

Christian Congregation of Jehovah's Witnesses



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LEGAL DEPARTMENT

LEM:LET 28 August 2020

Professor Alexis Jay OBE
Chair, Independent Inquiry into Child Sexual Abuse
PO Box 76107
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Sent by e-mail

Dear Professor Jay:

Re: Application to recuse panel member Ivor Frank

1. It is with regret that we must make this application to recuse Mr Ivor Frank—on the grounds of bias (actual or apparent) and pre-disposition—as a member of the panel for the investigation “Child Protection in Religious Organisations and Settings”. Our position is that Mr Frank should have no further dealings with this investigation, including in the evaluation and consideration of the evidence or in the preparation of any report relating to this investigation. To be clear, we make this application not simply to protect the legitimate interests of Christian Congregation of Jehovah’s Witnesses (“CCJW”)—sufficient in itself—but also because of the diminution to the stature and integrity of the Inquiry that will result from the implicit endorsement of his conduct by permitting Mr Frank’s continued involvement.

2. The grounds for our application are as follows.

3. On 13 August 2020 we wrote to you, as Chair of the Inquiry, to express our serious concerns and objections to the questions Mr Frank asked Mr Paul Gillies, a representative of the World Headquarters of Jehovah’s Witnesses, at the conclusion of Mr Gillies’ live-stream video testimony on 11 August 2020.

4. In his questioning, Mr Frank let it be understood that during a 2017 “seminar” a gentleman named “Shawn Bartlett” had counselled a criminal offence (in the light of the Chair’s 23 June 2015 letter requiring non-State institutions to retain records relating to allegations of child sexual abuse) and that the Britain Branch Office of Jehovah’s Witnesses (“Britain Branch Office”) was complicit in that offence. Mr Frank was well aware that his very serious allegation was being live-streamed to an indeterminate audience in England and Wales and indeed worldwide.

5. Neither Mr Gillies nor CCJW were given any advance notice by the Inquiry or by Mr Frank that this very serious allegation would be raised during the questioning of Mr Gillies. None of the materials provided to CCJW by the Inquiry, including the Evidence Bundle for Mr Gillies’ testimony, indicated that this issue would be raised.

6. Indeed, as pointed out in our 13 August 2020 letter, Mr Frank clearly chose to ambush Mr Gillies with this grave and far-reaching allegation of a criminal offence. Mr Frank knew that without advance notice Mr Gillies would be unlikely to be in a position to provide accurate information to the Inquiry in response to his allegation. To those watching—unaware that Mr Frank had sprung the questions on Mr Gillies in disregard of Inquiry procedures—Mr Gillies’ inability to supply that information might suggest evasiveness or worse. Certainly, one possible explanation for

the fact that no advance notice whatsoever was given of the allegation, and the manner in which Mr Frank made his allegation, is that Mr Frank's live-stream video 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. If that explanation is correct, it would be quite wrong for the Inquiry to allow Mr Frank to continue to participate. Tellingly, no other reasonable explanation has been supplied for Mr Frank's conduct.

7. But it is yet worse than the above account suggests.

8. Prior to making his live-stream allegation, Mr Frank and the Inquiry were aware, or should have been aware, that the allegation was false. In particular, the Inquiry and Mr Frank were aware or should have been aware of the following facts:

- (a) On 15 March 2016 the Inquiry made a Rule 9 request ("**2016 Rule 9 Request**") to CCJW for information relating to the current and past child protection policies of Jehovah's Witnesses and allegations of child sexual abuse. The Inquiry later acknowledged in its 14 June 2017 letter that compliance with the 2016 Rule 9 Request would require "considerable resources" on the part of CCJW.
- (b) CCJW retained Kingsley Napley solicitors to assist with the Rule 9 request. Kingsley Napley proposed to the Inquiry a detailed disclosure schedule and search terms. This was set out in letters from Kingsley Napley to the Inquiry, including progress reports, dated 8 June 2016, 11 June 2016, 11 July 2016, 9 September 2016, 31 March 2017, 17 May 2017, 5 June 2017, 28 June 2017, 7 July 2017, 25 August 2017, 27 October 2017, 8 January 2018, and 6 April 2018. The Inquiry agreed to the disclosure schedule, search terms, and progress reports. It was satisfied with the documents disclosed, as confirmed by its letters dated *inter alia* 12 July 2016, 14 June 2017, 12 September 2017, and 12 December 2017.
- (c) On 6 April 2018, Kingsley Napley informed the Inquiry that CCJW had fully complied with the 2016 Rule 9 Request. In that same letter, Kingsley Napley also 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" (emphasis added).
- (d) On 3 May 2019, the Inquiry informed CCJW that it had commenced a new investigation, entitled "Child Protection in Religious Organisations and Settings". The Scope of that investigation was defined as "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. This document should be read alongside the accompanying Update Note." The Update Note stated: "we will not be examining individual case studies, as the focus is upon organisational structures and child protection policies" (emphasis added). Jehovah's Witnesses were listed as one of 12 religions that would be the subject of that new investigation.
- (e) On 5 July 2019, CCJW was granted core participant status for the investigation.
- (f) On 4 February 2020, CCJW applied to the Inquiry to remove Lloyd Evans as a core participant because of extreme public statements he made against Jehovah's Witnesses, which might constitute hate speech. CCJW's letter included an eight-page attachment which quoted verbatim from Mr Evans' statements.

- (g) On 7 February 2020 the Inquiry declined to revoke Mr Evans' core participant status.
- (h) On 5 March 2020, CCJW filed an objection with the Inquiry on three evidentiary matters. One of those objections was that the Inquiry was providing to core participants documents 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 11 religions subject to the investigation despite the fact that "*most, if not all*" had confirmed in their witness statements they also maintained records concerning allegations of sexual abuse.
- (i) On 5 March 2020, the Inquiry summarily rejected CCJW's objections. Concerning the disclosure issue, the Inquiry stated that it had disclosed to core participants some of the material that CCJW had provided to the Inquiry pursuant to the 2016 Rule 9 Request. The Inquiry further stated: "*If the Inquiry held material that was provided by other religious organisations before this investigation was launched that we considered relevant for disclosure, we would have disclosed it.*" In other words, Jehovah's Witnesses were the only religion that had disclosed to the Inquiry their records concerning allegations of child sexual abuse.

9. In view of these facts, CCJW's 13 August 2020 letter to the Inquiry set out a reasonable approach to contain the irreparable harm caused by Mr Frank's live-stream allegation. This included a request that the Inquiry temporarily stop dissemination of the video footage containing Mr Frank's question until the matter was resolved. CCJW asked that Mr Frank answer four questions concerning his live-stream allegation so that they could bottom out the controversy and contain the damage.

10. The Inquiry replied by letter dated 14 August 2020 by which it "*accepts that Mr Gillies was given no prior notice of this particular question topic and apologises that its usual process failed in this respect*". While the apology was welcome, by itself it did nothing to remediate or contain the damage resulting from the conduct apologised for. Specifically, the Inquiry refused to stop public dissemination of the video footage of Mr Frank's questions. Indeed, the Inquiry even went on to legitimise Mr Frank's allegation, by means of a Rule 9 request, which demands that Mr Gillies provide a witness statement in answer to that allegation.

11. In its 14 August 2020 letter, the Inquiry reasoned that Mr Frank's "*interest in this topic arose on either 10 or 11 August during the course of Mr Gillies' evidence from his reading paragraph 88 of HHJ Globe's judgment in the case of A. v. The Trustees of the Watchtower Bible and Tract Society and others*". It further stated that "*Mr Frank undertook his own internet research outside the hearing*" and in doing so "*came across an article in The Philadelphia Inquirer entitled 'Watch: Jehovah's Witness official says to destroy documents because 'Satan is coming after us''*".

12. The Inquiry's letter raised more questions than it answered.

13. The only question raised by Mr Justice Globe at paragraph 88 of his judgment in *A. v. The Trustees of the Watchtower Bible and Tract Society and Ors* was whether the perpetrator had been appointed as a ministerial servant "prior to 31 August 1990". There is nothing in the judgment which finds or implies that child sexual abuse records had been destroyed. To the contrary, Mr Justice Globe found (at para 121) all of the defendant elders "*to be honest, upright, loyal and devout men*" and that any "*differences of recollection between them ... was not borne out of any ulterior motive*".

