

The Report of the Macur Review

(Redacted Version)

An independent review of the Tribunal of Inquiry into the abuse of children in care in the former county council areas of Gwynedd and Clwyd in North Wales since 1974

The Right Honourable Lady Justice Macur, DBE

March 2016

Return to an Address of the Honourable the
House of Commons dated 17 March 2016 for

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The Right Honourable Lady Justice Macur, DBE,
Lady Justice of Appeal

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Foreword

In conducting this Review I have adhered to the principles of thoroughness, independence and transparency throughout as I hope will be apparent herein.

The length of this Report belies the thousands of hours spent in investigating documents relating to the Tribunal of Inquiry into “the abuse of children in care in the former county council areas of Gwynedd and Clwyd since 1974” and in considering the additional information obtained from ministerial papers, interviewees and other contributors. I am grateful to all who have contributed their views and information and for the co-operation of many in the production of documentation and in particular those I invited to meet with me. I have proceeded at all times on the basis that there was something to find rather than nothing to hide.

I have been conscious of a public interest in the examination I have conducted into the integrity of the Tribunal of Inquiry, but have not underestimated the impact that the knowledge of this Review may have had upon those who gave evidence of childhood abuse and may have assumed that the publication of the Tribunal Report, “Lost in Care”, marked an end to a difficult life chapter for them. I have endeavoured to ensure that this Report addresses the terms of reference set to me in a straightforward fashion and with sufficient detail to demonstrate the conclusions I draw mindful, however, that its length should not deter the reader. I hope that this Report may bring a conclusion to the question mark raised against the Tribunal and achieve the finality that many participants in that process will desire.

The Right Honourable Lady Justice Macur, DBE

December 2015

Summary

Introduction

1. The following is a summary of the main conclusions that I have reached and express at the end of each of the chapters in this Report. I do not reproduce them verbatim. I nevertheless hope that interested parties will be inclined and able to devote the time to read the report as a whole. My detailed conclusions and the narrative text in support of them are contained within the Report itself. My concluding remarks and specific recommendations are found at the end of this Report.
2. This Review was commissioned by government and announced on 8 November 2012 at a time of significant public concern about allegations of widespread historic child sexual abuse involving celebrities and establishment figures, said to have been protected from scrutiny by reason of their standing in society. Long standing disquiet re-emerged that the statutory inquiry into the abuse of children in care in the former county council areas of Gwynedd and Clwyd since 1974, announced on 17 June 1996 and chaired by Sir Ronald Waterhouse (“the Tribunal”), had failed to discover such individuals’ participation in the abuse or had otherwise concealed it. That is, the Tribunal’s Report, ‘Lost in Care’ published in February 2000, did not include the names of establishment figures as had been expected.
3. The terms of reference set to this Review require that I consider the scope of the Tribunal and whether or not it sufficiently investigated specific allegations of child abuse in North Wales care homes falling within its remit. I have been asked to make recommendations to the Secretary of State for Justice and the Secretary of State for Wales.
4. Given the context in which this Review was commissioned and the, at least, implicit allegations of a government ‘cover up’, I have interpreted that part of the terms of reference which refers to “the scope” of the Tribunal to necessitate an examination of the actions of the Welsh Office (as it was then) and other government departments leading up to the establishment of the Tribunal. The second part of the terms of reference needs no further explanation.
5. My letter of appointment rightly anticipated that the Review envisaged would be predominantly document based, but did not preclude me seeking to interview those likely to be able to clarify issues arising. In addition, I have invited and considered contributions from interested parties; an ‘Issues Paper’ with suggestions of broad areas of interest has sought to prompt relevant written submissions. Individuals have been able to contact the Review by a variety of means. I held a public meeting in Wrexham, North Wales, with the aim of engaging local people in geographical proximity to the former Gwynedd and Clwyd county council boundaries and the Tribunal’s hearings.

6. A significant delay to the start of this Review was caused by the failure of the Wales Office (as it became from 1 July 1999) to archive, properly or at all, the Tribunal documents. As a consequence, documents and materials were forwarded to me in a state of disarray. A preliminary inspection of materials received by the Review revealed that the Tribunal's computer database was missing; later established to have been destroyed.
7. Every single document of the million plus pages of materials provided to the Review has been examined with a view to isolate those relevant to the Review and to ensure that nothing of relevance was concealed or contained in what appeared to be extraneous papers, or for leads to any materials or information which was excluded, concealed, overlooked or ignored. Manuscript comments on the documents have been scrutinised. This manual inspection took more than six months to complete. Materials were scanned on to an electronic document management system. The subsequent electronic search of the materials available to the Tribunal resulted in the identification of over 1,400 potential complainants of physical and sexual abuse for detailed analysis by the Review.
8. Interviews have been conducted with individuals closely involved with the Tribunal process and those who appeared to have information relevant to the Review on the basis of their written submissions. I have interviewed those involved in the police investigations and those who worked on the prosecution files of individuals accused of ill treatment, physical abuse, and/or sexual abuse of children in care in Gwynedd and Clwyd in the relevant period.
9. I am aware of other investigations and events that have arisen during the course of my Review and have sought information and made enquiries, as appropriate. In this regard, I have examined material and documents held by the Home Office relating to the loss or destruction of files, believed to relate to claims of child abuse and a dossier compiled by the late former MP, Mr Geoffrey Dickens.
10. I have provided a full account of my findings to the Secretary of State for Justice and the Secretary of State for Wales, but have advised that redaction of some parts of the report will be necessary to protect the integrity of pending and current criminal investigations and proceedings. Further, I have urged caution regarding the public identification by name of complainants, contributors to the Tribunal, and those individuals accused of abuse or speculated to be involved in abuse, who have not been subject to a police investigation, have not been convicted of a criminal offence and/or whose name is not in the public domain in the context of child abuse. In the case of the former, the Sexual Offences (Amendment) Act 1992 may apply in addition to their right to respect for their family and private life. In the latter cases, the allegations against them result from multiple hearsay or an unattributed and/or untested source and the individuals concerned have had no opportunity to address the allegations against them, although rumours continue to circulate. Some of these individuals may wish to be publicly exonerated in terms that this Review has found no reliable evidence whatsoever which implicates them. I have not considered it within my remit to seek their views in this regard. In any event, I do consider that it

is essential that the commissioning departments should be appraised of the nature and extent of the relevant information in accordance with the terms of reference set to me and for them to seek legal advice as to redaction of names.

Establishing the Tribunal

11. On 7 September 1992, Mr Gwilym Jones MP, the Parliamentary Under-Secretary of State for Wales, announced that a public inquiry was necessary into allegations of abuse of children in care in North Wales but that it would have to await the conclusion of police investigations and criminal prosecutions. On 17 June 1996, the Right Honourable William Hague, Secretary of State for Wales, announced the establishment of the Tribunal. The elapse of approximately four years has been adversely commented upon. My analysis suggests minimal delay following the conclusion of criminal proceedings, but marked reluctance to embark upon a public inquiry, although not with a view to protect politicians or other establishment figures.
12. Criminal investigation and proceedings continued between September 1992 and 9 February 1995. On 10 February 1995, Mr Rod Richards MP, the Parliamentary Under-Secretary of State for Wales, indicated that Leading Counsel would be appointed to advise the government as to whether a public inquiry was needed, and if so, what form it should take. I conclude this was a reasonable step, but question the selection of a Leading Counsel, eminent in her own field, but without experience in matters of statutory child protection, as opposed to either of two prominent female family law silks identified by the Welsh Office as possible for the role, but who the Treasury Solicitor's Department said may have felt "obliged" to recommend an inquiry.
13. Miss Nicola Davies QC (now Mrs Justice Nicola Davies) was appointed in this role on 10 May 1995. She expressly made clear, and the Welsh Office knew, that she had no relevant expertise in the subject matter of statutory child protection and continually sought the appointment of a social services assessor to assist her examination. She also repeatedly raised concerns about the terms of her examination, which prevented her from seeking further documentary evidence, oral evidence or further representations.
14. Miss Nicola Davies QC advised against a public inquiry on the basis that, on the evidence available to her, there were no clear grounds to believe that the current systems operating in Clwyd and Gwynedd were failing children in care, but she recommended a detailed and independent expert examination of current practice and procedures of North Wales care agencies. This was reasonable advice in the circumstances known to her and was adopted. However, whilst officials had reported to ministers Miss Nicola Davies QC's conclusions, they did not highlight at that time concerns raised by the Social Services Inspectorate Wales or other information subsequently received, and not available or known to Miss Nicola Davies QC, which contradicted her findings of a reduction in child abuse and improvements in child care practices.

15. An investigation commissioned by Clwyd county council and chaired by Mr John Jillings was also being conducted into “what had gone wrong with childcare in Clwyd, why it had happened and why it had continued undetected for so long.” The ‘Jillings Report’, submitted in March 1996, was not published in the light of unequivocal legal advice that to do so would expose the local authority to significant and multiple claims for libel and the risk of losing its public insurance indemnity. The government unsuccessfully pressed for it to be made suitable for publication. It appears that the failure to publish the Jillings Report ultimately forced the hands of government in establishing the Tribunal.
16. I am satisfied that the government was right to consider the different options since a public inquiry pursuant to the 1921 Act was correctly understood to be a major undertaking. However, by August 1995, it was clear that Miss Nicola Davies QC’s examination of documents could not uncover the scale of abuse that had occurred in the past, or assess the possibility that it was continuing, and that the Jillings Report had been hampered in accessing relevant material and had been unable to conduct a full review.

The Tribunal's terms of reference

17. I consider the time period set for the Tribunal's investigations to be reasonable. The starting point of 1974 aligned with the creation of Clwyd and Gwynedd county councils on 1 April 1974. Likewise, the geographical boundary of Clwyd and Gwynedd imposed upon the Tribunal was logical since it encompassed the centre of allegations of abuse. Initially, it seems that the Welsh Office was content to widen the inquiry into other areas of England, but there were good reasons not to do so because of police investigations underway in other counties. Undoubtedly, a nationwide public inquiry conducted with the same terms of reference would have been entirely unmanageable in scale and would have defeated its purpose.
18. Objectively, it was valid to exclude scrutiny of Crown Prosecution Service (CPS) decisions as to whether or not to prosecute named individuals. This exclusion reflects the convention that prosecution decisions, once taken, should not be subject to detailed public scrutiny. However, in my view, an exception to this rule was justified given that it was the small number of prosecutions, relative to the number of complaints of abuse, that had contributed to the establishment of the Tribunal and to allay any public perception of concealment. I found no evidence to support the view that CPS decisions were made with a view to protecting establishment figures or any other abuser.
19. The Tribunal heard evidence from former residents of Gwynfa clinic, a psychiatric residential facility for children and young people located in Clwyd, but was unable to make findings due to ongoing police investigations involving a member of staff and other, unspecified, reasons. In any event, it transpires that inaccurate information was provided to the Tribunal on behalf of the Clwydian Community Care NHS Trust with responsibility for Gwynfa. Counsel instructed by the Welsh Office to review materials concerning Gwynfa advised that the Tribunal had been seriously misled in significant respects and that a public inquiry into events at Gwynfa was necessary.

A copy of Counsel's advice was sent to the Tribunal on 1 March 1999. In my view, these issues should have been recorded in the relevant part of the Tribunal Report, which remained unchanged by the Chairman despite him being alerted to discrepancies in the evidence that had been produced in relation to Gwynfa.

20. I am satisfied that the terms of reference were not framed to conceal the identity of any establishment figure, nor have they been interpreted by the Tribunal with the design to do so.

The appointment of Tribunal members and staff

21. I consider Sir Ronald Waterhouse (now deceased) was eminently suited to the post of Chairman of the Tribunal by reason of his status and experience. It would be unlikely for any member of government or official to consider Sir Ronald Waterhouse amenable to outside influence or persuasion to protect the establishment. There is ample evidence of his independence from the Welsh Office and rebuff of their intervention.
22. The two other members of the Tribunal, Miss Margaret Clough and Mr Morris le Fleming, had relevant professional experience of the issues raised in the circumstances leading to the Tribunal and were unknown to each other or the Chairman prior to the Tribunal. It would be unlikely for any member of government or official to consider the appointment of a panel of three independent individuals if intending to manipulate process or outcome.
23. Counsel to the Tribunal were well qualified for appointment by reason of their expertise, experience and standing. However, two of the three Counsel to the Tribunal, namely Mr Gerard Elias QC and Mr Ernest Ryder (now Lord Justice Ryder) were, or had been, Freemasons at the time of their appointment. I have seen no documents which suggest that any part of the government's legal services, that is, either the Treasury Solicitor's Department or the Attorney General's Office, investigated whether Counsel had links with freemasonry prior to their appointment, although it was, or should have been, apparent that the Tribunal would be called upon to investigate the influence of freemasonry in the protection of those accused of child abuse. Mr Gerard Elias QC recalls that the question of a conflict of interest was discussed and Lord Justice Ryder said that he completed a declaration of interest, but I have found no record of either. The lack of documented discussion and the absence of the declaration of interest indicates a lack of due diligence in a matter of clear public interest.
24. The Chairman dismissed an application for a public register of interest requiring all Tribunal personnel to specify whether they were or had been a Freemason. I note that the Welsh Office did not support the application and that the Secretary of State for Wales rejected the criticism voiced by Mr Rhodri Morgan MP as to the appointment of Mr Gerard Elias QC on the basis of his connection with freemasonry. I consider the Chairman's decision to have been made with inadequate, if any, consideration of public perception in this regard, nor the possible adverse implications upon the integrity of any findings made by the Tribunal in relation to freemasonry.

25. The head of the Tribunal's Witness Interviewing Team (WIT), Mr Reginald Briggs, was a retired Detective Chief Inspector who had served in the South Wales police force and was a Freemason. The employment of retired police officers to trace and conduct interviews with witnesses who wished to complain about the police raised a further potential conflict of interest. Competing arguments as to their employment are adequately documented. On balance, I consider the rationale for employing retired police officers was right. They were experienced in interviewing witnesses and delay would be inevitable in the selection and training of other personnel. However, the employment of retired police officers from South Wales would have been objectively insensitive to some of the complainants of abuse to the North Wales police force, by reason of the proximity of the two Welsh police forces.

The Tribunal's investigation of specific allegations of child abuse

Procedure adopted by the Tribunal

Documentation

26. The Tribunal made a conscientious effort to obtain all existing relevant material. Some material of potential relevance was no longer available. There is no evidence to suggest deliberate destruction.
27. Concerns have been reported that a former employee of the successor authorities to Clwyd and Gwynedd county councils was involved in deliberately withholding potentially relevant files from the Tribunal. In May 1999, the Chairman was notified of these concerns. No further action resulted. I am not in a position to determine conclusively whether or not files were withheld from the Tribunal, however, the files collated were not the only source of allegations and it is unlikely that the relevant employee was in a position to protect alleged abusers. I do consider that the police should have been alerted by the Tribunal to the suggestion of a possible act of perverting the course of justice and that the Tribunal Report should have referred to the possibility that documents had been withheld.

Witnesses

28. The Tribunal was widely advertised and prospective witnesses were directed towards a dedicated telephone helpline. Generally speaking, those who contacted the helpline, and who appeared to have relevant information, were invited to be interviewed by the WIT. In addition, the WIT was instructed to trace witnesses who had previously given police statements. The WIT received a clear direction from Counsel to the Tribunal as to how to conduct the witness interviews at which statements were prepared. Witnesses were allowed to be accompanied when being interviewed by members of the WIT. The presence of a solicitor or third party during the interview protected the interests of the witness and the interviewer, and was sufficient guard against concealment or omission of complaints made. The documents reveal very few complaints made by those who had been approached and suggest that the WIT approached the task sensitively.

29. It would be unrealistic for the WIT to trace all witnesses who had provided a police statement, in particular those who had made more minor allegations of abuse. The WIT worked efficiently and industriously to obtain last known addresses for hundreds of potential witnesses identified in the police statements, but there were prospective witnesses who the WIT did not attempt to trace without reason given, or apparent from the material. Some of these complainants appear to have made serious allegations of abuse relevant to the Tribunal's terms of reference, but they are relatively few and, for the avoidance of doubt, did not concern establishment figures.
30. 600 other potential witnesses, who had not responded to the advertisements or otherwise made themselves known to the Tribunal, were selected randomly utilising an independently devised statistical formula. This was entirely reasonable in principle and could have provided corroboration or moderation of the scale of the abuse that was to be determined. The documents reveal that the WIT completed inquiries into 111 potential witnesses of the 'Random 600', as it was known, but relatively few of those seen provided a Tribunal statement detailing abuse suffered. In the circumstances, it was felt inappropriate to seek to interview the balance. It is unfortunate that the Tribunal Report does not reflect that this process was not followed through to conclusion, but the decision to abandon the process was proportionate in view of the level of response as against the time expended and the information available from other sources.
31. Legal representation was ensured for all living complainants who had made a statement to the Tribunal and those they accused. There was no representation for deceased complainants or accused. The Tribunal's rulings on representation were reasonable and not designed to impede access to justice. I am satisfied that it was reasonable and proportionate in light of available resources and the anticipated length of the hearings for the deceased not to be represented.

Management and presentation of evidence

32. The Tribunal prepared a schedule containing all allegations of physical and sexual abuse as contained in police and Tribunal statements. Analysis of the schedule revealed it to be largely accurate, but identified a small number of omissions or incorrect categorisation of the abuse alleged. This Review did not rely on the Tribunal schedule.
33. The management of the disclosure process in relation to social services, medical and criminal records was well ordered and appropriate to guard against unnecessary 'fishing expeditions' and to protect confidentiality, whilst ensuring observance of due process.
34. Oral and written evidence was adduced before the Tribunal. Arrangements made in this regard were satisfactory and the decisions made as to whether to call a witness to give oral evidence or whether to read their statement were, on the whole, reasonable. Such decisions were necessary in order to manage the huge volume of evidence before the Tribunal.

35. In general, I consider Counsel to the Tribunal explored all matters of relevance with witnesses during the course of their oral evidence. On the relatively few occasions where matters contained in witness statements were not explored, there was generally good reason. On some occasions, allegations against unidentified police officers were omitted when reading statements to the Tribunal, but unredacted statements were available to the members of the Tribunal and all Counsel representing parties before the Tribunal.
36. There is no evidence that the Tribunal sought deliberately to avoid investigation of any specific allegation of abuse. I am satisfied that the process was not likely, nor designed, to protect any individual or institution implicated in the abuse.
37. The Chairman explained in his note on procedure, at Appendix 4 of the Tribunal Report, why an adversarial approach was adopted. His reasoning was sound. It would have been difficult to devise a process that could have catered for every individual witness in light of the emotive subject matter under investigation. An adversarial approach, which involved so many legal representatives from independent practice, does not readily admit the prospect of undue influence or interference or concealment of relevant evidence.
38. The witness support service was independent and was introduced for the purpose of mitigating the impact of the traumatic process of making a statement alleging abuse and/or giving evidence before the Tribunal. It appears that the service was properly co-ordinated and well run, but it is inevitable that no service would be capable of alleviating all distress or anxiety.
39. Decisions made to withdraw Salmon letters and give assurances to those accused that they would not be named in the Tribunal Report were, in the main, justified in an effort to reduce the length of the hearings in the context of the other evidence available.
40. The Tribunal's ruling on anonymity was not designed to protect abusers, of whatever status, but rather to facilitate the giving of evidence.

The Tribunal's investigation of freemasonry

41. Despite two of Counsel to the Tribunal and the head of the WIT's association with freemasonry, there is nothing to call into question the adequacy of the Tribunal's investigations into the issue of freemasonry at any stage of the process. The findings in relation to the known Freemasons, _____ and Lord Kenyon, were in accordance with the weight of the evidence before the Tribunal.

Speculation and concerns as to the involvement of establishment names in child abuse in North Wales

42. Examination of available police documents relating to the period prior to the establishment of the Tribunal reveal that information provided by various sources to the police about establishment figures was unreliable or speculative and largely

based on hearsay. At least one journalist acted irresponsibly in conducting his own investigations into the involvement of establishment names. Notably, in the light of the circumstances leading or contributing to the establishment of this Review, Sir Peter Morrison's name did not feature at all in the police material.

43. There is reference within the Welsh Office papers, prior to and during the course of the Tribunal, to the alleged involvement of establishment names in the abuse of children in care, but no names are identified, save for one and he in the context of concealment of the names of child abusers. There is no document I have seen which deals with the action taken in respect of this information.

The Tribunal's investigation of the alleged involvement of establishment names

44. Tribunal working papers reveal that the Chairman and Counsel to the Tribunal were alert to the expectation of finding evidence relating to 'high profile names' and recognised that, in the interests of the Tribunal's credibility, they could not ignore rumours and speculation in respect of the involvement of such figures. I make clear again that I have seen NO evidence of child abuse by politicians or national establishment figures in the documents which were available to the Tribunal, save that which could be classed as unreliable speculation.
45. It was necessary for the Tribunal to make an evaluation as to the reliability of informants and the nature of their allegations when considering whether the matters should be investigated further. Where a source of information was identifiable and made a specific allegation of abuse, or where allegations reported in the media were supported by allegations contained in witness statements, the Tribunal made attempts to trace the witness and investigate the allegation. This approach was reasonable.
46. The name of "McAlpine" did arise during the course of the Tribunal hearings, but in circumstances where the actual identification of the individual was in obvious doubt. It was reasonable not to require Lord Alistair McAlpine to attend the hearings to answer allegations which did not appear to refer to him, and consequently, in light of the findings concerning allegations made against the name of "McAlpine", there would be no reason to refer to any McAlpine in the Tribunal's Report. The names of Sir Peter Morrison, other politicians of the day and now notorious celebrities did not feature in the evidence before the Tribunal. In these circumstances, there would be no reason for the Tribunal Report to refer to them.
47. There were allegations against one member of the clergy and unidentified police officers contained in statements available to the Tribunal that were not read out during the course of the hearings, and to which there is no reference in the Tribunal Report. In respect of the former, this is likely to be because he was under police investigation. However, it is arguable that the allegations against unidentified police officers falling within the Tribunal's terms of reference should have at least been acknowledged in the Tribunal Report, given the sensitivities around the investigations conducted by North Wales Police. The assertion in the Tribunal

Report that allegations of sexual abuse had been made against only three police officers, other than [redacted] may not be strictly accurate, subject to the Tribunal's definition of sexual abuse or their findings upon whether or not there was sufficient evidence as to whether a complainant was in care at the relevant time.

48. Allegations were made in police and Tribunal statements against a former police officer of the North Wales Police. No findings were made against him and he was not named in the Tribunal Report. Subsequently, he was convicted of a sexual assault against a young person not in care at the relevant time. It is arguable that the conviction, which became known during the drafting of the Tribunal Report, should have been referred to as a matter of public interest.

The Tribunal's investigation into the existence of a paedophile ring

49. The Tribunal defined a paedophile ring as a group of individuals, known to each other, exploiting children for sexual gratification by passing victims and information between themselves. This definition was not unreasonable.
50. Very few complainants alleged that they had been sexually abused by two men jointly participating or in the presence of others. There was evidence that two convicted abusers, involved in the running of North Wales children's homes, had separately introduced residents to men outside of the residential care establishments for the purposes of sexual favours. These allegations were explored during the course of the complainants' oral evidence. The Tribunal Report does not make specific reference to all of these allegations, but this is unsurprising given that they were isolated allegations, often involved unidentified participants, and would have added little to the more specific findings made against named individuals in the Tribunal Report.
51. The Tribunal Report recognised that the main complainant of a paedophile ring operating in North Wales was [redacted] referred to in the Tribunal Report as [redacted]. Tribunal working papers reveal that the WIT attempted to trace and interview 15 possible victims of an alleged paedophile ring and all of [redacted] alleged abusers. Several of the men accused by [redacted] of abusing him were called to give evidence at his solicitor's request. The Tribunal's difficulties in making particular findings against named individuals on the basis of [redacted] uncorroborated evidence are well referenced and cannot, in my view, be deemed perverse.
52. Witness statements before the Tribunal did reveal several allegations of sexual abuse made against different instructors in the army cadets, who were also serving or retired police officers. Whilst the Tribunal Report notes that allegations had been made against police officers at a time when they were working as army cadet instructors, the issue of whether or not this would suggest a paedophile ring was not fully explored.

53. Otherwise, on the direct evidence before them, it was not unreasonable for the Tribunal to conclude that there was no evidence of a further paedophile ring in existence.

Conclusion

54. I have found no reason to undermine the conclusions of the Tribunal in respect of the nature and the scale of abuse. Neither is there evidence of the involvement of nationally prominent individuals in the abuse of children in care in North Wales between 1974 and 1996. Consequently, I do not recommend the establishment of a further public or private inquiry or review.

Chapter 1: Introduction

Background to the Review

- 1.1 This Review was established to examine the scope and conduct of the “Tribunal of Inquiry into the abuse of children in care in the former county council areas of Gwynedd and Clwyd in North Wales since 1974”, established under the chairmanship of Sir Ronald Waterhouse in 1996 (‘the Tribunal’).
- 1.2 The Review was announced on 8 November 2012 in the midst of the increasing number of allegations of sexual abuse made against the late Jimmy Savile and the implication of the BBC’s complicity in concealing and effectively countenancing the same. The extensive media interest that surrounded the affair created the context for allegations against other ‘establishment’ figures to be aired. It also resurrected the disquiet voiced after publication of the Report, ‘Lost in Care’ (‘the Tribunal Report’), in February 2000 by politicians of the day and journalists, that prominent public figures had been involved in the abuse of children in care in North Wales, but had escaped exposure and public censure by virtue of their standing in society. Many suspected the connivance of government, the police, masonic lodges and/or the Tribunal itself. A significant number have maintained this stance to date.
- 1.3 In November 2012, [redacted] a witness to the Tribunal (referred to as [redacted] in the Tribunal Report), alleged in the media that there had been a wider circle of abusers than those referred to in the Tribunal Report, including businessmen, police officers and a senior Conservative politician, who some believed to be Lord McAlpine. Lord McAlpine, the former Conservative party treasurer, released a statement describing the allegations as “wholly false and seriously defamatory”. He made clear his intention to institute defamation proceedings against those circulating rumours on Twitter and other social media. [redacted] confirmed publicly, after seeing a photograph of Lord McAlpine, that this was not a man who had abused him. The majority of potential defendants to the libel proceedings apologised and agreed to make a charitable donation. Another [redacted] was ruled to have defamed him. In those circumstances, many expected or called for this Review to be abandoned.
- 1.4 However, around this time, press reports also contained former ministers’ accusations that Sir Peter Morrison, Parliamentary Private Secretary to the late Prime Minister Margaret Thatcher, a former deputy chairman of the Conservative party and MP for Chester from 1974 to 1992, who died on 13 July 1995, had been involved in the abuse of children in North Wales. More significantly, the Right Honourable David Jones MP, the immediate past Secretary of State for Wales, informed Sir Jeremy Heywood, the Cabinet Secretary, of a telephone call he received, he believed in about 2000, said to be from a member of the Tribunal staff, which implicated the late Sir Peter Morrison and appears thereby, at least by reason of cumulative effect, to have triggered this Review.

Terms of Reference for the Review

- 1.5 On 8 November 2012, the Right Honourable Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, made a Written Statement to the House of Commons in the following terms:

“Following the Prime Minister’s statement on 5 November, I am announcing today a review of Sir Ronald Waterhouse’s Inquiry into the abuse of children in care in the Gwynedd and Clwyd council areas.

The Review will be chaired by Mrs Justice Macur DBE, a High Court Judge of the Family Division.

The Review’s terms of reference are:

‘To review the scope of the Waterhouse Inquiry, and whether any specific allegations of child abuse falling within the terms of reference were not investigated by the Inquiry, and to make recommendations to the Secretary of State for Justice and the Secretary of State for Wales.’

The arrangements for the Review will be a matter for Mrs Justice Macur. The Ministry of Justice and the Wales Office will provide support to her, and all relevant material will be made available to support the investigation.”

- 1.6 The Right Honourable Lord McNally PC, Minister of State at the Ministry of Justice, made a similar statement in the House of Lords on the same day.

Parameters of the Review

- 1.7 My letter of appointment (Appendix 1) is dated 14 January 2013. It makes clear that my Review is “a non-statutory document-based Review and not an Inquiry held under the Inquiries Act 2005”. I was not asked to conduct a fresh investigation into the allegations to establish civil or criminal liability or to order financial settlement. I did not have the power to hold oral hearings, but could conduct ‘meetings’ and invite, receive and consider written representations as I considered appropriate. A separate, but parallel police investigation, Operation Pallial, was announced by the Right Honourable Theresa May MP, Home Secretary, on 6 November 2012 to assess the allegations recently received, to review the handling of the allegations of physical and sexual abuse by the North Wales Police force (NWP) in the relevant period and to investigate any new allegations arising in this context. It is continuing.
- 1.8 A Memorandum of Understanding was agreed between the Review and Operation Pallial in January 2013 governing how the two teams would work in tandem. It was obviously necessary that the Review should give priority to Operation Pallial in respect of the inspection of documents and interviewing of witnesses and/or complainants, in order to protect the integrity of criminal investigations and prospective future prosecutions.

- 1.9 During the course of this Review, a number of contributors have provided me with information including allegations that were not made during the currency of the Tribunal. I have recorded these allegations in my Report when relevant to the parameters of this Review, but have not been in a position to make any determination of their reliability.

A brief overview of my approach

- 1.10 I have interpreted my terms of reference so as to investigate and address the concerns expressed or implied, which have suggested that the Tribunal was inherently unreliable by reason of the constraints imposed by its terms of reference, or its constitution, or in its process of investigating complaints and/or the conclusions it reached in the Tribunal Report. I provide a detailed account of my methodology in Chapter 2. Throughout this Report, I refer generically to prominent members of society, whether local or national, as 'establishment names' or 'establishment figures'.
- 1.11 I have interpreted my terms of reference relating to the 'scope of the Waterhouse Inquiry' to require an examination of events prior to the establishment of the Tribunal in the context of what has been expressed to be the suspected malign influence of freemasonry and/or government, and/or other public bodies.
- 1.12 Consequently, I deal in this Report with:
- The apparent delay in the establishment of the Tribunal, addressing the possibility that ministers and/or officials wished to avoid a public airing of allegations made against establishment names or figures (Chapter 3).
 - The Tribunal's constitution and parties represented before the Tribunal, including the selection and recruitment processes leading to the appointment of the Tribunal members and its personnel, and the conduct of the Welsh Office in their role as a party to the Tribunal, examining whether any were involved in concealing evidence of child abuse (Chapter 4).
 - The formulation of the Tribunal's terms of reference, analysing whether they were specifically devised or interpreted in order to exclude investigation of establishment names or figures, or any other alleged abusers (Chapter 5).
 - The procedure adopted by the Tribunal in the course of the inquiry, assessing whether the approach chosen was amenable to the investigation of the allegations made and was pursued in like manner regardless of the identity of those accused (Chapter 6).
 - Freemasonry, examining the adequacy of the Tribunal's investigations into allegations against Freemasons accused of abuse or its concealment (Chapter 7).
 - Establishment names or figures, examining the adequacy of the Tribunal's investigations into allegations against establishment names and whether the Tribunal Report wrongly omitted to refer to the identities of those implicated (Chapter 8).

- The existence of a paedophile ring, examining the adequacy of the Tribunal's investigations into allegations, in general or specifically, as regards a paedophile network infiltrating the care system (Chapter 9); and
- Concluding remarks and recommendations (Chapter 10).

Inevitably, there is overlap of subject matter between the chapters.

- 1.13 It would be impractical to make reference to every document I have seen, or every contribution made to the Review, or every interview I have conducted. For the most part, where I do make reference to documents, communications or contributions, I summarise the same, for to do otherwise would render this Report over long. However, I do reproduce text in full when it appears to me to be either particularly pertinent or incapable of adequate précis. Where there is information that runs contrary to my conclusions, I have reported upon it.
- 1.14 I have made reference to material that would otherwise be subject of legal professional privilege in so far as it concerns the Tribunal legal team and Welsh Office legal team, taking the view that privilege has been waived by 'the client' in each case for the purpose of this Review. When alerted to this, the Wales Office responded saying they had no objection to the material held by the Review being used in this way.
- 1.15 A comprehensive list of the nature of the documents reviewed has been compiled, albeit not their individual components. All documents provided to the Review have been or will be returned to their source as requested, but will otherwise be retained with the Review documents for consideration of future archiving. Tape recorded interviews have been transcribed. The transcripts, and notes of interviews conducted but not recorded, have been produced and submitted for agreement by the interviewee. In addition, there is a computer database containing copies of all documents scanned and deemed potentially relevant to this Review's analysis of the allegations of abuse. My sources of reference are therefore amply documented and should be preserved.
- 1.16 Where I have identified matters in the documents provided to me or arising from contributions to this Review which, if not revealed, could undermine public confidence in the integrity of this Review, I report upon them regardless that they do not impact upon my conclusions.
- 1.17 Chapter 6 of the Tribunal Report sets out the "Tribunal's approach to the evidence". Specifically, it indicates that it did not "undertake a detailed examination of each specific incident, bearing in mind the overall objectives of the Inquiry underlying our terms of reference."¹ This Review has considered the Tribunal's handling of each of the documented complaints in the manner indicated in paragraphs 2.46 to 2.48 below.

1 See paragraph 6.02 of the Tribunal Report

Reporting of names

- 1.18 I indicate in paragraph 2.48 the manner in which this Review has scrutinised each and every allegation contained within the materials made available to it. Where I have considered it to be relevant to refer to specific complainants and contributors to address, demonstrate or describe a particular topic, I do so by reference to their name in the Report that I deliver to the Secretaries of State for the commissioning departments. In the case of the complainants whom I identify and who are also specifically referred to in the Tribunal Report, I also specify the non-specific initial adopted by the Tribunal. However, I remind the readers of this Report (redacted or otherwise) that the Tribunal Report explicitly records that an individual is not identified by the same initial throughout.
- 1.19 I have cautioned the Secretaries of State for the commissioning departments that the Sexual Offences (Amendment) Act 1992, sections 1(1) and 6 prohibits the inclusion in any publication addressed to the public at large of any matter relating to the identity of a victim of an alleged sexual offence if it is likely to lead members of the public to identify that person against whom the offence is alleged to have been committed. I advise that the public identification by name of complainants not protected by this statutory provision, or individuals who made representations to the Tribunal is unnecessary and to be avoided to guard against any adverse repercussions and in accordance with their right to respect for their private and family life. Nevertheless, I have thought it necessary to include the names of some complainants and contributors in order to fully inform the Secretaries of State of the commissioning departments of their identities, which maybe of interest to Operation Pallial or other reviews or inquiries.
- 1.20 In Chapters 8 and 9 I refer to the names of individuals rumoured or speculated to be involved in child abuse and raised prior to and during the Tribunal investigation; some of these names continue to be featured in the media in this context. I have done so in order to address the source and reliability of the information, and with a view to considering whether the Tribunal's approach to the available material was reasonable in this regard.
- 1.21 The individuals concerned include those who have not been subject to police investigation or have not been convicted of a criminal offence. Consequently, I have cautioned the Secretaries of State of the commissioning departments that, quite apart from 'Human Rights' considerations, to identify publicly those who fall into these categories, many who have not otherwise been subject to media reporting in this regard, would be unfair in two respects and unwise in a third. First, the nature of the information against them sometimes derives from multiple hearsay; second, these individuals will have no proper opportunity to address the unattributed and, sometimes, unspecified allegations of disreputable conduct made against them; and third, police investigations may be compromised.

- 1.22 I do not overlook the prospect that those individuals who continue to be the subject of unattributed allegations, rumours or speculation may wish to be publicly exonerated insofar as this Review is able to do so. Arguably, those individuals should be invited to make representations on this issue to the commissioning departments.
- 1.23 Save for the prospect of police investigations, actual or prospective, the reasons not to identify these individuals are equally applicable to those now deceased; a similar argument as to the exoneration of the deceased could be proffered to their family.
- 1.24 I have written separately to the Secretaries of State of the commissioning departments indicating my firm view that, whilst it is essential that they should be informed of all relevant detail considered by this Review, certain parts of this Report must be redacted pending the conclusion of criminal investigations and resultant criminal proceedings. This accords with the usual requirements of reporting restrictions pending and during criminal trial. It is for the Secretaries of State to determine any further redaction of my Report weighing public interest with the caution and for the reasons I have advised above.

Salmon letter process

- 1.25 I sent 'Salmon' letters to two interviewees prior to my interview with them in order to alert them in advance to specific allegations of their misconduct made to me and which I might wish to discuss with them. Subsequently, I have sent letters to individuals and organisations who may be criticised within this Report, identifying the nature of the possible criticism and materials I have relied upon in reaching my preliminary conclusions and inviting their response. In any case where the conduct of an employee in the execution of their duties might attract critical comment, and it appeared to me to arise from the instructions given by their employer, I have notified the latter. I have written to the known next of kin of deceased individuals whom I might have criticised in the Report and afforded them the opportunity to comment upon my preliminary conclusions.
- 1.26 When requested to do so, I have afforded those notified the opportunity to inspect the relevant materials identified, but have not provided them with copies of the materials to take away or permitted copies to be made. Inspections have been conducted in the presence of a trainee solicitor unconnected with the Review. The same arrangements for inspection have been applied throughout. I have considered the responses received to these letters before finalising my conclusions and make reference to them as relevant.
- 1.27 In addition, where appropriate, I have alerted surviving individuals of my intention to report certain details not otherwise in the public domain, but which do not constitute a criticism of their behaviour and invited their comments. I have not alerted the establishment or other figures whom I identify in accordance with paragraphs 1.20 to 1.23 above in the expectation that their names will be redacted.

Legal principles applied

- 1.28 I have not conducted this Review in an appellate capacity to determine afresh the findings and conclusions of the Tribunal. To do so would have been contrary to my terms of reference. Rather, I have considered whether the methods of investigation utilised during the inquiry were reasonable and sufficient to ensure that the Tribunal had access to all the relevant evidence and based their findings upon it. In so far as I adjudge the findings and decisions made to be rational and reasonable, I indicate that they are 'not perverse' regardless of whether I would have made the same adjudication.

Independence of the Review

- 1.29 My Review is independent of government. At no time have ministers or their officials attempted to influence me in the conduct of the Review or the conclusions I have drawn.
- 1.30 I was not required by the commissioning departments to declare any conflict of interest at the time of my appointment, or subsequently, or to indicate any interest in the subject matter of the Review. However, for the avoidance of doubt, I record the following information. I played no role in the Tribunal, including its establishment, conduct or the implementation of any of its recommendations. I appeared as Junior Counsel before Sir Ronald Waterhouse when he sat as a judge of the Family Division, but never, to my knowledge, in relation to hearings that concerned children or young persons who were placed in residential care in North Wales during the relevant period. In 1996, I was prosecuting Counsel in unrelated criminal proceedings against a former police officer accused, in the course of the Tribunal's hearing, of having sexually abused two children who may have been in care. I subsequently represented Flintshire county council, a 'successor' local authority, in unrelated childcare proceedings. I did not represent, nor participate in any criminal trials, for either the prosecution or defence of the North Wales care home staff implicated in the Tribunal hearings. I have come to know personally and/or professionally many of the Counsel who appeared on behalf of complainants, accused and other interested parties before the Tribunal, and others who represented the prosecution in associated criminal trials. Many now hold judicial office, have taken other positions or have been promoted in rank. To avoid confusion, where any individual has been promoted in rank, I refer to their present position on first mention of their name in this Report, but thereafter revert to their title at the time of the Tribunal. Save where identified as an interviewee, I have not sought their views, opinions or observations upon the Tribunal process.
- 1.31 I declare this interest, but do not consider that this caused a conflict of interest in regard to any issue arising during this Review.
- 1.32 I am solely responsible for the conclusions and opinions expressed in this Report, but have been ably assisted in the Review by a secretariat seconded from government, a solicitor from independent practice, a team of paralegals and my judicial clerk. The names of all Review personnel are to be found in Appendix 2. I am satisfied that all members of the Review team have consistently acted with all

due independence, discretion, diligence and with regard to the sensitivity of the subject matter at hand. No individual has declared or displayed any bias, prejudice, political affiliation or membership of, or association with, interested parties, pressure groups or freemasonry. I am assured and confident that members of my secretariat have maintained independence from their assigned departments in the conduct of their roles in this Review.

Transparency of the Review

- 1.33 In the interests of transparency, I report two matters relating specifically to the conduct of this Review and one matter relating to the preparation of the final Report of the Review.
- 1.34 As indicated at paragraph 1.4 above, the Right Honourable David Jones, MP, Secretary of State for Wales, met with Sir Jeremy Heywood, the Cabinet Secretary, on 5 November 2012. During the course of that meeting, Mr Jones voiced concern at the absence of any reference to Sir Peter Morrison in the Tribunal Report, despite what he assumed had been an authentic telephone call from a person who identified themselves as a member of the Tribunal staff. At the time of the telephone call, Mr Jones was a practising solicitor in North Wales and a Conservative prospective parliamentary candidate. The telephone call was said to be made to warn him that a once prominent member of the Conservative party, namely Sir Peter Morrison, had been named in one of the Tribunal's sessions as an abuser, and that this was likely to be in the Tribunal Report. The caller said that he was a Conservative party supporter and wanted to tip off the party to this name being made public. Mr Jones said that if the caller had identified himself he could not recall the name given. He had discussed the call with his constituency chairman, but heard nothing further. He told me that he had not been aware of the names of other politicians as falling under similar suspicion. Mr Jones said he specifically requested the meeting of 5 November 2012 to be minuted. He gave me permission to obtain minutes of the meeting from the Cabinet Office. This was requested in December 2012. After repeated prompting, a first 'note' of the meeting was eventually produced to this Review by the Cabinet Office on 14 May 2013.
- 1.35 The first 'note' records Mr Jones as saying "he recalled the general dissatisfaction of the way in which the Inquiry was conducted and a number of high profile names that continued to crop up in the context of child abuse allegations ..." The first 'note' went on to name three former MPs and Sir Peter Morrison. This is in stark contrast to the information Mr Jones supplied to me during interview. Accordingly, I asked for his observations.
- 1.36 It was then that I was informed that the former Secretary of State for Wales and the Cabinet Secretary had not been asked to approve the first 'note' before it was sent to me. Mr Jones emphatically disputed its accuracy. A second 'note' of the meeting was then produced by the Cabinet Office on 9 July 2013, which indicated that the named politicians, other than Sir Peter Morrison, were said to have been subject to

ongoing rumours and speculation on the internet subsequently. I confirm that the other politicians named in the 'notes' have been subject to rumours and speculation, as indicated later in this Report, however they were not named by any witness when giving evidence to the Tribunal.

1.37 I am told by their offices that this second, amended, 'note' is approved by Mr Jones and the Cabinet Secretary.

1.38 In response to my request for an explanation of the manner in which the notes had been prepared, the Cabinet Secretary's Principal Private Secretary responded, "... exceptionally, it may be agreed at a meeting that there will be a note which is to be agreed by all parties but this course of action is exceptional and was not the course of action agreed in this case."

1.39 I alerted the Cabinet Secretary of my intention to refer to this matter by letter dated 15 May 2015. He responded in terms that "it is not standard practice to share draft notes of meetings with those that attend a meeting. Nor is it standard practice to ask attendees to agree the content. My Principal Private Secretary (PPS) took a contemporaneous note of the meeting but I did not agree with the former Secretary of State for Wales, David Jones, that there would be a joint note produced of our conversation. If it had been agreed that a joint note would be produced, I can assure you that my PPS would have shown him the note in draft and secured his agreement to it." He went on to deal with Mr Jones's suggestion that the note was inaccurate, by indicating that he (the Cabinet Secretary) had "read the note again in the light of this. It is not a verbatim account of the meeting. Cabinet Office minutes are not intended to do more than cover the key points of the meeting. In that context, I am satisfied that it is an accurate account. Notes of the meeting were taken contemporaneously at the time and the formal note produced later, on request."

1.40 The letter does not specify which of the two notes has been read and verified as accurate by the Cabinet Secretary. Consequently, I wrote to him on 17 June 2015 inviting this clarification. I have received no response.

1.41 In light of the timing of the production of the notes to this Review, I consider it likely that the discrepancy between the notes arises from an attempt to decipher or interpret the notes taken during the meeting on 5 November 2012 too long after the event. This incident does not undermine the conclusions I have reached in this Report. I report this discrepancy lest it be thought that an absence to reveal this information is evidence of a conspiracy to conceal.

1.42 The Right Honourable William Hague MP, Foreign Secretary (now The Right Honourable Lord Hague of Richmond), requested access to the Review's papers immediately after the Review was established in November 2012. He was allowed access on 3 July 2013 to a restricted number of documents, which were likely to have been seen by him during his tenure as Secretary of State for Wales. I would not have permitted it, but for his reliance upon the 2010 Ministerial Code which

allows ministers “reasonable access to the papers of the period when they were in Office.” He proceeded with the appointment to access the material in the knowledge that it would be reported and has not sought that I should conceal the same. I did not meet or communicate with him at any time during his review of the materials.

- 1.43 I subsequently wrote to the Right Honourable Mr Hague on 15 July 2014 seeking information as to any knowledge he may possess concerning missing dossiers said to contain allegations of child sexual abuse, then being reported contemporaneously in the press. Having received no response, I wrote again on 8 October 2014. In his letter to me of 13 October 2014, Mr Hague apologised for the delay in responding, but indicated that the earlier letter had not reached him. He said that he had no knowledge of the missing dossiers; his reason for reviewing relevant papers was to refresh his memory of decisions taken in light of the renewed interest in the Tribunal. I record these matters in the interest of transparency.
- 1.44 On 30 September 2015, I received an unsolicited letter from Mr Jonathan Jones, Permanent Secretary, HM Procurator General and Treasury Solicitor Government Legal Department based upon his understanding of the manner in which I proposed to deal in this Report with the inclusion of names of individuals subject to unsubstantiated allegations. Mr Jones requested a meeting to discuss the matter in person. I responded by letter dated 13 October 2015 declining a personal meeting, indicating my intention in this particular regard and explaining the rationale behind my decision. Nevertheless, I made clear that I would consider any further written observations he may make in this regard.
- 1.45 On 27 October 2015 I received a letter dated 23 October 2015 from The Right Honourable Michael Gove MP, Lord Chancellor and Secretary of State for Justice, who had been shown the correspondence previously referred to. The Lord Chancellor and Secretary of State for Justice expressed the view that as a matter of principle it would be wholly unfair to name individuals who have been merely rumoured and speculated to be involved in child abuse, and ‘strongly urged’ that I consider whether there are ways of dealing in this Report with the manner in which the Tribunal dealt with such rumours and speculation without naming the people concerned. He suggested that I underestimated the unfairness and prejudice to such individuals of including their names in the Report submitted to the commissioning departments to determine redaction and that, in any event, redaction “is more properly a task for you.” He invited me to refer any allegations “about which you are not in a position to make a finding”, but which merited further investigation, to the police or otherwise to consider “providing Justice Goddard with the full unredacted text who would then be able to consider further disclosure in line with established processes under the Inquiries Act 2005.”
- 1.46 I have given all due weight to the views of the Lord Chancellor and Secretary of State for Justice, but for the reasons I refer to in paragraphs 1.19 to 1.22 of this Report, I am not persuaded that I should take a different course.

Chapter 2: Methodology

Introduction

2.1 This Review has taken a significant time to report. At the time of my appointment it was impossible to know the scale of the task I had been set. I refused then, and subsequently, to indicate a date when this Report would be produced and presented. I did so in order that the thoroughness and integrity of my investigation should not be compromised. In particular, I did not feel bound by the political calendar to present my Report before the General Election. The substance of this Review has cross party implications, wider public interest and, more particularly, affects many individuals who participated in the Tribunal process. I believe that events have proved that I was justified in this stance. This chapter details the vast quantity of materials inspected, the methodology of the Review's work and the difficulties encountered which have added to the timescales of the Review. A small delay has been occasioned by the necessity to abide by government recruitment and tendering protocols. During the course of the Review, I have contemplated increasing the number of personnel involved in the examination of material. However, the time that would have been expended in vetting, selection and training would have detracted from the progress of the examination of the papers.

The Review

2.2 Inevitably, my Review needed to obtain and consider the documents requisitioned or created by the Tribunal and those concerned with its establishment, procedure and outcomes. A press notice was issued on 28 November 2012 making clear that the Review wished to obtain all documents that would, or should, have been made available to the Tribunal. It asked that any person with information relating to the remit of the Review contact the Review team on designated telephone numbers or via a dedicated email address accessed only by members of the Review team.

Call for documents relevant to the Review

2.3 A call was made to all government departments, local authority chief executives and public bodies likely to hold information relevant to the Review. Consequently, I received documentation from the Wales Office, Welsh Government, Flintshire county council and Conwy borough council (two of the six successor authorities to Clwyd county council and Gwynedd county council), the Crown Prosecution Service (CPS), the Attorney General's Office (AGO) and the Department for Education. As indicated at paragraph 2.17 and 2.18, I later requested access to pertinent information held by the Home Office and the Government Legal Department (GLD).

Nature of documents received

- 2.4 I have received materials that were obviously considered by the Tribunal, namely witness statements, medical and social services files, care home inspection reports, reports of internal inquiries into events in certain North Wales children's homes commissioned by the Gwynedd and Clwyd county councils and court transcripts of some parts of relevant criminal trials and the civil proceedings initiated by Gordon Anglesea, a former Police Superintendent, in respect of what were determined to be libellous comments linking him to child abuse in North Wales children's homes. Other materials obviously arose from the running of the Tribunal, including secretariat and administrative communications, Witness Interviewing Team memorandum, daily transcripts of evidence, procedural rulings of the Chairman, agenda for meetings and written communications between Counsel and Solicitor to the Tribunal and the Chairman, the Chairman's correspondence, the working papers of Counsel to the Tribunal, the notes of evidence of the other two members of the Tribunal and minutes of meetings between the three members of the Tribunal to discuss their findings at the conclusion of the evidence.
- 2.5 In addition, I have had access to documents relating to the inception, progress and outcome of the public inquiry and the participation of the Welsh Office (the Wales Office since 1 July 1999) as a party before the Tribunal. These materials consist of ministerial, local government and civil service internal communications, instructions to and written advices from Counsel on various inter related matters arising, the minutes of meetings of the 'North Wales Working Group' established to support the representation of the Welsh Office before the Tribunal and communications including notes of Counsel/Solicitor/Client communications, that would otherwise be privileged as indicated in paragraph 1.14 above.

Presentation of documents

- 2.6 Tranches of documents were received by the Review between 15 November 2012 and 7 January 2014, amounting to 523 boxes and five separate files.
- 2.7 398 boxes originating from the Wales Office, now stored by the Welsh Government, were accompanied by a 'reference index' referring to 718 boxes, 35 general files, and 11 personal files. A separate index provided by the Clerk to the Tribunal, Ms Fiona Walkingshaw, did not, in the main, accord with the contents of the boxes delivered. All but a small minority of the boxes were security tagged and double bagged. The contents of those that were not were unremarkable.
- 2.8 The Welsh Government continued to discover relevant documentation after the first delivery of its own materials to the Review in January 2013. In total, three further consignments were received. In April 2013, I received an apology on behalf of the Welsh Government that the further documents had not come to light sooner, and was informed that they had been discovered in a locked safe which had not been opened for a considerable length of time. As a result, a further physical search

for relevant files or documents was made, but no additional documents came to light. However, on 26 November 2015, I was advised that the Welsh Government had discovered further documentation potentially relevant to the Review. Two files were subsequently delivered on 1 December 2015. All consignments of documents belonging to the Welsh Government were delivered in boxes comprehensively and accurately indexed, as were those contained in the single box provided by the Department for Education.

- 2.9 Contents of 11 of the 20 boxes of documents provided by the North Wales successor authorities contained an index, which did not always reflect the box content. The remaining nine boxes consisted of materials emanating from an earlier investigation commissioned by Clwyd county council and chaired by Mr John Jillings (see paragraphs 3.7 and 3.21), which were sent to the successor authorities by the Tribunal for the purpose of storage and/or destruction. The material in these boxes was not indexed, but the contents were well ordered.
- 2.10 Boxes of CPS files, primarily comprising prosecution advice files, still existing were delivered and found to be correctly indexed.

Additional documents and material received

- 2.11 Subsequently, I requested and received from the CPS, documents relating to the criminal prosecution of Derek Brushett for sexual assaults upon residents in an approved school for young males in the 1970s, and from the Welsh Government, the report of an independent internal audit of his work as a Social Services Inspector when employed by the Welsh Office (see paragraphs 4.108 to 4.119).
- 2.12 Following my meeting with a former auditor of Flintshire county council, I considered it necessary to obtain documents relating to his claim for constructive dismissal, and which referred to local authority employees who had had significant input into the Tribunal process. With his permission, I requested and received seven boxes of material from the solicitors he had instructed. These documents were recovered from storage. As expected, they were not indexed, but were apparently complete.
- 2.13 There has been documentation submitted by individual contributors to the Review. This includes a list of names held by Mr Martyn Jones, former MP for Clwyd South/South West and referred to in Hansard reporting the debate on 'Safeguards for Children' on 17 March 2000, and his notes of a meeting with police officers concerning the same. An additional box file was provided by the Senior Crown Prosecutor who appeared before the Tribunal, containing his working papers. I have been supplied with copies of Mr Richard Webster's book, 'The Secret of Bryn Estyn', and other publications by the organisation FACT (Falsely Accused Carers and Teachers).
- 2.14 I have made explicit requests of certain individuals who have implied in their written responses to me, or else in the media, that they hold information about abusers who were not investigated by the police or Tribunal, but they have not supplied me with further information or documents.

- 2.15 Following my interview with [redacted] and with his authorisation, I made a request for materials said by him to be potentially relevant to my Review and stored by a solicitors' firm he had previously instructed. The particular solicitor named by [redacted] had left the practice some time before. Unfortunately, it seems that although the case files had been archived, they had since been destroyed in view of their age. However, the solicitor dealing with my query recalled that, prior to archiving and destruction of the files, the solicitor named by [redacted] had visited the office and may have taken any documents he considered worthy of retention. I have written to the solicitor concerned, but he has not responded.
- 2.16 I have visited the Serious Organised Crime Agency (subsequently to become the National Crime Agency) North West Division offices in Warrington in order to access the HOLMES (Home Office Large Major Enquiry System) database created in respect of the police investigation commencing in North Wales in 1991. I have been provided with the downloaded entries and documents I requested.
- 2.17 More recently, I have requested information from the Home Office concerning the 'missing dossiers' said to have been compiled as a result of the late Mr Geoffrey Dickens MP's submissions to a former Home Secretary. I attended at the Home Office and was allowed access to the unredacted copies of the reports and the associated annexes prepared following the "Independent Review of Two Home Office Commissioned Independent Reviews Looking at Information Held in Connection with Child Abuse from 1979-1999", by Mr Peter Wanless CB and Mr Richard Whittam QC in 2014 ('The Wanless and Whittam Review'). They contained no relevant information of which I was not already aware from the materials previously available to this Review. It was subsequently reported in the media that documents had been discovered in the Cabinet Office archive, which were not available to Mssrs. Wanless and Whittam at the time of their reviews, and which refer specifically to former Conservative MPs including Sir Peter Morrison and Sir Leon Brittan. I have not seen those documents.
- 2.18 As a result of a letter sent to me by the Attorney General (AG), to which I make reference in paragraph 4.44, I became aware that the GLD may hold material relating to the Tribunal, which had not previously been disclosed to my Review. Consequently, the GLD was requested by letter dated 5 June 2015, to produce all relevant documents relating to the appointment of Counsel to the Tribunal. Documents were provided with an explanation for their prior non disclosure and an apology. It was said that the AGO is separate from the GLD and no appropriate liaison had occurred between the two prior to my letter addressed to the AG. Subsequently, as a result of the Treasury Solicitor's response to a Salmon letter dated 28 October 2015, it became apparent that the GLD held additional files pertinent to the terms of reference of this Review. Two boxes of documents were provided on 4 November 2015.

Storage and access to Review documents

- 2.19 All documents received by the Review have been stored in secure premises to maintain their integrity and by reason of their sensitivity. Save for the Right Honourable Mr William Hague's inspection of ministerial papers relating to his tenure as Secretary of State for Wales, which I refer to at paragraph 1.42 above, and the inspection of relevant documents by the recipients of Salmon letters, which I refer to at paragraph 1.26 above, access to the materials has been strictly restricted to members of the Review team, all of whom have been 'security vetted'.

Prior storage of Tribunal documents and failure to archive

- 2.20 I am satisfied that the Tribunal documents were properly stored in Gloucester during the compilation of the Tribunal Report, and for three months after its publication, and were appropriately identified and catalogued for onward transmission and ultimate storage in Cardiff. They were most likely handed over "in a fit state for archiving" as suggested was necessary in emails at the time, of which I give examples below.
- 2.21 In a letter dated 19 May 1998, the Tribunal Deputy Chief Administrative Officer wrote to Welsh Office officials, "Attached are lists of documents being delivered on 19 May to Curran Embankment File Store. As requested earlier could you let the Gloucester Officer know in due course what your classification numbers are ..." On 18 November 1998, he emailed a Welsh Office official reminding him to alert the Archive Registry that the documents already forwarded should be archived for 75 years, and that the Tribunal would require a list of the classification numbers when allocated.
- 2.22 On 1 March 2000, he notified Wales Office 'recipients' by email, "I shall be delivering to CP2 tomorrow ... the first tranche of items from the Gloucester Office ... I will be returning 3 files that were borrowed from the archive when it was in Curran Road ... from SOL 112. Also I will be returning a file to SOL 113 and another to SOL 153. In addition I will need to borrow SOL 92 and SOL 128. I also need to check whether SOL 87, 88 and 89 are in the Mezzanine ..." His ability to specify the precise destination of the files to be returned demonstrates the nature of the catalogue that had been created. I also note the similar ability of the Clerk to the Tribunal to direct, from long distance, a search of documents by reference to identified boxes in response to a request for disclosure in April 2001.
- 2.23 In March 2000, the Clerk to the Tribunal wrote to the Head of the Wales Office, "apart from the fact that, owing to their sensitivity, these documents should be placed in a secure and appropriate storage/archive as soon as possible ... we are under some pressure from the Valuation Office not to leave the papers in Gloucester any longer than necessary as major building works are planned for the suite of offices in which the papers are kept ... grateful if you could advise me ... of the arrangements for storing the papers after 15 May 2000. In making these arrangements it should be remembered that part of the Tribunal archive is already in CP2 and will have to be removed and put with the papers from the Gloucester office at the new location ... it would be helpful to have access to expert legal advice about the desirability of retaining the database of information compiled by the Tribunal in the course of its proceedings."

- 2.24 The methodical approach of the Tribunal administrative staff was not mirrored by the Welsh Office or subsequently by the Wales Office. In October 1998, a Welsh Office internal memorandum referred to the arrangements for storage of the papers produced by the Welsh Office Legal Team then currently held in CP2 (presumed to be Cathay Park Cardiff), “although the files have been allocated registered numbers they have not yet been formally registered although many do carry the registered number allocated to them ... the files can contain a number of different categories of document.”
- 2.25 In June 1999, a Welsh Office internal memorandum indicates that “a full set of Tribunal papers is, we understand, to be given over to the Secretary of State for archive purposes. It is not clear whether that material will be held by the Department (or in future the National Assembly), or whether arrangements need to be put in hand for the material to be placed in safekeeping elsewhere, perhaps in the Public Record Office.”
- 2.26 Of particular note are the contents of an email dated 25 April 2000 from a Wales Office official to others in terms, “my concerns are essentially directed towards those records which would be deemed to be Welsh public records ... we are still essentially in a paper document system and there still exists a need for the Tribunal material to be properly identified and catalogued. Welsh public records must be accessible and secure, this applies not only under the Public Records Act but also the revised Data Protection Act 1999. I have been raising this point for some time now and my concerns are that as we move further away from the date of the publication of the Report and its impact lessens as other priorities emerge, these papers will be left still unidentified and current knowledge of the value of the records lost as those with the knowledge move elsewhere. Someone needs to grasp this nettle once and for all.”
- 2.27 It appears that boxes of Tribunal papers were delivered for storage, initially to Curran Embankment file store in Cardiff, in and around May 2000. They have been moved, some apparently several times, subsequently. My examination of the exterior markings of the boxes suggests that the contents have been decanted from their original Tribunal packaging. There has been no attempt to archive them since 2000. Widespread disorder has replaced the apparently careful indexing of materials conducted by the administrative officers and Clerk to the Tribunal.
- 2.28 It is possible that some relevant documentation has been destroyed in accordance with government policies which prescribe destruction, or review for the purposes of destruction, of documents at different ages according to the nature and substance of the contents. If so, it will have likely been on an uninformed basis in the absence of a comprehensive index. There is no record of any such process other than as relates to the documents belonging to, and supplied by, the Welsh Government.
- 2.29 I wrote to the Director of the Wales Office on 15 May 2015 to inform him, amongst other things which are referred to elsewhere in this Report, of the criticism I was minded to make of the inadequate archiving of the Tribunal materials. The Director responded explaining that no attempt had been made to re-organise the documents

following the announcement of the Review in order to ensure a rapid production of materials to the Review and to avoid any suggestion that any member of the Wales Office had sought to interfere with the contents of the boxes of documents.

Absence of the Tribunal's computer database

- 2.30 The absence of a reliable index may have been compensated by access to the Tribunal's computer database. The Tribunal Report¹ records the scanning and filing of "12,000 documents, some of which ran to many pages" onto the Tribunal's computer. Two of the Counsel to the Tribunal, the Clerk, and one of the Solicitors to the Tribunal, all independently told me in interview that every document of note obtained for the Tribunal was logged and entered upon the bespoke computer database for use in what was intended to be a 'paperless' inquiry. It was said that the original documentation was not necessarily retained after being scanned into the computer database.
- 2.31 An agenda for an administrative meeting held on 9 February 2000, following the delivery of the Tribunal Report, suggests "that the scanner should be wiped clean as the information already exists in hard copy. This would avoid the involvement of data registration ..." However, the Clerk to the Tribunal specifically recalls its retention, indexed the same and was able to identify the label of the relevant archive box in which she had seen it stored. It was not present in any of the boxes delivered to me. All possible agencies were approached in an attempt to locate it.
- 2.32 Correspondence in relation to missing files indicates that a secondary computerised database was compiled by the successor authorities (see paragraph 6.79). During her interview with me, the Clerk to the Tribunal thought it possible that Flintshire county council, one of the successor authorities, may have inadvertently retained a copy of the database since computer hardware was returned to the authority after the conclusion of the Tribunal hearings. However, Flintshire's Head of Legal and Democratic Services notified the Review on 3 January 2013 that the "Head of ICT and our records officer both confirm that the databases were backed up to tape and the tapes given to the tribunal staff ... the servers were reformatted thereby wiping all the data so that they could be re-used within the council. It is our understanding therefore that the Welsh Office [sic] have those tapes ..."
- 2.33 The Wales Office conducted a search but found no trace. The tapes were found to have been transferred to the Welsh Government for storage and record management in either Cathay Park or Neptune Point, Cardiff, in accordance with a service level agreement that required the records of the 'North Wales Child Abuse Tribunal' to "be clearly identifiable and separately stored ... [with] no access to these records ... (except for records management purposes) without the express consent of the Wales Office." Investigations were commenced with, and an extensive search obviously conducted by, the Welsh Government.

1 See paragraph 1.11 of the Tribunal Report and paragraph 2 of Appendix 4 of the Tribunal Report (reproduced at Appendix 3 of this Report)

- 2.34 On 8 March 2013, my Secretariat was informed in terms, “with regards to the tapes holding back-up information relating to the Waterhouse Inquiry, I attach an email exchange from 2008 which states that the information held on the tapes was corrupted and unreadable. Also, attached is the formal documentation relating to the destruction of the tapes.” On 3 June 2013, it was confirmed that the Wales Office was not informed of the destruction at the time since, “there was no indication that the tapes belonged to the Wales Office. The labelling on the tapes were very scant and it was near impossible to tell what the tapes were about ... Furthermore the tapes were housed with other Welsh Government back-up tapes.”
- 2.35 The email exchange in September and October 2008 indicates attempts made to read the tapes and retrieve the data. There is no doubt that the subject of this email traffic is the ‘North Wales Tribunal backup tape’. A ‘technical support specialist’ employed by Siemens IT Solutions and Services Ltd, reports “the catalogue held on the first tape is corrupt (along with the data on that tape) which renders the other media in the set unreadable.” The tapes were thereafter consigned for “secure shredding ... on the Child Abuse file.”
- 2.36 I note a briefing paper prepared six months earlier in February 2008, dealing with the policy for “Storage and disposal of computer back up tapes and recovery data”, sought “agreement to proposed new procedures to reduce the time back-up tapes are kept to two years and to the disposal of back-up tapes older than two years.” It seems that this proposal was adopted and implemented in relation to approximately 4,500 tapes.
- 2.37 I wrote to the Permanent Secretary of the Welsh Government on 15 May 2015 indicating my provisional views on the destruction of the computer database. The Permanent Secretary responded indicating that his research had shown that, whilst the ‘limited information’ on the labels to the tapes suggested that they referred to the Tribunal, it was necessary to identify what was actually on the tapes by reading them. The Welsh Government’s ICT contractors at the time were aware of possible encryption issues, “but when asked to retrieve the data they were unable to do so citing digital continuity, digital rot (degradation of the software programme over time) and data degradation (data decay) over the eight or more years since the tapes were created.”
- 2.38 Unfortunately, if the computer database contained the cipher key to the initials utilised by the Tribunal to identify complainants in different chapters of the Tribunal Report, it too has been lost. It is not documented elsewhere. It has been necessary for the Review team to reconstruct the cipher key from base materials with consequent delay.
- 2.39 The failure to archive the Tribunal material, properly or at all, has increased the workload and extended the time scale of the Review considerably. In the absence of the Tribunal’s computer database and credible indices, it is impossible to confidently report that I have seen all relevant documentation that was before the Tribunal; although by process of analysis and cross referencing, I think it likely that I have obtained the majority, if not all, relevant documentation from various sources.

Preliminary examination of documents

- 2.40 My preliminary examination of the first consignments of boxes of documents originating from the Wales Office was conducted without the benefit of a credible index. They contained materials obviously relevant to this Review, but also many duplicated documents together with 'encyclopaedias' of public legislation and circulars, fee notes, invoices and other associated papers concerned with the running of the Tribunal premises. Two boxes identified as arising from the Tribunal contained material relating to the University of Wales and a building development!
- 2.41 Consignments from other sources were better ordered. On devolution, the Welsh Government had inherited the relevant ministerial and Welsh Office papers relating to the Tribunal, created prior to 1 July 1999, and owned those created subsequently. It appears to have stored them appropriately in accordance with a service level agreement, albeit in several locations. The Department for Education had inherited relatively few relevant documents concerning the Tribunal, originally emanating from the Department of Health. The AGO produced four envelope files which referred to legal aspects of the process. There were some, but fewer, duplicated materials.

Electronic Document Management System

- 2.42 Quite apart from their disarray, the sheer volume of potentially relevant documents, comprising more than one million pages, necessitated the Review to commission a bespoke electronic document management system. However, it was clear that the time and financial cost of scanning all materials supplied to the Review onto a secure computer database was disproportionate and would severely delay progress.
- 2.43 Therefore, I instructed the Review team to conduct a manual check of the boxes with a view to isolating all statements and other documents which contained reference, or were of relevance, to complaints of abuse or otherwise referred to the establishment or running of the Tribunal. Specifically, any duplicated documents with manuscript addition or annotation were to be retained and treated as creating a separate document from the original. All individual Review team members' manual searches were randomly cross checked by another. I considered it was necessary to examine every document to ensure that nothing of relevance was concealed or contained within what appeared to be extraneous papers.
- 2.44 Ultimately, more than 200 boxes of documents were identified as of potential relevance and were scanned onto the electronic document management system between 19 March 2013 and 3 July 2013. Unfortunately, since many of the boxes of documents were unsorted at the point of delivery, they were necessarily scanned on to the system out of order and in a mixture of single documents and lengthy bundles. This meant that unrelated files were found together and single documents out of context.

- 2.45 The database has been continuously refined by the deletion of duplicate materials to assist the efficient search of materials. Nevertheless, in the region of 434,500 pages remained available for search in the electronic document management system.

Process of more detailed analysis

- 2.46 The terms of reference set to this Review meant that it could not reasonably rely upon the accuracy of schedules of allegations of abuse prepared by the Tribunal. The Review's independent electronic search commenced in July 2013. The scanned material was first examined to identify all allegations of physical or sexual abuse contained in the material available to the Tribunal, regardless of whether the complainants had provided evidence to the Tribunal. In this fashion, a list of over 1,400 potential complainants was created.
- 2.47 The schedules prepared for this Review are more wide ranging than those prepared on behalf of the Tribunal, which recorded (i) an alphabetical list of children's homes in which former resident individual complainants alleged abuse, and (ii) the names of the recipients of Salmon letters accused of abuse, or witnessing it without intervention (see Chapter 6 herein). The Tribunal schedules do not record the individual allegations made, but allocate a category of abuse to them, that is 'physical' or 'sexual'. The Review schedules have been sourced from all materials made available to the Review and not restricted to police or Tribunal statements. They include allegations made by witnesses to, not necessarily victims of, the reported abuse.
- 2.48 Searches were then conducted to identify all documents relating to each allegation made by a complainant. All documents returned in the searches, in some cases several hundred, were categorised and reviewed. Information was collated as to the nature of the abuse alleged, date and, if revealed, name of the alleged abuser. Thereafter, in the case of each complainant, assessment was made as to whether the Tribunal had (a) considered the allegations; (b) made findings upon them; and, (c) pursued all reasonable inquiries. A blank pro forma is found at Appendix 4 to illustrate the universal process adopted by the Review team in respect of each of the complainants identified. The review of the materials was not restricted to a simple correlation of findings made in relation to explicit allegations and complaints, but analysed documentary evidence of links between abusers, introduction of residents to others, and identification of visitors and their ostensible purpose in visiting the home, to see if further lines of inquiry were overlooked by the Tribunal.
- 2.49 From the outset it was clear that a computer program (specifically, the optical character recognition function) could not be devised to recognise text in manuscript documents. Trial runs indicated difficulties in reliably and consistently identifying text upon poor quality paper, or when manuscript marks or annotations were made in the near vicinity of the typescript, for example, because it was underlined. Consequently, and recognising the potential limitations of generic search terms, a final examination was made of each page which had not been previously returned in relation to search terms, in accordance with the process indicated in paragraph 2.48 above.

- 2.50 I have been personally responsible for analysing the relevant government departmental records for indications of concealment of information or undue influence upon the Tribunal.
- 2.51 At all times this Review proceeded on the basis that there was something to find, rather than there being nothing to hide. Searches have been conducted in the knowledge that it would be unlikely to uncover evidence which explicitly revealed concealment or bad faith, but alert to the fact that to be “hidden in plain sight” is an effective ploy.

Other sources of information

- 2.52 I have watched recordings of various past television documentaries and news items concerning the subject matter investigated by the Tribunal, and more recent interviews conducted before and following the announcement of this Review. I have read newspaper articles in which allegations against previously unidentified alleged abusers have been made.

Issues Paper and written submissions

- 2.53 An Issues Paper was published on 8 January 2013, in English and Welsh, requesting information relating to the remit of the Review (a copy is provided at Appendix 5). A press release about the Issues Paper was issued in English and Welsh on the same day. Hard copies were also distributed to parties who may legitimately be thought to have a particular interest in the Review, and to any individual who specifically requested it. Additionally, a copy of the Issues Paper has been available on the Review’s dedicated webpage at www.gov.uk/government/organisations/macur-review and also included on the Children’s Commissioner for Wales’ website.
- 2.54 Submissions to the Review were invited to be made by email, post or via a dedicated telephone line by 29 March 2013, although those who requested additional time to complete their submissions were accorded all appropriate leeway. Mindful of the potential of a caller’s embarrassment in speaking about childhood abuse to a member of the Review team, a free telephone line with recording facility was made available from the outset. A pre recorded message inviting callers to leave their message was given in both English and Welsh.
- 2.55 All resultant contributions were recorded and have been followed up as appropriate.

Wrexham event

- 2.56 Conscious that this London based Review might alienate potential contributors with relevant information to reveal, a public meeting was held in Wrexham on 18 June 2013. The aim was to engage local communities, previously part of the Gwynedd and Clwyd county council boundaries, and to provide residents with the opportunity to meet the Review team on their own home ground.

- 2.57 The event was publicised with good notice in English and Welsh in the press and on the Review's website. The Children's Commissioner for Wales advertised the meeting on his Twitter feed and website and alerted various individuals to it. The successor local authorities, Assembly Members, MPs and others were invited to promote attendance of all interested parties at the event. All recipients of the Issues Paper and those who had made contact with the Review were notified of the event.
- 2.58 Public sessions were held in the morning and afternoon with general discussion, questions and answers. I then conducted private meetings with any person indicating a wish to speak with me. Both the public and private meetings were well attended. A follow up meeting was arranged in one case. Further information or documents as necessary were sought from other contributors.

Interviews and oral submissions

- 2.59 I selected as prospective interviewees those individuals whom I thought might have relevant information that had not been available to the Tribunal or, otherwise, whose participation in the Tribunal process would provide evidence of their first hand experience of events 'on the ground'. In addition, I met with several individuals who had requested a meeting with me and who appeared to have information relevant to the Review on the basis of their written submissions. Interviews have been conducted with a range of individuals as indicated below.

Members of the Tribunal, Legal Team and Clerk to the Tribunal

- 2.60 Sir Ronald Waterhouse died on 8 May 2011. I have conducted interviews with the two surviving members of the Tribunal, all three Counsel to the Tribunal, the successive Solicitors and the Clerk to the Tribunal. I have also interviewed the head of the Witness Interviewing Team (WIT).

CPS and Police

- 2.61 I have met with the immediate past Director of Public Prosecutions (DPP) and, with his agreement, have interviewed the two CPS lawyers responsible for initially dealing with the prosecution files of those accused of the ill treatment, physical abuse and/or sexual abuse of children in the care of Gwynedd or Clwyd county councils.
- 2.62 I then interviewed the Senior Crown Prosecutor who appeared before the Tribunal and carried out his own review of the decisions of the two CPS lawyers referred to above.
- 2.63 I have interviewed the Senior Investigating Officer of the 1991 police investigation and have met with the head of the National Crime Agency and the senior police officers heading Operation Pallial.

Successor authority staff assigned to the Tribunal

- 2.64 I have interviewed a local authority administrative officer, designated as the co-ordinating liaison officer by the successor authorities, and responsible for the location of files originating from the former Gwynedd and Clwyd county councils for the use of the Tribunal.

Complainants to the Tribunal

- 2.65 Relatively few complainants who had made witness statements to the Tribunal or during either of the police investigations contacted the Review or sought to speak to me. However, some of those who did attend the public meeting in Wrexham on 18 June 2013 spoke to me in private. On 26 August 2014, I interviewed a complainant to the Tribunal, who had criticised the Tribunal process in correspondence with the Chairman, and who has subsequently been predominant in criticising the Tribunal process publicly in the media. Another complainant witness, contacted me in August 2015 and was interviewed on 10 September 2015.

Journalists

- 2.66 I have interviewed two journalists who have shown particular interest in the subject matter of the Tribunal and whose articles appeared to suggest potential sources of relevant information to the Review.

MPs and local councillors

- 2.67 Interviews have been conducted with a former Welsh MP and a local authority Councillor, in office at the time of the Tribunal; both of whom had indicated disquiet and perceived deficiencies in the outcome of the Tribunal by reason of information they held.

Former auditor

- 2.68 A former auditor of Flintshire county council was interviewed as a result of his suggestion that a member of one of the successor authority's staff may have withheld relevant local authority files from the Tribunal.

Former union official

- 2.69 A former union official contacted the Review after I wrote notifying her that reference would probably be made in my Report to a statement she had previously prepared for the purposes of Employment Tribunal proceedings. She indicated that there was additional information that she could provide to the Review and was interviewed in June 2015.

Former care home staff and social workers

2.70 I have questioned a previous children's home worker who was a 'whistle blower'. I have met with two other former care home members of staff. A member of my secretariat met with a former North Wales social worker. I have received representations from members of FACT.

Other contributor

2.71 The Review solicitor met with an individual who wishes to remain anonymous and who identified documentary evidence likely to be of use to the Review, which, in fact, had already been obtained.

Government

2.72 I had a courtesy meeting with the immediate past Lord Chancellor and Secretary of State for Justice, and the immediate past Secretary of State for Wales, jointly, on 19 December 2012. Additionally, during a separate meeting on 30 January 2013 with the immediate past Secretary of State for Wales, David Jones MP, he provided information concerning a telephone call made to him from a person who identified themselves as a member of the Tribunal staff, as detailed at paragraphs 1.4 and 1.34 above. I have since met with the current Secretary of State for Wales on 12 September 2014.

