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for the Meeting with Sir Roger Singleton
on 24th November 2008

"There are more abusers without convictions than there are with them"- Sir WILLIAM UTTING's Report intituled "People Like Us"

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- The promise given by Maurice Smith, HMCI, on behalf of OFSTED to *"…review what OFSTED does generally in relation to independent schools. I will revisit these specific*

issues in the light of our new responsibilities from 1st April 2007" - Fax letter from Maurice Smith to WMRP. But it does not appear that OFSTED has done so.

- The crucial undertaking given in the convergence discussions leading up to 1st April 2007 to inspect to C.S.C.I. standards & procedures – we ***still*** do not have the wording of this.
- The unwisdom of OFSTED taking on any child welfare inspection rôle anyway, and the unacceptable practical results.
- The points on which it has proved not possible to obtain answers from OFSTED. See the list set out in the WMRP letter to Mr David Lloyd, Clerk to the Children Schools & Families Select Committee dated 1st October 2008.
- OFSTED refuses to give its assurance that Inspectors who themselves are the subject of a Notification under the EDUCATION ACTS will not be allowed to inspect schools.
- What happens to child welfare inspections where OFSTED carries out a "light touch" Inspection only?

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- Protocol of the I.S.I. in obtaining from Darlington the pre-April 2005 automatic transmission arrangements Notifications has ***still*** not been made available.
- The I.S.I. Company Limited by Guarantee [C^o. N^o. 06458829] formed on 21st March 2008 and how this impacts upon issues of accountability where failures occur

H. INSPECTION AGAINST NOTIFICATIONS under the EDUCATION ACTS is not happening in the way it is meant to. See Correspondence with OFSTED/I.S.I./Select Committee for Children Schools & Families/M.P.s **: [P31- 39]**

- General Background – WMRP letter to Colin Green of the D.f.E.S. 14th January 2006; letter from Colin Green 27th February 2006; and from Jim Knight, M.P. 25th November 2006
- The DCSF has still not made available the Memorandum that Mrs Pattinson in Darlington was meant to be preparing which is much needed to remove

uncertainty from the minds of Inspectors as to how the Notifications procedures are meant to operate. See WMRP letter to Mrs Pattinson in Darlington dated 5th December 2005.

- **Notifications, Inspectors of schools, and the DATA PROTECTION ACT** – see Fax letters from WMRP to Paul Lavery in Darlington dated 5th & 6th July 2006.
- Can the Notifications database be re-configured by Darlington on a school-by-school basis for, say, the last 10 years?
- There seems to be no means of "tracking" back on the Notifications to make sure the machinery is working properly.
- The inherent desirability or otherwise of the automatic transmission arrangements. See WMRP letter dated 4th January 2006.
- We still have not seen the legal opinion referred to in the D.f.E.S.' letter of 6th April 2005.

I. **THE RÔLE OF THE DCSF :[P40]** where prosecutions are concerned – at present it has no authority to instigate a prosecution where criminal offences committed on children in schools. The undesirable consequences of this. See letter from Colin Green of the D.f.E.S. dated 24th February 2006.

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K. The rôle and remit of **THE GOVERNMENT OFFICE FOR THE SOUTH EAST :[P42-43]** where a Serious Case Review is held. Need to clarify exactly what the Regional Government Office is empowered to do. It seems to be hard to pin this down.

L. **: [P44-45]** Guidance seems to be entirely lacking (*e.g.* in the Flowcharts on page 30 at Appendix 4 in *"Safeguarding Children in Education"* DfES/0027/2004) for the correct procedures to be followed where unconvicted but also unacquitted (*e.g.* in cases where the Indictment has been stayed) Defendant to criminal charges of offences against children. See WMRP letter to Colin Green of the D.f.E.S. 13th January 2006.

- **SUNDRY :[P46-47]**
  - Governing Bodies of schools – composition of and need to ensure independence of Governors generally; *semble* no enhanced CRB check needed to sit on the Governing Body of a school.
  - The I.S.I. Company Limited by Guarantee [C^o. N^o. 06458829] formed on 21st March 2008 and how this impacts upon issues of accountability where failures occur

SUMMARY SHEET
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"There are more abusers without convictions than there are with them"- Sir WILLIAM UTTING's Report intituled "People Like Us"

A. REPORTING INCIDENTS TO THE L.A.D.O.

AS YET THERE IS NO STATUTORY OBLIGATION under the new Independent Safeguarding Arrangements to report incidents to the L.A.D.O. In consequence, children who are abused are still left unsupported by a statutory framework with which schools *must* comply.

There is as matters stand at present no statutory obligation upon a school to report child protection incidents to the L.A.D.O. (Local Authority Designated Officer). It is only guidance. There is no sanction for non-compliance.

In the independent sector there is always a conflict of interest involved, because a school is doing in effect two things at one and the same time : it is *(a)* providing an education, and *(b)* running a fee-receiving business. What this means is that it is not in the business interests of a school to follow any procedure that could give rise to negative publicity, such as bringing in outside assistance where a child welfare incident occurs or to refer a matter to Social Services, or to the Police where an offence may have been committed.

Where (as is often the case in the Preparatory School world) the Headmaster is also the Proprietor of the school, or one of the Proprietors, the conflict of interest can become severe.

Not to recognize this inherent conflict of interest is to court failure of child protection systems, and particularly disadvantages children in the independent sector. The only way to overcome it is to place schools under a reporting duty.

That said, it is undesirable to place a school under an absolute statutory duty to report any given matter to Social Services or to the Police. For one thing, children can be very canny, and are not beyond deliberately causing difficulty for staff who have for instance

disciplined them or are not popular, and who might thereby find themselves placed in a quite unfair position. But if incidents have to be reported to the L.A.D.O., then every child would be assured of an assessment of the right course of action to be taken in any given case, and ungenuine complaints shown for what they are and appropriately dealt with.

Desired Recommendations :

1. THAT schools should be placed under a statutory duty to report incidents, not to Social Services, nor to the Police; but to the L.A.D.O. to ensure independent assessment of the right course of action to be taken.

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B. LOCAL SAFEGUARDING CHILDREN BOARDS

> **LSCBs** – It needs to be made clear to LSCBs everywhere and in child protection publications that in appropriate circumstances it is right and necessary that there should be full interaction between LSCBs and the School Inspectorates, where for instance material relevant to a child welfare inspection is put into the possession of LSCBs. At present this is not happening.

Please see Figure 2 on page 11 of the D.f.E.S. publication *"Local Safeguarding Children Boards : A Review of Progress"*. This shows, in varying shades of blue, *(1)* Board Partners under a duty to co-operate; *(2)* Partners whose involvement should be secured; and *(3)* Partners to be involved "as needed" *(sic)*.

What is completely missing from this diagram is the involvement of the Inspectorates. It is very important that, if LSCBs are given information that can be expected to impact upon child welfare inspections of schools, the relevant Inspectorate(s) should be put in possession of this information so that it can be inspected against as may be appropriate. If there is a case of abuse concerning child A. in a given school, then, although sadly it may be too late to protect child A., it is most important to ensure the safety and welfare of children B., C., D., &c. as well in the same school, who may not have registered any complaint.

This LSCBs ? Inspectorates interaction is not happening at present because LSCBs do not understand that this us what they are authorized to do, and are meant to do in appropriate cases. LSCBs are fearful of stepping outside their remit. This is understandable in a way because they do not find this interaction represented on Figure 2, and the Inspectorates are not to be found there formally designated as "Partners".

This omission though is an odd one, because numbered paragraph 8 clearly refers to *"protection, … and prevention."*

Where LSCBs become aware that they are dealing with a case that ought to be the subject of a Notification under the EDUCATION ACTS, but no Notification has been returned by the school, is it the duty of LSCBs to return a Notification to the Teacher Misconduct Section of the D.C.S.F. in Darlington? Or at the very least to require of the school in question that a Notification should be returned to the Teacher Misconduct Section of the D.C.S.F. in Darlington? Or to alert the Teacher Misconduct Section of the D.C.S.F. in Darlington that no Notification has been returned in circumstances where it ought to have been, and to request the Teacher Misconduct Section of the D.C.S.F. to require the school to comply with its statutory duty? This requires clarification.

There is a widespread and distressing ignorance on the part of LSCBs of the whole Notification machinery and of how it is meant to interact with Inspection procedures, which needs to be remedied. This ignorance is especially serious for the independent sector, because it is heavily dependent upon the Notification machinery working properly in conjunction with the Inspection procedures.

Desired Recommendations :

1. THAT Figure 2 on page 11 of the D.f.E.S. publication *"Local Safeguarding Children Boards : A Review of Progress"* be updated and amended so as to show clearly that LSCBs are to liaise fully with Inspectorates pre-Inspection (or immediately if the circumstances so warrant) where an LSCB is seized of information that must be relevant to the child welfare inspection rôle of any given Inspectorate ;
2. THAT the duty and authority of LSCBs *(1)* to require Notifications to be returned by schools under the EDUCATION ACTS where it comes to the attention of LSCBs that a Notification ought to have been returned but has not been, and *(2)* to require the Notification to be verified (see under SUMMARY SHEET **H.**, be clarified (or that if LSCBs do not have such duty and authority, then precisely who has) ;
3. THAT LSCBs are made generally more aware of the whole Notification machinery and how it is meant to interact with Inspection procedures in the independent sector.

