

Written evidence submitted by Hon Dame Lowell Goddard QC

Independent Inquiry into Institutional Child Sexual Abuse

I make this memorandum available to the House of Commons Home Affairs Select Committee in response to Mr Vaz's letter of 5 August and his and my subsequent exchange of letters of 31 August. I request that this memorandum be placed before the full Committee. In it I have set out for the Committee's consideration the responses Mr Vaz specifically sought and have also included a brief outline of what I see as various critical issues facing the Inquiry. This I do for the purpose of assisting the Inquiry in the future.

I commence by briefly traversing the history of the Inquiry in its various iterations.

A brief history and the early legacy

As you are aware, the Inquiry was first established in July 2014 as a non-statutory Inquiry. I understand this was in the interests of getting it up and running as quickly as possible. It was however contemplated that the Government could move to have it reconstituted as a statutory Inquiry under the Inquiries Act 2005, if the Chair thought that were necessary.

It is a matter of history that two Chairs were briefly appointed, the first in July 2014 and the second in October 2014. In conjunction with the second appointment, broad ranging terms of reference were promulgated and 8 Panel members appointed, together with Counsel to the Inquiry, Ben Emmerson QC, and an expert adviser.

It is unnecessary now to traverse that early history in any detail, except to note there were reports of difficulties within the Inquiry Panel, as well as conflicting political views over its composition in the wider victim and survivor communities. Of more critical moment is that the absence of leadership during that early period meant the Inquiry could not undertake any fundamental planning or initial scoping of its task nor develop a clear sense of direction.

As is also evident from media reports and commentary at the time, those two false starts served to engender or further fuel negative perceptions about the Inquiry's overall prospects of success. One example is the article by Andrew Gilligan in the Daily Telegraph of 4 November 2014, entitled "Whether Fiona Woolf heads it or not, the child abuse inquiry will fail."

After traversing the breadth of the terms of reference (which at that time were delimited by a start date of 1970 and did not contain the later provision that survivors of child sexual abuse must have the opportunity to bear witness to the Inquiry), the author then went on to describe the Inquiry's task as "impossible to complete, at least in under a decade or two ...without a dramatic narrowing of focus."

The establishment of a new statutory Inquiry and my appointment as its Chair

I was first approached about considering the role of Chair in November 2014, through the British High Commission in Wellington. The next approach was a phone call from a Home Office official in London on 22 December. In January 2015 a series of three video conferences took place with London, including one with the Home Secretary. It was evident that there was an urgent deadline by which the appointment of a new Chair had to be announced. This necessitated my making a very significant career and lifestyle decision within a very short timeframe.

On 4 February 2015 the Home Secretary announced her intention to appoint me as Chair and on 11 February I appeared before the Home Affairs Committee. There followed brief consultation over Panel membership and expanded Terms of Reference and on 12 March 2015 the statutory Inquiry was formally set up and I was appointed as its Chair, with an effective start date of 13 April 2015.

Managing the Inquiry

Early experience of managing the Inquiry and its vast remit swiftly brought realisation of the practical need to narrow its focus dramatically, if outputs were to be achieved within any reasonable timeframe. This was done by establishing three core projects: a Research Project, a Public Hearings Project and a Truth Project; and by an initial division of institutional sectors into 5 broad work streams. Those broad work streams were subsequently refined into carefully targeted areas of specific institutional and thematic investigation, twelve of which were announced by me on 27 November 2015. A 13th investigation (concerning the late Lord Janner of Braunstone QC) was launched on 18 January 2016.

The adoption of this carefully targeted institutional and thematically based approach was designed to ensure the Inquiry could reach conclusions on as broad an evidence base as possible. However, at the same time it had to be acknowledged that running 12 or 13 investigations in parallel was ambitious, and an organisational challenge that was unprecedented for a public inquiry

in the United Kingdom.

Additionally, the practical necessity to identify and settle on selected specific areas of investigation did not, and does not, sit entirely comfortably with the three guiding principles the Inquiry set for itself: of being comprehensive, inclusive and thorough.

Each of the thirteen investigations was given a description of scope. While carefully crafted, these were nevertheless arbitrary and intended as a working guide only to "delimit and focus" the Inquiry's operation. However, and while the Inquiry remains bound only by its Terms of Reference and not by these descriptions of scope, they have in practice assumed a rigidity and status beyond mere guidance which may be open to challenge.