2.73 Issues of social care and children's services in Wales were devolved to the Welsh Government. I met with the First Minister in December 2012 to describe my role and how I intended to undertake my Review, and to request the co-operation of the Welsh Government in providing any historical information that was of relevance.

2.74 I have also met the Cabinet Secretary and the immediate past Permanent Secretary of the Ministry of Justice jointly on one occasion; and I met separately with the immediate past Permanent Secretary on one occasion. These meetings took place immediately after the announcement of this Review as a matter of courtesy.

Children's Commissioner for Wales

2.75 I met with the immediate past Children's Commissioner for Wales on 27 November 2012. He undertook to make individuals who had reported allegations, or said they held information about child abuse, aware of this Review and the parallel police investigation.

Conduct of interviews

2.76 I have not found the terms of my appointment which prevent me "to hold oral hearings" to be restrictive, and believe that, in the majority of cases, interviewees have displayed a genuine desire to co-operate and assist the Review, and have been straightforward in their responses. I did not appoint 'Counsel to the Review' but have conducted all but two interviews myself, in the presence of members of my secretariat and/or the solicitor to the Review.

- 2.77 The interviews have been recorded in writing, when possible, as transcribed from audio tape. Interviewees were notified in advance that this would happen. A record of the interview has been supplied to the interviewee for their comments which have, where appropriate and seemingly accurate, been incorporated into the record.
- 2.78 My questions were intended to be probing, but not adversarial. I did not invite interviewees to take an oath or make affirmation as to the truth of the information they provided, but assessed that all were aware of the import of full and frank response to my questions.
- 2.79 I have conducted interviews with 38 individuals. Wherever possible, these have been conducted at locations convenient to the interviewee. Anyone who wished to be accompanied was permitted to be so given the nature of the subject matter. When this occurred, the person accompanying them was required to agree that they would respect the confidential nature of the interview, would not seek to intervene in the interview process and were not, or would not likely be, an actual or prospective contributor to the Review in their own right. I did, however, conduct a joint interview with the two surviving members of the Tribunal to accommodate the recent ill health of one of them. Two interviewees were notified in advance that I would be discussing concerns that had been raised about their conduct. Some interviewees were asked to clarify issues subsequently as appropriate.

Conclusions

- 2.80 This Review, as was the Tribunal, is dependent upon the integrity of the contributions it receives. Issues relating to the integrity of the documentation available to the Tribunal, and consequently to me, are dealt with in a separate chapter.
- 2.81 I have made every effort to assimilate information relevant for this Review. Operation Pallial may yet discover further information, and is the best equipped to do so. Necessarily, my conclusions are based on the information available to me now.
- 2.82 Whilst regrettable, I do not regard the late production of papers referred to in paragraphs 2.8 and 2.18 to be suspicious. The documents now produced are innocuous. However, a necessary delay has been occasioned by the necessity to thoroughly review the documents provided in November and December 2015 and raises the possibility that other government departments have made inadequate response to the call for all relevant materials to be provided to the Review.
- 2.83 The failure to adequately archive the materials associated with the Tribunal has undermined the integrity of the materials. The manner in which the Wales Office boxes of materials were filled suggests that the most likely explanations for missing or misplaced documentation are the result of: human error in the face of overwhelming volumes of materials; the contamination of a perfectly good indexing system with a view to reducing storage charges; re-organisation and re-location; and, possibly, deployment of 'destruction policies' with little thought of a Review such as this. The wholesale disorganisation of materials would militate against any thought of informed malign intervention or removal of documents.

- 2.84 I incline to regard the destruction of the Tribunal computer database as an unfortunate and innocent mistake, rather than a calculated ploy. Those who have admitted to its destruction would be unlikely to have a personal interest in deleting its contents nearly nine years after the presentation of the Tribunal Report and with no concept of a Review such as this, even if, contrary to the assertion of the Welsh Government's ICT support, the tapes had been readable.
- 2.85 This Review has been widely publicised and contributions positively encouraged and facilitated. That I have received relatively few contributions from complainants of abuse should be seen in the context of the painful subject matters investigated by the Tribunal, the distance of time, prospective changes in their own domestic circumstances and the ongoing current police investigation. I have not presumed that lack of participation necessarily indicates satisfaction with the Tribunal process.
- 2.86 Subject to the caveat I express in paragraph 2.39, I remain confident in the conclusions I reach in this Report in light of the numerous, varied and cumulative sources of information available to me.

Chapter 3: Background and Delay to the Establishment of a Tribunal of Inquiry

Introduction

- 3.1 Despite numerous and, increasingly, nationwide calls for a public inquiry into the events in North Wales children's homes, there appeared to be significant delay in the announcement of the Tribunal. The delay has been interpreted by some to indicate that the government feared that establishment figures would be exposed as complicit in child abuse. This chapter reports upon the chronology and nature of events which preceded the establishment of the Tribunal of Inquiry so as to examine the extent and reasons for the delay.

Events preceding the establishment of the Tribunal

Police investigations and CPS action

- 3.2 Between 1970 and 1992 a significant number of allegations were made by children and young people about the physical and sexual abuse they suffered whilst in care in North Wales. A police investigation conducted in 1986/87 into such allegations arising in Gwynedd did not lead to any criminal prosecutions.
- 3.3 In July 1991, the Chief Constable of the North Wales Police (NWP) was requested to investigate the "overwhelming number of links" between individuals convicted of serious sexual offences against young people in care and a former approved school, which later became a residential care home in Clwyd, by the Chief Executive of Clwyd county council who was concerned as to the "possible existence of a paedophile ring in North Wales." The Chief Constable agreed, and at the end of 1991 merged this investigation with the similar one commenced in October 1991 in Gwynedd. Very few criminal prosecutions resulted.
- 3.4 The small number of prosecutions mounted by the CPS in North Wales led to speculation of its connivance with the NWP not to bring offenders to trial. In September 1992, [redacted] designated special case worker, fearing that ongoing media coverage was likely to compromise the few pending criminal trials, wrote to the AG to inquire about the possibility of proceedings being initiated in relation to media articles, which would prejudice not only current prosecutions, but also ongoing investigations.
- 3.5 However, on 26 November 1992, the AG advised that since no court cases were immediately pending there was no possibility of contempt proceedings being started. Media reports about the situation in North Wales continued to appear.

- 3.6 In these circumstances and the voiced suspicions that members of the NWP were either involved in the abuse of children in care, or else in the protection of those who were, the repeated and increasing demands for investigation by an outside force were unsurprising. The Chief Constable of the NWP resisted them on the grounds of his confidence in the new investigation and his belief that the costs of replacing the investigating team, in terms of confusion, delay and expense, could not be justified.
- 3.7 I report in paragraph 4.109 below the contents of a letter dated 22 February 1993, addressed to the Permanent Secretary of the Welsh Office from the Chief Constable of the NWP, relating to the alleged concealment of complaints by a Social Services Inspector which he said had prompted his call for a public inquiry. However, it is clear that the mounting speculation about the failure of Clwyd county council, the successor authorities or the Welsh Office to publish 'the Jillings Report' (a report from a Panel of Inquiry established at the direction of Clwyd county council in January 1994 and chaired by Mr John Jillings to investigate "what went wrong with child care in Clwyd ... why did this happen and how this position could have continued undetected for so long") and the consequent impact upon police morale, added to his concerns and his calls for a public inquiry.

Complaints of Mrs Alison Taylor

- 3.8 The Tribunal Report¹ records that in September 1986 an article appeared in the Daily Mail referring to police investigations into allegations of the mistreatment of children in care. This newspaper article was mentioned in an anonymous letter addressed to the Prime Minister and forwarded to the Welsh Office for attention. Subsequently, in December 1986, Mrs Alison Taylor, a former Deputy Officer in Charge of Ty'r Felin, a children's residential home in Gwynedd, wrote to the Welsh Office, copying her letter to the Prime Minister, Margaret Thatcher, and other government departments, referring to her own personal employment situation and making allegations against Nefyn Dodd, in respect of his management of Ty'r Felin and the ill treatment of children in residential care in general.
- 3.9 The Tribunal Report notes that at this time the Welsh Office declined to become involved in matters that were for local determination and in a letter dated 14 January 1987 suggested that Mrs Taylor consider what further action was necessary when the social services department had "reported on her case". The Tribunal Report² details the further letters and reports sent by Mrs Taylor to various government departments and the responses made.
- 3.10 I report that in 1988 an internal Welsh Office memorandum considered whether "there is smoke" in the repeated allegations of Mrs Taylor, but it is clear from contemporaneous local authority communications to the Welsh Office at this time that her character was disparaged by reference to the institution of disciplinary proceedings against her. In mid 1991, ministers were reminded that she had first

1 See paragraph 49.58 of the Tribunal Report

2 See paragraphs 49.63 to 49.66 of the Tribunal Report

written in 1986, but invited to note the advice that the Social Services Inspectorate Wales (SSIW) "... view is that it would be a mistake to interview Mrs Taylor. Her allegations have already been very fully investigated and remain unsubstantiated ..."

- 3.11 The advice was accepted. The Tribunal Report³ records that Mrs Taylor was advised in a letter dated 12 July 1991 from the Right Honourable Wyn Roberts MP, Minister of State for Wales (later Lord Roberts of Conwy), on behalf of all other government ministers and departments to whom her letter of June 1991 had been sent, that it must be concluded that all allegations made prior to the police investigation in 1986 and SSIW inspection in 1988 had been properly investigated. The letter stated that "the Social Services Inspectorate conducted an inspection of residential child care facilities in Gwynedd in September and November 1988. Their report was published ... [and it] makes clear that the inspectors did not find anything to substantiate your allegations ..." She was advised to consult with her solicitor on how to proceed and to inform Gwynedd county council of any new information.
- 3.12 The Tribunal Report notes⁴ that Mrs Taylor's solicitor wrote in March 1993 expressing concern about the Welsh Office inaction to the complaints and pointing out the shortcomings in the 1988 SSIW inspection, which made no reference to the police investigation. The response of the Secretary of State for Wales was that any complaint about the NWP should be referred to the Chief Constable and if necessary the Home Office, and that complaints concerning Gwynedd county council should be taken up as a formal complaint with that authority. It also described the method of the SSIW examination to have been to hold "discussions with the resident youngsters in private during which they were given the opportunity to raise and discuss any issue ... No reference to abuse emerged ..."
- 3.13 In her second statement to the Tribunal, Mrs Taylor suggested that the correspondence passing between herself and the various government departments and agencies demonstrated a "pattern of official inertia" and that "all roads appeared to lead back to the Welsh Office and to Sir Wyn Roberts, MP, both of whom were thoroughly disinclined to create an upheaval."
- 3.14 In an undated and unsigned note prepared by a Welsh Office official in response, the author claims "that all correspondence received by the Welsh Office from Mrs Alison Taylor ... was responded to appropriately and the issues raised treated seriously and pursued so far as it was possible so to do, having regard to the limitations upon the capacity of a government department to intervene in relation to the issues raised ..." However, the Secretary of State for Wales was notified by officials in October 1997 that Lord Roberts (as he had then become) was likely to be criticised by Mrs Taylor at the Tribunal for giving little or no support in her efforts to secure an investigation into the child abuse allegations.

3 See paragraph 49.66 of the Tribunal Report

4 See paragraph 49.69 of the Tribunal Report

3.15 The Tribunal found that the Welsh Office had been wrong to accept “so readily” that Mrs Taylor was a “troublemaker” without an independent investigation of the background or circumstances, and that it was wrong to suggest to her that the 1988 SSIW inspection “embraced” the allegations she put forward. The Welsh Office response to her complaints was described as “inappropriately negative and inadequate”.⁵

Support of Mr Geoffrey Dickens MP

3.16 On 24 September 1991, Mr Geoffrey Dickens MP wrote to the AG (Sir Patrick Mayhew QC MP) “Your files will reveal that I raised concern with your office regarding the Ty’r Felin children’s home in 1986. My informant at the time, Mrs A Taylor, was dismissed ... I have assisted in the production of a documentary report for HTV which was broadcast 26 September. In your replies to me in 1986 you place reliance on the police enquiries. Having viewed the entire documentary ... (indecipherable) ... from witnesses who were named but not interviewed during the police enquiries, I hope you will agree to call for a proper enquiry. Your office may find it helpful to call for the TV film ... I am deeply concerned ...”

Local authority investigations and government response

3.17 The Tribunal found that the Welsh Office advice to the Director of Social Services for Clwyd about the nature of the inquiry needed into the allegations of abuse emanating from Cartrefle children’s home had been “confused and mistaken” leading to a “cumbersome, long drawn out and repetitive” investigation.⁶ The Tribunal commended the subsequent analysis and recommendations in the report of the local inquiry that was established, although finding them of limited value since the report could not be published; a file note (see paragraph 4.111) indicates that the results were reported to SSIW who notified Welsh Office officials of the nature of the allegations and recommendations made. However, both Clwyd and Gwynedd county council had previously commissioned several investigations and inquiries into particular children’s homes or individual events of abuse, many of which the Tribunal found had not been fit for purpose or had been misrepresented to local social service sub-committees, and which were not notified to the Welsh Office.

3.18 On 2 December 1991, an internal Welsh Office memorandum records, “PUSS [Parliamentary Under-Secretary of State] asks ... that officials should contact Clwyd CC tomorrow morning to point out to them the Ministerial as well as public concern about the latest allegations, to suggest that they carry out some form of inquiry if they are not already doing so ...”

3.19 On 7 September 1992, Mr Gwilym Jones MP, the Parliamentary Under-Secretary of State for Wales, indicated in a Welsh Office news release that “in view of the great public disquiet and on current information” and “the call by the North Wales

5 See paragraphs 49.68 and 55.10 (73) of the Tribunal Report

6 See paragraph 49.86 of the Tribunal Report

Police for a public inquiry," he had concluded that a public inquiry was necessary to consider "the nature and scope of the allegations which have been made about child abuse in North Wales ..." This was to await the conclusion of police investigations and criminal prosecutions.

- 3.20 Councillor Dennis Parry, who became leader of Clwyd county council in 1991 wrote to Sir Wyn Roberts MP on 29 January 1993 seeking that he establish a "major and vitally necessary Inquiry" without delay since it would otherwise be "materially compromised by the anticipated delays ... [by reason of] organisational upheavals or the displacement of personnel."
- 3.21 Clwyd county council commissioned the internal 'Jillings Inquiry' in 1994 (see paragraph 3.7 and below). Shortly before its dissolution in March 1996, Clwyd county council received the Jillings Report (see paragraph 3.26). The Jillings Report was not published by Clwyd county council or by the successor authorities in the light of unequivocal legal advice from Leading and Junior Counsel that to do so would expose the local authority to significant and multiple civil claims for libel and the risk of losing its public indemnity insurance. Nevertheless, the Jillings Report was 'leaked' and quoted in parts by the media suggesting its non-publication was a cover up.
- 3.22 The successor authorities urged the Secretary of State for Wales to establish a public inquiry to put an end to allegations of a cover up.
- 3.23 The last relevant criminal prosecution concluded on 9 February 1995. On 10 February 1995, Mr Rod Richards MP, the Parliamentary Under-Secretary of State for Wales, announced that a Queen's Counsel would be appointed, pursuant to section 81 of the Children's Act 1989, to undertake an investigation of papers and to advise the government whether a further inquiry into matters of child abuse in children's homes in North Wales was needed and, if so, the form it should take. Thereafter, on 10 May 1995, the Secretary of State for Wales appointed Miss Nicola Davies QC (now Mrs Justice Nicola Davies) in this role.
- 3.24 Miss Nicola Davies QC reported on 22 November 1995. Her conclusions and recommendations only were published at her request, as she had given an undertaking to parties co-operating in the production of documents that they would be assured of absolute confidentiality. She advised against a public inquiry, but recommended that there should be a detailed and independent expert examination of the implementation of practice and procedures of the North Wales child care agencies.
- 3.25 Consequently, in a Parliamentary Written Answer on 11 December 1995, Mr Rod Richards MP, the Parliamentary Under-Secretary of State for Wales, announced the appointment of Ms Adrienne Jones, former Director of Social Services in Birmingham and former Head of the Department of Residential Child Care Support Force, to head such an examination. Her terms of reference required examination of documents held by Gwynedd county council and Clwyd county council and by all private agencies in those counties who provided residential care for children from 1991 to date with a view to scrutinise child care procedures, their adequacy and effectiveness and including management and personnel procedures, and make recommendations.

- 3.26 The Jillings Report was submitted by the successor authorities to the Welsh Office at the end of March 1996. Following a meeting with the successor authorities on 6 June 1996, during which the Right Honourable Mr William Hague, Secretary of State for Wales, requested that they publish the Jillings Report, he made a statement to the House that “The successor authorities have subsequently informed me that they are unable to meet that request. In their view, the report is likely to contain evidence that was given in confidence to the inquiry team, and is in any case so seriously and extensively defamatory that an acceptable version of it cannot be produced. In the light of my own legal advice, I have considered whether I could make the report as it stands available to the House. I have concluded that, in view of the nature of the defamation it contains, it would not be a proper use of parliamentary privilege to do so. I find this a deeply unsatisfactory outcome, and one that reflects badly on the former Clwyd county council. It devoted two years and a substantial amount of public money to an inquiry, the report of which cannot safely be published. When public authorities establish investigations, they should do so in a way which, at the very least, permits the principal findings and recommendations to be made public.”
- 3.27 Ms Adrienne Jones reported formally in June 1996. She identified “significant gaps” in “operational, management and personnel procedures” in management practices in the field of child care and made 41 recommendations directed at the successor authorities to Gwynedd county council and Clwyd county council.
- 3.28 On 17 June 1996, the Secretary of State for Wales, Mr Hague, announced as “further [Government] initiatives” the commission of a judicial inquiry into the abuse of children in care in the former county council areas of Gwynedd and Clwyd since 1974. The statement was welcomed by members of the Opposition, but described as ‘belated’ since “his Department promised a public inquiry nearly four years ago” and in the interim had repulsed a sustained campaign by local politicians, senior police officers, the public and the media “to honour their promise.”

Review of government deliberations and advice to ministers leading to the public inquiry

- 3.29 As indicated above, the Tribunal was critical of the failure of the Welsh Office or other government departments to deal with the persistent efforts of Mrs Taylor to obtain any external or further inquiry into the care system in North Wales between 1986 and 1991. The Tribunal Report noted⁷ continuing public interest in the subject and questions being asked in the House of Commons on a number of occasions. In addition, the Welsh Office was criticised in the Tribunal Report for its overall lack of leadership and failure to inform itself adequately of what was happening on the ground.⁸ The Tribunal Report refers to Mr Gwilym Jones MP, Parliamentary Under-Secretary of State’s announcement that a public inquiry into the allegations would take place, noting that there was no indication of the “form that the inquiry would or

7 See paragraph 2.36 of the Tribunal Report

8 See paragraph 47.63 of the Tribunal Report

might take and it was clear that the police investigation would continue for a substantial period because new allegations of abuse were continuing to be made.”⁹ However, the terms of reference set to the Tribunal did not specifically require it to consider whether or not the Welsh Office should have established a public inquiry sooner.

3.30 As indicated above, I have interpreted the terms of reference set to this Review to require that I do consider the timing and nature of the government’s response.

3.31 I can confirm that there is nothing in the documentation seen by this Review which undermines the statement in the Tribunal Report that “prior to the Cartrefle disclosure in June 1990, Alison Taylor was the only source of information to the Welsh Office about allegations of child abuse in local authority community homes in North Wales on any significant scale” and that these allegations from December 1986 were restricted to Gwynedd “until a much later stage”.¹⁰ In these circumstances, set in the context of the Tribunal’s other critical findings of the Welsh Office’s “lack of initiative” and failure to take the opportunity to inform itself of what was happening, it is not surprising that the Welsh Office did not consider the necessity to announce a public inquiry sooner. However, the periods of time following the announcement of Mr Gwilym Jones MP on 7 September 1992 and before the conclusion of the criminal proceedings in February 1995, and thereafter and leading up to the announcement that a public inquiry would take place, call for more detailed report.

Deliberations and advice prior to the conclusion of the criminal proceedings

3.32 The Director of the Wales Office has informed me that officials provide ministers with briefing and advice orally, as well as in writing. Unless recorded, such oral communications are lost to any future review. However, documentation prior to the conclusion of the criminal proceedings in February 1995 reveals longstanding debate about the necessity for a public inquiry and consideration given to other options available to the department. The Director of the Wales Office has informed me that officials provide ministers with briefing and advice orally, as well as in writing.

3.33 Members of the Welsh Office Legal Group obviously interpreted Mr Gwilym Jones MP’s announcement literally, as indicated by the preparation of a detailed ‘minute’ dated 30 September 1993 commenting on the practical arrangements that would need to be put in hand for a public inquiry. This was not understood to be the case by other officials in the department. It was brought to the attention of a senior Welsh Office official with a manuscript annotation, “[Mr J] I think you should take a stiff drink before reading this!” The senior Welsh Office official responded on 6 October 1993 expressing surprise and concern, “Are we not getting ahead of ourselves? We have no Ministerial decision on the nature or scope of an inquiry ...”

9 See paragraph 2.36 of the Tribunal Report

10 See paragraph 49.84 of the Tribunal Report

- 3.34 On 8 October 1993, a note records that a public inquiry looked to be a “fiersomely [sic] expensive exercise”.
- 3.35 A ‘Note for the Record’ marked ‘CONFIDENTIAL’ dated 18 October 1993 summarises a meeting held on 13 October 1993 between Welsh Office officials and the Chief Executive and County Solicitor of Clwyd county council intended to discuss how arrangements for the inquiry indicated by Mr Gwilym Jones MP should be taken forward.
- 3.36 It appears that, at that meeting, officials discussed the two options for taking forward the announcement in terms of a Secretary of State public inquiry under the powers in the Children Act or a Secretary of State directed local authority independent inquiry. It was agreed that one difficulty with a local authority inquiry was that it would have no powers to compel evidence or witnesses, but officials made the point that “... if a local authority inquiry found itself without sufficient powers to pursue matters which required investigation it could report on the work it had been able to do and recommend that the Secretary of State should set up a further inquiry with powers to compel ...” They noted that the Chief Executive “was firmly of the view that it would be wrong to set up a local authority inquiry with the expectation that it would be followed by a Secretary of State inquiry [and] we accepted this point ...” (It is worthy of note that shortly after this meeting, in January 1994, the Chief Inspector of SSIW notified Welsh Office officials that Clwyd county council had decided to commission its own internal inquiry of the social services department which became the Jillings Inquiry. He indicated that he had “mentioned this informally” but “would not wish to comment on whether such a step was appropriate at this time ...”)
- 3.37 On 10 November 1993, a senior Welsh Office official, who had sought advice from a Department of Health official with greater experience of child abuse inquiries, reported two suggestions made by the Department of Health officials: a local authority inquiry set up using Secretary of State powers to compel witnesses and evidence; or, the appointment of a senior barrister to examine any documentary evidence and advise as to what further investigation was appropriate. The senior Welsh Office official commented that the second option “would be a less costly way of proceeding at least initially and might enable us to avoid a public inquiry altogether”. On 11 November 1993, a ‘Confidential’ message in SSIW documents reads, “glad to see that [Welsh Office Official] has been to see [Department of Health official]. The advice he has had may help to avoid a full blown S-o-S [Secretary of State] inquiry with all the nightmare of the terms of reference and, of course, costs ...” Subsequent legal advice made clear that a local authority could only be compelled to conduct a non statutory inquiry.
- 3.38 In September 1994, a draft submission circulated to officials in the Welsh Office and the SSIW questioned whether there need be an inquiry at all. A SSIW inspector responded pointing out the limitations of the Jillings Inquiry, which had neither the authority to compel the attendance of witnesses nor the production of documents. She referred to her meeting on 29 September 1994 with the Jillings Panel members in stark terms to the effect that, “Reviews and enquiries in Clwyd

to date have not established the full extent of the abuse nor the nature of the management and practice which allowed abuse to flourish undetected. Reports of reviews and inquiries into incidents in children's homes in Clwyd have not been published, nor have they been made available to county council members. There is confusion about accountability, terms of reference, the authority and duties of panel members. The Independent Panel of Inquiry has been denied appropriate access to information. Only the chairman of the panel is to be allowed to see relevant social services department files, all of which are held by the police. The panel has been told that it may not advertise in the press for individuals to come forward to give information. SSIW's advice about the terms of reference for the Independent Panel of Inquiry was not taken by Clwyd County Council ... In view of the difficulties experienced by previous panels in Clwyd it is clear that to achieve these objectives an inquiry panel would need the authority to compel the attendance of witnesses and the production of written information including individual case files, logs, policy documents. Its commissioners would need to be totally independent of Clwyd County Council and other local agencies and of interference by them. The inquiry would need the authority to explore the role played by the police at various stages. I conclude that only a judicial inquiry ... would meet these criteria."

- 3.39 The SSIW inspector's views were endorsed by the Chief Inspector of SSIW in a minute to Welsh Office officials, which cautioned against placing reliance on the ability of the county councils to commission an inquiry which could only conduct voluntary investigations. He made reference to the inability of previous inquiries, and the Jillings Inquiry, to measure the extent of the abuse or the possible collusion by the management regime, and expressed his view that "an inquiry with anything less than powers to compel witnesses and obtain full access to all relevant information and documentation would, I believe, be unsafe."
- 3.40 Noting this advice from SSIW, a senior Welsh Office official indicated to a junior official that the comments should be incorporated into the draft submission to ministers. Whilst describing the content of the advice as "worrying of course," it did not persuade him to move to an inquiry without considering other options first, including a private inquiry as had been recently conducted by Sir Cecil Clothier into the murders committed by nurse Beverly Allitt.

Advice to ministers on options for an inquiry

- 3.41 The resultant written submission to the Secretary of State for Wales and Mr Rod Richards MP, Parliamentary Under-Secretary for Wales, is dated 16 November 1994 and is annotated "as discussed on 20 December 1994". It sets out the scope and types of inquiry, including the option of whether an inquiry was needed at all.
- 3.42 Under the heading "Need there be an inquiry at all", the author of the submission notes the closure of one of the children's homes at the centre of the allegations in 1984, the radical change in the pattern of Clwyd county council services and the fact the council had also decided to establish their own inquiry under Mr Jillings. It notes that previous inquiries in Clwyd "including the present one" had run into

“considerable difficulty,” had been unable to measure the extent of abuse to children or the extent of possible collusion by the management regimes, and that there could be no reliance on the “willingness or the ability of the County Council(s) to undertake an inquiry which would get to the heart of the matter”. In any event, legal advice was that such an inquiry would have no power to compel witnesses and that “a county council could only meet the costs of such an inquiry at the expense of services which are already hard pressed.”

- 3.43 In considering the option of a non-statutory private inquiry, such as that recently commissioned by the Department of Health and chaired by Sir Cecil Clothier, the advice noted that this type of inquiry did not have the power to compel witnesses, “but we could ensure, when establishing the inquiry that such powers would be provided if the chairman and his team subsequently felt in need of them.” There had been limited legal representation and all of the witnesses that the inquiry wished to see had appeared voluntarily. The costs would be substantially less.
- 3.44 Another option of a “prior investigation of the papers by (probably) a QC” noted that this would “enable an independent person to examine files and to make recommendations to the Secretary of State about the scale of the problems and accordingly the scope and powers of any inquiry.” The submission identifies the “weakness in this procedure” to be that if the report suggested no inquiry be held then it would “do nothing to dispel local concerns and fears or overcome accusations of a cover up”.
- 3.45 Recognising that “Given the Parliamentary Secretary’s statement of September 1992 (notwithstanding the phrase ‘under present circumstances’) any decision not to proceed with an inquiry now would be severely criticised” and there would be many who pressed for a “full” independent inquiry and accusations of a cover up, it was apparent that such an inquiry “will be expensive, might not find anything new, and indeed might end up disappointing many because it will not have been able to look in detail at Police actions ...” The clear advice was that “on the face of it, [there were] no grounds for a full scale statutory inquiry under s81 of the Children Act 1981 ... an inquiry of this kind would be lengthy and costly and would almost certainly not report before April 1996 when the new unitary authorities come into being.” Mr Rod Richards MP was advised to agree the establishment of a non-statutory private inquiry.
- 3.46 The same senior Welsh Office official referred to in paragraph 3.40 above supported the advice given. In a separate note to ministers, he referred to the possibility that a full public inquiry would be intimidating for victims of abuse and may deter them from coming forward. Similarly, those “with something to hide” would be inclined to say as little as possible. He went on to say that “cost must be a secondary consideration but it is nonetheless a significant one.” The cost of a public inquiry would be “formidable”; starting with a private inquiry, however, would minimise costs and if it led to a public inquiry “at least this would be because there was evidence of matters so grave that the additional burden would seem justified.”

- 3.47 On 6 December 1994, in a note to the Secretary of State for Wales, headed 'NORTH WALES CHILD ABUSE ALLEGATIONS', Mr Rod Richards MP, Parliamentary Under-Secretary of State for Wales advised, "The very serious allegations in North Wales have involved various individuals and court cases are still proceeding ... All the court cases are expected to be completed by next Spring, and I have discussed with officials what our next step should then be ... Gwilym [Jones] concluded in 1992 that a public inquiry would be needed into all of this ... A full public inquiry ... would be very expensive ... [a] private inquiry actually being a much better way of getting at more of the truth. There is however a real likelihood of an outcry if we are seen arbitrarily to announce a private rather than a public inquiry. I would therefore propose that we first ask an eminent lawyer (certainly a woman – perhaps Ms Butler Sloss?) to consider the evidence and recommend to us what form of inquiry would be appropriate. My feeling for this is that such a person would be much more likely to veer towards a private inquiry, which advice we could then accept."
- 3.48 The Secretary of State for Wales requested officials to consult with the Chief Constable of the NWP on the option of there being no inquiry at all. A meeting took place between officials and the Chief Constable on 24 January 1995. A submission to ministers dated 27 January 1995 prepared by a senior Welsh Office official records that officials "conveyed the Secretary of State feeling that an inquiry would need to be fully justified in view of its likely cost (the money might be better spent on improving services), the further trauma it would cause for many of those who would appear before it and the disruption it would cause for all those involved." However, the Chief Constable was noted to have raised concerns that whilst no clear evidence of organised paedophile activity had emerged from the police investigations or proceedings, there remained concern about whether paedophiles were still employed in children's homes. The police referred to concerns that many of the allegations that had been made in police statements were still outstanding and that there might be information in possession of Clwyd county council that had not been disclosed to the police. The Chief Constable indicated that if the Secretary of State's decision was not to have an inquiry, he would have to express his reservations.
- 3.49 Ministers were advised that the meeting with the Chief Constable produced no further argument against the option of 'do nothing'. The submission suggested that police concerns about the suitability of individuals who may still be in contact with children could be notified to social services departments so that they could "keep a discreet eye" on them, saying this was "a matter of commonsense [sic] ... which can be pursued without involving the expense of even the minimal option [of a prior examination of papers by a QC]". Whilst noting that it was "a matter for Ministers' political judgement", the author offered his own view that "the choice is very finely balanced." He stated, "If our resources were not so constrained my advice would be to play safe and [seek QC's opinion]. As it is, they are severely constrained and even that minimal option would be a most unwelcome call on them. Since, increasingly, it seems likely that an investigation of papers would do no more than confirm that an inquiry is not needed, the game seems not worth the opportunity cost candle. On fine balance, therefore, I favour [doing nothing]."

- 3.50 The comments of Mr Rod Richards MP were annotated on the side of the note in manuscript and dated 2 February 1995. He did not favour the “keeping an eye” on suspects suggested. His view was that witness statements needed to be examined by “someone who is (a) impartial and (b) understands what he is looking for”.
- 3.51 In any event, on 3 February 1995, the same senior Welsh Office official reported “further developments which Ministers will wish to take into account” when considering the issue. This included the fact that officials had just learned that the Chairman of the Jillings Inquiry had produced an interim report, which was understood to assert “... that there are still flaws in Clwyd County Council’s management and operation of children’s services; that relevant information has been withheld from the Panel by Clwyd County Council and others; and that the former Director of Social Services for Clwyd has refused to meet the panel, apparently on legal advice.” The advice given to ministers was that the developments “alter the balance of argument overall” and that to “do nothing further” was no longer sustainable.

Government actions after the conclusion of criminal proceedings

- 3.52 The Secretary of State for Wales decided to appoint a QC to examine the evidence and to report to him on what further action should be taken.

Terms of reference for the examination of papers by a QC

- 3.53 Draft terms of reference for the examination were circulated by a junior official in the Child and Family Division to SSIW and other officials at the conclusion of the known relevant criminal prosecutions on 9 February 1995. The difficulties that the Jillings Inquiry had encountered in obtaining access to local authority papers were highlighted with advice that the investigation would need to ensure the cooperation of all the agencies concerned. In these circumstances, he queried whether the draft terms of reference should refer to the Secretary of State’s powers under statute to establish a further, more large-scale, inquiry.
- 3.54 The draft terms of reference were discussed with Miss Nicola Davies QC on 15 March 1995. It was noted as “agreed that the appropriate way forward was to treat this matter as a case of senior counsel being asked to advise the Secretary of State as to whether or not a full inquiry was needed ... Counsel’s task would not therefore have any statutory basis and everyone was aware of and accepted the fact that it would accordingly not have any statutory powers to compel witnesses or documents ...”

Selection of Miss Nicola Davies QC

- 3.55 The Welsh Office sought the advice of Treasury Solicitors on the appointment of one of three named prominent female Queen’s Counsel to advise the government in relation to the need for a public inquiry. The Deputy Treasury Solicitor responded on 2 March 1995 noting that one was still involved in another inquiry, and the other two had not previously been briefed by the department but could be approached, however, “it does occur to us that because of their close involvement in the field of

child protection they might feel under pressure to advise that an Inquiry should be held.” He went on to say that “in the circumstances I offer for your consideration the name of Nicola Davies QC ...” Miss Nicola Davies QC was said to have a “close family connection with Wales” and to have been frequently instructed by the department. It was noted that she was involved in the Cleveland Inquiry, but it was stated that “her practice is mainly in the field of medical negligence and associated medical litigation.”

- 3.56 The Deputy Treasury Solicitor’s advice was accepted and Miss Nicola Davies QC subsequently appointed. The Director of the Wales Office responded to the provisional criticisms I notified to the Wales Office in my letter dated 15 May 2015 on the matter of Miss Nicola Davies QC’s apparent lack of relevant expertise in matters of statutory child protection. He relied on the fact that (i) the two female QC’s with “close involvement” in the field of child protection had not previously been briefed by the Treasury Solicitor; and, (ii) in being described as more likely to advise that an inquiry should be held, they may therefore be thought of as partial and not independent. In any event, he considered that the selection of Counsel was akin to the situation where “there is nothing improper in Government consulting on policy options, while having a preference for one of them.”
- 3.57 Junior Counsel was briefed to assist Miss Nicola Davies QC in her examination, but notably following her appointment, at the meeting on 15 March 1995, Miss Nicola Davies QC indicated that “she would probably need a social services assessor to advise her on specific aspects of the practice of social services departments and other matters.” On 25 July 1995, Miss Nicola Davies QC’s instructing solicitor referred to the appointment of a social services expert in terms “[a Treasury Department official] suggested that this might be the case when he first met her and now that Nicola is well into her investigation she agrees.” On 2 August 1995 an attendance note records that “Nicola Davies phoned. Clwyd have come up with the documents and there will need to be a lot of input from social services ... will need social services input but this may cause delay.” On 4 August 1995, her instructing solicitor indicated to Mr David Lambert, Legal Adviser to the Welsh Office, that Miss Nicola Davies QC would like to have a meeting with a social services assessor to discuss various issues. In a minute dated 4 August 1995, the solicitor referred to a named individual as social services assessor “who is due to be appointed today.” This individual is referred to in Treasury Solicitor documents of the same date. Specifically, a letter from Miss Nicola Davies QC’s instructing solicitor to Mr Lambert referred again to a social services expert who, by the time of a Consultation arranged on 31 August 1995, “should have had an opportunity to do some reading. I think that he, too, should attend the Consultation.”
- 3.58 A file note of a discussion between two members of the Welsh Office staff on 7 August 1995 obviously anticipated that the social services assessor would be in post by the time of the Consultation and “would enable us to take true stock of the position.” However, on 18 August 1995 there is reference to “last minute failure of earlier candidates” for this role. On the same date there is indication that Miss Nicola Davies QC rang Welsh Office officials to “explain in more detail the nature

of the professional social services assistance she required” and it is noted that “we have now agreed that she, irrespective of the consultation, would still value a social services assessor and I have confirmed with her that Adrienne Jones will be contracted by the Department for this purpose.”

- 3.59 On 29 August 1995, the record of a conversation between a Welsh Office official and Miss Nicola Davies QC noted that she was “unimpressed with both Social Services Departments particularly Gwynedd, (which she described to me as a law unto themselves) their quality of documentation and record keeping, and their procedures generally” and that “in the light of her findings” in this regard, “she was seeking the appointment of a Social Services Adviser.” The author of the note indicates that he queried whether these issues may affect her conclusion that “on the basis of [the documentary evidence] (the North Wales police evidence ends in the mid-1980s) she will not be recommending a public enquiry” and was told that this would not be the case. It went on to record, “I suspect from Miss Davies’ comments that she will not now seek such an appointment but that her report will draw the Secretary of State’s attention” to her findings relating to her views about the social services departments.
- 3.60 In the event, neither Ms Adrienne Jones nor any other social services assessor was appointed to assist Counsel in her examination. In a subsequent letter written to me in clarification and amplification of points previously made as indicated in paragraph 3.56 above, the Director of the Wales Office wrongly noted that Miss Nicola Davies QC “was assisted by a social services expert and, with that additional input, must have felt able to undertake the task despite the absence of that expertise.”

Limitations on Miss Nicola Davies QC’s examination

- 3.61 As indicated in paragraph 3.54 above, it was known that Miss Nicola Davies QC would not have the ability to compel witnesses or documents. At the meeting on 15 March 1995, it was decided that members of the public would not be invited to make representations, nor would any specific additional evidence be invited. A senior Welsh Office official put it in terms that the department was “not looking for a ‘certificate of seaworthiness’ in respect of any of the Agencies.” The note of the meeting records, “Everyone agreed on the need to focus and limit the scope of this examination and to limit the ‘risk of it burgeoning into an inquiry’.” It is noted that the Treasury Solicitor “emphasised that it would be fatal to go anywhere near opening up the process to further evidence.” Miss Nicola Davies QC expressed her unease at her inability to seek further documentary evidence necessary to supply any missing detail, which she felt “could be closed with one brief letter from the body concerned”. The Treasury Solicitor suggested, however, that such bodies could make direct representations to the Secretary of State for Wales and that, in reaching his decision as to whether to hold an inquiry, he should take into account all relevant considerations, including the advice from the QC and any such representations. This suggestion was dismissed by a senior Welsh Office official, who emphasised that “the Secretary of State was not keen to become involved in a detailed consideration of issues in addition to counsel’s advice and wanted to place most

reliance on that advice. The QC's independence was important in political terms." It was agreed that "there were a number of delicate and difficult issues many of which could not be resolved until much further down the line and many would have to be left to the judgment of Counsel and Instructing Solicitor."

- 3.62 Amongst other materials, Miss Nicola Davies QC sought access to documents held by the NWP. On 3 May 1995, ministers were advised that the NWP wished to seek legal advice regarding "the ownership of papers held by the force" before permitting Miss Nicola Davies QC access to them. It was said to be possible that "Miss Davies will be prevented from examining some or all of the papers."
- 3.63 Mr Rod Richards MP, Parliamentary Under-Secretary of State, responded and advised the Secretary of State for Wales the following day, on 4 May 1995, that the department should exert pressure on NWP to release all their papers, since "if the QC is denied access to police papers, it seems to me that she may well conclude at an early stage that a fuller inquiry is necessary." He set out his view that, if the NWP continued to deny access, the alternatives would be "to decide that an investigation of papers is not now possible and proceed to hold no inquiry at all (not tenable), or a full public inquiry (not desirable) ..."
- 3.64 On 26 May 1995, Miss Nicola Davies QC's instructing solicitor wrote to Mr Lambert reporting the NWP's misunderstanding of the nature of Miss Nicola Davies QC's investigation. The letter explains that the solicitor for the NWP had anticipated that Miss Nicola Davies QC would seek a court order for disclosure of certain force documents that could not be voluntarily disclosed. Miss Nicola Davies QC's instructing solicitor had pointed out the lack of statutory power or standing of the examination to do so. She informed the NWP that it would probably not be necessary to see every single document, but they "needed to see sufficient to identify where the problems lay and what action had been taken since these problems had been identified, and what the system was now."
- 3.65 Thereafter, in a progress report to ministers on 7 June 1995, a Welsh Office official advised that Clwyd and Gwynedd county councils and the NWP were "co-operating fully and promise complete support." It is noted that the NWP did wish to withhold case summaries and opinions forwarded to the CPS, but that "this should prove of no practical significance as Miss Davies has said that she wishes to see only primary documents such as witnesses statements."
- 3.66 However, on 4 August 1995, Miss Nicola Davies QC's instructing solicitor wrote again to Mr Lambert and reported that "the material held by the police contains a mass of evidence up to the mid-80s but limited information thereafter" and that it is apparent from the documentation available from Clwyd county council that it was not until the late 1980s and 1990s that there was considerable development in the systems and procedures in place. She states that "what concerns [Miss Nicola Davies QC] is that, given the absence of primary evidence, she is unable to ascertain from the documents any real ... picture of what the current position is. It is not possible to see whether abuse is still occurring and whether the monitoring

procedures are effective. She feels that, on the available information in the documents, her report is unlikely to be as helpful as was hoped.” She suggested a consultation to “discuss the problems, as perceived by Nicola, and to decide whether her investigation should continue,” and proposed this take place on 31 August 1995.

- 3.67 A file note dated 7 August 1995, referring to a discussion between two members of the Welsh Office legal staff, concluded that “on balance it was probably better to have the consultation late in August since by then her task will be three quarters complete and abandoning the project at that stage would seem a less attractive proposition. Also of course it would enable us to take true stock of the position including getting feedback from the social services assessor who by that stage would have been able to read into many of the documents.” The file note went on to record, “we considered what Nicola might be able to say in her report and we felt that it would be possible for her to conclude, for example, that provided she had had access to documentary evidence of what the current systems and procedures are she could conclude that on the basis of that information her view was that perhaps there should be a Social Services inspection on behalf of the Secretary of State and that depending on the outcome of that inspection and assuming its conclusions were satisfactory that no inquiry was needed. We certainly did not need a public inquiry to tell us what was happening now.”
- 3.68 On 18 August 1995, a junior Welsh Office official made a progress report to senior officials. He reported that Miss Nicola Davies QC felt that she had gone as far as she could in examining written material and could not make any further progress without taking primary evidence and would be making her position clear at the “meeting of all interested parties” on 31 August 1995. He noted that “at this stage it is uncertain, if she was not permitted to take primary evidence, whether Miss Davies would be prepared to make a report and/or make a recommendation to the Secretary of State on whether a public inquiry was necessary,” but that following a brief meeting with other officials it was “decided that it would not be worthwhile to put advice to Ministers at the present time.”
- 3.69 On the same day, a note to the same officials confirmed that “Nicola Davies appears to have developed a concern that given the absence of primary evidence she may be unable to ascertain from the documents any real picture of what the current position is and considers it would be sensible to have a consultation to discuss these problems and to decide whether her examination should continue.”
- 3.70 An official obviously spoke to Miss Nicola Davies QC prior to the Consultation arranged for 31 August 1995. A further note for officials was prepared on 29 August 1995 reporting on his two conversations with her. It stated that she had completed her examination of all the documentary evidence and, on the basis of that evidence, noting that the police evidence did not go beyond the mid 1980s, she did not conclude that there was a sound evidential basis to recommend a public inquiry. He recorded that she was “uneasy” about the arrangements in respect of fostering and private care.

Consultation between Welsh Office officials and Miss Nicola Davies QC

- 3.71 The Consultation between Miss Nicola Davies QC and senior Welsh Office officials took place on 31 August 1995. Ms Adrienne Jones was invited and did attend the Consultation, but could only have done so in the role of observer. A note of that Consultation was prepared. It records that Miss Nicola Davies QC had come to the conclusion that “the answers which the Secretary of State had wanted would not be forthcoming from the exercise she had carried out.” It had not been envisaged that the police evidence would come to an end in the mid 1980s as was found to be the case. She expressed her view that whilst a purely paper exercise could work in some circumstances it would not provide the full answers here. She felt there was a need to interview people about putting procedures into effect and that had not been within the scope of her instruction. Therefore, there was no “hard factual evidence” post the 1980s to indicate that a public inquiry was needed. She would prepare her advice to the Secretary of State that a public inquiry was not needed. In her view, there needed to be good evidence to justify a public inquiry and she could not draw that conclusion as matters presently stood. If she had found evidence that a large number of people had had serious allegations made against them fairly recently and those allegations had been left unresolved then her conclusions would have been different. However, the allegations were old and the number of individuals, probably half a dozen, was not great. I note that in a paragraph in the note dealing with Miss Nicola Davies QC’s conclusions regarding foster care and social services management, it is recorded that she had “stressed also that one had to remember when looking at the documentation that some people who were guilty of misconduct were obviously good at covering their tracks in the documentation”. It was agreed at the Consultation that Miss Nicola Davies QC would complete her work as soon as possible and submit her advice.
- 3.72 On 14 September 1995, an official wrote to Miss Nicola Davies QC stating “I have now been able to reflect further in the light of our meeting and feel sure that, for the reasons we discussed, it is right to draw a line under your examination at this stage.”
- 3.73 The note of the Consultation was circulated. On 15 September 1995, Miss Nicola Davies QC’s instructing solicitor wrote to the Welsh Office official who had prepared the note, which she confirmed “seems to be a detailed and accurate record of what was said”, but made a “few comments”. She clarified her understanding that she did not believe that Counsel had concluded their examination of all the documents held by Gwynedd because of the “disorganised state in which they found them” but, as she understood the position, “feel that they have seen sufficient of this documentation to conclude that no useful purpose would be served by their continuing their examination of it since this would not serve to demonstrate whether the systems and procedures are now being implemented satisfactorily.” Further, she recalled that Miss Nicola Davies QC had said that in order to hold a public inquiry “there had got to be very good evidence that there were things going on.” Miss Nicola Davies QC’s instructing solicitor thought that the note of the Consultation should record that this part of Counsel’s advice was given specifically in response to the senior Welsh Office official’s query and that Counsel had said that she could not say that children were at risk.

Consideration of Miss Nicola Davies QC's report and subsequent action

- 3.74 Miss Nicola Davies QC reported in writing thereafter. Whilst she advised against a public inquiry - although noting that she "would not hesitate to recommend" one if there was evidence of abuse continuing to the extent it existed in the past - her full report sets out plainly the limitations of her investigations in several places and also her anxieties. I recognise that the references that follow are drawn from different paragraphs in her report and are not in chronological order but, in my view, they give clear warning signs of the difficulties.
- 3.75 Miss Nicola Davies QC's report indicates that she had not had power to compel people or organisations to disclose documents, although she believed that in the main they had co-operated. The majority of police evidence she had seen related to those who had been in care up to, but no later than, 1987/88 but a 10% sample of residents in the Bryn Alyn community between 1985 and 1993 revealed a higher number of complainants in the late 1980s and early 1990s. The majority of children in care in the late 1980s and 1990s had not been interviewed. As to evaluation of the social services records, she was "conscious of the fact that I am a lawyer without the skills necessary to fully appreciate the quality of any assessments and the nature of the record. An informed view can only be provided by a person trained in social work". She reported, "The difficulty which I face is that the terms of this investigation preclude the taking of oral evidence. As a result I do not know if other children have complained or wish to complain. This could only be discovered by interviewing children or associated persons ..." She had seen the reports of four internal inquiries from Clwyd and two from Gwynedd and urged that they should be read in full. She found that the conclusions of two of the reports of independent investigations carried out in the 1990s following complaints made at the Bryn Alyn Community "reflect the unease that I have felt throughout this investigation. Even when paper procedures appear to be adequate ... there are still real difficulties at ground level. It takes an incident or a complaint deemed serious enough to warrant an investigation to unearth facts ... It is an example of the difficulty of my own investigation, namely the reliance on documents and the absence of any oral evidence. It highlights my fear that an investigation such as mine will not uncover the true facts."
- 3.76 She noted that, in 1996, local government reorganisation meant that departments would be disbanded, "but many of the same people will continue to work for the new authorities and thus one's reservations remain." She noted that documentation provided by Clwyd county council and Gwynedd county council relevant to the period 1980 to 1990 was "of limited evidential value" and that "the record to be found in children's files, staff files and the books kept at the various homes frequently lacked both form and detail." She concluded that "in deciding whether to recommend a public inquiry I have asked myself the following question: do clear grounds exist for a reasonable belief that the systems presently operated in Clwyd and Gwynedd ... are or may be failing children in care? On the evidence I have seen I cannot say such grounds exist." She noted that "in compiling this report I have relied solely upon documentary evidence ..."

- 3.77 Pending consideration of the report, on 8 November 1995, an official advised ministers that Councillor Dennis Parry, the leader of Clwyd county council, asked that the Jillings Report be considered by the Secretary of State for Wales before making a decision about whether there should be a public inquiry. Councillor Parry suggested that the Secretary of State should not make any announcement on the basis of Miss Nicola Davies QC's report alone, unless the decision was that there should be a public inquiry. The official notes that Miss Nicola Davies QC had no contact with the Jillings Panel and that a view had been taken that she should restrict her work to an examination of the documents held by various agencies. He states, "Our view has been that Miss Nicola Davies' report would be sufficient for the Secretary of State to decide on whether there should be a public inquiry or not. However, it is difficult to reject Councillor Parry's proposals outright and for the Secretary of State to refuse to see the Jillings report. As anticipated, Miss Davies is recommending that there should not be a public inquiry. A decision of the Secretary of State to endorse that recommendation could be severely undermined if subsequently the Jillings report, on the basis of evidence and for reasons not known to the Department, recommended otherwise ..." The official notes that "we could find ourselves quite possibly back at square one in terms of the pressure upon us to hold a public inquiry ..."
- 3.78 On 9 November 1995, a senior inspector of SSIW wrote to senior Welsh Office officials after examining the conclusions of Miss Nicola Davies QC's report. He perceived the conclusions to rely heavily on changes in practices and procedures made by social service departments since 1989, the age of the complaints investigated by the police and the small amount of material about complaints in the period 1989 to 1995. The inspector advised that the expressed limitations within the report made the "final judgment finely balanced" and that there would not be "strong ground to hold onto this position [of no public inquiry] in the light of this report, particularly if the Jillings Report reveals more concern."
- 3.79 This advice was questioned by a junior official who advised that "only if Jillings points to people still in post who ... continue to pose a threat to children in care would I think a judicial inquiry was justified." At the same time, he referred to the report of Miss Nicola Davies QC lamenting that the government were only able to publish the conclusions. He indicates that it would have been better if it had been possible to publish a statement about the reasons why the publication was to be restricted. He noted, however, that the introduction to the report, which explains the reasons for the restriction, could not be published in its present form since it "unhelpfully refers to the consultation that we had in August and it reads as if the Welsh Office decided to draw the examination to a close at that stage. That of course wasn't the case ... its publication will lead to a lot of questioning and criticism of the Department." He went on to question whether the report was a final version or a draft "on which we can still comment and on which Nicola Davies is prepared to make some amendments? If the latter, then obviously I would like to see the introduction amended so that it makes the point about confidentiality but in a form that we can publish along with the conclusions and recommendations."

- 3.80 On 13 November 1995, Welsh Office officials and legal advisers and members of SSIW met to “discuss Nicola Davies’ advice”. The consensus was that the advice “was acceptable” and was something on which officials could properly base a recommendation to ministers that there was insufficient evidence to enable her to conclude that a public inquiry was necessary. There was slight disappointment on the subject of presentation, “for example it did not assist ... that the central conclusion that a Public Inquiry was not required was hidden away ... it was felt that this could usefully be highlighted and perhaps given a sub-heading of its own.” Also, it was felt that there were a number of ambiguities in relation to the recommendations and it was “regrettable that the text used such terms as “investigation” and “evidence” in the context of the proposed steps that should be taken by the Department in order to meet Nicola Davies’ concerns.” It was noted that it would be important to clarify precisely what she meant to ensure that her concerns could be addressed. A further Consultation was to be sought to address the points.
- 3.81 An official from the Social Services Policy Division of the Welsh Office, who had not attended the meeting but had seen the report, wrote to a Welsh Office official on 15 November 1995 indicating her disappointment in the report and wondering if there was “still some scope to firm up the drafting?” She went on to comment, “It is obviously Nicola Davies’s view that the documentation is insufficient to make a firm decision (p36 [referring to her fear that her investigation would not uncover the true facts] in particular is absolutely damning) since she seems to be saying that the paper evidence is inadequate for her to make a firm conclusion. I am also concerned that the police appear to have been a little less than wholehearted in pursuing the investigation.” She states that “to me, this evidence suggests that there probably were real causes for concern and that we can only establish their full extent by a much wider exercise.” She did, however, agree that it was only if there was enough evidence that there were people still in post, who continue to pose a threat to children in care, that a judicial inquiry was necessary. She thought an inspection, rather than an investigation, was necessary to confirm the adequacy of present arrangements.
- 3.82 Welsh Office officials sought to arrange a further Consultation with Miss Nicola Davies QC. On 16 November 1995, a member of the Welsh Office legal team wrote to Miss Nicola Davies QC’s instructing solicitor setting out “the thinking here”, which had prompted them to suggest the Consultation. He referred to her recommendation that a further examination should be made of policies and practices, and the uncertainty created by the use of the terms “investigation” and “evidence”. He said that it would be helpful before submitting the report to the Secretary of State for Wales “to have a clear and mutually agreed understanding on this matter.”
- 3.83 The note of the Consultation, which took place on 20 November 1995, indicated its essential “purpose” to be clarification of a number of points arising in the body of Miss Nicola Davies QC’s report. It was thought “particularly important that terminology used in [the] published part of the Report corresponded with the nature

of those next steps.” The note states “in that regard Miss Davies was happy to substitute the term “examination” for “investigation” in the Recommendations since she accepted that the terms presently used were probably a little too judicial in nature.” Miss Nicola Davies QC also agreed to “look again” at those places in her report where she had referred to the constraints which followed as a consequence of the terms of reference since “those constraints were well known and ... whether they needed to be repeated.”

- 3.84 In relation to publication of her report, the note of the Consultation records that Miss Nicola Davies QC would provide a covering letter, which “would make additional reference to the original terms of reference [that had indicated an intention to publish her recommendations and reasons for them, and explained that there may be some matters that it might not be possible to publish] and she would seek to indicate their appropriateness in view of the confidential nature of a large number of the documents concerned.” It was in this context it appears that she “stated specifically that she entirely accepted the constraints imposed in the terms of reference and did not think that they were so fundamental as to make the whole exercise appear flawed”. Miss Nicola Davies QC was of the view that a public inquiry was not the appropriate mechanism to redress the “massive wrong” that had been done to children in the past, but rather that it would be necessary if “children were currently at risk”. She clarified that she did not seek to criticise the police in her report, but had some reservations about the way in which the CPS had “applied their normal criteria in deciding whether or not prosecutions would go ahead.” She did not accept that her proposed examination of child care management practices should be undertaken by SSIW, as she considered SSIW to be “tainted” by reason of their prior involvement. She did, however, accept that “this would cause the Department some considerable difficulties, particularly in view of the short time scale involved.”
- 3.85 Following the Consultation, a note dated 23 November 1995 between legal advisers to the Welsh Office, discusses the statutory basis of the inspection of the social service departments that Miss Nicola Davies QC advocated. Administrators were said to be working on the basis that “if Ministers are to avoid potential embarrassment arising from Miss Davies’ failure to endorse the remedial steps being taken” as regards SSIW inspections, that a team of independent social workers needed to be set up. The matter was said to continue to be a “highly sensitive matter which, once again, is due to enter the public arena.” The note refers to the progress of the Jillings Inquiry noting that the report was believed to be finalised. It indicates that Leading Counsel who was advising the Jillings Inquiry had offered to release a copy of the report to Miss Nicola Davies QC, but the offer was not taken up.
- 3.86 Significantly, in light of Miss Nicola Davies QC’s conclusions, a ‘file note for information’ within the Welsh Office files dated 23 November 1995 sent by a SSIW inspector to senior Welsh Office officials, the legal adviser who had attended the Consultation with Miss Nicola Davies QC and another SSIW inspector, reports a telephone call received from a former principal officer (not Mrs Taylor) of children’s services for Clwyd county council on 22 November 1995. She said she had worked

for Clwyd from December 1991 until March 1994. She had been on sick leave until her retirement on health grounds in March 1995. She had been told of the child abuse on her first day. In her view, there was “a reluctance to acknowledge difficulties or deal with problems reported at grass roots. Allegations against the department were not dealt with.” She said she had a dossier of evidence about this, which she was willing to make available. The situation was such that she believed “that the circumstances that were reflected in the Cartrefle report [a previously commissioned local authority investigation into a children’s home] still prevailed which might allow continuation of abuse.” The note of the telephone call concludes that it is for “information at this stage”, and that further advice would be tendered “assuming we receive the documentation”. I have found no further reference to the steps taken in response to this information in the documents that have been provided to this Review.

- 3.87 Miss Nicola Davies QC submitted a second version of her report, described by SSIW in a note to Welsh Office officials dated 28 November 1995 as having “little amendment in the body of the report,” but that the conclusions provided a clearer, better argued summary and explanation of her views. However, in the same note, the officials were alerted to omissions in the annexes to Miss Nicola Davies QC’s report, which did not refer to some internal reviews of more recent times. In responding to these concerns on 6 December 1995, a senior Welsh Office official confirmed that this arose from the fact that Miss Nicola Davies QC “only examined those papers held by the Police relating to investigations triggered by the letters from Gwynedd and Clwyd County Councils. It was not part of her brief to go on an extended fishing expedition.” He stated that “if you have outstanding concerns ... it is for SSIW to pursue”

Advice to ministers on Miss Nicola Davies QC’s report

- 3.88 In November 1995, the Secretary of State for Wales was advised that “Miss Davies expresses concern on a number of matters. She also points to the limitations of the procedures involved in this examination particularly in terms of her inability to hear any oral evidence and to question professional social work practice and procedures. However, at our most recent consultation with her on 20 November, she expressed confidence in the soundness of this process.” The official summarised the position as “a complex issue, not least because of the complications generated by the Jillings report and the uncertainties that is creating. Nevertheless, Miss Davies has now reported upon her examination and we know of no reason why her recommendations should not be accepted in full ...”
- 3.89 On 29 November 1995, a senior official advised the Secretary of State for Wales and Mr Rod Richards MP in writing on Miss Nicola Davies QC’s advice. He indicated that he had “thought long and hard about whether there should be a public inquiry, and have questioned Nicola Davies closely about it on two occasions.” He thought that there were two sets of circumstances in which such an inquiry could be held: where it was clear that a group of children had been seriously failed in the past; or, “where there is clear evidence that the cohort of children currently in care

is not receiving the protection from abusers to which they are entitled". In respect of the latter, he noted, "In this case, Nicola Davies' report is clear: all the evidence in recent years points to a significant improvement in procedures and a substantial reduction in abuse. I am thus satisfied that she is correct to recommend that there should be no public inquiry."

- 3.90 This written advice did not refer to the limitations upon Miss Nicola Davies QC's 'examination', which had obvious implications to the advice she tendered against holding a public inquiry; namely, she had not had access to all documents, the shortcomings in the documents that she had inspected and her anxiety that she could not discover the present situation from looking at documents alone. Neither did it refer to the detail of the discussion with Miss Nicola Davies QC in either Consultation regarding those constraints, nor the telephone call from the principal children's officer received on 22 November 1995, nor the concerns that had been raised by SSIW regarding the omissions in the annexes to Miss Nicola Davies QC's report that suggested she had not had access to some internal reviews of more recent times.
- 3.91 Nevertheless, consequent upon Miss Nicola Davies QC's recommendations, Ms Adrienne Jones was appointed to conduct an examination of documents held by Gwynedd county council, Clwyd county council and by all private agencies in those counties who provided residential care for children.

Advice to ministers on further developments

- 3.92 Chronologically, the independent panel chaired by Mr Jillings had been convened prior to Miss Nicola Davies QC's appointment. In a letter to Mr Ron Davies MP from the Secretary of State for Wales dated 12 July 1996, it was confirmed that "a copy of the terms of reference for the Jillings Inquiry was passed to the Social Services Inspectorate for Wales who offered comments on them. However, they were not agreed in any sense and Clwyd County Council acted entirely independently in establishing the Jillings panel of enquiry [sic] and its terms of reference."
- 3.93 The Jillings Report was submitted to Clwyd county council in late February 1996. A copy was provided to the Welsh Office. On 22 March 1996, a senior official briefed the Secretary of State for Wales on his assessment of the Jillings Report. He stated "I found nothing in the report to indicate that such widespread and systematic abuse is continuing to the present day ... The Panel ... argue that because they did not have sufficiently extensive powers of investigation they were unable to assess in detail the role of certain players - notably the Police. But their analysis of the role of Clwyd County Council is damning." He suggests, in relation to sections dealing with the Welsh Office, that "if you have not already done so, I think you should read this material for yourself." He notes that, "The Panel were not invited in their terms of reference to consider whether there should be a Public Inquiry. They nonetheless call for one ... To my mind this is the least persuasive part of their report ... [they do not] provide new evidence of continuing abuse or serious inter-agency failures. Had they done so an inquiry, focused on the specific problems of North Wales, might have

been appropriate ... Instead they are seeking a very general inquiry [not focused on the specific problems of North Wales] ... I have considered these matters carefully. In my judgment the report does not sustain the case for an Inquiry of this nature. On the key issue of providing assurance for the future, the work we have commissioned from Adrienne Jones (who has had access to the Jillings' report) should achieve this objective (in North Wales) much more quickly and effectively than a public inquiry." Advice was tendered as to handling issues since it was known that Clwyd county council had been advised not to publish the report. It was predicted that the "reaction to the failure to publish may well lead to allegations of a 'cover-up' and further fuel calls for a Public Inquiry. These will inevitably be directed at the Department."

- 3.94 However, there is no reminder in this note to the Secretary of State for Wales of the matters referred to in paragraphs 3.38 and 3.51 above in terms of the difficulties faced by the Jillings Inquiry in seeking access to documents and obtaining evidence. There is also no reference to the recent telephone call referred to in paragraph 3.86 above in which concerns were raised about current practices.
- 3.95 In a minute dated 17 April 1996, a junior official reported to a senior official a conversation held with Ms Adrienne Jones, who together with "the examining team are increasingly concerned about Conwy County Borough's child care and more specifically child protection arrangements ... It was Adrienne's [sic] view that we should be alerted to this matter now so that steps can be taken prior to our receiving her report towards the end of May." I find no reference to this information being forwarded on to ministers at the time.
- 3.96 On the same day, the Permanent Secretary advised the Secretary of State for Wales that "the first question we will be asked is whether, having perused this version of the Jillings Report for two weeks, we now think there should be a public inquiry into these matters. Our present position is that, following receipt of Miss Nicola Davies' report, we think there should be no public inquiry. If we answer now that we are considering whether the Jillings Report provides new material which demands a public inquiry we shall be seen to be on the run. I think that we should therefore reach a conclusion now on whether or not the Jillings document causes us to revise our November view. [A senior official] who has considered the Report in detail believes that nothing in it should cause us to change our view. Others may hold a different view. I suggest that before you make your Parliamentary Answer tomorrow you decide where you stand on this ... We will fan the flames if we seem to be conspiring with others to suppress the report so I suggest that we go on to the front foot against the local authorities and urge them to get themselves and their report into a state in which it is publishable."
- 3.97 This appears to accord with Mr Rod Richards MP's response to a letter that I sent to him on 15 May 2015, and to which further reference is made later in this Report. That is, Mr Richards recalled that the officials' advice changed not as a direct result of the contents of the Jillings Report, but as a result of Clwyd county council's decision not to publish it, and the consequential pressure of public and political opinion on the Welsh Office.

3.98 In a note prepared and addressed, amongst others, to the Secretary of State for Wales, dated 16 May 1996 a number of 'pros & cons' of a public inquiry were articulated for consideration in terms worth repeating here:

"PROS:

- a) A number of the alleged victims of abuse have pressed for a public inquiry for some time. They argue, amongst other things, that society has a duty to investigate thoroughly and to expose the full level of abuse. That process may be of therapeutic value to them.
- b) It would meet public demand for detailed account of what happened in Clwyd and who might be to blame. It gets over the problem that Jillings is not publishable.
- c) It would lead to authoritative recommendations for minimising the risk of repetition and ensuring safe and appropriate care arrangements.
- d) It would address suspicions of a paedophile ring with high-placed protectors. It might expose such a ring if one existed or still exists. An inquiry would go some way to re-assure the public if it found no evidence of such a ring.
- e) It would - eventually - clear the air in respect of present North Wales staff and officials. It would overcome suspicions of a cover-up because of a failure to publish Jillings
- f) It would examine Jillings' comments on the Welsh Office and provide opportunity to answer those criticisms in our evidence to the Inquiry.
- g) It would give the appearance of the maximum possible commitment to ensuring the safety of children in care.

CONS:

- a) A large number of former residents who may be victims have remained silent. A public inquiry might be harmful to them many of whom have families of their own who might be unaware of this background. Two suicides of witnesses have occurred one connected with the Chief Superintendent Anglesea libel case and one following the Ty-Mawr inquiry in Gwent.
- b) The issues have already been addressed with the reports of Nicola Davies, Jillings and Adrienne Jones. The first and last to be published in part and it may yet be possible - notwithstanding latest local authority statement - to publish Jillings in some form and to some degree.
- c) It is virtually certain that some of those giving evidence to an inquiry would take the opportunity to make unsubstantiated allegations both of former and existing officials and other persons, including many prominent in public life. In all probability

these would be very extensively reported in a way that would be profoundly damaging to the people concerned. If the allegations were unfounded and this was eventually confirmed by the inquiry, a great deal of injustice would have been suffered in the possibly lengthy interim period.

d) It would be enormously costly financially and would divert resources and effort from local authorities and other agencies who would be directly involved. It is difficult to believe there would be much added value from such a process given recent comprehensive reports (Warner: "Choosing with Care") and Adrienne Jones. There is a need to get on with implementing recommendations of these reports in the new authorities.

e) It isn't at all likely that an inquiry would be able to find evidence of such a paedophile ring if this has eluded the police. Even if the inquiry's conclusions were negative on this point it is very likely that some proponents of the theory would remain unconvinced. This raises possible difficulties over the scope of the inquiry in terms of pursuing witnesses from further afield e.g. Cheshire.

f) Difficulty over scope of the Inquiry in respect of the police.

g) There might be a considerably greater delay before we would be able to respond effectively to the Jillings criticism of the Welsh Office."

3.99 Notably, the listed "Pros" do not include the limitations of the 'examinations' conducted by Miss Nicola Davies QC or the Jillings Panel or subsequently reported concerns, including those expressed by Ms Adrienne Jones about present day child care and child protection in Conwy borough council.

The decision to have an inquiry

3.100 On 19 May 1996, the Secretary of State for Health wrote to the Secretary of State for Wales agreeing "that, in the Welsh context, it is sensible to hold back further comment until the end of the month when you expect to receive Adrienne [sic] Jones' report on measures to improve children's home management in North Wales." In the meantime, suggesting that officials be instructed to work up more fully an account of the measures taken and those in prospect to address the wider issues, and to "consider further and quickly at a meeting of the Ministers most closely concerned, whether any further action or review is justified and if so what its purpose and scope should be."

3.101 A memorandum issued on behalf of the Secretary of State for Wales on 7 June 1996, distributed to the Lord Chancellor, the Solicitor General, the Home Secretary, the Chancellor of the Duchy of Lancaster and the Secretaries of State for Health, Environment, Scotland and Northern Ireland, sought a collective view on how to proceed. It stated that the Secretary of State for Wales had "reluctantly" come to the view that "we should seriously consider adopting one of the public inquiry options."

- 3.102 A draft of a note by the Secretary of State for Health submitted on 6 June 1996 argued against “a major statutory inquiry in Clywd [sic]”, but “[if] ... a 1921 Act inquiry is inescapable its terms of reference should be as narrowly tied to local issues as possible.” It stated that “the most powerful argument against a major ‘wider issues’ public inquiry is the delaying and diversionary effect that it would have on progress in implementing the measures already taken or in preparation. It might, for example, be difficult for the Home Office to proceed with its plans for legislation on criminal records and more effective supervision of released sex offenders. It would also make it more difficult for the Health Departments to force local authorities and others to implement properly the safeguards already in place ... We shall be handicapped if, by the establishing further inquiry, we move the focus from local action and responsibility to one of national analysis and debate.”
- 3.103 A letter dated 11 June 1996 from the Home Secretary argued that an inquiry would not “shed any fresh light on current issues” and could “cause additional distress to those whom it was supposed to help.” It suggested “there is surely widespread disquiet about what might be contained in the Jilling [sic] Report. I am convinced that the most effective way to counter the rumours and speculation would be to publish, if not the whole report, at least a revised version of it. I hope that this possibility can be fully examined before you decide to embark upon any other course.”
- 3.104 On 11 June 1996, a meeting of interested ministers was called and chaired by the Lord President (‘the Lord President’s Meeting’). A letter dated 12 June 1996, sent to the Principal Private Secretary for the Secretary of State for Wales appears to stand as the minutes of the meeting. There is no indication as to whether the minutes are approved by those who attended the meeting, but there is no other reason to question their accuracy or provenance. Noting those present to be The Lord President, Secretaries of States for Wales, Health, Environment, the Lord Chancellor, Ministers of State for Home Office, Scottish Office, the Solicitor General, the Paymaster General and Assistant Whip and two officials from the Cabinet Office, it noted that “in discussion the following points were made:
- a) there were advantages in establishing the inquiry under the 1921 Act. It would be an inquiry of high authority. It would have powers to compel the attendance of individuals and the production of documents [and]...powers relating to contempt ... [it would] also allow the role of the police to be investigated and was preferable to other options such as a Police Complaints Authority review.
 - b) The Inquiry should be confined as narrowly as possible into the past events in North Wales, although the emergence of problems in other areas, notably Cheshire, and the structure of inquiries set up under the 1921 Act would not make that task any easier. A UK-wide investigative inquiry into past events would not be sensible. There would be problems with examining criminal cases, a number of which were still outstanding.

c) The Inquiry's terms of reference would, therefore, need careful consideration. In particular, it would be highly unusual for such an inquiry to examine decisions on whether or not to prosecute in particular cases. That could lead to people being convicted by public opinion, even where they had not been prosecuted or had been acquitted. On the other hand, it would be difficult to avoid consideration of the role of the Crown Prosecution Service (CPS), particularly as the inquiry would consider the role of the police in events in North Wales. Furthermore, the police had in the past, when they had the responsibility for prosecution decisions, had such decisions scrutinised at inquiries. It would be odd to exclude the CPS from similar treatment. The low number of Prosecutions by the CPS was striking. The terms of reference should also avoid the inquiry considering general child care policy. Your Secretary of State [for Wales] would circulate draft terms of reference to colleagues for comment.

d) ... the Jillings report to be made available to the chairman of the inquiry (who would, in any event, be able to call for the report if he wished, under the 1921 Act powers), who would then be able to consider it and offer any comments he wished upon it in his report.

e) It seemed highly likely that the inquiry would need to be chaired either by a judge or by a senior member of the bar ...

f) The cost of the Inquiry ... Secretary of State [for Wales] would be able to absorb this cost within ... existing resources

g) The 1921 Act allowed legal representation to be refused ... in a case of this sort it was highly likely that such representation would be necessary ... might add to the estimated costs of the Inquiry

h) ... an announcement [to be made] within the next fortnight ..."

Conclusions

3.105 In the circumstances I have previously outlined, I consider it was inevitable that the government would be ultimately driven to conclude that only a public inquiry would suffice to allay growing concern. I do consider there was unwarranted, albeit marginal, delay in doing so. Specifically, by August 1995 at the latest, it should have been apparent to officials that neither the Jillings Inquiry nor Miss Nicola Davies QC's examination of the documents would uncover the scale of the abuse that had occurred in the past, or the possibility that it was still continuing, or likely to recur if substandard child protection practice continued. Ministers should have been so advised immediately. It was unlikely that the position would change prior to Miss Nicola Davies QC's final report.

3.106 The Tribunal concluded that, but for Mrs Taylor's complaints about Nefyn Dodd, there would not have been any public inquiry into the alleged abuse of children in care in Gwynedd. Her allegations required investigation. It was wrong to suggest that a SSIW inspection in 1988 had been a sufficient investigation of her concerns.

Although it was suggested that she take her solicitor's advice on the further steps to be taken, the Tribunal Report records the inadequacy of the Welsh Office response to the detailed and reasoned solicitor's letter sent in 1993.¹¹ I agree with the Tribunal conclusions that further investigation was amply merited, but consider that the government was reasonable not to establish a public inquiry immediately on the allegations as they stood. There are no documents to suggest that Sir Wyn Roberts MP attempted to influence decisions concerning the establishment of the public inquiry.

- 3.107 The contact directed to be made with Clwyd county council in December 1991 was apparently made without full knowledge of the facts, nor of the previous inquiries conducted by the local authority which had failed to avert or address widespread deficiencies in children's services. It was not a constructive intervention.
- 3.108 The statement of Mr Gwilym Jones MP, the Parliamentary Under-Secretary of State for Wales, in September 1992 made reference to the necessity to await the outcome of criminal proceedings before proceeding with an inquiry. The government would be justifiably subject to criticism in creating any situation that compromised ongoing criminal investigation or prospective trials of accused abusers, which continued until February 1995. There is nothing in the court transcripts or CPS documentation which suggests inordinate and intentional delay.
- 3.109 My reading of the note of the meeting between Welsh Office officials and officers of Clwyd county council in October 1993 leads me to the view that the Welsh Office officials' primary agenda was not to discuss practical arrangements for a government inquiry, but rather to encourage the establishment of a local authority inquiry. There is nothing in the documents to suggest that the officials were any better informed in 1993 as to the deficiencies with previous local authority inquiries than they had been in 1991. The notification by Clwyd county council of the local authority inquiry in January 1994 was likely to have been influenced, at least in part, by the meeting in October 1993.
- 3.110 The significant difficulties encountered by the Jillings Panel could not have been more comprehensively detailed than in the SSIW report of September 1994. The reasoning and unequivocal conclusions of the inspector were soundly based. There is reference to "considerable difficulty", including the lack of co-operation of local authorities and the police, being encountered by the Jillings Panel in the advice to ministers at the time but, in my view, it did not convey the extent of the problems identified in the detail of the SSIW report. The inability to place reliance on the outcome of the Jillings Inquiry in these circumstances should have been obvious and explicitly drawn to the ministers' attention, at the time and subsequently.
- 3.111 It was entirely reasonable for the Welsh Office to 'take stock' of the situation at the conclusion of the criminal proceedings and not move immediately to the establishment of an inquiry, whether public or private. It was reasonable to seek the representations of the Chief Constable and other interested parties. The necessity

11 See Chapter 49 of the Tribunal Report

to consider all options included the informed assessment of the relative advantages and disadvantages of a local internal inquiry, government directed private inquiry and public statutory inquiry.

- 3.112 The appointment of a Leading Counsel to advise the Secretary of State for Wales on future action was justified. Miss Nicola Davies QC was eminent in her field, but she expressly made clear, and the Welsh Office knew, that she had no relevant expertise in the matter of statutory child protection. In these circumstances, I consider that the identification of Miss Nicola Davies QC for the role, as compared with the two female QCs with 'close involvement' in the field of child protection, was questionable. For the avoidance of doubt, I make clear that I make no explicit or implicit criticism of Miss Nicola Davies QC in accepting the instructions on the basis that she made clear from the outset her need for, and repeatedly sought the assistance of, a social services assessor. I am satisfied that she acted independently and in good faith throughout.
- 3.113 The restrictions placed upon Miss Nicola Davies QC seeking oral evidence or further representations were prima facie valid in the context of the task which had been set. I do not consider that it was improper to direct the nature of her investigation in this fashion. However, the corresponding need for expertise in the subject matter of the documents she was expected to research should have been more readily apparent to the commissioning department. That is, Miss Nicola Davies QC was not instructed to advise the Secretary of State for Wales on the relative merits of a private as opposed to a public inquiry, and, even if her instructions had been so restricted, it is difficult to see how she could have done so in the absence of expertise in the subject matter. Her analytical skills and obvious experience of appearing in public inquiries could not compensate for her lack of expert knowledge in the field of child protection. A social services assessor was likely to have been able to supplement the deficiency, but, in the event, was not briefed. There is no evidence that Junior Counsel briefed had expertise in this field.
- 3.114 In the light of what I regard to be the distinct sense of reluctance to embark upon a full inquiry, as is apparent to me in the documents to which I have previously referred, I come to the view that, unknown to her, Miss Nicola Davies QC was appointed in the hope and anticipation that she would be less likely to advise an inquiry than would Counsel experienced in child protection matters, which advice the government was likely to accept. Obviously, a difficulty would arise if the government were seen to reject independent advice given.
- 3.115 Miss Nicola Davies QC repeatedly raised concerns that the constraints imposed by her terms of reference impacted upon her ability to properly advise the Secretary of State. At one stage, it was thought possible that she would withdraw from the process. Understanding that Welsh Office officials would obviously wish to see the examination completed by Miss Nicola Davies QC, it seems clear to me that officials were also concerned that for Miss Nicola Davies QC to publicly abandon the investigation before completion could only result in one outcome; the government would be forced to establish a more wide ranging inquiry.

