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## COUNSEL TO THE INQUIRY'S NOTE FOR THE HEARING ON 5 APRIL 2017

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### Introduction

1. The immediate purpose of the hearing due to be held on 5 April 2017 is to consider the application made by the Metropolitan Police Service for an extension of time in which to make applications for anonymity in respect of police officers who formerly served in the Special Operations Squad, the Special Demonstration Squad and the Special Duties Section. Associated with that application is a request by the Metropolitan Police Service that the Inquiry changes its approach to anonymity. These issues need to be considered in the context of the progress and approach of the Inquiry as a whole. The purpose of this note is to summarise the work of the Inquiry to date and to explain how it is currently proceeding. We then analyse and respond to the Metropolitan Police Service's applications in their proper context. Finally, we raise some of the wider questions which the Inquiry is considering relating to how it should proceed in the future. We do that so that core participants can express their own views on these questions in response.
2. The Inquiry is facing many challenges. At the root of most of these challenges are the difficulties inherent in conducting a *public* inquiry into *undercover* policing. The demands of conducting such an Inquiry are apparent at many points in this Note. However, the Inquiry remains firmly of the view that, although it will be slow and difficult, it remains extremely important to adhere to conducting the Inquiry as openly as we reasonably can. For the reasons which we explain in more detail further below, we do not consider that the revised approach to anonymity advocated by the Metropolitan Police Service is appropriate. Neither do we consider that it would be appropriate simply to extend time for the Metropolitan Police Service to make the applications currently sought to 1 October 2017.

### Overview of the Inquiry's approach to its terms of reference

3. The Inquiry's terms of reference are very wide ranging and the Chairman has a wide discretion about how to fulfil them. Having invited applications for core participant status and designated 178 persons as non-police, non-state core participants, the Chairman has said that he will investigate their cases<sup>1</sup>. He has, in addition, said that

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<sup>1</sup> We have included in this total family members of police officers whose experiences the Inquiry considers should not be overlooked.

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he will review the cases of 43 civilian applicants for core participant status. That necessarily involves at least some degree of investigation of those cases.

4. The activities of two undercover police units occupy centre stage in this Inquiry: the Special Demonstration Squad and the National Public Order Intelligence Unit. It should be noted that the unit known as the Special Demonstration Squad was only so named between 1972 and 1997. At its inception in 1968 (which is the reason for the start date of the Inquiry's terms of reference) it was known as the Special Operation Squad and after 1997 it became known as the Special Duties Section until it was closed down in 2008. Within this note, though the term Special Demonstration Squad is used, it is intended to refer to all three titles of the unit which existed between 1968 and 2008. It is the activities of some officers from these units (some confirmed, some alleged) which have caused sufficient public concern to warrant a full statutory public inquiry. The role of the Special Demonstration Squad and the National Public Order Intelligence Unit is sufficiently central to have merited specific mention in the terms of reference. Accordingly, the investigation of these two units is a priority for the Inquiry. We are proceeding on the basis that these two units will be investigated more intensively than other less central aspects of the Inquiry's work.
5. However, the Inquiry's work is not restricted to the Special Demonstration Squad and the National Public Order Intelligence Unit. The Inquiry is also investigating the work of the police units which pre- and post-dated the National Public Order Intelligence Unit. Investigating the Animal Rights National Index which pre-dated the National Public Order Intelligence Unit is likely to shed light on how the latter came to exist in the form, with the remit and with the practices that it did. Investigating the National Domestic Extremism Unit and other units which post-date the National Public Order Intelligence Unit is necessary to understand what has happened since the demise of the latter unit in or around 2010. These investigations will lead the Inquiry up to the present day which we regard as a necessary step if the Inquiry's work is going to establish whether or not there is continuing cause for concern.
6. The Special Demonstration Squad was a unit within Metropolitan Police Special Branch. It therefore makes sense to investigate the undercover policing activities of regional Special Branches in order to establish whether undercover operations of the kind which were being run by the Metropolitan Police Special were also being run by regional Special Branches. This the Inquiry is also doing.
7. Undercover policing more generally, as conducted by all police forces in England and Wales (including the Metropolitan Police Service, regional units and national units), also falls within the Inquiry's terms of reference<sup>2</sup>. Very often, this sort of undercover

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<sup>2</sup> For example, units such as the Regional Crime Squads, National Crime Squad.

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policing has been targeted at serious and organised criminals. The Inquiry has adopted a different, less intensive approach to its investigation of this undercover policing so as to enable the primary focus to remain on the Special Demonstration Squad and the National Public Order Intelligence Unit. The Inquiry has invited self-disclosure by police forces of both the good and the bad which has arisen from all of their other undercover policing operations. The Inquiry is taking steps to verify that the self disclosure has been frank and representative. Individual case studies which appear to merit further investigation are being followed up by the Inquiry team. This is proving to be a successful strategy thus far. There is both evidence suggestive of very productive undercover police operations that have been instrumental in bringing dangerous criminals to justice and evidence giving cause for concern that merits further investigation.

8. The Inquiry has, from the outset, explained that it will be adopting a three module approach. The purpose of Module One, which will receive evidence, whether written or oral, from undercover police officers and those affected by their deployments, is to build an evidential base which then provides a foundation for the investigation of the management chain which will follow in Module Two. Module Two will involve receiving evidence not just from managers within undercover policing but also from other managers within police forces. In addition to hearing evidence from within the police forces themselves the Inquiry will also receive evidence from witnesses from official bodies which have oversight roles and from other government departments, including the Home Office. Module Two will be a very substantial and crucial element of the work, intended to provide the Inquiry with the evidential base it needs properly to report on systemic issues, both good and bad, which must be understood if well informed recommendations are to be made. Module Three will be a much shorter and forward looking exercise designed primarily to reality test potential recommendations.
9. To assist general understanding of the shape of the hearings, it is anticipated that in Module One, undercover police officers will give evidence at hearings about their deployments (likely to include evidence about how they were selected, their training, which groups they infiltrated, why they understood they were so tasked, what they did during their deployments, any problems that occurred, their treatment post deployment, their welfare) including anything they have to say about the management of their deployments. Those affected by their deployments will also be called to give evidence about their experience. Evidence from the cover officer who managed, tasked and had day to day welfare responsibility for the undercover officer will be heard in Module Two not in Module One, though we will aim to have obtained and circulated statements from cover officers by the time of the relevant Module One hearing.

10. This is a public inquiry, therefore the expectation is that the evidence heard in Module One, whether written or oral, on which the Inquiry relies for its final report will be published subject to orders being granted to restrict some of its publication. Knowing what can and cannot safely be published by determining restriction order applications, including applications for anonymity, is a key issue which must be determined before the Inquiry can progress to hearings.

### **Summary of progress of the substantive investigation**

11. Investigation of the Special Demonstration Squad has been the Inquiry's first priority to date. Not simply because its activities are central to the Inquiry but also because the Inquiry intends to commence Module One by receiving evidence from witnesses who worked as field officers in this unit and from those who were affected by their activities.
12. The Inquiry has been greatly assisted by the existence and co-operation of Operation Herne which has done a good deal of investigatory work into this unit<sup>3</sup>. The Inquiry has been particularly assisted by the documents, interview notes and witness statements which have been collected by Operation Herne.
13. A significant impediment to receiving, reviewing, analysing, sifting, following up and preparing this material for use at the hearings has been the Inquiry's difficulties procuring information technology suitable and accredited for use with highly classified documents. The Inquiry, has since the autumn of last year, had a limited capability of this kind, namely stand alone computers which can be used to read highly classified documents and create documents with highly classified content (e.g. notes on what has been read). The Inquiry has procured, and is preparing for full service, a functioning secure database. At the time of writing the Inquiry has a number of terminals which are being used for testing and preparation which have been provisionally accredited for use with highly classified material. Whilst an ordinary database can be purchased off the shelf, procuring and installing a secure database has proved to be a formidable and very lengthy challenge. The secure database, when it enters full service, will give the Inquiry the capability to load almost all of the material which it has received onto one platform, sort, search within and across documents, view associated data (e.g. document title or author), allocate reference numbers, electronically tag, note, redact and gist documents. Until then we do not have the capability, for example, to search on the name of a police officer or core participant to establish what the records which we have received electronically contain in relation to such a person.

