NOTICE OF DETERMINATION DATED 11 APRIL 2017

INVESTIGATION INTO INSTITUTIONAL RESPONSES TO ALLEGATIONS OF CHILD SEXUAL ABUSE INVOLVING THE LATE LORD JANNER OF BRAUNSTONE QC

1. On 16 December 2016 I gave a Provisional Determination on certain matters concerning the Investigation into Institutional Responses to Allegations of Child Sexual Abuse Involving the Late Lord Janner of Braunstone QC ('the Investigation'). This followed the review that I had instigated in August 2016 into the Inquiry's way of working. In particular, I made the following three 'minded to' decisions, which were stated to be my provisional views and to be subject to any submissions made to me [paragraph 19 of the Provisional Determination]:

    a. The Inquiry should continue to conduct an investigation into institutional responses to allegations of child sexual abuse against Lord Janner.

    b. The formal definition of scope of this investigation should be that set out at Annex 1 (also attached as **Annex 1** to this document).

    c. The substantive public hearings in this investigation will not be held until I am satisfied that an appropriate balance has been struck to minimise (a) duplication of work that is being conducted by other organisations, in particular the IPCC, (b) the risk that a public hearing will contaminate evidence relevant to any criminal proceedings, and (c) the risk that the welfare of some individuals may be adversely affected by repeated questioning about issues relevant to this investigation.

2. In respect of the third of these decisions I also made the following observations [paragraph 20 of the Provisional Determination]:

    'First, I do not necessarily intend to wait until all other investigations have been concluded before holding substantive public hearings. The nature and progress of investigations relevant to this decision will be closely reviewed and I will take a view about when it is proportionate to commence those hearings. Second, I am mindful of the impact of delaying the hearings on all Core Participants and other interested parties. In particular, I am conscious that delay may be upsetting or harmful to vulnerable witnesses. The detrimental effects of this delay will continue to form part of my ongoing consideration. Third, I note that civil proceedings have been issued that touch on some of the allegations that are relevant to this investigation. The

management of those proceedings is a matter for the civil courts. As and when a decision falls to be made on the date of the substantive public hearings in this investigation, submissions will be invited on the extent to which (if at all) the civil proceedings should affect the Inquiry's timetable. Fourth, in light of the factors considered above it is likely that the substantive public hearings in this investigation will not be held before 2018.'

3. The Notice of the Provisional Determination was published on the Inquiry's website. I invited submissions from Counsel to the Inquiry and the representatives of Core Participants and other interested parties. The intention of this approach was to inform those with an interest in the Investigation, and the wider public, of my thinking on the matters raised in the Provisional Determination and to give them an opportunity to make submissions before a final decision was taken.

4. The representatives of Core Participants and other interested parties were also invited to meet with the Inquiry's legal team to discuss matters relevant to the Investigation. Neither I nor any other member of the Panel was present at those meetings for the reasons given at paragraph 22 of the Provisional Decision. The following meetings were held:

    a. Meeting on 18 January 2017 with Daniel Janner QC, Rabbi Laura Janner-Klausner and Marion Janner OBE;
    b. Meeting on 24 January 2017 with the Home Office;
    c. Meeting on 25 January 2017 with Leicestershire Police;
    d. Meeting on 26 January 2017 with Richard Scorer of Slater and Gordon solicitors representing 16 complainant core participants.

5. In my Provisional Determination I directed that submissions should be received from Counsel for the Investigation by 31 January 2017 and from Core Participants and others interested parties by 17 February 2017. I subsequently extended the timetable in order to facilitate the meetings between the Inquiry's legal team and those who wished to see them. Ultimately I received the following submissions:

    a. The submissions of Counsel to the Inquiry, dated 14 February 2017
    b. Submissions on behalf of 16 complainants represented by Slater & Gordon, dated 14 March 2017.
    c. Submissions on behalf of 3 complainants represented by Affinity Law, dated 13 March 2017.
    d. Submissions on behalf of 14 complainants represented by Simpson Millar, dated 15 March 2017.
    e. Submissions from Daniel Janner QC on his own behalf (including a 1 page supplementary submission), dated 10 March 2017.

f. Submissions on behalf of Marion Janner OBE and Rabbi Laura Janner-Klausner, dated 14 March 2017.
g. Submissions on behalf of retired Chief Constable Tony Butler, dated 10 March 2017.
h. Submissions on behalf of Chief Constable Michael Creedon, dated 13 March 2017.
i. Submissions on behalf of Leicestershire County Council, dated 14 March 2017.
j. Submissions on behalf of the Independent Police Complaints Commission, dated 10 March 2017.

