons Home Affairs Committee, *The Work of the Independent Inquiry into Child Sexual Abuse*, 24 November 2016, HC 636 of session 2016–17.

principally commented on developments in light of the resignation of Dame Lowell Goddard; the IICSA's duty of care to those working on the inquiry; and role of the Home Affairs Committee in scrutinising the work of the IICSA.

On the functioning of the IICSA more generally, the committee described the truth project as "an important way to enable abuse survivors to share their experiences with the inquiry".[109] However, it was critical of what it described as the IICSA's slow progress to date in "engaging directly with survivors".[110] The committee believed that this was a significant weakness in the IICSA's work at the time of the report's publication, which was prior to the publication of the IICSA's internal review.

The committee noted the IICSA's 13 investigations, stating that it believed the inquiry's terms of reference were broad enough to include both historic and thematic investigations:

> The terms of reference for the inquiry are broad enough to include both specific investigations into historic events, which would lend themselves to the judicial approach, and thematic assessments of current institutional policies and practices, which lend themselves to the inspectorate-style approach.[111]

The committee described the work of the inquiry as vital and said that it was important that it "is able to conduct forensic and legal investigations into historic abuse within institutional settings".[112]

The Government provided a response to the committee by letter on 24 January 2017.[113] The Government described the IICSA as an "opportunity to get to the truth, expose what has gone wrong and learn lessons for the future".[114]

House of Lords Oral Question

On 22 November 2018, Lord Campbell-Savours (Labour) asked whether the Government had plans to amend the Inquiries Act 2005 to make specific provisions for the conduct of inquiries into child sexual abuse.[115] Referring to

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[109] House of Commons Home Affairs Committee, *The Work of the Independent Inquiry into Child Sexual Abuse*, 24 November 2016, HC 636 of session 2016–17, p 10.
[110] ibid.
[111] ibid, p 11.
[112] ibid.
[113] Home Office, *Government's Response to the Eleventh Report from the Home Affairs Select Committee, Session 2016–17, HC 636: The Work of the Independent Inquiry into Child Sexual Abuse*, 24 January 2017.
[114] ibid.
[115] HL *Hansard*, 22 November 2018, cols 324–5.

the IICSA's investigative strand—in particular its investigation into institutional responses to allegations of child sexual abuse involving the late Lord Janner of Braunstone QC[116]—Lord Campbell-Savours expressed concern about the evidence that would be considered by the IICSA. Responding, Baroness Vere of Norbiton, a Government Whip, said that the Government did not intend to make any amendments in this regard, arguing that:

> The Inquiries Act 2005 and the Inquiry Rules 2006 that underpin it provide a robust and effective framework for the conduct of public inquiries. We do not see a need to make special provision for conducting inquiries into specific matters such as child sex abuse.[117]

She said that it was not the role of government to interfere in statutory inquiries, as this would undermine their independence. Baroness Vere referred to notices of determination about the investigation, published on the IICSA's website in April and May 2017, stating that "these summarise submissions received by the chair and decisions subsequently taken, and they confirm the inquiry's position on this strand as being kept under review".[118]

5. Further Information: Links to Useful Resources

- Independent Inquiry into Child Sexual Abuse, 'Preliminary Hearings Frequently Asked Questions', accessed 12 December 2018
- Independent Inquiry into Child Sexual Abuse, 'Inquiry Protocol on Redaction of Documents: Version 3', 25 July 2018
- Independent Inquiry into Child Sexual Abuse, *Inquiries Act 2005: Restriction Order Pursuant to Section 19(2)(b)*, 23 March 2018
- Cabinet Office, *Inquiries Guidance: Guidance for Inquiry Chairs and Secretaries, and Sponsor Departments*, 2012[119]
- National Audit Office, *Investigation into Government-Funded Inquiries*, 23 May 2018, HC 836 of session 2017–19
- House of Commons Library, *The Independent Inquiry into Child Sexual Abuse and Background*, 11 August 2016

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[116] Further details of this investigative strand can be found on the Inquiry's website: Independent Inquiry into Child Sexual Abuse, 'Investigation into institutional responses to allegations of Child Sexual Abuse involving the late Lord Janner of Braunstone QC', accessed 11 December 2018.

[117] HL *Hansard*, 22 November 2018, col 324.

[118] ibid.

[119] Published by the Propriety and Ethics Team at the Cabinet Office. The House of Lords Inquiries Act 2005 Committee understood that this version dates from 2012 and "is permanently in draft form so that it can be updated" (House of Lords Inquiries Act 2005 Committee, *The Inquiries Act 2005: Post-Legislative Scrutiny*, 11 March 2014, HL Paper 143 of session 2013–14, p 50).

