



Home Affairs Committee

Oral evidence: [Independent panel inquiry into child sexual abuse](#), HC 710

Tuesday 26 January 2015

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Written evidence from witness:

- [Ben Emmerson QC](#)

Members present: Keith Vaz (Chair); Michael Ellis, Paul Flynn, Tim Loughton, Yasmin Qureshi, Mr David Winnick.

Questions 278 – 367

Witness: **Ben Emmerson QC**, Counsel to the Independent Panel Inquiry into Child Sexual Abuse, gave evidence.

Q1 Chair: I welcome Mr Emmerson to the dais. Thank you very much for coming. The reason the Committee is meeting on a Monday instead of our usual Tuesday is that Mr Emmerson has other duties in respect of another inquiry and this was the only opportunity we had to see him. We are most grateful, thank you.

Mr Emmerson, before I begin can I remind you that the evidence you give before this Committee today is protected by parliamentary privilege and that it would be a prima facie contempt of the House for any witness knowingly to give false or misleading evidence to a Committee this House?

Ben Emmerson: I entirely understand that.

Q2 Chair: I am sure you are aware of that, thank you. The Committee thought it would be helpful for you to come in to clarify some of the points that were made to us last week in the evidence given by Sharon Evans, and to give you the opportunity on the record to perhaps help this Committee with an understanding of what is happening on this panel and indeed in advance of what the Home Secretary may or may not say by the end of this month. She has promised that we will have a full statement on the appointment of a new chair.

Ben Emmerson: I am very grateful for that indication. As I think you know, sir, I wrote to the Committee at the end of last week to indicate that I am bound by three separate but not coextensive duties of confidentiality that will or may inhibit some of the information that I can divulge.

Chair: Of course we understand that, and we published your letter on our website today.

Ben Emmerson: I am grateful for that.

Q3 Chair: Thank you for that. Of course you are very experienced in these matters having advised a Committee of this House, as you said in your letter, on a number of these issues. Just to get a feel of your role on this committee because, of course, before you became prominent last week, we had known that you were the legal adviser appointed by the Home Secretary.

Ben Emmerson: Counsel to the inquiry. It is a little wider than legal adviser.

Chair: Indeed, counsel to the inquiry. Do you have a job description for this post? I notice that other members of the committee have protocols that they have signed and other issues of that kind. Is there something someone has said they want you to do in respect of this inquiry?

Ben Emmerson: I have a contract with the Home Office to be counsel to the inquiry, which of course involves the provision of legal and strategic advice, and, once the evidence-taking phase of the inquiry is underway, assistance with the taking of evidence and its analysis.

Q4 Chair: What is your payment or salary for this?

Ben Emmerson: I am afraid you will need to ask the Home Office for that information. I can indicate I would have no objection to them answering it, but it needs to be put to the Home Secretary. I think she has publicly indicated over the weekend that the salaries paid to all those involved in the inquiry, counsel and panel members, are in line with the salaries paid to those involved in other public inquiries in the past.

Q5 Chair: So it should be quite easy; this is public knowledge?

Ben Emmerson: Exactly, and it is public money as well and I entirely understand there is a legitimate public interest in having it in the public domain. Procedurally, though, that question needs to go through the Home Office.

Q6 Chair: Of course. We will write to them and ask the Home Secretary if she knows.

We understand that you have not just attended and been present at panel meetings. You are also responsible for redrafting letters, giving other general advice and I think, on one or two occasions, you may indeed have convened or facilitated a meeting of the panel, because we all know, and we are not going to rehearse it today, there is no chair at the moment. Is that right? Have you had to convene meetings?

Ben Emmerson: You are asking me two questions in one. The first is about my role in relation to panel meetings, which I will deal with in a moment, and the second is about my role in relation to any advice I may have given, which, of course, would be covered by privilege, in relation to the drafting by individual panel members of any letters they may have written. I have thought very carefully about how I can provide as much help to the Committee as possible, consistent with my obligations of confidentiality, so let me answer those two questions separately.

First, it is in the public domain from the minutes of panel meetings that are on the inquiry's website that I have acted since the outset, on 12 November, in most cases as the facilitator of panel discussions and deliberations. Let me explain how that comes about. When Fiona Woolf resigned, clearly the panel was left without a chair. Obviously it would have been open to the panel to elect an interim chair from among its members in order to chair its deliberations, but the panel, as will be apparent from the minutes, decided not to do that. Instead, they collectively asked me to sit in the chair of their panel meetings. We made a very conscious decision, on my own advice, that I should not be called a chair, I should be called a facilitator, because we did not want there to be any misunderstanding that I was in effect standing in as chair of the inquiry. For example, I do not have a vote at panel meetings.

For all intents and purposes, I manage the agenda for most meetings—I manage the process by which panel members make their contributions. I decide the process by which those contributions are to be brought to a conclusion, in the same way that any other person chairing a meeting would do. To that extent, I have had a role that I would not have had to perform if we had had a chair as, of course, is envisaged this inquiry should have and will have. I have had to perform certain duties at the request of the panel over and above the duties that I would ordinarily be called upon to perform as counsel to the inquiry. That is the answer to your first question. You asked me another question.

Q7 Chair: Yes, but on that, Mr Emmerson, can I just say that is very helpful. That is more information than we received from the Home Secretary when she gave evidence to this Committee in December because we specifically asked her who was keeping the show on the road. It is not the right phrase, I should say.

Ben Emmerson: It is a team effort.

Chair: But who was making sure it was going ahead?

Ben Emmerson: It is a team effort, the panel, myself and the secretariat.

Chair: We understand it is a team effort, but you were facilitating this?

Ben Emmerson: I have been facilitating panel meetings. It is clear from the minutes that are on the website, if your clerks would care to show them to you.

Q8 Chair: What my clerks do and what this Committee does is not a matter for you, Mr Emmerson.

Ben Emmerson: No, I am simply saying—

Chair: I am just making the point to you that the Committee was not aware of that until now.

Ben Emmerson: I am making the point to you, sir, that it is in public domain.

Chair: I am very grateful to you for drawing the attention of this Committee to your website.

Ben Emmerson: Thank you. On the second question, my involvement in the drafting of panel letters, let me just be absolutely clear about what I can and cannot say. Obviously, I cannot say in detail what advice I have given to panel members, but what I can tell you is that there are only

two occasions on which I have been called upon to give any advice in relation to the drafting of letters by panel members.

I can tell you that the first occasion was when panel members were writing to the Home Secretary at the outset, at the time of their appointment, in order to disclose any potential conflicts of interest. Now, so far as that is concerned, although the 2005 Act does not yet apply to this inquiry, it had been agreed from the outset that we would behave as closely as possible as if it did apply, partly because there was always a possibility that it would be converted and nobody wanted to see a structure set up that would then have to be disrupted. The 2005 Act requires panel members to disclose matters that might be considered a conflict of interest to the Home Secretary.

Q9 Chair: Indeed. Did that include Fiona Woolf's letter?

Ben Emmerson: I will come back to that, if I may. It is a separate question. I am dealing with panel members' letters first, which was your first question. The position, as far as panel members' letters were concerned, is they were not my responsibility. They were prepared by the solicitor to the inquiry having taken instructions from individual panel members and made a judgment, of course, about what was and was not required to be disclosed on the basis that it might affect—

Q10 Chair: Would you help us? Who was the solicitor, because we have not heard of the solicitor to the inquiry before?

Ben Emmerson: His name is Simon Regis.

Q11 Chair: Is he a Home Office official?

Ben Emmerson: No, he was seconded to the inquiry from the Treasury Solicitor's Department.

Chair: All right, very helpful. Thank you.

Ben Emmerson: It does require a little detail, Mr Vaz.

Chair: Sure, please.

