

Speaking Note

1. Good afternoon. My name is Piers Doggart and I am the Solicitor to the Undercover Policing Inquiry. On my left is my Deputy, Stephen Brown.
2. We thought it would be helpful to start by explaining why we are here today. All of the members of the Inquiry team, from the Chairman down, want the Inquiry to be of real value. A key factor to our success in achieving this will be how we communicate. It is important that people who are interested in the Inquiry know what we are doing, and how and why we are doing it. We have therefore already responded to many general enquiries, provided updates and information to core participants and their legal representatives, and – of course – issued regular updates on both our website and via our twitter account. But communication is not a one way process. We also know how important it is to listen to, to understand and to take on board the concerns of those interested, engaged with, or affected by the Inquiry. The Chairman was very keen that the Inquiry was represented at this conference and, as he anticipated, Stephen and I have found it invaluable spending the past two days here, listening to the eminent speakers and getting a real insight into the views and concerns which they - and you as attendees - have expressed.
3. As the Chairman stated in his opening remarks, the Inquiry's priority is to discover the truth. Ever since the Inquiry started work, it has been a primary objective of the team to achieve this by engaging with all of those people who have an interest in the subject matter of the Inquiry. We recognise that the Inquiry process may not be well understood by many of the people we need to engage with, it is rather different to the process in adversarial proceedings such as civil damages claims or criminal proceedings, and – speaking as someone relatively new to the process myself – it can appear complicated at times. Therefore another of our key objectives is to demystify how the Inquiry

works, to explain clearly the processes we are following and are going to follow. In this way we want to ensure that those engaged with the Inquiry can understand these processes and are able to help us to navigate our course in the most effective way.

4. We will strive to ensure that this two way dialogue continues as the Inquiry progresses over the next couple of years.
5. The conference agenda described this slot as an “official update from the Inquiry”. In the spirit of this, I will now do my best to describe the scope of our work, the steps we have taken to date, the progress we have made, and our next intended steps.
6. I know that many of you will be familiar with the Terms of Reference for the Inquiry. It is worth reminding ourselves how wide those terms are. We are tasked to “inquire into and report on undercover police operations conducted by English and Welsh police forces in England and Wales since 1968”, a period of 48 years. Our task will cover the work of the Special Demonstration Squad and the National Public Order Intelligence Unit, but is not limited to their work. As you will know, some of the activities we will be considering have already been subject to scrutiny, for example by Mark Ellison QC or Operation Herne, but many have not.
7. By the terms of reference we have been asked to pay particular regard to six specific aspects of undercover policing. Crudely summarised, these are as follows:
 - i. the role and contribution made by undercover policing,
 - ii. the motivation for, and the effect of it upon individuals and members of the public,
 - iii. the adequacy of the justification for it,
 - iv. the state of awareness of the tactic across government,
 - v. the oversight and governance applied to it, and
 - vi. the selection, training, management and care of undercover officers.

8. The terms of reference provide that if we identify any cases where a miscarriage of justice may have occurred as a result of undercover policing, we then have an obligation to refer these cases to a miscarriages of justice panel. Therefore the Inquiry itself will not be responsible for any formal investigation in the event of a potential miscarriage of justice.
9. As well as the six areas noted above, it is important that we continue to bear in mind that we have also been asked to “identify and assess the adequacy of the statutory, policy and judicial regulation of undercover policing”.
10. In an attempt to break down the rather daunting nature of the scope of the task required of the Inquiry, in his opening remarks made on 28 July last year the Chairman announced that the Inquiry would adopt a modular approach. This can be summarised as follows. The first module will cover what has happened in the past. The second module will then investigate systemic issues affecting the use of undercover police such as selection, training and oversight. The third and final module will consider, informed by and drawing lessons from the first two, how undercover policing should be conducted, managed and governed in the future.
11. Over the last few months, a large part of our work has involved determining preliminary legal issues. I will speak about our progress on these issues first, before I update you on the steps we have taken to seek, preserve and receive evidence. In respect of each issue we have circulated a note from Counsel to the Inquiry, received submissions from those interested in or affected by the issue and – where necessary - we have had hearings to allow the Inquiry Chairman to hear argument on these issues. For example, on 7 October last year we had a hearing to decide who should be core participants (there are exactly 200 to date), and on 4 November we had a further hearing to determine legal representation and which of those

core participants should receive funding, at public expense, for their legal representation. To date the Inquiry has appointed 16 recognised legal representatives, representing the interests of 174 core participants.