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<sup>3</sup> We should emphasise that the Inquiry is by no means fixed with the conclusions or approach which Operation Herne took. The Inquiry is independent and will pursue its own course. The point we make is simply that a great deal of relevant material is available to the Inquiry from a single source.

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14. With the assistance of the Metropolitan Police Service, the Inquiry has sought to progress its investigation of the Special Demonstration Squad pending the arrival of satisfactory information technology in a number of ways. These have included:
  - 14.1 Receiving obviously important documents in hard copy from the Metropolitan Police Service.
  - 14.2 Obtaining electronic copies of the evidence obtained by Herne about this unit, including the unit's records and the interview notes and witness statements obtained by Herne.
  - 14.3 Visiting Operation Herne to inspect documents in situ, including using their information technology to access material stored electronically.
  - 14.4 Visiting New Scotland Yard to use police computers to view material copies of which have been provided electronically by the Metropolitan Police Service to the Inquiry.
  - 14.5 Visiting the Intelligence Management and Operations Support system to inspect and then request records from Special Branch (now known as SO15).
  - 14.6 Requesting and/or inspecting documents from third party bodies which are relevant to the units in question.
  - 14.7 Commencing restriction order work (manually) in respect of the content of selected and obviously important documents.
  - 14.8 Upon the arrival of our current stand alone secure computers, commencing consideration and analysis of material provided to the Inquiry electronically. In particular, the Inquiry is now pursuing officer-by-officer investigations.
15. We can say at this stage that matters of interest to the Inquiry, in relation to this unit, are certainly not confined to the deployments of those officers who have, to date, been officially confirmed.
16. A feature of what we have seen thus far is that the further back in time one goes the thinner is the documentary record. To date, we have very few documents from the early days.
17. Investigating the National Public Order Intelligence Unit is, in many ways, more complex than investigating the Special Demonstration Squad. Personnel for the former were drawn from forces across the country whereas the latter were drawn from Metropolitan Police Special Branch. Lead responsibility for the National Public Order Intelligence Unit rested, for a period, with the Association of Chief Police Officers, an

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entity which is now defunct. The work of Operation Elter, the police investigation of the National Public Order Intelligence Unit is not as advanced as that of Operation Herne. Potentially relevant documents are held by a wide range of persons.

18. The Inquiry also has access to Operation Elter. We have and will continue to inspect documents in situ at Operation Elter's premises. The Inquiry has received electronic copies of significant quantities of documents from Operation Elter which it is analysing with the IT currently at its disposal. As is the case with the Special Demonstration Squad, we are commencing officer-by-officer investigations. The Inquiry has also been locating and requesting relevant documents held by a number of state bodies.
19. The Inquiry has requested and has received substantial amounts of material (documents and/or witness statements) in pursuit of its investigation of the other undercover policing activities summarised in the overview section above, although there is much work left to do. Regional forces have made applications for restriction orders over some of the material which they have produced. These applications have been provisionally assessed by the Inquiry Legal Team but their final resolution is awaiting the arrival of the secure database so that it can be effected much more efficiently.
20. Preparation for Module Two has, from a very early stage, been running in tandem with the preparations for Module One. The Inquiry has requested witness statements and documents from a very wide range of public bodies including, for example, the Home Office, the National Police Chiefs' Council, the Office of Surveillance Commissioners, the Crown Prosecution Service, the National Crime Agency and the College of Policing. The Inquiry has been working through the material which has been produced and is making provisional decisions about necessity and making requests to follow up responses where necessary. The Inquiry has so far either inspected on site or received and reviewed thousands of documents potentially relevant to Module Two. Applications for restriction orders have been made in many cases and are awaiting the full implementation of the secure database before being substantially progressed. Work has also begun to identify individuals who have been involved the selection, training, guidance and oversight of undercover police officers and policing in order to obtain first witness statements to inform the Inquiry's ongoing investigations for the purposes of Module Two.
21. Preparations for Module Three are being deliberately left until later in the life of the Inquiry primarily because this module will be largely responsive to the evidence which we receive in Modules One and Two.

## **Procedural matters to date (other than anonymity and other restriction orders)**

### *Designation of Core Participants*

22. The Inquiry has already dealt with a number of preliminary issues but it may be helpful to explain that such work is continuing. The Inquiry has held a hearing on core participant status and the Chairman has, to date, made 12 rulings designating a total of 203 core participants. Further applications may well be received, for example from persons who become aware that they have been significantly affected by undercover policing or from undercover police officers with a core involvement in the events which the Inquiry is investigating.

### *Designation of Recognised Legal Representatives*

23. The Chairman has to date designated 24 lawyers as the Recognised Legal Representatives of core participants. In recent months arrangements have been made for the legal representation of officers associated with the National Public Order Intelligence Unit. These officers are being represented either by force solicitors or by independent solicitors and these representatives will be designated as Recognised Legal Representatives. The representation of these officers in this way has resulted from the Inquiry having sought applications for anonymity (if any are to be made) from a first tranche of officers. The current tranche of anonymity applications comprises undercover police officers associated with the National Public Order Intelligence Unit and their cover officers. Arrangements for the legal representation of further police officers are likely to need to be made as they become involved in the Inquiry. The Inquiry will next be giving further tranches of former National Public Order Intelligence Unit personnel the opportunity to apply for anonymity, should they so wish (i.e. other senior managers and back office staff).
24. As will be apparent from the Metropolitan Police Service's fourth letter dated 21 December 2016 there has been correspondence between the Inquiry and the Metropolitan Police Service as to whether it is sufficient for officers to be "legally supported" by that force's Directorate of Legal Services or whether officers should be offered full legal representation (i.e. on a solicitor-client basis) and, if so, by whom. The root of the Inquiry's concern is fairness to the officers. It is ultimately the officer's decision as to whether or not to accept the Metropolitan Police Service's offer of support or whether to seek legal representation (which is likely to entail also seeking funding).
25. The Inquiry is currently taking steps to satisfy itself that officers who served in the Special Demonstration Squad are being given all of the information which they need in order to make a fully informed decision. Further Recognised Legal Representatives

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will need to be designated for Metropolitan Police Service officers because it is already known that some are going to be separately represented, although it is not yet known how many. Arrangements for the legal representation of former National Public Order Intelligence Unit officers who were (or are) also Metropolitan Police Service officers are currently being clarified.

### *Standard of Proof & Undertakings*

26. The Chairman's approach to standard of proof was settled in his [ruling dated 13 January 2016](#). He has also ruled on question of undertakings, although subject to a proviso that the question of seeking further undertakings may be revisited (see the [ruling dated 26 May 2016](#)).

### *Deceased Children's Identities*

27. The approach which the Inquiry should take to the use of deceased children's identities by undercover police officers was the subject of the Chairman's [ruling dated 14 July 2016](#). The Inquiry has been applying the approach decided upon in this ruling and has, to date, contacted a number of surviving relatives. Although tracing and contacting relatives is a further step that needs to be taken before the Inquiry can confirm a particular undercover police officer's cover name, we are convinced that it is an essential and valuable step.
28. Of particular relevance to the forthcoming hearing on 5 April 2017 is the fact that in the course of deciding its approach to the issue of deceased children's identities, it was concluded that the Inquiry should treat each instance of this practice that it comes across as relevant and necessary. The working hypothesis at this stage of the Inquiry is that it was standard practice for the Special Demonstration Squad to use deceased children's identities until some time in the mid-1990s and there appears to have been some limited use of the practice by officers in the Animal Rights National Index and/or early days of the National Public Order Intelligence Unit thereafter<sup>4</sup>. Operation Herne concluded that, within the Special Demonstration Squad, there were 42 assumed identities which either did appropriate, or were highly likely to have appropriated, a deceased child's identity. Whether or not this figure is precisely accurate remains to be seen, but it provides a minimum number of cover names which the Inquiry will need to publish (unless a restriction order is sought and made) if it is to continue to pursue the course decided upon in July 2016.

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<sup>4</sup> Operation Herne's first report states that the practice was discontinued starting from November 2004.



