

# A HISTORIC DAY FOR THE INDEPENDENT INQUIRY INTO CHILD SEXUAL ABUSE AND A PIVOTAL DAY FOR ALL ESTABLISHMENTS THAT HAVE A ROLE TO PLAY IN CHILD PROTECTION

Seven years and seven months after the Independent Inquiry into Child Sexual Abuse was established under the Inquiries Act 2005, its final report was published on 20 October 2022, setting out the Inquiry's overarching recommendations and findings. This publication sees the conclusion to an ambitious and mammoth Inquiry and follows 325 days of public hearings, evidence from 725 witnesses, and consideration of almost 2.5 million pages of evidence. The final report is the culmination of evidence amassed following 19 investigation reports, 24 research reports, one interim report, and 87 recommendations for change.

The Inquiry's final conclusions and recommendations are pivotal to all establishments that work with and have a responsibility for children. For those institutions, the ramifications, significance, and pertinence of this report should not be underestimated.

## **A Reminder of the Inquiry's Remit and Purpose**

Established on 12 March 2015, the overarching aim of the Inquiry was to investigate whether public bodies and other non-state institutions within England and Wales had taken their responsibilities to protect children from sexual abuse seriously and to make recommendations to ensure that mistakes are learned from and that children are better protected from sexual abuse in the future. The Inquiry's remit was broad, including investigations into Westminster institutions, Local Authorities, residential schools, and faith establishments. Engagement with the Inquiry has been through core participants (organisations who have responded to direct inquiries) as well as victims and survivors of child sexual abuse and exploitation.

A significant aspect of the Inquiry's investigations involved the Truth Project which provided over 6,000 victims and survivors of child sexual abuse with the opportunity to share their experiences and propose changes that should be made for the future.

Whilst it was not within the Inquiry's remit to determine the civil or criminal liability of either named individuals or organisations, this did not inhibit the Inquiry from reaching findings of fact that fell within its terms of reference or from making recommendations impacting those institutions that have a duty to protect children and young people from sexual abuse and exploitation.

There was a plethora of recommendations made by the Inquiry preceding its final report of 20 October 2022, many of which have already been responded to or implemented.

The Inquiry's report following its investigation into Accountability and Reparations (published in September 2019) concluded that neither the criminal nor civil justice system was able to effectively deliver compensation to victims and survivors of abuse. As such, the recommendations made in the Inquiry's final report are not unexpected.

## **The Inquiry's Conclusions and Recommendations for Change – Published 20 October 2022**

The magnitude of the Inquiry's recommendations upon establishments that are engaged in working with children is such that we will be reporting on our analysis and assessment of the most notable recommendations in a series of articles to be published over the forthcoming weeks and months. For now, we have set out below the Inquiry's 20 key recommendations. A link to the Inquiry's full report is located at <https://www.iicsa.org.uk/finalreport>

### **Recommendation 1: Improved Data Collection Concerning Child Sexual Abuse and Exploitation**

The UK and Welsh Governments should improve data collected by children's social care and criminal justice agencies that concerns child sexual abuse and child sexual exploitation through the introduction of one single core data set covering both England and Wales. The data produced should include the characteristics of victims and alleged perpetrators (age, sex, and ethnicity), factors that make victims more vulnerable to child sexual abuse, and the settings and contexts in which the abuse or exploitation occurred.

### **Recommendation 2: The Introduction of Child Protection Authorities for England and Wales**

In response to criticism directed at failures of institutions to respond effectively (or at all) to child sexual abuse, the Inquiry recommends that Child Protection Authorities (CPAs) are established for England and Wales with the purpose of:

- i. Improving practice in child protection.
- ii. Providing advice and making recommendations to Government on matters pertaining to child protection policy and reform to improve child protection.
- iii. Inspecting institutions and settings as it considers necessary and proportionate.
- iv. Monitoring the implementation of the Inquiry's recommendations.

The implementation of CPAs is intended to make it more difficult for an institution to suppress allegations when it knew or ought to have known of child sexual abuse allegations and when some responsibility for the child's welfare was borne by the institution.

### **Recommendation 3: New Role of Cabinet Minister for Children**

The formation of a new post within the Government of Cabinet Minister for Children should be created to complement the introduction of the CPAs. The role would be expected to provide leadership and influence on matters of child protection.

