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 20 FEBRUARY 2020

Introduction

1. On 20 February 2020 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 Determination addresses the matters raised during that hearing. I have previously made Determinations about this Investigation dated 17 April 2017 and 9 October 2019.

2. For reasons that I will go on to explain, a relatively small part of the Preliminary Hearing of 20 February 2020 was held in "closed" session. In this instance, this meant that the public were not present in the hearing room during that period, and no transcript has been published on the Inquiry's website. Core participants and accredited members of the media were present during the closed session, and a summary of it has been placed on the Inquiry's website. I also received closed written submissions from Counsel to the Inquiry and two of the core participants. These were disclosed to all core participants, but not to the media.

3. Counsel to the Inquiry and core participants took care to ensure that as much of the relevant arguments as possible could be heard in public. I am grateful to them for doing so. The open written submissions of Counsel to the Inquiry and the core participants have been published on the Inquiry's website.

4. This Determination will be published in full on the Inquiry website, as well as being disclosed to core participants. I have made this Determination so that all parts of it can be made available not only to core participants but also the public.

Background

5. The Preliminary Hearing on 20 February 2020 was originally intended to consider a number of issues that had been identified by Counsel to the Inquiry in their submissions of September 2019. These included whether the Inquiry should continue and, if it did, what categories of evidence should be adduced at the public hearings and how those hearings should be conducted.

6. The date for the hearing was chosen to allow the Crown Prosecution Service ("CPS") as much time as possible to consider the case of an individual who had been referred to it by the Independent Office for Police Conduct ("IOPC"). This was intended to avoid any risk that the Inquiry's proceedings would prejudice any criminal prosecution. The referral had been made at the conclusion of Operation Nori, an IOPC investigation into the conduct of police officers from Leicestershire Police who had been involved in dealing with allegations made against Lord Janner. The CPS informed the Inquiry on 8 January 2020 that there would be no prosecution.

7. A further issue arose between my Determination of 9 October 2019 and the Inquiry being notified of the CPS decision. This turned out to be significant and the main subject of the preliminary hearing that took place on 20 February 2020. In summary, an individual who made complaints of child sexual abuse against Lord Janner had informed the Inquiry that s/he wished to assert his/her full rights to anonoymity. This decision has significant implications for the future of the Investigation in light of the Sexual Offences (Amendment) Act 1992 ("the 1992 Act").

8. The details and effect of the 1992 Act were again set out in the submissions of Counsel to the Inquiry. With the exception of the points I consider below, there was no significant disagreement with their analysis.

9. In summary, Parliament passed the 1992 Act in order to provide lifelong anonymity to those who alleged that they were victims of various sexual offences, including offences involving child sexual abuse. The intention was to make it easier for such people to come forward with their complaints of abuse.

10. The 1992 Act provides that *"no matter relating to [a complainant of sexual abuse] shall during that person's lifetime be included in any publication if it is likely to lead members of the public to identify that person"* [section 1(1)]. The 1992 Act is broadly drawn and has been broadly interpreted. It covers not only direct identification of a complainant, but also what is called "jigsaw" identification" - in other words putting information into the public domain that, when combined with other material already available to the public, will allow a complainant to be identified. The 1992 Act applies to the work of the Inquiry and those appearing at it, both lawyers and witnesses. A *"publication"* would include a lawyer's submission at one of the Inquiry's public hearings, or a witness's answer, or the act of placing a transcript on to the Inquiry's website. The 1992 Act is forward-looking, in the sense that it prevents offending publications regardless of what has been done in the past: see, in particular, *O'Riordan v Director of Public Prosecution* [2005] EWHC 1240 (Admin). The only defence relevant to this Inquiry is to obtain the written consent of the complainant in question to the publication that is proposed [section 5].

11. The relevance of the 1992 Act to this Investigation was explained in the following terms by Counsel to the Inquiry. I quote the exact words used, as these had been agreed with the complainant in question.

> *"In the particular circumstances relating to one complainant, his/her decision to exercise his/her lawful right to anonymity means that extensive redactions will have to be made to evidence that is to be placed into the public domain. The complainant was an individual who was identified as an alleged victim of child sexual abuse allegedly committed by Lord Janner. The allegations concerning the complainant were considered by various organisations, including Leicestershire Police, Leicestershire County Council, the Crown Prosecution Service and various other national and local bodies. The allegations were examined, or arguably should have been examined, at various points in time since they were made. As a result, they occupy a central role in the evidence that is relevant to this Investigation. That is so both in their own right - did institutions fail to respond appropriately to these particular allegations? - and in respect of the context that they provide to other allegations made against Lord Janner - in particular, the question of whether institutions failed to respond adequately to the accumulation of*

allegations over a number of years from a number of different sources."

