

## Update note March 2017

### Introduction

This is the Undercover Policing Inquiry's fourth update note. The purpose of these notes is to give a broad overview of the work that is being done by the Inquiry to progress the terms of reference and to explain in more detail some of the aspects of the Inquiry's work.

### Progress since the November update

On 15 February 2017 the Inquiry announced a [further preliminary hearing](#). The hearing, which will take place on 5 April 2017 at the Royal Courts of Justice, will consider requests from the Metropolitan Police Service around the timing and approach to the Inquiry's investigation of the Special Demonstration Squad.

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

Since November 2016 the Inquiry has:

### *Module One (deployment of undercover police officers in the past)*

- Announced a preliminary hearing on 5 April and published directions, related documentation and requested submissions. The hearing will consider an application by the Metropolitan Police to extend the period of time for the submission of anonymity applications in respect of former Special Demonstration Squad undercover officers, and a request from the Metropolitan Police that a different approach be taken to the extent of review of the Special Demonstration Squad's work
- Published a [note](#) by counsel to the Inquiry that responds to the Metropolitan Police Service's proposals (as above), and:
  - explains the processes that need to be completed before the Inquiry will be able to hold live evidence hearings, and the anticipated time these take to complete. This includes a process map with illustrative dates estimating that first oral evidence hearings are unlikely to take place before 2019;
  - sets out the legal challenges of conducting a public inquiry into undercover policing.
  - summarises the Inquiry's progress to date; and

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- explains that the Inquiry is undertaking a strategic review to consider whether or not there are any realistic alternative approaches, and that the Inquiry wishes to give core participants a chance to have their say on the approach that should be taken.
- Finalised anonymity applications in respect of 23 non-police, non-state applicants, and for two state witnesses (Jaipur and Karachi).
- Confirmed (under)cover identities: “Marco Jacobs”, “Carlo Neri”, “Rod Richardson” and “Simon Wellings”.
- Confirmed undercover officers: John Dines (cover name: “John Barker”), James Boyling (cover name: “Jim Sutton”) and Robert Lambert (cover name: “Bob Robinson”).
- Continued to review applications for core participant status, and to make designations where the applicant demonstrates that they have a significant role to play relating to the Inquiry’s terms of reference, and where the applicant’s experience is of important interest to the subject matter of the Inquiry.
- Continued to invite and consider applications for anonymity from police officers within the Special Demonstration Squad and the National Public Order Intelligence Unit. This involves, where necessary and prior to publication, third party enquiries being made of close relatives affected by the use of a cover name taken from a deceased child, or with individuals known or believed to have had relationships with an undercover officer.
- Continued to seek and receive evidence from police forces and state bodies relevant to the terms of reference, and to review that material for relevance.
- Published a [note](#) by counsel to the Inquiry and a [direction](#) from the Chairman by which core participants’ views are sought on the application of the Rehabilitation of Offenders Act 1974 and its potential impact on the Inquiry’s work.

### *Module Two (management and oversight of undercover police officers)*

- Issued further rule 9 requests to state bodies asking for the provision of material likely to be relevant to Module Two, including extensive requests to the Home Office and the National Police Chiefs’ Council concerning the Special Demonstration Squad, the National Public Order Intelligence Unit and successor units.
- Begun to issue rule 9 requests for witness statements to individuals believed to have knowledge about the operation and oversight of the National Public Order Intelligence Unit, and the National and Regional Crime Squads.

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- Sought evidence about the role of Special Branch in overseeing undercover policing.
- Continued to receive material provided voluntarily and in response to rule 9 requests issued as part of its Module Two work, and to assess that material for relevance and necessity, including material provided by the National Crime Agency, the Home Office, and the National Police Chiefs' Council.
- Issued rule 9 requests for witness statements from particular individuals at the College of Policing with knowledge of selection and training of undercover police officers, and begun to receive evidence in response.

## Inquiry Administration

### *Information Assurance*

Ensuring the security of relevant material is important to the Inquiry; it is in the interests of all parties that the Inquiry has access to the material it needs to discharge its terms of reference.