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### *Rehabilitation of Offenders Act 1974*

29. We have just published our [analysis](#) of the legal issues that arise for the Inquiry from the operation of the Rehabilitation of Offenders Act 1974 and invited submissions on the issue. The Chairman will then decide whether or not it is necessary to seek any form of exception from the operation of that Act. Although we wish to be clear about the legal position before proceeding, and above all to avoid any insuperable obstacle arising during the course of the hearings, it does not follow that the overall progress of the Inquiry will be greatly delayed if we have to wait at this stage for an exception to be made. The Inquiry has much which it could get on with.

### *Assurance*

30. The broad scope of the Inquiry and the nature of its subject matter make it impracticable for it to seek to acquire every document potentially relevant to undercover policing in England & Wales between 1968 and the present. The only feasible approach is targeted acquisition of material likely to be of real interest, hence the Inquiry's decision to seek all of the Special Demonstration Squad's records from Operation Herne. The practical difficulty, especially in relation to intelligence reports, is not only the sheer volume of material, some of which is in hard copy, but the fact that intelligence reports may be deliberately written so as to conceal their source ("sanitised"). Accordingly, although there are sometimes tell tales, for those who know what to look for, which indicate that a particular report came from an undercover police officer, intelligence reports have to be very carefully scrutinised if relevant material is to be sifted from irrelevant material. Identifying relevant intelligence reports is an issue which the Inquiry is presently addressing as needed on an officer by officer basis.
31. Because it is impracticable to acquire every potentially relevant document, the Inquiry has sought assurances and information from the Metropolitan Police Service and other police forces from an early stage about the steps which they are taking to prevent potentially relevant material from being destroyed before the Inquiry obtains it. Concerns have been followed up. The area of greatest concern is the National Counter Terrorism and Police Operations Centre (a.k.a. "NCTPOC") which is the latest incarnation in the long list of units which succeeded the National Public Order Intelligence Unit. As is now well known, it is currently under investigation by the Independent Police Complaints Commission in relation to document destruction in 2014, after the Inquiry was announced but a year before the Inquiry's setting up date, although it is not known if any of the documents which were destroyed related to undercover policing. The Inquiry has, during the course of 2016 and into 2017, obtained a series of signed witness statements as a result of its concerns about this unit's document retention which are currently being prepared for publication. This strand of work on securing document assurance continues, and further evidence is

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due to be provided by the Metropolitan Police Service in the coming weeks. The Inquiry has also sought and obtained confirmation that available mirror images of the National Counter Terrorist and Police Operations Centre's database are being securely held.

32. Considerable resources have been deployed by the Inquiry to the issue of assurance and the Inquiry's assurance work will continue as necessary. It may assist readers of the Metropolitan Police Service's third letter dated 21 December 2016 to know that Person B is an officer whom the Inquiry expects to feature in the Independent Police Complaints Commission's investigation. We say no more at this stage so as not to prejudice the Independent Police Complaints Commission's ongoing work. We should emphasise, in fairness to Person B, that matters remain under investigation, and the Inquiry's stance has been adopted and is maintained on a precautionary basis.

### *Protocols*

33. A draft disclosure protocol was developed at an early stage of the Inquiry and has gone through a number of iterations as a result of discussions with the Metropolitan Police Service, representatives of the non-police, non-state core participants and a consultation of all core participants conducted last year. A further draft will shortly be circulated for a further consultation amongst all core participants following further discussions with the non-police, non-state core participants. In the meantime the Inquiry, as outlined above, has been obtaining documents from the Metropolitan Police Service having regard to the successive draft protocols.
34. A restrictions protocol has also been in draft form since the early days of the Inquiry. A further iteration will also shortly be circulated for a final consultation dealing with the approach to protecting the privacy of civilians, whether non-police, non-state core participants or not. The Inquiry understands that the need to protect privacy is a very important issue for those involved and is seeking to develop a system which is both workable in practice and effective in the protection which it affords. The protocols will need be finalised in time for the mass processing of documents once the Inquiry's secure database is fully functioning.
35. The Inquiry plans to publish a witness statement protocol dealing with the format in which witness statements should be provided to the Inquiry. This protocol will be consulted upon and finalised before the Inquiry embarks upon the large scale acquisition of witness statements from persons whose evidence the Inquiry wishes to receive in Module One. In the meantime, those who have been asked to submit witness statements to the Inquiry have been provided with guidance included in correspondence as to the formatting of their statements. In particular, the Inquiry has requested that any witness who makes more than one statement on a particular topic

should produce a consolidated statement, rather than several separate statements in response to follow up requests or further information coming to light. This means that all the written evidence provided by a particular witness on a particular topic should appear in the same document, for ease of reference, which will be dated as at the latest iteration of the statement. Examples of statements adopting this format from the Metropolitan Police Service witness Neil Hutchison already appear on the Inquiry website.

36. Draft lists of issues will be circulated to core participants and consulted upon before being finalised. We are likely to issue both overarching draft lists of issues relating to each module and more specific lists once we have read in sufficiently to do so from an informed perspective. Before the oral hearings commence the Inquiry plans to consult upon and publish a protocol for questioning which will reflect the procedure required by rule 10 of the Inquiry Rules 2006. This protocol will be finalised in good time before the oral hearings begin.

### **Anonymity – Context**

#### *Transparency*

37. It is hard to overstate the importance of the restriction order process in relation to anonymity to the conduct of the Inquiry. First, it is the gateway to transparency. The extent to which officers' cover names, in particular, can be published will be the principal determinant of how public the Inquiry can be. It is for that reason that the Inquiry has gone to the trouble of very full consideration of the legal principles which fall to be applied, as now set out in the Chairman's [ruling of 31 May 2016](#). We have also published a very detailed [procedural flowchart](#) which illustrates the many steps which are necessary to deal with a single application.
38. If an officer's cover name can safely be published then the Inquiry can solicit evidence from members of the public who might have been affected by that officer's activities. There is reason to suppose that in some cases at least potentially very important evidence may only come to light if an officer's cover name is published. The Inquiry team is reinforced in this view having had the opportunity to compare the information which was available to Operation Herne in relation to an officer whose cover name has since been made public with that now available.
39. If an officer's cover name can safely be published then the Inquiry can call and question the officer to give evidence in public (with protections if these are necessary). This is obviously preferable to evidence which is given either behind closed doors or only to a select few. Or, if the evidence is admitted only in writing, his or her witness statement can be published. In contrast, if an officer's cover name has to be ciphered

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to protect their identity then there is only a limited amount of evidence that can be put into a public statement without undermining the purpose of the cipher. Substantive discussion about details of the officer's deployment would be likely to reveal his or her identity to those who were the subject of the deployment and defeat the purpose of the cipher.

40. Very significantly in the present context, the question of anonymity does not affect simply the question of whether an officer can meaningfully give evidence in public, whether orally or in writing. Anonymity also has important ramifications when it comes to considering the publication of documents (e.g. minutes of weekly debrief meetings, deployment authorisation forms, notes made by undercover officers, intelligence reports). If an evidence based risk assessment has led to the imposition of a cipher because publication of the cover name would lead to an unacceptable risk of harm, then that has to be taken into account when documents are considered for publication. The Inquiry then has to redact or gist such content of any document that might lead to the identification of the officer in question.
41. The reason why the point above is so important in the present context is that if an officer can be named then the Inquiry's next step is to consider documents relating to that officer's deployment for disclosure to those witnesses involved or affected by the deployment who may need to consider them before making their own witness statement, and publication generally. In the case of the Special Demonstration Squad, some of these documents will inevitably contain information about other undercover officers, usually from the same unit, including their names. If the Inquiry has received and determined anonymity applications from those concerned, it will know exactly where it should draw the line and can publish as much as possible of a document. If the Inquiry accedes to the Metropolitan Police Service's submission then the Inquiry will inevitably be faced with documents containing the names of personnel who have not been through the anonymity process and whom the Metropolitan Police Service are presumably asking the Inquiry to treat as anonymous by default. In the absence of an evidence based decision the Inquiry would have to restrict publication of all content that might reveal, directly or indirectly, the identity of the officer. In some cases that is likely to cover much more than merely the name itself. The approach proposed by the Metropolitan Police Service would necessarily limit the extent to which even a named officer could meaningfully be questioned in public on documents relating to his or her deployment.

