



INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

Child Protection in Religious Organisations and Settings Investigation

NOTICE OF DETERMINATION

Recusal Application

The Application

1. On 28 August 2020, the Inquiry received an application from the Christian Congregation of Jehovah's Witnesses ('the CCJW') for the recusal of Mr Ivor Frank, 'on the grounds of bias (actual or apparent) and pre-disposition' as a member of the panel for the Inquiry's investigation into Child Protection in Religious Organisations and Settings ('the CPIROS investigation').
2. The application arises out of the CCJW's concerns regarding questions Mr Frank asked Mr Paul Gillies, a representative of the World Headquarters of Jehovah's Witnesses, at the conclusion of Mr Gillies' testimony on 11 August 2020 in the course of the resumed substantive hearing in the investigation. The CCJW contend, on the basis of the questions Mr Frank asked, that a fair minded and informed observer, having considered all of the facts, would conclude there is a real possibility that he was and is biased.
3. 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. Mr Frank has read this determination and is in agreement with its contents.

Background

4. Mr Gillies gave oral evidence to the Inquiry on 10 and 11 August 2020. On 11 August 2020, at the conclusion of Counsel to the Inquiry's questioning, I asked my fellow panel members whether they wished to ask Mr Gillies any questions. I set out below the full transcript of Mr Frank's questioning of Mr Gillies:

MR FRANK: Yes, please. First of all, is it right that you were appointed to your current post in 2018?

A. Yes

MR FRANK: And the post is Director of the Office of Public Information of the World Headquarters of Jehovah's Witnesses?

A. Yes.



INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

MR FRANK: That's based in New York, I think.

A. Yes.

MR FRANK: Before you, who was your predecessor in that post?

A. Mr David Simonian.

MR FRANK: Do you also have a post of the records manager overseer based in your office or elsewhere?

A. That's not my position, no.

MR FRANK: Do you know of someone who holds that position?

A. Are you talking about the world headquarters?

MR FRANK: Whether it's the world headquarters or anyone else. Do you know of anyone who occupies the post of records manager overseer?

A. Well, we have records management guidelines, and each department will oversee its records management.

MR FRANK: Do you know a person called Shawn Bartlett as a records management overseer?

A. Yes, I do.

MR FRANK: Did he come to give a seminar to elders in England in 2017?

A. Yes, he did.

MR FRANK: Did you attend that?

A. I think I did. I can't recall it specifically.

MR FRANK: You might recall it if you remember the content of the seminar. Can you remember what the purpose of the seminar was?

A. To help us make sure that our record keeping was up to date with legislation and that we weren't keeping unnecessary documents.



INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

MR FRANK: Not keeping unnecessary documents. Do you mean that he advised you to get rid of some documents?

A. Well, of course, at that time, and even now, we have data protection matters, so we have to make sure that documents adhere to data protection issues, so, yes, he would have advised along those lines.

MR FRANK: My next question is, do you have a data retention policy that you have published?

A. We have a data retention policy. Have we published it? I don't know.

MR FRANK: In any event, you were at the seminar in 2017 where Shawn Bartlett, among other things, advised you how to keep and how to get rid of documents?

A. Yes.

MR FRANK: Did he, in the course of that seminar, tell you that the reason for getting rid of documents was because Satan was coming after you? Satan in the form of a legal process?

A. Okay. His comments, as I say, were directed with regard to data protection issues, as I recall. I don't remember exactly what he said on the subject. I don't remember any comments about Satan particularly.

MR FRANK: Do you know whether there is a record anywhere of that seminar, of what was said?

A. I'd have to find out for you.

MR FRANK: Would you do that, and please let us know? Thank you very much.

