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Secretary Barbara Jackson

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23 September 2016

Dear Home Secretary

**Re: Orgreave Inquiry**

***Introduction***

Before our meeting with you last Tuesday, 13 September 2016, for which we thank you, we were informed by your Private Secretary that the purpose of the meeting was to provide an opportunity for us to set out a case for there to be an inquiry into the events at Orgreave in 1984. We had met Mrs May in July 2015 similarly, to explain those reasons and had submitted as she had requested, a detailed submission in December 2015. Acting on guidance from your Private Secretary, we had understood Tuesday's meeting was intended to provide a similar opportunity to reinforce our original request so that you, newly in office, could yourself come to a decision as to whether or not there should be an inquiry.

Had we known that within a matter of days, newspapers would be citing "Whitehall sources" to the effect that you had reached a decision that there was to be an inquiry, and, by inference, that a lawyer-led, non public review would be the model likely to be ordered, we would have wished to canvas with you the different forms of inquiry that you might be considering, and to discuss the factors we felt imperative to be incorporated in any successful investigation into Orgreave. As that was not the position understood by us to have been reached, we write to you to raise what would otherwise have been canvassed by us with you last Tuesday.

We have given long and serious thought to what should be the minimum features at the core of any inquiry. We are mindful that over the years some inquiries have succeeded, and some have substantially disappointed. (By way of analogy, the Hillsborough families were profoundly disappointed by what was seen as an “establishment led” review (the Stuart Smith Scrutiny) whose conclusions were shown to be sorely wanting by both the Hillsborough Independent Panel and the Hillsborough inquests jury’s conclusions).

We are not, and have never been prescriptive in our approach; you will have recognised that our submission attached no label to any form of inquiry requested. It is not the label, but the ingredients, to which we attach importance. The following we know to be the factors of key importance that will, for us, conclusively decide whether an inquiry can meet the needs of the social injustice that was and still is Orgreave. We were joined on Tuesday by Margaret Aspinall, the Hillsborough family member who was at the centre of constructive meetings and communications with Mrs May in the years leading up to the Hillsborough Investigative Panel, (the families having a strong voice in the setting up of the Terms of Reference and the selection of panel members) and in turn to the Hillsborough inquests. Her interaction with Mrs May we know was helpful, and led to a process of investigation that was acknowledged throughout by the families as effective (after many years of ineffective investigations) and in which they could have confidence, and which arrived stage by stage at authoritative findings that were received with universal praise and acceptance, including by those the subject of criticism. It is precisely that level of confidence and authoritative investigative determination that we seek.

The features that we consider essential are these:

1. That the Inquiry have the power to require all the relevant data, documents, archives and evidence to be produced to it.
2. That those interested parties concerned with the subject matter of the Inquiry be able to fully participate in order to lend their experience, knowledge and understanding to the process of analysis and comprehension.
3. That the membership of the investigating tribunal reflect a breadth and depth of skills and experience drawn from the civil society of this country, such as to give confidence to all that there will be comprehension, independence and objectivity in approach.
4. That the processes and exploration of evidence by the Inquiry, be transparent, open and accessible and its conclusions publicly explained.

No part of what is sought by the miners, whose communities long ago were themselves economically decimated, and who have striven for a society that respects the economic needs of all, is a demand for an expensive, excessively extended inquiry with an open-ended multiplicity of participants. What is important to us, is an inquiry that has as central to its structure, the ability to reflect the essential requirements we have set out.

### *The potential models for an Orgreave inquiry*

We are aware, of course, that there is power to establish a public inquiry under the Inquiries Act 2005, s.1 where a Minister considers that “(a) *particular events have caused, or are capable of causing, public concern, or (b) there is public concern that particular events may have occurred*”.

Any inquiry into Orgreave will be concerned with investigating a massive, militarised and pre-planned police operation which resulted in countless pickets being seriously injured, falsely arrested and wrongly prosecuted on a scale never seen before, with an apparent total failure of the contemporaneous legal system to deliver any accountability for that series of events. This clearly meets the “*public concern*” threshold set out in s.1 of the 2005 Act.

In light of the above, and in light too of the enormity of implications both for the social fabric of this country and for those involved, there have to be considered procedural protections for all concerned. This includes police officers who might ultimately face criminal prosecutions if, as we believe an effective inquiry will establish, it is proven that there is a case to answer against them for serious assaults, perverting the course of justice and perjury among other possible criminal offences. Such procedural protections must extend to others present on the day as well.

We know that you will agree that it is necessary, if there is to be an inquiry into Orgreave, that it succeeds in establishing the truth about a crucial event in a crucial period in the social history of this country. Whilst an inquiry into an accident, however severe, is necessarily focussed upon the question of issues of causation, the investigation into events at Orgreave is qualitatively different; it involves an investigation into a potentially deliberate series of actions, ostensibly on behalf of the law enforcement authorities, which had from the outset, an exceptional agenda. There has been nothing to compare with this in the history of this country.

For this reason we think it necessary to canvas with you the potential models for an inquiry, and to consider which of those is capable of addressing those intrinsic factors that we consider to be necessary, and the seriousness of the task.

