

## Update note November 2016

### Introduction

This is the third update note for the Inquiry into undercover policing. The purpose of these notes is to give a broad overview of the work that is being done by the Inquiry to progress the terms of reference and to explain in more detail some of the particular aspects of the Inquiry's work.

### Background

The Inquiry is an independent inquiry, led by a senior judge, Sir Christopher Pitchford; it was established under the [Inquiries Act 2005](#) by the Government to look at undercover policing in England and Wales since 1968.

The Inquiry's role covers undercover policing in its broadest sense; it is not limited to particular types of undercover policing<sup>1</sup>, its [terms of reference](#) are widely drawn and they require the Inquiry to find out what happened, and why, and to make recommendations as to how undercover policing should be carried out in future.

Sir Christopher Pitchford made his [opening statement](#) on 28 July 2015. In this statement he said,

*"I hope that during the course of its work the Inquiry will acquire a clear impression as to the manner in which undercover policing has been conducted in England and Wales since 1968. It seems likely that the Inquiry will expose both creditable and discreditable conduct, practice and management. As far as I am aware, this is the first time that undercover policing has been exposed to the rigour of public examination. At the conclusion of its investigation, the Inquiry will report to the Home Secretary and make recommendations as to the deployment of undercover police officers in the future... The Inquiry's priority is to discover the truth. This is a public inquiry to which, as the name implies, the public will have access."*

The Inquiry's work will fall into three modules:

1. Module One will look at what happened in the deployment of undercover officers in the past, their conduct, and the impact of their activities on themselves and others.
2. Module Two will look at the management and oversight of undercover policing. In particular it will look at the authorisation of and justification for undercover police operations. This will include the role not only of police forces but also that of other government departments such as the Home Office. In relation to undercover police officers, it will look at issues such as their selection, training, supervision and care after the end of an undercover deployment.

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<sup>1</sup> The Inquiry is not restricted to political and social justice campaigns. It does not cover surveillance activities undertaken outside of undercover policing operations. The Inquiry's activities are limited to England and Wales.

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3. Module Three will be forward looking and take evidence to assist the Chairman to make recommendations about how undercover policing should be conducted in future. It is anticipated that the Inquiry will receive evidence from expert witnesses and evidence about best practice in other jurisdictions.

## Progress since the August update

Having established a number of preliminary matters of principle, the Inquiry is now considering applications for anonymity from some key witnesses. Applications for anonymity will be carefully considered on a case by case basis. Meanwhile the Inquiry is continuing to collect potentially relevant documents on a large scale and review evidence.

Since September 2016 the Inquiry Chairman has:

- issued a [direction](#) in respect of police anonymity applications;
- issued a [Ruling](#) granting anonymity to 23 non police, non state core participants;
- issued a [Ruling](#) in respect of former and serving police officers regarding retrospective disciplinary proceedings;
- in respect of the anonymity applications filed by the Metropolitan Police Service on behalf of Jaipur and Karachi:
  - sought the core participants' views on the applications;
  - received further correspondence from the Metropolitan Police Service with regard to a change in their roles; and
  - issued a '[Minded to](#)' Note.
- issued 'Minded to' Notes in respect of restricting some personal information relating to two former undercover officers who did not apply for anonymity for themselves - [N10 \(Bob Lambert\)](#) and [N14 \(Jim Boyling\)](#);
- issued a guidance [Note](#) setting out how the Inquiry would be best assisted in the analysis of risk in the risk assessment reports that accompany restriction order applications for police officers;
- granted core participant status to an individual known as '[Jane](#)'; and
- issued a public [notice](#) inviting any parents or close relatives of deceased children within a specified date range to contact the Inquiry if they wish to know whether their child's identity was used by the police to create an undercover identity.

Alongside this work, the Inquiry team has:

- published the Attorney General's [undertaking](#), which relates to the way in which evidence given to the Inquiry may be used in future criminal proceedings. The undertaking was granted in the terms requested by the Chairman;

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- continued to send formal requests to organisations that are likely to have relevant evidence to submit such evidence (known as '[rule 9](#) requests');
- closely monitored the anonymity applications being made by core participant police officers represented by Slater & Gordon (these are being delayed for a number of reasons- primarily relating to expert medical evidence and the need for new risk assessments);
- evaluated the processes being used by the Metropolitan Police Service to reduce unnecessary delay in the progress of anonymity applications by police officers not represented by Slater & Gordon.
- received further documentary evidence from state bodies;
- reviewed and analysed material relevant to Module One of the Inquiry (a substantial ongoing task)
- commenced specific investigation into the undercover deployments of two former undercover officers
- considered and challenged applications for restriction orders on an early sample of documents relevant and necessary to Module One
- reviewed further material and witness statements received from multiple state bodies in response to rule 9 requests touching upon the issues to be considered as part of Module Two;
- invited further applications for any restriction orders from state bodies relevant and necessary to Module Two;
- provided guidance to regional forces to ensure they prepare applications for restriction orders that meet the standards expected by the Inquiry;
- reviewed assurance statements and exhibits from regional forces to ensure potentially relevant documents are preserved;
- deployed team members to spend time in organisations covered by the Inquiry, examining *in situ* material that is relevant or potentially relevant to the Inquiry;
- undertaken extensive work on the draft protocols relating to disclosure of and restriction of documents;
- undertaken further staff recruitment to ensure the Inquiry continues to be properly resourced for the work it has to carry out;
- placed on the website an updated version of the [witness statement](#) of Neil Hutchison describing the searches conducted by the Metropolitan Police Service to identify and preserve documents that may be relevant to the Inquiry;
- published the Inquiry's [expenditure](#) up to the end of September 2016.

