

## IN THE UNDERCOVER POLICING INQUIRY

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### SUBMISSIONS ON BEHALF OF THE NPCC ON THE APPROACH TO ANONYMITY AND RESTRICTION ORDERS

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#### **Introduction**

1. These submissions are made on behalf of the National Police Chiefs' Council (NPCC) in advance of the hearing due to be held on 5<sup>th</sup> April 2017 to consider the submissions made by the Metropolitan Police Service (MPS) for: (a) an extension of time in which to make applications for anonymity in respect of police officers formerly employed by the SDS; and (b) a change in the Inquiry's approach to restriction orders, focusing on *"those officers whose deployment or evidence the Inquiry is likely to wish to publish or investigate further at a hearing"*.<sup>1</sup>
2. They follow a letter submitted on behalf of the NPCC on 1<sup>st</sup> March 2017,<sup>2</sup> which is appended to these submissions, and a note produced by Counsel to the Inquiry for the hearing on 5<sup>th</sup> April 2017.
3. The purpose of these submissions is to explain the NPCC's position in relation to anonymity applications and restriction orders insofar as they relate to the National Public Order Intelligence Unit (NPOIU), and thereby to inform the future progress of the Inquiry.
4. The NPCC stands ready to assist the Inquiry as best it can and does not seek to hamper or constrain the Inquiry's work in any way. The NPCC shares the desire of all CPs that the Inquiry is able to discharge its functions as expeditiously and effectively as possible.

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<sup>1</sup> MPS submissions of 23<sup>rd</sup> February 2017 (Extension of time / Restriction Orders), para. 14.

<sup>2</sup> Letter from Craig Sutherland, Head of East Midlands Police Legal Services, to Piers Doggart, Solicitor to the Inquiry.

5. The NPCC supports the invitation for a change of approach and makes further suggestions with a view to speeding up the anonymity and restriction process.

#### **Extension of time for anonymity applications**

6. The MPS seeks an extension of time for completion of anonymity applications for approximately 200 former SDS officers (118 undercover officers and a further (up to) 83 management and “backroom” staff)<sup>3</sup> due to the work and resources required to make these applications.
7. Particular concerns have been raised about the risk assessment process and the delay this has entailed. 14 risk assessments are said to be in progress, with only one having been completed within the original window for applications (August 2016 to March 2017). The MPS now has two risk assessors in post, with two further assessors to be added, who will be supported by four researchers and a police sergeant performing a coordination role.<sup>4</sup> The extension is sought until 1<sup>st</sup> October 2017. The NPCC notes that Counsel to the Inquiry has questioned whether even this new deadline is realistic.<sup>5</sup>
8. The NPCC has no direct interest in the MPS’ application, but anticipates that comparable issues are likely to arise in relation to NPOIU officers.
9. The number of NPOIU officers and staff is understood to be around 228 comprising 97 undercover officers, cover officers and senior managers; and a further 131 support staff.<sup>6</sup> The Inquiry has indicated that it intends to seek written statements, as a minimum, from all former NPOIU undercover officers.<sup>7</sup>

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<sup>3</sup> 118 undercover officers and a further (up to) 83 management and “backroom” staff: para. 5 of MPS submissions dated 23<sup>rd</sup> February 2017.

<sup>4</sup> Para. 7 of MPS submissions dated 23<sup>rd</sup> February 2017.

<sup>5</sup> Counsel to the Inquiry’s Note for the hearing on 5<sup>th</sup> April 2017, para. 78.

<sup>6</sup> Because Operation Elter has, so far, only examined approximately 10 percent of the available documentation relating to the NPOIU, these numbers are necessarily provisional.

<sup>7</sup> Draft letter dated 31<sup>st</sup> January 2017 from Piers Duggart, Solicitor to the Inquiry, to regional forces regarding legal representation for officers: *“It is the Inquiry’s present intention, in order to discharge the terms of reference, to require evidence from every undercover officer deployed on*

10. Although the number of undercover officers may be less for the NPOIU, the total number of officers and staff is comparable to that of the SDS. Importantly, the volume of documentation relating to the NPOIU is many times greater than for the SDS (in the order of tens of millions, as opposed to hundreds of thousands) which means there is far more material to be analysed and assessed in relation to each individual NPOIU officer.
11. The NPCC has now agreed with the Inquiry a process by which applications for anonymity will be made, which is separate from the process devised by the MPS. The agreed protocol is appended to these submissions. In summary:
  - a) NPOIU officers will be approached by the Inquiry directly asking whether they intend to seek anonymity in respect of their real or covert identities. The NPCC understands that so far 51 former undercover officers (including cover officers)<sup>8</sup> have been contacted, and that every officer who has so far responded has requested anonymity.<sup>9</sup>
  - b) It is therefore expected that an application for anonymity will be prepared, on behalf of each individual officer, by his or her legal representative(s).
  - c) If there is a need for medical evidence, the officer will be advised to approach the panel of medical assessors which has been approved by the Inquiry for the SDS process.
  - d) The NPCC has arranged for “national assessors” to provide further information and evidence relevant to applications for anonymity. Two NPCC assessors were approved by the Inquiry on 7<sup>th</sup> March 2017 and their CVs have been circulated to the NSCPs.
  - e) Where requested to make an assessment, the assessors will seek information from the officers via their legal representatives, and from the

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*operations conducted by the SDS and NPOIU. This will mean, as a minimum, providing a witness statement and, in some cases, also giving oral evidence.”*

<sup>8</sup> Counsel to the Inquiry’s Note for the hearing on 5<sup>th</sup> April 2017, para. 23.

