

## **INDEPENDENT INQUIRY CHILD SEXUAL ABUSE**

### **INVESTIGATION INTO INSTITUTIONAL RESPONSES TO THE ALLEGATIONS OF CHILD SEXUAL ABUSE INVOLVING THE LATE LORD JANNER OF BRAUNSTONE Q.C.**

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#### **SUBMISSIONS OF COUNSEL TO THE INQUIRY AHEAD OF THE PRELIMINARY HEARING ON 24 SEPTEMBER 2019**

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#### **Introduction**

1. This Investigation examines whether institutions responded appropriately to allegations of child sexual abuse made against the late Lord Janner of Braunstone Q.C. (“Lord Janner”). If they did not, the Investigation will examine why, including the question of whether Lord Janner’s position of prominence in public life influenced those whose duty it was to consider the allegations made against him.
2. At the heart of the Investigation is the suggestion that Leicestershire Police and the Crown Prosecution Service (“CPS”) failed properly to investigate or prosecute complaints of child sexual abuse made against Lord Janner during three investigations: Operation Intern (1989-1991), Operation Magnolia (2000-2002) and Operation Dauntless (2006-2007). While other institutions, including the Labour Party and Leicestershire County Council, are also of relevance to the Investigation, it is the responses of the police and the CPS that are the principal focus of the Inquiry’s work.
3. This Investigation cannot, in law, determine whether or not Lord Janner was guilty of criminal offences or was liable for sexual assaults in civil law: s.2(1) of the Inquiries Act 2005 (“the 2005 Act”). It will not replicate or replace now withdrawn legal proceedings. The Inquiry has a separate and distinct role, which is set out in its Terms of Reference. Its structures and processes reflect that different, inquisitorial, purpose.

#### **These submissions**

4. These submissions cover the following areas:

1. The Background to this Investigation, including the procedural history and work undertaken to date;
  2. Recent developments in the investigation undertaken by the Independent Office for Police Conduct (“IOPC”), Operation Nori, and the correspondence between the Inquiry and the IOPC;
  3. The Impact of these developments on the future of the Investigation;
  4. Decisions for the Chair;
  5. Other Matters.
5. The submissions are made from the independent perspective of Counsel to the Inquiry (“CTI”). It is our role to provide advice and assistance to the Chair in order to help her to fulfil the Inquiry’s Terms of Reference. We represent no participant and have no case or interest to put.
6. These submissions will be disclosed in advance of the hearing to all Core Participants in order to allow them to comment on the matters raised. The Chair will consider all submissions made to her in writing and at the hearing before making any determination. The submissions of CTI have no special status. The Chair will accept or reject them as she sees fit.

### **Background to the Investigation**

7. The Investigation arises from the aftermath of Operation Enamel, a further investigation conducted from 2012 by Leicestershire Police into allegations made against Lord Janner. During 2014, Leicestershire Police provided files to the CPS for charging decisions. Having taken the advice of leading counsel, the CPS determined that there was sufficient evidence to provide a realistic prospect of conviction in respect of allegations of child sexual abuse made by nine complainants. However, in April 2015 the then Director of Public Prosecutions (“DPP”), Alison Saunders, concluded that the second stage of the CPS Full Code Test was not met as it was not in the public interest to prosecute given medical evidence that Lord Janner was suffering from dementia and would be unfit to plead. That decision was overturned following a statutory review, and proceedings were commenced to charge Lord Janner with 22 offences. In October 2015, the CPS recommended that Lord Janner should be charged with 12 other offences relating to three further complainants. A trial was listed for February 2016. Lord Janner died in December 2015 and the charges he faced were formally discontinued the following month.
8. In April 2015, Sir Richard Henriques, a retired High Court judge, was asked to conduct an independent review of the actions of Leicestershire Police and the CPS during Operations Intern, Magnolia and Dauntless. He published a report in January 2016 that was critical of both the police and the CPS. Both organisations made public statements accepting those criticisms. Among Sir Richard’s conclusions was the finding that there was sufficient evidence for Lord Janner to have been charged with offences involving child sexual abuse in 1991, 2002 and 2007.

