Written evidence submitted by Hon Dame Lowell Goddard QC

Letter from Hon Dame Lowell Goddard QC to
Yvette Cooper MP, Chair of the Committee, 28 October 2016

May I first congratulate you on your election as Chair. During my time as Chair of the IICSA, and since, I have had a close experience of the work of the Committee and the important role that it plays in the British Parliamentary structure.

I am today writing separately with my further response to the matters raised in the letters from Mr Loughton MP as Acting Chair.

I made the decision to resign as IICSA chair because I judged that to be necessary in order to protect the Inquiry and its work, and so that the problems I encountered might be overcome. I came to this sad conclusion when I found that, despite my best efforts, I could not achieve what was needed in the Inquiry's best interests.

In resigning, I put the interests of the victims and their families (and also the wrongly accused) first.

I am writing to you personally about the Committee's request that I also give oral evidence.

I have been the subject of extensive, false, and defamatory comment in the British media, and have had to instruct London lawyers in these matters. These are current and not resolved. The media claim that some of the most recent defamatory comments have been made by members of the Committee you now chair.

In his letter to me of 14 October Mr Loughton said "An oral hearing with the Committee might also provide a useful opportunity for [me] to "put the record straight" on the further reports in the media today (Times of 14 October) about issues arising during [my] time as Chair of the Inquiry." In my reply of 17 October I raised with Mr Loughton statements published in the media about me, including an article appearing in the Times dated 15 October which contains quotes attributed directly to an unnamed member of the HASC alleging that I have wilfully refused to cooperate with the House of Commons investigation. I respectfully asked Mr Loughton as the acting Chairman for his assistance and the assistance of the Committee to investigate the leak of false information to the Times and to rectify publicly the correct position. In the interests of fairness and to ensure a level playing field I would be grateful if you could please now address and respond to this request. It would also be unjust for any repetition of media reports to occur under privilege; and prejudicial to me.

In the meantime, I reaffirm my willingness to assist the Committee in its investigation. In furtherance of that I am today providing a detailed written report for the Committee addressing matters identified from the Committee's correspondence with me and from matters raised during the Committee's hearings of 7 September and 18 October.

I have spent considerable time preparing this comprehensive report. If there is any point on which the Committee needs additional information, it would assist me if you could provide me with that detail.

I believe, taking into account my many years of judicial experience, that in matters of extensive factual detail, prepared written material is essential to ensure that information is comprehensive and factually correct.

The arrangement I made with the Rt Hon Keith Vaz, when he was Chair, was therefore for me to

provide a written report and information to assist the committee. I believe that was and still is the effective way of ensuring that the Committee receives the information which it needs from me in order to continue its supervisory work.

I am writing to you as I wish to assure you personally of my commitment to assist the Committee, and to set out how I have done that.

Yours sincerely

Hon Dame Lowell Goddard QC

Memorandum:

Introduction

I have identified from correspondence from the Committee, and from my own review of the HASC's work as detailed on the Parliamentary website (including the documents and HASC meeting video) that there are a number of matters where I can provide further information to the Committee.

Most of these matters require me to summarise facts, establish and send my opinion, and in some cases to look back through the history of my time as Chair. I am certain that the effective way to do this is to provide a further report.

The main matters are those raised at the Committee's hearing of 7 September, those in correspondence between myself and the former Acting Chair of the Committee, Mr Loughton, dated 14, 17 and 18 October respectively; and matters raised during the Committee's hearing of 18 October.

On 18 October, the new Chair of the IICSA, Professor Jay and two Panel members appeared before the Committee, along with the Permanent Secretary of the Home Office, Mr Mark Sedwill; and I have had the opportunity to consider their evidence.

I cross refer my letter of 4 August in which I offered my resignation to the Home Secretary, and her letter of reply to me of the same date; my report to the Home Secretary of 10 August and my original report to the Committee of 5 September.

An initial overview

Mr Vaz in his initial letter of 5 August expressed interest in further detail about the reference in my resignation statement to the challenges presented by the magnitude of the task, the difficulties encountered through a past legacy of failure and my view that with hindsight it would have been better to have started the Inquiry completely afresh.

I explained at that time, in my reply, that I resigned to protect and advance the vital work of the Inquiry. My inability to overcome that history of challenge and failure led me to accept that I should resign to enable change to occur under new chairmanship. I discuss that in more detail later in this report.

The Inquiry has now presented its internal review; established new approaches to its work; and the new Chair and two panel members have appeared before your Committee.

I am very pleased to find, from this, that the Inquiry, somewhat differently organised and planned, has found a new approach to its task which will retain past achievements but also open up a new and in my opinion interesting and viable approach to its task. It will still need to take into account the matters which I mention in this report.

