



INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

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

NOTICE OF DETERMINATION

October 2020 hearing

Background

1. The Inquiry's investigation into institutional responses to allegations of child sexual abuse involving the late Lord Janner of Braunstone QC is scheduled to commence its substantive hearings on 12 October 2020, and to complete those hearings by 30 October 2020.
2. I have already made Determinations (published on the Inquiry's website) in the Lambeth Council investigation, Child Sexual Exploitation by Organised Networks (CSEN) investigation and the Child Protection in Religious and Organised Settings investigation that the hearings in these investigations should be held virtually due to the restrictions placed on the country due to the Covid-19 pandemic.
3. As the government has sought to relax the restrictions it imposed, I instructed Inquiry staff to examine the developing guidance and consider ways in which the Inquiry might seek to return to its hearing centre at Pocock Street. They concluded that the only way that a return to Pocock Street would be possible was through use of a Hybrid Hearing. The Hybrid model involves putting as many people as is safe in the hearing centre at one time and making provision for others to participate virtually. In practice, this would involve myself and the Panel, Counsel to the Inquiry and other members of the legal team, other limited Inquiry staff, and some witnesses and their legal representatives attending the hearing in person, whilst core participants and their legal teams would attend virtually.
4. On my instruction, the Solicitor to the Inquiry sought submissions from core participants and consulted with witnesses in this investigation on the possibility of holding the hearing in this investigation as a Hybrid hearing. The Solicitor to the Inquiry informed core participants that if the Inquiry is to return to the hearing centre, it could only do so by way of the Hybrid model proposed, which required core participants to participate virtually. In addition, it was noted that should restrictions be reimposed or if I were persuaded by the responses of witnesses or core participants that the Hybrid hearing model was not appropriate, the hearing would



INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

need to proceed virtually on 12 October 2020 in light of the ongoing need for social distancing.

5. Core participants were asked to provide any submissions in response by 4pm on 25 August 2020. Although the witness timetable in this investigation has not yet been finalised, the Inquiry sought views of potential witnesses on whether they would prefer to give evidence in person or virtually should the Hybrid hearing model be adopted.
6. At the same time, I invited submissions from core participants on the virtual attendance of a small number of accredited members of the media during the closed sessions of the hearing. For reasons I explained in my determination dated 5 March 2020, parts of this hearing will take place in closed session and so the media would not otherwise be able to follow the hearing via the livestream on the Inquiry's website.

Core Participant Submissions on the Hybrid hearing proposal

7. I received written submissions from the following core participants:
 - a. Complainant core participants, represented by Simpson Millar
 - b. Complainant core participants, represented by Slater and Gordon
 - c. Complainant core participants, represented by Affinity Law
 - d. F54, represented by Howe and Co
 - e. Laura Janner-Klausner and Marion Janner OBE, represented by Leverets
 - f. Independent Office for Police Conduct (IOPC)
 - g. Home Office, represented by the Government Legal Department
 - h. Crown Prosecution Service (CPS)
 - i. Leicestershire County Council (LCC)
 - j. Leicestershire Police, represented by East Midlands Police Legal Services
 - k. Michael Perry
 - l. Dr Tony Butler, represented by Edward Fail Bradshaw & Waterson
 - m. Michael Creedon, represented by 3D solicitors
 - n. Christopher Thomas, represented by 3D solicitors
 - o. Peter Joyce QC, represented by MSB solicitors
8. The majority of submissions on behalf of core participants indicated that there were no objections to the Hybrid hearing model, rather than a virtual hearing.
9. Whilst some core participants expressed a preference for a hearing in person, many accepted this would not be possible in the current circumstances. Two complainant core participants represented by Simpson Millar indicated that they would rather the



INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

hearing be postponed to a later date when attendance in person would be possible. One of these complainant core participants said that attendance in person was important to him as he wanted to see the face of the Panel and barristers as evidence was being given.

10. Some complainant core participants accepted the proposals, but indicated that this was on the basis that they and their legal teams are permitted to attend the hearing in person on specified days upon their request so that they could “*look in the eye’ those who have failed them*”.
11. Many complainant core participants either made no specific representations on the Hybrid hearing model or indicated they had no objections to the proposal. Some noted their primary concern was just to be able to hear all of the evidence.
12. Laura Janner-Klausner and Marion Janner OBE submitted that if a Hybrid or virtual model were adopted, more time should be allowed in the timetable to allow for the handling of the complex issues that may arise as a result. They invited me to include 2 to 3 extra sitting days after 31 October to accommodate any slippage in the timetable and to allow core participants sufficient time to prepare and present written and oral closing submissions.
13. The IOPC, Home Office, CPS and LCC all indicated they had no objection to the proposals for a Hybrid hearing, whilst Leicestershire Police indicated they would be content for the hearing to take place virtually. They noted that in the Inquiry’s CSEN hearing, a number of witnesses had indicated they would be more comfortable with giving evidence virtually, rather than travel to the Inquiry’s hearing centre.
14. Of the former police officer core participants, Christopher Thomas and Michael Perry indicated a preference to attend the hearing virtually. Dr Tony Butler had no observations to make and Michael Creedon is content for the hearing to proceed in whatever format the Inquiry sees fit.
15. Peter Joyce QC indicated a preference to attend in person, subject to any government advice at the time or any difficulties any of the team faced in light of the Covid-19 pandemic.