9. The Independent Police Complaints Commission, now the IOPC, began an investigation into aspects of Leicestershire Police's handling of the allegations against Lord Janner in October 2015. This was known as Operation Nori. The effect of Operation Nori on this Investigation is considered further below.

### Procedural History

10. The Investigation formally opened in January 2016. There were two preliminary hearings on 9 March 2016 and 26 July 2016. A number of individuals and institutions were designated as Core Participants. It had been intended that the full public hearings of evidence would take place in September 2016, but this was adjourned in July 2016 in light of the IOPC investigation and because of a risk of prejudice to a further Leicestershire Police investigation into allegations of historic child sexual abuse. The public hearing was re-listed for March 2017.
11. Following the appointment of the Chair in August 2016, a review of all of the Inquiry's work was undertaken. In December 2016, the Chair invited submissions on whether this Investigation should continue and, if it did, what its scope should be and when the public hearings should be held.
12. Submissions were received from a number of Core Participants and from Counsel to the Inquiry. In a Determination dated 11 April 2017, the Chair held that the Investigation would continue and that the broad definition of the scope of the Investigation would be amended. On the date of the substantive hearings, she said that [37]:

*"I remain of the view that these should not be held until I am satisfied that an appropriate balance has been struck to minimise (a) duplication of work that is being conducted by other organisations, in particular the IPCC [now the IOPC], (b) the risk that a public hearing will contaminate evidence relevant to any criminal proceedings, and (c) the risk that the welfare of some individuals may be adversely affected by repeated questioning about the issues relevant to this investigation."*
13. A further preliminary hearing was listed for 23 May 2019. It was intended that this hearing would determine, among other matters, the list of issues that would be considered at the public hearings. The hearing was listed in the expectation (i) that Operation Nori would have concluded by the end of 2018 and, (ii) that the resulting report would be available for consideration by Core Participants if a decision had been made not to make any referrals to the CPS under paragraph 23(2)(d) of Schedule 3 to the Police Reform Act 2002. This expectation proved optimistic. In submissions dated 22 March 2019, the IOPC stated that it would not produce a final report by the time of the preliminary hearing, and that it would oppose disclosure of investigative materials to Core Participants if this were to prejudice its investigation or

possible criminal proceedings. In light of this information, the Chair vacated the preliminary hearing and relisted it for 24 September 2019.

14. It follows that the substantive hearings in this Investigation were postponed twice, in July 2016 and April 2017, principally because of the need to avoid prejudice to the IOPC investigation. A preliminary hearing in May 2019 was also vacated because Operation Nori had not concluded.
15. The substantive hearings in the Investigation are presently listed for three weeks in February 2020.

#### Work undertaken by the Inquiry

16. The Inquiry has continued its investigative work notwithstanding the adjournment of the various hearings. Among the steps taken are the following:
  - 16.1. The Inquiry instructed Professor David Berridge to provide a report on the topic of child welfare for children in public and local authority care. Professor Berridge's evidence has been adduced in the investigation into institutional failures to protect children in the care of Nottingham City and Nottinghamshire Councils from sexual abuse and exploitation.
  - 16.2. The Inquiry instructed of a team of experts, led by Professor Marin Innes, to provide a report on the way in which police forces approached allegations of child sexual abuse in England and Wales from 1990 to the present day. This evidence has been adduced in the investigation into institutional failures to protect children in the care of Nottingham City and Nottinghamshire Councils from sexual abuse and exploitation.
  - 16.3. The Inquiry made a Rule 9 request for a corporate witness statement from Leicestershire Police. An extensive and highly detailed statement has been provided by Nigel 'Matt' Hewson, Senior Investigating Officer of Operation Enamel.
  - 16.4. The Inquiry made a Rule 9 request for a corporate witness statement from Leicestershire County Council. A similarly extensive and detailed statement has been provided by the Chief Executive, John Sinnott, and a second statement has been sought and obtained in response to detailed interrogation of the documents provided by the County Council.
  - 16.5. The Inquiry has made further Rule 9 requests of a wide range of witnesses whom, it was felt, may have evidence to give in respect of institutional responses to allegations of child sexual abuse made against Lord Janner. These have included individuals associated with the Kirkwood Inquiry, employees of the Holiday Inn, journalists who either made allegations about Lord Janner or were thought to have investigated such allegations, lawyers

and those associated with lawyers whose work involved consideration of the allegations made against Lord Janner, employees and officials of Leicestershire County Council, and complainants who are not Core Participants but whose evidence of allegations of sexual abuse by Lord Janner may give rise to suggestions that institutions failed to respond to them. A number of other Rule 9 requests have been or are in the process of being prepared.