As part of its investigations, the Inquiry has been identifying and securing access to relevant information to enable it to fulfil its terms of reference. The Inquiry started its investigations in the summer of 2015. We made numerous requests for information to understand where and by whom relevant material was or should be held, and to decide how best to ensure the Inquiry could access that material. There is no complete or central repository of material that could simply be handed over to the Inquiry, so the Inquiry is identifying and seeking to secure material of potential relevance from a number of disparate sources.

Ensuring the security of all relevant material is key to the Inquiry's success. However, it would not be practicable or proportionate to take physical control of all material that *might* contain information relevant to the terms of reference. Both the massive quantity of such material (millions of documents and pieces of data) and the extreme sensitivity of some of the material would create operational difficulties for the Inquiry of such magnitude that it would be impossible for the Inquiry to process and store it all.

The Inquiry recently wrote to the non-state, non-police core participants explaining the assurances it had sought on document preservation. A copy of that [letter](#) is on the Inquiry's website, as is the Inquiry's [press release](#) in response to the Independent Police Complaint Commission's statement on the allegation of document destruction by the Metropolitan Police Service.

The Inquiry's approach to information assurance has been to take possession of parts of the available material where it considers that it is necessary and proportionate to do so. This

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includes the historic material relating to the work of the Special Demonstration Squad, which had previously been collated by Operation Herne. In parallel the Inquiry has sought regular assurances from police forces and other state bodies that they are taking all reasonable steps to preserve and secure potentially relevant material which the Inquiry may later want to receive or to inspect as part of its investigation.

The assurance approach to particular police forces or bodies and their material is subject to regular review by the Inquiry, and varies depending on the responses received and any other information that comes to the Inquiry's attention and which may affect its view on the security of certain types or sources of information.

The Inquiry escalated its assurance work after allegations concerning the shredding and deletion of information within the National Domestic Extremism and Disorder Intelligence Unit of the Metropolitan Police Service came to its attention during 2016. That escalation included seeking signed witness statements from those able to speak to the information systems in place within the unit, in particular the retention of information that may relate to undercover policing. Two ['assurance statements'](#) by Detective Superintendent Hutchison, both dated 29 July 2016, were published on the Inquiry website in September 2016; later statements from witnesses containing assurance evidence in relation to the National Domestic Extremism and Disorder Intelligence Unit (and its successor units) are currently being prepared for publication further to the recent [press release](#).

### *Additional Inquiry panel member*

The Inquiry announced that it would be seeking an additional panel member, who would eventually take over from Sir Christopher Pitchford. Details were published in a [press statement](#) issued on 20 February 2017

### *Disclosure and Restriction Protocols*

The Inquiry is preparing protocols that will set out the way in which we receive disclosure and apply any necessary restrictions. These protocols are initially for our dealings with the Metropolitan Police Service, but they will be applied with any necessary adaption for other core participants. For this reason we have consulted widely on drafts of these documents. We have discussed the most recent drafts with both state and non-state core participants, and we will circulate final drafts of the protocols (along with an explanatory note) to core participants and the media for comment in March.

### *Inquiry Sponsorship*

The Inquiry sponsorship arrangements are changing. For administrative purposes, all independent inquiries have a sponsor government department. The Undercover Policing

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Inquiry is sponsored by the Home Office, which provides funding and elements of administrative support. The sponsorship arrangements between the Home Office and the Inquiry are detailed in the [management agreement](#) between the two bodies. The sponsorship of the Inquiry had been provided by a team within the Capability and Resources Group; however the Home Office has rationalised sponsorship arrangements for its Inquiries and its Arms Length Bodies into a single team. This new team is based within the Finance and Strategy Directorate of the Crime, Policing and Fire Group. Sponsorship arrangements changed with effect from 1 March 2017.

## *Inquiry Information Technology*

The Inquiry has to date been managing its sensitive information on a small number of secure laptops. However, the Inquiry now has access to a purpose-built system for safely storing highly sensitive electronic information. The system was procured specifically to meet the Inquiry's needs, and while there were delays in the procurement and installation processes, the Inquiry is now configuring the database so that materials can be logged, catalogued and analysed in bulk.

