

**An investigation into the  
Department for Education and  
the Charity Commission:  
Mr U's complaint**

# Contents

Our decision .....	3
The complaint .....	5
Background .....	6
Evidence .....	8
Complaint one: DfE failed to act in accordance with its role as Principal Regulator, or otherwise exercise appropriate governance, over the exempt charity .....	9
Findings .....	9
Injustice .....	21
Remedy .....	21
Complaint two: the Charity Commission failed to undertake an appropriate investigation of his concerns and reached unsupported and poorly explained conclusions in respect of the registered charity .....	22
Findings .....	22
Injustice .....	38
Recommendations.....	39
Annex A: DfE response to Mr U in respect of its compliance with our recommendations .....	42

## Our decision

1. Mr U complained about how the Department for Education (DfE) and the Charity Commission (the Commission) responded to his serious allegations regarding the possible concealment of child sexual abuse by two related charities, one a religious congregation and the other a sixth form college (the College). The Commission's regulatory remit was in respect of the congregation and DfE's remit was in respect of the College.
2. Mr U's complaint raised serious issues. He was personally invested in it as a result of his own lived experience. The way in which organisations respond in such cases have significance for the complainant and the wider public.
3. In relation to the religious congregation, we found the Commission failed to understand or consider all the issues in Mr U's concerns that were relevant to its work and issues its guidance suggested it would consider. It did not, or was not able to, evidence it had taken all relevant considerations into account.
4. We also found the Commission could not demonstrate it took account of the types of factors its risk assessment and safeguarding guidance suggest were relevant, or factors relevant to what it told us was of significance to its assessment of the evidence and the risk. This included:
  - key facts about the relationship between the religious congregation and the College and therefore the accountability of the congregation in respect of events at the College and harm to beneficiaries, including children
  - the changing statutory framework and guidance in respect of safeguarding and the expectation on the religious congregation in respect of handling of safeguarding incidents in the years Mr U had said safeguarding incidents had occurred.
5. During our investigation the Commission has said it is concerned we are attempting to usurp its role and replace its decision. We have reviewed this feedback carefully, but consider we are not commenting on the appropriateness of the regulatory decision made by the Commission. We are identifying maladministration in the way the decision was made. We respect the Commission's discretion and appreciate that the Commission operating without maladministration, by considering relevant factors in accordance with its guidance and what it says it will do and demonstrating they have done so, might reach similar conclusions. Mr U told us he does not believe the Commission acting properly and without maladministration could possibly reach the same conclusions, but we have not taken a view on that.
6. In relation to the College, DfE did not demonstrate it had taken account of all the evidence Mr U had provided with reference to its powers as Principle Regulator and the Memorandum of understanding (MoU) it had with the

Charity Commission. It failed to properly account for its decision to take no further action on Mr U's concerns.

7. The responses Mr U received did not account for the decisions made. As a result, he has had no assurance there are appropriate structures in place to ensure appropriate governance action would be taken about charities, and sixth form colleges connected to charities, about which there are safeguarding concerns. He has no assurance the action taken by DfE and the Commission were the actions they should have taken in their roles as regulators in this instance.
8. The failures we have identified led to an injustice to Mr U because he did not gain reassurance his concerns had been dealt with. We have not seen evidence either organisation recognised the significance of Mr U's lived experience to his concerns. He therefore experienced his contact with them as distressing. He felt dismissed and a nuisance.
9. Mr U told the organisations the actions of the charities he had concerns about had, between 1993 and 2017 (24 years), delayed and made less likely him coming forward to report the abuse he had suffered. We can therefore understand why the failings by both organisations led Mr U to feel they had treated him without the expected respect and dignity, even if that was not the organisations' intentions. This has had a significant impact on him leading to an injustice which it is difficult to redress.
10. We uphold Mr U's complaints. At the provisional view stage we recommended DfE and the Commission take actions to put things right and prevent the same failings happening again. DfE fully engaged with us throughout our investigation and have already complied with those recommendations. We note Mr U told us he does not accept DfE's explanations for their actions or their apology. We have therefore set out in Annex A more about his concerns and our response about DfE's compliance.
11. We recommend the Commission should therefore:
  - apologise to Mr U for the impact of their actions on him
  - take action to address the failures we have identified
  - take measures to help prevent the same issue happening again
  - pay Mr U £1,000 in recognition of the injustice he has suffered.

## The complaint

12. Mr U complained between February 2018 and May 2020, DfE and the Commission each failed to respond appropriately to serious allegations he made to them.
13. Specifically, Mr U says he produced evidence of deliberate, serious, pervasive and persistent failure in management and corporate governance in relation to the concealment of child sexual abuse by a religious congregation who were the Trustees (not charitable trustees) of a college. The College was also an exempt charity. An exempt charity is one that is not required to be registered by the Commission and is not regulated by it. An exempt charity must still act in accordance with charity law. The Trustees of the College, the religious congregation, were also a separate registered charity (a charity registered with and regulated by the Commission). He says:
  - DfE failed to act in accordance with its role as Principal Regulator, or otherwise exercise appropriate governance, over the exempt charity
  - the Commission failed to undertake an appropriate investigation of his concerns and reached incorrect, unsupported and poorly explained conclusions in respect of the registered charity.
14. Mr U says he has been unjustly treated as a vexatious nuisance by both DfE and the Commission. He believes they dealt with his concerns inadequately, incorrectly, dismissively and negligently. He says he has been put to significant inconvenience and time by having to pursue his concerns for years longer than he should have done.
15. Mr U feels the issues raised by his concerns are also consequential for the governance of further education providers both in general and specifically in the area of child protection.
16. As an outcome of this complaint, Mr U wants to see his complaints are, or have been, taken seriously and properly pursued to a conclusion. He wanted:
  - DfE to reconsider his concerns, complaints and evidence there has been inappropriate governance of a charity running a sixth form college
  - the Commission to undertake a proper investigation into the registered charity in line with their statutory responsibilities
  - an apology for, and an acknowledgement of, the poor handling of his allegations and subsequent complaints from both organisations
  - financial compensation in recognition of the injustice caused to him by the poor handling of his allegations and subsequent complaints.

## Background

17. In 2017, Mr U learnt from a recently published memoir that a peer at his former secondary school had been subject to child sexual abuse in the late 1970s by a headteacher and priest. Mr U believed, from his own experience, there had probably been other instances of child sexual abuse at the school. At the time of the abuse, the school was founded and run by a religious congregation. At the time of the abuse, several teachers at the school were priests in the religious congregation. The religious congregation was a registered charity.
18. In the time since Mr U had attended the school, it had become a sixth form college (the College). Under revised legislation, the Further and Higher Education Act 1992, colleges became statutory corporations (corporations set up under legislation) that were governed as exempt charities (the corporations were designated exempt charities in section 22A of the Act). In practice this meant colleges were separate legal entities from the bodies which founded them. In this case the founding body was the religious congregation.
19. However, the religious congregation owned the College. It owned the land and buildings of the College, it retained the right in the College's governing document to appoint eight governors to the College's governing body and the governing document said the governing body was accountable to it. The governing document described them as Trustees.
20. Mr U contacted the religious congregation in 2017 after reading the book his peer wrote. He discovered the religious congregation had been aware of the abuse of the individual since 1993. He also discovered the religious congregation had not referred the allegations to the police, social services, the Commission, or the College for many years after. He found out the first attempt to report the abuse was probably in 2014 when the victim made a legal claim and the religious congregation needed to collect information from the College to respond. At the time of Mr U's concerns there was one governor on the board of governors who was a member of the religious congregation and had also been a teacher at the College at the time the abuse occurred.
21. Mr U was further aware that in 2008 the College had named an Arts building and an academic award after the perpetrator of the abuse. The religious congregation had held a Requiem Mass for the perpetrator when he died in 2011. Mr U had attended that Mass.
22. Of note, Mr U had long suspected he had also been a victim of grooming by the perpetrator. He told us it was only the book written by the victim in 2017 that allowed him to confirm the abuse as such. He told us the apparent absence of other victims was part of the reason he gave the perpetrator the

benefit of the doubt for many years. Mr U does not wish to dwell on his own experience, but we understand this was therefore a very sensitive and significant complaint for him.

23. In February 2018 Mr U raised concerns with DfE that members of the religious congregation had concealed non-recent instances of child sexual abuse. He said it was concerning that the members of the religious congregation retained a role and influence in the College. He said they were the legal Trustees of the College. He said he was concerned about governance issues for the College given that influence. He said he was complaining separately to the Commission about the religious congregation as a registered charity.
24. In February 2018 Mr U complained to the Commission. This was in relation to the same events, but, as indicated to the DfE, was a complaint about the actions of the religious congregation itself given its relationship with the College, rather than the governance concerns he had with the College.
25. DfE first told Mr U to complain to the College, then to the police, and later told him his complaint was not one it could look into further. In particular reference to Mr U's specific complaint to it as Principal Regulator, it said, without an explanation as to why, it would not use its powers as Principal Regulator.
26. The Commission opened a regulatory compliance case into the concerns Mr U raised with it. After concluding its enquiries, it wrote to the registered charity with statutory advice and guidance in respect of communication with the College and perceived conflicts of interest.