Ben Emmerson: In relation to that, his responsibility was to speak to panel members and to elicit instructions as to what might be considered a conflict of interest and then to decide whether it was properly to be disclosed in the letter. On one or two occasions when he was not quite sure whether a particular piece of information was information that needed to be disclosed, he sought my advice and I gave it. So that is the first occasion.

The second occasion relates to the letter of the Home Secretary to panel members sent on 15 December that was leaked by Sharon Evans. As far as that is concerned—

Q12 Chair: How do you know it as leaked by Sharon Evans?

Ben Emmerson: I know that it was. I cannot tell you how I know that it was, but I can tell you that the Home Office will be in a position to answer that question.

Q13 Chair: This is the letter I referred to, if you watched the last evidence session, that Lynne Featherstone had not see a copy of?

Ben Emmerson: I do not know what Lynne Featherstone has or has not seen, so I am not going to comment on that.

Chair: The letter that she wrote with her three options?

Ben Emmerson: Yes. Now, as far as that letter is concerned, I can tell you that two panel members replied to that letter, one of them was Mrs Evans, and she clearly did not consult me about the content of her reply.

Q14 Chair: She did not consult you?

Ben Emmerson: She did not, no. She published her reply coextensively with sending it, as far as I understand.

Q15 Chair: She is entitled to do that, is she?

Ben Emmerson: No, she is not.

Chair: Because?

Ben Emmerson: Because it is, in itself confidential, and it contained confidential information that she was not entitled to put into the public domain. It was both inconsistent with an obligation set out in her contract and inconsistent with the protocols to which she herself had been a party that were adopted on 19 November, which you have and which are published on the panel website, concerning collective responsibility and external communications. It also contains some sensitive and some misleading information. No, she should not have published it, and certainly not in the form that she did.

There was a second panel member, though, who wrote to the Home Secretary and I am authorised by that individual to tell you that she consulted me on her draft letter in order to get my advice on the contents. The only advice I gave her was that she should make it clear in her letter that she was writing solely on her own behalf and not behalf of other panel members, because there is always a risk of misunderstanding in that respect.

Q16 Chair: All right, and she made this clear?

Ben Emmerson: She then accepted my advice. She amended her letter to make it clear that it was from her alone and she made it clear to me and to the rest of the panel that, unlike Mrs Evans, she had no intention of putting her letter into the public domain and it is not in the public domain. For that reason I cannot comment on its contents. Those are the only two occasions.

Q17 Chair: Have the others replied now or is that confidential?

Ben Emmerson: I am sorry. I am pausing because I do not know whether the answer to that is confidential or not. Can I take that question away and reply to you in writing in relation to it?

Q18 Chair: That would be very helpful. What the Committee is concerned about is advice that we have received, because we have our own legal advisers, that there may be a prima facie contempt of Parliament in respect of witnesses before a Select Committee giving evidence to a Select Committee and then being subjected to what is called denigration. You will know the Witness Public Inquiries Protection Act 1892, which is the basis of parliamentary privilege as far as witnesses are concerned. You, of course, are an expert in these things having advised the Committee on Privileges on it. This has been drawn to the Committee's attention so we are concerned about it and that is why you are here. An opportunity to clear this matter up. We have in our possession the briefing document that was prepared by the Committee Secretariat for those who appeared before the Select Committee last week. You authorised that document, is that right?

Ben Emmerson: I did not draft it but I approved it.

Q19 Chair: No, you did not draft it. You were very clear that you had authorised it, presumably to make sure that it was legally correct?

Ben Emmerson: Yes.

Q20 Chair: But in there, of course, there are questions that they think this Committee would ask the witness, suggested lines for the witnesses to take and, on occasions, allowing witnesses to say what they felt they should say. In other words, I think one of the questions that was put was, "Should the panel survive?" The answer very much was, "It is up to you to decide what you want to tell the Select Committee".

Ben Emmerson: Yes.

Chair: You see Select Committees of this House are very concerned about anyone or any organisation that seeks to interfere with the way in which they give evidence. Now, you are regarded as one of the world's experts on human rights. There is no question about that. What we have heard over the last two weeks, and I find this very concerning, is here is a panel that has been established to get to the truth but every time we ask questions people are referring us back to the Home Office and saying that things are confidential, even processes. We are not talking about information about individual cases where people have been abused. We are talking about the need for transparency, which seems to be lacking in the way in which this is done. One particular answer, and you will know this document I am sure because you have authorised it, says, "If you are asked by the Home Affairs Select Committee were you coached by the Home Office, the answer you should give is, 'No'". Strictly speaking, of course, the Home Secretary did not go down and start briefing people, we know that, but this is a document that presumably was prepared by the secretariat whose members are all seconded by and large by the Home Office.

Ben Emmerson: I am sorry. With the greatest respect, they are not all seconded from the Home Office and, in any event, they are not currently Home Office employees. I do not have the document in front of me but it is absolutely accurate, entirely accurate, that nobody was coached at all and certainly not by the Home Office. This inquiry is independent of the Home Office. That answer is absolutely accurate.

Q21 Chair: It is absolutely accurate. If they had asked the question, “Were you coached or helped by the secretariat?” you would expect the answer to be “Yes”?

Ben Emmerson: I would expect that if a question was asked, “Were you helped or advised by the secretariat, or prepared for your evidence before HASC?” that the answer would be “yes”.

Q22 Chair: Well, we have the document and, as you say, it is best to publish all these on the website. So they will be on the website this afternoon. I think we have just published them. We have also published a series of emails and letters between the Home Office and Sharon Evans and emails and comments from you to Sharon Evans. Now, you were very upset, I know, when allegations were made that you were involved in bullying and immediately after the end of the evidence session you published a press release, a copy of which I have, in which you talked about members of the committee who breach confidentiality.

Ben Emmerson: I talked about a member of the committee.

Chair: A member of the committee. Well, the first paragraph does not talk about any member of the committee. It talks generally about the effective operation of public inquiries.

Ben Emmerson: No, sir, with respect, it says that the panel members are subject to a duty of confidentiality under their contract, the breach of which, under the contract itself, specifies that it makes the individual person’s contract liable to termination.

Chair: I think you say “is a breach of contract justifying immediate dismissal”.

Ben Emmerson: That is what the contract says.

Q23 Chair: So you did not refer to a member. You talked generally. The second paragraph refers specifically to Sharon Evans. The third paragraph is your duty as counsel to the inquiry and your duty to point this out, these breaches that you pointed out to the panel. The final paragraph talks about the allegations of bullying and intimidation and you say they are entirely baseless.

Ben Emmerson: Yes.

Chair: Also, that the Home Office will confirm this.

Ben Emmerson: Yes.

Chair: Also, that Mrs Evans’ complaints have already been fully investigated and dismissed as unfounded.

Ben Emmerson: Correct.

Q24 Chair: We now have a copy of Mary Calam’s letter to Sharon Evans. Nowhere in this letter are any of these words used. The words “baseless” and “unfounded” do not appear in the letter. On the question of “fully investigated”, we understand this all took place one morning the Thursday before last when you were called in to see Mary Calam, who is a Director General at the Home Office, followed by Sharon Evans being called in to see her.

Ben Emmerson: That is not correct.

Chair: Well, this is what she says in her letter. In the letter she says, “Ben Emmerson responded to your complaint by setting—” so you have not seen her, in other words?

Ben Emmerson: I beg your pardon.

Chair: It says, “He also came to see me on 15 January.”

Ben Emmerson: Yes, it is not correct that is all the investigation consisted of.

Chair: That is very helpful, because I have the letter of 19 January and these words—

Ben Emmerson: Just to be absolutely clear, there was a process that involved a very substantial written briefing by me.