The database system has had bespoke software written for it to enable the Inquiry to process documents between it and the Metropolitan Police Service (in particular). This means the Inquiry will shortly be in a position to step up the investigation phase of its operations to examine and process all new materials on the new system.

## *Costs*

As of 31 December 2016 the Inquiry has spent just over £4.6m. A full breakdown of the [Inquiry costs](#) for the last quarter was published in February and is available on the Inquiry website.

## **Next steps**

The next steps for the Inquiry are to:

- On 5 April 2017 hold a hearing at the Royal Courts of Justice to determine two applications by the Metropolitan Police Service:
  - for an extension of time for restriction order applications on behalf of police officers formerly employed by the Special Demonstration Squad; and
  - in respect of the Inquiry's approach to those restriction order applications.
- In March issue for consultation with core participants and the media, final drafts of the disclosure and restriction protocols, accompanied by an explanatory note;

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- continue the process of receiving, considering and determining anonymity applications by key individuals;
- recruit additional personnel to enable the Inquiry to process information and documents being received from state bodies;
- continue the process of requesting, receiving, reviewing and analysing documents from state bodies; and
- continue to investigate the activities of individual undercover police officers.

### Looking further ahead

- Following the preliminary hearing on 5 April 2017, the Chairman will issue a ruling and the Inquiry will write to the Home Secretary in the Spring to provide a revised estimate of the timetable for the Inquiry's completion.
- We will complete a strategic review that will aim to obtain 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 models and what their consequences would be.
- We will publish an agreed timetable for the Inquiry's delivery.
- Over the course of the next six months we will be continuing our review of the evidence provided to the Inquiry to date, as well as seeking further evidence, and following lines of enquiry that arise as a result of our ongoing work.
- In addition to the above we may also issue additional rulings that determine further applications for core participant status, and associated rulings on recognised legal representation and costs.

### A focus on...

From time to time the Inquiry aims to provide a bit more detail on certain aspects of the Inquiry. For this update we are focusing on the main steps that the Inquiry – and others – need to take in order to get to **evidence hearings**.

### *Starting the Inquiry*

The aim of the Inquiry is to get to the truth of how undercover policing has operated in the past, including the oversight it had. We will also make recommendations about how it could work better in the future.

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A question we are often asked is – “When will the Inquiry start?”. The work of the Inquiry started on 28 July 2015, when the Chairman made his opening remarks. Work since then has focused on the initiation of the Inquiry’s investigations, including taking witness statements, gathering documents, and corresponding with many of those who may have a story to tell, including those who have already responded to the Chairman’s call for evidence.

Evidence gathering is well underway. However, until the legal processes involved in applying for restriction orders have been followed, we are not in a position to make public much detail of what we have found.

### *Evidence hearings*

As the Chairman set out in his [announcement](#) on Inquiry timetabling of 16 November 2016, he will report to the Home Secretary in the Spring of 2017 on the potential timeframe for the Inquiry going forward, including the evidence hearings for Module One of the Inquiry’s work. In the interim, below are the steps the Inquiry needs to take to be ready for the first evidence hearings.

Module One evidence will encompass police officers and those who have been affected by undercover work, including the activities of the Special Demonstration Squad (or its precursor, the ‘Special Operations Section’) and the National Public Order Intelligence Unit.

In order to be ready for the Module One hearings, the Inquiry needs to:

1. Complete **paper investigations** into the officers involved – gathering the documents it needs from wherever they can now be found, and reading and analysing them for anything that needs to be followed up. The extent of the Inquiry’s investigations into the Special Demonstration Squad is one of the topics of the hearing scheduled for 5 April 2017.
2. Complete the **restriction order processes** in relation to the documents (which will require any relevant anonymity application to have been determined). This stage has begun in some cases where officers have already been confirmed by the Inquiry, or where documents make limited mention of individual officers. Again, this is one of the topics to be addressed at the hearing scheduled for 5 April 2017.
3. Identify those who will need to be **witnesses** (the Inquiry has already said, subject to the hearing on 5 April 2017, that it expects to take evidence from all surviving Special Demonstration Squad and National Public Order Intelligence Unit officers, but there will also be other witnesses).