### *Preparation*

42. The second reason why determining anonymity is of fundamental importance to the course of the Inquiry is that it is also the gateway to much of the necessary preparation for the Inquiry's evidential hearings. Some preparation can be done prior to an

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anonymity application being determined. For example, the Inquiry can obtain documents from state bodies and it can approach the officer for a witness statement (contra the submission made at paragraph 5 of the Metropolitan Police Service's skeleton argument dated 23/2/17). However, the Inquiry cannot give further consideration as to whether publication of a document referring to the officer ought to be restricted in any way until it knows whether the officer can or cannot be named. Neither can the Inquiry approach civilians for witness statements about the activities of the officer until it knows whether the officer can or cannot be named. The Inquiry cannot even ask questions about the officer of other state witnesses unless they already knew that the person in question was an undercover police officer.

### **Anonymity – Current Position**

#### *Non-state non police core participants*

43. The first group of anonymity applications which the Chairman has received and determined are those made by non-police, non-state core participants. These have proved relatively straightforward to consider and determine.

#### *Slater and Gordon clients*

44. The second group of anonymity applications which the Chairman wishes to determine are those made by police officers and former police officers who are currently core participants, i.e. those represented by Slater and Gordon. A number of these applications have fallen away in that the below named officers from this group who sought provisional anonymity have now been named. In two cases an application to restrict the real name remains outstanding and, as stated in the press release confirming the cover name, will be published in due course. The Inquiry is awaiting the submission of expert medical reports in both of these cases. In both cases we expect to have the reports before the end of this month.

<b>Herne nominal</b>	<b>Real name</b>	<b>Cover name</b>
N10	Bob Lambert	Bob Robinson
N14	Jim Boyling	Jim Sutton
N104	<i>Provisionally restricted</i>	Carlo Neri
N519	<i>Provisionally restricted</i>	Marco Jacobs

45. The anonymity applications of six remaining Slater and Gordon officers remain outstanding. They are N15, N16, N26, N58, N81 and N123. In all six cases a

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Metropolitan Police Service risk assessment is awaited, following the withdrawal of the Metropolitan Police Service's original risk assessors in September 2016.

46. Four of the six officers wish to rely on medico-legal reports obtained for the purposes of informing their applications. Their progress in obtaining this evidence has been extremely slow. Both their first and second medico-legal experts withdrew. The history is set out in the Chairman's [ruling](#) rejecting the second expert's anonymity application. The Inquiry has recently received a medical report relating to N58 from a third medico-legal expert. We expect to receive medico-legal reports in respect of N16, N26 and N81 shortly and understand that all three have been examined.
47. The Inquiry has asked the Metropolitan Police Service to prioritise the risk assessments in relation to the Slater and Gordon officers. Once we have both the risk assessment and, where one is being relied upon, the medico-legal report, for an officer the Inquiry will process the application. The process is illustrated [here](#).

### *Officers who served with the Special Demonstration Squad*

48. The Inquiry had originally intended to await the determination of the Slater and Gordon officers' anonymity applications before offering officers from the Special Demonstration Squad an opportunity to make their own applications. The purpose of so doing being to enable them to make applications with the benefit of the guidance which would be derived from early rulings. However, when it became apparent that the Slater and Gordon applications were seriously delayed, the Inquiry decided it could not wait any longer and afforded the officers from this unit the opportunity to seek anonymity if they so wished. That was done by way of a letter dated 11 August 2016.
49. The Inquiry's letter of 11 August 2016 first required the Metropolitan Police Service to confirm its position in relation to a number of officers whom the Inquiry wished to prioritise in connection with the applications for anonymity by Slater and Gordon's clients and by Jaipur and Karachi<sup>5</sup>. The letter set deadlines for applications to be made in two tranches, termed tranches 2 & 3 because the Slater and Gordon clients formed tranche 1. Tranche 2 contained small numbers of officers whose applications the Inquiry wished to have expedited and set a deadline of October 2016. Tranche 3 encompassed the majority of the officers. The deadline for this tranche was a window which extended from 7 November 2016 until 1 March 2017. In addition to setting a timetable for the provision of anonymity applications the letter also requested the provision of ancillary information by dates in October (for Tranche 2 officers) and November (for Tranche 3 officers). That information comprised:

49.1 which officers are living;

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<sup>5</sup> These confirmations were not entirely confined to officers from the Special Demonstration Squad.

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- 49.2 whether the Metropolitan Police Service was in contact with the officer and, if not, what steps had been taken to contact the officer;
  - 49.3 confirmation that the Metropolitan Police Service represents the officer in the Inquiry;
  - 49.4 whether the officer wished to apply for anonymity.
50. The Metropolitan Police Service abandoned reliance on Jaipur and Karachi as risk assessors on 27 September 2016, following concerns about the tension between their dual roles as liaison officers and risk assessors. It was an inevitable consequence of that development that there would be a significant delay in the provision of risk assessments. The Metropolitan Police Service also missed some of the early deadlines in the timetable. Consequently, the Inquiry decided actively to monitor progress and did so by maintaining a dialogue in meetings with the Metropolitan Police Service legal team and in correspondence.
51. The Inquiry's dialogue with the Metropolitan Police Service has proved helpful in some respects:
- 51.1 The Inquiry legal team was informed at an early stage of the names of the medico-legal experts instructed by the Metropolitan Police Service (none of whom are seeking anonymity).
  - 51.2 The Inquiry was also informed at an early stage of the identity and background of the replacement risk assessors whom the Metropolitan Police Service proposed to appoint. This enabled the Inquiry to consider whether there was any potential conflict of interest and to consult with the non-police, non-state core participants. Two of the three persons selected by the Metropolitan Police Service have been confirmed in their new role. A third has withdrawn: the person referred to as Person A in the Metropolitan Police Service's letter dated 21 December 2016<sup>6</sup>. The Inquiry team was also in a position to urge the Metropolitan Police Service to increase its resources as soon as it became clear that they were an issue. The Metropolitan Police Service's third letter dated 21 December 2016 is, in large part, a response to that call.

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<sup>6</sup> Person A's name is no longer necessary for the purposes of the Inquiry and so it has been ciphered. The Inquiry was reinforced in this view in fairness to Person A (whose identity is known to Non-police, non-state core participants). The Inquiry has no evidence of any actual conflict of interest, nor any grounds for concern about Person A's conduct. However, in light of the fact that he had had contact during his career with a Non Police Non State Core Participant the Inquiry wished to have positive and independent assurance that there was no potential conflict of interest.

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- 51.3 The Inquiry has also communicated its priorities to the Metropolitan Police Service with a view to securing those applications which will best facilitate progress first.
- 51.4 The Inquiry has been shown in draft and commented upon, but not taken any responsibility for, the risk assessment method now being adopted by the Metropolitan Police Service.
52. Despite the steps described above, the Metropolitan Police Service has nevertheless fallen further and further behind the timetable set in August. As a result, the Inquiry has intensified its monitoring of its progress and has now moved to a system of requiring fortnightly progress reports from the Metropolitan Police Service.
53. The current position on the ancillary issues is set out below.
- 53.1 The Inquiry has been informed that 16 of the unit's 118 undercover officers have passed away.
- 53.2 The Metropolitan Police Service has informed the Inquiry that 10 officers are already represented by other solicitors in the Inquiry; they have not contacted 3 officers on grounds of their reported ill health; in a further 3 cases the Metropolitan Police Service does not believe that it has identified the officer's current address; there is a conflict of interest between the force and 5 further officers. The Inquiry will decide how to proceed with these cases.
- 53.3 As explained at paragraph 25 above, arrangements for legal support or legal representation are not yet final.
- 53.4 The Inquiry is still awaiting confirmation as to which officers wish to make an anonymity application and which do not.
54. The substantive position is that the Metropolitan Police Service has not resisted, and the Inquiry has been able to confirm, the identities of two former members of this unit (in addition to those of Slater and Gordon's clients who have been named: John Dines (a.k.a. John Barker) and Simon Wellings). The Inquiry is currently going through its pre-disclosure procedure (as described in the flowchart '[Process map for determining key anonymity applications](#)') in relation to two further officers and is conducting its own assessment of risk in respect of a third.
55. In no case falling within Tranches 2 & 3, in which an application for anonymity is to be made, has the Metropolitan Police Service at the time of writing provided the Inquiry with an application. Had the Metropolitan Police Service been able to submit some applications within the applicable window then the Inquiry could have maintained



momentum. However, the failure to make any application at all before the close of the application window is particularly disappointing and is delaying the substantive progress of the Inquiry.<sup>7</sup>