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C. THE POLICE

THE POLICE are under the duty of returning a Notification to Darlington where investigating crime committed or allegedly committed by a teacher or by staff on school premises, but practice in this regard is not uniform among all Police Forces and cannot always be relied on.

Please see W.M.R.P. letter to the D.f.E.S. dated 17th May 2005 at page 4 under **A.C.P.O. ? D.f.E.S**. Practice between Police Forces is regrettably variable in this. Some Forces are punctilious in observing this procedural duty : others are not.

The Police themselves say that the problem often lies in the distinction between crimes investigated by C.P.S.C.U.s [Child Protection & Sexual Crimes Unit] on the one hand, and crimes investigated by other officers outside of the C.P.S.C.U.s on the other hand. If a perpetrator or alleged perpetrator has committed an offence away from the school at which he is employed, then frequently the perpetrator or alleged perpetrator, knowing the consequence of being barred from teaching children, will very deliberately not disclose his line of work unless and until forced to do so. As one Policeman put it : "It is truly wonderful how they all become bricklayers or gardeners all of a sudden". Thus the Police may themselves be in ignorance that they are investigating circumstances giving rise to the duty to return a Notification to the D.C.S.F. until quite late on in the investigation : in some rare cases they may not ever know.

The return of Notifications to the D.C.S.F. from the Sexual Crimes Units is thought to be good. But it is important that the entire Force is made aware of this requirement.

This particular issue may not be thought to be obviously relevant to safeguarding children in the independent sector. But in fact it is, for the following reasons : *(1)* schools in the independent sector offer particular opportunities to offenders to commit offences away from school premises; *(2)* children in the independent sector are heavily dependent

for child protection upon the Notification system working properly and efficiently; and *(3)* there is a significant number of cases where schools succumb to the temptation not to return a Notification, *e.g.* where an offence has been committed by one of its teachers but during the holidays and/or away from school premises (*"Nothing to do with us what Mr X does in his spare time"*). This is wrong, obviously ; but it happens.

There are also issues about *when* a Notification should be returned : Mr X is investigated by the Police and suspended by the school that employs him pending the outcome of the investigation; but will only be dismissed by the school and a Notification will only be returned upon his eventual conviction. There can, in child protection terms, be a very long period between arrest and conviction [1]. Also, the intervening process of investigation and trial can sometimes confuse the circumstances relevant to the returning of a Notification. Suppose Mr X to have taken a boy away on an illicit camping trip. He may plead Not Guilty to the commission of any offence. A Court may acquit him in the absence of any evidence of actual misconduct. Yet the mere fact of itself - possibly undisputed - that Mr X removed a boy contrary to the staff procedures of the school may well render him unfitted to work with children and justify the returning of a Notification. But should the school take this step pre-trial? and risk prejudicing the trial? In theory it possibly should : but in practice it won't. This is where the duty on the Police to return Notifications in appropriate cases and at the right time becomes paramount.

A yet further problem in the independent sector is the growing involvement of Teachers' Unions. A school in the independent sector can face real problems where a Union becomes involved in dismissal issues. Disgraceful cases are coming to light in which Union Representatives, aware perhaps that there is no statutory duty upon a school to report child abuse incidents to the L.A.D.O., attempt to protect their members by treating Notifications as something that can be negotiated about. It is vitally important, therefore, to strengthen the hands of Headmasters by ensuring they know they are in the position to make it clear to Union Representatives that where a criminal offence is being investigated the Police are in any case under a duty to return a Notification, and it is thus quite useless to attempt to persuade a school not to comply with its statutory obligation in this regard upon the dismissal of a teacher employed by it.

[1] My two letters to Mrs C. Knights of the Teacher Misconduct Section of the Department in Darlington dated 18th & 20th October 2006 refer.

Desired Recommendations :

1. THAT Police Forces be reminded in an effectual way of the duty to return Notifications in appropriate circumstances;
2. THAT the reminder be directed both to C.P.S.C.U.s and to non-C.P.S.C.U. Officers;
3. THAT the D.C.S.F. write annually to each Force recording how many Notifications have been returned by each Force *(a)* by its C.P.S.C.U., and *(b)* by its non-C.P.S.C.U. Officers. This should show up or give some indication at least of the level of awareness of each Force of the requirement to return the Notifications. If it were possible to tie this in with any available statistics of the number of crimes committed against children by teachers investigated by each Force, then so much the better.

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D. THE CONVERGENCE OF OFSTED WITH THE C.S.C.I.

- The correction now of earlier failures recorded in the correspondence with David Bell, HMCI, and with Maurice Smith, HMCI 29th November 2005 ? 14th January 2006, whereby OFSTED refused *as a matter of policy* to make the requisite pre-Inspection Inquiries of the D.f.E.S. prior to inspecting schools. Also WMRP letter to D.f.E.S. 14th January 2006.

Please see the correspondence in Bundle **D**. It is completely astonishing that in the past OFSTED should ever have refused, *as a matter of policy*, no less, to make the proper pre-Inspection Enquiries of the Department. The Notifications are now, with effect from April 2005, sent out under the automatic transmission arrangements, and the position is to that extent now overtaken (save that the automatic transmission arrangements are not retrospective in their effect, and thus the former manual enquiry procedures still need to be resorted to in all cases where a school is to be inspected that was last inspected prior to April 2005); but the deep suspicion remains that the culture of OFSTED seems to be antipathetic to carrying out proper pre-Inspection procedures that are essential to child welfare inspection, or, where the requisite pre-Inspection material is automatically made available, to making proper use of it.

It is not only the culture of OFSTED that may be antipathetic, but also its available expertise and bank of relevant experience. When Miss Gilbert, H.M.C.I., appeared before the Children Schools & Families Select Committee on Wednesday 10th December 2008 one of the questions she was asked in the Committee Session (but was unable satisfactorily to answer) was who in the organisation of OFSTED had relevant experience on the social services side (as opposed to the educational side) of its rôle. It is at best very unclear whether OFSTED has any relevant social services expertise to fulfil its function.

There needs to be a frank acknowledgment on the part of OFSTED of what the requirements of the D.C.S.F. in carrying out child welfare inspections are, and a public commitment to adhaere to them in any case, irrespective of the school inspection role of the C.S.C.I. having been subsumed into "new OFSTED". Without this, no-one can be certain of child welfare inspections taking place in schools that comply with the requirements of the Department.

- The promise given by Maurice Smith, HMCI, on behalf of OFSTED to *"…review what OFSTED does generally in relation to independent schools. I will revisit these specific issues in the light of our new responsibilities from 1st April 2007"* - Fax letter from Maurice Smith to WMRP. But it does not appear that OFSTED has done so.

No-one seems to have seen hair or hide of this promised review of "what OFSTED does generally in relation to independent schools".

- The crucial undertaking given in the convergence discussions leading up to 1st April 2007 to inspect to C.S.C.I. standards & procedures – we ***still*** do not have the wording of this.

Notwithstanding many requests that it should do so, OFSTED has consistently refused to put into the public domain the terms on which the school inspection role of the C.S.C.I. was on 1st April 2007 subsumed into "new OFSTED". Without this, no-one can test or gauge whether OFSTED is delivering the child welfare inspections that it is bound to provide.

What we do know is that the school inspection methodology was handed over to OFSTED by the C.S.C.I. in the convergence discussions [2]. That in itself predicates at the very least an expectation that the inspection methodology of the C.S.C.I. would be followed and adhaered to. This is borne out also by the correspondence [3] : on 23rd July 2007 Mrs Jean Humphrys of OFSTED, Deputy Director, Children wrote to W.M.R. Pumfrey : *"As I explained in previous correspondence,* ***the approach OFSTED now adopts when inspecting children's social care is that which C.S.C.I. followed in the past****. There is one approach to this work, not two."* On 19th March 2007 Mrs Jean Humphrys of

[2] Telephone conversation between Mr David Clark, Director of Transitions for the C.S.C.I. and W.M.R. Pumfrey on 17.12.2008.

[3] Copies of which will be found in the bundle herewith.

OFSTED had confirmed orally on the telephone to W.M.R. Pumfrey that w.e.f. the inception of "new OFSTED" on 1st April 2007 its Inspectors would be adhaering to the pre-Inspection Inquiry standards and procedures of the C.S.C.I., but W.M.R. Pumfrey understood that the undertaking may not have been reduced to writing. In the letter from W.M.R. Pumfrey to Mrs Jean Humphrys of OFSTED dated 20th March 2007 this understanding is set out. In a subsequent letter from Mrs Jean Humphrys of OFSTED to W.M.R. Pumfrey dated 9th July 2007 Mrs Humphrys wrote : *"In my previous letter I referred to the fact that **we would not change current C.S.C.I. practice**. Page 4 of the document I have provided sets that out clearly."* [4]

It is therefore the clear and definite understanding of those of us concerned with this subject that some kind of formal undertaking or agreement was given at the time. That this is so is also borne out by a letter written by Dr Roger Morgan to W.M.R. Pumfrey dated 5th January 2007 as follows : -

> *" … the continuation of pre-Inspection welfare checks that are undertaken by C.S.C.I. children's Inspectors **is not under any threat post-April 2007**, when their responsibilities transfer over to the new OFSTED"*

which postulates an agreed basis between the C.S.C.I. and "new OFSTED" arrived at in the convergence discussions. Only no-one seems to be able to say exactly what the wording of this was, notwithstanding exhaustive enquiries having been made on the subject. Nor is anyone able to explain why the procedures and standards of the C.S.C.I. are apparently no longer adhaered to by OFSTED. This is wrong and deeply unsatisfactory.