Although I am no longer part of the IICSA I reaffirm my absolute commitment to and support for the Inquiry and its work. It is paramount that it be able to successfully and fairly address the welfare of victims and survivors and make soundly based, achievable and workable recommendations that will be effective in the protection of children now and in the future. I am very hopeful that the fresh

start that I intended my resignation to facilitate and the interesting and innovative new approach that is now being developed by Professor Jay and her team will ensure that those goals can be fulfilled in a timely manner. Supporting those efforts and looking forward to the future in a positive manner is for me the critical factor when reporting to your Committee.

My report of 5 September to the Committee

I refer to my report of 5 September to the Committee, in which I set out for the Committee's consideration the matters on which Mr Vaz had specifically sought a response. I did so to assist the Committee in its ongoing supervisory role and also the Government in considering how the experience of the Inquiry up to the point of my departure might provide insight into how best it might achieve its objectives in the future. My observations on those matters were intended to be factual and constructive, and to relate to the best interests of the Inquiry. I intentionally did not take up or refute the external attacks I had sustained personally.

My recommendation of 5 September that my departure could provide a timely opportunity to review and recalibrate the emphasis of the inquiry **more** towards current events and to focus **major** attention on the present and future protection of children was not intended to undervalue or to discount the importance of reviewing allegations of serious offending, whenever it occurred. Such events are not historical for the victims and survivors. A number of institution-specific investigations concerned with such events were launched during my Chairmanship of the Inquiry: for example, the situation of the Shirley Oaks Survivors and the plight of the Child Migrants. More of these terrible experiences may justifiably be put under the Inquiry's microscope.

My reference to the engagement of Secretariat staff was simply a response to the direction in Recommendation 13 of the Committee's Twelfth Report of Session 2014-2015 following my appearance in February 2015.

My observation that the Inquiry's budget did not match the vast requirements of its overall remit was directed to the likely cost of fulfilling all of those Terms of Reference in their entirety. It was not a reference to whether the Inquiry had achieved all of the objectives for which funding was appropriated in year one of its operation. Therefore, what I said was not factually incorrect – I was looking to the overall outcome in future years.

My expressed concern about the hard work of the Inquiry not being sufficiently visible or communicated widely enough, was a concern that was shared by all of the panel members and myself, and was a topic of conversation at the facilitated meeting in March 2016, which I discuss later.

Responses to matters raised at HASC hearing 18 October

Positive gains
Professor Jay referred to the work on the Truth Project as a significant achievement, as indeed it was and clearly continues to be. There is also the solid body of work built up in the thirteen institution specific and thematic lines of investigation and the establishment of an excellent research unit. Of central and most critical importance in my view has been the establishment of an effective and dedicated Victims and Survivors Consultative Panel, the members of which have developed a demonstrated trust in the Inquiry and its work. Their continued trust and wise guidance going forward is of vital importance to the Inquiry and its ultimate outcome.

Relationship with the Panel
With reference to the working relationship between the Panel and me and Professor Jay's statement that it was clear from the beginning that I would have preferred to sit on my own without the assistance of a panel, the situation was that the statute under which we all had to operate vested certain powers in me which made me solely accountable for the role of chair; the Panel under that statute is accorded a more limited role providing case expertise and participating in fact finding and the formulation of recommendations.

From the outset, my experience was that members of the Panel in addition wished to have involvement in the determination of legal and procedural issues which only I had jurisdiction to make; and to participate in executive decision making and operational and management aspects of the Inquiry. The important procedural decisions, that are reserved to the Chair alone under the Act, are not committee decisions and are for good reason not intended to be. The statute confers an express statutory responsibility that cannot be abdicated by the Chair or be determined by a committee[1]. If they are determined otherwise they could be challenged in law and set aside.

My compliance with the statutory responsibilities I held in my actions and decisions (which the Panel knew was not aimed at them personally), did cause discomfort. The Panel knew that I respected each one of them for their individual experience and expertise, and that when it came to exercising our fact-finding function together and in formulating our recommendations, we would work together harmoniously and reach agreement. We would at that time be a team united in our commitment to expose the transgressions of the past and working together to put into place protections for vulnerable children now and for the future. I never had any doubts about our collective ability to do that. All of our different but highly relevant experiences and the perspective of each would be invaluable at that stage of our endeavours and be fully represented in the final outcome.

I note that Ivor Frank identified to your Committee that I approached my role from the perspective of a Judge. He acknowledged that that is my long-standing experience, as it is.