12. Counsel to the Inquiry expanded on the effect of the anonymity decision in closed submissions, setting out in detail why certain material could not be placed in the public domain.

13. It was the submission of Counsel to the Inquiry that if the investigation were to continue the complainant's decision to maintain full anonymity would mean that much, possibly all, of the hearings in this Investigation would have to take place in closed session, and that much, possibly all, of the Investigation report that followed would not be suitable for publication. To proceed otherwise would place individuals at risk of committing criminal offences and would fail to respect the decision that the complainant had made. Counsel to the Inquiry emphasised that the complainant was fully entitled to make that decision, as many other complainants had done, and that nothing should be inferred from it. The complainant maintained the allegations s/he had made against Lord Janner.

14. The only significant dissent from the legal analysis of Counsel to the Inquiry in relation to the 1992 Act came from William Chapman, making submissions on behalf of the complainant core participants represented by Simpson Millar. He argued that a court may be willing to give a narrower interpretation of the 1992 Act in the circumstances of this Inquiry as it could "read down" the legislation under section 3 of the Human Rights Act 1998, to give proper effect to article 10 of the European Convention on Human Rights ("ECHR").

15. In response, Brian Altman Q.C., Leading Counsel to the Inquiry, questioned this approach. He pointed out that the Divisional Court in *O'Riordan v DPP* had found that the 1992 Act, even when interpreted broadly, complied with article 10. He argued that it would be *"bold"* for the Inquiry to take a different view given that this could result in members of staff being liable for criminal offences. He submitted that even were a court to consider that the 1992 Act (as currently interpreted) was not consistent with article 10, then it might decide to issue a Declaration of Incompatibility, rather than re-interpreting the legislation. That would not assist the Inquiry unless and until Parliament chose to legislate. Mr Altman also argued that Mr Chapman's approach treated the complainant's decision on anonymity as a problem to be overcome, rather

than a position to be respected. That was, as he had previously said, *"anathema"* to Counsel to the Inquiry's position.

16. I agree with the submissions of Counsel to the Inquiry both on the point about article 10, and about the interpretation of the 1992 Act more generally. Save for Mr Chapman's arguments, there is no disagreement on this point. The 1992 Act applies to this Inquiry and the Inquiry must comply with it.

17. Beyond the legal point, it is important that this Inquiry respects decisions made by complainants to maintain anonymity. The Inquiry directs its work accordingly. This is in keeping with my wider commitment to place complainants at the heart of the Inquiry, and the Inquiry's long-standing position that no complainant will be required to give evidence against their will.

Approaches open to the Inquiry

18. Counsel to the Inquiry submitted that there were three broad approaches open to me in light of these developments relating to anonymity. The first was to proceed with the Investigation in the knowledge that most, if not all, of the hearings would not be held in public and that most, if not all, of the Investigation report would not be published. The second option was to proceed by identifying issues that could be examined in public and pursuing those. The third option was to discontinue the Investigation. None of the core participants disagreed that these were the three options open to me, although some argued that Counsel to the Inquiry were being unduly pessimistic about how much would have to take place in closed hearings (a point to which I return below).

19. The second option would involve focusing on matters other than the criminal investigations into the allegations made against Lord Janner, and on matters that were unrelated to the complainant who wished to preserve anonymity. Counsel to the Inquiry were opposed to this option as it would move the focus of the Investigation from core issues to peripheral ones. Samantha Leek Q.C., on behalf of the Chief Constable of Leicestershire Police, referred to it as *"the least satisfactory"* of the three options. It found no support among other core

participants. Counsel to the Inquiry submitted that if I did not consider this to be the appropriate course, then I should reject it at an early stage of my decision making in order to focus on the other two options.

20. I consider that the second option would not provide for a fruitful Investigation for the reasons given by Counsel to the Inquiry and Ms Leek. It is telling that it has no support from other core participants. I therefore reject it as an option and turn instead to the choice between the remaining two approaches.

What would closed hearings and a closed Investigation report entail?

21. In order to make my decision, I have considered first what closed hearings and a closed Investigation report would entail. In this context, closed hearings mean those from which the public would be excluded and that only core participants and, subject to submissions, accredited members of the media would attend. The hearings would not be livestreamed and no transcript would be published, although some arrangements may be made to publish a broad summary of what had taken place. A closed Investigation report is one that would not be published or placed on the Inquiry's website, but would be provided to core participants and, subject to submissions, accredited members of the media. Again, arrangements could be made to seek to summarise the Investigation report in a form that could be published.