### *National Public Order Intelligence Unit*

56. As was the case with the Special Demonstration Squad, the Inquiry had originally intended to wait until early anonymity applications had been determined before inviting any applications for anonymity from National Public Order Intelligence Unit personnel. Determining their applications is not as high a priority as the applications from the Special Demonstration Squad because it is intended to start by hearing evidence relating to the activities of the Special Demonstration Squad. However, in order to avoid further delays and in the light of experience as to how long it was taking for Slater and Gordon and the Metropolitan Police Service to prepare applications, the Inquiry decided to proceed and invite applications from a first tranche of former National Public Order Intelligence Unit officers.
57. The approach to the National Public Order Intelligence Unit has been to send letters (the majority of which were dated 16 December 2016) to undercover officers and cover officers associated with the unit informing them of the Inquiry's interest in obtaining evidence from them, the availability of legal representation, and the opportunity to make an application for anonymity. It has been able to deliver those letters via the police forces with responsibility for the officers / former officers concerned. The result is that officers have been securing legal representation and replying to the Inquiry. To date, every officer who has replied has intimated an intention to apply for anonymity.
58. Following detailed discussions with the National Police Chiefs' Council's co-ordinator and legal team a system for the production of risk assessments in relation to applications by former National Public Order Intelligence Unit personnel has been put forward by the National Police Chiefs' Council. Risk assessments are to be produced by officers from the Operational Security officer network that exists across the country within Regional Organised Crime Units. To date the Inquiry has been provided with details of two such proposed risk assessors via the National Police Chiefs Council, and an additional one through the National Crime Agency. Open summary form Curricula Vitae will shortly be circulated to the non-police, non-state core participants.

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<sup>7</sup> This is an appropriate juncture at which to clarify the reference in the Metropolitan Police Service's first letter dated 21 December 2016 to the effect that the Inquiry has not sought to apportion blame. It is right to say that that was the approach taken at a meeting between legal teams in December 2016 in order to be forward looking and to concentrate on securing a step change in the Metropolitan Police Services efforts to comply with the timetable. It is not to be taken as absolutism.

59. A further tranche of similar letters will be sent to other managers and any necessary back office staff who formerly served with the National Public Order and Intelligence Unit at an appropriate time.

### *Other Anonymity Applications*

60. It will be apparent from the overview of the Inquiry's proposed approach set out at paragraphs 3 to 10 above, that in addition to units at the core of the Inquiry's remit, the Inquiry has been and will be continuing to obtain evidence relating to undercover policing from a number of other units. In due course anonymity applications from those affected will need to be sought. However, at this stage the Inquiry is prioritising anonymity work concerning the Special Demonstration Squad and the National Public Order Intelligence Unit.

### **The Metropolitan Police Service's proposed approach to restriction order applications**

61. By its second letter dated 21 December 2016 the Metropolitan Police Service raises three issues. The first is to *"invite the Inquiry to reconsider its decision to require full restriction order applications from every former SDS officer"*.
62. The Metropolitan Police Service summarises the grounds for making this invitation as being: *"The MPS recognises that a number of deployments will be properly subjected to close scrutiny by the Inquiry in meeting its Terms of Reference. This does not mean, however, that each deployment will need to be subjected to the same depth of review. The current plan, requiring the MPS to make restriction order decisions and prepare applications for every officer at the outset, may include a number of cases that the Inquiry ultimately will decide not to publish and therefore is disproportionate given the resourcing this will require and all the other demands being made on the MPS"*.
63. The second letter then proceeds to develop the grounds for the proposal first by emphasising how complex, resource intensive and demanding the task of preparing an application is. Secondly, the Metropolitan Police Service asserts that many officers are reluctant to engage with the Inquiry process and may find the process of applying for anonymity harrowing and upsetting.
64. The solution proposed by the Metropolitan Police Service is for the Inquiry to: *"...consider the documents it holds, and invite restriction applications only for those cases it wishes to subject to more considered scrutiny"*.
65. The Inquiry readily accepts that it is likely to investigate some deployments, and some aspects within deployments, more closely than others. The ability to select deployments, and particular aspects of deployments, to subject to scrutiny are very

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important controls which will assist the Inquiry to report much more quickly than if it investigated every aspect of every Special Demonstration Squad's deployments in detail. They achieve this by greatly reducing the volume of documents which need to be put through the restriction order process.

66. However, we do not believe that this is a sound basis for accepting the Metropolitan Police Service's proposal. It is (and has for some time now – see the letter dated from the Inquiry to the Metropolitan Police Service dated 11 August 2016) been the stated intention of the Inquiry to obtain a witness statement from every former Special Demonstration Squad officer who is capable of providing one. The reasons for this approach are set out below.
- 66.1 The actions of certain Special Demonstration Squad members which have thus far come into the public domain (actual or alleged) are of sufficiently grave concern as to have been central to the setting up of this statutory public inquiry. It is therefore appropriate that the Inquiry investigates this unit thoroughly. Obtaining a witness statement from all those who can provide one is an important step towards the achievement of that goal.
- 66.2 Documents alone, where they have survived, are rarely likely to tell the full story. Witnesses can explain and put into context surviving documents. They can provide evidence about matters which are not recorded in writing.
- 66.3 The Inquiry's work to date suggests that Special Demonstration Squad's documentary record is very thin in the period prior to computerisation in the mid-1990s<sup>8</sup>. Accordingly, for a good proportion of the unit's history, there is a greater need for witness evidence.
- 66.4 Obtaining a large number of statements enables the Inquiry to build up an evidential picture on issues which require breadth of evidence, for example the extent to which deceased children's identities were used, or the extent to which officers were properly supported by the Metropolitan Police Service.
67. The Metropolitan Police Service's second letter appears to elide and equate a decision not to examine a deployment in depth with a decision not to publish. However, this misunderstands the position. When the Inquiry obtains and considers evidence about an officer, the question to be asked is whether the evidence is relevant and necessary. In other words, is it evidence which the Inquiry should admit at the hearing stage (whether orally or in writing and whether in open session, private session or closed session)? Only if the answer to that question is that the evidence will not be used is

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<sup>8</sup> The Inquiry is, of course, looking for other potential sources of documentary evidence surviving from this period but we do not expect document survival from the early years of the unit to be particularly great.

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that an end to the matter. When one applies that test, it is unlikely that many, if any, witness statements provided by Special Demonstration Squad officers will be wholly unnecessary. This is not least because statements are likely to contain evidence relevant to issues on which the Inquiry requires a breadth of evidence such as those referred to at paragraph 66.4 above.

68. Once it is accepted that it is appropriate for the Inquiry to obtain a witness statement from each officer capable of providing one and that the resulting statement will be used by the Inquiry to help to build the evidential picture of the unit, the appropriate decision to be made is whether the Inquiry can publish the statement. If that decision is to be taken in accordance with the legal principles ruling, that requires an evidence based application for anonymity unless the officer accepts that his or her name can be published.
69. There are other substantive reasons why it is important to the Inquiry to determine which Special Demonstration Squad names it can or cannot safely publish. We have touched upon them earlier in our Note. They are:
  - 69.1 First, if the Inquiry can publish the cover name of an undercover officer then it can solicit evidence from members of the public which is likely to result in a more thorough and satisfactory level of investigation.
  - 69.2 Second, unless the Inquiry has determined an evidence based restriction order application, it will have to default to a safe position when considering publication of documents the content of which might lead to the identification of the officer. Were the Inquiry to accede to the Metropolitan Police Service's request and adopt this as its default position in relation to a significant number of Special Demonstration Squad personnel then the documentary evidence which the Inquiry could publish and/or question witnesses about in public would be significantly limited.
  - 69.3 Third, in relation to any officer who has used a deceased child's identity as part of his or her legend, a decision not to publish the officer's name without considering an evidence based restriction order application would run contrary to the Inquiry's decision to treat all such instances as relevant and necessary evidence and to inform surviving relatives where it is possible to do so. Put the other way, observing the Inquiry's decision on approach will necessarily involve anonymity applications to be made by a substantial proportion of the unit's undercover police officers in any event.

