

Recognised Legal Representatives Ruling

Introduction

1. On 21 October 2015 I sought, by 4 pm on 29 October 2015, written applications from core participants in the Inquiry for designation of lawyers as recognised legal representatives under rules 6 and 7 of the Inquiry Rules 2006; and, where an application for an award of costs under section 40 of the Inquiries Act 2005 was to be made, written representations as to the composition of legal teams proposed and the costs award sought.
2. On or about 27 October eleven of the solicitors' firms currently instructed by non-police and non-institutional core participants met to agree a joint approach to the issue of single legal representation of groups of core participants with similar interests in the outcome of the Inquiry. Following the meeting a joint letter dated 28 October was sent to the Inquiry. It was submitted that, contrary to an indication it was thought I had given in the core participant ruling, the better course would be to conduct the oral hearings of module 1 of the Inquiry chronologically. It was pointed out that a core participant may qualify in more than one of the categories I had identified but have nominated a single solicitor. Secondly, there may well be a conflict of interest between core participants who fell within the same category. Thirdly, core participants wished to retain solicitors who had been acting for them in proceedings associated with the subject matter of the Inquiry. The firms wished to act co-operatively to minimise cost to public funds. An indication was sought from the Inquiry as to whether it was prepared to manage the module 1 evidence chronologically by reference to the activity of each alleged undercover officer in turn. It was thought that this course might have the effect both of saving costs and preserving the appointments of legal representatives already made.
3. I welcome the co-operative effort of the eleven firms. However, on 29 October the Inquiry replied assuring the core participants that no decision had been reached, even provisionally, as to the structure of module 1. It did not seem to me that a decision on management of module 1 at this stage was likely to produce any significant saving in costs. What the Inquiry required were representations that addressed the rule 7 criteria before designation of recognised legal representatives could be made. I directed that they should be provided by midday on Monday, 2 November 2015. The Inquiry has received a large number of written submissions within time, many of them detailed and thoughtful, and I am grateful for that effort.

4. As a result I have been able to determine the substantial majority of applications upon the written submissions made to me. A public hearing was held on 4 November 2015 in court 73 at the Royal Courts of Justice for the purpose of communicating those decisions and of receiving further information about the outstanding applications. The Inquiry has, since the completion of the oral hearing, received additional information from some core participants as a result of which some of the designations orally made will be corrected in this written ruling.

Unrepresented core participants

5. Several core participants remain unrepresented, have made no written application for designation of a recognised legal representative and did not attend the oral hearing. Indeed several have made no contact with the Inquiry since the core participant ruling was posted on the Inquiry web site. I shall ask the Inquiry team to make contact with the unrepresented core participants in the near future to ascertain whether (i) they do not wish to proceed as core participants, or (ii) they wish to proceed with legal representation or (iii) they wish to proceed without legal representation.
6. Core participants who are not legally represented have a right under rule 11 of the Inquiry Rules 2006 to make an opening and closing statement to the Inquiry. But the rules provide no means by which an unrepresented core participant can seek leave to ask questions of a witness. The right to make that application is granted by rule 10(4) only to a recognised legal representative. Therefore, the only procedure available to the unrepresented core participant who wishes a line of enquiry to be pursued with a witness is to make, in advance, suggestions in writing to the Inquiry's legal team who, at their discretion, may or may not pursue them in the form of questions to the witness. If a core participant wishes to enjoy the right to make an application to the chairman to ask questions of a witness then they should apply for the designation of a recognised legal representative. However, nothing that I have said should be taken as indicating that any particular application for leave to question a witness would be granted. I would have to decide such an application according to the state of affairs, facts and issues as they arise in the course of the Inquiry.

Rules 6 and 7 of the Inquiry Rules 2006

7. Under rule 6 where a core participant who does not fall within rule 7 has appointed a qualified lawyer to act on their behalf, the chairman must designate that lawyer as their "*recognised legal representative in respect of the Inquiry proceedings*".