22. I am limited in what I can say in this Determination about this issue. That is because going into details may compromise the complainant's anonymity and breach the 1992 Act. I can make clear, however, that Counsel to the Inquiry made very detailed submissions in closed proceedings about the types of material that, in their view, could not be made public given the circumstances in which the Inquiry finds itself. Andrew O'Connor Q.C., Counsel to the Inquiry who addressed me in closed session, submitted that, were the Investigation to proceed, *"most, possibly all"* of the hearings would have to be in closed session, and that the same formulation would apply to the Investigation report. He gave detailed reasons and examples as to why Counsel to the Inquiry had come to this view, although he said that he was not, at this stage, trying to identify precisely where the boundary between open and closed material would lie.

23. Part of the purpose of Counsel to the Inquiry providing such detailed closed submissions was to inform core participants of their analysis and to invite them to identify specific areas where there was disagreement. It is fair to say that no core participant did so. As Mr Altman said, *"none of the [core participants] identifies any section of evidence that they claim could be placed in the public domain when we say it could not."*

24. Although there were broad submissions from some core participants that it would be possible to hear more evidence in public than Counsel to the Inquiry had suggested, or that careful drafting or "gisting" (summarising) of evidence could be used to this end, no specific details were given. I agree with Mr Altman that I required such analysis, not generalities, to inform my decision. I also note that other core participants expressly agreed with Counsel to the Inquiry's position.

25. I am left, therefore, in a position where I accept the submissions of Counsel to the Inquiry on the question of what closed hearings and a closed Investigation report would entail. In particular I accept that most, possibly all, of any further Investigation would have to take place in closed form.

26. Were the Investigation to continue, I would expect efforts to be made to make as much material public as possible. It may be that, with further work, there are areas that lend themselves to public hearings or public summaries. But I cannot count on that being so. I proceed in making this decision on the basis set out above.

Closed hearings or discontinuance?

27. The power by which I can hold closed hearings, and produce a closed report, is contained in section 19 of the Inquiries Act 2005. This provides:

> ***"Restrictions on public access etc***
>
> *(1) Restrictions may, in accordance with this section, be imposed on—*
>
> *(a) attendance at an inquiry, or at any particular part of an inquiry;*

(b) disclosure or publication of any evidence or documents given, produced or provided to an inquiry.

(2) Restrictions may be imposed in either or both of the following ways—

(a) by being specified in a notice (a "restriction notice") given by the Minister to the chairman at any time before the end of the inquiry;
(b) by being specified in an order (a "restriction order") made by the chairman during the course of the inquiry.

(3) A restriction notice or restriction order must specify only such restrictions—

(a) as are required by any statutory provision, enforceable EU obligation or rule of law, or
(b) as the Minister or chairman considers to be conducive to the inquiry fulfilling its terms of reference or to be necessary in the public interest, having regard in particular to the matters mentioned in subsection (4).

(4) Those matters are—

(a) the extent to which any restriction on attendance, disclosure or publication might inhibit the allaying of public concern;
(b) any risk of harm or damage that could be avoided or reduced by any such restriction;
(c) any conditions as to confidentiality subject to which a person acquired information that he is to give, or has given, to the inquiry;
(d) the extent to which not imposing any particular restriction would be likely—
(i) to cause delay or to impair the efficiency or effectiveness of the inquiry, or
(ii) (ii) otherwise to result in additional cost (whether to public funds or to witnesses or others).

(5) In subsection (4)(b) "harm or damage" includes in particular—

(a) death or injury;
(b) damage to national security or international relations;
(c) damage to the economic interests of the United Kingdom or of any part of the United Kingdom;

(d) damage caused by disclosure of commercially sensitive information.

28. It is not in dispute that section 19 would allow me to hold closed hearings and publish a closed report in certain circumstances. As Danny Friedman Q.C. said in his oral submissions, *"Everyone accepts that you have the power to do this."* Mr Friedman represents Marion Janner OBE and Senior Rabbi Laura Janner-Klausner. Daniel Janner Q.C. expressed his agreement with his submissions. In this Determination I will refer to Mr Friedman's submissions as being made on behalf of the Janner family.

29. In their submissions, Counsel to the Inquiry identified the advantages and disadvantages of proceeding with closed hearings and a closed Investigation report. The advantages were that pursuing this course would allow the Inquiry to examine the central issues in this Investigation, namely possible failings in the criminal investigations into the allegations made against Lord Janner. This would inform the Inquiry's Final Report, even if a report on this particular Investigation could not be published. Continuing the Investigation would go some way to meeting the legitimate interests of the core participants, in particular the complainant core participants. In these ways, continuing the Investigation would assist the Inquiry in fulfilling its Terms of Reference, albeit in a less complete way than a public hearing would allow.