Q25 Chair: Right, but you were the subject of the complaint. How can you be briefing when you are the subject of the complaint?

Ben Emmerson: Again, let me absolutely clear about this. As I indicated in my statement, I had referred Sharon Evans’ conduct in breaching confidentiality to the Home Office. Now, I am treading a very careful line here because the letter that you have in your possession is subject to a duty of confidentiality. I am glad you have it in one sense, but I have been advised by the Home Office that my duty of confidentiality prevents me from discussing that with you. Indeed I would be—

Q26 Chair: Of course, we would not expect you to discuss it with us because you are the subject of the complaint and we do not have before us your complaint about Sharon Evans. But the point that we wanted to make in terms of the way in which the Act operates is your comments that this was baseless, unfounded and fully investigated, none of which are reflected in the letter of 19 January by Sharon Evans. Sharon Evans sets out a test for bullying, which is shouting at colleagues—

Ben Emmerson: I think you mean Mary Calam.

Chair: Mary Calam. Shouting at colleagues, personal insults, persistent and unjustified criticism, and she says the test has not been met. That is what she says, which means that the criteria were not reached. She goes on to say that, “All that said, there is no doubt that you genuinely found his approach”—his meaning you—“very distressing. Be assured that I will draw this to Ben Emmerson’s attention in an appropriate way”, hardly entirely reflected in what you said in your press statement.

Ben Emmerson: I do not accept that for a moment, sir.

Q27 Chair: None of these words, Mr Emmerson, are in this letter.

Ben Emmerson: I do not accept that for a minute.

Q28 Chair: As you correctly say, if we need further information about your complaint concerning Sharon Evans, we will need to write to the Home Office.

Ben Emmerson: Also about what action, if any, the Home Office has taken in relation to it.

Chair: Indeed.

Ben Emmerson: Can I respond, because I think that there is a question in what you have just said?

Q29 Chair: Let me put the question, if I may, since I am chairing these proceedings. The question is this. There was obviously a problem between you and Sharon Evans, and that means between the counsel for the inquiry and a member of the inquiry panel. Sharon Evans is one of only two survivors. Given the history of what has happened over the last few months, is this the right way to have dealt with all this? What concerns the Committee is not the individual personalities of the two individuals involved, because obviously it is clear other members of the panel have written in your support. There is no question of that.

Ben Emmerson: All other members of the panel.

Chair: Exactly, we have seen the letter, but there is this issue concerning yourself and a member who happens to be one of the survivors. My colleague, Mr Winnick, last week said this, and I think it is very appropriate and perhaps you could answer this point. “Through no fault of your own, be it any member who is before us now or other members of the panel, the general impression is that this has become a mess. Would you agree that this is the view of outsiders?” Professor Jay responds, “Yes, I think there is a strong perception of a process that is not well focused or well led.” Now, until these witnesses gave evidence to us last week, we did not know any of this that was happening. We merely wanted an update and we have now come across all this that is going on. Is this the right way to conduct this whole process?

Ben Emmerson: Sir, it is extremely difficult, if I may say so, to answer compound questions that have gone on as long as that question. Can I try and pull it apart and answer some of the things that you have put to me, because they are simply not the question that you subsequently formulated?

First of all, you criticised me for using the words “baseless” and “unfounded” and for saying—

Chair: Please, Mr Emmerson, I was not criticising you. I was referring to your press statement and I said they were not reflected in the letter.

Ben Emmerson: Again, perhaps you will let me respond to it. Your concern was that I used the words “baseless”, “unfounded” and “fully investigated”. I can tell you three things in relation to that. First, as the Home Secretary made clear in Parliament in response to a question from you last Thursday, the complaint against me was dismissed and no evidence of bullying was found. That means it was baseless. Secondly, the Home Secretary made it clear that it has been investigated, which it was fully. Thirdly, and clearly, it was unfounded and the Home Secretary used that language herself. On top of that, she made it clear in that statement that she had full confidence in me as counsel to the inquiry, the matter having been investigated. With respect, the suggestion that there was something misleading about describing the complaint as baseless, unfounded and having been fully investigated is simply wrong.

However, if I were not right about that and any additional confirmation was required, you will be aware that the panel issued a statement to correct Sharon Evans' evidence. By a majority of seven to one, the dissenter being Sharon Evans, the panel said, first of all, that there was nothing in the bullying allegation; secondly, that there was nothing in the intimidation allegation; and, thirdly, that they had full confidence in my impartiality, independence and the advice I have given. But I can go a little further than that.

Chair: Please.

Ben Emmerson: The complaint was based on written advice—

Chair: Her complaint against you.

Ben Emmerson: Yes, was based on written advice given to all panel members that concerned her disclosures and that she did not like. She didn't like the advice that she received. However, there can be no question that it was based on anything other than written legal advice. That advice has been found to be correct and entirely necessary in the circumstances, not only by the Home Office but by the other panel members, and you will remember that the panel includes two very experienced lawyers. The suggestion that there is in any sense anything misleading in the statement that I made is, I am afraid, completely misplaced and, just a little further than that, I can make it clear that my statement before it was issued had all necessary clearances.

Q30 Chair: So the Home Office approved it?

Ben Emmerson: I did not say that. I said it had all necessary clearances. You will have to refer to the Home Office for a specific answer to that question because I am subject to a contractual duty of confidentiality.

Now, you wanted to ask me a rather more general question.

Q31 Chair: Well, you have just confused me slightly. You have been very clear, whenever you have issued statements or done anything—

Ben Emmerson: I have only done it once.

Chair: Well, whenever you have done anything in relation to the panel you always get the support of the full panel. That seems to be the pattern that has developed. Is that right?

Ben Emmerson: It is not possible to generalise like that, I am afraid.

Q32 Chair: No, okay. You tend to rely on the fact that all the other members of the committee are supporting your position apart from Sharon Evans.

Ben Emmerson: Given that Sharon Evans' complaint has been dismissed, you might think that is a pretty reasonable position for me to take.

Q33 Chair: Do you think it is just all a big misunderstanding? I put this to one my clerks earlier today in respect of barristers giving advice and even sometimes, dare I say it, chairs and the members of Select Committees asking questions of witnesses. People think they are being aggressive when all they are saying is they are putting the facts before people. Could this just have

been a complete misunderstanding? I note that in an email that you sent on 7 January to Sharon Evans you seem to apologise if she regarded the email as being threatening. You did not mean it to be such but people just regard advice of this kind, either orally or in writing, as aggressive or threatening. Could it just be a misunderstanding?

Ben Emmerson: Honestly, you would need to ask Sharon Evans that question but what I can say is this. In the email you referred to where I said, “Look, I am sorry if you found this advice difficult but I have to stick by the advice that I have given”, which is what the email says—

Chair: It does not mention the word “threatening”?

Ben Emmerson: I cannot remember whether it does or not, but the apology that you have referred to was an apology “if”.

You are absolutely right about one thing and that is that as a barrister or as a lawyer you sometimes have to give difficult advice that is blunt in the way that you put it. But what I can tell you, because I do not know which emails you have, of course, is that I attenuated my advice according to the circumstances. Mrs Evans’ breaches of confidentiality were multiple. They began on 20 December and I responded then in much more attenuated terms, as one would expect. I appreciate quite clearly that she knew exactly what she was doing when she leaked her letter, but she may not have known how misleading some of her statements in it were or how bad the breach of confidences were and so initially my advice was in far more attenuated terms. But, as an adviser to the panel—and bear in mind she is not my client; the panel is my client; the inquiry is my client—as she continued to breach confidence, and indeed it is perfectly clear that she has breached confidence in briefing the Committee today—I appreciate she is protected by privilege but she has breached confidence in giving you documents and emails and briefings and so forth.

Q34 Chair: To be honest and to be clear to you, I am not saying they came from her. I have not said that.

