

**DETERMINATION FOLLOWING THE PRELIMINARY HEARING  
IN THE WESTMINSTER INVESTIGATION HELD ON 30 OCTOBER 2018**

**Introductory**

1. This is my determination of an application made on behalf of Ms Esther Baker at the preliminary hearing of the Inquiry's Westminster Investigation held on 30 October 2018. The substance of Ms Baker's application is that the Inquiry should investigate, as part of the Westminster Investigation, institutional responses to allegations of child sexual abuse that she made in 2015.

**Background**

2. Ms Baker is a core participant in the Westminster Investigation. She has alleged that she was sexually abused as a child by Mr John Hemming, who was an MP from 2005 until 2015. Ms Baker has made this allegation publicly and in her own name, having waived her statutory right to anonymity, although she states that she did not give Mr Hemming's name publicly until after he had identified himself as the subject of her allegations.
3. Ms Baker's account is that the abuse took place in the 1990s, when she was a child aged between about 8 and 12. She says that at least one other senior politician was involved in the abuse. She also says that individual members of the police were aware of and indeed facilitated the abuse at the time.
4. Ms Baker did not make any contemporaneous report of these matters to the police. She did, however, go to the police in 2015 (although she states that she did report some of her alleged abuse to social services in or about 1999, when she was 17). The Staffordshire Police have subsequently conducted an investigation into Ms Baker's allegations. In 2017, the investigation came to an end with the police deciding to take no further action in relation to the allegations - a decision taken after a file had been submitted to the CPS and the CPS had concluded that there

was insufficient evidence to support a prosecution. Ms Baker exercised her right to review the decision made by the CPS, and in 2018 the CPS upheld its decision. I will return to the detail of that investigation in due course.

### **The first preliminary hearing and the May Determination**

5. The first preliminary hearing in the Westminster Investigation took place on 31 January 2018. At that hearing, Counsel to the Inquiry made detailed oral submissions regarding the proposed scope of the investigation. I gave core participants an opportunity to file written submissions on scope following the hearing. Having considered both the oral and the written submissions, I gave a Determination on the scope of the investigation that was dated 8 May 2018 ('the May Determination').
6. One of the issues that I addressed in the May Determination was that of whether Ms Baker's allegations should be investigated as part of the Westminster Investigation. My decision was that Ms Baker's allegations would not be so investigated. My reasoning in this regard is set out at paragraphs 3 to 8 of the May Determination, which is available on the Inquiry website.
7. I note in passing that it is now submitted on behalf of Ms Baker that when she made submissions earlier this year she had not intended to invite the Inquiry to investigate the truth of her underlying allegations, but only the institutional response to those allegations once she had reported them in 2015. Having reviewed the written submissions on scope filed on Ms Baker's behalf following the January hearing (dated 12 March 2018), the best that can be said is that the position was ambiguous. However, even if there was a misunderstanding, it does not seem to me that anything turns on it, since at paragraph 6 of the May Determination I addressed in any event the possibility of taking the narrower approach of investigating only the institutional responses to Ms Baker's allegations.
8. Before turning from the May Determination, it is worth emphasising that it is now some six months since the Determination was published. Neither Ms Baker nor any

of the other core participants challenged the Determination at the time that it was given. The decisions on scope that the May Determination contains have formed the basis of the extensive preparations that the Inquiry has been undertaking for the last six months in advance of the public hearings in this investigation, which are now due to commence in less than four months' time.

9. The second preliminary hearing in the Westminster Investigation took place on 30 October 2018.
10. Prior to that hearing, those acting for Ms Baker indicated that they wished to make a renewed application for Ms Baker's allegations to be investigated as part of the investigation. I agreed that this issue should be included on the agenda, and directed that written submissions should be filed in advance of the hearing.