30. The disadvantages identified by Counsel to the Inquiry were: it risked offending the fundamental principle of open justice; closed hearings may not allay public concern and could create considerable public unease; the lack of public hearings would substantially undermine Counsel to the Inquiry's view of the main utility in continuing the Investigation, namely addressing the questions raised by previous investigations in public; there would be no substantial public report from this Investigation - any summary would lack nuance and would risk unfairness to the individuals involved; there were concerns about fairness to witnesses who may face public allegations that could only be answered in private; there was a tension with the Inquiry's requirement to be as transparent as possible; the Chair and Panel would only be able to make limited use of this Investigation in their Final Report; finally, there was the question of whether the substantial financial and emotional cost of proceeding was proportionate to the result that could realistically be achieved.

31. Counsel to the Inquiry conducted a similar exercise in respect of discontinuance. They saw no positive advantage in ending the Investigation, although they noted that others may argue that sufficient enquiries had already been conducted. The obvious disadvantages were that discontinuance would be a *"bitter disappointment"* to the complainant core participants and that it would leave the *"central question of public interest - whether Lord Janner was given preferential treatment, and if so, why"* unexplored and unanswered by this Inquiry.

32. Counsel to the Inquiry argued that both options were open to me in law. In their submission, the disadvantages of continuing with closed proceedings were such that they could not support this approach. They stressed, however, that I must consider all of the arguments made to me, that the submissions of Counsel to the Inquiry had no special status, and that I should accept or reject them as I saw fit. In their written submissions, they also stated that they would await the submissions of the core participants, *"to see if they are able to identify a proportionate, effective and lawful alternative."*

33. Submissions were made in writing by David Enright and Chris Jacobs on behalf of complainant core participants represented by Howe & Co and Affinity Law. Mr Jacobs expanded on them orally. Other complainant core participants adopted these submissions. They argued that the Investigation should continue. They pointed to section 19 of the 2005 Act as a mechanism by which I could proceed through closed hearings. This would not, in their view, unacceptably compromise public confidence, the principles of open justice, or the Inquiry's own Terms of Reference. They also argued that steps could be taken to ensure that the Inquiry's hearings were fair. Referring to my duties under section 17(3) of the 2005 Act, Mr Enright and Mr Jacobs argued that discontinuance would be unfair in all of the circumstances, and would provoke unnecessary costs as work previously done would not come to fruition.

34. Some of the arguments advanced by Mr Enright and Mr Jacobs proceeded on the basis that Counsel to the Inquiry had overstated the problems caused by the anonymity issue, and that these could be resolved through the usual methods of redaction and providing a "gist" (or summary) of sensitive

information. It follows from what I have said earlier that I do not agree that I can proceed on the basis that it will be possible to put substantial amounts of material into the public domain in this way. It may be that some information could be provided, but the complainant core participants have failed to engage with the details of this argument. Despite the invitation from Counsel to the Inquiry, they have not identified areas of evidence that could lawfully be adduced in open session.

35. I have, however, given careful consideration to the wider critique made by Mr Enright and Mr Jacobs of the arguments put forward by Counsel to the Inquiry. Regarding the advantages of continuing the Investigation, I note their central argument that the complainant core participants - who are emotionally invested in this Investigation - would remain involved, even in closed sessions. Accordingly they would be able to observe the testing and scrutiny of evidence, suggest lines of questioning, follow the evidence and read the Investigation report. Participation may take place out of public view, but it would be real and effective.

36. Many of these themes were developed by Nick Stanage in oral submissions on behalf of the complainant core participants represented by Slater & Gordon. He began his submissions by making the following points:

> *"First, let it be said that Lord Janner, described this morning [by Mr Friedman on behalf of the Janner family] as a devoted public servant, died while awaiting trial at the Central Criminal Court on 22 charges of sexual offences against children. On several previous occasions, he should have been prosecuted. In the view of Sir Richard Henriques, prosecution would have led to a realistic prospect of conviction …[T]he allegations against Lord Janner ... were of rape, buggery, indecent assault and gross indecency, dating from around 1955 until August 1988. The first question that our clients ask is: how did such a prominent person, known to have easy access to children in care, repeatedly, and for decades, escape prosecution and, therefore, accountability?*
>
> *Another factor that cannot be ignored and that leads me to my second question is this: there were apparent failures in institutional responses for decades. Those apparent failures deprived our clients and all other complainants of three things: dignity, justice and redress. Those three things*

are now available only from this inquiry. The second question, therefore, is: if not now, when?"

37. Mr Stanage also argued that the Inquiry should seek to accommodate the decisions made by complainants on anonymity, *"rather than in effect penalise [core participants] who maintain their statutory and absolute right to anonymity under the [1992 Act]."*

38. Mr Chapman, on behalf of his clients, adopted the submissions made by other complainant core participants. He also argued that a full Investigation report could be published under cover of Parliamentary privilege, thereby providing protection from the criminal sanctions contained in the 1992 Act. I do not agree that this would be an appropriate way to proceed. As Counsel to the Inquiry submitted, this would not respect the anonymity decision of the complainant in question. I repeat that this Inquiry will respect that decision. For this reason the use of Parliamentary privilege which would circumvent the provisions of the 1992 Act and the wishes of a complainant of child sexual abuse would, in my judgment, be inappropriate.