In fact it was my qualification and longstanding experience as a Judge that was emphasised as an important part of the criteria which led to my recruitment and appointment to chair the Inquiry. What principally guided me in my approach to procedure while undertaking that role was my view of what the statute and natural justice required.

Absences in New Zealand

[1] Inquiries Act 2005:
Section 17(1) ...the procedure and conduct of an Inquiry are to be such as the Chairman of the Inquiry may direct.
Section 18(1)..it is for the Chair to take such steps as he/she considers reasonable to ensure members of the public, media etc are able to attend or see and hear a simultaneous transmission of Inquiry proceedings.
Section 18(2)..no recording or broadcast can be made except at the request of or with the permission and on terms specified by the Chair.
Section 21..powers of the Chair to require production of evidence and mode by which evidence is to be given or received.
Section 24..the Chair of an Inquiry must deliver a report to the Minister setting out (a) the facts determined by the Inquiry Panel and (b) the recommendations of the Panel where the Terms of Reference require the making of recommendations.

I was not present in the United Kingdom throughout the entire 16 month period that I was Chair; but it was never expected or required that I would be.

Mr Sedwill was asked about the amount of time that I was spending abroad and, if that had continued, might it have been an issue that engaged s 12, had there been a complaint. I refer to Mr Sedwill's answer, that it is for the Chair of an Inquiry to determine how he or she should conduct the Inquiry and manage their own time. The Home Office has a flexible work from home policy and the Inquiry team were all fully equipped to work remotely and many regularly worked from home. Working out of a foreign location was authorised so long as the environment was secure. When my laptop was configured, I was advised that I could work securely on it from New Zealand because New Zealand is a member of Five Eyes. My periods of absence in New Zealand were at times convenient to the Inquiry and with arrangements in place for me to liaise with the office while at a distance. While working out of New Zealand or in Australia I was consistently logged onto the Inquiry's data bases and at all times able to be directly contacted and in communication with the office, in particular with the private office and the legal teams. I made no differentiation between leave days and other days while I was in New Zealand. The Inquiry and its work were at all times to the forefront of my thinking and my priority. I was always available to it.

The British Government had provided for four return trips to New Zealand per annum, in excess of what I requested or required. In my first year I travelled twice. In considering those two trips an important consideration was that I had to take up my role as Chair of the Inquiry under a considerable degree of urgency. This necessitated resigning my judicial career in New Zealand and urgently finalising my judicial responsibilities and relocating to another country in very short order. This very short time frame had meant leaving a number of personal affairs outstanding that still required attention and other obligations which I needed to return to attend to once I had got the Inquiry underway. I did engage in work in Australia with other members of the IICSA team over a period of days. I spent no personal time there. I have never claimed that I worked in Australia for months or extended periods. In early 2016 the Secretary of the Inquiry and I conducted truth sessions in Australia and New Zealand.

Qualities of leadership/leadership concerns?

No question or issue about this was ever raised with me by the Secretary to the Inquiry at any of my meetings with him, which were on an almost daily basis and usually one-to-one. He and I had a close working relationship and I trusted his judgement and the calibre of his advice to me. I am absolutely confident that he would have raised with me any matters of complaint involving my pastoral responsibilities. He was very attuned to the environment both internally and externally and alert to any potential risk for the Inquiry. At no time, did he ever raise with me any matter of complaint or concern about my relationship with any staff member or about my conduct. Nor was any such issue raised with me before the time of my resignation by anyone else at the Inquiry, including the Panel members.

To the contrary, I had the apparent support, both given and expressed, of the Panel throughout my tenure. For example, Drusilla Sharpling, in May/June and again in July, volunteered to me her absolute loyalty and support for me. This was in the context of our grappling with the various operational challenges we were facing at the Inquiry but also in relation to the increasing and unfair media onslaught we were experiencing and which was particularly targeting of me in a very personal manner. Our perception was that these personal attacks, which increased in intensity over time, were aimed at undermining me for the wider purpose of undermining the Inquiry itself, and more generally for wider political purposes about which one can only speculate. That was certainly the view also expressed by Peter Saunders, founder of (NAPAC) the National

Association for Children Abused in Childhood Charity and by other members of the Inquiry's Victims and Survivors Consultative Panel (VSCP). It is a view that I am sure has been reinforced for them by the very recent and highly defamatory articles in respect of which I have now instructed lawyers.

There were many meetings at which the Secretary and I discussed the Panel's perception of disenfranchisement and how to respond to that. Both the Secretary, and the legal teams, understood the statutory requirements and the division of roles required and their collective view was that the Panel needed to be brought to a better understanding of their role and how their role fitted with the roles and functions of the other teams or components of the Inquiry and how all should work together. Part of the response to that was the Secretary's advice to me that a facilitated meeting should be convened.

