IN THE UNDERCOVER POLICING INQUIRY

SUBMISSIONS FOR HEARING ON 5 APRIL 2017 SERVED ON BEHALF OF THE NATIONAL CRIME AGENCY

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1. These submissions are served on behalf of the National Crime Agency ('the NCA'). The submissions address (a) the MPS application for an extension of time for service of restriction order applications relating to the identities of former SDS officers; and (b) issues as to a possible `change of approach` by the Inquiry. Both these matters have already been canvassed in the MPS submissions dated 23 February 2017 (and the correspondence which preceded it), as well as in CTI`s Note dated 2 March 2017.

MPS application

2. The resolution of the MPS extension application is likely to turn to a considerable extent on questions of detail regarding MPS resources. Self-evidently, such matters are beyond the knowledge of the NCA. Moreover, although the NCA has some experience of making anonymity applications on behalf of undercover officers in this Inquiry (it is currently in the process of making two such applications on behalf of NCA officers who previously worked with the NPOIU), it has no experience of dealing with the volume of such applications that the MPS is currently having to process in respect of SDS officers.

3. It follows that the NCA is not in a position to make detailed submissions regarding the MPS application. The NCA does, however, advance three more general considerations that are supportive of the MPS`s request for more time in which to complete restriction order applications relating to the identities of SDS officers.

4. *First*, these restriction order applications are of fundamental importance in the context of the Inquiry as a whole. In their Note (see paragraphs 37 and

following), CTI make reference to the significance of these applications in terms of the transparency of the Inquiry`s process. They observe that the question of whether or not the cover names and/or the real names of these officers are to be published will have a great effect both on the Inquiry`s ability to elicit evidence from witnesses, as well as on the way in which and the extent to which SDS documents need to be redacted before being disclosed to CPs. We endorse those points.

5. We would add that these applications will also inevitably raise issues as to the damage that would be caused by the publication of real and/or cover names. Such risks will include the risk of serious physical harm (possibly including risk to life) to serving and former officers, their families and friends; the possible disruption of family life; as well as risks of damage to the future prevention and detection of serious crime by the revelation of hitherto secret undercover policing tactics (the last of these issues being one that particularly concerns the NCA).

6. *Second*, and following from the first point, we submit that when dealing with applications of this nature it is important that the Chairman is provided with evidence as to the relevant risks from the organisation (in this case the MPS) that is best placed to analyse and assess those risks. That is because understanding and evaluating the risks that would be created in individual cases by revealing the names of undercover officers is not something that lies within the institutional competence of the Inquiry. If and to the extent that CTI suggest at paragraphs 83-84 of their Note that the Inquiry could safely determine these applications without any evaluative Police evidence going to risk (and we accept that the risk assessments currently proposed are only one means of putting such evidence before the Inquiry) and based simply on its own evaluation of the risk, we respectfully disagree.

7. *Third*, we are able to attest to the difficulties that the MPS has experienced in securing appropriate risk assessors for this task, having experienced similar difficulties ourselves. The NCA does of course understand and accept the independence requirements that the Inquiry has stipulated for risk assessors. On a practical level, however, the NCA, like the MPS, has found it extremely

difficult to identify individuals who (a) are willing to undertake this work; (b) have sufficient expertise to undertake this work; and (c) have sufficiently limited connections to undercover operations to satisfy the Inquiry`s requirements.

8. In summary, this process was always going to be a time consuming one, in particular given the volume of work and the unique circumstances of this Inquiry. Given the gravity of the issues at stake, it is of critical importance that the Chairman is provided with full and appropriate evidence in support of these applications, so that the decisions that he makes on them can be as informed as possible. The MPS should be granted all reasonable time in order to serve such evidence.

`Change of approach`

9. The `change of approach` that the MPS has suggested regarding evidence from SDS officers is based on traditional proportionality arguments. Viewed in the abstract, those submissions have much to commend them. We accept, however, that the MPS submissions have less force if, as appears to be the case, the Inquiry has taken a principled decision that, because of the centrality of the SDS to its Terms of Reference, it will obtain and disclose statements from all surviving SDS officers regardless of other considerations such as lack of operational involvement, lack of documentation, lack of recall and/or infirmity.

10. On a related matter, we submit that the MPS arguments regarding proportionality and the merits of a staged approach are applicable in the separate practical context of the Inquiry`s exercise of disclosing sensitive documents to CPs. It is becoming increasingly apparent that this process will itself be a very time-consuming one, due in part to the volume of documentation and the need for different police core participants (including the NCA) to suggest redactions, make restriction order applications etc. We make no detailed submissions at this point, but we do suggest that this exercise is likely to be made considerably easier if a staged approach is adopted whereby the most important and/or relevant and/or sensitive

documents are considered early in the process, with less important or duplicative documents considered later.

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23 March 2017