5. On 13 August 2020 the CCJW wrote to the Inquiry setting out various concerns about Mr Frank's questioning of Mr Gillies. In summary, it stated that:
 - a. Mr Frank's questioning of Mr Gillies did not touch upon any of the documents within the evidence bundle with which Mr Gillies had been provided prior to the hearing;



INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

- b. Mr Gillies had no forewarning of this line of questioning;
 - c. Embedded in the questions were very serious allegations against both Mr Gillies and the Jehovah's Witnesses. It was suggested that Mr Frank had implied that Mr Bartlett had, in effect, counselled a criminal offence given that a letter had been sent by the Chair of the Inquiry on 23 June 2015 requiring non-State institutions to retain records of child sexual abuse; and
 - d. Mr Frank's questions were unjustified given that the CCJW had explained, in Mr Gillies' 2 December 2019 witness statement, and elsewhere, that information concerning child sexual abuse allegations are marked 'Do Not Destroy' and are kept 'indefinitely'. Additionally, it was suggested that Mr Frank and the Inquiry were aware that the CCJW had already provided disclosure of its child sexual abuse records to the Inquiry prior to the current investigation being launched in April 2019.
6. In the letter, the CCJW went on to ask a series of questions about how Mr Frank obtained the information he relied on in his questioning, when he first located it, and whether the information was provided to him or the Inquiry by an individual or entity. Additionally, the CCJW asked whether Mr Frank discussed the matter with any other panel member prior to putting his questions to Mr Gillies. The CCJW requested that the video footage of the exchange between Mr Frank and Mr Gillies '*not be disseminated more widely than it already has and that there is no other further dissemination of that exchange*'.
7. On 14 August 2020, the Solicitor to the Inquiry responded to the CCJW's letter. He said that:
 - a. Mr Frank's interest in the topic of retention and deletion of records relating to allegations of child sexual abuse arose on either 10 or 11 August 2020, during the course of Mr Gillies' evidence. This arose from his reading HHJ Globe's judgment in the case of *A v The Trustees of the Watchtower Bible and Tract Society and others* - a document disclosed to all core participants in the investigation - in which HHJ Globe indicated that Mr Gillies had made a witness statement in the case of PR-A5, from whom the Inquiry heard on 10 August 2020. In that statement Mr Gillies had said that prior to 31 August 1990 there were no filed documents in existence showing that Peter Stewart had either been appointed or deleted as a ministerial servant at any congregation of the Jehovah's Witnesses;
 - b. Conscious of the Inquiry's previous correspondence with the CCJW on the question of document retention and the reassurances that the CCJW had



INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

given in relation to preservation of documentation, Mr Frank undertook his own internet research outside the hearing and, in so doing, came across an article in The Philadelphia Inquirer entitled '*Watch: Jehovah's Witness official says to destroy documents because 'Satan is coming after us'*';

- c. No one brought the article to Mr Frank's attention and he did not discuss it with the Inquiry's legal team, his fellow Panel members or anyone else.
8. The Solicitor to the Inquiry made clear that the Inquiry accepted that Mr Gillies was given no prior notice of this particular question topic and apologised that its usual processes failed in this respect. He said that Mr Frank was sorry to hear that the question came as a surprise to Mr Gillies and apologised for this. He said that the Inquiry did not agree to edit or remove the transcript or video recording of proceedings from its website, as doing so would distort the public record and would fail to comply with the Chair's obligations under section 18 of the Act. He proposed, however, that in order to assist in ensuring a fair picture of Mr Gillies' evidence was made public, the Inquiry would publish any response he wished to give to the questions put by Mr Frank alongside the video and transcript of the relevant day's proceedings and that it would adduce in evidence any witness statement that Mr Bartlett wishes to provide. He asked the CCJW to treat the letter as a formal request under Rule 9 of the Inquiry Rules 2006 ('the Rules') for Mr Gillies to provide a further witness statement addressing the questions raised by Mr Frank.
9. On 19 August 2020, the Inquiry received a further letter from the CCJW in which:
 - a. The CCJW asked whether '*the Inquiry and/or Mr Frank will make its apology public (in the same way that the questioning of Mr Gillies was conducted publicly)?*';
 - b. It asked a series of further questions, including: on what date Mr Frank undertook his personal internet research on the subject; on what date he first came across the article in The Philadelphia Inquirer and the date of the article; whether any individual or entity informed Mr Frank or pointed him to the information on which he relied in questioning Mr Gillies; Mr Frank's explanation for not discussing his concerns and research with others; Mr Frank's explanation for not drawing the information that he had found to the attention of the CCJW in advance of Mr Gillies' evidence.
10. On 20 August 2020, the Solicitor to the Inquiry wrote to the CCJW and stated that:
 - a. No one brought the article in The Philadelphia Inquirer to Mr Frank's attention. He found it through his own research, prompted by reading a disclosed



INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

document and seeing that Mr Gillies had given evidence in relation to PR-A5 from whom the Inquiry had heard evidence on 10 August;

- b. As this arose during the course of the hearing, Mr Frank did not consider it necessary to raise with the witness in advance, his fellow panel members or the Inquiry's legal team. He considered it a question arising from the evidence for which no additional notice was required;
 - c. The Inquiry would give consideration to publishing the exchange of correspondence on this subject between the CCJW and the Inquiry, including the Inquiry's letter of 14 August 2020, once the statement and exhibit requested of Mr Gillies were provided and the evidential picture was complete.
11. On 28 August 2020, the Inquiry received a supplementary statement from Mr Gillies in response to the Rule 9 request of 14 August 2020 together with an application for the recusal of Mr Frank.
 12. In his witness statement, Mr Gillies states that he attended a records management presentation at the Britain Branch Office sometime in 2017. He does not recall the date of the presentation, did not take notes and does not have any other record of the presentation. He does not recall the presenter using the words mentioned by Mr Frank. He states that the same presentation was held later that same week with members of other departments present which he did not attend. Mr Gillies states that he has enquired of the Britain Branch Office which has informed him that it does not have a recording of the presentation.
 13. Mr Gillies also states that the subject of the presentation was '*implementation of a branch wide document retention policy, in compliance with data protection legislation, and which would be progressively implemented in late 2017 or early 2018.*' The presentation did not discuss records pertaining to allegations of child sexual abuse and it has long been the policy of the Jehovah's Witnesses that information concerning allegations of child sexual abuse are marked 'Do Not Destroy' and are kept 'indefinitely' so that children can be safeguarded and alleged perpetrators monitored.
 14. Mr Gillies also stated that:
 - a. On 6 April 2018, the CCJW's legal representatives had informed the Inquiry by letter that the Britain Branch Office was undertaking a branch-wide records management project, which is separate and apart from and unconnected to any records relating to allegations of child sexual abuse;



INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

- b. On 5 March 2020, the Inquiry confirmed that the Britain Branch Office was the only religious entity in the current investigation that had provided the Inquiry with records relating to allegations of child sexual abuse;
 - c. There was and is no substance to the impression left by Mr Frank's questioning that the Britain Branch Office had destroyed records relating to allegations of child sexual abuse.
15. In its application for the recusal of Mr Frank, also dated 28 August 2020, the CCJW raised a number of concerns, some of which have already been set out above. In summary, the CCJW stated:
 - a. Neither Mr Gillies nor the CCJW were given any advance notice *'that this very serious allegation would be raised during the questioning of Mr Gillies'*. None of the materials provided to CCJW by the Inquiry indicated that the issue would be raised;
 - b. As to the document which prompted Mr Frank's interest in the matter of retention and deletion of records in the course of Mr Gillies' evidence, the CCJW state that there was, in the judgment of HHJ Globe in *A v The Trustees of the Watchtower Bible and Tract Society and others*, no finding that the defendants had destroyed child sexual abuse records. On the contrary, the judge had concluded that the defendant elders were honest men;
 - c. Mr Frank chose to *'ambush'* Mr Gillies with this grave and far-reaching allegation of a criminal offence. One possible explanation, the CCJW state, for the fact that no advance notice was given of the allegation and the manner in which the allegation was made is that the allegation *'was designed for public consumption to humiliate Mr Gillies, Mr Bartlett, the Britain Branch Office, and individual elders of Jehovah's Witnesses by implying that each of them committed a very serious crime'*;
 - d. Prior to making the allegation, Mr Frank and the Inquiry was aware, or should have been aware, that the allegation was false. In 2016 the Inquiry made a Rule 9 request ('the 2016 Rule 9 request') for information relating to current and past child protection policies of Jehovah's Witnesses and allegations of child sexual abuse. CCJW retained Kingsley Napley solicitors to assist with the request. On 6 April 2018 Kingsley Napley informed the Inquiry that the CCJW had fully complied with the request. Thus, the CCJW state, the Inquiry was in actual possession of copies of the CCJW's records, including records relating to allegations of child sexual abuse;



INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

- e. In the same letter dated 6 April 2018 Kingsley Napley on behalf of the CCJW notified the Inquiry that the Britain Branch Office of Jehovah's Witnesses was '*currently undertaking a branch-wide records management project, which is separate and apart from and unconnected to the Inquiry's [Rule 9] request for documents*'. The CCJW states that whatever the content of the newspaper article consulted by Mr Frank, both the Inquiry and Mr Frank knew or should have known that the 'records management project' had nothing to do with records relating to allegations of child sexual abuse;
- f. On 5 March 2020, the CCJW filed an objection with the Inquiry on three matters relating to evidence in this investigation. One of those objections was that the Inquiry was providing to core participants documents that the CCJW had disclosed in compliance with the 2016 Rule 9 request but was not disclosing to core participants similar documents concerning any of the other religions subject to the investigation. The CCJW says that the Inquiry summarily rejected the CCJW's objections. The CCJW states that it was the only religion that was required to disclose to the Inquiry its records concerning allegations of child sexual abuse.

The issues

The topic of record keeping and records management

16. One of the issues being examined in this investigation is the nature of record keeping within religious organisations and settings in respect of child protection relating to sexual abuse. Each of the 53 religious organisations and settings that were asked to provide evidence were asked to answer a common set of questions about record keeping in respect of child protection issues, including: who keeps the records; who has access to the records; what information is passed on to the statutory authorities and when; and how long records are kept, amongst other matters.
17. This information was sought from each and every religious organisation which the Inquiry contacted, including the CCJW. Mr Gillies provided evidence within his witness statements about the record keeping practices and procedures of the CCJW.
18. Questions were asked by Counsel to the Inquiry about how records were kept, and the processes for referring allegations of child sexual abuse to the Branch Office within the UK, during the course of the oral evidence of Mr Gillies heard on 10 and 11 August 2020. It was not therefore a question or line of questioning which could be considered to be irrelevant.



INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

19. The Inquiry has heard evidence in several of its investigations about child protection related documents being disposed of contrary to records management policies or because such policies did not exist. This includes in the investigations relating to the Anglican Church and the Roman Catholic Church.

