

UNDERCOVER POLICING INQUIRY

ANNEX TO COUNSEL TO THE INQUIRY'S NOTE DATED 22 MARCH 2016 NON-EXHAUSTIVE LIST OF PUBLIC INTEREST FACTORS

Public Interest in Favour of Openness	
1	Open evidence may prompt persons with relevant evidence or information to give to the Inquiry to come forwards and assist the Inquiry with its work. There is a public interest in a thorough inquiry.
2	Open evidence permits those who may be affected by it to respond to it. This goes both to the public interest in thoroughness and to the public interest in fairness to those affected by the evidence.
3	There is a public interest in police officers being investigated as publicly as possible.
4	Open evidence of malpractice permits its victims to know that they have been affected. There is a public interest in identifying victims of improper undercover policing. This includes, but is not limited to, persons who may have been the subject of miscarriages of justice. There is a public interest in the administration of justice which is engaged where there has been the potential for a miscarriage of justice.
5	Open evidence permits the public and core participants to see and to scrutinise the way in which the Inquiry is working. It promotes public confidence in the work of the Inquiry and provides an added incentive for the Inquiry to maintain high standards. There is a public interest in working transparently.
6	Open evidence permits the public to know in more detail what has happened. This assists in addressing the public concerns which have led to the Inquiry and the restoration of public confidence. There is, in short, a public interest in openness. The concerns which have led to the Inquiry are numerous and profound. They go to maintenance of the rule of law (e.g. miscarriages of justice); the role of the police in a democratic society (e.g. undercover policing in relation to politicians and protesters); police attitudes to race (e.g. undercover policing in relation to racial justice campaigns, the investigation into the murder of Stephen Lawrence and the Stephen Lawrence Inquiry); police attitudes to women (e.g. deceitful sexual relationships entered into by undercover police officers); and the proper management and regulation of undercover policing.

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7	Alternative methods of protecting an individual's safety or of protecting methodology may tend against the need for restriction but it will depend on their availability and adequacy in each case.
Public Interest in Favour of Restriction	
8	Anonymity may prompt persons with relevant evidence or information to come forward or remain involved when they would not have done so if anonymity were unavailable/refused.
9	There is a public interest in protecting undercover police officers, their families and others associated with them from harm. This is engaged where unrestricted evidence would create or increase a risk of harm.
10	There is a public interest in protecting witnesses and those referred to in evidence from harm (including psychiatric harm or unnecessary distress), and from unwarranted intrusion on their private lives and homes, and those of their families and others associated with them.
11	There is a public interest in maintaining the effectiveness of legitimate undercover police tactics, techniques and procedures. This is engaged where unrestricted evidence would impair the future effectiveness of undercover policing methods. It is related to the maintenance of law and order.
12	There is a public interest in not harming the recruitment and retention of undercover police officers. This is engaged where unrestricted evidence would tend to discourage either recruitment or retention by undermining confidence in the level of protection which will be afforded to undercover police officers in the future. It relates to the public interest in the maintenance of law and order.
13	There is a public interest in respecting any relevant confidence (whether express or implied) between a police force and an undercover officer. In particular there is a public interest in respecting a commitment to keep confidential the identity of an undercover police officer. A decision not to respect such a confidence goes to the fairness of the treatment of the person protected by the confidence. It might also undermine the willingness of police officers in future to volunteer for undercover work. It therefore goes to the maintenance of law and order.

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14	There may be a public interest in preventing the publication of information which has been provided confidentially to a person by a third party. For example, intelligence provided by a member of the public or a foreign police force. A decision not to respect such a confidence may go to the fairness to the person or body concerned. It might also undermine the willingness of members of the public to provide intelligence, or of foreign police forces to share information. This interest therefore also goes to the maintenance of law and order.
15	There is a public interest in protecting the integrity of lawful ongoing police investigations. It is also a legal requirement to do so.
16	There is a public interest in protecting ongoing prosecutions from prejudice. It is also a legal requirement to do so.
17	There is a public interest in avoiding the publication of evidence which, though itself innocuous, would lead by implication or process of elimination (whether alone or in combination with other evidence or material in the public domain) to the disclosure of other information which it is not in the public interest to disclose.
18	The Chairman should have in mind the practicalities of conducting hearings where the evidence being given requires repeatedly moving from closed to open hearings. Note s.19(4)(d) of the 2005 Act in this regard. The disruption together with the risk of inadvertent disclosures may reinforce a case for restrictions.
Factors where the Public Interest can tend either way depending on facts	
19	The Inquiry may in some circumstances secure greater frankness and more detailed explanations or expressions of opinion if evidence is given in closed session without any constraint caused by the need to avoid revealing sensitive information. In other circumstances it may secure better quality evidence if the evidence is given and tested in public.
20	The existence of information about the alleged identity of undercover officers already in the public domain could weaken or strengthen the need for protection depending on the facts of each case.