The facilitated meeting

The background to this were two ad hoc meetings convened by the Panel members with the Secretary, Counsel and Solicitor to the Inquiry and at which a number of governance issues were apparently raised by the Panel in a rather heated manner, including questions about budget expenditure and management of the legal work. I was not present at these meetings. The view of the three statutory officers was that the panel were not understanding of their role and function in the Inquiry or accepting that their role was non-executive. The Secretary advised me that we should have a facilitated meeting to help impart a better understanding of the relationships. I agreed with his advice and the meeting was organised.

In preparation for the meeting a document was prepared setting out the role and functions of the Chair, Panel and statutory officers in a statutory inquiry. That document was contributed to by everyone. The section on the role and functions of Counsel to the Inquiry included advice that work should not be commissioned directly from the barristers without reference to Counsel to the Inquiry or his Second Counsel. This had previously been breached, causing problems, as had Panel actions in convening meetings with staff without reference to their relevant managers.

The facilitated meeting took place in March. In my view it was successful, although we ran out of time and resolved to convene for a further meeting on a future date. The shared concern of lack of visibility of the Inquiry's work was a topic of discussion.

It is misleading and erroneous to suggest that a facilitator was brought in simply to facilitate a working relationship between me and the Panel. The object was to achieve an overall better understanding of everyone's role and function. I did not cause the need; the action was taken as part of the necessity of all of us understanding the delineation between our respective roles.

I still had to spend significant time trying to broker the aforementioned impasses in the relationship between the Panel and the legal teams over methodology and approach to the Inquiry's investigative work. There was a substantial divide in opinion as to the appropriate methodologies. The departure of senior and other members of the Counsel Team a month after my resignation may be evidence that such tensions reflected the Inquiry's inherent structure, not my leadership.

The different preferences for fundamentally different methodological approaches as between me and the legal team on the one hand, and the Panel on the other are now evident in the preliminary review of the Inquiry's work announced by Professor Jay on 17 October. I note it is also evident in her statement to the HASC on 18 October in discussion about her approach in conducting the Rotherham investigation.

Meeting with Mary Calam in April

In terms of Ms Sharpling's meeting with Mary Calam in April, Ms Sharpling had more than once suggested to me that she could have a quiet word with Mary Calam or some other senior official at the Home Office about the operational problems we were encountering at the Inquiry and I left that to her discretion. As a senior Government official Ms Sharpling had such contacts in the Home Office. With reference to any leadership concerns that might have been expressed during the meeting, I can only think that Ms Sharpling's concerns derived from a view that I was not dealing with the operational issues sufficiently robustly and/or not being sufficiently inclusive of the panel in resolving them. As a possible example of the latter, the Panel felt that I should have included them in the discussions and decision around contractual issues concerning the acquisition of an EMS. However, it was not a part of their statutory role or function; nor was it appropriate to involve them in such a discussion and decision. It was a complex commercial decision which I took on legal advice and which in the end had a successful outcome for the Inquiry.

It is important to note that neither Ms Sharpling or Mr Sedwill contended there were conduct issues or complaints about me raised at the meeting with Mary Calam. Had there been any such complaints or misconduct issues I am certain they would have needed to be escalated to Mr Sedwill by Mary Calam. She could not have agreed to simply park them.

If the concerns were simply about my leadership and not about the management problems that were concerning us all, then Ms Sharpling could and should have raised them with the Secretary of the Inquiry who would certainly have discussed them with me, and this did not happen.

Meeting with Mr Sedwill in May 2016

In May I had a meeting with Mr Sedwill at the Home Office to talk about the Inquiry's work and progress. It was a one-to-one meeting with no officials present and lasted about an hour. We had met on two previous occasions near the beginning of my term of office, about a year prior. We talked about the Inquiry and its progress and his interest in matters of child safeguarding, of which I was already aware, and about some particular research he was having carried out at the Home Office into an area of interest. I briefed him about the Inquiry's Truth project and the establishment of the first regional offices and asked if he would like to visit the Inquiry at its Millbank HQ to observe our working arrangements there and also visit the Liverpool regional office. He was very enthusiastic about both. I reported this at the next Panel meeting and we resolved to facilitate both visits. Possible dates were then discussed between my office and Mr Sedwill's office but before a date could be finalised the Brexit referendum took place and the question of the future leadership of the Government intervened.

