

## NOTICE OF DETERMINATION

### CORE PARTICIPANT APPLICATION

#### **Background to Survivors of Organised and Institutional Abuse's applications**

1. Survivors of Organised and Institutional Abuse (SOIA), has made a number of applications for core participant status in the Inquiry. I set out for completeness a brief history of the applications which have been made.
2. On 30 March 2016 SOIA applied for core participant status in relation to all 13 of the current investigations announced by the Inquiry. By notice dated 25 April 2016 the previous Chair declined that application explaining that in order to properly manage the designation process the Inquiry was inviting applications in relation to each of the Inquiry's investigations individually. At the time of that application, the former Chair had determined applications in respect of the Inquiry's Lambeth, Rochdale, the late Lord Janner of Braunstone QC and Anglican investigations. She indicated that she was prepared to consider any application on those investigations that SOIA may wish to make out of time.
3. On 9 May 2016, SOIA submitted applications for core participant status in relation to the Lambeth, Rochdale, Lord Janner and Anglican investigations. The former Chair provisionally declined those applications by notice dated 10 June 2016. On 24 June 2016, SOIA made applications for core participant status in relation to two further investigations, the Roman Catholic Church and Accountability and Reparations.
4. Having provisionally declined their applications in relation to 6 of the 7 investigations for which the Inquiry has invited core participant status (SOIA has not applied for core participant status in respect of the Inquiry's case study in relation to the Child Migrants' Trust), the Inquiry offered its legal representatives the opportunity to renew their applications at a preliminary hearing held on 26 July 2016. It was agreed that

submissions in respect of all applications could be made at one hearing to save SOIA's representatives attending numerous preliminary hearings held by the Inquiry during that week. Mr Sam Stein QC on behalf of SOIA made oral submissions at that hearing. The former Chair and Panel, of which I was one, heard those submissions. Since my appointment as Chair I have considered the renewed applications and submissions made in support of them. This notice sets out my determination of SOIA's applications.

5. In reaching my decisions on these applications, I have therefore taken into account the following:
  - a. an application made on behalf of SOIA for core participant status in all the Inquiry's investigations announced at the time, dated 30 March 2016, together with enclosures;
  - b. An application made on behalf of SOIA for core participant status in relation to the Lambeth, Rochdale, Lord Janner and Anglican investigations dated 9 May 2016;
  - c. a letter of support for SOIA's application on behalf of the Shirley Oaks Survivors Association;
  - d. an application made on behalf of SOIA for core participant status in relation to the Accountability and Reparations investigation and the Roman Catholic investigation, dated 24 June 2016;
  - e. oral submissions made by Sam Stein QC and Mr David Enright at the preliminary hearing on 26 July 2016; and
  - f. letter from Howe & Co solicitors dated 2 August 2016.
6. I have therefore carefully considered all available material and have also reconsidered the provisional notices of determination made by the previous Chair in relation to each of the applications submitted by SOIA to date.
7. I have also reminded myself of the statutory criteria that govern the determination of core participant status, in Rule 5 of the Inquiry Rules 2006, which provides:

*(1) The chairman may designate a person as a core participant at any time during the course of the inquiry, provided that person consents to being so designated.*

*(2) In deciding whether to designate a person as a core participant, the chairman must in particular consider whether –*

*a. The person played, or may have played, a direct and significant role in relation to the matters to which the inquiry relates;*

*b. The person has a significant interest in an important aspect of the matters to which the inquiry relates; or*

*c. The person may be subject to explicit or significant criticism during the inquiry proceedings or in the report, or in any interim report.*

*(3) A person ceases to be a core participant on –*

*a. the date specified by the chairman in writing; or*

*b. the end of the inquiry.*

### **Determinations in respect of each investigation**

8. In the first application submitted on its behalf SOIA describes itself as a “*survivor representative group that was established, from the WhiteFlowers campaign group, to engage with the IICSA on behalf of the White Flowers campaign group.*” Four principal members of SOIA are named and some information is provided about their experience, qualification and standing. Reference was also made to two “very well attended and large scale meetings” organised by SOIA at the House of Commons to discuss the issue of “Survivor participation in the Inquiry”. In the provisional determination of 10 June, the former Chair recognised the standing of the named individuals. Whilst information has been provided about the aims of SOIA in relation to the Inquiry, the subsequent information and various applications provided by SOIA do not provide any further detailed information to assist me as to the scope, reach and general membership of SOIA as a representative group.