The previous correspondence concerning records management

20. The Inquiry made a request under Rule 9 of the Rules on 15 March 2016 for information from the CCJW which included, inter alia, requests for:
- a. Records of all judicial committee meetings at which allegations of child sexual abuse had been considered;
 - b. Copies of disciplinary cases and/or cases where it had been brought to the attention of the Branch Office that there may have been allegations or suggestions of child sexual abuse.
21. Documents were provided by the CCJW in response to that request and that correspondence took place as outlined at paragraph 8(b) of the letter dated 28 August 2020. It is not, however, correct to say that the Inquiry was “*satisfied with the documents disclosed*”; all that can be said is that the Inquiry understood the CCJW to have confirmed that it had complied with the request made. The fact that the CCJW had indicated that a records management project was taking place in 2018 (the nature of which was not set out explicitly though it was not related to the Rule 9 request) does not mean that Mr Frank was not entitled to ask a question about it, nor can a failure to explore this issue further at the time be seen as something which would prevent asking any questions if relevant at any later stage.
22. The CCJW submits that the ‘*allegations*’ made by Mr Frank were false in that the CCJW, through Kingsley Napley, had complied with the 2016 Rule 9 request and the Inquiry was therefore already in possession of all of the relevant records.
23. I do not accept the premise of the submission. The Inquiry is entitled to question the nature and extent of record keeping and records management of an organisation, and whether there was advice given that records should be destroyed. The article in The Philadelphia Inquirer referred to a specific seminar that took place in 2017 about which Mr Frank sought clarification.
24. That the CCJW had disclosed records relating to allegations of child sexual abuse to the Inquiry did not preclude Mr Frank seeking clarification about this point. Even if the content of that seminar had been directly addressed in a letter or a witness statement from Mr Gillies, witnesses in this Inquiry are routinely asked to elaborate on or clarify topics about which they have already provided information prior to their oral evidence. No one could reasonably conclude that this was anything other than a request for



INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

information in the light of allegations made in the press that relevant records may have been destroyed.

25. The Inquiry's request that the CCJW provide documents in 2016 prior to the start of the CPIROS investigation was a holding position to ensure that documents were preserved in light of allegations that elders had been instructed to destroy records which may be relevant to the Inquiry. The fact that it was not made to other religious organisations which subsequently became part of the CPIROS investigation is irrelevant. If the attention of the Inquiry had been drawn to concerns about records management in other religious organisations, similar steps would have been taken to preserve evidence relevant to the Inquiry and ensure compliance with the provisions of section 35 of the Act.

The documents

26. On 2 May 2019 the Inquiry announced the CPIROS investigation. The definition of scope made clear that the investigation was thematic in nature and would examine the nature and adequacy of current child protection policies, practices and procedures in religious organisations and settings within England and Wales. The purpose of this investigation was to examine: 2.1. The management of child protection within religious organisations and/or settings, including; 2.1.1. Training, and the understanding of child sexual abuse; 2.1.2. Policies and procedures; 2.1.3. Vetting and barring and regulated activity as identified in the Safeguarding Vulnerable Groups Act 2006 and the Protection of Freedoms Act 2012; 2.1.4. The arrangements in place to respond to allegations of child sexual abuse, including the provision of pastoral support; 2.1.5. Internal processes for auditing, inspection or oversight of the child protection practices and procedures.
27. The CCJW as a religious organisation operating in England and Wales fell within the scope of the investigation. It applied for designation as a core participant on 11 June 2019. I decided that it had a sufficient interest in accordance with the provisions of Rule 5 of the Rules and accordingly designated it as a core participant in my determination dated 5 July 2019.
28. At my request the investigation team then examined those documents obtained from the CCJW in response to the 2016 Rule 9 request, which numbered over 3,500. 31 documents were identified as relevant to the scope of this investigation. The CCJW was not not treated differently from other organisations from which the Inquiry already had in its possession material potentially relevant to this investigation. Other organisations had provided material in the context of other investigations, which was reviewed for relevance and disclosed where relevant in this investigation (for



INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

example, the Disclosure and Barring Service, the Department for Education, Ofsted, and the Charity Commission).

29. Some of the other core participants in this investigation asked the Inquiry to disclose all the documentation that the CCJW had provided to the Inquiry, in particular, its records for all internal reports of sexual abuse. The Inquiry concluded that any such wider disclosure was not relevant and went beyond that requested of other organisations in this investigation.
30. The Inquiry's approach in respect of these documents was explained to the CCJW legal department in an email from the investigation lawyer, Ms Amy Nicholls, dated 5 March 2020.