UNDERCOVER POLICING INQUIRY

8. A core participant falls within rule 7 when they are one of a group of two or more core participants of whom the chairman considers:
 - “(1)
 - (a) *their interests in the outcome of the inquiry are similar;*
 - (b) *the facts they are likely to rely on in the course of the inquiry are similar; and*
 - (c) *it is fair and proper for them to be jointly represented.”*
9. If the chairman considers that a core participant falls within rule 7(1), by rule 7(2) he *must* direct that those within the same group shall be represented by a single legal representative and may appoint a qualified lawyer for that purpose.
10. By rule 7(3) the chairman may only appoint a single legal representative with the consent of the core participants concerned but, in the event that agreement cannot be reached within a reasonable time, the chairman can impose his designation of an appropriate lawyer with sufficient knowledge and experience to act in that capacity.

“Fair and proper”

11. Several applicants have made the submission that the matters which they have confided to their present solicitors, either for the purpose of civil proceedings against the police or for responding to requests for assistance by the Herne and Ellison reviews, or for the purpose of making data protection requests to the police, have been painful and sensitive. Some of them have suffered health problems as a result of disclosure or public acknowledgements made. They do not wish to be exposed to the ordeal of making fresh disclosure of the same matters to a solicitor who is not known to them and does not know their story. Other applicants have a long standing lawyer-client relationship with their appointed solicitor. In my opinion, these are relevant considerations in the examination of the question whether joint representation would be “fair and proper” even where there are similarities between core participants’ interest in the outcome of the Inquiry and the facts on which they rely in the course of the Inquiry. Where they are relevant I have taken them into account before making my designations.

Categories

12. For convenience I shall approach the issue of legal representation by reference to the categories in which I placed the core participants in paragraph 4 of the core participant ruling. I am aware that some of the core participants are concerned that it may be my position that designation within a category impliedly excludes participation in any other. I wish to make it clear

that the identification of categories was useful in the assessment as to whether an applicant met the criteria for designation as core participant. But it was not intended to be and will not be a straitjacket within which the contribution of any particular core participant will be confined. It is quite clear that there are overlaps between categories that will be recognised when it is appropriate to do so. For example, and they are only examples, I am well aware that there are issues common to categories [G] and [J] and issues common to categories [K] and [L]. Many core participants have important evidence to give about several different subjects and issues and I do not wish it to be thought that the Inquiry is unaware of this.

Designation of recognised legal representatives

13. As to **Category [A], Police institutions**, since the oral hearing the Inquiry has been informed that the appointed lawyer for the Metropolitan Police Service is not Melanie Jones but Hugh Giles, head of its Directorate of Legal Services. I shall designate Mr Giles as the recognised legal representative of the Metropolitan Police Service. I designate Simon Armstrong of the National Crime Agency Legal Department as the recognised legal representative of the National Crime Agency. The Inquiry has received no representations thus far from the College of Policing or the National Police Chiefs' Council.
14. As to **Category [B] Government**, I shall designate Andrew King of the Government Legal Department, for and on behalf of The Treasury Solicitor, as the recognised legal representative of the Home Office.
15. As to **Category [C] Police officers** I shall designate Rosa Curling of Leigh Day, solicitors, as the recognised legal representative of Peter Francis, and Robert Roscoe of Victor Lissack, Roscoe and Coleman as the recognised legal representative of Mark Kennedy. At this stage I am not in a position to make any designation in respect of the anonymous police officers. Further discussions are required between solicitors, the Metropolitan Police Service, the Police Federation and the Inquiry before a settled application can be made and resolved.
16. As to **Category [D] Political organisations and politicians**, on 2 November 2015 I designated Ken Livingstone as a core participant. In part Mr Livingstone's role in the subject matter of the Inquiry is similar to that of the deceased Mr Bernie Grant MP whose widow, Mrs Sharon Grant OBE, is a core participant in Category [J]. However, Mr Livingstone's interest is likely to be more wide ranging. Mr Livingstone has appointed Jane Deighton of Deighton Pierce Glynn to represent him and I shall designate Ms Deighton as Mr Livingstone's recognised legal representative.

