

Cost of Legal Representation Awards Ruling

Introduction

1. The Inquiry has received applications under rule 20(1) of The Inquiry Rules 2006 from the majority of core participants for an award of the costs of legal representation during the preliminary stage of the Inquiry. For present purposes the 'preliminary stage' embraces the period during which the Inquiry will seek applications and submissions from core participants and make rulings upon the following issues:
 - (i) The terms of undertakings that the Inquiry should seek from the Attorney General, the Metropolitan Police Service and/or others with regard to disclosure of information to the Inquiry and the use of evidence given by witnesses to the Inquiry in criminal, disciplinary or other proceedings against them.
 - (ii) The legal principles upon which the Inquiry should act in making decisions upon applications for restriction orders under section 19(1) of The Inquiries Act 2005.
 - (iii) The standard of proof that the Inquiry should apply to issues of fact that arise in the evidence given to the Inquiry.
 - (iv) Whether and in what circumstances the Inquiry should confirm publicly or to a family member, the name of a deceased child whose identity is established to have been used by an undercover police officer.

Currently, the date set for completion of the hearings on preliminary issues is 22 and 23 March 2016 but, for reasons that I shall explain, it is necessary to put back that date for a further period of time.

2. The applications for costs awards have been made by individual police officers and former police officers whose interests are not represented by the Metropolitan Police Service, by trades unions and by non-police, non-state individuals and unincorporated associations. I have been informed by the recognised legal representatives for the Union of Construction Allied Trades and Technicians, the Fire Brigades Union and the National Union of Mineworkers that they do not wish to participate in the preliminary stage of the Inquiry. In their cases I shall make no award of costs of legal representation at this stage for reasons that I have provided in decision letters addressed to them.

The statutory test

3. The power to make an award of the cost of legal representation is contained in section 40 of The Inquiries Act 2005. By section 40(3) a person is eligible for an award if (a) they attend the Inquiry to give evidence or produce a document or exhibit or (b) they have such a particular interest in the proceedings or in the outcome of the Inquiry that, in the opinion of the chairman, an award of costs is justifiable.
4. All the applicants have been designated core participants. In reaching my decision to make those designations I applied the test set out in rule 5(2) of The Inquiry Rules 2006 [namely, *(a) the person played or may have played a direct and significant role in relation to the subject matters to which the inquiry relates, (b) the person has a significant interest in an important aspect of the matters to which the inquiry relates, or (c) the person may be subject to explicit or significant criticism during the inquiry proceedings or in the report, or in any interim report*]. Having regard to the terms of reference of the Inquiry, when I considered making designations I paid particular attention to the question whether the applicant played or may have played a direct and significant role in relation to the subject matter of the Inquiry. I found that they did. Accordingly, I have had no difficulty in concluding that the applicants for costs awards have met the threshold requirement set out in section 40(3)(b) of The Inquiries Act 2005.
5. I have an overarching duty under section 17(3) of The Inquiries Act 2005, when making any decision as to the procedure or conduct of the Inquiry, to act fairly and with regard to the need to avoid any unnecessary cost whether to public funds or to witnesses or to others. I have had particular regard to this duty when considering what procedural directions I should give towards the hearing of preliminary issues (see paragraph 28 and following below).

Financial resources and the public interest

6. Rule 21 of The Inquiries Rules provides:
 - “(1) Subject to section 40(4) of the Act (conditions or qualifications notified by the Minister), the chairman must take into account the general criteria set out in paragraph (2) when determining whether an award should be made.
 - (2) The general criteria are –
 - (a) the financial resources of the applicant; and
 - (b) whether making an award is in the public interest.”

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7. Section 40(4) of the Act provides that the Minister may make a determination that sets the conditions and qualifications to which the power of the chairman to make an award under section 40 is subject.
8. The determination made by the Secretary of State for the Home Department in relation to this Inquiry is posted on the Inquiry's web site. It contains the following condition relevant to my exercise of judgement whether to make an award:
 - “2. The qualifications and conditions are -
 - a. The Chairman shall only make an award relating to a person's costs of legal representation in relation to the Inquiry where he considers it necessary, fair, reasonable and proportionate to make such an award.”

There are several other qualifications and conditions that do not apply to the principle whether an award should be made at all but to the nature and extent of any award made and the conditions to which it is subject once made. I shall return to these provisions of the determination at paragraph 16.