9. The applications submitted on behalf of SOIA and specifically in the renewed application submitted on their behalf in relation to the Roman Catholic and Accountability and Reparations investigations, raise a number of general issues, principally in support of its submission that SOIA should be designated as a core participant across all of the Inquiry's investigations. However, in line with the approach adopted by the Inquiry to considering applications for core participant status on an investigation by investigation basis I have considered the submissions provided on behalf of SOIA in relation to each investigation separately.
10. I therefore firstly consider the applications made by SOIA in relation to six of the seven investigations for which the Inquiry has currently invited applications for core participant status (SOIA has not applied for core participant status in respect of the Inquiry's case study in relation to the Child Migrants' Trust). I then turn to consider the more general matters raised by SOIA.
11. In considering separately its applications for each investigation I have reviewed the general information provided by SOIA about its membership and its work, together with any information provided regarding its specific experience or links with the subject matter of each investigation. In general, I consider that SOIA has provided insufficient information to demonstrate the direct and significant role or the significant interest that it contends for in each of the particular investigations for which it has submitted an application, with the exception of its application for core participant status in the Accountability and Reparations investigation. The focus of its applications has been on its general interest and experience in the Inquiry's overall terms of reference.
12. For the reasons set out in more detail below I consider that the Inquiry's policy of designating core participants on an investigation by investigation basis is a proportionate basis for the Inquiry to manage its task. It also ensures that victims and survivors who have a direct interest in the matters that the Inquiry is specifically investigating can be involved to assist the Inquiry to satisfy its terms of reference.

13. Accordingly, under the process the Inquiry has established for considering applications for core participant status in order to be designated in relation to a particular investigation, SOIA needs to satisfy the criteria set out in Rule 5 of the Inquiry Rules 2006, in relation to that investigation.
14. The investigations announced by the Inquiry to date broadly fall into two categories, thematic and institution specific. In the context of the investigations to which these applications relate the investigations relating to the late Lord Janner of Braunstone QC, the Anglican Church, the Roman Catholic Church, Lambeth Council and Cambridge House, Knowl View and Rochdale, are institution specific investigations. The Accountability and Reparations investigation is the first of the Inquiry's thematic investigations which have been opened to applications for core participant designation.
15. For the reasons set out in respect of each investigation below, other than the Accountability and Reparations investigation, I am not satisfied that SOIA has played a direct and significant role in relation to the matters to which each of the investigations relate. I am also not satisfied that it has a significant interest in an important matter to which those investigations relate, or that there is any other sufficient reason to designate them as a core participant. However, given the broader thematic issues covered by the Accountability and Reparations investigation I do consider that SOIA satisfies the criteria in Rule 5 of the Inquiry Rules in relation to that investigation. Therefore, for the reasons set out below I am satisfied that SOIA should be designated as a core participant in relation to that investigation.

**(i) Accountability and Reparations**

16. SOIA's application submitted on 24 June 2016 in support of its renewed application in relation to the Accountability and Reparations investigation, states that *"it is self-evident that the members of SOIA have an overwhelming interest in important matters that the Inquiry has identified in its Scope of the investigation"*. The application refers specifically to paragraphs 1, 2.1 and 2.2 of the Inquiry's published

definition of scope for this investigation. I shall not repeat those paragraphs here. It is submitted on SOIA's behalf that *"SOIA has expertise in these key areas and represents Survivors who have a direct interest as well as direct experience in the issues identified in the Inquiry's Scope."*

17. While no further detail was provided in its renewed application about SOIA's specific interest, or the interest of its members, in this particular investigation I have, as explained above, considered all submissions previously made by SOIA in support of its applications for core participant status. This investigation is one of the Inquiry's thematic investigations, in contrast to the other investigations for which the Inquiry has sought applications for core participant status to date which are predominantly focused on particular institutions or specific geographical areas. The Accountability and Reparations investigation is an investigation into the extent to which existing support services and available legal processes effectively deliver reparations to victims and survivors of child sexual abuse or exploitation. The investigation is thematic in nature which means there is a need for core participants who can participate at an overarching and principled level, as well as having a role in relation to particular case studies. In those circumstances, on the basis of the submissions SOIA have so far provided, I am satisfied that it can provide a victim and survivors' viewpoint and general expertise which represents a significant interest in this particular thematic investigation.
18. I am conscious that the applications for designation as core participant that were invited in this investigation were limited to a number of case studies and also that other applications have been declined because they do not relate to those case studies. Nevertheless, I am satisfied that SOIA should be designated as a core participant in relation to the Inquiry's Accountability and Reparations investigation at this stage of its work because of the overarching nature of SOIA's interest and the assistance that it can provide from victims' and survivors' perspective in respect of this thematic investigation.

