

IN THE UNDERCOVER POLICING INQUIRY

NON-POLICE, NON-STATE CORE PARTICIPANTS' SUBMISSIONS IN RELATION TO THE ANONYMITY APPLICATIONS OF JAIPUR AND KARACHI

Introduction

1. The NPSCPs' contend that it would be wholly wrong for restriction orders to be granted in respect of Jaipur and Karachi given the critical role it is currently proposed they should play in the Inquiry. The risk assessments for which these officers are to be responsible will underpin the Inquiry's subsequent decisions as to whether or not the Inquiry grants anonymity to the undercover officers whose behaviour is under scrutiny. These decisions go to the heart of public confidence in the Inquiry's process and are central to its ability to fulfil the key functions of allaying public concern and getting to the truth.
2. Far from the proposed orders being conducive to the Inquiry fulfilling its terms of reference, they would undermine public confidence in the restriction order process and may preclude the Inquiry from achieving the very purpose for which it was established.

The particular public interest in transparency given the role to be played by Jaipur and Karachi

3. The restriction orders legal principles ruling makes clear the central importance of openness and transparency in allaying the public concern that was the reason for this Inquiry¹.
4. The principal means available to the Inquiry to allay that public concern is public accessibility to its proceedings². However, its ability to be fully open

¹ RO legal principles ruling [82].

is constrained by the competing factors identified in the legal principles ruling. The Inquiry's ability to command public confidence and ultimately to allay public concern turns in large part on public confidence in the decisions it reaches in striking this balance and the procedure it adopts³. Decisions that information must be withheld from public scrutiny risk exacerbating public concern unless there is strong public confidence in the process and it is seen to be as transparent and fair as possible. The role it is proposed that Jaipur and Karachi should play is pivotal to that process.

5. Anonymity decisions will be made on the basis of risk assessments provided by Jaipur and/or Karachi. So far the NPSCPs and the public have seen very limited information about these risk assessments. At least one anonymity restriction order (in the case of Cairo) has been made without any information at all about the underlying risk assessment being provided to core participants or the public. Core participants and the public are effectively asked to accept decisions that relevant information is to be withheld from them on the basis of evidence which they cannot see. Without knowledge of the evidence on which they are founded, such decisions are effectively unchallengeable. This requires a very high degree of trust in the process of risk assessment. The officers producing risk assessments and the procedure they have adopted must be transparent and open to scrutiny to ensure, so far as possible, that they are, and are seen to be, robust, fair and objective in their role.
6. Put shortly, the risk assessments are the foundation of the decision-making process that will shape the nature of this Inquiry and ultimately whether it is viewed as having delivered fair and accountable scrutiny such as to allay public concern. It cannot be right for responsibility for such risk assessments to rest on two anonymous officers, specially selected for the closeness of their connections to those they are assessing.

² RO legal principles ruling [104], [105], [109] & A.3.

³ RO legal principles ruling [104].

The countervailing public interest claimed by the MPS

7. The countervailing public interest advanced by the MPS as justifying protection of Jaipur and Karachi's identities is the claim that such secrecy is necessary in order to facilitate contact between those officers and the former members of the SDS and NPOIU, which will in turn assist the Inquiry to obtain evidence from them.
8. The NPSCPs challenge that claim on the following grounds.

The progress of the Inquiry will in fact be hindered, because J & K's risk assessments cannot properly be challenged

9. In addition to the overarching point made above', secrecy as to the identify of Jaipur and Karachi also affects the quality of the Inquiry's decision-making. Secrecy as to the identity of these officers precludes open and proper questioning of them concerning the process of risk assessment. There can be no proper public scrutiny of:
 - a. their qualifications to make such assessments;
 - b. the closeness of their friendships with the officers they are assessing;
 - c. what other roles they have held within the police;
 - d. other factors affecting their credibility.In the absence of such questioning, the Inquiry may find itself relying on risk assessments which are not thorough or impartial.
10. The Restriction Orders legal principles ruling at paragraphs 105 and 109 acknowledges the importance of the role to be played by CPs in testing the evidence presented to the Inquiry. It is submitted that the reasoning underpinning those paragraphs applies both at the stage of the Inquiry considering the substantive issues before it and at the stage of testing the evidence said to justify the making of a restriction order. If the Inquiry is

unable to get to the truth in relation to allegations going to risk, such that it makes restriction orders which, on proper testing of the evidence, could be shown not to be necessary, this has a knock-on effect on the Inquiry's ability to get to the truth more generally. Further, if restriction orders are granted on the basis of allegations against witnesses or CPs, which those individuals have no opportunity to challenge, this risks infecting the Inquiry's view of those individuals in circumstances which they are powerless to address.