9. Neither the Act nor the Rules specifies any financial threshold test for eligibility for an award in respect of the costs of legal representation at a public inquiry. However, the Secretary of State has determined that the chairman should only make an award when “*he considers it necessary, fair, reasonable and proportionate*” to do so. In my judgement, I am required when considering what is necessary, fair, reasonable and proportionate to have regard to the circumstances in which the applications for costs awards came to be made; they include the events that led to the involvement of these core participants in the Inquiry and the nature of their interest in its work.
10. I set out the historical background to the Secretary of State's decision to commence the Inquiry at paragraphs 2 – 9 of my remarks opening the Inquiry on 28 July 2015; they can be found on the Inquiry's web site and I shall not repeat them here. The main focus of the Inquiry is the conduct, management, supervision and oversight of undercover police operations in England and Wales since 1968. Those whose decision-making and conduct are under scrutiny are police officers, police forces, police institutions, and Government. The interests of serving or former police officers will be represented at the Inquiry either by their employers or, as core participants, by their designated recognised legal representative. As to those in the latter category, I am satisfied that no serving or former police officer has personal financial resources that are sufficient to meet or could reasonably be expected to meet the costs of their legal representation at the Inquiry. In their cases the question I have had to resolve is whether there is available to

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them a source of funding for legal representation on which they should be expected to call so that the financial burden should not fall on the public. For reasons that I have explained in individual decision letters I have decided that their recourse should be to the Police Federation to whom they should make an urgent application for legal assistance.

11. As to non-police, non-state core participants, it was an inevitable consequence of the focus of the Inquiry on undercover police operations that members of the public most closely affected, whether they were targets of an undercover operation or not, would be captured by the Inquiry's terms of reference. In the case of those who were targeted or were members of a targeted group, it is probable that their conduct will also come under scrutiny. However, this is not because they are responsible for the Secretary of State's decision to commence a public inquiry but because they did or may have provided the environment in which the undercover police operations under examination took place.
12. The Secretary of State reached the conclusion that a public inquiry was necessary in the public interest. Among other things, the terms of reference require the Inquiry to examine the targeting of political and social justice campaigns and the effect of undercover operations on members of the public. This is the choice of the sponsoring department of Government and not of the groups targeted or the public affected. Some of those who have been or may have been targeted and/or injuriously affected by undercover police operations may, in the process of participating in the Inquiry, expose themselves to the risk of criticism by the police, but that is a collateral effect of the Inquiry process and not a reason for the Inquiry. It does not seem to me that the non-police, non-institutional core participants drawn into the Inquiry in this way should, unless their financial circumstances are exceptional, bear the financial burden of legal representation at the Inquiry. It would be, in my judgement, unfair, unreasonable and disproportionate to require such an individual personally to incur the cost of representation at the Inquiry unless their financial resources are such that it would be an affront to place the financial burden of legal representation on the public.
13. Some of the core participants in Category [H] Individuals in relationships with undercover officers have recently settled their civil actions against the police. Those claims were made on grounds that arose out of the subject matter of this Inquiry. I am aware of the range of sums paid by way of damages under the terms of confidential schedules appended to consent orders made in the High Court. I have decided that it would be wrong in principle to treat any part of those damages as funds from which the cost of legal representation in this inquiry could fairly, reasonably and proportionately be met.

14. I have received information about the financial resources of each of the applicants. The substantial majority are of modest means and could not contemplate funding their legal representation at the Inquiry from their own resources. Some applicants have substantial assets in the form of the (usually mortgaged) residential property in which they live. Others have incomes and assets above, some well above, the means threshold for legal aid in civil cases. Were they bringing or defending civil claims in their own personal interest they would not receive public funding. However, as I have explained, these applicants are not pursuing a private interest. They have been designated core participants because they have a significant contribution to make to a public inquiry into whose terms of reference they have been drawn by a decision of the Secretary of State. Self-funding their representation at the Inquiry would, in my view, create an unreasonable financial burden having regard to the income and capital they have disclosed. Furthermore, none of the applicants has financial resources that would cause the objective observer to conclude that they and not the public should meet the cost of their representation at the Inquiry.
15. Applying these considerations to the applications made to me by the non-institutional, non-police core participants, I have concluded that the financial resources of each of them are such that it is necessary, fair, reasonable and proportionate and in the public interest that I should make costs awards under section 40 of The Inquiries Act 2005 in their favour. Each applicant for a costs award, successful or not, will be notified of my decision in a decision letter sent on my behalf by the Solicitor to the Inquiry, Mr Piers Doggart.

Conditions and qualifications

16. The Secretary of State's 'costs' determination includes the following further important conditions and qualifications:
- "2. The qualifications and conditions are –
- ...
- b. Any award shall be subject to the condition that payment will only be made for work that is properly evidenced and can be identified as having been done in an effective and efficient manner, avoiding unnecessary duplication and making the best use of public funds.
- c. An award shall be made only in respect of legal work undertaken by an applicant's named legal representative whom the Chairman has designated under either rule 6 or rule 7 of The Inquiry Rules 2006 to be that person's recognised legal representative in relation to the Inquiry, unless the Secretary of State for the Home Department agrees otherwise.