19. Similar considerations may apply to future investigations launched by the Inquiry, but I will consider any future applications from SOIA when applications windows are opened, if received, on their own terms.

20. I should emphasise that whilst designation as a core participant will give core participants access to documentary material obtained by the Inquiry it is likely that the Inquiry will limit such disclosure to material that relates to their specific interest in this investigation.

**(ii) Roman Catholic Church**

21. SOIA's application submitted on 24 June 2016 in support of its renewed application in relation to the Roman Catholic Church investigation states that its members "*have extensive knowledge of how institutions responded to reports of child sexual abuse within the Roman Catholic Church*". Their application does not provide any further detail about SOIA's interest, or the interest of its members, in this particular investigation or the case studies which are its focus. Indeed, SOIA has not provided any further information in relation to its direct interest in relation to any of the investigations with its renewal application, or in the oral submissions made by Mr Stein QC and Mr Enright. I therefore remain of the view that there is not a sufficient nexus between SOIA and the Roman Catholic investigation as presently constituted to warrant a grant of core participant status to the organisation.

22. For the reasons set out above I am not satisfied that SOIA should be designated as a core participant in relation to the Roman Catholic investigation.

**(iii) The late Lord Janner of Braunstone QC**

23. The renewed application, dated 19 July, submitted on behalf of SOIA in relation to this investigation raised matters of general application. The application states that SOIA

“relies upon its previous general submissions in support of this renewed application”. I have considered all previous submissions made on behalf of SOIA.

24. In its application for core participant status for this investigation, SOIA relies upon the interest of Mr Nigel O’Mara, one its representatives. Mr O’Mara has previously applied as an individual, to be designated as a core participant in relation to the investigation into Lord Janner. The former Chair declined Mr O’Mara’s individual application for core participant status. Her determination in that regard is published on the Inquiry’s website.

25. In her provisional determination of SOIA’s application for core participant status, the former Chair explained that she did not regard Mr O’Mara’s role as a reason for granting SOIA core participant status. Whilst I am of the view that Mr O’Mara has clearly made a significant contribution to, and has great experience in, matters relating to supporting victims and survivors of child sexual abuse I agree that Mr O’Mara’s involvement in SOIA, is not a reason to designate SOIA as a core participant. Other than Mr O’Mara’s involvement with the group, no further information in relation to SOIA’s particular interest in this investigation has been provided within the submissions made on SOIA’s behalf. Accordingly, I consider that SOIA should not be designated as a core participant in the investigation into Lord Janner.

**(iv) Cambridge House, Knowl View and Rochdale**

26. Again, I have considered all previous submissions made by SOIA in relation to their application for core participant status in this investigation. In the application dated 9 May 2016, it was submitted on behalf of SOIA that one of its members, within their wider work, had worked with survivors from Knowl View and Rochdale. I agree that the individual concerned has significant experience both personally and as a campaigner in relation to children’s care homes. However, I do not consider that the fact that he has worked with victims and survivors from Knowl View, and Rochdale more generally



is a sufficient reason to designate SOIA in relation to the Cambridge House, Knowl View and Rochdale investigation.

**(v) Anglican Church**

27. In support of its application SOIA relies upon the experience of one of its members (the same member referred to in relation to its application for Cambridge House, Knowl View and Rochdale) and their involvement with Whiteflowers, which is described as the “Campaign arm of SOIA”. It is said that the individual has *“been supporting Survivors of clerical abuse and has built close links with union representatives for the clergy.”* I reiterate that I acknowledge this individual's experience in working with survivors who have suffered from child sexual abuse in a variety of circumstances. However, I am not satisfied that this individual's involvement with SOIA is a sufficient reason to grant it core participant status in relation to the Anglican Church investigation.

**(vi) Lambeth Council**

28. In support of its application for core participant status in respect of the Inquiry's Lambeth Council investigation, SOIA states that *“there is currently no Survivor representative group participating in this investigation that can compete with the legal firepower of the establishment organisations that have been granted Core Participant Status”*. Survivors of Shirley Oaks Association has been granted core participant status and, at present, they do not wish to be legally represented. That is a matter for its membership and the organisation is making a valuable contribution to the investigation regardless. I have considered the general submissions made on behalf of SOIA in relation to equality of participation and I deal with those issues below. SOIA does not provide any further basis for its direct interest in the matters to be investigated within the Inquiry's investigation into Lambeth Council. Accordingly, I am not satisfied that SOIA have played or may have played a direct and significant role or

have a significant interest in relation to the matters to which the Lambeth Council investigation relates.

