



INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

Child Protection in Religious Organisations and Settings Investigation

NOTICE OF DETERMINATION

Recusal Application

Background

1. On 7 August 2020, Ms. Nicholls, investigation lawyer wrote to core participants in the following terms:

“I wanted to draw your attention that on reviewing the witness timetable next week, Professor Sir Malcolm Evans recognised the name of one of next week’s witnesses, Paul Gillies.

He previously came across Mr. Gillies in connection with his work relating to freedom of religion and belief. Sir Malcolm was previously a member of the Organisation for Security and Cooperation Advisory Council on Freedom of Religion and Belief. He came across Mr. Gillies, who was working to ensure that the CCJW article 9 rights were respected, occasionally in that context.

Sir Malcolm’s work on the Advisory Committee concluded some time before his appointment to become a Panel member for this Inquiry. He does not know Mr. Gillies well, and he was never a colleague, simply someone working in the same field who he occasionally came across.

Neither Sir Malcolm nor the Chair consider this previous connection gives rise to any difficulty, but they ask us to bring it to core participants’ attention for the purposes of transparency.”

2. Submissions were received in response by Mr. Alan Collins on behalf of the Ex-JW core participant group, supported by Mr. Richard Scorer on behalf of James Lloyd Evans. On behalf of their clients, they submit that Sir Malcolm’s work as part of the Advisory Council on Freedom of Religion or Belief in respect of religious freedom gives rise to an appearance of bias. This is on the basis that this organisation is concerned with religious freedom and issues related to this which “spills over into the work of IICSA”. They also say that his relationship with Mr. Gillies is not clear and so he could have been influenced by him.
3. Mr. Scorer makes the further submission that Sir Malcolm’s wife is a Baptist Minister and that this has not previously been disclosed to core participants.



INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

4. They submit that Sir Malcolm should recuse himself from this investigation either on the basis of automatic disqualification (Mr. Scorer) or apparent bias (Mr. Collins and Mr. Scorer).
5. I make this decision pursuant to my power under section 17(1) of the Inquiries Act 2005 (“the Act”) to determine the procedure and conduct of the inquiry.
6. Section 9(1) of the Act requires the Minister not to appoint a person as a member of an inquiry panel if it appears to her that that person has a direct interest in the matter to which the inquiry relates or a close association with an interested party, unless the appointment “could not reasonably be regarded as affecting the impartiality of the inquiry panel.” If at any time during the course of the inquiry a member of the inquiry panel has an interest or association, then in accordance with section 9(3) of the Act, they must notify the Minister.

The issues

7. Sir Malcolm made a declaration of interest, as required pursuant to section 9(2) of the Inquiries Act 2005, on 25 April 2015. He declared that:

“as a human rights academic focussing on issues concerning, inter alia, international dimensions of the freedom of religion and belief, I have and continue to be in contact with numerous figures within the cognate academic, educational, policy and religious spheres and have written extensively on this subject.”

8. He also confirmed that he had no direct interest in the matters to which the inquiry relates and no close association with an interested party.
9. Sir Malcolm’s public biography on the Inquiry’s website makes clear that from 2002 to 2013 he was a member of the Advisory Council on the Freedom of Religion or Belief of the Organisation for Security and Cooperation in Europe (OSCE), and that he was awarded an OBE for services to prevention of torture and the promotion of religious liberty in 2004. This work was recognised in the citation when he was awarded the KCMG in 2015. He is also an independent member of the UK Foreign Secretary’s Human Rights Advisory Group. He has not been a member of the OSCE Advisory Council since 2013 and has not contributed to any publications issued on behalf of this Council since then.
10. Sir Malcolm’s wife, Lady Alison Evans, is a Baptist Minister and hospital chaplain. This information is a matter of public record. It is not something which Sir Malcolm considers gives rise to a direct interest in a matter to which the inquiry relates or a



INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

close connection with an interested party such that it should have been declared, as the Inquiry is not investigating his wife or her religion. She has no particular organisational role or position of executive responsibility in relation to child protection.