14. Kingsley Napley had on 6 June 2018¹ given notice to the Inquiry that CCJW had fully complied with the 2016 Rule 9 Request and that the Britain Branch Office was then conducting a branch-wide records management project that was “*separate and apart from and unconnected to the Inquiry’s [Rule 9] request for documents*”. Thus, whatever the content of the newspaper article later 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. CCJW had, with the assistance of Kingsley Napley, complied with the 2016 Rule 9 Request and the Inquiry was in possession of all of the documents disclosed by CCJW in response to that request.

15. Furthermore, whether CCJW retained records concerning allegations of child sexual abuse (which the Inquiry knew that it did) was largely irrelevant to the investigation, which is a “*thematic investigation*” into “*current child protection policies, practice and procedures*” which “*will not be examining individual case studies*”. If records retention is relevant to the current investigation, then why did the Inquiry not insist that all other religions that are the subject of this investigation disclose their records relating to allegations of child sexual abuse? As noted, the Inquiry confirmed on 5 March 2020 that Jehovah’s Witnesses were the only religion that disclosed to the Inquiry their records relating to allegations of child sexual abuse.

16. Accordingly, on 19 August 2020, CCJW again wrote to the Inquiry noting that its failure to correct Mr Frank’s comments, and issue a public apology, resulted in the legal representative for Lloyd Evans referring to Mr Frank’s live-stream questions in his concluding submissions as proof the Inquiry had uncovered evidence that CCJW had destroyed records relating to allegations of child sexual abuse. As Mr Frank was no doubt aware in asking his questions on 11 August 2020, he set the hare running. Vilification of CCJW and those associated with it were entirely foreseeable consequences of his questions and the manner in which they were sprung on Mr Gillies. It is concerning that the Inquiry, conscious of the impropriety of the “questions” and the manner in which they were sprung on Mr Gillies, should refuse to take steps to contain the consequential harm and should simply allow that harm to take hold.

17. In view of the ongoing damage caused by Mr Frank’s allegation, CCJW asked that Mr Frank and/or the Inquiry issue a public apology. CCJW’s letter also enumerated five key questions that the Inquiry still had not answered. In particular, Question No. 3 noted that Internet blogs and posts were boasting that Jason Wynne, Lloyd Evans, and Mark J. O’Donnell had provided the Inquiry with the material Mr Frank had relied on when making his live-stream allegation. One of the posts was by “Jason Wynne” who claims he is a core participant (presumably a member of the “Ex-JW” group). CCJW therefore asked the Inquiry to confirm “*whether or not Mr Frank has ever been in contact with any of these individuals or been contacted by them*”.

18. We were disappointed to receive the Inquiry’s brief letter dated 20 August 2020, which did not answer CCJW’s five questions and which declined to issue a public apology. Embedded in that refusal is an endorsement of Mr Frank’s questioning and the aftermath, emptying the 14 August 2020 apology of meaning.

19. There are two elements to this. First, once properly informed of the facts (see above), a “*fair minded and informed observer, having considered all of the facts, would conclude there is a real possibility*” that Mr Frank was and is biased.² In particular, the undisputed facts confirm Mr Frank knew or should have known that:

¹ This was one month before the date of the article in *The Philadelphia Inquirer* later consulted by Mr Frank.

² *C. (A Child)* [2020] EWCA Civ 987, at [13]; *Porter v. Magill* [2002] 2 AC 357 at [102].