Ben Emmerson: Okay.

Chair: You are asking me not to jump to assumptions, Mr Emmerson, but I think you are doing so.

Ben Emmerson: Okay, you are right. You did not say that, although it is very hard to understand how you would be in receipt of a confidential letter to Sharon Evans from the Home Office if she had not given it to you.

Q35 Chair: Mr Emmerson, you may say that but at the end of the day out there watching these proceedings—you are no doubt very passionate about the work that you do and you have a great history in protecting people’s human rights—the public will be worried and concerned that so much of this is being kept confidential.

Ben Emmerson: On the contrary, sir, I think the public will be concerned about how much of this is being leaked into the public domain.

Q36 Chair: No, that is not the understanding that I have, Mr Emmerson. You are not leaking state secrets here. The public has been waiting for this inquiry for a long time. What the Home Secretary said to Parliament, and I can certainly send you statements that she made in Parliament, is that she wanted to see the clearest amount of transparency to avoid anyone believing things were being suppressed. I think that it could just be the fact that you wrote them in quite blunt terms and that, when you speak, you speak bluntly because you are not there to soft soap your clients.

Ben Emmerson: I think the word that the panel used when supporting me unequivocally was that the advice I gave was robust. I do not dispute that, but we are all agreed, that is to say the Home Office investigation, the other lawyers on the panel and the panel as a whole, that it had to be robust because there were repeated breaches of confidentiality.

You have made a point to me about transparency. It is very important that the public should understand, and the Committee should take on board, that all public inquiries, all arrangements of that kind, need to have rules about what goes into the public domain. Not just about individual cases, which is very important, but also about processes. This panel has been trying, in very difficult circumstances, to build an institution that is capable of lasting for years and doing some very difficult and serious work. They have heard suggestions and briefings from advisers and others and they have been in a position where they have had to have discussions among themselves and disagreements and so on.

The reason for a collective responsibility rule is the same as any other collective responsibility rule. It is so that people can speak freely, share their ideas, express opinions and exchange information without the fear that whatever they say or do is going to end up being discussed and leaked into the public domain. The aim is to set up an inquiry that can meet the needs of survivors and victims. They are very clear, and the messages we are getting from them are very clear, that confidentiality needs to be maintained around the work we do. I am afraid to have to tell you that victims and survivors groups have robustly complained about Sharon Evans' conduct and that was partly the reason for the advice I gave that generated her complaint.

Chair: That is very helpful, thank you.

Q37 Mr Winnick: Mr Emmerson, this is a long way from the whole purpose of the panel and the inquiry into looking into the very serious allegations of child sex abuse, is it not?

Ben Emmerson: It is.

Q38 Mr Winnick: The exchanges between the Chair and yourself, however interesting it may be, and I am not a lawyer, do not in fact—dealing with the processes and the rest—lead us anywhere nearer to trying to get the whole issue started. I accept you had no responsibility for the fact that the chairs appointed resigned and the rest of it.

Ben Emmerson: No responsibility, you mean?

Mr Winnick: Entirely.

Ben Emmerson: Sorry, I misheard you.

Mr Winnick: You are absolutely the last person to have any responsibility for that.

Can I just say that I do not want to pursue the same course as the Chair? Having said that, it should be said, in all fairness to the Chair, that Sharon Evans saw her Member of Parliament. The Member of Parliament, who is a member of the Government—not that it makes any difference because presumably a Member of Parliament will take up the complaints of a constituent—wrote a letter on 9 January, having been seen by his constituent, namely Sharon Evans. In the course of the letter he says that Mrs Evans has made a number of complaints about you. I am not suggesting for a moment that they were justified, Mr Emmerson, but clearly it is not just a matter of the Committee or the Chair of this Committee making these points. A Member of Parliament, having heard presumably at a surgery or whatever, decided to write. Did you know about this letter?

Ben Emmerson: I did not know about the letter itself. Indeed, that is the first time I heard there was a letter, I think. I have heard Mrs Evans say in public that she consulted her MP, Dr Vince Cable, and when she sent her leaked reply to the panel on 20 December last year she said she had consulted her MP.

Mr Winnick, I absolutely endorse your observation that all of this is a terrible distraction from the crucial and vital work the panel has been trying to do in difficult circumstances and I have to say that the leaks that Sharon Evans has been responsible for have made that work very much more difficult. There is no getting away from it. The panel are no longer able, with respect, to have discussions in confidence, secure in the knowledge that what they say will not be leaked into the public domain. That is a very difficult position for the panel to be in. Yes, I absolutely agree that making a song and dance about this satellite issue, as some people have done, including, with the greatest of respect, Mrs Evans, is doing absolutely no favours to the victims and survivors who ought to be at the heart of this process. I entirely agree with what you say.

As to Dr Cable's involvement, I cannot remember whether Vince Cable is a lawyer or not. No, I did not think so.

Chair: He is not.

Ben Emmerson: With all due respect he has taken this up as a constituency MP—

Q39 Mr Winnick: That is his duty.

Ben Emmerson: I am not suggesting it isn't, but he has taken it up as a constituency MP who does not understand the law, does not know the facts and has brought it to the attention of the Home Secretary. All well and good. It is quite right that there should be a procedure for investigating these things, but they have been investigated fully by the Office of the Home Secretary. The complaint against me has been dismissed. The breach of confidentiality by Sharon Evans I am not allowed to tell you what the outcome of that is, although it seems that you have a copy of correspondence that tells you anyway.

Q40 Mr Winnick: No reflection on you or the Chair or my colleague on the right or another colleague on the left. In my view it would be a very poor day indeed for the House of Commons if the only Members were lawyers.

Ben Emmerson: I agree with that; the fewer lawyers the better.

Mr Winnick: Some might even say there are too many, but I will not go into that.

Yasmin Qureshi: Steady on, steady on.

Chair: Order, could we move on, if you have finished.

Q41 Mr Winnick: Not I am not finished, Chair, if you do not mind. The position is as a Member of Parliament we take up complaints, as you know, from our constituents. We do not necessarily need to have a detailed knowledge of the law.

Ben Emmerson: No. I am sorry. I thought you were suggesting to me, Mr Winnick, that because Mr Cable had got himself involved in this, that somehow added to the weight of Sharon Evans's baseless complaints, With respect he is not in a position to judge.

Q42 Mr Winnick: You say he got himself involved in this. He was carrying out his duties as a Member of Parliament. You said in reply to a number of questions put to you by the Chair that quite likely you have a robust attitude. One would expect that. Without being patronising in the slightest, you are one of the leading lawyers in the country. Not many, I suppose, would particularly like to face you in court if you were prosecuting. For Sharon Evans, who certainly is not a lawyer, but is an ordinary member of the public who has become involved in this because of what she suffered many years ago, is it not possible that this personality clash, if it can be described as such, is because of the very different positions of yourself and Sharon?

Ben Emmerson: I do not think it is fair to call it a personality clash. I do accept that Sharon Evans comes to this job with some sensitivities and I have tried, in the work I have done, to accommodate her sensitivities. As I said earlier on, my advice has been attenuated over time. It began very gently put, but when the breaches continued and continued and continued it became stronger. You know of two of her breaches of confidentiality. There are others. Quite apart from what she may or may not have provided the Committee with, there are other breaches of confidentiality by her that are not fully in the public domain.

Yes, I accept that, by the time I reached the point of giving advice that was in fairly blunt terms about the position that she had put herself and the panel in, she may have found that very difficult to deal with. A lot of times when you have to give firm advice as a lawyer, clients do not like it. One of the problems that I do see in this situation is that among the statements that Sharon Evans has made in the public domain are included three very important misleading statements that have had an impact on the work of the inquiry. When you ask me about Mrs Evans and whether it is a clash of personality, there are bigger problems involved in it than this and I think it may be that in some areas Mrs Evans finds it difficult to distinguish between an accurate statement and an inaccurate one.

