



# INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

## Investigation into institutional responses to allegations of child sexual abuse involving the late Lord Janner of Braunstone Q.C.

### NOTICE OF DETERMINATION

#### Restriction Order Pursuant To Section 19(2)(b) of the Inquiries Act 2005

1. On 23 March 2018, I made a Restriction Order prohibiting the publication of information that may identify somebody as a core participant in this Inquiry, save in specified circumstances.
2. I am now asked to consider whether or not to make a restriction order under section 19(2)(b) of the Inquiries Act 2005 (“the 2005 Act”). The order in question would apply to any matter stated during the Inquiry’s hearings and any publication made by the Inquiry in connection with the Investigation into institutional responses to allegations of child sexual abuse involving the late Lord Janner of Braunstone Q.C. (“the Investigation”).
3. The effect of this proposed order would be to prohibit (except in defined circumstances) the publication of any matter relating to a complainant if it is likely to lead members of the public to identify a person as a complainant. For these purposes, “a complainant” is defined as a person who alleges or has alleged that a sexual offence has been committed against them, or a person against whom it is alleged that any such offence has been committed as listed in the Sexual Offences (Amendment) Act 1992 (“the 1992 Act”).

#### Submissions from CTI and Core Participants regarding the proposed order

4. In submissions dated 14 August 2019, Counsel to the Inquiry (“CTI”) invited me to consider making the proposed order for the following reasons:
  - a. The proposed order would ensure that those involved in the Investigation do not inadvertently publicly identify someone as a core participant in breach of my Restriction Order dated 23 March 2018.
  - b. The proposed order would ensure that individuals and witnesses who are not core participants receive the same protection from identification as complainant core participants. CTI explain in their submissions that some of the individuals mentioned in the material that the Inquiry has received have not made allegations against Lord Janner, but are referred to in material that

may be relevant to the Investigation. That information may be disclosed to core participants or published by the Inquiry during the investigation.

- c. The proposed order would largely mirror the 1992 Act. It would enable me to prevent the publication of material identifying an individual prospectively, rather than being reliant on retrospective criminal enforcement of the Act's provisions.
- d. The proposed order would help to bring clarity to the question of what could be said and published during the Inquiry's proceedings in this Investigation.
- e. The proposed order goes beyond the 1992 Act in one area. It extends to complainants who have died as well as the living. CTI submitted that this was proportionate and justified, as (i) it would not always be possible to identify who was alive and who had died, and (ii) those who may be close to the end of their lives would not be discouraged from providing evidence out of concern that it would become public after their death.

CTI also provided a draft of a proposed order with their submissions which I have carefully considered.

- 5. CTI's submissions and the draft proposed order were circulated to Core Participants. The Inquiry received the following responses:
  - a. Howe and Co. solicitors, on behalf of F54;
  - b. Slater & Gordon, on behalf of the core participants that they represent;
  - c. Simpson Millar LLP, on behalf of the core participants that they represent;
  - d. Leverets Legal, on behalf of Rabbi Laura Janner-Klausner and Marion Janner OBE. Leverets explained that they were also responding on this occasion on behalf of Daniel Janner Q.C., for whom they are not the designated legal representative;
  - e. Mr Michael Perry; and
  - f. The Government Legal Department, on behalf of the Home Office.
- 6. Slater & Gordon and Howe and Co. expressed support for the proposed order. Mr Perry also expressed support for the proposed order, but noted that other core participants who were not complainant core participants may have views on the fact that they would not be entitled to anonymity. I note that this concern was not raised by any of the other core participants in the other submissions that the Inquiry received.

7. The Home Office had no comments on the proposed order. Simpson Millar LLP made no submissions on the proposed order but did comment on other matters that I am not required to deal with in this Determination.
8. Leverets Legal made two observations. The first concerned CTI's argument about why the order should be extended to those who had died as well as the living. They sought clarification on a matter which has now been provided by CTI in their Submissions in Reply dated 16 September 2019.
9. Leverets Legal also made the point that it was difficult for core participants to comment meaningfully on whether it would be proportionate for the Inquiry to seek to identify all of those complainants who had died. CTI acknowledged, and I accept, that it is difficult for core participants to assess the practical difficulties involved given the limited disclosure made in this Investigation (which is itself the result of the need to avoid prejudice to any ongoing or potential criminal investigations). CTI argued, however, and I again accept, that the difficulties would be real and substantial, and that it would not be unfair for me to decide this matter on the submissions that I have before me.
10. The second point that Leverets Legal made concerned a specific paragraph of the proposed order, paragraph 13, which reads:

*“The Inquiry's legal team may, on behalf of the Chair, provide on terms of confidence the identity of a complainant to core participants or third parties, such as the police and statutory agencies, as is necessary to assist with the work of the Inquiry. Core participants and organisations providing documents and other materials to the Inquiry may similarly provide on terms of confidence the identity of a complainant where that is necessary to assist with the work of the Inquiry.”*

11. Leverets Legal's submission was as follows:

*“So far as the wording of the Order itself is concerned, then we think that paragraph 13 needs an additional clarification to ensure that there is a segregation between “core participants” and “third parties”. There are some core participants who also fall within the definition of third parties set out and so it should be worded so that there is no suggestion that only third parties, such as the police and statutory agencies, may apply for the identity of a complainant to be revealed to them, but this is a right enjoyed by all core participants.”*

12. In their Submissions in Response, CTI made the following argument:

*“While grateful for Mr Butler's observations, CTI do not think that any change is needed to the paragraph. It envisages that either core participants or third parties may be provided with the identity of a complainant where necessary to*

*assist with the work of the Inquiry. Further, core participants may apply during the course of the Inquiry for the restriction order to be varied (see paragraph 16 of the proposed order and s.20(4) of the Inquiries Act 2005)."*

## **Determination and Reasons**

13. Section 19 of the 2005 Act provides as follows:

- (1) *Restrictions may, in accordance with this section, be imposed on—*
  - (a) *attendance at an inquiry, or at any particular part of an inquiry;*
  - (b) *disclosure or publication of any evidence or documents given, produced or provided to an inquiry.*
- (2) *Restrictions may be imposed in either or both of the following ways—*
  - (a) *by being specified in a notice (a "restriction notice") given by the Minister to the chairman at any time before the end of the inquiry;*
  - (b) *by being specified in an order (a "restriction order") made by the chairman during the course of the inquiry.*
- (3) *A restriction notice or restriction order must specify only such restrictions—*
  - (a) *as are required by any statutory provision, enforceable [EU] obligation or rule of law, or*
  - (b) *as the Minister or chairman considers to be conducive to the inquiry fulfilling its terms of reference or to be necessary in the public interest, having regard in particular to the matters mentioned in subsection (4).*
- (4) *Those matters are—*
  - (a) *the extent to which any restriction on attendance, disclosure or publication might inhibit the allaying of public concern;*
  - (b) *any risk of harm or damage that could be avoided or reduced by any such restriction;*
  - (c) *any conditions as to confidentiality subject to which a person acquired information that he is to give, or has given, to the inquiry;*
  - (d) *the extent to which not imposing any particular restriction would be likely—*
    - (i) *to cause delay or to impair the efficiency or effectiveness of the inquiry, or*
    - (ii) *otherwise to result in additional cost (whether to public funds or to witnesses or others).*
- (5) *In subsection (4)(b) "harm or damage" includes in particular—*
  - (a) *death or injury;*
  - (b) *damage to national security or international relations;*
  - (c) *damage to the economic interests of the United Kingdom or of any part of the United Kingdom;*
  - (d) *damage caused by disclosure of commercially sensitive information.*