12. We also sought submissions on the standard of proof that the Chairman should apply when deciding issues of fact. As outlined in a note drafted by Counsel to the Inquiry on 16 December, the question was whether the standard applied should be the criminal standard (beyond reasonable doubt) or the civil standard (then balance of probabilities), or a flexible standard. In the event there was little substantive difference between any of the core participants on this issue and therefore the Chairman decided – in a ruling issued on 13 January - to adopt a flexible standard.
13. The next issue which has been considered is the legal approach in principle which should be taken by the Chairman when considering applications for what are described as Restriction orders. “Restriction order” is the legal term given to the power conferred on the Chairman by section 19 of the Inquiries Act 2005 to prohibit - by order - the disclosure or publication of any evidence or documents given to the Inquiry. As might have been anticipated, this was an issue on which there was a substantive difference between the positions adopted by state and non-state core participants.
14. Following the service of submissions and evidence, there was a two day hearing of the legal arguments around this issue on 22 and 23 March 2016. Some of you may have attended this hearing, or read reports in the press about it. As the length of the hearing suggests, detailed argument was advanced by all parties – the authorities bundle alone contained 140 separate references. As with all of our hearings to date, a transcript of each day of the proceedings is on the Inquiry website. I realise that my reference just now to 140 legal authorities may not provide much encouragement to everyone to rush home and

read the entire transcript, but the clear articulation of the separate positions was to the credit of all those who spoke, and of those on whose instructions they acted.

15. You may be disappointed, but probably not surprised, to learn that I am not able to say anything about the way in which the Chairman is likely to determine this issue. We anticipate that his ruling will be circulated on 3 May 2016, although if it is ready to issue before that date, we will do so.
16. Once this ruling has been issued, the Inquiry will start to progress the applications for restriction orders that it has received to date. It is at this stage that the issue of whether a police officer's real or assumed identity may be withheld will be determined. Directions setting out timelines for the service of further evidence and submissions in connection with this were issued on Friday (and appear on the Inquiry website). At this point, both those making an application and those seeking to oppose it, will do so with the benefit of knowing – from the ruling of 3 May - the legal principles that the Chairman will be applying and the way in which he will approach these.
17. Moving on from the issues around restriction orders the next hearing, on the 27 of April, will consider the scope of any undertakings which the Inquiry should seek from the Attorney General. These undertakings would cover the use to which evidence given to the Inquiry can be put in any future criminal investigation or criminal prosecution. The benefit of undertakings to those giving evidence would be to allow witnesses to give evidence freely in the knowledge that anything they might say in evidence before the Inquiry about their conduct could not be used in a future criminal investigation or prosecution of them. This would also ensure that Inquiry received from each witness all evidence which is relevant to its deliberations.

18. At the undertakings hearing the Chairman will also consider the particular argument that the protection should extend to evidence provided by a non-state witness about any conduct, whether by themselves or by others. Any undertaking would ultimately be provided by the Attorney General, as he has the power to decide whether a prosecution ought to proceed, and he is intending to be represented at the forthcoming hearing.
19. The final preliminary issue announced to date relates to the way in which the Inquiry should treat the issue of the use of identities of deceased children by the police. Should a hearing be necessary, this will take place on 22 June. In this regard the Chairman will have to consider whether the state has a duty to disclose to the parents of a deceased child that their child's identity was used for police purposes and, if there is a public interest test to be applied in deciding that, what does it comprise and how is it measured.
20. The above hearings have therefore set some of the foundations of the work for the Inquiry going forward.
21. Alongside our work on the preliminary issues already described, we have also already sought to identify, preserve and receive evidence relevant to our tasks ahead. We already have a large volume of documents from a number of public bodies, principally police forces.
22. I appreciate that not everyone will be familiar with the statutory powers that the Inquiry has to obtain evidence, so I thought it would be helpful to explain a little bit about the process that we have followed in order to progress our investigations. All of this will be more formally documented and evidenced in due course.
23. The first thing that we have done is to establish what categories of documents are held by an organisation, how and where they are stored and what steps are being taken to ensure they are

properly preserved. For example, which computer systems do they operate? If paper files exist, where exactly are these held? What precautions have been taken to ensure material potentially relevant to the Inquiry is being preserved?