There is a clear conflict of interest between J & K's roles as friends, colleagues and providers of support and their role as independent expert risk assessors

11. This conflict undermines public confidence in the reliability of the risk assessments to be relied on by the Inquiry and is highly likely also to undermine substantively Jaipur and Karachi's objectivity in making such assessments.

12. It is of note that the witness statement of DSI Hutchison acknowledges that Operation Motion (Jaipur and Karachi) exists primarily for the benefit of officers who have served in undercover roles, or in directly linked roles⁴ and the risk assessments served in support of the restriction order applications state that a "key factor underpinning the work of Op Motion is maintaining the trust and confidence of the SDS officers, which is achieved first and foremost by ensuring that their anonymity is maintained..."⁵. How can there be public confidence in the objectivity of risk assessments on which restriction order decisions are founded if the primary tasking of the officers who produce them is to benefit the officers concerned and ensure maintenance of their trust and confidence by ensuring that their anonymity is maintained? This fixes the officers with a professional objective to

⁴ 5th witness statement of DS Hutchison, undated, [4].

⁵ Risk assessments in respect of Jaipur and Karachi, both at [6.20].

influence the Inquiry's decision in favour of the granting of restriction orders.

13. Further, although the MPS acknowledges this conflict of interest⁶, the arguments it advances as to why maintaining the dual role is nonetheless necessary do not hold good. DSI Hutchison contends that the advantage in the risk assessments being completed by officers with intimate knowledge of the individuals and the nature of their deployments outweighs the benefit of independence⁷. The NPSCPs submit that given the vital importance of the objectivity of the risk assessments to the credibility of the Inquiry's decisions on openness, this cannot be right. This is not to say that debriefing and evidence gathering for the basis of risk assessment could never be conducted by officers with personal knowledge of the individuals concerned, but rather the task of evaluating such evidence and objectively assessing risk must be conducted by a person who:

- is, and is seen to be, free from personal links to those they are assessing;
- is not simultaneously tasked with providing support to those they are assessing;
- is not tasked with functions which depend on maintaining the anonymity of those they are assessing;
- is fully publicly accountable, such that their credibility and credentials for making objective risk assessments can be fully tested.

14. Further, it is not sufficient that the risk assessments of Jaipur and Karachi should be reviewed by DSI Hutchison and MPS counsel. Review is a different process to primary assessment. What is required is robust risk assessment by those who are in a position objectively to scrutinize and test the underlying material. And, given the centrality of this role to the credibility of the Inquiry, an argument based on lack of resources is

⁶ 5th witness statement of DS Hutchison, undated, [29].

⁷ 5th witness statement of DS Hutchison, undated, [30].

unconvincing. Ensuring public confidence in decisions to withhold information from public scrutiny is essential to the Inquiry's key function of allaying public concern. Ensuring that this aspect of the Inquiry is handled properly and fairly and in a way that commands public confidence is central to the Inquiry's effectiveness, particularly when the decisions in question are among the most important the Inquiry has to make. It should be a priority for resources.

15. In sum, the support and risk assessment roles can and should be performed by separate officers, so that whilst relevant information may be fed into the risk assessment process by supporting officers, assessment of risk can be, and can be seen to be, robust, objective and independent and those responsible for the assessments can be openly and publicly accountable.
16. This is wholly distinct from DSI Hutchison's suggestion that risk assessments might be "written up" by separate officers on the basis of information provided by Jaipur and Karachi⁸. The NPSCPs agree that this would indeed be a "false independence". The role of the independent risk assessor would be to gather relevant information from all available sources, to test it and to reach an objective, expert assessment.
17. If the support and risk assessment roles were split in this way, the need to protect the identities of the risk assessors falls away. On the occasions it is necessary for the risk assessors to meet with those they are assessing, appropriate precautions can be taken to protect the identities of those they are meeting unless or until a restriction order is refused. But this would not need to occur on the frequent or *ad hoc* or public basis said to be necessary for performance of the support role.
18. In any event, for the reasons set out below, the NPSCPs contend that the MPS evidence as to the risk of the identities of other officers or former

⁸ 5th witness statement of DS Hutchison, undated, [32].

officers being compromised if the identities of Jaipur and Karachi are made public is unconvincing.