- 3.116 I consider it entirely appropriate that Welsh Office officials should challenge the opinions of Miss Nicola Davies QC in Consultation and to seek to ensure that the part of her report that was to be published should contain sufficient detail and analysis to explain the conclusion she reached. I think it a more questionable practice that the Welsh Office representatives should have suggested that Miss Nicola Davies QC remove or relegate the reference to the constraints upon the investigation she conducted. Miss Nicola Davies QC's conclusions were reasonably drawn from the documents and information made available to her.
- 3.117 Welsh Office officials did accurately report Miss Nicola Davies QC's conclusions to ministers. However, in doing so, it does not appear to me that the obvious caveat she expressed about the limitations of her investigations and her restricted access to documentation was placed into proper context or given sufficient weight. There is no reference to the deficiencies notified by SSIW to officials concerning information she had not seen or referred to in reaching her conclusions, and the extrinsic evidence of ongoing concerns, of which she would not be aware.
- 3.118 Miss Nicola Davies QC's recommendations as to the necessity for an expert examination of relevant social work/residential care systems in Gwynedd and Clwyd were adopted. The appointment of Ms Adrienne Jones as that expert was swift and well informed. I consider her credentials were impeccable and well suited her to the task. However, this was obviously no substitute for a wider inquiry into the abuse that had occurred with full access available to all materials and additional information.
- 3.119 The publication of the Jillings Report proved controversial. I am entirely satisfied that the Secretary of State for Wales and the officials in his department were assiduous in their efforts to affect publication of the Jillings Report in a non libellous form which would nevertheless allay public suspicion of a cover up, and no doubt be seen as the best prospect to avoid the increasingly looming prospect of a public inquiry.
- 3.120 However, the inherent difficulties in the Jillings Panel procedure were, I find, effectively and unhelpfully ignored when advising ministers at the time. That is, it should have been obvious to officials that the Jillings Panel had been unable to conduct a thorough review. The issue of whether the Jillings Report would be published in full or redacted form did not address the actual underlying problem.
- 3.121 The Secretary of State for Wales' obvious frustration with the successor authorities' failures in relation to the Jillings Report, as indicated in paragraph 3.26 herein and as appears in the ministerial documentation, seems misplaced in the circumstances indicated in paragraphs-3.36 and 3.38. The Secretary of State appears oblivious to the problems clearly notified to officials at a much earlier stage.
- 3.122 A redacted version of the Jillings Report was actually published in July 2013. The fact of its later publication may well prompt questions of why it could not have been published in similar fashion before. However, I consider that the successor authorities and government were surely right to heed the clear advice of eminent and independent legal practitioners. I have read the unredacted Jillings Report

both in draft and its final form. It did not identify establishment figures alleged to have committed abuse. Its publication in 1996 in redacted form would not, in my judgment, have appeased the public concern about institutional child abuse in North Wales and its concealment, because there would have continued to be speculation as to what had been redacted.

- 3.123 The subsequent telephone calls to officials from a previous principal officer of children's services and Ms Adrienne Jones, the expert appointed by the government to review child care management of the successor authorities, warning of continuing deficiencies were cogent indicators that the situation was not resolved. These communications should have immediately been reported to ministers and in the context that the conclusions of Miss Nicola Davies QC were subverted.
- 3.124 Noting that the documents available to the Review, or at all, may not reveal all advice tendered to ministers at the time, I consider that it would be reasonable to anticipate that if oral advice was given which contradicted the written advice provided, this should be minuted, as should be any significant amplification of the advice or additional information provided. The construction of the individual briefing notes do not suggest that they were accompanied by previously submitted briefing notes and written advices. If the documents I have seen are a complete and accurate record of the advice tendered to ministers, it appears compartmentalised; that is, not placed in the context of preceding and accumulative events and/or all available information. There is nothing to alert successive Secretaries of State to the deficiencies in the previous process and therefore it may be said that they did not receive comprehensive and timely advice on all relevant matters relating to a decision whether to recommend the establishment of a public inquiry. Whilst I do not conclude that this was a deliberate ploy with an intent to deceive or knowingly mislead ministers, I do consider that if piecemeal information and advice was tendered by officials, it did obscure the decision making process and contributed to delay in the establishment of the Tribunal.
- 3.125 It is right that a public inquiry pursuant to the 1921 Act was correctly understood to be a major undertaking. Many valid reasons not to embark upon a public inquiry were identified and discussed by government ministers, including the vast emotional and financial cost. However, I note in the officials' correspondence a repeated reference to the prospective significant financial cost involved to an extent which suggests to me that this was a factor they weighed heavily in the balance.
- 3.126 Issues that delay would compromise the Tribunal's investigation, as raised by Councillor Parry, are addressed in the following chapters in the context of other issues. Whilst an important consideration, I do not consider in the prevailing circumstances that time delay should have been viewed as a determinative factor in the decision whether or not to establish a Tribunal. However, there would have been a valid reason to ensure the preservation of all materials that may be relevant for the purpose of an inquiry of whatever type deemed necessary.

3.127 The delay in establishing the Tribunal will inevitably have contributed to continued suspicions of a 'cover up'. As indicated within this Report, there were undoubtedly rumours, and what have transpired to be unsubstantiated allegations, of the involvement of politicians and establishment figures in the sexual abuse and exploitation of children in care in North Wales. I note from the documentation that officials of several departments were "aware of many rumours ... [and] could never be sure what an inquiry of the kind we were proposing would discover." However, whilst I am critical of some aspects of the background to the establishment of the Tribunal, I make clear I have found no indication in any document of a government 'cover-up'.

Chapter 4: The Tribunal's Constitution and Parties

Introduction

- 4.1 The constitution of a Tribunal of Inquiry and the personnel and parties involved in its process will dictate the reliability of outcome. Any real or perceived conflict of interest of any person or party with influence over process will tend to undermine the procedure and results, however objectively sound they are. This chapter examines not only the individuals, groups and parties who had the potential to manipulate the proceedings, but also whether their selection was with that view in mind.

Tribunal composition

- 4.2 The members of the Tribunal were appointed by warrant on 30 August 1996. Sir Ronald Waterhouse had been identified previously as Chairman by the Right Honourable William Hague MP, the Secretary of State for Wales. The other two members of the Tribunal were selected from a list compiled with a view to expertise, experience and availability. Sir Ronald Waterhouse defined the qualities he sought in his colleagues and was consulted as to names of prospective appointments, but did not otherwise identify or select them. He thought it desirable that at least one member of the panel should be a female and that both his fellow members should have no prior connection with Wales.

Chairman

- 4.3 Sir Ronald Waterhouse was an experienced and respected member of the judiciary of long standing. He retired from the High Court bench in 1996. He was a Judge with experience of family and criminal law. He had no known political affiliations to the Conservative party and it has been suggested to me by Miss Margaret Clough, a fellow member of the Tribunal, that his 'political leaning' was toward the Labour Party. He was not a Freemason (see paragraph 4.37).
- 4.4 Sir Ronald Waterhouse had been Leader of the Wales and Chester Circuit in 1978, very briefly before his appointment to the High Court bench. An anonymous undated manuscript note sent to the Chairman and found within the Tribunal papers reads: "Sir Ronald Waterhouse. You have been put in charge of the enquiry [sic] because you are local and will make sure that certain persons are cleared or kept out of the enquiry. Shame on you."
- 4.5 I wrote to the Right Honourable Mr William Hague on 18 May 2015 concerning his early discussions with Sir Ronald Waterhouse prior to his appointment as Chairman of the Tribunal. He responded on 1 June 2015 and supplied information concerning the appointment of Sir Ronald Waterhouse as Chairman of the Tribunal, which is not contained within the documents that I have seen. Namely, that Mr Hague recalls that he telephoned Sir Ronald Waterhouse on 13 or 14 June 1996 in the hope of persuading him to take the role. Sir Ronald Waterhouse had been reluctant to do so in view of his recent retirement from the bench. Mr Hague was satisfied that Sir

Ronald Waterhouse “with his experience in Wales and in the relevant areas of law, was the right man to take on the task.” Discussions took place as to the nature of the inquiry and that it would be “fully independent ... Much of our discussion was about the possible length of the work ... From the very beginning therefore, Sir Ronald would have been clear of my and the Government’s view of his complete independence ...” Mr Hague said he was relieved when Sir Ronald Waterhouse, having reflected on their conversation during the telephone call, then “agreed to do the job.”

Meeting between the Secretary of State for Wales and Sir Ronald Waterhouse prior to his appointment

- 4.6 The Right Honourable Mr Hague MP, Secretary of State for Wales, had dinner with the Chairman elect on 17 July 1996 in the presence of Mr David Lambert, Legal Adviser to the Welsh Office, and another Welsh Office official. On 11 July 1996, the Secretary of State for Wales had received a “briefing for your dinner ... Establishing the Tribunal is proving to be something of a tortuous process not least because, as parties to the tribunal, our access to Sir Ronald is necessarily very limited ... attached ... is a note of the points we should like you to raise and of the ones we expect Sir Ronald to mention to you ... up to now David Lambert has provided our only channel of communication with him, and I am sure he will want to have the opportunity to brief you about his impressions in advance of your dinner ... [Sir Ronald was expected to] ... share his thinking about the extent to which he should use the Tribunal to test the truth of evidence and reach conclusions about allegations against individuals. (This is difficult territory and not something upon which you should express a firm view ...) [and] draw your attention to the fact that he expects the Inquiry to result in public expression being given to the allegations that have persisted for some time about the involvement of public figures in abuse that occurred.”
- 4.7 The combined recollections of the two officials led to a note of discussions during dinner, the relevant parts of which I reproduce in full herewith since the note is capable of adverse interpretation. I make clear at the outset that such notes were not said to be contemporaneous and do not appear to have been submitted to Sir Ronald Waterhouse and/or the Secretary of State for Wales for their approval or comments.
- 4.8 The relevant parts of the notes are as follows:
- “a) ... it was agreed to proceed on the basis that the Tribunal’s aim would be to complete the hearing of oral evidence by the end of the calendar year 1997 ... The Secretary of State said that he would answer an arranged Parliamentary Question on the last day of the session to indicate the target ... Sir Ronald concurred, and agreed that it would strengthen his hand in resisting pressures for endless ramifications of evidence, etc, to be pursued that a definite target date would have been publicly specified.

e) Everyone who wanted to give written evidence would have to be allowed to do so. Sir Ronald indicated, though, that he hoped thereafter to be very selective in deciding who should be required or indeed permitted to give oral evidence.

...

h) Sir Ronald indicated that it would be necessary to take fresh statements even from those who had already made statements to the police. The statements made to the police had been prepared with a specific, and limited purpose in mind; the Tribunal's concerns would be wider.

...

j) All the Tribunal's papers would be made available to the police in due course. However Sir Ronald did not contemplate making any other kind of communications to the police bearing on the conduct of individuals. He did envisage, though, that the Tribunal's report might need to record, where appropriate, the conclusion that specified individuals were indeed abused as they claimed. This would tend to carry the inference that the Tribunal considered that some or all of the persons whom they accused of having abused them must indeed be guilty of having done so ...

k) It would be the Tribunal's aim to avoid private sessions in so far as possible. The Tribunal would however seek to suppress names where appropriate and hope to persuade the press to respect this.

l) The Secretary of State expressed concern at the extent of the general attacks upon the characters of those involved that were occurring in the current actions involving Ian Botham and Imran Khan. He hoped that this would not be a prominent feature of the Tribunal's proceedings. Sir Ronald, however, indicated that he did not think that it could be prevented. Those accused of misconduct had to be free to question the credibility of those making the allegations by attacking their general characters and reputations."

4.9 The note is open to an interpretation of attempts at, or actual connivance at, a 'cover up' which is why I produce it here; see, for example, the words 'very selective' and 'suppress' attributed to Sir Ronald Waterhouse at paragraphs (e) and (k). I note that the record shows that the Secretary of State for Wales' apparent reference to 'general attacks' on character was interpreted by Sir Ronald Waterhouse to refer to prospective complainants.

4.10 In his letter to me dated 1 June 2015, the Right Honourable Mr Hague recalled the dinner, but understandably, had no detailed memory of the conversation. He was unable to be "certain of the context for Sir Ronald reportedly referring to being 'very selective' about oral witnesses and hoping to 'suppress names'...", but thought this related to the need for an "efficient and timely inquiry" and for a report that could be published without the risk of defamation. So far as the comments attributed to him at the dinner were concerned, he referred me to statements he had made

in Parliament to the effect that he hoped that Tribunal witnesses' privacy could be maintained commensurate with the public interest. This, he said, was the context for his reference to the "celebrated libel trial of that time ... which had seen attacks on the character of all participants." In conclusion, on this point, he was certain that "no one present at the dinner or any other discussion about the inquiry could reasonably be in any doubt" of his intentions as Secretary of State that there should be no 'cover-up' and a fully independent Chairman.

- 4.11 I wrote to Lady Waterhouse on 19 May 2015 as a matter of courtesy notifying her of issues that I was then minded to include in my Report, which might result in criticisms being made about the actions or decisions of her late husband, Sir Ronald Waterhouse. Leading Counsel, who had not previously been concerned with the Tribunal, responded on her behalf. On this matter, he recognised the potential for an adverse interpretation of the comments. He suggests that the word 'selective' should be considered in the light of the size of the inquiry and the necessary management of the evidence, and the reference to 'suppress names' to be with a view to avoid private sessions and still to ensure the confidentiality of witnesses.
- 4.12 In the light of the meeting as reported, I have scrutinised the daily transcripts and other Tribunal documents for any sign of the Chairman's reluctance to investigate allegations against any person or establishment figure, or those which may implicate them. I refer in paragraph 4.122 to my conclusion overall in this respect, as detailed more fully in Chapters 7 to 9. In short, I did not detect any reluctance to investigate any issues raised by admissible evidence, whether it implicated establishment figures or not.

The other members of the Tribunal

- 4.13 Miss Margaret Clough had been a senior official of the Social Services Inspectorate of the Department of Health with responsibility including children's services. Mr Morris le Fleming was former Chief Executive of Hertfordshire county council and had served as an assessor in the 'Beck Inquiry' into the abuse of children in care in Leicestershire conducted by Andrew Kirkwood QC (subsequently to become Mr Justice Kirkwood, now deceased).
- 4.14 Neither of them was known to each other or the Chairman prior to their appointment. Neither of them declared a conflict in interest with any individual or local authority, nor suggested that they were affiliated to the Conservative party. Mr le Fleming has confirmed in writing to me that he has never been a Freemason and has no recollection of any enquiry to that effect prior to his appointment (see paragraph 4.37).
- 4.15 I have had access to the notes of evidence prepared by Miss Clough and Mr le Fleming and have seen the Clerk to the Tribunal's notes of discussions held during, and the minutes prepared and schedules drawn of their discussions with the Chairman after, the hearings. All findings made by the Tribunal were seemingly discussed and ultimately agreed.

- 4.16 As previously indicated in paragraph 2.79, I interviewed Miss Clough and Mr le Fleming jointly. I was informed by both that they had not felt subject to outside interference or undue pressure and were certain of the Tribunal's independence. However, Mr le Fleming considered that his participation in the Beck Inquiry was greater because he had "a very good relationship with [Counsel to the Beck Inquiry]." Miss Clough felt that her position as "the only non-lawyer in about 60 lawyers ... [meant that] even though attempts were made to make it non-adversarial, it is still a very adversarial process." Both were undoubtedly aware of the scale and importance of the public inquiry. Each commented on the close working relationship between the Chairman and Leading Counsel to the Tribunal. However, Miss Clough did say that she did not feel "the slightest sense that I was being stopped from pursuing anything I wanted to pursue."
- 4.17 The Tribunal's documents support her perception of them playing nothing other than a full part in the proceedings. For example, the contemporaneous annotation of a document by the Clerk to the Tribunal relating to a request for an informal confidential indication to be given to a social worker, against whom allegations had been made, that he would not be criticised in the Tribunal Report reads, "Ch content to agree to this. Members concerned about the practice of giving indications of whatever nature however informal/confidential – Ch asked counsel to inform his Counsel (AP) that whilst the Trib were sympathetic to his position it is unable at this stage to consent to this request." That is, the Chairman's initial views did not prevail.
- 4.18 On 24 September 1996, Miss Clough is noted to have "delivered a list of documents that she felt would be of assistance to the investigation. The list was similar to that prepared by Mr le Fleming." Miss Clough is noted to have asked for a briefing on the terms of reference so as to inform her reading of background materials (but rightly told that it would be inappropriate for Counsel to 'brief' tribunal members). Each of them prepared notes on the evidence, and in relation to their specialist fields, in relation to topics covered by the Tribunal's investigation for the information of the Chairman throughout the hearings.
- 4.19 Miss Clough contacted my Secretariat on 10 July 2014. She wished to report that on unspecified dates she attended some of [redacted] and on one occasion had lunch with him. He had provided her with a leaflet about the Paedophile Information Exchange, although he did not tell her he was a member or try to promote the organisation. She said they had engaged in a "purely academic discussion" about it.
- 4.20 I wrote to Miss Clough on 15 May 2015 alerting her to the fact that I was minded to refer in this Report to her contact with [redacted] prior to her appointment as a member of the Tribunal and the information that she had provided during the telephone call. In her response, she explained that the purpose of her call was to inform the Review that, in light of recent media reports concerning a list of establishment figures connected with child sexual abuse allegations involving Elm Guest House, [redacted] and having reminded herself of my question as to whether she had seen a list of establishment figures said to have been

involved with a paedophile ring in North Wales, she was able to categorically state that if the latter included _____ name, she had not seen it.

He had produced a leaflet about the Paedophile Information Exchange at a lunch which she and other students had attended, but had not admitted any personal involvement in the organisation or advocated its cause to her. She had no other contact with him subsequently and did not feel that the nature of her contact with him caused her any conflict of interest.

Assessor

- 4.21 Sir Ronald Hadfield, a former Chief Constable of Nottinghamshire and then the West Midlands, was appointed as an assessor to advise on police matters. He was independent of the NWP and was subsequently explicitly critical of the 1986 police investigation led by Detective Chief Superintendent David Owen. The Chairman had not identified or selected him personally, but had required "an eminent former chief constable ... as a special adviser on police matters."
- 4.22 The Chairman had suggested in a meeting on 16 July 1996 with Mr Lambert, then acting as de facto solicitor/secretary to the prospective Tribunal, that Sir Ronald Hadfield should not be considered as assessor to the Tribunal by virtue of his leadership of the West Midlands police at a time when that force had been subject to heavy criticism. I have not found any further reference to this advice and it was obviously discounted.
- 4.23 The Chairman made clear in his opening statement on 10 September 1996 that "... such advice as Sir Ronald [Hadfield] may tender from time to time will be in written form and will be circulated at least to Counsel and solicitors appearing before the Tribunal ..." and was capable of challenge in cross examination. Sir Ronald Hadfield's statement to the Tribunal is reproduced in full in the Tribunal Report.¹
- 4.24 Sir Ronald Hadfield died on 31 January 2013 shortly after this Review was established.

Counsel to the Tribunal

Selection of Counsel

- 4.25 Counsel to the Tribunal were nominated by the AG after consultation with the Chairman.
- 4.26 All three Counsel were in independent practice. Mr Gerard Elias QC, who was former Leader of the Wales and Chester Circuit, was Leading Counsel. Mr Gregory Treverton-Jones (since appointed a Queen's Counsel), who was a member of Mr Gerard Elias QC's chambers, and Mr Ernest Ryder (now Lord Justice Ryder) who

¹ See Appendix 11 of the Tribunal Report

was from Manchester chambers, were Junior Counsel. The Chairman made clear in his opening statement on 10 September 1996 that whilst their duty was “to advise the Tribunal on both legal and evidential matters and to present the evidence to the Tribunal in oral and documentary form... it will be for the Tribunal to decide ultimately what evidence it is necessary and appropriate to hear.”

- 4.27 The Chairman knew of and positively endorsed Mr Gerard Elias QC. The Clerk to the Tribunal informed me in interview that the Chairman had known Mr Gerard Elias QC for a long time and, she thought, he had once been his pupil master. A note of a meeting between the Chairman, the AG and Solicitor General on 29 July 1996 records, “Against this background, counsel of the highest calibre would be required. The preference of the judge is for Gerard Elias QC - formerly the Leader of the Wales and Chester Circuit ... The judge certainly favoured a common lawyer reflecting the extent to which the handling of the complaints and the conduct of the local authorities would be in issue ... Reverting to the question of counsel, it was noted that the inquiry would be sitting in Ewloe, Flintshire. There would be merit in having counsel who lived in reasonable proximity. The preferred option of the judge is Gerard Elias QC.”
- 4.28 One contributor to the Review, Mr Gareth Taylor, previously known as Michael Hassan Ullah, thought it significant that the Chairman and Leading Counsel had “met” on “the Pembrokeshire case ... trial of child sexual abuse ...” but did not explain in what way. However, I note that the comment should be seen in the context that, during the course of the Tribunal and to this Review, this contributor expressed himself as critical of the Tribunal process and did not accept all of the findings of abuse ultimately made.
- 4.29 Mr Gerard Elias QC recommended Mr Treverton-Jones. Mr Treverton-Jones was a member of the AG’s panel on the customs and excise list. Mr Gerard Elias QC’s recommendation was approved and Mr Treverton-Jones was instructed as first Junior Counsel to the Tribunal.
- 4.30 On 13 August 1996, a message to the Deputy Treasury Solicitor from Mr Lambert reads, “I saw the Judge yesterday and he would very much like to have a second Junior Counsel ... who has some considerable experience of family law matters and wonders ... whether it might be possible to send him a list of possible appointees ... to consider and make a recommendation to you.” Mr Justice Douglas Brown, a recent Family Division Liaison Judge of the Northern Circuit, was approached for recommendations. He provided a list of several names including the name of Mr Ryder, then a Junior Counsel based in Manchester, who was subsequently appointed.

Conflict of interest

- 4.31 Prior to the appointment of Mr Gerard Elias QC, consideration was given to the potential conflict of interest arising by reason of his wife’s employment. This issue had been raised by the Chairman in the meeting on 29 July 1996 attended by Law Officers and Mr Brian McHenry, Solicitor to the Tribunal. Mr Lambert was asked

to make further enquiries. In his letter dated 31 July 1996 to the Deputy Treasury Solicitor, Mr Lambert reports, "we have discussed the interests of Mrs Elias ... She is a non-executive member of the board of WHCSA [Welsh Health Common Services Authority]. This is a central servicing authority which gives technical and legal advice to ... health authorities and National Health Trusts in Wales ... It has no involvement in the provision of hospital or other medical or dental services in Wales. There has been no criticism, to my knowledge, of the provision of medical or other services with regard to the persons who have been allegedly abused and who will form part of this Tribunal of Inquiry. Administrative colleagues cannot see any conflict of interest were her husband to be appointed as the Leading Counsel to the Tribunal team."

- 4.32 There are no documents I have seen which indicate that the same consideration was given to the possibility that any of Counsel to the Tribunal were, had been or may be a Freemason. The first indication of this potential conflict of interest being raised appears in a letter dated 6 September 1996 written by Mr Rhodri Morgan, MP for Cardiff West, to the Secretary of State for Wales "to express the strongest possible objections" to the appointment of Mr Gerard Elias QC as Leading Counsel. The letter related that:

"While in no way reflecting on Mr Elias's legal qualities and capabilities, the fact that he is a prominent freemason and an officer or past officer of the same masonic lodge as your Parliamentary Under Secretary of State and so many other Conservative Party 'heavies' makes this an incredibly insensitive appointment. You must surely be aware that freemasonry will be an issue in the Waterhouse Inquiry, since freemasonry within the North Wales Police has always been pointed to as a possible factor in the long delays in exposing and solving the child abuse problem in Clwyd and Gwynedd. Furthermore any possible critical examination of the role of and possible failures of the Social Services inspectorate of your Department may well be perceived to be more difficult given the fellow freemason links between Mr Elias and Gwilym Jones in the Dinas Llandaf Lodge ... I should be grateful, therefore, if you would consider this matter and its possible impact on the willingness of previous victims or witnesses of child abuse in North Wales to come forward and for the Inquiry to follow its course to a full conclusion."

- 4.33 The letter was disclosed to the Chairman and Mr Gerard Elias QC. In a fax communication dated 17 September 1996 with suggested drafts of the letter in response, the Solicitor to the Tribunal reported that, "both Sir Ronald and Mr Elias would prefer the 'full frontal' approach, as it is the stance which the Chairman would take were the matter raised in open hearing."
- 4.34 The Secretary of State for Wales responded to Mr Morgan MP in a letter dated 20 September 1996 to the effect that Mr Gerard Elias QC was "appointed by the Attorney General following consultation with the Tribunal Chairman, Sir Ronald

Waterhouse.” He went on to say that Mr Gerard Elias QC was judged to be the most suitably qualified person in terms of legal skills, range of experience, judgement and personal qualities to undertake the important task. He concludes that:

“Whether or not Mr Elias happened to be a freemason was not a consideration nor was there any reason to regard it as relevant. There is no basis whatsoever for any suggestion that he will be influenced in the discharge of his duties as leading counsel by virtue of his membership of a lodge.”

Application for a register of interests

- 4.35 Independently of the concerns expressed by Mr Morgan MP, on 16 January 1997, Pannone & Partners, solicitors representing a number of the complainants wrote to the Chairman “concerning a sensitive issue ... namely the involvement in the Inquiry of members of the Freemasons. You will be aware that allegations of Masonic connections with the abuse of children in care in North Wales have been raised in the media over the past five years. These have focused on the Police but also extend to those running homes and in Social Services. These concerns are bound to be voiced again before the Tribunal. It would be most regrettable if the effectiveness of the Inquiry were to be in any way undermined by suggestions (however baseless) that Masonic influence ‘behind the scenes’ had compromised it in its task. We are therefore writing to suggest that a public register be kept of Masonic membership amongst Tribunal members, staff, advisers and witnesses ... Accordingly, we are instructed to make a formal application to the Tribunal in due course for a direction that membership of the Freemasons and other similar organisations should be disclosed.”
- 4.36 An attendance note from the Deputy Treasury Solicitor dated 17 January 1997, made aware of Pannone & Partners’ proposed application by Mr Lambert states, “It did not help that one of the two junior counsel assisting the Inquiry was a Mason (Mr Ryder had been the Judge’s appointment, taken from a list furnished by the Attorney’s office and which had the agreement of Mr Elias). The other junior Counsel was appointed at the request of leading Counsel.”
- 4.37 On 20 January 1997, a Welsh Office official advised the Secretary of State for Wales, “There have been, almost from the outset, allegations about a Freemasonry connection with the North Wales Child Abuse scandal ... In the Permanent Secretary’s absence on Friday I hastily convened a meeting ... to discuss the Judge’s approach ... After consulting the Acting Treasury Solicitor and the Attorney General’s Department, we advised the Judge that, in the main, these were issues for him to determine as they were directly concerned with Tribunal proceedings ... we did however advise him of the Department’s rules and procedures ... the need for Welsh Office personnel to declare any conflict of interest that may arise during the course of their work. We understand that the Judge is now likely to deal with this on the following basis: With regard to the Tribunal members themselves ... take the matter up with Secretary of State (We know that the Judge himself is not a

Freemason ... but we did not ask Mr Le Fleming whether he was a Freemason, and do not know whether he is one or not) ... With regard to ... Welsh Office staff ... he will refer to the departmental procedures about conflict of interest. It is likely that the Judge will extend this to cover Counsel to the Tribunal (we know that Mr Elias ... and Mr Ryder ... are Freemasons); and also the team of former policemen who are engaged in taking statements from witnesses (we know that at least one of them is a Freemason). As regards witnesses, the Judge intends to say that he will allow Counsel to ask witnesses about their membership of this organisation if he judges it to be relevant in the context of proceedings and of the witnesses' evidence." The note continues, "Should there be [sic] a media approach I would suggest ... 'These appointments were made on the basis of the individuals' qualifications and qualities. They were not asked whether they were Freemasons because there was no reason to regard this as relevant'."

- 4.38 The papers do not indicate the source of the Welsh Office's stated knowledge that Mr Gerard Elias QC or Mr Ryder were, or had been, a Freemason or when it became known to them. I have found no document which records any conversations with Counsel to the Tribunal prior to their appointment about their affiliations or association with freemasonry and/or any consequent debate as to whether, if so, this constituted or would be perceived as a conflict of interest. I do note that the suggested response to any media approach about appointments does not seek to distance the Welsh Office from the process. It does, however, contrast with the concerns expressed by the same official to the Secretary of State for Wales during a video link on 7 October 1996 in relation to, "the freemasonry issue especially with respect to the appointment of the former Detective Chief Inspector from South Wales and the rumours that were apparent within the South Wales Police Force regarding the reason for this appointment."
- 4.39 The notified application was made on the first day of the hearing, 21 January 1997, by Counsel instructed by Pannone & Partners. Whilst noting the "very strong and impressive opening" of Leading Counsel, Mr Gerard Elias QC, which would have "greatly strengthened" the confidence of the complainants in the Tribunal, he nevertheless made the application for a register of Freemason membership. The application was supported by an advocate representing another complainant. Counsel for the Welsh Office made no representations.
- 4.40 The Chairman's approach was not entirely that envisaged by the Welsh Office. The Tribunal dismissed the application; the Chairman making clear from his comments that he was not a Freemason, and directing criticism of any appointments of Tribunal members to the Secretary of State for Wales and of Counsel to the AG. The Chairman did not refer to Welsh Office procedures regarding declaration of any conflict of interest arising.
- 4.41 A member of the public writing to the Prime Minister after the reporting of the Tribunal's ruling on a register of Freemason membership reflected the distrust of many at the 'infiltration' of Freemasons and their perceived desire to protect their own, and other establishment figures, at all costs. A response was made in similar terms to that written to Mr Morgan MP.

- 4.42 The response did not refer to the information contained in a letter copied to the Secretary of State for Wales dated 25 September 1996 and addressed to Mr Morgan MP from the Grand Secretary of the United Grand Lodge of England. Attached to that letter was an extract from the Grand Lodge's leaflets "Freemasonry & Society" which includes the following, "... The Charge to the new Initiate calls on him to be exemplary in the discharge of his civil duties; this duty extends throughout his private, public, business or professional life ... there is no conflict of interest between a Freemason's obligation and his public duty ... A Freemason's duty as a citizen must always prevail over any obligation to other Freemasons ..." Within the same extract is included, "If an actual or potential conflict of duties or interest is known to exist or is foreseen, a declaration to that effect should be made. It may on occasions be prudent to disclose membership to avoid what others mistakenly imagine to be a potential conflict or bias, but this must be a matter for individual judgement."
- 4.43 Journalists have continued to highlight the issue of freemasonry and clearly perceive a conflict of interest given the long rumoured protection offered to establishment figures by virtue of their masonic connections.

My further enquiries

- 4.44 In response to my letter to him dated 15 May 2015, the AG notes that the Tribunal Report refers to all three Counsel being "nominated by the Attorney General to act as Counsel to the Tribunal", but explained that whilst the Law Officers maintain a panel of Counsel to undertake work for government departments after a recruitment process based on merit and experience, it is not a requirement that Counsel to inquiries are selected from the Panels or that a nomination for an 'off Panel' Counsel to be appointed to an inquiry is approved by Law Officers. He asserts in his letter to me that the AG did not appoint Counsel to the Tribunal and would not have a role in terms of assessing Counsel for any conflicts of interest. This, he considered, remained a matter for the Tribunal itself and the professional considerations of Counsel themselves.
- 4.45 The Welsh Government suggested in a letter to me that while Counsel to the Tribunal were "formally instructed" by Treasury Solicitor in their capacity as Solicitor to the Tribunal, the AG had been involved in discussions with the Chairman as to the identification of Counsel to be nominated.
- 4.46 In response to my letter to him relating to the appointment of Counsel to the Tribunal, the Treasury Solicitor indicates that he has not felt it appropriate to make enquiries of the officials involved at the time and refers to the view expressed in the letter to Mr Morgan MP, as indicated in paragraph 4.34. He indicates that this "was clearly the considered view at the time and [he did] not consider it appropriate for [him] to go behind that conclusion."
- 4.47 I interviewed all three Counsel to the Tribunal separately. None raised any anxiety about external political interference which could have undermined the independence of the Tribunal process. I did not raise the issue of freemasonry with them at that time since I had not then seen the documents to which I refer above.

- 4.48 I wrote to Mr Gerard Elias QC and Lord Justice Ryder separately on 13 April 2015 seeking that they confirm: (i) whether, at the time of their appointment they were or had been a Freemason; (ii) if so, whether they had been asked to declare any conflict of interest, including whether they were a Freemason, by the Welsh Office, the AGO, Sir Ronald Waterhouse, or any others, prior to their appointment; and, (iii) whether they had otherwise volunteered that information.
- 4.49 Mr Gerard Elias QC confirmed that at the time of his appointment as Leading Counsel to the Tribunal he was a Freemason, which "... at that time was generally known. The fact was known to the Welsh Office and to Sir Ronald and the question of any possible conflict of interest was raised in discussion with both. Both were satisfied - as was I - that no conflict existed or was likely to exist." He dismissed the suggestion that he had ever been a 'prominent' Freemason. He had indicated that he would not "participate in freemasonry in any capacity whilst the Tribunal operated" and had not been active since that time. He said that "had matters ever developed such that there could have been any perception of conflict [he would] doubtless have reconsidered the position. [He knew] that Sir Ronald would have also been alert to canvass any issue which he believed might raise the spectre of conflict of interest. No such issue arose."
- 4.50 Lord Justice Ryder confirmed that he had been a Freemason prior to his appointment as Counsel to the Tribunal, but could not recall whether or not he was still a Freemason at the time of his appointment; however, he was not an "active member" of the Freemasons at that time. He had tendered his resignation from the organisation soon after joining its ranks, but the formality of the procedures then involved some delay. No one from the Welsh Office or AGO had spoken to him about the subject. He recollected that after his appointment he was asked to complete a piece of paper declaring any possible conflicts of interest. He had declared his past or present status as a Freemason, but has no recall of the origin of the document or its destination. He had been asked by Sir Ronald Waterhouse about conflicts of interest at the time of delegation of Counsel's duties. He had confirmed his past or present membership to the Chairman and had also discussed with him, during several conversations, other potential conflicts that his prior professional contact with local authorities under investigation may create. He said that, "As allegations began to be received by the Tribunal the issue of Freemasonry became more concrete". He then agreed with Sir Ronald Waterhouse that it was inappropriate for him to be "party to any decisions or to handle any evidence relating to the same." He said that at no stage did he take part in decisions relating to the "investigations, the calling of evidence or its analysis" in relation to freemasonry issues.
- 4.51 I have seen no document containing any declaration of interest. Upon receipt of Lord Justice Ryder's reply, I requested the Wales Office and AGO to make a further search for any such documents relating to the Tribunal. Neither were able to locate the same. The AG did, however, indicate that the GLD held files relating to the appointment of Counsel to the Tribunal, which had not been previously disclosed to the Review. I have previously referred to this matter in paragraph 2.18. The files subsequently disclosed did not contain any declaration of interest made by Counsel.

- 4.52 Mr Treverton-Jones has confirmed in writing to me that he is not now, nor has he been a Freemason.
- 4.53 I was alive to the fact that two of the three Counsel to the Tribunal were, or had been, a Freemason when I examined the documents created or annotated by them. I have had access to a large quantity of manuscript and typed notes produced by them throughout the Tribunal process, although obviously by reason of the number that must have been created during this time, not all of them. I have read manuscript annotations upon witness statements and other documentation, whether in their own hand or indicating their presence at meetings at which matters of procedure and practice were discussed. I have seen records of planning / strategy meetings between Counsel to the Tribunal and with other Counsel and advocates representing interested parties, members of the Tribunal and the Solicitor to the Tribunal, and have seen notes passing between them. I have seen instructions issued to the WIT and other Tribunal staff or assistants. In addition, I have had recourse to the daily transcripts of proceedings and seen the nature of Counsel's questioning on behalf of the Tribunal and the lines of inquiry made by them or on their behalf by the Solicitor to the Tribunal. I record that there is nothing within the documents that have been disclosed to me that indicates any knowledge of available evidence relating to Freemasons and/or establishment figures that they suppressed, or decision taken which may suggest intent to do so if such evidence became available.
- 4.54 In this regard, it is pertinent to report the contents of a letter dated 3 February 1998, sent to the Solicitor to the Tribunal on behalf of the Masonic Province of North Wales complaining of the perceived "disparagement [of freemasonry] at the proceedings of the Tribunal" and "gratuitous involvement of the Craft and its late Provincial Grand Master (Lord Kenyon)". This does not suggest that the Tribunal was minimising the issue. The letter was placed before the Tribunal and discussed between them and Mr Gerard Elias QC. Thereafter, Mr Stuart Howard, then Solicitor to the Tribunal, responded on 12 February 1998, "you must surely be aware that one of the matters that the Tribunal must investigate is the alleged influence of Freemasons on the investigation by the police and by social services into the abuse of children in care in North Wales between 1974 and 1996."

Solicitors and Clerk to the Tribunal

- 4.55 The Solicitors to the Tribunal were Mr Brian McHenry (now Reverend McHenry) from mid July 1996 until December 1997, and subsequently Mr Stuart Howard. They were seconded from the Treasury Solicitor's Department as was the Clerk to the Tribunal, Miss Fiona Walkingshaw. They were interviewed and obviously approved by the Chairman, but had not been identified by or known to him previously. Mr McHenry was known to have had previous experience of public inquiries.
- 4.56 I have interviewed the successive Solicitors to the Tribunal. Neither was concerned as to any lack of integrity in the Tribunal process, save that in interview with me, Reverend McHenry expressed that on occasions he felt that he was excluded from meetings between Counsel and/or Counsel and the Chairman, and remarked upon the frequent visits of Mr Lambert to the Tribunal.

- 4.57 I wrote to Mr Gerard Elias QC on 15 May 2015, concerning Reverend McHenry's perceptions, amongst other things, and invited his comments. Mr Gerard Elias QC responded that he remained on friendly terms with Reverend McHenry, but that Counsel to the Tribunal and Solicitor to the Tribunal had different functions. In his experience, Solicitors to Tribunals often wished to be more involved in 'the action'. He said the Solicitor to the Tribunal had never been deliberately excluded.
- 4.58 The second concern raised by Reverend McHenry relating to the early involvement of Mr Lambert, by reason of his employment with the Welsh Office and therefore his potential conflict in his role, is discussed at paragraphs 4.94 to 4.98.

Administrative staff

- 4.59 Administrative staff were seconded from the Welsh Office. Their letters of secondment required them to be independent of the Welsh Office and to behave at all times in order that their loyalty to the Tribunal must never be questioned. They were instructed not to engage in any activity which could be interpreted as political and to avoid behaviour which called into question their political neutrality.
- 4.60 All personnel employed on Tribunal business were to be security vetted. There are letters which refer to security questionnaires still to be completed and which needed to be returned and for the provision of documents to make identification checks. Follow up communications included the necessity to take up matters with individual's home departments.

The Witness Interviewing Team

- 4.61 The Tribunal's Witness Interviewing Team (WIT) comprised retired police officers; the initial appointees having served in the South Wales police force. Retired officers from forces outside Wales joined subsequently. The WIT was employed to trace and interview potential witnesses at the direction of the Tribunal.
- 4.62 Mr Reginald Briggs was the head of the WIT. He was a retired Detective Chief Inspector having served in the South Wales police force. He told me in interview that he had been recommended for appointment by Mr Gerard Elias QC. Mr Briggs also informed me that he knew Mr Gerard Elias QC professionally having been involved in a number of cases prosecuted by him. He unhesitatingly volunteered to me that he was a Freemason. He said that he had been interviewed on two occasions before being appointed to the role and had been asked if he was a Freemason. He had confirmed that he was, but was happy to 'pack it in' if it had been necessary to do so. He did not consider it had affected his performance in any way.
- 4.63 Mr Gerard Elias QC, in his response to my letter of 15 May 2015, makes the following points: (i) he did not appoint Mr Briggs; (ii) he did recommend Mr Briggs since he knew him as "highly efficient, a good manager of staff, capable of organising and running a team, and that he had recently retired" and there was "an acute need to recruit those who already had the skills and experience for the task and could almost immediately set to work"; (iii) he did not know that Mr Briggs was a Freemason.

- 4.64 The appointment of previously serving police officers from the South Wales force appears to have been controversial in more than one respect.
- 4.65 On 11 September 1996, Mr McHenry wrote to the Deputy Treasury Solicitor stating that he had taxed Mr Gerard Elias QC on the use of retired South Wales' detectives for taking witness statements, acknowledging that "[public] confidence could be undermined if word got out that former detectives from South Wales were being used in the preparatory work. The North Wales Police were in the frame. Public opinion would not distinguish between the North and South Wales police forces. The police were being implicated in the emerging Belgian scandal ... [creating] considerable risks for the integrity of the process." He said Mr Gerard Elias QC had responded that the Tribunal was not involved in a police investigation. The former detectives were not serving officers. They were the most efficient statement takers. Given the size of the task and the short time frame, nobody else could undertake the work which required skilled and experienced handling.
- 4.66 Subsequently, in a note dated 23 September 1996, Mr McHenry was "anxious not to lose the services of these former officers [that is Briggs et al] because time is valuable and further delay in gathering evidence and statement taking will hinder the presentation of evidence to the Tribunal."
- 4.67 In a note dated 8 October 1996, the Tribunal Chief Administrative Officer records that in a meeting held on 2 October 1996, Mr Gerard Elias QC had reported that five former police officers from South Wales had started to work tracing and interviewing potential witnesses. The note goes on to say that Mr Gerard Elias QC "estimated that 5 more will be required as soon as the present five are organised and up to speed, [however] the Chairman has decided that these should come from outside Wales and not be recruited by the same person, Mr Briggs who recruited the original members ... At least one or two of the additional interviewers should be female. Originally Mr Briggs had spoken to an ex lady officer from South Glamorgan but this was put on holds [sic] when it was decided not to employ any more people from that area." A retired female police officer from an outside force was subsequently appointed.
- 4.68 On 9 October 1996, a trainee solicitor wrote to Mr Lambert quoting as his source "an informal contact I have with the South Wales Police ... In essence the former officers who have been appointed are highly experienced in organising and conducting police investigations, but they have little or no experience of conducting interviews of this kind using modern methods."
- 4.69 Mr Gerard Elias QC was obviously made aware of the note. He responded to what he saw to be rumours which undermined the confidence of the public and the Welsh Office in the operation of the Tribunal. In a note intended to be seen by Welsh Office officials, he sought to "disabuse" the informant who was "seriously in error". He wrote, "The facts are as follows: 1. Former police officers from Wales & outside will be employed on the Tribunal's behalf ... 2. No former police officer will be called upon ... to 'assess the way in which the NW police conducted their recent investigation' or 'the methods of interviewing they used' ... 3. No former police

officers are being used to 'extract information' from anyone ... 6. Those who are to come into contact with adults who may have been the subject of ... abuse have had the benefit of ... discussions on the proper approaches both with myself ... and Ernest Ryder. 7. No former officer will undertake any Meeting ... with a complainant without that person having acquainted him/herself with the essence of the interviewing Guidelines laid down ... in the Cleveland Inquiry and with the 'REPENT' (The Structured Interview) format as taught at the Harrogate Police College ... written Guidelines given to each of our Tribunal representatives [state], 'Please bear in mind at all times that you are not seeking to produce any particular outcome from your meeting - you are not encouraging or discouraging complaints or allegations; you are recording whatever the witness wishes to tell you. It is imperative that you do not ask the witness leading questions on contentious matters.' The difference between this approach and that involved in carrying out a criminal investigation will be obvious ... 8 ... Counselling facilities have been put in hand & the Tribunal representatives are well aware - and armed with written details to hand to a complainant."

- 4.70 The Welsh Office concern as to the recruitment of the first members of the WIT is indicated in paragraph 4.88. A note dated October 1996, from one official to another, indicates that independent research was conducted into the character of the WIT. It reads, "This somewhat cryptic note concerns the investigation by the Midlands into the actions of the South Wales Force concerning the apparent failure to investigate allegations of abuse at the Cardiff children's home 'Taff Vale'. I wanted to make sure that the ex-officers recruited by the Tribunal were not part of that investigation and this note clears them."
- 4.71 On 23 October 1996, the Tribunal Chief Administrative Officer recorded the recruitment of three retired officers from external forces "best suited to this work because of their background in criminal work and they have all undertaken a considerable amount of interviewing over the last few years. They all knew about the existence of the Home Office Code of Practice and more importantly they were the three with the best inter-personal skills." On 20 November 1996, he reported to the personnel department of the Welsh Office, "over the last two months I have been able to observe [the first five interviewers] working and I have no problem in recommending an extension to their contacts ... Mr Briggs has worked extremely hard in setting up a system for tracing and interviewing witnesses. He has been successful in developing a team spirit, bringing together ex-officers from several Police Authorities. He also has the confidence of the legal team working here." He went on to describe the work of the other four members of the team in complimentary fashion and concluded, "the whole team has settled down well and criticism has only been minor and has not been about individuals but about the concept of employing ex-police officers."
- 4.72 Concerns continued however as to the deployment of the retired police officers. On 4 November 1996 an Assistant Solicitor to the Tribunal wrote to Mr McHenry accepting that the WIT were "the best persons available to do the necessary chasing, finding and locating witnesses to the Tribunal, and were the most experienced to obtain the type of statements required ... [however] the WIT

members do look like former officers and behave as such ... difficult for them to disguise. The witnesses to the Tribunal would not take long to spot them. Due to the allegations that are likely to be levelled at the NWP, I endorse the point mooted ... that it would be a good idea to send one WIT and one graduate out to interview ... Now that there have been a few complaints about the WIT members, and that there have been noises made ... I wonder to what extent the recommendation ... may be taken forward?" Apparently this suggestion was not adopted in many cases, if at all.

- 4.73 A letter addressed to the Solicitor to the Tribunal from _____ on 4 November 1996 complains, "to use ex police officers is an insult. You said they have got a clean record on file, so as the former superintendent, _____ ... This Tribunal is a Joke NO ONE listens, the only thing you and the chairman seem to listen too is bad advise ... let me assure you I will not allow this very important job to be done in a sloppy way ... There is no one more determined than me to make sure this tribunal is a success, yet you lot seem to be determined for it to flop. Mind you what's knew? [sic]"
- 4.74 On 12 November 1996, the Tribunal Chief Administrative Officer wrote to _____ solicitor, " _____ makes a comment on the use of ex-police officers as interviewers. The Chairman decided in view of the difficulties being experienced in tracing witnesses for interviews that the most experienced people to work in this field would be ex-police officers. The Tribunal has been very careful in their selection, making sure that they were previously employed by Police Authorities which have had no contact in any form with child abuse matters in North Wales. Every ex-officer employed has been carefully vetted on a personal basis and only those with exemplary records and good inter-personal skills have been employed."
- 4.75 At the commencement of the Tribunal hearings, the contracts of several members of the WIT were extended to include "the work of warning witnesses required to attend hearings, their care whilst at the Tribunal and, as and when required, the conveyance of witnesses to and from the Tribunal of Inquiry". I have found no complaints about their conduct in this role. Some witnesses declined the service. During interview with me, Mr Briggs produced a letter of thanks sent from a solicitor on behalf of one of his clients who had been escorted to the Tribunal by him.
- 4.76 On 6 March 1997, _____ solicitors wrote to complain about Mr Brigg's conduct that morning. It was alleged that, during a conversation between Mr Briggs and _____ the former had said to others nearby "Look how easy it is to wind this lad up, look how he bites." An argument ensued. Mr Briggs, when asked for his response, acknowledged that there had "been words" concerning _____ loud vocal assertion that "this Tribunal is a total sham", but that soon afterwards _____ had assisted in locating a witness and had told Mr Briggs "I'm OK now". _____ had no recollection of the incident when asked by me in interview, but acknowledged continued antipathy towards members of the police forces in Wales.

- 4.77 The incidence of complaints against the members of the WIT is very small. Those complaints may be categorised almost exclusively as being by reason of their determined approach in tracing witnesses and seeking to interview them. I have found none to suggest that prospective witnesses were deterred from reporting complaints, save in the case of one contributor who suggested that the WIT were only interested in allegations of sexual abuse.
- 4.78 The continued use of members of the WIT as chauffeurs ensured and facilitated the attendance of witnesses at the Tribunal. There is nothing in the daily transcripts or other documents to suggest that any witness complained of undue influence being brought to bear by any member of the WIT involved in the transportation of witnesses. Witness statements were already in existence and laid before the Tribunal, many prepared by members of the WIT.

The successor authorities' staff assigned to the Tribunal

- 4.79 On 24 July 1996, the Chief Executive of Wrexham county council indicated in a meeting with Mr Lambert that the approach of the successor local authorities was to establish 'an informal advisory group'. A joint enquiry office was to be headed by Mr Andrew Loveridge, Director of Legal and Administration of Flintshire county council. Each successor authority would 'lose' two members of staff to this group.
- 4.80 Ms Sian Griffiths was assigned by Mr Loveridge, effectively as a co-ordinating liaison officer to the Tribunal. Her conduct in this role has been called into question in two distinct respects, as detailed in Chapter 6.

Telephone call

- 4.81 If the telephone call referred to in paragraphs 1.4 and 1.34 was made by a member of the Tribunal staff, this obviously raises an issue of their propriety and impartiality. Ultimately, for reasons given later in this Report, I conclude that it was a hoax call.

Parties to the Tribunal

- 4.82 20 complainants were represented by a Leading Counsel and two Junior Counsel, a further 39 complainants were represented by a separate Junior Counsel. A separate Leading Counsel and solicitor advocate represented the organisation 'Voices from Care'. A Leading and Junior Counsel represented over 100 residential care staff, including those against whom serious allegations were made. Others accused or implicated were separately represented. The Welsh Office, NWP, successor authorities and insurance companies were each represented by Leading and Junior Counsel. The CPS was represented by a solicitor advocate. Councillors Malcolm King and Dennis Parry and the North Wales Health Authority were represented by Junior Counsel.

4.83 Notes of meetings between the Clerk to the Tribunal and the Chairman at the time of the preliminary hearings indicate his positive assessment of Leading Counsel likely to be briefed on behalf of the complainants and Voices from Care, but he was not responsible for their instruction. Other Counsel were briefed independently by the interested parties. Counsel for the Welsh Office was instructed with the approval of the AG.

The Welsh Office

4.84 The Welsh Office was the commissioning department for the Tribunal, but was also subject to investigation in the public inquiry. There was an inevitable tension in the dual nature of its interest. Examples of early communications which follow demonstrate that the Welsh Office did not adequately recognise, and/or observe, appropriate boundaries as a party to the Tribunal. Equally, the response of the Chairman demonstrates he would not accord the department special status or permit its intervention. This message became clearly understood as is shown in later communications.

4.85 In September 1996, Mr Lambert, then acting as Legal Adviser to the Welsh Office, wrote to the Solicitor to the Tribunal indicating that following the first preliminary hearing of the Tribunal, a number of matters were beginning to cause the Welsh Office concern. In particular, "we had always assumed that the former residents of children's homes in North Wales who had allegations to make would, in the first instance, be witnesses of the Tribunal ... There would appear to be a risk ... that the granting of legal representation to groups of such people at this stage may tend to undermine this approach. It is understood for example that ... the firm of solicitors in Leicester that requested representation at the preliminary hearing, is currently advertising for clients ... It seems to us that if this happens on any significant scale the existence of large numbers of former residents who would have their evidence prepared with the help of a single legal team (which might subsequently be acting for these same clients in compensation claims) could risk prejudicing the work of the Tribunal as a whole ... The number of different groups, in some cases within single classes of organisation, who it would appear are likely to be granted representation will almost certainly have an impact upon the cost and duration of the Inquiry. This will certainly be the case if extensive cross examination is allowed - which in turn could lead to the Inquiry taking on an adversarial, as opposed to inquisitorial, character ..."

4.86 A file note dated 27 September 1996 made by the Solicitor to the Tribunal reads, "I read over the letter to Sir Ronald and he said he was deeply offended by its contents. This grandmother can suck eggs!"

4.87 A meeting which subsequently took place on a "Saturday afternoon" between Sir Ronald Waterhouse and Mr Lambert appears to have been subject to a manuscript undated report. Matters discussed included that, "Sir Ronald wishes to see all contracts relating to Tribunal matters before they are issued by the Department ... Mr S [a Welsh Office official] is not to take part in any financial discussions with the Secretariat or Tribunal staff. He is a witness and must be seen to be independent ..."

While it is acceptable for the Department to write and meet with the Tribunal staff and Secretariat about financial matters, it is not acceptable for representations to be made about matters which are within the sole purview of the Tribunal. Thus: no further action will be taken by the Tribunal about the letter recently sent by me about the granting of legal representation by the Tribunal to various individuals; and the letter ... about the police investigators should not be sent. Their method of appointment and their code of conduct in carrying out their investigations are matters solely for the Tribunal.”

- 4.88 In a note to “PS/SS” dated 4 October 1996, a Welsh Office official recorded, “we spoke earlier today about the difficulties we are experiencing with the Tribunal mainly because of the recruitment practices it is adopting [with reference amongst others to police investigators] ... if not stopped - the Tribunal’s approach would give rise to serious public, and possibly Parliamentary, criticism. On the other hand, we are equally aware that any attempt on our part to make the Tribunal change its ways leaves us open to the charge that we are undermining its independence and frustrating its efforts. This is a pretty uncomfortable position in which to be, and it is important that the Secretary of State is made aware of the possible implications. In an attempt to resolve matters, Mr Lambert will be having an informal word with Sir Ronald Waterhouse this afternoon.”
- 4.89 There is a note made on 16 October 1996, recording that “The Permanent Secretary said that it was vital that the Department’s interests should be represented as forcibly as necessary, and that ... [the Tribunal Chief Administrative Officer] should insist on access to meetings between the Judge and the legal team. [A senior Welsh Office official’s] regular trips to Ewloe would help reinforce the message. The Permanent Secretary stressed the need to keep the Treasury Solicitors informed of developments, particularly in view of the likely need for assistance in reinforcing tough messages ...” The note indicates that the Permanent Secretary misunderstood the nature of the Chief Administrative Officer’s secondment and the independence of the Tribunal. However, I have found nothing in the documents to suggest that any such direction was given.
- 4.90 On 21 November 1996, departmental correspondence notes a Welsh Office official’s difficult relationship with the Chairman in relation to costs. In December 1996, an official briefed the Secretary of State for Wales, “our relationship with the Tribunal continues to have its problems ... One thing we are doing immediately is to transfer responsibility for the administration of the Tribunal from me to Finance Group. This will mean that I personally will no longer have to wrestle with the conflict created by our dual role in relation to the Tribunal ...”
- 4.91 In June 1998, a Welsh Office official writing to Mr Lambert, at a time when Sir Ronald Waterhouse was known to be drafting the Tribunal Report, suggested that the “door [is] slightly open for one of us to speak to Sir Ronald about the tone and content of the report.” He was quickly informed that “Mr Lambert has advised that we should not try to give the Tribunal a steer.”

- 4.92 In March 1999, a submission to the Secretary of State for Wales from the Child and Family Division identified insignificant “factual errors” in the draft of the first 27 chapters of the Tribunal Report. It states, “We have a dilemma. On the one hand we do not believe we should check the report for accuracy ... it is not our report. We would put ourselves at grave risk of accusations that we had influenced the report should it become known that we were checking it in any way. On the other hand the errors might discredit the report.”
- 4.93 The response of the Secretary of State for Wales is noted in manuscript. It directs that the Clerk to the Tribunal should be told, but “it should be recorded in a note that makes it explicit that the WO [Welsh Office] is providing information and is not seeking to influence the Tribunal’s views.” I confirm there is nothing that I have seen in any document that could be interpreted as an attempt to influence the findings or views of the Tribunal.

Legal Adviser to the Welsh Office

- 4.94 Mr Lambert was Legal Adviser to the Welsh Office. Prior to the appointment of Mr McHenry and Miss Walkingshaw, he effectively acted as the Chairman’s Solicitor and Clerk. He was not previously known to the Chairman.
- 4.95 In a letter dated 28 November 1996, Mr Lambert wrote to the Treasury Solicitor explaining the “involvement which I have had with ... Sir Ronald Waterhouse from the Tribunal’s inception ... arose because for 2 ½ months from the time that the Tribunal was established ... there were no Tribunal staff. It was therefore necessary for me to liaise on a very regular basis with the Chairman to explain the activities I was undertaking at the Department’s request, to begin to set up the Tribunal machinery. The result was a very efficient channel of communication between myself and the Judge ... Liaison with the Judge has continued to this day because he has requested that he is kept abreast of all matters relating to the Department’s control over the costs and other financial matters ... A list of the particular matters [largely of administrative concerns] is attached ... In a perfect world I am sure that these are matters which would be dealt with by the Tribunal Secretariat and its Solicitors ... however ... The magnitude of the work in which they are involved means that there are significant administrative areas which have to continue to be the direct responsibility of the Welsh Office ... I do expect that, by the time the Tribunal begins its sittings ... the involvement of the Department ... will have been considerably reduced and that, therefore, it will no longer be necessary for there to be this continued liaison between myself and the Chairman. However, until this occurs, it is evident that he very much appreciates this link.”
- 4.96 During this time, Mr Lambert continued to advise the Welsh Office in relation to Tribunal matters.

- 4.97 Correspondence passing between Mr Lambert and a senior Welsh Office official in December 1996 and January 1997 recognises the perception of the conflict of interest in his dual roles. Mr Lambert wrote in favour of his continuing the “line of contact, provided that there are no discussions which could in any way compromise the Department’s case. While ... for important matters, Mr McHenry should be persuaded to put his statements in writing... there are other matters which both he and I have found to be very helpful to discuss. I would like your agreement for such conversations to continue at my discretion.” A senior official agreed that he should have discretion to speak to the Solicitor to the Tribunal, but “the underlying principle to be observed here is ... that now that the Tribunal hearings are about to start, your main commitment will have to be to the preparation of the Department’s evidence and the defence of its position; so that any contacts with Mr McHenry must not compromise this or be incompatible with it.”
- 4.98 I am satisfied that Mr Lambert had given appropriate advice to Welsh Office senior officials prior to the announcement of the Tribunal regarding the necessity of maintaining ‘Chinese Walls’ and the consequent cost and disruption to the department. However, the senior officials did not appear to recognise that his own reports back to the Welsh Office at this time did not entirely sit within the concept of the professional distance he had advocated, nor the direction they had given as indicated above. That said, I note from the records that he was punctilious in fully recording all his meetings with the Chairman. They can be described as largely attempting to placate the difficult relationship between commissioning department and independent Tribunal. His advice to the department during this time was largely anodyne.

Counsel for the Welsh Office

- 4.99 Miss Patricia Scotland QC (now Baroness Scotland of Asthal QC) was Leading Counsel for the Welsh Office. Her junior, Mr Dermot Main Thompson had been briefed independently of her. It is clear from other documents that Miss Patricia Scotland QC had previously advised the Jillings Panel, and was stated by a local councillor when writing to the Secretary of State for Wales to be advising the Jillings Panel on the need to add to the contents of their report. This previous instruction was known to the Welsh Office. In the main, it appears any initial antipathy to her appointment by Welsh Office officials was overcome after their initial Consultation with her.
- 4.100 I do not perceive that Miss Patricia Scotland QC’s advice to the Jillings Panel created a conflict of interest in her appearing on behalf of the Welsh Office before the Tribunal. The unredacted Jillings Report and associated materials were available to the Tribunal. Any advice she tendered to the Jillings Panel would be subject to legal professional privilege, but would be irrelevant to the Tribunal’s investigation.
- 4.101 The process of representing the Welsh Office was obviously not straightforward. Instructions to Counsel were unequivocal on the face of them, “The Welsh Office will seek at all times to assist the Tribunal in the carrying out of its objectives as set out in the Terms of Reference ...” However, I do note the comments in a number of documents which appear to contradict that assertion, as I indicate below.

- 4.102 In a Consultation with Leading Counsel on 11 October 1996, a senior Welsh Office official was recorded to have said “that he would not wish the Welsh Office to accept the blame for anything it did not have to accept because of the concern about compensation claims.” The report of a meeting, which had taken place on 17 December 1996 involving the Permanent Secretary and the Chief Inspector of SSIW, revealed that “[the Chief Inspector of SSIW] was highly critical of the legal team who were working with him in the preparation of his evidence, accusing them of imposing impossible deadlines and promising the Inquiry material which, in his view, should not be produced. As a result of this, [the Permanent Secretary] wants to know why we are providing so much material to the Inquiry ... I [Instructing Solicitor to Counsel for the Welsh Office] heard this morning that, during a meeting with David Lambert, [the Permanent Secretary] enquired whether I was working for the Inquiry or for the Welsh Office, the implication being that I was co-operating to too great an extent with the Inquiry in agreeing to provide evidence.”
- 4.103 Leading Counsel for the Welsh Office advised Welsh Office officials, in Consultation on 17 December 1996, that “one of the Jillings criticisms was non co-operation by WO [Welsh Office] ... In practice Inquiries depend upon all parties co-operating with the spirit behind the setting up of such an Inquiry, i.e. to ascertain what happened, why [and] what went wrong. [Therefore the] usual adversarial approach becomes more muted and has to be more subservient to main purpose of Inquiry. To do otherwise would defeat aim of Inquiry ... [Counsel] would be very unhappy if at this stage proposing to disclose information [which was] (a) highly sensitive and speculative; (b) ... not in public domain; (c) ... confidential ... Although we shouldn't be giving confidential information, we need to be addressing with vigour areas of potential concern so that when and if we are questioned we have a cogent and well researched response ready ... [therefore] we have to deal with current situation as delicately as we can giving the I.T. [Tribunal] all the information we have in that it is a consolidation of what is or should be in the public domain ... If we prepare our material we have the advantage of 'packaging' it but we must do it in the most full and frank [way] ... Don't want to say anything which is a hostage to fortune but don't want to refuse to give material we shall be obliged to give in due course.”
- 4.104 In minutes of a meeting held on 21 July 1997, it is indicated that the Permanent Secretary was “worried about compensation claims to date and that is why she has been very cautious about disclosing any department information; the Welsh Office nevertheless has a duty to furnish the Tribunal with all the evidence it requires to fulfil its function.”
- 4.105 In a ‘Note from Leading Counsel regarding the Tribunal request for further evidence and recommendations’ dated 22 January 1998, she records, “the WO [Welsh Office] are placed in the difficult position of being a party to and the commissioner of the Inquiry. As such there is an inherent conflict of interest. It is in the WO's interest, as a party, for as little criticism as possible to attach to the manner in which the duties and powers invested in the Secretary of State were exercised in the past.

However, as the commissioner of the report, it is of the utmost importance that the structure currently in place be rigorously reviewed so as to ensure that the mistakes of the past, if any, are not repeated ... Having invested millions of pounds in this exercise it would be a tragedy if the recommendations arising from this Inquiry were based on perceptions which were insufficiently well informed to make all or any of them amenable to implementation. The fact that the Inquiry may, if only in part, be pilloried for any such failing would be of little comfort as the judgment of the WO who were responsible for commissioning, instructing and assisting the Tribunal to undertake this task might likewise be questioned."

- 4.106 Some of Leading Counsel's notes to her solicitor and recorded oral advice to Welsh Office officials demonstrate the fine line between correcting what are perceived to be the misconceptions of Counsel to the Tribunal whilst defending the position of the Welsh Office. However, the advice tendered and apparently followed indicates that the Welsh Office was well aware, not only of its duties and responsibilities to the Tribunal, but recognised that any subsequent perceived deficiencies, which were in its power to correct, would discredit the Tribunal process and subsequent Tribunal Report, and thereby defeat the object of the exercise.
- 4.107 I report these exchanges for obvious reasons of transparency. I confirm that, alerted to the possibility by the matters raised in paragraph 4.102 above, I have scrutinised the papers to see if the Welsh Office deliberately concealed evidence from, or misled, the Tribunal. I have found nothing to indicate this was the case, however, I do indicate in paragraphs 8.39 and 8.41 that I did not discover any documents in the Tribunal materials which related to a matter of potential relevance to the Tribunal and had been produced by the Welsh Office.

Derek Brushett

- 4.108 Derek Brushett was a senior inspector in the SSIW, part of the Welsh Office. He had taken part in meetings in which advice to ministers had been formulated prior to the establishment of the Tribunal and in others afterwards in which the evidence of the Welsh Office had been discussed.
- 4.109 His actions in relation to an allegation of abuse had previously received adverse attention. On 22 February 1993, Mr David Owen, Chief Constable of the NWP, wrote to the Permanent Secretary at the Welsh Office headed 'PERSONAL AND CONFIDENTIAL - Gwynedd/Clwyd Child Abuse Inquiry', "I called for a public enquiry into the above some several weeks ago and this call was prompted by clear evidence of the concealment of complaints and a complete absence of observance of rules and supervision ... My particular concern regarding the Welsh Office stems from the contact that Derek Anthony Brushett, a Social Services Inspector employed in the Welsh Office, has had with a [redacted] during the course of his professional career. I understand that in fact Brushett is godfather to one of [redacted] children. During September 1992, the 'Wales This Week' programme ... levied allegations against [redacted] ... [redacted] contacted Brushett and told him that he had been indecently assaulted by [redacted] and also by another man named [redacted]"

Howarth. The timing of this allegation could well prove to be important in the future. The matter was not reported to the police, though I understand that Brushett did inform his seniors in the Welsh Office. Following enquiries, [redacted] was interviewed and indicated the report that he had made to Brushett. We were eventually provided with a note of the matters that Brushett had reported to his seniors. The question obviously arises as to why no action was taken by Brushett or the senior personnel in the Welsh Office? I am sure you will be aware of the background allegations that range from masonic involvement to downright neglect ... it appears the substance of the reason as to why the matters were not reported to the police was that Brushett had been told in his capacity as a private citizen ... suffice it to say the reaction at these headquarters is one of total and absolute incredulity."

- 4.110 I can find no record that this letter was disclosed to the Secretary of State for Wales. The response from the Permanent Secretary dated 6 March 1993 contained a fulsome apology, but no indication that ministers had been informed of the details of the incident. There is a note of a meeting between Detective Superintendent (DSU) Peter Ackerley and a senior inspector of SSIW dated 20 February 1993, prepared by DSU Ackerley, at which this issue was discussed and in which he indicates that he was assured that ministers had been "briefed" and legal advice may have been taken. This note of the meeting is incongruent with the file note prepared by the Acting Chief Inspector on 22 February 1993, which suggests that it was not thought necessary to inform the police of what Derek Brushett had told his manager since the police had already interviewed the complainant involved. In those circumstances, I am uncertain as to what issue ministers had been "briefed" upon in relation to Derek Brushett's failure to inform the police of the allegation. I have found no indication that SSIW independently brought this issue to the attention of senior officials in the Welsh Office prior to the visit of DSU Ackerley, or any documents briefing ministers on this point.
- 4.111 In a 'note to file' dated February 1995, a Welsh Office official records, "it is unfortunate to have learnt in the context of this PQ [Parliamentary Question] that information has been withheld from this Branch by SSIW. In particular, we have not been shown a copy of the Cartrefle overview report by the independent panel, or the individual agency reports, nor have we seen before now the letter ... dated 24 October 1991 ... [which] points, for the first time to my understanding, to allegations of widespread abuse in children's homes in North Wales." On the face of it, this note implicates the SSIW (of which Derek Brushett was a senior inspector) of concealment of significant information concerning the situation in the former county council areas of Clwyd and Gwynedd. However, I have found another 'note for file' copied to officials by SSIW dated 3 December 1991 referring to allegations of child abuse in North Wales, and note that a background note was submitted to the Parliamentary Under-Secretary of State for Wales on 2 December 1991 referring to the recommendations of an independent review of the Cartrefle children's home. The combination of the two notes quite clearly points to lack of communication, rather than concealment, as was apparent in the situation leading up to the establishment of the Tribunal.

- 4.112 A file note dated 24 April 1996 reveals that Derek Brushett informed the Chief Inspector of SSIW that he had “become aware, through media coverage, that a Mr Peter Harley has been convicted of sexual abuse of children, at a home ... Mr Harley was employed ... at Bryn-y-Don [a former approved school], where I was head, for a period from about 1975 onwards.”
- 4.113 In a ‘solicitors’ advice dated 29 April 1997, Mr Lambert’s trainee solicitor recorded that on 17 May 1997 it had come to “our attention ... that the evidence of a witness, to be heard that day by the [Tribunal] referred to an incident at Bryn-y-Don school ... involving a current Welsh Office Social Services Inspector ... Mr Derek Brushett ... It transpired that the incident ... was not referred to in the actual oral evidence ... On the morning of the 17 May, Mr Lambert, [the trainee solicitor], Mr Mooney (Deputy Chief Inspector of SSIW) and Mr Brushett met to discuss the issue ... Mr Brushett categorically denied the incident and further stated that he had not heard the allegation prior to this day ... Mr Brushett had received no Salmon letter from the Tribunal - this coupled with the fact that the allegation was not raised in the examination of the witness confirmed our view that the allegation was outside the terms of reference of the said Tribunal.”
- 4.114 In May 1997 the Welsh Office was informed that police investigations were being conducted into further allegations of child sexual abuse and other offences against Derek Brushett, subject to a strict prohibition against alerting him to the same. In October 1997 a senior investigating officer reported that Derek Brushett was unlikely to be seen by police until January. He was arrested in August 1998. He was convicted in November 1999.
- 4.115 For completeness, I record that in a letter dated 30 June 1997 to the Solicitor to the Tribunal, SSIW conceded that it had misplaced an inspection report in relation to Bryn Alyn, “Mr Brushett has also been unable to find the report in his personal records.” Also, I have seen correspondence between Derek Brushett and a manager of the Bryn Alyn Community following their attendance at a conference together and referring to a forthcoming prospective visit to the Community. The letters are genial in tone, but not professionally inappropriate. I do not suggest improper interest by Derek Brushett in the Bryn Alyn Community or that the missing inspection report was likely to have contained incriminating detail, but nevertheless consider that this missing report should be reported as a matter of transparency.
- 4.116 A note dated 3 March 1998 was prepared for the Tribunal concerning Derek Brushett’s employment history and current status. He had joined SSIW in 1988, “Allegations against Mr Brushett, whilst at Bryn-y-Don came to light during the course of the ongoing South Wales Police investigation into abuse of children in south Wales. The Welsh Office was advised in 1997... of the fact that allegations had been made against this member of staff. The police investigation has been extended and has ... many months to run. Mr Brushett has not been arrested, but in view of the fact that he is under investigation ... he has been redeployed to special duties within the inspectorate which involve no contact outside the Department ... You will appreciate that since there is an ongoing police investigation, the information contained in this letter is provided in strict confidence and is only to be shared with the Tribunal members.”

- 4.117 Councillor King wrote to the Secretary of State for Wales on 27 November 1998 suggesting that, in light of the many allegations, “his [Derek Brushett’s] previous involvement in inspecting Children’s Services in North Wales... needs to be very carefully investigated and reviewed ... I have no idea what influence he may have had over the way the Welsh Office approached the Waterhouse Inquiry or how it gathered and gave its evidence, but as Derek Brushett was one of probably only two people with very substantial experience of direct work with children, it seems inconceivable that he did not play a major role in these processes ... [there was] very considerable and long running resistance ... shown by the Welsh Office to having a Judicial Inquiry. How much of this was actually instigated by Welsh Office Ministers at the time and how much were they advised by their expert officials?” Mr Martyn Jones MP (see paragraph 2.13) asked similar questions in Parliament (Hansard: 17 March 2000, Column 660).
- 4.118 Briefing the Secretary of State for Wales in response to the letter, on 23 December 1998 an official advised that once the department became aware that there was an allegation of physical abuse against Derek Brushett, his work was immediately constrained; he had no access or involvement to work with children or “a direct involvement with the development of evidence then being prepared for the Tribunal. In September 1997 [he] was further constrained to a narrow range of duties ... with limited access to colleagues.”
- 4.119 An independent audit of Derek Brushett’s work was commissioned and undertaken by Dr Kevin McCoythe, Chief Inspector of Social Services in Northern Ireland, and Professor Roger Clough of Lancaster University. Copies of the report were placed in the library of the House of Commons and can be accessed via the Welsh Assembly website. The Audit Team concluded that Derek Brushett “played virtually no part in handling concerns about Bryn Alyn Schools nor was he other than a peripheral figure in considerations of the nature of an inquiry concerning abuse in North Wales. This was handled at a high level in the Welsh Office.”

Conclusions

- 4.120 In my view, the selection of a recently retired High Court judge indicates the importance attached to the Tribunal of Inquiry and the intention that there should be an expert and discerning appraisal of the ‘child care’ situation appertaining in North Wales in the relevant period, in contradistinction to other inquiries conducted and panels convened in the preceding years by the local authorities. It was eminently appropriate to make such an appointment bearing in mind the skills, expertise and experience required to manage the scale of the task apparent from the outset. I do not consider that Sir Ronald Waterhouse’s connection with Wales disqualified him as Chairman of the Tribunal, particularly so in light of his specific request that his fellow members be appointed from outside Wales.

- 4.121 There is no note of the fact of a telephone conversation between the Right Honourable Mr Hague MP, Secretary of State for Wales and Sir Ronald Waterhouse in the material made available to the Review. Whilst this Review could not have been contemplated at the time, the surrounding events which led to the establishment of the Tribunal already indicated the sensitivity which would surround the appointment of the Chairman of the Tribunal. I consider the conversation should have been logged. If it was, it is regrettable that the record has been misplaced.
- 4.122 The note of the conversation between Sir Ronald Waterhouse and the Right Honourable Mr Hague at dinner should be rightly subject to scrutiny. As a stand alone document, it lacks the context now provided by Mr Hague. In any event, the terminology attributed to Sir Ronald Waterhouse, as indicated in paragraph 4.8, is unfortunate and open to adverse interpretation by those suspicious of the Tribunal process. Following my review of the vast number of documents which base my conclusions in relation to the Tribunal process as a whole, as reported in Chapter 6, I do not consider that such an unfavourable interpretation is warranted. Objectively, I consider the reference to 'general attacks on character' linked to a celebrity libel trial to be incongruous to the issue of attacks upon a complainant's character within Tribunal proceedings. On the basis of the document seen alone, it appears more likely to refer to attacks on the characters of establishment figures rumoured to be involved with the scandal. Mr Hague's explanation provides the background and suggests a more detailed conversation than annotated. Therefore, whilst I regard the comparison he used to be inappropriate, I do not conclude that he was seeking to influence Sir Ronald Waterhouse in the investigation of establishment figures.
- 4.123 The note could not possibly be a verbatim record of the conversation. I question why it was not submitted to Sir Ronald Waterhouse for his approval, if not merely as a matter of courtesy. However, it would be concerning if the Secretary of State for Wales and the Chairman elect had dined together without a note being taken of their conversation. It was obviously intended to be 'witnessed' by officials. Mr Lambert expresses surprise that he was invited to attend the dinner at all.
- 4.124 I consider it unlikely that any official or member of Government would consider Sir Ronald Waterhouse amenable to outside influence or persuasion to 'protect the establishment'. If there had been any thought of this at the outset, it was quickly dispelled.
- 4.125 Equally, despite the comments I report in paragraph 4.16 which may suggest otherwise, I am satisfied that the other two members of the Tribunal were not excluded from discussions, demonstrated their independence and were not inhibited in their participation in the Tribunal nor intimidated by the status of its Chairman. The calibre, experience and expertise of the Tribunal panel is self evident. In volunteering the information about _____ I consider Miss Clough to have demonstrated conscientiousness and integrity.

