Undercover Policing Inquiry: Chairman's Opening Remarks 28 July 2015

Background to the Inquiry

1. Good morning. My name is Christopher Pitchford. I am a serving lord justice of appeal appointed by the Home Secretary to conduct an independent public inquiry into Undercover Policing. As chairman of the Inquiry I should be addressed not as 'my lord', as I would be in court, but as 'sir'. My purpose today is to introduce the Inquiry and its team to the public. To that end I shall first explain the historical background to my appointment and then I shall have some observations to make as to the way in which the Inquiry will proceed. My remarks have been prepared in advance. Copies are available to those who require them and they will be posted on the Inquiry web site after this hearing is completed.

2. In 2011 media reports made allegations of misconduct during undercover operations by a unit within the Metropolitan Police Service called the Special Demonstration Squad. In October 2011 Sir Bernard Hogan-Howe, the Commissioner, ordered a review and investigation. It was called *Operation Soisson*. A year later the scope of the review was expanded to embrace further allegations of misconduct and the review and investigation became known as *Operation Herne.* In February 2013 the Chief Constable of Derbyshire, Mr Mick Creedon QPM, accepted an invitation to join and lead Operation Herne. Mr Creedon has since delivered four reports to the Commissioner:
Report 1, entitled *Use of Covert Identities* was published in July 2013;
Report 2, entitled *Allegations of Peter Francis* was published in March 2014;
Report 3 entitled *Special Demonstration Squad Reporting: Mentions of Sensitive Campaigns* was published in July 2014;
Report 4 called *Operation Herne Update* was delivered in February 2015 and had restricted circulation.

3. Eighteen years after the death of Stephen Lawrence, on 4 January 2012 two men were sentenced for his murder. As a result of the further light cast on the investigation into Stephen's murder, in a written ministerial statement to Parliament on 11 July 2012 the Home Secretary, Theresa May, announced that she had appointed Mark Ellison QC to carry out a review of the police investigation into the murder of Stephen Lawrence for the purpose of examining allegations reported in the media that (i) the investigation had been tainted by corruption and (ii) the Metropolitan Police Service had failed to make proper disclosure to the Macpherson Inquiry of that taint of possible corruption.

4. In July 2013 the terms of reference for the Ellison review were extended so as to embrace further allegations more recently made. They included the issues (i) whether undercover policing had played any role in the Lawrence case, (ii) if so, who ordered it and why, (iii) whether undercover police involvement had been withheld from the Macpherson Inquiry and (iv) if so, to what effect. Mr Ellison

was also asked to investigate (v) whether "any intelligence or surveillance activity [had been] ordered or carried out by police forces nationally" into Stephen Lawrence's family at the time and in respect of the Macpherson Inquiry and (vi) "what was the extent, purpose and authorisation for any surveillance of Duwayne Brooks and his solicitor".

5. Mark Ellison QC published his report *Possible corruption and the role of undercover policing in the Stephen Lawrence case* on 6 March 2014 (HC 1038 - 1 and II).

6. On the same day, 6 March 2014, the Home Secretary made a statement in the House of Commons in which she summarised some of the findings made by Mark Ellison QC and Operation Herne. She announced that she would be commissioning an external review into the role of the Home Office in the commissioning and work of the Special Demonstration Squad. She indicated that revelations already made by Ellison and Herne had persuaded her of the need for a judge-led public inquiry into undercover policing. Mr Ellison and Operation Herne were continuing their investigations into specific cases. It was anticipated that legal proceedings relating to any criminal offence or past miscarriages of justice would be completed before a public inquiry was established.

7. However, in the course of the following year it became apparent that the time needed by Mr Ellison and Mr Creedon to complete their investigations was likely to be prolonged. On 26 June 2014 the Home Secretary announced to Parliament that Mr Ellison would co-ordinate a multi-agency review, and would report to the Attorney General, "assessing the possible impact upon the safety of convictions in England and Wales where relevant undercover police activity was not properly revealed to the prosecutor and considered at the time of trial". In connection with current undercover policing practice Her Majesty's Inspectorate of Constabulary carried out *An inspection of undercover policing in England and Wales* and in October 2014 published its report. In January 2015 Mr Stephen Taylor reported to the Secretary of State upon links between the Home Office and the Special Demonstration Squaf. On 16 July 2015 Mark Ellison QC and Alison Morgan published their (interim) report to the Attorney General upon the results of their review of the safety of convictions. In their report the authors identified the problems of scale that faced the investigation and expressed the opinion that a public inquiry might provide the best opportunity for public examination of the issues raised by undercover policing.