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- d. If an applicant's recognised legal representative engages a legal team, an award shall be made in respect of work undertaken by that team only if the Chairman has approved its size and composition, including the seniority and number of any counsel whose retention he agrees to be necessary. Costs associated with work carried out by legal representatives who are not approved in advance of the work being carried out shall not be met from public funds.
 - e. In determining whether to make an award the Chairman shall specify the nature and scope of the work that is to be publicly funded. Legal representatives must not be publicly funded for work that does not fall within the specified scope.
 - f. As an inquiry under the 2005 Act is inquisitorial in nature, an award shall not be made in respect of investigative work or work in relation to obtaining expert reports unless the Chairman gives express written permission in advance for such work to be carried out.
 - g. An award shall limit the maximum number of hours that can be charged by any member of the applicant's legal team in any week to 40 hours save that, exceptionally, the Solicitor to the Inquiry may authorise an increase to a maximum of 60 hours during the oral hearings, including preliminary hearings, and for the eight week period immediately preceding the commencement of the oral hearings, where he is satisfied that such action is justified in all the circumstances. For the purposes of this paragraph, a week shall be taken to commence on a Monday and end on the following Sunday, and no unused hours below the maximum in any one week may be set off against any other week.
3. Where the Chairman has determined that an award in respect of legal representation should be made, the maximum hourly rates to be paid must not exceed:
- Leading Counsel (whether a member of the Bar or a solicitor advocate) a range between £180 - £200
 - Junior Counsel (whether a member of the bar or a solicitor advocate) £100
 - Solicitor with over eight years post-qualification experience £150
 - Solicitors and legal executives with over four years experience £125

- Other solicitors, legal executives and fee-earners of equivalent experience £100
 - Trainee solicitors, paralegals and other fee-earners £75
4. ...
 5. Expenditure incurred by an applicant in respect of legal representation before an award is made by the Chairman shall not be recoverable, except where (and to the extent that) it has been incurred with the prior agreement of the Solicitor to the Inquiry.”

Applications for costs awards

17. When inviting core participants to make an application for a costs award the Inquiry drew the attention of legal representatives to the terms of paragraph 13 of the Costs Protocol issued by the Inquiry and posted on its web site. At paragraph 13(h) and (i) the protocol invited applicants to include within the application an estimate of the number of hours in each week for which the legal representative’s team and counsel (if permitted) would be engaged on Inquiry work, having regard to the interest of the applicant and the preliminary hearings in which they were seeking to participate. This information is important because it assists me to perform my duty under section 17(3) of The Inquiries Act 2005 (see paragraph 5 above) and it assists the Inquiry to set a realistic budget.
18. I have already, when giving my ruling upon legal representation, expressed satisfaction that legal representatives for many of the core participants were acting co-operatively with a view to identifying common ground, sharing representation and minimising costs. Most of the applications for awards of costs of legal representation follow a similar pattern: they identify the nature of work for which payment will be sought for each of the preliminary issues identified in paragraph 1 above, the weekly hours to be spent on such work and the rates per hour of the team member engaged in the work. Some of the applications make a distinction between the weeks in which the hearing is listed to take place and the three weeks preceding the week of the hearing. Others use four-week cycles culminating in the oral hearing. Several also, and separately, identify further work not specifically related to a preliminary issue, which it is anticipated the recognised legal representative will undertake in connection with the investigative phase of the Inquiry.
19. By way of example (not taken from any particular application) a typical estimate is broken down approximately as follows:

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Estimate of hours for an average week during the 28 day period up to and including the preliminary hearing

Work Done	Fee Earner	Hours	Rate £
Client Liaison	A	5	150
	B	2	75
Inquiry Liaison	}		
Group Meetings and Work	}		
Internal Meetings	}	etc.	
Counsel advice	}		
Considering documents	}		
Instructions to counsel	}		
Preparation and attend hearing	}	etc.	
Consider ruling and transcript	}		

20. Most of the estimates anticipate specifically the number of hours that will be spent by each fee earner on the work identified, although nearly all are qualified by the reasonable observation that the work required may turn out to be more or less than estimated. Some provide a range of hours so as to cater for the possibility that the work done will be more or less than the mean.

The Inquiry’s analysis of applications

21. It will be seen from the identification of preliminary issues at paragraph 1 above that during the preliminary stages the Inquiry is concerned almost entirely with the correct legal approach to issues that will arise later in its work. For example, the chairman will be required to make decisions on applications for restriction orders under section 19(1) of the Act. Those decisions will concern, among other things, issues of anonymity and the extent to which evidence about undercover police officers and operations, or the private lives of witnesses, should be withheld from disclosure. I wish to receive submissions in advance that identify the legal principles that I should apply to those applications when they are made. I wish to receive submissions as to my correct approach to the application of those principles. Save in respect of core participant applications for anonymity, I do not wish to receive, at this preliminary stage, the applications themselves or the evidence that will be submitted in support of them (see further paragraphs 39 - 44 below).
22. I am unclear as to whether recognised legal representatives have fully understood what the Inquiry has said about the content of this preliminary stage. As a result of the information provided to me by the applicants I have been able to carry out a rough and ready calculation of the cost to the public

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of awards made upon the basis of the estimates provided. The result is that, if the work currently estimated were in fact done on behalf of non-police, non-state core participants between now and the end of March 2016, the cost of public legal funding would be about £900,000 - £1.4m exclusive of value added tax.