- 4.126 Assuming any individual or organisation to be intent on manipulating outcome, it would be far easier to be assured of being able to influence one individual, failing that a group with a common characteristic. The fact that a panel of three individuals was appointed, all established experts in their own fields and previously unknown to each other, runs counter to any belief that the Tribunal was selected on the basis that it would be susceptible to any influence or pressure to protect 'the establishment'.
- 4.127 I find there is nothing in the documents to suggest that Sir Ronald Hadfield was compromised in his role. Any bias that he may have been perceived to hold was capable of exploration in cross examination.
- 4.128 I consider that Counsel to the Tribunal did have a professional duty to disclose any actual or perceived conflict of interest and the Tribunal was responsible for dealing with any application made in that regard. Quite apart from their responses to me, the documents to which I refer in paragraphs 4.36 and 4.37 suggest that Counsel did so. I do not consider that these individual duties and responsibilities abrogated the responsibility of those involved in the instruction of Counsel from making relevant inquiries in the light of the "long standing" issues concerning freemasonry that would necessarily have to be investigated by the Tribunal. A failure to record discussions concerning two of the Counsel to the Tribunal's association with freemasonry, or to lodge securely the written declaration of interest which Lord Justice Ryder recalls he made, is poor practice and indicative of a disregard, or misunderstanding, of the importance of the process being recorded. There is no document in the papers delivered to me, and none can be located, which resembles either a note of discussions or declarations of interest. (I have previously made criticism of the archiving and safekeeping of Tribunal documents).
- 4.129 The Welsh Office, as commissioning department, had an interest in ensuring the Tribunal process was seen as above reproach. I note that a different approach appears to have applied in the proposed defence of the instruction of Counsel to the Tribunal in the event of media approach and the concerns voiced about the appointment of a Freemason as the head of the WIT. I note that the Welsh Office did not join in the application made for a register of interests or make any representations on this issue via Mr Lambert to the Chairman.
- 4.130 It is difficult to reconcile the difference in the Chairman's approach, reported to me by Mr Gerard Elias QC and Lord Justice Ryder, as regards their respective involvement in matters to do with freemasonry. I am unsure whether this reflects a lack of clear recollection of Mr Gerard Elias QC and/or Lord Justice Ryder, or the Chairman's acknowledgment of the personal sensitivities of each Counsel at the time. Whatever the reason, I am satisfied that there would have been, and will remain, a perception of a conflict of interest in the Tribunal investigation into the influence of freemasonry in matters relating to child sexual abuse in North Wales, regardless that the Tribunal ultimately concluded that there was none. The answer will beg the question of whether this conclusion was reached because Freemasons, present or former, had been involved in the investigation. Suspicions of a 'cover up' of the role played by freemasonry in the concealment of child abuse will be little helped by the inherent distrust created by a secretive organisation.

- 4.131 Members of the judiciary are required to indicate a personal interest in the subject matter of litigation they are called upon to try. It has been suggested that Mr Justice Drake, the High Court Judge who had presided over Gordon Anglesea's libel trial, had done so at the start of the trial in terms which suggested that he was, or had been, a Freemason and invited the parties to make any submissions they thought appropriate. None did. I perceive that Sir Ronald Waterhouse was convinced in his positive view of the character and integrity, standing and proficiency of his nominated choice of Leading Counsel in particular. He had prior experience of his work and would have clear knowledge of his reputation and standing in the field. He appears to have overlooked the fact that this would not have been common knowledge in the wider public domain. Objectively, his stance on the issue of the proposed register of interests reflects the Chairman and the Tribunal's strength of character, independence and resistance to outside opinion, but in my view, it was an over protective and probably unnecessary stand. This stance will likely fuel a continued distrust in the process. Whilst it would not necessarily alter public perception of there being a conflict of interest, I conclude that a register of interests, or declaration of interest by those concerned, may have reduced public disquiet on this point.
- 4.132 Nevertheless, following my examination of the documents, I consider that Counsel to the Tribunal executed their instructions conscientiously in all aspects of investigation into this, and other, topics. Further reference is made to the Tribunal's examination of the links of freemasonry to child abuse and the protection of those alleged to have been involved in Chapter 7. All Counsel to the Tribunal undoubtedly had the appropriate specialist knowledge, advocacy skills and standing to justify their appointment.
- 4.133 Documents clearly record the Chairman's high regard for Mr Gerard Elias QC. I do not consider their previous professional association to contra indicate the appointment of Mr Gerard Elias QC as Leading Counsel to the Tribunal.
- 4.134 I am satisfied that records demonstrate Mr McHenry's frequent attendance and participation in meetings held by the Tribunal members and Counsel. The topics discussed when he is noted to be absent do not support any suggestion that he was deliberately excluded from meetings. I detect that Leading Counsel, Mr Gerard Elias QC, in particular, may have found the working style of Mr McHenry to be less attuned to his own than that of the second Solicitor to the Tribunal.
- 4.135 In the absence of any documentation or transcript of evidence containing any allegation concerning Sir Peter Morrison before the Tribunal, I conclude that the telephone call to Mr David Jones was a hoax call. There is no other reason to question the Tribunal staff's loyalty to the Tribunal.
- 4.136 I do not consider that Mr Briggs' association with freemasonry affected his performance in the role of head of the WIT. However, his interest would have been publicly registered if a register of interests had existed and may have reduced any public disquiet. There was a delicate balance to be drawn in using former police officers to conduct witness interviews. On the one hand, the necessity to ensure the

efficiency and viability of the Tribunal process in a short time scale. On the other, the sensitivity of complainants who believed they had not received an adequate police response to their complaints. Nevertheless, overwhelmingly, I consider the rationale for employing retired police officers in the tracing and interviewing of witnesses was right.

- 4.137 Objectively viewed, it was wrong to permit Mr Briggs any influence in the appointment of the first members of the WIT, all from South Wales. By doing so, he effectively decided the character of the team, the members of which may reasonably be suspected by disgruntled participants to have especial loyalty to him, if not to police officers subject to investigation. I regard this aspect to have been addressed, at least in part, by the recruitment of retired officers from outside forces and the direction of Counsel to the Tribunal. Any possible adverse influence brought to bear upon witnesses transported to the Tribunal by former members of the WIT was capable of detection in the light of the adversarial nature of the Tribunal proceedings.
- 4.138 Nevertheless, and taking all matters into account and overall, I find there is nothing in the documents that could legitimately undermine the credibility of the Tribunal panel or personnel.
- 4.139 Counsel and legal representatives representing individuals, groups and organisations before the Tribunal were independent of the Tribunal and engaged in an adversarial process. The number and the nature of the respective interests represented before the Tribunal renders any possible external undue influence ineffectual.
- 4.140 I have found no detail in the Welsh Office documents which suggest that it withheld evidence or information concerning allegations of abuse, save as referred to in paragraphs 8.39 to 8.41. The conduct of the Welsh Office in exposing the deficiencies of disclosure of the Clwydian Community Care NHS Trust (see paragraph 5.92) supports their integrity in the Tribunal process, despite other initial responses referred herein which could suggest otherwise by reason of their fear of exposure to compensation claims.
- 4.141 Mr Lambert's position as de facto solicitor/secretary to the prospective Tribunal was necessary in the circumstances, but I do consider that he should not have continued with his role of Legal Adviser to the Welsh Office at the same time. However, I have not found any indication in the documents that the early decisions of the practical arrangements for the Tribunal were compromised or adversely influenced by his involvement.
- 4.142 In my independent research of the documents, I have found no indication that Derek Brushett had any influence in the Welsh Office decisions relating to the establishment of the Tribunal or the evidence that was to be led on its behalf. He was not sufficiently senior to do so. However, it should have been recognised that his position was potentially compromised by the events described in the letter referred to in paragraph 4.109 above. His self report of the incident to his manager should have been notified immediately to Welsh Office officials. The police

complaint should have been notified to ministers. His future participation in meetings concerning the Tribunal should have been fully discussed against the background of the complaint made in 1993. Failure to make such a report or hold such a discussion, or to make a note of the same, indicates a failure to have regard to likely public perception if the circumstances of the police complaint became known.

4.143 The substance of the notes that I refer to in paragraphs 4.85 to 4.93 corroborates the independence of the Tribunal. The Chairman obviously repelled any incursion into the Tribunal's domain. The Welsh Office was left in no doubt as to this, much to their apparent initial chagrin, and it was obviously a sufficient rebuff to endure throughout the life of the Tribunal. My analysis of the documentation, as indicated above and elsewhere in this report, reveals the Chairman's fierce protection of the independence of the Tribunal from the Welsh Office and other parties.

Chapter 5: The Scope of the Tribunal

Introduction

- 5.1 The framing of the terms of reference is crucial to the extent and nature of any Tribunal's investigations. This chapter examines the terms of reference set to the Tribunal, the basis of their formulation and whether the effect was to impede the Tribunal from investigating any matters which could have led to the exposure of establishment figures or public bodies or wider paedophile activity.

The Tribunal's terms of reference

- 5.2 On 17 June 1996, the Secretary of State for Wales announced the terms of reference of the Tribunal of Inquiry to be:
- a) To inquire into the abuse of children in care in the former county council areas of Gwynedd and Clwyd since 1974;
 - b) To examine whether the agencies and authorities responsible for such care, through the placement of the children or through the regulation or management of the facilities, could have prevented the abuse or detected its occurrence at an earlier stage;
 - c) To examine the response of the relevant authorities and agencies to allegations and complaints of abuse made either by children in care, children formerly in care or any other persons, excluding scrutiny of decisions whether to prosecute named individuals;
 - d) In the light of this examination, to consider whether the relevant caring and investigative agencies discharged their functions appropriately and, in the case of the caring agencies, whether they are doing so now; and to report its findings and make recommendations to him [the Secretary of State for Wales].

Construction of the Tribunal's terms of reference

- 5.3 The terms of reference at (a) impose a time span and geographical limit upon the Tribunal; at (b) direct an examination of the actions of 'care agencies'; at (c) direct a wider examination of the response of 'relevant authorities and agencies' to allegations and complaints of abuse 'excluding scrutiny of decisions to prosecute named individuals'; and, at (d) require the Tribunal to assess past conduct of the relevant caring and investigative agencies, and the present discharge of duties by the caring agencies.
- 5.4 I have not uncovered and would not expect to detect any controversy attaching to terms of reference (b) and (d), save as indicated in paragraph 5.101 below.

Time span

- 5.5 The start date of 1974 provided by the terms of reference was apparently aligned to the creation of the new Clwyd county council and Gwynedd county council, which replaced five former county areas on 1 April 1974 under the provisions of the Local Government Act 1972.
- 5.6 In briefing the Secretary of State for Wales on the terms of reference in preparation for his dinner with Sir Ronald Waterhouse (see paragraph 4.6), an official advised that “we would have liked to have selected a later date than 1974 as the starting point of the Inquiry - especially given concerns about the reliability of evidence relating to events of over 20 years ago. But the establishment of the Clwyd and Gwynedd County Councils provides a natural starting point. [We are] aware that some would like the Inquiry to go back even further. But would hope that it would only consider pre-1974 evidence where it is directly relevant to the post-1974 period.”
- 5.7 A letter dated 8 July 1996 to the Secretary of State for Wales, written on behalf of the successor authorities, supported the selection of an earlier starting date on the basis that a number of individuals had been convicted of offences involving activities in children’s homes in the very early 1970s and there should be no cover up.

Tribunal approach

- 5.8 A note dated 10 July 1996 of a meeting between Mr David Lambert and Sir Ronald Waterhouse reports that “the Judge has informally indicated ... The commencement date of 1974 is not absolute. The Judge is prepared to consider matters which started before this date and which continued afterwards ... particularly the case with Bryn Estyn [one of the residential children’s home investigated by the Tribunal] when it was an approved school.” Subsequently, in his opening statement on 10 September 1996, the Chairman made clear that “evidence relating to alleged abuse outside that period [1974 - to date] will not necessarily be excluded but its admissibility will be assessed by the normal criterion of relevance.”
- 5.9 Allegations of older abuse did emerge at the Tribunal. In accordance with the Chairman’s prior indications, evidence was heard where it appeared relevant to a pattern of offending on the part of a particular abuser, or might have demonstrated a particular ethos in a residential care establishment, or provided an illustration of the response to a complaint which was not otherwise available. Accordingly, although the Tribunal declined to make findings on the particular allegations falling “outside the period of our review”, it did consider the complaints made before the time span imposed and took them into account in the overall picture. For the avoidance of doubt, I make clear that none of these allegations earlier in time concerned establishment figures, or suggested their involvement in or protection of any paedophile ring, or were indicative of a wider paedophile ring than that found by the Tribunal to be in existence.

Geographical limits

Government views

- 5.10 The geographical area prescribed by the Tribunal's terms of reference was limited to the former county council areas of Gwynedd and Clwyd. It is clear from ministerial documentation that this geographical limit was the source of some disagreement between government departments. There was a debate as to whether the Tribunal's inquiries should be restricted to North Wales, the whole of Wales or should include neighbouring counties of England and beyond, as indicated in paragraph 3.102 and below.
- 5.11 An official, briefing the Secretary of State for Health, wrote, "The Welsh Office preference has so far been to avoid further inquiry into the local Welsh issues; and to try and widen matters into a debate or inquiry into national issues about the adequacy of safeguards around children's residential homes, foster care and other placements away from home. We are resisting this ... The dissatisfaction in Wales originated in allegations that the Clwyd abuse was not, or not at first, properly investigated because some members of the local police were implicated in it."
- 5.12 A subsequent note from the Secretary of State for Health dated 6 June 1996 acknowledged that, "no part of the UK has been without cases of this kind ..." However, he considered that "there has already been a substantial Government response" and safeguards introduced, referring to the Children Act 1989 and associated regulation, and concluded that, "if, in the Welsh Secretary's view, a 1921 Act inquiry is inescapable its terms of reference should be as narrowly tied to local issues as possible." That is, his view was that it should not extend beyond North Wales.
- 5.13 Inter departmental communications reveal further reasons were advanced in support of restricting the geographical limits. These included: i) minimising "the potential for overlap" with the Review of Safeguards against the abuse of children living away from home in England and Wales, also announced on 17 June 1996, to be conducted by Sir William Utting and commissioned by the Secretary of State for Health; and ii) the fact that a substantial number of criminal investigations surrounding children's homes in Cheshire were still pending.

Other views expressed

- 5.14 I am aware that two contributors to this Review regarded the prescribed geographical limits to exclude consideration of the full range and scale of abuse committed by John Allen, a convicted abuser named in the Tribunal Report, particularly in relation to Cotsbrook Hall in Shropshire. Another contributor has suggested that John Allen holds the key to a wider network of paedophiles and an inability to investigate his geographically diverse activities precluded a proper appreciation of the number and social standing of its participants.

- 5.15 Another contributor to my Review noted that the boundaries between North Wales and neighbouring counties in England were 'fluid' and it was artificial to restrict consideration to the two county councils in North Wales. In this respect, it is right to note that Sir Peter Morrison was MP for Chester from 1974 to 1992 and was a prominent public figure alleged in the press to have been implicated in abuse of children in care in North Wales (as indicated in paragraph 1.4). In addition, it is apparent that convicted abusers and others investigated by the Tribunal had worked in residential homes in counties outside Wales.

Tribunal approach

- 5.16 Analysis of the materials indicates that several inquiries were made beyond the geographical boundaries of Clwyd and Gwynedd county councils as indicated below.
- 5.17 A letter dated 18 April 1997 from the Solicitor to the Tribunal to the Chief Constable of Cheshire explained the reason for a request made for an informal meeting with the Deputy Chief Constable to be "to permit the Cheshire Police to provide information and assistance to the Tribunal in an informal setting ... to discuss (1) common links between child abuse in Cheshire and the former counties of Clwyd and Gwynedd ... among the important issues which the Tribunal has to consider in seeking to determine the nature and extent of the abuse of children in care by those in positions of responsibility, is whether there was any form of paedophile ring, or infiltration by paedophiles into the residential care system ... you will doubtless be aware that ... other abusers, employed in the former counties of Clwyd and Gwynedd, were also employed in Cheshire during the period covered by the Tribunal's terms of reference." The Cheshire Police Authority assured full co-operation with the Tribunal, but stated, "there is a very limited amount of factual information concerning common links between child abuse in Cheshire and in the former counties of Clwyd and Gwynedd, all of which has previously been disclosed to the North Wales Police." On 15 October 1997, Mr Treverton-Jones, Counsel to the Tribunal, met with the Solicitor to the Cheshire Police Authority to discuss the availability of any evidence which may relate to a paedophile ring extending into Cheshire.
- 5.18 Inquiries were also made on behalf of the Tribunal into the progress of other current ongoing police investigations into large scale child abuse in other parts of the United Kingdom at least in part, it appears, in relation to establishing possible links with alleged abusers in North Wales. On 2 May 1997, the Chief Constable of Gloucester wrote to Sir Ronald Hadfield, "I have now established that there are 12 investigations being undertaken in England, Wales & Scotland where allegations relating to child abuse which may have taken place in institutional settings ... I have agreed that I will forward to you a summary of each individual investigation in a anonymised format, that is, without direct identification of the police force concerned." On 15 August 1997, an Assistant Solicitor to the Tribunal wrote to a senior North Wales police officer confirming a list of alleged abusers to provide the basis of research with other forces.

- 5.19 It is perfectly clear from the daily transcripts and discussion in the Tribunal Report¹ that the terms of reference did not inhibit the Tribunal from investigating the complaints of paedophile ring activity in Cheshire in so far as it concerned children in care in North Wales. In paragraphs 9.8 and 9.10 of this Report, I refer to material which concerns abuse alleged or suspected to have been committed in other geographical areas, but with connections to North Wales. Specifically, enquiries were made on behalf of the Tribunal in relation to residential institutions in County Durham and Cheshire. I have found no indication that the Tribunal did, or would have, declined to investigate explicit allegations made by children in care in North Wales concerning abuse committed against them when in care, even if outside the geographical boundaries prescribed by the terms of reference.
- 5.20 Documents reveal that the Tribunal was aware of John Allen's wider connections, including with residential schools in Shropshire and Cheshire, as is clear from the Tribunal Report,² but did not investigate allegations arising from them. The Tribunal was notified of police inquiries into some of these allegations by a letter dated 31 January 1997, which indicated that enquiries were being conducted into alleged sexual abuse that had occurred at Cotsbrook Hall in Shropshire.
- 5.21 The Tribunal did hear evidence, including in closed session (see paragraphs 6.222 and 9.16), relating to the activities of John Allen in London and Brighton, and acknowledged in the Tribunal Report that it gave rise to "some cause for concern ...". However, the Tribunal determined it "...has not been within the scope of our terms of reference to investigate ..." and "such evidence as has been given ... has been largely hearsay ... and it would be inappropriate to make any findings about them ..."³ Miss Margaret Clough indicated to me in interview that she remained unhappy about "all the Brighton stuff" and that, in discussion with Sir Ronald Waterhouse after the Tribunal, she expressed the view that, if there was a wider paedophile network than that exposed during the Tribunal, it would have centred around John Allen.

Further government consideration

- 5.22 On 3 July 1997, the Secretary of State for Wales was briefed on 'South Wales child abuse'. An official informed him of a police press conference to be held on 8 July 1997 and "our intention to alert the North Wales Tribunal to these developments". The note went on to suggest that the media "are likely to seek to link these matters to events in North Wales ... such comment is likely to lead to demands for a further inquiry or for the current North Wales Tribunal to have its remit extended to cover the whole of Wales."
- 5.23 The advice given was that the lack of "hard information about these allegations, the nature or extent [of them]" rendered it "premature" to do so and that the police should be allowed to continue with their investigations and the question of any future

1 See Chapter 52 of the Tribunal Report

2 See paragraphs 21.06 and 21.31 of the Tribunal Report

3 See paragraph 21.46 of the Tribunal Report

inquiry, or presumably the extension of the existing one underway by the Tribunal, should await completion of inquiries and subsequent prosecutions. In this regard, I am aware that one caller to the Tribunal helpline, who represented a client alleging abuse in Ty Mawr, was referred to the South Wales police inquiry.

- 5.24 In the event, the Tribunal's remit was not extended. However, in the course of my Review I have been alive to the possible links between the abuse of children in care in North Wales and South Wales residential children's homes, not only by reason of the employment of several former police officers of the South Wales police force as members of the WIT (see paragraph 4.61) and Derek Brushett's previous employment, but also the geographical proximity of the areas and the movement of residential care staff between homes.
- 5.25 The conviction of Derek Brushett, a Social Services Inspector in Wales (see paragraph 4.114) in relation to child abuse in South Wales, necessitated this Review researching the voluminous CPS materials concerning his prosecution for indications of his participation in abuse in North Wales, or other than professional association with those against whom allegations had been made. None were found.

Relevant authorities and agencies covered by the Tribunal's terms of reference

- 5.26 The terms of reference extended beyond those authorities and agencies responsible for providing statutory care to children to those public bodies recipient of allegations of abuse or responsible for their investigation. The explicit exclusion of scrutiny of decisions whether to prosecute named individuals did not exclude an examination of the role of the CPS in North Wales in the course of police investigations.

The Police

- 5.27 In a letter dated 11 June 1996 to the Secretary of State for Wales, the Right Honourable Michael Howard MP, Home Secretary, (now Lord Howard of Lympne CH, QC) indicated that he did "not believe an inquiry would shed any fresh light on current issues ..." in the light of Miss Nicola Davies QC's report. He went on, "You mention that there has been underlying concern about the action of the North Wales Police; I do not believe that concern is limited to policing issues. There is surely widespread disquiet about what may be contained in the Jilling [sic] report. I am convinced that the most effective way to counter the rumours and speculation would be to publish, if not the whole report, at least a revised version of it. I hope that this possibility can be fully examined before you decide to embark on any other course. I am aware that one of Jillings' recommendations ... is that the Police Complaints Authority should be invited to conduct an inquiry into the handling of the allegations of abuse by the North Wales Police, in a similar manner ... following the conviction of Frank Beck ... I do not believe that this would provide a practicable way of allaying public disquiet ... The decision to invite a fresh PCA supervised investigation would be for the Chief Constable of North Wales and there has been no indication that he is thinking of taking this course of action. The PCA have also indicated to us that there

would be very real problems in conducting an inquiry into events which occurred so many years ago. The PCA can only examine issues relating to the police and even then the report of their investigations cannot be published. I cannot see, therefore, that such an inquiry would help to reassure wider public concern about the affair, nor do I believe it is necessary. Miss Davies ... had access to all material held by the police in connection with the criminal investigation. In her report she confirmed that 'the North Wales Police carried out a thorough and extensive investigation into allegations of abuse of children in care homes in Clwyd and Gwynedd'."

- 5.28 I report upon documents in paragraphs 3.62 to 3.66 which indicate that Miss Nicola Davies QC did not have access to all material held by the police, and subsequently, in paragraph 3.117, the fact that I conclude that Welsh Office officials apparently did not adequately draw this and other information to the attention of ministers. I am not aware of the advice tendered to the Home Secretary by his officials in relation to the materials made available to Miss Nicola Davies QC or else the degree of participation of the NWP in the inquiry conducted by the Jillings Panel. As previously indicated, both the provision of documents held by the NWP to Miss Nicola Davies QC and the NWP participation in the Jillings Inquiry appears to have been restricted. Quite apart from these matters, the context in which the Tribunal was established, see for example the comments in paragraph 5.11, implicates the police.
- 5.29 In those circumstances, I refer to and quote from the Home Secretary's letter at some length since, in my view, objectively appraised, some of the passages within and read without knowledge of his and other ministerial communications on this topic, may suggest that the Home Secretary was resistant to an investigation into the actions of the NWP, for whatever reason, under the guise of general opposition to the concept of a public inquiry. However, contrary to such a view, I report that I have seen no other correspondence which advances the same points and there is no suggestion in any subsequent documents that the NWP claimed it was not a 'relevant authority' falling within the Tribunal's remit. The NWP was represented at, and participated fully in, the Tribunal proceedings. Materials were disclosed by the police. Senior officers gave evidence and were subjected to cross examination.
- 5.30 I wrote to the Right Honourable Lord Howard of Lympne CH, QC on 15 May 2015 alerting him to the fact that I intended to refer to the terms of the letter and acknowledge the adverse interpretation that some may draw of various passages within it, even though I intended to indicate that no objection was raised to an investigation of the NWP response to complaints during the Tribunal process. In his response, Lord Howard made clear that the letter as a whole indicates the context of his reservations and that he was following the advice of Miss Nicola Davies QC and Home Office officials. He emphasised that any suggestion that his response was to avoid an investigation into the NWP would be entirely wrong and he did not agree that his letter of 11 June 1996 could, or should, be interpreted to indicate his general opposition to the concept of a public inquiry.

The CPS

Disquiet concerning CPS decisions and response prior to the establishment of the Tribunal

- 5.31 Disquiet about CPS decisions had been quite long standing and referred to ministers. In a letter to Mr Geoffrey Dickens MP, dated 29 January 1985 [sic] (but referring to correspondence in late 1986) the AG, Mr Michael Havers QC, apologises for the long delay in replying due to the necessity to “request information from the Crown Prosecution Service in North Wales.” The subject of the correspondence concerned the “ill treatment of residents at the Ty’r Felin Assessment Centre”. The letter indicates that a file had been sent to the North Wales Branch of the CPS in September 1986, “studied by senior members of staff, and certain advice was forwarded to the police ... they did not at that stage have sufficient evidence to institute criminal proceedings ... I have been informed, however, that certain further enquiries are now in hand, and no doubt when they are complete a new file will be sent to the Crown Prosecution Service for consideration.”
- 5.32 In answering an associated letter from Mr Wyn Roberts MP, complaining on behalf of his constituent, Nefyn Dodd (see paragraph 8.13), about Mr Dickens MP’s involvement, on 29 January 1987 the AG expanded “although I am quite satisfied that there was no evidence to support the majority of the complaints ... there were one or two matters which seemed to me not to have been fully investigated. These matters are now being dealt with as are certain further complaints...” A letter from the AGO to CPS headquarters dated 30 January 1987 identified the matters concerned and asked to be kept informed.
- 5.33 There were no criminal prosecutions arising from the 1986/7 police investigation, including against Nefyn Dodd, at this time. Subsequently, as previously indicated, a further police investigation commenced in July 1991. Very few criminal prosecutions resulted.

Disquiet concerning CPS decisions relating to allegations against (former) policemen prior to the establishment of the Tribunal

- 5.34 On 26 March 1993, Dr John Marek MP wrote to the DPP, “I am alarmed at your statement of 24th March regarding the North Wales sex abuse inquiry that there are to be no prosecutions because of insufficient evidence or that it would not be in the public interest ... I have to tell you that there is great public interest in North Wales ... [television programmes] clearly showed a victim stating that the police were not interested in accusations against certain ex-policemen. I hope you will think again about this as justice must be seen to be done ... we are all at a loss to understand why you have made your decision. Either the numerous allegations are untrue or there has been a stitch up.”
- 5.35 The DPP wrote in response on 20 April 1993. Indicating that she had called for a full report on decisions relating to former police officers, she went on to say, “the evidence against each police officer, or former police officer, ... was carefully reviewed ... the decision not to prosecute was taken purely upon evidential grounds.

In other words, the reviewing lawyer concluded that there was insufficient substantial, admissible and reliable evidence to provide a realistic prospect of convicting ... so far as ... the former Special Constable was concerned ... There was sufficient evidence ... However, we concluded that it was not in the public interest to prosecute ... I appreciate that this explanation gives only a broad indication of the reasoning which lay behind our decisions ... However, I am unable to go further and provide details of decisions in such individual cases ... [which] could amount to a trial of the suspect without the safeguards which criminal proceedings are designed to provide."

- 5.36 I have seen the briefing note provided by _____ the CPS designated special case worker responsible for initial advice in cases involving allegations against police officers in North Wales _____ to the DPP's office in 'mid April' regarding his advice not to prosecute. It refers to inconsistencies between witnesses, lack of corroboration, consideration of the facts and that "after careful consideration, therefore, the decision was taken that there was insufficient evidence to prosecute either _____ Jones or Sharman ...". In the case of separate allegations against a fourth man, Special Constable Michael Hayward, he had made admissions of indecency with a 15 year old, _____ but it was decided not to be in the public interest to proceed, having regard to his age at the time, the age of the incidents, that there had been no further allegations of improper conduct, his subsequent marriage and the fact "that the negative effects of a prosecution upon him and members of his family would far outweigh any possible public benefit that might result." It was further noted that the prospective complainant had himself been subject of similar allegations by another and now lived out of the jurisdiction.
- 5.37 Unaware of the details of this note, Dr Marek MP responded on 10 May 1993 attaching statements of complainants and inquiring, "were you aware of the existence of these documents?", obviously incredulous and concluding, "finally, I must say that there are many, probably wild, stories about very important and influential people mixed up in child sex abuse here in North Wales. The situation has arisen simply because no prosecutions have been brought against anyone then in authority and the fact that the North Wales Police have been investigating these matters for years and years without apparently achieving any success."
- 5.38 In discussing the situation, and following sight of a further letter from Dr Marek MP to the DPP, officials were concerned about "handling" issues. They were aware that "the DPP's assertion that there is insufficient evidence must seem to [be] incredible to a layman who has seen a victim on TV saying in plain terms that a particular individual has buggered him. Clearly the public is unaware of ... subsequent inconsistencies and inaccuracies ... the nature of the Director's reply to this latest letter [is] very important. She could easily appear to be coldly ignoring evidence which, to Dr Marek and others, is as plain as the nose on his face."
- 5.39 I have seen the further faxed memorandum from _____ to the Legal Secretariat's officials on 10 May 1993 dealing at greater length with issues of discrepancy and credibility. It concludes, "although not directly relevant, enquiries have also been made concerning _____ behaviour in other areas of his

life. One or two minor items of gossip concerning him have been reported to the investigating officers. For example ... seen him at a local homosexual club ... not been confirmed ... [enquiries into his] domestic life have also failed to reveal any indications at all of any homosexual inclinations on his part ...” A background note briefing the AG subsequently in July 1993 assessed [redacted] to be of heterosexual orientation.

- 5.40 A letter was accordingly sent to the DPP’s Private Secretary on 14 May 1993, and the AG briefed on 18 May 1993, suggesting a discussion about the handling and form of her reply as soon as possible, “there is a real need to reassure the public that the case has been considered thoroughly and seriously and to prevent the understandable concerns of Dr Marek escalating to the point of public criticisms being made of the CPS ... She will need to address the suggestion that the public are now listening to wild rumours about child abuse in high places in NW [North Wales] and do not understand how the police could investigate the allegations for so long without any apparent success.”
- 5.41 On 9 June 1993, the DPP wrote to Dr Marek MP giving further explanation, referring to inconsistencies in account, and adding that “in cases of this nature which involve sexual allegations, a jury must always be directed by the judge that it is dangerous to convict in the absence of corroboration.” (The requirement for a Judge to warn a jury of the danger of convicting upon uncorroborated evidence of sexual abuse was abolished from 3 February 1995).
- 5.42 A meeting took place between Dr Marek MP and the AG on 7 July 1993, during which time attention was drawn to a letter from a BBC News reporter/researcher to the Police Complaints Authority dated 17 June 1993, which asked: how DSU Peter Ackerley could be capable of investigating [redacted]; why the North Wales Police press officer told a BBC Wales reporter “rather gleefully” that the file on [redacted] was more or less complete and that he wasn’t going to be prosecuted despite the fact that a third person was reluctantly persuaded to give a statement because he was convinced that “the police would get him [redacted]”; and other general criticisms. The AG undertook to have the evidence looked at again. [redacted] was summoned to a meeting with the AG, and although challenged, maintained his views and advice that there was insufficient reliable evidence to secure a conviction in the case of [redacted]
- 5.43 A letter dated 7 September 1993 was sent by the AG to Dr Marek MP. The AG’s files made available to me disclose numerous previous drafts and reflect the considerable care taken to ensure accuracy of factual content and what was considered to be the appropriate ‘general tone’. The letter reported that “the Director has considered this matter personally and remains satisfied that that decision [not to prosecute [redacted]] is the correct one ... As for the outcome of the investigation as a whole it is correct to say that a large number of allegations ... have been made and that relatively few prosecutions have been instituted. It may however help if I put this into context. Each matter put before the CPS has

been looked at carefully on its own merits ... I have sought to address the specific points you raised with me in this letter; but I can also add that I am satisfied that the experienced lawyers in the Crown Prosecution Service who have considered each one of these many cases have done so with the thoroughness and care which the seriousness of the complaints required and which the public has a right to expect.”

Exclusion of scrutiny of CPS decisions

5.44 The Tribunal's terms of reference specifically excluded “scrutiny of decisions whether to prosecute named individuals”. The reason for this is traced to a letter from the AGO to the Secretary of State for Wales's Private Secretary dated 14 June 1996, in which it is said, “as the Solicitor General explained at Tuesday's meeting, it is a point of fundamental importance that prosecution decisions once taken are not subject to detailed public scrutiny or second guessing. The rationale is the importance of finality and fairness to the potential defendant, victim(s) and witnesses. The convention is not intended to protect prosecuting authorities. It has been endorsed by the Philips Royal Commission on Criminal Procedure and is reflected in the fact that prosecution decisions fall outside the scope of scrutiny by the Parliamentary Ombudsman and are also specifically excluded from scrutiny by the Home Affairs Select Committee. The Solicitor General considers it essential that prosecution decisions are specifically excluded ...”

5.45 The relevant passage in the Philips Report reads:

“The decision to prosecute or not of its very nature can involve the interests and reputations of witnesses, of the victim and of the accused or suspect. Publicly calling into question a decision not to prosecute could amount to a trial of the suspect without the safeguards which criminal proceedings are designed to provide. Similarly, questioning the original decision to prosecute when a person has been acquitted could amount to a retrial.”

5.46 A member of the Legal Secretariat expanded upon the reasons to exclude scrutiny of decisions whether or not to prosecute in a letter to Mr Lambert in terms, “a further reason why successive Law Officers and DPPs have sought to avoid providing material which can be used to second guess and criticise a prosecution decision is the very important principle that the prosecution process should not be subject to political pressure. You refer to the possibility that members of the CPS may be required to give evidence to the Tribunal. The Law Officers and DPP would certainly not want to impede the Tribunal's work and have from the outset accepted that the Tribunal might wish to examine whether the working arrangements between the CPS and police were satisfactory and therefore to call members of the CPS to give relevant evidence. But, if this evidence were, for example, to extend to cover the view taken by a CPS member of the adequacy of information provided by the police to found a specific prosecution, the Tribunal would be seen as entering the area which the Law Officers are concerned to protect.”

- 5.47 However, in providing a draft of this letter to the Solicitor General, the same correspondent in a note dated 29 August 1996 informed him, "I have cleared with the DPP and [it] incorporates her comments. We both believe that the Inquiry is ... almost bound to end up scrutinising the prosecution decision making process. But the exclusion from the terms of reference reflects an important principle ... I should add that the DPP says that she will be having a series of internal meetings about all this to ensure that all proper inquiries have been made both internally and externally and that relevant material is available to the Inquiry."
- 5.48 The explanation given on behalf of the AG for the exclusion was not challenged by ministers.

CPS approach at the Tribunal

- 5.49 The CPS was not represented before the Tribunal from the outset, but Senior Crown Prosecutor, attended the Tribunal as an observer in the public gallery. He prepared regular briefing notes for the Law Officers.
- 5.50 In a briefing note dated 9 October 1996, recorded that the "police acknowledge that a public interest immunity [PII] claim could be raised in relation to material such as police reports and CPS advice but feel that the balance of public interest may lie with disclosure ... Notwithstanding the terms of reference it is difficult to argue that advice provided by the CPS, including advice in individual cases, has no relevance to the Inquiry. The quality of the investigation and the relationship with the CPS are within the terms of reference and the police will maintain that their investigation was shaped, in part, by advice provided by the CPS ... It is recommended that the CPS raise no objection to the course of action proposed by the police but that, in relation to any material determined by the Inquiry to be relevant, it is made clear that PII arguments may be put forward at a later stage and before any material comes into the public domain."
- 5.51 In his note dated 30 January 1997, reported that, "In his opening statement Counsel for the Tribunal did not introduce evidence of major failures on the part of the North Wales Police. At this stage, therefore, it appears that the Tribunal team itself is unlikely to suggest that the CPS has participated in assisting the North Wales Police in any form of 'cover up'. There may, however, be others represented before the Tribunal who take a different view. The focus upon the low number of prosecutions; the number of allegations against one individual in cases such as Dodd; the possible application of the case of DPP v P on the probative value of allowing evidence of similar allegations; indicates that it may be suggested that the CPS was too cautious in its approach to review..."
- 5.52 succeeded following his untimely death on was formerly Senior Inspector and Assistant Chief Crown Prosecutor, CPS London. During the course of the Tribunal's hearings, the CPS made an application for representation at the hearings, which was granted by the Tribunal on 3 February 1998. No member of the CPS was called as a witness before the Tribunal. cross examined witnesses and made closing submissions to the Tribunal as referred to below.

5.53 indicated in interview with me that, in relation to provision of CPS material, he adopted a position which protected the constitutional basis for the exclusion of scrutiny of CPS decisions whether to prosecute rather than protecting the individuals concerned, but otherwise afforded appropriate access to materials as necessary. That is, his brief was not to obstruct any relevant investigation. In his briefing note dated 27 March 1998 to the AG, he reported that “one advocate sought much wider disclosure of CPS advices when police defended the extent of their investigations because of CPS advice. The CPS formally objected to the disclosure and there was some debate with the Chairman as to the extent of the exclusion within the terms of reference ... In the event the specific advices as to decisions made upon the credibility of [redacted] were referred to, but there was no wholesale disclosure.” He continued, “Police made the point that they had recommended the prosecution of former [redacted] and former Special Constable Heyward [sic] ... This could not be dealt with fully without transgressing the terms of reference.” It appears that the CPS notes of the relevant conference between [redacted] and the AG were provided to the Tribunal.

Tribunal approach

- 5.54 Not surprisingly, in the light of the clear public disquiet voiced concerning the low number of criminal prosecutions prior to the establishment of the Tribunal as indicated above, the decision to exclude CPS decisions gave rise to strong objections at the time. In a letter dated 10 August 1996 addressed to the Secretary of State for Wales, [redacted] complained vociferously about the exclusion saying, “there are many questions for the C.P.S. to answer ... we want everything to come out. Including the corruption in the C.P.S. in North Wales ...”
- 5.55 Clearly, the decision to exclude CPS decisions raised questions not only as to whether the CPS would escape critical examination as a body, but whether the Tribunal would be deflected from its own investigations into, and making findings in relation to, those cases where the CPS had decided not to prosecute.
- 5.56 I find no indication in the transcripts of the daily proceedings, or other documentation that I have examined, to suggest that the Tribunal felt the exclusion frustrated a full examination of the evidence into the alleged abuse of children in care, nor do I see how it can be reasonably construed to have done so. In the case of Gordon Anglesea, the Chairman made clear that if additional relevant information was available to the Tribunal, which had not been presented to the civil jury considering the libel proceedings, he would make findings as appropriate; this regardless of the CPS decision not to prosecute him. A submission made on behalf of another alleged abuser that the refusal of the CPS to prosecute effectively prohibited the Tribunal from making findings against him was roundly dismissed on the basis that the Tribunal's remit was to evaluate the evidence with a view to make findings in accordance with the terms of reference, not to reach a decision as to the merits of a criminal prosecution.

- 5.57 As a non appellate body, the Tribunal was bound to respect the verdicts of a criminal trial. In the Tribunal Report⁴ this is said to have caused no practical difficulty since in those cases where defendants had been acquitted, there was no fresh evidence adduced. There are several paragraphs in the Tribunal Report where reference is made to the specific exclusion which prevented scrutiny of individual prosecution decisions, but otherwise the Tribunal merely notes the refusal of the CPS to initiate criminal proceedings, and sums up the situation in terms that the decisions not to prosecute made by the police themselves or the CPS were “for a variety of reasons, usually encompassed within an explanation that there was insufficient evidence to justify a prosecution.”⁵ The Chairman did ask questions of CPS general policy including as to prosecution, notification of decision to the complainant, cautions, consultation with complainants, the absence of a complainant at the plea and directions hearing, the need to ensure the charges on the indictment reflected the seriousness of the offending, delay and abuse of process.
- 5.58 In their closing submissions, a number of the advocates for victims of abuse and Councillors Malcolm King and Dennis Parry were critical of the decisions made by the CPS. Submissions made on behalf of Councillors King and Parry urged the Tribunal to refer them to the AG to “undertake a separate investigation into the decision making process ... The prosecution rate and the conviction rate from other inquiries of a much smaller scope seems to have been much higher than that achieved in North Wales ...” It was suggested that there was considerable disquiet in the North Wales police as to the CPS special case worker’s, views on individual cases.
- 5.59 Sir Ronald Hadfield considered that the CPS had shown a lack of objectivity in their response to the 1986/87 police reports. He thought that the deficiencies in the files, presumably both as to evidence gathered and opinion expressed, should have been apparent to an experienced Crown Prosecutor.
- 5.60 In closing submissions on behalf of the CPS, reminded the Tribunal that it had not heard evidence from any member of the CPS. He highlighted the different functions of the CPS, created in 1986, in assessing sufficiency of evidence and ‘public interest’, as compared with the Tribunal’s inquisitorial process. However, he recognised that “In applying the public interest test, there was the clear statement in the second edition of the [CPS] code that sexual assaults upon children should always be regarded seriously. And in such cases, where the Crown Prosecutor was satisfied as to the sufficiency of the evidence, it would seldom be any doubt the prosecution would be in the public interest.”

CPS documents

- 5.61 Although prosecution decisions were explicitly excluded from examination by the Tribunal’s terms of reference, I nevertheless considered it necessary in order to address my terms of reference to examine those CPS documents which still exist in

4 See paragraph 6.11 of the Tribunal Report

5 See paragraph 30.20 of the Tribunal Report

relation to the NWP investigation into abuse of children in care in order to establish whether, in excluding scrutiny of such decisions by the Tribunal, protection was thereby directly or indirectly afforded to establishment figures or any other individual. In doing so, I was assured of and received full co-operation from the immediate past DPP, and had the benefit of reading the briefing notes prepared by [redacted] and the AG files provided.

- 5.62 By far the greater number of relevant prosecution files provided to the Review by the CPS were compiled by [redacted] since [redacted] was only responsible for those allegations concerning serving or retired police officers, of which there were comparatively few. In a note from [redacted] to the DPP's Private Office dated 5 July 1993, he indicated that he had "to date opened a total of 174 files ranging from sexual and physical assaults to attempts to pervert the course of justice. The figure includes a PACE application as part of the [redacted] Investigation and some of the matters dealt with by [redacted] ... The files that are now being submitted are arriving for initial advice to identify the nature of the complaint actually made. Many of the allegations have been definable as nothing more than time barred common assault and the Police are concerned that they do not arrest or try to interview where it is clear that no proceedings would be possible in any event. As such the current advice files merely have statements of complaint and other witness statements. They do not have records of interview ... In addition, I have been sent two files where various nationally prominent persons have been named by a solicitor in Clwyd County Council and by a local councillor as being persons who are rumoured to have been involved in child abuse. Neither of these files has contained anything that could be described as evidence and the police have been advised accordingly. The existence of the files has been drawn to the attention of my [Chief Crown Prosecutor] and [Assistant Chief Crown Prosecutor] (Casework). These files are held at Colwyn Bay."

Informal review of CPS decisions

- 5.63 In a series of notes dated between November 1997 and April 1998 (during the time when the Tribunal was sitting), [redacted] conducted his own review of the relevant decisions of the CPS arising from the 1986 and 1991 police investigations at some length. He found, of a total of 280 relevant prosecution files on a Schedule compiled by [redacted] arising predominately from the 1991 police investigations and including those sent to [redacted] 12 files, which had not resulted in prosecution, had not been traced; a total of eight defendants were prosecuted; a further three defendants received a police caution; 12 files were 'for information only'; six files were for general advice, not relating to prosecution; four potential defendants had died; and, 13 alleged offenders had not been identified.
- 5.64 He recorded that in 193 cases the police had made the recommendation or observation that there should be no further action taken or that no prosecution should follow, for the most part as a result of there being insufficient evidence. In 28 files, the police gave no view as to whether the case merited prosecution. In three cases, the police recommended that the individual be cautioned. The CPS agreed

with this course of action in two cases, but in one case, advised against a caution on the basis that there was insufficient evidence to provide a realistic prospect of conviction. The police recommended prosecution in relation to 20 files concerning 25 defendants, the comparative small number influenced, they said, by the early advices of the CPS not to prosecute other individuals in similar situations.

- 5.65 In the main, [redacted] considered that the decisions not to prosecute were “justifiable”, and that overall most of the CPS decision making was straightforward and clearly right, but identified a small number of cases where criminal proceedings would have been amply justified and considered that there “were a significant number of questionable decisions.” Necessarily, these mostly concerned the proportionately greater number of files compiled by [redacted] exposed a number of inadequacies and deficiencies in some advice files, which may be summarised as follows: erroneous application of the ‘evidential sufficiency test’; inadequate advice on missing evidence; uncertainty of case handling and decision making; incorrect analysis of evidence and consequently erroneous subsequent charge; attributing undue weight to matters other than the evidence and, applying a test higher than that within the Code for Crown Prosecutors; a failure to consider all allegations against an individual together in terms that one series of similar offences possibly afforded cross corroboration of evidence; the wholesale dismissal of the evidence of [redacted] involved in several cases without separate consideration in each case; and, a ready acceptance of prospective but untested ‘abuse of process’ arguments. He concluded that, “In the light of the analysis, it is not surprising if the Tribunal is of the view that there may have been a lack of inclination on the part of the CPS to prosecute.”

My review of CPS documents

- 5.66 Most of the files appearing on [redacted] master schedule were still available for my examination. I had previously conducted my own analysis of the file in relation to the ‘high profile’ decision relating to [redacted] and a further random sample of prosecution files. Some of those happened to include the files referred to in [redacted] schedule as questionable decisions. Those which apparently dealt with named establishment figures were absent. This is not surprising. I suspect the file, so called, contained little other than the correspondence relating to them and to which I refer in Chapter 8. I have discovered no witness statement which contains any allegation of abuse in relation to the same. The files would have been obviously and rightly assessed by [redacted] as lacking any evidence, as indicated in paragraph 5.62 above.
- 5.67 I agree with [redacted] views in relation to those files I did happen to inspect before I became aware that they had been previously reviewed by [redacted]. In relation to those cases I reviewed which had been advised upon by [redacted] I found examples of all of the inadequacies and deficiencies identified by [redacted] and which are referred to in paragraph 5.65. In relation to the few cases I reviewed which had

been advised upon by [redacted] I considered that in one case, he had erred in recommending no prosecution against former Special Constable Michael Hayward by reason of what I would regard as an objectively over generous interpretation of the public interest test.

- 5.68 In one file, involving allegations against police officers, [redacted] had reached a view that “evidence supplied by [redacted] should not be relied upon to support any allegation of sexual or physical abuse against anyone.” He prepared a file note to that effect in February 1993. [redacted] has indicated to me that he intended this annotation to apply to the prosecution files for which he was responsible. It is clear that [redacted] and [redacted] were in contact during this time about their respective cases. Thereafter, it appears that [redacted] advised that counts in at least one indictment which named [redacted] as the complainant should be withdrawn, and his evidence in general was not relied upon in subsequent criminal trials.
- 5.69 In a briefing note to the AG dated 30 July 1997, [redacted] suggested that “one consequence of these decisions [relating to allegations against police officers] was that counts on the indictment against Peter Howarth which were based on the evidence of any of the witnesses [concerned] ... were not pursued. A second consequence was that Michael Taylor (Bersham Hall staff member) who admitted some offences of indecent assault was not prosecuted ... police were advised to caution because to prosecute would be inconsistent with the decision about [the special police constable].”
- 5.70 During the public meeting in Wrexham, an individual made clear to me that he was deterred from participating in the Tribunal by virtue of a CPS failure to prosecute his complaint of ill treatment against a member of staff.
- 5.71 I interviewed [redacted] and [redacted] separately and before I interviewed [redacted] I did not have access to [redacted] schedule or internal review at the time of my interviews with either of them and therefore did not ask them to address any specific concerns raised by [redacted]. I did, however, raise general points concerning their decisions and approach arising from my own reading of the files. Each of them volunteered in interview with me that he was not a Freemason.
- 5.72 I wrote to [redacted] and [redacted] on 18 May 2015 inviting their response to my preliminary conclusions on issues relating to their decisions. I informed both that I had returned the relevant prosecution advice files to the CPS on 10 March 2014 should they wish to access the same in order to formulate their responses to my letter.
- 5.73 In their written responses to me, [redacted] and [redacted] indicate that they were not interviewed by [redacted] in the course of his review, did not see his conclusions and have not been given the opportunity to challenge them. In fact, documents that I have seen show that [redacted] responded in writing to a ‘handwritten minute of 10 September 1997’ prepared by [redacted] referring to several issues arising from the

files reviewed by [redacted] and referred therein to a conversation he had had with [redacted] on 10 September 1997. Reasonably, both [redacted] and [redacted] refer to the passage of time and the difficulty in recalling specific cases in detail; both have now retired. Each make the point that since their last involvement in these cases there have been significant changes in law, practice and policy and that some of their decisions may have been different in the recent climate.

5.74 [redacted] describes the management structure of the CPS and stresses the fact that he was responsible for initial review of the files, but was not a final decision maker, which rested with his CPS line managers of higher grades. In respect of [redacted] he makes the point that he had given full written reasons for his view concerning his reliability and credibility of this witness and the fact that there was no corroboration for his individual complaints. He refers to the fact that his views on the particular cases, which give rise to the matters mentioned above, were discussed with senior police officers at the time in the presence of his line manager. He rejected any notion that he had the ability to influence the decisions made by other CPS lawyers, specifically [redacted] in the context of who, or what offences, should be prosecuted.

5.75 [redacted] specifically makes the point that it is possible for a range of different professional views to exist on a particular file, all of which fall within a band of reasonableness and none of which are therefore necessarily perverse. However, he accepts, with hindsight, that he “may have taken a cautious approach to a number of the charging decisions that [he] made.” His caseload in relation to these matters was large.

5.76 I wrote to the present DPP on 18 May 2015 as a matter of courtesy to inform her of my provisional view relating to some of the decisions made by the prosecution during the relevant period and the absence of any published overarching review. The DPP confirmed that “the CPS has accepted that [redacted] review represents a fair and balanced assessment of the decision making in these cases.” She accepts that it would have been possible for the DPP to have “published [redacted] report or alternatively commissioned a new review from, for example, a retired judge, both of which the CPS has done recently in respect of other cases.” However, she draws my attention to the fact that the former DPP did already have the benefit of the authoritative reports of [redacted] a former inspector, and this may have informed her past predecessor’s decision not to do so.

Health authorities

5.77 A literal interpretation of the terms of reference set to the Tribunal would permit investigations into the circumstances of children not only in local authority care, but also the de facto care of other institutions or bodies, including NHS establishments in the former county council areas of Gwynedd and Clwyd. That is, the terms of reference at (a) require the Tribunal to “inquire into the abuse of children in care in the former County Council areas of Gwynedd and Clwyd...”, rather than those children in the care of the former Gwynedd and Clwyd county councils.

5.78 It is clear from the Tribunal's working documents and the framing of the Tribunal Report that the Tribunal did not give this wide interpretation to the terms of reference. However, it did not interpret the terms of reference restrictively in so far as evidence was concerned. The Chairman regarded the pertinent filter for admissibility of evidence to be its relevance to the terms of reference not its source; for example, in respect of a witness who had not been a child in local authority care, he stated, "we are dealing with the treatment of children in care at Gwynfa and she [the witness] was there at a material time ... I find it difficult to see how her evidence is irrelevant."

Gwynfa clinic

5.79 Gwynfa clinic was a psychiatric residential, assessment and treatment facility for children and young people administered by the Clwyd Area Health Authority from 1974, the Clwyd Health Authority between 1982 and 1993 and the Clwydian Community Care NHS Trust ('the Trust') thereafter. This facility housed, but was not restricted to, children 'in the care' of a local authority. The Tribunal heard evidence from 14 of its former patients and found that of the "total of 23 former patients [who] made complaints relating to the period 1974 to 1987... [it was] reasonably clear that 13 of these were in care at the time ..."⁶

5.80 The Tribunal Report noted the "vulnerability of young children when they are living in a residential clinic ... whether or not they are formally in care at the time".⁷ However, the Tribunal felt hampered in making specific findings since "The picture that we have received of conditions at Gwynfa has been incomplete for a variety of reasons but most notably because we have not been able to investigate the activities of Z [a member of staff who was under police investigation] ..."⁸ The Tribunal Report does not detail what the "variety of reasons" were, but in any event, it now seems clear that the Tribunal had been provided with inaccurate or incomplete information as indicated below.

Concerns about evidence provided to the Tribunal relating to Gwynfa

5.81 A Welsh Office Health Advisory Group ('the Health Group') was established with specific responsibility for advising on health issues arising from and during the Tribunal investigations and hearings. The documents provided to me by the Wales Office, including numerous emails and letters between the Health Group and the Trust, briefing notes and records of various meetings, indicate the Health Group's growing distrust of the accuracy of information provided by the Trust to the Tribunal, and concern at the response of Mr Laurie Wood, formerly General Manager of the Clwyd Health Authority responsible for Gwynfa before becoming the Trust's Chief Executive in 1993, when informed of the apparent discrepancies and/or omissions. Subsequently, in a briefing note dated 9 March 1999, a senior Welsh Office official

6 See paragraph 20.17 of the Tribunal Report

7 See paragraph 20.28 of the Tribunal Report

8 See paragraph 20.28 of the Tribunal Report

advised the Secretary of State for Wales that he considered himself deliberately misled by Mr Wood about “the allegations arising from Gwynfa and what the management response had been. This would have been particularly important to me in 1996 when the terms of reference of the North Wales Child Abuse Inquiry were being agreed. The first written advice I received on this matter in December 1996 and this has proved to be misleading on a number of issues ...”

- 5.82 A report had been prepared by Mrs Irene Train in 1992 for the Authority when she was Divisional General Manager (North) of the Community and Mental Health Unit of Clwyd Health Authority. In 1996, when working as a consultant for the Trust, she was instructed to prepare a further report. Both reports were submitted to the Tribunal. They asserted that she had been informed by the police that “the type of allegations made by these young people would constitute common assault and none alleged that any form of sexual abuse took place.” This information appears to be directly contradicted by a meeting note produced by the NWP to the Welsh Office, which records the police as having told Mr Brian Jones, Chief Executive of the Clwyd Health Authority between 1992 and 1996, in August 1992 that “further allegations of buggery USI and assaults” had been received in respect of a member of staff. A memorandum dated 24 March 1998 from a member of the Health Group to Mr Lambert suggests that this report deliberately mis-stated the true nature of the complaints since, “by describing the Gwynfa allegations as common assaults board members (of both the Trust and the Health Authorities), who were also members of the criminal justice system (JP’s, an ex-CPS lawyer and a solicitor who had worked for Child-line) [sic], would have no expectation of there being criminal proceedings.” I presume that she was referring to the fact that prosecution of common assaults must commence within six months or else will become time barred.
- 5.83 I wrote to Mrs Train on 15 May 2015 inviting her comments on certain issues arising from the reports she prepared. She responded that she had no recollection of meeting with DSU Ackerley when he met with the Chief Executive of the Clwyd Health Authority in August 1992, but did remember meeting him in the February of that year, when he had asked for access to patient records at Gwynfa, which she initially refused pending the advice of the Welsh Office. She did recall “at some later date” that she went to Colwyn Bay Police Station with a non executive director of the Trust and a solicitor, where they were allowed to read statements and make notes. She recalled that, “we noted allegations of common assault, but none of sexual abuse.”
- 5.84 Mrs Train retired many years ago. She said that until she received my letter she had not been aware of the Welsh Office concerns expressed in relation to her reports. She had no recollection of the specific details contained in her reports and believed that, although the reports “would have reflected the information provided to me”, it was possible that there were mistakes not apparent at the time. However, she is “certain that there was no intention on my part to mislead or obstruct the Inquiry in anyway.”
- 5.85 On 28 May 2015, I wrote to Mr Brian Jones inquiring about his knowledge of the inaccuracies contained within the reports prepared by Mrs Train, particularly in light of the meeting he held with DSU Ackerley in August 1992, referred to above. I re-sent the letter on 11 June 2015.

- 5.86 Mr Jones responded. He noted the comments, but had “no files or records” to which he could refer. He went on to say: “...if the Welsh Office were troubled about conflicting evidence at that time it would have been far easier to have dealt with that matter if they had raised it at the time ...”
- 5.87 I wrote in similar terms to Mr Wood on 28 May 2015. He indicated in his written response that he now resides abroad and said he could not access the files and documents involved. He said his recollection was that the Health Group’s concerns, referred to above, were only referred to him in early 1999 and that he was “totally unaware that the Welsh Office Health Department had any involvement in the matter of the Tribunal’s Terms of Reference” or that they were being agreed in 1996. He was certain that his then colleagues at the Health Authority “made every effort to present an accurate picture at the time and that no attempt was being made to minimise the seriousness of the allegations.” He said the report that the Trust submitted to the Tribunal “was prepared after exhaustive investigation and with full input from our legal advisors: it represented the facts as we were able to ascertain them ...” He concluded “... with the benefit of hindsight it is clear that we did not get things 100% right but we did try to deal with the allegations as thoroughly as we could and bearing in mind the absence of prosecutions in such a way as was consistent with employment law at the time. The evidence that was presented to the Tribunal was carefully drafted, fully sifted by our legal team and was as complete as we felt we could achieve: certainly not, to my mind evidence of any conspiracy.”

Subsequent action by the Welsh Office and the Tribunal’s response

- 5.88 There obviously had been an expectation that the nature of management responses to allegations of abuse would be investigated by the Tribunal. The Solicitor for the Welsh Office informed the Health Group in a letter dated 17 December 1997 that “the Tribunal will not wish to investigate the merits of individual cases of abuse but, if you are able to identify for the Tribunal those cases in which either no action was taken, or inappropriate action was taken, by the Clwydian NHS Trust following a complaint brought to their attention, the Tribunal will hear evidence of the systems and procedures in operation at the time of the complaint, and the manner in which these were not complied with ...” In the event, the Tribunal did not investigate these issues. The Tribunal was assured by the Welsh Office during the Tribunal hearings that the allegations of abuse in Gwynfa would be investigated appropriately. The Tribunal may reasonably have anticipated that the management response to the allegations would form part of that investigation.
- 5.89 I have seen Instructions to Counsel, Mr Adrian Hopkins (since appointed Queen’s Counsel), in November / December 1998 (after the conclusion of the Tribunal hearings) from the Welsh Office seeking advice in relation to the Trust’s management response to allegations of abuse arising in Gwynfa and its interaction with the Tribunal. The instructions state that “the Department is now aware of 82 complaints of abuse made by 40 former patients of Gwynfa”. They went on to list 13 specific concerns. Of particular interest in the context of my Review were those

listed as follows: “c) The Chief Executive of the North Wales Health Authority [then Mr Brian Jones] appears to have been informed by the police of serious allegations of abuse by Gwynfa staff on 6 February, 1992 and allegations of serious sexual abuse on 7 August, 1992 ... This matter does not appear to have been reported accurately or at the appropriate time to ... the Welsh Office or the Tribunal ... e) The Briefing for Board members of Clwyd Health Authority and Clwydian Community Care NHS Trust, [the report prepared by Mrs Train] which was later sent to the Welsh Office and submitted in evidence to the Tribunal contains statements that are contrary to what was actually happening and which the police dispute ... g) ... The police were refused access to all records when many, such as staff records, were not subject to the issue of patient confidentiality ... j) Important meetings with the police on child abuse [including with Mrs Train and the unit’s resident psychiatrist and Mr Jones] were not documented and correspondence not retained by Clwyd Health Authority officials ... m) Serious conflicts remain within the chronology of events [as repeatedly reported to Mr Wood].” I have inserted the explanatory detail supplied elsewhere in the papers sent to Counsel in the square brackets above for ease of reference.

- 5.90 Contrary to the responses of Mrs Train and Mr Wood, which I refer to earlier in this chapter, my own review of the core documents relating to this issue confirms the factual content included in the Instructions to Counsel that I reproduce in paragraph 5.89 above, save that the police were eventually allowed access to some of Gwynfa’s records in July 1993. It appears that the attempts by the Health Group to have the factual inaccuracies indicated above corrected in chronologies and the report produced by the Trust to the Tribunal were resisted on behalf of the Trust. Despite several invitations by the Health Group, Mr Wood in response rejected the necessity to do so. The majority of these documents that I have seen, comprising internal briefing notes and correspondence between the Health Group and the Trust, were not available to the Tribunal.
- 5.91 Counsel’s written advice considered that there were serious deficiencies in the management of, and care provided by, Gwynfa and indicated that he was of the opinion that the Tribunal had been misled in significant respects. He advised that a public inquiry was necessary.
- 5.92 On 16 December 1998, a member of the Welsh Office Legal Group wrote to the Clerk to the Tribunal, “as sanctioned by the Tribunal, at the behest of the Welsh Office, a process to review all the allegations of abuse arising from Gwynfa was initiated ... The [Trust] Corporate Group’s Report was received by the Department at the end of May. It has since been the subject of careful analysis. Our initial conclusion was that it contained serious omissions and that serious conflicts with the police evidence remained. The Department ... [briefed] Counsel with a view to him advising the Department on the scale and seriousness of the abuse; the management response; and options for the way forward. Counsel’s conclusion is that the Gwynfa allegations and the NHS Management response are sufficiently grave to justify independent inquiry.”

- 5.93 On 20 January 1999, a member of the Health Group wrote to Welsh Office lawyers “translating” the manuscript comments written by the Secretary of State for Wales on their briefing note advising him on the way they suggested he should deal with Counsel’s advice. The annotation was confirmed to read, “I am NOT content with the advice. This report [that is, Counsel’s advice] needs to be dealt with quickly, openly and effectively. I cannot understand the advice, which appears inclined to hide the report and the conclusions. Surely I should (a) ask police and CPS to decide urgently whether to pursue/prosecute and not to dither (b) agree to set up judicial inquiry and announce it NOW (even tho’ (a) may involve some delay) and (c) to provide the whole report NOW to Sir Ronald.”
- 5.94 A copy of Counsel’s advice was sent to the Tribunal under cover of letter dated 1 March 1999. Having inspected the original manuscript proofs prepared by the Chairman and first typed versions of the same, and compared them with the final Report, it is clear that he did not revise the content of Chapter 20, dealing with Gwynfa, in any respect upon receipt of the advice.
- 5.95 For the sake of completeness, I record that a public inquiry into the events at Gwynfa was not established by the Welsh Office. Following the UK government’s devolution of health policy, the National Assembly for Wales commissioned a review of the safeguards for children and young people treated and cared for by the NHS in Wales, led by Lord Carlile. The terms of reference are reported to “include provision for a further retrospective consideration of matters relating to Gwynfa”, but “not to mount a retrospective inquiry into what took place at Gwynfa” and make clear that it will not “seek to attribute blame or criticism to individuals”. The review reported in March 2002 and the resultant report, “Too serious a thing”, devotes two chapters to Gwynfa.

Concerns about the Tribunal’s approach to health issues

- 5.96 Lord Kenyon had been a member of the Clwyd Area Health Authority and the Family Practitioner Committee in the 1970s. A briefing note prepared by Counsel for the Welsh Office in May 1997 suggests that there had been “anxiety [in the Health Group] ... that the Inquiry is failing to pursue issues which may become politically sensitive as a result of the involvement, if only indirectly, of Lord Kenyon ...” However, a Health Group note prepared on 2 October 1997 recorded that it was thought that the Tribunal “did not know” of the connection of Lord Kenyon. Mr Hopkins’ written advice does not refer to it. I have found no reference in materials available to me that this information was otherwise placed before the Tribunal.
- 5.97 An anonymous contributor to my Review, introduced by the Children’s Commissioner for Wales, voiced lingering concerns that the obstructions created by the inaccurate portrayal of the circumstances appertaining to Gwynfa may well have concealed associations between Lord Kenyon and Gary Cooke (see Chapter 9) and other members of the NHS accused of paedophile activity with boys.

- 5.98 Other concerns were raised at the time and in submissions to this Review, not specific to Gwynfa, revolving around relevant expertise in the interpretation of health records, and also the connection between mental health issues and the survivors of child abuse.
- 5.99 In regard to health records, a letter was sent to the Solicitor to the Tribunal from the Solicitor for the Welsh Office to the effect "... on 13 February I passed on the concerns which had been expressed by the Health Department in connection with paragraph 2(g) of the document entitled 'Complainants' Files Proforma' ... Is there any record of, or reference to, psychiatric, psychological or medical treatment or examination whilst in care? If so, what and when ... [the] Health Department's concern is that it appears that medical information of this nature is being extracted from medical records held on Local Authority files by those who may have no medical training and may therefore have difficulty in fully assessing their significance ..."
- 5.100 An aspect of 'health issues' that was excluded by the Chairman was that which Voices from Care wished to raise in relation to the "mental health of any of the survivors of child abuse witnesses" on the basis that "it is well known in mental health circles that there has been, and remains a lacuna between Mental Health Legislation and the Children Act 1989 in relation to mental health problems of children." In a letter dated 6 November 1997, the Solicitor to the Tribunal wrote at the direction of the Chairman, "your comments on mental health appear to show a misunderstanding of the concerns of the Tribunal. The provision of mental health services to children in care is part of the general inquiry but the Terms of Reference make it clear that the major purpose of the inquiry is to prevent the occurrence of abuse to children rather than the arrangements for providing treatment when such abuse occurs."
- 5.101 The solicitor for Voices from Care disagreed, asserting that the second of the terms of reference allowed the Tribunal to investigate whether the agencies or authorities responsible for the care of children could have prevented the abuse, or detected it at an earlier stage, and that disturbances in the mental health of children should have been recognised as evidence of distress or anxiety which may have been linked to abuse. The Tribunal's view was unchanged.

The Chairman's views on his terms of reference

- 5.102 The magnitude of scale imposed by the terms of reference set to the Tribunal is revealed in the Chairman's correspondence in the period after the conclusion of the hearings. In a letter to the Secretary of State for Wales dated 16 November 1998, he wrote, "the task imposed by our terms of reference has been extremely wide-ranging and the volume of evidence to be distilled is enormous ... I have been working full time since the Tribunal's hearings ended ... the task is very onerous because the reputations of many are at stake and accuracy of detail, as far as it can be achieved after the lapse of time since events occurred, is essential."

5.103 To on 8 February 1999, who had complained of the delay in producing the Tribunal Report, he wrote in similar fashion, “like you ... I am very concerned that the report is taking so long to write but that is not because of any lack of effort to complete it as soon as possible ... The range of matters to be covered is enormous and the time scale of nearly a quarter of a century obviously increases the size of the task ... Summary conclusions would not satisfy anyone and detail cannot be avoided.”

Conclusions

5.104 I consider the rationale in the selection of 1974 as the starting date, and the definition of the geographical boundaries, to be sound and proportionate. The circumstances which triggered the inquiry reasonably prescribed it. The date chosen reflected the creation of the new Clwyd and Gwynedd county councils; the boundary encompassed the centre of the allegations of abuse and mismanagement.

5.105 Initially, the Welsh Office would seemingly happily have widened the public inquiry into other areas of England (see paragraph 5.11). There was good reason not to do so into counties where criminal investigations were still underway, such as Cheshire and South Wales.

5.106 Neither time nor geographical limit restricted the Tribunal in its investigations. Evidence was heard which fell outside the parameters of time or location if deemed relevant to a pattern of behaviour or course of conduct. The geographical limitations apparently did not interfere with the Tribunal’s consideration of the relevant employment history of convicted or alleged abusers in the care system beyond North Wales. The Tribunal was obviously alert to the possibility of a cross boundary paedophile network (see Chapter 9). Whilst it is arguable that a wider investigation of out of area activities and links, for example, in the case of John Allen, may have led to ‘bigger fish’, I have uncovered no evidence to suggest that this would be so.

5.107 I have no reason to conclude from the documentation seen by the Review that Lord Howard was seeking to avoid an investigation into the NWP. The full participation of the NWP in the Tribunal process demonstrates their co-operation with the process.

5.108 I am satisfied that the co-operation of the Law Officers and the NWP with the Tribunal process ensured that, but for information concerning referred to in paragraph 7.18, all information informing relevant CPS process was placed before the Tribunal. Inevitably, any restriction placed upon the Tribunal would and will be viewed with suspicion. The decision to exclude CPS decisions to prosecute from the Tribunal’s investigation was, and is, objectively valid on a constitutional basis. However, I consider there will be circumstances where intrepid investigation of the criminal justice process in this regard will be necessary to safeguard other constitutional and human rights and to assuage genuine public concern. I note the DPP’s response suggesting a possible reason why her past predecessor did not regard it necessary to establish an independent published review of prosecution decisions. However, in the circumstances, I consider there

was sufficient criticism and speculation to trigger at least an overarching internal and independent review of all, or a random selection of, charging/process decisions made by the relevant CPS lawyers, and for the publication of general findings and indication of any remedial action considered necessary.

- 5.109 I considered [redacted] to be an impressive and straightforward interviewee. His written reports were balanced in that they fairly acknowledged the difficult circumstances created by the scale and nature of the abuse, yet were unhesitatingly critical of the basic errors of approach, which in my view on the basis of the sample I inspected independently, he accurately identified.
- 5.110 I am satisfied that both [redacted] and [redacted] in some cases were responsible for errors of judgment in varying degree. Taking into account all the circumstances, the documents and my interviews with each of them, I assessed [redacted] to be overwhelmed by the scale of the 1991 police investigation and [redacted] only responsible for advising in relation to prosecution files submitted in respect of police officers, as necessarily unaware of the possible interplay between other cases considered by [redacted] and those concerning police officers.
- 5.111 It is clear from their written responses to me that neither should be viewed as an independent agent with sole responsibility for the decisions reached. The size of [redacted] caseload is remarkable. Today, it would be inconceivable that he would be assigned all cases arising from a similar sized police investigation. [redacted] knew his initial views would be subject to review by his superiors. If erroneous, they were accepted and compounded by them.
- 5.112 I record that there is no evidence to suggest that either [redacted] or [redacted] acted with anything other than professional integrity and in good faith. There is nothing to suggest that [redacted] took decisions with a view to the protection of any abusers, and specifically, not in order to protect any establishment figure or other individual. Equally, and specifically in relation to the high profile case involving [redacted] there is nothing to suggest that [redacted] was unreasonable in the exercise of his judgment on the basis of the information then available to him. I do not consider that either of them were complicit in a 'cover up'. I accept that they operated in a different climate surrounding the prosecution of child abuse allegations, current or historic, to that which exists today.
- 5.113 However, in my opinion, in light of the information provided to me by the contributor who attended the Review's public event in Wrexham, one consequence of the CPS decisions not to prosecute is that complainants may have been deterred from participating in the Tribunal.
- 5.114 The ongoing police investigations into lately revealed allegations of serious sexual abuse involving Gwynfa staff would have prevented the completion of the Tribunal's investigation into allegations of abuse at Gwynfa. In the absence of any indication of the unreliability of the Trust's evidence as subsequently revealed, and in view of the Welsh Office assurance as to future intent, it was reasonable for

the Tribunal not to proceed to determine inadequate or inappropriate managerial response. It is regrettable that the question raised subsequently as to whether the Trust was complicit in a cover up of the allegations was not resolved by the Tribunal, but I regard this issue to have surfaced too long after the hearings had concluded to then reconvene.

5.115 However, I find the lack of any amendment to the draft Tribunal Report following the Chairman's receipt of Counsel's written advice to be surprising. I have not found anything to suggest that the advice was circulated to the other members of the Tribunal. It was unnecessary for an amendment to be made in relation to the generic finding that abuse was likely to have occurred within Gwynfa. However, since Counsel's advice specifically challenged the veracity and integrity of evidence laid before the Tribunal as to managerial response to allegations of abuse, I would have expected the Tribunal Report to explicitly refer to the possibility, at least, of tainted evidence which had been submitted by the Trust. The reliance that appears to be placed upon the evidence of Mrs Train, either in respect of findings made in the Tribunal Report,⁹ or at all, is now questionable.

5.116 I have no reason to reject Mrs Train's assertions of her good faith in preparing the reports, however inaccurate they transpired to be. Nevertheless, I regard the discrepancy between the nature of the assaults reported by her, and those to which Mr Brian Jones was said to have been alerted in August 1992, to be remarkable. The communications between the Health Group and Mr Wood that I have seen do not accord with his recollection to the effect that he was unaware of a problem prior to 1999, or that Mr Jones was unaware of the problem sooner.

5.117 An absence of a specific term of reference in relation to children resident within NHS units was unsurprising given the preceding events leading to the establishment of the Tribunal. However, I have considered whether the framing of the terms of reference, or the Tribunal's decision not to reach detailed conclusions regarding Gwynfa, or else to question the integrity of the evidence placed before it, could support any suggestion of a 'cover up'. I conclude it does not. The terms of reference were drafted in ignorance of what later transpired. The reaction of the Welsh Office in briefing Counsel in respect of the Gwynfa allegations in the terms it did reveals no attempt to conceal this aspect. The graphic reaction of the Secretary of State for Wales to a briefing concerning the handling of Counsel's advice revealed his wish for transparency. The Tribunal was able to consider the regime in Gwynfa and made generic findings of abuse.

5.118 I am not in a position to adjudicate upon the degree and reason why misinformation was promulgated by the Clwyd Health Authority or the Trust concerning the Gwynfa allegations. It would be difficult to do so at this distance of time in the course of a non adversarial procedure such as this Review. It is at least probable that if the concerns referred to above had been explicitly drawn to the Tribunal's attention during the hearings, a decision would have been made to require the attendance

9 See paragraphs 20.15 and 20.30 of the Tribunal Report

to give evidence of one or more member of Clwyd Health Authority or the Trust. The reality is that too much water has passed under the bridge to contemplate any meaningful inquiry into managerial inadequacy in the relevant period and would likely have little influence in present day practice. In my view, the appropriate investigation will be whether there is evidence of a previous conspiracy to pervert the course of justice, and, if so, whether criminal prosecution is merited. This is more a matter for a police investigation.

- 5.119 The Tribunal showed no reticence in investigating and reporting upon the role of Lord Kenyon and his influence upon the criminal justice system in relation to Gary Cooke, or as Grand Master of a masonic lodge seeking to influence the Chief Constable of North Wales who had spoken out against police officers being Freemasons, or to advance the career of (see Chapter 7). In those circumstances, the Tribunal was unlikely to deviate from investigation of any suggested influence he may have brought to bear to subdue Gwynfa complaints, by virtue of his connection with the Clwyd Area Health Authority and the Clwyd Family Practitioners Committee.
- 5.120 The refusal of the Tribunal to investigate mental health issues in general is understandable. The decision not to seek expert advice on the interpretation of medical notes was within the compass of reasonable Tribunal management decisions when seen in the light of the abundance of express evidence of abuse. The exploration of the possible warning signs of abuse, as exhibited by disturbed behaviour, was arguably encompassed by the terms of reference, but would have meant a significant incursion into the hearings' timetable, and possibly at the expense of other topics. Time was clearly at a premium, as indicated in Chapter 6 herein. In the circumstances of the other factual topics that clearly called for detailed inquiry, and bearing in mind the comparative paucity of any factual evidential basis upon which to embark upon an investigation of mental health issues with care workers and other witnesses, I am satisfied that the Tribunal's decision not to do so cannot be deemed unreasonable. There is certainly no basis to presume that this decision meant that abusers were thereby concealed from detection.
- 5.121 The Tribunal's consistent and demonstrated application of a "filter of relevance" for the evidence it received in relation to the terms of reference indicated its flexibility and was entirely reasonable. I find no basis in any of the Tribunal working papers or daily transcripts of proceedings for suggesting that a rigid, restrictive or formulaic approach was adopted for the benefit of any individual, establishment or organisation.
- 5.122 Having analysed the papers, I agree with the Chairman's assessment of the breadth of the Tribunal's terms of reference. The length and detail of the Tribunal Report substantiates those reflections. I have no doubt that to have increased the scope of the Tribunal in any respect would have been to render it unworkable and unfit for purpose. That is, due process must necessarily be observed and sufficient evidence must be considered to elicit meaningful findings. Those findings must be capable of being reported within a reasonable time span of the events in question to render them of more than historical significance. In order to do so, some limit must be prescribed and focus maintained.

Chapter 6: Procedure Adopted by the Tribunal in the course of the Inquiry

Introduction

- 6.1 The Tribunal was responsible for devising its own procedure. The 'Note by the Chairman of the Tribunal on its procedures'¹ justifies reading in full and is appended to this Report (at Appendix 3) for ease of reference. The procedure appears comprehensive and designed to facilitate a thorough investigation of the issues before the Tribunal. However, its implementation has been called into question generally for the reasons why this Review was established, that is, an accusation that the Tribunal was prevented from or failed to investigate and/or discover and/or report upon the extent of, and reason for, the abuse of children in care in North Wales. More specifically, Contributors to this Review have complained about, or criticised, aspects of the Tribunal procedure which they believe discouraged or prevented witnesses from giving evidence and which consequently, they say, undermined the validity of its reported conclusions.
- 6.2 Therefore, it was essential for this Review to examine the procedure adopted by the Tribunal and its implementation in some detail. This chapter reports upon the various stages of the procedure in terms of the effectiveness of the procedure in identifying and accessing the evidence, and the diligence and consistency with which it was applied, focusing particularly upon those areas which have drawn criticism or adverse comment.

