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SUBMISSIONS ON BEHALF OF

JA-A8, JA-A, JA-A15, JA-A16, JA-A4, JA-A6, JA-A7, JA-A12, JA-A19, Hamish Baillee, John Gater, Anthony Hyde, Alan Hodges

IN THE INSTITUTIONAL RESPONSES TO ALLEGATIONS CONCERNING  
LORD JANNER INVESTIGATION

REPRESENTED BY SIMPSON MILLAR LLP

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1. These submissions are provided in response to CTI's submissions (open and closed), dated 28/1/2020. It is inevitable, given the Restriction Order in place, the 1992 Act and CTI's concerns, that oral submissions will need to be heard in closed session.
2. CTI suggests that it may not be possible to continue with a substantive hearing into the Greville Janner allegations. CTI suggests that the guarantee of anonymity to complainants of sexual abuse under the 1992 Act<sup>1</sup> could not be maintained at the same time as a proportionate and effective inquiry into the institutional response to allegations against Greville Janner. CTI raises particular concerns in relation to one particular complainant.
3. We have had the benefit of seeing in draft submissions prepared by the legal representatives at Howe & Co. We gratefully adopt and support them.

**Reaction of CPs represented by Simpson Millar**

4. Those we have spoken to since CTI's submissions were received have all decried the possibility that this strand of the investigation might be abandoned for obvious reasons:
  - a. They were always told this investigation was going to happen.
  - b. Henriques has already determined that Janner should have been prosecuted in 1991. The main point of *this* investigation was to uncover the reasons *why* Janner had not been prosecuted sooner. See Definition of Scope 11/4/17, in

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<sup>1</sup> Sexual Offences (Amendment) Act 1992

particular §2.5<sup>2</sup>? The question has never been investigated, let alone answered.

- c. One reason after another has been put forward since this Inquiry began as to why - of all the strands - the Janner investigation cannot proceed. The shifting sands of the arguments put forward has undermined the complainant CPs' confidence.
  - d. The last hearing focussed on the CPS charging decision. The CPS decided in January not to charge. The complainant Core Participants had a legitimate expectation that the final impediment to a full hearing had been removed.
  - e. They feel in truth, that the Establishment does not want this investigation to proceed.
  - f. The idea that of all the investigations, this one, may be scuppered because a Core Participants' anonymity cannot be safely maintained seems to them remarkable.
5. None of those we spoke to, that wished to preserve their anonymity, expressed concerns that this would be compromised.
  6. We reject CTI's suggestion that a proper inquiry cannot be made without breaching the 1992 Act. It would be remarkable if the law compelled such a conclusion in the circumstances. Fortunately, it does not. The Inquiry has sufficient powers to protect the identity of all the complainant CPs.

7.

# Restriction Order

## *Anonymity*

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<sup>2</sup> §2.5 Definition of Scope: 'whether any attempts were made to exert improper influence in order to hinder or prevent an institution from effectively investigating or otherwise responding to allegations falling within paragraph 1'

<sup>3</sup> §27 CTI open submissions

8. We would expect the complainant's representatives to be able to assist the Inquiry with steps that would be protect his identity. CTI has not raised specific concerns in relation to any other CP.
9. Howe & Co have set out the comprehensive range of powers available to the Inquiry to achieve anonymity where necessary, in particular, under s.19 of the 2005 Act. We will not repeat them here. They have been widely deployed elsewhere in this Inquiry and in other public inquiries including those concerning terrorist offences and undercover police operations. We are not aware of any complaints in this Inquiry that anonymity has been undermined or there has been a potential breach of the 1992 Act or any Restriction Order. The purpose of a Restriction Order is, in part, to ensure compliance with 'such restrictions as are required by any statutory provision...', including the 1992 Act.
10. There is a proper distinction between a) providing further material that may tend to identify a complainant and b) exciting public interest generally that may lead members of the public or media to examine publicly available records. But that is not the offence under the 1992 Act. The Act forbids 'matter relating to that person' being published.

11.

# Restriction Order

12.

# Restriction Order

13. If the Panel were truly concerned that a final report might be in breach of the 1992 Act, it would be open for Parliament to order the publication of the report. The publication would then be protected by parliamentary privilege under section 1 Parliamentary Papers Act 1840<sup>4</sup>.

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<sup>4</sup> See also §347, Parliamentary Privilege, First Report, 30/3/1999

## Procedural matters

14. We have no objection in principle:

- a. if part of the preliminary hearing on 20/2/2020 is heard in closed session;
- b. attendance by accredited members of the press;
- c. the existing Restriction Order and statutory provisions are sufficient. The media might usefully be reminded of them;
- d. we are not aware of any Article 2 ('right to life') or Article 3 ('freedom from torture...') issues.

## Other

15. CTI has set out in a lengthy Annex a list of topics that would or would not raise issues of anonymity. It is based on extensive material that CPs have yet to see. It is not possible therefore to make meaningful submissions in response. For what it is worth, it is accepted that some hearings may need to be in closed session. We would expect the final decision on that to be taken nearer the time of the final hearings, after disclosure of the relevant material and after consultation between CTI and with core participants.

## Judicial Review

16. If the Panel rules against continuance of this investigation or restricts its scope, it is likely that complainant core participants will seek to judicially review that decision. The time limit for such a review is short: 14 days, section 38 of 2005 Act. In those circumstances, we would be grateful if the Chair would indicate that she will waive the requirement for a Letter Before Action.

WILLIAM CHAPMAN

9 FEBRUARY 2020