23. I do realise that it is not an easy task to make firm pre-estimates of the work required. However, it seems to me that costs of legal representation of this magnitude, incurred only by non-state, non-police core participants, principally in the marshalling of argument as to legal principles, are liable to contravene the requirement set out in paragraph 2.b. of the Secretary of State's determination (paragraph 16 above) and they cause me to question whether, without further directions, I would be fulfilling my duty to avoid unnecessary costs. I doubt that the pre-estimates submitted to me would, if realised, represent the cost of work done in an effective and efficient manner, avoiding unnecessary duplication and making the best use of public funds. Some estimates appear to me to be more realistic than others and some parts of the estimates are more realistic than other parts. It would be invidious to single out individual applications at this stage but there are some common assumptions underlying many of the applications that need to be confronted.
24. I am, of course, confining my present observations to this, preliminary, stage of the Inquiry and they are not comprehensive. First, in several cases substantial estimates are given of the number of hours per week to be spent in client liaison. However, I have already received from many of the core participants detailed factual submissions advancing their direct and significant role in the subject matter of the Inquiry. I do not anticipate that many hours need to be spent with individual clients taking instructions as to the factual background. Secondly, in several cases I have accepted the submission that because core participants have already confided their concerns and claims about the subject matter of the Inquiry to their appointed solicitors they should not now be required to share the services of another solicitor in whom they have not confided. That was represented to me as a cost-saving decision because work would not be duplicated, and I agree. Thirdly, the preliminary stage of the Inquiry is concerned primarily with legal and not factual issues. Client liaison will be concerned mainly if not wholly with identifying the client's interest in the legal issue under discussion and their position in relation to it. Fourthly, paragraph 2.f. of the Secretary of State's determination is specific. No investigative work is to be performed without the express permission of the chairman. As to process, this is not litigation in which the main purpose is to advance a private interest; this is an inquisitorial process conducted in the public interest that will be led by the Inquiry itself. The Inquiry will have access to many contemporaneous

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documents that will inform the direction to be taken. The Inquiry will make contact with core participants and witnesses both informally, for discussion, and formally, by means of rule 9 requests for information. It is not necessary for core participants to take on the role of detective. When, for example, the Inquiry has sought or has approved the preparation of an impact statement its necessary and reasonable cost will be met.

25. Several of the applications appear to proceed on the assumption that recognised legal representatives of non-police, non-state core participants will be authorised to instruct their own counsel throughout the period between now and the end of March 2016. This is unlikely to be the case. I do not consider it necessary or appropriate, save exceptionally, to consult counsel upon the question whether a core participant's interest in a legal issue is the same as or similar to that of another core participant represented by a different firm. Some joint meetings of lawyers will be necessary. However, it will not be necessary or appropriate to conduct joint meetings of lawyers when, conveniently, views can be exchanged and agreement reached by means of emails. I consider that from the outset recognised legal representatives should look to share the services of junior and, if necessary, leading counsel for the purpose of advice and, if necessary, preparing written and oral submissions on legal issues. Separate counsel should be instructed only when there is an identifiably separate and conflicting interest to be represented. For example, I can, at the moment, think of no good reason why I should receive more than one argument from the non-police, non-state core participants as to my principled approach to applications for anonymity and restriction orders. I do not consider it necessary or appropriate for solicitors to attend throughout the hearing of any oral argument delivered by counsel when written submissions will be prepared in advance and transcripts of the oral hearings will be published daily.
26. There are twelve recognised legal representatives designated for the remaining non-police, non-state, non-institutional core participants. They are Shamik Dutta (Bhatt Murphy), Jules Carey (Bindmans), Mike Schwarz (Bindmans), Tamsin Allen (Bindmans), Harriet Wistrich (Birnberg Peirce), Jane Deighton (Deighton Pierce Glynn), Stefano Ruis (Hickman and Rose), Jocelyn Cockburn (Hodge Jones and Allen)¹, Imran Khan (Imran Khan and Partners), Maya Devi Lal (Public Interest Lawyers), Nia Williams (Saunders Law Limited) and Richard Parry (Saunders Solicitors Limited). Some of the recognised legal representatives act for one core participant (e.g. Nia Williams of Saunders Law limited) or for more than one participant (e.g. Shamik Dutta of Bhatt Murphy) who appear to share the same or a similar interest in the preliminary legal issues with other core participants. Other

¹ Jocelyn Cockburn omitted in error from original ruling, included in corrected ruling dated 22 December 2015.

recognised legal representatives act for several core participants who share the same or a similar interest in the preliminary legal issues both with each other and with core participants represented by other recognised legal representatives (e.g. Mike Schwarz of Bindmans and Stefano Ruis of Hickman and Rose). It is self-evident that preventing unnecessary duplication of work and making best use of public funds requires the earliest possible identification of common interest and conflict of interest, if any, among them so that the relevant **interest** is properly represented at the Inquiry.