Part 1: Documents

- 6.3 There is no doubt that the Tribunal could not begin to comprehend the scale of its task, or begin to commence its investigations, or conduct its hearings in any meaningful sense, without reference to all existing likely relevant documents. The possible sources were wide ranging. The extent of their availability unknown. Some documents, such as police statements, would obviously contain allegations of abuse. Those which did not, for example social services records, may otherwise corroborate or undermine significant parts of factual accounts. Others would assist in the identification of potential witnesses to give evidence relevant to the terms of reference. The weight to be given to the substance of any document would be able to be determined by its provenance and detail. The Tribunal had obviously anticipated that, in the circumstances, "any documentary or other supporting evidence of incidents to which [the complainants] referred was likely to be difficult to trace and patchy at best."² The Tribunal also formed the view that, particularly in relation to Clwyd county council, documents which did exist may be unreliable. Incidents were found to have been recorded "so that an uninformed reader would not surmise that an alleged assault had occurred" and, on some occasions, "would be distorted in order to nullify it."³

1 See Appendix 4 of the Tribunal Report

2 See paragraph 6.01. of the Tribunal Report

3 See paragraphs 30.15, 30.31 and 30.32 of the Tribunal Report

- 6.4 However, documents which might reasonably be expected to exist, but which were notably absent, inevitably raise questions now, as they could have been expected to have done then, as to the reason for their loss or destruction.
- 6.5 The nature and extent of the documentation obtained by the Tribunal is indicated in a letter from the Chairman in response to information requested by Liverpool John Moore's University on 29 April 1998. He indicated that "all potential Tribunal Witnesses made Tribunal Statements prior to appearing to give evidence before the Tribunal ... Over 12,000 documents have been scanned into the Tribunal data base. Identification of the various sources of the documents drawn together ... Clwyd County Council, Gwynedd County Council, Gwynedd and Clwyd NHS, North Wales Police, Welsh Office; Private & Voluntary Children's Homes; Various outside Counties children's files; Crown Prosecution Service; Court records; Boys & Girls Welfare Society; Care Concern; Local and National media coverage; Independent Inquiries e.g. Jillings, Insurers ... the figures may not be exact ..."
- 6.6 However, the letter did not refer to those documents sought by the Tribunal, but no longer available, although there is reference to missing documentation at various parts of the Tribunal Report. This part of the chapter reports upon the Review's examination of the steps taken by the Tribunal to obtain documents, the difficulties encountered, and the reasons why, if known, documents were no longer available or not made available to the Tribunal.

Issues relating to the availability and integrity of documents sourced by the Tribunal

The successor authorities

- 6.7 A written summary of a meeting between Mr Andrew Loveridge, (Director of Legal and Administration of Flintshire county council and assigned lead for the successor authorities in relation to the Tribunal) and Mr David Lambert, on 9 July 1996 records that "successor authorities to Clywd [sic] know the whereabouts of virtually all their files. Mostly they are held centrally in Flintshire. Copies are with the Insurer's solicitors. Further to this all files are summarised and held on a database. Also available are the assessments which range from crude methods of linkage through to more sophisticated ones of plotting the movement of those convicted ... In relation to Gwynedd, it is believed that the files were disaggregated between the three successor authorities with the exception to those involved in current claims - these were despatched wholesale to the Insurer's solicitors. Further to this most of the files in Gwynedd are believed to be in Welsh and unorganised."
- 6.8 This appeared to accord with an earlier report of Miss Nicola Davies QC's instructing solicitor that, "Gwynedd's documents which were stored in two attics and were not easily accessible and which are poorly identified ..." whilst Miss Nicola Davies QC in 1995 had described Clwyd's documents as "readily accessible and ... meticulously identified, indexed and stored, and cross-referenced on a computer ... All the documents which were made available to the police ... have recently been returned by them ..."

- 6.9 However, on 8 October 1996, the Tribunal Chief Administrative Officer informed Welsh Office officials of the difficulty “acquiring the files which have since the re-organisation of Local Authorities been distributed to several locations and have not yet been catalogued or filed ...” As it transpired, the problem did not wholly relate to re-organisation. On 13 November 1997, it was recorded that the audit of children’s social service files of Gwynedd and Clwyd county councils by the independent social worker, who had been commissioned by the Tribunal for this purpose, was taking time as the logs were in disorder lacking information or clarity as to what they referred to.
- 6.10 By fax dated 22 October 1996, Mr Loveridge informed the Solicitor to the Tribunal that he had very grave doubts as to whether the majority of legal files (that is, those referring to cases taken to court), certainly for Clwyd, had been retained and those which had been located had very little in them, apart from duplicates of the children’s files and the advocate’s note when attending court to obtain revocation of the Care Order. He went on to suggest “the logistical implications entailed in continuing the trawl for legal files, which may prove fruitless, are tremendous and it may be, in view of the prioritisation attached to the other requests that this is something that Counsel may wish to reconsider.”
- 6.11 An initial indication had been given that there were approximately 12,000 local authority children’s files. It turned out that the number was significantly less. An explanation was sought by the Solicitor to the Tribunal. In response, Mr Loveridge wrote, “you obtained your own estimates from the Welsh Office and relied upon them ... the estimates we have been [sic] provided you with ... have always been just that, estimates. Caution was urged upon you as to the estimate of 12,000 in the first place ...”
- 6.12 Documentation was supplied piecemeal. On 11 November 1996, the Solicitor to the Tribunal wrote to Mr Loveridge, “on 7th November, Ms Griffiths gave to our team in Mold a file of case conference minutes relating to alleged abuse by Local Authority staff. This is a most useful document the existence of which we were previously unaware ... I would also ask you to clarify the position of the Successor Authorities in relation to the production of evidence: how is it that only on 7 November 1996 a collated and prepared file of case conference minutes comes to light, that it is produced informally to a member of our paralegal team rather than under cover of explanation between ourselves?” In answer it was said that the file had been returned from Miss Nicola Davies QC and its “usefulness was not immediately appreciated and it was therefore filed.”
- 6.13 On 1 July 1997, the Solicitor to the Tribunal informed Counsel to the Tribunal that he intended to speak to Mr Loveridge about the reasons why boxes of material continued to be produced in Mold in response to applications for discovery. He indicated that he had asked how much more material was yet to be passed to the Tribunal. He noted that the boxes that had been produced from the archives were in response to what Ms Sian Griffiths called the “modern records list”. This was said to list all files sent down to archives by the council departments.

- 6.14 On 11 September 1997, the Solicitor to the Tribunal wrote to Mr Loveridge again, “as you may be aware [a local authority employee] visited the Tribunal office at Mold earlier today to inspect various documents in connection with Phase II of the Inquiry. During the course of his visit [he] was able to identify a number of policy and management files which were not available for inspection. [He] informed the Tribunal team that he had recently seen some of these files in the Social Services offices at Wrexham, and I understand that it has now been confirmed that these files are still at Wrexham. It is of some concern to the Tribunal team that the files in question have not hitherto been made available to it ...”
- 6.15 On 18 September 1997, a fax was sent from the Director of Personal Services at Wrexham County Borough to Mr Loveridge indicating that, as a result of a Tribunal inquiry on 11 September 1997, “we conducted a search of Grosvenor Road offices and discovered a substantial number of files in a locked filing cabinet. They should have been submitted to the Joint Successor’s Inquiry Office at the time of the original request. We are currently investigating how they were missed in our initial trawl ... I can only apologise ... I am sure you will recognise the difficulties that we face in identifying every single file that should be submitted.”
- 6.16 There is no indication of difficulties in obtaining the relevant files of children in care of local authorities outside North Wales.

The Jillings Panel material

- 6.17 On 15 July 1996, Mr Lambert informed Mr Loveridge that “Mr Jillings has been in contact with me and he would prefer that his documentation is deposited directly with the Secretariat with access for the Police to consider the documents. For my part, I am very willing to arrange for this and to meet his request that help be given by the Secretariat staff to collate the documents before they are passed to the Secretariat.”
- 6.18 However, it is not clear that all statements or records of interviews of those witnesses who attended before the Jillings Panel were released. In a letter dated 18 November 1996, from a firm of solicitors to the Solicitor to the Tribunal regarding the request for “...consent from specified clients for the release of statements given to the Jillings Panel” it was said that, “ ...[one client] does agree to this ... [another] is not prepared to give his consent ...”
- 6.19 On 12 November 1996, the Solicitor to the Tribunal wrote to Mr Loveridge indicating that Counsel to the Tribunal had annotated a computer printout of the documents provided to Miss Nicola Davies QC. He went on to refer to the fact that the missing documents may be in the Jillings material which were still in the process of inspection, but requested copies of the documents to be provided nonetheless.

Bryn Alyn Community and other private residential homes

- 6.20 Children in the care of local authorities would also be housed in private institutions. The Tribunal therefore sought relevant files and documentation from these establishments.

Bryn Alyn Community: The fire at Pickfords

- 6.21 On 25 October 1996, a fire occurred in Pickford's storage depot in Chester, which destroyed many Bryn Alyn Community files that had been stored there. There is no evidence I have seen to suggest a targeted arsonist attack. A note of a telephone call made by the company secretary of the Bryn Alyn Community to the Tribunal that day refers to "the second set of files i.e. those not looked at by the police ... not the current files, were stored in Pickfords which burnt down today ... Will be gaps as no way of knowing what was lost in fire." The note continues that later that day "Sian [Griffiths] rang. Was sorting out Bryn Alyn files and conveniently (for Bryn Alyn) there are over 80 files of the key players missing ..." She recorded that of the "victims who alleged abuse by John Allen in court, 3 are available, all others missing; From the children mentioned in passing, 9 files available and 51 missing; In relation to staff files, majority missing, Inquiry into Ken Taylor [presumed to be referring to Kenneth Taylor, Child Care Officer with the Bryn Alyn Community] and other abusers from 1991, 34 staff files connected with that inquiry missing."
- 6.22 A note to Counsel to the Tribunal from Ms Griffiths dated 30 October 1996 indicates "following our telephone conversation regarding Bryn Alyn files I can confirm that I have cross referenced the list of files which we have received from Bryn Alyn against (a) the staff and children who were mentioned ... during the course of the John Allen Trial ... (b) other staff who have worked for Bryn Alyn and who have also been employed by Clwyd ... (c) other children who have been placed at Bryn Alyn and also in Clwyd and/or Gwynedd Homes ... (d) John Allens offences relate to the period 1972 – 1985, there are no log books or other documents prior to 1988 ... As you will see from the lists there is a substantial amount of documentation which is missing. During the course of John Allens Trial it was mentioned that he had a number of files at his house relating to Bryn Alyn and in particular the files of [three former residents] which he took to the Office in London. Greg Treverton Jones currently has all the documents relating to John Allen - the file contains a variety of documents ..." On 4 November 1996, Ms Griffiths was reported as "... currently holding all logs for Bryn Alyn Homes [from] 1988 to date (others burnt); and all child complaint files and the majority of staff files for Tanllwyfan (all log books destroyed). [Ms Griffiths] reported that after Care Concern shut down all homes [were] sold off but log books should be arriving from other homes in due course."
- 6.23 On 4 November 1996, the Bryn Alyn Community company secretary wrote to the Solicitor to the Tribunal "enclosing the list of files which I have available for inspection ... The ones that are still intact have come from the residential units which are still operational ... You will note that virtually no files exist from the list of discharges for young people who were resident at Gatewen Hall, this is because the Unit had been closed for some length of time and therefore all the files were in storage." On 11 November 1996, he sent to the Tribunal a list of staff files, but indicated that, "Unfortunately the only files available for inspection are [two boxes] plus of course all current employees." On 18 December 1996, he made a declaration that "the attached list of files, which were held in storage at Pickfords in Hoole Chester were, to the best of our knowledge, completely destroyed by fire on the 25 October 1996." The lists attached appear to me to relate to staff files in the light of the P45 and National Insurance numbers provided.

6.24 Other Bryn Alyn Community documentation came to light subsequently. A note from the Solicitor to the Tribunal to Counsel to the Tribunal dated 4 March 1997 records "I have spoken to ... solicitors to the Community ... [he] told me that he had taken into custody some 15 boxes of paper which consist of log books, personnel files and children's files ... to ensure that the papers do not find their way into the custody of the Insolvency Practitioners ... I then spoke to [the company secretary of the Bryn Alyn Community] ... In respect of the documentation, [he] said that the material which he had placed with [the solicitors] consist of all the material which he had kept aside for our purposes. He told me that there was no other relevant material in his hands ... Following my discussion with [Counsel to the Tribunal], I spoke again to [the solicitor] and asked if we could take custody of the boxes of papers ... He thought that this would be very sensible ... will take urgent instructions and revert."

Clwyd Hall

6.25 In a file marked "Old Welsh Office Legal Documents" there is an undated memorandum reading, "Clwyd Hall for Child Welfare. Privately Run & Owned Independent School ... closed on 27th July 1984 ... Only 1 file on Clwyd Hall. [Office of Her Majesty's Chief Inspector] confirmed via telephone that they have no files on this establishment - they've all been destroyed." However, the absence of documentation did not preclude police investigation or the fact that abuse had occurred. On 20 March 1997, a Welsh Office official informed Mr Lambert "about Clwyd Hall School ... The Police had fresh allegations of abuse of pupils at the school, which they were investigating outside the North Wales Tribunal ... The Police have now re-arrested a former member of staff who has confessed to some offences ..."

Other private establishments

6.26 There is nothing in the documents to suggest that other private establishments, which housed or had housed children in the care of local authorities, were unable to produce their records.

The Police

6.27 The NWP indicated early on that they were willing to disclose all documents and materials relevant to complaints "where they are legally able to do so". Save as indicated in paragraph 6.31 and 7.17, all prospective relevant statements made to the police were apparently made available to the Tribunal. In the case of other police documents, agreement was reached between Counsel to the Tribunal and Counsel for the NWP that some documents could be copied by the other parties, and other documents inspected but not copied.

6.28 However, an attendance note dated 8 July 1996 recorded that the NWP Solicitor was aware that some items were no longer in possession of the police. She said that the police did have a list of all files removed from social services departments of relevant councils signed on their return and an assurance had been obtained that they would be retained pending any judicial inquiry that may be announced. However, the

police did not have much documentary evidence covering the period 1974 to 1989. The force's destruction policy imposed a three year limit on most files, a six year destruction policy on files where civil proceedings had been indicated and ten year destruction policy on police officer note books. Some categories of documents, such as working copies of taped interviews, were destroyed after twelve months.

- 6.29 That which was known to be available was discussed in a meeting held between Mr Lambert, the NWP Solicitor and investigating officers on 19 July 1996. The summary prepared indicated that "1. The Police statements from the 1990's investigation are available ... 2. There is an issue of claims of PII on many of the Police files - such as informants documents and legal advice ... will need to be presented to the Judge for his consideration. 3. The PCA will need to be approached for files ... 6. The extent of the investigation into each of the suicides would be limited to the Sudden Death File prepared by the Police for and held by, the Coroner ... [The police] have a substantial library of press cuttings and videos of the TV coverage in relation to the 1990's Investigation ... The Police are willing to provide the Judge with a list of suspects from previous inquiries to help him prepare for the possible categories of accused."
- 6.30 On 17 September 1996, DSU Peter Ackerley wrote to the Solicitor to the Tribunal, confirming that, "In addition to the documentation already supplied to you the following is a summary in respect of the situation concerning further material that has been requested;

I): Request for two copies of all material held with the Major Incident Room system concerning the Gwynedd/Clwyd Major Police Investigation.

All other documents; messages; actions; officer's reports and telex messages have been researched, extracted, compiled and copied ... we are currently receiving legal advice about P.I.I.

II): Request for a list of files in the Ownership/Possession of

Clwyd County Council
Gwynedd County Council
Privately maintained Children's Homes

viewed by police during the course of the major investigation. The list has been compiled ... awaiting legal advice ...

III): Request to produce copies of all files in respect of an allegation or complaint of abuse made either by children in care, children formerly in care or any other person since the 1st January 1974. The North Wales Police destruction policy meant that we were unable to fully comply with the request. However, [the NWP Solicitor] has written to you to set out the position and indicate other avenues which you may wish to explore. In respect of the period outside our destruction policy there are two avenues through which we may be able to comply with the request.

Firstly our Crime Recording System has been researched ... second avenue ... detailed manual search of some 12,000 Police reports ... Once any such allegations/complaints are identified then we will seek to marry up the reports with any other relevant documents ..."

- 6.31 During the course of the Tribunal hearings, Counsel to the Tribunal were made aware of a criminal investigation into allegations of indecent assault made by a female adult family acquaintance against _____ Subsequently, they were informed that no proceedings were to be taken against him. A request for the police/CPS file was made and refused as irrelevant to the Tribunal's terms of reference. This is discussed further in Chapter 7.

Medical records

- 6.32 There is nothing in the documentation to indicate that the Tribunal, Welsh Office or any other government department had notified all relevant institutions or Community Health Trusts of the necessity to retain records that would otherwise be destroyed in line with routine destruction policies for the purpose of the Tribunal or other review.
- 6.33 In a note to Counsel dated 11 November 1996, a member of the Tribunal's legal team reported, "There is a slight problem in relation to [Gwynfa] staff files. Namely, that they are destroyed after six years, so few exist. [The Trust] have provided a list as far as they can but are unsure as to its accuracy or completeness."
- 6.34 Some Gwynfa records were obviously made available; however, as indicated in paragraphs 6.77 to 6.79 below, it appears that some of the files that were provided were subsequently misplaced by the Tribunal. Unfortunately, the number and contents are difficult to discern.
- 6.35 As regards other health records, a letter dated 10 January 1997 from the Clinical Director of Gwynedd Community Health Trust to the Solicitor to the Tribunal, asked whether the Tribunal "needs any health records kept by the Community Child Health Directorate in the old county of Gwynedd. These records are destroyed routinely when the person reaches the age of 26 years. If you wish any or all of these records to be retained ... let me know soon - otherwise the records will be lost."
- 6.36 An email dated 8 December 1997 between Welsh Office officials indicates that other records may have been destroyed. It reads "my secretary has tried to obtain files on Clwyd & Child and Adolescent Psychiatric services and although your department had a record of the numbers, she was told they no longer existed." A response on the same day indicates, "I can confirm that according to our records the files quoted below have been destroyed. I can also confirm that at no time prior to the commencement of the Tribunal was any adict [sic] issued on which subject files should be retained. In fact during the reviewing exercise I and my colleagues have been identifying files and forwarding them to the relevant section."

- 6.37 It follows that the Tribunal would not have accessed all medical records, whether by reason of destruction policies or otherwise.

Welsh Office

- 6.38 The Welsh Office provided the Tribunal with policy documents, statutes and statutory instruments. It appears from a response made by SSIW on 14 February 1995 to a question from the Jillings Panel about inspections, that many files containing old regional planning information had been destroyed.
- 6.39 The Record Management Systems presently operated by government departments appears to be based on the "Grigg system" of retention and disposal, which entails the review of documents after a five year period for identification of those which may be destroyed immediately or after an additional designated period without further review, or after an additional designated period with further review, and those which should be reviewed after 25 years. The National Archives are reputed to operate a "model retention schedule". I am not aware which system was in force during the relevant time frame of 1974 to 1996, but would expect some such policy to have been operated. An efficient system would require a file listing dates of destruction of identified documents as a record of review. I have not discovered any within the Tribunal papers.
- 6.40 In an agenda titled, "Fourth meeting of North Wales Working Group" on 18 March 1997, reference was made to submission of other documents to the Tribunal. The note of the meeting records that insofar as the papers relating to Mrs Alison Taylor were concerned that internal minutes relating to the answering of Parliamentary Questions need not be included and neither need a letter to the AG. As to documents originating from third parties, these parties were to be alerted to the imminent disclosure of their documents. In the case of MPs, it was intended that the Private Office should notify them. The note records that "it was agreed that the Home Office should see all the Department's evidence before it was finally submitted, particularly since it retains responsibility for vetting."
- 6.41 I note that Mrs Taylor appears to have submitted to the Tribunal copies of all documents that she had written, including letters to ministers and others and her own reports. These would have included those which had not been produced by the Welsh Office.

Destruction policies other than indicated above

- 6.42 One of the witnesses appearing before the Tribunal, _____ referred to photographs seized by the police, which he said revealed sexual activity between males, some who could be clearly identified as establishment figures, and young males, some obviously below the age of consent and whom he identified as being in care, including himself. He believed these photographs had been destroyed by the police to conceal evidence and protect the abusers. He stated that the majority of the photographs were not deployed during a criminal trial and depicted the illegal sexual activity of two police officers, _____ and Peter Sharman.

- 6.43 There was evidence before the Tribunal that photographs had been secreted and were located with the assistance of _____ and removed by police from the premises in which Thomas Kenyon, son of Lord Kenyon, resided. The Tribunal cross examined a police officer about the photographs, who acknowledged their existence at the time and that the contents of the photographs showed homosexual activity, but denied that the faces of participants, other than _____ were revealed.
- 6.44 In his interview with me, Mr Ackerley doubted the deliberate destruction of materials other than in accordance with force policy or as a result of court order at the conclusion of criminal trial if the imagery was classed as pornographic. This process is illustrated in a photocopied manuscript memorandum dated 18 November 1991 contained within the Tribunal papers, sent from a Detective Constable in Llandudno to the Chief Superintendent, indicating that a video cassette tape seized on 15 November 1990 from the Ambulance Station, Old Colwyn and containing "various scenes of child pornography" was housed in the Superintendent's safe at Colwyn Bay Police Station. David Hughes (see paragraphs 7.11 and 8.84) and another had been convicted of offences in relation to the tape and a destruction order had been made by Flintshire Magistrates Court. David Hughes' appeal against sentence had been rejected and the officer therefore requested that the tape should "now be destroyed". The request was approved and the document annotated "Destroyed by burning" is signed and date stamped 4 December 1991.

Deliberate withholding of documents from the Tribunal

Former auditor of Flintshire county council's allegations

- 6.45 In response to my call for information relevant to my Review, I was contacted by Mr Andrew Sutton, a former auditor at Flintshire county council and subsequently met with him on 6 February 2013.
- 6.46 Mr Sutton explained that one of the reasons he had left his employment at Flintshire county council was as a result of difficulties created, he perceived, by his repeated yet frustrated call for explanations of payments made to Ms Griffiths sanctioned by Mr Loveridge. Mr Sutton's principal concern was that information had been deliberately withheld from the Tribunal by Ms Griffiths.
- 6.47 His consequent claim for constructive unfair dismissal succeeded and was upheld on appeal. He consented to the disclosure to the Review of all Employment Tribunal papers relating to his case. They were considerable in number.
- 6.48 It is evident from these papers that Ms Griffiths was claiming a significant amount of money in overtime in relation to her role assisting the Tribunal. The documents record that Mr Sutton, as auditor, was asked by the Director of Finance for Flintshire county council to investigate and obtain documents to substantiate the payments. The Tribunal's accountant, Mr Roger Parry, also sought a detailed breakdown of the overtime claimed. Apparently, despite repeated requests from both Mr Sutton and Mr Parry, Mr Loveridge did not provide the information requested. It seems that

ultimately the overtime was paid on the basis of assurances given by the Director of Finance to Mr Parry to the effect that Mr Loveridge had justified to her the level of overtime worked and that the claims were correct.

6.49 During his interview with me, [redacted] alleged that he had received “threats” from police officers during his audit of these payments. He referred to [redacted] who was [redacted] who told him to “back off” and “Beware of the Brotherhood”, which he believed to refer to masonic influences. In a letter written by [redacted] in 2001, found within the papers received from his solicitors, it appears that at that time he considered these warnings to have been said in a “supporting manner” and in respect of a number of investigations that he was conducting into the council at that time. Apparently, his view had changed by the time of the interview with me and he appeared to regard them as sinister.

6.50 Mr Sutton thought that the overtime payments may have been made to Ms Griffiths because she had threatened to expose the deliberate withholding of documents from the Tribunal. This Review has been provided with a copy of an audit report by Audit Services of Flintshire county council dated June 2002, which found no documentary evidence of hours worked and recommended more stringent controls of overtime. However, the report made clear that there was no evidence that overtime had not been worked.

6.51 The statement of [redacted] and [redacted] a witness to the Employment Tribunal convened to hear Mr Sutton’s claim, refers to her conversation with Mr Howard Marshall, who was acting as Ms Griffiths’ union representative. Part of the statement recording the detail of the conversation is tippexed out and is replaced by a manuscript sentence. The relevant extract with the handwritten amendment reads:

“On this particular occasion, Howard Marshall told me that he had just spent the morning with Sian Griffiths in his office and that she was very angry and said that if she did not get the settlement she wanted, she would start to make allegations about what she and [redacted] had done in the past in the course of work.”

6.52 The original text still visible beneath the tippex reads:

“On this particular occasion, Howard Marshall told me that he had just spent the morning with Sian Griffiths in his office and that she had been very angry and said that if she did not get the settlement she wanted, she would start to tell people how much information she had assisted [redacted] in holding back from the Waterhouse Tribunal.”

6.53 I wrote to [redacted] on 21 May 2015 alerting her that I intended to refer to her witness statement provided for the purpose of Employment Tribunal proceedings, and specifically in relation to the amended paragraph as indicated above. [redacted] sought a meeting with me in response to that letter. I interviewed her on 22 June 2015.

- 6.54 told me that she was a staff development and training officer for Flintshire county council and had been a union official at the relevant time. She said that she was not responsible for the amendments to her statement. She pointed out that she had not signed the amendment as acknowledgment of the change and that the handwriting which overlaid the tippex was not hers. The author of the manuscript was unknown to her. She said that she had not been aware prior to our meeting that such a change had been made. She confirmed the accuracy of the original wording in the statement and went on to re-iterate the fear that Ms Griffiths had withheld materials from the Tribunal. She was aware that Mr Christopher Clode, a former Child Services Manager of Flintshire county council (see paragraph 6.59) had subsequently contacted the Tribunal to this effect, but had been told that it was “too late”.
- 6.55 Consequently, and with the support of the local authority’s pensions officer who, despite an independent local government pension arbitration service upholding Ms Griffith’s claim, thought it remarkable that Ms Griffiths was “earning more than the Chief Executive” over the period during which the Tribunal was sitting, alerted the police to her fears that evidence had been suppressed. had visited subsequently and later told her that Mr Marshall had denied her account. She said that the police officer had not taken notes during his meeting with her or taken possession of the documents photocopied by the local authority’s pensions officer, which related to Ms Griffith’s overtime claims. To her knowledge, the matter was taken no further.
- 6.56 told me that she believed she had been under the surveillance of undercover police officers around this time, although she could not be sure whether it was before or after her conversation with Mr Marshall. She believed her telephone had been tapped. She knew that had received threats. She had suffered work related stress and had moved home.
- 6.57 also indicated that she had been told, four years ago, of a former local authority official destroying documents, but said that it was difficult to “tease out what was gossip and speculation”.
- 6.58 I note that Mr Loveridge did not give evidence before the Tribunal, although he was the recipient of a Salmon letter. A “Note to advocates” distributed during the course of the hearings informed them that “Mr Loveridge is a Salmon Letter recipient. The Tribunal has received a [medical] report indicating it would not be appropriate for him to attend to give oral evidence. For the moment, it is proposed that Mr Loveridge’s statement will be taken as read ... The Tribunal will consider applications by parties for leave to administer interrogatories ...” The Salmon letter concerned his advice to Clwyd county council as County Solicitor in relation to various external and internal inquiry reports.
- 6.59 In May 1999, after the conclusion of the Tribunal hearings, Mr Clode, who gave evidence to the Tribunal on ‘Whistleblowers Procedures’, left an answer phone telephone message at the Tribunal offices suggesting that information had been

withheld from the Tribunal. A member of the Tribunal Secretariat returned his call and the note of the conversation reads, "the information he had concerned Mrs Sian Griffiths. During the Hearing Mrs Griffiths managed the Successor Authorities Office. Prior to that she had managed the Bryn Estyn Office for Clwyd County Council. Before that she had been Senior Staff Officer and had been involved in appointing some of the staff who had looked after the children. [She] is in dispute with Flintshire County Council ... has been on sick leave since the end of the Hearing and is negotiating retirement on the ground of sickness. At present she is in dispute about the settlement figure and has said that (Mr Clode's words) 'if the Council do not settle on her terms she will go public about information that Andrew Loveridge and Flintshire County Council asked her to keep from the Tribunal'. Mr Clode said that the source of this information was ... who had heard the story from Mr Howard Marshall, a full-time official with the Union who was involved with the negotiations."

- 6.60 The Clerk to the Tribunal discussed the matter with Mr Gerard Elias QC and Mr Ernest Ryder. A note of her conversation with each reveals that Mr Gerard Elias QC did not consider the matter could be taken further in light of the multiple hearsay involved and that he could not think of any information which could have been concealed. Mr Ryder was only concerned about information that would have come in at the end of the Tribunal [that is in reference to issues in relation to general child care policy] by which time she had little public part to play. The Chairman was informed. In his view, it would be difficult to take further action on the basis of the information, although it left the Tribunal in a very difficult position.
- 6.61 I wrote to Mr Gerard Elias QC about this issue on 15 May 2015 indicating that I was minded to express surprise that this matter had not been referred to in the Tribunal Report, or referred to the NWP. He responded that he was no longer retained as Counsel to the Tribunal in May 1999, but had been contacted from time to time "during the report writing stage ... to help or comment on matters." He believed he was asked by the Clerk to the Tribunal for his informal view over the telephone. He does not recall seeing any of the correspondence at the time, but was appraised of its "general import". He felt that the allegation was one of "hearsay piled on hearsay". He said it would not be his decision whether to refer the matter to the police or not for investigation into the possibility of what may have been a conspiracy to pervert the course of justice.
- 6.62 I wrote to Lord Justice Ryder on the same day and in similar terms. Lord Justice Ryder responded confirming that he had been approached by the Clerk to the Tribunal for his views. He too indicated that at that time he was no longer retained as Counsel to the Tribunal and did not formally advise the Tribunal. However, he thought it reasonable that he should have been asked for his recollection of matters during the course of his retainer, and he considered this the real object of the exercise.
- 6.63 Lord Justice Ryder confirmed the information recorded in the note of the telephone conversation to the effect that he could not identify anything which he had suspected of being withheld at the time of his retainer, "the Tribunal had taken

possession of computer and hard copy indices of the materials that formed part of the Flintshire record and the Jillings Inquiry record. Those indices were checked against the original documents and computer records that the Tribunal was given and no material was found to be missing." He had advised the Clerk to the Tribunal that if the information was to be considered by the Tribunal, it would be "prudent" to ask the informants whether any were prepared to discuss matters "on the record".

- 6.64 Mr Clode was contacted on behalf of the Tribunal and informed on 19 May 1999 that it could only act if it was "in receipt of information which could have been called as evidence by the Tribunal". Mr Clode indicated that he would pass on any further information he received. I have found nothing further on this point.
- 6.65 One contributor to this Review, Mr Mark Isherwood AM, has claimed that the Chairman told him in a private conversation, during a National Assembly for Wales event, that he was aware of the allegations regarding Ms Griffiths and believed that documentation/information had been withheld from the Tribunal. The same contributor reported that a member of FACT informed him that key information had not been submitted to the Tribunal, implicating Ms Griffiths to be responsible for this omission. Another, a victim of abuse, suggests that parts of the social services files supplied to the Tribunal were missing or altered.
- 6.66 Several contributors, apparently unaware of this issue, question the Tribunal's reliance placed upon the good faith of those who had been employed by the former county councils, despite the potential for a conflict of interest. One, Mr Glyn Alban Roberts, said that he had contacted the Chief Executive of Gwynedd county council in the lead up to the Tribunal and was assured that the information he gave would be forwarded to the Tribunal, but since he was not contacted thinks this may not have happened.

Television interview

- 6.67 Ms Griffiths appeared in a television programme broadcast on 8 December 2012 titled 'The Past on Trial'. I viewed the programme from a DVD recording. In the television interview she herself implied that there was information available which was not taken into account sufficiently or at all by the Tribunal, and that there were people 'walking free', including establishment figures. She suggested that non-establishment figures, named by a convicted paedophile, Gary Cooke, as being involved in the abuse of children, were required to attend at the Tribunal whilst establishment figures named by him were not. She questioned the destruction of Polaroid photographs, which she understood to be by order of the Crown Court, which apparently showed the presence of members of a paedophile ring and which would lead to their identification (see also paragraph 6.42).
- 6.68 As will be apparent from the contents of Chapter 9, her recorded comments about establishment figures named by Gary Cooke were inaccurate, and her insinuation about the Polaroid photographs probably misinformed. That is, Gary Cooke did not name public figures other than Lord Kenyon and his son, Thomas, when giving evidence before the Tribunal, both of whom were dead. There was evidence before

the Tribunal, and I take judicial notice of the fact, that it is normal practice for a destruction order to be made of offensive/pornographic material at the conclusion of trial. The Polaroid photographs are referred to in the Tribunal Report.⁴

- 6.69 I requested an interview with Ms Griffiths and met with her in Chester on 24 April 2013. Prior to interview, I wrote to Ms Griffiths indicating in general terms the allegations that had been made and which I wanted to discuss, namely that she may have been involved in withholding relevant documents from the Tribunal, and that she may have received a financial benefit for doing so.
- 6.70 She was informed of her right to be accompanied to the interview, but chose to attend alone. Ms Griffiths was distressed at one point during the interview, incongruent to the subject being discussed at the time, but answered all questions asked of her.
- 6.71 Ms Griffiths denied that she had withheld Tribunal materials for gain or otherwise. When reminded of her reference to Tribunal documents during the television interview, she conceded that she had kept possession of a “handful” of files, which contained duplicate documents concerning the paedophile ring; she had not done so intentionally but “went off sick” and had not returned to County Hall since. In particular, “there were four, there were five folders that were the paedophile ring which were in my house which the police have now had back.”
- 6.72 She claimed that she had been deliberately positioned and filmed in front of a shelf “covered in folders” as she read from Tribunal documents, and sought to distance herself from the television journalist’s commentary broadcast at the time that “she was the administrative gatekeeper who kept everything and showed me only a fraction of it ...” She insisted that the numerous files shown in her home during the television interview related to the Mold Rugby Club, of which she was Secretary.
- 6.73 During my interview with her, Ms Griffiths specifically and repeatedly denied any knowledge or possession of information relating to any establishment figure, which was not produced for evaluation before the Tribunal. I am informed that police officers attended at her address on 5 December 2012, removed the files and returned the original documents to Flintshire county council. This Review has been provided with a schedule of the documents she had retained and I can confirm that the files appeared to be duplicates of other materials seen and which had been available to the Tribunal, some of them had been referred to in evidence.
- 6.74 I wrote to Ms Griffiths on 15 May 2015 seeking any further comments she wished to make in regard to my provisional views relating to the television interview. She initially responded by email dated 31 May 2015 indicating that she had not been able to respond by the deadline of 29 May 2015 as she wished to take legal advice. Thereafter, she sent two emails dated 1 and 3 June 2015, each denying the substance of my provisional criticisms of her and adding that she did not wish to comment further on the matter.

4 See paragraph 52.67 of the Tribunal Report

6.75 I record as pertinent to this issue that in a Tribunal file of Mr Gregory Treverton-Jones, there is an 'Analysis of Complaints of Abuse in Staff Files':

"1. For the purpose of earlier Inquiries, all of the Clwyd Local Authority staff files had been researched by Mrs. Sian Griffiths ... in order to discover whether there were any complaints of abuse contained in those files.

2. Having identified a large number of alleged abusers from the Police Inquiry witness statements, the present Inquiry team researched in detail all of those staff files in which complaints of abuse had been discovered by Mrs Griffiths. In addition, and in order to ensure that Mrs Griffiths' research had been thorough and comprehensive, the Inquiry team researched a further 100 staff files on a random basis. No evidence of child abuse, or complaints of abuse, were found in these files, indicating that Mrs Griffiths' research had indeed been both thorough and comprehensive ..."

Handling of documents by the Tribunal

6.76 One contributor to this Review commented adversely on the state of files returned to Bryn Estyn at the close of the Tribunal. She described them as in disarray and questioned whether they had been handled or stored appropriately with regard to their sensitive contents.

6.77 In a letter dated 2 September 1998, addressed to the Welsh Office, the Trust's Chief Executive complained that "there are still a number of Gwynfa files that appear to be missing. Because the Tribunal failed to catalogue the records as they originally agreed, we have no definitive list of the records which were taken into the Tribunal's custody. What we do have, is the list compiled from the Gwynfa Admissions Book and also a list of files which are known to be missing ... We were told by Tribunal staff at the time that the Gwynfa files were being split up and filed with the other documents relating to individuals ... the probability seems to me that the absent files have been sent back with other papers to either Local Authorities or to whoever else papers were returned to."

6.78 An email to the Clerk to the Tribunal from the Tribunal Assistant Administrative Officer dated 17 September 1998, headed 'Bryn Estyn Log Books' reports, "I met with Mrs Sian Griffiths last week and she was able to hand over a further four files from the missing files list for Gwynfa ... Sian can trace no record of having booked in or received files for [six others]. It is always possible that we never received these files. Gwynfa do not have a list of what was sent to the Mold Office. It is also possible that they remain in the Successor Authorities office but they have been misfiled."

6.79 On 26 November 1998, the Tribunal Assistant Administrative Officer wrote to the Trust's solicitors enclosing five of the missing files and reporting that, "According to your records there remain 9 files which your clients cannot trace on their premises and which they conclude were forwarded to the Tribunal offices and have not been returned ... We have run these names through the Successor Authorities computer

system and this has provided us with the following information: [in relation to four names] no record of a Gwynfa file; [in relation to a further four names] no file; [in relation to one name] file returned to Gwynfa on 27/5/98. We obviously cannot rule out human error and the possibility that a file was received and was not entered onto the computer but this seems unlikely as I understand that a secondary system was in operation by the Tribunal Office and that this corroborates, insofar as it is able, the Successor Authorities records ... [which] suggests that no Gwynfa files were used by the Inquiry. Files were not usually called for unless they were going to be used and this may therefore question whether they were ever received. However, our records do show that there are three pages in the PII material of [E] which would appear to have come from her Gwynfa file. The remaining six names, with the exception of [T], do not appear on the Schedule of Abuse for Gwynfa. In the absence of information to the contrary therefore we would conclude that with the possible exception of [E] the Tribunal would not have sought the production of files for these individuals ...”

- 6.80 I indicate in paragraph 6.198 that it is evident from notes between Counsel to the Tribunal and the Chairman that a staff file was lost during the course of the Tribunal relating to Keith Bould.

Part 2: Witnesses

- 6.81 The Tribunal could not expect that the allegations of physical and sexual abuse in the documents they obtained would give other than an indication of the wider picture to be investigated in accordance with the terms of reference set. The identification, engagement and encouragement of witnesses to give evidence, whether orally or in writing, was therefore crucial to the Tribunal's work.
- 6.82 A decision was made, 'as a general rule', that the only evidence of abuse that the Tribunal would consider would be from complainants traced and willing to make a statement to the Tribunal. This part of this chapter examines those aspects of the Tribunal's procedure which dealt with the seeking out and tracing of witnesses, the support provided to them, the obtaining of fresh statements and the practical arrangements made to facilitate them giving evidence.
- 6.83 The Tribunal's working documents reasonably anticipated that many prospective lay witnesses, who could provide evidence in relation to child abuse, may be reticent to do so for a variety of reasons. In a meeting in July 1996, between the NWP and Mr Lambert, it was indicated that "the police are very willing to share their wealth of experience on methods of approach to witnesses ... They are also able to help substantially in the tracing of witnesses. Also in helping name people referred to in statements by their first names or by nicknames." In August 1996, the NWP Solicitor suggested that difficulties could be anticipated when approaching many of the potential witnesses by reason of their past experiences. She indicated that some "have now established a new life for themselves and their period in care is unknown to their new families and friends. Some of the witnesses present a suicide risk and should be treated with the utmost care and delicacy. Many of the witnesses are unlikely to respond to an approach by telephone or letter and indeed, it is the

considered view of the North Wales Police that many of those previously interviewed will only respond if approached, in the first instance, by the officer with whom they established sufficient trust to be able to provide an account of what happened to them..." The Solicitor to the Tribunal responded, "I can see that we will need the help of the police in tracing some witnesses in due course. My present view however is that it would not be appropriate otherwise to involve the police."

- 6.84 In this regard, I note that at the bottom of one NWP statement is recorded, "1205pm 19/10/92 Refused to sign statement but agreed with its contents. The witness was most uncooperative with enquiries and made it clear he was anti police. Signature [WPC]". This clearly indicates antipathy towards the police, for whatever reason, and therefore prospective lack of engagement.
- 6.85 Mr Loveridge had echoed the views of the NWP in a meeting on 9 July 1996, when he reported that "alot of the abused will not want to be identified as have [sic] been abused. Alot of the families of the abused will not be aware of this aspect of their past. Also, the abused are wary of the Police and the Authorities and of course the Press ... these people will not want to be seen at or near the location of the Tribunal or the place where the written statements are taken ... (if Sian Griffiths or Andrew Loveridge ... are approached with names, they could warn on the individuals traits??)"
- 6.86 This suggestion that Ms Griffiths or Mr Loveridge should advise the WIT in relation to the characters of the complainants to be approached was not formally countenanced at this stage.
- 6.87 The Tribunal commenced to seek witnesses on its own behalf.

The Tribunal's advertisements seeking witnesses

- 6.88 In a letter dated 27 August 1996, Mr Lambert informed a firm of solicitors already approached by prospective Tribunal witnesses that "advertisements will be published and there will be accompanying media press notices ... The advertisements will appear in the Daily Telegraph, the Birmingham Evening Mail, the Manchester Evening News, Liverpool Daily Post and Western Mail. Neither the advertisement nor the accompanying press statement will invite persons to come forward to give evidence. A further advertisement to be placed in most national newspapers at a later date ... will invite persons to come forward. By the time that this subsequent advertisement is published, a counselling service will be available to help to give support ..."
- 6.89 The further advertisements appeared in local and national newspapers in the fashion of inviting anyone "including former residents of the homes, former foster children, families, staff and the general public to come forward with any evidence relating to the Inquiry" and providing contact details for the Tribunal team. At the relevant times, public notices were issued giving details of the timing and location of preliminary hearings, their purpose and inviting anyone with a relevant interest to attend.

Other advertisements

- 6.90 On 18 September 1996, a file note from a member of the Tribunal's legal team alerted the Solicitor to the Tribunal to the fact that one solicitor's firm was requesting those abused as children to come forward. HTV Wales were reported to have aired a news item on 18 September 1996 indicating that the solicitor's firm in question was holding a "meeting" at a hotel in Bangor for this purpose. The Daily Post had printed a "news item" the previous day making a similar request. The Liverpool Daily Post featured an advert from the solicitor's firm on 18 September 1996. Complaints were made to the Welsh Office and the Tribunal about these advertisements by complainants and other solicitors, particularly in light of the absence of adequate counselling services.
- 6.91 Submissions have been made by two contributors to the Review, to the effect that they had not been aware of the establishment of the Tribunal or its proceedings. This is contradicted by submissions made by a solicitor, who appeared before the Tribunal on behalf of complainants, who stated "nobody in North Wales could possibly have been unaware of the existence of the Tribunal during its sittings from the publicity provided by newspapers, TV, radio, friends or conversations in pubs and clubs. Victims had every opportunity and encouragement to be heard."

Telephone helpline

- 6.92 The advertisements contained the number of the Tribunal telephone helpline, established to field calls from prospective witnesses and deal with other inquiries. Telephone operators were briefed in the appropriate manner of response to likely queries raised. I have seen records of telephone calls and a brief description of the nature of the query and response that were kept. Telephone calls made out of office hours were recorded and a written record subsequently made. Generally speaking, individuals contacting the Tribunal helpline who appeared to possess relevant information were invited to be interviewed by the WIT, or on some occasions, the Solicitor to the Tribunal. Pro forma documents were created with initial details and, presumably, passed on for action.
- 6.93 However, for the sake of completeness, I note that the available records in relation to two telephone calls received from indicate that one was not passed on for follow up without reason given, and the other apparently not adequately responded to. In the first case, which involved allegations of physical and sexual abuse against unnamed members of male and female residential care staff at a children's home between 1976 and 1980, there is no record of action. It is possible that follow up documentation which indicates that the message was actioned was mislaid, although this seems unlikely in the context of what appears otherwise to be a complete set of this documentation. In the second case, in which a caller was seeking to make a Tribunal statement reporting additional allegations of physical abuse to those contained in his police statement, the operator's response appears to have been formulaic. That is, the caller was informed that his police statement was available and his additional

comments noted. The same complainant telephoned again five days later asking about the Tribunal's progress and offering to give evidence regarding Bryn Alyn. There is no record of the response given, but searches reveal that no statement was taken and the complainant was not called to give evidence. There is no document found which explains the reason to reject the offer made of further evidence. I make clear that neither call suggested the involvement of an establishment figure.

The Tribunal's random selection of witnesses

- 6.94 A 'Briefing Note' prepared by Jones Health Statistics Analysis explains the reason and method adopted by the Tribunal to select potential witnesses who had not responded to the advertisements or otherwise made themselves known, "The aim is to examine a sample of records relating to people who, when children, had stayed in any of the Children's Homes in Clwyd or Gwynedd since 1977. The sample will be made up of 5 per cent of the residents over this (about 20 year) period. The records are currently being retrieved and it has been assumed that there will finally be about 12,000 ... The figure of 12,000 is a rough estimate ... A 5 per cent sample (600 records out of the 12,000) was thought to be a fair compromise between the accuracy of the resulting estimate and the effort expended in examining increasing numbers of records. Annexe A gives two sets of random numbers (generated using the statistical software package ...): one for Clwyd, one for Gwynedd ... Taking a sample using these random numbers means that each record will have an equal probability of being picked. A person's being picked will not depend on their length of stay or the number of separate stays. It will make no difference to the validity of the sample whether the records themselves are in a random order or in some logical sequence ..."
- 6.95 Further statistical advice was needed when it transpired that the number of files were significantly lower than at first thought (see paragraph 6.11 above). The advice indicated that, "the consequence of a much lower total number of records - about 7,000 instead of 12,000 - is that a much smaller number of sample records will be extracted ... In order to achieve the same accuracy you will still need to sample 600, but this will represent a larger fraction of the total number of records ... If you do want to extract a sample of 600, you will need an additional scheme of numbers from us ..." The number of children's files recorded as seen by the Tribunal is 9,500 not 7,000.
- 6.96 The 'Random 600' as it continued to be referred to within the Tribunal working papers was not universally approved. A Chief Executive of one of the successor authorities wrote on 4 November 1997, "I must record our disagreement with this method of survey. Choosing files from such a small sample of children dealt with by the previous Social Services Authorities, is likely to lead to unbalanced conclusions. The number of complainants represents only a small proportion of the children actually dealt with between 1974 and 1996." In response, the Solicitor to the Tribunal defended the decision, "1(a) The random sample is a statistically relevant sample as advised by the expert statistician whose advice will be produced in evidence to justify the sample. 1(b) Our Terms of Reference direct us to the association between abuse and social services processes, and not an analysis of child care practice in general. It is therefore appropriate to limit the sample to those who have given evidence to the Tribunal, oral or read."

- 6.97 In any event, as it transpired, the exercise was not fully implemented in execution. A Tribunal 'Working Note' dated 5 March 1998 and headed "The Random 600" reads as follows, "1. The Tribunal Investigating Team have recorded that they have completed inquiries into 111 of the Random 600 ... Of these ... 52 either refused to make statements or were unable to do so due to age, ill health or demise ... 37 provided statements averring that they had no complaint to make ... 12 made statements of complaint, although not all of these were complaints of physical or sexual abuse ... and some of the 12 were already Tribunal witnesses having made complaints to the Police during the 1991/1992 investigation. 2. In the light of this general level of response, together with the volume of evidence already obtained from other witnesses, it was felt inappropriate to seek to interview the balance of the 600".
- 6.98 The Tribunal Report does not specifically indicate that the process was discontinued prior to completion.

Evidence sought in support of allegations made in police statements

- 6.99 The Tribunal was supplied with the police statements of approximately 650 complainants of abuse seen during the 1991 investigation. A "Note re Administrative Systems" by Mr Treverton-Jones reveals that a team was "presently researching police statements made during earlier inquiries ..." Some of those complainants were also part of the sample selected by the 'Random 600' (see above) and also the 'volunteers' who had come forward as a result of the Tribunal's advertisements.
- 6.100 A WIT progress report filed on 11 October 1996 notes, "statements and last known addresses have been filed in alphabetical & numerical order ... currently the Master Copy List shows 671 witnesses which will probably be increased via Helpline/Solicitor/Others." If accurate, the note corroborates the efficiency and industry of the WIT. Other documents record the efforts of the WIT to trace witnesses through the Benefits Investigation Branch and other bodies with varying degrees of success. In some cases where last known addresses were obtained the witness is reported as not traced (see, for example, paragraph 6.199).
- 6.101 In opening, Mr Gerard Elias QC referred to the fact that social services files had been researched for approximately 70% of those who had made police witness statements, and in about 35% of cases, their current address had been traced. He stated, "efforts to trace have been followed, where successful, by a detailed re-interview and by a careful targeting of the tracing efforts we are confident that most of those who made the more serious allegations in 1991/92 will by now have been covered by our new investigation."
- 6.102 There are complainants who had made police statements who apparently were not sought by the WIT, it seems on the basis that assurances had been given to those they accused (see below) or when Salmon letters sent to those individuals withdrawn or that there was sufficient other evidence dealing with the nature of abuse which their allegations concerned.

6.103 The documents reveal other prospective witnesses that the WIT did not seem to attempt to trace, without reason given or apparent to me. One such complainant, [redacted] had made a police statement alleging physical abuse against Nefyn Dodd, but also had seemed to refer to abuse in foster care, as recorded in her social services files, which a file note from Mr Treverton-Jones suggested should be followed up. In another case, the complainant, [redacted] made allegations in a police statement of serious sexual abuse against a foster father, convicted in relation to other foster childrens' allegations. The Tribunal Report referred to her allegations but concluded that she "was not called to give evidence to us and we are unable to say whether there was any truth in her allegations."⁵ There are no documents available to me which indicate what, if any, attempts were made to locate her or assess her competence to give evidence. Another complainant, [redacted] alleged a significantly more serious physical assault against a care worker concluded to have been responsible for other lesser assaults, but does not appear to have been sought.

6.104 Two contributors to this Review, [redacted] have queried why, despite what they think should have been contained in their social services records, they were not approached on behalf of the Tribunal and asked to give evidence, saying they could have provided relevant evidence, including that relating to paedophile links in other areas. I note that at least one of these contributors had not made a police statement. [redacted] said that he had refused to make a police statement for fear of reprisals.

Schedule of allegations

6.105 Writing to a regional union officer in October 1999, the Chairman indicated that, "Counsel to the Tribunal prepared, for the assistance of the three members of the Tribunal, two 'Schedules of abuse': one of these listed, in respect of each individual against whom a complaint had been made, the name of each complainant, the latter's period of stay at the relevant home, and the category of alleged abuse; and the other schedule listed the same allegations by reference to each residential establishment ..."

6.106 This Review's analysis of the Tribunal's schedule of allegations contained in the police and Tribunal statements confirm it to be largely accurate. There were a small number of omissions or an incorrect categorisation of the abuse alleged; none of which involve an allegation against an establishment figure (see also paragraphs 2.46 and 2.47). However, it is important to note that this Review has not been able to trace all police statements referred to in the complainants' Tribunal and/or other police statements or referred to in the daily transcripts.

6.107 I deal in later chapters with particular inquiries directed to be completed in relation to specific offenders and topics of interest to the Tribunal. Generally, it is clear from the Tribunal documents that Counsel to the Tribunal sought to lead evidence of allegations dealing with the spectrum of abuse within residential establishments and

5 See paragraph 25.69 of the Tribunal Report

in foster care, more particularly the serious abuse, as informed by the Schedules compiled. By way of example, there is a query raised in a 'Note to the Tribunal' from Counsel to the Tribunal, "At present, we have no statement of complaint directly against (the subject of allegations by 11 individuals) or Ken Taylor, (the subject of allegations by 17 individuals). Unless the Tribunal takes a different view, we propose to send out the W.I.T. team to obtain evidence of abuse by these individuals." In manuscript alongside is written "agreed".

Witness interviews

6.108 At the commencement of the second preliminary hearing held on 15 October 1996, the Chairman stated that "investigations ... have now reached such a stage that I am able to outline the arrangements that have been made to interview potential witnesses who may be called to give evidence ... and to invite anyone who may have relevant evidence or information to give to the Tribunal to get in touch ... Anonymous information is unlikely to be acted upon, but anyone coming forward may request that his or her identity be not disclosed publically ... and we will give the most careful consideration to any such request. Certainly, no-one will be identified in public without our consent having been given ..." The Tribunal address and free telephone number were given.

6.109 In a letter dated 8 November 1996, the Solicitor to the Tribunal made clear to one of the firms of solicitors on record as representing a number of complainants, why the Tribunal was adopting the approach of taking its own statements as opposed to accepting proofs from solicitors and/or other third parties. That is, the Chairman wished to have evidence "which is, and which is seen to be, as untainted and independent as possible". He explained that for this reason there needed to be a uniform approach, the witnesses needed to address questions posed by the Tribunal as opposed to other extraneous matters and to be seen to be independent from each other and not to have their evidence presented as part of a "package" by a solicitor acting for a number of complainants. Therefore, the WIT would continue to invite those it contacted to make statements, specific to purpose and with a minimum of delay.

6.110 On 6 January 1997, a solicitor representing complainants who were members of NORWAS (North Wales Abuse Survivors) wrote to the Clerk to the Tribunal setting out the terms upon which they would be willing to engage with the WIT. These included provision as to counselling, which it was specified should not be restricted to the Tribunal's witness support service and with no arbitrary restriction on duration and practical arrangements for making a statement including when complainants should have the option of having their solicitor present, to have all previous statements made available, to make unlimited amendments and supplementary statements, to choose a male or female interviewer, for there to be no limitation on appointment time and a choice of venue. The majority of the conditions were agreed by letter on 7 January 1997.

6.111 Instructions were given to the WIT when dealing with witnesses at the Tribunal premises or in their own homes, in terms:

In the case of the former:

- “1. All volunteer complainants [witness who has voluntarily responded to call for evidence] should be contacted as soon as possible and in any event within a week ... Counsel should be informed if contact within that period is impossible.
2. The volunteer should be told that the Inquiry will pay his reasonable travelling expenses... if the travelling distance is great ... [refer] to the treasury solicitor ...
- ...
4. When the volunteer arrives at the Council offices, he should be met, and taken to a private room or area if he cannot be seen immediately. It is essential to prevent contact between the volunteer and other volunteers who may be present in the building at the time.
5. If the volunteer is accompanied, his companion should not be permitted to sit in on the interview if the companion is or may be a witness before the Tribunal. If the companion is not a potential witness, he or she may be permitted to sit in on the interview, but ... he or she cannot take an active part in the interviewing process.
6. If a problem arises ... a member of the treasury solicitor team will be available to assist.”

In the case of those seen in their own homes and those selected randomly:

- “1. ... great care is required in contacting and interviewing potential witnesses. The assurance of confidentiality will be vital and each person will need to be approached with tact and sympathy.
2. Some may have concealed the fact that they were in care ... Some may require professional help, legal advice and/or counselling. Some may be difficult or dangerous ... [or] suspicious.
3. ... bear in mind at all times that you are not seeking to produce any particular outcome from your meeting - you are not encouraging or discouraging complaints or allegations; you are recording whatever the witness wishes to tell you.
- ...
5. Anyone requesting an interviewer of the opposite sex to the person first allocated should be told that this can be provided and, if possible, arrangements should be made for an interview at an agreed time and place.

6. Anyone requesting a consultation with a solicitor or counsellor before answering any questions is to be given that opportunity
 7. The Witness Meeting Record ... should be filled in by you ...
 8. The "witness assessment" at the foot of the document does not envisage that you will make an assessment of the truthfulness or otherwise of the witness's allegations, if any. It is intended [to] give ... the Tribunal a guide as to the degree of willingness/reluctance to give evidence."
- 6.112 The instructions could not anticipate the time necessary to be spent with individual witnesses. A member of one of the support groups protested at the time that two witnesses were kept waiting for six hours at the Tribunal premises on 7 November 1996, when a previous interview had taken far longer than expected.
- 6.113 In interview with me, the second Solicitor to the Tribunal considered that the WIT was closely supervised, but voiced reservations about the quality of the assessments made by them. He considered they had followed the 'script' and I understood him to suggest thereby that they had not used much initiative in the interviewing process. That is, they had failed to follow through answers which suggested a further line of inquiry. The second Solicitor to the Tribunal said that he had required the WIT to return to ask further questions on occasions.
- 6.114 There are some statements which do contain unintelligible information which may demonstrate this. Equally, I note that manuscript notes taken during the interview may have been incorrectly deciphered when typed.
- 6.115 In one case I note that a serving prisoner, who wrote to the Tribunal saying that he had seen a man believed to be visiting a children's home and who was subsequently visited by the WIT, did not include the same information in his Tribunal statement. There is no record to indicate whether he was asked about this previously imparted information.
- 6.116 One contributor to this Review complained that the WIT only appeared interested in allegations of sexual abuse. Others are reported by the immediate past Children's Commissioner for Wales to have claimed to have been constrained in giving evidence or advised not to refer to parts of it. It is unclear whether this complaint relates to the WIT at the time of taking the statement or Counsel to the Tribunal deciding which evidence to lead.
- 6.117 Mr Lambert in a note dated 26 September 1996 indicated that he had raised with Mr Ryder his concern about possible repercussions to the department of the 'cold calling' of the retired policemen at people's houses, "I foresee a possible number of criticisms ... I understand the proposal of Leading Counsel to the Tribunal is that ... persons named in the local authority files will be chosen at random and ... will then be visited by the retired police, irrespective of whether or not they gave a statement to the North Wales police during their investigation ... I am troubled by the fact that

people who have not given statements to the police but who are now being called upon, perhaps for the first time since they left local authority care, will be shocked and embarrassed by the revelation to their families that they were somehow involved in the matters under investigation by the Tribunal ... Junior Counsel agreed that complaints about this method of interviewing could not be discounted ... He indicated that if strong objection were taken to this proposal then the Judge would have to be informed of our concerns. It also seemed as if Junior Counsel was concerned that interviews would be conducted by 2 police. He indicated that he would much prefer that a paralegal accompanied one policeman in each case so that the interviewee felt less overawed ... This view was not supported by Mr Briggs, the former [Detective] Chief Inspector, who was arranging for the recruitment of the police. This may also be a matter which we might need to consider and comment upon to the Tribunal Team."

- 6.118 In his meeting on 31 October 1996 with Treasury Solicitors, Mr Loveridge reported complaints regarding the practice of "door stepping" complainants without prior notice, and suggested that a list of forthcoming interviewees "could be forwarded to Sian Griffiths for her to provide relevant information before the witnesses were approached." The Solicitor to the Tribunal forwarded this suggestion to Counsel to the Tribunal. A later "File Note in Confidence" to the Solicitor to the Tribunal recorded an "off the record" conversation between Ms Griffiths and a member of the Tribunal's legal team in which she is said to recognise the difficult position she and the local authorities were in, with respect to conflicts of interest, "but she is in the unique position, because of her role in the police inquiry, of having personal knowledge of many of the interviewees. Rather than sending her a list of those interviewees, it was agreed that ... she would liaise with me in the future on an unofficial basis to prevent any further avoidable upsets which could do untold harm."
- 6.119 A solicitor to some of the complainants contacted the Solicitor to the Tribunal anxious that "we warn her before we approach any of her clients." She was told that it was not "possible to comply with the request ... to forewarn the solicitors about our interviews, that would be administratively unworkable ... but ... I have warned our interviewers about the state of mind of some of the solicitors clients." However, during the third preliminary hearing on 26 November 1996, Leading Counsel to the Tribunal stated that the WIT would not approach any person known to be represented by a solicitor without first contacting the solicitor "so no-one who is prepared to give a name and address at this stage ... need worry that he or she will be approached without the solicitor first being contacted and only then if the solicitor says that it is satisfactory for that to be done." Apparently, in accordance with this assurance, I have seen a letter to the Tribunal from a solicitor's firm providing names and addresses of potential witnesses and indicating in each case whether a solicitor would need to be present when interviews were conducted.
- 6.120 In June 1997, Mr Loveridge notified the Tribunal that an individual who had confided in his social worker, but not his wife about abuse, had agreed to see a member of the WIT. The Solicitor to the Tribunal arranged that Mr Reginald Briggs would first contact Mr Loveridge "to discuss the best method of approach" before visiting the complainant.

6.121 Whilst I am not in a position to determine the reliability of all complaints made, it does appear that the WIT may have been wrongly maligned in a number of instances. For example, when on 11 October 1996, the Solicitor to the Tribunal asked for information since “a relation of one of our witnesses had rung the Flintshire Enquiry Office ... very worried about a note which had been dropped through her door ... were they bona fide”, the response, which is in manuscript, indicates “the telephone No. of the office was left with [the witness's] father. The lady ... is [the witness's] girlfriend - she has been assured ... 2 occasions ... that there were no problems ... did not say to her what we wanted to speak to [the witness] about ...” On 18 November 1996, one firm of solicitors representing a number of complainants wrote to the Solicitor to the Tribunal “concerned that one of [her] clients ... has already been approached by the Tribunal and feels that inappropriate pressure has been placed upon her.” A full explanation was given including that the relevant complainant had been undecided about where she wished to be interviewed by the WIT and the several approaches which were made were to clarify the position.

Salmon letters

6.122 Salmon letters, giving indication of the criticisms to be made, were sent to those against whom allegations were made explicitly or implicitly within the documentation obtained. This was intended to enable the recipient to answer allegations made against them. In one instance, it is apparent from the daily transcripts that a Salmon letter had not been sent to two individuals, the then adult sons of a foster parent, accused of sexual abuse. Accordingly, they were not questioned about the allegations.

6.123 Criticism was made by those representing some of the Salmon letter recipients of the length of the letters sent to those with managerial responsibilities and without regard to their actual responsibilities. Some were subsequently withdrawn, as indicated in paragraphs 6.207 to 6.209 below. Leading Counsel representing a large number of those accused of abuse complained of the timing of dispatch of the letters and consequent inability to obtain advice and support during the Christmas period. One of the contributors to this Review felt that the recipients of these letters were not given sufficient time to respond to the allegations made, if they were alerted sufficiently to the allegation at all.

6.124 The Tribunal determined that in a small number of cases of people who had been “mentioned critically, some of whom are very old now and some of whom are mentioned only in relation to very ancient incidents ... [that] no Salmon Letters were sent at all because the matter was so trivial that it was not proper to require them, in effect, to seek legal representation and advice.” An example of this situation is illustrated in a note to the Chairman from Counsel to the Tribunal, “One small matter of detail upon which your guidance is sought. an alleged Bryn Alyn sexual abuser, is aged over 80 and living in sheltered accommodation ... For these reasons, we have not sent him a Salmon letter ... unless you take a different view.” A manuscript comment alongside reads, “Agreed. Evidence to be adduced without naming him.”

Witness support

6.125 The Tribunal issued a "Statement on Counselling" which identified that a Witness Support Service had been established to meet the needs of all witnesses, including those accused of abuse, and others contacted on behalf of the Tribunal. The management of the service was to be undertaken by The Bridge Witness Support Service ('the Bridge'), an independent national organisation, in order to avoid evidence contamination before the Tribunal. Contact particulars of the Bridge were to be given to all potential witnesses and it was made known that support would be available at all stages of the process; from the time before the taking of a witness statement to the time following a witness appearing before the Tribunal. The support staff were to be experienced counsellors (male and female, Welsh and English speaking, and able to call upon specialist assistance if necessary). The service was to be totally confidential and would be provided at a centre separate from the Tribunal premises. However, counsellors would be on hand in the Tribunal premises during the Tribunal hearings.

6.126 The Bridge supplemented this statement by indicating that support would be available to those unsure of whether they wanted to give evidence in order to discuss their concerns, and following the giving of a witness statement to talk of any issues relating to being a witness. It was also made clear that a witness could be accompanied by someone during the giving of a witness statement provided it was notified to the interviewer in advance. Support was also available during the Tribunal hearings and following the giving of evidence to talk of any concerns arising.

6.127 The Bridge emphasised that the counselling was independent of the Tribunal and would be confidential, subject to the exception where a witness disclosed details of an offence against a child where the Bridge had a duty to report the information to the Secretariat of the Tribunal in order for the Chairman to decide on the action to take.

6.128 In the light of adverse reporting about the Witness Support Service the Chairman issued a statement at the commencement of the day's proceedings on 6 October 1997: "the Tribunal should respond to reports on BBC Radio and Television this morning about the provision of witness support services. The Tribunal has been very aware from the outset that amongst those who have given evidence to the Tribunal in person or in writing, and those who have been approached to give evidence, there are vulnerable men and women who may be at risk. The Tribunal is also well aware that giving evidence may increase the need for continuing support ... For this purpose [he made reference to the Bridge]. The identities of those referred to in today's reports have been made known to the Chairman of the Tribunal for the purpose of determining whether any further steps need to be taken to provide them with support. The Tribunal wishes to emphasise that in both cases the persons concerned have been offered support and advice and will be provided with the services they require ... The statement in BBC 'Wales Today' that the Tribunal is being lobbied to improve the counselling service is untrue ... regrettable that anything should be published ... that tends to discourage witnesses from giving evidence before this Tribunal ... particularly regrettable if the reports are founded upon misapprehension."

6.129 The Witness Support Service was incapable of completely alleviating the trauma for some of those recounting allegations of abuse or giving evidence about them. Sample letters from solicitors are instructive in this regard. One dated 22 October 1997 refers to a client's "resurgence of memories and psychological difficulties" following him providing a statement to the Tribunal; another dated 25 February 1998 about another witness was to similar effect and indicated that the experience had begun to "severely impact on his day to day existence."

6.130 Some complaints were made to the Tribunal about the service from an early stage, including its operation being restricted to office hours, the inadequate number of counsellors, and the service being available to abused and accused. Several contributors to this Review suggest that the counselling and therapeutic support provided by the Bridge was inadequate to alleviate the trauma of giving evidence to the Tribunal. Others have criticised the lack of ongoing therapeutic support for those abused in childhood. One has commented on his inability to physically access the service by view of its distance from his home address.

Arrangements for witnesses

6.131 A meeting in mid January 1997 confirmed the arrangements for witnesses who were to give evidence. Witnesses and solicitors were to be separately informed when the date selected for a particular witness to give evidence was known. It was hoped to give up to 10 days' notice with enquiry made as to whether or not there would be problems regarding attendance. Witnesses were to be asked whether they intended to give evidence in English or Welsh. Provision was to be arranged for access of disabled witnesses. Travelling and overnight expenses were to be provided and appropriate food breaks arranged. Arrangements were discussed as to accommodation of witnesses upon their arrival at the Tribunal premises and offers to be made for the provision of a pre-evidence site visit. Witness protection was to be arranged if applicable.

Transportation of witnesses

6.132 On 8 August 1996, in a meeting between the Tribunal Chief Administrative Officer and the NWP, "Detective Superintendent Ackerley highlighted some of the difficulties that the police had had in tracing witnesses [during the police investigation] ... it was only by personal attendance on many of the witnesses, that the police had secured their attendance at the various court hearings. Many of the witnesses lived an alternative lifestyle ... others were frightened and apprehensive and he strongly advised that unless ... proper arrangements [were made] to secure the attendance of witnesses at the Tribunal, by dedicating staff to arrange for their attendance and putting transport at the disposal of that staff, many of the abused complainants would fail to attend ..." As indicated subsequently at paragraph 6.201, some did fail to attend regardless of the arrangements made.

6.133 I have previously indicated that members of the WIT acted as chauffeurs and witness escorts (see paragraphs 4.75 and 4.78), apparently successfully. There were others, however, who were resistant to their role including in the capacity of chauffeur and witness escort by reason of their former employment. One contributor to the Review, when asked by me if he would have taken a lift from the WIT said, "didn't like the witness team at all; ex-policeman all of them...Everybody was wary of them [and saying] 'There's no ... way I'm talking to the cops'..."

Other measures for witnesses

6.134 Prior to the hearings commencing, one solicitor wrote on behalf of her clients suggesting that "it is important that completely separate facilities are provided - cloakrooms, cafe, etc in addition to a waiting area in order to minimise potential problems" between complainants and accused. She suggested that there should be an independent firm of security guards, since a local firm were staffed by former police officers and that a "safe house or houses" may be preferred to hotel accommodation by some individual witnesses.

6.135 There is indication in the documents reviewed that tensions existed between complainants themselves. Some of this originated from separate organisations formed and claiming to be more appropriately representing the survivors of abuse than the other. On one occasion the Chairman made clear that reported incidents of verbal and physical abuse arising would not be tolerated.

6.136 Other efforts were made to accommodate witnesses within reason. A letter from the Assistant Solicitor to the Tribunal reads "there is no doubt that the Tribunal would wish to hear your son's evidence, based upon what you have told, but of course, that is a decision only he can make. Were he to choose to send us a signed statement, this would be read in open court. Public funding would not extend to flying [your son] from New Zealand, but his travel within the UK and any subsistence needed to attend the Tribunal would be paid. Legal representation and counselling would also be available ..."

6.137 Rearrangements of dates when witnesses were anticipated to give evidence were made to accommodate late disclosure, ill health or other reasons for indisposition. For example, a note dated 3 March 1997 in the Welsh Office papers indicates "the Tribunal have also just received a statement from [redacted] in which he names 40 individuals against whom allegations are made. Around a dozen of those named are not already the subject of a Salmon letter. In order to provide adequate notice ... it is proposed that [the complainant's] evidence should be heard on 17 April (the first day after the adjournment)."

6.138 I am aware that [redacted] considers that some promised financial assistance for child care, accommodation and the like failed to materialise. This has been a consistent complaint of his, and was notified to the Chairman during the course of the Tribunal, although no other complainant appears to have made a similar complaint at the time or subsequently.

- 6.139 In his written closing submissions, [redacted] criticised several aspects of the procedure and the facilities made available for witnesses. He wrote, “we have been asked to come here and tell of our horrendous past in front of 20, 30, 40 people. I wonder how many of you could have come here and talk about your fears and nightmares without having some difficulties when asked certain questions ... survivors could not get a drink when they wanted, there was no room that could be used by survivors, there was no facilities available, apart from ... when you were giving evidence, and that was laughable ... the way this inquiry room is laid out ... To expect survivors to sit next to the person or persons they are making accusations against is, at best, insensitive.”
- 6.140 This complaint is reflected in an independent observer’s comment to this Review that lay witnesses were inadequately supported or prepared for giving their evidence on such sensitive issues before a large audience.
- 6.141 Another contributor claimed that the Chairman refused him a hearing loop to compensate for his hearing loss.
- 6.142 In March 1997, a solicitor expressed concern and asked “if some arrangement ought however to be made to contain a distressed witness, who leaves the witness box, from coming into contact with those yet to give evidence. We suspect that it was the distress of the [one witness] that distressed [another] and brought about the panic attack.” There is no indication of what steps were taken in response to this query, although implicitly it appears to have been resolved in the absence of subsequent, similar complaint.
- 6.143 In another respect, I note that in July 1996 one of the successor authorities invited the Tribunal to consider sitting in a venue in the West of the region and suggested that signposting would be required for the route from North Wales. Whilst I have received no submissions relating to the inability to access the Tribunal by reason of its location, although one contributor suggested that the Tribunal’s distance from her home, approximately 15 miles, deterred her participation, the Tribunal Report⁶ recognised the “disincentive” to those witnesses living far afield required to attend before a Tribunal sitting in North Wales. Another contributor has remarked upon the difficulty he experienced in transportation, albeit it did not prevent him from attending the Tribunal every day for 16 months; and contemplated that the location of the Tribunal was a deliberate deterrent to wider participation.

Part 3: The hearings

- 6.144 The nature of the evidence gathered on behalf of the Tribunal would only be revealed to the public during the Tribunal’s hearings, most of which were heard in open session (see paragraph 6.162 below). A comparison of the oral evidence and the Tribunal’s analysis of and conclusions upon it can be made against the Tribunal Report. However, the public could not know the extent of the evidence amassed by the Tribunal, since its deployment would be dependent upon the prior determination

6 See paragraph 21.105 of the Tribunal Report

of the Tribunal as to relevance in the context of the terms of reference. In the light of this opportunity to suppress evidence, this part of this chapter considers the arrangements made for and management of the hearings themselves, the methods of giving evidence, the evidence adduced and the criticisms made of this aspect of the Tribunal procedure.

Preliminary hearings and rulings

Legal representation

6.145 Preliminary hearings dealt, amongst other things, with the issue of representation, “any complainant who made a written statement to the Tribunal would be granted representation by Counsel and Solicitor, if he or she wished to be represented. [The Tribunal] did so on the grounds that it was necessary in the public interest that their views on a range of issues should be put to the Tribunal with professional assistance. It was necessary also that persons against whom they made allegations should be cross-examined on their behalf ...”⁷

6.146 In August 1996, [redacted] wrote to the Secretary of State for Wales representing the views of NORWAS, “as the Judicial enquiry [sic] is about to start very soon, we must and need financial backing from the Welsh Office without delay. It is not right, practical or fair to let other bodies to organise counsellors, support workers or safe houses etc. This was said to be done for us the victims in the past and believe us the so called help and support we got was a complete waste of money. It caused the death of victims, so consequently this must not happen again. We know the people we want to work for us and we know the people we would pick to support us. This takes money, but this time it will be money well spent ... We also want your guarantee we can have our own legal representation ... Quite simply because we need to make sure everything comes out and that our interests in this are put across in full ...”

6.147 High level legal representation was ensured for all living complainants who had made a statement to the Tribunal, albeit not necessarily individually nor by Counsel of choice. Informed of the potential for conflict between those complainants who had been abused by other complainants who had been abused themselves, the Tribunal determined during the third preliminary hearing held on 26 November 1996 that it would be perfectly possible for one Leading Counsel “to keep above the fray so far as that kind of internal conflict is concerned, leaving it to the junior counsel involved in the separate groups to conduct cross-examination ...” On the basis of the larger number of complainants represented by one firm of solicitors, the Chairman indicated that the Tribunal thought that the Leading Counsel intended to be briefed by those solicitors would “really be the appropriate person to be selected ...” as opposed to the one chosen by the organisation “Voices from Care”, although the Tribunal would be “most reluctant to force that ...” Two individual complainants attending the hearing each objected to not being granted representation by counsel

7 See Appendix 4 (16) of the Tribunal Report

of choice. One argued that there should be a choice of Leading Counsel, and that there should be a male and female QC and a male and female Junior Counsel representing the complainants.

- 6.148 The Chairman answered the criticism by saying that the Tribunal was “bending over backwards to ensure that representation is of the person’s choice” since a complainant intending to make a Tribunal statement could go to any solicitor. The solicitor would then be invited to act through one of the solicitor’s firms nominated as leaders in co-ordinating the cases to ensure the representation by Leading and Junior counsel. He indicated that the concept of individual representation was unrealistic in terms of cost and the ultimate burden upon the tax payer.
- 6.149 At the fourth preliminary hearing held in January 1997, the Tribunal agreed that different representatives would appear for survivors of abuse and those who had also abused.
- 6.150 It is clear that the Tribunal wished to encourage witness engagement or participation in the Tribunal proceedings in this fashion and to ensure the “elucidation of the facts” and “protection of the interests of the complainants.”
- 6.151 One contributor refers to legal representation being withdrawn half way through, but there are no documents to suggest that this was the case for any living complainant. Tribunal authorisation of the attendance of solicitors, and thereafter the payment of their costs, was scaled back after completion of the evidence from complainants, but representation was not withdrawn. Significantly, Leading Counsel appearing for the majority of the complainants accepted the “Tribunal’s view that in phase 2 [i.e. the conclusion of the complainants’ evidence] onwards there should be but one team of representatives on behalf of the Complainants ... can foresee no conflict in our accepting the responsibility for those previously given separate representation ... without prejudice to any application by, for example, those currently representing and others, to be present for the purpose of cross-examining specific witnesses where evidence bears directly upon such client (e.g. police) ... As Counsel however, we do support at the very least the importance of separate solicitor representation for the two distinct geographical Groups.” This submission was apparently acceded to.
- 6.152 Those criticised were also to have representation made available to them. Many were still members of unions who funded it. Others had their costs met by the Welsh Office. One contributor to the Review criticises the Tribunal for sanctioning this. Leading and Junior Counsel were engaged. The Tribunal encouraged collective representation where there was no conflict of interest.
- 6.153 The Chairman had declined in one preliminary hearing to grant representation to deceased members of staff of children’s homes. He acknowledged the understandable concerns raised by a representative of FACT that people now deceased may have their name taken in vain and that it was regrettable. Some

contributors to this Review have criticised the fact that those accused, but deceased, were not permitted representation to defend their reputations. Others have criticised the absence of representation for deceased complainants.