- (a) CCJW, with the assistance of Kingsley Napley, had complied with the Inquiry's 2016 Rule 9 Request, a process which used search terms, a disclosure schedule, and progress updates, all of which were approved by the Inquiry.
- (b) As a result of CCJW's compliance with the Inquiry's 2016 Rule 9 Request, the Inquiry was in actual possession of copies of CCJW's records, including records relating to allegations of child sexual abuse. In fact, in late 2019 through to early 2020, the Inquiry had disclosed to core participants some of the material CCJW had provided to the Inquiry in response to the 2016 Rule 9 request.
- (c) CCJW was the only religion to have disclosed to the Inquiry its files relating to allegations of child sexual abuse. No other religion in this investigation had done so. Yet, none of those religions were publicly criticised by Mr Frank or the Inquiry during the live-stream proceedings for their failure to provide disclosure.
- (d) The judge in *A. v. The Trustees of the Watch Tower Bible and Tract Society and Ors* [2015] EWHC 1722 (Q.B.) did not find or imply that the defendants in that case had destroyed child sexual abuse records. To the contrary, the judge concluded that the defendant elders were "*honest, upright, loyal and devout men*" and that any "*differences of recollection between them ... was not borne out of any ulterior motive*".
- (e) On 6 June 2018 Kingsley Napley gave notice to the Inquiry that the Britain Branch Office was conducting a branch-wide records management project and that this was "separate and apart from and unconnected to the Inquiry's [Rule 9] request for documents" (emphasis added). Thus, whatever the content of the newspaper article later 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) The implication of Mr Frank's live-stream questioning of Mr Gillies was that the Britain Branch Office was complicit in a criminal offence to destroy records pertaining to allegations of child sexual abuse (in the light of the Chair's 23 June 2015 letter ordering that such records must be preserved).
- (g) Mr Gillies (and CCJW) was not given advance notice of the subject of Mr Frank's questions and thereby the Inquiry failed to apply its usual processes, including the fundamental requirement of fairness and notice.
- (h) Mr Frank's questioning of Mr Gillies was being live-streamed to an indeterminate audience of people in England and Wales and indeed worldwide and that the video recording would be and is accessible to anyone in any country via the Internet.
- (i) The implications made by Mr Frank's questioning would be given wide broadcast, in view of the very important and significant issues before the Inquiry, as confirmed by the closing live-stream submissions of the legal representative for Lloyd Evans who claimed that Mr Frank's questioning proved the Inquiry had discovered evidence that Jehovah's Witnesses had destroyed records pertaining to allegations of child sexual abuse.

20. We respectfully submit that, having considered these facts, a fair minded and informed observer would conclude that there was a real possibility that Mr Frank was biased (actual or apparent).

21. Secondly, continued refusal by the Inquiry to contain the damage (*i.e.* to contain it by removing Mr Frank from the panel for this investigation) is not a neutral thing. That refusal is an endorsement by the Inquiry of Mr Frank's conduct and of the aftermath. It is an endorsement in full knowledge of the facts as we have brought them to you. Such endorsement diminishes the stature and integrity of the Inquiry.

22. It is also well established under the case law of the European Court of Human Rights that a public authority, which includes the Inquiry and its panel members, must not abuse its "*dominant position*" and must act free of "*bias*" and "*prejudice*" (*Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, §§ 147 and 157, 17 May 2016; *Sürek v. Turkey (no. 1)*, no. 26682/95, § 61, 8 July 1999). This is especially the case where the State is the source of the difference in treatment and its actions adversely affect an "*unpopular*" minority religion which is "*more vulnerable to victimisation*" (*Beizaras and Levickas v. Lithuania*, no. 41288/15, § 108, 14 January 2020; *Milanovic v. Serbia*, no. 44614/07, § 89, 14 December 2010). The State is under a positive duty that it "*must not ... portray adherents [of a minority religion] in an unfavourable light in public opinion ... as a dubious sect ... [or] amplify prejudices against the adherents of such, often small, [religious] communities*". (*Magyar Keresztény Mennonita Egyház and Others v. Hungary*, nos. 70945/11 and 11 other applications, § 92, ECHR 2014)

23. The live stream allegation made by Mr Frank, which both he and the Inquiry knew or should have known was false, have profoundly damaged the good name and reputation of Mr Gillies, Mr Bartlett, CCJW, and individual elders of Jehovah's Witnesses, and have violated the prohibition on discrimination and bias, all of which is contrary to Articles 6, 8, and 9 of the European Convention on Human Rights taken alone and in conjunction with Article 14.

24. We are mindful that the *Inquiries Act 2005*, section 3, requires the Inquiry to hear the evidence as a panel. While that is undoubtedly true, it does not mean that where an allegation of actual or apparent bias (and pre-disposition) is made out against a panel member, that panel member cannot be recused. It simply means that the Inquiry must proceed with its task with the remaining panel members only.

Thank you for considering the above application.

Yours sincerely,
*Christian Congregation
of Jehovah's Witnesses*
Legal Department