27. An application has been made by Tamsin Allen of Bindmans for an award of costs both in respect of work to be done on behalf of her personal core participant clients and in respect of her work co-ordinating the group of non-police, non-state recognised legal representatives in order to make efficient use of public funds. I applaud this innovation. It seems to me, however, that Ms Allen's agreed role will fulfil its intended purpose only if it results in the identification of common and, if any, conflicting interests at an early stage in the cycle towards the hearing of the preliminary issue. Only then can the group agree upon the appropriate instruction of counsel.

Inquiry management

28. I have concluded that in order to comply with my statutory duty of fairness and the need to avoid unnecessary cost, I should now identify a timetable towards each of the oral hearings on preliminary issues and, by that means, seek to elucidate the steps that I consider it necessary and appropriate for the core participants, in particular the non-police, non-state core participants, to take towards those hearings. I do not intend to pre-judge the merits of any later applications for approval of bills submitted. I intend to structure the timetable with the aim of reducing costs and, at the same time, to provide some practical guidance to recognised legal representatives and the Inquiry team as to my interpretation of work "*done in an effective and efficient manner, avoiding unnecessary duplication and making the best use of public funds*" in the context of the preliminary issues and the new timetable.
29. First, because the process of designating core participants and recognised legal representatives took longer than expected it has been necessary for me to put back the timetable for hearing of preliminary issues. Having done so, I do not think that sufficient time remains for legal representatives to deal fairly and adequately with the issues of undertakings and restriction orders under the present timetable. I have therefore decided to re-arrange the timetable for hearings of preliminary issues and the subject of those hearings, which will now take place as follows:

27 January 2016	Standard of Proof
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2 March 2016	Undertakings
22 and 23 March 2016	Restriction Orders (legal principles to be applied)
Date to be announced	Restriction Orders (anonymity - hearing on the merits)
Date to be announced	Identities of Deceased Children

30. Secondly, I have concluded that, in respect of each of the preliminary issues, in order to make the most efficient use of public funds I should place on the Inquiry's counsel team the onus of taking the lead in identifying the legal issues to be considered, conducting relevant legal research and presenting for the chairman and the core participants the likely range of interests to be represented. I am therefore going to request that the Inquiry's counsel team produces at an early stage in each cycle a written "Note" on the preliminary issue under consideration for distribution among the core participants. This will assist the core participants to identify (1) whether they have any interest at all in the preliminary issue to be considered, (2) if so, the nature of that interest and (3) the range of different interests, if any, among the non-police, non-state core participants that require separate representation.
31. The responsibility of the recognised legal representatives of non-police, non-state core participants will be to identify their clients' interest, if any, in the preliminary issue and the position they are likely to adopt in respect of it. That will require at least some contact and discussion with clients. As I understand it, Ms Allen will gather the views of her professional colleagues in order to identify common and conflicting positions among their cohort of core participants. It seems probable that this can be done by email communication at least in the first stages of the exercise. It is possible that a meeting of recognised legal representatives will be needed to complete the process and to identify (1) whether all can be represented by a single counsel team (junior and/or leading counsel), (2) if not, how many conflicting positions require separate counsel teams and (3) which counsel should be instructed. Exceptionally, it may be appropriate for the group to instruct one junior and/or leading counsel to attend the meeting and/or to give advice upon the issue of conflicting interests.
32. The next question is: who shall be responsible for the preparation of any written submissions to the Inquiry? This is a matter for the recognised legal representatives and their clients. However, the Inquiry will not require written submissions representing the same or a similar position from more than one lawyer. That would simply be wasteful of public resources. The recognised legal representatives for non-police, non-state core participants taking the

same or a similar position can either instruct junior and/or leading counsel jointly or send a communication to the Inquiry indicating an intention to adopt the submissions of others. I would expect that in her role as co-ordinator Ms Allen would seek approval from her group of professional colleagues for the instruction of counsel to prepare written submissions on behalf of all the non-police, non-state core participants who were taking the same or a similar position. She would seek their approval for more than one counsel team only when a conflicting position had been identified. I recommend that in her co-ordinating role Ms Allen keeps in regular contact with the Solicitor to the Inquiry so as to consult and keep the Inquiry informed.