### **Recommendation 4: Increase Public Awareness of Child Sexual Abuse**

A key aspect of the Inquiry's investigation has focused on the importance of raising public awareness of child sexual abuse and encouraging greater discussion about the subject matter within society (something we at GBUK fully support). The Inquiry recommends that the Governments in England and Wales initiate long-term programmes to increase public awareness of (i) child sexual abuse and (ii) the action that should be taken if it is known or suspected that child sexual abuse is occurring.

### **Recommendation 5: Prohibition of Pain Compliance Techniques**

As initially proposed in the Inquiry's Sexual Abuse of Children in Custodial Institutions: 2009-2017 Investigation Report of February 2019, the Inquiry recommends that the UK Government prohibits the use of any technique that deliberately induces pain by withdrawing all policy that permits its use in custodial institutions in which children are detained.

### **Recommendation 6: Amendment to the Children Act 1989**

The Children Act 1989 should be amended to provide for an avenue by which children in care can apply to the family courts for orders to mandate or limit a local authority's exercise of its parental responsibility. When a Court is satisfied that there is reasonable cause to believe a child who is in the care of a local authority is experiencing or is at risk of experiencing significant harm, then upon application by the child, the proposed amendment would allow a Court to:

- i. Prohibit a local authority from taking steps that it would otherwise be entitled to take (through the exercise of its parental responsibility for the child);  
or
- ii. Give directions for the purpose of determining a specific question in connection with any aspect of the local authority's exercise of parental responsibility for the child.

### **Recommendation 7: Registration of Care Staff in Children's Homes**

In the wake of the Inquiry's investigations concerning sexual abuse of children looked after by local authorities, the Inquiry concluded there had been sexual abuse of children in residential care by staff as well as failures by staff to identify and act upon "clear signs" that children were being sexually abused and exploited. As such, the Inquiry recommends that the UK Government introduces arrangements for the registration of staff working in care roles in children's homes (including secure children's homes) with an independent body that will have the power to enforce standards of training and conduct thorough fitness to practice procedures.



### **Recommendation 8: Registration of Staff in Care Roles in Young Offender Institutions and Secure Training Centres**

The UK Government should introduce arrangements for the professional registration of staff in roles responsible for the care of children in young offender institutions and secure training centres [initially recommended in the Inquiry's Sexual Abuse of Children in Custodial Institutions Investigation Report].

### **Recommendation 9: Greater Use of the Barred List**

The UK Government should enable any person engaging an individual to work or volunteer with children on a frequent basis to check whether that person has been barred from working with children by the Disclosure and Barring Service (DBS).

### **Recommendation 10: Improve Compliance with the Statutory Duty to Notify the DBS**

Steps should be taken to increase the compliance by regulated activity providers with their statutory duty to refer concerns about the suitability of individuals to work with children to the DBS.

### **Recommendation 11: Extend the Disclosure Regime to Those Working with Children Overseas**

Legislation should be introduced permitting the DBS to provide enhanced certificates with barred list checks to citizens and residents of England and Wales when applications are made to work or volunteer in a regulated activity role either (i) with UK-based organisations when the recruitment decision is taken outside of the UK or (ii) with organisations based outside the UK.

### **Recommendation 12: Mandatory Pre-Screening**

Pre-screening enables Internet companies to prevent child sexual abuse images from being uploaded to platforms and social media profiles. The Inquiry recommends the introduction of new legislation mandating all regulated providers of search services and user-to-user services (services allowing users to share content) to pre-screen for known child sexual abuse material.

### **Recommendation 13: Mandatory Reporting of Child Sexual Abuse**

A predictable yet fundamental recommendation arising from the Inquiry's investigation is the proposal that legislation should be introduced requiring certain individuals to report child sexual abuse (defined as any offence under the **Sexual Offences Act 2003** when the alleged victim is under 18) in the following situations:

- When they receive a disclosure of child sexual abuse from a child or perpetrator; or
- When they witness a child being sexually abused; or
- When they observe recognised indicators of child sexual abuse.