In terms of the early operation of the new statutory Inquiry, a matter of ongoing consequence deriving from its early legacy was forecast by the Committee in its recommendation in paragraph 13 of its Twelfth Report on Session 2014-2015 (following my appearance before it in February 2015).

In its recommendation at paragraph 13, the Committee said:

"Careful thought needs to be given to the composition of the secretariat, in which Home Office secondees currently appear to be very well represented. Members of the secretariat should be chosen for their skills and the Panel should look well beyond the Home Office and the civil service if that is necessary to produce the right skill mix."

Although it was reconstituted as a new statutory Inquiry on 12 March, in practical effect the Inquiry proved in operational terms not to be a new Inquiry with a completely fresh start, but rather a continuation and expansion of the previously existing Inquiry in terms of its administration and management. The existing secretariat of about 30 personnel was simply expanded and the Panel and I have had little or no input into either the composition of the senior management team or the recruitment of secretariat staff during the lifetime of the current Inquiry. Thus recommendation 13 in the Committee's Report has not been able to be complied with.

The administrative arrangements made by the Home Office as the inquiry's sponsor meant that in the recruitment of staff priority was given to civil servants and any non-civil service staff had to become civil servants unless they were employed on contract through the Solicitor to the Inquiry. In practical terms this meant that the skills and qualifications of many recruits did not fit the tasks which they were called upon to perform, as none of the

secretariat or senior management team had previous experience of running an inquiry of this nature. Therefore they did not fully understand or appreciate its organisational and operational needs. Their approach has been bureaucratic and the Inquiry's progress has been impeded by a lack of adequate systems and personnel, leading to critical delays.

I felt as Chair handicapped by not being given a free hand to recruit staff of the type that I judged to be essential.

A further compounding factor was that despite my expressed desire to scope the Inquiry myself from the ground up on arrival and to build an early operational plan based on that, this did not happen. Critical building blocks were not put into place either appropriately or swiftly enough.

Another difficulty is that the huge amount of hard work the Inquiry has been putting in over its first 16 months has not been sufficiently visible or communicated widely enough. During my tenure the communications capacity of the Inquiry was never adequate for the formidable and important function of interacting with the public and I suggest that capacity in that regard needs to be radically strengthened for the future.

These are but some of the aspects as to why the legacy of fallout, both in fact and in the public perception, from the two false starts, has not been able to be decisively dispelled.

At the time of my resignation, the Panel and I were in the process of implementing a review of the Inquiry's overall operating efficiencies and were identifying measures required for greater quality assurance and to improve performance and increase outcomes; with consideration being given to engaging an external agency to validate any findings from the review and assist in developing an Inquiry plan to end of 2020. I trust that initiative is continuing post my resignation.

Positive Achievements

Having commenced this report on something of a negative note, I wish immediately to say that on the personal front, I feel privileged to have had the opportunity of chairing the Inquiry during its first sixteen months and I am satisfied that despite the many difficulties encountered during its start-up phase, much has been achieved and there is now a sound platform and body of work to build on. Of central importance has been the establishment of an effective and dedicated Victims and Survivors Consultative Panel. They are an integral component of the Inquiry and their continued input and guidance will be pivotal to the Inquiry's ultimate success. I wish to say how

indebted I and the inquiry are to them and to all of the victims and survivors who have been brave enough to come forward.

As I said in my report to the Home Secretary, the most important issue that now needs to be addressed is how the very real progress that has been made by the Inquiry is best to be consolidated, so that its work can be enhanced. What is particularly important is that the Inquiry does not go backwards and that it learns from the lessons of the past. It is paramount that it is able to fulfil its purpose by successfully and fairly addressing the welfare of victims in a focussed manner and that it is able to make soundly based, achievable and workable recommendations that will be effective in protecting children now and for the future.

My resignation

It was with great sadness that I concluded, and on 4 August announced, that I was unable to continue to chair the Inquiry and see it through to its conclusion. It is a critical and fundamentally important inquiry, which is why I made the initial decision in 2015 that I should relinquish judicial office in New Zealand and make a firm commitment to it.

However, the criticisms that had been mounting came to a head in July when it became evident that the Inquiry was not able to deliver on its commitment to hold public hearings in 2016, as it had undertaken to do.

