

# Scottish Child Abuse Inquiry

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## GUIDANCE ON THE GENERAL PROCEDURES OF THE SCOTTISH CHILD ABUSE INQUIRY

### Introduction

1. This Guidance covers:
  - the terms used by the Inquiry;
  - the remit and work of the Inquiry;
  - the Inquiry's general principles and approach;
  - the publication of Protocols;
  - an overview of how the Inquiry will take, and hear, evidence;
  - applicant and witness support.

### Terms used by the Inquiry

2. The Inquiry uses the following terms in its official publications (including this Guidance):
  - an **applicant** is any person who wishes to provide evidence to the Inquiry of having experienced abuse during the timeframe of the Inquiry, and within the Inquiry's remit;
  - a **witness** is any person, including an applicant, who provides evidence to the Inquiry;
  - the Inquiry's **remit** is set out in its Terms of Reference;
  - the Inquiry's **timeframe** is any time within living memory, up to 17 December 2014;
  - a **core participant** is any person, group of persons, institution or organisation that is expected to have a significant role in all or part of the Inquiry.

## **Remit and work of the Inquiry**

3. General information about the Inquiry, including updates on its progress, can be found on the Inquiry website – [www.childabuseinquiry.scot](http://www.childabuseinquiry.scot). The website also includes copies of the legislation which applies to public inquiries.
4. The Inquiry's Terms of Reference have been decided by the Scottish Ministers, and they set out the remit for the Inquiry. Any changes to the remit and Terms of Reference can only be made by the Scottish Ministers.
5. The Chair of the Inquiry has the power to require persons to provide witness statements, produce documents, or attend a public hearing. Failure to comply is a criminal offence. The Inquiry hopes it will receive full co-operation from everyone who can assist it.
6. The Chair has the power to issue Directions or Orders to ensure the efficient conduct of the Inquiry. For example, an Order may be made fixing a date or time by which something must be done, such as producing a document to the Inquiry, or responding to a written request for evidence. The Chair may penalise a person who does not meet these requirements. Alternatively, the Chair may relieve a person from the consequences of a failure to comply with a Direction or Order.
7. The Chair has the power to confer core participant status upon any person, group of persons, institution or organisation at any time during the course of the Inquiry. For example, core participant status may be conferred where a person, group, institution or organisation has a significant interest in a particular part of the Inquiry's proceedings. The Chair has the power to fund legal representation for a core participant where the core participant is unable to pay for legal representation. Anyone who wishes to apply for core participant status, or funding for legal representation, should look at the Inquiry Protocols which deal with these matters.

## **General principles and approach**

8. The Inquiry is committed to conducting its work in as open and transparent a manner as possible. A key aim is to ensure the fair treatment of all applicants and witnesses.

9. The Inquiry is independent. It will always act independently of any person or organisation. It is not part of the Scottish Government, although it receives its funding from that Government.
10. The Inquiry will conduct its business in an inquisitorial manner. As a result, the Inquiry will investigate matters falling within its remit, rather than relying on others to present evidence to it.
11. An inquisitorial process does not involve putting anyone on trial. No one who gives evidence to the Inquiry, or is referred to in evidence, will be treated as if he or she is facing a criminal charge. The Inquiry has no power to determine anyone's civil liability, to pay damages or compensation. Such liability can only be determined by a court of law. However, the Inquiry can publish its decisions about facts which fall within its remit.
12. When making any procedural decision, the Inquiry will act with fairness, and with regard to the need to avoid any unnecessary cost.
13. The Inquiry is a public inquiry. Where possible hearings will be held in public. The Chair may decide to hold some proceedings in private if there is good reason to do so. The Chair may also decide that evidence will be given in public, but in such a way that the person giving evidence cannot be identified.
14. The Inquiry will obtain oral evidence (given by people at public hearings), written Witness Statements, and documentary evidence. The Inquiry will carry out its own research, and may appoint or employ others to obtain information on its behalf. It may commission academic research.
15. The Inquiry has been asked to focus particularly on the identification of "systemic failures".
16. The Inquiry will be working with vulnerable witnesses who may be elderly, frail or in poor health. The Inquiry expects everyone to respect the dignity of every applicant and witness.
17. More generally, the Inquiry expects everyone to adopt a co-operative, constructive and sensitive approach to the Inquiry. Good and efficient working relationships will be essential to ensure the Inquiry fulfils its remit to the best of its ability and on time.

## **Protocols**

18. The Inquiry will publish Protocols setting out the procedures it will follow, and details of the ways in which it will work. All Protocols will be published on the Inquiry website. Protocols and Guidance published by the Inquiry

may be amended during the course of the Inquiry. Where any amendment is made, an amended version of the relevant Protocol or Guidance will be made available on the Inquiry's website. Amendments will be communicated to core participants.

19. The Inquiry needs to operate flexibly. The Protocols are not intended to cover every eventuality which may arise during the Inquiry. Where something arises that is not covered by a Protocol, a procedural decision will be taken by the Chair, with the assistance of the Inquiry legal team.

20. The Protocols will cover,:

- applications for core participant status;
- applications for awards of expenses, including funding for legal representation;
- providing evidence to the Inquiry, including the procedures for requesting documents and taking the evidence of witnesses, and how the Inquiry will treat information received by it;
- anonymity and other protective measures, including measures: to anonymise applicants and witnesses; to protect the identities of others who are not applicants or witnesses; to restrict the disclosure or publication of evidence or documents; to restrict attendance at Inquiry hearings; and to protect the well-being of witnesses;
- the Inquiry's approach to handling personal data, the procedures for blacking out information in a document (known as redaction), and how to apply for information to be redacted;
- public hearings, including how hearings will be conducted.