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4. Gather together the documents that each witness (whether officer or civilian) will need to draw on to make a statement and invite or request witnesses to provide statements.
5. Complete the **restriction order processes** in relation to the statements to ensure appropriate information is put in the public domain – see the section on restriction orders below.
6. Provide **written evidence** to be used at the hearing, including witness statements and documents, to the core participants involved.
7. Prepare to hear **opening statements**, which legal teams will need time to prepare after they have seen the written evidence.

### *Restriction Orders*

In November 2016 we published a [‘focus on’ describing anonymity applications](#), to set out the process that needs to be followed where an application is made to restrict publication of an individual’s identity. The procedures that will need to be followed in relation to restriction orders over documentation (which may result in the redaction of identities or other information contained in the document) are also complex and the Inquiry needs to follow [the anonymity and restriction order processes](#) before documents can be disclosed to the public. This means:

- The Inquiry cannot yet encourage members of the public to come forward, approach potential witnesses ourselves or reconsider applications for core participant status. This is because it is only after the anonymity process that we may be able to tell witnesses that a person they can give evidence about was an undercover officer.
- For the same reasons, we cannot yet ask witnesses for information about where documents might be found or what issues we should be looking at unless the anonymity process is complete and the officer has not sought (or has been refused) anonymity.
- Until we know whether an officer will be granted anonymity, it is impossible to complete the restriction order process over documents relating to him or her.
- We can only disclose documents to non-police witnesses in order to enable them to make a statement after the restriction order process is complete.
- We can take statements from police witnesses, however we can only disclose those statements to non-police witnesses after the restriction order process is complete.



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- We can publish information from non-police witnesses but only after we have considered whether they should be restricted to protect the privacy of the witness.

The Chairman has explained that he wishes the Inquiry to be as open as possible; his 3 May 2016 [Ruling](#) on restriction orders details the Inquiry's approach. The Inquiry is endeavouring to follow the process for both anonymity and restriction orders – and the Inquiry's work more generally - as transparently as possible.

Further information on the steps needed to get to evidence hearings is set out in the [note](#) issued by counsel to the Inquiry on 6 March 2017; a set of illustrative flow charts accompanied that note and these provide more detail on the processes.

### Key Inquiry statistics:

As at 9 March 2017 the Inquiry has:

- held five preliminary hearings, and listed a further preliminary hearing for 5 April 2017;
- made over 360 'Rule 9' requests for information from more than 50 organisations;
- made two section 21 request for information;
- received over one million page from the Metropolitan Police Service alone;
- received over 300 witness statements (not including further or replacement statements);
- published twelve sets of directions;
- published 42 rulings;
- published eight Chairman's notes;
- published 31 orders;
- published nine notes by Inquiry counsel;
- designated 203 core participants, of whom 180 are receiving funding for legal costs from the Inquiry;
- recognised 25 legal representatives;
- received more than 45 formal submissions and position statements from core participants and others;
- published determinations in respect of 30 anonymity applications;

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- received around 35 tranches of voluntary disclosure; and
- 30 people to work with the Chairman as part of the Inquiry team.

## Questions and queries

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

## Background

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

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

Sir Christopher Pitchford made his opening statement on 28 July 2015. In this statement he said,

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

The Inquiry’s work will fall into three modules:

**Module One** will look at what happened in the deployment of undercover officers in the past, their conduct, and the impact of their activities on themselves and others.

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

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**Module Two** will look at the management and oversight of undercover policing. In particular it will look at the authorisation of and justification for undercover police operations. This will include the role not only of police forces but also that of other government departments such as the Home Office. In relation to undercover police officers, it will look at issues such as their selection, training, supervision and care after the end of an undercover deployment.

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

## Contacts

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