## Evidence

27. We have seen the records held by DfE and the Commission of Mr U's communication with them. We have seen their internal documents in respect of the decisions they made about his case and the enquiries they made. We have met with both DfE and the Commission. We have spoken to Mr U and considered his written submissions to us.
28. We use relevant law, policy, guidance and standards to inform our thinking. This allows us to consider what should have happened. We have referred to the following standards:
  - The Charities Act 2011 (specifically schedule 3)
  - The Charities Act 2006 (Principal Regulators of Exempt Charities) Regulations 2011
  - Further and Higher Education Act 1992, section 56E
  - [‘Memorandum of Understanding: The Charity Commission and DfE’](#), 2017
  - The Children's Act 2004
  - HM Government, [‘Working together to safeguard children’](#), 2006 and updates
  - DfE, ‘Keeping Children Safe in Education’, 2018
  - Ofsted, [‘Education inspection framework \(EIF\)’](#), 2019
  - Office for Product Safety and Standards, [‘Regulators’ Code’](#), 2014
  - our ‘Principles of Good Administration’, February 2009
  - the Charity Commission, [‘Safeguarding duties for charity trustees’](#), 2017
  - the Charity Commission, ‘Regulatory and Risk Framework’, February 2018
  - the Charity Commission, [‘Conflicts of interest: a guide for charity trustees’](#), May 2014
  - the Charity Commission, ‘Strategy for dealing with safeguarding issues in charities’, December 2017
  - the Charity Commission, ‘The essential trustee: what you need to know, what you need to do’.



# Complaint one: DfE failed to act in accordance with its role as Principal Regulator, or otherwise exercise appropriate governance, over the exempt charity

## Findings

### DfE's powers and responsibilities

29. DfE regulates the further education sector to ensure high standards of education. DfE has a core function to ensure an effective use of funding and a quality experience for learners. It monitors and collects data about colleges to assist with this and with decisions about when to intervene. It says it holds annual strategic conversations with every college, providing support and challenge to leadership teams, and to college corporation boards, on their ambitions and plans.
30. As regulator of the further education sector, DfE has intervention powers under the Further and Higher Education Act 1992, section 56E. It is able to intervene in one or more of the following situations:
  - the college's affairs have been or are being mismanaged by its governing body
  - the college's governing body have failed to discharge any duty imposed by any Act
  - the college's governing body have acted or are proposing to act unreasonably with respect to the exercise of any power conferred or the performance of any duty imposed by or under any Act
  - the college is performing significantly less well than it might in all the circumstances reasonably be expected to perform or is failing or likely to fail to give an accepted standard of education or training.
31. Under the legislation, DfE can take a number of actions if the above apply, including removing governors, appointing new governors or directing the governing body to dissolve. However, the DfE may intervene in other ways where it has serious concerns but does not need to take statutory action. It says it may take action such as referring colleges to the Further Education Commissioner for tailored support, ensure compliance with recommendations made by the Commissioner to improve or taking other actions such as maintaining a presence on the governing body.
32. Under the Charities Act 2011, DfE is also the Principal Regulator of sixth form college charitable corporations (we will refer to colleges for the remainder of

this report) because, in accordance with legislation, they are also exempt charities. All exempt charities must have a Principal Regulator.

33. As a Principal Regulator, DfE has a 'compliance objective' which is a responsibility to do all it can to ensure the trustees of a college are acting in accordance with charity law. The trustees are the governors on the governing body of the college. They have to act in accordance with charity law because colleges are exempt charities in law.
34. Where DfE has a concern about a college, DfE's only power as a Principal Regulator is to refer concerns about trustees (governors) of that college to the Commission to investigate. However, it may also use its own intervention powers and processes, as above.
35. DfE is only the Principal Regulator of the exempt charity that is the college corporation. It does not have a regulatory role in respect of any charity or organisation associated with a college. That is, any organisation that may have set up the college or have some other role in it, such as owning land and buildings. If those organisations are charities, they are not exempt charities. They are registered charities, regulated by the Commission. The DfE does have powers in respect of the owners of a school or college insofar as DfE can intervene in schools or colleges that are failing to meet certain standards.
36. DfE and the Commission have a MoU in respect of DfE's role as Principal Regulator. It says the key principles of effective regulation should include (among others):
  - acting in accordance with the principles of good regulation and the Commission's statutory objectives and the principles it applies to charity regulation
  - promoting standards of governance that result in effective and efficient furtherance of the charity's purposes
  - ensuring the charity complies with relevant legal and statutory requirements.
37. With particular reference to this complaint, the Commission's statutory objectives include:
  - increase public trust and confidence in charities
  - promote compliance by charity trustees with their legal duties
  - enhance the accountability of charities to donors, beneficiaries, and the general public.
38. The MoU also says both organisations operate a risk-based regulatory regime and base regulatory decisions on risk. The MoU says where DfE identifies 'potentially serious concerns' about the administration of a charity it may

invite the Commission to use its regulatory powers. The Commission may decline to do so.

39. The MoU also identifies that DfE and the Commission should liaise in respect of complaints made to them about how they 'interact'.

#### **What DfE told Mr U**

40. Mr U first complained to DfE on 12 February 2018. He said his complaint related to a historical instance of child sexual abuse. He said his complaint was about how the allegation was handled by the Charity.
41. Mr U said he was concerned with the conduct of the Charity as Trustees (see paragraph 19) of the College and appointers of the College's foundation governors.
42. Mr U specifically told DfE he had not complained to the College because of the conflict of interest of the governing body. He said he did not think it could sanction the Charity. He said the Charity should have no connection with an educational establishment given his view they were not fit and proper persons.
43. DfE replied to Mr U. DfE told Mr U colleges were autonomous bodies which had legal responsibility for compliance with safeguarding responsibilities. It told him to complain to the College and then to the Education and Skills Funding Agency (ESFA). The ESFA is an executive agency of DfE. It is responsible for allocating funding to further education colleges and for making funding agreements. It is responsible for providing assurance further education institutions are accountable for the funds they receive. That is, it is responsible for checking colleges are acting in accordance with their funding agreements. ESFA was responsible for looking at complaints about colleges (note: the role of ESFA has changed since the time of these events, but that change is not significant to the findings in this report).
44. Mr U complained to ESFA. He said he was complaining about the actions of the Charity, one member of which was also a governor of the College. He said he was concerned the Charity was not fit to hold the role it did in relation to the College or fit to have the power to appoint foundation governors. He said this was because the Charity had failed to bring to light historical sexual abuse which had prevented other victims from coming forward.
45. In response, ESFA told Mr U he had to exhaust the College complaint procedure regarding the safeguarding concerns. It did, however, pass his concerns about poor financial stewardship, management and accounting directly to the appropriate intervention team within DfE. Mr U was unhappy with this response, but in a subsequent exchange with ESFA he was told nothing more other than to approach the police.

46. Mr U contacted his MP, and over two further exchanges of correspondence, DfE told Mr U's MP (presumably in response to Mr U's statement that the governors may have a conflict of interest), that the governors of the College had a primary duty to act in the best interests of the College (not the Charity). DfE said safeguarding was the responsibility of the local authority and Ofsted. It said no concerns had been raised about the current safeguarding procedures within the College by those bodies. It said it had no role in the Charity but gave no reason why. It said its advice remained Mr U should put his concerns to the police.

### **Summary of our decision**

47. We have looked at two aspects of the way in which Mr U's concerns were handled by DfE. Firstly, whether the process followed was the right one. We found there were some aspects that were maladministration. This was in respect of:
- who in DfE should have dealt with Mr U's complaint
  - whether DfE made an appropriate consideration of risk
  - whether DfE made adequate records so it could properly account for its decision.
48. Secondly, we looked at whether DfE made its decision taking all relevant considerations into account. We found some maladministration in the way DfE took relevant considerations into account and have set that out below.

### **Handling Mr U's concerns**

49. The concerns Mr U raised with DfE were initially that the influence of the Charity and at least one of the governing body of the College (by virtue of being members and trustees of the Charity) had demonstrated they were not able to comply with relevant safeguarding duties. He said the governors had a conflict of interest. He suggested the Charity and members of the governing body had ignored harm (for example, by naming an Arts building after the perpetrator and failing to rename it when that was recognised, and failing to ensure the governing body as a whole was properly informed of the litigation in 2014).
50. 'Working together to safeguard children' issued by HM Government as a guideline for all public bodies, says governing bodies of sixth form colleges have duties in legislation in relation to safeguarding and promoting the welfare of children. It says they must have regard to DfE's statutory guidance, 'Keeping children safe in education'. Statutory guidance is guidance organisations must follow to comply with the law, unless they have a very good reason not to.

51. 'Keeping children safe in education' says governing bodies must comply with their duties under safeguarding legislation. The duties described in that document include ensuring there are appropriate processes for handling allegations of abuse, or complaints and concerns relating to child protection.
52. 'Keeping children safe in education' also says colleges that are charities must comply with Commission guidance. Commission guidance says governors (trustees) should promote an 'open and positive culture and ensure everyone feels able to report [safeguarding] concerns, confident they will be heard and responded to'. It says the Commission expects, among other things, all trustees make sure their charity is quick to respond to concerns and carry out appropriate investigations and does not ignore harm or downplay failures.
53. When we spoke to DfE, it said the advice it gave Mr U originally was in accordance with its established complaint procedure.
54. 'Working together to safeguard children' says governing bodies are responsible for ensuring complaints about safeguarding are handled correctly. They should also be reported to the local authority and other authorities such as the police, if necessary. Our Principles of Good Administration expect organisations to act in accordance with published policy and guidance. Mr U was complaining about safeguarding. DfE, by directing Mr U to complain to the College and EFSA, was strictly acting in accordance with published guidance on the handling of safeguarding complaints.
55. However, our Principles of Good Administration also say public organisations should follow established procedures unless the circumstances of the individual case require an individual approach.
56. Mr U had told DfE he was reluctant to complain to the College because of the potential conflict of interest of the governors. Further, the matter he was raising was not about a current safeguarding allegation in the sense there was any suspicion of current abuse. He has told us he was concerned about accountability for past abuse and its concealment as well as the actions and influence of the Charity and, therefore, the associated conflict of interest of College governors. He was concerned about future risk from the Charity remaining involved with the College.
57. As DfE later identified, Mr U was actually suggesting a possible systemic or governance issue within the College. His complaint called into question DfE's generally accepted position that governors would be acting in accordance with safeguarding requirements alongside their primary duty being to the College. He was suggesting there was an inappropriate influence from the Charity. While this still raised questions of safeguarding, it does not appear to be a complaint that easily falls into the remit of the local authority, or the police.