6. Representatives of Leicestershire Police, the Department for Education and the Labour Party wrote to the Solicitor to the Investigation to state that they had no submissions to make, as did Michael Perry.

7. I am grateful to all of those who have assisted by responding to my Provisional Determination. I have considered carefully those written submissions that have been made to me. In light of those submissions I consider that I am now in a position to give the Determination that follows.

The Submissions

1. Should the Inquiry continue to conduct an investigation into institutional responses to allegations of child sexual abuse against Lord Janner?

8. Counsel to the Inquiry submitted that I have a broad discretion as to which matters to investigate in order to fulfil the Inquiry's Terms of Reference, and that I must exercise that discretion fairly and with regard to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others): see sections 5 and 17 of the Inquiries Act 2005 ("the 2005 Act") [paragraph 18].

9. It was their submission that the Investigation falls within the Inquiry's Terms of Reference and that there was a 'strong basis' for taking the investigation forward for the following reasons.

> '20. There is substantial public concern about the way in which allegations of child sexual abuse against people of public prominence have been handled by institutions with a duty to respond to such allegations. Such institutions include the police, the CPS, the courts, other judicial and quasi-judicial bodies, local authorities, and political parties. In order to investigate such concerns it is necessary to consider how such allegations have been dealt

with in the past. The response of institutions to allegations made against Lord Janner is one potential case study.

'21. There are evidential and practical advantages in adopting this investigation as a means of examining the wider issue referred to in the previous paragraph.

a. The responses to the allegations made against Lord Janner span a number of decades. By examining them, the Inquiry will be able to investigate how institutional attitudes and approaches have evolved over that period. It may, for example, be in a position to contrast the actions of police and prosecutors in the early 1990s with those demonstrated in the following 20 years later.

b. A broad range of institutions may fall to be examined in terms of the responses made to those allegations ... The Inquiry will benefit from being able to compare the responses made by such disparate bodies at various points in time…

c. The responses to the allegations made against Lord Janner raise issues about what may be termed the "pendulum effect". It has been suggested that in recent years a heightened sensitivity to allegations of child sexual abuse (sometimes referred to as a "moral panic") has led to inappropriate decisions being taken to investigate and/or prosecute individuals, particularly those with a high public profile. Criticism has been levelled at police and prosecutors for adopting an overly-credulous approach to those alleging child sexual abuse. Concerns have also been expressed about decisions to prosecute notwithstanding strong countervailing factors, including the age and health of the accused. This Investigation may provide the Inquiry with an opportunity to consider such concerns in respect of the more recent approach of institutions to the allegations made against Lord Janner.

d. The Inquiry is required by its Terms of Reference to consider information that is available from, among other sources, published and unpublished reviews, court cases and investigations ... Considerable amounts of potentially relevant evidence have been - and continue to be - generated by such proceedings and investigations. They include the materials obtained and created in the criminal investigation of Lord Janner and the ongoing IPCC investigation arising out of police responses to the allegations made against him. The Inquiry can draw

upon these and upon the work of other bodies and individuals, including the Kirkwood Inquiry and the report of Sir Richard Henriques into the approach of the CPS to the relevant allegations (published in January 2016). Making use of this existing archive of materials provides for a number of advantages. It avoids the need to investigate matters anew, at considerable public expense and many years after the date of the alleged events. It helps to minimise repetitive questioning of witnesses, including vulnerable witnesses. It allows for the investigation to proceed more efficiently and effectively than would otherwise be the case. Finally, it provides an opportunity for the Inquiry to scrutinise and learn from the approach taken in previous investigations.

e. The Investigation may consider the experiences of those who made complaints, and how those experiences varied over time and by institution. This would help to fulfill the Inquiry's Terms of Reference…'

10. Later in their submissions, Counsel to the Inquiry made the point that the Investigation 'did not emerge from a vacuum', making reference to the following matters [paragraph 38]:

'a. The Inquiry is aware of 33 complainants who have made allegations of child sexual abuse against Lord Janner. We understand that there are ongoing civil proceedings in respect of some or all of these allegations, in which claims have been brought against Lord Janner's estate.