UNDERCOVER POLICING INQUIRY

17. As to **Category [E] Trades unions and trades union members**, there is a common interest between the Blacklist Support Group, the unions and union members in the issue whether and to what extent undercover policing contributed to the maintenance of an employment blacklist. However, the unions have a separate and wider interest to serve. They each assert that their activities were infiltrated by undercover officers. Furthermore, Imran Khan and Partners, solicitors, has represented the Blacklist Support Group for over three years, Thompsons has represented the Fire Brigade Union, and Birnberg Peirce and Partners have represented the National Union of Mineworkers for many years. Even if there was an exact community of interest and evidence between the core participants in this category, which there is not, I consider that it would not be fair and proper to require them or any permutation of them to relinquish their long standing representation for the sake of joint representation. I shall designate Imran Khan as the recognised legal representative of the Blacklist Support Group and its named members. I shall designate Paula Porter of Thompsons as the recognised legal representative of the Fire Brigades Union and I shall designate Gareth Peirce as the recognised legal representative of the National Union of Mineworkers. The Inquiry has received a late application from the Union of Construction, Allied Trades and Technicians. OH Parsons has represented the union since 1974. It is currently supporting civil litigation on behalf of some of its members in respect of the construction industry blacklist. There is a conflict of interest between some members of the Blacklist Support Group and the union. I shall designate Spencer Wood of OH Parsons as the recognised legal representative for the Union of Construction Allied Trades and Technicians.
18. As to **Category [F] Relatives of deceased children** I shall designate Jules Carey of Bindmans, solicitors, as Mrs Barbara Shaw's recognised legal representative.
19. As to **Category [G] The family of Stephen Lawrence, Duwayne Brooks OBE and Michael Mansfield QC**, although Baroness and Mr Lawrence have the same or a similar interest in the subject matter and outcome of the Inquiry they have been separately represented for several years for reasons it is unnecessary to explore. I shall designate Imran Khan as Baroness Lawrence's recognised legal representative and Jocelyn Cockburn of Hodge Jones and Allen as Neville Lawrence OBE's recognised legal representative. Duwayne Brooks OBE has been separately represented for some 20 years. I shall designate in his case Jane Deighton of Deighton Pierce Glynn. The interest of Michael Mansfield QC in the subject matter and outcome of the Inquiry is important but discrete. It arises from the performance of his professional duty. In my view he has a separate interest that I should

UNDERCOVER POLICING INQUIRY

acknowledge by designation of Nia Williams of Saunders Law Limited as his recognised legal representative.