<sup>9</sup> Counsel to the Inquiry’s Note for the hearing on 5<sup>th</sup> April 2017, para. 57.

records being held by Operation Elter.<sup>10</sup> They will also commission and make use of research conducted by the National Regional Operational Security Officer (Opsy) network and other sources. This work will be done without any of the centrally held NPOIU material being distributed to officers' home forces.

- f) The national assessors will produce a report<sup>11</sup> in respect of each application, which will not be subject to legal professional privilege and which will therefore be discloseable to the Inquiry regardless of whether the officer seeks to rely on it in support of an application. It will be given to the officer's legal representatives and to the Inquiry. The report will set out the evidence that has been taken into account by the assessor and contain an opinion on the potential risks to the officer and any third parties, and any means of minimising or avoiding them. It will seek to assist the Inquiry by identifying, where possible, any third party equity. The report will be qualified to make it clear that the opinion is based only on the information referred to in the report and the assessors cannot undertake that there are no further risks arising out of information not in their possession. It also needs to be understood by all concerned that the assessors' report will not and is not intended to be relied upon by home forces as the product of a risk assessment process through which the home force fulfils its duty of care to its officers: it is produced solely for the purposes of the anonymity application.
- g) The officer's legal representative will be responsible for submitting the application to the Inquiry.
- h) The Inquiry will identify any further potential third party interests in the application and may request further information. However, the Inquiry has indicated that it expects applications to be based on all relevant

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<sup>10</sup> The terms of reference for Operation Elter include conducting criminal and misconduct investigations, researching miscarriages of justice, and detailing the history of the NPOIU.

<sup>11</sup> In open and closed format.

evidence in the first instance so as to avoid multiple “bites at the cherry”.<sup>12</sup>

- i) Home forces will at all times remain responsible for managing any risks arising during this process or as a result of any disclosure of information, in relation to the officer or any third party.
12. The NPCC recognises that this process depends on officers having access to legal assistance or representation for the purpose of making an application for anonymity. The NPCC has established a panel of suitably vetted solicitors qualified to perform this role.
  13. However, pursuant to Home Office Circular 43/2001, it is for home forces to determine whether they are willing to provide legal assistance or funding for legal representation for any serving or retired officer. A number of forces can and do offer legal representation to officers via their in-house or nominated lawyers. However, officers have the right to choose their own legal representation. The NPCC cannot compel any officer to obtain legal representation, or any force to fund or provide such representation.
  14. Although the NPCC will perform a coordination role in arranging the services of the national assessors, the responsibility for submitting applications for anonymity will fall to individual officers and their legal representatives.
  15. The potential for the collation of these applications to take longer than anticipated, and possibly considerably longer than the SDS applications, is very real because of the multiple steps which we will now describe and which are likely to be necessary in each case to complete the application and provide the evidence in support of it.

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<sup>12</sup> Note to CPs on applications for restriction orders on behalf of police officers: risk assessments, dated 20<sup>th</sup> October 2016, at paras. 9 to 10: *“In general I must be able to repose a reasonable degree of confidence that the applicant has provided me and/or the risk assessor with all the evidence that is relevant to the application and that the risk assessment is a conscientious and objective appraisal of the risks to which the applicant will be subject if the restriction order sought is refused. [...] I do not intend to give the applicant the opportunity to improve their application every time an argument in support of a conclusion seems to me to be unmeritorious or unsupported by evidence.”*

16. Officers must first approach either their home force legal department or a panel solicitor, who will assist in preparing the application. The NPCC understands that solicitors are yet to be instructed for the majority of officers. The officer's legal team will then begin the task of reconstructing the officer's historical deployments and identifying potential sources of risk. They will need to consider whether medical evidence is required and make arrangements for an examination and report where such evidence is necessary.<sup>13</sup>
17. At the time of writing, only two applications from former NPOIU officers have been submitted to the national assessors.
18. Once the initial paperwork has been collected and referred to the national assessors, their work will include:
  - a) *Piecing together multiple aspects of an officer's career, before, during and after a particular NPOIU deployment.* Unlike the SDS where all or most officers had (in the MPS) a common home force, NPOIU officers were provided by many different home forces. Over time NPOIU officers were deployed to different operations conducted by a variety of forces. Therefore the assessors and/or Opsys will need to interrogate multiple police systems and collate information from operations across the country. In this respect, investigating the NPOIU is more complex than investigating the SDS whose officers were drawn from a single source.<sup>14</sup> A further distinction between the SDS and the NPOIU is the age of former officers: it is more likely that former NPOIU officers will still be working as police officers and their current deployments will need to be identified and assessed.
  - b) *Examining relevant information held by Operation Elter.* Approximately 5.5 million files are currently accessible to Operation Elter. An additional 20

