

UNDERCOVER POLICING INQUIRY

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Tamsin Allen
Bindmans LLP

By email only

28 November 2016

Dear Tamsin and other non-state, non-police recognised legal representatives,

Undercover Policing Inquiry – timescale and processes

Further to your email of 23 November 2016 ahead of this week's meeting, I now write to answer your questions.

You ask first about deadlines for anonymity applications. The Inquiry set a window for applications for anonymity to be made by officers who served with the Special Operations Squad, the Special Demonstration Squad and the Special Operations Section, whether as a field officer or in another capacity. The window opened on 7 November 2016 and runs until 1 March 2017, this is a publicly known deadline, published by the Inquiry in its last [update note](#); no application has yet been received from the Metropolitan Police Service but the Inquiry is making it clear to them the need to maintain momentum on this issue.

The Inquiry is in regular contact with the Metropolitan Police Service and we understand that they are in the process of replacing their original risk assessors. The Inquiry is also itself scrutinising the risk assessors' credentials for potential conflicts of interest. It has, in one instance, consulted a third party to help it establish whether there is a conflict of interest. We intend to publish the relevant experience of the new risk assessors recruited by the Metropolitan Police Service as their appointments are confirmed.

In respect of delays in providing the Inquiry with medical evidence, the Metropolitan Police Service informed the Inquiry that none of the three experts originally approached by them was able to examine and report within a reasonable timeframe; they have therefore found and engaged experts who can report earlier, although they say the first reports are not expected before January 2017. The Inquiry has asked the Metropolitan Police Service to prioritise applications so as to deal with the earliest officers first in order to minimise the impact of the delays to date on the Inquiry's ability to proceed to the substantive hearing of Module One. None of the medico-legal experts instructed by the Metropolitan Police Service is seeking anonymity.

Ten clients of Slater & Gordon have applied for restriction orders. The real and cover names of two of these ten (Lambert and Boyling) have now been published, the cover names of two more have also been published (Jacobs and Neri). The latter two officers are seeking to restrict publication of their real names. The position in relation to these applications and in relation to the applications by five of the other six Slater & Gordon applicants is that the medical witnesses involved in their cases have sought anonymity. Their applications are currently before the Chairman. The remaining application is not to be supported by medical evidence, but is awaiting a risk assessment which is to be performed by one of the new risk assessors recruited by the Metropolitan Police Service.

You will have seen from the [process map](#) on anonymity published by the inquiry with the update note in November 2016 that a determination that an officer should not have their cover identity protected will not necessarily mean that the Inquiry publishes the cover identity immediately. For example, where there was use of the identity of a deceased child, the Inquiry will make contact with any family of any such child before publishing the cover name. The process of tracing families of children whose identities were used by Special Demonstration Squad officers is ongoing. The Inquiry already has some details and Metropolitan Police have agreed to provide us with details for all families (so that the Inquiry is in a position to contact them without delay in cases where cover name anonymity is not sought or is refused) by 16 January 2017.

There will be further tranches of anonymity applications. Officers who served with the National Public Order Intelligence Unit will be the next to be asked if they wish to apply for anonymity and the Inquiry will be setting a timetable for these to be dealt with in tranches. A necessary step before setting this timetable has been the identification of those who served with the National Public Order Intelligence Unit. The Inquiry has recently received information from Operation Elter about the identities of a large proportion of those who worked for the National Public Order Intelligence Unit.

You also raise the question of publication of the identities of the groups or individuals who were reported on. The question whether a particular group or individual was reported on is inextricably linked to the anonymity applications of those undercover police officers who reported on the group or individual. Each time the Inquiry publishes or confirms the cover name of an undercover officer it will be clear to some that they have been, or might have been, affected by the actions of an undercover officer in general terms. Once a name has been published or confirmed the way is clear for the Inquiry to proceed to consider documents relating to that officer, including his intelligence reports, where these have survived, and to consider any applications for restriction orders over the contents. Some work of this nature has already commenced but large scale processing of documents can only efficiently begin once the Inquiry's secure database is fully up and running.

