

## **IN THE UNDERCOVER POLICING INQUIRY**

For hearing (provisional) 22 June 2016

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### **PRINCIPLES RE DECEASED CHILDREN'S IDENTITIES METROPOLITAN POLICE SERVICE SUBMISSIONS DATED 27 MAY 2016**

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#### **Introduction**

1. As counsel to the Inquiry correctly note, in 2013 the Commissioner apologised for the shock and offence caused by the use of the identities of deceased children by Metropolitan Police Service undercover officers. The Inquiry will rightly wish to examine the motives for the MPS employing this tactic, and why (as seems likely) there was insufficient thought given to the effect of the tactic on others.
2. The effect of this tactic was not just that the identities of dead children were used, but that false stories were told, as part of the process of legend-building, about the undercover officers' "parents". The MPS wishes at the outset of these submissions to acknowledge and apologise for the upsetting details that the further (and proper) investigation of this issue is likely to bring to light.
3. The issues identified by the Chairman on 16th December 2015 (and 15th April 2016) are:
  - 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
  - if there is a public interest test to be applied what does it comprise and how is it to be measured.

### **Duty to Disclose?**

4. The MPS concurs with the conclusion of Counsel to the Inquiry that there is no freestanding legal obligation on the state at common law, in public law, or pursuant to the Human Rights Act 1998 (with reference to Article 8 of the Convention) to disclose that the identity of the child was used for police purposes. The MPS also agrees with the legal analysis supporting that conclusion.

### **Discrete Public Interest Test?**

5. The MPS agrees that the application of the public interest and the assessment of the relevant factors in respect of restriction orders touching on the identities of deceased children presents particular difficulties. This is because no assumptions can be made about the views of a family, individually or collectively, either as to the receipt of information about the use to which the identity of a deceased child had been put, or as to the wider disclosure of such information.
6. When it comes to determining individual applications in due course, the Inquiry may wish to receive and assess information held by the MPS. A number of families and individuals have approached both the MPS and the Inquiry seeking clarification of the use to which their relatives' identities may have been put. Some of the approaches to the MPS were received via the hotline set up by Operation Herne in February 2013. This was publicized in the national media and was open on 9<sup>th</sup> and 10<sup>th</sup> February 2013. Enquiry forms were completed in respect of each call received. This information is held in confidence by the MPS and the Inquiry may wish to consider in due course issuing a request pursuant to Rule 9 of the Inquiry Rules 2006 to the MPS to provide any information that touches on application for individual restriction orders.

7. The MPS agrees that where a restriction order relating to the use of a deceased child's identity is sought and refused, fairness dictates that close living relatives should, where possible, be notified by the police in advance of disclosure to core participants or the public generally. Given that the Inquiry clearly and correctly anticipates that it would consider any representations made by relatives in response to such notification, the Chairman might wish to consider expressing any such potential refusal of a restriction order on a provisional basis.
  
8. The MPS is anxious to ensure that any such notification is not subject to unnecessary delay. To that end, preliminary scoping work is being undertaken by the MPS with a view to establishing whether parents or other next of kin can be identified and whether means of contacting those persons can be established. The Inquiry is aware of this work and will continue to be provided with the results of it. The exercise will not necessarily be straightforward, not least because of the passage of time. The identities which were either used or considered highly likely to have been used were with very few exceptions those of children born between the 1940s and 1970s.
  
9. The MPS agrees that this is not the stage to determine how to approach the issue of allaying the fears of families whose child's identity was *not* in fact used.

**JONATHAN HALL QC**

**SARAH LE FEVRE**

**27 MAY 2016**