8. In the meantime, in a written statement to the House of Commons on 12 March 2015 the Home Secretary announced my appointment to conduct an inquiry under the Inquiries Act 2005. She stated that the Inquiry would "review practices in the use of undercover policing, establishing justice for the families and victims and making recommendations for future operations and police practice".

Terms of Reference

9. The Terms of Reference for this Inquiry, about which I have been consulted, were announced by the Home Secretary on Thursday 16 July 2015. They are as follows:

*"**Purpose***

1. *To inquire into and report on undercover police operations conducted by English and Welsh police forces in England and Wales since 1968 and, in particular, to:*

   i. investigate the role and the contribution made by undercover policing towards the prevention and detection of crime;

   ii. examine the motivation for, and the scope of, undercover police operations in practice and their effect upon individuals in particular and the public in general;

   iii. ascertain the state of awareness of undercover police operations of Her Majesty's Government;

   iv. identify and assess the adequacy of the:
   a. justification, authorisation, operational governance and oversight of undercover policing;
   b. selection, training, management and care of undercover police officers;

   v. identify and assess the adequacy of the statutory, policy and judicial regulation of undercover policing.

Miscarriages of justice

2. *The inquiry's investigations will include a review of the extent of the duty to make, during a criminal prosecution, disclosure of an undercover police operation and the scope for miscarriage of justice in the absence of proper disclosure.*

3. *The inquiry will refer to a panel, consisting of senior members of the Crown Prosecution Service and the police, the facts of any case in respect of which it concludes that a miscarriage of justice may have occurred as a result of an undercover police operation or its non disclosure. The panel will consider whether further action is required, including but not limited to, referral of the case to the Criminal Cases Review Commission.*

Scope

4. *The inquiry's investigation will include, but not be limited to, whether and to what purpose, extent and effect undercover police operations have targeted political and social justice campaigners.*

5. *The inquiry's investigation will include, but not be limited to, the undercover operations of the Special Demonstration Squad and the National Public Order Intelligence Unit.*

6. *For the purpose of the inquiry, the term "undercover police operations" means the use by a police force of a police officer as a covert human intelligence source (CHIS) within the meaning of section 26(8) of the Regulation of Investigatory Powers Act 2000, whether before or after the commencement of that Act. The terms "undercover police officer", "undercover policing", "undercover police activity" should be understood accordingly. It includes operations conducted through online media.*

7. *The inquiry will not examine undercover or covert operations conducted by any body other than an English or Welsh police force.*

Method

8. The inquiry will examine and review all documents as the inquiry chairman shall judge appropriate.

9. The inquiry will receive such oral and written evidence as the inquiry chairman shall judge appropriate.

Report

10. The inquiry will report to the Home Secretary as soon as practicable[1]. The report will make recommendations as to the future deployment of undercover police officers."

10. There are 43 police forces in England and Wales. Many, if not all of them, will, during the last 50 years, have deployed undercover police officers for the purpose of preventing and detecting crime. Statutory authorisation for such activity was for the first time introduced by the Regulation of Investigatory Powers Act 2000.

11. This Undercover Policing Inquiry will investigate the practice of undercover policing in England and Wales from 1968 to the present. The year 1968 was the year that the Home Office approved the formation by the Metropolitan Police of the Special Operations Squad. The Squad was formed for the specific purpose of infiltrating groups that may be planning incidents of major public disorder. Undercover policing has, of course, been used for preventing and detecting other forms of serious crime for many years. This Inquiry will investigate the evolution of undercover policing for all purposes, not just in the Metropolis but throughout England and Wales. It is to be noted that the Inquiry will not consider undercover policing in Scotland or Northern Ireland and it will not consider undercover activity managed by any agency other than the police forces of England and Wales.

