**In the matter of section 19(3) of the Inquiries Act 2005**
**Applications for restriction orders on behalf of police officers**
**Risk assessments: Note to core participants**

## Introduction

1. The Inquiry has received a number of risk assessments from Special Branch officers 'Jaipur' and 'Karachi', on behalf of the Metropolitan Police Service, 'in support of' applications for restriction orders made by core participants who are present and former police officers represented by Slater and Gordon ("the Slater and Gordon applications"). On 27 May 2016 I gave directions requiring that if Jaipur and Karachi sought to retain their anonymity they too should make applications for a restriction order. Their applications were received by the Inquiry on 30 June 2016.

2. On 19 July 2016 I gave directions whose purpose was to provide the non-police, non-state core participants with the opportunity to make written submissions in response to the applications made by Jaipur and Karachi. For this and other reasons (explained in my further Directions of 29 September 2016) on 22 August 2016 I withdrew that part of my directions of 27 May that required the non-police, non-state core participants to respond to the Slater and Gordon applications by 15 September 2016. My Directions of 29 September 2016 further explain that I am still unable to set a new date for the receipt of those submissions.

3. In the meantime, on 16 September 2016, the Inquiry received written submissions from Ms Ruth Brander on behalf of the non-police, non-state co-operating group of core participants responding to the applications of Jaipur and Karachi. On 27 September 2016 the Metropolitan Police Service wrote to the Inquiry acknowledging the weight of Ms Brander's observations as to the dual nature of the roles of Jaipur and Karachi as welfare and liaison officers within Operation Motion and as risk assessors in support of the Slater and Gordon applications.

4. As noted in my further Directions of 29 September 2016 the Metropolitan Police Service seeks to withdraw the risk assessments prepared by Jaipur and Karachi in support of the Slater and Gordon applications and to replace them with risk assessments prepared by officers who are independent of Operation Motion. I approve of this course.

5. On 30 September 2016 the Inquiry, at the suggestion of the non police, non-state core participants, sought clarification as to the continuing roles of Jaipur and Karachi and the practice that will be adopted by the risk assessors who replace

them. On 3 October 2016 the Metropolitan Police Service replied, explaining that while Jaipur and Karachi, if asked to do so, would continue to gather evidence relevant to the assessment of risk, they would take no part in the evaluation of the evidence leading to the risk assessment report. The replacement risk assessors (who would not be making an application for anonymity) would examine the available evidence and carry out any further investigation they thought fit. As to the latter it was pointed out that they could not compel former officers to meet them for the purpose of taking part in a risk assessment interview.

6. This seems to me to be a suitable moment to issue a Note that explains to core participants how I consider I would be best assisted by analysis of risk in risk assessment reports. I intend no criticism of what has gone before or to be prescriptive as to the future. My purpose is to provide some guidance as to what will assist me in my task and, I hope, avoid the need for supplementary requests for information.

**Evidence 'in support'**

7. The primary evidence that I receive will be from the applicant (in the form of a witness statement from the applicant and/or from the applicant through the conduit of a welfare officer and/or risk assessor) and from the risk assessor. Although I have, for convenience, used the term "in support of Slater and Gordon applications" I do not intend to convey the impression that I expect the risk assessments necessarily to be supportive of the restriction order sought. I expect the assessment to be expert, critical and objective.

8. During the oral hearing as to Legal Principles and Approach to applications for restriction orders I received submissions on behalf of the Metropolitan Police Service and the Home Office that I should attach particular weight to an assessment of risk of harm or damage made by police officers who had the experience and expertise to make them. At paragraph 161 of my Legal Principles and Approach Ruling I said:

> *"161. I accept the invitation by the police services and the Home Office to treat with due respect the risk assessments made by those who are expert in policing and the risks attendant on the exposure of identities and police operations. However, this acceptance does not mean that I shall accept every expression of opinion offered to me, particularly when the opinion is offered at the level of generality. In the end I have the responsibility of assessing the public interest balance for and against restriction. That will involve critical assessment of evidence. I*

*have tried to indicate the type of evidence I shall need and my provisional approach to the issues in the preceding paragraphs. If I think evidence is missing or sketchy I shall err on the side of caution and give the applicant an opportunity to make good the omission."*

9. These remain my views. As Chairman of the Inquiry I have a personal responsibility for the decisions I make under section 19(3) of the Inquiries Act 2005. That is why I included the last sentence in paragraph 161. However, if the process of decision-making is not to become unreasonably protracted, if not unmanageable, in general I must be able to repose a reasonable degree of confidence that the applicant has provided me and/or the risk assessor with all the evidence that is relevant to the application and that the risk assessment is a conscientious and objective appraisal of the risks to which the applicant will be subject if the restriction order sought is refused.