MPS contention that disclosure of J & K's identity would compromise other officers is unconvincing

19. The MPS contends that if the identities of Jaipur and Karachi are made known then this increases the risk of compromising the identities of those former UCOs and related officers with whom they meet. The NPSCPs submit that any increase in risk is minimal and capable of being managed.

20. The scenario posited by the MPS is that if Jaipur and Karachi's identities are publicly known and they were to carry out liaison meetings with SDS officers in public places, then a person with an interest in the Inquiry could make the assumption that a person meeting with Jaipur and Karachi was an SDS officer and carry out further investigations to test that hypothesis⁹. First, the NPSCPs do not accept that there is a genuine need for such meetings to take place in public at all, or at least, if there is any such need, it is not of sufficient weight to outweigh the very strong interest in the identity of the risk assessors being open and transparent. But, in any event, the NPSCPs submit that the likelihood of public identification of Jaipur and Karachi leading to the identification of other officers is extremely remote:
 - a. Jaipur and Karachi presumably meet any number of people in public places. Only a few of these will be former SDS or NPOIU officers;
 - b. anyone who recognised Jaipur or Karachi in conjunction with their Op Motion role would therefore have to have some means of excluding the likelihood that the person met was *not* a former UCO. It is difficult to see how this could realistically be achieved;
 - c. the MPS suggest that facial recognition software might be deployed, but this is fanciful. It would not only require the interested observer to obtain a photograph of the person concerned and to have access to, and the knowledge and inclination to use, facial recognition software,

⁹ Risk assessments [6.22].

but even in this highly unlikely event, the capabilities of such software, even in the hands of sophisticated law enforcement agencies such as the FBI, are open to question, particularly when most undercover officers' appearances will have changed over time¹⁰.

- d. it is of note that the MPS do not suggest that such means have to date led to campaigners identifying any individual as a UCO, notwithstanding that, as a result of the intimate roles played by UCOs in campaigners' lives, they will be in possession of numerous photographs of those they suspect of having been such.
21. Further, in so far as it is suggested that Jaipur and Karachi might be subjected to surveillance by campaigners, it should be put on record that the Undercover Research Group ["URG"] that is the focus of much of the MPS evidence, has never engaged in, nor would it engage in such surveillance. Reference is made to the witness statement of Donal O'Driscoll appended to these submissions. The unfair mischaracterisation of URG and its work is addressed in further detail in the following section.
22. The NPSCPs also point out that maintenance of the trust and confidence of the former SDS and NPOIU officers in Operation Motion cannot properly be founded on an assurance that "first and foremost" their anonymity will be maintained¹¹. Neither Operation Motion, nor the MPS, is in a position to give such an assurance. As is made clear in the legal principles ruling, the starting point of the Inquiry is openness and transparency. There will be no blanket restriction order protecting all UCO identities. Operation Motion must, therefore, work with officers on the basis that, where appropriate, the Inquiry will, quite properly, order that identities be disclosed. There is no benefit to the Inquiry, or the officers, of Jaipur and Karachi operating on the basis of a false assurance.

10 <https://www.theguardian.com/us-news/2016/jun/15/fbi-facial-recognition-software-photo-database-privacy>.

¹¹ This is contention made by the MPS – see risk assessments [6.20]

MPS complaint of risk of “profiling” of J & K is misconceived

23. The MPS’ submissions on the risk of Jaipur and Karachi being “profiled” rest on an unfair mischaracterisation of the activities of the URG and other campaigners and, significantly, display a continued failure to recognise the obligation on the police (and the value) of public accountability.
24. For example, the risk assessments assert that *“since the SDS closed in 2008 there is no current management structure to expose and therefore the next best thing for the activists and researchers would be to expose the de facto management which now exists for the SDS officers, namely the officers involved in running Op Motion.”*¹² The assessments then point to an article on the URG website, which names senior officers who are alleged to have held supervisory posts with responsibility for the SDS, NPOIU or a national remit in respect of covert or undercover policing or domestic extremism¹³. DSI Hutchison in his witness statement gives further examples of how the URG and others have published profiles of other serving or former officers with links to undercover policing.
25. The whole tenor of the MPS position is that such profiles are inappropriate, contrary to the public interest and matters from which the officers concerned might legitimately expect to be protected. The NPSCPs submit that this is wholly misconceived.
26. Police officers are public officials. Public scrutiny is the foundation of policing by consent.¹⁴

¹² Risk assessments [6.6].

