



# 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 FOLLOWING THE PRELIMINARY HEARING ON 24 SEPTEMBER 2019

1. On 24 September 2019, the Inquiry held a preliminary hearing in the investigation into institutional responses to allegations of child sexual abuse involving the late Lord Janner of Braunstone Q.C. (the “Investigation”). This is my determination following that hearing. I was asked to consider whether the public hearing in this Investigation should proceed as planned in February 2020. I have concluded that it should not. Before giving my reasons explaining this decision it is important to set out some of the background.

#### Background

2. From its inception, this Investigation has co-existed alongside other enquiries and proceedings that touch upon matters relating to the allegations involving the late Lord Janner of Braunstone Q.C. (“Lord Janner”). These have included: an investigation by Leicestershire Police into historic child sexual abuse, civil proceedings brought by complainants against Lord Janner’s estate and, most significantly for the purposes of this Determination, the investigation conducted by what is now the Independent Office for Police Conduct (“IOPC”) into matters connected with Leicestershire Police’s handling of the allegations made against Lord Janner. That investigation is known as Operation Nori. The existence of these other investigations has inevitably affected the way in which this Inquiry has approached its task.
3. In April 2017 I gave a [Determination](#) in which, among other matters, I addressed the question of when the public hearings would be held. I said then at paragraph [37]:

*“In respect of the timing of any public hearings, 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 [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 issues relevant to this investigation.”*



# INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

4. I noted at that time that only one core participant, Mr Creedon, had sought to persuade me of a different course. I added that I would have to weigh a number of factors before deciding on when the full public hearings could take place and that I would invite submissions before I did so. I also accepted that evidence that emerged from other proceedings may affect my approach to the Investigation and its position in relation to the Inquiry's other work. My Determination was not challenged.
5. I do not repeat the full procedural history of events since that time; these are summarised in the submissions of Counsel to the Inquiry dated 2 September 2019, which are available on the Inquiry's website. Suffice it to say that Operation Nori has taken longer to conclude than expected. This has meant that a preliminary hearing listed for 23 May 2019 was adjourned until 24 September 2019. That date was chosen with care. It was considered by Counsel to the Inquiry to be the latest date by which a preliminary hearing could take place in order to allow for the public hearing listed to take place in February 2020 to be effective.
6. As set out in the Solicitor to the Inquiry's note dated 30 August 2019 and Counsel to the Inquiry's submissions dated 2 September 2019, before a full public hearing takes place, I need to make a number of decisions regarding the Investigation and a number of procedural steps need to take place. Both of these documents have been published on the Inquiry's website. Before making those decisions I must allow all core participants a fair opportunity to make informed submissions. In order to make those submissions, core participants must have had sufficient material disclosed to them. As Brian Altman Q.C., Counsel to the Inquiry, said in his submissions to me at the preliminary hearing:

*"These are not simply arid points of procedure and process. They are matters concerning the Inquiry's fundamental duty to be fair to all core participants, all witnesses and all those affected by this Investigation. They also go to the critical importance of ensuring that this investigation is effective in providing [the Chair and Panel] with the evidence that you need to come to just and appropriate conclusions about the institutions you are examining."*
7. It had been hoped that the preliminary hearing on 24 September 2019 would be the point at which the submissions on the points raised above could be made. It was the view of the Inquiry's legal team that in order to allow informed submissions by that date, it would be necessary to disclose the report produced by Operation Nori to core participants. To this end, the Solicitor to the Inquiry corresponded with the IOPC to inform them of the date by which certain steps had to be taken if the September preliminary hearing was to be effective. The history of this correspondence is set out at paragraphs [23 to 30] of Counsel to the Inquiry's submissions dated 2 September 2019.



# INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

8. Given these developments, the Inquiry's legal team reluctantly concluded that it would not be possible for the report to be disclosed and hence it would not be possible for the preliminary hearing on 24 September 2019 to consider, amongst other things, the matters set out at paragraph 36.4 of Counsel to the Inquiry's submissions dated 2 September 2019.

## **Submissions received**

9. In their submissions, Counsel to the Inquiry set out the position in which the Inquiry found itself. These submissions are available on the Inquiry's website and so I do not repeat them in this determination. It is important to say that these submissions were made by reference to a detailed note from the Solicitor to the Inquiry that sets out the work involved in preparing for a public hearing. At paragraphs 16 to 19 of Counsel to the Inquiry's submissions dated 2 September 2019, they also provided details of the work that had been done by the Investigation team to date and, importantly, those areas in which that team had not been able to progress matters in light of the ongoing IOPC investigation.
10. The conclusion from the submissions was that, in their view, core participants were not in a position to make informed submissions on the future course of the Investigation in time for the September preliminary hearing. This in turn meant that there would simply not be enough time to prepare properly for the full public hearing in February 2020.
11. Counsel to the Inquiry, therefore, invited me to vacate the listing for a public hearing in February 2020, and to give further directions that I consider later in this Determination.
12. On the immediate question before me - whether or not to vacate the February 2020 listing - the following core participants either agreed with the submissions of Counsel to the Inquiry or did not oppose them: the complainant core participants represented by Slater and Gordon, Mr Creedon, Tony Butler, the Janner Family, the Home Office, the Department for Education, the Labour Party, Leicestershire Police, Leicestershire County Council, the IOPC and the CPS.
13. The suggestion was, however, opposed by the complainant core participants represented by Simpson Millar, Howe & Co and Affinity Law, and by Michael Perry. Those representing the complaints emphasised the length of time they had waited for public scrutiny of what they considered to be institutional failings. On behalf of Howe & Co and Affinity Law, submissions were made by Chris Jacobs to the effect that the hearings in February 2020 could and should go ahead notwithstanding the CPS referral, and that further hearings could be undertaken in October 2020, or later, as



# INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

required. Mr Jacobs argued that other investigations undertaken by this Inquiry had involved hearings at different times, and that this and other public inquiries and inquests had proceeded with hearings and disclosure notwithstanding concurrent criminal investigations: the examples of the recent Hillsborough Inquests and the Grenfell Tower Inquiry were given.

