

## Independent Inquiry into Child Sexual Abuse

### WRITTEN CLOSING SUBMISSIONS ON BEHALF OF HARVEY PROCTOR RELATING TO THE WESTMINSTER INVESTIGATION

*Key:*

*Day '1/1/1-2' = Hearing transcript Day 1, page 1, lines 1 to 2*

#### **(A) INTRODUCTION**

1. These written submissions reflect and build upon those which were presented orally on the final day of the hearings.
  
2. We opened by saying that sometimes there is smoke without fire. In the case of the hideous allegations against Harvey Proctor, there never was a fire. There was, instead, a belching smoke machine. We have now had three weeks of hearings, with evidence from politicians, police, the Secret Intelligence Services, public servants and others. Where has this left us? Behind the smoke, there is no credible evidence to support any allegation against Harvey Proctor. The evidence to this Inquiry has cleared him completely. There is no evidence of a 'Westminster paedophile network'. The evidence to the Inquiry confirms it never existed. The Police, Independent Office for Police Conduct and MI5 have all considered the issues, in at least 72 separate investigations. Their evidence to this inquiry was, without reservation, that there was no corroboration for the allegations against Mr Proctor or of a Westminster paedophile network.

#### ***Closing submissions in summary***

3. In summary:
  - 3.1. First, the Westminster Investigation report should clearly exonerate Mr Proctor. Based on the overwhelming evidence which the Inquiry has now heard, no other conclusion is open to the Inquiry and there is a moral duty to say so.
  
  - 3.2. Secondly, the Inquiry must, for both principled and practical reasons, carry out a further investigation into the treatment of Harvey Proctor and other people of

public prominence by the Metropolitan Police in Operation Midland – a Westminster Investigation Part 2.

- 3.3. Thirdly, the Inquiry should make recommendations to ensure that such treatment is never repeated and that an effective investigation must mean investigation that is fair.

## **(B) SUBMISSIONS**

### **First submission: The Inquiry should clear Harvey Proctor**

4. Our first submission is that in its report the Inquiry should clear Harvey Proctor of the heinous allegations that have surfaced in public from time to time, that he was part of an alleged Westminster Paedophile Network, in the course of which he tortured and even killed small boys. He is grateful to the Inquiry for commissioning investigations and calling evidence which exonerates him and indeed proves that there was no such thing as a Westminster paedophile network.
5. Regrettably, in the moral panic which ensued after Jimmy Saville's crimes came to light, malicious conspiracy theories against Harvey Proctor and others were given far more credence than they deserved. He suffered and still suffers grave reputational and grievous material damage, as well as personal pain and suffering as a result.
6. We do not, for a moment, seek to minimise the importance of unearthing historical child sexual abuse and bringing perpetrators to justice – indeed, we argue that this purpose is best served by a system that rejects, at an early stage, false accusations and focusses on those that can be corroborated. But it is an uncomfortable truth for this Inquiry that the public and political outcry which led to it being established involved senior politicians, the Metropolitan Police and certain journalists, including the now defunct Exaro news agency, giving credence to malicious and false allegations. They all behaved irresponsibly and, in the case of senior police officers, negligently. The allegations were so incredible that any reasonable person would at the least have treated them with extreme caution. Instead, a small group of self-promoting politicians including

Zac Goldsmith, John Mann, Simon Danczuk and Tom Watson, amplified the allegations and used their considerable political clout to give them status and believability. And when, in 2012, Mr Watson raised the issue in Prime Minister's Questions, he became a vehicle for conspiracy theorists and a patsy for fake news.