- 69.4 Fourth, the Chairman's commitment to investigate the cases of the non-police, non-state core participants and those whose applications for such status is under review must be taken into account.
70. In addition to the substantive reasons there are also practical reasons why the Metropolitan Police Service's proposal is problematic. First, it assumes that the Inquiry could make reliable and appropriate decisions about priorities from the documents alone. We do not believe that to be the case, especially so in those periods for which the unit's own records have not survived.
71. The second practical problem which would arise if the Inquiry was to accede to the Metropolitan Police Service's proposal is further delay. The Metropolitan Police Service's proposal would involve suspending the question whether an application is necessary for a significant number of officers until documents have been fully considered. In view of the delays to date in the provision of anonymity applications by the Metropolitan Police Service to the Inquiry, this is particularly undesirable.
72. On the subject of practical problems, the Metropolitan Police Service's second letter of 21 December 2016 raises the issue of the Inquiry's approach to publication of evidence in support of applications for anonymity. The position is that the Inquiry is taking a flexible approach according to the nature and the importance of such supporting evidence. It is not correct to state that the Inquiry is slavishly adopting a line-by-line approach to all such evidence. We are taking such an approach to the generic evidence submitted by the Metropolitan Police Service in support of large numbers of applications because of its wide significance. But, for example, in relation to Cairo's application for anonymity the Inquiry could not publish any of the supporting material because of the risk of harm to Cairo. Evidence in support of anonymity applications is one example of an area in which the Chairman may have to restrict publication, in an appropriate case, on the ground that it is conducive to fulfilling the Inquiry's terms of reference to do so.

### **Metropolitan Police Service application for an extension of time**

73. We have already explained the interaction which the progress of the anonymity application process has on other strands of the Inquiry's work; especially the processing of documents in preparation for publication; and the obtaining of witness statements from third parties (where publication to the third party is not restricted).
74. We recognise that making properly evidenced applications for anonymity is a challenging and resource intensive task. However, it is essential that applications are made if the Inquiry is to discharge its remit as publicly as it can.

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75. The Inquiry's priority now is to have before it, as soon as possible, complete applications which the Chairman can then determine in accordance with the process published on the Inquiry's website. In particular, the Inquiry requires applications from those in its priority categories. The Inquiry has to date asked the Metropolitan Police Service to prioritise the provision of risk assessments in relation to the outstanding Slater and Gordon applicants<sup>9</sup>. It has also asked the Metropolitan Police Service to prioritise officers from the Special Operations Squad, i.e. the period 1968 – 1972<sup>10</sup>. We propose to identify further tranches of priority cases, likely to be based on those officers whose anonymity status needs to be resolved in order to process documents relating to the deployment of those officers who have already been officially confirmed<sup>11</sup>.
76. We have four broad observations about the application for an extension of time for the making of applications for anonymity by Special Demonstration Squad officers to 1 October 2017. The first is to recognise that what the Inquiry cannot do is simply publish the names of the officers now that the time set for the making of applications has expired. The Inquiry wishes to, and must as a matter of law, respect the fundamental human rights of the officers. It must also act with fairness. If it were to publish the name of an officer without first considering at all whether or not the officer would be at risk of serious harm by doing so then it would be acting recklessly as to his or her rights under articles 2, 3 & 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Inquiry would also be acting unfairly when it can reasonably anticipate that many Special Demonstration Squad officers are likely to wish to apply for anonymity and that the delays to date appear primarily (at least as a matter of generality) to relate to arrangements for risk assessment rather than anything for which the officer could personally be blamed.
77. Our second observation is that given the high importance to be attached to receiving some applications to process as soon as possible, we do not consider a solution which does not set any earlier deadline for the provision of some of the applications to be acceptable. We note that the Metropolitan Police Service commits in its first letter of 21 December 2016 to providing applications when they are ready. However, given the lack of progress to date, we consider that a more formal arrangement is necessary.

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<sup>9</sup> They are all officers whose activities are of interest to the Inquiry; they are core participants; and their applications were sought by the Inquiry some considerable time ago now.

<sup>10</sup> The surviving officers from this era are of advanced age and, if the Inquiry is to follow a chronological approach, they are the first officers from whom the Inquiry will wish to receive evidence.

<sup>11</sup> The activities of the officers who have already been officially confirmed, when taken collectively, affected, or are alleged to have affected, a significant number of the non-police, non-state core participants. By progressing associated anonymity applications we can bring forward the day when we can provide documents to non-police, non-state core participants and request informed witness statements from them.

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78. Our third observation is to question how realistic the proposed deadline of 1 October 2017 really is with the resources which the Metropolitan Police Service have, and are proposing, to deploy. It was based on the following assumptions:
- 78.1 A team of 4-5 risk assessors, supported by 4 researchers and two contact officers to be in place by 1 March 2017<sup>12</sup>.
  - 78.2 12 risk assessments to have been completed by 1 March 2017 by the three risk assessors who had been identified when the application for an extension of time was made.
  - 78.3 Risk assessments completed at the rate of 16 per month thereafter (with a one month allowance for holiday and other absence).
  - 78.4 A further month for the Directorate of Legal Services to prepare the applications (allowing a month for contingencies).
79. In its latest update to the Inquiry dated 24 February 2017, the Metropolitan Police Service informed us that the position is:
- 79.1 2 risk assessors are now in post.
  - 79.2 2 further risk assessors have been identified but conflict checks, Inquiry approval, security vetting and training have yet to be completed<sup>13</sup>.
  - 79.3 4 researchers were due to commence work on 27 February 2017 and to have been inducted and trained by 6 March.
  - 79.4 Efforts were ongoing to recruit a fifth assessor and two further researchers.
  - 79.5 A sergeant with a liaison and co-ordination role was due to begin on 27 February 2017.
80. In their skeleton argument, the Metropolitan Police Service's counsel state that as at 23 February 2017, one risk assessment has been completed and 14 more are in progress.
81. It is self evident from the above that in the two months since making the application, the Metropolitan Police Service has fallen some way short of realising the assumptions which it made when making the application.

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<sup>12</sup> The number of risk assessors whom the Metropolitan Police Service has proposed to appoint has fluctuated during the course of the Inquiry's communications with it on this issue.

<sup>13</sup> At the time of writing the identity of these two proposed risk assessors has not yet been communicated to the Inquiry.

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82. Our concerns about the continuing slippage take us to our fourth observation, how is the Inquiry to ensure that applications are now provided to an acceptable timetable? We consider this question from two angles.
83. First, what is required properly and fairly to decide an anonymity application? We ask this question given the problems which have been encountered in relation to risk assessors. Fundamentally, what the Inquiry needs is a detailed explanation of the route by which it is contended that publication of a cover name and/or real name, as the case may be, will cause harm to the officers and/or other persons and/or the wider public interest. It also needs the evidence which relates to these issues (whether it assists or undermines the application). One way of producing such an application is to use risk assessors of the kind being utilised by the Metropolitan Police Service. However, there appear to be limits to their expertise. Whilst they may have expertise in the generic assessment of risk, e.g. for health and safety purposes, they are unlikely to have factual expertise, for example, as to whether or not particular persons or groups encountered in the course of a deployment pose any current risk to an undercover officer. Indeed, this is implicitly accepted by the Metropolitan Police Service which has informed the Inquiry that the risk assessors will themselves be provided with *“a current thematic threat assessment from key sectors of domestic extremism (the thematic assessments) this will be prepared by an analyst appointed by NCTPOC. Such thematic assessments will be regularly reviewed and the risk assessors will be provided with updates as they are prepared”*<sup>14</sup>.
84. An alternative way to make an anonymity application would be to disclose the underlying evidence relevant to the issues together with an application and legal submissions which explain the basis for the application with reference to the evidence. The Inquiry has to date proceeded on the basis that the Metropolitan Police Service should be permitted to rely upon risk assessors. However, if the system is not made to work in a timely fashion, the Inquiry may need to consider imposing an alternative approach. We note in that regard the problems which the Metropolitan Police Service has had recruiting assessors and the financial difficulties to which it adverts in the letters of 21 December 2016.
85. Second, the use of the Inquiry’s powers of compulsion. Two potential approaches fall to be considered: either an ‘unless order’<sup>15</sup> or the use of notices under section 21 of the Inquiries Act 2005 (‘section 21 notices’). For the reasons touched upon in paragraph 75 above, it is important from the perspective of fairness not to visit adverse consequences of the delay on the part of the Metropolitan Police Service on an officer (or his family). For this reason we do not consider that an unless order imposed on the

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<sup>14</sup> Metropolitan Police Service draft protocol for risk assessment work, 24 February 2017.