Q43 Mr Winnick: Mr Emmerson, how do you see this going further? Having put your point of view today and explained the position as you see it, obviously not as Mrs Evans sees it, would you be quite satisfied to leave it as it is?

Ben Emmerson: I would have been satisfied to leave it as it is when the Home Office had resolved the complaint about me and also resolved my concerns brought to their attention in the way that they have. I would have been quite happy to leave it like that. I am afraid the situation has developed in the way that it has because Mrs Evans came before this Committee indicating that she was maintaining her complaint of bullying, not telling anybody that it had been

dismissed and leaving an entirely misleading impression that then I, the panel and the Home Office had to correct.

Q44 Mr Winnick: You have done that, Mr Emmerson. You have given your interpretation. Obviously we have heard Mrs Evans. Would any purpose be served by escalating this, either by us or by you?

Ben Emmerson: Absolutely not.

Chair: Excellent.

Q45 Tim Loughton: Mr Emmerson, would you agree that the public perception is that this is all a bit of a mess?

Ben Emmerson: Are we speaking about the Sharon Evans issue or the inquiry as a whole?

Tim Loughton: The inquiry as a whole.

Ben Emmerson: Do you know what, Mr Loughton? I do not think that is a question for me. You are asking me my opinion as to what the public might think about the situation. It is obviously a matter of commonsense that having an inquiry without a chair is an undesirable state of affairs and that it has taken perhaps more time than some of us would have hoped to put that situation right. I do not mean to be in any way evasive, but I am counsel to the inquiry.

Q46 Tim Loughton: I am not getting anywhere with that. Since you raised it, do you think that this situation as regards claims of bullying against witnesses and counterclaims, and the unfortunate exchanges that we have been discussing have—

Ben Emmerson: Can I just pause a moment? Claims of bullying against witnesses?

Tim Loughton: Witness in this case.

Chair: Witness to this Committee.

Ben Emmerson: Oh, I am sorry.

Chair: Not witnesses to the—

Tim Loughton: I am sorry. I am talking generally; the public will view this as being a bit of a mess. Do you agree that that position has largely come about as a result of the vacuum that has been caused by the absence of a chairman?

Ben Emmerson: As I said a moment ago, it is obviously extremely undesirable that the inquiry has been without a chairman or a chairperson. Indeed, I would not have been in the position that I was in having to deal with breaches of confidentiality by Sharon Evans in the way that I did, if we had had a chairman. What I would have done is advised the chairman and she or he would have dealt with it appropriately.

Q47 Tim Loughton: I think you are agreeing with my question, that this situation has been exacerbated by the vacuum that has been caused by a chairman and you have been put in the

frame, fairly or unfairly, because there is nobody performing the role of the chairman. You have referred to yourself as a facilitator as the official title rather than chairman but, for all intents and purposes, you are performing a quasi-chairing role as well as being legal counsel to the inquiry and advising them on matters of legalities and others. Is that fair to say?

Ben Emmerson: In some respects, in relation to panel meetings at least, I had to hold the bridge, but can I say this? A very important part of the panel's work has been these listening events that have taken place around the country and, although I have attended all but one of them, they are chaired by the secretariat and not by me.

Q48 Tim Loughton: I understand that. That is not the question I was asking, though. What I am trying to get at is what power you have.

Ben Emmerson: I am sorry. I just do not even understand the question. Could you be more specific?

Tim Loughton: What power do you have to claim to speak for the panel?

Ben Emmerson: Can I do one at a time? I do not speak for the panel.

Q49 Tim Loughton: So when you issued a press release in response to Mrs Evans's claims last week that was entirely on a personal basis?

Ben Emmerson: Yes, and it is fairly clear from the terms of the press release.

Q50 Tim Loughton: In the same terms, she claims, but you would challenge her validity in doing it, that she spoke on a personal basis when she allegedly breached confidentiality by revealing certain details to the media.

Ben Emmerson: You will see from the letter you have that I am not allowed to talk about—

Chair: The Mary Calam letter.

Ben Emmerson: Yes. You will see from that letter that one of the points—I mean, I do not know whether the Chair or the Committee intend to publish that letter on the website.

Chair: Yes.

Ben Emmerson: You do? Well, then that is fine. I am choosing my words as carefully as I can. You will see that one of the complaints that had been made and was upheld was that Mrs Evans had failed to make it clear, either in her appearance on television or in her letter to the Home Secretary, that she was not representing the position of the panel. In the collective responsibility protocol, which is in the external communication protocols that you have and that are on the website, you will see that panel members are specifically warned of the need to make it absolutely clear at every stage that if they are speaking in public they are speaking on their own behalf. Not only did she not do that, but she purported to speak on behalf of other panel members in her letter and appeared to be speaking on behalf of the panel in her television interview.

Q51 Tim Loughton: The point I am trying to get at, and forgive me if I am not making it clear, is trying to ascertain your status in the absence of a chair and what action could have been taken to deal with these problems about alleged breach by one particular member, Mrs Evans, before now. What we have learnt today is we are aware of two alleged breaches of confidence, the details of which appeared in the media on 21 December, which you are ascribing to Mrs Evans, and her appearance on Channel 4 7 pm news, which I remember seeing live on 5 December, where very clearly it is down to her because she appeared in person and gave various details.

You have just said that in fact there are other breaches about which you are not able to go into detail. Could you tell us, however, whether those breaches were prior to that media piece on 21 December and subsequent to 5 December, both or neither?

Ben Emmerson: I cannot.

Tim Loughton: You cannot say anything about the confidentiality?

Ben Emmerson: No.

Q52 Tim Loughton: You have just used the phrase “all necessary clearances”. I think the problem we are now having, around the credibility of the panel, is that we do not know who runs it. We do not know what power, status or independence, as you have repeated several times, panel members have, vis-à-vis you as the legal counsel performing some sort of quasi-chairman role, vis-à-vis the secretariat, some of whom have connections with, although they are on secondment to an independent inquiry from the Home Office and other departments of Government and beyond that. To say that when your statement went out it was subject to all necessary clearances, but you cannot tell us where those all necessary clearances come from, makes us confused as to who is running the show, let alone the perception by the public and some of those survivors who, with good reason, have doubts about the validity, the independence and the credibility of the work that this panel is doing. Very unfairly, as I said last week, certain independent panel members who did this job in good faith are now being targeted as to whether they are bona fide independent and so on. Do you understand what I am saying? There is a huge confusion as to where the buck stops, ultimately.

Ben Emmerson: I have distilled what you have said into three separate questions. One is my powers; the second are the independence issues for the panel; and the third is the credibility and work of the panel.

At the moment, we are in the run-up to a decision by the Home Secretary about the appointment of a chair and the future of the panel. She has given an undertaking that she will reach that decision by this Saturday coming. I am not sure when the announcement will be, but the decision is to be reached by the end of this month, which is Saturday. Many of the problems that we have been beset by, which of course are related to the absence of a chair, will hopefully be resolved when the process is restarted one way or another with a chair at the helm.

Of course, you are right that if you set a boat on course from Dover to Calais and you do not have a helmsman there are risks associated with that. The crew may have to perform functions that they would not ordinarily have to perform, and that is what has been going on. My powers, as you call it, my job, is to give advice to the panel. I do not have any powers. I do not have a vote.

Tim Loughton: Not even a pilot?

Ben Emmerson: Well, I am holding on to the tiller in certain respects, in order to try to navigate this boat through some pretty choppy waters, but no, I am not the captain. I am not at all the captain. We do not have a captain, and that has not made the situation any easier.

