INDEPENDENT INQUIRY INTO CHILD SEXUAL ABUSE ("IICSA")

INVESTIGATION INTO INSTITUTIONAL RESPONSES TO ALLEGATIONS INVOLVING THE LATE LORD JANNER OF BRAUNSTONE QC
(the 'Janner Investigation')

SUBMISSIONS ON BEHALF OF:
MARION JANNER & RABBI LAURA JANNER-KLAUSNER
RE: PROCEDURAL HEARING NO. 3 [24.9.19]

SUMMARY

1. These submissions are provided on behalf of the above CPs, but are also supported by their brother, Daniel Janner QC, who represents himself. They deal only with (a) the recommendation of CTI to cancel the fixture for substantive hearings in February 2020; and (b) the future of the investigation in the light of the reasons in support of that cancellation, including the acknowledgement by CTI (for the first time) that the substantive hearings might not be able to proceed at all (§§34-39).[1]

2. The Inquiry is aware that this family have always objected to the existence of the Janner Investigation. They regard it as neither fair, nor proportionate, in terms of its implication for the memory and reputation of their late father. Its continuation has had an adverse impact on them as bereaved individuals still grieving his death, but properly determined to defend him.

3. The proposed delay aggravates their suffering, and should require the Inquiry to revaluate its decision of April 2017 to continue with the strand in due course because of (i) the overall delay since 2015, (ii) the outstanding work (and consequential disclosure) that the investigation is yet to begin, (iii) the list of identified issues yet to be considered as regards the final scope and process of the hearings, and (iv) the rights of the deceased accused and his family in this altered context.

4. While the recommendation to cancel the fixture cannot be opposed for the reasons given, there must be an effective procedural hearing as soon as possible, and no later than the 20 February 2020. The effectiveness of that hearing depends upon timely disclosure of the IPOC report and its underlying evidence, so that the Inquiry can finally determine whether the investigation will continue; and if so, to decide all remaining outstanding issues that can no longer be deferred.

[1] Submissions of Counsel to the Inquiry Ahead of the Preliminary Hearing of 24 September 2019 (hereafter to the 'CTI Submissions')

RECOMMENDATION TO CANCEL FIXTURE

5. The logic of the IICSA's Determination in April 2017 (at §37) to delay the progress of the investigation until the conclusion of the IOPC investigation was to avoid (a) duplication, (b) contamination of evidence relevant to potential criminal proceedings and (c) the risk that the welfare of some individuals may be adversely affected by repeated questioning. It follows that the Inquiry cannot now rationally progress with its own investigation until after the conclusion of a criminal process, following the recommendation by the IOPC of a single charge against an individual in relation to one matter.
6. Thereafter, the ability to progress the Janner Investigation would only arise either after: (i) the determination of any criminal charge(s); or (ii) the exhaustion of remedies available to those who might disagree with either a CPS decision not to prosecute and/or an IOPC decision not to recommend charges against the same, or other officers.

CONSEQUENCES

7. CTI do not regard it as possible for any CP to properly prepare for the hearings, including "*on submitting on whether the investigation should continue*" – which is now recognised as requiring reconsideration - until the disclosure of the IOPC report and its underlying materials (§34.3-34.4). CTI can also see no benefit in discretely investigating the non-criminal justice institutional response to the Janner allegations (§34.5). They recognise for the first time that Janner Investigation may not conclude.
8. Their currently expressed reasons are as follows. First, *if* a decision is taken by the CPS to charge, then they do not consider that an Inquiry hearing could "*realistically*" complete before the end of October 2020 (§36.1). Second, *even* if a decision is taken not to charge, unless it is taken by 6 January 2020, then there will also be insufficient time for sufficient disclosure to take place to ensure an effective preliminary hearing by 20 February 2020 (§36.3-4), which is essential to undertaking the preparatory steps to enable an effective substantive hearing thereafter (§36.5). For understandable reasons, CTI seek clarification from the CPS as to whether it is likely that a charging decision in relation to a matter of this complexity could be made by 6 January 2020 (§37). *However*, assuming all steps within the above period, CTI still emphasise that the investigation will not necessarily proceed. The reasons must be withheld for now, save to emphasise that "*Many very important and difficult decisions lie ahead*" (§38).
9. Fairness dictates that definitive transparency and clarity is essential. A Procedural Hearing should be listed for 20 February 2020, at the latest, with the benefit of adequate and timely

pre-hearing disclosure made to all CPs, so that the Inquiry carry out a fresh and final determination of whether the Janner Investigation should continue in the light of such altered circumstances. Although determination of this issue awaits the disclosure promised by CTI, there are additional reasons why that reconsideration is now imperative, which are set out below.

