

## **NOTICE OF PROVISIONAL DETERMINATION FOLLOWING REVIEW**

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

1. In August, I set up a review into the Inquiry's ways of working. That review is now complete and I set out below my intended approach to this investigation and procedural decisions that I am minded to make in consequence. I wish to emphasise that all these matters are currently provisional, and are subject to any submissions that are received. If you wish to make any such submissions, you should do so in writing according to the timetable that is set out below.
2. The formal title of this investigation is: "The investigation into institutional responses to allegations of child sexual abuse involving the late Lord Janner of Braunstone QC". For convenience it will be referred to hereafter as "the investigation". The late Lord Janner of Braunstone QC will be referred to as "Lord Janner".

#### Purpose and role of the investigation

3. The Inquiry's Terms of Reference require it to consider, among other matters, the extent to which State and non-State institutions have failed in their duty of care to protect children from sexual abuse and exploitation; to consider the extent to which those failings have since been addressed; and to identify further action needed to address any failings identified. One area that falls to be investigated, and is plainly a matter of public concern, is the way in which institutions have responded to allegations of child sexual abuse made against persons of public prominence. I envisage that this broad issue may arise in a number of the investigations being undertaken by the Inquiry, for example those dealing with the Anglican and Roman Catholic churches and different local authorities. In respect of politicians of national standing, the Westminster Investigation is likely to address such matters.

4. Having carefully reviewed the Inquiry's ongoing ways of working, I am firmly of the view that an investigation into the institutional responses to the allegations of child sexual abuse involving Lord Janner falls within the Inquiry's Terms of Reference and will assist me and my colleagues in fulfilling those Terms. There are a number of reasons why I have come to this conclusion.
  - a. The events surrounding the allegations made against Lord Janner span a number of decades. By investigating the institutional responses over this period the Inquiry will be able to see how approaches may have changed over time and across institutions. This will assist an understanding of historic practices and will inform the Panel's analysis of current and future approaches.
  - b. The investigation into the responses to the allegations made against Lord Janner will provide a point of reference and comparison for the Inquiry's other investigative strands dealing with allegations made against people of public prominence. It will inform the Inquiry's wider understanding of relevant issues and allow for comparative analysis. The work on this investigation is likely to be closely associated with that of the Westminster Investigation. There will be further points of overlap with other areas of work. By drawing upon related investigations the Panel will be better placed to come to final conclusions and recommendations.
  - c. There have been a number of police and other investigations and reviews that relate to the allegations made against Lord Janner. An extensive IPCC investigation is ongoing (on which, see below). I intend to consider the information from such investigations, in accordance with paragraph 2 of the Inquiry's Terms of Reference. This will allow the investigation to be conducted in an efficient, proportionate and effective manner notwithstanding the difficulties inherent in dealing with what are often termed "historic allegations".

- d. The investigation will allow the Inquiry to consider the extent to which, if at all, State and Non-State institutions failed to identify abuse and/or failed to respond appropriately to allegations of such abuse, in accordance with paragraph 2 of the Inquiry's Terms of Reference. Such institutions are likely to include several of those listed within the "Scope" section of the Inquiry's Terms of Reference.
- e. The investigation will consider the experiences of individuals who made allegations of child sexual abuse, including in respect of how those to whom they made the allegations responded.

#### Findings of fact

5. The Inquiry's Terms of Reference require it to consider the extent to which institutions have failed in their duty to protect children. For that reason the focus of this investigation will be on the institutional responses to the allegations involving Lord Janner. As a matter of logic, it may not be necessary for a finding of fact to be made on the truth or otherwise of a specific allegation of child sexual abuse in order to examine the institutional response to that allegation.
6. If, however, there are instances in which the truth or otherwise of an allegation of abuse is said to be relevant to an analysis of an institution's actions, careful consideration will need be given to whether it is necessary for a finding of fact on that underlying allegation to be made. This is a topic that is fact specific and one on which I cannot take a firm view now, but which will be kept under review as the investigation continues.
7. If such a situation arises, I am presently minded to adopt the approach recommended by Inquiry Counsel, namely that I should only make such a finding where it is: (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 to make the finding (such circumstances including the inability of Lord Janner to respond to allegations).

### Witnesses

8. I am determined that the Inquiry will continue to work closely with all witnesses and their representatives. This includes witnesses who have made allegations of child sexual abuse against Lord Janner. The Inquiry will strive to ensure that the welfare of the witnesses is not compromised during the course of this investigation. The extent to which oral evidence will be required to satisfy the objectives of the investigation will fall to be determined in due course.