In addition, when Miss Gilbert, H.M.C.I., appeared before the Children Schools & Families Select Committee on Wednesday 10th December 2008 she was asked [5] in the Committee Session (but was unable to answer without referring first to materials in her office) what the agreed basis or protocol was between the C.S.C.I. and OFSTED. Miss Gilbert said that she would write in to the Select Committee with her answer, which is awaited.

[4] Although it did not appear to W.M.R. Pumfrey that the document intituled *"The Regulation and Inspection of Children's Social Care from 1st April 2007"* did set it out clearly – see letter 13th July 2007 WM.R. Pumfrey to Mrs Jean Humphrys.

[5] Question put by Fiona Mactaggart, M.P.

- The unwisdom of OFSTED taking on any child welfare inspection rôle anyway, and the unacceptable practical results.

Reference has already been made above to the culture of OFSTED seeming to be antipathetic to carrying out proper pre-Inspection procedures that are essential to child welfare inspections, or, where the requisite pre-Inspection material is automatically made available, to making proper use of it. To this may be added the doubtful degree of child welfare inspection expertise available in its ranks together with the doubtful bank of experience in this field. Education and child welfare are two entirely different subjects. To be good in one does not at all imply any degree of competence in the other. In practice the opposite tends to be the case : educationists on the whole (there are of course always honourable exceptions) are not as a rule interested in or concerned with child welfare, and vice-versa. It is a conceptual misunderstanding and a pragmatic error to group the two subjects together.

To give just one example of what goes wrong conceptually when the two subjects are conflated in the one organisation : it is possible, and desirable, where the inspection of *education* is concerned, to as it were "take a snapshot" of the general educational standing of a school at a given moment of time, rather as a Company's Balance Sheet does where finance is concerned. But to do – or to attempt, as it is not in fact possible – the same thing where *child welfare* is concerned is an approach that can only be described as disastrously mistaken, and dangerously wrong. In the latter case what is needed - to pursue the accounting analogy - is more of a Profit & Loss Account : that is to say, the following of the child protection history of the school that is being inspected over the period of time since the last inspection, which is done, *inter alia,* by inspecting against the Notifications returned by the school if any, and similar matters on a recurring basis.

- The points on which it has proved not possible to obtain answers from OFSTED. See the list set out in the WMRP letter to Mr David Lloyd, Clerk to the Children Schools & Families Select Committee dated 1st October 2008.

These are all set out in the letter referred to, and perhaps need not be referred to again here. No answers have been furnished by OFSTED to these points. Please see Desired Recommendations numbered 6. to 7. below.

- OFSTED refuses to give its assurance that Inspectors who themselves are the subject of a Notification under the EDUCATION ACTS will not be allowed to inspect schools.

Please see Desired Recommendation number 8. below. Many Inspectors have either come out of, or are still in, teaching. It is not unknown for an Inspector to have left his teaching post under a cloud. The psychological conflict of an ex-teacher inspecting against Notifications where he is himself the subject of a Notification is obvious, and respectfully should not be permitted.

- What happens to child welfare inspections where OFSTED carries out a "light touch" Inspection only?

There is considerable and mounting concern on this subject. See for example the article that appeared in *The Times* on 12th July 2007. Does it mean that the pre-Inspection procedural requirements of the D.C.S.F. will no longer be insisted upon? To carry out a child welfare inspection of a school without having the necessary pre-Inspection information to hand, and in particular the Notifications returned by the school since the date of the last inspection, simply means that there is no child welfare inspection worthy of the name.

Desired Recommendations :

1. THAT it be reviewed whether OFSTED has the necessary expertise and experience within it to carry out child welfare inspection work;
2. THAT OFSTED be asked to give a public acknowledgment of the Department's requirements where pre-Inspection inquiries and procedures are concerned, especially in the obtaining of Notifications from the Teacher Misconduct section, and a commitment to adhaere to the Department's requirements;
3. THAT OFSTED should now be asked to make available its promised review of "what OFSTED does generally in relation to independent schools" if it has prepared one ;

4. THAT the undertaking or formal agreement or agreed basis referred to in the correspondence on which the school inspection rôle of the C.S.C.I. was on 1st April 2007 carried over into the "new OFSTED" be clarified beyond any possible question or doubt, and made publicly available by (if necessary) reducing it to writing, and by placing it firmly in the public domain ;

5. THAT consideration be given to whether OFSTED should be inspecting child welfare at all ;

6. THAT OFSTED be required to publish the qualifications of its Inspectors, and be reminded of the requirement to publish details of the qualifications or experience required of Additional Inspectors, the standards that they are required to meet, and the skills they must demonstrate in carrying out Inspections, as *per* the Department's GUIDE TO THE LAW FOR SCHOOL GOVERNORS [D.f.E.S. Publications Centre 2006, reference DFES-0227-2005] in chapter 14, at numbered paragraph 5 ;

7. THAT OFSTED be required to publish the details of the training of its Inspectors ;

8. THAT no-one should be permitted to inspect for OFSTED, or for any other Inspectorate, who him- or herself has been the subject of a Notification under the EDUCATION ACTS returned to the Teacher Misconduct Section of the D.C.S.F. in Darlington.

9. THAT "light touch" inspections should be clarified and explained where child welfare inspection is concerned, and assurances given that where child welfare inspections are concerned, there will be no derogation from the former standards and procedures of the C.S.C.I..

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E. THE INDEPENDENT SCHOOLS INSPECTORATE

THE I.S.I. Difficulty in ascertaining precisely what status its school inspections have, and the unnecessary degree of complication about it. See the correspondence with Mr Hubbard (now retired) between October – November 2004.

The position of the I.S.I. in the Schools Inspection spectrum is one of considerable complication and is not widely understood outside of the I.S.I. and the I.S.C. organisations themselves. The average member of the public is unlikely to have any real mental grasp of the points contained for instance in the letter of Mr Hubbard (predecessor to Miss Christine Ryan) to W.M.R.P. of 9th November 2004. Still less is he likely to comprehend how such points could impact upon the efficacy and reliability of child welfare inspections. Even if he did, a number of unanswered questions naturally present themselves : given, for example, that the I.S.I. is devoid of any autonomous power to inspect, or to follow up an inspection it has already carried out, as Mr Hubbard says in his letter, what exactly is the I.S.I. meant to do (or empowered to do) in cases where between Inspections it is apprised of live child protection issues in a school affiliated to the I.S.C.?

The I.S.I. is a recipient Inspectorate under the new automatic transmission arrangements w.e.f. April 2005 of the Notifications returned under the EDUCATION ACTS to the D.C.S.F. in Darlington. What therefore is it meant to do with such Notifications received between its six-yearly Inspections? Has it the power exceptionally to act upon them? If not, what if anything does it do with them, apart from, presumably, filing them until the next Inspection date arrives?

Then again, as Mr Hubbard points out, the I.S.I. is a body approved by the (as it was then) D.f.E.S. for certain purposes. So are the powers of the I.S.I. enlarged for those particular Departmental purposes, or not? Does it have powers of enforcement where it

inspects for the Department, but not otherwise? And a further very pertinent question is whether the nature and the scope of an Inspection carried out specifically for the Department are different from such that apply to Inspections carried out purely for the I.S.C.? None of this is clear. And what is perhaps worrying is that I.S.I. Inspectors may not themselves be *au fait* with any such differences that may obtain.

This situation of almost Byzantine complexity is not at all conducive to good and effective child welfare inspection practice in the independent sector. In particular it gives rise to problems of accountability. See for instance the letter of W.M.R.P. to Mr Hubbard dated 13th October 2004. Mr Hubbard was happy to attend a meeting to discuss the issues that had arisen over the *national* inspection policy of the I.S.I. – but not to discuss particular problems of inspection that had manifested themselves out of the discovery of the systemic child abuse that had come to light at Caldicott School. This is not, to be frank, a particularly helpful stance where problems arise. In many ways an institution is judged by its response when things go wrong. The I.S.I. has been found to be constitutionally incapable of delivering an effective response when things go wrong. It signally fails this acid test.

In general, there is a feeling among the public at large, and among those involved in child welfare school inspections in other Inspectorates in particular, that the I.S.I., rather like a Trade Union, is essentially there to protect the interests of schools affiliated to the I.S.C. [6], and not to carry out any robustly independent child welfare inspection work worthy of the name. It will furnish school Inspection Reports : but the moment you query anything contained in them, or draw attention to any inspection failures, it proves impossible to get the I.S.I. to respond or to do anything about them [7]. Doubts are regularly expressed by H.M.I.s and Inspectors for the C.S.C.I. and OFSTED about the quality of the I.S.I. child welfare Inspection work, and the I.S.I. is regarded by professionals largely as a kind of "joke" organisation not to be taken seriously, and having no credibility in this field whatever where child welfare is concerned. The specific criticism is often heard that the I.S.I. Inspectors are all educationists, and have no qualification or interest in child welfare. It is impossible to get at the truth of this [8], because the I.S.I. will not answer questions about the qualifications or experience of its Inspectors.

