

## Preliminary Issue: Undertakings Directions

1. On 16 December 2015, in paragraph 10 of the first Costs Awards Ruling I refused applications for costs awards made by core participants who were serving and former police officers represented by Scott Ingram of Slater and Gordon and Robert Roscoe of Victor Lissack, Roscoe and Coleman. The ground of refusal was that there was an alternative source of funding available to the applicants. Having examined the Police Federation Fund Rules as amended to June 2015, and in particular rules 14, 16, 17 and 24.13, it seemed to me that each of the applicants had proper grounds for application to the Police Federation for legal assistance funding at the Inquiry. Rosa Curling of Leigh Day had on behalf of Peter Francis already made such an application. As I understand it, as a result of my decision, each of the remaining core participants who were present and former police officers submitted an urgent application to the Federation. They and Mr Francis are still awaiting a decision.
2. On 11 January 2016 Rosa Curling of Leigh Day, recognised legal representative of Peter Francis, sought advice from the Inquiry as to the appropriate way to proceed in the absence of a decision from the Police Federation. The Inquiry has since been seeking information as to the progress of the applications for assistance.
3. Yesterday, Tuesday, 26 January 2016, at my request, the Solicitor to the Inquiry sought from Mr Andrew Ward, the Deputy General Secretary of the Police Federation, an indication as to the date by which decisions could be expected. Mr Duggart was informed that the decision-maker was Mr Ward himself. Decisions could be made “by the end of next week”, that is by the close of office hours on Friday, 5 February 2016.
4. Mr Ward is aware of the importance of the next period of weeks in the life of the Inquiry and of the need for the officers immediately to receive legal advice and assistance upon the issues of Undertakings and Restriction Orders.
5. At paragraph 38 of the first Costs Awards Ruling I gave directions for a new Undertakings timetable. The Inquiry’s counsel team has already circulated its Note to the inquiry and core participants. Core participants are, under the existing timetable, due to submit position statements as to undertakings to be sought from the Attorney General or the Metropolitan Police Service by 4 pm on Friday, 29 January 2016. It is clear that the police officer core participants awaiting a funding decision are not in a position to meet the timetable.

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6. At paragraph 44 of the first Costs Award Ruling I also gave directions for a new Restriction Orders timetable. The Cabinet Office witness statement has already been circulated and on Friday, 29 January before 4 pm the Inquiry counsel team's Note will be circulated to the Inquiry and core participants. Under the existing timetable core participants are to submit applications for a restriction order giving anonymity by 4 pm on Friday, 12 February 2016. This is clearly an important issue for police officers. Assuming the police officers receive a favourable response to their funding applications by 4 pm on 5 February, it is my judgement that seven days is insufficient time for proper consideration to be given to the issue of anonymity, at least by some of the officers, and further time is needed.
7. I very much regret that this situation has arisen. It seems to me that the officers' funding situation should have been anticipated several months ago and resolved well before the end of last year. As it is time and public funds have been wasted. In order to minimise the cost and to ensure that proper attention is given to these important issues I am going re-issue the timetables as follows.

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8. I give the following directions in **substitution** for those of 16 and 22 December 2015:
  - (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, **19 February** 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 of the first Costs Awards Ruling) 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, **26 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, **4 March** 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, **11 March** 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

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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, and provide directions for the filing of skeletons and the preparation of a bundle of authorities.

- (7) If necessary the oral hearing will take place **on a day to be fixed after 1 April 2016** and any written requests for undertakings will follow in due course.

For ease of reference I have highlighted the relevant changes in dates.

### Restriction Orders

9. I give the following directions in **substitution** for those of 16 and 22 December 2015:
  - (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 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.
  - (4) By 4 pm on Friday, **19 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.
  - (5) 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.
  - (6) Shared or separate written responses (see paragraphs 31 and 32 of the first Costs Awards Ruling) to the submissions made by the Metropolitan Police Service and other state or police institution under (3) 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 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.

I have found it necessary to make but one date change in paragraph (4) above which applies to applications for anonymity by all non-state core participants.

27 January 2016

Sir Christopher Pitchford  
Chairman, Undercover Policing Inquiry