58. DfE had no regulatory authority over the Charity. Nevertheless, it had powers to affect the actions and make-up of the governing body in accordance with its other statutory objectives. It also had the power as Principal Regulator to refer the governing body or members of it to the Commission, which could also result in action taken about the governing body or individual members of it. It therefore had remit in Mr U's complaint.
59. Despite that, we have not seen evidence DfE grasped the nature of Mr U's complaint in the round, or considered whether there was a genuine conflict of interest or governance issue at the College which would make directing Mr U to the College inappropriate. We note DfE passed Mr U's parallel complaints about financial management of the College to the intervention team. DfE was already intervening in the College, which had been found to have serious governance concerns by the Further Education Commissioner. There appears to be no reason why Mr U's safeguarding concerns were not treated equally in this instance, given they were about governance and culture.
60. Given the seriousness of the issues Mr U raised and for the reasons set out in paragraph 56 to 59, we think DfE should have considered an alternative approach in accordance with our Principles. Not to have done that was maladministration.

#### **Initial consideration of risk**

61. Mr U complained to DfE in its role as Principal Regulator. The Regulators Code says regulators should act proportionately and based on risk. The MoU between DfE and the Commission also highlights the fact DfE uses a risk-based process for intervention. It says good regulatory practice is to act in accordance with the Government's and the Commission's principles of effective regulation, which include acting on the basis of risk.
62. We can see no evidence when Mr U first complained that DfE, in its role of Principal Regulator, undertook any assessment of the risk of the issues he raised before deciding how his complaint should be considered, or by whom. We note when DfE later took more substantive action on Mr U's complaint it looked at risk insofar as considering whether other regulatory organisations had any safeguarding concerns, which we will look at in more detail below (paragraphs 77 to 80). However, the failure to consider risk at the outset is likely to have contributed to DfE failures to consider where in the organisation Mr U's complaint should have been directed.
63. That was a failing to act in accordance with the Regulators Code, the MoU and the Commission's principles and was maladministration.

#### **Accounting for its decision**

64. When Mr U complained through his MP, we can see DfE did consider in more detail whether it should take action. This consideration is set out in an internal email exchange.



65. The email exchange says if DfE took the view there was no reason to refer the matter to the Commission (in its role as Principal Regulator) it should say so to Mr U. It says DfE had no other specific power as Principal Regulator, other than referring the matter to the Commission.
66. The email exchange shows DfE operational colleagues understood DfE could also choose to use its intervention powers in accordance with section 56E or in accordance with its own intervention policies (for example, non-statutory intervention such as referral to Further Education Commissioner for further assessment of the operation of the governing body). They also understood that the only way to separate the registered charity from the College (note at the time DfE did not have sufficient powers in legislation to make structural changes to colleges) was to ask the governing body to dissolve. DfE explained that because the registered charity was the Trustee of the College it would have to consult with it before taking that action anyway.
67. Dissolving the governing body would have the effect of closing the College because the land and buildings would pass back to the registered charity. DfE's records show it considered whether doing that was appropriate. DfE's records say the governors were unlikely to be the same as the ones complicit in what Mr U had alleged. There was no explanation as to why that was unlikely in the records we have seen. In fact, Mr U has explained one of the serving governors was a friend of the perpetrator, at the time of the historic abuse and a trustee of the registered charity. This fact should have emphasised the conflict of interest Mr U had raised. DfE did not respond to that point.
68. We have also seen an onward email trail sharing the above with DfE colleagues and showing staff at DfE had no concerns about the current safeguarding arrangements at the College. This was based on a recent inspection by Ofsted, and from DfE observing governing body meetings from May 2017 onwards following its intervention in the College for other reasons. DfE told us this formed its consideration of risk in this case. DfE emails also said historical allegations should be reported to the police.
69. DfE told us it can be deduced from these emails (as described in paragraphs 64 to 68) that the reasons DfE decided it should not act were: its lack of remit over the registered charity, the non-recent nature of the abuse, the chance any current governors who may have been involved in the events was small, and the current risk to students was low given no concerns raised by Ofsted around safeguarding policy. However, the considerations DfE gave to each of these issues and the weight assigned to them is not clear. It is not clear how decision makers responded to the advice sought and how they applied it.
70. Our Principles of Good Administration say organisations should keep appropriate records, be able to account for decisions and should give reasons for decisions.

The MoU with the Commission says DfE would strive to act in accordance with effective regulatory practice. That includes acting in accordance with regulatory principles (such as proportionality and risk) and the Commission's statutory objectives. The statutory objectives include increasing public trust and confidence in charities and promoting compliance by charity trustees with their legal responsibilities.

71. DfE's email trail does not fully account for the reasons why it was not using its powers as Principal Regulator or intervening (other than by seeking a statutory intervention to ask the governing body to dissolve), as its emails indicated it should do. DfE's records do not evidence in any detail:
- why DfE had no concerns about the compliance of individual governors with their legal responsibilities in respect of their involvement in the possible concealment of child sexual abuse. Mr U alleged that had occurred as recently as 2017. DfE's emails appear to rely on present governors being involved in the events as 'unlikely', with no obvious basis for that
  - address the issue of conflict of interest of individual governors given their relationship with the Charity and their obligations in respect of that in charity law
  - address the potential risk of the Charity retaining influence over the College through its connection with it and with its ability to appoint foundation governors.
72. We recognise the internal email exchange implies individuals within DfE may have thought through some of these considerations. However, the actual record (the email trail) and the explanations to Mr U provide no assurance of that. DfE told us it accepted it would be helpful to have a more robust decision-making document in cases such as this for better decision making and a more robust audit trail. We are grateful for this acknowledgement, although even if DfE had recorded the email trail, that would not have in itself ensured it took account of everything bulleted above. A robust decision-making document would nevertheless aid decision-making and ensure all aspects of the matter were considered.
73. DfE's reasoning in the email trails is not all reflected in the decision sent to Mr U. The letters sent to Mr U said only:
- the governing body were responsible for meeting their safeguarding responsibilities and their first duty was to the best interests of the school (not the Charity)
  - there were no current safeguarding concerns at the appropriate authorities with oversight of safeguarding (the local authority and Ofsted)
  - historical allegations of abuse were for the police



- DfE had no role in the Charity.
74. These explanations do not explain all the considerations in the email exchange. In particular, these explanations fail to fully explain why a referral to the Commission would not be appropriate in accordance with the MoU or, alternatively, DfE’s intervention policy and practice as set out in the email exchange. It did not provide any explanation about its lack of remit in the registered charity as opposed to the exempt charity and how the two related and therefore appeared utterly unconcerned about the potential influence of it on the College.
75. Our Principles of Good Administration say organisations should keep appropriate records, be able to account for decisions and should give reasons for decisions.

For all the reasons in paragraphs 71 to 74, we do not think DfE kept appropriate records of its decision that accounted for it. We do not think it gave adequate reasons for its decision to Mr U. We therefore do not think it acted in accordance with our Principles and that was maladministration.

76. Our Principles also say people should be dealt with sensitivity, bearing in mind their individual needs. DfE’s response lacked empathy and its failure to account for its decision and provide reasons failed to meet Mr U’s clear need for assurance in respect of safeguarding governance.

#### **The considerations DfE took into account when taking its decision not to act on Mr U’s concerns**

77. DfE then considered what powers it could use in Mr U’s case. The only powers it then considered using were to refer the governors to the Commission in its role as Principal Regulator or use intervention powers to ask the governing body to dissolve to prevent the Charity from influencing the College (about which it would have to consult with the Charity anyway). It did not consider using other interventions in accordance with its usual practice and policy and the email trail provides no explanation as to why.
78. During this investigation, DfE clarified to us it was already using its intervention powers. It told us the College was already subject to:
- monthly case conference meetings
  - a published Financial Notice to Improve, which detailed specific actions the college (including governors) was required to adhere to
  - several Further Education Commissioner interventions and monitoring visits
  - observer capacity at all governing body meetings
  - an external review of governance

- detailed regular financial reporting.

Running in parallel, DfE was involved in structural considerations for the college, which included:

- work on a federation bringing further external views on the college and its governance
- a reducing role for the Charity, as they ceded power to appoint governors, before the college was decatholicised through Canon Law and statute, removing any religious powers in terms of governor appointment.

79. However, despite the actions that were being taken we have seen no evidence DfE considered the safeguarding concerns Mr U raised should inform that intervention.
80. The MoU with the Commission says in its role as Principal Regulator DfE would strive to act in accordance with effective regulatory practice. That includes acting in accordance with regulatory principles (such as proportionality and risk) and the Commission's statutory objectives. The statutory objectives include increasing public trust and confidence in charities, promoting compliance by charity trustees (in this case the governors) with their legal responsibilities and primary duty to the charity (in this case the College).
81. When we spoke to DfE during our investigation it told us there was nothing linking the historical act of abuse to the current governing body. It also said the current governing body was under close scrutiny and there were no current safeguarding concerns. The DfE email trail we have seen says it is unlikely the governors were the same as at the time of the abuse. However, there is nothing in the email chain that explains why DfE concluded that and Mr U had provided information that a serving governor had been a close friend of the perpetrator at the time of the abuse and had taught at the college at around that time.
82. The considerations DfE took into account did not wholly fulfil the role that DfE set out for itself in the MoU in its role as Principal Regulator. There were a number of relevant considerations for DfE in deciding whether to use its powers as Principal Regulator (to refer individual governors or the whole governing body to the Commission) in respect of the expectation it would act in accordance with the Commission's statutory objectives and deciding whether to act on the basis of a robust assessment of risk.
83. Those considerations include issues we have seen were considered by DfE as to whether there were any current safeguarding concerns at the College and whether there were any current governance issues.
84. They also include issues we have not seen were considered by DfE, which concern the question of whether the governors had a conflict of interest, were complying with their duty to the College, and with their legal

responsibilities. It is difficult to see how, without a consideration of these issues, DfE could adequately weigh up whether Mr U's complaint should be referred to the Commission:

- evidence in respect of whether historical abuse was covered up by the registered charity, by whom and at what time
- the actions of the governing body and individual governors when the allegations were known about in 2014 and 2017 (whether they took action to minimise harm by, for example, renaming the Arts building) and whether any potential conflicts of interest were declared or managed at that time or subsequently
- the influence of the registered charity on the foundation governors and the College and whether (given the above) that represented a future risk to students or the College.