7. The evidence which the Inquiry heard over three weeks points in one direction. The allegations against Harvey Proctor relating to the Elm Guest House, child sexual abuse and murder have no foundation. They are wholly false. As Sir Richard Henriques declared in his report on Operation Midland the Elm Guest House list is equally fantastical, there was no VIP paedophile network at Westminster and *a fortiori*, no coverup of any such network.
8. On Day 2 of your hearings, Chris Mahaffey of the Independent Office for Police Conduct confirmed that in 36 of 37 of their investigations, no evidence had been obtained to support allegations of police misconduct.<sup>1</sup> The only potential misconduct identified had nothing to do with any issue involving Harvey Proctor. No police misconduct has been identified in relation to any cases involving the Elm Guest House. No matters have been referred to disciplinary or criminal proceedings.
9. On Day 4, Commander Neil Jerome of the Metropolitan Police Service gave an overview of 11 separate investigations which relate to Elm Guest House. He confirmed:
  - 9.1. No single 'Elm Guest House list' was ever found during police investigations whilst the guesthouse still existed in the 1980s. The so-called 'guest list' only emerged in very recent years from Chris Fay and Mary Moss.
  - 9.2. Commander Jerome said "*it's certainly very clear that evidentially that list has no value, and how it's been created is certainly dubious*".<sup>2</sup>
  - 9.3. In his second statement, Commander Jerome said "*I am content that that there is no evidence of a 'Westminster paedophile network' or of any attempts to cover up or suppress the existence of such a network.*"<sup>3</sup>

---

<sup>1</sup> Day 2/49/3-8

<sup>2</sup> Day 4, 574/6-9

## **Chris Fay**

10. Chris Fay claimed that a number of prominent people attended the Elm Guest House, including Harvey Proctor. But he never provided any evidence to back those claims up. The Inquiry should accept the conclusions of investigating officers, such as DCI Paul Settle, that Chris Fay, who dragged Harvey Proctor's name through the mud, is wholly unreliable.
  
11. In 2012, Fay had just been released from prison. He had been convicted, in the previous year, for defrauding pensioners. The BBC website said he was part of an 'Olympic property fraud gang'. The sentencing judge called it an "*outrageous and elaborate*" fraud which hit those "*who could ill afford to lose money*". The scam was widely reported and evidence of Fay's involvement easily available by a simple Google search. It is extraordinary that Tom Watson and others gave Fay any credence at all, let alone believed him as they appear to have done. As a senior politician, he has research assistance and it is astonishing that they did not warn him of Fay's criminal record. DCI Settle said in his statement to the Inquiry that he found Fay's behaviour to be "*duplicitous*". Commander Jerome said that there was "*no evidence he was able to provide us to back [his] claims up*". There was, he said, "*no corroboration*" and there were "*significant inconsistencies*" in accounts given to the police. In conclusion, Commander Jerome said:

*"The conclusions are that the credibility of Chris Fay is called into question; that there is evidence that does not prove his claims... there's absolutely no substance to those at all, and the overall conclusion is that there is no evidence to substantiate any of Mr Fay's claims"*<sup>4</sup>

12. On Day 6, an Mi5 witness confirmed that "*no material was found to indicate either the existence of a Westminster paedophile network or of any attempts to cover up or suppress information about the existence of such a network*".<sup>5</sup>

---

<sup>3</sup> OHY007085\_002/para 6

<sup>4</sup> Day 4/568/1-5

<sup>5</sup> Day 6/126/3-7

13. And so, the evidence exonerating Harvey Proctor is impressive and compelling, as is the evidence that Chris Fay is a conspiracy theorist, a dishonest criminal, a fantasist and a liar. The Inquiry should make both of these points clear in its report.

### **Anthony Gilberthorpe**

14. The Inquiry should deal the same way with the allegations of Anthony Gilberthorpe against Harvey Proctor. The Inquiry's investigations show that Gilberthorpe is a deeply malicious man, harbouring hatred towards the Conservative Party for rejecting him. He was a drunkard and a bankrupt, desperately in need of money: he wanted £40,000 to put his name to these libels, and was offered £12,000: we do not know what he finally received from The Sunday Mirror. Despite extensive investigation, there is no confirmation of his fantasy allegations. Harvey Proctor's name was added by these defamers because, as we explained in Opening, he was fined in 1987 for indecency in circumstances which would not have been a crime a few years later. His case was widely and sensationally publicised, which is why these liars think they can give credibility to these lists by adding his name.