- House of Commons Library, *The Inquiries Act 2005*, 30 January 2018
- House of Lords Library, *Historical Child Sex Abuse Investigations*, 27 June 2016
- House of Lords Library, *Work of the Ad Hoc Committees in 2013–14*, 20 January 2016
- Institute for Government, *How Public Inquiries Can Lead to Change*, December 2017
- Ministry of Justice, *Memorandum to the Justice Select Committee: Post-Legislative Assessment of the Inquiries Act 2005*, October 2010, Cm 7943

Appendix I: Independent Inquiry into Child Sexual Abuse: Terms of Reference

Purpose

1. 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 consider the extent to which those failings have since been addressed; 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. In doing so to:

- Consider all the information which is available from the various published and unpublished reviews, court cases, and investigations which have so far concluded;
- Consider the experience of survivors of child sexual abuse; providing opportunities for them to bear witness to the Inquiry, having regard to the need to provide appropriate support in doing so;
- Consider whether state and non-state institutions failed to identify such abuse and/or whether there was otherwise an inappropriate institutional response to allegations of child sexual abuse and/or whether there were ineffective child protection procedures in place;
- Advise on any further action needed to address any institutional protection gaps within current child protection systems on the basis of the findings and lessons learnt from this inquiry;
- Disclose, where appropriate and in line with security and data protection protocols, any documents which were considered as part of the inquiry;
- Liaise with ongoing inquiries, including those currently being conducted in Northern Ireland and Scotland, with a view to (a) ensuring that relevant information is shared, and (b) identifying any state or non-state institutions with child protection obligations that currently fall outside the scope of the present Inquiry and those being conducted in the devolved jurisdictions;
- Produce regular reports, and an interim report by the end of 2018; and
- Conduct the work of the Inquiry in [as] transparent a manner as possible, consistent with the effective investigation of the matters falling within the terms of

reference, and having regard to all the relevant duties of confidentiality.

Scope

3. State and non-state institutions. Such institutions will, for example, include:

    - Government departments, the Cabinet Office, Parliament and Ministers;
    - Police, prosecuting authorities, schools including private and state-funded boarding and day schools, specialist education (such as music tuition), local authorities (including care homes and children's services), health services, and prisons/secure estates;
    - Churches and other religious denominations and organisations;
    - Political parties; and
    - The armed services.

4. The Inquiry will cover England and Wales. Should the Inquiry identify any material relating to the devolved administrations, it will be passed to the relevant authorities;
5. The Inquiry will not address allegations relating to events in the Overseas Territories or Crown Dependencies. However, any such allegations received by the Inquiry will be referred to the relevant law enforcement bodies in those jurisdictions;
6. For the purposes of this Inquiry "child" means anyone under the age of 18. However, the panel will consider abuse of individuals over the age of 18, if that abuse started when the individual was a minor.

Principles

7. The Inquiry will have full access to all the material it seeks.
8. Any allegation of child abuse received by the Inquiry will be referred to the police;
9. All personal and sensitive information will be appropriately protected; and will be made available only to those who need to see it; and
10. It is not part of the Inquiry's function to determine civil or criminal liability of named individuals or organisations. This should not, however, inhibit the Inquiry from reaching findings of fact relevant to its terms of reference.

Appendix II: Independent Inquiry into Child Sexual Abuse: Current Investigations

- Accountability and Reparations for Victims and Survivors of Abuse

  An inquiry into the extent to which existing support services and available legal processes effectively deliver reparations to victims and survivors of child sexual abuse and exploitation.
- Cambridge House, Knowl View and Rochdale

  An inquiry into allegations of the sexual abuse and exploitation of children residing at or attending Cambridge House Boys' Hostel, Knowl View School, and other institutions where their placement was arranged or provided by Rochdale Borough Council.
- The Sexual Abuse of Children in Custodial Institutions

  An inquiry into the extent of any institutional failures to protect children from sexual abuse and exploitation while in custodial institutions.
- Protection of Children Outside the UK

  An inquiry into the extent to which institutions and organisations based in England and Wales have taken seriously their responsibilities to protect children outside the United Kingdom from sexual abuse.
- Child Sexual Exploitation by Organised Networks

  An inquiry into institutional responses to the sexual exploitation of children by organised networks.
- Investigation into Institutional Responses to Allegations Concerning Lord Janner

  An inquiry into the institutional responses to allegations of child sexual abuse involving the late Lord Janner of Braunstone QC.
- Children in the Care of Lambeth Council

  An inquiry into the extent of any institutional failures to protect children in the care of Lambeth Council from sexual abuse and exploitation.
- Children in the Care of Nottinghamshire Councils

  An inquiry into the extent of any institutional failures to protect children in the care of Nottingham City and Nottinghamshire Councils from sexual abuse and exploitation.
- Child Sexual Abuse in Residential Schools

  An inquiry into the sexual abuse and exploitation of children in residential schools.
- Child Sexual Abuse in the Anglican Church

  An inquiry into the extent of any institutional failures to protect children from sexual abuse within the Anglican Church.
- The Internet and Child Sexual Abuse

  An inquiry into institutional responses to child sexual abuse and exploitation facilitated by the internet.

- Child Sexual Abuse in the Roman Catholic Church
  An inquiry into the extent of any institutional failures to protect children from sexual abuse within the Roman Catholic Church in England and Wales.
- Allegations of Child Sexual Abuse Linked to Westminster
  An overarching inquiry into allegations of child sexual abuse and exploitation involving people of public prominence associated with Westminster.[120]

[120] Independent Inquiry into Child Sexual Abuse, 'Current Investigations', accessed 10 December 2018.