33. For the avoidance of doubt the Inquiry will undertake to distribute among recognised legal representatives and unrepresented core participants the written applications and submissions that it receives. If the material submitted is open and closed the Inquiry will not distribute closed material.
34. Once I have considered the written applications and submissions of the core participants it might be possible to dispense with an oral hearing altogether; alternatively, to limit the issues in respect of which I will require oral submissions. This has happened already with regard to the first three preliminary hearings: applications for designation of core participants and recognised legal representatives and costs awards. If the hearing is to take place the Inquiry will give approval for the instruction of counsel to attend the hearing depending upon the number of positions that require separate representation. I will not expect a recognised legal representative to attend any hearing at which the client is adequately represented by counsel.
35. With this analysis in mind I have reconsidered a workable timetable towards each of the oral hearings.

Timetable: Standard of Proof 27 January 2016

36. Subject to further representations as to the time limits I impose (to be received within 7 days) I shall direct that:
 - (1) By 5 pm on Wednesday, 16 December 2015 the Inquiry counsel team will supply to the chairman, to recognised legal representatives and to unrepresented core participants a written 'note' as to the alternative standards of proof available to the chairman when reaching conclusions of fact, drawing attention to previous judicial or inquiry decisions that appear relevant to the issue.
 - (2) By 4 pm on Friday, 18 December 2015 the Inquiry will issue to the recognised legal representatives and unrepresented core participants a 'minded to' letter in which the chairman will express his provisional

view as to his preferred approach to the standard of proof to be applied to decisions of fact.

- (3) By 4 pm on Friday, 8 January 2016 the recognised legal representatives, if so instructed, and the unrepresented core participants, if they so wish, will submit to the Inquiry a shared or separate position statement or written submissions (as to which the non-police, non-state recognised legal representatives should see paragraphs 31 and 32 above) addressing (i) the contrary approach they invite the chairman to adopt, and (ii) the grounds for preferring that contrary approach.
- (4) By 4 pm on Wednesday, 13 January 2016 the Inquiry will indicate to the recognised legal representatives and the unrepresented core participants whether an oral hearing is necessary and, if so, what issues require oral submissions. It will at the same time indicate to the recognised legal representatives for the non-police, non-state core participants the number of counsel whose instruction to appear at the oral hearing the chairman is minded to approve.
- (5) If the oral hearing is to take place, by 4 pm on Thursday, 21 January 2016 the recognised legal representatives, if so advised, and unrepresented core participants, if they wish, will lodge skeleton arguments.
- (6) By 4 pm on Monday, 25 January 2016 the Inquiry team will prepare and distribute bundles of authorities/materials, if any.
- (7) Oral hearing on Wednesday, 27 January 2016, if necessary.
- (8) Written ruling in due course.

Timetable: Undertakings 2 March 2016

37. Witnesses are not required to give evidence that would tend to implicate them in a criminal offence. However, there is a strong public interest in ensuring that a public inquiry receives the best evidence available to it, even if, and perhaps especially if, the result is to expose wrongdoing. The Inquiry has no power to grant immunity from proceedings whether criminal, civil or disciplinary, nor to limit the later use of evidence that has been provided to it. A practice has grown up by which an inquiry chairman may seek from the Attorney General any undertaking the Crown is prepared to give that would provide some protection to the witness from the consequences of giving evidence, especially self-incriminating evidence, to the inquiry. Similarly the Inquiry may ask the witness's employer whether and in what terms it is prepared to give an undertaking as to the use of such evidence in proceedings in respect of disciplinary offences. This preliminary issue is raised to give core participants the opportunity to make representations as to

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the form of undertakings the Inquiry should seek, if any, and in respect of whom they should be sought.

38. Subject to further representations as to the time limits I impose (to be received within 7 days) I shall direct that:
- (1) By 4 pm on Friday, 8 January 2016 the Inquiry counsel team will supply to the chairman, to recognised legal representatives recognised legal representatives and to unrepresented core participants a written 'note' as to the undertakings that the chairman might seek, making reference to undertakings requested and given on other occasions.
 - (2) By 4pm on Friday, 29 January 2016 the recognised legal representatives, and any unrepresented core participants if they so wish, shall file with the Inquiry a shared or separate position statement (as to which the non-police, non-state recognised legal representatives should see paragraphs 31 and 32 above) setting out the undertakings that should be sought from the Attorney General or the Metropolitan Police Service or anyone else.
 - (3) By 4 pm on Friday, 5 February 2016 the recognised legal representatives and any unrepresented core participants who wish shall file with the Inquiry their shared or separate submissions in response.
 - (4) By 4pm on Friday, 12 February 2016 the Inquiry will make a report to the Attorney General's Office inviting a written response and the opportunity to make oral representations if necessary.
 - (5) By 4 pm on Friday, 19 February 2016 the Inquiry will indicate to recognised legal representatives and unrepresented core participants whether an oral hearing is necessary and, if so, what issues require oral submissions. It will at the same time indicate to the recognised legal representatives for the non-police, non-state core participants the number of counsel whose instruction to appear at the oral hearing the chairman is minded to approve.
 - (6) If the oral hearing is to take place, by 4 pm on Friday, 26 February 2016 the recognised legal representatives and unrepresented core participants, if they wish, will lodge shared or separate skeleton arguments.
 - (7) If necessary the oral hearing will take place on Wednesday, 2 March 2016 and any written requests for undertakings will follow in due course.