24. Once we have established what material is held, we can make a formal written request for evidence under rule 9 of the Inquiry Rules – a rule 9 request. This may be a request for a witness statement, or a request for particular information or evidence to be provided within a certain time period. We have already issued 122 of these and received a large number of responses.
25. In the event that a person or organisation does not co-operate with a rule 9 request, the Chairman has the power - under section 21 of the Inquiries Act - to serve a notice requiring a person to provide the evidence requested. A failure to comply with such a notice carries a criminal sanction.
26. So far, our experience has been that organisations and individuals have almost invariably been eager to co-operate with the Inquiry. Information has been provided willingly and I am pleased to say that to date there has been no need to serve a section 21 notice on an unwilling organisation or individual.
27. Of course, we are keenly aware of the concerns that have been expressed in the media and elsewhere about the risk of documents being destroyed or withheld, particularly by police bodies. These concerns are understandable, particularly given the issues which Mark Ellison QC encountered and identified in his report, and we take the issue extremely seriously. It will be of paramount importance that when the Inquiry delivers its conclusions, that these are reached, and – as importantly - can be shown to have been reached, on the basis of full and frank disclosure having been made to it. Under section 35 of the Inquiries Act it is a criminal offence for a person to suppress, conceal, alter or destroy a document in the course of an Inquiry where the document is relevant to the Inquiry's work.

We have reminded all of those from whom we have sought evidence or assistance of the importance and effect of section 35 and the need for them to be able to show that all relevant documents have been preserved and produced to the Inquiry.

28. We have also circulated in January a draft protocol for disclosure. This is still under consideration and discussion (and we are considering the comments we received from all core participants), but this protocol deliberately places a specific requirement on the Metropolitan Police Service to keep the Inquiry team informed as to the steps which it is taking to preserve information. I should add that we have also inspected the document systems operated by the Metropolitan Police Service and Operation Herne. We have also already asked for, and been provided with, a signed statement covering this issue and this will be published in due course.
29. As I hope all of the above illustrates, we have put steps in place to be as transparent as possible. We are a public Inquiry, and we therefore aim to publish as much as we can about our work and the way in which we are conducting it. For example, as I have previously mentioned, all of the transcripts of all of the hearings to date have been published on the website immediately following the hearing, and remain there. Although the layout of the website is evolving as the Inquiry progresses, I do commend it to you as a “one stop shop” or a library for the materials published by the Inquiry to date, and the transcripts, rulings and other orders issued in the course of our business. We will continue to keep this up to date. As part of the evolution of the website we will be inviting feedback on its usability – please do feel free to email us with any views or suggestions you have about this.
30. That is a brief summary of what the Inquiry team have been doing so far. Looking ahead, we will continue to secure documentary evidence from public bodies. We will also need to gather evidence from core participants and witnesses.

31. In due course a list of issues will be prepared by Counsel to the Inquiry. The purpose of this document will be to help structure the Inquiry's work, and to allow us to focus our investigations in the lead up to the oral hearings. It will not be set in stone, and people who have an interest in the Inquiry will be invited to make suggestions about further possible issues. Of course, as the Inquiry progresses, it may be appropriate for new issues to be added, or for existing issues to be removed - depending on how the evidence emerges.

32. Thank you for listening today, and thank you to the conference organisers for inviting Stephen and I to attend. Looking ahead, we are very keen to continue the process of engagement. We are happy to respond to enquiries directed through the Inquiry website, and would be very happy to attend further events relevant to our work, provided that our attendance was considered helpful and welcome.