### **The present application**

11. Written submissions were duly filed by Mr Jonathan Price, who represented Ms Baker at the October hearing. Mr Price made further oral submissions at the hearing. I am grateful to Mr Price for the clarity of both his oral and written submissions. I also heard oral submissions on this matter from Andrew O'Connor QC, Counsel to the Inquiry. Following the hearing, I received written communications from Mr Hemming and also from Ms Baker's solicitor, both of which supplied further information regarding ongoing criminal investigations and civil litigation related to Ms Baker's allegations. I also sought and received further information from Staffordshire Police relating to past and current criminal investigations.
12. The core points of the submissions made by Mr Price may be summarised as follows.
  - a. Mr Price emphasised the narrow basis of his application. He did not invite the Inquiry to investigate the truth of Ms Baker's allegations, nor should anything be investigated that occurred outside the UK. What should be investigated,



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he said, was the institutional reaction - and in particular the reaction of the police - to the allegations made by Ms Baker in 2015. In Mr Price's words: *"[t]he starting point for the investigation Ms Baker seeks would be the making by her of the allegation in 2015, and the end point would be the decision to take no further action."*

- b. Mr Price stated that, in general terms, the issues that he was inviting the Inquiry to investigate were within the scope of the Westminster Investigation. He referred to three of the topic areas that I identified in the May Determination (namely, Police investigations, Prosecutorial decisions and Political parties) and submitted, rightly, that Ms Baker's allegations touch on each of those three areas.
- c. Mr Price submitted that there *"is now no current police investigation into the relevant allegations, nor into any aspect of how they were handled"*. He submitted that the only extant civil proceedings, a defamation action *"may (if it progresses) grapple with the underlying truth of the allegations, but not the institutional responses to them"*. In a similar vein, Mr Price sought to emphasise the practicality of investigating Ms Baker's allegations. He said that the allegations are relatively recent, dating only from 2015. He said that the police investigation could be *"neatly encapsulated"* by the file sent to the CPS and the CPS response, and suggested that if I was concerned about the volume of material held by the police then I should make enquiries with the police before reaching a decision.
- d. Finally, Mr Price submitted that the fact that an issue is contentious should not be accorded any or any significant weight by the Inquiry in deciding whether or not to investigate it. He added that *"treating some contentious allegations as engaging the issue of proportionality but not other, risks treating survivors in particularly contentious cases inconsistently, and therefore unfairly."* Mr Price pursued the latter point in oral submissions, suggesting that if the Inquiry was now proposing to investigating allegations involving the Green

Party and Mr Challenor, which were not mentioned in the May Determination, it would be inconsistent not to investigate Ms Baker's allegations.

13. Mr O'Connor opposed the application to include Ms Baker's allegations within the scope of the investigation. His submissions (along with Mr Price's oral submissions) are recorded on the transcript of the hearing, which is available on the Inquiry website. Mr O'Connor made three points.
14. First, he submitted that the issue that was before me was whether or not to select these matters - i.e., the institutional responses to Ms Baker's allegations - as matters that would be amongst those investigated by the Westminster investigation. They are within the scope of the investigation, so I am quite entitled to investigate them. But equally I am not bound to investigate them, since the Inquiry has made it clear that only some selected matters falling within scope are to be the subject of investigation.
15. The essence of Mr O'Connor's second point was that the nature of the issues raised by Ms Baker made them unsuitable for investigation. He said that the issues of institutional response were closely linked to Ms Baker's underlying allegations of abuse, and that if the Inquiry attempted to investigate the former it would be likely to get drawn into hearing evidence, and perhaps even making findings, on the latter. The complexity and sensitivity of these matters, he added, would make enquiries into them resource intensive and time consuming, which would distract attention from the lengthy list of other topics that the Inquiry proposes to examine. He also said that the likely need to hear evidence about the underlying allegations of abuse would risk a conflict with ongoing civil proceedings.
16. Mr O'Connor's third point was a more pragmatic one. He put it in this way:

*"The hearings in this investigation are listed to take place over three weeks next March. The other work of the inquiry means that there is no prospect either of adjourning or of extending the Westminster hearings. Undertaking the type of investigation that Ms Baker invites you to embark upon, even if it is limited in the way suggested, would be a very considerable undertaking. It*