¹³ Risk assessments [6.8]-[6.11].

¹⁴ See, for example, the statement of Sir Hugh Orde, then President of ACPO, to the Leveson Inquiry: *“The police service exists to keep people safe, and has been given significant powers within the law in order to do so. It is right that a public service with such powers should be held fully accountable and be as open and transparent as possible, within operational limitations. We have a positive duty, in my view, to inform and engage with the media as an important part of the communities we police, under the British model of policing by consent.”* <http://webarchive.nationalarchives.gov.uk/20140122145147/http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Hugh-Orde.pdf>

27. It is accepted that there may be reasons why information and identities cannot be made public, but in the context of this Inquiry, that is for the Chairman to determine through the restriction order process. If, having considered all relevant material, he concludes that the grounds for restricting disclosure of an officer's identity are not made out, then there is no basis for complaint if those officers are subjected to public scrutiny, subject, of course, to ordinary principles of fair comment, accuracy and proper respect for the balance between private life rights and freedom of information. *A fortiori*, it cannot be a basis for seeking a restriction order, that if refused, those named will be subject to open public scrutiny.
28. It is important to note in this regard that all of the profiles cited in the risk assessment and in DSI Hutchison's witness statement focus on the profiled officers' professional careers – i.e. the matters of direct public interest. Indeed, as detailed in the witness statement of Donal O'Driscoll, appended to these submissions, URG has, on a number of occasions, deliberately omitted material of a personal nature from a public profile on the basis that such information did not serve the public interest and was intrusive. Further, URG operates a strict policy of accuracy and verifiability and provides a specific right to reply. It is of note that the MPS complaint is of the fact of profiling *per se*. No suggestion is made that the content of the profiling is salacious, inaccurate, or obtained by unlawful or intrusive means.
29. Further, all of the profiles referred to in the risk assessments and in DSI Hutchison's statement are drawn from publicly available material, in some cases material that the officers have themselves published (Paul Hogan on LinkedIn) or broadcast (Wilf Knight appeared without any form of disguise and talked openly about his role on national television in the BBC True Spies documentary).

30. Further, the profiles are published in the context of the clear public interest in the accountability of undercover policing arising out of the documented abuses that have led to the instigation of this Inquiry. Indeed, the knowledge that enabled those abuses to be brought to light has largely come about due to the combined work of many dozens of the activists affected, including those involved in the URG.
31. The URG has not been asked by any of the officers or anyone on behalf of any of the officers to remove any profiles, or been given any good reason why such profiles should not be published. In those circumstances it is inappropriate for the MPS to now rely on this in support of anonymity applications. This is particularly the case when, as here, the officers are playing a role of such significant public interest.
32. Further, “profiling” of the type illustrated in the examples cited by the MPS is not such as to constitute any form of disproportionate interference with the officers’ private life rights. As above, all of the profiles complained about focus on the officers’ professional careers and are based on publicly available information. Such minor references as there are to the officers’ family circumstances are limited to very brief details such as appear in any standard biography.
33. Likewise, in the event that the interference with Jaipur and Karachi’s friendship, as detailed at paragraphs 6.16 of the risk assessments, constitutes an interference with respect for their private life rights at all, it cannot possibly be of such a degree as to be disproportionate given the overwhelming legitimate interests served by disclosure of their identities. As set out above, the credibility and accountability of these officers’ risk assessments are central to the ability of the Inquiry to allay public concern and to restore public confidence in the police. The subject matter of this Inquiry concerns deep and intimate intrusions by the police into the most personal and private aspects of the lives of those who were spied upon. Some of those affected are no longer able to form trusting friendships or

sexual relationships at all as a result. Bearing that context in mind, it is deeply distressing to those affected that the anonymity applications for Jaipur and Karachi seek to rely on what is, in comparison, a very minor intrusion. Jaipur and Karachi would still be able to meet their friends in private and indeed would be free to continue to provide support and/or to meet with their friends anonymously if the function of providing risk assessments is transferred to other officers as the NPSCPS say it should be.