- 16.6. The Inquiry has requested and obtained submissions from Speaker's Counsel on how Parliamentary privilege may affect the Investigation.
- 16.7. The Inquiry has requested that searches be undertaken and material disclosed from a wide range of sources, including: Leicestershire Police, the Metropolitan Police, Leicestershire County Council (including its archive of the Kirkwood Inquiry), the Labour Party, the Cabinet Office, the Department of Health and Social Care, the security and intelligence agencies (that is, MI5, SIS and GCHQ), the Henriques Inquiry, and the archives held by the London School of Economics, the NSPCC and the Community Security Trust. CTI acknowledge the large amount of time and resources that Leicestershire Police and Leicestershire County Council in particular have dedicated to providing both documentation and witness statements to this Inquiry. Between them, they have disclosed well over 200,000 pages of material to the Inquiry.
- 16.8. The Inquiry has also received extensive disclosure from the IOPC and the CPS. This amounts to more than 100,000 pages. This comprises original documentation from the various police investigations, material obtained from the CPS and many other organisations, and witness statements and interview transcripts produced by the IOPC during the course of its investigation.
- 16.9. The Inquiry's legal team have reviewed, coded and - in some cases - redacted the material it has received. This has been a labour-intensive and painstaking task. It is ongoing and will continue in the months to come.
17. In short, a large amount of preliminary work has been completed in order to allow disclosure to commence as quickly as is practicable. The Inquiry's legal team were conscious that such work was essential if the planned hearing date of February 2020 was to be met.
18. There have, however, been important areas in which the Inquiry has not been able to undertake work. This is because of the risks of prejudicing any criminal proceedings arising from the IOPC investigation and adversely affecting witnesses by repeated questioning. The Inquiry has also been conscious of the need to avoid the waste of public funds as a result of unnecessarily duplicating work.
19. Two areas in particular have been affected. First, the Inquiry has not been able to obtain its own statements from witnesses who are involved in the IOPC's

investigation, including complainants and former police officers. Second, the Inquiry has not been able to disclose materials, particularly those obtained from the IOPC, to Core Participants. This in turn has made it impossible to invite informed submissions on the future approach to the Investigation, and in particular on the list of issues to be considered in the public hearings.

20. It was the Inquiry's intention that these submissions would be made at the preliminary hearing on 24 September 2019, facilitated by the disclosure of the IOPC report to Core Participants several weeks before the hearing. The hearing was deliberately listed for the latest possible date in order to allow the IOPC as much time as possible to complete Operation Nori, produce its report, and take the relevant decisions on whether any referrals would be made to the CPS.

### **Recent developments in Operation Nori and the correspondence between the Inquiry and the IOPC**

21. CTI acknowledge that Operation Nori has been a complex and extensive investigation. It has involved a significant number of subjects and witnesses, a large number of events that took place over the course of decades, and a vast amount of documentation. We also acknowledge that the investigators have, rightly, retained flexibility and followed evidential leads when they have arisen. Further, the sensitive nature of the allegations, and the vulnerability of some of those involved, are such that considerable care has been required when interviewing witnesses and finalising statements.
22. Throughout the period referred to above, the IOPC has provided the Inquiry with regular information on the progress of its Investigation. The Inquiry in turn has provided updates to the Core Participants.
23. On 15 April 2019 the Inquiry told Core Participants that the IOPC expected to complete its report in Operation Nori by 30 June 2019. The report would then be submitted to the IOPC's Decision Maker to determine whether a referral would be made to the CPS. The IOPC expected that decision to be taken by 31 July 2019. In subsequent correspondence the Solicitor to the Inquiry emphasised the importance of the IOPC adhering to those dates and noted the effect on the Inquiry's work were they not to be met.
24. The IOPC wrote to the Inquiry on 19 June 2019 to inform it that the report would not be completed by 30 June 2019. The IOPC stated that it was still thought that referral decisions would be made on 31 July 2019. This was the first time that the Inquiry was informed about slippage to the 30 June 2019 date.
25. Three weeks later, on 11 July 2019, the IOPC wrote to the Inquiry to state that the report had not been finalised and a referral decision would not be made by 31 July 2019.

