

## **RULINGS by the CHAIR: Nos 1 and 2.**

### **(1) The “End Date”, or the last date when abuse took place, which will be deemed by the Inquiry to fall within Term of Reference no 5.**

#### **Terms of Reference**

Within the Terms of Reference (to which the Inquiry has added numbering), no 5 reads as follows:

*“5. The Inquiry is to cover that period which is within living memory of any person who suffered such abuse, up until such date as the Chair may determine, and in any event not beyond 17 December 2014.”*

The significance of 17 December 2014 is that it was the date when the Cabinet Secretary for Education and Lifelong Learning, Angela Constance MSP, made her formal announcement to the Scottish Parliament that this Inquiry would be set up.

On 28 May 2015, she announced the Terms of Reference of the Inquiry to the Scottish Parliament.

The first Term is:

*“1. To investigate the nature and extent of the abuse of children whilst in care in Scotland, during the relevant time frame.”*

The starting point is therefore any date when a living person can recall being abused. It follows that someone who is currently over 90 may be able to recall being abused in the 1920s, and wish to provide testimony to the Inquiry. If so, the Inquiry will accept that testimony as part of the national public record, even though, for example, the residential home where it happened might have closed half a century ago.

#### **“The End Date”**

In order to consider my discretionary decision on the **“end date”** (i.e. the last date when abuse took place, which will enable an individual’s testimony to be received by the Inquiry) I held discussions with the other Panel members and my legal team. My legal team, and the Secretary to the Inquiry, had held meetings with survivor groups. They were told that there was a strong preference for the “end date” being the last date possible, that is to say, 17 December 2014.

I took those representations into account, but there were other issues to consider. I held a formal meeting to discuss this matter, attended by Prof Lamb and Mr Houston, the three Counsel to the Inquiry, and two of the Inquiry’s Solicitors on 8 December 2015. There was a round table discussion when we attempted to analyse every angle.

## Discussion

Drawing on that discussion of the issues, I decided that the “end date” should be 17 December 2014. This was made public on the Inquiry’s website on 23 December 2015. The present Note records my reasons for the formal Ruling.

Firstly, I considered the Terms of Reference. I noted that the present title “Historical Child Abuse Inquiry” suggested that the Scottish Government had long past events in mind, as that is suggested by the word “Historical”. The general tenor of the preamble could suggest examination of past events, rather than consideration of abuse in the recent past: it reads:-

*“The overall aim and purpose of this Inquiry is to raise public awareness of the abuse of children in care, particularly during the period covered by the Inquiry. It will provide an opportunity for public acknowledgment of the suffering of those children and a forum for validation of their experience and testimony.”*

I note that an important qualification to the stated “aim and purpose” is the “period covered by the Inquiry”.

In addition, the Terms of Reference read:

*“3. To create a national public record and commentary on abuse of children in care in Scotland during the relevant time frame.*

*4. To examine how abuse affected and still affects these victims in the long term, and how in turn it affects their families.”*

Long term effects can only be ascertained after the passage of time. The concept of a public record may also suggest a document for historians. Significantly, however, there is nothing to suggest that the Inquiry should not consider the impact of abuse on victims in the more recent past.

It is important also to examine Term of Reference 6:

*“6. To consider the extent to which failures by state or non-state institutions (including the courts) to protect children in care in Scotland from abuse have been addressed by changes to practice, policy or legislation, up until such date as the Chair may determine.”*

Plainly the date in that last phrase has to be a date as close to the publication of the Inquiry Report as possible, as otherwise any gaps or criticisms canvassed in the Report risk being out of date before it is even published. That date ought to be towards the end of the Inquiry process, in order to ensure that the Report’s recommendations are relevant at the time of publication. I will call that date the “**recommendation date**” for convenience.

The wording of Term of Reference no 6 means that there will necessarily be a gap between the “end date” and the “recommendation date”.

