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METROPOLITAN POLICE SERVICE  
SUBMISSIONS DATED 5 OCTOBER 2016  
RE: JAIPUR AND KARACHI

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**Introduction**

1. These submissions concern the applications by the Metropolitan Police Service for Restriction Orders in respect of the officers known as Jaipur and Karachi. Unless otherwise stated, reference is made to paragraphs of the 5<sup>th</sup> witness statement of Neil Hutchison (in the form NH/5 at [paragraph]). In summary, MPS invites the Chairman to conclude that the public interest, including the effectiveness of the Inquiry, is better served by allowing Jaipur and Karachi to have anonymity in their welfare roles, than in requiring them to be named.
2. On 27 September 2016 the Metropolitan Police Service ('MPS') wrote to the Inquiry regarding its decision to split the welfare and risk assessment roles so that these would no longer be performed by the same officers. In that letter the MPS referred to recent discussions between counsel for the MPS and counsel to the Inquiry, to the fact that the MPS had openly acknowledged the potential conflict of interest in the dual role (cf NH/5 at [26]), to the concerns expressed on behalf of other Core Participants in the submissions of Ruth Brander dated 16 September 2016, and to the circumstances in which Jaipur and Karachi had come to play the dual role.
3. The MPS indicated that it was urgently looking for suitable alternative risk assessors who can be named, whose experience and expertise can be afforded proper scrutiny, and have no personal or working relationships, or welfare role, with the persons whose risk they are assessing. It was further indicated that the MPS intends that:
  - a. Jaipur and Karachi will continue in their welfare and internal risk management role as part of Operation Motion;

- b. Jaipur and Karachi will continue to gather evidence relevant to risk for former SDS and MPS NPOIU officers;
  - c. However, any assessment of risk in support of a restriction order application would fall to the new risk assessor to make;
  - d. The new risk assessor will, in addition to receiving information from Operation Motion records, receive a summary of information from MPS disclosure searches, and information from Operation Herne records. The new risk assessor will then be able to make their own enquiries and consider relevant police records in order to prepare an assessment for the Inquiry.
4. It is to be noted that the following aspects of the risk assessment process will continue to apply:
  - a. All documents detailing the former UCO's deployment, or any historic documents relating to risk, are considered alongside any information deriving from the officer himself;
  - b. Independent medical evidence will be commissioned where appropriate, together with medical records, and provided in support of any claim of psychiatric or psychological harm;
  - c. All those documents will be available to the Inquiry team in their full and unredacted form;
  - d. The Inquiry team is able to ask for further evidence or detail following submission of any restriction order application.
5. As set out in a Direction dated 29 September 2016, the Chairman has decided that it is still necessary to determine Jaipur and Karachi's applications for anonymity. The identities of Jaipur and Karachi are no longer relevant to any role as risk assessors. However the Chairman has:
  - a. noted that the MPS has made it clear that it intends that these officers will act as a 'conduit for information' between former undercover officers seeking anonymity and the new risk assessors;

- b. observed that the officers may be required to give evidence in Module 2. According to the Chairman's Opening Remarks of 28 July 2015, Module 2, "...will investigate the systemic issues affecting the deployment of undercover police officers during the period under consideration. These will include institutional issues such as the adequacy of justification, authorisation, governance and oversight. They will include the selection criteria, training, management and care of undercover police officers. They will include the statutory regulation, policy guidance and judicial oversight of undercover policing activity. The role of Her Majesty's Government, and especially the Home Office, will be considered."
6. In response to the Inquiry's further questions by letter dated 30 September 2016, the MPS made the general point that the MPS is currently working to identify suitable new risk assessors. It would be unwise to try and pin down the precise risk assessment procedure until those individuals have been identified and consulted. The most up to date response to the questions is as follows:
- a. *What precise role will Jaipur and Karachi continue to play in risk assessments?* It is not intended that J and K will play any role in risk assessments. The process of conducting the risk assessment will be carried out exclusively by the new risk assessors.
- b. *What is meant by 'conduit for information'?* This is not a phrase used by the MPS. It is a phrase used by the Chairman in reference to the MPS's letter dated 27.9.16 in which the MPS stated that it anticipated that J and K "...will continue to gather evidence relevant to risk for former SDS and MPS NPOIU officers but any assessment of risk in support of a restriction order application would fall to the new risk assessor to make."
- c. *What access will the new risk assessors have to those they are risk assessing independently of Jaipur and Karachi?* It is intended that the new risk assessors

will have as much as access as they require. However it must be noted that like Jaipur and Karachi, the new risk assessors will have no power to require former officers to meet them.