85. We have similar concerns regarding DfE's assessment of whether it could take any other intervention action. We note the only intervention the DfE considered was how to remove the influence of the registered charity entirely. We accept it would only do that in the most serious of cases. However, we see no reason why it would not consider using other actions if necessary. DfE's own policies allow for non-statutory intervention. The email trail provides no evidence that DfE considered using those actions specifically.
86. Again, the only reasoning DfE provided to us for not considering whether to use its intervention powers related to the historic nature of Mr U's concerns and the current lack of safeguarding concerns.
87. While the historical acts of abuse were the starting point for Mr U's concerns, Mr U was saying his evidence suggested individual College governors, under the influence of the registered charity, had been complicit in the cover up of at least one instance of child sexual abuse from 1993 up until 2017. More specifically, he was saying the governors had failed to act in 2008 when an Arts building was named after the perpetrator, and again after 2014, when the governing body was told about the abuse.
88. Mr U's concerns and evidence were about current governors and recent senior managers and governors, and the influence of the registered charity. His concern was about the risk of any incident of abuse happening in the future. It is not therefore clear why DfE determined the issue was historical.
89. The lack of consideration as set out in paragraphs 84 and 85 would similarly have been relevant to whether any other intervention action would be appropriate.
90. Our Principles of Good Administration say when making decisions organisations should take account of relevant considerations, discount

irrelevant ones and balance the evidence appropriately. They say organisations should account for their decisions. For all the reasons above, DfE did not take all relevant considerations into account or balance the evidence appropriately. We do not think its documentation accounts for its decision. We consider that to be a maladministration.

## Injustice

91. Mr U has not been given a properly made or explained decision in response to his concerns. That is a significant injustice to him. He is personally very invested in his complaint and in seeing safeguarding matters are dealt with appropriately. DfE's response gave him no confidence it was able to exercise its regulatory responsibilities in respect of further education colleges and safeguarding.
92. In addition, DfE's response necessitated a much longer correspondence from Mr U than it should have done. Mr U first complained in 2018 and it is only with the issue of our final report (some five years later) that he should receive a comprehensive response to his concerns.
93. Mr U says given his lived experience he should have been entitled to a swift and satisfactory conclusion to help him bring some closure to the matter. Our Principles of Good Complaint Handling in place at the time said complainants should be dealt with sensitively and promptly. In the time between his complaint and this report Mr U has told us that the religious congregation, at short notice, withdrew from the governance of the College and that soon after that the College finally became insolvent and was closed. He says they have done this without any comment, or action if that had proved necessary, from DfE about Mr U's concerns. Mr U is shocked DfE has appeared to him to have no concern this has occurred.
94. Mr U says he has been treated as a nuisance. We can see why he has formed this view. The responses DfE sent him were not clear about why DfE was taking no action and did not demonstrate any concern or assessment of risk. They did not demonstrate an understanding of the gravity of the issues Mr U made or his personal investment in them.
95. It is clear the response DfE gave Mr U has caused him significant emotional injustice and inconvenience over a number of years.

## Remedy

96. During this investigation, we shared our view with DfE and invited it to take action to remedy the maladministration we had found by reviewing its decision in this instance and also by undertaking an audit of similar cases to implement wider lessons learnt. DfE accepted this invitation. We have set out in Annex A its response as well as Mr U's comments on that and our view. We have decided DfE took a reasonable approach to our recommendations and complied with them.

# **Complaint two: the Charity Commission failed to undertake an appropriate investigation of his concerns and reached unsupported and poorly explained conclusions in respect of the registered charity**

## **Findings**

### **Summary of our decision**

97. We have looked thoroughly at all the actions the Commission took during its assessment and consideration of the concerns Mr U had raised. Many of these, particularly the type of evidence the Commission gathered, and the regulatory outcomes it pursued, were in accordance with its operational guidance and policy. However, there are some of the Commission's actions which were maladministration.
98. When coming to our decision we have been mindful of the limitations of the Commission's role as a regulator both as a statutory body and as a body which receives more concerns than its funding would allow it to investigate. We have therefore first set out below the key aspects of its role under the heading 'The Commission's powers and responsibilities', and its specific remit in this case under, 'The Commission's remit'. We have then set out the reasons for our decision.

### **The Commission's powers and responsibilities**

99. The Commission is a regulator of the charities required to be registered with it (registered charities). In this case, the Commission was responsible for regulating the Charity.
100. The Commission describes itself as a risk led regulator and, in accordance with the Regulators Code the Commission should act on the basis of risk. The Regulator's Code also says regulators should use resources in the most efficient and effective way, act proportionately and consider using advice and guidance as a first response.
101. The Commission's general objectives are set out in the Charities Act 2011 and include promotion of public trust in charities and the compliance of charities with the law.
102. To achieve those objectives, the Commission's general functions include:
  - encouraging and facilitating the better administration of charities

- identifying and investigating apparent misconduct or mismanagement in the administration of charities and taking remedial or protective action.
103. The Commission is not a prosecuting authority but does have a range of statutory powers. These are set out in its Regulatory and Risk framework. These include (but are not limited to) specifying action to be taken by those in or connected to a charity, issuing official warnings, or disqualifying a trustee. The Framework makes clear the Commission's role is aimed at engaging and enabling trustees in the good administration of their charities.
  104. During this investigation the Commission stressed it can only look at whether charity trustees have complied with their duties under charity law, and it does not carry out a more general inspectorate function. The Commission also made clear it is not a complaint service and cannot look into individual allegations of interpersonal abuse, which is a matter for the criminal system. However, it does use the complaints and concerns brought to it by the public to look into potential regulatory issues with a charity. Mr U has equally made clear he was not asking the Commission to do anything outside of its powers and remit.
  105. Charity trustees (trustees) are responsible for the administration of charities. The Commission issues guidance for trustees about what good administration and management of a charity is. The guidance says a trustee must act in their charity's best interests. This includes things such as doing what the trustees (and no one else) decide will best enable the charity to carry out its purposes, making balanced and adequately informed decisions, and avoiding a conflict of interest with the duty to act in the best interests of the charity.
  106. Of note to this investigation, the Commission describes itself as a risk led regulator. It uses risk in all its decision-making. That is, it uses the risk rating it gives a concern to decide whether to investigate it and to decide what regulatory action to take. It has this in common with many organisations that have to make decisions about how to prioritise work.
  107. The Commission assesses the risk of the concerns it receives in accordance with its Regulatory and Risk Framework. In assessing risk, the Framework says the Commission considers the impact and likelihood of the risk. It says where harm has already occurred the Commission will assess the impact of the harm done and the likelihood of a future risk. The Framework says risk can be mitigated by factors such as recent regulatory engagement with the charity, and evidence the charity is engaging with the Commission.
  108. The Commission gives concerns carrying the highest and live risks priority and told us they may be investigated through a statutory enquiry. Some concerns, which the Commission deems as low or no risk are not investigated. Concerns the Commission thinks are moderate to high risk are passed to regulatory compliance teams and are dealt with in order of priority and receipt.

109. During this investigation, the Commission told us how it defined ‘live risk’ in practice. It said ‘live risk’ specifically refers to cases where there is an urgent or unfolding risk that requires immediate intervention or escalation to prevent harm.

### **The Commission’s remit in this instance**

110. Mr U raised issues about a religious congregation that was a registered charity. However, his concerns were rooted in the relationship of the registered charity with the College, a separate exempt charity.

111. The Commission only had a role in relation to the charitable trustees of the Charity (the religious congregation) and their activities. Those activities included the religious congregations’ involvement in the College. The Commission did not have any remit over the College (the exempt charity) or its governing body, and only would have if DfE had referred the governing body to it.

112. The relationship between the College and Charity helps to understand the reach of the Commission’s remit and the factors relevant to its decision making and assessments of risk. We have set out below key information which we think helps define that relationship:

- the religious congregation that is the Charity were the founding owners of the school that later became the College. They were the majority of the teaching staff of the school. This was the situation when the non-recent abuse which Mr U’s concerns related to occurred. Due to changes in educational legislation in 1992, the school became the College. The College and the Charity were then separate legal entities. The College was then an exempt charity and its governing body were the charitable trustees responsible for it
- despite the change in education legislation, the Charity remained the owners of the College’s land and buildings, which the College benefitted from by using them free of charge
- the College’s governing document (that we have seen) defines the role of the Charity as Trustees (separate from the charitable trustees) of the College, to whom the governing body was accountable for both conducting the College and determining the Roman Catholic character of the College. The Trustees/the religious congregation also retained the ability to appoint the majority of the governing body of the College
- a Further Education Commissioner’s report from 2019 says, ‘ultimate control, oversight and ownership’ of the College rested with the Charity as the Trustees. (Note: while the Commission has rightly pointed out the FE Commissioner’s report post-dates some of the concerns Mr U had, there is no evidence the relationship between the two organisations were



substantially different from the point the school became the College up to the date of that report)

- DfE told us during this investigation if it were to take any intervention action in the College (for example, to instruct the governing body to dissolve), it would have to consult with the Charity (as the Trustees and ultimate owners) before it did so.