39. All of those representing the claimant core participants emphasised the devastating effect that discontinuance would have on their clients. One spoke of putting his life on hold because of the Investigation, which had become a *"fundamental part of his own personal healing process"*. He was concerned that *"its derailment will send out a bad signal to high-profile abusers."* Other complainants reiterated these two themes: that they had invested in the Investigation such that it was of critical importance to them personally, and that discontinuance would be felt to be a cover-up or an evasion of scrutiny. One observed that, *"discontinuance will exacerbate feelings of worthlessness and the belief that victims count for nothing, and for even less if the perpetrator and his family are prominent."* Several spoke of concerns that ending the Investigation would endanger complainants, and - in the submissions of Mr Stanage and Slater & Gordon - would *"aggravate feelings of victimisation, marginalisation and unfairness that have been their life experience since the abuse occurred."*

40. Mr Friedman, for the Janner family, submitted that proceeding by way of closed hearings and closed report would *"empty any remaining utility out of*

the Investigation," as the central allegations could not be explored in public. He argued that there was, in fact, no evidence suggesting that alleged institutional failings were connected to Lord Janner's position as a prominent person in public life, citing the report of Operation Nori in support of that proposition. He further submitted that the matters of concern to this Investigation had already been repeatedly considered by various bodies. In light of these arguments he submitted that continuing the investigation would be a disproportionate - and hence unlawful - interference with the Janner family's rights to private and family life under article 8 ECHR. In particular it would interrupt their private grief and offend against human dignity in light of the distress that it would cause. He cited case law from the European Court of Human Rights in support of his argument: *Putistin v Ukraine*, App. No. 168882/03, 21 November 2013, and *Genner v Austria*, App. No. 55495/08, 6 June 2016. I will return to this argument later.

41. Of the other core participants who made submissions, the Chief Constable of Leicestershire Police, Detective Superintendent (retired) Christopher Thomas, Leicestershire County Council and the CPS adopted neutral positions. The Labour Party urged the Inquiry to *"find a way forward that respects the wishes of complainants … [including] the use of closed sessions, if absolutely and strictly necessary."* However, it made no substantive submissions on what the way forward should be. Chief Constable (retired) Michael Creedon supported a full public hearing, but did not make submissions as to how that could be achieved. Dr Tony Butler opposed closed hearings and, with regret, submitted that the Investigation should be discontinued if an alternative fair and satisfactory process could not be identified.

42. I have carefully considered all of the written and oral submissions made to me, including those made in closed session. Having done so, it is my decision that the Investigation should continue, using closed proceedings under section 19 of the 2005 Act where necessary.

43. I make this decision despite the disadvantages to this course identified by Counsel to the Inquiry. I accept that these disadvantages exist. It would have been preferable to have held the hearings entirely in public. That is a course that is not open to me. I must therefore decide between the two approaches

that are left, knowing that either decision will be opposed by some. It is a decision that I do not take lightly, as I am very conscious of the importance of transparency and of an inquiry taking place, so far as it is able to do so, in public. However, it is a decision for me, and my view is that the balance falls squarely in favour of continuing.

44. The main reason for my decision is that there remain, in my view, too many unanswered questions about institutional responses to the allegations made against Lord Janner. Those allegations were extremely serious, and they span a period of decades. For most, and perhaps all, of the complainant core participants, this Investigation represents the last opportunity to get answers to those questions. There is also a public interest in pursuing those answers. I agree with the submissions made by Mr Stanage in this respect, which were in keeping with my thoughts on this matter.

45. I have considered the views of all of the core participants, as expressed through the submissions of their legal representatives. The complainant core participants all supported continuing the Investigation and made clear the devastating effect that discontinuance would have on them. They have invested much in this Inquiry over the past four years and the delays have not been of their making. I am conscious that, for many, their position is that the feelings they have expressed represent a lifetime's damage and distress. I took account of the strength of these feelings when making my assessment. I also took into account the argument that complainant core participants should not be prejudiced by the decision taken by one individual to exercise his/her statutory right to anonymity.

46. The Janner family took the opposite view. Through Mr Friedman they referred to the distress that the Investigation had caused to them and would continue to cause to them. I accept that this is the case. Through my professional experience, I understand something of the continuing impact of loss and bereavement, and I also understand that the Investigation may prolong the grieving process for the Janner family. Their feelings were among several factors that I considered when assessing the strength of the arguments for discontinuance. Ultimately, I concluded that it is right that the Investigation

should continue, notwithstanding that it may have to take place without the public being present or able to view a full record of the proceedings.