14. Mr Perry also referred to the Hillsborough Inquests and argued in his written submissions that *“further delay to the Inquiry’s work is both undesirable and unnecessary.”* He accepted that the Inquiry could not force the CPS to make a decision by a particular date, but expressed his view that it would not be unreasonable to expect such a decision to be taken within a month. He invited the Inquiry to scrutinise the work of the IOPC and commented (again in his written submissions) that: *“At some point someone is going to have to be publicly accountable for the way your Inquiry has been delayed by the prevarication of others.”*

## Determination

15. I understand and sympathise with the frustration that the complainant core participants - and others involved in this Investigation - have about the length of time involved and about the uncertainties that remain. I recognise that this may be deeply distressing to some. There remain, however, good reasons why we have proceeded with care and caution. The delays that have arisen in this Investigation are not of the Inquiry’s making. They are the consequence of other public bodies fulfilling the public and statutory duties with which they are charged. The public interest would not be served by this Inquiry acting in a way that would risk undermining those investigations. Taking such a course would also risk causing further distress and harm to witnesses and others.
16. I do not accept the submission that the Investigation should proceed on the basis of “split” hearings commencing in February 2020. There are several reasons for this. First, the submissions do not fully address the situation in which the Inquiry now finds itself, or the practical and legal problems of disclosing sufficient material to allow for fair and effective procedural and substantive hearings.
17. Second, a number of the analogies made by those advocating this course are misplaced. As explained by Counsel to the Inquiry, the Grenfell Tower Inquiry and the Hillsborough Inquests do not appear to have been in the same position as this Investigation. They were not publicly investigating matters at the same time as the CPS were actively considering whether to charge a specific individual with a criminal offence relating to those matters. Further, in this Inquiry, the timetable of the



# INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

Investigation into the English Benedictine Church was amended so that a prosecution could proceed before a public hearing took place into relevant events.

18. Third, I do not consider it wise to embark on public hearings about one part of an investigation at a time when no decision has been taken on its overall shape. This would not, in my view, be conducive to a full, fair and effective series of hearings. There are some investigations that allow for early decisions to be taken to divide the work into modules and a timetable can then be drawn up as to when different hearings can be listed. This is not such an investigation. I am not persuaded by the suggestion that I should, nonetheless, begin with one area without a decision on how it will relate to others.
19. Finally, I agree with the submissions made by Counsel to the Inquiry, and supported (or not opposed) by many other core participants, that it is simply not feasible for the hearings in February 2020 to go ahead. I understand that there are a number of procedural steps which need to be completed before documents can be disclosed to core participants to the Investigation. Further, that careful consideration has to be given to the approach to be taken to redaction of such documents and careful liaison with relevant institutions will need to take place in order to protect the identities of individuals entitled to such protection. Unfortunately, until the CPS reaches a decision on the referral, the investigation team is hampered in its ability to complete these steps. This means that documents cannot be disclosed to core participants who will also not be in a position to make submissions on what should be considered at the final hearing until they have received such disclosure. I agree with the submissions that have been made before me that it is not possible to take all of the necessary steps to prepare for a hearing in February.
20. In light of the above, I direct that the hearing listed for February 2020 be adjourned. I turn now to the consequences of that decision and further directions.

## **Further directions**

21. Counsel to the Inquiry also invited me to make the following further directions:
  - a. That a preliminary hearing be listed for either the earliest practical date following the CPS decision on the referred matter or 20 February 2020 to deal with the matters listed at paragraph 36.4 of their submissions, and/or any consequences arising from the work of the IOPC and the CPS.
  - b. That the public hearings be provisionally listed for October 2020 for three weeks, subject to discussions with Core Participants about dates to avoid.



# INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

22. The matters listed at paragraph 36.4 of Counsel to the Inquiry's submissions were as follows:

*"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."*

23. Subject to one point, which I consider further below, I do not understand there to be any opposition to these further directions if - as I have done - I determine that the full public hearing should not go ahead in February 2020. The directions are intended to allow the Inquiry to "*retain all its options*", to adopt the words of Edward Brown Q.C. for the CPS. I will, therefore, give these directions. I will not set down the agenda of the next preliminary hearing now, but I expect that it is likely to include the matters listed above at paragraph 22.

24. The one point that was contentious was the submission made by the complainants represented by Affinity Law and Howe & Co that I should make a determination at this stage that this Investigation will not be discontinued. I understand that most or all



# INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

other complainant core participants are also strongly opposed to any suggestion that the Investigation should be abandoned, but do not seek a determination from me on this matter at this stage. I am also aware that other core participants will or may wish to argue that the Investigation should be discontinued.

25. I accept the submissions of Mr Altman that any arguments on whether the Investigation should continue or be discontinued must take place *“in a fair and structured way, when more information is available and when all concerned have had an opportunity to make their submissions in full.”* In light of all of the above, this is not something that I therefore need to make a determination about at this stage.

## Directions

26. I direct that:

- 1) The listing of February 2020 for the public hearing in this Investigation be vacated.
- 2) A preliminary hearing be listed for the earliest practical date following the decision of the CPS on the matter referred to it, or 20 February 2020 (whichever is the earliest).
- 3) The public hearings be provisionally listed for October 2020 for three weeks, subject to discussions with Core Participants about dates to avoid.

**9 October 2019**

**Professor Alexis Jay, OBE**

**Chair, Independent Inquiry into Child Sexual Abuse**