OVERALL DELAY

10. The April 2017 Determination to postpone the Janner Investigation acknowledged the detrimental consequences of delay for interested parties, and committed to keeping them well in mind as the Investigation progressed (§2). Those consequences weigh heavily on the Janner family whose private and family life was devastated by the revised decision to prosecute him in the face of fatal illness; and the determination in the wake of his death by the previous Chair of this Inquiry to engage in a fact-finding investigation as a prelude to assessing institutional responses. Both the original title of the Investigation and the first paragraph of its TOR underscored the focus on fact-finding.

11. Thereafter, the substantive hearings were predicted to begin in September 2016 (as at First Preliminary Hearing), March 2017 (as at the Second Preparatory Hearing), and during 2018 (as of the April 2017 Determination).

12. The revised TOR may have somewhat refocussed the investigation, but it retained its discretion to fact-find on a "wait-and-see" basis, whilst withholding a commitment to enable complainants to be questioned by other CPs. A Preparatory Hearing that was set to resolve those and other crucial matters in a timely and fair fashion was due to take place in May 2019; at which time its date was moved to September 2019 and the substantive hearings were listed for February 2020.

13. It was not until 2 September 2019 that STI served a statement on the CPs, indicating that the substantive hearing, if it is to be cancelled, must be relisted in October 2020, or not at all. In the same statement he invites submissions regarding Jewish holidays that will fall in what is now presented as the only window of opportunity (§41). In 2020 those Festivals will take place between 19 September and 11 October. All the Janner family recognise the significance of that period in the Jewish calendar; but as Senior Rabbi to the Reform Movement of Great Britain, Laura Janner-Klausner (and her family in support of her) would rightly object to the substantive hearings being listed on those days.

OUTSTANDING WORK AND CONSEQUENTIAL DISCLOSURE

14. The possible future timetable fills the Janner family with the understandable anxiety that having been required to endure the uncertainty of delay for two years, circumstances have now conspired to cause them to endure the risk that time for a fair investigation has run out without their objective being met of defending their late father.

15. The STI accepts (at §30) that during the two year period from April 2017 "*the Inquiry refrained from much of its investigative work in order to allow the IOPC to complete its investigation*". The summary by CTI confirms that there are core areas that overlap with the IOPC investigation in which the Inquiry has previously been unable to work at all (§18). That is especially with regard to obtaining its own statements from witnesses involved in the IOPC and disclosing any of the 200,000 documents previously supplied by document providers (§16.7), and the 100,000 pages now supplied by the IOPC (§16.8). CTI are also adamant that without onward disclosure of documents, "*particularly those obtained by the IOPC*", it is "*impossible to invite informed submissions on the future approach of the investigation*" (§19).

16. Even if there is duplication and irrelevant documents, this Investigation, involving 46 CPs, is likely to have to disclose several hundred thousand documents.[2] There have actually been seven, not four, relevant investigations undertaken by the Police: (i) Op Inert (1989-1991), (ii) Op Magnolia (2000-2002), (iii) Op. Dauntless (2006-2007), (iv) Op Enamel (2013-2015), (v) the Scottish Police investigation (2014-2016), (vi) Op Midland (2013-2015) and (vii) the Leicester Care Homes follow on investigation (referred to at the July 2016 hearing in this case). The IOPC investigation is the second police complaint investigation. The first one was in 1993, carried out on its behalf by Chief Superintendent Foster of West Mercia Police. IICSA is the second statutory inquiry. The first was in 1992, led by Sir Andrew Kirkwood. Allegations relating to Lord Janner have been considered twice by Sir Richard Henriques; although his previous views, if they are to be relied on by this Investigation, must be the subject of further enquiry, especially with regard to establishing what material was available to him.

17. On any view there is a substantial amount of material that is relevant to testing the credibility of complaints. The Janner Family wrote to IICSA (at its request for information)

[2] The Interim Report of IICSA (April 2018), Ch. 6 and subsequent published reports suggests that the disclosure in the Janner Investigation would be far greater than any of the investigations that have hitherto been completed.

on 2 June 2016 and on 9 December 2018. On both occasions they provided summaries of presently confidential information that undermines the case against their father, especially the case that formed the basis for criminal charges against him. With due respect to the statutory provisions on anonymity and the Inquiry's own control of this issue, it is imperative that underlying documentation that might reasonably be said to question the credibility, or reliability of the allegations, and especially the evidence relied upon in support of the 2015 charging decisions, should be disclosed to CPs as soon as possible. This must occur in good time before any future hearing in order to establish whether the investigation is capable of proceeding in a fair, thorough and effective fashion in what time is left available.