## **Evidence**

### Evidence of witnesses generally

21. Any applicant or other witness who wishes to give evidence should contact the Inquiry. People who witnessed abuse of children, or had experience of running an institution long ago, are particularly encouraged to make contact.

22. A Protocol (*Protocol on Providing Evidence to the Inquiry, other than in Public Hearings*) will be published setting out the details of how initial statements will be taken from witnesses

23. Priority will be given to taking statements from witnesses who are very elderly or seriously ill.

24. Any applicant or other witness who provides a statement to the Inquiry may be asked to give oral evidence at a public hearing. No applicant will be compelled to give oral evidence about his or her experience of abuse. Every witness who gives evidence at a public hearing will be treated with respect, and will not be exposed to hostile questioning. In most cases, questioning will be done by Counsel to the Inquiry.

#### Evidence of applicants

25. An extremely important aspect of the Inquiry's work will be the taking of evidence from applicants about their experiences of abuse. There may be cases where an applicant has given a statement to the police. That does not mean that the applicant cannot contact the Inquiry to give evidence now.
26. The Inquiry has published on 23 March 2016 a Call for applicants to give evidence. Those who come forward will be asked to attend an interview at a private session.
27. Private sessions will normally take place near the applicant's home or place of work. Where a number of applicants reside in a particular area, the Inquiry will try to make arrangements to hold individual private sessions for as many of them as possible in that area over the course of a week, and applicants will be encouraged to assist the Inquiry by making themselves available at that time. Every applicant will receive advance notice of at least a fortnight, and they will be able to discuss all the arrangements with the Inquiry's Witness Support team in advance.
28. Every private session will be conducted in such a way as to result in as little distress to the applicant as possible. It will involve a qualified, experienced and specially trained lawyer obtaining evidence from the applicant, with the purpose of creating a written statement, called a "witness statement".
29. The applicant will be able to alter the written statement prior to finalising it by signing it. Further information on private sessions will be provided in the Inquiry's *Protocol on Providing Evidence to the Inquiry, other than in Public Hearings*.
30. The Inquiry will only take evidence of abuse from an applicant in a private session if the abuse falls within the Inquiry's remit, namely abuse at any time in living memory up to 17 December 2014 of a child in care in Scotland (or a child whose care was arranged in Scotland). A child in care includes:

- a child in a children's home, whether the home was run by a local authority, a faith based organisation, a voluntary organisation, or a charitable or other body;
- a child placed in secure care unit, such as a List D school, borstal, or a Young Offenders' Institution;
- a child in a state, private or independent boarding school;
- a child in a healthcare establishment providing long term care;
- a child in foster care.

31. Evidence of abuse after 17 December 2014 may be relevant to the Inquiry's task of making recommendations for the future, and it will therefore be considered, but it will not be the basis for taking evidence in a private session.

#### Records and documents

32. Organisations with legal responsibility for the protection and welfare of children in care in Scotland during the Inquiry's timeframe should make themselves known to the Inquiry.

33. Any successor organisations should also make contact with the Inquiry. These organisations may hold records which are relevant to the Inquiry's remit.

34. Please do not send the Inquiry any documents until you have discussed them with the Inquiry team.

#### Legal representatives

35. Any person participating in the Inquiry may employ a legal representative.

36. Because the Inquiry's proceedings will be inquisitorial, legal representatives will have a more limited role than they would have in court proceedings.

#### Hearings

37. The Inquiry may hold preliminary hearings in public. Legal representatives may request a preliminary hearing, specifying why it is necessary, by writing to the Chair.
38. The Panel will decide on the themes or issues which will be explored at public hearings. It will not be possible to investigate every account of abuse. It is anticipated that the Inquiry will hold several separate hearings, rather than one long one. The hearings will take place as soon as practicable.
39. Before public hearings can take place, the Inquiry has to undertake a significant amount of preparation and investigation. The Inquiry needs to be satisfied that it has a sufficient number of witness statements and records to enable the public hearing to address a particular issue. It will then decide which applicants and other witnesses will give evidence in public. Sometimes the Inquiry will require to give time to institutions or individuals to investigate abuse accounts, or to locate witnesses, for example to refute accounts of abuse.
40. Details of the venues and dates for public hearings, will be published on the Inquiry website. They will also be announced in the press.
41. Members of the public will be entitled to attend public hearings unless the Chair has decided it is necessary for particular evidence to be heard in private.
42. The Inquiry will make arrangements to assist any person with special needs who wishes to attend the public hearings.
43. The Inquiry will publish on its website the transcript of the evidence heard at public hearings, the witness statements of applicants and other witnesses who gave evidence at the hearings, and any documents referred to in the witness statements.
44. Unless they consent, the identities of applicants will not be published.
45. The Chair has the power to restrict or prevent publication of information (including evidence), for various reasons. The transcript of evidence, the witness statements and other documents may be published with redactions to protect the identity of any person whose name is given to the Inquiry.
46. Media representatives will be encouraged to attend and report on public hearings. Facilities for the use of the media will be provided at the hearings. Further information will be provided in a *Media Protocol*.

## **Witness support**

47. Witness support will be available to applicants and witnesses, if desired. Support will be free to users, and confidential. In due course, details of this service will be available on the Inquiry website.
48. Any witness can be accompanied by a support person, for example a friend or relative, when giving a statement, or when giving evidence at a public hearing.
49. The Inquiry will make arrangements to assist any witness with special needs.
50. People who prefer to give evidence in Gaelic or another language will be given assistance to do so.