- 6.154 There was no application for the defunct local authorities of Gwynedd county council and Clwyd county council to be separately represented. It is clear from the Chairman's comments in three of the four preliminary hearings that he was anxious to ensure that former employees of the defunct authorities and Councillors should be represented.
- 6.155 In the first preliminary hearing, Leading Counsel for the successor authorities indicated that the interests of former social services employees would be protected to the extent that it was proper to do so, but that the successor authorities did not wish to be "hamstrung" by receiving instructions from individuals which required them to defend what they might think to be the "indefensible". Upon hearing that a former director for social services in Clwyd sought independent representation and financial assistance to arrange it the Chairman, when granting his application, queried the position in relation to other senior administrative members of staff in the former county councils and requested that some investigation be made as to whether joint representation could be arranged for those at the level of director of social services and above in view of the potential criticism that may be made. At the following preliminary hearing, the solicitor then representing the former director said that enquires had been made of former colleagues. Some had maintained their union membership and would be represented accordingly. Leading Counsel who had added them to her clients informed the Chairman that there were "28 who think they will need representation but there may be others who have their heads in the sand ..."
- 6.156 In the second preliminary hearing the Chairman asked if there was anyone present on behalf of individual Councillors. A legal representative informed him that two "other" Councillors had approached his firm requiring representation and the firm had written to the secretary of Gwynedd county council and Chief Executive of Flintshire county council inviting any former council members seeking representation to contact them, but had been informed that "most councillors are reserving their position but will require representation if and when they are required to attend."
- 6.157 Despite these attempts made, a former Chief Executive of the former Gwynedd county council wrote on behalf of other past officers to the Secretary of State for Wales, complaining that, "former (pre-reorganisation) Gwynedd County Council ... in no way represented before the tribunal ... evidence which the Council would, if represented, have challenged went unchallenged, witnesses who could have commended the council were not contacted, searches for misplaced records were not pursued to the extent which might otherwise have been possible, and collaboration between individuals with a view to piecing together forgotten episodes going back to 1974 could not take place ... Generally speaking, the whole atmosphere was more akin to that of a criminal trial ... In such an atmosphere, some witnesses tried, inevitably, to shift any blame alleged on to others, while potential witnesses were discouraged from coming forward ... the case of the former Gwynedd County Council is substantially different from that of the former Clwyd County Council and should, perhaps, have been heard by a separate tribunal."

- 6.158 Leading Counsel for the Welsh Office was obviously in agreement with this point of view as is apparent from a note dated 22 January 1998 (see paragraph 6.217) where she wrote, "It was no part of the [Welsh Office] case, nor any other party, to take up the cudgels on behalf of the defunct local authorities but the consequences of there having been no counsel before the Tribunal with a vested interest in so doing is that the picture presented to the Tribunal has lacked balance. Had the stance adopted by the Tribunal been different this would not have been such a significant failing because the questions asked by the Tribunal members or upon their behalf could have filled this gap. The restrictive adversarial approach has meant that local government responsibility, and the difficulties inherent in it, which should have been advocated upon Clwyd and Gwynedd's behalf has been all but absent."
- 6.159 The Tribunal Report⁸ refers to the difficulties faced by the Tribunal in examining the responses of the former Clwyd county council in relation to child abuse allegations and the lack of representation. Subsequently, in the Tribunal Report,⁹ the Tribunal makes reference to unidentified Councillors' lack of discharge of their respective personal responsibility for the welfare of children in specific community homes.

Anonymity

- 6.160 A decision to grant anonymity to complainants of physical and sexual abuse and to persons against whom such an allegation was or was likely to be made was announced at the first preliminary hearing in September 1996. The Chairman indicated at a meeting with Counsel to the Tribunal on 14 October 1996 that, "names will be used in the Tribunal hearings unless specific application is made. There will be a general order preventing the reporting of witnesses' names, addresses, photographs and other pictorial representations i.e. materials tending to identify a person. Addresses need never be released." This decision was challenged by the BBC and two local newspapers.
- 6.161 The ruling made on their application in February 1997 maintained the direction prohibiting publication of name, address or other identifying features, save in the case of names already within the public domain, and is recorded in full in the Tribunal Report¹⁰ and attached at Appendix 3 of this Report. In summary, the justification given for the direction was the protection of privacy of those who made complaint and the encouragement of those who were accused of abuse "to give as full and true an account as they can of the facts within their knowledge." In addition "we have had in mind also that, in the context of the first paragraph of our terms of reference, the identities of particular complainants or persons against whom allegations are made is of much less importance than the question whether the alleged abuse occurred and the circumstances in which it is alleged to have happened."

8 See paragraph 28.02 of the Tribunal Report

9 See paragraphs 29.68 - 29.70 of the Tribunal Report

10 See Appendix 4 of the Tribunal Report

- 6.162 Importantly however, as indicated above, the Tribunal made clear that the hearings would take place in public and that names would be given during the course of the hearings.
- 6.163 Nevertheless, in an October 1997 press release, speaking of the decision about anonymity, the Right Honourable Ms Ann Clwyd MP said, "The fact that alleged paedophiles have been granted the privilege of anonymity now puts particular responsibilities on the Police and Crown Prosecution Service. We now need assurances ... that in every case where prosecution is possible, even at this late stage, they do proceed. When I objected in the House of Commons to the Order to set up this Inquiry, I warned that the form of Inquiry could actually hinder the investigation to find out the truth. The form of this Inquiry has meant it shut down discussion in the House ... the public who are unable to attend the hearings in Ewloe for themselves, have a right to know the full facts."
- 6.164 On 26 November 1997, the Chairman wrote to her, "to avoid any misunderstanding I must reiterate that the anonymity ruling extends only to the press. At the daily hearings in public there is no anonymity and all those named are recorded on the daily transcripts. The police are fully aware of the evidence ... and are free to pursue new or further investigations ... without any restraint ... The anonymity ruling does not, therefore, inhibit police action in any way".

Procedure and management decisions during the hearings

Disclosure of documents

- 6.165 As with other litigation, the question of disclosure of relevant documentation to interested parties needed to be considered by the Tribunal. Clearly, there was a difficult balance to be drawn between disclosure of evidence which may undermine the case against those accused of abuse and revealing personal information concerning prospective complainants.
- 6.166 In a meeting held on 28 July 1996, the Chairman emphasised that "everything is subject to fresh statements ... There will be no disclosure of information unless and until it is decided to call the witness [or] if there is anything in the documents which is material to the defence of somebody and that person ought fairly to know that in order to defend themselves [sic]. It is then for the Judge to decide whether disclosure of that information to that party should be made even though the witness is not being called ... If there is a conflict between the statement taken by the [Tribunal] and the one taken by the Police then, the person named will probably be entitled to see the police statement too. But there will be no general disclosure of police statements."
- 6.167 The reality was that the majority, if not all, police statements of those called as a complainant witness by the Tribunal would be disclosed on the basis that there had either been an explicit confirmation of the contents of the police statement without more, or else amplification or alterations in the allegations made.

6.168 Contrary to the suggestion made that the successor authorities should be responsible for decisions as to whether or not files would be produced in light of prospective public interest immunity (PII) and legal privilege claims, the Tribunal had previously directed that all documents which may be subject to claims of PII by the successor authorities were to be disclosed to the Tribunal for inspection. The initial trawl to assess relevance of these documents was to be undertaken by the paralegal team under supervision, the second by the Tribunal's legal team, and the final decision made by the Chairman. Parties were at liberty to apply for disclosure of any specific documents that were withheld.

6.169 Once the hearings commenced, the issue of disclosure was revisited. Writing to the Chairman on 30 January 1997, Mr Gerard Elias QC suggested it "may be worthwhile rehearsing our reasons for as 'open' an approach to the problem as can reasonably be made: (a) we have underlined the 'no stone unturned' approach with all that this implies for the Tribunal to have regard to all relevant material; we are very anxious to avoid a final judgment on the Tribunal from any direction which begins with the assertion 'They did not look at this or that relevant aspect ...' (c) There may be all the difference in the world between the need for the Tribunal to have regard to the fullest particulars of a complainant or alleged abuser & the need to permit any/extended cross examination in respect of those particulars. Thus, in the case of a particular individual, matters which may go, for example, to his credit may be highly material to the Tribunal's general or specific findings but are not necessarily matters which require any reference when the witness is giving evidence. Of course, such matters will always be subject to such proper comment in closing addresses as is appropriate;

Problem ... As I believe you are aware, the real objection seems to be more to do with the exposure of some complainants to what is perceived to be difficult/irrelevant cross examination, going to credit rather than to any principle of disclosure ... We take on board the very valid point made by Booth [representing 19 complainants, including NORWAS] that Complainants may be discouraged if the Tribunal permits cross examination upon 'extraneous' matters & we may find that a number do not turn up.

Proposed Solution ... 'Wide' pro forma be completed ... & distributed ... to all parties. No reference may be made to its contents ... without prior application to the Chairman. Any application for wider disclosure ... subject of a specific application to the Chairman ... in writing specifying the information sought, the aspect of the applicant's case to which it relates & the suggested relevance to the Tribunal's deliberations ... believe that the above, accompanied by a direction as to permitted limits of x exn [cross examination] should allay the fears ... whilst ensuring that the Tribunal's credibility remains high & the approach open."

6.170 The "Practice Statement: Discovery of Social Service materials" subsequently issued adopted these points. The Solicitor to the Tribunal was to make available replies to interrogatories in a pro forma document in accordance with a list of contents approved by the Tribunal. The contents of the pro forma would be admitted into evidence before the Tribunal without further direction or need for examination

or cross examination. Any applications for specific discovery/production needed to state the precise document sought and the grounds relied upon which must include the relevance that it was contended the document had. The Chairman would have all social services and health files that supported the pro forma and the complainant's antecedent form. The Chairman would consider the documents in advance of a witness being called so as to determine whether any of the documents contained relevant material. If a document was determined to be relevant, the Tribunal would invite the successor authorities or health service bodies and the complainant to consider production. In the event of disagreement, the Chairman would hear further submissions

6.171 On 1 July 1997, the Solicitor to the Tribunal reported that few inquiries had been made for disclosure prior to the Practice Direction being issued, but not since.

Witness packs

6.172 It was intended that after core bundles of all relevant documents had been created, 'Witness Packs' would be produced containing all relevant documents likely to be necessary for the purpose of a witness giving evidence before the Tribunal.

6.173 In the main, they contained statements taken by the WIT and other statements and documents as considered appropriate. Other documents were sometimes added to the pack in relation to information which the Tribunal subsequently decided to introduce into evidence.

6.174 The Tribunal maintained a distinction between inter partes inspection of materials and the production of the materials upon which reliance was placed and therefore included in the witness packs. In a letter dated 22 May 1997, the Solicitor to the Tribunal made clear to the Solicitor for the Welsh Office that the Tribunal would not be deemed to know the contents of all documents informally inspected if not disclosed. It follows that the Tribunal would be reliant upon the parties raising the issue of relevance following inspection of any document not otherwise disclosed in the witness packs.

Management of evidence

6.175 Oral and written evidence was adduced to the Tribunal. Witness statements of those called to give oral evidence were deemed to have been read in advance and to stand as evidence in chief, subject to clarification for the purpose of subsequent cross examination. Witness packs which contained other documents as indicated above were prepared for each witness as relevant.

6.176 This procedure did not command universal favour and some contributors to this Review have complained that not all relevant evidence was considered by the Tribunal.

6.177 In April 1998, Councillor Malcolm King expressed dissatisfaction “with the way in which my evidence ... was not, supplied to the Tribunal ... feeling profoundly cheated by the events surrounding my giving of evidence.

1. ... consistently advised by [my own Counsel] ... not to supply certain ‘evidence’ to the Tribunal ... virtually all of these matters have concerned the North Wales Police.
2. As a result of [my Counsel’s] resistance to virtually all my statements regarding the Police, I watered it down ...
3. The basis for much of his arguments for withdrawing most of what I wanted to say about the Police was either that it would harm my reputation, or that it would not stand up as evidence in a court of law ...

I am left to conclude that I would have been able to put before the Tribunal more ‘evidence’ ... than I eventually gave. If it had been deemed to be irrelevant or inadmissible, so be it, at least I would have done my best to supply the Tribunal with everything I believed to be relevant.

4. Preceding my giving evidence, a decision was taken ... without my knowledge or consent to not hand to the Tribunal any of my supplementary documents, many of which were mentioned in my statement
5. I was advised by [my Counsel] that he would be taking me through my evidence in chief. It was not until the day before giving evidence that he apparently discovered that this was not possible ...
6. He did not inform me at any time that details which I provided in my statement would not be considered as evidence by the Tribunal unless it was read into the Tribunal by their Counsel or other Counsel or solicitors ...
7. The haphazard way that the Tribunal supplied participants with other parties’ statements meant that I was not given sufficient time to consider either the Welsh Office statements or the Insurer’s statement before answering questions on them. There are a number of ways in which I would have been able to answer more fully and forcibly had I had an opportunity to read them properly.
8. Most crucially, I did not receive a copy of my proposed cross-examination by the Police, or know of its existence until after I had finished giving evidence.

I feel betrayed and seriously misrepresented ... I wish to make it clear publicly to everyone concerned that I am profoundly unhappy with the way that ... the process and events have meant that I have not given the evidence I would have wished and had intended ...”

6.178 Councillor King repeated some of these matters when I saw him in Wrexham and interviewed him at his request in London thereafter. In fact, the Chairman had responded by letter on 16 September 1998 in terms, "I regret very much that you feel that you were prevented from presenting your full thoughts and potential evidence to the Tribunal ... I am rather mystified that you should think so ...

1. Your Tribunal statement was submitted to the Tribunal before you gave evidence ...

2. All witnesses [other than Salmon letter recipients] ... were taken through their oral evidence first by one of the three Counsel to the Tribunal and not by their own Counsel.

3. After reading your Tribunal statement [Leading Counsel to the Tribunal] as a matter of courtesy, indicated to your Counsel the topics on which he intended to question you ... considered to be relevant to Tribunal's terms of reference, bearing in mind general principles of admissibility.

4. It was the helpful practice of each Counsel to let the other Counsel involved know of the subjects on which they proposed to question a witness but not the details of the proposed cross examination. The purpose ... to avoid as far as possible unnecessary duplication ...

5. As far as I am aware Mr Moran [Leading Counsel for the NWP] followed this procedure ... his list of subjects was based on your full statement rather than the more limited topics selected by [Leading Counsel to the Tribunal]. It was inappropriate for [Leading Counsel for the NWP] to suggest 'a Damascene conversion' on your part because you had not decided what questions you would be asked ... subject to next sub paragraph.

6. The transcript does show that, when you were questioned by your own Counsel, he asked you twice whether there were any other points not yet dealt with that you wished to raise (Day 170 pages 25261 and 25266). This was your opportunity to say anything further that you wished, subject only to any ruling that the Tribunal might have had to give on admissibility.

... the members of the Tribunal and Counsel to the Tribunal were not aware of any other admissible matters that you wished to raise. The test of admissibility is, of course, broader ... but a Tribunal must confine itself to the terms of reference that it has been given and must not abuse its privileged position by canvassing potentially defamatory matters outside those terms of reference. This test applies to documents as well as to oral evidence and I can assure you that [Leading Counsel to the Tribunal] would have asked for any relevant and admissible supplementary documents referred to expressly or by inference in your full Tribunal statement ... everyone present was well aware that you had other criticisms to make of the North Wales Police in respect of matters not within the Tribunal's terms of reference ...

there was nothing haphazard about the procedure. From the earliest days of the hearings the Tribunal team pressed for delivery of other parties' statements and detailed time-tables were given but rarely complied with. The Welsh Office itself presented an intolerable mass of documentation, which had to be pruned over and over again, but the Welsh Office statements and documents in seven files were distributed during the summer of 1997. Some amendments and alterations were made later ... but they did not alter its basic case. In any event it was presented orally over many days ... surprised that you, as experienced politician, felt at a disadvantage in criticising it.

The insurers' case presented a different problem because the relevant facts were quite short and not in dispute and the Jillings inquiry was at the boundary of relevance to the Tribunal's terms of reference. Moreover, the insurers conceded that they were at fault. It was for that reason that the Tribunal did not require a representative of the insurers to give oral evidence. If you felt at a disadvantage in commenting upon their role, your Counsel could have included any additional comment that you wished to make in his final submissions on your behalf ..."

6.179 In his closing written submissions, [redacted] also commented adversely on "the system whereby you have to apply for a specific document, not knowing what ... documents are available, or even exist, leaves the statement made by this inquiry of leaving no stone unturned somewhat contestable ... The second problem with documentation is that of the way in which people were given vast amounts of documents to read, sometimes on the day that they were giving evidence. Whilst we understand that there was a vast amount of paperwork involved with this inquiry, it should have been managed better with more time allocated for people to read relevant documents ... [Police] should have been forced to hand everything over to the Inquiry, and not just what they wanted to ... why should they ... be forewarned about the questions that they were going to be asked?"

6.180 A contributor to this Review, Mr Michael Barnes, representing FACT complained that the evidence which ran counter to abuse was not adequately presented before the Tribunal. He complained that those accused were not allowed to adduce evidence of good character or good practice, the contra indications of abuse having occurred, false memory syndrome, the compensation culture or the negative impact on credibility of the police and/or the WIT trawling for witnesses. Others made similar points and one complained that complainants of abuse were afforded more licence and protected against robust cross examination, unlike several of those accused. Another contributor, Mr Gareth Taylor, who had been a resident in one of the children's homes and had not complained of nor been accused of abuse, complained of the apparent dismissal of his evidence since it did not report abuse, and observed upon what he perceived to be a lack of fair process for those who had received Salmon letters. He had been told he need not attend the Tribunal and that his written submission was sufficient. Nevertheless, he had felt it important to attend the Tribunal hearings. He suggested that others holding the contrary view had been deterred from participating in the Tribunal. In his view, the

Tribunal appeared to be tailoring the evidence adduced to correspond with their pre-conceived views of systematic abuse and to “protect a range of individuals and organisations that could in some way be criticised or held to account.” The Tribunal Report¹¹ indicates that the Tribunal had borne some of these issues in mind in reaching the conclusions it did.

- 6.181 Mrs Alison Taylor told me in interview that she did not feel that the Tribunal tried to restrict or contain her evidence, but criticised the procedure which led to late production of documents with no sufficient time for the witness to familiarise themselves with the contents before cross examination. She has complained that the Tribunal did not adequately examine evidence relating to her suspension and subsequent dismissal, glossed over mismanagement of staff and resources, did not adequately consider local Welsh ‘chapel’ influences nor give due consideration to the issue of misconduct in public office. She and other contributors to the Review question whether adequate examination was made of the alleged and/or suspected complicity of the NWP in failing to investigate allegations of child abuse. Mrs Taylor wondered whether the Tribunal had been sufficiently alert, indicating that someone had told her that the Chairman had appeared to fall asleep when she was giving evidence.
- 6.182 Two journalists have queried in particular the failure of the Tribunal to call a witness, Mr Desmond Frost, to give evidence. He was employed with the Bryn Alyn Community between June 1975 and February 1985 and then associated with the Community for a further year on a self-employed basis. He has spoken to reporters and appeared on television suggesting that he had notified Cheshire police officers of rumours concerning John Allen's sexual abuse of boys in his care. He said he heard nothing further from the Cheshire police but had received a visit from a local police officer, who he said was acting on behalf of the Durham constabulary investigating a possible blackmail attempt by a former Bryn Alyn resident who had written to John Allen asking for money. Mr Frost is reported by one publication to have indicated that he had not repeated what he had told the Cheshire police and deliberately avoided alerting NWP fearing that John Allen would discover that he was the source of the information. In fact, he said that he had indicated that the request for money made in the letter was part of an “aftercare” system. Mr Frost was contacted by the Tribunal as a result of evidence from another witness concerning this issue. He made a Tribunal statement on 24 October 1997. In it he relates informing police officers from Chester police station of rumours concerning John Allen sexually abusing young boys in care. He asked the police officers to pass the information on to Wrexham police. He had not repeated the rumours to a local police officer who had called subsequently to investigate the potential blackmail attempt. He had not made a connection between the ‘blackmail letter’ and the rumours. He did not think it was “a big deal” to have gone to the Cheshire police as these rumours could have been false. He was uncertain as to when he had raised his concerns with the police. The Tribunal was informed that investigations were made with the Cheshire police in regard to Mr Frost with nil return.

11 See paragraphs 6.06 and 6.07 of the Tribunal Report

Mr Frost's evidence was orally summarised by Mr Treverton-Jones. His statement was therefore deemed to have been read into the evidence before the Tribunal without challenge. His evidence is referred to in part in the Tribunal Report.¹²

Evidence read or deemed to have been read

6.183 Not all witnesses who had given statements and were expected to give oral evidence were called to do so. In one category were those witnesses who had been unable to face the prospect of giving evidence in public, including those who actually attended the Tribunal premises in order to do so, but had then been overwhelmed by the circumstances. Other witnesses were prevented from attending at the Tribunal by virtue of their own ill health, or that of close relatives, domestic circumstances or death including suicide. In another category were those witnesses who the Tribunal decided it was unnecessary to call. Other reasons indicated in the documents include: logistical problems, for example, one Category A serving prisoner was not called to give evidence by reason of the difficulties in arranging his attendance with all necessary security measures, another inmate was suggested to have significant mental health problems; avoiding duplication of evidence relating to a particular form of abuse at the hands of a particular abuser or within an institution; relevance to the terms of reference; or statements deemed by Counsel to the Tribunal to contain insufficient evidence to justify the calling of the witness concerned. In these cases, the evidence was generally read, summarised or deemed read into the proceedings.

6.184 It is clear that some witness statements read, or deemed to have been read, into the proceedings were considered by the Tribunal in reaching its conclusions. Different weight was attributed to the witness statements in different circumstances depending on the nature of the evidence contained in the statement and the subject matter with which it dealt. The Tribunal Report¹³ records that, "we have assessed the written statements before us in the appropriate conventional way, having firmly in mind that they have not been subject to cross-examination. The evidence in them has been very useful in filling out the general picture before us and in giving us a much wider cross-section of views about the relevant issues but we have not based any of our findings adverse to individuals upon the contents of the written statements, except in the very small number of cases in which the facts were admitted or virtually indisputable."

6.185 One witness, _____ who was to give evidence concerning his time in Bryn Alyn telephoned the Tribunal saying he had expected to be called but had been informed that his statement was to be or had been read. A member of the Tribunal staff explained that he had not been called in view of the abundance of evidence and advised that his evidence would be entered into the transcript in any event.

12 See paragraph 50.40 of the Tribunal Report

13 See paragraph 6.19 of the Tribunal Report

- 6.186 In some cases, it is clear that Counsel to the Tribunal had formed the view that statements containing allegations against named individuals were unreliable by virtue of extraneous and incontrovertible fact. In other instances, there is no record of the reason why a witness was not called or his evidence not otherwise referred to. These statements may have been regarded as duplicating other similar allegations.
- 6.187 The daily transcripts reveal that when reading from the majority of statements containing allegations against unnamed police officers, no reference was made to the paragraphs containing such allegations. A live witness, whose statement included an allegation of physical abuse against a police officer, was not questioned about that allegation, although he was questioned about those he made against others who were not police officers (see paragraph 8.97).
- 6.188 I wrote to Mr Gerard Elias QC and Mr Treverton-Jones QC on 15 May 2015 inviting comment on the fact that these complaints were not referred to in public. Mr Gerard Elias QC responded indicating that the unredacted statements of all witnesses save as to sensitive material, addresses and telephone numbers, were served on all parties. These statements would have included the allegations made against unidentified police officers and could have been pursued by other Counsel or members of the Tribunal if thought relevant to the terms of reference. Mr Gerard Elias QC raised the difficulty of evaluating a complainant's evidence in a vacuum, that is, without an identified perpetrator.
- 6.189 Mr Treverton-Jones QC responded that to the best of his recollection there was no policy of deliberately not leading allegations against unidentified police officers. Counsel to the Tribunal liaised closely with the Tribunal members and Sir Ronald Hadfield and were influenced by their views on the evidence they wished to have examined orally. He too made clear that the relevant witness statements containing any such allegations would have been available to the Tribunal and counsel representing complainants and therefore would have comprised evidence before the Tribunal.
- 6.190 I record that Counsel representing other parties before the Tribunal did take the opportunity to request that some witnesses, whose statements would otherwise be read, be called to give oral evidence.

Evidence not admitted by the Tribunal

Late submissions

- 6.191 During the last days of the hearing, Mr Treverton-Jones reported that there were two statements that "had come in recently" and that, in those circumstances, Counsel to the Tribunal did not consider that the individuals accused could "reasonably be expected to answer the allegations in them". Therefore, they were not treated as evidence before the Tribunal.

6.192 On 28 April 1998, the National Youth Advisory Service contacted the Welsh Office, "our Solicitor ... notified [Counsel to the Tribunal] ... of the existence of new evidence and submitted a copy of ... statement. This followed a letter of 31 March 1998 which I wrote to Sir Ronald Waterhouse, seeking guidance and clarification of the matter of principle on the position of young people who wished to give evidence to the Inquiry but who are genuinely both in fear of their lives and in a precarious mental state. This has led to our receiving the assurances of the Tribunal that any information disclosed will be referred for the consideration of the Chairman alone."

6.193 Others contacted the Tribunal by telephone or letter after the hearing or, in some cases, after the Tribunal Report had been delivered. One said he had only just summoned up courage to get in touch, although he had been contacted in May 1997. Another would "always regret not coming forward". Another explained that he was writing "after the news tonight, which has opened a can of worms which I thought was well and truly closed ... I have kept it all deep down inside of me because of the humiliation of it all after seeing those lads on the news after all these years, has destroyed me again. So I am more than prepared to point the finger at the 3 monsters that operated in Chevethey [sic] because they must be still going on undetected, because the fear and intimidation they put into you, anyway who would believe a dishonest x-con, but I am available to speak to who ever wants to know ..."

Evidence deemed to fall outside the Tribunal's terms of reference

6.194 In other cases, witnesses who wished to give evidence were determined to be outside the terms of reference. On 12 May 1997, the Solicitor to the Tribunal wrote to a firm of solicitors, "I reiterated the point that your client's evidence fell outside the Terms of Reference of the Tribunal of Inquiry ... I have since put the complete file before the Chairman. He has asked me to indicate that Tribunal staff took a statement from your client last November in order to ensure that your client's history was properly considered ... The Chairman however considers that it is abundantly clear that the alleged abuse by your client falls outside the Tribunal's Terms of Reference." I confirm that the evidence concerned was outside the time frame of the terms of reference, was not relevant to a pattern of offending on the part of a particular abuser, did not demonstrate a particular ethos in a residential care establishment nor provide an illustration of the response to a complaint which was not otherwise available in other evidence (see paragraph 5.9).

Victims of suicide or unlawful killing who may otherwise have given evidence

6.195 A number of previous residents of the children's homes being investigated were known to have committed suicide. Although the Tribunal did not investigate the circumstances of the suicides, it did obtain the Coroner's files in most cases. Save in three instances, where a police statement had been made previously by a suicide victim it was read to the Tribunal. The three police statements that were not read, those of _____ did not contain allegations of significant abuse of a nature not covered in the evidence of others.

6.196 Another individual, _____ who may have been a witness to the Tribunal, had perished in an arson attack in Brighton. Some suspected that John Allen was responsible for instigating the fire. An internal Tribunal note records the Chairman as “not interested in seeing the box of material containing evidence from the Inquest [of one of the deceased]. His basic view is that the Brighton fire is a red herring.” The Solicitor to the Tribunal has noted underneath “I suspect that it would be prudent if we opened this Pandora’s Box of evidence.”

6.197 The Tribunal was informed that a police re-investigation had taken place into the circumstances of the fire. The police press release and briefing “Palmeira Fire Reinvestigation” made available to the Tribunal indicated: “the re-investigation confirmed that the original suspect [who committed suicide three days later] was responsible for starting the fire. There is no new evidence to indicate either that anyone else was involved or that he was acting as another’s agent. Two large sums of money which appeared in his bank account during 1990 appear to coincide with a redundancy payment, and the sale of a property. All surviving people who attended the party at Palmeira Square have been traced, with the exception of one man who is not central to the enquiry. None has been able to offer any new evidence. There is no disagreement among experts that the seat of the fire was the settee in the ground floor hallway. It will never be known whether the arsonist also set fire to other objects on his way down the stairs. Among those interviewed was John Allen, a central figure in the North Wales child abuse inquiry. Two of the victims of the fire were former residents of Bryn Alyn, but the team found no evidence to corroborate any involvement of Allen with the fire, and no evidential links were established between the fire and the events under investigation in North Wales. The circumstances of the death in 1995 of _____ who survived the fire, have been the subject of considerable speculation. It is also clear that [he] himself had become more suspicious over time about the cause of the fire and this too has affected his surviving family. The investigation has been able to resolve several of the outstanding issues surrounding his death.”

Allegations not dealt with for other reasons

6.198 I indicate in paragraphs 6.77 to 6.80 that the Tribunal mislaid evidence. It is further evident from notes between Counsel to the Tribunal and the Chairman that a staff file was lost during the course of the Tribunal relating to Keith Bould. Keith Bould was for some time registered as a foster carer with Clwyd county council and allegations of sexual abuse had been made against him by four young girls. He was convicted. Counsel to the Tribunal had formed an early decision that the alleged abuse should not be investigated by the Tribunal as it did not fall within its terms of reference, apparently under the misapprehension that all but one of the complainants had been cared for by Keith Bould’s wife as registered child minder, not foster carer, and the other was a relative of theirs. At the later date, when the Chairman queried this decision, it was established that the file was missing. Subsequent investigation revealed that at least two of the three complainants, _____ and _____ were in the care of Clwyd county council at the time of the indecent assaults and would have fallen within the terms of reference.

- 6.199 One complainant, _____ who had alleged physical abuse against three residential home care staff in a police statement, complained in a 1999 television documentary that the Tribunal had failed to contact him (see also paragraph 6.100). This prompted Mr Treverton-Jones to contact the Clerk to the Tribunal, saying that he “simply cannot remember why we did not make contact with him ... The Gwynedd complainants tended to come forward voluntarily, but as he was the allegedly ‘dull wicked boy’ of [the 1986 police] Reports, I feel sure that we would have specifically tried to contact him.” There is a record that the WIT obtained a contact address for the complainant, but no follow up documentation to indicate what action was taken or outcome achieved.
- 6.200 Eight alleged abusers were subject to ongoing police investigation at the time of the Tribunal hearings. The Tribunal records its general policy not to receive evidence in support of complaints still under police investigation in the Tribunal Report. None of the eight would constitute an establishment figure. Generally, complainants whose predominant allegation concerned those who were subject to police investigation were not called.
- 6.201 One complainant, _____ failed to attend the Tribunal on several occasions without good reason, despite his repeated assurances that he would do so and a witness summons being issued to compel his attendance. The Chairman raised the issue during the Tribunal hearings, raising the distinction between his case and those who had good reason not to attend or said they did not feel able to give evidence, in which case their statement was read. In this case, the complainant appeared “to be playing hot and cold”, had been offered counselling but failed to attend for that purpose, and in the circumstances, it was decided that no reliance would be placed upon his evidence at all.

Progress of the Tribunal

- 6.202 My reading of the documents relating to Tribunal “Progress Meetings” reveal the revision in plans necessitated by unforeseen events and the encroachment of time, inevitable in a public inquiry of this scale. The oral evidence in the first phase of the hearing obviously took longer than anticipated. A note from Counsel to the Tribunal to the Chairman suggested that, to ensure completion of Phase 1 by the end of July, the number of live witnesses in the remaining part of Phase 1 be reduced by removing trivial allegations from the evidence, alternatively to impose time limits for cross examination.
- 6.203 On 10 June 1997, notice was given in relation to the management of the Tribunal timetable that statements would no longer be read out during the course of the proceedings, but would be entered into the computerised transcript overnight. If the statement was from a complainant, the passages which contained allegations of abuse would be read and the remainder summarised. If the statement was from a Salmon letter recipient, his or her advocate would be invited to say publicly in a few sentences what needed to be said about the evidence. The statement was to be issued to the press at the same time the statement was put before the Tribunal.

6.204 A list of witness statements to be read indicates a range of reasons for doing so in addition to those matters indicated previously in paragraph 6.183. Five witnesses indicated they were willing to give evidence, but could not then be traced. Three, who had been willing to give live evidence, declined to do so for no specified reason. Two indicated from the outset that they were unwilling to give live evidence. One witness was assessed to be of very low intelligence and with a very limited ability to concentrate. Another was unable to attend because of child care responsibilities.

6.205 A letter to the Chairman from Mr Treverton-Jones concerning the “Final sweep up” indicates the necessity of “further statements to be read” since in one case “unfortunately, the statement was mislaid, and was only found a matter of days before the Tribunal adjourned ...”

6.206 Further decisions as to the management of the evidence were made. A note of the meeting on 13 June 1997 between Counsel for the Welsh Office, one of Counsel to the Tribunal and the Solicitor to the Tribunal records that:

“1. ... Chairman had made a decision to exclude evidence which will not provide examples of systems and procedures, and systematic abuse. Evidence of serious allegations will not, however, be excluded but the intention is that certain representative evidence will be given. There will not be any area of evidence that will not be covered ... aim is to eliminate duplication.

2. ... evidence relating to Bryn Alyn ... Welsh Office had some concern that with such an extensive list of potential witnesses only 25 people were being called ... [Counsel to the Tribunal] said that the Chairman would not be receptive to any arguments that he would not hear enough about Bryn Alyn from those who were being called. [He hoped the other (approximately 75) statements would be read out, but this had not yet been discussed with the Chairman]. It may be that only the very significant statements would be read out ... this would provide a record of allegations but as the evidence would not be tested it would not be used to make findings in relation to the scale or extent of abuse. [Counsel to the Tribunal] said that the Chairman had no difficulty in believing the nature and extent of abuse based on the evidence he had already heard.

3. Gwynedd evidence... Tribunal would not need to hear a vast amount of evidence to get the picture.”

Withdrawal of Salmon letters

6.207 In a ‘Note to Chairman’ dated 14 May 1997 concerning progress, past and future, Counsel to the Tribunal wrote, “1. In our view we must ensure that Phase 1 is completed by the summer break ... 2. If we do not complete Phase 1 by the end of July, we do not see how we could complete the Inquiry this year; 3. In order to meet this self imposed deadline, we consider that we shall have to reduce radically the number of Salmons who give live evidence ... On the other hand, it is obviously important that the Tribunal should hear a sufficient spread of evidence to be able to reach proper conclusions. In our view, we should seek to reduce the number of

Salmons ... to around 30. This can be achieved as follows: 3.1. the Tribunal should issue a list of those from whom it wishes to hear live evidence (these will be the most serious alleged abusers, and/or those in the more senior positions); 3.2. by and large, those who do not wish to give evidence should not be forced to do so; 3.3. those willing to give evidence, against whom only 1 or 2 allegations are made ... provided that the allegations are not of the most serious kind, should be informed that, in the absence of admissions, cautions or convictions, it is highly unlikely that they will be named/criticised as abusers in the Report, and that it is not necessary for them, therefore, to give their evidence orally. The same principles do not apply to those who have indicated that they do not wish to attend to give evidence who are not on the list at 3.1 above ...” In this last respect, I note that witness summons were issued to compel recalcitrant convicted abusers to attend the hearings to give evidence.

- 6.208 A separate note to the Chairman from Counsel to the Tribunal at paragraph 4.5 reads, “we have as yet given no assurance to the legal advisers of the ‘read’ Salmons that their clients will not be criticised as abusers in the Report. We believe that unless such an assurance is given, some, perhaps all, of those representatives will wish their clients to give live evidence ... 4.5.1. In our view little would be lost by providing some form of limited assurance, since we believe that the Tribunal will not be concerned to resolve one-off issues of fact involving less senior members of staff at the homes. 4.5.2. However, we also believe that the matter will have to be approached carefully, probably on a person-by-person basis, as some of these Salmons have made admissions, and there may be further documentary evidence in respect of others. Above all, the Tribunal will not wish to tie its hands as to the future. 4.5.3. We recommend that the Tribunal indicates through Counsel that in the absence of admissions, or other documentary evidence tending to confirm the truth of the complaint, the Salmon will not be criticised as an abuser in the Report without being given an opportunity to give live evidence to the Tribunal ...” In manuscript alongside appears “Ch agreed”.
- 6.209 Some Salmon letters were consequently withdrawn. In other cases, ‘assurances’ were given that alleged abusers would not be named in the Tribunal Report.
- 6.210 The Chairman indicated on day 65 of the hearing that there was a “category of persons against whom very few complaints are made, and against whom the complaints are very much at the lower end of the scale ... those persons ... evidence may be read.” He said that the Tribunal was “giving the limited assurance ... about not naming them because of the marginal relevance of their identity to any conclusions that we come to”. However, he made clear that if the Tribunal received fresh evidence requiring the witness to be called, the assurance would be of no effect.
- 6.211 This stance is confirmed in the Tribunal Report, where it is said that the Tribunal considered that “we should exercise a restrictive discretion in naming alleged abusers in our report. We have, for example, been able to give assurances in advance to a substantial number of persons in this broad category because of the comparative triviality of the allegations against them or the very limited number of minor allegations made against them over a long period.”¹⁴

14 See paragraph 6.15 of the Tribunal Report

- 6.212 Assurances were given to approximately 70 alleged abusers. Some recipients of the assurances had been subject of several allegations, including physical and sexual abuse. Save for two police officers, and the former against whom there had been a single but serious allegation of sexual abuse made, no other recipients of the assurances were establishment figures. Analysis of the materials makes clear that in some cases there were evidential difficulties, and in others, it was not unreasonable to consider them of “comparative triviality” in the light of other more prolific and serious alleged abusers.
- 6.213 Referring to the management of the proceedings indicated above in their written closing submissions, Counsel to the Tribunal asserted that “the evidence receiving part of this investigation could well have occupied two, three or more years, and but for a number of practical steps, taken with the full agreement of parties affected at the time, may well have done so.”

Issues raised by witnesses giving oral evidence

- 6.214 One contributor to my Review, a witness against whom allegations had been made, complained of the insensitivity shown in insisting on his attendance at the Tribunal at a time when his wife was in hospital. Another complained that his treatment was not conducive to giving evidence on such sensitive issues, in that he was “taken to the Tribunal in a pair of handcuffs and a six foot long chain by prison officers and was kept like that all through giving evidence.” He said that he found this “embarrassing” and he “did not want to be a part of the process because of this situation.”
- 6.215 However, another witness serving a sentence of imprisonment brought from prison to give evidence to the Tribunal wrote to the Chairman subsequently, “I think that I handled myself ok ... but it hit me when I got back to my cell ... After all this was only my 2nd time of talking about it. Being put on the spot as I was I was unable to think fully ... I want to thank you and those who treated me with respect like a victim and not a prisoner. This I found very helpful.”

Adversarial nature of the proceedings

- 6.216 The preliminary hearings resolved the order in which the evidence would be called, the manner in which the evidence would be adduced and also that the nature of the hearings would be adversarial. The Chairman’s note on procedure (see Appendix 3 of this Report) records, “although there are some advocates of wholly inquisitorial proceedings in investigations of this kind, in which the questioning is conducted almost exclusively by the Tribunal itself or Counsel on its behalf, I reached the firm conclusion that such a procedure would be inappropriate in this inquiry. It was essential, in my view, that complainants should be given a full opportunity to put relevant matters based on their own special knowledge to persons against whom they made allegations. Conversely, it was equally important that alleged abusers should have their cases put as they wished to the complainants who made allegations against them. This adversarial factor in the proceedings was inescapable, having regard to the nature of the allegations that the Tribunal had to consider.”

- 6.217 A note from Leading Counsel for the Welsh Office expresses criticism at the adversarial nature of the proceedings, although it appears that this criticism is restricted to those phases of the hearing dealing with managerial responses to allegations of abuse. Her note on 22 January 1998 complains “it seems that [the Chairman] has continued to view this Inquiry as a normal piece of litigation in which it is incumbent upon the parties, through their counsel, to invite his attention to relevant documents and make submissions which balance those of their opponents so that he, when he comes to write his report, can adjudicate upon them, identifying which argument he prefers. Thus, if difficulties are not highlighted by counsel and arguments and solutions are not presented in evidence and/or submissions it is unlikely that they will be alighted upon by the Tribunal ... It is an unusual stance for the Chairman of such a Tribunal of Inquiry to adopt.”
- 6.218 More significantly, the impact upon some complainants was traumatic. At the conclusion of the hearings, the Chairman in writing to thank the members of the Bridge team expressed that he was “perturbed that some witnesses have said that it was a worse experience than giving evidence in the Crown Court and that a prisoner said that he felt ‘dirty’ after doing so. I wish that it had been possible to devise a more informal way in which to hear the evidence but the need to enable those against whom allegations are made to challenge the complainants by cross-examination is the fundamental problem. I have done my best to eliminate crass ‘liar’ suggestions and unnecessary but disturbing peripheral questions; but it would be a breach of the Salmon rules to prevent proper cross-examination and the number of interested parties cannot be reduced ...”
- 6.219 One former children’s home resident, Mr Gareth Taylor, complained that the Tribunal hearings were too adversarial, complaining of “the overwhelming adversarial fisticuffs that currently holds sway, as well as the deferential and ‘grand inquisitorial’ style that seems to have become the norm by default and lack of scrutiny.” He wrote three months later to the Chairman to report “_____ has suffered a heart attack ... I wrote to complain of the way in which [she] was dealt with as a witness to the Tribunal recently ... I put it to you that people are actually dying to a greater extent because of the Tribunal and its failure to provide adequate support and protection to witnesses. Furthermore, this Tribunal has whipped up an atmosphere of rumour, innuendoes and salacious gossip ... It is these lies, the suggestive accusations of collusion, of ignorance and of actual abuse that has I would argue, led to several members of former staff dying prematurely, several former residents committing suicide or attempting the same ...” He repeated the substance of these criticisms when he spoke to me in Wrexham.
- 6.220 In its written closing submissions, Voices from Care indicated that it “has been concerned by the number of people who have been granted party status to the Tribunal and who have been allowed to cross-examine witnesses on a daily basis. At times, cross examination of witnesses has been conducted as if the Tribunal was not merely engaged in an investigative process but acted as if it were a criminal court. It is the view of Voices from Care that representatives of parties have been too much concerned with putting their clients’ cases rather than assisting in the fact finding role of the Tribunal.”

6.221 Several contributors to the Review have also highlighted the anxieties engendered by giving evidence on such sensitive issues in public and may well reflect the intimidatory aspect of an adversarial process (see also paragraph 6.139). Mrs Alison Taylor considered that the quality of her evidence was adversely affected by the adversarial nature of the proceedings, and equally it may have affected other witnesses. She complained that the Tribunal did not intervene during cross examination of her by Counsel for Gordon Anglesea, when it should have been apparent that she had no knowledge of the police investigations. [redacted] who gave evidence to the Tribunal, told me in interview that he felt “mauled” and treated as a criminal rather than as a victim.

6.222 However, other witnesses were satisfied as to the special arrangements put in place to facilitate their giving evidence. One, [redacted] had notified his fears in January 1997 when, in a telephone call to the Tribunal, he indicated concerns for his own safety. Part of his evidence was heard in closed session, that is, in the absence of members of the public, but representatives of all other parties being able to attend.

6.223 Some closing speeches were also considered inflammatory. On 6 January 1999, [redacted] wrote to the Chairman complaining of a term used by Mr Gerard Elias QC which he considered to be disparaging. He went on to say:

“...you of all people should have made sure Mr Elias was not allowed to make comments like this and judge people like this, considering I am a victim ... I was very critical of some of the police officers who took statement after statement from me and I was very critical of the tribunal team [WIT], who took statements, with very good reason ... a person who I was told did not exist appeared before Wrexham magistrates court this month charged with sex offences, dating back to my time in care. I told North Wales Police about [them] ... These are people who I was told did not exist ... I never told any lies at the tribunal, but I could have said a great deal more, but as you know my health was not so good ... I think this Tribunal has left a heap of stones unturned, part of which Mr Elias must take the blame and Mr Moran.”

6.224 The Chairman replied on 8 February 1999 challenging the use of the term by Counsel to the Tribunal saying, “he would not have done so but, if by an aberration, he had used the expression, I would have intervened to correct him. The words that you probably have in mind were said only in Mr Elias’ final submissions and were put in such conditional (if) form by way of possible argument that it would have been unjudicial for me to stop him. I made it clear, however, at the close of his submissions that the views that he had expressed were not to be taken to be the views of the Tribunal itself.”

The Tribunal Report

6.225 The Clerk to the Tribunal confirmed in her interview with me that the Chairman’s manuscript draft of the Tribunal Report was faithfully reproduced in typescript, and then submitted to him for further handwritten editing. My ‘spot check’ of manuscript and various drafts seems to confirm this approach. No parts of the Tribunal Report were redacted or amended, save by the Chairman.

- 6.226 The Tribunal Report does not refer specifically to all of the allegations of abuse evidenced before it, whether orally or contained within the witness statements read or deemed to have been read into the proceedings. Indications in internal Tribunal notes would suggest that there were some allegations where the Tribunal entertained doubt as to reliability of the evidence. In any event, the Tribunal Report makes clear that it would have not been “practicable or appropriate ...to attempt to reach firm conclusions on each specific allegation that has been made...bearing in mind the overall objectives of the Inquiry underlying our terms of reference.”¹⁵
- 6.227 The Tribunal Report does not record the evidence of witnesses who made allegations against unidentified police officers nor make findings in relation to them.
- 6.228 This Review has identified some relatively minor factual discrepancies in the Tribunal Report when compared with the evidence adduced, for example: an inaccurate number of complainants alleging abuse against individual residential care workers, or number of complaints received in relation to a particular establishment; whether a complainant was in care at the relevant time; and, in one case whether a complainant had made a Tribunal statement or offered to give evidence.
- 6.229 In the Tribunal Report, it is said that, “In a small number of cases potential witnesses were not called or written statements were excluded because there were clear pointers to their unreliability.”¹⁶ However, where there is evidence which does not appear to have been taken into account and/or reported upon by the Tribunal in reaching its findings on the particular topics of freemasonry, establishment names and the paedophile ring. I make further reference to it in Chapters 7 to 9 of this Report.
- 6.230 The Tribunal Report¹⁷ explains the Tribunal’s rationale in relation to the question of “naming names”. In summary, complainants of sexual abuse were covered by section 1 of the Sexual Offences (Amendment) Act 1992 and since many also alleged physical abuse would have presented a technical problem by their identification in respect of only part of their allegation. Others had made difficult decisions to reveal their past experiences and it was not considered within the public interest to expose them. In the case of alleged abusers, a “restrictive discretion” not to name was exercised in all the circumstances revealed, save in the cases of those subject to court proceedings, or against whom a significant number of complaints had been made, or who had featured prominently in the evidence, or who should be “identified in the public interest in order to deal with current rumours” and those not subject to allegations of abuse but who were in positions of responsibility.

15 See paragraph 6.02 of the Tribunal Report

16 See paragraph 6.17 of the Tribunal Report

17 See paragraphs 6.13 to 6.16 of the Tribunal Report

Conclusions

Documents

- 6.231 Inevitably, missing documents will have hindered the Tribunal's preparation or process of investigation. In some cases, the documents could have provided corroboration for evidence which was not otherwise considered sufficient upon which to make findings or could have undermined findings that were made. However, I am satisfied that conscientious efforts were made by the Tribunal to acquire all relevant materials.
- 6.232 I consider that most of the issues raised as to 'missing' documentation are likely to have innocent explanations and arise from authorised destruction policies, inappropriate storage and inadequate record keeping or the passage of time. It is not unusual or suspicious for organisations to operate a specified destruction policy of some categories of materials to ensure effective archiving. The advance of computer technology may well obviate the need to do so which is necessitated by limited storage space. Specifically, it is unsurprising that files appear to have been destroyed a significant time prior to any government consideration of the necessity for a public inquiry. There is no evidence to suggest a deliberate destruction of materials after the announcement of the establishment of the Tribunal.
- 6.233 Allegations that documents were deliberately withheld from the Tribunal are concerning. In this respect, I regret that I considered Ms Griffiths to give an unsatisfactory account of herself in interview with me. She did not reveal that she had retained Tribunal documents until confronted with the evidence that she had done so, patently revealed during the course of the television interview. Her attempt to distance herself from the claims she is seen to make during the television interview as being the result of editing was unconvincing. Nevertheless, I am not in a position to determine conclusively whether she did or did not withhold files from the Tribunal, and if so which and at what stage. However, the files that she collected and collated during the Tribunal process were not the only 'source' of allegations to be examined by the Tribunal, and therefore the identities of alleged abusers were unlikely to be protected. The random selection of files concerning children in care would have been beyond her manipulation. What is clear is that she certainly did not repeat in interview with me her televised claims about the Tribunal's omissions. Nevertheless, they will undoubtedly have undermined public confidence in the Tribunal process and lent support to claims of a 'cover up'.
- 6.234 I accept the validity of Mr Gerard Elias QC and Lord Justice Ryder's responses to the queries raised by the Clerk to the Tribunal in relation to Mr Clode's information concerning Ms Griffiths. Whilst it was not unreasonable to seek their views on the factual context, the decision as to what should happen was one for the Chairman alone. Overall, I deem the response of the Chairman in respect of the late allegations against Ms Griffiths to be reasonable. The difficulties in investigating the hearsay evidence at that stage of the proceedings were correctly balanced against her limited ability to skew the outcome of the Tribunal. However, I am of the view

that in the interests of transparency, the Chairman should have alerted the police to the suggestion that she may be responsible for perverting the course of justice, and that an allegation that files had been withheld from the Tribunal and was subject to police investigation should have been referred to in the Tribunal Report as a matter of public interest.

6.235 I considered _____ account of her conversation with Mr Marshall to be consistent and reliable. There is no indication that she was responsible for altering her statement in the way I have described in paragraphs 6.51 and 6.52, nor that she knew of the apparent amendment prior to my meeting with her. Since Mr Marshall had denied the relevant conversation with _____ when asked by DI Roberts, it is unsurprising that the investigation was curtailed. However, a more rigorous investigation may have resulted if the Chairman of the Tribunal had reported this matter to the police.

6.236 I conclude that the possibility of other deliberate destruction, for example the Pickfords fire, is improbable. The Tribunal had access to documents from multiple sources. Tribunal statements were independent of other documents and not necessarily consistent even with relatively recent police statements, as demonstrated by additional and/or more serious allegations of abuse which emerged within them. In a few cases, allegations were amplified or made for the first time in the oral evidence given.

6.237 The small number of errors in the Tribunal's safe keeping and recording of the whereabouts of files will fuel suspicion, but is more likely the result of human error in the light of the scale of the documentation involved.

Witnesses

6.238 I conclude that the Tribunal was sufficiently well and widely advertised in the United Kingdom. The telephone helpline was generally well administered and operated well. The advice proffered to callers was uncontroversial.

6.239 The preparatory work in terms of seeking witnesses and the planning of the Tribunal hearings appears to me to have been conducted in the main with all due diligence and expedition. The errors in the schedule of allegations were minimal and did not adversely impact upon the overall effectiveness or conclusions of the Tribunal.

6.240 I consider that the Tribunal was justified in seeking its own statements of complaint from witnesses, whether those complainants were represented by solicitors or not, for the reasons indicated in paragraph 6.109.

6.241 The Tribunal was reasonable in relying upon the results of the police re-investigation and declining to inquire into evidence arising during the Inquest into one of the victims of the Brighton fire. There was no apparent reason to discredit the police re-investigation and conclusions.

- 6.242 The statistical exercise which should have resulted in a “Random 600” witnesses was entirely reasonable in principle and could have provided either corroboration or moderation of the scale of the abuse that was to be determined. It is unfortunate that the Tribunal Report does not record that the process was not followed through to conclusion for the sake of completeness. However, the abandonment of the process was reasonable on the basis of proportionate yield of results as against time and other sources of information.
- 6.243 The employment of former police officers as members of the WIT may have alienated some witnesses, but I do not detect any suggestion that it was deliberately designed to do so. There was little realistic alternative open to the Tribunal. The tracking down or visiting of complainants long since dispersed from the area, and the necessity that they should provide a statement of relevant information in a standard form within a limited time frame, could not otherwise have been achieved as comprehensively as it was.
- 6.244 The offer of the NWP to provide serving officers to assist was rightly declined in the light of their party status and the sensitivity of those who considered the force to have ignored or contributed to the abuse. Equally, it was appropriate to decline the initial invitation of Mr Loveridge and Ms Griffiths to assist in identifying the characteristics of prospective witnesses prior to the WIT approaching them. The subsequent involvement of Ms Griffiths in this respect was in my view pragmatic, but with hindsight of her subsequent behaviour as indicated above, regrettable. Whatismore, it did not adequately reflect the potential conflict of interest created by her employment with an authority whose behaviour was under review. However, for the reasons given above, I think it entirely unlikely that she was able to manipulate the inquiry to her own or any other individuals’ advantage.
- 6.245 It would have been unrealistic for the Tribunal to attempt to trace all witnesses who had made complaints, as noted in their social services files or police statements, in the past relating to more minor allegations of abuse within the limited time frame available. Specifically, the nature of the information indicated by the two individuals calling the telephone helpline (see paragraph 6.93) would have been unlikely to have added to the overall picture. Equally, it would have been disproportionate to attempt to trace witnesses in relation to allegations made against those who had received assurances, whose Salmon letters had been withdrawn or not issued, or in cases where there was already a sufficiency of evidence to establish the range of abuse alleged. I have referred to cases where no explanation is given for the WIT’s failure to attempt to trace various witnesses. These are comparatively few in number and, for the avoidance of doubt, do not concern allegations against establishment figures.
- 6.246 I regard the WIT briefing notes as well prepared. To enable a witness to have a solicitor or third party present at the taking of their statement was a protective measure for both interviewee and interviewer. I think the criticism of the Solicitor to the Tribunal regarding the WIT’s restrictive approach to be an inevitable product of a strict adherence to the instructions rather than indicative of indifference.

6.247 The Witness Support Service was independent and was introduced for the purpose of mitigating the impact of the traumatic process of making a statement alleging abuse and/or giving oral evidence before the Tribunal. It appears to have been properly co-ordinated and maintained confidentiality of those who used the facility. It was not unreasonable to offer the same service to abused and accused assuming appropriate arrangements could be made to ensure their segregation, each from the other. No service would be capable of alleviating all distress or anxiety.

6.248 The arrangements made for the hearings probably did not cater adequately for the welfare of all witnesses before and after giving evidence, as indicated in the complaints made at the time and subsequently. However, it is difficult to devise a process that could have catered for every individual witness in the light of the emotive subject matter to be investigated. Approaches to witnesses, delay in taking their statement, the changes made to the Tribunal timetable and intended live witness lists, and the adversarial nature of the proceedings carried inherent risks which I consider were unavoidable. The necessity of a working practice to ensure due process may have appeared unfeeling to some of the participants. Its impact on an individual witness's comfort is regrettable, but I consider it unlikely to have significantly impeded the quality of evidence given by the majority. Specifically, it would have been unrealistic to have contemplated the Tribunal sitting in more than one location by virtue of the personnel and equipment involved.

Hearings

6.249 The Tribunal's rulings on representation were reasonable and not designed to impede access to justice. I am satisfied that it would have been impossible to meet demand for representation in financial terms. Recognising the importance of protecting the reputation of deceased witnesses, whether abused or accused, I am nevertheless satisfied that it was reasonable for them not to be represented. The Tribunal's terms of reference did not centre upon particular allegations and it was necessary to have regard to proportionate use of resources, finances and length of hearings.

6.250 I am satisfied that no complainant was disadvantaged by reason of the decision made to scale back the number of solicitors at the conclusion of Phase 2 dealing with complainants' evidence. There is some merit in the argument that the defunct local authorities should have been independently represented from the Welsh Office and the successor authorities from the objective perspective of 'equality of arms'. The Chairman sought to ensure this in the preliminary hearings. However, whilst some personal criticism of previous Councillors may have been deflected, it is unrealistic to suppose that their separate representation would have undermined the overall conclusions of the scale of the abuse or the inadequate managerial response that had occurred.

- 6.251 The Tribunal's ruling as to anonymity was not designed to protect abusers of whatever status, rather to facilitate the giving of evidence. The public hearing was recorded. Names were used throughout and appear on the daily transcripts. The ruling prohibited the reporting of a witness's identification, or those accused, in the media, but not the public naming of either during the Tribunal hearings. The benefit of encouraging greater participation of witnesses in the Tribunal process outweighed the prospect of identifying witnesses and those they accused to members of the wider public unable to attend the hearings.
- 6.252 The management of the disclosure process appears to have been well ordered and appropriate to guard against unnecessary fishing expeditions and to protect confidential child care and medical records, whilst ensuring observance of due process.
- 6.253 The procedure adopted by the Tribunal in relation to the witness statements of live witnesses standing as their evidence in chief is uncontroversial. I consider that the Chairman's response to Councillor King's complaint as to process to be accurate and well balanced. The selection of witness statements to be read involved an exercise of discretion in the context of the whole and, as a practice, was merited to limit the length of the hearings appropriately. I do not regard any of the individual decisions made by the Tribunal to read or summarise a statement, rather than call the maker to give live evidence, to be unreasonable. Specifically, I do not regard the decision not to call Mr Frost to be at all questionable. His evidence as to the approach he made to Cheshire police was seemingly not challenged by any party to the Tribunal. His attitude that "it was no big deal" and his description of the information he gave to be rumours would not have indicated a necessity to call him, and may well have accounted for the fact that the Cheshire police officers did not consider it sufficiently important to log or pass on to the NWP. What is clear from the evidence is that, for whatever reason, the Tribunal did not do so.
- 6.254 The provision of witness packs should have assisted a well ordered investigation. Records of decisions made to exclude evidence show that they were made for practical reasons. I do not consider it unreasonable to disregard the evidence of witnesses who repeatedly failed to attend the Tribunal, or those who volunteered late in the day, or could not add to the overall picture of the evidence already available. Case management was a necessary component of a well ordered inquiry on this scale.
- 6.255 Specifically, it was reasonable for the Tribunal to review its practices and amend its procedures with a view to conclude the hearings within a reasonable time frame.
- 6.256 I have not discovered any indication of bad faith on the part of the Tribunal or Counsel to the Tribunal in relation to the management of evidence or due process. The reluctance to compromise police investigations or prospective criminal prosecutions was merited. Decisions made in respect of elderly abusers appear uncontroversial in the scheme of the Tribunal. Arguably some allegations were wrongly identified as "very limited" in number or "minor" in nature to lead to assurances being given to alleged abusers that they would not be named in the

Tribunal Report, however it was necessary for a judgment to be made not only as to the categorisation of the nature of offences alleged, but also the available evidential foundation in relation to them. Different conclusions could have been reached in some cases in this regard, but I do not conclude that the decisions made by the Tribunal or Counsel to the Tribunal were outside the band of reasonable decisions. The decisions made in regard to the withdrawal of Salmon letters and the giving of assurances were otherwise justified in an effort to foreshorten the hearings in the context of the other evidence available.

- 6.257 I consider that the Tribunal was right to decline to investigate the cases of those complainants who had committed suicide. The Tribunal was not in a position to review the Coroner's verdicts. Neither was the Tribunal in a position to gainsay the results of the police investigation into the circumstances surrounding the Brighton fire.
- 6.258 I do not regard the complaints made that the Tribunal ignored evidence running counter to the evidence of abuse to be objectively justified in the context of the Tribunal's findings that not all complaints of abuse were sustained. The Tribunal's expertise was such that it was unlikely to require expert evidence which dealt with the contra indications of abuse. The high level representation of those accused rendered this redundant. Cross examination of complainants was capable of revealing any factor which undermined reliability. I do not consider it was necessary or reasonable for the Tribunal to investigate the evidence concerning Mrs Taylor's employment, or otherwise to allow her or Councillor King to give opinions on the evidence of others. I consider that the Chairman's response to Councillor King's complaint as to process to be accurate and well balanced. Noting Mrs Taylor's views as to the inadequacy of the investigation by the Tribunal of managerial response in respect of children in care or the role of the NWP in the investigation of child abuse allegations, I nevertheless conclude from my reading of the documents as a whole and the Tribunal Report that this criticism is not justified.
- 6.259 I recognise the inherent difficulty in assessing the reliability of accusations made against unidentified police officers. The prospect of reaching a determination on the validity of the individual complaints was unlikely. In these circumstances, it was not unreasonable to concentrate on the substantive allegations made against named individuals.
- 6.260 The apparent omissions in admitting available evidence into the proceedings are comparatively few. Some, as indicated above, were reasoned decisions. In respect of the others, I would not discount the possibility of human error, or oversight, in view of the quantity of the materials involved.
- 6.261 The selection of an adversarial process rather than an inquisitorial process provided a forum for any evidence to be led and cross examination made in relation to all allegations whomsoever they concerned. This particularly so by reason of the legal representation of complainant witnesses. The Tribunal would not have been likely to select such an approach if it had wished to suppress evidence.

6.262 The daily transcripts reveal that Counsel to the Tribunal were robust in their approach in cross examination of alleged abusers and showed no distinction between classes of those accused. That on occasions offence was said to have been caused to some of the Tribunal witnesses by Counsel to the Tribunal may indicate an over combative manner but undermines any suggestion of a lack of enthusiasm to establish the case of institutional abuse. Other Counsel were also criticised for their cross examination of the witnesses.

6.263 It appears to me that Leading Counsel for the Welsh Office's criticism of the adversarial approach adopted by the Tribunal was articulated in relation to the stage of the hearings dealing with managerial responses to allegations of abuse and not the determination of factual issues of abuse. If it was more wide ranging, it was, in my view, unreasonable and unfounded. If limited to the stage dealing with managerial responses, the argument is more finely balanced, but I consider the scale comes down in favour of a consistent approach.

The Tribunal Report

6.264 The Tribunal was not intended nor devised to be a series of quasi criminal trials returning verdicts on all allegations. The omissions and factual discrepancies I have identified are few in number and hardly surprising in a report of its length and breadth. It would be unrealistic to expect every piece of evidence to be mentioned or to assume that it was not therefore considered by the Tribunal. Specifically, given the continued issues raised by the two journalists referred to in paragraph 6.182 herein, it appears to me that the nature of Mr Frost's evidence was sufficiently imprecise to enable findings to be made either as to when he informed the police officers in Chester or whether they had adequately informed Wrexham police.

6.265 The Tribunal Report may be inaccurate in reporting that "The evidence before us shows that there were three officers only against whom allegations of sexual abuse were made ..." ¹⁸ There were allegations made by a small number of witnesses who may have been in care which arguably complained of sexual abuse against other police officers, albeit that they were unidentified. A far greater number complained of physical abuse by police officers. In view of the repeated allegations of a police 'cover up' in the lead up to the establishment of the Tribunal, I consider it would have been appropriate to refer to the number of allegations made against several unidentified police officers by witnesses and the reason why no conclusions were drawn. The failure to do so is likely to continue speculation of cover up of police complicity.

6.266 However, overall, I adjudge the Tribunal Report to accurately reflect the preponderance of the evidence. The Tribunal Report will inevitably disappoint those participants who sought vindication for their own case or cause and did not achieve it.

18 See paragraph 51.65 of the Tribunal Report

Overall conclusion

6.267 I conclude that the procedure identified and implemented as a general rule, and in regard to the likely majority of participants, was appropriate and reasonable in the circumstances that the Tribunal need investigate and report in a time span commensurate with the public interest and to address any unresolved local or national issues of child care practice. I am satisfied that the process was not likely nor designed to protect any individual or institution otherwise subject of allegations or legitimate criticism.

Chapter 7: Freemasonry

Introduction

- 7.1 The issue of freemasonry formed a lynchpin in many theories of why the abuse of children in care in North Wales had been allowed to continue for so long. Those Freemasons who were not directly involved in abuse were considered likely to protect those who were, either by failing to investigate allegations adequately or at all. The rumours of the NWP being a bastion for freemasonry held firm,

The inclusion of this chapter in this Report requires no further explanation.

Tribunal approach

- 7.2 The Tribunal Report states that freemasonry “soon became a non-issue” in the Tribunal as “there was no evidence whatsoever that freemasonry had had any impact on any of the investigations with which [the Tribunal has] been concerned.”¹ The Tribunal had investigated the issue in relation to because it appeared “to be alleged specifically that [his] membership of the Masons had led to a ‘cover up’ of the allegations about him or to specially favourable treatment in consideration by the police of the strength of the evidence against him.” The Tribunal found neither situation to have been established. As regards Lord Kenyon, a Freemason, Provincial Grand Master, and a member of the NWP Authority in the 1980s, who was speculated to have “advocated promotion for the purpose of covering up the fact that his son had been involved in child abuse activities ... We have received no evidence whatsoever in support of this allegation and it appears to have been a malicious rumour.”²
- 7.3 The “very strong and impressive opening” (see paragraph 4.39) of Leading Counsel to the Tribunal did not refer to the issue of freemasonry. However, his opening speech at the beginning of Phase 4, dealing with the police investigations, covered the topic fully. Mr Andrew Moran QC, opening this stage of the Tribunal on behalf of the NWP did so berating the source of information concerning the adverse impact of freemasonry in relation to police investigations, in terms that, “an oft recurring theme ... in this force area, that a particular officer of the North Wales Police, based in Gwynedd, had because of Masonic influence failed to investigate a case of child sexual abuse ... the source of the allegation was identified and Councillor Parry ... when confronted ... conceded that he knew that the unfortunate person on whom he was relying was mentally unbalanced ... the deluded ramblings of a complete ‘Walter Mitty’ like character, asserting the role of a secret service agent ... In association ... suggestions put about in North Wales that the police were not fit to be investigating, that because of freemasonry they would show favour in circumstances where officers of the force were suspects ... were entirely unjustified ... We can now demonstrate that - apparently at some time a freemason - was not shown an ounce of favour ... The proof of that is incontestable in the recommendation made by Superintendent

1 See paragraph 50.42 of the Tribunal Report

2 See paragraph 50.44 and 50.45 of the Tribunal Report

Ackerley that there was sufficient evidence to prosecute ...Freemason at the top of the North Wales Police, there are none. Freemason? Mason free zone, we would say.”

7.4 I bear in mind the complaint of Councillor Malcolm King in his letter to the Chairman and repeated to me to the effect that he was prevented from giving his evidence fully. His correspondence with the Chairman is referred to at paragraph 6.177 herein. To me, he suggested a degree of cover up, possibly with a view to protect a senior police officer who he said had investigated a member of the NWP and had told him they would like to “do [the officer] for child pornography.” For the avoidance of doubt, I record here that the NWP officer concerned was not the subject of any allegations by any witness to the Tribunal. Councillor King had spoken to this senior police officer about _____ in a different connection and did not specifically refer to this in the context of freemasonry. Significantly, in his address to the Tribunal, Counsel for Councillors Parry and King said that, “I had not intended to raise the wretched topic of free masonry ... It is correct that Councillor Parry and Councillor King, did suspect that there may have been such an involvement ... errors may be made by those well intentioned ... if this information [in relation to other senior police officers, including the Chief Constable’s, non membership] had been revealed [in 1991] then it may have been the end of that unfortunate story relating to free masonry.” In doing so, he appears to confirm the Tribunal’s view that it was a non-issue.

7.5 The wider issue, of course, was the appointment of two Counsel to the Tribunal and the head of the WIT who were Freemasons. This Review has specifically considered whether there is anything within the material which suggests that the investigations made on behalf of the Tribunal into freemasonry was less thorough by reason of this fact. I have found nothing to suggest this was the case and illustrate the point below predominately in relation to two establishment figures identified during the course of the Tribunal as Freemasons, namely _____ and Lord Kenyon, and briefly in general (see paragraphs 7.22 and 7.23).

Tribunal investigations

7.6

3 See paragraph 9.01 of the Tribunal Report

4 See paragraph 6.12 of the Tribunal Report

7.7 That part of a note of the Chairman's meeting with Counsel to the Tribunal on 26 November 1996 referring to [redacted] after commenting upon the further enquiries to be made in relation to establishment names appearing in the press (see paragraph 8.61) reads, "Ditto - we propose to make further investigative enquiries in relation to this individual particularly in the light

Nb -

we have been put on notice that NWP propose to adduce this fact in Opening their case to the Tribunal to seek to destroy the 'Police Cover up Conspiracy' theory - (& since [redacted] has been described as a 'prominent freemason', no doubt any suggestion of a conspiracy in that direction, also!)."

7.8

[redacted] The WIT made repeated attempts to trace one witness, [redacted] without success who had given information

A firm of solicitors was reported as waiting for him to give them instructions in order to represent him at the Tribunal. It appears that he eventually made a Tribunal statement, (although this cannot be located in the Review papers) for in the last days of the Tribunal hearings, Mr Gregory Treverton-Jones made a reference to it in terms that it had arrived too late to adduce fairly into evidence since those against whom he made accusations would not have an adequate opportunity to deal with them. It appears from the Chairman's comments at the time that the statement contained allegations against Paul Wilson and Peter Howarth or Stephen Norris. No reference was made to [redacted] which would suggest the statement was silent on this point.

7.9 The Tribunal looked for evidence of other allegations of sexual abuse and grooming, and established [redacted] more frequent visits and greater association with Peter Howarth and Bryn Estyn than he had previously accepted. A CPS file note created by [redacted] refers to a 1994 police statement in which it is said that one witness, [redacted] alleged that [redacted] visited Bryn Estyn about twice a week between 1979 and 1982 in civilian clothes, and that he and Peter Howarth, together with some boys, would knock golf balls about in a neighbouring field. This witness's address was obtained by the WIT via the Benefits Agency but there is no further indication as to whether contact was made with him. Tribunal documents show that the WIT was directed to investigate relationships between [redacted] and Peter Howarth, and [redacted] and Stephen Norris.

7.10 I observe that although a WIT record of a meeting with a Tribunal witness, [redacted] refers to [redacted], there is no reference to [redacted] in his Tribunal statement and no other document which expands on this entry. The witness gave evidence to the Tribunal but, unsurprisingly in the circumstances, was not asked about [redacted] Another witness, [redacted] who was a serving prisoner, wrote to the Tribunal referring, amongst other things, to [redacted] frequent visits to Bryn Alyn. He was seen by the WIT, but did not refer to [redacted] in his Tribunal statement. It is not clear whether he was asked about [redacted]

- 7.11 A witness, Mr [redacted] seen by the WIT whilst a serving prisoner was assessed as “Fixated re [redacted] and his alleged involvement in a paedophile ring.” The statement produced records his assertions that in 1991 he had seen part of a video featuring [redacted] sexually abusing a boy and girl. The video had allegedly been stolen from a local Councillor subsequently prosecuted for possession of a large quantity of pornography. He said he developed photographs from the video and sent them anonymously to the Chief Constable of the NWP. A week later, [redacted] This witness was not called to give evidence and there is no evidence of his statement being read to the Tribunal. A note with the statement addressed to ‘Gerard’ queries whether the allegations of sending the photographs to the Chief Constable should be followed up. There is no direct response to this in writing. However, in a Tribunal note headed “Final sweeping up evidence”, his statement was described as “deemed not credible by Counsel to the Tribunal” and his allegations “not properly supported.”
- 7.12 Investigations were made of membership lists of the masonic lodges with which [redacted] had been affiliated, and to determine the identity of his proposer(s). Visitor’s books were inspected. Other investigations had been made to investigate his connection with Peter Howarth; at Bryn Estyn to establish the frequency of his visits; and at the attendance centre at which he had been [redacted] to question his colleagues about the manner in which he carried out his role. The investigations were commissioned on behalf of the Tribunal and apparently faithfully executed by the WIT. However, more than one contributor to this Review still question whether enough was done to find evidence against [redacted] or to properly examine the links between freemasonry and the failure to investigate child abuse allegations.
- 7.13 This Review has noted, and I record for the sake of completeness, that one other member of the [redacted] Masonic Lodge at the same time as [redacted] was said, in other documents, to be the owner of a flat in which an indecent assault was committed against a male youth, when he was in care, by a female residential care worker, who was subsequently convicted. Another individual, who was subject to an unsubstantiated assertion of association with John Allen and “getting boys”, has a similar name to that of another member of the [redacted] Masonic Lodge at this time. However, no connection was drawn between either of them and [redacted] by any witness. Neither were they referred to by name by any witness before the Tribunal. Therefore, there were no allegations and no evidential basis to make findings against them. Unsurprisingly in these circumstances, [redacted] was not questioned about them. The Tribunal Report records that Nefyn Dodd denied that he had ever been a Freemason when specifically asked in order that “any suggestion of a ‘cover up’ [by the NWP and [redacted] in his case on that ground should be probed.”⁵ One other witness to the Tribunal, [redacted] was for some time a member of the [redacted] Masonic Lodge at the same time as [redacted] but gave evidence that he knew him by sight and had never approached him.

5 See paragraph 50.47 of the Tribunal Report

Tribunal hearings

- 7.14 One witness, Mr [redacted] who gave oral evidence to the Tribunal in relation to allegations against several residential care staff, refused to expand upon matters relating to [redacted] in a police statement. He acknowledged that he knew [redacted] and that he had seen him in Bryn Estyn in about 1974, but refused to say anything further, he said for fear of reprisals.
- 7.15 Another witness, [redacted] obviously indicated that he did have evidence relating to [redacted] which did not appear in his first Tribunal statement. He was not called to give evidence, but was requested to produce a further statement containing the allegations, and did so in September 1997. He alleged that [redacted] whom he later recognised as [redacted] would come to Bryn Alyn regularly. He suggested that boys were called out of the room to be masturbated. The daily transcripts confirm that Leading Counsel to the Tribunal cross examined [redacted] about these and other allegations.
- 7.16 During the course of [redacted] evidence, reference was made to an anonymous witness who would allege abuse against [redacted]. An attendance note dated 3 February 1998 reads, "At the short adjournment I visited Mr [redacted] in the witness room to request that he furnish me with the name of the complainant [against] that he had referred to in the witness box ... Mr [redacted] refused to give me the name unless the undertaking outlined by the Chairman (i.e. that the complainant would not be approached without his consent) was given ... the U/T [undertaking] having been given." A file note dated 3 March 1998 records, "[redacted] telephoned. He has spoken to lead social worker at Altcourse [prison] – X has indicated that he does not wish to speak to anyone at the Tribunal, or to MK [redacted]. He was most distressed after his last conversation with MK. Therefore little else we can do at this stage?"
- 7.17 Two 'new' witnesses, [redacted] who complained of sexual abuse at the hands of [redacted] were called to give oral evidence. I have considered whether the decision not to call one witness, [redacted] to give oral evidence was reasonable (see paragraph 8.94). [redacted] was a [redacted]. His statement was read to the Tribunal and made reference to [redacted]. The Tribunal subsequently gave little weight to his statement on the basis that: it was the only evidence to the effect that [redacted] would 'pick boys' lined up for that purpose by Peter Howarth; that there was uncertainty as to whether the witness was at Bryn Estyn at a time of regular visits made by [redacted] an [redacted] and, it contained speculation rather than direct evidence.⁶ [redacted] statement added some weight to the fact of [redacted] association with Peter Howarth and the number of his visits, but not otherwise to his motive in visiting. I note there was already evidence before the Tribunal to this effect, which countered [redacted] assertions to the contrary.

6 See paragraph 9.28 of the Tribunal Report

Evidence not before the Tribunal

- 7.18 I am aware that an allegation of a relatively minor indecent assault was made against [redacted] by an adult acquaintance of his family prior to the commencement of the Tribunal hearings. It appears that Counsel to the Tribunal was informed that “the CPS had decided to take no further action in the case on the grounds that there was insufficient evidence to support criminal proceedings”, but apparently not of the fact that [redacted] had lied, on his own subsequent admission, when first interviewed under caution about the allegation. A note to the Chairman from Mr Gerard Elias QC and Mr Treverton-Jones indicates that, “we have requested sight of the NWP file in respect of the allegation of indecent assault ...The NWP’s legal representatives are concerned that this allegation (of indecent assault upon an adult) is entirely irrelevant to the issues before the Tribunal. We believe that we should at least see the file, and unless you take a contrary view, we propose to insist upon its production to us.” However, a manuscript annotation reads “justification needed” and it does not appear that the matter was taken any further.
- 7.19 I wrote to the present Chief Constable of the NWP on 15 May 2015 in relation to this non disclosure. The Chief Constable responded indicating that there is no material in the possession of the NWP to indicate why the file was not disclosed, but that it is possible that the file’s relevance to the issue of credibility was overlooked. Having looked into the matter, the Chief Constable noted that [redacted] had been interviewed during the course of the investigation into the indecent assault and an advice file submitted to the CPS, who decided to take no further action.
- 7.20 On a different issue, this Review notes that a letter dated 1 October 1998, sent by Mr Treverton-Jones to the Clerk to the Tribunal states that “... had [he] seen the statement [of a complainant, [redacted] it would have rung a number of very loud bells.” The statement concerned allegations of physical abuse against [redacted]. In the same statement, [redacted] refers to the visits of [redacted] to Gatewen Hall on a number of occasions while [redacted] was associated with the home. Mr Treverton-Jones wrote that he was “pretty sure that [he had] never seen this statement ... [and] was extremely interested in the connection between [redacted] and [redacted] ...” Whilst accepting in the letter that “the statement somehow slipped through the net”, he went on to conclude it did not contain an allegation against [redacted] and that [redacted] himself had accepted in evidence that he had visited Gatewen Hall on a number of occasions at the relevant time.