[6] In order to be accepted as an I.S.I. Inspector you are required to be a member of an I.S.C. school.
[7] Even where straightforwardly factual mistakes occur.
[8] Although it is sadly apparent from the I.S.I. website that in recruiting Inspectors no child welfare expertise is even looked for by the I.S.I., which is extraordinary. Nor does there seem to be any relevant training.

The I.S.C. may of course for its own private purposes rely upon the I.S.I. : but it is a serious error in public administration to infer from that that *the public* may place its own unqualified reliance upon the I.S.I.

There is also a general feeling that the public are misled into thinking that the I.S.I. has delivered a wholly independent School Inspection Report, when this may not in fact be the case, because the I.S.I. Inspection remit does not accord with the Inspection frameworks of other Inspectorates. The I.S.I. makes considerable play of the fact that it is a body approved by the D.C.S.F. for certain school inspection purposes, which in itself can sometimes mislead the public and others into the erroneous understanding that it is a body generally approved by the D.C.S.F. for all school inspection purposes, which is not the case. Even its name is misleading in this context : "Independent" refers to the schools, not to the Inspectorate.

There is of course no harm at all in any organisation setting up its own self-inspection arm : but that is what it should remain. It is a public administrative error to allow its true identity to become confused by conflating the *private* function of self-inspection with the *public* function of inspecting schools on behalf of the Department. That way confusion lies.

- Does the undertaking referred to above at **D.** given in the convergence discussions leading up to 1st April 2007 to inspect to C.S.C.I. standards & procedures apply equally to the I.S.I.?

This is a fundamental question of central importance to child protection in schools in the independent sector that are inspected by the I.S.I., and especially in schools that are inspected by the I.S.I. and by no other Inspectorate (such as independent day schools). It has proved impossible to get an answer to this question. According to a newspaper article published in the Daily Telegraph on 15th November 2006 [9], the I.S.I. "is compelled to follow OFSTED guidelines". If this be a correct statement of the position, then the answer should be in the affirmative, with the result that no school inspected by the I.S.I. should ever be inspected to a lower standard than that applied by the C.S.C.I. down to 1st April 2007. But again it is not clear – and it is most important that it should be made absolutely clear to everyone, so that the I.S.I. can be held accountable to inspect to the (very good) standards of the C.S.C.I.

[9] By Graeme Paton, entitled : *"Boycott OFSTED, Woodhead tells heads"*.

- To what extent is the I.S.I. compelled to conform to what OFSTED does? See newspaper article 15th November 2006.

Clarity is needed on this point already partly dealt with above for other and more general reasons. It might for instance impact on the problem of the I.S.I. being devoid of any autonomous power to inspect, or to follow up an inspection it has already carried out ; or of what exactly the I.S.I. is meant to do (or empowered to do) in cases where between Inspections it is apprised of live child protection issues in a school affiliated to the I.S.C.

In general, it is desirable that the relation to which one Inspectorate stands toward another be made publicly clear.

Desired Recommendations :

1. THAT the child welfare inspection function be removed from the I.S.I. altogether;
2. THAT (failing the above) the exact position occupied by the I.S.I. in the Schools Inspection set-up be clarified and simplified, and its powers and authority publicly defined and if possible standardised;
3. THAT (failing the above) clarity be introduced on the problem points of procedure and practice such as what is the I.S.I. meant and empowered to do with Notifications received from the Teacher Misconduct Section of the D.C.S.F. between its six-yearly Inspections? Or if it is apprised of live child protection issues at a give school in the middle of its inspection cycle? ;
4. THAT (failing the above) it be made clear whether the undertaking referred to above at **D.** given in the convergence discussions leading up to 1st April 2007 to inspect to C.S.C.I. standards & procedures apply equally to the I.S.I. ?
5. THAT (failing the above) more general points be addressed arising out of the obligation, if it be such, of the I.S.I. to conform to the practices of OFSTED and the precise relation in which the I.S.I. stands to OFSTED in regard to its inspection practices and procedures should be made clear.

SUMMARY SHEET
following the meeting with Sir Roger Singleton on 24th November 2008

"There are more abusers without convictions than there are with them"- Sir WILLIAM UTTING's Report intituled "People Like Us"

F. THE REPORT OF THE STATUTORY INQUIRY INTO CABIN HILL SCHOOL

THE REPORT OF THE STATUTORY INQUIRY INTO CABIN HILL – Will Government now adopt these recommendations? See WMRP letter to Theresa Villiers, M.P., dated 11th September 2008.

The recommendations of the Report of the Statutory Inquiry into CABIN HILL School (published January 2005 by the Department of Education and the Department of Health, Social Services, and Public Safety in Northern Ireland) are of fundamental importance to the safeguarding of children in the independent sector. But at the date hereof the Report has been adopted in Northern Ireland only, and not in the rest of the U.K. Enquiries made through M.P.s have been unable to elicit any substantive explanation [10] as to why the recommendations of this Report have not been adopted in England, or even whether their adoption has ever been considered.

- **11.3** Resolution of the conflict of interest point that is always encountered in the independent sector.

A crucial point for child protection in the recommendations of the Report of the Statutory Inquiry into CABIN HILL School is that this conflict, which is for ever met with in the independent sector, is resolved decisively on the side of concern for the *"current physical and emotional health of the former pupils who might have been abused when in the school's care"* over against *"the desire to exonerate the school"* paragraph **10.4** and Recommendation **11.2**.

[10] Please see the letters of Kevin Brennan, M.P., dated 27th August 2008, and Baroness Morgan dated 4th December 2008. Both letters make the point that *(a)* the recommendations are addressed to the Department for Education in Northern Ireland (obviously), and thus the DCSF is under no obligation to respond; and *(b)* that DCSF Guidance already covers the recommendations of the Report. But this is not a satisfactory answer, since *(a)* the recommendations may still voluntarily be adopted, and should be; and *(b)* although DCSF Guidance already covers some of the recommendations of the Report, it by no means covers all of them and not the most important ones; and – see W.M.R.P. letter of 11th September 2008 – the Inspectors cannot lawfully inspect against these points unless and until the recommendations are formally adopted by Government.

- **11.4** Recommendations to D.E.N.I. about implementation.

The CABIN HILL Report is unusual in that it includes the recommendation to D.E.N.I. (the Department for Education in Northern Ireland) that it should *"put in place appropriate means to ensure full compliance with its guidance to schools on child protection"* - Recommendation **11.4**. This concerns the point already made at Summary Sheet **A**. above, *viz.* that in England there is no statutory obligation to report child protection incidents to the L.A.D.O. : it has the status of guidance, only.

If the recommendations of the CABIN HILL Report are adopted, this would entail the putting in place of appropriate means of ensuring compliance with the requirement to report incidents to the L.A.D.O. (as well as with the rest of the guidance of the D.f.E.S. and of the D.C.S.F. to schools on child protection). Not impossibly this may afford the explanation of why the recommendations have not been adopted by Government.

- *Cabin Hill* outlaws dormitory monitoring of younger boys by older boys. Desirability of adopting this stance at Boarding Schools on the mainland. See WMRP letter to Dr M. Lindsay of the CHILDREN'S RIGHTS DIRECTORATE dated 15th November 2006.

At numbered paragraph **8.5** on page 25 the Report (which was concerned with acts of abuse committed by a dormitory prefect aged 13 years upon boys under his dormitory supervision as young as 10) states :

> ***"The practice of putting an older boy in charge of boys as young as 10 in this setting was then*** [*i.e.* in 1992]***, as it would be now, seriously misguided. The dangers inherent in that system were well known prior to 1992/1993."***

and at numbered paragraph **11.3** on page 46 the Report concludes :

> ***"Older pupils should not share dormitory accommodation with younger pupils in boarding school departments."***

This subject was also dealt with in the earlier H.M.S.O. publication *"The Welfare of Children in Boarding Schools"* (1991, H.M.S.O.), which (at paragraphs 6.48 and 6.58) specifically warns of the need where the management of dormitories is concerned to recognise the possibility that children are sometimes abused by other children. An extract

taken from paragraph 6.48 of the H.M.S.O. publication *"The Welfare of Children in Boarding Schools"* is to be found quoted at numbered paragraph **8.5** on page 25 of the CABIN HILL Report.

The difficulty encountered in practice by Inspectors in this area is that for some schools the practice of dormitory monitoring by older boys of younger boys seems to work well, and where it works well schools are understandably loath to alter it. A great deal turns on the cultural ethos of the school itself in its boarding arrangements. But in the light of the CABIN HILL Report it is submitted that there does need to be that positive experience to justify such dormitory monitoring by older boys of younger boys to be permitted : dormitory monitoring should not be permitted to continue merely out of general inertia and unwillingness to change. Boarding Inspectors should therefore in their school Inspection Reports be authorized to recommend disbandment of dormitory monitoring arrangements by older boys of younger boys except where they are able to report positive experience by the school in question.