47. I have also considered the argument made by Mr Friedman that by taking this course the Inquiry will disproportionately, and unlawfully, infringe his clients' article 8 rights. Even if those rights are engaged, I do not accept that the interference would be unlawful, essentially for the reasons given above. The investigations undertaken by this Inquiry have, inevitably, impinged on the private lives of numerous individuals. Many will have found this distressing. However, it has been necessary in order to undertake our work and to achieve the objective of fulfilling the Terms of Reference. By completing this work we will contribute to improving the protection of children from sexual abuse and exploitation in England and Wales. Although the public value of this Investigation is lessened by it not taking place in open session, as I have explained I still consider its overall value remains not least because it will inform the Inquiry's wider work. I do not accept the Janner family's suggestion that it would be sufficient simply to provide the complainant core participants with the Operation Nori report. There is a public interest in calling and testing evidence, even in closed session.

48. Nor do I accept Mr Friedman's further argument that continuing this Investigation would be unlawful in light of the Inquiry's published policy on the selection of investigations. In my view, that argument comes too late. This decision is not about selecting an investigation, but about whether this Investigation should continue, some four years after it was originally selected, and nearly three years after my decision in April 2017 to proceed with it at that stage. The arguments for and against continuing are those I have considered above, and they are the basis for my decision.

49. Finally, and for completeness, I reject the argument made by the complainant core participants that I was in any event bound to continue this Investigation under the legal principle of legitimate expectation. As is set out in the submissions of Counsel to the Inquiry and Mr Friedman, in order to succeed on this point, the complainant core participants would need to demonstrate that I had given a *"clear and unambiguous undertaking"* that the Investigation would proceed to public hearings and a report: *Re Finucane* [2019] UKSC 7

[62]. I gave no such undertaking, for the reasons set out by Counsel to the Inquiry and Mr Friedman in their submissions. I have decided to continue not out of a legal obligation, but because I was persuaded that the benefits of this course outweighed those of ending the Investigation.

Procedural matters arising from the decision to continue the Inquiry

50. In light of my decision to continue the Inquiry, I turn to the procedural matters that arise as a consequence.

<u>The issues to be considered in the public hearings</u>

51. The first of these is the question of what issues should be addressed in the Investigation hearings. The broad scope of the Investigation has been defined by my Determination of April 2017. I must now consider which categories of evidence should be called in the three week period available for the Investigation hearings. I am conscious that this is a limited period of time and that I must be selective. The Investigation hearings must concentrate on the matters that are of most importance to this Inquiry, keeping in mind its Terms of Reference and its wider work.

52. Counsel to the Inquiry submitted that the focus should be on the conduct of Leicestershire Police and the CPS during the various criminal investigations into the allegations made against Lord Janner that took place in previous decades. While other organisations may also be considered - for example Leicestershire County Council, the Kirkwood Inquiry, the Labour Party and the Cabinet Office - Counsel to the Inquiry submitted that the majority of the hearings should be allocated to the criminal investigations. These were, after all, criminal allegations and it fell to the police and the CPS to consider them. They provided a detailed proposal (referred to by some as a timetable) for the hearings, which was contained in their closed submissions. This was disclosed to the core participants some weeks before the Preliminary Hearing on 20 February 2020 in order to allow them to consider this matter, take instructions and make submissions.

53. With the exception of two points that I address below, Counsel to the Inquiry's proposal was not opposed by any of the core participants. Mr Jacobs, for the complainant core participants represented by Howe & Co and Affinity Law, said that there was *"nothing … objectionable about that timetable"* and cited this as a reason why the Inquiry could and should continue. His submissions were adopted by Mr Stanage, on behalf of the Slater & Gordon core participants, and by Mr Chapman, on behalf of the Simpson Millar core participants. Ms Leek on behalf of the Chief Constable of Leicestershire Police submitted that *"CTI have covered all of the relevant issues and the Chief Constable does not seek to add to them."* The Labour Party, in closed submissions, did not disagree with the majority of Counsel to the Inquiry's proposal, but raised a matter that I consider below. Other core participants were silent on the issue.

54. The first exception to which I have referred came in the submissions of Mr Friedman, made on behalf of the Janner family. He did not argue that anything within Counsel to the Inquiry's proposal should be removed. Indeed, when referring to the central issues identified by Counsel to the Inquiry, Mr Friedman said that his clients *"want the public to know about these matters"*, in part because Sir Richard Henriques' previous report did not - in their view - *"do justice to the serious issues of credibility that surround these and other allegations."*

55. The Janner family submitted, however, that were the Investigation to continue, it should also consider the actions of Operation Enamel and the charging decisions that resulted from that operation. Operation Enamel was the most recent Leicestershire Police investigation, which commenced in 2012. It resulted, as Mr Stanage said, in Lord Janner being charged with a large number of extremely serious offences of child sexual abuse. Mr Friedman's argument was that this Inquiry should investigate the possibility that Lord Janner received unfairly *detrimental* treatment towards the end of his life on account of his position of public prominence.