20. As to **Category [H] Individuals in relationships with undercover officers**, C, AKJ and others, AJA and others, Jacqui and HJM have all instituted civil claims against the Commissioner for the Metropolitan Police. In Jacqui's case the proceedings have concluded. Although there are similarities in the nature of the claims and in the interests of the claimants in the subject matter and outcome of the Inquiry, I do not consider that it would be fair and proper to require any of them to relinquish their relationship with a solicitor with whom they have trusted intimate and sensitive information. The other core participants in this category have all appointed a solicitor already instructed by others in the category. Accordingly, I shall designate Beth Handley of Hickman Rose as recognised legal representative of C, Harriet Wistrich of Birnberg Peirce and Partners as recognised legal representative of AKJ and others, and Jules Carey of Bindmans as recognised legal representatives of AJA and others, Jacqui, TBS and HJM.
21. In **Category [I] Miscarriage of justice**, all of the core participants listed at paragraph 51 of my core participants ruling have appointed Mike Schwarz of Bindmans to act in the Inquiry. I shall designate Mr Schwarz as their recognised legal representative accordingly.
22. As to **Category [J] Justice campaigns**, Shamik Dutta of Bhatt Murphy has been appointed by Celia Stubbs, Lee Lawrence, Myrna Simpson, Bernard Renwick, Sharon Grant OBE, Winston Silcott, Hackney Community Defence Association, Dr Graham Smith and Mark Metcalf, the Colin Roach Centre, Broadwater Farm Defence Campaign and Stafford Scott. I shall designate Shamik Dutta as the recognised legal representative of those core participants. Patricia Armani da Silva has appointed Harriet Wistrich of Birnberg Peirce. The interest of the family of Jean Charles de Menezes is similar to that of other family campaign groups but the evidence is, of course, different in its details. Furthermore, Ms Wistrich has been acting for the family of Jean Charles de Menezes since 2005. I will designate Harriet Wistrich the recognised legal representative of Ms Armani da Silva and also of Newham Monitoring Project Limited and Marc Wadsworth, for whom she also acts. The Monitoring Group and Suresh Grover are placed in the same category but they are not the family of a deceased relative and their interest while similar is not the same. There is a long connection between them and Imran Khan and Partners and I shall designate Imran Khan as their recognised legal representative. Bindmans represented the family of Michael Menson from the outset of their campaign and the family of Ricky Reel before the announcement of the present Inquiry. I shall designate Mike Schwarz of Bindmans as recognised legal representative for MSS and MWS and

Sukhdev, Balwant, and Tish Reel. Finally, Paul Heron of Public Interest Lawyers has a close connection with Youth Against Racism, Lois Austin and Hannah Sell. While Youth Against Racism has an interest similar to that of the Monitoring Group it is, in my view, fit and proper for the organisation and the individuals to retain their representation of choice. I shall designate Maya Devi Lal of Public Interest Lawyers, in Mr Heron's temporary absence on sabbatical leave, as their recognised legal representative.

23. Three separate firms of solicitors have been appointed by core participants in **Category [K] Political activists**. Mike Schwarz of Bindmans has been appointed by FCA and others in connection with the Fairford coaches incident. Bindmans has represented the group throughout their challenge to the lawfulness of the decision by Gloucestershire police to stop and return the coaches to London. He has also been appointed by Sian Jones and others in the Aldermaston group, Jason Kirkpatrick, Trapese, Kim Bryan and Alice Cutler. The Inquiry has received late notification that Paul Chatterton (Trapese) and Kirk Jackson wish to appoint Mr Schwarz as their legal representative. I shall designate Mike Schwarz as the recognised legal representative of those core participants. Jules Carey of the same firm has been appointed to represent VSP and Cardiff Anarchist Network, while Mike Schwarz has been appointed to represent Terence Evans and Chris Dutton who have the same interest in the evidence received by and the outcome of the Inquiry. The human core participants have agreed, very sensibly, that in order to avoid duplication of work Jules Carey should be designated the recognised legal representation for all four core participants. I shall make that designation.
24. The Inquiry has, since the oral hearing, been notified by Bindmans that Sandor Dus no longer wishes to be a core participant. I shall use this opportunity to terminate Mr Dus' designation as a core participant with immediate effect.
25. Emily Apple has been represented by Jules Carey of Bindmans for a period of some five years. He has also been appointed by Hannah Dee and Defend the Right to Protest for whom he has also acted for several years. I shall also designate Mr Carey the recognised legal representative for these core participants.
26. Beth Handley of Hickman and Rose was jointly approached by Nicola Benge, Suzan Keen and Jennifer Verson to represent their interests in the Inquiry. Theirs is a sub-category of its own within Category [K]. I shall designate Ms Handley the recognised legal representative of these core participants together with Rhythms of Resistance and the Rebel Clown Army.