For the avoidance of doubt, the Inquiry will not refuse to analyse cases of abuse which take place in the gap after the “end date”: it will certainly have to take into account the occurrence of abuse between the “end date” and the “recommendation date” in order to fulfil its remit under Term of Reference 7:

*“7. To consider whether further changes in practice, policy or legislation are necessary in order to protect children in care in Scotland from such abuse in future.”*

The distinction is that, while the Inquiry will not be examining abuse which took place after 17 December 2014 on the basis of the testimony of individuals, it will nevertheless look at evidence of abuse from other sources. That evidence may come (for example) from expert witnesses, statistics, convictions, and reports, and it would particularly address Term of Reference 7.

Secondly, I asked the following questions.

The first question was whether there should be an “end date” well before December 2014? This involved asking whether there were points in time which might logically support such a choice. I had regard to the Children (Scotland) Act 1995, which did have a significant impact on child care. The difficulty was that that date would have left more than 20 years of abuse potentially unexamined in any detail before the report date. A date which was a little later, namely late 2000, when most of the Scotland Act 1998 was in force, seemed to be a possibility, as it signalled a major change in legal responsibility at Government level. Choosing the end of 2000 would also have had the advantage that all the witnesses who gave evidence about abuse which actually happened to them as individuals would have been adults, eliminating some practical difficulties for the Inquiry if it has to take evidence from witnesses who are still children. However, changes introduced by the Scottish Government since devolution would then not have been subject to proper scrutiny. I concluded that this would have been an unacceptable gap in the Inquiry Report.

I went on to consider making the “end date” a date when more recent legislation came into force. That legislation would have had to be very significant in relation to the subject matter of the Inquiry, in order to justify the choice. The Acts and measures I identified as possibilities did not reach that standard: examples are: (i) the Regulation of Care (Scotland) Act 2001, which established the Care Commission and changed the system for inspection of relevant services; (ii) The Protection of Children (Scotland) Act 2003, changes to Local Government legislation, and the establishment of the Commissioner for Children and Young People, all in 2003; (iii) the introduction of National Care Standards for care homes for young people, for foster care, and for school care accommodation services, plus the Protection of Children and Prevention of Sexual Offences (Scotland) Act, all in 2005; (iv) the setting up of the Care Inspectorate, and a different regime for Children’s Hearings, in 2011. While each of these matters is significant, none stood out as creating an obvious watershed.

I had to bear in mind the fact that the choice of “end date” means that individual complaints of abuse after that date cannot be considered. It would be unfortunate if a child who was abused in 2012 could not come forward and say that he or she had made complaints and not been listened to, whereas the Inquiry would be duty bound to receive and document the same complaint of abuse when it happened before a

much earlier “end date,” for example in 1988. On any view, the more recent case would be more relevant to the Inquiry’s consideration of the failures of state or non-state institutions when looking towards the future.

Senior Counsel to the Inquiry advised me to select the last possible date, and both the Panel members favoured it.

## **Decision**

Taking these considerations into account, I have decided that the “end date” for the purpose of Term of Reference 5 will be 17 December 2014.

### **(2) The Name of the Inquiry**

One consequence of this decision is that the title given to the Inquiry – “The Historical Child Abuse Inquiry” - may now be somewhat misleading. Survivor Groups criticised the title during the Inquiry’s consultation process, as they believe that the Inquiry’s name may mislead people into thinking that the Inquiry is concerned largely with the past. They suggest that some survivors will simply fail to come forward because they mistakenly think that the word “Historical” means that the Inquiry cannot have anything to do with them.

For the reasons already given, it is clear that the Inquiry will be very much concerned with the present, including the ongoing effects of abuse on people today. The Report will address the effectiveness of child protection (so far as relevant within the Terms of Reference) as close to the “recommendation date” as possible. That date will be in the future. It is therefore logical to change the Inquiry’s name.

I have consulted my fellow Panel members on this matter. There are no formal legal implications if the name is changed. The cost implications of a name change are trivial. It is the work of a moment to change the headings of documents held on computers, and the e-mail address does not require to be changed. The website and twitter addresses can be changed without difficulty.

Accordingly, the Panel has decided that the Inquiry will be known as the **Scottish Child Abuse Inquiry**.