We make a number of comments in relation to what has been termed a “full public inquiry”, since the media have reported your officials as saying that such an inquiry into Orgreave would, “*potentially take a very long time and be totally unwieldy in terms of cost*”. We point out that there is a constellation of features here that point in a different direction:

- (i) The campaign is united on behalf of the miners; it does not demand a multitude of avenues of input into the inquiry; its approach is collaborative and constructive. It has no appetite for an inquiry that is “unwieldy” either in terms of cost or length. On behalf of the miners, we have a strong sense of the just economics of society.
- (ii) The IPCC has already carried out two years of investigation into the Orgreave case. Importantly, it has recognised that it could not, within its limitations, achieve any comprehensive and satisfying result. Extraordinarily and exceptionally, it has thereby reached out with a cry for a properly resourced further form of inquiry.
- (iii) The Hillsborough inquests themselves, could entirely appropriately have taken as their evidential starting point the events of Orgreave. The findings of Hillsborough vividly show an exact continuum; the same senior personnel, acting with the same institutional and (on

occasion personal) methodology, identical production of evidence entirely outside any legally permissible process and, primarily, under the aegis of the same police force.

- (iv) It is important to remember that there are in existence full transcripts of the Orgreave criminal trials.

The above factors point forcefully to two conclusions: that significant building blocks are in place that would give an inquiry an unprecedented head start in terms of the gathering of data and comprehension of that data thereby drastically reducing cost and length, but moreover, points up that Orgreave has an expectation triggered by the Hillsborough findings to the most thorough examination of evidence.

We are aware that there are a number of alternative forms of inquiry, for example: (a) a non-statutory inquiry under Ministerial executive power (such as the Hutton Inquiry, The Bichard Inquiry and The Zahid Mubarek Inquiry), or under Orders in Council (such as The Falkland Islands Inquiry and The Butler Inquiry); (b) a thematic review (such as the Corston Review of Women with particular vulnerabilities in the criminal justice system); or (c) a lawyer-led review such as that conducted by Mark Ellison QC into allegations that undercover police officers sought to collect information on the family of Stephen Lawrence that would bring their campaign into disrepute.

Non-statutory inquiries have recognised advantages that are understood, including (i) greater flexibility to adopt processes and procedures; (ii) a release from the strict requirements of the 2005 Act and its accompanying Rules; and (iii) the probability that the inquiry may be completed within a shorter time, with less involvement of lawyers and with a subsequent saving of costs.

However we would be concerned at the inability of a model that did not have the power to compel organisations and individuals to turn over relevant documentation. It is essential that whatever model is chosen for Orgreave it has robust powers in relation to the collection of evidence.

That is a particular concern given the history of this case: the Hillsborough inquests have raised real questions about whether there was a culture within South Yorkshire Police in the 1980's of manipulating and suppressing evidence; the Hillsborough Independent Panel clearly did not flush out all relevant material, as disclosure continued to the Hillsborough families throughout the inquest process; and the IPCC, despite its extensive scoping exercise, did not secure disclosure of the full Operational Orders into the policing of Orgreave.

As you will appreciate, uncovering the truth about Orgreave by definition requires that all possible relevant evidence be obtained.

Any model must also have the power to make the Orgreave documents, once obtained, public: full disclosure was an essential part of the transparency and truth achieved by the Hillsborough Independent Panel, and the same is needed in respect of Orgreave.

If any inquiry is to be effective and command confidence, it must have full powers to produce a detailed report as the Hillsborough Independent Panel did. You will have noted, we are sure, that the jury's conclusions in the Hillsborough Inquest, in large part mirrored those that the Panel had reached. In *R (Mousa) v Secretary of State for Defence* [2013] HRLR 32, the Administrative Court, when considering the manner in which allegations of mistreatment of Iraqi nationals by British forces could be considered, envisaged that the inquiry would produce "*a narrative account of the facts*" (para. 221).

Any inquiry must also have the involvement of those with sufficient expertise and independence to deliver robust conclusions. The Hillsborough Independent Panel included the Right Reverend James Jones, Bishop of Liverpool, the journalist and broadcaster Peter Sissons, the criminologist Phil Scraton, a medical consultant, a retired police officer, two experts on document archiving and a television producer. A similar diversity of experience and expertise is essential here if the truth is to be established.

You will also be familiar with the novel, and important, group that has been established to oversee the decisions about whether any criminal charges should be brought in light of the Hillsborough jury's conclusions. This group is providing the families and the public with an important additional layer of transparency and accountability for those essential decisions.

A public inquiry clearly could call live witnesses. But other models can do so: in *Mousa*, the Administrative Court envisaged witnesses being examined in an inquisitorial fashion by counsel to the inquiry only, rather than by separate interested parties, and that the hearings could be conducted via video-link to make them accessible to those in Iraq and anyone else who wished to watch (paras. 213-219).

It is impossible for us not to have observed a degree of hostility towards the concept of an inquiry into the events at Orgreave from a number of perhaps predictable commentators. We emphasise in investigating what is a critical event in the history of this country, the place in our history that the mining community has played. From powering ships, the railways and the industrial revolution to the supply of electricity and warmth for this country, the coal industry and those who worked in it have been of central importance to the growth of Great Britain. We believe that the importance of the contribution to this nation of those who were at Orgreave on the day, and the communities from which they came, scarred as they have been as a result of those events, expects and deserves as thorough an inquiry into the exceptional events that befell them on 18 June 1984 as can be delivered.

We trust that you recognise our powerful wish to achieve, and participate in achieving, truth and justice for all. We therefore welcome such further communications with you or your officials, as can achieve that end.

Yours sincerely

Barbara Jackson  
**Orgreave Truth and Justice Campaign**