*would involve calling for and then analysing a very large number of documents, taking witness statements, and so on. We do not think that there is any prospect that this work could be undertaken in time for a hearing next March, and even attempting to do so would compromise the work that is under way on all the other topics that I have outlined.”*

17. As I have already mentioned, I received further information in writing following the hearing going to the question of extant criminal investigations and civil proceedings.
18. In a letter dated 6 November 2018, Staffordshire Police confirmed (as at paragraph 4 above) that its investigation into the complaints made by Ms Baker in 2015 had concluded. The letter added, however, that:

*“One individual who was the subject of allegations made by Ms Baker subsequently made a counter allegation that Ms Baker had perverted the course of justice in her original complaint (which in June 2018 was concluded with no further action to be taken). At the end of June 2018 the individual met with officers from Staffordshire Police and indicated he had further information in relation to this complaint.*

*Staffordshire Police is currently investigating the nature and content of this further information and is not able to comment further as this is an on-going investigation.”*

19. An email to the Inquiry from Ms Baker’s solicitor provided further information. It stated that:

*“Whilst there are no live police investigations into the relevant allegations, there is a current live investigation by Staffordshire Police into attempts to pervert the course of justice initiated by Ms Baker against [Mr Hemming and another man].*



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*Mr Hemming’s allegations to Staffordshire Police of Ms Baker perverting the course of justice have already been dismissed, but Staffordshire Police are, at Mr Hemming’s insistence, currently reviewing that decision.”*

20. The same email gave details of a number of sets of civil proceedings. The only proceedings that seem to me to be of importance for present purposes are the defamation proceedings between Ms Baker and Ms Hemming. The email describes those proceedings in the following terms:

*“Ms Baker and Mr Hemming are parties to a defamation action, in which each sues the other in relation to various public statements made by them. The only potential overlap between this case and what Ms Baker has asked to have investigated by the Inquiry is that Ms Baker sues on Mr Hemming’s allegation that she lied to the police. But as Ms Baker has been at pains to remind the Inquiry, she does not seek to have evaluated the truth of her allegations to the police, which is what a defence of truth in the libel case would entail. She seeks only that the Inquiry effectively audit the police’s responses to her having made those allegations.”*

21. Turning now to my conclusions, I make it clear at the outset that I am very conscious of the importance that Ms Baker attaches to this application. I have considered it with great care. I have not approached the application on the basis that I am in any way bound or constrained by the decision that I made in the May Determination. Rather, I have considered the matter afresh. That said, I am of course now considering the matter at a different point in time, and that has its own implications.
22. Mr O’Connor and Mr Price are agreed that the question of whether or not to investigate Ms Baker’s allegations is a matter that lies within my general discretion. I am entitled to investigate the allegations, but I am not bound to do so. This is therefore essentially a case management question, which I must resolve by reference to all relevant facts and circumstances. One consideration that is of particular importance is that of how suitable these allegations are to be selected for

investigation. Another is the more practical consideration of whether, given the limited time and resources available, it would be possible and/or proportionate to investigate these allegations.

### Conclusion

23. Adopting that approach, the decision that I have reached is that Ms Baker's allegations will not be investigated as part of the Westminster Investigation. My reasons for this decision are as follows.
24. The question of the suitability of Ms Baker's allegations for investigation is of course a relative concept. But that is inherent in any process of selection, and, as Mr O'Connor made clear in his submissions at the October hearing, the approach that the Inquiry has adopted in the Westminster Investigation has been to select a small number of topics for investigation at the oral hearings. The focus of the Westminster Investigation is on the institutional responses to allegations of child sexual abuse, rather than on the truth or otherwise of the underlying allegations, and this focus has guided the selection of the topics to be investigated.
25. Although Ms Baker's application is put on the basis that the Inquiry should only investigate the institutional responses to her allegations, I am not persuaded that a limited investigation of this nature would be possible. As I observed in the May Determination (paragraph 6), "*In Ms Baker's case, the issues of potential institutional failings are very closely bound up with her underlying allegations of abuse. It would not be practical or proportionate to attempt to separate one from the other.*" As Mr O'Connor submitted, many of Ms Baker's allegations about institutional failings since 2015 involve allegations that Mr Hemming himself has directly or indirectly interfered with the proper investigation of Ms Baker's underlying claims of sexual abuse. With respect to Mr Price, I do not see how these allegations could properly be investigated simply by reference to the contents of the Police file sent to the CPS and the CPS's response. It would be necessary to call evidence from Mr Hemming. And it seems