Tensions within the Inquiry Team

I have described these before as natural tensions and I believe they were not serious. There was a divergence of views about methodology and approach as between the panel members and the legal teams and me, which became evident at a fairly early stage and derived from our very different understandings and experiences. The IICSA is a statutory inquiry. Counsel, the Solicitor and I had all had previous experience of judge led inquiries and understood how they worked, how they should work, the reasons for separating the investigative functions from the fact finding function and the risks of not keeping appropriate degrees of separation. We approached our work at the IICSA very much on this basis. That does not mean we did not value the Panel members' different experiences and approaches or that they did not have their vital role to play. Nor were the Panel improperly excluded from all preparatory work. Indeed, they were able to contribute in preparatory ways that were safe from a legal perspective and that work was highly valuable, in

particular in relation to the setting up of the important Truth Project.

In terms of methodology, Panel members, particularly those with inspectorate backgrounds, wished to approach the work in a frame- worked compliance manner and with an identifiable end point. This is quite different to the approach adopted by the legal teams and me, which was based on forensic investigation and evidence gathering and analysis leading to open conclusions. It was not however a polarised situation and I had sympathy for approaches other than the strict forensic/public hearings approach, depending on the context and particular matter under scrutiny. I said so in the opinion I prepared for Counsel in advance of a methodology workshop held in October last year.

Reasons for/circumstances of my resignation

A real and increasing strain, particularly for me but in fact for everyone, was the intensifying media criticism of the Inquiry which commenced around March this year. This centred on allegations of unfairness in the investigation of allegations concerning the late Lord Janner of Braunstone QC and developed into widening personal attacks on me and my competence.

This, together with criticism of my performance at the preliminary hearing in relation to the matter concerning the late Lord Janner on 26 July, and a Times front page article about my being 'on holiday abroad' for 3 months (including that I was claiming to have been working in Australia during that period) had a damaging internal impact on the Inquiry and on me. I believe this is when the team lost their nerve about my ability to continue leading the Inquiry, which I perceived to be the objective of those behind the publications.

I considered both the impact of this campaign and the effect which I saw it to have. The allegations were false but they had already done their damage. I nevertheless believed that, having made the commitment to the victims and survivors, I had to continue to see it through.

I was also very concerned that if the Inquiry lost a third Chair that might prove fatal for it, which was clearly what the campaigners were seeking to achieve.

The pressure was relentless, as was the impact on panel members and all who felt deeply their responsibility to the Inquiry. On the morning of 4 August, three of the Panel members came to see me. In discussion with them it became clear that I no longer had the support of my senior colleagues at the Inquiry that I would need if I were to continue as Chair.

Following that discussion, I considered what should be done in the best interests of the Inquiry and I took the decision that I should resign.

It was my decision alone, although I consulted with the Inquiry Secretary, who I trusted and who provided me with his advice. I was particularly anxious to be reassured by him that the Inquiry would be able to continue notwithstanding the resignation of a third Chair. I respected his views and accepted his reassurance that the Inquiry would survive my resignation, that its progress might well be facilitated and it would not be seriously impeded. This helped me come to my decision, which was the right decision.

There was no contact with the Home Secretary or the Home Office before I made my decision, and no earlier pressure either. As Mr Sedwill said at the HASC hearing on 18 October, the Secretary called on him on 29 July to discuss concerns about my continuing my leadership of the Inquiry and took the message back that the Team were to raise it with me themselves. That was the proper course to

follow. Communication between Panel member Sir Malcolm Evans and me in the days after my resignation confirmed to me that the loss of confidence in my leadership of the Team was precipitated by the adverse press coverage of the preliminary hearing on 26 July.

I do not accept as justified the criticism of my handling of the preliminary hearing by certain critics. I recognise that the fact that we had to postpone the public hearings again, this time into next year, meant that the preliminary hearing was difficult and in some ways damaging to public confidence in the Inquiry. In a formal sense, I had to take and did take responsibility for this.

I categorically deny that there was any basis for any allegation of misconduct raised, or causing, or connected to my resignation.

I did subsequently regret not having called on the Home Secretary personally to offer my resignation.

<u>A final word:</u>

It was because of my relevant background of experience over a long career and my recent work in conducting an inquiry into child abuse investigations in New Zealand, that I accepted the invitation of the British Government to take up the role of Chair of the IICSA. My single reason for doing so was my belief that the Inquiry was essential. That is still my belief.

I wish to once again reaffirm my total and unwavering support for this Inquiry, to which I made a very real and deep-seated commitment and which I continue to believe in. I emphatically endorse the Prime Minister's stated view that for far too long far too many voices have gone unheard. It is even more agonising that these were children's voices. Our children are our society's greatest asset, they are its future and its hope for a better world. They deserve to be nurtured and protected and above all to grow up believing that justice has a high value in their society.

Hon Dame Lowell Goddard QC