10. It is for the Metropolitan Police Service with the assistance of its legal team to select the evidence on which, and the witnesses on whom, it chooses to rely. There is a difference between the admissibility of evidence and the weight that should properly be attached to it. Exceptionally, shortly before Ms Brander's submissions were received, the Inquiry had itself made known to the Metropolitan Police Service the possible criticism to which the dual roles of Jaipur and Karachi may be exposed. I am grateful for the thoughtful response of the Metropolitan Police Service to Ms Brander's submissions. It seems to me, however, that strategic thought needs to be applied to all similar issues so as to avoid delay such as will now, inevitably, take place. I do not intend to give the applicant the opportunity to improve their application every time an argument in support of a conclusion seems to me to be unmeritorious or unsupported by evidence.

**Risk assessments**

*Evidence*

11. As I have said at paragraph 7 above, I am content that risk assessments should rely on evidence received directly from an applicant or indirectly through a welfare officer or other conduit. However, whatever information the assessor is considering, I need to know its source and the means by which and the form in which it was supplied.

12. Where the assessor is relying on documentary evidence, such as a previous risk assessment (e.g. following an earlier compromise), incident report or record, I should be told its source. Where the document is utilised for an opinion expressed

within it, or used to support an opinion expressed by the assessor, I should be provided with a copy annexed to the assessment so that I can see for myself the material on which that opinion was formed.

*What risk? What harm?*

13. When applying the public interest test, as I am required under section 19(3)(b) of the Inquiries Act 2005, the main factor for consideration in favour of restriction is likely to be (under section 19(4)(b)) **"any risk of harm or damage that could be avoided or reduced by any such restrictions"**.

14. The risk of harm or damage referred to in paragraph 13 above will be relevant not just to (i) the public interest evaluation, but also to (ii) consideration of applications based on individual rights under the European Convention of Human Rights, both the unqualified rights under Article 2 and Article 3 and the qualified right under Article 8, and (iii) the issue of fairness at common law and under section 17(3) of the Inquiries Act 2005. Having regard to the pre-eminence of Article 2 and Article 3 I would be assisted, in any case in which it is relevant, by a specific assessment as to whether there is a real and immediate risk of death or serious injury.

15. As I said in the Legal Principles ruling, the harm or damage with which I am principally concerned is:

    (i) death or injury (the injury may be physical or psychological); but may also, or alternatively, comprise

    (ii) harassment or other interference with the private and family life of the applicant or others.

16. At page 81 of the Legal Principles Ruling, I said that I would look for evidence and/or argument as to the existence and quantification of any pre-existing (i.e. present) risk of harm, including a risk caused by self-disclosure or third party exposure or partial exposure, *and* the existence and quantification of any risk of harm (that would be caused by disclosure) that a restriction order would avoid or reduce. Only by this means will I able to judge the extent to which a risk of harm or damage on disclosure would be "avoided or reduced" by the restriction order sought.

17. Accordingly, I need (i) evidence and assessment of any present risk and (ii) evidence and assessment of any future risk should the restriction order sought not be made.

18. Section 19(3) of the Inquiries Act 2005 requires me to impose *"only such restrictions"* as other statutory provision or the public interest requires. Therefore, I will be considering whether a *lesser* restriction could be imposed (e.g. restriction on disclosure of an applicant's true identity and any other personal details capable of identifying them but disclosure of the applicant's undercover identity). The risk assessment should provide me, if possible, with a differential evaluation of risk. It should not be assumed that the application will succeed or fail in full. (Note paragraphs B.2 and B.3 at page 82 of the Legal Principles Ruling.)