### **The MPS submissions**

15. The Metropolitan Police Service ('MPS') in their closing submissions sought to "*remind you*" that the allegations were into "*police misconduct and not into the underlying allegations of criminals, as suggested by Harvey Proctor's counsel.*"<sup>6</sup> However, this belies the nature of those investigations. In order to consider whether police committed misconduct by not adequately investigating, the IOPC and MPS conducted an exhaustive set of investigations into the underlying allegations, in order to assess whether any corroboration could be found. In relation to the allegations against Harvey Proctor and Elm Guest House, these allegations were investigated sufficiently – including by Sir Richard Henriques - for the Inquiry to exonerate him.
16. Similarly, in their opening submissions, Ms Leek QC on behalf of the the MPS said that she did not propose "*to address anything said in opening on Mr*

---

<sup>6</sup> Day 14/79/7-9

*Proctor's behalf about Operation Midland. Suffice to say that what Mr Jerome will say, what Commander Jerome will say, may be slightly more nuanced than has been suggested.*<sup>7</sup> However, as is detailed below, Mr Jerome's evidence on the topic of Harvey Proctor and Elm Guest House was not nuanced at all – it was clear and unambiguous. It is not clear why the MPS devoted a significant proportion of their submissions to trying to persuade you not to make clear that the allegations against Harvey Proctor were unfounded<sup>8</sup>, however the Inquiry is reminded that Mr Proctor has an extant negligence claim in the civil courts against the MPS relating to precisely these issues. This may explain why the MPS are not enthusiastic about the Inquiry stating clearly that the allegations against Mr Proctor are – and always have been – unfounded, as opposed to being “*credible and true*”, as a senior MPS officer stated publicly during the investigation (see our second submission below).

### ***Putting paid to public concern***

17. One of the key purposes of a public inquiry is to put paid to public concern and scurrilous rumours, and you and your report will be judged on how you do that by, amongst others, clearing Harvey Proctor. If you did so, you would merely, but importantly, be confirming the evidence you have heard from senior police officers, and Sir Richard Henriques, who said in his report at paragraph 1.92:

*“As part of this process I have interviewed or corresponded with several innocent persons accused of grave criminal offences. Harvey Proctor must stand first in line; having been accused of the murder of three children, in addition to a catalogue of the gravest sexual offences. He is, in my judgement, an innocent man.”*

18. Of course, you have been advised by your counsel that you should not make findings in respect of this issue. If by this it is meant to deter you from commenting that Harvey Proctor is innocent, then as we said in opening it is wrong advice, and you are not obliged to accept it. You must act according to your own sense of morality and good conscience: you have heard the evidence, gathered at great public expense, and if you accept it the public will expect you

---

<sup>7</sup> Day 1/156/2-6

<sup>8</sup> See also Day 14/85-87

to say that there was no Westminster paedophile ring and you should endorse the conclusion of Mr Justice Henriques – Harvey Proctor, the only living victim of this hideous smear campaign, is an innocent man.

### **Second submission: Inquiry must address the injustice in Harvey Proctor's case**

19. There may be no fire behind the smoke, but in Harvey Proctor's case there is a burning injustice. The Inquiry must not conclude its work without addressing it. The presumption of innocence is at the heart of our criminal justice system. It has been described as the 'golden thread' which runs through our common law.<sup>9</sup> It is a central feature of Article 6 of the European Convention on Human Rights, the right to a fair trial. In Harvey Proctor's case, that principle was turned on its head. Harvey Proctor has faced the most hideous allegations imaginable – of child abuse and child murder. He was treated as guilty until proven innocent. The Metropolitan Police gave the press enough information to identify him and then said, publicly without corroboration or proper investigation, that the incredible and false allegations against him were '*credible and true*'.<sup>10</sup>
20. Harvey Proctor was subsequently exonerated, in Sir Richard Henriques' report (which has not been published in full but is evidence the Inquiry possesses), in the fulsome apology from the Metropolitan Police, and, now, in the incontrovertible evidence which is before this Inquiry. Nonetheless, the burning injustice remains and we are sure that it burns in other families and relatives of publicly prominent people whose names have been blackened.
21. What should the Inquiry do about it? The current answer appears to be "not very much". Although he accepted the issues were "*important*", Mr Altman QC also said in his opening that there were "*principled*" reasons not to address in the Westminster Investigation problems in the way cases of child sexual abuse are dealt with by the criminal justice system. He said that they are "*remote from the central purpose of this inquiry*".<sup>11</sup>