very likely that at that stage the truth or otherwise of Ms Baker's underlying allegations against Mr Hemming would be put in issue before the Inquiry. Having re-examined this issue, I therefore maintain the view that I took in the May Determination. A powerful factor against the Inquiry investigating Ms Baker's allegations of institutional failings is the difficulty of separating those allegations from her underlying allegations of having been abused by Mr Hemming.

26. An associated consideration is the ongoing police activity referred to above and also the civil defamation proceedings between Mr Hemming and Ms Baker. I accept that I do not have the detail of precisely what the police work concerns. But the detail that I do have, together with the information about the defamation proceedings, is sufficient for me to conclude that any investigation that the Inquiry attempted to conduct into Ms Baker's allegations would at least run the risk of being made more complicated through overlap and/or conflict with the police work and/or the civil proceedings. That is a further factor that militates against investigating Ms Baker's allegations. In light of Mr Price's submissions, I emphasise that what I have in mind is not simply the fact that Ms Baker's allegations are "*contentious*", but rather the practical difficulties that are inherent in the same or related allegations being investigated at the same time through more than one legal process.
27. Even in the absence of the considerations to which I have already referred, I would have rejected Ms Baker's application in any event for the much simpler reason that the Inquiry does not have the time or resources to undertake the preparatory work that would be necessary for her allegations to be considered at the hearings in March next year.
28. The Inquiry's legal team is currently fully engaged on making preparations for the hearings relating to the issues that I identified in the May Determination. As will be apparent from the transcript of the October hearing, the task of providing core participants with disclosure of documents that are relevant to those issues is a pressing one. Although some further requests for evidence are being sent and fresh

lines of enquiry developed (the issue relating to the Green Party and Mr Challenor being an example of the latter), these are all limited in scope.

29. I am satisfied that the task of investigating and preparing to hear evidence on Ms Baker's allegations would be an extensive exercise, and one that could not be undertaken between now and March. As I have already said, it would not be sufficient to rely on the police file and the CPS report. Ms Baker's allegations of institutional failings include assertions that both the police investigation and the CPS consideration of the case were infected by interference, including from Mr Hemming. If those allegations were to be investigated, it would be necessary to review the entire investigation, and to also to take statements from Mr Hemming and from the police officers and CPS officials involved. This would be a substantial task. At Mr Price's suggestion, the Inquiry requested information from the Staffordshire Police about the scale of its investigation into Ms Baker's allegations. That information was provided in a letter dated 6 November 2018. The Police describe the investigation into Ms Baker's allegations as "*comprehensive and complex*". There appear to have been as many as 11 police officers involved in the investigation. Witness statements were taken from 30 individuals. Ms Baker alone has been interviewed for a total of 91½ hours, with the transcripts of those interviews running to 1,081 pages. There are 33 items of unused material, which run to 7,214 pages. These details suffice to demonstrate that any investigation by this Inquiry into Ms Baker's allegations would necessarily involve a considerable amount of work. Any attempt to undertake this work in the limited time available between now and the hearings in March would seriously prejudice the Inquiry's work on the other matters that I have already decided will be investigated.
30. For all the reasons that I have given, I have decided that Ms Baker's allegations will not be investigated. As I hope is apparent, I have made this decision on the basis of the particular facts and considerations that are relevant to this issue. With regard to Mr Price's submissions suggesting an inconsistency of approach, summarised at paragraph 12d above, I do not accept that my decision not to investigate Ms Baker's allegations demonstrates inconsistency or unfairness when set against the fact that

other allegations are being investigated. It is of the essence of proportionality that different cases are treated differently.

**Professor Alexis Jay OBE**

**19 November 2018**

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