14. In accordance with section 17(3) of the 2005 Act, when considering my power to make a restriction order, I must act with fairness and also with regard to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others).
15. CTI set out the relevant law at paragraphs 5 to 10 of their submissions. In addition to the provisions of the 2005 Act and the 1992 Act, CTI noted that the Inquiry was a public authority that was bound by the Human Rights Act 1998, the Data Protection Act 2018 and common law obligations of confidentiality. I must, therefore have regard to the relevant jurisprudence of the common law and (among other matters) Articles 8 and 10 of the European Convention on Human Rights when balancing respect for private and family life against the right of freedom of expression (including, but not limited to, media reporting). The analysis set out in those paragraphs was not challenged by any of the core participants who made submissions.
16. I have also had regard to the Inquiry's Terms of Reference, the most relevant provisions for these purposes are paragraphs 1, 2 and 9.
  - a. Paragraph 1 requires me (amongst other things) to consider the extent to which State and non-State institutions have failed in their duty of care to protect children from sexual abuse and exploitation.
  - b. Paragraph 2 requires me (amongst other things) to consider the experiences of survivors of child sexual abuse and provide them with opportunities to bear witness; to disclose, *"where appropriate and in line with security and data protection protocols"*, any documents which were considered as part of the Inquiry; and to conduct the Inquiry in as transparent a manner as possible while *"having regard to all relevant duties of confidentiality."*
  - c. Paragraph 9 states that, *"All personal and sensitive information will be appropriately protected; and will be made available only to those who need to see it."*
17. It follows that the Inquiry must balance the requirements of transparency with the need to provide appropriate protection to witnesses and core participants, particularly in respect of highly sensitive personal information. Without such protection, it is likely that witnesses will feel inhibited from providing the evidence that the Inquiry needs to discharge its Terms of Reference.
18. I note that no core participant has argued that I should not make the proposed order. The order was proposed by CTI, whose role is to act independently and to assist the Inquiry in concluding its work fairly and effectively.
19. I accept that the submissions made by CTI that there are good reasons why the proposed order should be made. In particular, the importance of my being able to prevent the publication of material identifying an individual prospectively and in a

timely fashion, rather than being reliant on retrospective criminal enforcement of the 1992 Act's provisions.

20. Even though the proposed order is not opposed in principle, I have still considered carefully whether it should be made. In particular I have considered:
- a. the obligations of transparency and openness contained in section 18 of the 2005 Act and in the Inquiry's terms of reference ;
  - b. the public interest of the media reporting on the work of the Inquiry;
  - c. the public interest of witnesses being encouraged to give evidence;
  - d. the public interest of the Inquiry's work being conducted effectively and proportionately, the need to avoid unnecessary cost;
  - e. the interests of complainant witnesses and core participants who may be referred to in evidence published or made public during the course of this Investigation; and
  - f. the provisions and purpose of the 1992 Act.

I am satisfied that it is necessary to make a restriction order under section 19(2)(b) of the 2005 Act for the reasons outlined above.

21. I turn then to the terms of the proposed order. The only dispute within the submissions concerns paragraph 13. To date, the Inquiry has received 356,557 pages of material in this investigation. To identify every name in this material which might require protection would be a substantial task.
22. Once identified, these individuals would then need to be traced and a record kept of whether they were dead or alive. There is no guarantee that the document that mentions their name would provide sufficient information to allow this exercise to take place which leaves a residual risk that the Inquiry would inadvertently leave their name in a document in breach of the provisions of the 1992 Act.
23. I am satisfied that it would therefore be disproportionate for CTI to carry out this exercise prior to considering the proposed order and result in unnecessary expenditure of public funds. In reaching this decision, I have borne in mind not only the submissions made by CTI and others, and also my obligations under section 17(3) of the 2005 Act to act fairly while avoiding unnecessary expense to the public.
24. I am therefore satisfied for the reasons set out by CTI in their submissions and reply and for those set out at paragraphs 21 to 23 above that it is necessary to make an order in the terms set out at paragraph 13 of the proposed order.
25. It follows that I make a determination in the terms set out in the Appendix to this determination.

**18 September 2019**

**Professor Alexis Jay, OBE**

**Chair, Independent Inquiry Child Sexual Abuse**

## **Appendix to the Determination of 18 September 2019**

### **Investigation into the institutional responses to allegations of child sexual abuse involving the late Lord Janner of Braunstone Q.C.**