### **SOIA's general submissions**

29. **Equality of participation** - SOIA submit that *“without the participation of a recognised and respected Survivor organisation, on something approaching a similar basis, the Inquiry, its decisions and recommendations will not result from a balance of representation and viewpoints i.e. between establishment institutions and Survivors.”*

In the provisional notice of determination dated 10 June 2016, the former Chair set out the number of complainants and/or victims and survivors who had been designated core participants across four of the Inquiry's investigations at that time. Following determination of further applications, the number of individual and groups of victims and survivors designated stands at 140. Through their involvement as core participants in the investigations and otherwise, victims and survivors will play a substantial role in the Inquiry's work.

30. Whilst the former Chair rightly recognised the experience of the four individuals named as SOIA's principal representatives, and I echo that, the information provided to me by SOIA to date does not provide further details of the organisation's wider membership. It does not, therefore, establish that SOIA is of such general representation that it should be designated across the Inquiry as a whole or in individual investigations where SOIA is unable to identify a specific factual nexus between the subject matter of the investigation and its experience. It may be that SOIA's experience and expertise is more suited to its designation as a core participant in the Inquiry's thematic investigations, the topics for which are of a broader or more overarching nature, rather than the institutional specific investigations, which necessarily require a direct interest or role in the matters the Inquiry is investigating in relation to each institution.

31. **Equal interest in the overarching themes of the Inquiry** - Applications received from individuals and groups of complainants are considered on the same basis as

those from institutions. The reasons for the previous Chair's designation of institutions such as the Department for Education and the Crown Prosecution Service in a number of investigations are set out in the published notices of determination. In short, applications made in respect of each investigation were considered separately and granted where the former Chair was satisfied that they played a direct and significant role in relation to matters under investigation and/or have a significant interest in an important aspect of the matters under investigation.

32. Applications from a number of institutions for designation in relation to the Inquiry's investigations have been declined. Determinations in respect of all individuals and institutions are based upon their interest in the specific investigation for which they have applied and are not based upon that individual or institution's general interest in the Inquiry's terms of reference more generally.

33. **Equal access to the evidence and an equal opportunity to make submissions -**  
It is submitted by SOIA that *"the granting of Core Participant Status to the same or similar establishment organisations in most, if not all investigations, provides a very significant advantage to establishment organisations i.e over Survivors who are individually granted Core Participant Status in individual investigations."* For the reasons set out above I do not consider that this is the case. There are individual or groups of complainants designated as core participants in relation to each of the Inquiry's investigations that have invited applications. I have set out the current numbers above. Therefore, subject to any decisions I may make in respect of disclosure to core participants within each investigation, complainant core participants are likely to have the same access to the evidence as any institutional core participant. Complainant core participants across the six investigations for which SOIA has applied are represented by ten different legal teams and will have an equal opportunity to make submissions, from the differing viewpoints that may be contained in each of those teams.

34. **Direct interest and modularisation** - SOIA submits *“that the Inquiry has fallen into error by requiring that a Survivor representative group demonstrate a ‘direct interest’ in individual investigations“* and that *“If the Inquiry had been established in a non-modular manner (i.e to consider all issues relevant to child sexual abuse in the UK) SOIA would have little difficulty in satisfying the Rule 5 criteria”*. Section 17 of the Inquiries Act 2005 provides that the procedure and conduct of the Inquiry are for me to direct. I am also required to act with fairness and also with regard to the need to avoid any unnecessary cost. I consider that the Inquiry's policy of designating core participants on an investigation by investigation basis is a proportionate basis on which to ensure that victims and survivors who have a direct interest in the matters that the Inquiry is specifically investigating can be involved to assist the Inquiry to satisfy its terms of reference.
35. As the former Chair explained in the provisional determination dated 10 June 2016 and on a number of other occasions, survivors of child sexual abuse should be at the centre of this Inquiry. Designation of individuals and groups of victims and survivors as Core Participants is only one means by which the Inquiry will achieve this aim. In addition, the voices of victims and survivors are heard through the Victim and Survivor Consultative Panel (VSCP) on issues not directly related to the investigations, the Truth Project, the Victim and Survivor's Forum and potentially through responses to issues papers that the Inquiry will publish.
36. **Terms of reference** - It is submitted on behalf of SOIA that *“it is evident, from the Inquiry's [terms of reference] that the Inquiry's focus includes the assessment of institutional and systemic protection gaps. Such an assessment requires a consideration of the themes and matters arising across the 13 modules.”* It is therefore submitted on behalf of SOIA that *“in order for the Inquiry to effectively discharge its functions Core Participant status should be granted to Survivor organisation(s), which are in a position to assist in addressing those overarching concerns.”* It is primarily the function of the Chair and Panel to identify matters that should be considered by the Inquiry and to make findings and make recommendations

based on the evidence gathered by the Inquiry. We will be assisted in that by all core participants designated within each investigation and will also be informed by the Truth Project, and other mechanisms that I set out above. For all the reasons previously mentioned I consider that it is not necessary to designate core participant status to a complainant or victim/survivor group across all investigations in order for the Inquiry to properly satisfy its terms of reference.