b. Prior to his death, Lord Janner had been charged with 22 offences of child sexual abuse relating to nine different complainants. Those charges were brought by the CPS having applied its Full Code Test. This includes the prosecutor making an objective assessment of whether there is sufficient evidence to provide a realistic prospect of conviction on each charge. By bringing the charges, the CPS had determined that this test was met, meaning that in the view of the prosecutor it was more likely than not that an objective, impartial and reasonable jury, properly directed, would convict on the charges alleged.

c. The decision of the CPS followed a lengthy and complex investigation carried out by Leicestershire Police, known as "Operation Enamel". This investigation was described by the Director of Public Prosecutions ("DPP"), Alison Saunders, in April 2015 as being "thorough and comprehensive." It considered a large number of allegations of child sexual abuse. Hundreds of witnesses were interviewed and a file was submitted to the CPS that led to

the charging decision. The Assistant Chief Constable who oversaw the investigation, stated publicly following the initial charging decision in April 2015 that: “There is credible evidence that [Lord Janner] carried out some of the most serious sexual crimes imaginable over three decades against children who were highly vulnerable and the majority of whom were in care.”

d. In April 2015 Sir Richard Henriques, a retired High Court judge, was asked to conduct an independent review of past CPS decision making and handling of matters relating to Lord Janner. He published a report in January 2016 in which he concluded (among other matters) that:

i. In 1991 there was a sufficiency of evidence for a prosecution to be commenced against Lord Janner for offences relating to the sexual abuse of an individual referred to as Complainant 1.

ii. The police investigation was incomplete and inadequate in 1991.

iii. In 2002 there was a “remarkable” failure by the police to provide a statement containing further allegations of child sexual abuse to the CPS. This statement was made by an individual referred to as Complainant 2. Sir Richard concluded that this failure merited investigation by the IPCC.

iv. Had Complainant 2’s statement been forwarded to the CPS there would have been a sufficiency of evidence to commence a prosecutions against Lord Janner in 2002 for sexual offences against both Complainant 1 and Complainant 2.

v. In 2007, following allegations made by an individual referred to as Complainant 3, Lord Janner should have been arrested and charged with sexual offences against all three complainants.

vi. Sir Richard made various other criticisms of the CPS and also a number of recommendations for future practice.

e. In a public statement in April 2015, the Director of Public Prosecutions, Alison Saunders, accepted that mistakes were made by Leicestershire Police and the CPS in 1991, 2002 and 2007. Her view was that Lord Janner “should have been prosecuted in relation to these complaints.”

f. Following the publication of the Henriques Report, the CPS produced a formal response dated January 2016 in which it stated: “This independent review confirms the DPP’s view that the CPS decisions in 1991 and 2007 were wrong, and concludes that the handling of the case previously by both police and prosecutors we unsatisfactory.”

g. The IPCC are presently conducting a criminal investigation into the way in which Leicestershire Police responded to the allegations of sexual abuse

involving Lord Janner. We understand that it has served misconduct and criminal notices on 11 individuals.

h. While there has been much criticism of the approach taken in the past not to prosecute Lord Janner, there was also considerable public concern about decisions taken in 2015 to bring proceedings notwithstanding undisputed medical evidence that Lord Janner was not fit to stand trial. Concerns have been raised both about the decisions that were taken and the process by which they were reached.

i. There have also been questions raised about other aspects of the way in which the complaints against Lord Janner have been handled, for example in respect of:

(i) the way in which the first public allegation emerged in court proceedings (such that the statement maker was protected against defamation proceedings by privilege),
(ii) statements made by Lord Janner and others in Parliament (again under the protection of privilege),
(iii) the response of the Labour Party and prominent politicians,
(iv) the knowledge and decisions of those charged with deciding to ennoble Lord Janner, and
(v) the approach taken to his evidence by the Kirkwood Inquiry.'

11. The representatives of the 16 complainants represented by Slater & Gordon and the 3 complainants by Affinity Law supported my 'minded to' decision to continue the Investigation. The representatives of the 14 complainants represented by Simpson Millar adopted the submissions of Counsel to the Inquiry.

12. The representatives of Chief Constable Creedon, Leicestershire Police and the IPCC were neutral or made no direct submissions on this issue.