Whether the general recommendations of the CABIN HILL Report are adopted or not, there is a case for a review of policy specifically in regard to Dormitory Monitoring arrangements of this kind in the light of the Report, and for appropriate guidance to be put in place for all Inspectors of Boarding Schools.

Desired Recommendations :

1. THAT the recommendations of the Report of the Statutory Inquiry into Cabin Hill School be now adopted by Government to enable the Inspectorates in England lawfully to inspect against the recommendations of the Report ;
2. THAT (failing 1. above) some account and explanation be given of why the recommendations of the Report of the Statutory Inquiry into Cabin Hill School have not been or cannot be adopted by Government;
3. THAT (failing 1. above) in the light of the CABIN HILL Report taken in conjunction with the earlier H.M.S.O. publication *"The Welfare of Children in Boarding Schools"*, policy specifically in regard to Dormitory Monitoring arrangements should be reviewed ;
4. THAT the practice of putting older boys in charge of younger boys in dormitories should not be banned outright, but that there should be a presumption against allowing such arrangements, unless a school is able to show and satisfy the

Boarding Inspectors that the practice in the setting of that given school has worked well and its retention would be justified ;

5. THAT irrespective of the recommendation at **11.3** of the CABIN HILL Report the Inspectorates should be reminded of the existing requirement for schools to take account of the warnings of the H.M.S.O. publication *"The Welfare of Children in Boarding Schools"* (1991, H.M.S.O.) anyway, which (at paragraphs 6.48 and 6.58) specifically warns of the need where the management of dormitories is concerned to recognise the possibility that children are sometimes abused by other children.

SUMMARY SHEET
following the meeting with Sir Roger Singleton on 24th November 2008

"There are more abusers without convictions than there are with them"- Sir WILLIAM UTTING's Report intituled "People Like Us"

G. THE FAILURE OF THE INSPECTORATES TO REPORT ON AND DEAL SATISFACTORILY WITH CHILD PROTECTION ISSUES.

- The Children Schools & Families Select Committee Session – even Parliament being misled on this. See correspondence with M.P.s and with the Clerk to the Select Committee

It has been becoming ever more apparent since the formation of "new OFSTED" on 1st April 2007 that child protection issues thrown up in school inspections are just not being dealt with in the way that they are meant to be, and were dealt with formerly by the C.S.C.I. Most of these failures – but not all – have to do with Notifications, which are dealt with in this submission separately below under SUMMARY SHEET **H**.

However, there are a number of general matters as well that just do not seem to be receiving attention by the Inspectors, whether from OFSTED or from the I.S.I., whereby the condition of child welfare in any given school is left in a very unsatisfactory state of uncertainty and doubt.

For example, there appears to have arisen a strong disinclination to state properly and accurately in the School Inspection Reports or elsewhere the facts of situations against which school inspections have been carried out. As a supreme example of this, Miss Gilbert, H.M.C.I., undertook, given her inability to answer questions on the subject in the Committee Session of 14th May 2008, to write in to the Children Schools & Families Select Committee in Parliament to give the background to the last Inspection carried out by OFSTED on Caldicott School, a private preparatory school in Buckinghamshire. She wrote a letter that completely failed to apprise the Select Committee of the systemic abuse that had taken place at that school, and of which both she and the OFSTED Inspectors all perfectly well knew. This has given rise to an issue of misleading Parliament. The detail of this will be found in the accompanying bundle of copy correspondence, and it is perhaps unnecessary to reiterate it here.

VALID AS AT 24.11.2008

The School Inspection Reports of both OFSTED and the I.S.I. (this being a Joint Inspection because their respective inspection cycles happened to co-incide at the end of 2007) on this particular school fail to even mention, let alone actually deal with, the extensive child protection issues thrown up in that particular case. The child protection policy of the school in question was embarrassingly and woefully inadequate, and remained so even after the Inspection. It is doubtful whether the Inspectors even called for the Child Protection Policy to be shown to them. The School Rules utterly failed – again, even after the Inspection – to place the private bedrooms of masters on school premises out of bounds to boys at the school, notwithstanding the commission in that *locus* by former masters, one at least of whom was sentenced to imprisonment of serious criminal offences against a number of boys at the school. The facts *(1)* that in 2000 the school had been required by earlier Inspectors of the Buckinghamshire County Council to give an undertaking to the then D.f.E.S. to report child protection incidents to the Police and to Social Services, and *(2)* that in 2001, little over a year later, this undertaking was deliberately breached by the school, were not picked up on at all and were accorded not even a mention in the Inspection Reports of either Inspectorate, even though a pre-Inspection meeting had taken place with the Local Safeguarding Children Board and the Buckinghamshire County Council concerning all these matters, following which the two Inspectorates had been fully briefed, and notwithstanding in correspondence they acknowledged themselves to have been so.

Both OFSTED and the I.S.I. solidly refuse to answer any of the questions arising out of the complete failure of child welfare inspection and/or reporting at this school.

A yet further example is furnished by the OFSTED Report on Stony Dean School in Amersham. No-one reading that Report would ever know, or could ever know, from the Report itself that this school is the subject of a Serious Case Review; that its Head of Care was sentenced to 10 years' imprisonment for offences committed by him against children; or that the Headmaster and Deputy Headmaster were both suspended for failing to deal with the situation adequately. All these matters are in the public domain, having been reported fully in the Press, and have long been well-known to anyone in the locality having dealings with that particular school. Yet not a mention of any of it is to be found in the OFSTED Report, which glosses over the entire criminal history at this school. This gives rise to serious questions about the reliability of School Inspection Reports prepared by OFSTED.

Even without considering the even greater failure concerning inspection against the Notifications that is dealt with separately below under SUMMARY SHEET **H**., these matters taken alone represent a signal failure of child welfare inspection.

- OFSTED ***still*** gives no public reason for its deliberate omissions of known child welfare issues in schools from its Inspection Reports. *Ditto* the I.S.I.

The extraordinary omissions from the School Inspection Reports referred to above are not explicable on grounds of ignorance, negligence, or laxity on the part of the Inspectors. It is known that these omissions are deliberate.

What is not known or understood is what the reason for such fundamental omissions can possibly be. No public reason has been advanced by OFSTED, or by the I.S.I., both of whom simply refuse to answer correspondence on the subject. Accordingly, questions directed to OFSTED about this have been sent in to the Children Schools & Families Select Committee in Parliament. It had been hoped that the Select Committee would deal with this at the last Committee Session on 10th December 2008, but the situation was somewhat overtaken by the "Baby P" case in Haringey. There is to be an additional Session of the Select Committee in January at a date that has not yet been announced. It is much to be hoped that the questions arising out of the deliberate omission of known child abuse matters from the School Inspection Reports of both OFSTED and the I.S.I. will finally be accorded some kind of answers then.

- To whom is the I.S.I. accountable?
- The I.S.I. Company Limited by Guarantee [C°. N°. 06458829] formed on 21st March 2008 and how this impacts upon issues of accountability where failures occur

It is not clear to whom the I.S.I. is accountable to answer these questions. Presumably to the I.S.C. in the first instance, which has now formed a Limited Company [11]; but the matter is shrouded in a degree of mystery that is difficult to penetrate. It is unhealthy that there should be no clearly defined path of public accountability, especially given the signal failures of this Inspectorate where child welfare is concerned and the I.S.I.'s refusal to answer questions, or even to correct factual errors in its Reports.

[11] Company Limited by Guarantee – Company N°. 06458829.

- The Protocol of the I.S.I. in obtaining from Darlington the pre-April 2005 automatic transmission arrangements Notifications has ***still*** not been made available.

At page 1 of SUMMARY SHEET **D**. above it has already been noted that Notifications are now, with effect from April 2005, sent out under the new automatic transmission arrangements, save that these new arrangements are not retrospective in their effect, and thus the former manual enquiry procedures still need to be resorted to in all cases where a school is to be inspected that was last inspected prior to April 2005 in respect of the period from the last inspection down to April 2005. By letter dated 24th May 2006 the I.S.I. was requested to furnish its pre-April 2005 protocol for its Inspectors in obtaining the requisite Notifications from the Teacher Misconduct Section of the Department in Darlington prior to inspection of any given school, given the non-retrospective operation of the automatic transmission arrangements. No answer has ever been received to this request in spite of several reminders and repeat requests. The deeply held suspicion is that the I.S.I. simply does not bother to get in these Notifications. Yet it acknowledges that manual requests will still have to be made until 2011 given its 6-year inspection cycle. This is extremely unsatisfactory, given the dependence on inspection against Notifications for any kind of effective child welfare inspection in the independent sector.

Desired Recommendations :

1. THAT both OFSTED and the I.S.I. be required to account publicly for the omissions from their school Inspection Reports of known child protection issues ;
2. THAT both OFSTED and the I.S.I. be reminded that they are required to deal with the pragmatic aspects of child welfare inspection in schools, such as approving (or not as the case may be) the school's child protection policy, and approving or requiring amendments to the School Rules which should be drawn so as to meet the particular exigencies of any given school [see as to this the NATIONAL MINIMUM BOARDING STANDARDS at **3.7**] and to take into account past incidents so as to minimize the possibility of future recurrence ;
3. THAT clarification be obtained and made public of the accountability of the I.S.I. and the status of the Limited Company formed by the I.S.C. ;
4. THAT the I.S.I. be now required to make public its pre-April 2005 protocol for its Inspectors in obtaining the requisite Notifications from the Teacher Misconduct Section of the Department in Darlington.