The delays in proceeding to hold any substantive public hearings have regrettably resulted from the Inquiry's inability to obtain in any timely way the vital infrastructure necessary to prepare for and conduct public hearings. The lack of an Evidence Management System (EMS) fit for purpose has severely hampered the Inquiry's ability to manage the thousands (if not millions) of documents the Inquiry has been receiving, and the Solicitor to the Inquiry has consequently been unable to prepare the documentation for public hearings. That issue has been ongoing since late last year and is of fundamental importance not only as a serious process concern but more importantly in relation to the delivery of natural justice to all. As at the date of my resignation, the EMS that had at last been procured was still not in place. I trust that it now is.

There have also been difficulties with securing a hearing centre. At the end of 2015 we had planned for preliminary hearings to be held in March of this year with the first substantive hearings initially planned for June or July 2016. The preliminary hearings duly took place in March in the Royal Courts of Justice, thanks to the Lord Chief Justice. However, Courtroom 73 in the

Royal Courts was never going to be available for more than occasional preliminary hearings and the Inquiry had known from the outset that it would need its own hearing centre. As at the date of my resignation however the Inquiry had still not succeeded in securing its own Hearing Centre.

When it became clear that substantive public hearings would not be possible in July, because there was still no EMS to prepare the documentation for hearings, the date for the first substantive hearing was pushed back to 26 September.

When it then became clear in July that there was still no guarantee the Inquiry would have an EMS fit for purpose - or a hearing centre - in time to prepare for any public hearings in 2016 (as had been announced), the hearing dates had to be moved once again and could only realistically be announced as next year. That was hugely concerning. It also caused justifiable criticism and a loss of confidence, for which I, as Chair, had to take ultimate responsibility.

A fresh start: review of the current Inquiry model?

What has always set this Inquiry apart is, that while all Inquiries are unique in their subject matter, their focus is almost always defined by one essential issue, and thus a reasonably clear course is able to be mapped with linear certainty from the outset. While many of the numerous issues the Inquiry is charged with examining can fit that model, the difficulty for this Inquiry is the huge multiplicity of issues and events within its remit. Those issues and events often relate to very different institutions or have arisen from situations that occurred during very different time periods. Many of the issues do not fit a classic panel inquiry model and the wide ranging nature of the terms of reference necessitates a variety of methodological approaches. This variety of methodological approaches and the bringing together of people with professional backgrounds in different academic disciplines produces natural tensions which must be managed within the Inquiry team but can be difficult. An inquiry has to follow the rules of natural justice and many other elements of legal fairness but differences in disciplinary approaches, coupled with the multiplicity and variety of issues to be inquired into, made the task of coordinating the various strands of this Inquiry complex, difficult and time consuming. The maintaining of a necessary degree of separation between investigative and fact-finding functions was not always well understood and much of my time was involved in endeavouring to broker these differences in approach and understanding and in arbitrating between the different points of view as to how the tasks might be approached and where responsibilities lay.

Another major logistical hurdle arising out of the multiplicity and variety of issues for examination is that a panel inquiry constituted under the Inquiries Act 2005 requires a quorum approach. There is no power under the Act for the Chair to delegate hearing responsibilities to panel members, which precludes expediting the work of conducting the public hearings by convenient division. This is in contrast to the Australian Royal Commission of Inquiry into Child Sexual Abuse, the Chair of which has the ability to delegate hearing responsibilities to the various Commissioners.

Also, as I earlier said, notwithstanding the Inquiry's adoption as its guiding principles that it would be comprehensive, inclusive and thorough, its work has, for practical reasons, had to be broken down into selected investigative modules and search related projects. While this has improved the prospect of achieving at least some outcomes that are representative and proportionate to its vast work-load, as well as enabling a more timely delivery of interim reports and recommendations, the inherent difficulty of overall size and multiplicity of issues remains. That means that, in reality, the terms of reference in their totality cannot be met.

With the benefit of hindsight - or more realistically - the benefit of experience, it is clear there is an inherent problem in the sheer scale and size of the Inquiry (which its budget does not match) and therefore in its manageability. Its boundless compass, including as it does, every state and non-state institution, as well as relevant institutional contexts, coupled with the absence of any built-in time parameters, does not fit comfortably or practically within the single inquiry model in which it currently resides. Nor is delivery on the limitless extent of all of the aspirations in its terms of reference possible in any cohesive or comprehensive manner.