13. Daniel Janner QC, while making clear his view that the Investigation was 'misconceived' and that his late father was innocent of all allegations made against him, submitted that:

"the decision on whether to hold the investigation and whether it should be part of the Westminster strand should be put on hold pending the outcome of the civil case and IPCC. For instance, if the civil case and/or the IPCC found adversely against my father, it would point towards holding the investigation and the contrary is also true. Work can continue on the investigation in the meantime."

14. The submissions made on behalf of Ms Janner and Rabbi Janner-Klausner contended that the Investigation was "inherently unfair" [paragraph 22] and made the following argument about the continuation of the investigation:

> '52.The Janner family and Estate remains energetically opposed to the singling out of an innocent, dead man for a paradigm case study that will, necessarily, be based on incomplete and distorted information. It is a further insult to Lord Janner's posthumous reputation with consequential cost to the Janner Family and Estate, including devastating emotional upset.
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> 53.It would be more representative to pick a prominent person from public life as the paradigm who is either alive, or has been subject to a prosecution process (whether convicted, or not). It is not the function of these submissions to offer a list of potential case studies.'

15. The same submissions included the following response to the points made by Counsel to the Inquiry for continuing the investigation:

> '54. It is submitted that no-one's behaviour has ever been investigated in life, or death, to the extent of Lord Janner. Everything stems from the unique genesis of a planned stunt pulled by Frank Beck in 1990 when he shouted out his accusation against Lord Janner from the privileged position of the dock in a Magistrate's Court in Leicester, as a desperate act to distract attention from his crimes. In this context, the cited "evidential and practical advantages" of adopting the Janner Investigation (§21 a. – e.) as part of an overarching review of "the wider issue" of institutional responses are specious (following the sub-paragraph lettering):
>
> > a. the concept that examination of specific allegations made against Lord Janner over a number of years will shine a light on the evolution of institutional attitudes to child sexual abuse generally is nonsensical given that Lord Janner had been publicly accused in criminal court proceedings in 1991 to which he was not a party and was, forever after, battling to fight against false allegations in the teeth of such reputational harm – it follows that any institutional responses to Lord Janner would have been calibrated by the knowledge of this initial accusation (the only way that Inquiry Counsel's argument might have any statistical validity is if the Inquiry gauged the reaction of institutions to initial complaints made against successive different individuals of equal public prominence over a date range);
> >
> > b. the same submissions in a.;

c. the same submissions in a. are repeated in respect of the range of institutional responses, whose approach would have been coloured by the fallout from the initial accusation against Lord Janner, so that any investigation into the "pendulum effect" by employing allegations against Lord Janner can have minimal relevance when examining whether a widespread pendulum phenomenon has taken place and, if so, its likely causes;

d. the adoption of a so-called "archive of materials" relating to investigations into Lord Janner is the very reason why he should not be singled out for special attention, because it starts from an inherent prejudice that there must be something amiss with all that has gone before which now requires investigation, and ignores that each investigation was coloured by the original stunt pulled by Frank Beck;

e. the same submissions in a."

16. The submissions made on behalf of Ms Janner and Rabbi Janner-Klausner concluded that:

> '74.While the Janner family and Estate accept that the Inquiry must allow itself to remain flexible to adapt to events, such flexibility must be balanced against any risk of injustice to interested parties.
>
> 75.To that end the Janner family and Estate invites the Inquiry to keep under permanent review any investigations in which Lord Janner's name may appear, thereby retaining the capability to withdraw from its current 'minded to' decision as and when circumstances dictate.'

17. The only Core Participant who submitted unequivocally that a decision should be taken at this stage to stop the Investigation was retired Chief Constable Tony Butler. On Dr Butler's behalf it was argued that [paragraph 6]:

> 'a. the substantial public concern about the institutional handling of child sexual abuse allegations as it relates to this investigation has properly and adequately been met by the Report of Sir Richard Henriques and the Response of the Crown Prosecution Service;
>
> b. additionally, there is significant contemporaneous material in the 1993 Independent Inquiry Report of Chief Superintendent Foster of the West Mercia Police, commissioned by the Chief Constable of the Leicestershire