56. Mr Friedman developed his submissions in the open and closed hearings. He argued that, *"there are features of Operation Enamel that are genuinely worrying."* He pointed to what he saw as problems with the credibility of some

of the complainants whose evidence formed part of the prosecution case. He identified mental health issues, delays in raising the allegations against Lord Janner, and assessments made by others that these witnesses' evidence was unreliable or flawed. He raised the *"arguably problematic investigation strategy"* adopted by Operation Enamel of not taking further detailed statements from complainants who had made allegations in the past. He suggested that the CPS decision making in and around 2014 may have been an abuse of process. Mr Friedman also made criticisms of Sir Richard Henriques' report.

57. Counsel to the Inquiry made two points in response. First, Counsel to the Inquiry had not identified institutional failings by Operation Enamel or the CPS, and were *"wary of an approach that relies on selecting a few pieces of contentious evidence and saying that they call into question the investigation as a whole."* Second, they emphasised that the Terms of Reference of this Inquiry require it to consider failures to protect children from sexual abuse and exploitation. Whatever criticisms were made of Operation Enamel and the CPS (fairly or unfairly), *"they are not matters that are directly connected to failures to protect children from sexual abuse."*

58. Having considered these submissions, I have decided that the Inquiry will not consider Operation Enamel and the related CPS decision making at the Investigation hearings. The reason for this is that, as I have said, I must be selective and I must concentrate the hearings on those issues that are most relevant to this Inquiry and its Terms of Reference. The purpose of the Inquiry is to consider institutional failures to protect children. Mr Friedman's submissions do not persuade me that there were any such failures during the course of Operation Enamel or in the CPS decision making in and around 2014.

59. I add this. The submissions made on behalf of the Janner family rested heavily on suggestions that mental health issues, a troubled past, or delayed disclosure make complainants unreliable witnesses. Such views have been prevalent in the past, and this will no doubt be relevant to the work of this Investigation. I found submissions made on behalf of the Janner family on the

approach of Operation Enamel to be out-dated and unpersuasive.

60. There has been much recent research on this issue, including work published by this Inquiry (see the report of the IICSA Research Team's rapid evidence assessment, *"The Impact of Child Sexual Abuse"*, published in July 2017). Being a victim of child sexual abuse is associated with an increased risk of adverse outcomes in all areas of life, including mental health, substance abuse, offending behaviour, and socio-economic position.

61. The second point raised in objection to Counsel to the Inquiry's proposal for the shape of the hearings also came from the Janner family. It was to the effect that there would be insufficient time to prepare for the hearing in October, and that the timetable was too optimistic given the complex issues involved. Mr Friedman submitted that it was *"untenable"* to hold fair and effective hearings in this way.

62. I do not agree and note in particular that the preliminary hearing on 20 February 2020 was scheduled to allow sufficient time for preparations to be undertaken for a hearing in October if my decision was that the investigation should proceed.

63. On the timing of the hearing, I agree with the submissions made that it should not begin until after the Jewish holidays in September and October 2020 are complete. It follows that the first available date would be Monday 12 October 2020. The availability of counsel is not a factor that I will take into consideration when listing the hearing, not least because the proposed window was announced a year in advance. It is regrettable that some counsel may not be able to participate, but that is insufficient to justify re-arranging the hearings.

64. Finally, I note that the Labour Party raised the question of Parliamentary privilege and how that may affect some of the issues that could, in theory, be included in the Investigation hearings. The Solicitor to the Inquiry had previously obtained submissions on this point from Speaker's Counsel. I will direct that these be shared with core participants, and that he should

correspond with the core participants about any further submissions that may be required on this point.

Other procedural matters

65. I can deal with the three other procedural matters shortly as I accept the proposals made by Counsel to the Inquiry, which were not opposed by the core participants.

66. The first issue concerns whether or not this Investigation should result in findings being made on the truth or otherwise of the underlying allegations of child sexual abuse made against Lord Janner. I will adopt the same approach as I did in the Westminster Investigation. This is set out in paragraphs 35 and 36 of the written submissions of Counsel to the Inquiry. In short, in light of the matters that this Investigation will consider, it will be neither necessary nor proportionate to seek to make such findings of fact. While, in theory, it remains open to me to do so, I consider it highly unlikely that such findings will be required.