19. When the assessor concludes that the disclosure of further information not already in the public domain would or might complete a "jigsaw" or "mosaic" sufficient to identify or locate the applicant, thus giving rise to a risk or increased risk of harm or damage to the applicant or their family, I need to know (i) what is the information already in the public domain and (ii) the route by which the jigsaw or mosaic might be completed. I do not need persuading that the jigsaw/mosaic effect exists. However, generalisation and speculation in individual cases will not suffice.

20. An assessment of the level of risk requires consideration of possible sources of risk. Is the source specific or is it general? If it is specific, who or what is the source? I need evidence in support of an assertion that an individual or group presents a specific present or future risk to the applicant or a risk of any particular form of harm or damage. I need to know what is the causative link between disclosure of information and the risk of harm or damage suggested. Where a considerable period of time has elapsed since the last known incident giving support to an identification of risk, it should be confronted in the assessment. (See paragraph B.2 at page 81 of the Legal Principles Ruling.)

21. An assessment of risk requires consideration of whether the risk is real and immediate or general and inchoate. I need evidence in support of an assertion that a risk of harm is real and immediate.

*Confidentiality*

22. Evidence of an expectation of confidentiality is not a proper subject for a risk assessment report and should form no part of it. It is relevant to the public interest and to fairness but not to an assessment of a risk of harm or damage to the applicant or their family. I have already received evidence of possible damage to the capacity of the police service to prevent and detect crime caused by disclosure of confidential sources. I do not need it in the risk assessment reports. However, if the applicant relies on a personal expectation of confidentiality, I should have *evidence*

from the applicant (either direct or through Operation Motion) of their personal grounds for the expectation.

*Definition of terms*

23. As I understand it, the risk assessment reports that have now been withdrawn used a "Likelihood" scale comprising VERY LOW, LOW, MEDIUM, HIGH and VERY HIGH as explained by the 'PLAICE' Risk Model issued in 2015. PLAICE has a "descriptor" for each of these levels of risk. I am concerned that the descriptors may not be directly transferable in full to present circumstances.

24. I expect that the term "descriptor" was carefully chosen to distinguish between the likely *features* of a particular level of risk and the *qualifying thresholds* between levels of risk. For example, the descriptors for a VERY LOW level of risk are "Unlikely to occur, No record of previous occurrence; Assessed at 0 – 20% chance of occurring. Not likely to occur within next 24 months"; the descriptors for a VERY HIGH level of risk are "Almost certain to occur, Has occurred within last month; Assessed at 81 – 100% chance of occurring. Likely to occur within next month".

25. The existence of a previous occurrence and its proximity to the date of assessment appear to be factors that influence whether the risk of an occurrence is described as higher or lower.

26. However, in the present context, the absence of a previous occurrence may well be irrelevant to an assessment of future risk. Here, the assessor is considering (i) any pre-existing (present) risk of harm or damage *on the basis of information already known or available* and (ii) any future risk of harm or damage *if an order restricting disclosure of that information or additional information is not made*. Past experience may be no indicator of future risk. Indeed the whole purpose of the application for a restriction order may be to secure that no 'occurrence' ever does take place, by ensuring that information about the applicant *remains* secret.

27. I would be grateful if the Metropolitan Police Service gave some further thought to the wisdom of applying the PLAICE descriptors to their full effect in the risk assessments to be submitted to me. Under section 19(4)(b) of the Inquiries Act 2005, I am concerned only with an evaluation of the risk that *unless the restriction order sought is made*, a particular form of harm or damage will occur.

28. Whatever the outcome of the re-consideration I will need to know the assessors' underlying definition of terms. A definition of terms is required to bring consistency to the process and to inform me of the factors that led to the conclusion.

*Structure of reports*

29. I am content with the structure of reports until now supplied that provides me with a summary of the officer's career before, during and after deployment undercover, relevant previous events, identification of sources of risk, identification of possible harm, assessment of current risk and assessment of future risk on disclosure.

30. I approve of the listing within the report of relevant documents that form the basis for the assessment made, but repeat my request that I should be provided with copies of any documents that are significant contributors to the conclusion.

20 October 2016

Sir Christopher Pitchford
Chairman, Undercover Policing Inquiry