---

<sup>9</sup> *Woolmington v DPP* [1935] UKHL 1, per Viscount Sankey LC

<sup>10</sup> These were the words of Detective Superintendent Kenny McDonald  
<https://www.telegraph.co.uk/news/uknews/crime/11301225/Westminster-paedophile-ring-Police-investigate-murders-of-three-boys.html>

<sup>11</sup> Day 1/48-49

22. With respect, this is the wrong approach. It is essential that the Inquiry consider and make recommendations about the failings, particularly by the police, in Mr Proctor's case. The Inquiry's terms of reference include considering "*whether State and non-State institutions failed to identify such abuse and/or whether there was otherwise an inappropriate institutional response to allegations of child sexual abuse*" [emphasis added]. It is right that the Inquiry's central focus has been on the endemic failure over decades to identify and prevent child sexual abuse. However, it must be the case that Mr Proctor's treatment by the police was an "*inappropriate institutional response*".
  
23. There are three principle reasons to inquire into the Metropolitan Police's actions in Harvey Proctor's case:
  - 23.1. Firstly, if the police fail in an investigation, particularly one of huge public interest, or are seen to be taken in by false allegations, they will reduce public confidence in their activities. This will deter people from coming forward with true allegations and cooperating with investigations in future.
  - 23.2. Secondly, failures cost money and resources which are necessarily drawn away from important investigations into child sexual abuse. Police specialists in child sexual abuse are a limited resource and should only be working on investigations which are based on plausible allegations which can be corroborated.
  - 23.3. Thirdly, the Inquiry can, by investigating this issue, make a useful and powerful contribution to the question of how the police behave towards suspects in child sexual abuse cases. This is of profound interest and importance not just to those suspected of child sexual abuse but also to genuine victims.

### **Third submission: suggested recommendations**

24. The Inquiry is charged to make recommendations, based on the evidence it has heard, that will conduce to better investigation of allegations of child sex abuse, whether historic or not, and to avoidance of cover-up of such allegations within institutions. Mr Proctor, as an innocent victim of allegations that are false, has an interest in ensuring both that true allegations are brought to light and that false



allegations are quickly investigated and rejected. The Inquiry should, in our view, make a number of recommended actions to this end that have not occurred to its team of counsel or to counsel for other parties. These we adumbrate in the following paragraphs.

25. This further investigation will give the Inquiry the opportunity to consider, and to endorse, the wise recommendations of Sir Richard Henriques. For example:
26. The Inquiry should hold a 'Westminster Investigation Part II'. The Inquiry has rightly steered clear of the issues around Operation Midland because of Carl Beech's forthcoming trial, however it must return to the issue once the legal proceedings are concluded.<sup>12</sup> Mr Altman QC rightly identified there are "*important*" issues over police treatment of suspects, but also said that they were "*generic rather than being specific to Westminster*".<sup>13</sup> It may be that the Inquiry considers these issues under a separate investigation, rather than a Westminster Part II, but it must consider them nonetheless.
27. In the further investigation, the Inquiry should also consider the recommendations made by Sir Richard Henriques. We submit that it should approve them. We respectfully suggest the following recommendations are considered as a starting point:
  - 27.1. Anonymisation of suspects - there should be anonymisation of suspects of historical child sexual abuse before arrest. This means stopping the police practice of giving information which does not name a suspect but in effect reveals their identity, such as in Harvey Proctor's case when his age and location were revealed when his house was searched, allow the press to accurately guess his identity. Anonymisation before charge should also be considered.