12. For the purposes of this Inquiry, an undercover police operation is one in which a police officer is deployed covertly, with the intention of concealing from those among whom he moves that he is a policeman. That covert deployment may take place face to face with targets and others. It may also take place by means of social media or other internet outlets. Covert operations of this kind have the capacity significantly to affect not just the lives of the officers themselves and those whom they are targeting but also members of the public with whom they come into contact while undercover. This Inquiry will examine:
    - (i) the part undercover policing has had in, and the contribution it has made to, the prevention and detection of crime;
    - (ii) the nature and scope of undercover police activities as they have been conducted in practice;
    - (iii) the intended purpose of or motivation for undercover police activities;
    - (iv) the role and knowledge of Her Majesty's Government, and in particular the Home Office, in undercover police activities;
    - (v) the effect of undercover police activities upon individuals and the public;

[1] It is anticipated that the inquiry report will be delivered up to three years after the publication of these terms of reference.

(vi) the stated justification for undercover policing both in general and in particular instances;
(vii) the systems from time to time in place for the authorisation of undercover police operations, their governance and political oversight;
(viii) the selection, training, management and care of undercover police officers; and
(ix) the statutory, policy and judicial regulation of undercover policing.

13. In the course of its investigation the Inquiry will need to examine any evidence of the targeting of individuals for their political views or participation in social justice campaigns. The Inquiry has only just started. As the investigation progresses more issues will emerge and a detailed list of issues will be prepared for publication.

14. As I have already mentioned, the Inquiry succeeds the work of Mark Ellison QC, Operation Herne, Her Majesty's Inspectorate of Constabulary and Stephen Taylor. The Inquiry will need to consider their reports and the evidence on which they are based. Meetings have already taken place and will continue to take place to ensure that the evidence so far gathered is preserved and made available to the Inquiry. The Inquiry will need to make a judgement as to the extent to which it is necessary to revisit areas covered by these reports and the conclusions already reached. As paragraph nine of our Terms of Reference makes clear I have to exercise my own judgement as to the nature and extent of the evidence that the Inquiry receives.

15. I hope that during the course of its work the Inquiry will acquire a clear impression as to the manner in which undercover policing has been conducted in England and Wales since 1968. It seems likely that the Inquiry will expose both creditable and discreditable conduct, practice and management. As far as I am aware, this is the first time that undercover policing has been exposed to the rigour of public examination. At the conclusion of its investigation, the Inquiry will report to the Home Secretary and make recommendations as to the deployment of undercover police officers in the future.

Miscarriages of justice, criminal offences and self-incrimination

16. It is not the function of the Inquiry to investigate and reach a view about the commission of criminal offences by any officer acting under cover, nor to identify occasions when a miscarriage of justice has occurred. Section 2 (1) of the Inquiries Act 2005 provides that the Inquiry panel has no power to rule on or to determine any person's civil or criminal liability. On the other hand, by section 2 (2) the panel is not to be inhibited from reaching necessary conclusions of fact from which others may infer such liability. In the case of this Inquiry there exists the possibility, I put it no higher at present, that evidence will emerge that casts doubt upon the correctness of historical convictions for criminal offences. The Inquiry's Terms of Reference make specific provision for such an eventuality at paragraphs two and three. Where the Inquiry has reason

to consider that a miscarriage of justice may have occurred it is required to refer the facts to a panel composed of senior members of the Crown Prosecution Service and the police for further consideration.

17. Evidence may emerge that an undercover police officer may have committed, by his or her unauthorised action, a criminal offence while performing an undercover role. Unless that officer subsequently receives immunity from prosecution they will be liable to prosecution. However, it is not the function of this Inquiry to make a finding about criminal responsibility one way or the other. It is the Inquiry's task to discover the facts of undercover policing in so far as it can. Secondly, former undercover police officers may have important evidence to give to the Inquiry that raises issues of self-incrimination. This Inquiry may request that the Attorney General considers giving an undertaking that any evidence provided by a person to the Inquiry will not be used in subsequent criminal proceedings against that person. Thirdly, undercover police officers may be bound by undertakings given to their employers or by statutory prohibition against making disclosure of undercover activities to third persons. In all these cases it is my intention to seek from persons interested submissions as to the conditions, if any, under which evidence should properly be received by the Inquiry. The Inquiry's priority is to discover the truth.