Responses from witnesses on the Hybrid hearing proposal

16. Of those potential witnesses who were contacted for their view on whether they would prefer to give evidence in person or virtually, the majority indicated a preference to give evidence virtually. Some of those who said they would rather



INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

attend in person also noted concerns around travelling by public transport, or the fact that their view may change depending on developments in the Covid-19 pandemic.

Submissions of core participant on attendance of members of the media in closed sessions

17. Most core participants who provided submissions in response to the proposals that a small number of accredited members of the media attend the closed sessions of the hearing virtually said that they were content with this approach.
18. The responses of complainant core participants on this matter were however varied. Some indicated their support for members of the media to attend closed sessions or raised no objections, whilst others felt strongly that the media should not be permitted to attend.
19. Of those who objected to the attendance of the media in closed session, they were primarily concerned about information being reported that would allow individuals to be identified.

Determination

20. I have reflected very carefully on all of the submissions received, both in relation to whether the hearing could take place as a Hybrid hearing as opposed to a virtual hearing, and on the attendance of accredited members of the media in the closed sessions.
21. As I have previously explained, in ordinary circumstances, my preference, along with all core participants, would be to hold hearings in the usual way at the Inquiry's purpose built hearing centre in London, where support is available to complainant core participants in person and where core participant teams can take part in the investigation alongside each other. We are not, however, in ordinary circumstances. The impact of Covid-19 has affected individuals and society considerably and will continue to do so, most likely for many months. The UK Government's published Covid-19 Recovery Strategy makes clear that social distancing measures will remain in place for some time.
22. Whilst I can appreciate that some core participants would rather I delay the hearing altogether until it is possible to resume the hearings as normal at the Inquiry's hearing centre, the future impact of Covid-19 on society and consequential government guidelines presents an ever changing and uncertain landscape and I consider that the Inquiry can and should adapt to the current circumstances, and make progress with its work where it can. I am particularly concerned not to delay



INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

this hearing any further given its long procedural history and the impact I know this has understandably had on all those involved.

23. In addition, any delays to the Inquiry timetable impact upon the Inquiry's ability to fulfil its terms of reference, and to make recommendations for the better protection of children from child sexual abuse. Because of the complex programme of work the Inquiry is undertaking, a delay of even one week in holding a particular hearing may cause a knock on delay in our being able to conclude the Inquiry of several weeks or indeed months.
24. Having considered the submissions from core participants and the responses of witnesses to the question of whether they would rather attend the hearing in person or virtually, I have decided that this hearing should take place virtually.
25. In reaching this decision, I have in mind that the majority of witnesses contacted expressed a preference to give evidence virtually, and for those who said they would rather give evidence in person, some indicated that this may be subject to change depending on developments in the response to the Covid-19 pandemic. Importantly, in light of my earlier determination that no complainant core participants will give oral evidence in this investigation, any decision to proceed virtually will not impact on their participation in the Inquiry. The way in which the virtual hearing will be conducted will in fact provide a better view of the witness giving evidence, and the Panel and Counsel to the Inquiry, than the seating in the public gallery at the Inquiry's hearing centre, which I appreciate will be important to some complainant core participants.
26. Although some complainant core participants expressed a preference for a Hybrid hearing over a virtual hearing, this was on the condition that they are permitted to attend in person on specific days. Unfortunately, as explained in the proposal sent to core participants, social distancing requirements and the space available means that it is not possible to accommodate the physical attendance of core participants or their legal teams within the Hybrid model. I note, however, for the most part core participants simply indicated they had no objection to the Hybrid model and did not specify that this would be preferred over a virtual hearing.
27. In light of this, I consider that the benefits of holding a Hybrid hearing in this investigation do not outweigh the risks to health in doing so, nor justify the complex arrangements necessary to make such a hearing work. Proceeding with a virtual hearing will ensure that the hearings can take place as scheduled without the need for the Inquiry, core participants and/or witnesses to worry about the possibility of significant disruption or last minute changes to the timetable that may be caused by local lockdowns or other unpredictable measures put in place by the Government.



INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

Further details about the practicalities of the virtual hearing will be circulated to core participants by the Investigation Lawyer.

28. In relation to attendance of a small number of accredited members of the media during closed sessions of the hearing, I note that most core participants were content with this. I have considered the objections raised by some complainant core participants and their concerns about the protection of their anonymity. It is important that I clarify that any evidence heard during closed sessions will be subject to a Restriction Order under section 19 of the Inquiries Act 2005, and they enjoy lifelong anonymity under the Sexual Offences (Amendment) Act 1992. It follows that nothing said in closed session could be reported by the media in such a way that would breach any Restriction Order, including my Restriction Orders dated 23 March 2018 and 18 September 2019 protecting the anonymity of complainant core participants in this investigation, or would breach the 1992 Act. I consider these reporting restrictions, together with the provisions of the 1992 Act, address the concerns raised in submissions and therefore permit a small number of accredited members of the media to attend closed sessions of this hearing virtually.

Professor Alexis Jay OBE
Chair Independent Inquiry into Child Sexual Abuse

18 September 2020