IN THE INDEPENDENT INQUIRY INTO CHILD SEXUAL ABUSE
INVESTIGATION INTO INSTITUTIONAL RESPONSES
TO ALLEGATIONS OF CHILD SEXUAL ABUSE
INVOLVING THE LATE LORD JANNER OF BRAUNSTONE QC

SUBMISSIONS ON BEHALF OF COMPLAINANT CORE PARTICIPANTS
REPRESENTED BY SLATER AND GORDON
AT A PRELIMINARY HEARING TO BE HELD ON 24 SEPTEMBER 2019

Introduction and summary

1. The Core Participants represented by Slater and Gordon adopt the submissions made by Howe & Co with one exception: we do not believe that the substantive hearing can proceed in February 2020.

2. The Complainant Core Participants seek effective participation in a full and fearless substantive hearing but that appears impossible in February 2020 because of the volume of material still to be disclosed and considered.

3. The Inquiry has correctly recognised that delay has a detrimental[1] effect on Core Participants. However, the Inquiry should if necessary delay in order to allow all relevant disclosure to be considered.

4. Any delay is preferable to abandonment of the substantive hearings, which would be devastating to the Core Participants' mental health and *prima facie* a breach of public law principles.

October 2020

5. It appears realistic to reschedule the substantive hearings to October 2020. Paragraph 4 of the IOPC submissions dated 30 August 2019 suggests that the CPS might not take much time to reach a charging decision. The Inquiry can invite the CPS to provide regular updates, as it did with the IOPC.

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[1] Determination of 16 December 2016 at paragraph 20.

6. Whether or not the CPS decide to prosecute the one individual referred to them, the substantive hearings can be heard in October 2020. Because of the particular focus upon institutional responses rather than individual fault, the Inquiry hearings can proceed regardless of the stage that criminal proceedings may have reached. The analogy with the Grenfell Tower Inquiry is well made.

7. Alternatively, the Inquiry should reconvene and hear this strand of the investigation as soon as it is able to do so.

No abandonment

8. On the information presently available, the Inquiry could not reasonably abandon the investigation without proceeding to substantive hearings, for the following reasons:

   (i) Counsel to the Inquiry submitted and the Inquiry correctly accepted that there was a 'strong basis' for taking this investigation forward[2];

   (ii) The Inquiry has pursued the investigation for good reason. No good reason is shown to stop its progress, which logically should culminate in substantive hearings;

   (iii) Work already undertaken has been lengthy and extensive, as confirmed in the submissions of Counsel to the Inquiry[3] and Solicitor to the Inquiry. The IOPC report has been completed. It is necessary and proportionate to complete all such extensive work by substantive hearings listed for only three weeks;

   (iv) Public scrutiny of any inadequacies in institutional responses is a necessary and valuable aspect of the investigation. It is the very raison d'être of the Inquiry;

   (v) No such public scrutiny has taken place. Civil claims were discontinued due to limitation, which was the defence put forward by the Estate of Lord Janner. The substantive hearings will be the only opportunity for such public scrutiny;

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[2] Determination of 11 April 2017 at paragraph 9.

[3] Submissions of Counsel to the inquiry at paragraphs 16.1-16.9

(vi) The Complainant Core Participants are accustomed to waiting for such formal public scrutiny. Having patiently waited, they deserve the opportunity at last to participate in substantive hearings;

(vii) To be deprived of that opportunity would have a devastating effect on their mental health;

(viii) In public law the Complainant Core Participants have a legitimate expectation that the investigation will proceed to substantive hearings in the absence of any good reason to stop such progress. See, albeit regarding the government's resiling from an assurance to hold any public inquiry into an unlawful killing, the Supreme Court judgment in Finucane [2019] UKSC 7. Lord Kerr in the leading judgement held (at [72]) that the doctrine of legitimate expectation is *"underpinned by the requirements of good administration"*, and that it would be incompatible with this view *"to permit public authorities to resile at whim from undertakings which they give simply because the person or group to whom such promises were made are unable to demonstrate a tangible disadvantage"*;

(ix) There is no public interest in frustrating the Core Participants' legitimate expectation;

(x) Further or alternatively, it is arguable especially in light of (v) above that the substantive hearings in this strand of the inquiry are the only means by which the State can at long last discharge the investigative obligation that it owes to the Complainant Core Participants under Art 3 ECHR[4]. The State is obliged to carry out an effective investigation into violations of Art 3 ECHR by individuals[5]. Indeed, this Inquiry arguably discharges the State's investigative duty under Art 3 ECHR twice. Firstly, it investigates the allegations of sexual abuse. Secondly, and more importantly, it investigates and makes findings and recommendations on institutional failures, whether systemic or procedural, on the part of institutions who had, but may have breached, an investigative duty towards the Core Participants.

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[4] The right to be free from inhuman and degrading treatment.

[5] *Commissioner of Police of the Metropolis v DSD & Anor [2018] UKSC 11* (the John Worboys case) in which it was accepted (at para 6) that the Human Rights Act 1998 imposes a general duty to investigate ill-treatment amounting to a violation of Article 3 of ECHR. See also (para 81) per Lord Neuberger *'Article 3 of the European Convention on Human Rights carries with it an obligation on the state to carry out an effective investigation when it receives a credible allegation that serious harm has been caused to an individual'.*

(xi) Finally, by analogy with inquest hearings which discharge the State's obligation to investigate any violations of Article 2 ECHR (the right to life), the substantive hearings are necessary to satisfy the requirement that the Inquiry have a sufficient element of public scrutiny. In *Regina v. Secretary of State for the Home Department ex parte Amin [2003] UKHL 51* the House of Lords held (at [20(8)]): 'While public scrutiny of police investigations cannot be regarded as an automatic requirement under article 2 (Jordan, paragraph 121), there must (Jordan, paragraph 109):

> *"be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case."*

At [31] of Amin the House of Lords observed:

> *'The purposes of such an investigation are clear: to ensure so far as possible that the full facts are brought to light; that culpable and discreditable conduct is exposed and brought to public notice; that suspicion of deliberate wrongdoing (if unjustified) is allayed; that dangerous practices and procedures are rectified...'*

9. It is submitted that the purposes of this Inquiry are the same as those attributed above to investigations under Art 2 ECHR. Abandonment of the substantive hearings would fail to ensure so far as possible that in this strand of the Inquiry *'the full facts are brought to light; that culpable and discreditable conduct is exposed and brought to public notice; that suspicion of deliberate wrongdoing (if unjustified) is allayed; that dangerous practices and procedures are rectified'.*

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