The questions put to Mr Gillies by Mr Frank

31. The theme of Mr Frank's questions - record keeping - is one which is of relevance to this investigation and to the Inquiry more generally: the Inquiry has received evidence in several investigations of institutions filleting, removing, and on one occasion burning contemporaneous records of child sexual abuse where it is alleged that this was to conceal child sexual abuse and the organisation's response to it. As the Solicitor to the Inquiry said in his letter dated 14 August 2020, as a Panel member Mr Frank was entitled to ask Mr Gillies questions relevant to the investigation and the Inquiry's terms of reference.
32. Nevertheless, as he acknowledged, the Inquiry accepts that Mr Gillies was not given prior notice that it wished to ask questions relating to the article in *The Philadelphia Inquirer*. The Inquiry's usual processes failed in that respect and I repeat the previous apology which the Inquiry has given to Mr Gillies for this.
33. Contrary to the CCJW's assertion, it was not Mr Frank's intention to 'ambush' Mr Gillies '*...to humiliate Mr Gillies, Mr Bartlett, the Britain Branch Office, and individual elders of Jehovah's Witnesses by implying that each of them committed a very serious crime*'. He simply wished to fulfil the Inquiry's statutory remit to enquire by asking relevant questions.

Conclusion

34. The test, as set out in *Porter v Magill* [2001] UKHL 67 [2002] 2 AC 357, is whether the fair minded and informed observer would conclude that there is a real possibility of bias (per Lord Hope at [103]). The courts have also emphasised that this observer is balanced: is neither complacent nor unduly sensitive or suspicious and is familiar with the entire context and of all background facts. Section 9 of the Act provides that



INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

someone may not be appointed or undertake an activity if that person has a direct interest into the matters to which the inquiry relates, or a close association with an interested party, unless his appointment could not reasonably be regarded as affecting his impartiality. This test must be seen in the context of section 8 of the Act, which permits the Minister to choose individuals who have the necessary expertise and balance.

35. Given the relevance of the subject of records to this investigation and in light of the facts above, I consider that no fair minded informed observer, having considered the facts, would conclude that there was a real possibility that Mr Frank was biased. In any event, Mr Gillies has now had the opportunity, by way of his supplementary statement dated 28 August 2020, to clarify the position as regards the content of the presentation in 2017 about which he was asked by Mr Frank. That statement, the relevant correspondence and this Determination will be published on the Inquiry's website.
36. Even if the CCJW's allegation against Mr Frank were well founded, this would not justify removal of the video with the questions upon it. I am required by section 18 of the Act to take such steps as I consider reasonable to secure that members of the public and reporters can obtain or view a record of evidence and documents provided to the Inquiry Panel. Section 19 sets out the grounds on which evidence or documents may be restricted from disclosure or publication and I consider there are no relevant grounds on which for me to make such an order.
37. The CCJW makes reference, at paragraph 22 of its letter dated 28 August 2020, to a series of cases from the European Convention on Human Rights ('the ECHR'). None of them are directly relevant to the issues here, but simply confirm the general legal principles of fairness and equity and the need for a state to respect religious and philosophical beliefs and the freedom of association.
38. As I consider that the line of questioning was not biased, for the same reasons I also consider that there has been no breach of Articles 6, 8 and 9 of the ECHR, whether alone or read with Article 14. I consider that Article 6 is not engaged at all (as this Inquiry is not determining civil rights, nor does it have any disciplinary function) nor do I consider that, even if Articles 8 and 9 were engaged, that there has been any breach of the right to respect for religious and philosophical beliefs or the right to privacy and identity. Even if there has been such interference, such is plainly a proportionate means of meeting the legitimate aim of asking relevant questions to religious organisations about their approaches towards child protection.



INDEPENDENT INQUIRY CHILD SEXUAL ABUSE

39. Accordingly, I decline the request for Mr Frank to recuse himself from this investigation on the grounds that it is neither necessary nor appropriate for him to do so.
40. I also decline to remove from the website the video in which questions were asked of Mr Gillies by Mr Frank, but the website will have the response of Mr Gillies, the relevant correspondence and this decision appended thereto to provide the full context.

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

21 September 2020