<sup>15</sup> That is, an order that unless by a particular date an application is provided, consequences specified in the order will follow.



Metropolitan Police Service, which provides that in default of provision of an application the officer will be named, would be appropriate. However, a section 21 notice, directed at the Commissioner, requiring provision of the evidence which the Inquiry needs to determine an application, might have to be considered if the position does not rapidly improve.

### **Next steps: illustrative timescales and potential approaches**

86. Having dealt above with the Metropolitan Police Service proposal and application we now turn to the Inquiry's future course. The Chairman has already informed the Home Secretary that it will not be possible to report within a period of three years from the Inquiry's start date in July 2015<sup>16</sup>. He will need shortly to write to the Home Secretary again to provide her with his best estimate of likely timescales.
87. The Inquiry is pursuing the approach which we have outlined above at paragraphs 3 to 10 in order to do justice to the terms of reference. The approach is intended to recognise that in some areas the Inquiry needs a breadth of evidence, whereas in others it will need depth. It also recognises that some undercover policing units merit more intensive scrutiny than others. Since the Inquiry is also required, by its terms of reference, to report as soon as possible, it is important that the approach that it takes to the breadth and depth of investigation is limited to that which is necessary to discharge its terms of reference. Obviously, what is needed in practice to achieve this goal is a matter of judgment for the Chairman and will depend upon what the Inquiry discovers as it investigates.
88. However, it is apparent that the challenges of conducting a *public* inquiry into *undercover* policing are such that following the Inquiry's current approach is going to be very time consuming. In order to illustrate why this is so, we append to this note a series of timeframes covering the processes involved in the anonymity, restriction order and witness evidence process.
89. As will be apparent from these charts, there are certain features of the Inquiry's timescales which appear inescapable.
90. Firstly, even when anonymity applications begin to be received the process which needs to be followed to determine them and, if refused, to publish the name of the officer is a complex and lengthy one.
91. Secondly, anonymity applications need to be determined before police or state redaction applications can be made over documents referring to undercover officers. The question whether the officer can be identified is likely to affect the treatment not

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<sup>16</sup> See the Inquiry's [press notice](#) of 16 November 2016.

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only of his name but also of numerous other aspects of his deployment, and thus the redactions which it is appropriate to apply for or grant. This means that, even if some limited progress can be made in the meantime (for example, in the cases where anonymity is not sought), the vast majority of the work involved in processing redaction applications cannot start until anonymity applications begin to be determined.

92. Thirdly, the process which needs to be followed to determine restriction orders by police or state applicants is again a complex and lengthy one. The Inquiry's experience to date is that the restriction order applications which it has received from police and state core participants have been of a different order of magnitude from those received by other public inquiries, both in that applications are made over a far greater proportion of the documents involved and that there are numerous instances in which the Inquiry needs to consult additional state bodies (for instance, other police forces) in order to determine applications.
93. Fourthly, it is not until the Inquiry has determined the restriction orders by police or state applicants that it can lawfully disclose any documents to the non-police, non-state witnesses or core participants. This has consequences for the Inquiry's ability to obtain witness statements. Many non-police, non-state witnesses have expressed an understandable reluctance to provide witness statements without seeing documents evidencing the undercover policing which affected them, and in cases where they are willing to do so the Inquiry would be unable even to ask the witnesses questions about topics of interest to it until any restriction order affecting those topics had been determined.
94. The Inquiry will be in a position to have taken statements from some police witnesses, to whom it can disclose unredacted documents, before it will be in a position to disclose documents. In any event, however, police witness can only respond to any factual allegation made by a witness once the Inquiry has taken a statement from that witness and knows what factual allegations need to be put to the officer. Any police statement made in response would itself need to be considered for restriction orders.
95. It follows that in the case of any given officer whose application for anonymity is, in the event, refused, the Inquiry will need to consider sequentially first the anonymity application, then any restriction order applications over documents relevant to the deployment, and finally take witness statements from non-state witnesses affected by the deployment and give the officer an opportunity to comment on the allegations made in them.
96. This is not by any means an exhaustive list of the processes which the Inquiry will need to complete before oral hearings into the Special Demonstration Squad can begin. However, some provisional work has been conducted to identify illustrative

timeframes for these processes alone. The charts attached set out examples of the periods of time that might be required to complete individual stages of the anonymity, restriction order and witness statement taking processes. It is not intended that the timescales set out in the charts should be treated as being the likely timescales. In many instances timescales will need to be determined by directions set by the Chairman. In many instances, some of which have been noted in the flowcharts, there are factors which risk causing additional delay, which in many cases might be considerable. However, the dates indicated do give a flavour of the complexity and time which may be involved in preparations for evidence hearings: they suggest that the determination of anonymity applications would not be complete for over a year from now, that the Inquiry would be unable to take statements from most non-state witnesses before 2018 and that evidence hearings would not begin before 2019.

97. We recognise the concern which our illustrative timescales will cause. The Inquiry is currently conducting a strategic review with a view to obtaining a more sophisticated estimate of how long the Inquiry will take on the current model. The strategic review will also consider whether there are realistic alternative approaches and what their consequences would be. In broad terms a faster inquiry would likely have to sacrifice transparency and/or breadth and/or depth of investigation. Given the importance of questions of time, transparency, breadth and depth of investigation to those with a significant interest in the Inquiry, we are affording core participants an opportunity to express their views before the Chairman writes to the Home Secretary.

### Conclusions

98. Counsel to the Inquiry consider that the Metropolitan Police Service's proposal prospectively to select Special Demonstration Squad officers, whose names it will not publish, on the basis of currently available documentary evidence, is inappropriate and would unduly fetter the Inquiry's ability publicly and thoroughly to investigate the unit at the centre of the Inquiry.
99. Counsel to the Inquiry have become increasingly concerned at the amount of time which it is taking the Metropolitan Police Service to prepare risk assessments and anonymity applications. We are not confident that the Metropolitan Police Service is currently in a position even to make good on a 1 October 2017 deadline. There is a need for a step change in the Metropolitan Police Service's preparation of anonymity applications. A timetable which requires tranches of applications, in order of priority, would be more appropriate than a blanket extension of time. The Metropolitan Police Service is invited to explain in its reply due on 30 March 2017 what further steps it is taking to expedite the provision of anonymity applications. It is also invited to set out any reason why the Inquiry should not reinforce its timetable through the use of section 21 notices.