## **Our decision**

113. We have considered how the Commission applied its own risk based approach in relation to Mr U's complaint. We have seen the Commission did not act in accordance with its risk assessment and safeguarding guidance when it made key decisions to open and close its case looking into Mr U's concerns. We have set out below why that is under two headings:

- the Commission's first assessment of risk and decision to close its case
- the Commission's final assessment of risk and decision to close its case.

### **The Commission's first assessment of risk and decision to close its case**

114. On 11 February 2018, Mr U sent his concerns to the Commission. He said the trustees of the registered charity (the Charity) had failed in their duties. He said they had:

- failed to report an instance of child sexual abuse to the police in 1993 or otherwise act upon it
- allowed the College to name a College Arts building after the perpetrator in 2008
- held a requiem Mass for the perpetrator when he died in 2011, which was attended by Mr U (who had also been a victim of abuse by the perpetrator)
- failed to bring the abuse to light over a number of years, including failing to report it to the Commission
- failed to respond to his complaint, about these events, which he made in 2017.

115. Mr U said he thought the actions of the trustees of the Charity showed them to be putting income streams and their reputation ahead of their duties as trustees to donors and beneficiaries. He said their actions both at the time of the abuse and subsequently were putting beneficiaries at risk of harm, both physically and mentally.

116. On 2 May 2018 the Commission told Mr U it was aware of the situation he had raised concerns about and was monitoring it. It closed the case.

117. We have seen the Commission's risk assessment of the concerns Mr U sent to it in February 2018. The Commission described his concerns as 'the trustees did not appropriately deal with allegations of historical abuse'. The Commission categorised the risks associated with that concern on its risk assessment tool as 'safeguarding (historic)', and 'reputational damage' (presumably relating to the publication of the book in 2017, about which the charity had reported a serious incident). The Commission's risk assessment tool gave an amber risk rating overall. This was changed to green (low risk) by the member of staff assessing the case, which appears to have informed the decision to close the case without further investigation on 2 May 2018.
118. The Commission's decision document dated 2 May 2018 gave the Commission's reasons for closing the case:
- 'Complaint from former pupil at school, he himself did not suffer abuse but he does think he was subject to grooming behaviour. The charity have submitted an RSI [serious incident report] in December 2017 regarding historic sexual abuse. we are already engaging with them ... There is a b/f to check for an update on 30/6/2018. In my view this case is low risk the charity are in contact with us and providing updates.'
119. This decision document and the risk assessment tool (paragraph 117) were the only documented record of the risk assessment process as applied to Mr U's complaint.
120. During our investigation, the Commission told us the factors it considered in its risk assessment to decide the concerns Mr U referred to it were low risk were:
- there was no live risk requiring immediate escalation, immediate intervention and/or other emergency action by the Commission or others
  - the incident of sexual abuse was historic, and the perpetrator was deceased
  - the trustees had submitted serious incident reports in November 2014 and December 2017
  - the Commission was engaging with the trustees about the serious incident reports, and they were providing regular updates
  - the December 2017 serious incident report had said the publication of the victim's book in September 2017 had prompted two other individuals to contact the Charity, including a historic allegation of inappropriate behaviour
  - the further allegation of historic abuse was being investigated by the Charity's diocese safeguarding coordinator, who had reported it to the authorities.

121. The Commission said the reasons above led it to be satisfied the Charity was engaging with the Commission. It said the Charity referring the most recent allegation to appropriate authorities was sufficient for it to decide the trustees were currently in compliance, and able to comply, with relevant law and guidance.
122. We have seen the serious incident paperwork the Charity sent the Commission in 2014 and 2017 (before Mr U's complaint, but relevant to the issues in it). By the time of the Commission's risk assessment and decision on 2 May 2018, the Charity had given the Commission the following information in that incident report and updates:
- the publication of the book led two people to contact the Charity
  - the Charity had received one further allegation of historical abuse by a teacher at the school, allegedly committed by a different perpetrator from in the book (this was in fact Mr U's allegation)
  - the allegation had been referred to the authorities and was being investigated by the police
  - the Charity had not had any further contact from the second person. The Charity did not describe what the contact from the second person was about or what it had done in response.
123. The Commission showed us its internal safeguarding risk assessment guidance. That gives guidance to staff about what they should consider when making an assessment of risk in safeguarding cases. This is not publicly available, so we have not quoted from it here. However, it reflects the advice the Commission gives to charities about safeguarding. Broadly, if charities follow the Commission's safeguarding guidance, then the risk the Commission assigns to a concern following any incident of abuse or failure in safeguarding practice is likely to be lower.
124. The guidance reflects that trustees should take action to minimise safeguarding risks by, for example:
- having effective policies in place
  - reporting incidents to the authorities
  - reviewing safeguarding procedures regularly and when an incident occurs
  - submitting a serious incident report to the Commission if an incident occurs.
125. The guidance also says factors like the perpetrator remaining connected to a charity, or if the incident is recent are likely to increase the risk.
126. We have also seen the Commission's internal guidance for staff in respect of verifying information from charities about their handling of safeguarding

incidents. This says, in most cases, when a safeguarding concern is referred to the Commission, its initial assessment of the concern should involve verifying whether trustees are acting in accordance with the Commission's guidance to Trustees. The internal guidance says verification of what the charity has done could come from the type of information trustees are advised to submit in the Commission's guidance on submitting a report of a serious incident (RSI) to the Commission. This includes:

- which of the charity's policies or procedures relate to the incident and whether they were followed
- what steps the charity has taken to deal with the incident
- what steps the charity has taken to prevent similar incidents
- where applicable, the charity's media handling or press lines, including a link to a press release if available.

127. We have not seen evidence the Charity provided all the details above in its RSI or that the Commission verified any of the information the Charity did send with its RSI before concluding the case was low risk. We have not seen anything specific about this case that would not lead it to be verified in the same way as 'most cases' the guidance refers to. In particular, there is no evidence the Commission:

- saw the Charity's safeguarding policies and procedures
- knew the steps the Charity had taken to prevent similar incidents (or what the incident fully entailed in respect of the second person who contacted the Charity)
- knew the Charity's media and press lines.

128. Further, we have not seen evidence the Commission took account of the fact Mr U was claiming there were incidents and failures by the Charity, which the Charity had not reported to the Commission in the RSIs.

129. In particular the Commission's risk assessment did not capture the concerns that:

- the Trustees failure to act in respect of safeguarding at key points in 2008 (naming of the Art block), 2011 (requiem Mass for the perpetrator) and in response to his complaint in 2017
- conflicts of interest of current Trustees. In respect of that he said the trustees were protecting reputation and income over the best interests of the charity, its donors (who were donating without knowledge of the historical abuse) and its beneficiaries, which included the College and past and present students of it.

130. The Commission reversed its decision about closing the case after Mr U complained about it. The Commission told us it took a ‘pragmatic operational’ decision to reopen Mr U’s case. It said it therefore did not need to reassess the risk at this time. However, we have seen evidence that a safeguarding specialist within the Commission advised the caseworker to look at whether appropriate policies and procedures were in place at the Charity and whether Mr U’s complaint had been dealt with appropriately. That advice appears to be in accordance with the Commission’s internal guidance about the assessment and verification of safeguarding complaints as set out above. It appears to us that it could have affected the assessment of risk as made by the Commission on 2 May 2018 and therefore should have been taken into account initially or a new risk assessment done in light of the decision to take that information into account.
131. For the reasons above, with regard to the assessment of risk and prioritisation of the case, up to the decision of 2 May 2018, we have seen the Commission took many relevant considerations into account (paragraph 120). However, omitting to take the information in paragraph 127 to 129 into account means it did not take all the relevant considerations that its own risk and safeguarding specific guidance suggests it would take into account (such as factors that would affect the assessment of harm done and the possibility of future harm to beneficiaries and charity). It also did not verify the information it had in accordance with its safeguarding guidance, which would have given it further relevant information. The Commission did not therefore consider the risk in accordance with its Regulatory and Risk Framework (paragraph 107).

### **The Commission’s final decision to close its case**

132. After its compliance case had concluded, the Commission wrote to Mr U and said it had fully assessed Mr U’s information about historic allegations and the allegation there was a cover up of the abuse.
133. The Commission said it had given the Charity advice and guidance in respect of communication. It said naming the Arts building was the result of issues with communication between the College and the Charity. The Commission said a conflict of interest could not be proven, but it had provided the Charity with advice and guidance about a perception of conflict of interest. The Commission said it was satisfied with the Charity’s current safeguarding arrangements. Finally, the Commission said Mr U had a response to his concerns from the Charity, albeit not one he agreed with.
134. Mr U complained to the Commission that its response did not address his serious concerns. In particular, he said the interests of beneficiaries and donors had been disregarded. He said the Commission had not addressed the ‘continuing culture of secrecy’ and the ‘roles of individuals [trustees] during the period of the cover up and to the present day’.

135. When looking into safeguarding concerns, the Commission says it will ensure trustees are properly managing risk to current and future beneficiaries by, for example (this is not the entire list):

- establishing trustees have handled allegations appropriately
- making sure trustees have adequate safeguarding policies, procedures and other appropriate measures in place to safeguard the charity and its beneficiaries checking whether measures are being implemented in practice
- checking trustees have effective review mechanisms in place to assess the adequacy of the charity's safeguarding policies and practices.

136. As we have described in paragraphs 107 to 110, the Commission bases its decisions on assessment of risk. It also has safeguarding specific risk indicators (paragraph 123 to 126) which include whether the Trustees are dealing with the matter and whether the Trustees are taking the lead on recognising and managing the safeguarding incident. If trustees are putting safeguarding into practice the guidance says this lowers the risk.