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<sup>13</sup> The NPCC understands that the panel of three experts originally approached by the MPS was unable to examine and report within a reasonable timeframe; which necessitated finding and engaging experts who could report earlier: Letter from Piers Doggart, Solicitor to the Inquiry, sent by email to the NSCPs dated 28<sup>th</sup> November 2016.

<sup>14</sup> As recognised in Counsel to the Inquiry's Note for the hearing on 5<sup>th</sup> April 2017, para. 17.

terabytes of data (provisionally estimated to be approximately 40 million files<sup>15</sup>) are yet to be uploaded onto the Elter viewing system (FTK). The NPCC has yet to complete the procurement of Relativity, which will allow this enormous quantity of information to be searched and categorised more quickly than is possible on FTK.

- c) *Identifying and evaluating potentially disparate and diverse sources of risk, and where necessary obtaining further information.* Former NPOIU officers are likely to have had greater exposure than former SDS officers to other areas of undercover work and accordingly there are likely to be more sources of potential risk.
  - d) *Identifying, considering and evaluating the potential risks to:* (i) the officer concerned; (ii) other undercover officers; (iii) third parties, including covert human intelligence sources (CHIS). This is not simply a matter of examining the risk posed to each of the above by each contact; but also assessing the risk of such contacts being given information by others thereby causing or aggravating the risk.
  - e) *Communicating and receiving sensitive information to and from undercover officers and the Opsy network.* This largely cannot be done using the normal public channels due to the need to share secret information.
19. A draft flowchart illustrating the steps to be completed by the national assessors is appended to these submissions.
20. Because of the number and variety of other undercover operations in which many NPOIU officers were engaged, the collation and assessment of material by the national assessors (essential if a detailed and thorough application is to be prepared by those representing the officer) is likely to be by far the most time-consuming aspect of any anonymity application. As Counsel to the

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<sup>15</sup> This figure is an estimate which may reduce once duplicates and operating systems are removed by Relativity. It also includes an unknown number of files relating to the software and other technical material.

Inquiry has noted, preparing properly evidenced applications for anonymity is a challenging and resource intensive task.<sup>16</sup>

21. The NPCC currently anticipates the following approximate timescale for each application received by the assessors:
  - a) *Day 1* – Following receipt of the application the assessors will review the statement and application; obtain the nominal profile from Op Elter; and consider any further information that may be required from the applicant;
  - b) *Day 2* – Identified queries will be raised with the applicant’s lawyers and the relevant Opsy will be identified;
  - c) *Day 3* – The Opsy will be given a personal briefing and provided with the relevant documentation and information;
  - d) *Day 4-5* – The Opsy will review the material and identify enquiries that need to be made;
  - e) *Day 6* – The Opsy network will identify stakeholders e.g. SIO, Com UC, and specific units, to arrange for review and/or collection of relevant documents. Relevant personnel will be identified and located for the purpose of conducting interviews;
  - f) *Day 7-35* – Documentation will be reviewed and interviews conducted with the identified stakeholders and witnesses (this bracket is necessarily broad because of the wide variety of enquiries likely to be needed);
  - g) *Day 36* – The Opsy and assessor will meet to discuss the final report; and
  - h) *Day 37-41* – The report will be finalised and hand delivered, along with any relevant material, to the applicant’s lawyers and the Inquiry.
  
22. In view of the number of former NPOIU officers from whom the Inquiry wishes to receive evidence, it may become necessary to appoint additional assessors who will need the prior approval of the Inquiry.

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<sup>16</sup> Counsel to the Inquiry’s Note for the hearing on 5<sup>th</sup> April 2017, para. 74.