Evidence handling

18. This is a public inquiry to which, as the name implies, the public will have access. I will therefore start with the presumption that witnesses should give evidence in public. However, the subject matter of the Inquiry means that there may be circumstances, such as the national interest, continuing police investigations or the rights of individual witnesses, that require me to make an order under section 19 of the Inquiries Act 2005 restricting attendance at the Inquiry or restricting the disclosure or publication of evidence. I wish to encourage all those with material evidence to give to make themselves known to the Inquiry team. Any person who provides material to the Inquiry or who is to give evidence may apply to the Inquiry for the making of a restriction order. Any such application will be considered fully and with care and it will be decided according to established principles.

Method and timetable

19. The footnote to paragraph 10 of the Terms of Reference anticipates that the Inquiry's report will be delivered to the Home Secretary within three years. This is not a condition but, in light of the background, it is highly desirable that the Inquiry makes strenuous efforts to meet the target. An important part of the Inquiry's function is to make recommendations "as to the future deployment of undercover police officers". The public needs to be assured that when undercover policing is conducted, it takes place under satisfactory statutory and professional conditions. It is in the public interest that any recommendations the Inquiry has to make should not be unduly delayed. With the assistance of

counsel to the Inquiry I have examined how the time available may best be used to meet the target set for us.

20. It seems to me that, subject to any submissions I may later receive, the work of the Inquiry can usefully be encompassed within three separate modules, recognising, however, that there will be some overlap in the evidence between one module and the next.

21. Module One: will investigate and gather evidence as to what has happened in the past. This is a process that is likely to take several months to complete. When the written material has been gathered the Inquiry will receive oral and written evidence from police officers and from those who have been affected by their undercover work. The Inquiry will investigate the purpose, motive and justification for deployment of the officer. It will investigate whether the conduct of undercover policing fell below an acceptable standard from the points of view both of the officer and of those with whom he or she came into contact in an undercover role. The Inquiry will examine the value of the contribution made by undercover policing to the prevention and detection of crime, particularly serious crime. Although the scope of module one is shortly described it embraces a vast amount of human experience and therefore of evidence. I shall return to the preliminary stages of evidence gathering for module one in a moment.

22. Module Two: will investigate the systemic issues affecting the deployment of undercover police officers during the period under consideration. These will include institutional issues such as the adequacy of justification, authorisation, governance and oversight. They will include the selection criteria, training, management and care of undercover police officers. They will include the statutory regulation, policy guidance and judicial oversight of undercover policing activity. The role of Her Majesty's Government, and especially the Home Office, will be considered.

23. Module Three: will be devoted to consideration, by drawing lessons from the past, as to the manner in which undercover policing should be conducted, managed and governed in the future. I intend that the Inquiry should be assisted by expert evidence and the examination of good practice in other jurisdictions.

24. Following the Home Secretary's announcement of my appointment in March 2015 several interested persons, institutions and organisations, personally and through their solicitors, expressed their interest in the Inquiry by writing to the Home Office and to me. All enquiries addressed to me have, until 16 July, been re-directed to the Home Office. It would have been inappropriate for me to make any substantive response before the start date for the Inquiry was set. A record of all those communications has been kept. It will enable the Inquiry team, within the next few weeks, to make further contact with correspondents both informally and with requests for evidence under rule 9 of the Inquiry Rules

2006. From now on we and not the Home Office are the correct destination for enquiries relating to this public Inquiry.

25. It will be apparent to anyone interested in the Inquiry that the Home Office is the department of government that is sponsoring it, and is therefore responsible for its budget. It is also likely to be an important source of evidence to the Inquiry and a core participant. It is to the Home Secretary that I shall eventually report. Without firm measures there would be a clear risk of or at least a perception of a risk of conflict of interest. Steps have been taken to ensure segregation of the functions of the sponsoring department from the evidence-gathering unit within the Home Office. There will be no communication between civil servants employed respectively in one or the other function.

Core participants

26. Rule 5 of The Inquiry Rules, made under section 41 of the 2005 Act, enables me to designate a person, with their consent, a core participant in the Inquiry. That designation can take place at any time during the Inquiry but the sooner it is made the better for the applicant and for the smooth running of the Inquiry. A person for these purposes may be an individual or a body corporate or other institution or organisation. Before making the designation I am required to have regard in particular to that person's role in matters the subject of the Inquiry, the nature and extent of the person's interest in the matters to which the Inquiry relates, and the prospect that the person may be the subject of criticism during the Inquiry proceedings or in its report.