### The IPCC investigation

9. 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. The IPCC announced earlier this year that it had served misconduct and criminal notices on 11 individuals.
10. In order to conduct the investigation, I understand that the IPCC has obtained a large amount of material spanning a number of decades from a number of sources, including previous police investigations. I am told that the material consists of thousands of documents, including statements, reports, correspondence and policy files. A dedicated team within the IPCC's Directorate of Major Investigations is analysing the material to identify possible police misconduct or criminal acts and identify further lines of enquiry.
11. I understand that the IPCC investigation has identified a significant number of potential witnesses and is in the process of approaching and taking statements from these individuals. These witnesses include some who are Core Participants to the Inquiry, individuals who have complained of suffering child sexual abuse, former or serving police officers and staff and other individuals whose knowledge of relevant events could assist the IPCC in establishing how Leicestershire Police responded to allegations of abuse when they were made.

12. I am told that the IPCC is in the process of approaching and taking statements from these witnesses. They are using survivor engagement managers and specialist trained interviewers to assist and support witnesses, particularly those who may be vulnerable or find the process of recalling events distressing. The IPCC have indicated that the historical nature of the investigation presents particular challenges in relation to securing and obtaining evidence, often from archives dating back many years.
13. The Inquiry has been meeting regularly with the IPCC to receive updates about their investigation and receive material that may be relevant. The IPCC has reassured me that the Inquiry will have access to all of the material from the IPCC investigation.
14. At a preliminary hearing on 26 July 2016 Counsel to the Inquiry noted the following concerns, which were shared by the Inquiry, Leicestershire Police and the IPCC. First, that an uncoordinated approach to gathering evidence would risk the contamination of that evidence and could prejudice any future criminal trials. Second, that multiple simultaneous demands on complainants might compromise the welfare of in some cases very vulnerable witnesses. These concerns have led to the substantive public hearings in this investigation being delayed.
15. My current view is that these concerns remain and are substantial. I am also conscious of the need to avoid spending public resources on replicating work that is already being undertaken.

#### Ongoing work

16. I wish to emphasise that the work of the Inquiry in respect of this investigation goes beyond that of the IPCC. While the Inquiry will make appropriate use of the materials provided by the IPCC, and will seek to avoid wasteful duplication of resources, it is not limited to these materials. Nor is it in any way bound by any of the IPCC's conclusions.
17. The Inquiry's team is continuing its work of obtaining, organising, analysing and preparing the evidence that will be disclosed to Core Participants and adduced before the Panel. To

this end the Inquiry continues to work with, among others, Leicestershire County Council, Leicestershire Police, the Crown Prosecution Service, central government departments, the Labour Party and other institutions. The Inquiry is grateful for the considerable efforts that have been made to assist its work.

18. To date the Inquiry has obtained disclosure of approximately 100,000 pages of materials in the course of this investigation. These are being analysed by the legal team. The Inquiry has commenced the process of requesting and reviewing witness statements from institutions and individuals. It has instructed expert witnesses to produce reports on the state of residential care and the methods of conducting criminal investigations of child sexual abuse allegations in the relevant time period. Further requests for disclosure, for statements and for other evidence will follow.

'Minded to' decisions

19. Following the review of the Inquiry's ways of working and for the reasons given above I am minded to make the following three decisions in respect of this investigation. These are my provisional views and they are subject to any submissions that may be made to me. I will consider such submissions carefully before coming to a final view. They are:
  - 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.
  - 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.

20. In respect of the third of these decisions, I make the following additional observations. 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.

#### Timetable for discussion and responses

21. Members of the Inquiry's legal team will make themselves available to meet with Core Participants and other interested parties in January 2017 if requested to do so.
22. It would be inappropriate for me or any Panel member to attend such meetings. This is because all oral submissions that are made to the Chair and the Panel must, as a matter of fairness and transparency, be made publicly and in the presence of all Core Participants who choose to attend. The substance of any written submissions that are received by the Chair and the Panel will be circulated to all Core Participants.
23. Counsel for this investigation will circulate their own written submissions in relation to the 'minded to' decisions by 31 January 2017.

24. I invite written submissions from the representatives of Core Participants and other interested parties by 17 February 2017.
25. If necessary, a preliminary hearing will be held in March 2017 for oral submissions to be heard.
26. I would be grateful if those who do not wish to make submissions could make this known as early as possible.
27. Please be reminded that the Inquiry is able to provide support services to witnesses involved in the investigation on request.

**16 December 2016**  
**Professor Alexis Jay**



## **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.