137. The Commission's decision document dated 29 January 2019 set out the reasoning behind its decision to close the case into Mr U's concerns with regulatory advice and guidance. It says:

- the issues were historic and there was no immediate risk
- the Charity had responded to all questions from the Commission
- the Charity dealt appropriately with a recent historic safeguarding allegation made by Mr U against another member of the Charity
- there were issues with communication between the College and the Charity which had been rectified
- there were possible issues with conflicts of interest but the historic timeframe did not allow for this to be confirmed
- there were issues with the Charity in that the College governors were not properly informed of the historic safeguarding incident, and a College building was named after the perpetrator, which led to unwanted media attention and a number of governors resigning at once, but this was to do with communication
- it was not proportionate to look further into the matter because the perpetrator and the trustee accused of concealment were both now dead
- the main issue for the Commission was reputational damage to the Charity and advice and guidance would be given.

138. The Commission's decision document shows the Commission thought the case was low risk and did not connect the failures in communication the Charity

had acknowledged, or potential conflict of interest it found, with any intent by the Charity to conceal the non-recent abuse. It does not appear to have considered, as Mr U had contended, there was any failure by the Charity to recognise or deal with the historic incident, or a failure to recognise or deal with any of the associated safeguarding incidents such as the naming of the Arts block from then on. Failing to deal with safeguarding incidents and learn from them are issues the Commission's guidance says might increase the risk of a case. We have therefore looked at the Commission's assessment of risk.

139. During our investigation, the Commission re-iterated it drew its conclusion that the case was low risk from the evidence it had:
- the Charity's handling of Mr U's recent abuse allegation about a different priest in the congregation
  - the Charity's evidence about how it had handled the instance of historic abuse
  - it would not be proportionate to investigate further because the perpetrator and the Trustee who apparently knew of the abuse were dead
  - the historic timeframe did not allow for conflicts of interest to be evidenced.
140. Our Principles say organisations should take all relevant considerations into account and balance the evidence when making decisions. We have looked at each of the four points above with that in mind.

### **The Charity's handling of Mr U's recent allegation**

141. We have seen the Commission spoke to the police and the Charity about the Charity's handling of Mr U's recent allegation about a different college priest and teacher. It received information from the police it had been handled appropriately. Mr U has not disputed that it was not. However, he notes his allegation was made to the diocese safeguarding co-ordinator rather than the Charity and during the time the Commission were looking into the Charity. Nevertheless, we recognise this would be a relevant factor to the Commission assessing that the Charity were putting safeguarding policy and procedure into practice, which should have been balanced with other factors in accordance with its guidance.

### **How the Charity handled the instance of historic abuse**

142. The Charity told the Commission only one trustee, who had died in 2018 shortly after Mr U made his complaint to the Commission, had been aware of the abuse from 1993 (when the victim came forward) up until 2014 when the victim made a legal claim and papers needed to be sought from the College. The Charity said the one trustee was 'respecting the confidentiality of the victim' up until 2014.



143. The safeguarding representative of the Charity who met the Commission, told the Commission he had told the Chair of the College governors about the abuse in 2014. The Charity said the Chair was a good friend of the perpetrator and was 'in denial'. The Charity said the Chair did not tell the rest of the governors, as it had expected him to do. It said even a college governor who was also a friend of the perpetrator and a trustee of the Charity did not know or was not told. The Charity said its trustees had not checked all the College governors had been informed (even the member of the religious congregation referred to above), and recognised communication had been poor.
144. The Charity also said poor communication was also the reason for the Arts building being named after the perpetrator in 2008. It said a trustee of the Charity (but did not specify who) apparently asked the College not to name the building. It said the trustee did not give the College a reason why, and the College did it anyway. The Charity did not do anything to stop or change that.
145. The Commission also asked for information from Mr U. In enclosures with his letter dated 20 December 2018, Mr U said the Charity was inappropriate to still insist it was acting as the victim had wished from when the victim told the Charity about the abuse in 1993 up until 2017. Mr U said the Charity had not recognised that was not an appropriate thing to do for all that time.
146. Mr U said the naming of the Arts building in 2008, failing to make the College governors aware in 2014, and holding a Mass when the perpetrator died in 2011 were all events that could not reasonably be caused by the victim's wishes for confidentiality. He said the Trustees collective failure to bring to light the abuse at these points in time (and in any event up until it was forced to in 2014 by the legal claim and in 2017 by a book) allowed harm to other beneficiaries by failing to generate a culture in which others would come forward. He said the Charity had failed to protect other potential victims and, indeed, caused other victims, in which he included himself, harm by these failings.
147. In summary, Mr U made clear his concerns were:
- failures by the Charity Trustees to adequately respond to shortfalls in safeguarding practice (in 2008, 2011 and 2014), review or learn from them (in accordance with Commission guidance) by inappropriately relying on the confidentiality requested by the victim in 1993, or the inaction of the College
  - the failure of the Charity to respond to his complaints in what he believed to be an open and positive way by insisting only one Trustee had ever known of the abuse up until 2014, when that was highly unlikely to have been true.



148. When we spoke to the Commission it told us it balanced the issues Mr U raised against the other evidence it had, even if this was not demonstrated in its decision document. It said this led it to the conclusion the case was low risk. It said it decided the evidence showed there had been no mismanagement or misconduct, that the issues it found were ones of communication and perception of conflict of interest, and the Charity would comply with its duties.
149. In paragraph 139, the second and third bullet points show that the Commission gave weight to the Charity's explanations that only one member of the congregation knew of the abuse and that they were respecting the confidentiality of the victim by taking no action until 2014 when prompted to by a legal claim. The Commission told us:
- 'If sexual abuse is reported to charity trustees in 2023, we would not now accept keeping the confidentiality of the victim as a reason for not reporting the abuse to the relevant authorities. In 1993 there was no requirement for a trustee to report such things to the Commission. We weighed and considered Mr U's evidence against the backdrop of the relevant standards in place at the time.'
150. In respect of the events of 2008, 2011 and 2014 when the Trustees failed to ensure further harm was prevented by failing to co-ordinate with the College about the non-recent abuse, the Commission also told us this was not misconduct or mismanagement and accepted the Charity's explanation that only one Trustee knew of the abuse and other issues were to do with communication. It told us:
- 'It is our view that there was no failure of trustee duties in relation to these events, other than poor communication. Although the Charity maintained a presence on the College's governing body, the two were legally separate entities. Decisions about the arts block were, therefore, for the governing body to make and the college was regulated by the Department for Education.'
151. It appears to us these explanations do not demonstrate the Commission balanced relevant factors to assess things its guidance says it will when assessing the risk of a case. In particular, this includes whether a Charity is managing and learning from incidents (paragraph 138).
152. We accept the Commission should judge charities against the standards in place at the time. However, the concern Mr U raised was not solely about the expectation charities should refer allegations of abuse to the authorities and to the Commission in 1993. His concerns were about an ongoing (and deliberate) failure by the Charity to comply with relevant safeguarding standards up until his complaint to them.

153. The safeguarding guidance and legislation changed from 1993 when the Charity knew about the abuse, up to 2018 when Mr U complained to the Commission. For example, the Working Together guidance was issued in 1991 and updated regularly from then on. By the time of the events in 2008, 2011 and 2014 Mr U highlighted to the Commission, this guidance said social services should be contacted about instances of abuse and confirmed that information could be shared with other appropriate organisations without consent for the safety of children. Similarly, the Children’s Act 2004, brought in the requirement to report. The guidance also gives a more general expectation that organisations had responsibilities to keep people safe from harm.

154. The evidence the Commission has shown and told us it had when determining the case was low risk was that the Charity was using the fact that only one Trustee in the Charity knew of the abuse and the Charity was respecting ‘confidentiality’ to explain a number of its more recent actions. The Charity used this reason for not doing anything about the original incident of abuse, or subsequent safeguarding incidents. However, we have not seen evidence that explanation could be supported by safeguarding guidance in place at the relevant times (or, as we will see below, the relationship between the two organisations).

The Commission said it would not now accept that reasoning if an incident occurred now. However, the guidance changed from 1993 to 2008, 2011, 2014 and 2017. Those changes are relevant to considering whether the Charity’s explanation for its inaction, and that of its Trustees, throughout 1993 to 2017 is reasonable, and therefore relevant to an assessment of risk on which the Commission was making its regulatory decision. The Commission’s records and explanations to us do not demonstrate it took that into account.

155. The Commission’s response in paragraph 150 about the events in 2008, 2011 and 2014 being issues of communication and therefore low risk (that the two organisations were legally separate entities) would also appear to us to fail to take into account relevant factors about the relationship between the Charity and the College that are relevant to an assessment of whether Trustees are acting in accordance with their duties and an assessment of risk to beneficiaries and the charitable sector (in accordance with the Regulatory and Risk Framework).

156. From its explanation in paragraph 150, the Commission appears to say the extent of the role and influence of the Charity in the College is a relevant factor in how the Commission assessed the evidence in respect of the Charity’s actions and assessed the risk.

157. However, the Commission’s conclusion that the College and the Charity were two separate legal entities and therefore the events in 2008, 2011 and 2014 were a matter for the governing body, and therefore only a matter of communication for the Charity, does not appear to us to recognise the nature

of the relationship between the College and the Charity, as we have set out in paragraph 112. Of note, one of the charitable objectives of the Charity as recorded on the Charity Commission's website is, 'the advancement of the Roman Catholic religion through ... educational support', and therefore the Charity's ownership of the College and the use of the buildings free of charge seems to suggest the College and its students were also likely to be beneficiaries of the Charity itself. This would again appear to be relevant to the Commission's acceptance of the Charity's evidence about who knew of the abuse and its intentions to respect the victim's confidentiality, as well as its expectations on the Charity to recognise, manage, and learn from safeguarding incidents and its assessment of risk. It is also therefore relevant to the Commission's assessment of the proportionate regulatory action.

158. Our Principles of Good Administration say that organisations should be able to give reasons and account for its decisions. While the Commission has told us in response to our provisional views that it would clearly have knowledge of the factors we have described above, it has not demonstrated through its case records, decision documents or its comments to us that it did. It is not possible to understand why the Commission concluded the issues and concerns about the Charity that it was looking at were not failings to comply with relevant standards or duties from the reasons it has given. We do not think the Commission has accounted for its decision that the case was low risk and the potential failures were simply communication.