UNDERCOVER POLICING INQUIRY

27. NRO is a long standing client of Hickman and Rose. He seeks the designation of Beth Handley as his recognised legal representative. However, Paul Robinson, who has a similar interest through his membership with NRO of WOMBLES, has appointed Mike Schwarz of Bindmans to represent him. At first sight a duplication of effort is implied. However, the main focus of the Inquiry in this area is, at present, the alleged infiltration of the WOMBLES organisation, leading to the Fairford coaches stop. Mr Schwarz is the recognised legal representative of the Fairford coach group and is therefore already familiar with the background. Secondly, NRO has a further and separate interest in the Inquiry, namely the alleged infiltration of his web vehicles Indymedia and Aktvix. In these circumstances, I consider that the duplication of effort will be minimal and that it would not be fair and proper to require joint representation. I shall designate Ms Handley and Mr Schwarz accordingly.
28. Finally, in this category, I have been informed that Unite Against Fascism and others, having been designated core participants, no longer wish to continue in that role. I shall therefore use this opportunity to terminate the designation of Unite Against Fascism, Anti-Nazi League and National Assembly Against Racism with immediate effect.
29. Most of the core participants in **Category [L] Social and environmental activists** have appointed Mike Schwarz of Bindmans as their legal representative. They are London Greenpeace, Albert Beale, Dave Morris, Martyn Lowe, Paul Gravett, Gabrielle Boseley, Helen Steel and Jane Laporte; Jacqueline Sheedy, Robert Banbury and Matt Salusbury (as members of Reclaim the Streets); Climate Camp Legal and Frances Wright; Simon Lewis; Genetic Engineering Network, Jacqueline Sheedy, Martin Shaw and Brian Healy; and Merrick Cork. In the cases of these core participants I shall make the designation requested in favour of Mr Schwarz.
30. Mike Schwarz of Bindmans has, since the oral hearing, emphasised that he does not represent Reclaim the Streets; nor does he represent Alex Hodson, Helen Steel and Carolyn Wilson as members of Reclaim the Streets. Ms Steel informed me at the oral hearing that she and her two colleagues were still in discussion. At the time of this ruling these core participants are unrepresented in this capacity.
31. Mr Schwarz has also informed the Inquiry that although he represents Paul Gravett in his personal capacity and as a member of London Greenpeace, he does not represent Mr Gravett in his capacity as a member of London Animal Action and does not act for London Animal Action either. Mr Gravett as a member of London Animal Action and the unincorporated association itself remain unrepresented.

UNDERCOVER POLICING INQUIRY

32. Furthermore, the Inquiry has received applications from Robin Lane and Trudy Middleton of the London Animal Action group for the termination of their status as core participants. I shall take this opportunity to state that Mr Lane and Ms Middleton will cease to be core participants with immediate effect.
33. Piers Corbyn, Michael Zeitlin and Advisory Service for Squatters have appointed Saunders Solicitors Limited as their legal representative. Although they share the same general interest in the Inquiry as do several others in category [L] theirs is a niche interest since it concerns the alleged infiltration of squatting associations in London in the 1960s and 1970s. They are the only core participants who share that interest. Even if, which I doubt, the facts on which they rely could be said to be similar to those in other cases, I consider that it is not fit and proper that they should be jointly represented with others against their wishes. I shall therefore designate Richard Parry as recognised legal representative in their cases. Norman Blair has also appointed Richard Parry. Mr Blair naturally falls within the professional sphere of Mr Schwarz since he represents the London Greenpeace group of which Mr Blair was a member. However, Mr Blair is currently and has for some time been represented by Mr Parry in connection with civil proceedings both in the United Kingdom and Italy arising, it is asserted, from information about him passed from London to the Italian police in 2001. In these circumstances it seems to me fit and proper for Mr Blair to retain the services of Mr Parry and I shall designate him accordingly.
34. Dr Harry Halpin is represented by Tamsin Allen of Bindmans. I consider that Dr Halpin's interest is sufficiently distinguishable from those of others in the same group that the designation of Ms Allen as his recognised legal representative is appropriate.
35. Dr Dónal O'Driscoll has appointed Beth Handley of Hickman and Rose to represent him. While the firm has not before acted for Dr O'Driscoll a relationship of trust has been formed in consequence of High Court injunction proceedings in which both of them have been involved in the past. Hunt Saboteurs Association Limited has also appointed Ms Handley to represent them on the understanding that there is a community of interest with Dr O'Driscoll, the connection being the infiltration of animal rights groups. Hickman and Rose have been designated as recognised legal representatives for core participants in a similar category, namely category [K] Political activists. In my view it is appropriate that I should designate Ms Handley as the recognised legal representative of both Dr O'Driscoll and Hunt Saboteurs Association Limited.
36. The Inquiry has received a late application from Indra Donfrancesco on behalf of herself and her two daughters that Beth Handley of Hickman and Rose should be designated their recognised legal representative. Ms Handley has