VALID AS AT 24.11.2008

SUMMARY SHEET
following the meeting with Sir Roger Singleton on 24th November 2008

"There are more abusers without convictions than there are with them"- Sir WILLIAM UTTING's Report intituled "People Like Us"

H. INSPECTION AGAINST THE NOTIFICATIONS.

INSPECTION AGAINST NOTIFICATIONS under the EDUCATION ACTS is not happening in the way it is meant to. See Correspondence with OFSTED/I.S.I./ Select Committee for Children Schools & Families/ M.P.s

This is the most important aspect of all in the realm of safeguarding children in the independent sector. If this system breaks down, falls into desuetude, is not taught to Inspectors in training, is not correctly understood, is not adhaered to, or is not enforced and insisted upon by all those who place reliance upon School Inspection Reports, then in terms of effective child protection in schools in the independent sector there is quite simply almost nothing of real protective value left. It is not voluntary; it is not mere guidance; it is a ***statutory*** obligation under the EDUCATION ACTS upon schools in the independent sector, from which no independent school can opt out, to return a Notification to the Secretary of State (in practice to the Teacher Misconduct Section of the Department in Darlington) in all cases where the services of a teacher have been dispensed with on the grounds that he/she is unfitted to work with children, or where a teacher has resigned in circumstances where had he/she not resigned, the services of that teacher would have been dispensed with. The Notification will record all the surrounding circumstances and will explain why the services of this particular teacher have been dispensed with.

This, therefore, is the fixed key point of the safeguarding of children in the independent sector.

- General Background – WMRP letter to Colin Green of the D.f.E.S. 14th January 2006; letter from Colin Green 27th February 2006; and from Jim Knight, M.P. 25th November 2006

VALID AS AT 24.11.2008

The system is really quite simple in itself. It is actually no more than common sense, and the man in the street can understand it perfectly well. Once a Notification is returned to Darlington, it is either *(a)* in the case of pre-April 2005 Notifications stored until requested by an Inspectorate about to inspect a school; or *(b)* in the case of post-March 2005 Notifications sent out automatically to the Inspectorates.

Armed with the Notifications (if any) returned by a school since the date of the last inspection, the Inspector will proceed to inspect the school's child welfare against the circumstances thrown up by the Notification. The circumstances may indicate a failure of the recruitment procedures, for instance; or failures of school protocols about not being with pupils alone and unaccompanied, or about accompanying pupils off school premises &c. &c. From there the Inspector will examine the relevant School Rules, protocols, procedures &c. with a view to ensuring that the failure, whatever it was, is properly acknowledged and the possibility of any future recurrence is minimized. It is envisaged by paragraph **3.7** of the NATIONAL MINIMUM BOARDING STANDARDS that schools will have their own input into their child protection policies, and if the Notification has been returned by reason of misconduct in circumstances that are specific to that particular school, then the Inspector will satisfy him- or herself that it is covered and dealt with in the school's child protection policy, staff handbook, Rules, and any other relevant protocols.

It is never the rôle of an Inspector to investigate the *subject* of a Notification. That is for the Police and/or Social Services to do. The Inspector concerns himself solely with the circumstances surrounding the Notification and disclosed by it.

Verification of Notifications. Where the services of a teacher have been dispensed with in circumstances amounting to the commission of a criminal offence it is likely that a statement will have been given to the Police by the victim. It is usual then to verify the Notification returned by a school by comparing it with the statement given to the Police. It will be appreciated that there is otherwise no realistic means of ascertaining whether a school has returned to the Department a truthful and accurate Notification or not.

In the Inspection Report, the Inspector will not make any specific reference to the Notification or to the subject of it; still less to a victim. At the front end, there will be a statement simply as to whether or not any Notification has been returned by the school since the date of the last inspection. Then, if there has been, in the body of the Report the problem will <u>passively</u> be stated avoiding all mention of names (<u>not</u>, therefore, *"Mr X did*

(a), (b), and (c) to Smith minor in the cricket pavilion and was dismissed" but *e.g. "There was a failure to follow the proper recruitment policy with the result that a CRB check was missed. Misconduct occurred in the cricket pavilion when a member of staff was not on duty"*), what the school has done about it in terms of child protection measures (*"Recruitment procedures have now been tightened and the cricket pavilion has been placed out of bounds to all boys and staff after close of play"*), and whether in the view of the Inspector anything further needs to be done to minimize the possibility of any future recurrence (*"The school is aware of its responsibilities to prevent misuse of sports facilities after hours but needs to ensure staff remain on duty for at least as long as the sports facilities remain unlocked up after use so as to forestall any possible misconduct of this kind in future"*). Thus the problem is reported; the steps taken explained; and the outcome hopefully a positive one of improved security. The next Inspection Report will pick up on this problem and sign it off as dealt with (*"The school has heeded the advice given in the last Inspection Report and there have been no further problems"* &c.) or draw attention to failure to heed the former advice, as the case may be.

Given the simplicity of this procedure, what exactly is going wrong?

A number of unpleasant and unwelcome discoveries have been made.

First, in 2005 the discovery was made that those Inspectorates that had quite correctly been requesting the Notifications from Darlington pre-Inspection were, unknown to them, not being given them by the Department [12]. The explanation of this turned out to be that for some reason the Notifications (believed to go back to the 1920s) have been filed over the years by the name of the subject of the Notification, and not by the name of the school. This is distinctly unhelpful to Inspectors. A school with a small staff can be searched relatively quickly by name of staff : but larger schools with bigger staff turnover present difficulties. The Annual Independent Schools Census Return Forms are used in conjunction with this exercise, which for example should enable mid-term departures (which for obvious reasons are always viewed with suspicion and have to be accounted for) to be picked up on quickly (and are now retained for a longer time in the Department specifically for this purpose) : but somehow this was no longer being done. The result was that requests from Inspectorates were being submitted to Darlington that, unknown to the

[12] It will be appreciated that Inspectors routinely apply to Darlington for all sorts of different pre-Inspection information, not merely from the Teacher Misconduct Section. Thus a failure to respond to requests for Notifications may not especially stand out, and may give rise to a wrong assumption that there were none.

requesting Inspectorate, were not being acted upon. In this way "blind" inspections began to occur.

The remedy for this was to put in place in 2005 the automatic transmission arrangements that meant that as from April 2005 Notifications have been sent out automatically to the Inspectorates without any request needing to be made by them. However, and as already noted, these new arrangements are not retrospective in effect : earlier Notifications have still to be requested manually.

Second, the discovery was made later in 2005 that OFSTED was not even making any pre-Inspection requests for Notifications anyway. It had quite simply made its own private decision not to take any notice of the Notifications, and to ignore them for Inspection purposes, as a matter of deliberate policy, no less. This discovery (as to which please see the acrimonious correspondence 29th November 2005 to 14th January 2006 with David Bell and Maurice Smith H.M.C.I.s) came as a complete shock.

This refusal by OFSTED to comply with the requirements of the D.f.E.S. was taken up with the Department at the time. The Department agreed that it had the authority to order OFSTED to comply with its, the Department's, requirements in this regard : but it also decided that it would not exercise its authority. The Department was asked to furnish a reason for not exercising its authority. It never did so. OFSTED for its part sheltered behind the fact that (as it claimed) it had never been requested by the Department to comply with its requirements. W.M.R.P. requested the Department to make the necessary request. So far as is known the Department has not done so. See generally W.M.R.P. letter to the D.f.E.S. dated 28th December 2006, at page 2.

Third, it began to become clear that without the Notifications, Inspectors were slipping into the habit of relying on what the inspected school was prepared to tell them about child protection matters at the school. This, for obvious reasons, Inspectors should never do in any school, and especially not in the independent sector.

Fourth, schools, it has been found, do not always care to volunteer to the Inspectors knowledge about Notifications returned by that school and/or any child protection incidents that one would expect Inspectors to be informed about and to inspect against. There is a gap here; a loophole that needs to be closed. Even respectable Headmasters have been known to take the view that their duty extends only so far as to allow the Inspectors access, and that what happens after that is no concern of theirs. If an Inspector arrives at the school in a state of ignorance, that is his affair, and (so the ratiocination

goes) it is not for the Headmaster to fill in the gaps in the Inspector's knowledge, or to do his job for him.

There needs to be some sanction in place to stop this happening. It is very desirable for a school to have some defined responsibility in this process, however small. While it is important that Inspectors should never place reliance on what a school tells them, a concomitant duty should be placed on schools to ensure *(a)* that successive Headmasters are kept fully informed about child protection incidents that have arisen prior to their assumption of office (and thus cannot plead ignorance) by keeping all relevant records in one single file to be handed on to each successive Headmaster (known as a "Red Book Policy"); and *(b)* that Inspectors are informed about child welfare matters that have arisen since the date of the last Inspection (which can be done very easily by simply handing over the "Red Book"). There should be a sanction for non-compliance : and the suggested sanction is that any Notification of which an Inspector has been kept in ignorance by a school will be inspected against in the next School Inspection and reported on irrespective of when the matter occurred.

