

INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

**INVESTIGATION INTO INSTITUTIONAL RESPONSES TO ALLEGATIONS OF CHILD
SEXUAL ABUSE INVOLVING THE LATE LORD JANNER OF BRAUNSTONE Q.C.**

DETERMINATION RE: CALLING COMPLAINANT WITNESSES

Introduction

1. In a Note dated 9 July 2020, Counsel to the Inquiry (“CTI”) set out detailed proposals on the way in which the forthcoming hearings in this Investigation should be structured. Paragraph 9 stated (emphasis added):

“CTI do not, at present, propose that any of the complainants listed above should be called to give evidence orally. The Inquiry has their accounts, and these can be investigated effectively and fairly without them being called. As has been repeatedly stressed, this is not an Investigation into the complainants, or into the truth or otherwise of their underlying allegations of abuse. It is concerned with how institutions responded to allegations that they received.”

2. Any core participant who wished to make submissions about the Note was invited to do so by 17 July 2020. Only one core participant indicated their opposition to this proposal. Slater and Gordon indicated on behalf of their core participants that, of those they had been able to contact, two of their core participants wished to provide witness statements to the Inquiry and a number of other core participants were in broad agreement with the proposal. Other core participants were silent on the point.
3. Solicitors to the Inquiry (“STI”) subsequently became aware that the legal representatives of some of the complainant core participants had not fully realised the implications of CTI’s proposal at paragraph 9 of the Note of 9 July 2020. In order to ensure that those legal representatives had no further submissions to make, STI contacted those legal teams. In response, a number of core participants submitted that the Inquiry should hear live evidence from complainant witnesses. The submissions included an indication of which complainants wished to be called. I have read those submissions in full and considered, with care, the precise reasons given by those complainant core participants about why they wish to give evidence.
4. In coming to my decision, I have kept some important points in mind. Firstly, as the Definition of Scope of the Investigation makes clear, this is an investigation into the institutional responses to allegations concerning Lord Janner. It is not an investigation



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into the complainants, or into the truth or otherwise of their underlying allegations of abuse. It is not a proxy criminal or civil trial. Secondly, this Investigation is, for the reasons set out in my determination following the preliminary hearing on 20 February 2020, exceptional in that most of the evidence will have to take place in closed form. This necessarily limits the amount of evidence that will be capable of being made publicly available and I have made it clear that the Inquiry would respect the complainants' decisions on anonymity, and it must comply with the Sexual Offences (Amendment) Act 1992. Finally, as I have previously stated, no complainant would be required to give evidence if they did not wish to do so. Some complainant witnesses in this Investigation have indicated that they would not wish to give evidence. That is an entirely understandable decision, and one that should attract no criticism or adverse comment. It is inevitable and unsurprising that different people have wished to engage with this Inquiry in different ways.

5. The decision whether to call any complainant evidence is one of significance to this Investigation and so I set out below a number of the competing arguments for and against calling this evidence.

Arguments in favour of calling of complainant evidence

6. The arguments in favour of calling complainant evidence include:
 - a. Evidence relating to the institutional response to a complainant who reported an allegation is within the scope of the Investigation, and calling some complainant witnesses is consistent with the approach taken by the Inquiry in other Investigations. It is also in keeping with my wider commitment to place complainants at the heart of the Inquiry.
 - b. Such evidence may further the Inquiry fulfilling its Terms of Reference, and in particular consideration of complainant experiences.
 - c. Some complainant core participants have expressed a desire to give such evidence as part of their engagement with the Inquiry, and have done so in powerful terms.
 - d. Oral evidence may often be more direct and accessible than read evidence (whether read on the papers or into the record).

Arguments against calling complainant evidence

7. The arguments against calling complainant evidence include:



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- a. There is no forensic necessity to call the evidence of witnesses whose allegations are known to have been received by Leicestershire Police - the issue for this Investigation is what was done *after* the allegation of abuse was received.
- b. In respect of some complainant witnesses, the passage of time has meant that, understandably, accounts of historic disclosures (many of which were made decades ago) are often lacking in detail, and may be accompanied by an absence of relevant contemporary documentation. Where individuals accused of failings have been identified, statements have been sought and those accused of having ignored allegations of abuse have denied this. In reality there is likely to be an insufficiency of evidence to enable the Inquiry to make a finding of whether or not there has been an institutional failing. This calls into question the purpose to be served by calling oral evidence on a point incapable of resolution.
- c. Any questions asked of complainant witnesses would be directed to institutional failings, not their underlying accounts of abuse. This is likely to be deeply frustrating and upsetting for the witnesses especially for those who have expressed a wish to be both heard and believed. In addition to the distress this may cause:
 - i. Where there is evidence that is contradictory or unsupportive of complainant witnesses who give oral evidence, then consistent with my duty to act fairly (pursuant to s.17 Inquiries Act 2005) it will be necessary to adduce such evidence. This may include evidence that challenges the underlying facts of the alleged abuse and/or witnesses who contradict or challenge the accounts given by complainant witnesses, particularly where allegations of individual failings are made.
 - ii. Issues of credibility may also arise where a complainant witness gives oral evidence and makes an allegation of wrongdoing against another. Great care would be taken to adduce only relevant evidence and to do so in a sensitive manner, but as a matter of fairness it might be necessary to adduce material that challenges the accuracy of a witnesses' account.
 - iii. Core participants will have different views on what evidence should and should not be adduced to challenge the accounts of those complainant witnesses who give oral evidence. The Janner family are likely to submit that all evidence that calls into question the truthfulness of the witness should be adduced, and to propose that critical questions should be asked in live evidence. Institutional core