Q53 Tim Loughton: Your other two points, because there is one further last thing I wanted to ask.

Ben Emmerson: You asked about the independence of the panel. Absolutely the panel is wholly independent of the Home Office, but the panel is collectively responsible to one another. That is why they made mutual undertakings to each other, to keep confidential information private and to make decisions that were collective and to stick by them. That is the protocol that Mrs Evans has so roundly and repeatedly breached. Independence does not mean that individual panel members can go off and take their own course and say whatever they want about the work of the panel in public, but it does mean collective independence from the Home Office, and that I am absolutely satisfied has been established and maintained.

Regarding credibility in the work of the panel, I have to say it is a little unfair to suggest that the panel is shambolic or lacks credibility. They have been working, as we all agree—

Tim Loughton: That is not my charge. It is the perception.

Ben Emmerson: I think it is important that we all work hard to put that perception right, because they have done an awful lot of basic groundwork to try to institutionalise—

Q54 Tim Loughton: I think the Committee acknowledged that last week. Finally, you are now saying that Sharon Evans breached confidentiality against the terms of her contract or the collective responsibility of the panel that she was subject to on at least four occasions?

Ben Emmerson: Correct.

Tim Loughton: I have quoted you two, and you have said that there were other occasions, which must be at least two. So we are talking about at least four occasions on which you claim she has breached confidentiality?

Ben Emmerson: Correct.

Q55 Tim Loughton: How many strikes before you're out?

Ben Emmerson: That is a matter for the Home Office.

Q56 Tim Loughton: Have you given advice on that?

Ben Emmerson: I am not Home Office counsel.

Q57 Tim Loughton: Do you think that her position—or anybody who had breached confidentiality that number of times—is now at all tenable in remaining a member of that panel, and why was that not dealt with before this latest outburst?

Ben Emmerson: Why was that not dealt with? I have been complained about for dealing with it. I mean, with respect, for me to be sitting here accused, as I have been, of acting inappropriately for giving legal advice and then asked why I didn't deal with it—

Tim Loughton: I did not say why you did not deal with it.

Ben Emmerson: I am counsel to the inquiry.

Tim Loughton: But you have said that you do not have the power, so are you now saying you could have dealt with it?

Ben Emmerson: I have referred it to the Home Office.

Q58 Tim Loughton: You have referred it to the Home Office?

Ben Emmerson: As I have made clear on a number of occasions, I referred the breaches to the Home Office. The Home Office have the power and duty to deal with the question of contractual breaches. You have a letter in your possession that indicates what they have done in respect of two of them, and obviously the Home Office is making its decision in the context of a situation where new arrangements are going to be put in place very shortly.

Q59 Tim Loughton: Regardless of what is going to happen on Saturday or before or not, the thought that continued breaches of confidentiality have been made by one member of the panel with no consequences to that member of the panel in terms of her contract—continued membership, therefore, rests fairly and squarely with the Home Office and ultimately the Home Secretary. Is that what you are saying?

Ben Emmerson: I am in such a difficult position.

Tim Loughton: It is a quite easy question.

Ben Emmerson: It may be an easy question, but it is quite a difficult thing to answer. You have a letter you should not have. I have been told that I am not in a position to discuss that with you. I have asked the Home Office, as the Home Secretary made clear in her letter to the Committee on Friday, whether they are prepared to lift that obligation on me so that I could discuss this with you. They have said no.

Q60 Tim Loughton: Who has said no?

Ben Emmerson: The Home Office has said no.

Tim Loughton: The Home Office or the secretariat?

Chair: No, the Home Secretary.

Ben Emmerson: I will repeat what I have just said. I am not in a position to discuss what is a confidential determination against Sharon Evans in the letter that you have seen. You have it, which puts us in a very artificial position.

However, I have made it clear that I approached the Home Office last week, when I knew I was coming before this Committee, and asked them to lift a restriction on confidentiality that exists in my contract. As the Home Secretary has explained in her letter to this Committee, the decision was taken that any questions about matters of that nature have to be referred to the Home Office. Much as I would like to discuss with you what attitude the Home Office has taken to two breaches of confidentiality by Mrs Evans, you have all the—

Q61 Tim Loughton: Why two and not four?

Ben Emmerson: Because there are only two referred to in the correspondence that you have available.

Tim Loughton: But you have referred to two more.

Ben Emmerson: I said the actions they have taken in respect of two.

Tim Loughton: No, you referred to the two specific instances.

Chair: To be fair to the witness—

Ben Emmerson: I said there are more.

Chair: Mr Loughton, I do not think Mr Emmerson gave a figure. He just said that there are more.

Q62 Tim Loughton: Chairman, the point that was made, there are two that are documented, that we have referred to, and one obviously is her because she was interviewed in person. You have then referred to others. There were others. Therefore, there has been a minimum of four breaches of confidentiality.

Ben Emmerson: One for reasons that I am not in a position to discuss. I am afraid I am in a very difficult position here. Can I be clear? Is the letter from Mary Calam going on this Committee's website?

Chair: Yes. All letters that we receive. We do not believe in suppressing information.

Ben Emmerson: In a sense then—

Chair: This is Parliament, so we put everything on the website.

Ben Emmerson: Then it is in the public domain. You know, in that case, Mr Loughton, that she was found to be in breach of her contract and why. You know what position the Home Office took in relation to that and how seriously they took it, because the letter deals with that, and how they regarded it as a serious repeated breach of her responsibilities.

Chair: Let us move on to Mr Ellis. You can come back in a minute. I do not want this to go on much longer, colleagues. That is not a reference to you, Mr Ellis.

Michael Ellis: It is uncanny, Mr Chairman, how often you say that before calling me.

Chair: Please do not think I was referring to you.

Michael Ellis: Can I give you this undertaking? I will not be as long as any of the previous questioners.

Chair: I am most grateful.

Michael Ellis: Can I give that undertaking?

Chair: I accept it.

Q63 Michael Ellis: So about half an hour each, I would have thought.

Mr Emmerson, you are very experienced counsel. You are at Matrix Chambers, are you not?

Ben Emmerson: Correct.

Michael Ellis: You have acted before in national inquiries, I understand?

Ben Emmerson: Correct.

Michael Ellis: If I can cut to the chase here. Do you have any doubts about the sincerity and the integrity of the panel that has been convened to get to the truth of these hideous child abuse allegations?

Ben Emmerson: None whatsoever.

Q64 Michael Ellis: Do you have any doubt about the sincerity or integrity of the Home Secretary, the secretariat or the Home Office generally or Her Majesty's Government as presently constituted about the sincerity and integrity of getting to the truth of these child abuse allegations?

Ben Emmerson: The secretariat are an immensely committed small group of people who have done an incredible job in a very short space of time. I am proud of the work that they have done and I am proud of them.

Can I just add this? You might find it surprising, coming from me, but I have also been extremely impressed by the personal commitment of the Home Secretary in this process. It has been very difficult. I am not suggesting that mistakes have not been made by her officials along the way and I am not suggesting the thing has been an attractive operation in the way that it has been run, but I have been surprised and encouraged by the seriousness with which she takes the entire inquiry and the complete commitment that she has personally shown to listening to victims and survivors in getting it right. It has taken longer than one would hope but, as she has made clear all the way along the line, a balance has to be struck between getting it done quickly and getting it done right this time. It came as a surprise to me that the Home Secretary would take such a close and committed personal interest.

Q65 Michael Ellis: Surprised on the grounds that there is so much else for a Home Secretary to do, not because of a personal reflection on her?

Ben Emmerson: No, not at all. I am simply saying it is a very busy office and it is very easy to delegate these kinds of arrangements to officials, but my clear impression, from having met her and discussed some of these issues with her and from what I know about the work that she has

done, is that she has taken an extraordinary personal interest and involvement in making sure that she has listened to survivors in this process and is reflecting their concerns in the structures that she is setting in place. It was not in any sense surprising for Theresa May, but rather surprising for a Home Secretary.