Constabulary to consider the actions of his own force in light of the Frank Beck case and supervised by the Police Complaints Authority (which examined twenty-nine individual cases, reached conclusions and made recommendations); and, the comprehensive 1992 Leicestershire Inquiry into aspects of the management of children's homes within the county chaired by Frank Kirkwood QC, and ordered by the Secretary of State of Health (along with a national inquiry into the appointment, management and support of staff in children's homes chaired by Norman Warner);

c. insofar as the scope of these Reports and the Response can be said to limit wider utility, any such shortcomings can be rectified within the Inquiry by reference to other cases, with a significant cost saving;

d. this particular investigation is unlikely, by virtue of temporal scope, number of institutions involved or as a paradigm of the "pendulum effect", to contribute any unique or unusual feature, or otherwise provide material of general application having regard to the Inquiry's Terms of Reference;

e. whilst the legal analysis of the Inquiry and Investigation provided by Counsel to the Inquiry is unimpeachable, the singular background and history is capable of creating an unfortunate perception which might serve to detract and distract from the very purposes it seeks to serve;

f. the existing archive only operates to save cost in the event the Investigation continues but, as noted ante, conclusions have already largely been drawn and appropriate remedial measures taken and, where that is or may not be the case – for example the adequacy of response by political parties, Parliament, government departments, and/or the security and intelligence agencies, the necessary consideration will have to take place in any event, quaere in relation to more suitable cases;

g. rather than imbuing this case with any advantage, the fact that there is a live Independent Police Complaints Commission investigation and extant civil litigation is likely to cause additional and unnecessary complexity, delay, distress, duplication, expense and uncertainty.'

2. Should the formal Definition of Scope of this investigation be amended to that set out at Annex 1?

18. Counsel to the Inquiry agreed with the proposed revisions to the Definition of Scope and submitted that [paragraph 50]:

> 'In particular, we agree with the focus that [the revised Definition] places on the institutional responses to the allegations made against Lord Janner. This properly reflects the Inquiry's Terms of Reference which require (among other things) an investigation into the extent to which institutions have failed in their duty of care to protect children from sexual abuse and exploitation.'

19. The 14 complainants represented by Simpson Millar adopted the submissions of Counsel to the Inquiry. The IPCC 'fully support' the approach set out by Counsel to the Inquiry [paragraph 3]. Leicestershire Council agreed with the revision of the definition of scope and the points made by Counsel to the Inquiry [paragraph 9]. They did, however, seek further clarity on the definition of 'child sexual abuse' and on how the adequacy of institutional responses would be measured [paragraphs 9.1 and 9.2].

20. The representatives of Chief Constable Creedon expressed no final view on the Definition of Scope beyond stating agreement with the proposition that 'the focus of the scope of [the Investigation] should be on institutional responses to the allegations of sexual abuse involving Lord Janner' [paragraph 13].

21. Mr Janner submitted that 'plainly the rejigging of the terms of reference are sensible' and that: 'Should the investigation proceed, I agree that the refocusing is fairer.'

22. On behalf of Ms Janner and Rabbi Janner-Klausner it was submitted that the revised Definition of Scope was 'almost identical to its predecessor, and so, as drafted, does not yet appear to diminish the likelihood of the Inquiry making findings of fact as to whether any allegations against Lord Janner are true' [paragraph 14]. The same submissions argued that such findings of fact would be, in their view, 'contrary to natural justice'.

23. By contrast, the submissions made on behalf of the of the 16 complainants represented by Slater and Gordon were that they did not seek to challenge my 'minded to' decision provided that:

> '1. The "minded to" decision (if implemented) maintains the ability of the inquiry to make factual findings about whether Lord Janner committed all or any part of the abuse alleged, should such findings be necessary in order for the inquiry to execute its terms of reference;
>
> 2. The decision as to whether it is necessary for the inquiry to make such factual findings will be made at a later date when the inquiry makes disclosure of relevant documents;

> 3. Core participants will have the opportunity at that stage to make submissions as to whether such factual findings are necessary in order for the inquiry to execute its terms of reference, before any such decision is made.'

24. The 3 complainants represented by Affinity Law submitted that 'that the underlying question of the truth or otherwise of the allegations needs to be considered by the Inquiry.'

25. Dr Butler's representatives were neutral on this matter, save to acknowledge the need for further consideration should the matter progress' [paragraph 10].

