IN THE UNDERCOVER POLICING INQUIRY

SUBMISSIONS ON THE MPS APPLICATION
FOR AN EXTENSION OF TIME
ON BEHALF OF PETER FRANCIS

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1. These submissions are made on behalf of Peter Francis ('PF') in response to the Chairman's Directions, dated 15 February 2017, which relate to the Metropolitan Police Service ('MPS') request for an extension of time until 1 October 2017 for the making of restriction order applications in relation to former SDS undercover officers and to what the Chairman has called a "change of approach" (as set out in Ms Jones' First and Second Letter, Appendix A and B to the Directions).

2. We are grateful to Counsel to the Inquiry ('CTI') for their Note for the Hearing on 5 April 2017, not least because it gives CPs an insight into the very significant challenges facing the Inquiry, the work it has done to date and the shape of future hearings. It also alerts CPs to the fact that, at the time of CTI's writing, the MPS had not made a single anonymity application within the existing deadline in relation to Tranche 2 and 3 SDS officers (CTI, para 55) and that all the risk assessments relating to the Slater and Gordon anonymity applications (Tranche 1) are still not before the Inquiry.

3. We can state, shortly, that we agree with CTI that

    i. the restriction order process in relation to anonymity is profoundly important, in particular as "it is the gateway to transparency" (CTI, para 37);
    ii. the risk assessments relating to the anonymity applications of the Slater and Gordon officers (Tranche 1) should be prioritised (CTI, para 47);

iii. the MPS proposed new approach to restriction orders is not a sound one (in particular we agree with CTI, paras 61 – 71 and 98);

iv. it must be the Inquiry's priority to have before it, as soon as possible, complete restriction order applications relating to anonymity (CTI, para 75).

4. The MPS's proposed new approach is based, in part, on the assertion that "Many officers are reluctant to engage with the Inquiry process and in particular with the question currently posed: whether or not their identity should be restricted" (Ms Jones, Second Letter). This comment is difficult to understand. Surely, that is precisely the question officers would wish to engage with? This is particularly so when, in the majority of cases, it is their cover identity which is of relevance, as opposed to their true identity (we are aware of the attendant risks that it is said attaches to disclosure of even cover identities). Perhaps this comment is more telling of an institutional reluctance by the MPS to engage with the process on behalf of their officers on the basis that UCOs were given a promise of life-long confidentiality – an assertion that PF specifically refutes. In his *Restriction Orders: Legal Principles and Approach Ruling*, the Chairman said he was inclined to accept that any such assurance or understanding must have been qualified and could not have been absolute "for the very good reason that every officer is aware of the supremacy of the judicial decision on disclosure should the officer find that his activities have become relevant to a civil or criminal trial" (para 165).

5. Ms Jones goes on to say that "They and their families *may* find the process of applying (via the MPS) for restriction harrowing and upsetting. Some are in advanced years. Some *may* need to undergo distressing and confusing psychological or medical assessment, which are themselves costly in financial resources" (emphasis added). Again, it seems to us, that these comments belie a reluctance by the MPS to engage with the process, given the barriers pre-emptively posed.

6. As far as the continued use of risk assessments is concerned, the Chairman in his *Restriction Orders: Legal Principles and Approach* Ruling, made clear that whilst he would show due respect to the risk assessments of those who are expert in policing and the risk attendant on the exposure of identities and police operations, he also

made clear that he would not necessarily accept every expression of opinion offered to him, particularly when offered at the level of generality (para 161). It seems to us that since the proposed MPS risk assessors appear to have very limited expertise and will themselves need to be briefed on "thematic threat assessment" (as referred to by CTI at para 83), the delay that this approach is causing is wholly disproportionate. Since it appears that the Chairman will not be provided with the kind of expert assessment that he envisaged at the time of his Ruling, and the fact that he made clear that he would not be bound by it, in any event, there seems to be little purpose in the MPS pursuing their current approach to risk assessment, not least because of the interminable delay it appears to be causing.

7. We endorse the alternative approach suggested by CTI at para 84. The Chairman is perfectly able to consider all the evidence, including an officer's own perception of his risk (as set out at C1 – 4 of Part 6 of his *Legal Principles and Approach* Ruling). It seems to us that the Inquiry should use its powers of compulsion to ensure that a new and early deadline in relation to the priority officers is complied with by the MPS, and if not complied with, then the MPS should not be permitted to rely upon risk assessors.

Ben Emmerson QC

Maya Sikand

22 March 2017