---

<sup>12</sup> Mr Beech's trial is due to begin on 7 May 2019

<sup>13</sup> Day 1/48-49

- 27.2. Police leaks - Every effort should be made to minimise leaks of information by the police. Sir Richard Henriques recommended examining current systems and increasing sanctions and we agree with that recommendation.
- 27.3. Search warrants - There should be transcripts of applications for search warrants, and they should only be granted in cases of historical child sexual abuse by district judges and not by lay justices.
- 27.4. Complaints - Complaints to the police should be treated with the utmost seriousness and be investigated thoroughly. However, there should be no automatic 'belief' of complainants, as this leads to errors such as was made in Harvey Proctor's case, where the allegations against him were publicly described by the police as "*credible and true*" before they could be corroborated<sup>14</sup> – they never were corroborated. People should be called 'complainants' until there is confirmation by the criminal justice process that they are victims.
- 27.5. Support for victims of false allegations - In exceptional cases, where suspects have been falsely accused of a crime, they should be treated as 'victims of crime' and should be offered support and liaison compatible with the gravity of the allegations made.
- 27.6. Official secrecy - The Inquiry has heard allegations about misuse of the Official Secrets Act (e.g. to deter a journalist from publishing Barbara Castle's allegations) and how the impact of 'signing' the Act deterred a customs officer from acting upon his belief (which may have been mistaken) that Sir Leon Brittan had imported child pornography. The use of the Official Secrets Act has not been carefully addressed in the institutional submissions, but there is no doubt that it can be used as a deterrent to whistleblowing. The present Act (of 1989) applies to all Crown Servants and Government contractors and is narrower than the previous law (which covered divulging of virtually any job-related information). However, Section 4 of the Act prohibits the revelation of certain information about crime, and could be used *in terrorem* against civil servants who wish to take safeguarding concerns to NGOs or to the media. The Inquiry

---

<sup>14</sup> See above

should recommend that all government departments and contractors must make clear to employees that their duties under the Official Secrets Act do not extend to keeping quiet about the lack or failure of safeguarding they encounter at work, and in particular do not apply to speaking about their experiences of sexual harassment or to “leaking” to the press of information about child sexual abuse or its cover-up. This should be set out clearly in training manuals. The old practice of requiring employees to ‘sign’ the Official Secrets Act should, if it still occurs, be abandoned – it has no legal effect and can only act as a deterrent to exposure of failures in safeguarding.

27.7. Media Restrictions - Although Mr Proctor has suffered greatly from media reportage, he does not blame the newspapers, but the police, whose negligence in giving credence to obviously false accusations (“*credible and true*”) has caused those reports. He believes that journalists and editors have a real contribution to make in the investigation and reporting of child sex abuse by powerful people, and that the Inquiry should commend Private Eye for exposing the cover-up of Sir Peter Hayman and the Rochdale Free Press in exposing Cyril Smith. Obviously if the press is to play this important “watching” role it should not be restricted by the law, and it is widely known that the crimes of Jimmy Saville would have been exposed while he was still committing them had it not been for the laws of libel and breach of confidence. Reform of libel law in 2015 at last gave the media a qualified “public interest” defence, but defamation remains the only civil law action in which the burden of proof falls upon the defendant (i.e. the media) to prove its case. This is difficult and can be impossible in cases where the sources do not wish identification and the police are unwilling to act. Wealthy and powerful wrongdoers can therefore gag the media and stop calls for investigation of their conduct. ‘Breach of Confidence’ is another legal doctrine quite widely used to prevent publication of information (even if true or in the public interest) obtained from employees or servants – the recent case of Sir Phillip Green offers but one example. We think that the Inquiry should endorse the right and the role of media investigations of child sex abuse or its institutional cover-up and ask the Law Commission to report on whether the laws relating to defamation and breach of confidence require amendment to permit this