- The DCSF has still not made available the Memorandum that Mrs Pattinson in Darlington was meant to be preparing which is much needed to remove uncertainty from the minds of Inspectors as to how the Notifications procedures are meant to operate. See WMRP letter to Mrs Pattinson in Darlington dated 5th December 2005.

It would be immensely helpful all round if the Department would furnish a memorandum for the reference of all the Inspectorates spelling out in simple terms precisely what the requirements of the Department are where inspection against the Notifications is concerned, and what steps the Inspectorates need to take to be sure of complying with what the Department expects and requires in this regard. By this simple means all uncertainty would be removed for the benefit of all concerned. In 2005 it had been agreed that Mrs Pattinson in Darlington would draw up a memorandum on this subject for just that purpose; but the memorandum did not materialize. It would be very helpful if this could be drawn up and made available now.

- **Notifications, Inspectors of Schools, and the DATA PROTECTION ACT** – see Fax letters from WMRP to Paul Lavery in Darlington dated 5th & 6th July 2006.

A further problem that raised its head in this connection was that all of a sudden in July 2006 Notifications were thought to be subject to the DATA PROTECTION ACT, 1998. It was suggested at one point that an Inspector would need to furnish DATA PROTECTION ACT grounds to the Teacher Misconduct Section in Darlington merely to be given a Notification that was needed for the purposes of inspection of a school. This however ignored the entitlement of Inspectors to see the records of a school under s.162 B (2) of the EDUCATION ACT 2002 and by Regulation 4 (1) of the NATIONAL CARE STANDARDS COMMISSION (INSPECTION OF SCHOOLS & COLLEGES) REGULATIONS 2002.

However, the question arises whether the Inspectors of OFSTED and of the I.S.I. are equally assisted by s.162 B (2) of the EDUCATION ACT 2002 and by Regulation 4 (1) of the NATIONAL CARE STANDARDS COMMISSION (INSPECTION OF SCHOOLS & COLLEGES) REGULATIONS 2002 as the C.S.C.I. were. The I.S.I. does not enjoy any statutory basis. Does that mean that an I.S.I. Inspector would need to furnish DATA PROTECTION ACT grounds to the Teacher Misconduct Section in Darlington merely to be given a Notification? If so, then the I.S.I. cannot be expected to carry out child welfare inspection work at all. There should not be any unclarity over this, and it is desirable to confirm the position generally.

Then – please see W.M.R.P. letter to OFSTED dated 28th December 2007 – it was even suggested that Inspectorates might be under the necessity of making a FREEDOM OF INFORMATION ACT request. That can only be absurdly false.

- Can the Notifications database be re-configured by Darlington on a school-by-school basis for, say, the last 10 years?

It is not known how many Notifications are stored at Darlington, and therefore how big a job this would be. It would be a most useful thing to achieve. It would for one thing afford a bird's eye view of where most of the known child protection problems in the independent sector are. It would also make it infinitely easier for the DCSF to comply with the manual pre-Inspection requests for Notifications from the Inspectorates.

- There seems to be no means of "tracking" back on the Notifications to make sure the machinery is working properly.

How do you tell whether schools are complying with their Notification obligation under the EDUCATION ACTS? It is not easy for anyone outside the Department to test the efficacy of the Notifications machinery at present. Nearly all of the Inspection and procedural failures detailed in this submission to the Review of safeguarding in independent schools have been identified and exposed by "tracking back" – *i.e.* by starting

with known events such as convictions of persons known to have been working as teachers, and then working backwards from there to check that procedures were correctly followed at each stage along the way back to the misconduct itself or even earlier to the recruitment of the subject. But it really needs someone within the DCSF to do this, since the information necessary to this exercise is not available to the public. Please see the W.M.R.P. letter to the D.f.E.S. dated 28th December 2006 at njmbered paragraph 5 on page 4.

There ought not be any problem about the Teacher Misconduct Section in Darlington confirming publicly, for example, whether any given school has complied with the Notification requirement in cases where there has been a conviction. But in practice such confirmation is unobtainable from the Department. This is undesirable, since it leaves the public without any check at all on whether the machinery is working correctly or not.

- The inherent desirability or otherwise of the automatic transmission arrangements. See WMRP letter dated 4th January 2006.

The automatic transmission arrangements for Notifications are preferable to an unworkable manual system (*i.e.* because the Notifications have been filed over the years by name of the subject of the Notification, and not by the name of the school that dispensed with the services of the subject, as noted above). But there are drawbacks. For one thing there is considerable suspicion that Inspectorates have given up on the pre-April 2005 Notifications, and make no attempt to obtain them under the manual request system. It is simpler and easier all round to have just one system in operation. Then there is the problem of the present trend of outsourcing the inspection work to independent contractors : are the Notifications to be sent out into the hands of employees of limited liability companies that carry out inspection work on a contract basis for an Inspectorate? This could be viewed for example by Teachers' Unions as very unsatisfactory, and as a threat to the rights of their members. Does indeed an employee of a limited liability company carrying out inspection work on a contract basis for an Inspectorate have the same legal entitlement to hold the Notifications as would for example an H.M.I. (as noted on page 6 above)? At present there do not seem to be clear answers to these points, other than the D.f.E.S. letter of 27th February 2006 (see page 2 about Contractors), in response to W.M.R.P. letters of 5th December 2005 and 4th January 2006.

- We still have not seen the legal opinion referred to in the D.f.E.S.' letter of 6th April 2005.

It is possible that this legal opinion addresses and answers some of the legal problems referred to above : but no-one outside of the Department seems to have seen hair or hide

of it. It would be good and useful if this could now be placed in the public domain for all to study.

Desired Recommendations :

1. THAT proper and due emphasis and priority be given in all DCSF child protection publications to the statutory (and thus obligatory) nature of the Notification requirements under the EDUCATION ACTS. The proper and logical order in which material should appear in publications is that which is statutory first, followed in second place by that which is guidance;
2. THAT Inspectorates be made aware of the expectation that child protection procedures, staff handbooks, school rules &c. are all to be checked by Inspectors for proper content, especially where child abuse incidents have occurred that might have been prevented;
3. THAT a positive duty be placed on Inspectorates to obtain from the DCSF all relevant Notifications before inspecting; or at the very least that the DCSF should now formally make the request of OFSTED that it comply with this requirement of the DCSF to inspect against the Notifications;
4. THAT Inspectorates be made aware that Notifications are where the circumstances warrant to be verified by the Department by reference to statements given by victims to the Police, and that it is then the *verified* Notification that is to be inspected against;
5. THAT Inspectorates be made aware that Notifications are to be dealt with in the correct way in School Inspection Reports and are not to be ignored or deliberately omitted;
6. THAT Notifications be filed henceforth on a school-by-school basis as well as by name of subject, and THAT the viability of the re-configuration of the Notifications database into a school-by-school basis for, say, the last ten years be considered;
7. THAT schools be placed under a duty to ensure that all child welfare incidents at the school are made known to each successive Headmaster and to the Inspectors and are to be filed in a single file to be handed on to each successive Headmaster and handed over to the Inspectors for their perusal ("Red Book Policy");
8. THAT where a Notification has not been brought to the notice of Inspectors by a school it will be inspected against and reported on at the next inspection after it shall have become known of, no matter when the events giving rise to it occurred;
9. THAT a memorandum be drawn up by the Department for the purpose of explaining to schools and Inspectorates exactly what the requirements of the Department are where inspection against the Notifications is concerned, how they are to be dealt with in School Inspection Reports, and generally what procedures are to be followed and where manual requests are still necessary to be made;

10. THAT the impact (if any) in law of the DATA PROTECTION ACT on the making of the Notifications available to Inspectors be clarified;

11. THAT following the coming into being of "new OFSTED" on 1st April 2007 the powers available to OFSTED to have school records made available to its Inspectorate under s.162 B (2) of the EDUCATION ACT 2002 and by Regulation 4 (1) of the NATIONAL CARE STANDARDS COMMISSION (INSPECTION OF SCHOOLS & COLLEGES) REGULATIONS 2002 be clarified;

12. THAT it be ascertained what the position is of the I.S.I. in regard to powers to have school records made available to it as an Inspectorate;

13. THAT the inherent desirability or otherwise of the automatic transmission arrangements for Notifications and their appropriateness in the light of the outsourcing of inspection work to outside Contractors be considered and reviewed;

14. THAT the rôle of "tracking back" the Notifications to ensure the proper functioning of the associated procedures be undertaken by the Department, and that where a criminal conviction has been recorded, relevant information regarding the fact or otherwise of the return merely of a Notification (but not of its content) be released upon request to the public;

15. THAT the legal Opinion referred to in the letter of the D.f.E.S. dated 6th April 2005 be now made publicly available.

SUMMARY SHEET
following the meeting with Sir Roger Singleton on 24th November 2008

"There are more abusers without convictions than there are with them"- Sir WILLIAM UTTING's Report intituled "People Like Us"

I. THE RÔLE OF THE D.C.S.F. IN PROSECUTIONS

THE RÔLE OF THE DCSF where prosecutions are concerned – at present it has no authority to instigate a prosecution where criminal offences committed on children in schools. The undesirable consequences of this. See letter from Colin Green of the D.f.E.S. dated 24th February 2006.