23. A further complication specific to most former NPOIU officers is their deployment as undercover officers in the investigation of general crime, unconnected to their NPOIU role. Although there are likely to be efficiency savings in relation to the general threats posed by known extremist groups, where a generic threat assessment can be prepared and then used in multiple applications, deployments relating to local criminal activity or organised criminal gangs cannot be so easily subjected to generic assessment. Even in relation to extremist groups the level of risk may be dependent on the nature of the infiltration and the precise identity of the officer's contacts.
24. Moreover, applying the Inquiry's current approach, no time savings can be made in cases where the evidence in support of an application is clear and compelling because all relevant evidence in relation to all sources of risk must be researched, obtained, and included in the application. There is a risk of delay at every stage of the application process.
25. Based on these component steps, the specific complexities relating to former NPOIU officers, the MPS' experience to date and updated time estimates<sup>17</sup>, and the NPCC national assessors' estimates as to how long it will take them to complete a single assessment, the NPCC anticipates that it will take around 6 months to prepare and submit the first tranche of anonymity applications (i.e. for the 50 or so undercover officers who have already been approached).<sup>18</sup>
26. Accordingly, there is no prospect of meeting the deadlines envisaged in the current timetable for anonymity applications,<sup>19</sup> which provides that all applications will be submitted to the Inquiry by 11<sup>th</sup> April 2017 and any supporting evidence including risk assessments submitted by 4<sup>th</sup> April 2017.
27. Therefore whilst the NPCC takes a neutral stance in relation to the MPS application for an extension of time, it takes this opportunity to inform the

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<sup>17</sup> The MPS application for an extension is based on an estimated 16 assessments taking place per month with 4-5 assessors, 4 researchers and 2 contact officers.

<sup>18</sup> That is 6 months from the beginning of the process outlined at paragraph 21 above.

<sup>19</sup> Timetable for anonymity applications for NPOIU officers dated 20<sup>th</sup> January 2017.

Inquiry that the current timetable for anonymity applications from former NPOIU officers is unrealistic and will need to be amended.

28. Although applications for extensions may technically need to be made by individual officers, the Inquiry may wish to consider this issue of its own motion.

### **Approach to anonymity applications**

29. It is in the public interest that the Inquiry fulfils its Terms of Reference and identifies the lessons that need to be learned for the future without undue delay. The NPCC makes the following observations on the approach to be adopted to anonymity applications in the belief that a revision of the Inquiry's approach will assist in achieving those objectives.
30. The NPCC appreciates that the Inquiry will wish to obtain and review, at least in outline, the evidence relating to each NPOIU officer before it can determine which of those officers' evidence is relevant and necessary to the Terms of Reference. The NPCC also recognises that the Inquiry intends to investigate the cases relating to each of the NSCPs.
31. However, the NPCC supports the MPS' invitation for the Inquiry to adopt a more focused approach to individuals "*whose deployment or evidence the Inquiry is likely to wish to publish or investigate further at a hearing*"<sup>20</sup> insofar as that is possible.
32. It seems likely, on the basis of the considerable information already available in relation to ex-NPOIU officers and staff, that the Inquiry could be in a position to make at least a provisional assessment as to which individuals' evidence is more likely, or less likely, to be required. Because of the timespan of the NPOIU (1999-2011) there is a much larger volume of documentation available

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<sup>20</sup> Para. 14 of MPS submissions dated 23<sup>rd</sup> February 2017.

than may be available in respect of the SDS, which is one of the reasons the Inquiry has given for seeking evidence from the officers themselves.<sup>21</sup>

33. Were the Inquiry to be in a position to be able to indicate that the evidence of any officers – or, more likely, “backroom” staff – is unlikely to be required, even if in only a few instances, this would save time and allow limited resources to be devoted to applications for officers whose evidence will be required. This of course assumes that applications for anonymity will always need to be made. If the Inquiry were content for undercover officers to give statements in their covert identities, there would be no need for corresponding anonymity applications. Alternatively, the Inquiry could consider the statements it receives before indicating whether any of those officers’ evidence, and any corresponding anonymity applications, will be required.
34. Any such indication would, of course, remain subject to review and could be revisited when Operation Elter is further advanced, and when the Inquiry has considered a greater proportion of the available documents.
35. The NPCC has identified three further areas where a potentially very large amount of time could be saved, without altering the Inquiry’s intention of taking an account from the majority of former NPOIU undercover officers: (i) “Compelling cases” or “fast track” approach to anonymity applications; (ii) Content of applications; and (iii) Provision of material to home forces.

*(i) Compelling cases for anonymity applications*

36. The first area relates to applications for anonymity which are supported by compelling evidence and which could be granted without consideration of other evidence disclosing relevant, but subsidiary, risks of harm. Where an officer faces a clear and compelling risk, for example because of a current deployment or previous exposure to a terrorist network, a streamlined

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<sup>21</sup> Counsel to the Inquiry’s Note for the hearing on 5<sup>th</sup> April 2017, paras. 66.3 and 70.

application could be made without the need to provide evidence about every other potential risk that may exist in relation to other deployments.

37. The NPCC appreciates the Inquiry's desire to avoid applications seeking to have "two bites at the cherry". However, allowing for a streamlined process in particularly compelling cases would avoid wasting time and resources researching and preparing comprehensive applications which are not required. This appears to be the Inquiry's intention going forward (as communicated in a letter of today's date to legal representatives of officers associated with the NPOIU). The NPCC would be grateful for confirmation that this approach will apply to all cases where the evidence is clear and compelling.
38. The Inquiry's concern about repetitive applications is unlikely to materialise if there is a "fast track" approach in especially strong cases, particularly if the Inquiry is able to offer guidance as to the types of information likely to be available in a very strong application (see (ii) below). Time and resources will be saved in both the preparation and consideration of such applications.