I have recommended in my report to the Home Secretary that my departure provides a timely opportunity to undertake a complete review of the Inquiry in its present form, with a view to remodelling it and recalibrating its emphasis more towards current events and thus focussing major attention on the present and future protection of children.

Alongside that should be an overhaul of its operating model.

The Australian Royal Commission of Inquiry

I have referred to two key features of the Australian Royal Commission of Inquiry into Institutional Child Sexual Abuse: the ability to delegate hearing responsibilities; and their conduct of Private Sessions which has provided the model for the Inquiry's Truth Project.

In company with Inquiry officials I spent time at the Australian Royal Commission in Sydney during two separate weeks, examining their experience and also conducting Truth Project work for this Inquiry with their assistance. I believe there is yet more to be learned from the Australian experience and I recommend that your Committee consider this. Although it is a project of somewhat lesser scale than this Inquiry, given population and historical differences, the Australian Inquiry was funded at approximately twice the level of this Inquiry in its initial stages.

The Truth Project

Given the pledge in the Terms of Reference that all victims and survivors would have their voices heard in a safe and confidential environment, a Truth Project modelled on the lines of the successful Private Sessions conducted by the Australian Royal Commission, was established. The Project, as envisaged and set up by the Inquiry, is a conceptually appropriate vehicle by which to fulfil that pledge in the terms of reference and, at the same time, to provide important information about child sexual abuse and child sexual exploitation in England and Wales. However, it is a logistically huge component of the Inquiry with enormous management demands and if there is to be a restructuring, it may benefit from being re-established as a stand-alone and more holistic entity. The information it receives could still be fed into the Inquiry's database and analysed and absorbed into recommendations; and the individual stories of victims and survivors could still be anonymously published.

The Truth Project also has other aspects and possible ramifications that require a serious rethinking of it as an integral component of the Inquiry. While the Inquiry has carefully put in place appropriate support for those victims and survivors who want to share their experiences in a confidential manner through the Truth Project, the experience is not a therapeutic exercise and the Inquiry cannot provide long term or ongoing support post the experience. All the Inquiry can do is to signpost participants to local support organisations following their experience. Panel members and I have listened to concerns expressed by such support organisations around the country, who are in the main voluntary, about their lack of resources to take up the demand that will inevitably be created by Truth Project experiences. I suggest these issues require careful review

Meetings with the Home Secretaries.

The Committee has specifically requested advice of the dates in which I have met with the Home Secretaries.

On the day following my appearance before this Committee on 11 February 2015, I met with the then Home Secretary, the Rt Hon Theresa May MP. Following my formal appointment as Chair on 12 March 2014 I never met with Mrs May again, although she wrote a letter of welcome on my arrival in April 2015, in which she stated that her door would always be open to me. I provided her with copies of my opening statement of July 2015 and my statement announcing the launch of the Inquiry's first twelve investigations. I am sure we both understood the need for an Inquiry that is both independent of the Government and not run by a Government department to be seen to be operating entirely independently.

A tentative appointment of 4 August 2016 was made for me to meet with the new Home Secretary, the Rt Hon Amber Rudd MP, but that was not confirmed. As it turned out that was the day I tendered my resignation.

In conclusion

May I reiterate that it was with enormous sadness that I tendered my resignation and I wish to thank Her Majesty's Government for having afforded me the privilege of leading this important Inquiry during its first sixteen months.

I wish to also thank the Committee for endorsing my appointment as Chair of the Inquiry. I can assure the members that over the sixteen months I have worked as Chair, there has never been a time when the Inquiry and its objectives did not dominate my life. I made a firm commitment to undertake it and was determined to see it through to its conclusion. I am disappointed that that this has not been possible. It was never easy operating in an environment in which I had no familiar networks and there were times when it seemed a very lonely mission. However, I am pleased I was able to set it on its way. Ultimately however I had to face a situation which I could not solve and which would continue unless challenged. I resigned to make that challenge occur

Finally, it is important to re-emphasise that, despite the impossibility of fulfilling the Inquiry's mandate in its present boundless form and despite the operational difficulties encountered, there have been very positive achievements and I am satisfied there is now a very solid platform of work upon which to take the Inquiry forward. The task ahead will however be simplified and less open to challenge and disappointment if its compass is sensibly narrowed.

Hon Dame Lowell Goddard DNZM QC