

**NOTICE OF DETERMINATION
CORE PARTICIPANT APPLICATION**

1. On 25 January 2016 the Inquiry invited anyone who wished to be designated as a core participant in the investigation into institutional responses to allegations concerning the late Lord Janner of Braunstone QC to make an application to the Solicitor to the Inquiry by 22 February 2016.
2. On 31 August 2016 an application was made by retired Assistant Chief Constable Tony Butler, for core participant status in the investigation concerning allegations of child sexual abuse involving Lord Janner and the institutional response to those allegations. Mr Butler seeks to appoint Paul Harris of Edward Fail Bradshaw as his recognised legal representative. This notice sets out my determination of the core participant application.
3. Applications for core participant status are considered under Rule 5 of The Inquiry Rules 2006 ('the Rules') which provides:

(1) The chairman may designate a person as a core participant at any time during the course of the inquiry, provided that person consents to being so designated.

(2) In deciding whether to designate a person as a core participant, the chairman must in particular consider whether –

a. The person played, or may have played, a direct and significant role in relation to the matters to which the inquiry relates;

b. The person has a significant interest in an important aspect of the matters to which the inquiry relates; or

c. The person may be subject to explicit or significant criticism during the inquiry proceedings or in the report, or in any interim report.

(3) A person ceases to be a core participant on –

a. the date specified by the chairman in writing; or

b. the end of the inquiry.

4. In determining the application, the matters listed in Rule 5(2) must be considered, but the list is not exhaustive and other relevant matters can also be taken into account.

The Time Delay

5. The application has been lodged approximately six months after the deadline for core participant applications on the Lord Janner investigation were due. Notwithstanding the delay, I have a discretion pursuant to Rule 5(1) to designate a Core Participant “at any time” during the course of the inquiry,.
6. I understand from information brought to my attention by the Inquiry’s legal team that on 16 May 2016, Mr Butler was served by the IPCC with a disciplinary notice under Regulation 16 of the Police (Complaints and Misconduct) Regulations 2012. Mr Butler is alleged to have breached Standards of Professional Behaviour in regards to previous criminal investigations into allegations of child sexual abuse involving Lord Janner. It is said that Mr Butler may have prevented the arrest of Lord Janner, despite the investigating officers believing there were grounds to do so and that his decisions may have caused, or contributed, to serious criminal allegations not being thoroughly and effectively investigated.
7. In an email from Mr Harris, dated 2 September 2016, he confirmed that Mr Butler only received the IPCC notice in May 2016 and that his firm was instructed shortly thereafter. It is said that since then Mr Butler has only had limited information from the IPCC and he has not yet been interviewed. Having reviewed the information available to Mr Butler, his legal team considered that now was the appropriate time to apply for core participant status and to have applied before now would have been premature.
8. Having regard to the delay in Mr Butler’s application being provided, I am satisfied that a significant part of the delay arises from the service of the Regulation 16 notice by the IPCC on 16 May 2016. Although it is possible that Mr Butler could have made an application earlier, I am satisfied that the delay in doing so should not otherwise disbar his application for core participant status. I have a wide discretion in Rule 5(1) to consider an application at any time during the Inquiry. There is good reason for me to consider the merits of the substantive application for designation.

The Application

9. The investigation will consider allegations of child sexual abuse involving Lord Janner and the adequacy and propriety of law enforcement investigations into those allegations. Mr Butler was involved in the Restriction Order investigation into allegations of child sexual abuse involving Lord Janner. It is said that Mr Butler played a significant role in that investigation and made decisions on how it should proceed. Mr Butler is now the subject an investigation by the IPCC and acknowledges that he may be subject to criticism during the Inquiry on matters relating to Lord Janner.

10. I am satisfied, on the information available to me, that Mr Butler has a significant interest in the Inquiry's investigation into the criminal investigation into Lord Janner conducted by Leicestershire Police Restriction Order and, that due to alleged failings as a result of decisions he is said to have taken, that he may be subject to significant or explicit criticism during the Inquiry. I make plain however that, on its own, the fact that an individual is a suspect in a criminal investigation does not necessarily engage the criteria for designation of a core participant in Rule 5.

11. In considering the matters set out in Rule 5(2), I am satisfied that Mr Butler played, or may have played, a direct and significant role in relation to matters under investigation and that he has a significant interest in an important aspect of the matters under investigation and may be subject to criticism during the Inquiry. For these reasons, I designate Mr Butler as a Core Participant in the investigation into allegations of child sexual abuse involving Lord Janner, and the institutional response to those allegations. Should there be any change in Mr Butler's circumstances, I will review this decision to designate Mr Butler.

Designation of Legal Representatives

12. Applications for designation as the recognised legal representative of a core participant are governed by rules 6 and 7 of the Inquiry Rules 2006, which provide as follows:

6(1) Where -

- (a) a core participant, other than a core participant referred to in rule 7; or*
- (b) any other person required or permitted to give evidence or produce documents during the course of the inquiry,*
has appointed a qualified lawyer to act on that person's behalf, the chairman must designate that lawyer as that person's recognised legal representative in respect of the inquiry proceedings.

7(1) This rule applies where there are two or more core participants, each of whom seeks to be legally represented, and the chairman considers that -

- (a) their interests in the outcome of the inquiry are similar;*
 - (b) the facts they are likely to rely on in the course of the inquiry are similar; and*
 - (c) it is fair and proper for them to be jointly represented.*
- (2) The chairman must direct that those core participants shall be represented by a single recognised legal representative, and the chairman may designate a qualified lawyer for that purpose.*
- (3) Subject to paragraph (4), any designation must be agreed by the core participants in question.*
- (4) If no agreement on a designation is forthcoming within a reasonable period, the chairman may designate an appropriate lawyer who, in his opinion, has sufficient knowledge and experience to act in this capacity.*

13. Accordingly, as I am satisfied that Mr Butler has appointed Paul Harris of Edward Fail Bradshaw as his qualified lawyer, I designate Mr Harris as Mr Butler's recognised legal representative in accordance with Rule 6(1).

14. I understand that Mr Butler was referred to Edward Fail Bradshaw from another firm of solicitors representing other police officers subject to the same IPCC investigation. In an email from Paul Harris, dated 2 September, he confirmed that there is a conflict of interest requiring Mr Butler to seek separate legal advice from other police officers.

15. In the circumstances, I am satisfied that it is appropriate for Mr Butler to have separate legal representation.

16. If Mr Butler wishes to make an application for an award for expenses to be incurred in respect of legal representation under section 40 of the Inquiries Act 2005 it must

be lodged by 26 September 2016. Any such application will be determined in accordance with the Inquiry's Cost Protocol on Legal Representation at Public Expense.

Professor Alexis Jay OBE

7 September 2016