You have also asked about plans for the Module One hearings. The Inquiry's intention is to receive evidence, oral and written, from undercover police officers (i.e. the field officers) and those affected by their deployments. The aim, in the very broadest of terms, is to establish what officers actually did and how their actions affected people. Some of the evidence that the Inquiry will need to make findings about justification will also be taken in Module One. The Inquiry is currently planning on the assumption that in relation to units at the centre of its investigation it will proceed on a unit by unit basis, starting with the Special Operations Squad. Within each of the units which it will be examining it is intending to proceed on an officer by officer basis. Within each unit it also proposes to proceed on a chronological basis insofar as that can practicably be arranged. In relation to each officer the Inquiry anticipates receiving evidence first from those affected and then from the officer. That way,

the evidence of the former can be put to the latter. The Inquiry will necessarily have to be selective about how many officers it calls and to what depth it examines a selected deployment. You will know that the Chairman is committed to proceeding transparently and how far and how publicly the process can proceed will also depend upon the outcome of restriction order applications, especially the key anonymity applications. The Inquiry's present intention is to investigate the cases of all of the Non Police Non State Core Participants (i.e. those cases which involve the confirmed involvement of an undercover police officer and those which involve suspected involvement). As the Chairman has previously stated, it will also be investigating the cases of a number of those who have to date been refused core participant status but whose applications will be reviewed as the Inquiry proceeds.

You ask about the Inquiry's intentions in relation to obtaining witness statements and, in particular, what material will be disclosed to witnesses before witness statements are sought. For the purposes of Module One, the Inquiry will be assisted in its work if it is able to obtain factual accounts of their experiences from those who have been, or may have been, affected by undercover policing. The Inquiry will clearly be particularly interested in what those affected by undercover policing can tell it about the conduct of undercover police officers and its effects. We will also be seeking other factual evidence relevant to whether or not a deployment was justified, including whether or not there was evidence of actual or suspected criminal conduct such as to justify the initial and continued deployment of an undercover police officer. The Inquiry will, of course, also be seeking evidence from field officers themselves.

We recognise that witnesses will be assisted by sight of documents which may refresh their memories. These may be documents in their own possession, which will themselves be of relevance to the Inquiry, or documents which the Inquiry has obtained from others. There may also be documents which make assertions about what a witness has said or done which the witness can respond to directly.

The Inquiry will be identifying potential witnesses and the respects in which they appear to be able to assist the Inquiry. It will be seeking then to identify the documents which the witness should see in order to assist him or her to produce a witness statement. The Inquiry plans to make requests under rule 9 of the Inquiry Rules 2006 for witness statements to those from whom evidence will, or may, be received in Module One. The request will be accompanied with the documents which the Inquiry has identified as necessary for the witness to see in order to prepare the witness statement.

The Inquiry may need to return to a potential witness to request a further statement or statements as the investigation proceeds. For example, if further documents need to be put to a witness, if clarification is required or if fresh issues need to be addressed.

The Inquiry understands that it might not always at first appreciate the full extent of the relevant evidence which a witness may be able to give. The Inquiry is planning to address this issue with a catch all question at the end of its requests to Module One witnesses.

The Inquiry also understands that it may not always at first appreciate who has been affected by particular undercover police officers. In cases where applications for restriction orders over the cover names of undercover police officers are refused, the Inquiry will publish the cover name. In cases where it is able to do this, it is hoped that more of those affected will be identified and may come forward to assist the Inquiry.

Turning to Module Two, the Inquiry currently envisages that the majority of the evidence will be provided by witnesses who are, or were, public servants. In Module Two the Inquiry will be investigating a wide range of managerial, systemic and organisational issues. It will also be looking, insofar as necessary at what happened to the reports made by undercover police officers. Evidence is likely to be sought from non state witnesses insofar as there are specific matters on which they can give factual evidence necessary for the Inquiry to discharge its terms of reference. For example, blacklisting is potentially one such matter.

You ask how the Inquiry will engage with core participants in setting the framework for the evidence gathering process. This letter is a step in such engagement. I look forward to your and your colleagues comments on our plans. They will be considered before we proceed to request any witness statements from Non Police Non State Core Participants.

The final request in your email expresses a concern about staffing as opposed to being a direct question. I can only repeat that the Inquiry team is currently expanding and will continue to expand as necessary. The Inquiry is sufficiently funded. We are being assisted by Operation Herne and, more recently, by Operation Elter (which is focused on the National Public Order Intelligence Unit), but it is not bound by their work.

I am copying this letter to all core participants so that they all have the benefit of the Inquiry's current position on the issues which you have raised. Any comments which they have on the Inquiry's plans for obtaining witness statements will also be considered.

A copy of this letter will also be posted on the Inquiry's website.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Piers Doggart', with a stylized flourish at the end.

Piers Doggart
Solicitor to the Inquiry