26. The Solicitor to the Inquiry responded the following day, saying that 9 August 2019 was “*the very latest date*” by which the Inquiry needed to be informed of the Decision Maker’s conclusion and provided with a copy of the final report if the hearing in September 2019 was to be effective.
27. On 9 August 2019, the IOPC wrote to the Inquiry providing it with a copy of the report. It also informed the Inquiry that the Decision Maker had made the decision to refer one individual to the CPS and that further decisions in relation to other individuals were still under consideration. The Decision Maker had not yet reached any decisions in relation to whether any individuals may have behaved in a manner which would justify the bringing of disciplinary proceedings. As a result, its statutory procedures were not complete but it was anticipated that the decision on whether to refer other individuals to the CPS would be taken by 23 August 2019.
28. Core Participants were informed of these developments by letter dated 14 August 2019. They were also informed that the IOPC report would not be disclosed to Core Participants before the preliminary hearing. This decision was taken following a request to this effect from the IOPC in order to avoid the risk of prejudice to any potential criminal proceedings.
29. On 23 August 2019, the IOPC informed the Inquiry that no other individuals would be referred to the CPS as a result of Operation Nori.
30. The Inquiry requested a further update by way of written submissions, to be provided to the Chair by 30 August 2019. Those submissions have been disclosed to the Core Participants subject to the terms of the confidentiality undertaking. In the submissions the IOPC state that decisions on whether any of the subjects of the investigation would have had a case to answer in respect of professional misconduct charges will be communicated to Leicestershire Police in the week commencing 2 September 2019. However, as all relevant individuals are retired, “*there will be no disciplinary proceedings of any kind.*”

#### The IOPC report

31. The Inquiry has received an unredacted copy of the IOPC report, which has been reviewed by CTI. It is a substantial document running to over 1,700 paragraphs and 200 pages. The report summarises a large amount of investigative material. It outlines the evidence underlying allegations against former police officers and civilian police staff about their handling of complaints of child sexual abuse involving Lord Janner in the course of their professional duties. That evidence is likely to sit (along with other material that this Investigation has received) at the core of the Inquiry’s examination of Leicestershire Police’s institutional response to complaints of child sexual abuse.
32. The report is a document that must be analysed with care. We consider that it is not possible for Core Participants to make informed submissions on the future scope of

this Investigation without seeing the report and being given an appropriate period of time to consider it.

33. We note that some individual Core Participants are directly and personally concerned with the contents of the report. The Inquiry has been made aware that some Core Participants may take issue with the work of the IOPC.

### **The Impact of these developments on the future of the Investigation**

#### The February 2020 listing

34. It is our firm and settled view that the decision of the IOPC to refer an individual to the CPS means that the February 2020 substantive hearings cannot go ahead for the following reasons.
  - 34.1. Any public hearing in the Investigation will consider in detail whether or not there were failures by Leicestershire Police and its staff to respond appropriately to allegations made against Lord Janner. Witnesses will be called and evidence adduced and tested in public hearings. Such hearings would plainly run a serious risk of prejudice to any future criminal proceedings touching upon related matters.
  - 34.2. CTI have examined the referral that has been made. We do not believe that the investigation would be fair, thorough and effective unless it examined matters relevant to the referral.
  - 34.3. It is not possible to take all of the necessary steps to prepare for a February 2020 hearing given the referral. We are not able to disclose the IOPC report and its underlying materials, meaning that Core Participants are not able to make informed submissions on the list of issues to be considered at the public hearings (or indeed on whether the Investigation should continue). The Chair cannot, therefore, make a determination on what is, and is not, to be considered in the public hearings. This in turn means that final decisions on disclosure cannot be made. We have no doubt that in any event the CPS and IOPC would strongly oppose disclosure of any or all relevant material prior to any charging decision on the grounds of the risk of prejudice.
  - 34.4. These preparatory steps cannot be completed in a matter of weeks: see the Solicitor to the Inquiry's Note for the Preliminary Hearing. The sensitive nature of the material under consideration means that great care must be taken in assessing relevance and applying redactions. Critically, Core Participants must also be given an appropriate period of time to consider the documents before any hearing. These are not mere 'technical' matters or points of arcane procedure. They are central to the fundamental duty of the Inquiry to be fair to all Core Participants, all witnesses and all individuals and organisations that it considers.