37. **Article 3** - SOIA submits that *“Survivors had an absolute right to effective participation in this Inquiry, pursuant to Article 3 of the European Convention on Human Rights and Fundamental Freedoms”*. For the reasons set out above, I consider that complainants, victims and survivors will have effective participation within this Inquiry, not only by being granted core participant status, where appropriate, but also through the Truth Project and other mechanisms for engagement established by the Inquiry. I also reiterate what was said by the former Chair within her provisional notice of determination. This Inquiry is established to fulfil the terms of reference set by the Home Secretary. It is not its function to discharge the United Kingdom’s obligations under Article 3.

### **Recognised legal representative**

38. In relation to my designation of SOIA as a core participant within the Accountability and Reparations investigation I now turn to consider their application for designation of a recognised legal representative.

39. Applications for designation of a recognised legal representative of a core participant are governed by Rules 6 and 7 of the Inquiry Rules 2006, which provide as follows:

6(1) *Where -*

*(a) a core participant, other than a core participant referred to in rule 7; or*

*(b) any other person required or permitted to give evidence or produce documents during the course of the inquiry, has appointed a qualified lawyer to act on that person's behalf, the chairman must designate that lawyer as that person's recognised legal representative in respect of the inquiry proceedings.*

*7(1) This rule applies where there are two or more core participants, each of whom seeks to be legally represented, and the chairman considers that -*

- (a) their interests in the outcome of the inquiry are similar;*
- (b) the facts they are likely to rely on in the course of the inquiry are similar; and*
- (c) it is fair and proper for them to be jointly represented.*

*(2) The chairman must direct that those core participants shall be represented by a single recognised legal representative, and the chairman may designate a qualified lawyer for that purpose.*

*(3) Subject to paragraph (4), any designation must be agreed by the core participants in question.*

*(4) If no agreement on a designation is forthcoming within a reasonable period, the chairman may designate an appropriate lawyer who, in his opinion, has sufficient knowledge and experience to act in this capacity.*

40. I am satisfied that SOIA has appointed David Enright as its qualified lawyer in relation to the Accountability and Reparations investigation. I therefore designate Mr Enright as the recognised legal representative for SOIA in relation to the Accountability and Reparations investigation in accordance with Rule 6(1) as I am required by that rule to do.

## **Conclusion**

41. In summary therefore, I do designate SOIA as a core participant in relation to the Inquiry's Accountability and Reparations investigation.

42. I do not consider that SOIA should be designated as a core participant in the following investigations:

- a. The Roman Catholic Church;
- b. The late Lord Janner of Braunstone QC;
- c. Cambridge House, Knowl View and Rochdale;
- d. The Anglican Church; and
- e. Lambeth Council.

43. I take this opportunity to draw SOIA's attention to the directions issued at the preliminary hearing held in relation to the Accountability and Reparations investigation on 29 July 2016, in particular the direction that any application made by SOIA or on its behalf for an award of legal expenses under section 40 of the Inquiries Act 2005 be made by 4pm on 8 September 2016, such application to address the matters set out in paragraph 12 of the Inquiry's cost protocol which is available on the Inquiry's website. In light of the renewal and reconsideration of SOIA's application for core participant status I am happy to extend the time for it to submit any application under section 40 of the Inquiries Act to 4pm on 22 September 2016. I would also direct SOIA's attention to the other directions made at the preliminary hearing on 29 July 2016.

44. In relation to the applications submitted on behalf of SOIA that I have declined, I will keep the scope of the investigation and the designation of core participants under review as the Inquiry progresses and further invitations to apply for core participant status may be made as the investigation proceeds. My decision not to designate SOIA as a core participant in those five investigations for which it has applied does not preclude them from making a future application in respect of these investigations if its focus changes in future or in respect of future investigations for which the Inquiry invites applications for core participant status. In particular, in light of my decision in respect of SOIA's application in relation to the Accountability and Reparations investigation it may be that SOIA's experience and interests are best aligned with the

Inquiry's thematic, as opposed to institution specific, investigations. I shall of course need to consider on its merits any future application which SOIA wishes to make.

**Professor Alexis Jay**

**19 August 2016**

**Chair, Independent Inquiry into Child Sexual Abuse**