#### **Proportionality of further action given the Trustee who knew of the abuse was dead**

159. During our investigation, the Commission has said at various points it would not have been proportionate to make any further enquiries or take further regulatory action. We recognise that may remain the case.
160. In accordance with the Commission's own Regulatory and Risk Framework, the proportionate regulatory action would depend on an assessment of risk. A robust assessment of risk would appear to us to depend on taking relevant considerations into account in the assessment of whether a Charity is managing safeguarding in accordance with the relevant standards. We do not think the Commission did that because there is no evidence we have seen (in the case records, decision document or the Commission's responses during this investigation) that the Commission did consider relevant factors to the reasons they were relying on as detailed above.
161. In respect of the Trustee who knew of the abuse being dead, the Commission has not demonstrated why it has apparently given that significant weight in the actions of the Charity over a number of years. Until the Commission demonstrates it has taken account of relevant factors, including those above, it is not possible to say whether its assessment of risk was adequate or its regulatory action was proportionate.

## **Conflict of interest could not be established due to a historic timeframe**

162. The Commission has expressed concern during this investigation that we are suggesting it should conduct additional work of many hours. Specifically, the Commission told us that it would be disproportionate to examine who within the Charity may have been friends with the perpetrator to establish a conflict of loyalty.
163. We agree that in most cases, other than those carrying the highest risks, establishing personal loyalties going back many years is likely to be disproportionate. We also accept that it may be difficult to evidence if those conflicts were historic.
164. However, the conflict of interest put forward by Mr U was not a conflict arising from the relationship between friends within the religious congregation. Given that the charity was a religious congregation and very small (around 20) and personal relationship would necessarily exist, Mr U was saying there was a conflict between the collective interest of the registered Charity in respect of its financial interest in retaining donors to provide for it. He was saying the Charity had an interest in concealing abuse given it was a religious congregation which relied on income for communal living, for example.
165. Mr U was saying those interests were being served over and above the best interests of the Charity in respect of its objectives and the general expectation charities will not cause harm to those it comes into contact with. In particular, the interests of the Charity's past and present beneficiaries, particularly the College and those linked to the College, in which he included himself.
166. An assessment of this conflict of interest would seem to us to be dependent on a consideration of relevant factors the Commission has said it was already taking into account (as we have set out above), and which are fact-specific to this case. The Commission has not provided evidence that taking, or demonstrating it had taken, account of the relevant factors we have described above would have been significantly more work or, therefore, disproportionate.

## **The Commission's communication with Mr U**

167. There is no guidance or obligation on the Commission to communicate with people who raise concerns about charities. There is no requirement to provide them with a detailed response. However, in its communications with Mr U, the Commission told him it acknowledged once the case was concluded he wanted a substantive response. It confirmed a 'response' would be provided. It also said it would 'inform him of the outcome'. In response, Mr U acknowledged the Commission was not personally accountable to him, but

said it was reasonable to expect his feelings and expectations to be taken into account.

168. While the Commission does not have to provide a particular type of response to people who raise concerns, it clearly indicated it would provide a response to Mr U. It also recognised his expectation was for this to be a response that took account of his evidence and his situation. The Commission did not cause Mr U to expect anything other than that.
169. Our Principles say public bodies should do what they say they are going to do. In the event, the Commission did provide a response that explained what its decision was. However, it did not adequately account for that decision (and therefore did not do what it said it was going to do), which reflects the issues we have discussed in respect of its decision making and assessments.
170. During our investigation, the Commission recognised its communications with Mr U were not as good as it might like. It recognised that it should have spoken to Mr U to understand his perspective. It recognised its corporate communications at the time lacked empathy. We welcome and agree with this reflection.

## Injustice

171. Mr U is personally very invested in his complaint and in seeing safeguarding matters are dealt with appropriately and that adequate governance structures are in place to prevent abuse. By failing to take account of relevant and key issues in the concerns he raised, the Commission's investigation gave Mr U no confidence it was able to exercise its regulatory responsibilities.
172. Mr U says given his lived experience he should have been entitled to a swift and satisfactory conclusion to help him bring some closure to the matter. We agree.
173. It is clear that the investigation and the corporate style of the responses the Commission gave Mr U has caused him significant emotional injustice and a loss of faith in the system over a number of years. At each point he had to engage with the Commission he was caused distress by its approach to him.
174. Mr U has told us of his exhausting quest to be heard and see adequate actions taken. He has told us of his feelings of frustration and distress that the College is now closed, and the Charity is allowed to continue to receive charitable funds without an appropriate consideration of their actions that would allow Mr U not to remain concerned about harm being done to donors and beneficiaries.
175. Mr U says he has been unjustly treated as a vexatious nuisance by the Commission. He believes they dealt with his concerns inadequately, incorrectly, dismissively and negligently.
176. We do not think the Commission dismissed Mr U's concerns or treated him as a vexatious nuisance. This is because it did consider his concerns and did correspond with him. However, the Commission's failure to take full account of the relevant considerations to its assessment of risk meant it did not do that without maladministration and did not demonstrate it had balanced the information he provided. It did not account for its decision. Mr U has justifiably experienced this failing by the Commission as treating him (and his concerns) inadequately and dismissively. This is a significant injustice to him given his lived experience and his concern for the safety of others and children in particular.

## Recommendations

177. In considering our recommendations, we have referred to our ‘Principles for Remedy’. These state that where poor service or maladministration has led to injustice or hardship, the organisation responsible should take steps to put things right.
178. Mr U wanted as outcomes:
- DfE to reconsider his concerns, complaints and evidence there is inappropriate governance of exempt charities that run schools and colleges
  - the Commission to undertake a proper investigation into the registered charity in line with their statutory responsibilities
  - an apology for, and an acknowledgement of, the poor handling of his allegations and subsequent complaints from both organisations
  - financial compensation in recognition of the injustice caused to him by the poor handling of his allegations and subsequent complaints.
179. Our Principles say public organisations should look for continuous improvement and should use the lessons learnt from complaints to make sure they do not repeat maladministration or poor service.
180. In the course of this investigation, we have found DfE has instituted a number of changes to its practices which we have set out in Annex A. We have also set out Mr U’s comments and our view that DfE has acted appropriately to respond to the first and third recommendation, above.
181. The Commission has not yet undertaken work to put right the failings we have identified in this report. Within three months of the date of the final report the Commission should:
182. look again at its risk assessments and regulatory decisions in Mr U’s case. In particular it should:
- look at the reasoning for its decision and consider whether those adequately account for the decision. The Commission’s review should be done by someone from the Commission independent of the original investigation and our investigation.
  - having done that the Commission should determine whether the outcome in Mr U’s case would have been any different
  - involve a person independent of the original case to look at whether there is any learning in respect of how it assesses the risk of safeguarding incidents at charities and how it engages with people who may have been a victim of abuse



- consider whether its internal and external guidance on the assessment of risk is sufficient and coherent. The Commission should identify and act on any changes that need to be made.
  - the Commission should write to Mr U to explain the outcome of its review and explain its decision in his individual case
  - the Commission should apologise to Mr U for the distress caused by its poor communication and its failure to account for its decisions.
182. Our Principles say public organisations should put things right and, if possible, return the person affected to the position they would have been in if the poor service had not occurred. If that is not possible, they should compensate them appropriately.
183. To decide on a level of financial remedy, we review similar cases where the person has experienced similar injustice, along with our severity of injustice scale. Following this review, our current thinking is as a result of the actions of both organisations Mr U has suffered injustices in line with level four of our financial injustice scale. He has, over a number of years, felt dismissed and treated as a nuisance. The failure of the organisations to demonstrate they understood and appropriately weighed up the information he had provided, and could exercise appropriate regulation in response was, we think, a factor in those feelings.
184. In particular, both organisations have acknowledged they could have engaged with Mr U better and this alone would have offered him some reassurance about what was being done. However, what Mr U was actually seeking was that DfE and the Commission could demonstrate they can effectively regulate and ensure good governance in charities and schools and colleges. Had they shown that, Mr U says he would not have felt compelled to pursue his concerns to try and achieve that and ensure safeguarding matters are appropriately managed in these settings. While we recognise emotional matters are complex and multifactorial, Mr U approached DfE and the Commission to undertake their statutory roles and their failure to demonstrate they did that without maladministration has, he has told us, exacerbated his pre-existing feelings regarding the religious congregation to a significant degree.
185. This is not about the statutory action that was or was not taken. Even if more robust regulatory and intervention actions were not taken in respect of either the Charity or the College, Mr U says that had the Commission and DfE explained their actions and demonstrated they had been robust, he would have accepted that. We accept his statement. As such, Mr U's limited ability



to live a normal life free of the responsibility of his concerns is clear. He has experienced this for several years. We have made findings about both organisations. We have considered the impact and we consider that while each failing had a similar impact those impacts were concurrent in nature and so the financial element of our remedy for injustice should be shared.

186. Within one month of the date of this report DfE and the Commission should pay Mr U £2,000 between them in recognition of the injustice to him.