- 34.5. For completeness, we do not believe that a fair, thorough and effective investigation could be conducted without considering the role of Leicestershire Police at all (e.g. by focusing only on organisations outside of the criminal justice system). The allegations made against Lord Janner were criminal in nature. They were, in some cases, communicated to the police who had a statutory duty to investigate them. Other organisations were entitled to have regard to the outcome of the police investigations. It would be unfair and a distortion of the historical record to ignore the role of the police for reasons of expediency and look only at the response of other institutions.

#### Possible future hearing dates

35. If the February 2020 listing is vacated, the Chair must consider what future hearing dates are available.
36. The Solicitor to the Inquiry's Note for the Preliminary Hearing identifies October 2020 as a possible alternative period. If this is to be viable, then the following will need to have occurred:
- 36.1. The CPS will need to have taken a decision not to prosecute the one individual referred to them by the IOPC. If a decision is taken to prosecute, we do not consider that a hearing in October 2020 would be realistic. Such a prosecution might not take place for some time, during which period the Inquiry would be unable to disclose key materials, including the Operation Nori report, or seek evidence from witnesses involved in the criminal proceedings. Were there to be an appeal following any conviction, this period would be extended. The Inquiry would also wish to consider the evidence that arose from the prosecution before final decisions were taken on scope and disclosure. CTI see no way in which the criminal proceedings would conclude in time to allow for preparations to be made for public hearings in October 2020.
- 36.2. For the Inquiry's purposes, a decision not to prosecute would have to be made by **6 January 2020** to allow sufficient time for a preliminary hearing on 20 February 2020 (see below). Following the decision, it will be necessary to disclose the IOPC report and allow Core Participants sufficient time to analyse it and take instructions. A period of time will also be required for the preparation and exchange of written submissions before the preliminary hearing. For reasons of fairness and practicality, we consider the CPS's decision must have been made at least six weeks before the preliminary hearing.
- 36.3. An effective preliminary hearing must take place no later than **20 February 2020**. This date will allow seven months from the Chair's subsequent determination to the substantive hearings, which is the minimum time required

to allow for preparations (see the Solicitor to the Inquiry's Note for the Preliminary Hearing).

36.4. That preliminary hearing must allow for the Chair to make determinations on (at least) the following matters:

36.4.1. Whether the Investigation is to continue. Some Core Participants may wish to argue either that sufficient investigations have already taken place (including both the Henriques Report and the report of Operation Nori), or that the Investigation should not continue for other reasons.

*If the Chair decides that the Investigation is to continue,*

36.4.2. What the list of issues to be considered at the public hearings should be - in particular, which alleged institutional failings will be examined and which witnesses (or categories of witnesses) should be called.

36.4.3. What approach will be taken to findings of fact on the underlying allegations of abuse made against Lord Janner.

36.4.4. What approach should be taken to evidence adduced for the purposes of testing the credibility of witnesses, including any complainant witnesses.

36.4.5. What procedures will be adopted for the questioning of witnesses.

36.4.6. We are aware that some Core Participants may wish to raise further matters, including whether a member of the Panel should recuse herself from these hearings.