#### **Determination on a Restriction Order made under s.19(2)(b) of the Inquiries Act 2005**

##### **Background**

1. The Inquiry's terms of reference require it to consider the extent to which State and non-State institutions have failed in their duty of care to protect children from sexual abuse and exploitation; to identify further action needed to address any failings identified; to consider the steps which it is necessary for State and non-State institutions to take in order to protect children from such abuse in future; and to publish a report with recommendations.
2. As part of its public hearings the Inquiry is hearing evidence about alleged institutional failings to respond appropriately to allegations of child sexual abuse involving the late Lord Janner Q.C. ("the Investigation"). Pursuant to section 18 of the Inquiries Act 2005 the Chair must take reasonable steps to secure public access to inquiry proceedings and information, subject to any restrictions imposed under section 19 of the Inquiries Act 2005. The Chair also has regard to her powers and duties under section 17 of the Inquiries Act 2005, and the jurisprudence of the common law and Articles 8 and 10 of the European Convention on Human Rights when balancing respect for private and family life against the right of freedom of expression (including, but not limited to, press reporting).
3. Written and oral evidence received by the Inquiry will include testimony from and concerning core participants who allege that they are the victim and survivor of sexual offences ("complainant CPs") and witnesses who allege that they are the victim and survivor of sexual offences ("complainant witnesses"). Many such individuals are entitled to protection of their identity under section 1 of the Sexual Offences (Amendment) Act 1992 ("the 1992 Act").
4. Complainant CPs have the benefit of the Inquiry's Restriction Order dated 23 March 2018. At present, complainant witnesses do not enjoy equivalent protection from the Inquiry.
5. Having regard to section 19(3)(b) and 19(4) of the Inquiries Act 2005, complainant witnesses should have equivalent and enforceable anonymity protections at the Inquiry as those to which they are entitled to pursuant to the 1992 Act. Protecting the identity of all complainants - core participants and witnesses - is conducive to the Inquiry fulfilling its terms of reference and is in the public interest. If a Restriction Order were not imposed for all

complainants, it may impair the effectiveness of the Inquiry and discourage the participation of individuals who may assist the Inquiry.

### **Restriction Order**

6. Having regard to paragraph 9 of the Inquiry's terms of reference, the requirements of the 1992 Act and sections 19(1) and 19(3)(a) and (b) of the Inquiries Act 2005, a restriction order is imposed pursuant to section 19(2)(b) of the Inquiries Act 2005 ("the restriction order").
7. The restriction order shall apply to:
  - 7.1. Any matter stated during the Inquiry's preliminary or public hearings in the Investigation, and
  - 7.2. Any publication made by the Inquiry in connection with the Investigation.
8. The restriction order applies to protect the identity of a complainant. For the purposes of this Order, a complainant is a person who alleges or has alleged that a sexual offence listed in the 1992 Act has been committed against them or is a person against whom it is alleged that a sexual offence listed in the 1992 Act has been committed.
9. Where the restriction order applies it prohibits, except in the circumstances set out in paragraphs 10 and 16 below, publication of any matter relating to a complainant if it is likely to lead members of the public to identify that person as a complainant. This includes, but is not limited to,
  - 9.1. the complainant's name,
  - 9.2. the complainant's address,
  - 9.3. the identity of any school or other educational establishment attended by the complainant,
  - 9.4. the identity of any place of work associated with the complainant.
  - 9.5. any still or moving picture of the complainant.
10. The restriction order does not apply where the complainant:
  - 10.1. has waived their anonymity for the purposes of the Inquiry and does not seek to prohibit publication or disclosure of any information that identifies or tends to identify them; or
  - 10.2. has given written consent to the publication of any matter that may lead members of the public to identify that person as a complainant, and has provided a copy of that written consent to the Inquiry.
11. The Inquiry shall:
  - 11.1. include the name of any complainant to whom paragraph 10.1 applies in Annex A to the Restriction Order dated 23 March 2018;
  - 11.2. publish on its website summaries of the written consent received pursuant to paragraph 10.2 above.



12. Insofar as it necessary to identify a complainant participant in public it shall be by a cipher unique to each complainant core participant. Where practicable, the Inquiry will disclose materials to core participants using such unique ciphers.
13. The Inquiry's legal team may, on behalf of the Chair, provide on terms of confidence the identity of a complainant to core participants or third parties, such as the police and statutory agencies, as is necessary to assist with the work of the Inquiry. Core participants and organisations providing documents and other materials to the Inquiry may similarly provide on terms of confidence the identity of a complainant where that is necessary to assist with the work of the Inquiry.
14. Pursuant to section 20(4) of the Inquiries Act 2005 the Chair may vary or revoke this Restriction Order by making a further order during the course of the Inquiry.
15. Any person affected by the Restriction Order may apply in accordance with section 20 of the Inquiries Act 2005 to vary its terms.
16. The Restriction Order continues in force indefinitely, or unless the order is varied or revoked pursuant to section 20 of the Inquiries Act 2005.

**Annex A**

[Restriction Order dated 23 March 2018](#)