FINAL DETERMINATION OF SCOPE AND PROCESS

18. CTI have identified six issues, which it is agreed must be determined as soon as possible, and in any event at the February directions hearing (§36.4). These are, in summary: (1) discontinuance; (2) scope of the inquiry if it does continue, especially what witnesses are to be called and the institutional failings to be investigated; (3) approach to fact finding in relation to the allegations; (4) approach to testing the credibility of complainant witnesses, including presumably putting material to them that may undermine their allegations; (5) the procedures to be adopted for questioning, including whether there will be a case managed opportunity for CP questioning; and, (6) potential recusal of Panel members.

19. Of those matters specified, the following is added by way of provisional justification as to why CTI are right to submit that each matter cannot await further delay:

20. First, the foremost issue of whether the Investigation should continue will have to bear in mind the potential case management consequences of all other live issues.

21. Second, if the Investigation can go ahead at all, its horizons will have to narrow - that of itself reopens the question as to whether IICSA needs this investigation (if it is to go ahead, the Janner family want an investigation that would comprehensively enable them to clear their father's name - the prospect of a truncated process, is not necessarily a fairer option)

22. Third, IICSA has left the prospect of fact-finding on the individual accusations in limbo since 2017 - the position is to be contrasted with the Westminster Investigation, in which CTI regarded it as neither necessary nor proportionate to engage in "*time consuming and resource intensive*" enquiries into the truth of underlying allegations [31.1.18/28]. The Inquiry in due course elected to limit its approach "*to investigate institutional failings and*

not determine facts on individual cases" (Determination May 2018 §5). In short, just because s. 2 of the Inquires Act 2005 says such fact-finding is permissible does not mean that a proper application of s. 17 of the Act to this Investigation means that it can fairly and proportionately take place. That is especially so if time has run out to manage such an enquiry fairly in any event. Above all, as the terms of s. 2 have not by necessary implication overridden the constitutional right to be legally presumed innocent until convicted, it is imperative that the natural justice protections accorded to the Janner family, whose name as well as the name of their father is under attack, are commensurate with the issues at stake.

23. Fourth, the exculpatory material that ought now to be well known to CTI makes it impossible to reasonably continue this strand without returning to consider the original published selection criteria for investigations concerning *credibility*, as well as the *practical capacity* (presumably including what is fair and proportionate) to conduct detailed examination through oral and written evidence.

24. Fifth, once the full body of relevant evidence is available to the CPs it is likely to become much more obvious that the Inquiry would have to renounce comprehensively some aspects of its original scope. Otherwise, it must introduce robust due process protections commensurate with the issues at stake. If it allows for the detail of allegations to be ventilated publicly, then it must equally enable CPs to ask questions of complainant witnesses. The limited time available in October 2020 cannot sensibly countenance a "wait and see" approach to establish whether, and if so, how this will take place in accordance under Rule 10(4) of the Inquiry Rules 2006. The witnesses and CPs should know where they stand. However, the Inquiry will also be aware that the alternative of submitted questions via CTI is considerably time consuming, especially where the facts are disputed and require careful examination.

25. Sixth, the Janner family have previously raised the prospect of Drusilla Sharpling recusing herself based on the direct briefings she received in relation to Op. Enamel and/or her previous contact with CC Michael Creedon. Potential recusal for Panel members may necessarily fall to be reconsidered depending on the content of the IOPC report. The issue concerns only the appearance of justice and is not intended to impute the integrity of the Panellist.

THE DIGNITY OF THE ACCUSED AND THEIR FAMILIES

26. Respect for the inherent dignity of individuals forms party of the very essence of the ECHR (*Pretty v UK* (2002) 35 EHRR 1 §65), and is now recognised as a fundamental value underlying the common law (*Osborn* [2014] AC 1115 §68; *R (A and B) v Secretary of State for Health* [2017] 1 WLR 2492 §93). It was arguably always thus (*East Sussex County Council* [2003] EWHC 167 (Admin) §86).

27. During its life time IICSA has rightly made statements about its concern to protect the dignity of vulnerable witnesses that have made complaints. It has said much less about the predicament of the accused, especially where there is a credible prospect that they have been wrongly accused. The declared case studying ethos by IICSA for this and other investigations unavoidably bears a risk of undermining the dignity of accused individuals and their families. The Inquiry has previously justified its examination of institutional responses to the allegations against Lord Janner, because it claims it is a paradigm that provides a means to an end of greater understanding about the state's treatment of accusations against prominent persons (April 2017 Determination §§2 and 14). That reasoning and the consequences that have followed undoubtedly interferes with the grief of a bereaved family who have cause to see their father as a victim of injustice. If the paradigm's quality becomes tarnished, or the utility of what the Janner Investigation can achieve diminishes, then the justification requiring its continuance must surely need to be more compelling. The issue at stake for the next hearing therefore engages both public law duties and human rights obligations in relation to the accused and their families outside of the criminal and civil law context. On any view, the original purported public interest in pursuing this stand in the wake of Lord Janner's death must now be re-assessed.

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