NOTICE OF DETERMINATION

1. The Inquiry held a preliminary hearing in the Westminster Investigation on 31 January 2018. Amongst those present at the hearing was Ms Esther Baker, to whom I had previously granted core participant status in the investigation. Ms Baker was represented at the hearing by Mr Garsden, her solicitor.

2. Ms Baker has made well-publicised allegations of sexual abuse against Mr John Hemming, a former MP. She also claims to have been abused by other individuals of public prominence, who have not been named publicly. She has waived what would otherwise have been her statutory right to anonymity in connection with these allegations.

3. At the end of the hearing Mr Garsden indicated that he wished to make an application on behalf of Ms Baker. He made oral submissions in support of his application, which are recorded on the transcript of the hearing that is published on the Inquiry website.

4. Mr Garsden referred to what he described as *"an orchestrated campaign"* against Ms Baker, the purpose of which, he said, was *"to vilify her and call her a liar"*. He referred to articles in the press describing Ms Baker as a *"fantasist"* and criticising her involvement in this Inquiry. Mr Garsden took particular exception to the use of the word *"fantasist"*. That was a word that had been used repeatedly – although not with express reference to Ms Baker - by Mr Daniel Janner QC in his submissions to me earlier in the hearing. Mr Garsden went on to describe the severe effect on Ms Baker of the criticism to which she has been subject in recent times. He said that she had made 12 attempts at suicide since 2015 and had been repeatedly hospitalised. Mr Garsden made it clear in the course of his submissions that Ms Baker regards Mr Hemming and his supporters – Mr Garsden referred to *"Mr Hemming and his, if I can call them, trolls"* – as being amongst those responsible for the criticism, or, as she would describe it, abuse, to which she has been subject.

5. Mr Garsden's application was founded on the Witnesses (Public Inquiries) Protection Act 1892. Mr Garsden referred to the terms of section 2 of the Act and submitted that it would be *"open to this inquiry to institute through the police an investigation into what has been done to Esther Baker which has brought her to take overdoses and suffer psychologically and psychiatrically."*

6. I can deal with this application shortly.

7. Section 2 of the 1892 Act creates a criminal offence. It does so in the following terms:

> "Every person who commits any of the following acts, that is to say, who threatens, or in any way punishes, damnifies, or injures, or attempts to punish, damnify, or injure, any person for having given evidence upon any inquiry, or on account of the evidence which he has given upon any such inquiry, shall, unless such evidence was given in bad faith, be guilty of a misdemeanour, and be liable upon conviction thereof to a maximum penalty of one hundred pounds, or to a maximum imprisonment of three months."

8. As Mr Altman QC, Counsel to the Inquiry, submitted at the hearing on 31 January, it is clear from the wording of section 2 that it is a condition precedent to the commission of an offence that the individual who has been *"punished, damnified or injured"* has already given evidence to the inquiry in question. That requirement is determinative on the facts of this case. Ms Baker has not given evidence to this Inquiry. Indeed, we have not yet heard or adduced any evidence within the context of the Westminster Investigation, nor have we yet decided whether we will hear or adduce any evidence from Ms Baker.

9. Mr Garsden argued at the hearing that the section 2 condition was satisfied by the fact that Ms Baker had *"made an application to the inquiry, and disclosed her evidence"*. I do not accept this argument. The fact that Ms Baker has made an application for core participant status does nothing in itself to satisfy the requirement of having *"given evidence upon"* the inquiry. In support of her application, Ms Baker filed brief written submissions and also a victim review application that she had submitted to the CPS in response to their decision not to prosecute Mr Hemming. Neither document was in the form of a witness statement. Whilst I of course considered the content of both documents in reaching my decision to grant Ms Baker core participant status, I do not regard either as having been admitted into evidence before the Inquiry.

10. I therefore reject Mr Garsden's application, which, as I understood it, was to make a report to the Police of the possible commission of offences under section 2 of the 1892 Act. Had I concluded that any such offences may have been committed, it would have been necessary to consider whether it was appropriate in all the circumstances to make such a report and whether, for example, I should invite submissions from Mr Hemming and others before doing so. One factor that would have militated against making such a report would have been the fact that, as Mr Garsden stated, Ms Baker is already in contact with the Police and has in fact already asked them to investigate the same conduct as amounting to one or more different criminal offences. Given my conclusion that no section 2 offence can be said to have been committed, however, those matters are academic and I do not consider them further.

11. I wish to conclude this ruling by making some more general observations about the way in which I expect those who appear before the Inquiry, and in particular those who have been granted core participant status, to conduct themselves.

12. I have already referred to the objection that Mr Garsden took to Mr Janner's use of the word *"fantasist"* during the hearing on 31 January. WM-A4, a complainant of child sexual abuse who was renewing his application for core participant status at the hearing, understood Mr Janner to be referring to him. Mr Stein QC, who represented WM-A4, made the following short submissions in response:

> "A4 is in fact in the inquiry hearing room and was present when he was accused of being a fantasist. We would respectfully ask, no matter what feelings are being expressed, that great care is given to making such accusations about individuals. The tendency, otherwise, is it will put people off making applications to be present or indeed to participate."

13. Since the hearing on 31 January, the Inquiry has been contacted by Mr Hemming, who has complained that Mr Garsden used the public hearing of the Inquiry as a platform to repeat Ms Baker's allegations against him, which Mr Hemming contends are entirely without foundation. On a separate point, I would draw attention to Mr Garsden's description in the course of his submissions to me of Mr Hemming's supporters as *"trolls"* – language that I regard as entirely inappropriate.

14. At the end of the hearing on 31 January, Mr Altman referred to the submissions of Mr Stein and Mr Garsden and urged that *"whatever other individuals' views and opinions may be"*, those appearing before the Inquiry should *"choose their words with care for future reference, given the obvious sensitivities and difficulties, and often divergent interests amongst participants."*

15. I strongly endorse those sentiments. Given the subject matter of this Inquiry, it is inevitable that from time to time the strongest of emotions will be engaged on all sides. On occasions, as on 31 January, those appearing before the Inquiry will wish to advance diametrically opposing but deeply held views. As Mr Altman observed, such situations call for the exercise of sensitivity and restraint. The Inquiry is entitled to expect – and does expect – that both core participants and their legal representatives will demonstrate such sensitivity and restraint. I am of course aware that there are any number of disputes that are collateral to this Inquiry and that involve one or more core participants. I emphasise that it would be a fundamental abuse of that core participant status if any individual sought to use their status within this Inquiry to gain an advantage in any such collateral dispute.

16. On a practical level, I will in future expect core participants and their representatives to consider with care whether it is necessary to make contentious submissions of the type that I have described at public hearings of the Inquiry. If they consider that such submissions are indeed necessary – and I would not of course wish to stop any necessary submissions being advanced – I would expect core participants and their legal representatives to discuss the matter in advance with Counsel to the Inquiry.

17. I have no general power to control the behaviour of core participants outside the hearing room. That includes the use by core participants of social media, which I am aware has given rise to many of the grievances in this area. Core participants must comply with the terms of confidentiality undertakings that they give to the Inquiry. Beyond that, I am not in a position to control what core participants do or do not say on social media, nor would it be appropriate for me to do so.

18. I would, though, make a final plea that all those who report on the issues with which this Inquiry is concerned, and all those who comment on those issues using social media, should do so exercising a level of restraint and respect that is commensurate with the sensitivity of those issues, and the vulnerability of many of the individuals involved.

Professor Alexis Jay OBE

22 February 2018