Lord Kenyon

- 7.21 Lord Kenyon’s alleged manipulation of the criminal justice system on behalf of Gary Cooke to protect the interests of his son, Thomas Kenyon, and the attempt he made to persuade the Chief Constable of the NWP to withdraw a directive discouraging police officers’ membership of freemasonry, was considered by the Tribunal, as [redacted] was his alleged influence to ensure [redacted] promotion.⁷ Lord Kenyon’s

⁷ See paragraphs 50.44 and 50.45 of the Tribunal Report

previous association with the Clwyd Area Health Authority between 1974 and 1978 was not. I refer in paragraphs 5.80 to 5.95 to the impediment in the Tribunal conducting a thorough investigation in relation to Gwynfa. There is no allegation in any witness statement available to the Tribunal which suggested Lord Kenyon's personal involvement in child abuse.

Other references to Freemasons

- 7.22 In a briefing note dated 9 October 1996 sent by [redacted] (see paragraph 5.49) to the DPP and others, he notes under "other developments ... I have raised with [redacted] the sensitivities of Masonic influence in the case. He has assured me that he has no links whatsoever with Freemasonry." [redacted] spontaneously indicated that they had no connection with Freemasons in interview with me.
- 7.23 During the course of this Review, I have been informed by Mr Andrew Sutton that he was told by a police officer to "Beware of the Brotherhood", which he took to refer to freemasonry. I have also been told by [redacted] of malign masonic influence, which prevents him identifying establishment figures as abusers. I am unable to take these matters further and it was not evidence that was before the Tribunal.

Conclusions

- 7.24 I consider that the Tribunal working documents indicate that considerable efforts were made in the pursuit of evidence against [redacted] before and during the Tribunal hearings. The directions given for investigation appear to have been comprehensive and dutifully followed through in respect to his association with Freemason's lodges, [redacted] and his association with the children's homes. Counsel to the Tribunal appear to have been alive to the possibility of securing further evidence against [redacted] as is apparent in paragraphs 7.8 and 7.9 above.
- 7.25 The failure of those witnesses referred to in paragraphs 7.8 and 7.10 to mention [redacted] in their Tribunal statements is noteworthy. However, the fact that records exist of their previous reference to [redacted] tends to negate the possibility that they were prevailed upon not to provide this evidence.
- 7.26 The failure or inability to trace witnesses has been referred to in paragraphs 6.100 to 6.103. The difficulties in locating witnesses are well documented. The limited information of the witness referred to in paragraph 7.9 would not justify extraordinary efforts to trace him.
- 7.27 The obvious antipathy voiced by the witness referred to in paragraph 7.11 against [redacted] and the isolated lurid allegations would indicate the need for caution before calling him as a reliable witness of fact. In the absence of documentation, I am not able to say if his claim of sending photographs to the NWP was investigated by the Tribunal. In the absence of anything to substantiate this assertion, I do not consider it unreasonable that a judgement was made not to call him.

- 7.28 I consider there to be no basis upon which [redacted] could be questioned about other members of [redacted] Masonic Lodge by reason of nebulous information concerning their possible association with John Allen and the convicted female residential care worker.
- 7.29 The statement of the witness referred to in paragraph 7.15 was obviously admitted into evidence in order to form the basis of cross examination of [redacted].
- 7.30 I am satisfied that the decision not to call [redacted] Witness F, (referred to in paragraph 7.17) was reasonable. His statement was incapable of corroborating the evidence of the new witnesses called to give oral evidence of the allegations of sexual abuse by [redacted]. It is speculative to suggest that oral evidence would have clarified the timeframe when he said [redacted] did visit and his rank at the time or the time he [redacted] was resident in Bryn Estyn, but it was unlikely to contain direct accusations not contained within the statement. Any elaboration, rather than clarification, of his written evidence would have been regarded with suspicion. The fact of [redacted] status as a serving prisoner would also have to be considered in the balance. That is, not prejudging the reliability of his evidence, but in terms of the practical arrangements that would have to be made as against the nature of the information he conveyed. Further, the assessment that there was “little else we can do” in relation to the reluctance of another prisoner, referred to in paragraph 7.16 to give evidence against [redacted] was clearly right.
- 7.31 I regard the evidence that [redacted] had lied when first interviewed under caution about the allegation of indecent assault against an adult acquaintance of the family was relevant to the issue of his credibility. Counsel to the Tribunal do not appear to have been made aware of this fact and would have been at a disadvantage in justifying their request for disclosure. It is likely that the NWP overlooked the issue of credibility in favour of considering whether the facts of the alleged offence constituted similar fact evidence. This information may have been significant in the Tribunal’s appraisal of his credibility and would have been ‘fresh’ evidence to that which had been available in the libel trial.
- 7.32 There is nothing in the Tribunal papers to suggest that the evidence relating to [redacted] was dealt with in any different way to that relating to other allegations indicated in the preceding chapter. There is no material in the documents available to me to suggest that the findings in relation to [redacted] were against the weight of the evidence available to the Tribunal.
- 7.33 I find there is nothing untoward in the failure to recognise and investigate Lord Kenyon’s previous association with the Clwyd Area Health Authority. Since the Chairman had showed no compunction in questioning the prospective relevance of freemasonry to the issues he had to determine in other spheres, I see no reason to expect him to take a different stance in relation to health issues.

- 7.34 There is no material in the documents available to me to suggest that the findings in relation to Lord Kenyon and freemasonry were against the weight of the evidence available to the Tribunal, nor that the evidence relating to him was dealt with in any different way to that relating to other allegations indicated in Chapter 6 (see also paragraph 8.65 in relation to Lord Kenyon as an establishment name).
- 7.35 The mystery surrounding freemasonry undoubtedly continues to engender distrust. The explicit and implicit concerns that continue to surround this subject are understandable, although have not been raised excessively in the contributions made to this Review. I have discovered no reason to question the professional integrity of Counsel to the Tribunal or the head of the WIT. The impact of freemasonry on the issues concerning the Tribunal was soundly researched and appropriately presented and pursued.

Chapter 8: Establishment Names

Introduction

- 8.1 There have been long standing rumours circulating in many quarters, and which continue, to the effect that many establishment figures (taken in this Review to mean prominent members of society, whether local or national) were involved in paedophile rings or paedophile activity in North Wales. Contributors to this Review and others have queried why no such individuals are named in the Tribunal Report and see the absence of their names as evidence of concealment of serious allegations of child abuse.
- 8.2 In Chapter 3 of this Report, I address the possibility that the government wished to avoid a public airing of allegations made against those in public life when considering the delay in establishing the Tribunal. In Chapter 5, I analyse whether the framing of the terms of reference was specifically devised in order to exclude investigation of establishment names. These exercises necessarily presume that information was available to the government which was desired to be concealed. Consequently, in the first part of this chapter, I examine the sources and nature of the information that was available prior to the establishment of the Tribunal, and whether there is any indication that government was aware of allegations made against establishment figures and wished to conceal them.
- 8.3 In Chapter 4, I examine the selection and recruitment processes of the Tribunal members and its personnel, and also scrutinise the conduct of the Welsh Office in their role as a party in the Tribunal, with a view to reaching a conclusion as to whether any of the relevant individuals or bodies were involved in covering up evidence of child abuse by establishment figures. In Chapter 6, I deal with the procedure adopted by the Tribunal in the course of its inquiry to assess the adequacy of the investigations and resultant conclusions. Therefore, in the second part of this chapter, I examine the investigations made to obtain, and the source and nature of, the information made available to the Tribunal, and whether in those circumstances the Tribunal Report could reasonably be expected to have referred to any establishment figure, in addition to [redacted] or Lord Kenyon.

Sources and nature of information concerning establishment names available prior to the establishment of the Tribunal

- 8.4 In the first part of this chapter, I report upon the manner in which establishment names have been suggested to be involved in child abuse in North Wales. In doing so I acknowledge an unfortunate consequence to be the possibility of adding credence to claims which are not evidenced in any credible way. However, I consider it necessary for this Review to examine the claims, many of which continue to be made, against the evidence apparently available to the Tribunal, and consequently to specifically report upon them to the commissioning departments. As previously indicated in paragraphs 1.20 to 1.24, the redaction of this report is a matter for the commissioning departments.

Information, police inquiries and actions revealed in HOLMES material

- 8.5 In his Tribunal statement, DSU Peter Ackerley indicates that during the course of the police investigation commencing in 1991 all information concerning the involvement of establishment figures, however tenuous, was logged onto HOLMES, cross referenced and investigated. I have had access to HOLMES. I can confirm the process described by DSU Ackerley save in relation to _____ as indicated in paragraphs 8.32 and 8.89 below. The collection of information from the most innocuous source is demonstrated by a documented _____ 'joke' albeit with no reference to child abuse in North Wales. However, this meant that any mention of a name from whatever source, and even if appearing in a notoriously slanderous publication, would be logged as a suspect. In this way, their name would appear on the list referred to in paragraphs 8.56 and 8.57. Objectively, and without knowledge of the basis of the list, this may well have given the impression that the police had a reasonable suspicion of a crime having been committed, or had received reliable information to that effect.
- 8.6 On 25 September 1996, Junior Counsel for the NWP responded to a number of queries made by Counsel to the Tribunal confirming the process of listing suspects. He distinguished between two categories of suspects on the list: the first against whom there was some evidence, albeit hearsay, in witness statements; the second on the basis of "information received – eg rumours passed on by journalists and so forth". He confirmed that "all were referred to the CPS".

Journalists

- 8.7 Documents derived from HOLMES indicate that in October 1992 police officers questioned the freelance journalist, Mr Brian Johnson-Thomas, the author of articles on child abuse in North Wales that had appeared in the Observer newspaper over five consecutive weeks from 30 August that year. He had referred obliquely to the identities of the alleged abusers and his sources of information in his articles. In the meeting with police officers, Mr Johnson-Thomas identified 'the bachelor priest' he referred to in his first article as _____ He mentioned Lord Kenyon and _____ as being subject to 'homosexual gossip', and _____ as protecting Graham Arthur Stephens, a convicted paedophile but was not in possession of any evidence or allegations of offences against them.
- 8.8 The note of the meeting records that he indicated that he had based his reports on a variety of things, including a document supplied to him by Mrs Alison Taylor, the views of other journalists, his own research, information supplied by a representative of the National Association of Retired Police Officers who had established a link between Stephen Norris and other known offenders in Merseyside, his 'interpretation' of the conversations he had had with a named former police officer, the 'impression' he had received from an MP and senior officials in the county councils who he would not identify, Councillor Dennis Parry, 'homosexual gossip' and information from 'a very senior official in the Home Office' who he refused to

identify. He acknowledged that in some instances his information was out of date or misinformed. For example, he was unaware of a successful appeal against a conviction, he had made an assumption as to the number of girls and boys interviewed, and he was unaware that a particular document and statement by one witness, had been included in a prosecution file submitted to the CPS. In more than one respect, he blamed a sub editor's error for information contained in the articles including, for example, wrongly ascribing to an accusation of cover up of criminal conduct (see above).

- 8.9 I wrote to Mr Johnson-Thomas on 15 May 2015 regarding this note and the nature of his subsequent contact with the NWP. In responding to my letter, Mr Johnson-Thomas disputed the accuracy of the note of the meeting and informed me of a further meeting he had with DSU Ackerley on 30 October 1996 during which he said he provided "confirmation of identities; affidavit of (which contained allegation about); names in affidavit; outstanding documents and information." However, if he did provide this information and documentation in a meeting on 30 October 1996 I have not seen it, and note that whilst he asserts in his response to me that his research was largely conducted by talking to victims of physical and sexual abuse, he does not identify the other informants upon which he said he relied and referred to obliquely as 'police sources', 'local MPs', 'Clwyd County Council sources' or 'Home Office, unofficial source'.
- 8.10 Thereafter, telephone attendance notes prepared by DSU Ackerley or a member of the police investigating team show that both Mr Johnson-Thomas and Mr Peter Wilson of the News Desk, Sunday Mirror, would phone the NWP offering snippets of information, but also seeking confirmation of rumours. For example, on 26 April 1993, Mr Johnson-Thomas is recorded to have phoned the police incident room to say that an unsigned letter, typed on NWP headed notepaper, had been sent to Private Eye saying that a had been given a "gypsy's warning" regarding his involvement with boys. He said that had worked with and both were Freemasons. He went on to repeat a "press rumour" that and were involved in child abuse. On 7 September 1993, Mr Wilson referred to "rumours regarding Lord Kenyon, and being linked to a ring and would introduce them into the story [about John Allen]". He confirmed that he had "no evidence against those named". On 9 September 1993 he suggested that he had information that boys from Bryn Alyn had been bussed to Lord Kenyon's home and had caddied for men at his private golf course and then supplied sexual favours.
- 8.11 Mr Johnson-Thomas says in his letter to me that his regular contact with the police was both to check information and to provide information (with the consent of the victims). He says that, before publication of each of these articles, "we contacted the police to find out if anyone had been charged, in order to avoid prejudicing any proceedings." He suggests that the documents provided to me do not contain details of the full extent of his contact with the police during this period.

8.12 This information provided by Mr Johnson-Thomas and Mr Wilson and other journalists to the police was not dismissed out of hand. Actions recorded in HOLMES directed inquiries to be made into those matters which would be capable of factual verification. As a result, it was established that Lord Kenyon did not have a private golf course, neither did [redacted] "the only connection with a golf club in this area is Wrexham [redacted]." Further, a check was made with the Scottish Criminal Record Office in relation to [redacted] and [redacted] with negative effect. The closest match was an [redacted] An enquiry of the National Criminal Intelligence Services relating to knowledge of [redacted] was also made with a negative result.

8.13 I confirm that there is no mention in any other document available to this Review which supports the suggestion that [redacted] was a Freemason or involved in abusing boys. There is a reference in the documents to the fact that Mr Wyn Roberts MP (as he then was) had written to the AG in December 1986 on behalf of his constituents, Nefyn [redacted] He had previously visited Ty'r Felin, in the presence of the Director of Social Services of Gwynedd county council and members of the Welsh Office, apparently in the course of his constituency duties. Mr Johnson-Thomas said that his information about [redacted] originated from a former resident of a children's home, [redacted] I note that [redacted] police statement does not make any specific allegation of abuse against [redacted] but says that he visited the home and took a boy out, who seemed to have more freedom than the others.

8.14 Mr Johnson-Thomas was subsequently to assert that a witness, [redacted] also known as [redacted] (referred to as Witness C in the Tribunal Report), had identified [redacted] from four photographs he had shown to him, [redacted] as the person who had been introduced to him by John Allen, and who had indecently assaulted him. A police statement had been taken from [redacted] on 5 September 1993. On 8 September 1993, Mr Johnson-Thomas asked that DSU Ackerley be informed that [redacted] "has named a lot of senior people and is frightened for his safety and wants protection." However, [redacted] told DSU Ackerley that he had been told by Mr Johnson-Thomas that he was being moved to a "safe house". On 9 September 1993, he made a further police statement to "clarify certain points". He said, "since ...1st September 1993 Johnson Thomas had been telling me names and asking what I knew about them. Even on the train he was asking me about people. All sorts of names mainly kids a lot I didn't know. I can't remember the names now, I know he mentioned a former Policeman called [redacted] and somebody called [redacted] ...The name [redacted] meant nothing to me at all. I only knew [redacted] Johnson Thomas didn't ask me if I'd been abused by them he just asked if I knew them ... Over the course of time I told him how I'd been sexually abused by John Allen and he'd asked me if there were any others and I told him no ... I thought about it then it came to me that there had been another man but I didn't know his name."

- 8.15 The manner in which [redacted] was said to have been led into making an identification of [redacted] by the journalist is then recorded. [redacted] said that two photographs were shown to him as showing his potential abuser. His statement records, "Even though I said 'Yes' when he asked me I cannot in all honesty be one hundred percent sure when looking at a single poor quality photograph some years later, possibly eight years later. The best I can say really is that the man in the picture is similar. At the same time I can't say it is not him." [redacted] said Mr Johnson-Thoma's wife "witnessed" the identification and said "It looks as if you are going to bring the Government down ... Brian was smiling." He went on in his police statement to give further detail about the man that, if reliable, quite clearly did not correspond with a description of [redacted]. That is, he said "he [the alleged abuser] told me he was a barrister".
- 8.16 Mr Johnson-Thomas confirmed to me that he "deliberately sought to involve my wife in the care of [redacted]", but that she was "not involved in the 'journalistic' process in any way."
- 8.17 Mr Johnson-Thomas was asked by investigating officers to make a statement concerning the identification of [redacted]. He did not agree with [redacted] account, but accepted that he had shown him four photocopied photographs, two of [redacted] one of [redacted] and one of an MP who happened to appear next to [redacted]. He denied that there had been a discussion about [redacted]. He said that the choice of photographs had been dictated by the description given by [redacted] and, particularly, by the Harrods charge and/or credit card said to have been seen by him. Subsequent investigations with the credit card providers revealed that [redacted] did not hold a Harrods card.
- 8.18 In his letter to me Mr Johnson-Thomas suggests, in relation to the photographic identification, that the whole story cannot be understood by reading this one sided account. He said that other sources, not specifically identified to me, had provided him with information which, together with some of the details suggested that the person was likely to have been [redacted]. He claimed that his "use of 4 photos to put to the witness was a reasonable step to take and my understanding was that the police would follow up any leads of this kind to either corroborate or disprove any such allegations."
- 8.19 Mr Johnson-Thomas faxed Mr Wilson in September 1993. He claimed that DSU Ackerley had confided in him on several issues under investigation in North Wales and had "agreed not to arrest John Allen until our story is published on Sunday ... The following notes/suggestions are based on my conversations over the weekend with [redacted] Superintendent Ackerley and another abused boy". The fax goes on to report allegations and claims. Under a heading "The Ring", Mr Johnson-Thomas records, "Here Superintendent Ackerley is being much more circumspect, agreeing that he knows of, but will not comment on the substance of, the allegations against - in particular - [redacted] Lord Kenyon, former Chairman of the North Wales Police Authority, former Lord Lieutenant of [redacted]"

Flintshire and former Chief Scout for Wales; and

Other members of the ring are understood to be ... (a 'pretty solid' case, according to a source in the National Criminal Intelligence Service),

... Ackerley did, however, make one interesting admission - that several members of the ring have already been dealt with by police Cautions and that the Press Office would not confirm this ... As you know, one way in which boys in care were introduced to the ring was by using the boys as caddies at Wrexham Golf Club ...

... has confirmed ... a list of the known 'caddies' ..." A list of names followed and also addresses in London. DSU Ackerley in a letter to the CPS dated 14 September 1993 denied that any such conversation had taken place. In his letter to me, Mr Johnson-Thomas maintained that his account is a fair summary of his 'off the record' interviews with DSU Ackerley.

8.20 Complaints were made about Mr Johnson-Thomas by ... and the police. On 10 September 1993, DSU Ackerley reported the "appalling" behaviour of Mr Johnson-Thomas to the Deputy Chief Constable. The Sunday Mirror advised on 10 September 1993 that they were dropping the story because ... was creating problems for Mr Johnson-Thomas.

8.21 On 12 October 1993, Mr Wilson called the incident room asking for confirmation that as a result of the identification of ... he was to be subject to an official enquiry and was to be interviewed in Venice. On 22 March 1994, Mr Johnson-Thomas telephoned to advise police that

... as involved in a paedophile ring. ... was going to be reported as supplying the boys. On 10 May 1994, a journalist from the News of the World phoned DSU Ackerley saying that he had received "reliable information (from Brian Johnson Thomas) that ... was an offender in [the] Child Abuse Enquiry and that a file [had] been sent to CPS" and asking if he could confirm it. Mr Johnson-Thomas in his letter to me says he has no knowledge of this and makes the point that he would be highly unlikely to give another reporter the information.

Child Protection Agencies

8.22 The police records also contain a report prepared by Mr John Roberts of the Wrexham Child Protection Team titled "People with Influence and Power involved in Bryn Estyn" which included national and local establishment figures without indicating what their influence and power was said to be. The relevant names were

... (local businessman), ... (Roman Catholic Priest) and the ... (local businessmen). That there was a nefarious connotation is suggested by the remainder of the document which refers to convicted paedophiles and their

associates. There is a reference to "Social Workers also talking to boys who refuse to be interviewed by Police" and names given without any reference to allegations that may have been made.

- 8.23 When seen by officers on 3 December 1992, Mr Roberts indicated that, save in the case of [redacted] the information regarding the establishment figures had all been provided by the National Society for the Prevention of Cruelty to Children (NSPCC). [redacted] name was included since he had told Mr Roberts that Gary Cooke, a convicted paedophile, did not work for Clwyd county council, but Mr Roberts understood that he had, and felt that [redacted] had not discharged his duties properly. Mr Roberts explained to police that additional information which had been added about two of the names had been the result of speculation. Other names and information had been included on the basis of rumours or second and third hand hearsay, and some names were included on the basis of an individual's association with convicted and known paedophiles, or their association with someone else who associated with them. Limited inquiries were made in the absence of any hard evidence. The document was described in the police files as "speculative".
- 8.24 When seen by investigating police officers, Mr Viv Hector from the NSPCC Wales provided no further information as to the source saying that he had "received information from more than one source but predominantly from one source concerning a paedophile [sic] ring operating in the Wrexham area." He introduced the additional name of [redacted] as having been identified to him as a member of a paedophile ring and said that a [redacted] had been used to deliver members of a paedophile ring to abuse boys supplied by Stephen Norris and Peter Howarth. This was described by DSU Ackerley as "shown to be nothing more than a record of some established facts and repetition of speculation." There is no primary material that this Review has discovered to the contrary.

Local authority Councillors and officials

- 8.25 A note of a meeting between DSU Ackerley and Councillor Malcolm King on 17 December 1992 records that Councillor King said that he thought the name of [redacted] had been raised by Mr Roberts.

[redacted] Councillor King also raised rumours that [redacted] had been involved in kerb crawling.

- 8.26 Councillor King had provided police officers with a list of names of men who were alleged to have abused several boys who were in care at a party specifically organised for that purpose. These men were not national figures. Inquiries were conducted. Nine of the 'boys' said to have been abused denied that there had been a party or that, in some cases, they knew others mentioned on the list. Two declined to cooperate with police investigations. The men, not already subject to other investigations, were interviewed. All denied the allegation. The source of

Councillor King's list was said to be an Independent journalist, who had claimed that it had been produced in a sworn affidavit from a previous Bryn Estyn resident. When seen by police, [redacted] denied all knowledge of or supplying information about the party. A similar list of names also found its way to Mr Roberts, via his supervisor, who said that he had received it from Mr John Jevons, Chief Executive of Clwyd county council. Mr Jevons also identified [redacted] as the source, but said there "was no evidence of any activity by those on the list supplied to him."

- 8.27 Police investigations revealed that the initial source of these names or some of them may well have been [redacted] a local taxi driver

[redacted] Eight of the names he mentioned were said to have become members of the CHE Committee. He considered that these men had abused their position of trust and had used the CHE helpline to target victims for their own sexual gratification; however he could not be specific as to who had committed what offences. Another man he identified was the owner of a nightclub in Chester which "catered for gays". [redacted] said that it was "common knowledge" that teenagers would go to the club and ask for money. He believed that the owner had committed offences against boys who would then blackmail him. This information had been passed on by another individual to [redacted] When seen, that individual, [redacted] who subsequently gave evidence to the Tribunal as a complainant, had no first hand knowledge of any paedophile offenders. He named another man, who he now believed to be gay, on the basis that when a care officer in Clwyd House he had had two favourites who always followed him around.

- 8.28 In October 1992, Mr Andrew Loveridge confirmed to DSU Ackerley that he had "passed on a rumour" to a senior NWP police officer to the effect that [redacted] had removed an obscene video tape in a case being prosecuted to prevent conviction, although he was aware that the matter had been investigated and proved to be untrue. However, Mr Loveridge denied that he had claimed to Mr John Cooke, representative of the National Association of Local Government Officers, that "three others in political life" were involved in child abuse. He was however aware of current rumours that [redacted] Greville Janner and Lord Kenyon had been involved in child abuse outside North Wales, but knew of no evidence in support of this.

Others

- 8.29 Mrs Taylor's document, 'Gwynedd County Council Analysis' was submitted to the Tribunal and found to include "many rumours and a great deal of hearsay".¹ Mr Johnson-Thomas explicitly referred to this document as one of his source materials.

1 See paragraph 2.22 of the Tribunal Report

- 8.30 A disappointed litigant in matrimonial proceedings claimed to have been told that the judge sitting in those proceedings was “subject to on going Police enquiries” and reported his suspicions that he “may be a child abuser and that he gave custody of [his daughter] to [his ex wife's new partner] because he knew or suspected [him] to be a child abuser and was sympathetic towards him”. Whilst he did go on to say that he had “no further reasons, evidence, information or material to which to base this suspicion on”, the name of the judge has since been repeated in this context by others.

Police and CPS response

- 8.31 On 12 May 1993, Detective Inspector John Rowlands wrote to regarding “ Granville Jenna [sic], Lord Kenyon and the Former Deputy Chief Constable” in terms, “I forward to you details of various items of rumour and innuendo concerning the above named persons. Over 4000 actions have now been completed and in excess of 3000 statements taken in respect of the Gwynedd/Clwyd Child Abuse Enquiry. No evidence has been obtained to substantiate any claims against the above ... The rumour in respect of the former Deputy Chief Constable (see paragraph 8.113) seems to stem from his alleged association with a person whose relative was friendly with a known child abuser who committed suicide in 1990 as he was about to be arrested for indecency offences ... Johnson Thomas ... John Roberts ... Viv Hector of the N.S.P.C.C. say that their information is from varying sources. I suspect that it is one main source and that the same information from that source was being re-iterated by others.”
- 8.32 Of the files containing names of establishment figures sent for the attention of only one appeared to seek advice “in relation to the limitation period in respect of gross indecency allegation made by against another ‘prominent’ person identified by at the behest of Johnson Thomas [journalist].” In manuscript note is written “(old? Photos of). The file is marked “Advice given”. Other files naming “ M’s of Parl, Dep Ch Constable, Lord Kenyon and his son” were supplied “for consideration” or “for information only”, one file stating of the named individuals within. “All are now deceased.” A number of files specifically referred to the source of the information as “Allegations of impropriety by journalist who named persons he believed to be members of paedophile ring. Linked to ...” noted the files to the effect, “Nothing on file on which to advise.” In his interview with me, thought he remembered the name of featuring in the conglomerate files relating to Lord Kenyon and but I have found no reference to it in the documents.
- 8.33 The Tribunal concluded that, of the lists of individuals in respect of whom files were submitted to the CPS, there was nothing to “cast doubt upon the thoroughness of the investigation or the willingness of the police to prosecute.”²

2 See paragraph 51.59 of the Tribunal Report

- 8.34 In paragraphs 3.4 and 3.5 I have referred to contact with the AG in 1992 in relation to press reports which he felt could compromise pending criminal trials or ongoing criminal investigations. There would, however, be no other reason for to refer the files indicated above to the AG.
- 8.35 In paragraphs 5.39 to 5.43 I refer to the manner in which the AG was alerted to the controversy surrounding the lack of prosecution of and the interventions that followed. There is no similar situation in relation to any other public figure.

Government knowledge of information and allegations concerning establishment names

- 8.36 There is no indication in any of the papers delivered to this Review that the information logged onto HOLMES was referred by the police to any government department other than by way of submission to the local CPS branch as indicated in paragraphs 8.31 and 8.32 above. Equally, there is nothing in the papers delivered to this Review to suggest that the AG alerted other government departments to the names of establishment figures in connection with the NWP inquiries.
- 8.37 I have previously referred in paragraph 3.98 to a Welsh Office document which indicated that rumours of this nature existed and were known by members of the government and officials prior to the establishment of the Tribunal. There is a report dated 27 January 1995 addressed to "PS/Secretary of State" which records that "recent correspondence to the Department about an inquiry had been from those who felt they were under suspicion and wanted an inquiry to clear their names". The only document that I have seen which fits this description is a letter from a representative of the Bryn Estyn Supporters Group.
- 8.38 In a briefing note to Mr Rod Richards MP, the Parliamentary Under-Secretary of State for Wales, dated 3 April 1996, an official informed him that "A new twist was given in last Sunday's 'Wales on Sunday'. A copy of that article is at Doc 2. Throughout this whole issue there have been rumours about the involvement of respected and senior public figures and politicians to which Jillings refers also. This is the first time to my knowledge that these two individuals have been named in this context." Document 2 was not in the papers available to me, certainly not identified or attached to the particular briefing paper, and therefore I am unable to ascertain the names to which he referred. However, quite clearly, they originated from press reports. Specifically, the Jillings Report did not name politicians or other establishment figures as implicated in abuse.
- 8.39 Amongst the Welsh Office papers, I have found a note between senior officials dated 30 April 1996 indicating that one had received a telephone call from the Director of the National Institute for Social Work, alerting him to "3 or 4 'phone calls" she had received within the last few days from young adults who had been in care prior to 1989. Their stories varied slightly, but in essence suggested that Lord Gareth Williams was aware of matters relating to North Wales child abuse issues

and was aware of a ring of abusers, although there were no direct allegations that he was himself involved in abuse. The note continued, "They are aware that he is a member of a London freemason lodge, barrister to the Police Federation and acted for Chief Superintendent Anglesey [sic] in his successful libel case and alluded to connections between freemasons and MI5 in procurement of young people for illicit sexual purposes. Lord Williams is the current chairman of the NSPCC on the prevention of child abuse. [The caller] is also a member of the Commission and intends to present Lord Williams with these allegations. I have absolutely no idea what, if anything, we do with this rather garbled information, but thought you should know that these allegations are being made."

- 8.40 A manuscript note in response reads, "I discussed this information with [author of note]. David Lambert has apparently already been informed and they are awaiting his advice on what steps, if any, the Dept should take. Subject to his views, I said that if [the caller] was proposing to take it further that [would probably] suffice but if not we would need to consider notifying police so they [could] investigate."
- 8.41 I have found no other reference to this information within the papers, whether as to further action or notification to the Secretary of State for Wales or other Ministers. Neither have I found any reference to Lord Gareth Williams on HOLMES which, in light of the contents of paragraph 8.5 above suggests that a report was not made to the NWP. I have found no document which was before the Tribunal that refers to the information being brought to its attention.
- 8.42 Significantly, in terms of its origin and timing, I found in manuscript on the reverse of a briefing note prepared for the Secretary of State for Wales for the Lord President's meeting on 11 June 1996, the following notes:

"What do people fear that current inquiries have not dealt with?

- Not everyone brought to justice, because police deficient/involved
- Involvement/fault of others in LA or elsewhere not revealed.
- Full extent of what happened and possible links with elsewhere not appreciated [therefore] lessons not learned.
- Jillings report must have said something devastating

What are the publicly known accusations that are floating around?

- Several public figures in Cons Pty were involved
- Police ...
- Paedophile ring ...

Who has called for public inquiry?

- Crts - Media
- Police - Individuals?"

8.43 This appears to be in the Secretary of State for Wales' handwriting. The typed briefing note is marked 'Personal' in manuscript at its head. It is directed to the Secretary of State and others. There is no other specific information provided as to the identities of the "several public figures" that were subject to the rumours (see also paragraph 8.37).

8.44 Hansard's report of a Parliamentary Debate on 17 March 2000 records Mr Martyn Jones, MP for Clwyd South West/South between 1987 and 2010, as saying that it was "an open secret in the press and among those who were involved in the inquiry that many high-profile people have been named by victims ... They include current and former Members of Parliament, senior members of the judiciary, members of the police force ... and prominent business men." He emailed me in January 2013 to express his continued concern that potential abusers had been omitted from the Tribunal Report and had not otherwise been investigated by the NWP with appropriate rigour.

8.45 I interviewed Mr Martyn Jones on 13 February 2013. He explained the source of his earlier knowledge to come from the accounts of two complainants, and another whose name he could not recall. He explained:

"I was ... MP ... some of the names he was giving us, alleging as abusers were, in fact, rather controversial ... a lot of the victims ... believed they were being abused by people of importance ... we pressed and pressed and pressed and eventually we got the Waterhouse Inquiry. Then it took some time, as you know, but when it actually reported ... I felt very strongly that whilst the victims had been listened to in terms of the abuse ... the problem then was that they were ignored in terms of some of the people that they mentioned ... Very, very early on ... was mentioned ... was mentioned, who was an MP ... I think he may have already died by then. was mentioned, who was an MP, who was a catholic priest, was mentioned. A was mentioned, and I, at the time, thought, because I didn't know how many there were, that it was but then later on when I went into this in greater depth with the other witnesses as well I was fair certain it wasn't that it was another and I could speculate as to who it was, but I think the person involved is still alive ..."

8.46 The Welsh Office papers show that Mr Martyn Jones was amongst a group of Labour MPs seeking to persuade the Secretary of State for Wales to establish a public inquiry. However, I make clear that I did not find any of these names, or others suspected to be involved in child abuse, referred to specifically within Welsh Office documents as being mentioned in support of his request for a public inquiry.

8.47 On 27 October 2012, the Daily Mail newspaper reported that Mr Rod Richards, Parliamentary-Under Secretary of State for Wales between July 1994 and June 1996, had made "incendiary claims that one of Margaret Thatcher's closest aides was implicated" in the "North Wales children's homes case". He also "linked a second leading Tory grandee - now dead - to the scandals at homes". It is reported, "He said official documents had identified the pair as frequent, unexplained visitors

to the care homes ... He added that William Hague, who was Welsh Secretary at the time of the inquiry, 'should have seen the evidence about ... Mr Richards said he received detailed briefings about the case while junior Welsh Office Minister for health and social services. He said, 'It fell to me to decide initially whether to hold a public inquiry. So I saw all the documentation and the files.

was linked. His name stood out on the notes to me because he had been an MP. He and [the other man] were named as visitors to the homes.' "

- 8.48 I have discovered no material in the Welsh Office papers which remotely resembles the "documentation and files" or "notes" he is reported to have said he had seen which names or a "leading Tory grandee" or any other individual as "frequent, unexplained visitors to the care homes". Consequently, I wrote to Mr Richards on 15 May 2015 seeking his comments on this matter. Mr Richards replied and confirmed that he had spoken to the journalist, Mr Glen Owen, who had initiated the conversation. However, he did not accept any responsibility for the article published by the Daily Mail, did not write any of its contents, did not have sight of the article prior to publication and had no editorial control. In short, he did not think the article gave a balanced or accurate account.
- 8.49 Mr Richards clarified that he did tell Mr Owen that he recalled seeing name on a note, possibly hand written, but that he could not recall the context in which it appeared. However, he had made clear that he had not seen "any corroborating evidence linking to the abuse of children" and did not refer to a "second Tory grandee". Mr Richards informed me that he had not seen the name of any other 'Tory grandee' linked to the North Wales child abuse allegations in any official documents. He says it was likely that he did tell Mr Owen that Mr William Hague would have seen all the official documents that he had seen, but could not be certain of that. He said it was beyond his authority as Parliamentary Under-Secretary of State, a junior minister, to decide whether to call a public inquiry. He totally denied saying that he had seen documentation linking and 'the other man' as visitors to the homes.
- 8.50 I wrote by recorded delivery to Mr Owen on 23 July 2015 inviting his observations on the points made by Mr Richards. It appears that the letter was delivered, but I have received no response.
- 8.51 I observe that in a personal note to the Secretary of State for Wales dated 16 April 1996, Mr Richards writes "Jillings ... makes particular allegations about SSIW and the Department, which I hope we can rebut. His call for a public inquiry does not stick, given that there is no evidence that there are things still to be uncovered, or that we need new recommendations for action ... I hope I can continue to be involved with this issue, and am available to attend any discussions you have on it."
- 8.52 The substance of this note contradicts the article referred to in paragraph 8.47 above which suggested that Mr Richards decided upon the establishment of a Tribunal. Mr Richards has indicated to me that he has no recollection of writing this note, does not recognise the quoted passage and that it is not in his style. However, he did not consider it necessary to inspect the document.

8.53

8.54 I wrote to The Right Honourable Mr William Hague further in consequence of this information. Mr Hague replied indicating that he had no recollection of any such conversation, and if he had possessed specific information about would have passed it to officials or directly to the Tribunal

Otherwise, he could only speculate that he had been asked to comment on gossip that may have taken place amongst MPs.

8.55 For the sake of completeness, I record that the minutes of the North Wales Working Group (established to support the presentation of the Welsh Office case to the Tribunal) dated 18 February 1997, indicate that the BBC's failed application to lift reporting restrictions could be subject to challenge and that "there was a risk that the names of prominent people might be published in connection with serious allegations, without officials having the time to warn Ministers that this was about to happen." However, this particular note, as with others to which I have referred, does not identify those names that it was thought may be revealed.

Tribunal investigations into the involvement of establishment names in child abuse in North Wales

Early discussions

8.56 Notes of a meeting between the AG, Solicitor General and the Tribunal Chairman on 29 July 1996 show that "the judge understood the police to believe that there were about 80 people who could have been prosecuted. The growing list of names in this category included some significant public figures." This is the 'suspect list' referred to above and compiled in the NWP investigation commencing in 1991. The Chairman called for it.

8.57 On 23 August 1996, the NWP Solicitor wrote to Mr David Lambert in connection with this request informing him that, "the suspect list maintained on the Police Computer has 374 names recorded. Some of the suspects were identified in the statements of complainants, others were reported to the police by informants. Some of the information is extremely sensitive and must be handled with great care. To provide a list will not identify the source of the information which led to the suspect being placed on the list, nor the sensitivity of any particular names, as the suspect

list does not include any indication of title or rank, for instance. For this reason the North Wales Police wish to appear by Counsel alone in camera, so that Counsel may make representations on the contents of the suspect list.”

- 8.58 Mr Lambert responded indicating the Chairman to be “agreeable to your suggestion that he should be addressed in camera by Counsel alone for the North Wales Police ... [on] 30 August 1996”. There is no transcript of this appearance, although it did take place as is evident from the subsequent comment of the Chairman in open session, as indicated in paragraph 8.81 below. As I indicate below, there was no such list contained within the papers provided to this Review, and it seems that any list provided to the Chairman when sitting in camera in August 1996 was returned immediately by him to NWP.
- 8.59 In early August, a social work manager for the Children’s Society for Wales contacted the Tribunal indicating “recently there was the case of a ‘rent boy’ in Cardiff producing a list of highly prominent persons names in Wales including a Police Officer in Gwyneth [sic] ... Reference was made to a chart being in existence containing the names of significant people who maybe involved.”
- 8.60 I am unclear as to who the Cardiff rent boy is and have seen no chart, other than the HOLMES register/list referred to in paragraph 8.5 containing “highly prominent names” or otherwise. This report may have conflated and misinterpreted several sources of information.

Tribunal investigations regarding establishment names

- 8.61 All Counsel to the Tribunal were aware of the rumours. Notes from the Chairman’s meeting on 26 November 1996, sub headed “High Profile Names”, read, “It is apparent from the enclosed cuttings - as well as from much that has been said in some TV programmes/Scallywag and occasionally in witness statements - that there is some expectation that the Tribunal will be be [sic] considering evidence relating to these high profile ‘names’. Some of the names have been the subject of rumour & speculation for some time & we doubt whether, in the interests of the Tribunal’s credibility, we can simply ignore them. Accordingly, we wish to pursue some very discreet enquiries as a first step (Records/Intelligence – further the material available via Jillings) independently of any enquiry made hitherto by the NWP, with a view either (a) to progressing the matter to the point where we could say at the Tribunal that there was no evidence to support such rumour or (b) to call such evidence as may implicate.”
- 8.62 There is no document in the papers I have seen which indicates that approaches were made to, or information was obtained from, any intelligence agency. When I asked Counsel to the Tribunal whether they had been supplied with or seen materials which comprised any of the dossiers presented by Mr Geoffrey Dickens, they said they had not. I have previously referred in paragraph 2.17 to my own reading of the unredacted report of the Wanless and Whittam Review and my conclusion that there was no additional information of relevance to the Review in the materials I had seen.

8.63 There are no establishment names contained in the Jillings Report in the context of being concerned in child abuse, but the accompanying materials and other documents available to the Tribunal contain the following: Councillor King raised his concerns regarding [redacted] and [redacted] and their individual participation in matters of child abuse; there is reference to [redacted] which may refer to a [redacted] but no further information in this respect than that already before the Tribunal; and, when interviewed by the Jillings Panel a witness, [redacted] said that, if his brother had been able to give evidence, MPs would have been prosecuted. This witness subsequently gave evidence to the Tribunal in closed session. He did not refer to allegations of abuse by MPs, but said that his brother had been employed as an 'employment liaison officer' to obtain destitute boys from Kings Cross and bring them up to Bryn Alyn where they would satisfy the sexual needs of customers supplied by John Allen.

8.64

8.65 A specific allegation directly involving Lord Kenyon was reported to the NWP by a Sunday Mirror reporter who identified his source as [redacted]. Inquiries were made by the WIT to trace [redacted] but with no success. However, other inquiries were made into some of the detail of the allegations; none were substantiated. The particular allegation was not repeated or referred to in any of the evidence concerning Lord Kenyon which was before the Tribunal.

8.66 Allegations about public figures identified in the media without naming a source were not followed up. Named sources of other allegations were contacted, but if denied by them were not pursued. Others, supported by allegations in witness statements were investigated in the course of the Tribunal proceedings. These matters are dealt with in the Tribunal Report.³

8.67 An individual, [redacted] due to be interviewed by the WIT cancelled his appointment with them citing a conflict of loyalties and fear of repercussions. In a telephone call to the Tribunal helpline on 28 October 1998, he gave the name and telephone number of a farmer said to live near to a children's home who had regularly seen [redacted] drive past in a car to collect boys for the evening and return them within a couple of hours. He questioned a Coroner's verdict in respect of a former children's home resident, [redacted] who had alleged abuse against [redacted] and "Maintained conspiracy theory involving [redacted] large builder/contractor & Security Services."

3 See paragraphs 51.64, 52.02 and 52.03 of the Tribunal Report

- 8.68 There is nothing in the Tribunal documents to indicate whether or not the farmer was traced and spoken to. There is no statement from him. However, the Coroner's file in relation to the named resident, _____ was obtained. It did not bear out the concerns the caller had expressed in this regard. What is clear is that the issues surrounding _____ visits to children's homes were investigated by the Tribunal (see Chapter 7).
- 8.69 A disappointed litigant writing on 10 March 1997 to the Solicitor to the Tribunal, wished to "submit a list of names of all persons involved in a private law matter in North Wales. I have substantial reason to believe that throughout these proceedings evidence of child abuse and incest has been disregarded and suppressed ... I submit these names on the understanding that it is a complete list of all persons involved whatever their role, that I am not making allegations against them and that, at this stage, the information is strictly confidential. However, should any of the persons marked * arise in the course of the enquiry [sic] it should be regarded as a matter of exceptional gravity and complexity and I would wish to give evidence." 49 names were then listed including the judge hearing the matter, barristers, solicitors, social workers, police officers, psychiatrists, psychologists and MPs to whom he appears to have written to during the course of the proceedings.
- 8.70 Appended to a copy of that letter, which had been shown to the Chairman, is a post it note asking for it to be shown to Mr Gerard Elias QC, who may then like to discuss it with Leading Counsel for the NWP, since it contained some names that appeared on the HOLMES suspect list. The common name was "_____". Significantly, however, there is no evidence that supports any direct claim of abuse against him in any witness statement or evidence led before the Tribunal. No allegations were made in relation to any of the other names listed in the letter during the course of the Tribunal proceedings as being concerned in abuse or its concealment.
- 8.71 _____ a regular caller to the Tribunal helpline and a previous resident of Bryn Alyn and Bryn Estyn between 1961 and 1968 was seen as a result of his claim that "_____ and 9 police officers ... are all involved in child abuse along with peers and politicians. He says that if names are not named in the Report he will go to the Press." His calls were frequent, sometimes abusive and he quoted passages from the Bible. He was visited by the WIT and a statement taken. An assessment made of him as a potential witness stated, "He is a mature man who appears somewhat paranoid about his treatment in care. He is easily confused about dates and places. He has given evidence on previous occasions about his treatment in England". He was not called to give evidence nor his statement read.
- 8.72 Another caller to the Tribunal helpline, _____ identified himself as a previous police surgeon. He claimed to have spent years researching all aspects of child abuse. He apparently stated that he knew of corruption within paedophile rings involving doctors, police officers, politicians especially the Conservative party and Catholic priests. He told the operator he had been "put off road for drink by GMC". This caller has also contacted this Review with similar claims.

8.73 When asked by me in interview, none of the three Counsel to the Tribunal or either Solicitor to the Tribunal said they felt under pressure to avoid issues of potential embarrassment to the government of the day, or otherwise to protect establishment figures or institutions. I find nothing in the daily transcripts or notes of meetings of Counsel to the Tribunal and/or Solicitor to the Tribunal to suggest otherwise.

8.74 In response to my specific question: "Was there ever a stage during the Inquiry when you felt any anxieties or concerns that establishment figures were not being investigated for the fact that they were establishment figures?" Lord Justice Ryder said "No, quite the contrary. I think Counsel took the view that if, as it was, this Tribunal was set up to expose anybody who had been involved in something and who had managed to hide their identity it was actually our function to identify them ... we would talk for hours about why we were not finding out more information than we thought we would do, and the openings all reflected a high line ... Your aim was actually to expose not to come to a value judgment."

Evidence given to the Tribunal regarding establishment names other than [redacted] and Lord Kenyon

8.75 The name of [redacted] was referred to during the Tribunal hearings, both in oral evidence and within police and Tribunal statements.

8.76 An obvious difficulty on the face of the materials related to the identity of the [redacted] against whom it appeared allegations of abuse were made (see paragraph 8.15 above). In relation to [redacted] evidence, the photocopied photographs were described by him at the outset as being of poor quality. In his police statements, [redacted] indicated he was not "one hundred per cent sure" that the man he had identified in the photograph was the man who abused him, or whether the man who did was a [redacted] at all. [redacted] was traced by the WIT, made a Tribunal statement and gave evidence. His evidence recounted abuse at the hands of a man introduced by John Allen and reiterated his uncertainty as to the identity of this man. John Allen was asked about this matter in evidence before the Tribunal and denied knowing [redacted] but said that he had been asked by [redacted] whether he knew him.

8.77 [redacted] alleged in a police statement that he had been introduced to [redacted] by Thomas Kenyon, and had then been abused by him on several occasions. During the Tribunal hearings, [redacted] refused to identify [redacted] concerned, indicating that he had received threats and said that his house and car had been destroyed [redacted] When questioned before the Tribunal, he did give evidence, however, that [redacted] who had abused him had since died. [redacted] also referred to [redacted] who he believed to be employed by [redacted] Gary Cooke (a convicted paedophile) gave evidence to the Tribunal that he had shared a cell with [redacted] who had lived with [redacted]

8.78 As indicated at paragraph 8.24, minutes of a meeting between the NWP and the NSPCC on 3 December 1992 refer to the use of a plane and private airstrip owned by [redacted] to transport child abusers to North Wales. However, DSU Ackerley gave oral evidence to the Tribunal that he had nothing “tangible” in relation to [redacted] despite investigations conducted into the [redacted]

8.79 In closing submissions, Mr Gerard Elias QC summarised the position to be “the name [redacted] has hung over the rumour of abuse in North Wales by people in high places for as long as those rumours have existed. We submit, sir, the picture is no clearer after 200 days of evidence in this respect than it was before. No Christian name has ever been provided for this shadowy figure”.

8.80 [redacted] did not receive a Salmon letter and was not represented before the Tribunal. No reference is made to the name [redacted] in the Tribunal Report.

Other establishment names

8.81 Giving evidence before the Tribunal on 26 February 1998, DSU Ackerley was asked to read out a list of names where police advised no prosecution. At the name of [redacted] the Chairman intervened. The following exchange took place:

“... [redacted] [sic] -----”

THE CHAIRMAN: We are embarking on the role of fantasy now, are we not?

A. Yes, sir.

THE CHAIRMAN: The reference to [redacted] [sic] is simply absurd and shows the nature of some of the allegations, certainly as far as this inquiry is concerned because nobody has suggested any allegation against that person.

MR. MORAN: No, sir.

THE CHAIRMAN: And it is quite clear that the anonymity rule must apply to him, as to [redacted]

MR. MORAN: Indeed so, sir.

...

THE CHAIRMAN: I thought that this list dealt with persons who were actually involved in the Inquiry and allegations which had been canvassed before us.

MR. MORAN: Not before you, sir, these were allegations canvassed to the police; as you say absurd material sometimes.

THE CHAIRMAN: In order that the matter be clear, I was supplied by the police, at my request, with a list of all persons against whom allegations had been made,

before the Tribunal ever began sitting, and one of the allegations that was fantastic was referred to in evidence last week, about a judge who was accused, by hearsay, of having something to do with interference with children; a malicious allegation made by somebody who failed to get custody of his children, his own children.

MR. MORAN: That is so, sir.

...

THE CHAIRMAN: I have no special duty to protect prominent persons, but I don't think that anybody whose name is the subject of that sort of rumour should have it bandied about. It's clear that the name [redacted] and the name Kenyon were an entirely different category because they have been introduced in relation to matters properly within the scope of this Inquiry.

...

THE CHAIRMAN: We have had a very good picture so far, and the difficulty is that I think this list, which I deliberately returned to the police, and to which no further reference has been made, is emerging, so to speak, quite unnecessarily. We are concerned to know particularly where advice was given not to prosecute in respect of persons against whom we've heard actual allegations ... We have got a list of people against whom specific allegations are made, of either physical or sexual abuse, and it is persons in that category, in respect of whom no prosecution took place, that we want to know about."

- 8.82 At the time I interviewed the now retired DSU Ackerley, on 14 June 2013, it was clear that the list from which he had read the names to the Tribunal was not within the materials supplied to the Review. Mr Ackerley had no independent recollection of the list, but advised as to its likely whereabouts. I do not know why this document was not available in the Tribunal records delivered to the Review.
- 8.83 Operation Pallial supplied a copy of the 'suspect list'. On 2 July 2013, I visited the Serious Organised Crime North West Division offices in Warrington, at which the HOLMES computer relating to the 1991 police investigation is now housed. With the assistance of a trained operative, I accessed all relevant "messages", "documents", "statements", "reports" or "actions" against the names of these establishment figures. I was provided with copies which had been retrieved as necessary from storage in Colwyn Bay. Save in the case of the name [redacted] it is clear that all the names of national public figures referred to by journalists and others, as indicated above, were included on the 'suspect list' as a result of multiple hearsay, gossip/rumour/innuendo and media reports. The primary source of the allegations is unspecified. No witnesses had made allegations against them.
- 8.84 The 'suspect list' also made reference to several local prominent figures including: David Hughes, the former Mayor of Colwyn Borough Council;
and,
David Hughes had been convicted of possession of indecent images in 1991.

was alleged to be a member of the CHE. had been named by a journalist as a paedophile. Gary Cooke subsequently suggested in oral evidence before the Tribunal that he might have been employed by by reason of his sexual orientation, and for the purpose of recruiting young men for sexual purposes. No witnesses had made allegations against any of them.

8.85

is also named on the list. There is an unsigned note in a Welsh Office file headed “”. The relevant part of the note reads, “In the summer of 1992 | | requested to meet with John Jevons, Director. During the course of the meeting | alleged that whilst he was at Bryn Estyn he informed | - who was visiting the Home - that there were boys at the Home who were being physically and sexually abused by members of staff, he also alleged that whilst in care he had been told by other children (not named) that | paid children in care for sexual favours and that when he left care he was lived [sic] for a period ... [in] Wrexham and had seen | with young people - male and female - in his car on a number of occasions. A record of this meeting was passed to the North Wales Police who interviewed | in relation to these matters - the police file was passed to the Crown Prosecution Service - who decided on the basis of the evidence not to proceed ...” This allegation was not investigated by the Tribunal.

8.86 There were other references to | name in the papers. He was included in the list of “People with Influence and Power involved in ‘Bryn Estyn’” compiled by the Wrexham Child Protection Team. There is no explanation why. During a meeting at Wrexham Police Station, Councillor King's reference to an alleged ‘kerb crawling’ incident involving | was confirmed, although stated to have been marked ‘no further action’ because of insufficient evidence. Suggestions found in other documents that | was a shareholder in Bryn Alyn have not been verified by the Review from direct evidence.

8.87

8.88 | name is also on the ‘suspect list’. He had | and was accused by | of attempting oral masturbation upon him when he resided in a property owned by the project. | gave evidence to the Tribunal, was cross examined about the allegation and denied it. No findings were made against him

- 8.89 name does not appear on the 'suspect list', despite his name being identified in one of the files referred to as indicated in paragraph 8.32 herein, but was mentioned by Mrs Taylor in her 'Gwynedd County Council Analysis' report, submitted to the Tribunal and to this Review, as being linked to abuse on the basis of providing accommodation to young homeless boys and men. A newspaper reporter said was known in the gay community and he had been alleged by a former children's home resident, to have been encouraged by staff, to take boys to his house for the weekend. There was evidence before the Tribunal that had visited one of the children's homes under investigation, but no witnesses made allegations against him.
- 8.90 a Catholic priest, was named in a police statement as an abuser by a former resident of Clwyd Hall, who had also made allegations against Noel Ryan, a housemaster there, subsequently convicted of abuse. gave evidence at the Tribunal, but was not asked about . The allegations were serious, being of indecency and buggery. is not mentioned by name, or his calling identified, in the Tribunal Report. Unfortunately, the police statement in which these allegations are made is undated and does not indicate first name, making a cross check against the 'suspect list' impossible.
- 8.91 There is a letter dated 16 August 1996 from the NWP Solicitor to Mr Lambert, which refers to complaints received by three named individuals, including "which fall within the terms of the reference of the Tribunal", but there is otherwise no indication of the nature of the allegation or the identity of the alleged abuser. The letter concludes, "I confirm that these matters are being investigated by the North Wales Police." This would mean that those allegations would not be investigated by the Tribunal.
- 8.92 My letters to Mr Gerard Elias QC and Mr Treverton-Jones QC asked for their comments about the omission to refer to in the evidence orally adduced before the Tribunal. Each was understandably handicapped by the passage of time. Each independently suggested that the likeliest explanation for not calling the evidence was because of a potential or actual police investigation. Mr Treverton-Jones QC referred to the fact that the police statement containing the allegation would have been in the possession of the complainant's Counsel who would be in a position to examine the witness upon the evidence if omitted by Counsel to the Tribunal in oversight or error.
- 8.93 One such counsel, HHJ Margaret de Haas QC, as she now is, confirms in an email to Mr Treverton-Jones QC, copied to me, that it was unlikely that Counsel to the Tribunal failed to lead relevant evidence. She postulates that possible reasons for its omission are that: the allegation was not in the relevant statement or had been redacted; the witness did not wish to mention the allegation; or, the allegation had been ruled inadmissible by the Tribunal as being irrelevant or outside the remit of the Tribunal.

- 8.94 The statement of one complainant, _____ read to the Tribunal, alleged that someone “introduced as _____ would “pick little boys and take them for weekends away”. No further detail was given beyond associating him with a group of people visiting Bryn Estyn and doing the same, including _____ evidence was referred to in the Tribunal Report in the case of _____ but given little weight. No further investigation appears to have been made in so far as the name _____ was concerned, and no findings were made in relation to this allegation. No other witnesses made allegations against this name.
- 8.95 Allegations were made in police and Tribunal statements against named police officers. Two complainants, _____ refused to take part in the Tribunal proceedings. Evidence of specific allegations of abuse made by one witness, _____ against Peter Sharman, a former police officer with the NWP, was heard by the Tribunal. _____ oral evidence undermined his police statement in terms of the time frame when some of the sexual abuse was alleged to have occurred. On the oral evidence, the majority of the alleged indecent assaults occurred when _____ was not “in care”. However, there was one occasion when the evidence indicated he was in residential care, when he said Peter Sharman had attempted to abuse him. No finding is made on this particular allegation in the Tribunal Report. The allegations against the same officer made by another witness, _____ were dealt with in the Tribunal Report in anonymised form. The evidence as to whether or not _____ was in care at the time of the assaults was uncertain.
- 8.96 At the time of the Tribunal hearings, Peter Sharman was due to face trial for serious sexual assaults against a child who was not in care. An order was made pursuant to Contempt of Court Act 1981, section 4(2) to prevent publication of any account of the Tribunal proceedings pending his trial, and if convicted, any determination of appeal or before time for serving notice of appeal had expired. He was convicted. There is no indication that any appeal was initiated or pending at the date of production of the Tribunal Report, and there would have been no bar to him being named for this reason.
- 8.97 For the sake of completeness, and as previously indicated, I record that there are a number of police and Tribunal statements which do include allegations of abuse against many unidentified police officers by complainants who were in care at the relevant time. These parts of the statements were not all referred to in oral evidence or read into the proceedings as indicated in paragraph 6.187. The Tribunal Report indicates that one of the reasons why complaints have not been investigated includes “lack of identification of the abuser”,⁶ but otherwise makes no reference to the nature of these allegations in so far as they concerned police officers.

6 See paragraph 55.06 of the Tribunal Report

Alleged concealment of evidence relating to establishment names

8.98 [redacted] alleged that he struck a deal with Leading Counsel to the Tribunal prior to giving evidence before the Tribunal and agreed not to name certain 'names'. He repeated this allegation to me when I interviewed him in August 2014. Mr Gerard Elias QC categorically denies any such meeting or third party intervention at his direction in this regard.

8.99 When I interviewed Mr Gerard Elias QC on 5 December 2012, he provided me with emails sent to him on 1 November and 6 November 2012 on behalf of BBC Newsnight and Channel 4 News respectively, which asked for his response to an allegation apparently made by [redacted] that he had refused to permit [redacted] giving evidence of up to 32 names identified as his abusers on the basis that they were "high profile people including police officers". In his response to Channel 4 News, Mr Gerard Elias QC said "... your email contains, amongst others, allegations which amount to a serious attack on my personal and professional integrity, I do consider that some immediate comment is required. Accordingly, I wish to state that there is not a shred of truth in the suggestion that, at any time, I 'negotiated' with [redacted] as to which names could be included in his statement or that I 'pressured' him to alter the content of any statement he made for the Inquiry by removing names from it. No doubt you will be making the content of the recent interview with [redacted] available to the judge conducting the review - I shall of course make the content of this email available to her." Neither Newsnight nor Channel 4 News has contacted the Review.

8.100 Mr Treverton-Jones QC recalled in interview with me that he did meet with [redacted] at the request, and in the presence, of [redacted] solicitor. The meeting was said to be cut short due to [redacted] emotional state. Mr Treverton-Jones QC said that no part of the substance of his evidence was intended to be, or had been discussed.

8.101 The daily transcripts of the Tribunal hearings show that [redacted] threatened Mr Gerard Elias QC and at least one other Counsel during the course of giving his evidence.

8.102 [redacted] told me in interview that there were establishment names he remains frightened to disclose. When giving evidence before the Tribunal, he complained the NWP had failed to record some of his allegations against some named individuals, and that some of his statements had not been produced. However, he did not say in oral evidence who or what these allegations involved. The Tribunal refers to these criticisms in the Tribunal Report.

Further submissions made to this Review

8.103 I mention my interview with Mr Martyn Jones, in which he expressed his concern that the Tribunal had not included names of establishment figures in its report, in paragraphs 8.44 and 8.45. During the course of the interview he said, "Anyway, you're

probably aware I made some fairly empty threats actually to read out the names in Parliament ... I mean I didn't think it was going to be a responsible thing to do, but I thought it was responsible to threaten in order to try and get some action in terms of the investigation which I assumed was going on ... I mean I used the threat to mention them in Parliament under privilege as a means of getting some real information ..."

- 8.104 He told me that the reference to the judiciary in his speech to Parliament was in relation to "Lord Kenyon, I think." As to politicians "... it may well have been at the time, but that was not one I remember now ... I'm certain it was mentioned at the time, but by then it was also and who had got into the mix. I am pretty certain that they were not mentioned early on, whereas was a politician ... was a politician, when I first heard, was a politician ... I mean, to be honest I was furious, because those names had just been missed off, and I felt, regardless of the fact that whoever they were, they should be investigated."
- 8.105 Mr Martyn Jones produced to me a list he said he had received from police officers in 2000 containing the names of alleged abusers, but said that there were "some notable exceptions ... bearing in mind the names that I know had been given to the Waterhouse Inquiry". He said and names were added later, but he thought they had been provided to the Tribunal. He had prepared a list of the missing "controversial" names, but it had since disappeared along with the notes that he made. He used to shred them. He recalled that when name was mentioned and was thought to be as a Labour politician he first thought, "Wow, this is dynamite if this gets out. But actually, I think, it also had the opposite effect; the fact that it was sort of 'gossipy' and controversial made it more difficult to believe as well ... I mean some of the names were quite shocking really."
- 8.106 A letter sent by the Chairman to the Secretary of State for Wales in February 2000 "in confidence" reads, "I am dismayed that Martyn Jones is reported to be intending to name between six and 50 persons under the cloak of Parliamentary privilege, alleging that they have not been adequately investigated by the Tribunal. At the moment I can only guess whom he has in mind but it seems that a serious abuse of the privilege may occur. Martyn Jones has not asked for any information or explanation from the Tribunal and, as far as I am aware, has not communicated with us ... He is said to be consulting [sic] and Councillor Malcolm King but both these persons gave evidence to the Tribunal and what they had to say was explored as fully as possible within the Tribunal powers ... they were represented by Counsel throughout ... I will be pleased to supply appropriate information about each person to be named by Martyn Jones, if and when his/her identity becomes known to you."
- 8.107 A note of the meeting between the Secretary of State for Wales and Mr Martyn Jones MP on 14 March 2000 referred to the list of names and then goes on to record, under the subheading "Other issues", as follows "the list of names was not shared at the meeting. Mr Jones said the list did not reflect the more outrageous claims that had been made in some quarters over the years, for example that

government ministers were involved. He explained that he has information that indicates some people whose names are on the list could not have done what was alleged against them and that some names on the list do appear in the report.”

8.108 I refer in paragraphs 1.4 and 1.34 to the telephone call made to Mr David Jones, when a prospective parliamentary candidate, by someone claiming to be a member of the Tribunal staff and saying that Sir Peter Morrison was likely to be named in the Tribunal Report. As previously indicated, I have found no Tribunal document which would support such a contention.

8.109 Other MPs are reported to have made claims to the media after the publication of the Tribunal Report, and more recently, concerning the involvement of establishment figures in child abuse in North Wales. I do not refer to them by name, since none appear to me to have been likely to have had access to any relevant “official documents” in contrast to Mr Richards by virtue of his role as Parliamentary Under-Secretary for State for Wales. None refer to a credible, or any, source of their information. None have sought to contribute to this Review.

8.110 In interview with me, _____ referred to other alleged abusers, with freemason and judicial connections, who he said he still feared to name (see above). He made allegations against other national and local establishment figures that do not appear in his police or Tribunal statements. However, following my Salmon letter to him indicating that I was not satisfied that he had been prevented by Mr Gerard Elias QC from giving evidence identifying all those involved, he has expressed his disappointment in my Review and sought to withdraw his contribution to it. In those circumstances, I consider it would be inappropriate to refer to the detail of the allegations and/or the insinuations he made.

Other contributors

8.111 Investigative journalists who responded to the Review had particular interest in the allegations concerning _____ but did not refer to other establishment names.

8.112 Councillors King and Parry, who were urging the government to establish a public inquiry, have not implicated any public figure by name or by description as a politician, nor have they identified any such individual to me, despite my invitation for them to provide any particulars revealed to them. In the letter of complaint written by Councillor King to the Chairman, in which he claimed he had been prevented from giving all relevant evidence to the Tribunal, he does not suggest that he had first hand evidence concerning political figures.

8.113 In his interview with me, Councillor King referred to allegations against _____ and suggested that the Tribunal had insufficiently appreciated the import of his meeting with Mr Peter Joslin, Chief Constable, since he had been “closed down” in evidence. Councillor King had reported in his Tribunal statement that an unnamed Chief Constable, subsequently named as Mr Joslin, had informed him that “his investigating team had reason to believe that there was evidence that _____ was involved in child pornography.”

- 8.114 There is a letter in the Tribunal papers from Mr Joslin, Secretary of the Association of Chief Police Officers, dated 16 January 1998 and addressed to the NWP Solicitor, in which he identified himself as the unnamed Chief Constable referred to by Councillor King in his Tribunal statement and confirming his meeting with Councillor King on 3 June 1993. However, he states “I do remember this issue [the Deputy Chief Constable’s alleged involvement in child pornography] being raised but, quite the contrary, my comment was that there was no evidence whatsoever to suggest that either of the Officers investigated were involved in child pornography ... during [the police complaints investigating team’s] time in Wales both the media and the public seemed to think we were investigating matters more serious than we were. There was rumour about paedophile activity and the press seemed to be seeking sexual connotations to the enquiries we were carrying out.”
- 8.115 Ms Sian Griffiths named a former children’s home resident, _____ said to have lived with the son of Black Rod in the Houses of Parliament. She referred to rumours that MI5 had _____ under surveillance and saw boys emerging from a back exit to his flat. She said that Mrs Taylor and Mr Jevons had mentioned to her the _____ and _____ in relation to a ‘boy’ whose social services file revealed had worked on the Grosvenor Estate. She said that the probation records obtained in relation to Gary Cooke mentioned _____ and _____ whom she described as _____ chauffeur. She believed that the files of two previous Bryn Alyn residents, _____ contained information concerning offenders convicted of crimes against children and one of them acting as a rent boy when they moved to the South East.
- 8.116 Mrs Taylor, the prominent “whistleblower” and supporter of the complainants, did not in any of her reports/analyses previously submitted to the NWP and government departments, or in her statements to the Tribunal, nor despite being pressed by me in the interview I held with her on 25 April 2013, suggest that any who had confided in her, at the time or subsequently, alleged abuse by any of the establishment figures referred to above. She said that if they had “... they would have been included [in the documents she had prepared, prior to, for the Tribunal and subsequently]”. For the avoidance of doubt, I record that she did refer in one of the reports/analyses she prepared to allegations apparently made by a young man, _____ concerning a Judge sitting on the North Wales Circuit but, to her knowledge, the Judge was not charged with sexual offences against him. I have previously referred to the fact that she mentioned _____ Mrs Taylor considered that there was a “chapel hierarchy” in Gwynedd, which had not been examined by the Tribunal.
- 8.117 However, Mrs Taylor was aware of allegations against _____ and that there were allegations of assault made about _____ but “I’m not sure what those were and I’m not sure about whether or not they were genuine ... I mean there’s been names straggling around for a long time ... I mean _____ has been in the public domain forever, and I’ve lost count of the number of journalists who, with sort of baited breath, have asked me about _____ and I’ve said: ‘Don’t go there because the _____ that may

have abused children is not the [redacted] you think he is', and everybody has known this - I won't say everybody, but I've known it, and a lot of other people have known this for a long time, long before [redacted] was named recently...

[redacted] there've been various MPs named over the years ... Not necessarily directly to me, not as abusers, but names floating around in the ether, so to speak."

8.118 [redacted] indicated to me in interview that he had a sense of unease that none of the names 'floating about' were called to the Tribunal. That said, he acknowledged the evidence had not come forward and did not feel that it had been concealed.

8.119 My Review has been well publicised. Press reports have stated that Mr Richard Scorer, a solicitor with Pannone and Partners who represented complainants before the Tribunal, [redacted] and other "former residents" of Bryn Estyn and "a retired care worker" have commented on the alleged involvement of named and unidentified establishment figures in child abuse in North Wales children's homes. Mr Scorer refers to the allegations as being seen as "far-fetched", [redacted] says the abuse went "wider", [redacted] refers to Jimmy Savile being present when he was abused by Peter Howarth and seeing [redacted] taking boys "off in smart-looking cars" and [redacted] says that he was taken from the home by people in power. "Former residents" are said to have referred to [redacted] and "a paedophile network" with at least one senior Conservative party figure involved. The retired care worker reported that [redacted] had claimed that he "took boys out" and used sexual language to them. None have contacted me in relation to these matters.

8.120 The Children's Commissioner for Wales's office has assisted in notifying and offering to support those who may wish to contribute to this Review. Mr Keith Towler, the immediate past Children's Commissioner for Wales, informed me that some of those who had contacted his office after the Tribunal had mentioned [redacted] and the [redacted]. He gave no other details of these reports. No one, other than the contributors I refer to above, has come forward to me with information or complained that evidence of the involvement of establishment figures has been concealed or ignored.

8.121 I have not considered it appropriate to seek to meet with those who are named as being involved in child abuse, since it is patently not within my remit and there is no basis upon which to do so. I have not deemed it necessary to approach the stated 'sources' of media reports alleging the involvement of establishment figures in child abuse. There is no information within any of the documents I have seen which would suggest that these sources had access to any documents relating to North Wales in regard to the background to the Inquiry. I regard it as reasonable to expect that, if they did possess relevant and cogent evidence, they would have contacted this Review.

Conclusions

Government knowledge

- 8.122 There is no evidence available to me to suggest that the NWP or AG had formally notified any government department of the speculation or information concerning political or public figures whose names appear on HOLMES or were otherwise contained in files submitted to the CPS for advice.
- 8.123 It seems that, save in the case of Lord Gareth Williams, the only information available to the government in relation to establishment names was contained in newspaper articles, magazines and television programmes. I do not know how the information concerning Lord Gareth Williams was dealt with by Welsh Office officials. The information does not appear otherwise in the Tribunal documents. There are no witness statements which make allegations against him.
- 8.124 There are no documents that I have seen which resemble those said to have been described by Mr Richards as establishing the politician's visits to children's homes in North Wales. I note that the newspaper is unusually coy in the naming of "the other man" despite the fact that he was said to be dead and therefore no issue of libel would arise. No response has been made by the journalist concerned.

Equally, The Right Honourable Mr Hague makes the valid point that if he did have specific information concerning he is unlikely to have told about it rather than his officials or the Tribunal he, as Secretary of State for Wales, had established.

Sources of information

- 8.125 I regard the actions of Mr Johnson-Thomas in staging a photographic identity parade to have been extremely irresponsible. Whether he produced two or four photocopied photographs for consideration could not produce a reliable identification of an abuser and may well have contaminated any legitimate identification made with the safeguards provided in the Police and Criminal Evidence Act 1984 and associated Codes of Practice. Whatever description provided by does not resemble or the other politician shown in the photographs, and there is no explanation as to why, on his version of events, two photographs of the same man were shown. Mr Johnson-Thomas' suggestion that mention of a Harrods card informed his choice of photographs is untenable and illogical. His indication to me that there was additional information which led him to this choice is not substantiated in any detail.
- 8.126 Responsible journalism may rightly claim some credit in creating and maintaining public interest in the child abuse allegations in North Wales and increasing pressure for a high level investigation. Sensationalist reporting in the media may have encouraged exaggerated or false complaints, and contributed to the taint of the authentic accounts of others and the results of the police investigations that were continuing from 1991.

8.127 The document produced by Mr John Roberts of the Wrexham Child Protection Team was described, rightly in my view, as “speculative”; it may more aptly have been viewed as tenuous in terms of those individuals named with no previous convictions for, or indicators of, paedophile offences.

8.128 I regard the Tribunal description of Mrs Taylor’s “Gwynedd County Council Analysis” as including “many rumours and a great deal of hearsay” to be accurate and fair. Mrs Taylor effectively agreed with the Tribunal’s description in her interview with me.

Tribunal investigations

8.129 I find that it was entirely reasonable that the Tribunal did not pursue allegations made in media articles which were unattributed and general in nature. I do not consider that it was in the public interest for the Tribunal to repeat or report rumours contained within press reports, or to regard them as reliable evidence. However, it has been necessary for this Review to examine all materials that were or should have been before the Tribunal, and for this Report to inform the commissioning departments of the nature and reliability of the information in respect of the names of individuals contained within which have based my conclusions as to the adequacy of the investigations made, and to cross reference the actual allegations made and evidence, properly called, available. That is, I do not consider that a bland assertion or general conclusions as to unidentified establishment names would be satisfactory or sufficient in the circumstances in which this Review was established. Having done so, I am satisfied that the Tribunal was reasonable to decline to investigate or identify names on the ‘suspect list’ against whom no witness had made allegations.

8.130 Counsel to the Tribunal would necessarily be called upon to make an evaluation of the reliability of an informant. Therefore, for example, a “conspiracy theory” such as that referred to in paragraph 8.67, if unspecific, would not reasonably warrant further investigation. An objective analysis of the contemporaneous records of the informant’s calls to the helpline referred to in paragraph 8.71 would rightly indicate him to be an unreliable witness. It was reasonable he was not called. The allegations of the caller referred to in paragraph 8.72 were general and broad and not necessarily in relation to North Wales. The weight able to be placed on his research/hearsay evidence may reasonably have been assumed to be negligible. I consider there would have been little merit in following up this call.

8.131 It was reasonable not to require [redacted] to attend at the Tribunal to answer allegations which may have referred to him. The evidence implicating him was inadequate and unreliable. Consequently, the Tribunal had no reason to mention his name in its report. What is more, since the investigation into the [redacted] (in general) was conducted in public session, and in all the circumstances above, I am satisfied that the decision not to include [redacted] within the Tribunal Report cannot be categorised as perverse. Conversely, Lord Kenyon and his son were rightly named in the Tribunal Report. There was specific evidence identifying them, which accused them of serious acts of impropriety.

8.132 It seems most probable that the omission to refer to the allegations against [redacted] was by reason of a potential or actual police investigation into them. Whatever the findings that may have been made against [redacted] any reference to him in the Tribunal Report was likely to have been anonymised in accordance with the practice adopted in the case of those who had not been prosecuted and convicted. In these circumstances, I doubt that the absence of any reference to his name or calling in the Tribunal Report is a deliberate concealment.

8.133 The Chairman's intervention when the list of names was being read out by DSU Ackerley was, in the circumstances indicated above, certainly correct. It was no part of the Tribunal's function to propagate gossip or rumour. In the light of the comparative ease for me to obtain a copy of the 'suspect list' referred to in paragraphs 8.83 to 8.85⁷ above from other sources I doubt that it was deliberately destroyed with a view to concealment.

Tribunal Report

8.134 I consider that the findings made in relation to whether [redacted] was in care at the time of his allegations of abuse against Peter Sharman may be regarded as over cautious, but not perverse. The evidence of another complainant, whose evidence suggested that he may have been in care at the relevant time, is not referred to in the Tribunal Report. The decision not to name Peter Sharman in the Tribunal Report is explicable in that no findings were made against him in relation to allegations definitely covered by the terms of reference. However, it is arguable that in light of his subsequent conviction of sexual assault, the Tribunal Report should have named him and made reference to his conviction as a matter of public interest.

8.135 Since evidence was not led about all of them, the absence of any reference in the Tribunal Report to complaints made against unidentified police officers is unsurprising. I accept that to call or lead evidence against an unnamed perpetrator would have required time devoted to them with scant prospect of any meaningful finding being made. However, there is consequently an imbalance in the Tribunal Report, since none of the allegations are even acknowledged to have been made. The stark assertion in the Tribunal Report⁷ of the numbers of police officers against whom allegations of sexual abuse may be inaccurate, subject to the Tribunal's definition of sexual abuse or their findings upon whether or not there was sufficient evidence as to whether a complainant was in care at the relevant time.

Alleged concealment of evidence

8.136 If [redacted] had agreed in a meeting with Mr Gerard Elias QC not to say anything about certain individuals before he gave evidence, it is reasonable to assume that when he lost his temper with Leading Counsel during the Tribunal hearings, he would have abandoned restraint. I find it improbable that Mr Gerard

7 See paragraph 51.65 of the Tribunal Report

Elias QC would have had a private meeting with [redacted] after the threat delivered during the hearings. Significantly, [redacted] makes no reference to this purported agreement in the letters he wrote to the Chairman subsequently (see paragraph 6.223) complaining of Mr Gerard Elias QC's conduct during the Tribunal. What he does say in that letter was that his evidence was compromised by ill health which prevented his full disclosure. I find it improbable that he would be amenable to any attempt to tailor his allegations to protect any part of the establishment at the behest of Mr Gerard Elias QC or anyone else.