Recognised legal representatives

27. A core participant may appoint a qualified lawyer to act on their behalf in relation to the Inquiry proceedings. However, it not infrequently happens, and it will almost certainly happen in the present Inquiry, that two or more core participants have similar interests both as to the facts on which they rely and as to the outcome of the Inquiry. Where there is a community of interest, and it would be fair and proper for them to be jointly represented, I am required by rule 7 (2) of the Inquiry Rules to direct that they should be represented by a single recognised legal representative and, in the absence of agreement, I may designate a qualified lawyer for that purpose.

28. I have power under section 40 of the Inquiries Act 2005 to make awards in appropriate cases for the cost of legal representation and attendance of witnesses. It should be noted that I am most unlikely to make awards for legal representation that duplicates work. For that reason it is important that those who fall within a generic category of persons interested in the Inquiry should commence discussions at the earliest possible time to reach agreement as to single representation. I would prefer not to impose my own view when

satisfactory arrangements for single representation can be proposed by the participants themselves.

29. I expect to make designations of core participant status at a first preliminary hearing to be held in the Royal Courts of Justice during the week commencing 5 October 2015. I expect to make decisions as to legal representation where agreement has not already been reached during a second preliminary hearing in or about November 2015.

30. I want to emphasise that it is not necessary for all those who wish to assist the Inquiry and to give evidence to become core participants in it. My power under section 40 to award expenses and legal costs applies to those who give evidence whether they are core participants or not. I would invite anyone who is considering approaching the Inquiry to consider not just whether they are likely to qualify under rule 5 for core participant status, but also whether they really need or want to become core participants.

Next steps

31. I therefore invite all those who wish to be considered for core participant status in the Undercover Policing Inquiry to make an application in writing to the Inquiry by 4pm on 18 September 2015. The application should state (i) what are the matters likely to be raised by the Inquiry in which the applicant is interested, (ii) what is the nature and degree of the applicant's interest in those matters, (iii) what role the applicant played in those matters, (iv) whether and if so for what reason the applicant may be the subject of criticism in the Inquiry proceedings or in its report, and (v) such other facts and matters on which applicant relies in support of the application.

32. It may be that one or more applicants have already made a premature written application for designation as a core participant either to the Home Office or to me. If so, it will suffice for that applicant to make a further brief application in writing within the same time limit, provided that the application makes explicit and accurate reference to the earlier document on which the applicant relies in support.

33. There will be those of whom the Inquiry is as yet unaware who have a useful contribution to make to the evidence to be received by the Inquiry but who do not seek be designated as core participants. I wish to encourage anyone who has a contribution to make to contact the Inquiry so that details can be provided and advice given by the Inquiry team.

34. I recognise that there will be some applicants and witnesses who will only make contact with the Inquiry if they are assured of confidentiality. I can assure those applicants and witnesses who do approach the Inquiry that their confidentiality, if sought, will be respected. The conditions under which applications and

evidence will be received will be discussed with them privately before any decision is made to process their application or evidence.

Contact details

35. The address for the Inquiry website is: www.ucpi.org.uk

36. The Inquiry may be contacted by email at info@ucpi.org.uk or press.queries@ucpi.org.uk
37. The postal address for correspondence with the Inquiry is PO BOX 71230 London NW1W 7QH.

38. The contact telephone number for the Inquiry is 0203 741 0411.

Inquiry team

39. The Secretary to the Inquiry is Dawn Eastmead. Leading counsel is David Barr QC. The solicitor to the Inquiry is Piers Doggart. I will now invite Mr Barr to introduce the team that will be working with him to assist me in bringing the Inquiry to a satisfactory conclusion.

David Barr QC

Thank you, Sir. Might I say straight away that it is an honour to have been appointed to assist you with the important work of the Inquiry.

Working with me throughout will be first junior counsel to the Inquiry, Melanie Cumberland. Ms Cumberland is unable to be here today but has considerable previous experience of public inquiry work. Sitting to my right is Ms Victoria Ailes, who is second junior counsel for the purposes of Module One.

To her right is Ms Emma Gargitter, who is second junior counsel for the purposes of Module Two. Both have previous experience of public inquiry work. All three junior counsel are also specialists in criminal law. It may assist members of the public for me to explain that it is our role to advise and assist you. In due course, we will present the evidence to you.

The other counsel here today is Mr Neil Garnham QC who appears on behalf of the Metropolitan Police Service. He will be leading Mr Jonathan Hall QC.