participants and individuals facing criticism will be entitled to make their own submissions on these points; again, it is reasonable to anticipate that at least some will seek to adduce evidence that supports their position and undermines that of their accusers. While it is hoped that all involved will take a constructive approach, there is a risk that considerable time and energy will be spent on such matters and in the event of disagreement, I will have to determine any points of dispute. The risk of satellite litigation cannot be excluded, particularly where a party considers it has been treated unfairly. These tensions, which stem from the diametrically opposed positions of core participants to the facts underlying the allegations of abuse, are unique to this Investigation and justify a different approach to that taken elsewhere in the Inquiry's work.

- d. There would, inevitably, only be a selection of complainant witnesses who give oral evidence at the hearings. While they may be representative of some of the evidence about institutional failures to respond to allegations, they will not be representative of the overall criminal case against Lord Janner. There is a risk of distorting the public record as many of the proposed witnesses from the criminal trial will not be called, including those who made statements corroborating accounts of abuse of others. The cumulative weight of the evidence for and against Lord Janner will not be reflected.
- e. There are alternatives to complainants giving oral evidence. As in other investigations, a gisting table could be used to provide the Inquiry with an understanding of evidence that is relevant to the Investigation but incapable of resolution. This can be presented efficiently, effectively and fairly, through summaries and documents. It is also proposed to call SIO Nigel Hewson of Leicestershire Police who provides helpful background and contextual evidence relating to the chronology of allegations and investigation in respect of Lord Janner. Several detailed statements have been obtained from him which provide an overview of the evidence - including the complainant evidence.

Conclusion

8. Having carefully considered all of these matters I have decided that no complainant evidence should be called. My reasons for coming to this decision include:
 - a. The focus of this Investigation is on the institutional response to the allegations made against Lord Janner. A number of those core participants who wished to give evidence do not give evidence that refers to an

institutional response and, for others, the evidence that they do give on this topic is not such that it will assist the Inquiry in understanding whether the institutions responded properly to the allegation and/or whether the response was improperly influenced by the fact that they were dealing with a figure of public prominence. For example, B10 and F54 indicated that they wished to give evidence. B10 made his first statement to the police during Operation Enamel in 2015. In my determination on [5 March 2020](#) I explained why Operation Enamel and related CPS decision making was not going to be considered at the public hearing. F54 first complained to the police during Operation Winter Key in 2018. By 2018 Lord Janner had died and the police would not therefore have been able to pursue an investigation. Hearing from these witnesses would not fall within the scope of this Investigation.

- b. Across the Inquiry's work as a whole, although some complainant evidence has been called, the Inquiry has not heard live evidence from the vast majority of complainant core participants. Moreover, this Investigation is unique because each and every allegation of abuse is contested. Accordingly, there is a very real risk of consequential satellite litigation such that I think it would be disproportionate and distract the Inquiry from focusing on what this Investigation is about, i.e. the institutional response.
- c. In addition, some of the complainant core participants who wished to give evidence, give evidence of an institutional response/contemporaneous complaint that is directly contradicted by other witnesses. For example B9 and E1. I have considered with care how the Inquiry could properly come to findings where such a conflict exists, and I accept the submission that in many cases it will not be possible. Even if the Inquiry were able to do so, I do not think resolving such matters would be of such assistance that it would be necessary to hear from the witness.
- d. I have made this decision after much thought. My conclusion reflects the Terms of Reference by which this Inquiry is legally bound, and my related rulings on the scope of this Investigation. For the reasons given, this Investigation is different from others that the Inquiry has conducted and hence a different approach to complainant evidence is justified. The hearings must not become a proxy trial, in which complainants' accounts of abuse are subject to forensic scrutiny and challenge with no subsequent resolution.
- e. I know that some complainants will be bitterly disappointed and even distressed by my decision. I am concerned by this and whilst I did not think that this was a factor that I could properly take into account in deciding whether or not to call evidence from these complainants now that I have

reached my decision, I have alerted the Inquiry's safeguarding and support team, which includes clinical psychologists, to the terms of this Determination. The services of this team will be available to assist any complainant core participant should they wish for such support.

9. I have therefore come to the conclusion that it is not necessary for such evidence to be given in order for the Inquiry to fulfill its Terms of Reference in this Investigation. This is not a criminal or civil trial and the Inquiry must not lose sight of the focus on the institutional response.
10. I am committed however to ensuring that the complainant witness evidence can, and will, be adduced at the hearing. The use of a gist table and the evidence given during the course of SIO Hewson's live evidence will ensure that the complainants' accounts are considered in a way that is fair to all core participants and focuses on the institutional response. I welcome the assistance the complainant core participants have provided thus far. If any complainant core participant who has not already made a statement to the Inquiry wishes to do so, they should contact the investigation lawyer assigned to this investigation, Mrs Shepherd.
11. This Determination will be published in full on the Inquiry website, as well as being disclosed to core participants. I have drafted this Determination so that all parts of it can be made available not only to core participants but also the public.

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

4 September 2020