11. In preparing for the part of the hearing in this investigation that is due to commence tomorrow, Sir Malcolm reviewed the witness list. On seeing that Mr. Gillies would be giving evidence, he asked the investigation lawyer to notify core participants of his past professional acquaintance with Mr. Gillies as a matter of transparency. This follows the Inquiry's general practice and that followed by myself and other Panel members prior to investigation hearings.
12. Ms. Nicholls' email was sent in the interests of transparency. Neither I nor Sir Malcolm consider that he has a direct interest in a matter to which the inquiry, or this investigation, relates and no close association with an interested party. If he did, he would have notified the Minister, as required by section 9(3) of the Act.
13. Sir Malcolm's past professional acquaintance with Mr. Gillies is historic and brief. Between 2002 and 2013, as part of the panel of experts forming the Advisory Council, he occasionally met Mr. Gillies in a group context at events where discussion of religious freedom was on the agenda. He did not discuss anything to do with the Jehovah's Witnesses in the United Kingdom, but simply issues of their religious persecution in Eastern Europe. His work on the OSCE did not involve examining any issues concerning child sexual abuse or child protection issues in relation to the Jehovah's Witnesses.
14. He was not a colleague of Mr. Gillies and did not work with him. The contact amounted to a passing professional contact. Sir Malcolm is satisfied, as am I, that he will be able to consider and assess the evidence of Mr. Gillies, and other witnesses being called to give evidence to the Inquiry in its investigation hearing next week, independently and dispassionately, as with any other witness.
15. I note that the OSCE is the world's largest security orientated intergovernmental organisation, which has 57 participating countries who work on conflict prevention, crisis management and post conflict rehabilitation. The Advisory Council on Religion is part of the Office for Democratic Institutions and Human Rights whose role is to assist participating states, religious and belief communities in protecting the right to freedom of religion and belief, and in preventing and responding to discrimination on religious grounds. Sir Malcolm was a member of the expert panel, who are expressly appointed because of their "independence" from across those countries who are members of the OSCE. They do not represent any organisation or confession, and their expertise is made available to all those countries who are members of the OSCE, and to non-governmental organisations.



INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

16. This investigation is a thematic investigation into the nature and adequacy of current child protection policies, practices and procedures in religious organisations and settings within England and Wales. Its job is not to determine the correctness of anyone's personal religious beliefs, nor is it an investigation into any particular religious organisation.
17. Sir Malcolm has no personal or professional acquaintance with any witness giving evidence in this investigation or others on behalf of the Baptist Union of Great Britain. Neither Sir Malcolm, nor I consider that his wife's role as a Baptist Minister impedes his ability to assess evidence relating to the Baptists' child protection policies or that of any other religious organisation, or gives rise to any bias or appearance of bias in his doing so.
18. The Inquiry Panel was expressly chosen by the Minister because of its members' experience and expertise in various areas relating to its terms of reference. Contrary to Mr. Collins' submissions, this is not an investigation into religious freedom. The Inquiry has so far produced four separate investigation reports relating to failures by religious organisations to protect children from sexual abuse. Each of these reports has reflected the unanimous view of the Inquiry's Panel, including Sir Malcolm, as required by section 24 of the Act.
19. Mr. Collins makes reference to a lecture given by Sir Malcolm in 2011 where issues around the international human rights approach to religious belief are discussed. This does no more than set out the current international obligations in law, and discusses ways in which the international community can approach those rights to ensure that they are respected.
20. The Baptists are one of over 50 organisations whose practices are being examined thematically to determine if more needs to be done to enhance child protection in these contexts: this investigation is not concerned with adjudicating upon any matter upon which Sir Malcolm's wife has a direct interest or other close connection.

Requirement for the Panel to undertake the Inquiry

21. Further, the submission asks Sir Malcolm to do something which is impermissible under the 2005 Act, i.e. to stand aside and not to hear the evidence of some witnesses part way through a hearing. This Inquiry is being undertaken by a Panel, pursuant to section 3 of the Act. The evidence of all witnesses in all investigations, must therefore be heard by all members of its Panel.

Conclusion



INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

22. Sir Malcolm does not have a direct interest in the matters to which the inquiry relates, nor a close association with an interested party which required notification to the Minister. Further, I consider that no fair minded informed observer, having considered the facts, would conclude that there was a real possibility that Sir Malcolm was biased. Accordingly, I decline the request for Sir Malcolm to stand aside from this investigation on the grounds that it is neither necessary nor appropriate for him to do so.
23. In the circumstances, I consider that I am not likely to be assisted by the provision of further written or oral submissions on this issue.

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

9 August 2020