*(ii) Guidance on content of applications*

39. The second area relates to the content of anonymity applications. In contrast to the detailed protocols which have been circulated for restriction orders and disclosure, no guidance has been produced by the Inquiry on the kinds of evidence or the nature of the information which the Inquiry will expect to be included in an anonymity application.
40. Clearly, the Inquiry cannot be expected to offer guidance on how to make an application for anonymity. However, it would greatly help those preparing and advising upon such applications to have a clear understanding, at the outset, of the types of information and/or the level of detail which (if available) needs to be included. If the Inquiry were willing to consider this suggestion, the NPCC could provide a list of potential items to be included.

41. Various solicitors and legal departments will be responsible for drafting applications and they will have differing levels of experience in relation to such applications. Whilst panel firms will quickly gain knowledge and experience of large numbers of anonymity applications, home force legal departments may only have one or two to prepare. A means of ensuring consistency of approach will assist the Inquiry and is likely to save time.
42. The alternative is that applications are prepared which have substantial deficiencies in detail and/or evidence, where further questions need to be asked by the national assessors or the Inquiry because of a lack of clarity or specificity as to the nature of the risks involved (which may or may not be real).
43. The NPCC envisages this problem adding considerably to the length of time required for the national assessors to complete their reports, particularly given the constraints imposed by secret information on the assessors' ability to engage in correspondence with individual officers about their applications. Engaging in questions back and forth with officers is likely to take some time.

*(iii) Provision of material to home forces*

44. Third, the NPCC remains concerned that home forces, who retain ultimate responsibility for protecting both their officers and members of the public who may find themselves at risk of harm as a result of disclosure of information, may not receive the information they need to assess and manage risk.
45. Once an application for anonymity has been determined, the home force will need to consider what if any protective measures need to be put in place. To this end, they will need to consider, at a minimum, the report produced by the national assessor.
46. The NPCC considers that once an application has been determined, all information relevant to risk management, which has been gathered to date by the national assessors, will need to be made available to specified individuals

within home forces so that they can discharge their duty of care to those officers in respect of whom disclosures are to be made.

### Redactions

47. The NPCC understands, from the draft protocols recently circulated,<sup>22</sup> that in relation to restriction orders the Inquiry intends:

- a) First to review the available documentation in un-redacted form;
- b) Then to indicate which documents it considers to be relevant and necessary; and
- c) Only after that indication, to determine any applications for restriction orders made in relation to any of those documents.<sup>23</sup>

48. Paragraph 28 of the Explanatory Note to the draft protocols<sup>24</sup> states: *“In order to be able to report as soon as practicable the Inquiry will need to focus only on those documents which are really necessary for it to discharge its terms of reference. This is particularly so because processing documents, especially where it involves considering applications for restriction orders in respect of the content, is time consuming and labour intensive. An important aspect of the Inquiry’s work will be to identify which documents are both relevant and necessary ... Only if material is deemed necessary will it continue to be processed by the Inquiry (for the continuing process see the Draft Restriction Protocol). Decisions may be revisited in the light of developments and a record will be kept of decisions on relevance and necessity.”*

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<sup>22</sup> Draft Disclosure and Restriction Protocols, both dated 15<sup>th</sup> March 2017 (v3).

<sup>23</sup> Per para. 14 of the Draft Restriction Protocol: *“As soon as it is in a position to do so after the production to the Inquiry of unredacted Information (or Information with provisional redactions shown, if this does not cause delay in its production), the Inquiry will indicate to the Metropolitan Police Service the Information considered to be relevant and necessary. The Metropolitan Police Service must as soon as reasonably practicable thereafter in respect of Information indicated to be relevant and necessary (and where it has not already done so): (i) confirm in writing ... that no restrictions in respect of that Information are sought; or (ii) provide information electronically to enable the Inquiry to view the Information with the provisional redactions or gists marked legibly on it and to see the number of the open category and any closed subcategory claimed in respect of each ...”*

<sup>24</sup> Explanatory Note about the Draft Disclosure Protocol and the Draft Restriction Protocol relating to the production of documents by the MPS to the Inquiry and the procedure for applying for orders restricting their publication, dated 15<sup>th</sup> March 2017.

49. Although the NPCC will address the draft disclosure and restriction protocols in separate submissions, it regards this proposed approach as essential for maintaining the viability of the redaction process, and the Inquiry's timetable.
50. The NPOIU material comprises (on current estimates) approximately 40 million documents.<sup>25</sup> It would be unworkable to seek to apply redactions to the totality of this material prior to the Inquiry indicating which documents were likely to be required for publication – an indication which, as with anonymity applications, would remain under review.