# Annex A: DfE response to Mr U in respect of its compliance with our recommendations

## DfE's letter to Mr U

DfE wrote a letter to Mr U in respect of its compliance with our provisional recommendations. In that letter DfE explained the approach it had taken originally in response to Mr U's concerns. It said:

1. The primary policy document that steers DfE's approach when addressing safeguarding complaints is 'Keeping Children Safe in Education'.
2. It was unable to comment on allegations or assumptions about the historic actions and culture of the registered charity as these 'were not possible to evidence'. DfE said it could only act on available evidence to determine whether the concerns Mr U raised presented a current risk.
3. It referred to evidence sources it used to determine current/immediate risk to learners at the College. These included:
  - Ofsted's February 2019 inspection of the College
  - correspondence with the Borough Council
  - the level of continuous scrutiny applied to the College senior leadership team and governing body through the Education Funding Agency (EFA)/Education and Skills Funding Agency (ESFA is EFA's successor), and the Further Education Commissioner (FE Commissioner) formal intervention
  - EFA/ESFA/DfE attendance, and observation of behaviours, at full governing body meetings from 2017 until the College closure in 2022
  - the outcome of the National Leaders of Governance external review of the College's governance (undertaken in 2018)
  - following changes in 2019/20 academic year the registered charity were no longer able to appoint foundation governors at the College
  - the college subsequently ceased to be a religious college on 1 November 2020 and the College updated its Instruments and Articles such that the College Corporation had full responsibility for all its new appointments
  - the Commission's communication to DfE dated February 2019 in which it advised of Mr U's parallel complaint about the registered charity, and in which it confirmed that it was satisfied, based on the information it was given, that the registered charity acted appropriately when removing the Headmaster and reporting the allegations to the Police and the Church Safeguarding Board.

In line with PHSO recommendations, DfE reviewed its handling of Mr U's concerns. It said:

4. DfE recognised it was wrong to have applied its usual complaint policy (particularly of first making a complaint to the College) to Mr U's complaint. DfE said it had reassessed its approach to sensitive and complex complaints and that its internal complaints process will be amended to ensure that does not happen to future complainants submitting complaints of a similar nature.
5. It was unable to comment on the actions of the registered charity, as this was for the Commission to consider.
6. DfE was content that its advice to Mr U to escalate the historic abuse allegations with the Police was correct and remains so.
7. DfE was satisfied that the steps it took to ensure that the safeguarding concerns raised were not current, were appropriate.
8. DfE was content that there was not sufficient evidence to warrant Secretary of State intervention on the basis of the evidence it had under point 3.

However, DfE said it recognised it could have:

- reflected on the 'Keeping Children Safe in Education' guidance from a cultural perspective, and considered asking the National Leaders of Governance to focus on safeguarding practices and culture in the 2018 external review of governance, and/or commissioned the FE Commissioner to undertake a review specifically focused on safeguarding practices and culture
- requested more detailed assurances from the Commission as to the extent of its investigation and subsequent outcome
- asked the Local Authority (to consider whether it might want to investigate further).

DfE said it was taking further action and process improvements following the review. It said it was:

9. Doing a review of its end-to-end complaints process.
10. Updating its internal safeguarding guidance to reflect new policies and procedures in accordance with government guidelines.
11. Considering any lessons learned from the handling of Mr U's complaint when next reviewing the MoU with the Commission and any associated internal protocols.

DfE said in its conclusion to Mr U:

‘DfE acknowledges the concerns that you raised within your complaint and recognises that there are further measures that could have been considered to support its decision-making. Your complaint has encouraged DfE to reflect on and review its practices and ways of working on complaint handling and safeguarding.

However, DfE is satisfied that the actions taken to investigate your complaint, within the parameters of its responsibility, were appropriate and sufficient, and remain so’.

## **Mr U’s comments on what DfE had done**

Mr U wrote a response to that letter. Mr U said that the response from DfE again disregarded and had not addressed his concerns:

- he listed 11 things he said DfE should have addressed and investigated but had not
- he said those were independently verifiable and clearly indicative of poor governance, mismanagement and maladministration by the registered charity in their role of Trustees and ultimate owners of the College, in relation to concealment of sexual abuse
- he said in its response, DfE had characterised his concerns as ‘allegations or assumptions’ that are ‘not possible to evidence’. He said in his view that was a false and unreasonable assertion.

Of DfE’s review of his concerns, Mr U said:

- DfE incorrectly labelled ‘some of the concerns’ in his complaints as ‘historic’. He said this was a fundamental error and misrepresentation of his central concern
- the focus of his complaint and request for regulatory intervention has always been the intentional, decades-long concealment of the misconduct by the [registered charity] and several of their appointees at the College between March 1993 and August 2017
- DfE references to ‘current/immediate risks to learners’ were also irrelevant to his complaint about flagrant governance failures in the religious congregation that owned the College and the well-evidenced, long-term concealment of sexual misconduct
- until August 2017 the continuing and current risk represented by the intentional concealment by the Trustees and their appointees within the College, from Governors, social services and other important stakeholders of child sexual abuse by their own priest and Headteacher. This concealment continued even after 2014 when the Chair of Governors and very senior

managers had been made aware, and after the DfE began to attend Governor meetings in May 2017

- he was not arguing with what the DfE's powers and responsibilities. He contended they have not discharged them properly
- the reference to and reliance upon the Commission was 'completely baffling'. It is not for the Commission to say whether the religious congregation 'acted appropriately in removing the Headmaster'. He said that was a matter for the Governing Body at the time, and for the DfE once they became aware
- the removal of the Headmaster was not in fact 'appropriate' as described by the Commission. As well as failing to inform the Governing Body or any other College stakeholders, they also failed to notify Social Services or the Police
- he referred to his previous correspondence with the Director of Children's Services and Education at the Borough Council, who stated in December 2020:

'In 1993 the Working Together to Safeguard Children (1991) was the relevant statutory guidance to follow for all agencies working with children. The 1991 guidance outlines the process of reporting abuse perpetrated by professionals should be to report to 'Social Services' and the Police and that the 'Public Interest' test can be used to share information relating to the safety of children without consent.'

'... The statutory requirement to report concerns to 'Social Services' was not followed by the College based on [U's] case study.'

- he said the Safeguarding Co-Ordinator for the Diocese did belatedly report abuse to the police in 2014, but, 'the Headteacher being long dead, that was somewhat academic ...'

In respect of DfE's conclusions, Mr U said:

'If DfE had ever genuinely understood the gravity of my concerns it would have carried out a serious, facts-based investigation into them rather than expending all its energy into deflecting and closing them down...'

## **Our view on whether DfE has complied with our recommendations**

Mr U is clear he does not think DfE has reconsidered his concerns properly. In particular, he says DfE should have investigated more thoroughly the concealment of non-recent sexual misconduct and abuse by the registered charity in their role of Trustees of the College and by individual members of the religious congregation

who sat on the governing body. He does not accept DfE's comment it was unable to evidence historical events that happened within the registered charity.

We recognise DfE has a remit that places some limitation on what it does. It has no regulatory role in respect of the Trustees of a sixth form college or in a respect of a registered charity. However, through its intervention powers it does have the ability to achieve structural change within a school or college which could include separating a college from its Trustee/owners. To do that it has to see evidence of certain factors set out in legislation, for example, serious mismanagement of the College.

We note the 11 things Mr U says DfE could have investigated were not ones he raised with it at the time. DfE could have looked more closely at the past actions of the registered charity insofar as these were also the actions of members of the governing body, or evidence of a conflict of interest amongst members of the governing body arising from the influence of registered charity. We have set out our thoughts on this in paragraph 85. However, that is not the same as saying DfE necessarily had to take specific action in this regard if it had justification for not doing so.

The potential misconduct or mismanagement of the College's governing body and individual members of it, as well as the potential conflict of interest arising from any influence of the registered charity, were relevant considerations for DfE in the face of Mr U's complaint. We have already set this out in paragraph 71. These things were relevant to the question of whether the governing body was mismanaging safeguarding, specifically by failing to manage information it had about non-recent child sexual abuse by a member of the religious congregation.

DfE has now clearly explained the sources of information it looked to about safeguarding at the College to evidence Mr U's concerns about mismanagement by the governing body, conflicts of interest or non-compliance with. We think the information DfE looked at was all relevant to that question.

DfE had reassurance from the evidence it had that safeguarding was well-managed in the College. It also had reassurance from the Commission that it did not have concerns about the registered charity. It was reasonable for DfE to rely on information from the Commission. It is the Commission that is responsible for regulating the registered charity. It is not for DfE to replicate that role. Mr U had told DfE his main concerns lay and stemmed from the actions of the registered charity and members of it. The Commission's view would clearly have been a relevant factor when deciding on the possible negative influence of the registered charity over many years, its appointees on the governing body and any potential conflict of interest.

The reassurance DfE had and has from the Commission is subject to the findings in this report about the Commission. We therefore welcome DfE's acknowledgement that it could have engaged with the Commission in more detail to better

understand the information it was given. In principle, seeking this information and using it was taking a relevant consideration into account.

DfE also reflected it could have asked the FE Commissioner to look more closely at the issue of culture, and had more detailed discussions with the Local Authority. These are again relevant factors. Unfortunately, they are not actions DfE can take now.

We cannot question the merits of a discretionary decision if it is made without maladministration. We accept public bodies have to act proportionately. DfE's decision that the evidence it had gathered itself was proportionate and did not give it sufficient indication that further investigation into the College's management, or current individual governors and senior leaders was needed, took relevant considerations into account.

We recognise here Mr U's deep conviction that, outside of its specific remit, DfE appeared not to demonstrate a more general concern about the events he had uncovered in this respect. He says all public bodies have a general duty and ability under safeguarding guidance to act on safeguarding concerns about organisations not in their remit. Nevertheless, we recognise DfE's reasonable position that it should only act within its statutory role. There is a gap between these two positions.

In summary, we consider DfE has acted in accordance with relevant standards in reviewing its actions in Mr U's case. We consider it has complied with the recommendations as far as it can given the information it received from other organisations and recognising the College has now closed.



## Parliamentary and Health Service Ombudsman

Citygate  
Mosley Street  
Manchester  
M2 3HQ  
United Kingdom

Telephone: 0345 015 4033

Email: [phso.enquiries@ombudsman.org.uk](mailto:phso.enquiries@ombudsman.org.uk)

[www.ombudsman.org.uk](http://www.ombudsman.org.uk)

Follow us on:



If you would like this document in a different format, such as Daisy or large print, please contact us.