The following individuals would be bound by the proposed new legislation and classified as 'mandated reporters':

- i. Any person working in regulated activity in relation to children (as defined under the Safeguarding and Vulnerable Groups Act 2006)
- ii. Any person working in a position of trust (as defined by the Sexual Offences Act 2003)
- iii. Police officers

When the child is aged between 13 and 16, there is no mandatory requirement to make a report when it is reasonably believed that one of the following applies:

- The relationship between the parties is consensual and not intimidatory, exploitative, or coercive; and
- The child has not been harmed and is not at risk of being harmed; and
- There is no material difference in capacity or maturity between the parties engaged in the sexual activity, and there is a difference in age of no more than three years.

**The above exceptions would not apply when the alleged perpetrator is in a position of trust within the meaning of the Sexual Offences Act 2003.**

When an individual who is under a duty to report fails to do so and either (i) is in receipt of a disclosure of child sexual abuse from a child or perpetrator or (ii) witnesses a child being sexually abused, the Inquiry recommended that such a failing be sanctioned as a criminal offence.

### **Recommendation 14: Compliance with the Victims' Code**

The UK Government should commission a joint inspection of compliance with the Victims' Code in relation to victims and survivors of child sexual abuse.

### **Recommendation 15: Removal of Limitation**

The three-year limitation period under the **Limitation Act 1980** should be removed for victims and survivors of child sexual abuse who are seeking to pursue civil compensation claims. The protection of the right to a fair trial would remain, with the burden falling on defendants to show that a fair trial would not be possible. It is proposed that this change would apply to all cases involving child sexual abuse other than those that have been dismissed by Court or when a settlement agreement has been reached.

### **Recommendation 16: Specialist Therapeutic Support for Child Victims of Sexual Abuse**

A **national guarantee** should be introduced, which guarantees that child victims of sexual abuse will be offered fully funded, specialist, and accredited therapeutic support, which should be commissioned by **local authorities**.

## Recommendation 17: Access to Records

Records that are known to relate to allegations or cases of child sexual abuse should be retained for 75 years. Institutions should also have clear and accessible procedures for victims and survivors of child sexual abuse to access these records.

## Recommendation 18: Criminal Injuries Compensation Scheme

The Criminal Injuries Compensation Scheme should be amended to include **online-facilitated sexual abuse**. A further amendment to the scheme should also ensure that applicants with unspent convictions are not automatically excluded when offences are likely to be linked to child sexual abuse they have suffered. Finally, the time limit for child sexual abuse applications should be increased to seven years from either (i) the date the offence was reported to the police or (ii) the age of 18 when the offence was reported whilst the victim was a child.

## Recommendation 19: National Redress Scheme

A national redress scheme should be implemented for the benefit of victims and survivors of **child sexual abuse** and exploitation when there is a **clear connection** to state or **non-state institutions**. The scheme would be open for five years and would consist of a two-tier payment structure comprising a fixed-rate recognition payment and the option to apply for a second-tier payment upon the production of more detailed evidence (such as medical evidence). The scheme would be funded by central and local Governments, with **voluntary contributions** being sought from non-state institutions.

## Recommendation 20: Age Verification

Legislation should be introduced requiring providers of **online services** and **social media platforms** to implement more stringent age verification measures.

## Commentary

The Inquiry's recommendations come at a challenging time for the Government, and many of the proposals will require the introduction of new legislation or significant amendment to existing legislation. It is, therefore, unclear to what extent and over what timescale the Inquiry's recommendations will be fulfilled. The most significant recommendations, which we shall be commenting on in future publications, are the Inquiry's proposal for a national redress scheme, the mandatory reporting requirement, and the proposed amendment to the Children Act 1989. These proposals, in particular, require careful and detailed analysis of both the merits and potential limitations of implementation.

The Inquiry's report emphasises the importance of organisations taking a holistic approach to all reports of disclosures of child sexual abuse by ensuring that child protection and safeguarding are always paramount considerations in every disclosure, notification, or referral received. We welcome this approach and the Inquiry's strong messaging that the prevention of child sexual abuse needs greater public awareness.

All organisations working with children need to be aware of the Inquiry's final recommendations and how they might be directly impacted by them. We will be publishing further articles analysing the Inquiry's key recommendations in more detail over the coming weeks.