### **Conclusion**

51. The NPCC stands ready to assist the Inquiry to discharge its Terms of Reference in a timely and proportionate manner.
52. To this end the NPCC supports the MPS' invitation for the Inquiry to adopt a more focused approach to the evidence it seeks from undercover officers and staff, insofar as this is possible. Adopting the Inquiry's current approach, the NPCC anticipates a timeframe in the order of 6 months for the completion of the first tranche of anonymity applications on behalf of the NPOIU. This estimate is itself based on assumptions which are necessarily provisional.
53. The NPCC further invites the Inquiry to consider:
  - a) Allowing for a streamlined or "fast track" application to be made in cases where the officer is able to demonstrate a clear and compelling risk;
  - b) Issuing guidance to police officer applicants on the types of information and evidence it expects to be included in an application for anonymity;
  - c) Permitting the reports produced by the national risk assessors, and the evidence on which they are based, to be distributed to home forces at the conclusion of the application process, to enable chief officers to manage the risks attendant on disclosure.

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<sup>25</sup> See paragraph 18b) above.

54. The NPCC respectfully submits that these steps will allow the Inquiry to progress in a more expeditious manner and avoid some of the delays which have affected the MPS/SDS processes to date, without compromising the Inquiry's desire to receive evidence from the majority of undercover officers from the NPOIU.

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23<sup>rd</sup> March 2017



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Piers Doggart  
Solicitor to the Inquiry  
Inquiry into Undercover Policing

Dear Piers,

Having considered the Chair's directions dated 15 February 2017 and the submissions submitted on behalf of the Metropolitan Police Service (MPS) on 23<sup>rd</sup> February 2017 we thought it might assist the Inquiry if we set out our initial views, on behalf of the National Police Chiefs' Council (NPCC), in advance of our formal submissions which will be submitted by 23<sup>rd</sup> March 2017.

The MPS seek an extension of time to complete their restriction order application process because of the amount of work involved and the resources available, in particular the difficulties encountered in these respects with risk assessments. We are concerned that if the current approach to anonymity applications and restriction orders is maintained by the Inquiry the NPCC, panel firms and in-house solicitors will face the same difficulties.

In particular, we are concerned that:

1. the resources available to the MPS are far greater than the combined resources available to Clyde & Co and individual in-house force legal teams that will be assisting ex-NPOIU officers and staff in considerations around anonymity. Although the NPCC will assist the legal advisors in locating and assessing any relevant material, there is likely to be greater material relating to these individuals spread across a greater number of forces; the material will include electronic material which may be inaccessible or hard to obtain; the ex-NPOIU officers are likely to have had greater exposure than SDS officers to other areas of undercover work including the infiltration of organised criminal groups.
2. The very real practical difficulties faced by the MPS in finding and recruiting suitably qualified risk assessors are currently being faced by the NPCC in identifying individuals who are suitably experienced and sufficiently independent to be qualified, whilst at the same time being willing and able to conduct the work. We have identified two individuals and are in discussion with the UCPI about their suitability. Delays in the process arising out of this assessment as to suitability will impact on the timescales proposed by the Inquiry.



EMPLS is the collaborative legal unit of  
Derbyshire Constabulary, Leicestershire Police,  
Lincolnshire Police, Northamptonshire Police & Nottinghamshire Police  
Part of the East Midlands Police Collaboration Programme

The proposal of the Inquiry to take the same approach to ex-NPOIU officers and staff as is currently being taken with ex-SDS officers and staff (i.e. that most, if not all, will be called upon to provide evidence to the Inquiry) will necessitate a huge amount of work to prepare anonymity or restriction applications for officers and this will have a negative impact upon the timescale of the Inquiry.

It is with a wish to avoid unnecessary delay that the NPCC is currently minded to support the MPS's suggestion for a more focused approach to the evidence and a more flexible approach to applications for anonymity. In particular, there are three key areas where the approach currently taken by the Inquiry could usefully be revisited to improve the process and prevent unnecessary delay:

1. It seems likely that with even a cursory examination of the information and evidence gathered about all the ex-NPOIU officers and staff the Inquiry would be able to say that there are some from whom it is unlikely that evidence will be required. If a filtering process were to be undertaken it would allow the NPCC, Clyde & Co and in-house force solicitors to focus their limited resources on the officers of most interest to the Inquiry and save time. Even a limited indication as to which officers/staff will or definitely won't be called upon by the Inquiry would be of tremendous assistance in directing resources effectively. To do otherwise risks wasting time and resources being spent on researching and assessing officers from whom the Inquiry will never seek evidence. The NPCC has no desire to direct or limit the Inquiry in any way, and any indication given as suggested would not prevent it being subsequently revised. We suggest that if the Inquiry is able to provide indications, and focus as suggested the resultant concentration of resources could only lead to an increase in pace and a reduction in the overall timespan of the Inquiry.
2. The Inquiry's current approach to anonymity applications is likely to be particularly demanding of NPCC resources and time consuming because of the desire to include all relevant material in one application. Whilst we entirely understand the rationale for this approach, in reality a disproportionate amount of time and effort will be spent on applications for some officers which are not necessary. Where an officer faces a clear and serious risk, for example because of a current deployment or previous threats, a streamlined (or fast track) application could be made for anonymity on clear and compelling evidence without the need to provide evidence about all the other risks that may exist due to other deployments. The Inquiry's current wish to avoid 'a second bite of the cherry' prevents such a streamlined approach and requires scarce resources to prepare fully comprehensive applications when it is unnecessary to do so. Regrettably, this can only increase delay and the overall timespan of the Inquiry.
3. An officer's Chief Constable owes a responsibility to his or her serving or retired officers and any third parties who may be put at risk of harm by the disclosure of information relating to an officer's deployments. The assessment of any risk and the measures necessary to counter that risk can only be undertaken by the Chief Constable with full knowledge of all relevant information. Whilst the NPCC will offer assistance to Chief Constables the NPCC cannot assume or discharge the responsibility that the Chief Constable holds. Chief Constables have indicated that they wish to have access to the centrally held NPOIU material in order to discharge their responsibilities. The Inquiry has directed the NPCC not to release this material to Forces in order to, inter alia; avoid evidence or the suspicion of evidence being distorted; avoid multiple statements being required to clarify when witnesses became aware of evidence or document; and ensure that the disclosure process is kept as simple as possible. Whilst we understand the rationale of the Inquiry, as every Force has now submitted a Rule 9 statement outlining their knowledge of how the NPOIU has

impacted upon their Force we consider that positional statement can be utilised to allow the Inquiry to manage these risks whilst allowing the NPCC to break out information to Forces that may assist them in undertaking their assessments in parallel to the anonymity process.

The scope of the work of ex-NPOIU officers is very different to that of ex-SDS officers: the SDS officers were usually involved in only one key deployment before being redeployed back to Special Branch, whereas NPOIU officers were routinely used in multiple deployments around the country in different force areas. The amount of work involved for each 'average' NPOIU officer, in tracing deployments, forces and assessing risks is likely to be much more than for the 'average' SDS officer. If the Inquiry were able to adopt a more focused and flexible approach it seems to us that the same results can be obtained in a more timely and proportionate manner, whilst still complying with the Terms of Reference and ensuring transparency and fairness to all.

We will endeavour to develop our proposals in our formal submissions, but trust that this assists in informing the Inquiry team of our current thoughts.

Yours faithfully

A handwritten signature in black ink, appearing to be 'C W Sutherland', written over a dotted line.

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## Protocol for role of NPCC in anonymity applications

1. This document outlines the coordination role to be performed by the NPCC in the process of anonymity applications submitted on behalf of former NPOIU officers (or other crime UC officers or staff, retired or serving, all of whom will be collectively referred to simply as “officers” in this protocol).
2. UCPI intends to receive evidence for publication from all former NPOIU undercover officers, cover officers, managers and selected supporting staff.

### Process

3. The Inquiry sends letters to officers seeking clarification whether they intend to seek anonymity in respect of their real and/or covert identity when they provide evidence, verbal or written, to the Inquiry. The UCPI have recommended that they seek legal representation and have suggested a ‘panel’ of appropriate firms.
4. In the case of any officer who indicates that they do not wish to seek anonymity, the NPCC and any Forces who may have potential equity in the officer and any operations he or she may have performed, request that UCPI informs them in order that full consideration is given to any third party risk that would justify an anonymity application.
5. Where officers directly contact forces seeking further guidance and expressing concern due to the direct approach from a solicitor at the UCPI, forces should refer officers to the arrangements for obtaining legal advice and representation, and offer appropriate welfare arrangements where these are not already in place.
6. Having established the views and wishes of the officer, the officer’s legal representative will initially inform the UCPI whether or not the officer wishes to make an anonymity application and then conduct a de-brief of the officer to establish his or her previous history and an understanding of any risk they believe they face.
7. If requested by the officer, this de-brief may be attended by their welfare officer who would be appointed by the host force. Unless the officer consents to the disclosure of information they provide to their legal representative, such information will be subject to legal professional privilege and a duty of confidentiality owed to the officer.
8. Should the legal representative representing the officer require further information or assessment in support of any anonymity application in relation to their client, they may request this via the NPCC UCPI Coordination Team who will commission the collation of any further relevant information through one of the NPCC National Assessors. Any such request for an assessment will be on the understanding that the information provided by or on behalf of the officer to the National Assessor will not be subject to legal professional privilege and that the report of the Assessor may be provided to the Inquiry regardless of whether the officer wishes to rely on it.

