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Rt Hon Dame Elish Angiolini DBE QC FRSE
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Sent by email

Copied to: Rt Hon Priti Patel MP, Home Secretary

8 February 2022

Dear Dame Elish,

JUSTICE Working Party: When Things Go Wrong. Recommendations for the Sarah Everard Inquiry

I was pleased to hear that you had been appointed to chair the public inquiry established by the Home Secretary to inquire into the abduction, rape and murder of Sarah Everard by Wayne Couzens, a serving Metropolitan Police officer. As you know I chaired the Justice Working Party that produced the report "*When Things Go Wrong: The response of the justice system*" published in August 2020. The immediate trigger for the decision to convene the Working Party was the response of the bereaved and survivors to the establishment of the Inquiry into the Grenfell Tower disaster, which demonstrated yet again the erosion of confidence in the response of the justice system to deaths giving rise to public concern. Our initial focus was on addressing the related and widely recognised issues of duplication and delay that have plagued the current arrangements for the investigation of major incidents. But it soon became clear that the scope of the project should be expanded to a comprehensive review of the failings in the current arrangements, and consideration of the ways in which they could be remedied. To that end we were able to draw on an unrivalled breadth and depth of practical experience as can be seen from the membership of the Working Party, and those whom we consulted. I have attached a list of both; and of course, you were one of those consulted given your considerable experience in chairing inquiries into issues relating to policing and the criminal justice system. We made a total of 54 recommendations in the report, which is to be found on the JUSTICE website, recommendations which if implemented, would assist in restoring confidence in the arrangements for the investigation of incidents giving rise to widespread public concern. I am very conscious that you are alive to many of the issues that we sought to address. But it may be of assistance to identify a number of our recommendations that are of particular relevance to the Sarah Everard inquiry.

Part 1 of the Inquiry

The Terms for Reference (ToR) in relation to Part I of your inquiry, on which I know that you were consulted, are to be welcomed. They both identify the factual issues that will require investigation, and the potential sources of evidence, documentation from relevant police forces and other authorities, and interviews and witness statements. But the full cooperation of the relevant police forces, in particular the Metropolitan Police, both in the disclosure of documentary evidence and in evidence from witnesses, will be critical to the effectiveness of your inquiry. In announcing the inquiry the Home Secretary said that *“The Angiolini Inquiry will shine a light on the failings that allowed a police officer to abuse his power in such a horrific manner and make recommendations for change within policing”*. That will only happen if the inquiry is approached with complete candour on the part of the police. Regrettably experience gives rise to serious concern that you will encounter institutional defensiveness on the part of the police authorities that will be involved in the inquiry. In your Review of Deaths and Serious Incidents in Police Custody you observed that *“it is clear that the default position whenever there is a death or serious incident involving the police tends to be institutional defensiveness on the part of state bodies”*, and that *“institutional defensiveness can be a significant barrier to understanding what has gone wrong and in consequence to learning from it”*. Similarly, the Daniel Morgan Independent Panel, whose report was published in June 2021 observed that institutional defensiveness (in that case on the part of the Metropolitan Police) can pose a significant impediment, especially where an inquiry is non-statutory and thus cannot compel evidence. Furthermore, institutional defensiveness results in an adversarial approach, which serves to prolong the process at considerable cost to the public purse and is corrosive of public confidence. It is simply unacceptable in public authorities.

We addressed the problem in our report, recommending the introduction of a statutory duty of candour. In 2016/7 a bill, the Public Authority Accountability Bill, was introduced with cross-party support, but regrettably fell at the last general election. There can be little doubt that the introduction of such a duty would serve both to reinforce public confidence in the inquiry process, and importantly to reduce the length, and in consequence the cost of such proceedings. I note the recent amendment by the House of Lords to the Police Crime and Sentencing Bill at clause 72 which would introduce a statutory duty of candour for the police. This in many ways reflects the duty that would have been introduced by the Public Authority Accountability Bill and is to be commended. Though it is, of course, still making its way through the Parliamentary process and is not yet law. But in the absence of such a statutory duty, could I commend our recommendation 38, an invitation to the interested parties to commit to the voluntary Charter, proposed by the Rt Rev Bishop Jones in the report of the Hillsborough Independent Panel, which he chaired. *“Charter for Families Bereaved through Public Tragedy”*. As you are probably aware Lord Bob Kerslake in the progress report of his review into the Manchester Arena Attack recommended that public bodies adopt the Charter. This has since been adopted by several parties to the Manchester Arena Inquiry chaired by Sir John Saunders, including the National Fire Chiefs Council, and by two of the parties to the Grenfell Tower Inquiry, namely the Mayor of London and Royal Borough of Kensington and Chelsea. Notably, the National Police Chiefs’ Council, on behalf of all 43 police forces in England and Wales, and the College of Policing have both recently signed the Charter, as did the Crown Prosecution Service in 2018.