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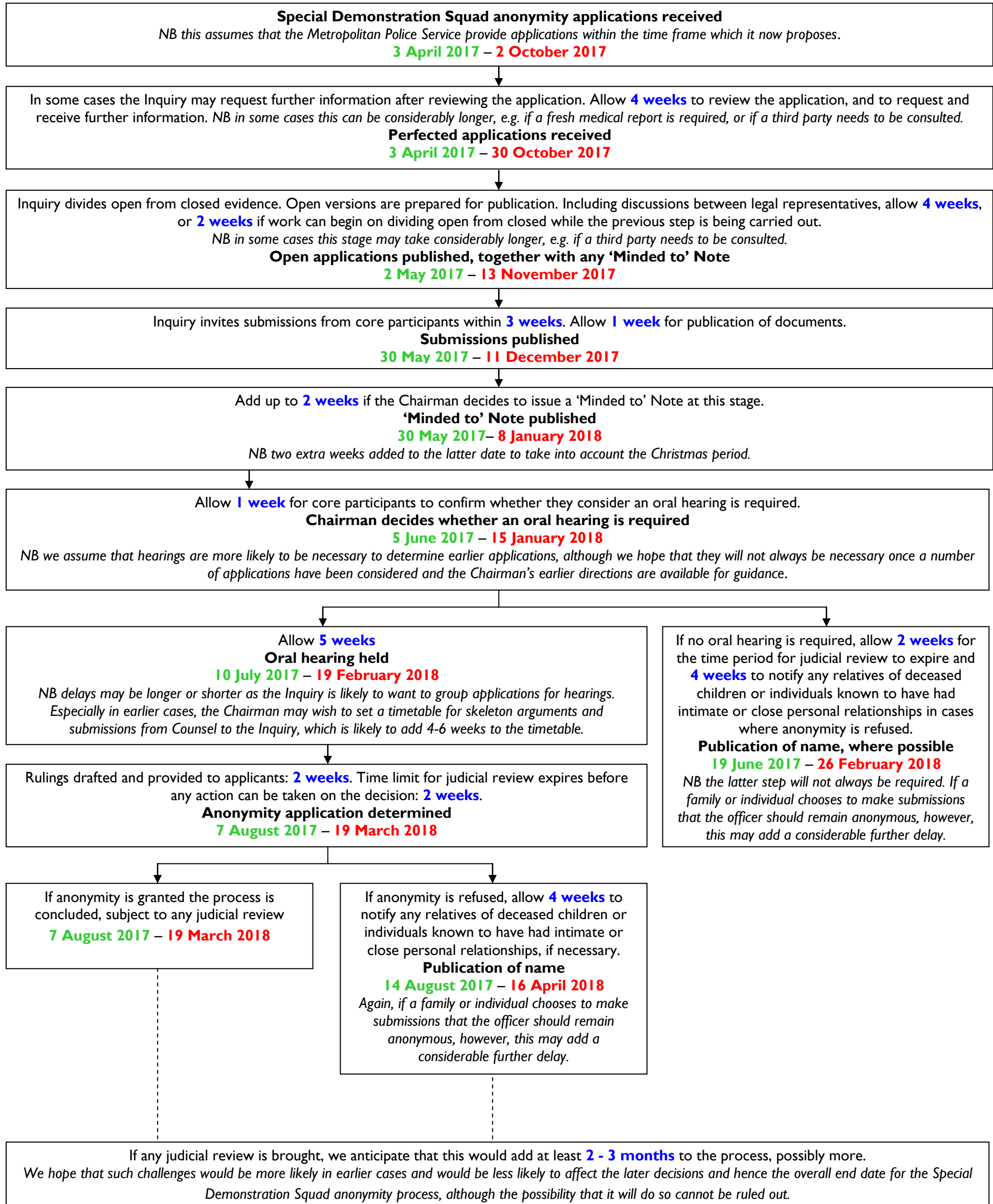
100. Although we are not in agreement with the proposal and application made by the Metropolitan Police Service, we must make clear that conducting a public inquiry into undercover policing is proving to be a formidable task which is likely to be very time consuming and resource intensive. The delays to the anonymity application process are but one of the challenges which we face. It is important that no one is under any illusions about the scale of our task or its inherent complexity. Accordingly, the Inquiry is affording all core participants the opportunity to air their views on the Inquiry's approach. We conclude by stating that the material which we have seen to date has done nothing but underline the importance of a thorough investigation of undercover policing.

DAVID BARR QC  
KATE WILKINSON  
EMMA GARGITTER  
VICTORIA AILES

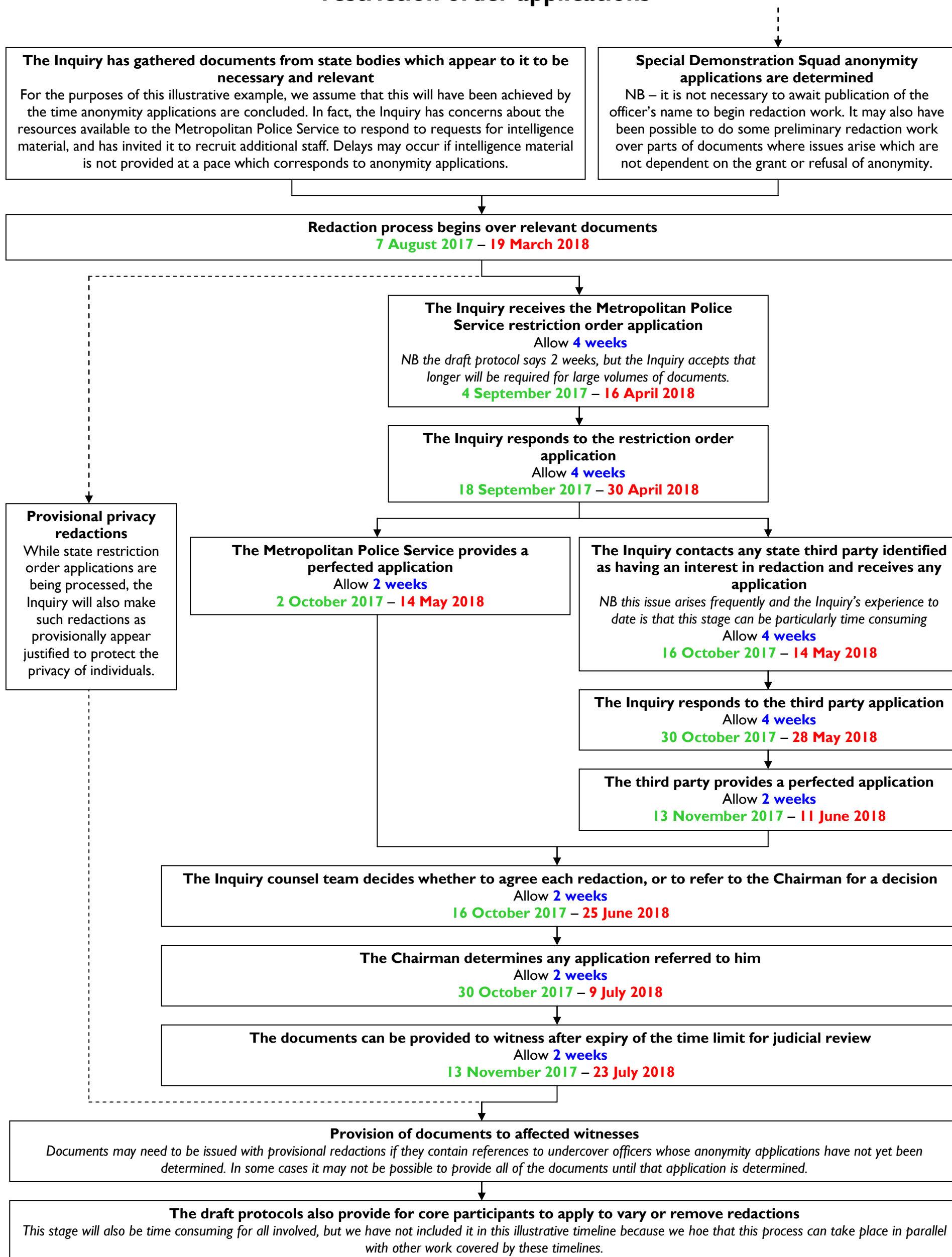
2 March 2017

## Illustrative timeframe 1 of 3: determining Special Demonstration Squad anonymity applications

Note: The time limits and dates in this document are intended to provide an illustrative example of the timeframes within which anonymity applications may be determined. Dates in **green** indicate the earliest applications taking the swiftest possible route to determination. Dates in **red** indicate later and slower applications. However there are a number of reasons set out in the chart why timescales may nevertheless be overly optimistic. It is also possible that the process will be slower at times, when the Chairman and the legal teams are processing a large number of applications simultaneously. This illustration should be read in conjunction with the [process map](#) for determining anonymity applications.



## Illustrative timeframe 2 of 3: determining Special Demonstration Squad restriction order applications



### Illustrative timeframe 3 of 3: taking witness statements and preparing for Module One Special Demonstration Squad evidence hearings

Note: There are a number of ways of approaching the taking of witness statements. The Inquiry does not intend to take a single prescriptive approach. However, if it appears to the Inquiry that in every case where a witness statement is taken from a non-state witness, the following stages will need to be followed sequentially as a minimum, in addition to any other steps that may also be taken. For the avoidance of doubt, it is expected that there will be numerous other aspects to this part of the process (e.g. gathering documents from non-state witnesses. For simplicity, those likely to have a particularly significant impact on the overall timescales for the Inquiry have been included here.