Q66 Michael Ellis: Do you think that the issue that has concerned you and Mrs Evans is a satellite issue that detracts from the whole essence of the child abuse inquiry?

Ben Emmerson: Yes. The issue does not concern me. It concerns Mrs Evans. My job is a legal adviser. I have given legal advice. It was correct. It has been found to be correct. As you now know, she was in breach of her contract and she has committed a series of breaches of confidentiality. Yes, her conduct has been a massive distraction and has caused a great deal of damage in the final stages of this interim inquiry.

Q67 Michael Ellis: These issues are process issues. They are satellite issues. I wish to focus, and I know this Committee does, on the victims, the survivors, and I know the secretariat and I am sure you and everybody else wants to focus on that, not on who said what, when and letters and all the rest of it. Breaches of confidentiality, very important as they are, are part of the process and we want this inquiry, as the Home Secretary does, to get underway—it is already underway, but to continue. All other members of the panel support you?

Ben Emmerson: Correct.

Michael Ellis: You say that it is 7:1?

Ben Emmerson: Yes, it is just Mrs Evans.

Q68 Michael Ellis: You said that the result of the inquiry by the Home Office was that there was nothing in the bullying or intimidation allegations?

Ben Emmerson: The words of the Home Secretary were “no evidence”.

Michael Ellis: No evidence of bullying or intimidation?

Ben Emmerson: Correct, and the panel took the same position.

Q69 Michael Ellis: Perhaps you could explain for this Committee what the difference is between briefing a witness who is appearing before a Committee of the House and coaching a witness about their evidence?

Ben Emmerson: The expression “coaching” is usually used to describe a situation where a third party tells a witness what they should say, and manipulates their evidence in order to present a picture that is something other than the full and accurate truth. There is a world of difference between coaching, which is generally improper, and the provision of quite proper preparation of a witness and the provision of advice about where the line is to be drawn.

You have to remember that the panel members who testified before this Committee were subject to a duty of confidentiality and confidence. They were stuck in the same situation that I am in. Some very careful preparation had to be gone into in order to ensure they knew what they

were able to say based on what was in the public domain and what, under their duty of confidentiality, they were not able to say. That seems to me to be the difference.

Q70 Michael Ellis: Do you appreciate, Mr Emmerson, that those watching from outside may feel that everything should be in the public domain, that nothing should be concealed from the public gaze in these matters? Can you elaborate as to why it is you feel that certain things ought to be kept confidential?

Ben Emmerson: I think Mr Vaz has drawn this distinction between individual cases, which he accepts should always be confidential, and I am sure we would all wholeheartedly agree that all individual allegations of child sexual abuse should be confidential, and process issues, which he has suggested are somehow different. In reality it is quite hard to draw the line between the two. I will just explain why, in answer to your question, confidentiality is so important. I touched on it earlier on, but panel members need to be in a position to hear views, exchange views, hear advisers give them their opinions, work through carefully the methodology that this inquiry is going to adopt, have listening events that are confidential and put that information together in order to come up with what is their responsibility, namely a clear line about the way this inquiry is going to go about its work, the institution building. If they are not able to have those discussions in confidence then they are unable to have them at all. That is the point. These duties of confidence exist so that panel members are able to exchange information and ideas secure in the knowledge that what they say is not going to end up in tomorrow morning's newspaper. That is an essential working prerequisite.

At the same time, of course, it is vital that as much information about the work of this inquiry as possible should be put into the public domain. There is a balance to be struck, but that balance is struck by the panel. It is their responsibility to strike that balance and decide what information should be public and what information should not. You will see on the website that the panel has released quite a lot of public information about its work and its decision-making, including the minutes of its panel meetings, which is an extraordinarily transparent process.

Q71 Michael Ellis: Just finally from me, based on what you have just said, is it your evidence to this Committee and your assessment that previous breaches of confidentiality have broken the necessary ability of the c panel, to continue to function?

Ben Emmerson: Yes.

Michael Ellis: That is your assessment?

Ben Emmerson: That is my assessment.

Q72 Michael Ellis: Just to clarify that, your professional assessment as counsel to the panel is that the panel is now in difficulties because it is, in your assessment, incapable of operating due to previous breaches of confidentiality?

Ben Emmerson: My professional assessment, since you ask it, is that the conduct of Mrs Evans in releasing this information has effectively rendered it impossible for the panel to have full confidential discussions with one another and has, therefore, brought about a situation where it

is simply not possible for it to operate in full. I would also say this. In doing so, while I understand that she is herself a survivor, she has done no service to the survivor community.

Q73 Michael Ellis: This is particularly important, because I understand the panel has already evidence from—

Ben Emmerson: It has heard no evidence.

Michael Ellis: It has heard from a number of sources, has it not?

Ben Emmerson: No. There are two sources, broadly speaking. First, the panel has heard advice from external advisers, and I have the list of them here. It has heard from the Deputy Children's Commissioner, Alexis Jay, the staff from the Hillsborough inquiry, and so on.

Michael Ellis: It has heard from witnesses.

Ben Emmerson: Well, "witnesses" is not the right word. We have also had listening events around the country where we have had—

Chair: Could you send us the list? Is it on the website?

Q74 Michael Ellis: Is all that work lost?

Ben Emmerson: Has all the work that has been done lost? No, not at all, absolutely not. It will provide the foundation for the incoming chair and whatever arrangements are made for a new panel.

Q75 Michael Ellis: The final question from me then. What would your advice be, as counsel, about moving forward with this inquiry now, bearing in mind that you have said what you have?

Ben Emmerson: We are all aware that the Home Secretary has set out three options. It is not for me to give advice to the Home Secretary. I make it absolutely clear I am counsel to the panel, so if you are asking me to express an opinion it is a personal opinion. I appreciate it is complicated because I am, as counsel to the inquiry, in the position to express an opinion on whether the current arrangements continue to be tenable, and I do not think they do.

Michael Ellis: Which you have made clear.

Ben Emmerson: Therefore, the only options would be for the Home Secretary to go down either the route of setting up a new statutory inquiry under the 2005 Act with a new process for recruiting both a chair and panel members, a more transparent process than was adopted last time around, or a Royal Commission with the same basic arrangements.

Q76 Michael Ellis: So new people?

Ben Emmerson: It does not necessarily mean all new people because there would be a process of appointment and, no doubt, those who are currently on the panel would be invited to offer their services. Indeed, in the letter that Mrs Evans leaked on 20 December the Home Secretary

said in terms that the existing panel members would be free to offer their services on a new panel.

Q77 Chair: Mr Emmerson, you are telling this Committee today that it is your personal view that this panel should come to an end and that one of the other options put forward by the Home Secretary should be adopted?

Ben Emmerson: It has come to an end. I am not suggesting it has to come to an end today, but you have understood me correctly. I do not see that maintaining the current arrangements, even with a new chair, are tenable with the existing panel, in large part because of Mrs Evans's breaches of confidentiality.

Q78 Chair: Is that all to do with Mrs Evans's breaches of confidentiality or are there other issues?

Ben Emmerson: No, that is the primary reason.

Q79 Chair: You would therefore not be surprised, when the Home Secretary makes her statement next week, if the panel is no longer in its current form?

Ben Emmerson: I am not going to speculate on what decision the Home Secretary has made, but I can say that the Home Office is fully aware of my views.

Q80 Yasmin Qureshi: Mr Emmerson, I think a number of the questions I was going to ask have already been covered by other colleagues, so I just wanted to come on to the final bit that you just said, in your opinion, about the particular panel. You may feel you cannot answer this question because there are sensitivities about it, but are you saying that the main crux of the reason why this panel is failing is because of the actions of Mrs Evans?