- d. *How will the new risks assessors conduct their risk assessments – for example, will they take new statements from officers, carry out their own investigation into the risks faced by those they are assessing and reconsider any existing evidence from an independent perspective?* The new risk assessors will be responsible for carrying out new risk assessments, carry out any investigation they see fit, and reconsider any existing evidence from an independent perspective. The new risk assessors will be asked to advise on how the risk assessment process should be carried out, and the MPS will agree with them an appropriate methodology in order to best assist the Inquiry. They may wish to debrief officers directly, but like Jaipur and Karachi the new risk assessors will have no power to require former officers to make statements.
- e. *Is it proposed that a restriction order will be sought over the identities of the new risk assessors?* No.

## **The applications**

7. In light of the “change of factual circumstances” noted by the Chairman in his Note dated 29 September 2016, the MPS makes the following submissions on the maintained applications for anonymity.
8. First, it is beyond argument that the welfare needs of current and former SDS or NPOIU UCOs should be considered and, so far as reasonably possible, met. These welfare needs arise in the context of public disclosure of previously confidential information relating to undercover operations and officers, increasing efforts being made to gather, analyse and publicise information in order to identify SDS or NPOIU officers, and the impact of being a potential witness before the Public Inquiry (NH/5, [3], and the 7 bullet

points therein). They also arise in the context of, in some cases, psychiatric damage and ill health (NH/5, [12], [18], [19]), and stress (NH/5, [14]).

9. Secondly, the welfare role has proven to require an intense degree trust between the former officers and Jaipur and Karachi (NH/5, [9], [11], [12], [13]-[17], [19]). The illustrations at [16] and [17] are expressly stated to be examples.

10. Thirdly, there is both:

- a. The objective fear that naming Jaipur and Karachi could be used to identify former SDS or NPOIU officers (NH/5, [34] for the reasons given at [35]-[55]).
  - i. At worst this could lead to the actual naming of a UCO outside of the restriction order process.
  - ii. The evidence of Mr O'Driscoll dated 16 September 2016 is noted, but he is not in a position to judge (if only because he is not privy to all relevant information) whether revelation of an officer's name would lead to harm to that officer, a third party, or the public interest.
  - iii. The risk intensifies were Jaipur and Karachi to attend any Inquiry hearings with officers whose identities are protected by restriction order; and
  - iv. Enhancing measures to counter risk or assigning additional officers will involve additional cost (NH/5, [26], [33]), in addition to the additional costs that the MPS recognises as necessary in securing new risk assessors (MPS letter dated 27 September 2016 at [7]); and
- b. The subjective fear that naming Jaipur and Karachi could be used to identify former SDS or NPOIU officers:
  - i. This fear is sufficiently real that Operation Motion officers use tradecraft when meeting former UCOS (NH/5, [24]-[25]).
  - ii. Enhancing these measures could lead to loss of confidence by former UCOs (NH/5, [28]).
  - iii. Former UCOs who are elderly or in ill health may be less inclined to accept home visits from named officers (NH/5, [18]).
  - iv. There are already significant fears about the Inquiry (both as to the Inquiry's intentions, and its ability to protect) (NH/5, [21]).

11. The CP submissions of Ruth Brander dated 16 September 2016 describe the evidence that disclosure of Jaipur and Karachi's identity would compromise other officers as "unconvincing" and "extremely remote" ([19]-[22]). However:

- a. What is at issue are the identities of all SDS and NPOIU officers. The risk profile of some of those officers, depending on the nature of their deployments, may be very high. A precautionary approach is appropriate. It cannot be speculated that the only persons interested will be the campaigners referred to in the submissions.
- b. The arguments made ([20]) about the lack of any need to meet in public places, or the unlikelihood of an identification made at a meeting in public, and about the utility of facial recognition software are arguments, not evidence.
- c. Nor does this deal with the important element of subjective fears referred to above.

12. Fourthly, there is very considerable public interest in Jaipur and Karachi being able to continue their welfare role as effectively as possible:

- a. As follows from the passages of NH/5 cited above, it has taken considerable time, patience and resources to create the current degree of engagement between Operation Motion and former UCOs.
- b. That engagement benefits the UCOs, by allowing the vital welfare role to be performed, and benefits makes it more likely that the Inquiry will be able to fulfil its terms of reference (conversely, loss of confidence by officers could have a knock-on impact on the Inquiry (NH/5, [21], [28])).
- c. Operation Motion was introduced in late 2013 prior to the announcement of the Inquiry (NH/5,[3]). It has therefore provided a historic and current support mechanism which the Inquiry may wish to consider as part of Module 2. But to name Jaipur and Karachi will bring Operation Motion in its current form to an end.