Please see the attached correspondence generally, and the W.M.R.P. letter dated 13th January 2006 to the D.f.E.S. at numbered paragraph 4. on page 2. There have been cases where the Department has desired that a prosecution be instigated where child abuse has taken place, but where no prosecution has taken place because the school has been able to get the affected parents to agree not to take the matter to the Police.

Desired Recommendations :

1. THAT the Department should be under a statutory duty either itself to initiate a prosecution or (upon the decision of a Minister) to pass the papers and evidence in its possession to the Crown Prosecution Service and to the Police for further investigation in all cases where a Notification under the EDUCATION ACTS or other referral to the DCSF / Teacher Misconduct Section in Darlington discloses the commission of a criminal offence against a child or the likelihood of such offence having been committed.

SUMMARY SHEET
following the meeting with Sir Roger Singleton on 24th November 2008

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J. THE INFORMATION TO BE INCLUDED IN SELF-EVALUATION LETTERS.

SELF EVALUATION LETTERS to be prepared by schools in the new Inspection procedures – inclusion of Notifications (the number only) would greatly assist Inspectors of child welfare.

Please see the attached correspondence generally, and the W.M.R.P. letters dated 28th December 2006 to the D.f.E.S. at numbered paragraph 4. on page 3, and dated 19th march 2007 to OFSTED at numbered paragraph 4. on page 1.

It would assist Inspectors greatly if schools would simply declare in their Self-evaluation letters whether a Notification has been returned under the EDUCATION ACTS since the date of the last inspection (but without giving any further details than that – the purpose being merely to alert the Inspector in appropriate cases to the necessity of ascertaining the relevant details of the Notifications from the Teacher Misconduct Section in Darlington before inspecting). This small, simple, and really rather obvious step would make a big difference to the work of the Inspectorates. Please also see the letter of Dr Roger Morgan of the Children's Rights Directorate to W.M.R.P. dated 5th January 2007, which at the foot of page 1 would appear to indicate that the Department and OFSTED have no objection in principle to *" … incorporating a future requirement …to provide, in advance of a scheduled Inspection, key children's safeguarding data as part of the emergent self-assessment process."*

Desired Recommendations :

1. THAT the Department will now request OFSTED to require schools to declare, in the Section intituled *"Personal Development and Wellbeing"* [*i.e.* Section 4] of the on-line document known as the SCHOOL SELF EVALUATION FORM, whether any Notifications have been returned under the EDUCATION ACTS to the Teacher Misconduct Section in Darlington.

VALID AS AT 24.11.2008

SUMMARY SHEET
following the meeting with Sir Roger Singleton on 24th November 2008

"There are more abusers without convictions than there are with them"- Sir WILLIAM UTTING's Report intituled "People Like Us"

K. THE RÔLE AND REMIT OF THE REGIONAL GOVERNMENT OFFICE

The rôle and remit of **THE GOVERNMENT OFFICE FOR THE SOUTH EAST** where a Serious Case Review is held. Need to clarify exactly what the Regional Government Office is empowered to do. It seems to be hard to pin this down.

Please see the attached correspondence generally with the Government Office for the South East in Guildford. The W.M.R.P. letter dated 7th October 2008 summarizes the basic questions. No substantive answers have been received. The public needs clarity on these points. It is administratively not correct that a Serious Case Review should proceed upon an incorrect and incomplete child welfare Report, but it is unclear what powers the Government Office for (in this case) the South East can deploy to ensure that a full and proper child welfare Report is submitted to it by OFSTED and the omissions (known to be deliberate) rectified. This state of affairs is unsatisfactory.

One particular aspect of this matter is that (see newspaper articles on 13th September 2008) Local Authorities are being encouraged by Government to place vulnerable children in the independent sector. It is absolutely wrong that this should happen and public money expended in cases where the OFSTED Report on child welfare cannot be relied on, because known child protection issues are deliberately being omitted from its School Inspection Reports.

Desired Recommendations :

1. THAT the rôle and remit of Regional Government Offices be made clear where there is a Serious Case Review;
2. THAT the powers of Regional Government Offices to require rectification of erroneous and/or inadequate child welfare Reports be clarified, together with the

powers (if any) to require to be informed of and/or to review the qualifications and experience of Inspectors ;

3. THAT it be made clear whether Regional Government Offices have the power to require OFSTED to rectify its child welfare School Inspection Reports so as to conform to the standards of the C.S.C.I. in the light of the undertaking given in the convergence discussions leading to the formation of "new OFSTED" on 1st April 2007.

SUMMARY SHEET
following the meeting with Sir Roger Singleton on 24th November 2008

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L. THE POSITION OF UNCONVICTED BUT UNACQUITTED DEFENDANTS

Guidance seems to be entirely lacking (*e.g.* in the Flowcharts on page 30 at Appendix 4 in *"Safeguarding Children in Education"* DfES/0027/2004) for the correct procedures to be followed where unconvicted but also unacquitted (*e.g.* in cases where the Indictment has been stayed) Defendant to criminal charges of offences against children. See WMRP letter to Colin Green of the D.f.E.S. 13th January 2006.

Please see the attached correspondence generally and the W.M.R.P. letter to the D.f.E.S. dated 17th May 2005 at page 1.

This should perhaps be dealt with under the general heading of handling allegations of sexual offences against children. One might have expected some guidance on this to have emanated from the BICHARD Inquiry Report.

There is a small but significant number of criminal Defendants to charges of offences against children (not all of them in schools, of course) who have managed to obtain a stay of the Indictment against them by taking what is known as a plea in bar on an abuse of process hearing (*e.g. in R. v. Brian Selwyn Bell* (CA) on 11th February 2003), on the grounds typically that they cannot obtain a fair trial because of the passage of time since the date of the commission of the offence.

This affects independent schools in particular, because of the psychological inhibitions that frequently prevent pupils in private schools from reporting (sometimes until quite late in life) matters of abuse at the time of the commission of the offence on grounds of filial loyalty to parents and to the school, especially boarding schools. The knowledge that one's parents are making a financial sacrifice to send one to a boarding school can be a powerful disincentive to saying anything at all about abuse, as can many other factors in a boarding school environment. There have been distressing cases of charges being

preferred but not brought to trial. How are these to be dealt with? For instance, what is the position in regard to returning a Notification under the EDUCATION ACTS if a teacher has been charged but not either convicted or acquitted ?

Desired Recommendations :

1. THAT the position of unconvicted but unacquitted criminal Defendants to charges of offences against children be considered ;
2. THAT guidance material published by the Department be amended / updated / amplified so as to include provisions applying to unconvicted but unacquitted criminal Defendants to charges of offences against children for the removal of doubt as to how such situations should be handled.

SUMMARY SHEET
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Sundry Matters

1. GOVERNORS WHO ARE ALSO TEACHERS

- Governing Bodies of schools – composition of and need to ensure independence of Governors generally; *semble* no enhanced CRB check needed to sit on the Governing Body of a school.

Certain problems have manifested themselves on the subject of School Governors. In the independent sector it often happens that a master at one school is Governor of another. Cases have occurred where a master has been *e.g.* the subject of a Notification at school A.; but has continued to be Governor at school B., which is undesirable. At present there is no means of dealing with such cases. It is submitted that such situations should be dealt with as *per* the recommendations below.

Desired Recommendations :

1. If a School Governor is or has been in teaching, whether at the same or at another school, then the same standard of CRB check will be required that applies to him or applied to him (or would apply now if he were still in teaching) *qua* teacher (*i.e.* so that no-one can be a School Governor who has had to discontinue teaching at any school or who could not now for CRB reasons take up teaching again) ;
2. No-one should be permitted to be a School Governor against whose name a Notification has been returned under the EDUCATION ACTS (with a similar provision, *mutatis mutandis,* for state schools).

VALID AS AT 24.11.2008

2. DEPARTMENTAL PUBLICATIONS

There is a distressing tendency in the Department in its published Child Welfare material to fail to set out the material in the logical order of ***statutory*** and therefore ***compulsory*** matters first, followed afterwards by ***guidance*** material.

This leads to ignorance and confusion which are entirely avoidable. The Chairman of several LSCBs covering in total a very considerable geographical area confessed to W.M.R.P. recently that he was in complete ignorance of the whole Notification procedure and how Inspectors are meant to inspect against Notifications; and consequently of what he may legitimately expect to see in School Inspection Reports. This was astounding and distressing : but explicable if not entirely excusable on the basis that it is hard to see how he could properly have understood these procedures or their importance from the material published by the D.f.E.S. / DCSF.

As a prime and wretched example of failure to identify and accord positional priority to statutory obligations on schools, reference may be made to *"Safeguarding Children and Safer Recruitment in Education"* D.f.E.S. 2006 which, although containing much good material, suffers from this defect and contains several errors.

The publications of D.E.N.I. [Department of Education in Northern Ireland] are of a very high standard indeed for absolute clarity and readability, and may without hesitation be held up as a model of what to aim for in this realm.