Ben Emmerson: Yes, can I just briefly come in? I did not say it is failing. Up until this point it has done an awful lot of valuable work. What I said was the panel cannot operate under conditions of confidence with a member of the panel doing what Mrs Evans continues to do.

Q81 Yasmin Qureshi: That was my using words very loosely. I was not implying that the panel had done anything wrong. I am trying to sum up what you were saying, which is that, because of what happened with the lady concerned, it has caused difficulties. As I said, you may not be able to answer this question, but if she is the reason for this panel coming to an end and all the hard work that has been carried out and if a new panel is set up, does that then suggest that she would have difficulty in getting on to that panel or there would be problems with her being on that panel, bearing in mind she is one of the victim survivors? You may not be able to answer.

Ben Emmerson: I can give you a response up to a point. First, she would not be the reason, I would not have thought, for the panel coming to an end. The Home Secretary has made it clear in the letter that Mrs Evans leaked that one of her principal concerns, and she has listened to survivors on this, is that there is a perceived lack of transparency about the way the panel was appointed. Therefore, she would have it in mind to identify criteria and have a more transparent process of appointment for the new panel. If a decision was taken to go with options two or three it would not be Mrs Evans who had brought the present situation to an end, but a strategic

decision by the Home Secretary to adopt a more transparent process for the appointment of panel members. I think you went on to ask me whether I think that Mrs Evans would be a suitable member for a new panel.

Yasmin Qureshi: Yes, and that is why I thought you may not be able to answer.

Ben Emmerson: It may be not appropriate for me to say any more.

Q82 Chair: Can I just ask a couple of closing questions? I think you were about to answer this but we moved on. In terms of Fiona Woolf's letters, did you assist Fiona Woolf in drafting her replies or give her advice?

Ben Emmerson: I am dancing my way a little bit around legal privilege here, but I think I can give you the answer to the question you want answered without breaching privilege, because I have come to the conclusion that I can tell you when I didn't give advice. The position is this. I was not responsible for the drafting of Ms Woolf's letters to the Home Secretary, although I was kept aware of the various iterations as they developed. I did not advise or amend on any part of her letters that dealt with her relationship with the Brittans.

Q83 Chair: Thank you. As you know, as soon as the Home Secretary announces her nominee for the next chair this Committee will have to conduct confirmation hearings.

Ben Emmerson: Yes. You say that, but I remain a little unclear about that process. You may well be much better informed in your relationship with the Home Office than I am. You have used the words "confirmation hearing", which is resonant of the confirmation hearings in the US Senate and the implication is that this Committee would have the final say on whether or not—

Chair: Let us leave it at pre-appointment hearing. I may be overreaching.

Ben Emmerson: I think that might be more accurate and may be overreaching at that.

Q84 Chair: We will be responsible for a pre-appointment hearing. Using your vast experience as opposed to this particular case in terms of the qualities required of a chair—and you never know, we might be on the lookout for a legal counsel to help us do this—

Ben Emmerson: Happy to be of service, Mr Vaz.

Chair: —what would you say are going to be the main qualities that are required, given the history of this but also the main qualities of those who chair such huge inquiries, because this is a very big inquiry?

Ben Emmerson: That is a very good question. You need somebody with absolute independence from the Executive, with demonstrable ability to hold the Executive and institutions to account. You need somebody with very significant forensic skills. By that I do not mean forensic science skills but the ability to analyse vast quantities of information and penetrate deep into institutions that have failed victims and survivors over the years. You need somebody who is passionate about the need to bring justice to victims and survivors and to expose the scourge of institutional failings to protect them over the years. You need someone with sufficient inspiration and commitment to the job, and with sufficient imagination to realise that we are at a very significant crossroads in which our society as a whole has a once-in-a-lifetime opportunity to look back on

these decades and decades of abuse and draw a line under it. You need someone with real courage. Those seem to me to be the main qualities.

Q85 Chair: If you were assessing a timetable would you know roughly how long this would last, given the very large amount of work that has to be gone through? We were told possibly five years.

Ben Emmerson: The Australian Royal Commission, which has similarly wide terms of reference and although, of course, more geographically diverse, not any larger by any means in terms of the scale of the problems that it needs to look into, began at the beginning of 2013 and is scheduled to end at the end of 2017. May I just add, for those who are considering the budget in the Home Office, it had a budget of AU\$0.5 billion, I think?

Q86 Mr Winnick: In reply to Mr Ellis, you said—I will not quote your actual words—that you believe the Home Secretary was fully committed to a thorough inquiry into the allegations of sexual abuse. That is not, I should tell you, one that is being questioned at all. I think all of us agree, regardless of where we stand politically, that the Home Secretary is so committed. The position however is that it does—

Ben Emmerson: Yes, and I am not a natural political ally either.

Mr Winnick: I am.

Ben Emmerson: When I say what I say I do so because I believe it to be true.

Mr Winnick: What I am saying is not in question, but would you not agree that as the situation now is the whole position, to put it bluntly, is in tatters?

Ben Emmerson: I am not going to go into the newspapers being quoted as saying the situation is in tatters, no. The situation is in transition.

Mr Winnick: It is unsatisfactory?

Ben Emmerson: If it was satisfactory it would not be in transition.

Q87 Mr Winnick: Yes, that is right. Arising from what the Home Secretary may say by Saturday, if we are going to start afresh would it not be better if all those concerned were not involved any longer, without any reflection on any of them, including Mrs Evans and yourself?

Ben Emmerson: No, I do not think that is necessary at all.

Q88 Mr Winnick: Do I take it from that answer that you would be willing to continue as counsel to the inquiry?

Ben Emmerson: I think it is very important that we have as much continuity as we can. There are some fantastic people on our panel who I have complete confidence in and would see absolutely no reason why they should not serve on a future panel. There is only one in fact that I think there are problems with.

Chair: Yes. We will not go into that again.

Ben Emmerson: No, but you are asking me about what position I would take.

Q89 Mr Winnick: Without any reflection whatsoever as far as I am concerned. I cannot speak for any other members of the Committee, but with no reflection on you from my position as such, I want to make that absolutely clear. I think you have acted with integrity, Mr Emmerson.

Ben Emmerson: Thank you.

Mr Winnick: I just want to know whether you feel that in all the circumstances, however unfair, it would be appropriate for you to be the counsel to the inquiry that the Home Secretary is going to announce apparently, as you say, by Saturday?

Ben Emmerson: It is very important that we can put behind us the sideshow that this has created. I certainly do not think, as counsel to the inquiry who provided accurate and necessary legal advice to a leaking panel member, that somehow makes me an inappropriate person to continue as counsel for the inquiry. Obviously the appointment of counsel to the inquiry, if there was to be a new arrangement, would be a matter for the Home Secretary in consultation with the incoming chair.

Mr Winnick: That is a very fair answer to my question. Thank you very much.

Q90 Chair: Thank you, Mr Winnick. In terms of your time commitments, you are starting a major inquiry tomorrow for which we wish you the best of luck.

Ben Emmerson: Thank you.

Chair: Will you have the time commitment to be able to conduct that very large inquiry? I understand you are also a judge in the International Court in respect of Rwanda.

Ben Emmerson: You were once a lawyer, Mr Vaz. We are used to sometimes having to deal with multiple commitments. Certainly the Litvinenko inquiry that begins tomorrow is a very important public inquiry, but I have a junior in that matter and my attendance in court is not required every day. We are going to be facing a period where there is—

Chair: So you have the time to do it?

Ben Emmerson: Yes.

Chair: Excellent. Thank you very much for coming here and being so clear.

Ben Emmerson: Thank you very much.