Timetable: Restriction Notices 22 and 23 March 2016

39. I acknowledge that the time available to prepare for a preliminary hearing on the legal principles to be applied to applications for restriction notices is now too short to accommodate a hearing date in January or early March. The hearing will therefore, if necessary, take place on 22 and 23 March 2016.
40. There are three forms of applications for a restriction order under section 19 of The Inquiries Act 2005 that I anticipate receiving, although I may be told that there are more. The first is an application for anonymity by an individual, whether a police officer or not, on privacy or personal safety or public interest grounds. The second is an application by an individual, whether a police officer or not, for non-disclosure of facts on similar grounds. The third is an application made by an institutional core participant for non-disclosure of identities or other facts on public interest grounds. The issue of restriction orders is particularly important to this Inquiry for reasons I have already explained in my opening remarks and the rulings already made and I shall not repeat them here. However, I am mainly concerned at this preliminary stage not with the individual decisions I shall in due course have to make but upon the identification of the legal principles and tests, if any, to be applied to applications made under section 19.
41. Several non-police, non-state core participants have questioned the wisdom of seeking written legal submissions upon the principles to be applied to applications for restriction orders in respect of their anonymity before the Inquiry has received the applications themselves. I am content that the views of those core participants should be accommodated. Since the hearing of this issue has been put back there is no longer a need to shorten the timetable towards the hearing.
42. The police services have a policy neither to confirm nor deny certain facts on public interest grounds ("NCND"). The policy has received judicial recognition but the application of the policy has thrown up exceptions and qualifications. On other occasions courts have overruled a refusal to disclose or disapproved of an earlier failure to make disclosure when a greater public interest has been held to prevail. The Inquiry has sought from the Cabinet Office a witness statement explaining the genesis and development of the NCND policy, identifying the limitations of and exceptions to the policy that are recognised by Her Majesty's Government. The witness statement, when received, will be circulated to core participants before they are required to submit applications or make written submissions.
43. I informed those core participants who stated in their application for designation that they wished to remain anonymous that they would be treated as anonymous pending a formal application for a restriction order

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under section 19. Now is the time for core participants to make their formal application for anonymity if they wish. By the operation of rule 12 of The Inquiry Rules 2006 when an application for anonymity is under consideration the applicant's identity is 'potentially restricted evidence' and is protected from disclosure until such time as the application has been determined by the chairman.

44. Subject to further representations as to the time limits I impose (to be received within 7 days), I shall make the following directions. It is important to note that they apply only to core participant applications for restriction orders. They do not apply to applications that may be received from those who have not been designated core participants or have ceased to be designated core participants by 4 pm Friday, 8 January 2016.
- (1) A Cabinet Office witness statement will be circulated by the Inquiry on or shortly after Friday, 15 January 2016.
 - (2) By 4 pm on Friday, 29 January 2016 the Inquiry counsel team will circulate a note on the legal principles to be applied to applications for restriction orders.
 - (3) By 4 pm on Friday, 12 February 2016 any core participant who wishes shall file their application for a restriction order giving anonymity under section 19 of The Inquiries Act 2005. The grounds for the application should be stated in open and, if appropriate, in closed documents supported by the evidence on which the applicant relies. The application must specify the terms of the restriction order sought and should address the legal test to be applied.
 - (4) Upon receipt of the applications the Inquiry team will check the applications for their open and closed content. Once the Inquiry is satisfied that the open and closed applications are properly separated, the open applications will be circulated to other core participants.
 - (5) Also by 4 pm on Friday, 12 February 2016 the Metropolitan Police Service and any other state or police institution core participant who wishes to do so shall file written submissions (supported by any necessary evidence) as to the legal principles that should be applied by the Inquiry to applications for restriction orders (including but not limited to protection from identification) under section 19 of The Inquiries Act 2005.
 - (6) Shared or separate written responses (see paragraphs 31 and 32 above) to the submissions made by the Metropolitan Police Service and other state or police institution under (5) above shall be filed with the Inquiry by 4 pm on Friday, 4 March 2016.