36.5. Following the determination of the list of issues for the hearings, consideration will need to be given to what, if any, waivers of anonymity the Inquiry will require from relevant complainants. As is discussed in CTI's Submissions on the Proposed Restriction Order, the Inquiry is bound by the Sexual Offences (Amendment) Act 1992 and other relevant legal obligations. There may be a substantial risk that the public hearings could allow for jigsaw identification of some complainants given material that is already in the public domain. The Inquiry, the relevant complainants and their legal advisors will need to consider how best to handle this difficult and sensitive matter. It will not be possible to hold the hearings unless a resolution can be found that is lawful, fair and acceptable to the individuals concerned.

37. We note two points in relation to the points raised above. First, the Inquiry recognises that the CPS has an independent and important public duty to consider any referrals made by the IOPC. Such consideration will take time given the nature of the referral made in this case. The Inquiry has no power to set a timetable for the CPS and would not seek to do so in any event. CTI would, however, invite submissions from the CPS at this stage on whether or not it is reasonable to expect a charging decision by 6 January 2020.

38. Second, it is not the case that the substantive hearings will necessarily go ahead even if the CPS determines that no charges will be brought within the above period.

Many very important and difficult decisions lie ahead. Unfortunately, they cannot be addressed at this stage given that CTI have seen the IOPC report but the Core Participants have not. It would be neither fair nor effective to seek to circumvent the procedural sequence set out above.

39. If the public hearing cannot be held in October 2020, then the only other possible alternative would be to hold the hearing after the planned conclusion of the hearing of evidence in the Inquiry. The consequences of extending the Inquiry's programme of hearings are set out in the Solicitor to the Inquiry's Note for the Preliminary Hearing. It is evident that any later hearing will severely disrupt the Inquiry's work plan and will delay the production of the Final Report by months or years. We also note that unless the CPS takes a decision by early 2020 not to bring any charges, then there will be considerable uncertainty as to when any future hearings in this Investigation could possibly be held. As we set out below, we are very conscious of the effect that such delay and uncertainty may have on Core Participants and others.

### **The decisions for the Chair**

40. The Chair has a broad discretion in respect of how she manages the Inquiry's proceedings. She must consider in particular her statutory duty to fulfil the Inquiry's Terms of Reference. Section 17(3) of the Inquiries Act 2005 requires the Chair to act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others).
41. The Chair must decide whether the February 2020 listing for the public hearings can proceed. For the reasons given above, we submit that it cannot. Any hearing at that time would not be fair, thorough and effective given the IOPC's decision to refer an individual to the CPS.
42. Regrettably, because of that decision, we do not think that informed and effective submissions can be made to the Chair on the many other important and sensitive matters that arise in this Investigation. Only CTI have seen the IOPC report, and they are limited in what they can say about it, both for reasons of fairness and to avoid the risk of prejudice in any potential criminal proceedings.
43. The Chair will be mindful of the effect that ongoing delay and uncertainty has on all those connected with the Investigation, many of whom are in vulnerable situations. CTI, too, are acutely conscious of this factor. It will plainly be uppermost in the Chair's mind that that the expectation of timely substantive public hearings in this Investigation must be framed against a realistic and transparent assessment of what is achievable and fair. The proposal to vacate the February hearing is not made lightly, but CTI consider that it would have been wrong to hold out false hope that they could be effective.
44. CTI therefore propose the following course:

- 44.1. A preliminary hearing be listed for either the earliest practicable date following the CPS decision on the referred matter or **20 February 2020** to deal with the matters listed at paragraph 36.4 above, and/or any consequences arising from the work of the IOPC and the CPS.
- 44.2. The public hearings be provisionally listed for **October 2020** for three weeks, subject to discussions with Core Participants about dates to avoid.

**Other matters**

45. CTI have made submissions on a possible restriction order to be made in this Investigation (dated 14 August 2019). Submissions have been received in response from a number of Core Participants. CTI will produce a reply summarising the various submissions and identifying and commenting on any matters of contention concerning the proposed restriction order. This reply will be disclosed to Core Participants and provided to the Chair. We will invite the Chair to make a determination on the papers following consideration of the submissions received from Core Participants and also CTI's reply.

**Brian Altman Q.C.**  
**Andrew O'Connor Q.C.**  
**Matthew Hill**  
**Marlene Cayoun**

**2 September 2019**