3. The timing of the public hearings

26. Counsel to the Inquiry submitted that in light of the ongoing IPCC investigation [paragraphs 56 and 58]:

> '56. … The position set out in the Provisional Determination is unavoidable. We consider that the risk of prejudice to the IPCC investigation, to individual witnesses, and to the interests of Core Participants and others by proceeding to early substantive public hearings greatly outweighs any advantages that may be gained. We also consider that early public hearings would inevitably lead to a duplication of work and unnecessary cost to the public purse (both in respect of costs incurred by the Inquiry and other public bodies).
> …
> '58. In due course a time will come when the Chair will consider that the IPCC investigations are sufficiently advanced to allow for a date to be set for the substantive public hearing. At that stage we would invite the Chair to consider submissions from Counsel to the Inquiry and all Core Participants on the relevant timetable. Among the factors to be considered may be:
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> a. The extent of disclosure made to Core Participants at that stage.
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> b. The availability of witnesses, and the effect of ongoing delay upon them.
>
> c. The progress and status of the IPCC investigation.
>
> d. The progress and status of any ongoing and related civil proceedings.
>
> e. The progress and status of any ongoing and related criminal or disciplinary proceedings.

> f. The Inquiry's broader timetable, including any scheduled public hearings.'

27. The IPCC welcomed the approach set out in the Provisional Determination and Counsel to the Inquiry's submissions. It acknowledged the balancing exercise involved and supported my keeping the issue of timing under review [paragraphs 4 and 5].

28. Dr Butler's representatives accepted that there was 'a certain inevitability in delay' due to the IPCC investigation, but emphasised that this would have an adverse impact on all parties and urged the 'active management of the Investigation if it is to continue' [paragraphs 11 and 12].

29. Mr Janner submitted that the Investigation could not take place (in any form) before the conclusion of the IPCC investigation. He also submitted that the ongoing civil litigation, in which some of the complainants have brought proceedings against his late father's estate, should precede the Investigation:

> 'The determination of the civil case will assist the Inquiry as to whether or not to hold an investigation and the scope of it.
>
> For example, if findings are made by the High Court Judge after cross-examination against my late father, it will make the Inquiry's task more relevant and focused.
>
> Equally, if findings are made in favour of my late father, then it would assist the Inquiry as to whether to hold the investigation at all, or whether it should be part of the Westminster strand.
>
> It would also mean that the key complainants … might not need to give their evidence twice since the transcripts of their evidence would be available to the inquiry.'

30. Further details about the civil proceedings are contained in the submissions made on behalf of Ms Janner and Rabbi Janner-Klausner [paragraphs 37 to 46].

31. No submissions were received on this point from Leicestershire County Council or any of those representing the complainants (although Simpson Millar, for 14 complainants, broadly adopted the submissions of Counsel to the Inquiry).

32. The only challenge to the proposal that the public hearings should await the further progress of the IPCC investigation was made by those representing Chief Constable Creedon [paragraphs 16 to 18].

> 'In our submission, the Chair should fix a realistic, provisional date for the public hearings to begin in 2018 and a timetable for their completion thereafter. Such a step, together with the setting of a disclosure timetable, would focus the minds of those involved in the investigation and provide dates towards which everyone can work. In our submission, if the IICSA is reliant on the IPCC completing its investigation, before fixing a date for the public hearings, there is a real danger of an unacceptable wait for the proceedings to begin.'

Other submissions

33. Submissions were made on a number of other matters, including but not limited to the questions of whether there should be findings of fact on the underlying truth or otherwise of the allegations of abuse, whether the Investigation should be merged with the Westminster investigative strand, and the need for further consideration of procedural issues. I do not summarise those here as they are not directly relevant to the three 'minded to' decisions on which I invited submissions. I am, however, grateful for these submissions, which will inform our future work. Where and when appropriate I will invite further submissions on these matters.

My Determination

34. I deal together with the questions of whether the Investigation should continue and the formal Definition of Scope. Having carefully considered the submissions it is my view that the Investigation should continue, adopting the revised Definition of Scope at Annex 1, but will be subject to review in light of evidence that emerges from ongoing investigations and litigation. I agree with the submissions of Counsel to the Inquiry that there are good reasons to consider that the Investigation will assist in fulfilling the Inquiry's Terms of Reference. I also accept the point made by Mr Janner and others that evidence that emerges from other proceedings may affect my approach to the Investigation and its position in relation to the Inquiry's other work.

35. I do not accept the arguments made on behalf of Dr Butler that the existing reports cited in their submissions address the full range of issues identified by Counsel to the Inquiry, or the matters set out in the amended Definition of Scope. Nor do I accept that any shortcomings can be rectified by reference to other, unspecified cases. Similarly, I reject the proposal made on behalf of Ms Janner and Rabbi Janner-Klausner that another investigative strand should be opened into the

institutional response to allegations made against some other unidentified but living prominent individual.