UNDERCOVER POLICING INQUIRY

already been designated in this category; this further designation is appropriate and I shall make it.

37. In **Category [M] Families of police officers** S's position is unique. She has appointed Beth Handley of Hickman and Rose. I shall designate Ms Handley the recognised legal representative for S.
38. That concludes my designations of recognised legal representatives. I shall now turn to the issue of costs.

Awards of costs, next steps

39. Applications have been made for awards of costs under section 40 of the Inquiries Act 2005 and rule 20 of the Inquiry Rules 2006 but in many cases I was provided with insufficient information from which, as a first step, to consider approving the constitution of legal teams as required by paragraph 2d of the Secretary of State's Determination. During a brief adjournment of the hearing on 4 November counsel and solicitors for the core participants and the Inquiry took the opportunity to anticipate the next steps in the Inquiry. Core participants' solicitors indicated that within seven days of the oral hearing they would submit to the Inquiry legal team their proposals as to my approach to applications on the correct assumptions that the Inquiry will proceed incrementally in the stages discussed and that the level of need for the involvement of junior and leading counsel will fluctuate depending upon the issue under consideration. The core participants' lawyers will meet together and with the Inquiry legal team for the purpose of resolving matters of joint concern. At the conclusion of that process I will expect to be provided with all the material necessary to make in respect of each applicant for the next stage of the Inquiry a decision under rule 20 that is compliant with the Costs Protocol and the Secretary of State's Determination.
40. As to principle, I am required by rule 21(2)(a) of the Inquiry Rules 2006 to have regard to the financial resources of the applicant but I am also required by rule 21(2)(b) to consider whether an award of costs is in the public interest. Several non-institutional core participants have submitted that in principle I should make an award whatever the financial resources of the individual. I do not consider that in all circumstances financial resources can be treated as immaterial to the exercise of discretion. If that were so, there would be no need for the requirement in rule 21(2)(a). On the other hand I am, provisionally, sympathetic to the submission that a person who has done little or nothing to bring the Inquiry about, but is found in circumstances that require their close involvement in the Inquiry, should not be expected to bear their own costs of involvement, unless the means of the individual are so extensive that it would be an affront to grant public funding. That observation may

UNDERCOVER POLICING INQUIRY

provide some measure of assistance to the individual rather than institutional applicants.

41. However, this public inquiry is being conducted largely at public expense and it is essential that costs are not permitted to run away. I have already noted the willingness of recognised legal representatives to act co-operatively to prevent duplication of work and wasted effort and, therefore, to save costs. I will be seeking the active participation of legal representatives in the proposed formation of legal teams with that objective in mind. I am referring in particular to the scope for the sharing of junior and leading counsel and for limiting the instruction of leading counsel for specific tasks, primarily legal submissions, that are of central importance to the progress of the Inquiry.
42. The Inquiry has reserved court 73 at the Royal Courts of Justice for the next preliminary hearing on **9 December 2015** for submissions on the subject of 'undertakings'. The room will continue to be reserved for the time being for the resolution of any outstanding issues relating to awards of costs but the issue of undertakings will be postponed.

9 November 2015

Sir Christopher Pitchford
Chairman, Undercover Policing Inquiry