Caution as to the benefits of Operation Motion for the Inquiry

34. As above, there are overwhelming risks for the Inquiry's credibility and effectiveness if Jaipur and Karachi are granted anonymity and continue as the assessors of risk on which decisions about other restriction orders will be founded. However, even the benefits of the *support* role provided by Operation Motion should be treated with caution.

35. On its face, the task of identifying and building lines of communication with former SDS and NPOIU officers is of apparent benefit to the Inquiry in securing potential evidence that might not otherwise be available to it, or which it would otherwise have to seek out for itself. However, there are also risks for the Inquiry in this approach. It is of note that at least one of the two examples DSI Hutchison cites, of Jaipur and Karachi successfully re-establishing links with former officers – N16 – is an instance where the officer was already engaging with the Inquiry prior to links being forged with Op Motion, and indeed had already been granted CP status¹⁵. This is not therefore an example of Op Motion successfully encouraging a witness to come forward who would not otherwise co-operate with the Inquiry. It is an example of a witness, who was clearly ready to participate and had put him or herself forward as a Core Participant at the first opportunity.

¹⁵ For the chronology, see [16] of DS Hutchison's witness statement and [25] of the first Core Participant ruling dated 21 October 2015. N16 was granted CP status on 21 Oct 2015, but contact was not established with Op Motion officers until the early stages of 2016.

What Op Motion achieved, was a reconciliation with the MPS of a witness who had previously been alienated from it, not from the Inquiry.

36. It is not known whether the time line is the same in relation to N104, DSI Hutchison's other example, because DSI Hutchison's witness statement does not record when Op Motion achieved its reconciliation with this officer and whether it was before or after s/he had sought and was granted CP status.
37. What is clear, however, from N16's case is that there is a risk for the Inquiry in the support role played by Op Motion. If an aspect of its role is to win over hostile and disaffected former officers who have already come forward to participate in the Inquiry, there is a risk of potential whistle-blowers being stifled and therefore of Operation Motion obstructing rather than enhancing the Inquiry's ability to get to the truth. The Inquiry must be alert to this possibility and treat with caution the extent to which the benefits identified by the MPS of the support role are truly benefits to the Inquiry.

The other bases on which the RO applications are stated to be made

38. The NPSCPs note that these applications are stated to be made on the basis of s.17(3) (fairness), s.19(3)(a) (required by statutory provision, enforceable EU obligation or rule of law) and s.19(3)(b) (conducive to Inquiry fulfilling terms of reference or necessary in the public interest). However, it is only the last of these grounds (conducive to Inquiry fulfilling terms of reference or necessary in the public interest) that is addressed in the substance of the application form and in the risk assessments and statement of DSI Hutchison served in support. This has therefore been the principal focus of these submissions.
39. In relation to s.19(3)(a), no statutory provision, enforceable EU obligation or rule of law is identified in the MPS material as justifying the applications and the NPSCPs submit that none exists. In the event that the MPS

subsequently seek to advance such basis, the NPSCPs would wish to make submissions in response.

40. The application based on s.17(3) is also not articulated or substantiated in the MPS documentation. However, as noted above, complaints are raised in the risk assessments and in DSI Hutchison's statement about risk of "profiling" and of interference with Jaipur and Karachi's private and family lives. In so far as it might be contended that these are bases of unfairness for the purposes of s.17(3), they are addressed at [23]-[33] above. In the event that the MPS subsequently seek to advance any further basis of alleged unfairness, the NPSCPs would wish to make submissions in response.

Conclusion

41. For all of the reasons developed above, the grounds for restriction orders protecting the identities of Jaipur and Karachi are not made out. Contrary to the MPS submissions, it would be destructive of the Inquiry's ability to fulfil its terms of reference by commanding public confidence and allaying public concern were its future restriction order decisions to be founded on risk assessments produced by anonymous officers with personal links to those they are assessing and a professional obligation to secure their anonymity. The applications should be refused.

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