36. I make it clear, in response to the submissions of the Slater and Gordon complainants, that I do not regard the terms of the Revised Definition of Scope as inhibiting the Panel's ability, should it choose to do so, to make findings of fact as to the truth or otherwise of specific allegations of child sexual abuse. At paragraph 7 of my Provisional Determination I expressed the view that such findings should only be made where they are (i) relevant to the discharge of the Inquiry's overall Terms of Reference; (ii) open and available on the evidence; and (iii) fair in all the circumstances (including the inability of Lord Janner to respond to the allegations). As I have already mentioned, many of the written submissions that I have received touch on this issue. I have been assisted by these submissions, but I do not intend to address this matter any further at this stage. Rather, as the Slater and Gordon submissions suggest, I shall return to this issue in due course. By that stage, the investigation will be further advanced and as a result it will be possible to address this issue in a more focused way.

37. In respect of the timing of any public hearings, I remain of the view that these should not be held until I am satisfied that an appropriate balance has been struck to minimise (a) duplication of work that is being conducted by other organisations, in particular the IPCC, (b) the risk that a public hearing will contaminate evidence relevant to any criminal proceedings, and (c) the risk that the welfare of some individuals may be adversely affected by repeated questioning about issues relevant to this investigation.

38. I note that the only submissions that seek to persuade me of a different course were those made on behalf of Chief Constable Creedon. While I agree that the delay is unfortunate and that it may adversely affect the Core Participants and vulnerable witnesses, I accept the submissions of Dr Butler's representatives that there is a 'certain inevitability' to this decision. Counsel to the Inquiry and the Core Participants have identified the different factors that form part of the balancing exercise involved. In my view, when these factors are weighed together, the decision to refrain from public hearings until further progress has been made in the IPCC investigation is the appropriate one.

39. I also repeat what I said at paragraph 20 of my Provisional Determination (which is reproduced above). I will continue to review the progress of the IPCC investigation and I do not rule out the possibility that any public hearings in this Investigation could commence before the IPCC has concluded all of its work. I accept the submissions of Counsel to the Inquiry that a number of other factors, including the status of the civil proceedings, may need to be taken into consideration if and when I return to the

question of the timing of any public hearings [see paragraph 58 of their submissions]. I will invite submissions before any date for the commencement of public hearings is set.

40. In light of the submissions I have received and the Determination that I have made I do not consider it necessary to hold a preliminary hearing for oral submissions. In my view, all Core Participants have had an opportunity to address the issues identified in my Provisional Determination. I have been assisted by the written submissions that I have received and I do not consider there to have been any further issues that have arisen as a result of those submissions such as to necessitate a preliminary hearing on the three 'minded to' decisions. I consider that I am able to make the decisions that I have made fairly and proportionately on the basis of the written submissions. In coming to this conclusion I note that I will continue to keep under review the continuation of the investigation, its scope, and the timing of any public hearings. I am also mindful of my duty under s.17 of the 2005 Act to act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others). If any Core Participants wish to contend that I should nonetheless hold a hearing to enable further oral submissions to be made on the three 'minded to' decisions, they should provide reasons in writing within 7 days.

11 April 2017
Professor Alexis Jay OBE

ANNEX 1

Definition of scope

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

1. The Inquiry will investigate institutional responses to allegations of child sexual abuse involving the late Lord Janner of Braunstone QC ("Lord Janner").

2. In particular, the Inquiry will consider

2.1. the adequacy and propriety of law enforcement investigations and prosecutorial decisions relating to allegations falling within paragraph 1 above;

2.2. the extent to which Leicestershire County Council and the Kirkwood Inquiry were aware of allegations falling within paragraph 1 and the adequacy of their response;

2.3. the extent to which the Labour Party, Parliament, government departments, and/or the security and intelligence agencies were aware of allegations falling within paragraph 1 and the adequacy of their response;

2.4. the extent to which any other public or private institution may have failed in its duty to protect children from sexual abuse in respect of the allegations falling with paragraph 1;

2.5 whether any attempts were made to exert improper influence in order to hinder or prevent an institution from effectively investigating or otherwise responding to allegations falling within paragraph 1.

3. In light of the investigations set out above, the Inquiry will publish a report setting out its findings and recommendations to improve child protection and safeguarding in England and Wales.