- 27.8. Transparency - Mr Proctor has, in the course of his quest to clear his name, been met with refusals to provide documentation and evidence about decisions taken in relation to allegations against him. Some do not appear to have been documented at all, such as the wrongful decision to apply for a search warrant, and in any event there are no transcripts made of these applications, which vitally concern the liberty of the subject. There is no paper trail provided to the Inquiry for the decision to misled the Court over the true identity of “Mr Henderson,” or of the disgraceful decision of the DPP to give Hayman immunity from prosecution after a private meeting with Sir David Napley (a decision, we suggest, that must have been approved by the Attorney General, although again there are no records). We suggest that IICSA recommend that all decisions which impact on individual liberty, whether to apply for a search warrant or to caution rather than charge, must be properly minuted and in due course carefully archived. We cannot help observing the number of times in this Inquiry where “the trail goes cold” – files which must at one time have existed in Government Departments have either been lost or have been destroyed. Whether this has been done to save space or to save face does not perhaps matter: we hope IICSA will recommend that all files with references to child sex abuse should be maintained in archives for 50 years.
- 27.9. Social Media - Mr Proctor, as a victim of false allegations, can say more emphatically than anyone else, that the greatest damage is done on social media, by malicious postings that are shared to tens of thousands and remain downloadable for years, uncontroverted and largely uninvestigated, A classic example of this fake news is the “Elm Guest House List” – we asked for it to be exhibited but were advised that your counsel did not want to give further publicity to the malicious naming of celebrities who were on it. Fair enough, perhaps, but we invite you to Google it, just to realise how unacceptable it is that it remains available for downloading on several Google sites. You have seen DCI Settle’s statement, and how his investigation proved it was a fabricated fiction. But there it still is, handwritten and plausible, available as propaganda to persuade gullible members of the public, long after your report to the contrary has been published and forgotten, that there really was a “VIP child sex network” in Westminster. Is there any way, short of ordering Google to remove it, that you can provide an antidote to this poison? We have an idea. It is not an original idea – it was

developed by the Court of Appeal in the case of *Loutchansky v Times Newspapers Ltd and Others (Nos 4 and 5)* [2002] 2 W.L.R. 640<sup>15</sup> in the context of libel in newspapers. Instead of removing a libellous article from the newspaper website, a court can order that an explanation should be added to it, so that when downloaded again the recipient will immediately be apprised of its falsity. We suggest that this is a proportionate and principled approach which you should take, recommending that Google and other providers add to the list appearing on its sites words to the effect that “*this list of purported VIP guests has been investigated by police and found by IICSA to have been fabricated by criminals and fantasists. There is no evidence to suggest that any of these persons ever attended the Elm Guest House.*” It may be that your recommendation will be ignored by Google, in which event Parliament will need to give statutory powers to public inquiries to correct internet records.

- 27.10. Statutory powers to Courts and public Inquiries to order internet providers to correct their postings - These are usually anonymous, so the malicious accuser cannot be sued for libel and there are difficulties in holding Google and other site hosts accountable. The Internet Watch Foundation does valuable work in identifying child pornography, but it does not provide a service for identifying false accusations. We consider that anyone in Mr Proctor’s position, faced with a false accusation on the internet, should be able to apply immediately to a Court for an order that it be taken down or else hyperlinked to a “statement of falsity.” This suggestion needs to be set out in some detail, and you may wish to consider it further as part of your internet Inquiry. If so, Mr Proctor will consider applying to be a core participant.

## **(C) CONCLUSION**

28. We emphasise, once again, the importance of the Inquiry addressing the problem of false accusations, because they impact on public confidence in policing and law enforcement approaches to allegations that may well be true.

---

<sup>15</sup> per Lord Phillips MR at paragraph 74: “Where it is known that archive material is or may be defamatory, the attachment of an appropriate notice warning against treating it as the truth will normally remove any sting from the material”

They impact on jury decisions: jurors aware of how false allegations have been taken seriously in the past may be induced to reject charges that are well-founded, Where police endorse uncorroborated allegations (“credible and true”) they make themselves a laughing stock and deter other real victims from entrusting them with complaints.

29. Mr Harvey Proctor wishes the Inquiry well in its important remaining work. He thanks the Chair for making him a Core Participant, for giving him the opportunity to place on record his innocence of all these false allegations that have besieged him these last 4 years, commends all authoritative bodies that have investigated and agreed his innocence. He now places his highest trust in the Chair and Panel that they will confirm his complete innocence unequivocally in their final report.

**GEOFFREY ROBERTSON Q.C.**  
**ADAM WAGNER**

Doughty Street Chambers  
29 March 2019