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- (7) By 4 pm on Friday, 11 March 2016 the Inquiry will notify recognised legal representatives and unrepresented core participants whether an oral hearing on the legal principles applicable to section 19 applications is needed and, if so, what representation at the hearing for publicly funded core participants the Inquiry will approve.
- (8) If the legal principles hearing is to take place, by 4 pm on Tuesday, 15 March 2016 a consolidated bundle of authorities will be prepared, copied and distributed by the Inquiry.
- (9) If necessary, the oral legal principles hearing will take place on Tuesday 22 March and Wednesday 23 March 2016.
- (10) A ruling in principle will be published on or before 15 April 2016.
- (11) By 4 pm on 29 April 2016 the core participants shall submit open and closed written submissions as to the legal and factual merits of their application for anonymity together with any supplementary evidence on which they wish to rely. Publicly funded core participants are reminded that prior approval must be sought for the instruction of an expert.
- (12) Submissions and evidence will be checked by the Inquiry to ensure the proper separation of open and closed content. The open material will be circulated to core participants.
- (13) Any responses to applications for anonymity to be filed by 4 pm on Friday, 13 May 2016. Subject to further application to the chairman there will be a single joint response from non-police, non-state core participants to applications made by current or former police officers.
- (14) By 4 pm on Tuesday, 17 May 2016 the Inquiry will notify core participants whether an oral hearing of all or any of the applications for anonymity is needed and, if so, what representation at the hearing for publicly funded core participants the Inquiry will approve.
- (15) The hearing, if necessary, to be listed for a date to be fixed.
- (16) Rulings in due course.

Timetable: Identities of deceased children (date to be notified)

45. It does not at the moment seem to me that any core participant outside category [F] Relatives of deceased children has a legitimate interest in participating in the resolution of this preliminary issue. The issues of law that arise are (1) whether the state has a duty to disclose to the parents of a deceased child that the identity of that child was used for police purposes and (2) if there is a public interest test to be applied what does it comprise and how is it to be measured. I have postponed the hearing of this

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preliminary issue until the legal principles that apply to section 19 applications have been considered because there may be some common issues that arise.

46. At present there is only one core participant in this category. Mrs Shaw has already received confidential information from the Metropolitan Police Service that she is not, under the terms of its receipt, permitted to reveal. There were two other applicants for core participant status in this category. I declined to make the designation in their cases. However, they were both represented by Jules Carey of Bindmans when they made their applications. I shall invite RDCA and Mr Peters, represented by Mr Carey, to participate in the resolution of the deceased children preliminary issues and will consider a costs award for that purpose. At present, despite the written representations made by letter sent by email on 1 December 2015 by Harriet Wistrich of Birnberg Peirce and Partners, I find it difficult to identify the basis on which other core participants would have a sufficient interest to justify participation. I shall, however, provide Ms Wistrich with the opportunity to make further written submissions on this issue before the timetable for an oral hearing is set.
47. I shall issue a timetable and directions on this issue in due course.

Costs awards

48. There will be issued simultaneously with this ruling letters to core participants setting out the terms of the awards made and the reasons for the award or the refusal of the award as the case may be. A list of those core participants in receipt of public funding will accompany this ruling.
49. There are over 100 non-police, non-state core participants. Very sensibly applications have been made by recognised legal representatives on behalf of groups of applicants because, I suspect, it is appreciated that in the preliminary stage of the Inquiry interests will be common to core participants both within and across the categories [D] to [M]. On the other hand, some recognised legal representatives have made separate group applications on behalf of core participants according to the category in which they appear.
50. The issue arises as to how paragraph 2.g. of the Secretary of State's determination is to be interpreted should a recognised legal representative find it necessary to exceed the Secretary of State's limitation on the maximum number of hours to be claimed in each week. Does paragraph 2.g. apply to each member of the recognised legal representative's legal team in respect of an award to each core participant client or does it apply to each member of the team working under an award made to the group of core participants whom the recognised legal representative represents?

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51. The issue is, in my view, arguable both ways. There is a third possibility, namely that the maximum applies to an award made to each group of core participants with the same or a similar interest in the subject matter of the Inquiry. The interpretation of paragraph 2.g. is not without difficulty in the circumstances of this Inquiry.
52. For the avoidance of doubt I state that the costs awards letters issued by the Inquiry are addressed to the core participants individually. However, it should not be thought that this provides any mandate to claim the maximum number of hours in respect of each client and each member of the recognised legal representative's legal team. The conditions stated in the award letters under paragraph 2.b. - e. of the determination provide the effective limit on the work properly to be carried out under the awards I have made. My provisional assessment is that the limit of 40 hours per week for each member of the team in respect of each recognised legal representative's *group* should be more than adequate, and in some cases much more than adequate, properly to represent the interests of the core participants in the preliminary issues.
53. For budgeting purposes it is necessary to state that the costs awards made in the present round will authorise work to be done by recognised legal representatives up to and including 31 March 2016. By that date the duration of the awards will have been reviewed by the Inquiry (so as to accommodate the extended timetable for anonymity decisions and the deceased children issue) and notice given to the recognised legal representatives of the extent to which the period of the award will be extended.

16 December 2015

Corrected 22 December 2015

Corrected 19 January 2016

Sir Christopher Pitchford
Chairman, Undercover Policing Inquiry