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I note that the inquiry is non-statutory in form. The Home Secretary has said that it was established in that form in order to enable it to operate as swiftly and flexibly as possible. It is of course of importance to the family of Sarah Everard, and in the public interest, that the facts be established as quickly as is consistent with a full and unimpeded investigation. But the weakness of the non-statutory form of inquiry is that that you will be unable to compel the attendance of witnesses, and that those who mislead or lie to you will not face prosecution. That may handicap you in addressing the problem of institutional defensiveness. That said, some comfort is to be derived from the statement by the Home Secretary that she would not rule out converting your inquiry into a statutory inquiry should you feel that you are unable to fulfil the ToR on a non-statutory basis.

Part 2 of the Inquiry

As to Part 2 of your inquiry, the murder of Sarah Everard has brought national attention to serious failings in police culture and processes. As you have said the inquiry “*comes at a pivotal moment for policing.*” I recognise that your findings in Part 1 will inform consideration by the Home Secretary as to “*what further, broader, issues arise for policing and the protection of women that should be considered in Part 2 of the Inquiry*”. But may I commend to you to a number of the recommendations that we made in our report and which you may wish to consider in relation to Part 2.

We recommend consultation on terms of reference (recommendation 35). Establishing the parameters of Part 2 will be of obvious importance. As you will be aware, there have been various calls to broaden the scope of the inquiry; and involving the public at an early stage through wide consultation will encourage trust in the inquiry, and ensure that all relevant issues are considered. We also recommend consultation as to whether you should sit with a panel in Part 2, and if so, as to the panel’s composition (recommendation 34). I recognise that for previous reviews you have appointed a small expert reference group. But for this inquiry, I suggest that there may be benefit in constituting a panel for Part 2, to include members with relevant specialist knowledge. Transparency in the appointment of any panel members, including the criteria by which it is proposed to appoint to the panel, could also help to engender confidence in a panel’s expertise and impartiality.

Secondly the evidence that the Working Party gathered showed very clearly that, instead of receiving the answers to which they are entitled, bereaved people and survivors are frequently left feeling confused, betrayed, re-traumatised and alienated from inquiries which put them in an unequal battle against State bodies or corporate core participants. As you have previously said the involvement of bereaved people is fundamental to the effectiveness of an investigation; and we made several recommendations directed at encouraging meaningful participation, and in building public confidence in the inquiry process. May I commend them to you, although I recognise that their applicability will depend to some degree on the terms of reference for Part 2 and the form that your inquiry then takes. They address such matters as communication of what will be involved, and when and where it is to take place, support for participants in particular for vulnerable witnesses, disclosure of documentary material, the physical environment of an inquiry, choice of location and venue, all matters that can have a significant impact on participation.

Thirdly we addressed accountability and systemic change. A key feature that distinguishes inquiries from other parts of the justice system is the expectation that recommendations will

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be made to prevent similar events from recurring. However, as you will be aware, effecting systemic change is a complex process, often dependent on the appetite of the executive and public bodies. The lack of any formal process for oversight of the implementation of recommendations can undermine the objective of ensuring that the necessary lessons are learnt. But inquiries can themselves play a part in monitoring the implementation of recommendations, as has been shown by the monitoring processes incorporated into the Independent Inquiry into Child Sexual Abuse. Based on that model, our report recommended that where the timescale permits, public inquiries should incorporate a formal process for tracking the steps taken by those to whom recommendations are addressed, and which could be of use for the Sarah Everard inquiry.

I would of course be happy to discuss the many issues to which the establishment of the inquiry gives rise if that would be of assistance.

Yours sincerely,

A handwritten signature in black ink that reads "Robert Owen". The signature is written in a cursive style with a large initial 'R'.

Sir Robert Owen

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When Things Go Wrong: The response of the justice system

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When Things Go Wrong: The response of the justice system

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