13. Fifthly, it is only if Jaipur and Karachi carry on in their current welfare role that they would provide a 'conduit for information' between former officers and the new risk assessors. Those carrying out the welfare role may be a, or perhaps the only, source of some relevant information for the risk assessor to assess. For example, a former UCO may be prepared to inform a welfare officer of a matter that is relevant to risk, but not be willing to provide this in a written statement or meet the risk assessor. Jaipur and Karachi may be able to obtain relevant information from spouses, or children, owing to the relationship of trust that has built up, that would otherwise be unavailable to the risk assessor. In all cases the nature of the evidence would be apparent to the risk assessor who would no doubt set out his sources of information (whether from the officer, or from the officer via Jaipur and Karachi), and could be considered by the Chairman as a matter of weight. Being a 'conduit of information' is therefore an inevitable part of carrying out the welfare role, and cannot be considered separately from it.

14. The statutory grounds for restriction orders flowing from the above are:

- a. As set out in the Restriction Order applications, s19(3)(b), conducive the inquiry fulfilling terms of reference and necessary in public interest) and s19(4)(d) (delay, impairment to efficiency or effectiveness, additional cost);
- b. To a greater extent than set out the original applications, s17(3) fairness, and s19(4)(b) (risk of harm or damage). To reveal Jaipur and Karachi's name risks damage to the ability of the MPS to provide welfare support to former officers, risks harm to those officers if the current level of support is withdrawn, is damaging to the general public interest that former UCO officers should have access to welfare support and should not be caused unnecessary stress and possible psychological or psychiatric harm in connection with their earlier service, and is unfair to those officers.

15. Conversely, there is limited public interest in the naming of Jaipur and Karachi in connection with their welfare role.

16. In this context it is noted that the submissions of Ruth Brander on behalf of other CPs dated 16 September 2016:
- a. Acknowledge that there is a difference between the debriefing and evidence gathering role, which it is not said could never be conducted by officers with personal knowledge of the officers concerned ([13]), and draws a distinction between the feeding in of information and its objective assessment ([15]).
  - b. Comments that if the support and risk assessment roles are split, the need to protect the identities of the risk assessors falls away ([17]). It is not said either here or elsewhere, and cannot have been a matter of oversight, that the CPs considered that even those with a welfare and support role should be named.
  - c. Do not object to Jaipur and Karachi continuing to provide “support” ([29, final sentences]). It is clear that this is a reference to doing so anonymously.

## **Module 2 role**

17. The Chairman’s Direction states (at [7]) that both Jaipur and Karachi may be required to give evidence in Module 2.
18. Although the MPS does not dispute this, it having been raised, the Chairman’s Direction does not identify on what matters Jaipur and Karachi may be required to give evidence in Module 2. It is difficult to assess the value of naming Jaipur and Karachi for the purposes of Module 2 where it is not known what evidence they may be required to give. It is therefore impossible to make informed submissions on the extent to which the making of a Restriction Order in their cases would inhibit the allaying of public concern under s19(4)(a).
19. It is also impossible to determine what risk there may be to others if they are named without knowing the context in which they might be named. Both Jaipur and Karachi served in the MPS Special Branch and CO15 counter-terrorism command (Jaipur Risk Assessment, [2.1]; Karachi Risk Assessment, [2.1]). It is conceivable that any evidence they might give in Module 2 might concern matters where naming them could put them or others at risk. It is right to take a precautionary approach.



20. Procedurally, the applications for Restrictions Orders dated 30 June 2016 were based upon their authorship of certain documents, including risk assessments. They were not made on the basis that they might potentially be called as witnesses in Module 2. The exercise of considering the value of their potential evidence, and the potential personal and public interests in non-disclosure, has not been carried out.
21. In these circumstances it is submitted that the possibility that Jaipur and Karachi may be called as witnesses in Module 2 must be disregarded as a reason for naming them. The Chairman is invited to consider, and grant, the applications for restriction orders in light of their welfare role only. In the event that they are required to give evidence to the Inquiry on Module 2 issues, it is open to the Chairman to consider the continuing need or basis for a restriction order, if granted, at a later stage (s20(4)).

JONATHAN HALL QC

5 OCTOBER 2016