67. The second issue concerns the extent to which evidence about the credibility of complainants should be adduced during the Investigation. Counsel to the Inquiry made the following submissions on this point. They were not opposed and appear to have some measure of support from Mr Friedman, on behalf of the Janner family, and Ms Leek on behalf of the Chief Constable of Leicestershire Police.

> *"[37] [C]redibility of the complainants [will] only [be] relevant in certain limited and tightly defined circumstances. This issue is closely linked to that of findings of fact. If (as above) the Inquiry is not seeking to make findings of fact on the underlying allegations, then the circumstances in which it will be necessary or appropriate to consider issues of credibility will be very limited. If an individual who was responsible for making decisions on how to respond to allegations of abuse (for example, a police officer or a CPS lawyer) was aware of a matter going to the credibility of a complainant, and if that matter was material to the individual's decisions on how to respond to the allegation, then it would be relevant evidence. Care would need to be taken about how and in what detail that evidence was adduced in public, but it would be unfair and wrong to exclude such evidence from the public hearings.*

> *[38] However, it would also be unfair and wrong to adduce evidence about the credibility of complainants for the improper purpose of attacking those complainants in public. CTI can see no basis for adducing evidence of, for example, mental health history or criminal conduct or convictions other than in the specific circumstances set out above. The public hearings should not be used as a forum for a proxy defence of Lord Janner any more than it should be used as a place for a proxy prosecution."*

68. I agree with this submission, and this is the approach that I will adopt.

69. Finally, I agree with the submission of Counsel to the Inquiry that I should adopt the same approach for the questioning of witnesses as I have done in other investigations - namely questions will be put by Counsel to the Inquiry, informed by submissions made by core participants as to possible lines of questioning, and subject to any applications under rule 10 of the Inquiry Rules 2006. This, too, was not opposed by any of the core participants. Nor was there disagreement with Counsel to the Inquiry's legal analysis that I have no power to allow questions from an unrepresented core participant.

Conclusion

70. I have determined that this Investigation will continue and that it will address the matters identified by Counsel to the Inquiry in their proposal. I will instruct the Inquiry's legal team to proceed on this basis and to make arrangements for more detailed planning on how the evidence will be adduced, including which witnesses will be called and which documentary evidence will be considered during the Investigation. Core participants will be regularly updated and I expect them to engage constructively with the Inquiry's legal team with a view to reaching agreement on these matters.

71. It is my hope and intention that as much material as possible will be put into the public domain. The boundaries between the open and closed stages of the Investigation will only become finalised once further work is done, but it may be that more can be heard in public than currently appears to be the case. I ask the Inquiry's legal team and all core participants to keep in mind the importance of this Investigation being as transparent as is legally and

practically possible. However, I make it clear that the Inquiry must respect the complainants' decisions on anonymity, and must comply with the 1992 Act.

72. A further Preliminary Hearing may be required. I will direct the Solicitor to the Inquiry to correspond with core participants on this point.

73. I remind those reading this Determination that this is not an investigation into Lord Janner's guilt or innocence. It is not a proxy criminal or civil trial. As the Definition of Scope of the Investigation makes clear, it is an investigation into institutions, and into how they responded to the allegations made against Lord Janner. Among the questions the Investigation will seek to answer are whether those institutions gave Lord Janner preferential treatment, and if so why. Together with the Panel members, I will consider all matters with an open mind, based on the evidence that is adduced in the Investigation. We are not bound by the findings of any previous inquiries or investigations, and we do not proceed on the basis that Operation Enamel arrived at "correct" or "incorrect" decisions or conclusions.

74. The hearings in this Investigation have been repeatedly delayed by matters beyond the Inquiry's control, in particular the need for criminal investigations to be concluded. Core participants have had to show considerable patience. The path is now clear and the hearings in the Investigation will commence on **Monday 12 October 2020**.

5 March 2020

Professor Alexis Jay OBE
Chair, Independent Inquiry into Child Sexual Abuse

INDEPENDENT INQUIRY
CHILD SEXUAL ABUSE

Investigation into institutional responses to allegations of child sexual abuse involving the late Lord Janner of Braunstone Q.C.

DIRECTIONS

1. **The substantive hearings of this Inquiry shall commence on Monday 12 October 2020.**

2. **The hearings shall be conducted in accordance with the decisions contained in my Determination of 5 March 2020.**

3. **The Solicitor to the Inquiry shall disclose to core participants the submissions made by Speaker's Counsel on the issue of Parliamentary privilege.**

4. **The Solicitor to the Inquiry shall correspond with the core participants on the following matters:**
    a. **What further submissions, if any, are required on the issue of the effect of Parliamentary privilege on the scope of this Investigation;**
    b. **The need for, and timing of, a further Preliminary Hearing.**

5 March 2020

Professor Alexis Jay OBE
Chair, Independent Inquiry into Child Sexual Abuse