## Next steps

The next steps for the Inquiry are to:

- continue the process of receiving, considering and determining anonymity applications by key individuals;
- continue the process of requesting, receiving, reviewing and analysing documents from state bodies;
- continue to investigate the activities of individual undercover police officers;
- conduct a final consultation on revised drafts of the disclosure and restriction protocols during the autumn before finalising and issuing them;
- consult on a draft witness statement protocol once the disclosure and restriction protocols have been issued;
- undertake a review of the Inquiry website with a view to providing a more user friendly version early in the New Year;
- continue to publish 'minded to' notes and rulings in relation to restriction orders, with the possibility of hearings in respect of applications for such orders; and
- collect further witness statement.

## Looking further ahead

- Over the course of the next six months we will be focussing on continuing our review of the evidence provided to the Inquiry to date, as well as seeking further evidence.
- Early in the New Year, we will set out the next steps for the commencement of Module One evidential hearings.
- Detail will be included in the next update note about the main steps the Inquiry will take towards evidential hearings
- In addition to the above we may also issue additional rulings that determine fresh applications for core participant status, and associated rulings on recognised legal representation and costs.

## A focus on...

From time to time the Inquiry aims to provide a bit more detail on certain aspects of the Inquiry. For this update we are focusing on *applications for anonymity by key witnesses* in order explain the processes the Inquiry undertakes.

### *Anonymity applications*

Alongside the Inquiry's commitment to transparency, it must consider how it should best approach some of the particularly sensitive issues it comes across. Most notably at this stage of the Inquiry, requests are being received from individuals and organisations engaged in the Inquiry to seek anonymity. To this end, the Inquiry Chairman can impose restriction orders in accordance with his powers under [Section 19 of the Inquiries Act 2005](#).

Individuals can request that they remain anonymous by applying for a restriction order. If such a restriction order is granted it would prevent the Inquiry from disclosing or publishing information that would reveal the applicant's identity. The process of applying for and being granted anonymity is set out below.

The Inquiry's work to determine anonymity applications is a legal and sometimes complex process and particular materials are needed to evidence each application. Many of the applications the Inquiry has received to date have required considerable interaction between the Inquiry's legal team and the legal representatives of those making applications.

### *Anonymity applications in respect of police officers*

Fundamental to the Inquiry is the issue of whether or not undercover police officers (and those associated with their work) should remain anonymous. In his [ruling on the legal principles](#) the Chairman explained that he wishes to be as open as possible, and set out the approach he would follow when making these decisions.

The police officers who are core participants and represented by Slater & Gordon are now in the process of making their applications for restriction orders.

In August 2016 the Inquiry requested that the Metropolitan Police Service submit applications for anonymity in respect of all of the officers who served with the Special Demonstration Squad by 1 March 2017. The Chairman recently issued a [guidance note](#) on the approach that the Chairman would like risk assessors to adopt when providing evidence in support of anonymity applications, in order to assist with this process.

Other undercover officers who are likely to be witnesses to the Inquiry will also be given the opportunity to submit applications for anonymity; the next group of officers will be those officers who served with the National Public Order Intelligence Unit.

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It is important to note that section 19 of the Inquiries Act 2005 is aimed at controlling the disclosure or publication of evidence or documents (or parts of evidence or documents) *given to and held by the Inquiry*. It is not aimed at prohibiting the disclosure or publication of information, evidence or documents held by a person independent of the Inquiry. Thus, if an individual's identity is known to a person (e.g. a friend) otherwise than by means of evidence or documents given, produced or provided to the Inquiry, the Inquiry does not have power to restrict the dissemination by that person of that information.

### *The process*

In its simplest form, the process appears relatively straightforward. The Inquiry:

- receives an application;
- seeks further information if necessary;
- publishes the application;
- ensures that core participants and the media can have their say on the application;
- holds a hearing (if necessary); and
- makes and publishes a decision.

A simplified explanation of the process is illustrated in this [flowchart](#).

However, the steps set out in the overview are not as straightforward in practice as they first appear. They are also time consuming. A detailed illustration of what is involved appears in the [full process map](#).

In the [previous update note](#) we focussed on *Core participants* and *Evidence gathering*.

## Key statistics

As at 1 November 2016 the Inquiry has:

- held five preliminary hearings;
- made around 280 'Rule 9' requests for information from more than 50 organisations;
- made two [section 21](#) request for information;
- received over 320,000 documents from the Metropolitan Police Service alone;
- received over 220 witness statements (not including further or replacement statements);
- published eight sets of directions;
- published 39 rulings;
- published eight Chairman's notes;
- published five orders;
- published seven notes by Inquiry Counsel;
- designated 201 core participants, of whom 179 are receiving funding for legal costs from the Inquiry;
- recognised 23 legal representatives;
- received more than 45 formal submissions and position statements from core participants and others;
- determined 24 anonymity applications;
- received around 30 tranches of voluntary disclosure; and
- recruited 27 people to work with the Chairman as part of the Inquiry team.

## Latest documents

The Inquiry website already hosts a significant amount of information sorted into topic areas. During the course of its work Inquiry anticipates receiving many hundreds of thousands, potentially millions of documents from a range of sources. As many of these as practically possible will be uploaded onto the Inquiry's website

## Questions and queries

The Inquiry has a full set of ['frequently asked questions'](#) (updated on 10 August 2016) covering matters such as how the Inquiry can be contacted, how people can engage with its processes, and what it means to be a core participant.

## Contacts

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