Contributors to this Review

8.137 I am satisfied that Mr Martyn Jones' concerns were genuine and not politically motivated, either at the time of the publication of the Tribunal Report or subsequently. I have no reason to doubt that he did raise other names with the police in his meetings with them. However, Mr Jones accepts that he used the list he provided to me as an aide memoire and is reliant on memory of events which occurred a significant time ago. The copy lists that he gave to me did not include the names of the public figures mentioned above. As is clear from the discussion above in relation to the information available to and the evidence given to the Tribunal, there was no mention of [redacted] or [redacted]. As to the other names, apart from Lord Kenyon, there was good reason not to report them as I indicate above.

8.138 I doubt the accuracy of Ms Griffiths's recall of her conversation with Mrs Taylor. Mrs Taylor did not confirm the same, nor is the substance of the conversation referred to within the comprehensive reports prepared by her. I am not able to judge whether Ms Griffiths was given this information by Mr Jevons as she indicated he may have done. However, the other information she provided to me was gossip or a repeat of other information before the Tribunal and referred to herein.

8.139 In the absence of any reference to the name of Peter Morrison in the Tribunal papers, I am inclined to conclude that the telephone call to Mr David Jones was a hoax, not made by any member of the Tribunal staff.

8.140 Some of the submissions made to me identifying alleged perpetrators of abuse, and those appearing in subsequent media reports, were not available to the Tribunal.

Overall conclusion

8.141 I detect no reluctance by the Tribunal to investigate allegations made against national or local establishment figures. Constraint may have been imposed by ongoing police investigations. The absence of findings against establishment names in the Tribunal Report reasonably reflects the Tribunal's view of the absence of any, or any reliable, evidence to sustain them. I have not detected any evidence that could reasonably have led the Tribunal to a different view.

Chapter 9: Paedophile Ring

Introduction

9.1 In light of the long prevailing reports of a paedophile ring involving high profile or establishment figures which continued to circulate around the Tribunal hearings and subsequently, I have considered it necessary to report separately upon this Review's examination of the evidence available to the Tribunal concerning the existence of one or more paedophile rings. Much of the substance of this chapter is already covered in Chapters 6, 7 and 8 of this Report. This examination was conducted with a specific view to investigate whether there was more revealed by the evidence than reported by the Tribunal, or which reasonably could have been investigated further. It was not confined solely to consideration of the Tribunal's findings in relation to the involvement of establishment figures (see Chapter 8). As indicated below, the Tribunal considered the wider picture of paedophile activity connected to residential children's homes. This Review therefore comments upon the nature of the investigations conducted.

The Tribunal's definition of a paedophile ring

9.2 The Tribunal considered that "a paedophile ring may exist in many different forms and ... the range of its possible activities is also wide."¹ The Tribunal proceeded on the basis that it was sufficiently defined as a group of individuals known to each other exploiting children for sexual gratification by passing victims and information between themselves.

Tribunal approach

9.3 The Tribunal considered the "main (but not sole) source of evidence"² concerning the existence of a paedophile ring to have been It investigated:
(i) paedophile activity at and connected with Bryn Estyn and Cartrefle, including the association between Peter Howarth and Stephen Norris; (ii) recruitment to children's residential homes generally; (iii) paedophile activity in and around Wrexham town including the investigation of Gary Cooke in 1979 and involvement of CHE; and, (iv) paedophile activity on the North Wales coast.

9.4 As regards (i) and (ii), the Tribunal conducted an analysis of findings made in relation to the children's residential homes to reveal whether there was any "connecting thread or link between the proved offenders and whether ... they shared victims or information about them."³ As to (iii), specific attention was paid to the activities of convicted paedophile Gary Cooke, although not excluding the evidence of others called to give evidence as a result of allegations. The fourth area was more restricted on the evidence to activities in Rhyl.

1 See paragraph 52.05 of the Tribunal Report

2 See paragraph 52.08 of the Tribunal Report

3 See paragraph 52.09 of the Tribunal Report

Summary of Tribunal's findings

- 9.5 The Tribunal Report indicates that “no evidence has been presented to the Tribunal or to the North Wales Police to establish that there was a wide-ranging conspiracy involving prominent persons and others with the objective of sexual activity with children in care. Equally, we are unaware of any evidence to establish that there was any coherent organisation of men with that objective.”⁴ It concluded that it was satisfied “during the period under review, [that] a significant number of individual male persons in the Wrexham and Chester areas were engaged in paedophile activities ... Many, but not all, of these paedophiles were known to each other and some of them met together frequently ... Inevitably, some information about likely candidates for paedophile activities was shared, expressly and implicitly, and there were occasions when sexual activity occurred in a group ... To the extent that we have indicated we accept that there was an active paedophile ring operating in the Chester and Wrexham areas for much of the period under review. The evidence does not establish, however, that there was a conspiracy to recruit paedophiles to children’s residential establishments or to infiltrate them in some other way.”⁵
- 9.6 However, significantly, in the Tribunal Report it was considered “necessary to stress ... that an inquiry of this kind cannot emulate, for example, an investigation by the police. The resources of the Tribunal and its mechanisms inevitably limit its ability to seek out new witnesses and interrogate them. Thus, in the course of probing the existence of an alleged paedophile ring, we have been unable to do more than hear what the relevant witnesses known to us have been prepared to say on the subject and there has been very little documentary evidence to assist us.”⁶

Tribunal's investigation into paedophile activity in children's residential homes

- 9.7 The Tribunal Report makes clear the scope of its investigations into this issue which included: possible connection between Peter Howarth, Stephen Norris and others; the presence of others at the time of alleged abuse; the introduction of children to abusers outside the children’s residential establishments, including prominent individuals as referred to in Chapter 8 of this Report; and, the systematic recruitment of paedophiles as residential care staff. The contents of Chapters 6 to 8 of this Report already cover some of these areas and I do not repeat them here. However, I do set out below, the evidence available to and investigations conducted by the Tribunal in this respect, which are not otherwise referred to elsewhere.
- 9.8 Inquiries were made regarding Peter Howarth’s possible connections with other abusers. I note some confusion obviously existed about his connection with Aycliffe School and Axwell Park School. Interviews were conducted and the Axwell Park minute book inspected. Peter Howarth’s visitors, correspondents and associates

4 See paragraph 52.07 of the Tribunal Report

5 See paragraphs 52.84, 52.85 and 52.88 of the Tribunal Report

6 See paragraph 55.04 of the Tribunal Report

whilst in prison were identified. The Ruskin College, Oxford list of students studying for the Certificate in Residential Child Care at the same time as Peter Howarth was obtained to identify possible names implicated in abuse (Matthew Arnold, former Head of Bryn Estyn and colleague of Peter Howarth at Axwell Park School, was known to have lectured in Ruskin College). Inquiries were made in local golf clubs to identify Peter Howarth's partners, proposers and other members. These inquiries did not reveal any evidence of infiltration of the care system or a paedophile ring.

- 9.9 One complainant, referred in his police statements to Peter Howarth's golfing friend being present in his flat on occasions and a possible association between Peter Howarth and 'Gilligan' - whom the police wondered might be reference to David Gillison (see below) - although made no allegations against them acting together and did not refer to these matters in oral evidence before the Tribunal. A deceased complainant, whose police statements were summarised to the Tribunal, referred to being sexually abused by Peter Howarth and another unidentified man at the same time. There were other complainants who said that they were abused jointly by Peter Howarth and another, and are referred to within the Tribunal Report.
- 9.10 Stephen Norris had worked in Greystone Heath Approved School in Warrington. Several men who worked there at the time were convicted of indecent assaults on the residents there. The Tribunal Report makes reference to two of them.⁷ One of those convicted was said to have maintained a link with Stephen Norris and to have visited him at Bryn Estyn. No allegations were made against that individual by any resident of Bryn Estyn in the documents that I have seen, or against Stephen Norris in relation to his employment at Greystone Heath. Whether a paedophile ring operated in Greystone Heath was outside the Tribunal's terms of reference.
- 9.11 Two complainants, made allegations that Stephen Norris had introduced them to other individuals for the purpose of sexual favours. The Tribunal was unable to make findings in relation to the most serious of these allegations, which involved Stephen Norris and another man taking it in turns to rape for the reasons given in the Tribunal Report.⁸ In summary, failed to attend the Tribunal on several occasions, the outside abusers were unidentified and his evidence against a substantial number of other abusers was considered 'highly dubious'.
- 9.12 Very few complainants alleged that they had been sexually abused by two men jointly participating or in the presence of others. Other complainants said they were abused by the same offenders at different times. Several of those accused worked together or knew of each other. The Tribunal found there was no direct evidence of a joint venture between Peter Howarth and Stephen Norris and "on the contrary the evidence suggests a degree of hostility between them."⁹

7 See paragraph 29.07 of the Tribunal Report

8 See paragraph 52.15 of the Tribunal Report

9 See paragraph 29.12 of the Tribunal Report

- 9.13 The WIT was directed by Counsel to the Tribunal to carry out inquiries in relation to John Allen when a prison inmate. His visitors and names and addresses of those with whom he was in contact were obtained.
- 9.14 One complainant, _____, who gave oral evidence to the Tribunal alleged that John Allen and _____ had abused him jointly. _____ denied the association suggested and the abuse alleged. _____ also alleged that John Allen would host parties for men, some of whom would visit him in the night. Another deceased complainant, _____ whose police statements were summarised to the Tribunal, alleged that John Allen had arranged for him to have dinner with the headmaster of another residential establishment, who had sexually abused him before returning him to Bryn Alyn. The Tribunal made no specific mention of these allegations in its Report.
- 9.15 Other complaints were made against care workers in the Bryn Alyn Community. Some complainants said that their abusers made reference to the fact of their abuse by other abusers, leading at least one, _____ to say that he thought that he had been targeted by Gary Cooke because of information supplied by John Allen.
- 9.16 As a matter of completeness, I report that there was evidence before the Tribunal which gave them “cause for concern”¹⁰ regarding John Allen’s later activities in the South East. Young men leaving care in North Wales previously known to him were housed by him in several properties. Implicitly, at least, some were working as male prostitutes.

Tribunal’s investigations into a Wrexham and Chester paedophile ring involving Gary Cooke and members of the Campaign for Homosexual Equality

- 9.17 Counsel to the Tribunal indicated in a note to the Tribunal that, “there remains evidence of the existence of the so-called paedophile ring, a subject of much interest to the successor authorities. The Tribunal may feel that this issue essentially tangential to the real purposes of the Tribunal, unless it can be shown that there was either deliberate and systematic infiltration of the care system, or deliberate and systematic targetting [sic] of boys in care, by paedophiles. Although we have carried out considerable inquiries, the evidence on either ground is slim. At the present time, we have some reservations about devoting a significant amount of Tribunal time to this issue, but would welcome the Tribunal’s views.”
- 9.18 However, _____ wrote to the Chairman on 21 October 1997, angered by a press article in the Welsh Evening Leader on 17 October 1997, and remonstrated that, “during this article you stated that only one person has alleged that there was and still is a paedophile ring in operation. Whilst it is clear that no-one else has named as many people as myself, numerous other survivors have named some of the same people in their evidence. You go on in this article to ask the question, are the press reporting on the same tribunal that you have been attending? I ask

10 See paragraph 21.46 of the Tribunal Report

the question, are you attending the same tribunal that both myself and the press are attending? ... Throughout this inquiry you have 'had a go' at gays and have stated that this is a gay thing. I personally find this very offensive ... At various times during this inquiry you have put a block on barristers asking very pertinent questions. An example of this was when Mr M Hughes asked Gary Cooke if he could enlighten the inquiry as to how he identified potential victims. At this point you stated that you did not want to go down that road because it could get very messy ... It is this kind of information that could prevent possible victims of the future.

Mr N Booth has also wanted to explore a number of issues throughout this inquiry and you have continually stopped him ... I must state at this point that this must stop if you are truly trying to uncover the truth ... Also on the point of relevant questions and appropriate witnesses, you are no doubt aware that we have asked that you call a number of other people to come and give evidence at the tribunal. In response to this the tribunal has stated that they will first of all see if they can find them and then wait to see what their written response is before deciding whether to call them to give evidence. I find this totally preposterous, how can you not see that these people are bound to deny what took place, after all Gary Cooke, even with anonymity, denied a large catalogue of offences. It appears to me that your system has failed so far ... The central theme that you keep on referring to when not wanting to explore certain aspects in most of the above is that of costs. Ultimately the cost of this tribunal will be a lot in monetary terms, but nothing compared to the cost of human life and personal suffering ..."

9.19 The Solicitor to the Tribunal wrote to _____ solicitors on 29 October 1997, "For your information the Chairman has received a letter from _____ ... He has made it clear in the course of the hearings that he will not receive letters addressed to him by witnesses who are legally represented ... However, it may be helpful if I say that: (a) The Tribunal's team is continuing to pursue possible witnesses who can give evidence about the alleged paedophile ring and no final decisions have been made about who will be called. Great difficulty is being experienced in tracing most of the persons who have been mentioned in this context. (b) If you will identify any proper issue that Mr Booth thinks that the Chairman has prevented him from exploring, the Chairman will be pleased to consider the matter. He has been anxious to allow Mr Booth proper scope throughout and not least in relation to evidence of the witness Gary Cooke." I have not found _____ solicitor's response to this final point, and neither _____ solicitor nor _____ has contacted the Review.

9.20 In this respect, I note that following discussions with the legal advisers to the successor authorities, the WIT indicated that they had endeavoured to trace and interview 15 possible victims of a paedophile ring, some of whom had been referred to in _____ witness statements. Their records indicate that they were unable to trace eight of them. Three of them declined to assist. One failed to attend an appointment to meet with members of the WIT. One gave a statement but did not support the evidence of _____. One was reported as "not seen – in-patient at mental hosp[ital] for next 12 months". The results of another inquiry is not recorded. There is no Tribunal statement from either of these last two individuals and they were not called to give evidence.

- 9.21 On 12 November 1997, the head of the WIT reported to Counsel to the Tribunal on the outcome of inquiries in response to information contained in a letter sent by solicitor in respect of the 'paedophile ring'. One alleged abuser, said to be involved in incidents in the Crest Hotel, was traced and a statement obtained, but was too ill to give evidence. Another alleged abuser was found to have absconded from a private flat two weeks previously owing £2,000 in rent arrears and his location was unknown. Another had died several years before. One of the alleged abusers denied knowing or Gary Cooke and refused to make further comment or a statement. Another had left his premises five years before and was believed to be living and working as a florist in Bournemouth. Another was seen at his place of business and declined to make a written statement but proffered some information voluntarily which did not refer to
- 9.22 Several of the men accused by of abusing him and being part of a paedophile ring were called to give oral evidence at his solicitor's request. was the only complainant in relation to several of the men, and the only one to give direct evidence against the majority of the named individuals. The Tribunal found it difficult to make findings on the basis of uncorroborated or 'vulnerable' corroborated evidence and deemed his evidence "insufficient ... to establish satisfactorily that particular named individuals committed specific offences on identified occasions."¹¹ However, the Tribunal found that, "he was subjected to sexual abuse repeatedly by several persons during his stay ... [at a bungalow in Cheshire owned by a member of the CHE, which] ... was, at least, a major cause of the overdose that he took [within weeks of moving there]."¹² However, the Tribunal rejected an accusation that social services had arranged the accommodation for him, preferring evidence which indicated that he had been placed in an 'After Care hostel' in Chester, but left within a month to take up residence in the bungalow of his own volition.¹³
- 9.23 The Tribunal heard oral evidence from a small number of complainants who alleged that they had been sexually abused by Gary Cooke; according to their evidence, some were in care at the time. One complainant, indicated in his Tribunal statement that he had met Gary Cooke on a number of occasions in the vicinity of a children's home, but was not asked about these matters when giving oral evidence during the hearing, since the Tribunal did not at that stage consider this aspect of his evidence to fall within its terms of reference. Two of his police statements, which are referred to in his Tribunal statement, are not found within the documents provided to the Review. A written application was made on behalf of the successor authorities to recall the witness on the basis that his police statements indicated he was in care at the relevant time. The witness was not recalled. I have found no document dealing with the reasons given for the Tribunal apparently refusing the application.

11 See paragraph 52.90 of the Tribunal Report

12 See paragraph 52.79 of the Tribunal Report

13 See paragraph 52.76 of the Tribunal Report

9.24 Both [redacted] and a journalist contributor to this Review have raised concerns that Gary Cooke, named by the former as one of his abusers and a prolific convicted paedophile, was influenced by someone during the course of giving his evidence to the Tribunal. They each independently thought that although he continued to answer questions after the midday adjournment, he was less forthcoming. They each suspect that he had been spoken to and warned off.

9.25 It is difficult to gauge such a change from the transcript of his evidence alone. I do note that it was necessary to enforce Gary Cooke's attendance at the Tribunal.

Tribunal's investigations into other paedophile rings

9.26 There was some evidence that William Gerry, convicted for offences of sexual assaults upon boys in care in North Wales, had connections in Manchester and the North East, and may have been engaging in paedophile activities there, and the video recording of homosexual pornographic videos. David Gillison, his co-defendant in the criminal proceedings referred to above, lived with him for a time in Manchester. Mrs Alison Taylor, in her 'Gwynedd County Council Analysis', links David Gillison with the "Bryn Estyn vice ring" and also with a paedophile group with national and continental connections. She was later to suggest in a letter to the Tribunal that David Gillison was connected with John Allen in the trade of child pornography. Mrs Taylor's analysis had been supplied to the police in 1991 and to the Tribunal and is described in the Tribunal Report as "including many rumours and a great deal of hearsay."¹⁴

9.27 William Gerry committed suicide on 1 December 1997. The evidence relating to him was provided by his ex fiancée in a police statement and must obviously be approached with some caution. David Gillison appeared before the Tribunal, but was not questioned about matters outside North Wales.

9.28 [redacted] complained of abuse when attending the army cadets in Connahs Quay at the hands of two of the instructors; one being Peter Sharman. Two complainants, [redacted] and [redacted] had made allegations of indecent assault concerning another instructor, Sergeant Michael Hayward. The relevant instructors were serving or retired police officers. Michael Hayward was subsequently to admit indecent assault upon one of the complainants and was cautioned. Gary Cooke had also been an army cadet instructor there and in evidence before the Tribunal confirmed that he knew Peter Sharman. The Tribunal Report¹⁵ records that allegations had been made against police officers working as instructors in the army cadets, although does not consider whether a paedophile ring was in operation involving one or more army cadet centres.

9.29 Gary Cooke and William Gerry were among several taxi drivers named as abusers. Another was said to be an associate of Stephen Norris. A former resident, [redacted] alleged that Stephen Norris had taken him to a taxi driver, [redacted]

14 See paragraph 2.22 of the Tribunal Report

15 See paragraph 51.66 of the Tribunal Report

house, who on that and a subsequent occasion took photographs of him dressed in shorts and covered in cream. This was untoward behaviour at the least but made no allegation of sexual assault against him. There were other concerns referred to in the papers that the same taxi driver may have been responsible for an indecent approach to another boy, and had offered a third boy, a trip to the cinema in exchange for washing his car. named another taxi driver as one of his abusers. referred to in paragraph 8.27, was himself a taxi driver, but was not the subject of any complaints.

Subsequent representations concerning a paedophile ring

- 9.30 An email found within the Welsh Office files dated 28 September 1998 recorded a telephone call received from who claimed to represent an organisation against child abuse. It stated that “ appeared to be forewarning us that ... his organisation would be meeting the Home Secretary and then releasing information to the press about the activities of a Mr Wainright [sic], who he says was Mr John Allen’s right-hand man for 25 years. Mr Wainright [sic], he alleges, runs several children’s homes in Cheshire ... and has taken children from the surrounding area including North Wales some of whom have now come forward and complained of abuse in the homes. claims to have video evidence of abuse in the homes. also claims that the network of abuse and cover-up which his group has uncovered involves the local police, the IRA and the Intelligence Services.” The author of the email describes as appearing to be genuine, but that “the extensive nature of the cover-up allegations are hard to take in.” The email goes on to record “apparently a researcher from the Inquiry had met him in Runcorn whilst the Inquiry was sitting but it was decided not to call him to give evidence ... I do not know how much of this to believe. We get the occasional crank caller, but this man was clear, logical and rational throughout.”
- 9.31 There is no indication that this was referred to the Tribunal by the Welsh Office. There is no statement from and no record that he was seen by a member of the Tribunal. As a matter of note, I record there is no allegation of sexual abuse against Norman Wainwright in any witness statement seen by this Review.

Contributions to this Review

- 9.32 A contributor to this Review, living in North Wales, considered that the Tribunal had not made a full investigation of the links between various individuals who went on to be employed in other residential homes, and in particular ‘Corvedale Care’, one director of which was Norman Wainwright.
- 9.33 Another contributor considered that the Tribunal’s investigations were too narrowly focused on incidents of abuse within residential care establishments, and not those which may have occurred elsewhere but have been instigated by, or originated from, staff within the institutions.

9.34 Other contributors to this Review, and some others who have apparently given interviews to the media, have made allegations or insinuations of possible misconduct against other individuals - some of them prominent. This information was not available to the Tribunal.

Conclusions

- 9.35 The conclusions of the Tribunal in relation to the existence of organised paedophile activity in Wrexham and Chester as indicated in paragraph 9.5 above were reasonable and consistent with the findings made upon the evidence presented. Specifically, I confirm that the Tribunal's findings that no establishment figures were involved in a paedophile ring targeting children in care in North Wales are in accordance with the evidence. There is no indication that evidence of their alleged involvement in paedophile activities, whether acting alone or as part of a ring, was concealed.
- 9.36 The widespread sexual abuse of children in North Wales children's homes by numerous care workers and others will obviously raise the possibility or belief that an organised paedophile network was in operation. However, the Tribunal's general view that the association of those individually indicted, accused or convicted of sexual abuse may indicate a common purpose and propensity, but does not necessarily mean that they joined together in a group in furtherance of their perversions, is not unreasonable. Therefore, I consider the Tribunal was rightly cautious about making findings that other paedophile rings did exist within the residential care system.
- 9.37 It was not unreasonable for the Tribunal to determine that the allegations in relation to individual members of staff introducing children to outsiders for sexual purposes were nebulous in their substance. The absence of specific reference in the Tribunal Report to each and every allegation made is unsurprising in the wider context of the nature of the investigations. Those which are not specifically referred to in the Tribunal Report tend to be isolated from a common theme, involved unidentified participants and added little to the more specific findings made against named individuals throughout the other parts of the Tribunal Report .
- 9.38 Counsel to the Tribunal's note referred to in paragraph 9.17 may suggest an early reluctance to continue in the inquiries regarding an external paedophile ring, but the subsequent documents and directed actions do not bear this out and the cross examination of Gary Cooke and other individuals, including members of the CHE, suggests otherwise. Counsel to the Tribunal directed the WIT to conduct inquiries in relation to the paedophile ring said to be operating in Wrexham and Chester. The WIT appears to have done so conscientiously.
- 9.39 I cannot comment upon the reasons for the failure to recall the complainant referred to in paragraph 9.23, in the absence of any document regarding the same. Clearly this evidence could not have corroborated the specific allegations of and was unnecessary to inform the general conclusions of the Tribunal concerning the existence of a paedophile ring or the activities of a significant number of individuals, including Gary Cooke.

- 9.40 An objective assessment of the relevant parts of the transcript of Gary Cooke's evidence suggests that his performance when giving evidence appeared to border on the theatrical at times. He was demonstrated to be an unreliable historian. There is no evidence that he was silenced and no reason to consider that he had 'bigger names' in store. If Gary Cooke became more truculent it may well be that he had tired of the experience of fencing with the advocates as time wore on.
- 9.41 I regard the Tribunal's difficulties in making particularised findings against named individuals on the basis of uncorroborated evidence to be well explained and therefore cannot be deemed perverse.
- 9.42 The Tribunal did not consider and/or find that other paedophile rings were in existence, including in terms of recruitment of residential home staff members or by reason of common employment as taxi drivers. This was not unreasonable on the direct evidence before it. The information provided by Mrs Taylor in relation to the existence of a wider paedophile ring on this issue was multi-handed hearsay evidence and the conclusions drawn by her amount to speculation.
- 9.43 I have previously indicated that the Tribunal Report fails to refer to the number of allegations made against, in the main, unidentified serving or retired police officers. I note that several army cadets made allegations against their instructors who happened to be retired or serving police officers. There was doubt as to whether one such witness, was in care at the relevant time. In these circumstances, and by extension, it is arguable that reference could have been made to the possibility of a paedophile ring involving the targeting of army cadets, as defined in paragraph 9.2, being in existence. However, I do not consider the failure to do so reflects a protective attitude towards the NWP, rather a cautious approach to the evidence and strict adherence to the terms of reference.

Chapter 10: Concluding Remarks and Recommendations

- 10.1 The ongoing debate between 1992 and 1996 about the necessity to establish a public inquiry rightly considered the possible traumatic impact upon a complainant by the public revelation of childhood sexual abuse and the difficulties in examining historical events. However, in my view, the case for a public inquiry into the abuse of children in care in the former county council areas of Gwynedd and Clwyd in North Wales was eventually and correctly recognised as incontrovertible. There was an obvious need to establish, reliably and openly, the nature and the extent of the abuse beyond that indicated by the criminal convictions of several residential care staff, to assess the adequacy of local managerial response and national government oversight and then address the deficiencies in the system and to seek to ensure that such a situation would never arise again. That is, there was a clear purpose to improve and then promote good child protection procedures.
- 10.2 As it was, the Tribunal made 72 wide ranging recommendations¹ including in relation to the prevention, detection and response to abuse by police and other bodies working co-operatively and to whistleblowing procedure. Recent events in some areas of England since publication of the Tribunal Report may suggest that the basis and rationale behind the recommendations has been overlooked. Regrettably it seems that the detail and length may have deterred a close reading of the Tribunal Report. However, many of the Tribunal's recommendations for safeguarding vulnerable children are as pertinent as ever.
- 10.3 I do not underestimate the benefits of the cathartic process for complainants to know that their evidence had been heard in public and that they had been listened to. Nevertheless, it is all too apparent to me that a public inquiry or review into historical child sexual abuse should not be thought to provide a process which will substantiate an individual's complaints or denials and bring them any sense of finality in this regard. There is difficulty in attempting to determine events that occurred many years ago absent a proficient police investigation and the protection of the criminal trial process without risk of grave injustice.
- 10.4 Unfortunately, despite the repeated reminder of the Tribunal at the time that the inquiry did not constitute a series of quasi criminal trials, some contributors to this Review, both individuals or associations supporting complainants and accused, see an absence to consider and determine all issues, or to make reference to the same in the Tribunal Report, to be fatal to the integrity of the public inquiry. It appears to me that several fail to appreciate that my role has not been an appellate one. Similar misunderstandings may prevail in the context and purpose of any overarching inquiry or review and should be clearly addressed.

¹ See paragraph 56.05 of the Tribunal Report

- 10.5 Equally, whilst a failure or inability to investigate every individual complaint will not undermine the overall determination of the fact of child abuse and/or mismanagement to some extent, it should be appreciated that an inquiry or review may fail to reveal the full extent of the problem. There are many compelling reasons which will deter individuals from making a complaint of sexual abuse when it occurs or subsequently. Whilst my professional experience would support the fact that, even since the publication of the Tribunal Report, public awareness of the problem of child abuse expands and public authorities attitude towards complainants becomes the better informed, it is still a daunting prospect for any person, let alone a child or young person, to disclose or discuss abuse however distant, or for those close to them to accept the prospect of it having occurred. In these circumstances, it is only right to observe that some complainants who gave evidence before the Tribunal and may have wished to contribute to this Review, have been reluctant to re-open painful past experiences and may not consider doing so in any other arena. Others, apparently and understandably, could not bring themselves to participate at the time.
- 10.6 The establishment of the Tribunal pursuant to the Tribunals of Inquiry (Evidence) Act 1921 (since repealed) was an exceptional step. It is not surprising in those circumstances that repeated challenges to the integrity of the Tribunal, apparently based on reliable information in the context of allegations of historical sexual abuse said to have been concealed by other public bodies, led the government to instruct this Review.
- 10.7 In conducting this Review it is all too apparent to me that I have the distinct benefit of hindsight and that my comment on matters concerning the Tribunal should acknowledge the changing perspective given to sexual abuse allegations by children and young persons, sometimes against celebrities and establishment figures, which continues to evolve.
- 10.8 Recent prosecutions have resulted in the conviction of several individuals in relation to the historical child abuse of children who had been in care in North Wales. However, the fact of a successful prosecution does not of itself support a case that the Tribunal inquiries were deficient, or otherwise that evidence was ignored or misinterpreted in any significant degree by the Tribunal. The Tribunal was not constituted as a body with the power or responsibility to detect and produce evidence of criminal activity.

Recommendations

1. In order to obtain and maintain public confidence, it is essential that every effort is made to ensure that a public inquiry or investigation or review will be objectively viewed as above reproach. There is a clear need for due diligence in appointments made to avoid the undermining of findings legitimately and reasonably made.
2. The preservation and correct archiving of materials, including computer records, of an important public inquiry or review is essential. Those materials which still exist in relation to the Tribunal should be preserved and archived without undue delay.

3. All government departments should possess an accurate database of the documents and materials held by them, and should conduct a necessary review and inspection to identify those relevant to inquiries or reviews established by the government, in order to make prompt disclosure of the same. If the relevance of any such materials is in doubt then the default position should be to proffer the materials for inspection by the inquiry or review.
4. I do not advise the establishment of a public or private inquiry or review into the individual allegations of abuse that were not investigated during the course of the Tribunal's hearings or referred to individually in the Tribunal Report. Operation Pallial continues to investigate the allegations of complainants of historical sexual abuse which occurred in residential children's homes, foster homes, and other establishments attended by children in the care of the former Clwyd and Gwynedd county councils. Arrests have been made and continue to be made. Criminal proceedings have been instituted and trials have taken place. Due criminal process inevitably will take time, but is better suited to disposal of any unresolved complaints and allegations of the time, rather than a public inquiry.
5. I do advise that consideration is given as to whether it would be appropriate for a police investigation in due course to consider whether there is sufficient evidence and public interest relating to matters of malfeasance in public office and/or perverting the course of justice.
6. In general, I would advise caution in embarking upon a review of the workings of previous tribunals or boards of inquiry without a considered opinion of the time likely to be involved and the consequent outcome to be achieved. The conclusions of a rapid investigation into a broad and complex topic will be unlikely to allay the concerns and anxieties of interested parties or the public in general. An exhaustive review will produce results that may no longer be relevant to the circumstances which initiated the investigation. In any event, it should be appreciated that the conclusions of any such body will not meet with universal approval. Those with an interest, personal or otherwise, will seek justification for their views and be unlikely to accept the contrary.

Appendices

Appendix 1: Lady Justice Macur, DBE's letter of appointment dated 14 January 2013

Appendix 2: The Macur Review Team

Appendix 3: Appendix 4 of the Tribunal Report: Note by the Chairman of the Tribunal on its procedures. Preparations for the hearings

Appendix 4: Blank pro forma detailing the universal process adopted by the Review

Appendix 5: The Macur Review Issues Paper

Appendix 6: Acronyms

Appendix 1: Appointment Letter



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14 January 2013

APPOINTMENT TO AN INDEPENDENT REVIEW OF THE WATERHOUSE INQUIRY

Further to our meeting on 19 December, I am writing formally to thank you for agreeing to conduct an independent Review into Sir Ronald Waterhouse's Tribunal of Inquiry into the Abuse of Children in Care in North Wales. As you are aware, your appointment was announced in both Houses of Parliament on 8 November 2012.

The terms of reference of the Review are:

"To review the scope of the Waterhouse inquiry, and whether any specific allegations of child abuse falling within the terms of reference were not investigated by the Inquiry, and to make recommendations to the Secretary of State for Justice and the Secretary of State for Wales.

Your appointment commenced on 8 November 2012. The end date of your appointment is at present unknown but you are aware of the urgency of the Review and you will continue to hold office in accordance with your appointment until you submit your Report to me and the Secretary of State for Wales.

In conducting your Review you will be entirely independent of Government.

In carrying out your work, you will have full access to the Waterhouse archive and all Government papers you decide are relevant to your Review. The Review will be required to comply with the normal Cabinet Office guidelines in relation to the secure storage and handling of sensitive material.

As you are aware, this is a non-statutory document-based Review and not an inquiry held under the Inquiries Act 2005. As such, the Inquiry Rules 2006 will not apply. However, as discussed, you will let me know if at any time you feel that the status of the review or its terms of reference need to be re-considered. The Review will not

establish civil or criminal liability nor order financial settlement. You are not being asked to conduct a fresh investigation or a non-statutory inquiry. You are consequently not being asked, nor do you have the power, to hold oral hearings. If, however, you wish to meet people who may be able to assist you with your review, then that and the manner in which you conduct those meetings is a matter for you. The Government would assist this process wherever possible. It is, of course, open to you to invite and consider relevant written representations or submissions as you see fit.

You will have the full support of all relevant Government Departments and agencies in carrying out your work. The Ministry of Justice and Wales Office will provide appropriate support and assistance to you as the joint sponsoring departments. Staff from all Government departments and agencies are required to co-operate fully with the Review.

I intend to publish the report of your Review as a House of Commons paper as soon as practicable after it has been submitted to me in due course.

May I take this opportunity of formally thanking you for accepting this appointment and wish you well as you carry out this important task.

W. H. Best
W. H. Best

CHRIS GRAYLING

Appendix 2: The Macur Review Team

Chair: The Right Honourable Lady Justice Macur, DBE

Review Secretariat

Diane Caddle, Secretary

Ashleigh Freeman, Solicitor

Marie Colton, Business Manager

Review Paralegal Team

Tjubi Adebiyi

Tom Hennessy

Luke Manzarpour

Marium Riaz

Emma Wells

Secretariat and paralegal assistance at earlier stages of the Review

Stephen Knight, Deputy Secretary

Mike Dillon, Clerk to Lady Justice Macur

Paul Barnett

Sinead Daly

Jane Debois

Ayesha Devlia

Roxanne Manson

Amber Mun

Paria Shahidi-Asl

Kim Lindsay Smith

Appendix 3: Appendix 4 of the Tribunal Report 'Lost in Care'

APPENDIX 4

Note by the Chairman of the Tribunal on its procedures Preparations for the hearings

1 Leading Counsel to the Tribunal, Gerard Elias QC, made his opening speech on 21 and 22 January 1997, seven months after the setting up of the Tribunal had first been announced by the Secretary of State for Wales and just under five months after the members of the Tribunal had been formally appointed. This was the very minimum period required for preparation, having regard to the large number of potential witnesses to be seen, the enormous number of documents to be inspected and the widespread dispersal of both documents and sources of information that had occurred on local government reorganisation with effect from 1 April 1996.

2 All three Counsel to the Tribunal were fully engaged in the preparations from early in September 1996 onwards. By that time the Treasury Solicitor had appointed a small team of lawyers, led by Brian McHenry (who had wide experience of public inquiries) as Solicitor to the Tribunal, to instruct Counsel and supervise a large group of up to 30 (from time to time) paralegals and two trainee solicitors in the preliminary work. This involved at first the examination of some 9,500 unsorted children's files, numerous staff files and 3,500 statements made to the police as well as the records of both former County Councils and of about 85 children's homes. In the end 12,000 documents were scanned into the Tribunal's database, including documents extracted from the large number of files submitted by the Welsh Office.

3 A Chief Administrative Officer to the Tribunal, Evan Hughes, was seconded from the staff of the Welsh Office and he had a team of eight working under him to provide administrative and financial support. He was responsible, under the Welsh Office budget holder, for authorising expenditure and dealt with all the ancillary services as well as the processing of bills. There was a memorandum of understanding with the Welsh Office.

4 We were fortunate to secure about half of the former but new headquarters of the Alyn and Deeside District Council at Ewloe in Flintshire, near major road junctions, as the venue for our hearings and as the office for the Tribunal and the main part of its staff. It was necessary, however, to obtain separate accommodation at the Shire Hall, Mold, for the purpose of housing many of the documents and carrying out the initial trawl through them. The former Council Chamber at Ewloe was specially adapted for the hearings with convenient working space for Counsel and solicitors and seating accommodation for the public.

5 Preliminary matters that had to be negotiated under the leadership of the Welsh Office and with the guidance of its legal adviser, David Lambert, included the appointment of a witness interviewing team (WIT) comprised of former detective officers of the South Wales Police and adjacent forces, the engagement of a witness support service (The Bridge

Child Care Development Service[929]), including a detailed specification of the service to be provided, and the provision of a Live Note transcript service by Sellars Imago, including document imaging. A Press Officer, David Norbury, was appointed in January 1997.

6 Inspection of the statements to the police disclosed that about 650 former children in care had made complaints of abuse of varying gravity. The Tribunal itself advertised its proceedings widely with a request that complainants should make themselves known and about 100 persons responded to this request. In addition, the Tribunal's legal team selected at random as potential witnesses 600 former residents of children's homes in North Wales (about ten per cent) who were not known to have made any complaint. The members of the WIT were eventually able to interview 400 widely dispersed witnesses and travelled over 80,000 miles.

7 The Tribunal decided that, as a general rule, we would receive evidence of abuse only from complainants who could be traced and who were willing to make a statement to the Tribunal. This involved, for most of them, making a statement to a member of the Tribunal's WIT, who was provided with a proforma containing guidance as to how the interview should be conducted; and complainants were informed that they could have their solicitor present at the interview, if they wished, and of the availability of the support service, if they required it.

8 Two major problems intensified the work of the Tribunal's legal team throughout the preparation for the hearings and the subsequent proceedings. The first of these was the need to draft "Salmon letters" to all those who were alleged to have been guilty of abuse and to those who were likely to be the subject of other criticism, giving adequate particulars of what was said against them. In the case of alleged abusers, the problem was mainly one of timing because the evidence of the complainants had to be obtained before the letters could be drafted. Most of the alleged abusers had been interviewed by the police so that they had at least a general recollection of what might be alleged but the Salmon letters had to be based on the available up to date evidence, which, in some cases, included new allegations. To our great regret many Salmon letters had to be posted for this reason during the pre-Christmas period because of the urgent need to begin the hearings.

9 The Salmon letters addressed to administrators and some others presented the different problem of diffuseness. They had to be drafted before the Tribunal's legal team had received any clear evidence of divisions of responsibility within the two former social services departments and the Welsh Office; and, even if the legal team had received some preliminary evidence about this, it would still have been necessary for the Salmon letters to have been drafted in wide terms, covering a broad range of issues. The result was that some Salmon letter recipients had to undertake considerable work, referring to forgotten files, in order to deal with the matters raised in the letters. Moreover, it was inevitable that informal interrogatories had to be addressed to some of the recipients, after their statements had been received in order to remedy omissions or clarify matters that remained unclear.

10 I confess that I have not been able to devise a practical solution to the problem of over-diffuse Salmon letters. If matters of potential criticism are omitted, the Tribunal is open to the criticism of unfairness unless it grants an appropriate adjournment; and successive adjournments would cause major difficulties for everyone involved. A form of preliminary hearing or investigation could take place before each Salmon letter in this category was sent out, but that would also lengthen the hearings considerably in any complex case; and the procedure would not necessarily lead to a more concise statement of issues unless the relevant lines and areas of responsibility were clear cut. It may be that our own procedure was the only practicable one open to us, having regard to the fact that we had to investigate nearly a quarter of a century of administrative and other activity.

11 The other main problem was that of disclosure of documents to the interested parties. Public interest immunity from disclosure was claimed by the successor authorities as a matter of principle in respect of a large proportion of the two former social services departments' documents, particularly the children's files and staff personal records. In the event, we adopted a procedure whereby the initial selection of relevant documents for each witness was made on a broad basis by the paralegal team under supervision; a narrower selection was then made on the basis of relevance by the Tribunal's legal team; and the final choice was made by me after weighing the public interest issue. The result was that all relevant documents, as far as the Tribunal was aware of them, were disclosed. In the case of police documents (other than statements to the police) they were divided, by agreement between the Tribunal's Counsel and Counsel for the North Wales Police, into two categories, namely, documents that could be copied by the parties and those that could be inspected but not copied. Inspection of documents and disclosure were made subject to appropriate undertakings limiting the use of information or documents to the purposes of the Tribunal. Parties were at liberty to apply for disclosure of any specific documents that had been withheld.

12 On the basis of these procedures, core bundles containing all the main relevant documents were formed. These were, however, too large and unwieldy for repeated reference to in the course of a witness' evidence. A relevant smaller bundle was therefore prepared by the Tribunal's legal team for each witness; any other documents required by any of the parties were added to it; and the witness was then able to read and cope with the selected bundle before and in the course of giving evidence.

13 On the whole, the procedure for disclosure of documents worked quite well with the co-operation of Counsel and solicitors but the volume of documentation to be absorbed in a short time undoubtedly imposed considerable strain on those most closely involved, including some witnesses. There were comparatively few complaints of being taken by surprise and short adjournments were granted whenever asked for on the ground of late disclosure. The Tribunal itself was assisted greatly in assimilating and dealing with the documents and in all other respects by its Clerk, Fiona Walkingshaw, a solicitor who joined us full time in December 1996, after secondment by the Welsh Office to the European Commission in Brussels, and who remained as de facto Secretary to the Tribunal until the presentation of our report.

Preliminary hearings

14 It was necessary for the Tribunal to hold four preliminary hearings at intervals of five or six weeks beginning on 10 September 1996, mainly to deal with questions of representation. Before our first hearing HM Attorney-General authorised the Tribunal to say that anything any witness said in evidence before the inquiry would not be used in evidence against him or her in any criminal proceedings, except in relation to any offence of perjury or perverting the course of justice.

15 We decided at the first preliminary hearing to grant anonymity to complainants of physical or sexual abuse and to persons against whom such an allegation was or was likely to be made, in the terms set out in paragraph 1.08 of our report and for the reasons given in the following paragraph of the report. On 11 and 12 February 1997 an application was made by Leading Counsel on behalf of the British Broadcasting Corporation, the Liverpool Daily Post and the Western Mail that we should set aside this “direction”. The application was refused and the Tribunal’s reasons for rejecting it, as explained by me on 12 February 1997, are annexed to this Appendix together with the revised notice given to the press and media after the application.

16 We indicated at the first preliminary hearing that any complainant who made a written statement to the Tribunal would be granted representation by Counsel and solicitor, if he/she wished to be represented. We did so on the grounds that it was necessary in the public interest that their views on a range of issues should be put to the Tribunal with professional assistance. It was necessary also that persons against whom they made allegations should be cross-examined on their behalf and that they should have the protection of legal representation when dealing with any counter-allegations that might be made against them.

17 The obvious problem was that a wide range of solicitors had already been consulted by complainants, some in connection with civil claims and other firms because of their known experience of inquiries into child abuse of a similar kind. Without going into unnecessary details, it became possible by agreement for one silk and two juniors to represent 119 of the complainants and for a separate junior Counsel to represent 18 other complainants. One firm of solicitors acted for 45 of the complainants and another for 18 whilst 61 were represented by 16 firms, forming a Wales and Chester Group led by Gwilym Hughes and Partners for the purpose of joint representation by Counsel[930]. The other 14 complainants were represented by 11 firms of solicitors. In this way nearly all the complainants who gave oral evidence to the Tribunal were legally represented as well as a small number of those who gave written statements but who were not called.

18 A similar approach to the problem of representation of Salmon letter recipients was adopted as a result of very helpful co-operation by them and by their solicitors. In the event 103 of these recipients were represented by Anna Pauffley QC and Rachel Langdale. The 103 were mainly former residential care workers, including Officers-in-Charge, but some were former senior officers of the Social Services Departments. Representation of other Salmon letter recipients was more diffuse but some former teachers at Bryn Estyn, for example, were jointly represented.

19 An early objection to these arrangements when they were at the discussion stage was that there were potential conflicts of interest between clients within the same group. A similar problem in more acute form had been faced and overcome, however, in the course of the Aberfan Tribunal's hearings despite wide joint representation, and we considered that the range of experienced Counsel instructed on behalf of the various parties was sufficient to enable any conflict to be accommodated without professional embarrassment. In the event we are not aware that any difficulty arose and we are satisfied that each of the "parties" who required legal representation was fully and fairly represented.

20 In any prolonged inquiry of this kind the question of legal representation is inextricably linked with the issue of costs, which, in other forms of litigation, would be dealt with separately. In the present inquiry few of the "parties" had sufficient means to meet the cost of their own legal representation. On the other hand the Tribunal itself had no power to make any order for costs: it could only make a recommendation to the Secretary of State for Wales, who had set up the inquiry, that the costs of a particular party should be met out of public funds.

21 Guidance on this subject was given by HM Attorney-General in answer to a Parliamentary question on 29 January 1990[931] in the following terms:

"Tribunals and Public Inquiries can be set up in a variety of ways. So far as ad hoc tribunals and inquiries are concerned the Government already pays the administrative costs. So far as the costs of legal representation of parties to any inquiry are concerned, where the Government have a discretion they always take careful account of the recommendations on costs of the Tribunal or inquiry concerned. In general, the Government accept the need to pay out of public funds the reasonable costs of any necessary party to the inquiry who would be prejudiced in seeking representation were he in any doubt about funds becoming available. The Government do not accept that the costs of substantial bodies should be met from public funds unless there are special circumstances."

22 Since the Tribunal's hearings ended the Treasury Solicitor's Department has issued a memorandum[932] containing further guidance on the payment of costs, dealing with such matters as the basis of representation, the control of costs and the process of assessment, including provision for appeals.

23 A particular problem that arose in this inquiry was that several of the Salmon letter recipients were members or former members of trades unions which had a discretion, usually to be exercised by the union's executive committee, as to whether or not the member or former member should be given support in the form of legal aid in defending himself/herself against allegations in relation to the performance of his/her duties whilst still a member. It is not surprising that, with varying degrees of hesitation, all but two of the relevant trades unions decided against giving legal support in this inquiry and we do not know of any means by which that decision could be challenged successfully. In these circumstances the Tribunal felt bound to recommend that the costs of the past and present members of the unions that had made that decision should be met out of public funds in the light of the Attorney-General's guidance.

24 The other two trades unions declined to make a decision either way before the Tribunal made its own decision on the costs issue; and Counsel representing the seven Salmon letter recipients affected by this refusal renewed his application that the Tribunal should recommend that his clients' costs be paid out of public funds on the penultimate day of our sittings. Faced with this situation, we agreed to make the recommendation to the Secretary of State for Wales that was sought but to inform him of the background circumstances in which it was made. The Tribunal's dilemma on this issue highlights a real difficulty about the Attorney-General's statement in 1990. Underlying that difficulty is the question whether a "party" whose union agrees to provide legal support is less meritorious than one whose union refuses to do so.

The Tribunal's hearings

25 As we have said in paragraph 1.11 of the report, we sat on 201 days between 21 January 1997 and 7 April 1998 to hear evidence and submissions. In all 264 witnesses gave oral evidence and we received the written evidence of 311 further witnesses. Evidence was read for a wide variety of reasons, including the deaths of some witnesses, but the range of reasons need not be canvassed here. No important evidence on an abuse issue was read in the face of objections to it. The contents of much of the written evidence that was read were not agreed but it was possible to agree a number of substantial written statements.

26 Counsel for the various "parties" were invited to make opening statements on their clients' behalf at the conclusion of the opening address by Leading Counsel to the Tribunal.

27 For convenience, the evidence was divided into successive phases. In Phase 1 we heard the main evidence of alleged abuse (including evidence from alleged abusers), dealing with the various categories of residential establishments in Clwyd and Gwynedd in turn. In Phase 2 we heard the evidence of senior staff and officers from Officer-in-Charge of residential homes upwards to Directors of Social Services. Phase 3 comprised the evidence of the Welsh Office and Phase 4 that of the North Wales Police. In Phase 5 we dealt with Chief Executives and Councillors whilst Phase 6 covered the role of the insurers and Phase 7 the evidence of the six successor authorities.

28 This division into phases was helpful for a number of reasons. The most important was that it enabled the Tribunal's legal team to formulate an orderly time-table for serving Salmon letters on higher officials and for their responses. Another benefit was that Counsel to the Tribunal were able to present opening statements at the beginning of each phase, clarifying the issues in the light of evidence that had already been given and the Salmon letter responses as well as inter-party discussions in the course of the hearings. Counsel for some of the "parties" chose to make opening statements at the beginning of the phase affecting them.

29 In view of the distances those involved in the hearings had to travel, the length of the Inquiry, the number of clients to be seen and the documentation, the Tribunal sat for four days each week from 2 pm on Mondays to 1 pm on Fridays, daily from 10.30 am to 1 pm and from 2 pm to 4.30 pm. We sat in sessions of about six weeks with short breaks in between to enable the preparatory work for each session to be completed in the intervals.

30 Although there are some advocates of wholly inquisitorial proceedings in investigations of this kind, in which the questioning is conducted almost exclusively by the Tribunal itself or Counsel on its behalf, I reached the firm conclusion that such a procedure would be inappropriate in this inquiry. It was essential, in my view, that complainants should be given a full opportunity to put relevant matters based on their own special knowledge to persons against whom they made allegations. Conversely, it was equally important that alleged abusers should have their cases put as they wished to the complainants who made allegations against them. This adversarial factor in the proceedings was inescapable, having regard to the nature of the allegations that the Tribunal had to consider.

31 In the event Counsel for the many parties exercised proper restraint in questioning the witnesses and there were comparatively few occasions when I had to intervene because of the nature or manner of cross-examination. There were a small number of regrettable incidents and some complainants resented “being put in the dock” as they would describe it but most of them recognised that it was inevitable that their allegations would be challenged by close questioning. It must be said also that Counsel were economical in their cross-examinations with the result that no witness was detained for an excessive time.

32 In order to save time the written statements to the Tribunal by complainants called to give evidence and any earlier statements to the police that they confirmed were taken as read and formed part of their evidence. Complainants were called by Counsel for the Tribunal and then cross-examined and re-examined in an agreed order. All other witnesses were witnesses of the Tribunal but Salmon letter recipients were led in evidence initially by their own Counsel in order to introduce themselves and to amplify or clarify any matters in their written statements to the Tribunal that they wished to before they were cross-examined.

33 At the conclusion of the evidence on 12 March 1998, Counsel and solicitors were given time to prepare full written submissions, including any recommendations that their clients wished to make. The Tribunal read these submissions before convening again on 31 March 1998 for a week to hear final oral submissions, limited to 30 minutes for each “party” or group of “parties”. Leading Counsel to the Tribunal then made concluding oral submissions supplemented by detailed written submissions.

34 We held a well attended seminar on 6 and 7 May 1998 to discuss possible recommendations that the Tribunal might make. The expert panel at this seminar comprised Sir William Utting CB, Sir Ronald Hadfield QPM, DL, Adrienne Jones CBE, Brian Briscoe, and Dr Anthony Baker[933]. Questions were addressed to the panel by Counsel to the Tribunal and by other Counsel and solicitors on behalf of the “parties”, supplemented by questions from members of the Tribunal.

NORTH WALES CHILD ABUSE TRIBUNAL OF INQUIRY
Anonymity
12 February 1997

Giving the Tribunal's reasons, the Chairman of the Tribunal, Sir Ronald Waterhouse, said

"I must say, first of all, that this is not a ruling in any meaningful legal sense. It is an explanation of action taken by the Tribunal, given as a matter of courtesy in response to submissions made on behalf of the BBC and some newspapers. In giving the explanation I should say that, in so far as I touch on matters of law, they represent my view, but so far as questions of general assessment are concerned, they are the view of the Tribunal collectively.

I accept that this Tribunal has no power to make an order affecting the press, apart from statute, and I make clear that no order has been made by the Tribunal under either section 4 or section 11 of the Contempt of Court Act 1981. The word 'direction' that appears in the material guidance is, at least partly, a misnomer. The word was used only in the sense of a practice direction explaining procedure and was intended to be an indication to the parties involved in the Inquiry as to how the Tribunal was intending to proceed, coupled with an intimation to the press as to the view that the Tribunal would take, and in particular, the action I would take as Chairman, if the identity of any person in the 'anonymous' categories referred to in the document was to be disclosed in a publication.

The background to the action we have taken is that the Tribunal has received requests from virtually all the potential witnesses who are complainants of abuse and from the persons against whom allegations of abuse are made that they should be granted anonymity in the proceedings. We have been given information about the impact of the Inquiry and the gathering of evidence upon potential witnesses and we have reached the firm conclusion that there is substantial risk that the course of justice and the proceedings of the Tribunal would be seriously impeded and prejudiced if there were to be general publication of the identity of the abusers and persons against whom allegations of abuse are made. For that reason we regard it as necessary that anonymity should be conferred as far as possible upon the witnesses referred to in order to avoid the risk of serious prejudice of the kind that was discussed in the House of Lords in the case of Attorney-General versus Leveller Magazine reported in 1979, as well as that specified in the Contempt of Court Act 1981.

In considering what we should do, we have had a large number of considerations in mind. These include the terms of reference which we have to follow, the background to the setting up of the Inquiry and the need for full disclosure by witnesses to avoid any continuing suggestion of cover-up. By 'full disclosure' I mean the interviewing of every available potential witness and the objective that those witnesses shall give as full and true an account as they can of the facts within their knowledge both in their written statements and in their oral testimony if and when they are called to give evidence.

We have had in mind also that, in the context of the first paragraph of our terms of reference, the identities of particular complainants or persons against whom allegations are made is of much less importance than the question whether the alleged abuse occurred and the circumstances in which it is alleged to have happened. We have obviously had regard also to the provisions of the Sexual Offences (Amendment) Act 1992 to the extent that they are relevant.

These are all matters that we have had in mind in making our assessment that the course of justice in these proceedings is likely to be seriously impeded if anonymity is not conferred upon the potential witnesses in the first part of our inquiry.

The difficulty that we had to face, however, is that, despite the need for anonymity, there is no practical means of conducting the actual hearing within the Tribunal Chamber by adopting a series of symbols for witnesses; neither a numerical nor an alphabetical system would be readily comprehensible, bearing in mind the large number of persons involved.

The problem is not confined to intelligent Counsel and solicitors steeped in the case, but extends, of course, to witnesses and the transcribers of the evidence. The prospect of a witness, probably ill-educated because of circumstances beyond his control, being faced with the problem of not naming persons to whom he wishes to refer, but identifying them by a code set in front of him in the witness box, is too appalling to contemplate. The length of the proceedings and the extra public expense involved in that procedure would be intolerable, and the ultimate report of the Tribunal might be delayed by many months.

An alternative possible procedure would be for the Tribunal to sit 'in camera' but that would defeat one of the major objects of the setting up of the Tribunal, namely, to assuage public anxiety about what has occurred in the past. It could lead to unjustified suggestions of a cover-up and we have rejected it, bearing in mind what was said by the Salmon Commission about the need for hearings to be in public.

Taking fully into account that guidance, we have decided that it is necessary for the hearings to take place in public and for names to be given in the course of the hearings. In the event the prejudice to the witnesses is likely to be, and has proved to be, minimal because attendance at the Inquiry by the general public has been very limited. The proceedings have been entirely open, but attendance has been largely confined to persons who have a direct interest in the subject matter of the Inquiry, most of whom are legally represented or who are at least potentially witnesses.

Thus, the result of names being given in the hearings involves only a minor breach of the anonymity which we wish to confer upon the witnesses to whom we have referred. Most of the people who hear names in the course of the hearing would be entitled to know the names because of their position in relation to the Inquiry and would not therefore be covered by the anonymity rule.

Having considered all the difficulties, and not least the exchanges that occurred in Parliament when the announcement was made that the Inquiry would take place, we decided to proceed as we have done but to indicate to the press in clear terms that in our view the publication of material enabling the public to identify witnesses who are either complainants of abuse or persons against whom allegations of abuse are made would seriously impede and prejudice the course of the hearings of this Inquiry. It would do so because it would tend very strongly to dissuade witnesses of either category from coming forward and telling the full truth, and such a disincentive would affect also such independent witnesses who were either residents at the relevant care homes or present there as employees or in some official other capacity from giving honest evidence.

In giving that express intimation, we believe that we were following the guidance given, in particular, by Lord Edmund Davies in the *Leveller* case and the spirit of what was said by Lord Diplock in his opinion. In our view, there can be no misunderstanding of that intimation to the media.

I stress that the consequences of any publication of the identity of a witness of the prohibited kind would have to be considered on its merits if and when it occurred. If that event were to happen, there would have to be a complaint about the matter and the Tribunal would have to consider it. I would have to decide whether in the circumstances it was appropriate to certify the matter in accordance with section 1(2) of the Tribunals of Inquiry (Evidence) Act 1921 to the High Court, and ultimately it would be a matter for the High Court to consider.

It is for that reason that it would be inappropriate to call this explanation a ruling. But it is proper for me to say that, as a matter of law, I regard it as highly doubtful whether an editor could rely on the defence provided by section 4(1) of the Contempt of Court Act 1981 if a publication that did seriously prejudice the course of justice in these proceedings were to be published now, despite the intimation given by this Tribunal, supported by senior counsel on all sides, who are fully acquainted with the nature of the evidence and the circumstances in which it has been obtained.

Apart from the argument as to whether the particular publication did offend the strict liability rule defined in the Act of 1981, there would be the question whether the material was published in good faith. I will say only that it would surprise me if a court were to hold that publication in the face of an express warning was 'in good faith'. But that would be an issue to be decided upon the facts of the particular case rather than as a theoretical question.

Finally, I should say that our intimation applies only to witnesses in the first stage of this Inquiry. The intimation is without time limit, subject to the provisions of the legislation, but it applies only to witnesses who are either complainants of abuse or the subject of allegations of abuse and witnesses who give evidence touching upon those allegations. Different considerations entirely will arise when we pass at a later stage to administrative matters relating to the children in care.

We will keep under review the question of the application of the anonymity principle. We have already excepted persons whose names are already in the public domain, namely, those who have been convicted of offences forming part of our Inquiry and one of the complainants who is well known through the press as a potential witness in these proceedings⁹³⁴. But, if any particular question arises in relation to a specific witness, we will consider it and our Press Officer is always available to advise the press and the media if there is any matter left in doubt.”

North Wales Tribunal of Inquiry Important information for the Assistance of the Press and Media

1 The Tribunal wishes to indicate that it will regard the following as prima facie evidence of a contempt of court:

publication of any material in a written publication (as defined in section 6(1) of the 1992 Act) available to the public (whether on paper or in electronic form), or in a television or radio programme for reception in England and Wales, which is likely to identify any living person as a person by whom or against whom an allegation of physical or sexual abuse has been or is likely to be made in proceedings before the Tribunal, with the exception of those who have been convicted of criminal offences of physical or sexual abuse of children in care.

2 The Tribunal considers that such publication is likely to create a substantial risk that the course of justice in the proceedings of the Tribunal would be seriously prejudiced or impeded, not least because in the event of such publication, potential witnesses may be deterred from testifying, or from testifying fully, to the Tribunal. In the event of such publication, the Chairman would be minded, subject to any representations made to him at that time, to refer the matter to the Attorney General, and/or to the High Court, under the Contempt of Court Act 1981, and the Tribunals of Inquiry (Evidence) Act 1921.

3 This is a general intimation. It is open to the Tribunal to give a different intimation in relation to any specific witness. The intimation will be subject to continuous review both during the proceedings of the Tribunal, and at the time of publication of the Tribunal's report.

929 See Appendix 5 for the report by The Bridge on its work.

930 See Appendix 3 for the details of representation.

931 Hansard, 29 January 1990, Col 26.

932 Guidance on payment of legal costs to parties represented at public expense in public inquiries, June 1998.

933 See para 1.12 of the report.

934 This witness subsequently applied for and was granted anonymity.

Appendix 4: Blank Pro Forma detailing the universal process adopted by the Review

MACUR REVIEW

Stage 1 - Review of specific allegations of abuse considered by the Waterhouse Tribunal

NB. Include reference to documents (i.e. document number) reviewed on Magnum where appropriate to support analysis.

Name of complainant:	
Placement from which social services area? (e.g Clwyd / Gwynedd / other e.g Manchester, London) Name of home attended:	
Name of alleged abuser(s) and description of allegation(s).	
Was there a criminal prosecution in respect of the complainant's allegations and/or the alleged abuser? If so: Allegations included in the indictment? Allegations left on file? (if so, details) Allegation included on indictment, but no evidence offered?	
How did the allegation come to the attention of the Waterhouse Tribunal? (e.g. police statement, direct approach to Tribunal, third person)	
Did the allegation appear to fall within the Tribunal's terms of reference? (i.e. child in care of Clwyd or Gwynedd, since 1974, etc)	

<p>Was the complainant interviewed by the Witness Investigation Team? Does the WIT appear to have followed the Trib A or B guidance appropriately? (i.e. refer to Trib guidance, is the statement in the appropriate format, address the relevant points etc?)</p>	
<p>Did the complainant return a signed statement? (If not, reason?)</p>	
<p>Was the complainant's evidence put before the Tribunal? If so, in what format and why? (i.e in person, read, unread)</p>	
<p>If the complainant gave evidence in person: • Which Counsel led evidence in chief? (GE or GTJ?) • Which Counsel cross examined?</p>	
<p>If the complainant's evidence was not put before the Tribunal, why not? (e.g. witness did not respond to correspondence – in which case what attempts were made to contact? Credibility issues – who made assessment of credibility?, etc)</p>	
<p>Was there reference to the complainant in the Waterhouse Report? If so, do the findings in relation to the complainant appear to accord with the primary material?</p>	
<p>List all search terms used:</p>	
<p>Miscellaneous (e.g. other lines of enquiry pursued / movement between homes or regions?)</p>	

Completed by:

Date:

Appendix 5:

THE
MACUR
REVIEW

Issues Paper

8 January 2013

Review of the Tribunal of Inquiry into
the Abuse of Children in Care in North Wales

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Introduction

1. The Macur Review is an Independent Review, chaired by Mrs Justice Macur and required by our Terms of Reference

'To review the scope of the Waterhouse Inquiry, and whether any specific allegations of child abuse falling within the terms of reference were not investigated by the Inquiry, and to make recommendations to the Secretary of State for Justice and the Secretary of State for Wales.'

Background

2. The Terms of Reference of the Waterhouse Inquiry announced on 17 June 1996 were:
 - a) To inquire into the abuse of children in care in the former county council areas of Gwynedd and Clwyd since 1974;
 - b) To examine whether the agencies and authorities responsible for such care, through the placement of children or through the regulation or management of the facilities, could have prevented the abuse or detected its occurrence at an earlier stage;
 - c) To examine the response of the relevant authorities and agencies to allegations and complaints of abuse made either by children in care, children formerly in care or any other persons, excluding scrutiny of whether to prosecute named individuals;
 - d) In the light of this examination, to consider whether the relevant caring and investigative agencies discharged their functions appropriately and, in the case of the caring agencies, whether they are doing so now; and to report its findings and make recommendations to the Secretary of State for Wales.
3. The Inquiry delivered its report "Lost in Care" on 16 February 2000.

Evidence and Information for the Macur Review

4. We have been provided with evidence obtained, and large volumes of material relating to, the original Inquiry. We are working hard to ensure that all documents that would or should have been available to the Inquiry or now may inform our Review are provided to us.
5. We would also very much like to hear from anyone with information relating to the remit of our Review. We have set out below some questions of interest to us.

Questions on which we seek your views

6.
 - i. Were the terms of reference for the Waterhouse Inquiry sufficiently wide to address all matters of legitimate public interest and/or disquiet concerning allegations of continuing abuse of children in care and the nature of child care procedures and practice in North Wales?
 - ii. Was any undue restriction placed upon the terms of reference to prevent a full inquiry or examination of the evidence in order to protect any individual or organisation?
 - iii. If not, did the Tribunal appear to restrict the terms of reference to avoid investigation or examination of relevant evidence?
 - iv. Was any pressure brought to bear upon those participating in the Inquiry whether as members of the Tribunal, its staff, legal teams, witnesses or contributors to deflect, deter or conceal evidence of relevance to the Waterhouse Inquiry?
 - iv. Were witnesses prevented or discouraged otherwise from giving relevant oral evidence or making statements? If so, by whom and/or in what circumstances.
 - v. Were all relevant witnesses invited to furnish statements and/or be heard by the Inquiry? If not, why not?

- vi. Were witnesses given adequate support (e.g. legal advice, advocacy or counselling) to facilitate giving evidence to the Inquiry?
 - vii. Were the arrangements made for the Inquiry, including but not limited to, notice of the Inquiry and its proceedings, witness interviewing, location of Tribunal headquarters, configuration of hearing chamber, oral evidence taking, conducive to encourage the participation of relevant witnesses.
7. We will not draw any conclusions until all the evidence available to us is considered.

We hope to hear from you soon

8. We look forward to hearing your views on these and any related issues you think are raised by our Terms of Reference. We would like to receive your views as soon as possible and in any event by 29 March 2013. Unless you specifically request otherwise, all responses will be made public.
9. All submissions should be sent to the email or postal addresses below. Please indicate whether you would object to being contacted by a member of the Review if further clarification of your response appears necessary:

enquiries@macurreview.gsi.gov.uk

Macur Review
Room TM 10.02
Royal Courts of Justice
Strand
WC2A 2LL

10. Anyone who would prefer to make their submissions by telephone can do so by using our dedicated Freephone telephone number, with automatic recording, at 0800 313 4139.

Alternative formats

11. If you require this information in an alternative language or format or have general enquiries about the Macur Review, please contact us by email at enquiries@macurreview.gsi.gov.uk or telephone us at 020 7071 5770.

Confidentiality

All written representations and evidence provided to the Macur Review will, unless publication is unlawful, be made public unless specifically requested otherwise. If you would like any of the information provided in your response to be treated confidentially, please indicate this clearly in a covering note or e-mail (confidentiality language included in the body of any submitted documents, or in standard form language on e-mails, is not sufficient), identifying the relevant information and explaining why you regard the information you have provided as confidential. Note that even where such requests are made, the Macur Review cannot guarantee that confidentiality will be maintained in all circumstances, in particular if disclosure should be required by law. If you have any particular concerns about confidentiality that you would like to discuss, please contact the Macur Review at enquiries@macurreview.gsi.gov.uk.

The Macur Review is not subject to the requirements of the Freedom of Information Act 2000. However once the Macur Review has completed its work its papers are likely to be passed to the Government. In these circumstances information formerly held by the Macur Review may then be subject to the requirements of that legislation.

Members of the Macur Review are data controllers within the meaning of the Data Protection Act 1998. Any personal data provided will be held and processed by the Chair and Secretariat only for the purposes of the Review's work, and in accordance with the Data Protection Act 1998. Once the Macur Review has completed its work then any personal data held is likely to be passed to the Government for the purpose of public record-keeping.

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Papur Materion

8 Ionawr 2013

Adolygiad o Dribiwnlys yr Ymchwiliad i
gam-drin plant mewn gofal yng Ngogledd Cymru

Cynnwys

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Cyflwyniad

1. Mae Adolygiad Macur yn Adolygiad Annibynnol, a gadeirir gan Mrs Ustus Macur ac sy'n ofynnol fel rhan o'n Cylch Gorchwyl

'I adolygu cwmpas Ymchwiliad Waterhouse a pha un ai oedd unrhyw honiadau penodol o gam-drin plant a oedd yn berthnasol i'r cylch gorchwyl heb eu hymchwilio fel rhan o'r Ymchwiliad, ac i gyflwyno argymhellion i'r Ysgrifennydd Gwladol dros Gyfiawnder ac Ysgrifennydd Gwladol Cymru.'

Cefndir

2. Roedd Cylch Gorchwyl Ymchwiliad Waterhouse, a gyhoeddwyd ar 17 Mehefin 1996, fel a ganlyn:

- a) Ymchwilio i gam-drin plant mewn gofal yn ardaloedd cyn-gynghorau sir Gwynedd a Chlwyd ers 1974;
- b) Edrych a fyddai wedi bod yn bosib i'r asiantaethau a'r awdurdodau a oedd yn gyfrifol am ofal o'r fath, drwy leoli plant neu drwy reoleiddio neu reoli'r cyfleusterau, atal y cam-drin neu ei ganfod yn gynt;
- c) Edrych ar ymateb yr awdurdodau a'r asiantaethau perthnasol i'r honiadau a'r cwynion am gam-drin a wnaed naill ai gan blant mewn gofal, plant a arferai fod mewn gofal neu unrhyw unigolion eraill, ac eithrio craffu ar a ddylid erlyn unigolion sydd wedi'u henwi;
- d) Yng ngoleuni'r archwiliad hwn, ystyried a oedd yr asiantaethau gofal ac ymchwiliol perthnasol wedi cyflawni eu swyddogaethau'n briodol ac, yn achos yr asiantaethau gofal, a ydynt yn gwneud hynny yn awr; a chofnodi ei ddarganfyddiadau a gwneud argymhellion i Ysgrifennydd Gwladol, Cymru.

3. Cyflwynodd yr Ymchwiliad ei adroddiad "Ar Goll Mewn Gofal" ar 16 Chwefror 2000.

Tystiolaeth a Gwybodaeth ar gyfer Adolygiad

Macur

4. Rydym wedi derbyn y dystiolaeth a sicrhawyd, a chyfrolau mawr o ddeunydd perthnasol i'r Ymchwiliad gwreiddiol. Rydym yn gweithio'n galed er mwyn sicrhau bod yr holl ddogfennau a fyddai neu a ddylai fod wedi bod ar gael ar gyfer yr Ymchwiliad, neu a all fod yn sail i'n Hadolygiad ni yn awr, yn cael eu rhoi i ni.
5. Byddem hefyd yn hoff iawn o glywed gan unrhyw un sydd â gwybodaeth am gylch gwaith ein Hadolygiad. Rydym wedi datgan isod rai cwestiynau sydd o ddiddordeb i ni.

Cwestiynau yr ydym eisiau eich barn amdanynt

6.
 - i. Oedd cylch gorchwyl Ymchwiliad Waterhouse yn ddigon eang i roi sylw i'r holl faterion o ddiddordeb cyhoeddus cyfreithlon a/neu anniddigrwydd ynghylch honiadau o barhau i gam-drin plant mewn gofal a natur y gweithdrefnau a'r arferion gofal plant yng Ngogledd Cymru?
 - ii. A osodwyd unrhyw gyfyngiadau gormodol ar y cylch gorchwyl er mwyn atal ymchwiliad neu archwiliad llawn o'r dystiolaeth er mwyn gwarchod unrhyw unigolyn neu sefydliad?
 - iii. Os na, oedd y Tribiwnlys yn ymddangos fel pe bai'n cyfyngu ar y cylch gorchwyl er mwyn osgoi ymchwilio i'r dystiolaeth berthnasol neu ei harchwilio?
 - iv. A roddwyd unrhyw bwysau ar y rhai a oedd yn cymryd rhan yn yr Ymchwiliad, boed fel aelodau'r Tribiwnlys, ei staff, y timau cyfreithiol, tystion neu gyfranwyr, i fwrw i'r naill ochr, atal neu gelu tystiolaeth o berthnasedd i Ymchwiliad Waterhouse?
 - iv. A gafodd yr holl dystion perthnasol wahoddiad i gyflwyno datganiadau a/ neu gael eu clywed gan yr Ymchwiliad? Os na, pam?

- v. A gafodd yr holl dystion perthnasol wahoddiad i gyflwyno datganiadau a/ neu gael eu clywed gan yr Ymchwiliad? Os na, pam?
 - vi. A gafodd y tystion gefnogaeth ddigonol (e.e. cyngor cyfreithiol, eiriolaeth neu gwnsela) i hwyluso rhoi gwybodaeth i'r Ymchwiliad?
 - vii. Oedd y trefniadau a wnaed ar gyfer yr Ymchwiliad, gan gynnwys, ond heb fod yn gyfyngedig i hysbysiad yr Ymchwiliad a'i weithrediadau, cyfweld tystion, lleoliad pencadlys y Tribiwnlys, cyfluniad siambr y gwrandawriad, cymryd tystiolaeth lafar, yn annog cyfranogiad y tystion perthnasol?
7. Ni fyddwn yn llunio unrhyw gasgliadau nes bod yr holl dystiolaeth sydd ar gael i ni'n cael ei hystyried.

Gobeithiwn glywed gennych yn fuan

8. Edrychwn ymlaen at glywed eich safbwyntiau ar y materion hyn ac ar unrhyw faterion cysylltiedig a godir gan ein Cylch Gorchwyl yn eich tyb chi. Hoffem dderbyn eich safbwyntiau cyn gynted â phosib ac erbyn 29 Mawrth 2013 fan bellaf. Oni bai eich bod yn gwneud cais penodol fel arall, bydd yr ymatebion i gyd yn cael eu cyhoeddi.
9. Dylid anfon pob safbwynt i'r cyfeiriadau e-bost neu bost isod. Os ydych yn gwrthwynebu i aelod o'r Adolygiad gysylltu â chi os bydd yn teimlo bod angen eglurhad pellach o'ch ymateb, nodwch hynny os gwelwch yn dda:

enquiries@macurreview.gsi.gov.uk

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Y Llysoedd Barn Brenhinol
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WC2A 2LL

10. Gall unrhyw un sy'n dymuno cyflwyno ei safbwyntiau dros y ffôn wneud hynny drwy ddefnyddio ein rhif ffôn Rhadffôn arbennig, gyda recordiad awtomatig, ar 0800 313 4139.

Fformatau eraill

11. Os oes arnoch angen yr wybodaeth hon mewn iaith neu fformat arall, neu os oes gennych chi unrhyw ymholiadau cyffredinol am Adolygiad Macur, cysylltwch â ni drwy e-bost ar enquiries@macurreview.gsi.gov.uk neu ffoniwch ni ar 020 7071 5770.

Cyfrinachedd

Bydd unrhyw safbwyntiau a thystiolaeth ysgrifenedig a ddarperir i Adolygiad Macur yn cael eu cyhoeddi oni bai fod eu cyhoeddi'n anghyfreithlon ac oni bai y gwneir cais fel arall. Os hoffech i unrhyw ran o'r wybodaeth sydd wedi'i chyflwyno gennych chi yn eich ymateb gael ei thrin yn gyfrinachol, nodwch hynny'n glir mewn nodyn i gyd-fynd â'r ymateb neu e-bost (nid yw'r testun cyfrinachedd sy'n rhan o gorff unrhyw ddogfennau a gyflwynir, neu'n safonol mewn negeseuon e-bost, yn ddigonol), gan ddatgan yr wybodaeth berthnasol ac egluro pam eich bod yn ystyried yr wybodaeth rydych chi wedi'i chyflwyno fel gwybodaeth gyfrinachol. Hyd yn oed pan wneir ceisiadau o'r fath, ni all Adolygiad Macur warantu y bydd y cyfrinachedd yn cael ei gynnal o dan bob amgylchiad, yn arbennig os yw datgelu'r wybodaeth yn ofynnol yn gyfreithiol. Os oes gennych chi unrhyw bryderon penodol am gyfrinachedd yr hoffech eu trafod, cysylltwch ag Adolygiad Macur ar

enquiries@macurreview.gsi.gov.uk.

Nid yw Adolygiad Macur yn dod o dan ofynion Deddf Rhyddid Gwybodaeth 2000. Er hynny, unwaith y bydd Adolygiad Macur wedi cwblhau ei waith, mae ei bapurau'n debygol o gael eu hanfon ymlaen at y Llywodraeth. O dan yr amgylchiadau hyn, gall yr wybodaeth a gadwyd o dan Adolygiad Macur fod yn rhan wedyn o ofynion y ddeddfwriaeth honno.

Mae aelodau Adolygiad Macur yn rheolyddion data oddi mewn i ddiffiniad Deddf Diogelu Data 1998. Bydd unrhyw ddata personol a ddarperir yn cael eu cadw a'u prosesu gan y Cadeirydd a'r Ysgrifenyddiaeth at bwrpas gwaith yr Adolygiad yn unig, ac yn unol â Deddf Diogelu Data 1998. Unwaith y bydd Adolygiad Macur wedi cwblhau ei waith, yna mae unrhyw ddata personol a gedwir yn debygol o gael eu hanfon ymlaen at y Llywodraeth at bwrpas cadw cofnodion cyhoeddus.

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Appendix 6: Acronyms

AG	Attorney General
AGO	Attorney General's Office
CHE	Campaign for Homosexual Equality
CPS	Crown Prosecution Service
DPP	Director of Public Prosecutions
DSU	Detective Superintendent
FACT	Falsely Accused Carers and Teachers
GLD	Government Legal Department
HOLMES	Home Office Large Major Enquiry System
NORWAS	North Wales Abuse Survivors
NSPCC	National Society for the Prevention of Cruelty to Children
NWP	North Wales Police
PACE	Police and Criminal Evidence Act
PII	Public Interest Immunity
SSIW	Social Services Inspectorate Wales
WIT	Witness Interviewing Team

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