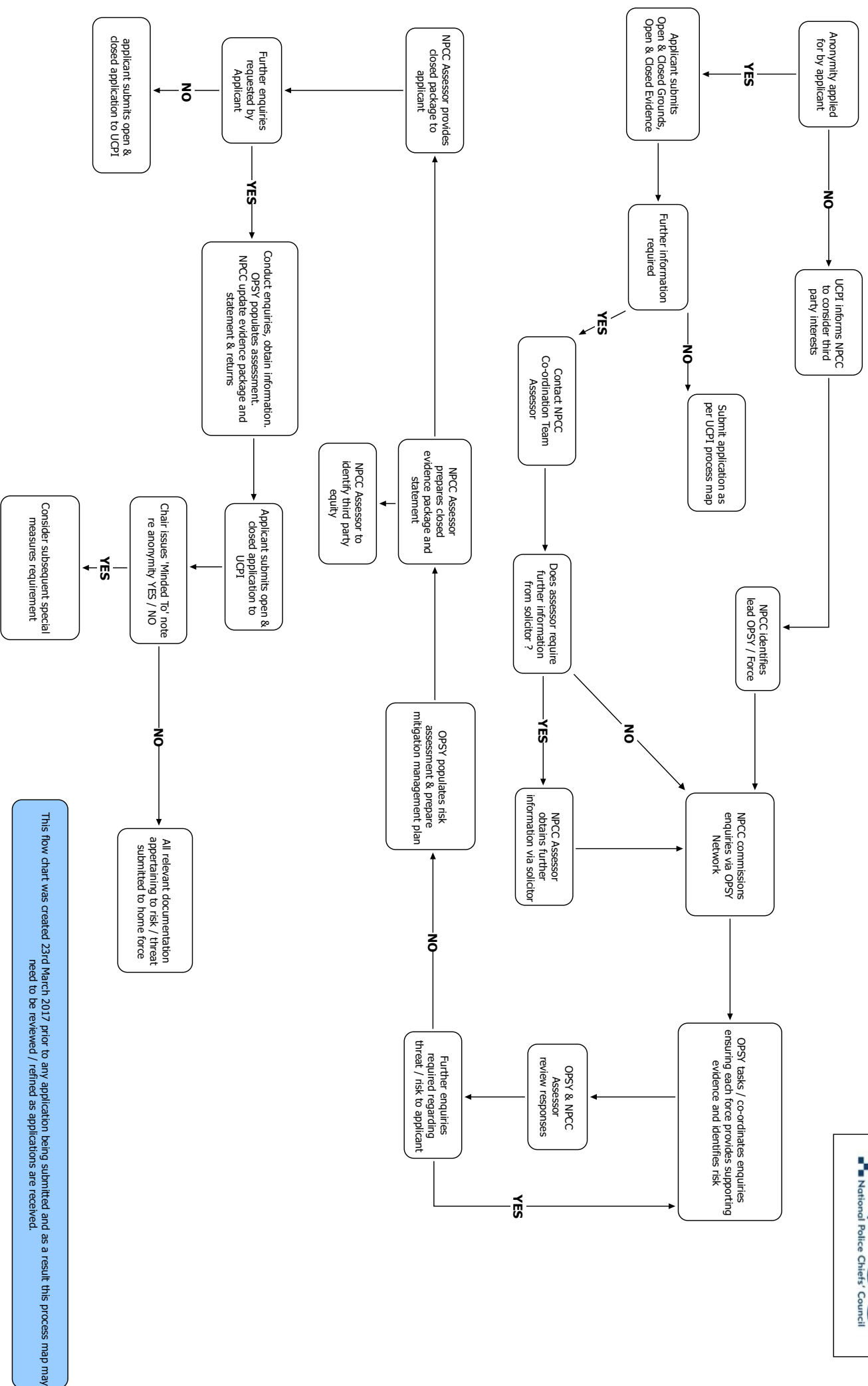
9. The NPCC National Assessors will then instigate any further enquiries through centrally held information in Operation Elter and across forces. Research and information collection will be conducted by representatives from the National Regional Operational Security Officer (OPSY) network who will approach forces or undercover units believed to hold information relevant to any anonymity application. Where possible any potential third party risks or equities will also be identified at this stage.
10. The NPCC Co-ordination Team and National Assessors will ensure that there is no disclosure of centrally held material, at this stage, to forces.
11. Any relevant information obtained in support of the individual anonymity application will be made available to the requesting legal representative, including the risk assessment report of the National Assessor. The information will not, unless deemed necessary and authorised by the UCPI, be shared with any other parties contributing to the gathering of information at this time.
12. Having received all available information the legal representative will prepare the anonymity application based upon the risks as being identified relevant to their client. The Inquiry may ask for further information or evidence in relation to an application, but all relevant information and evidence should be included when an application is submitted. Any decision by the Chairman or the Inquiry legal team to request further information in relation to an application for anonymity will be made in accordance with the Inquiry's process map for determining key anonymity applications: <https://www.ucpi.org.uk/wp-content/uploads/2016/11/161107-process-map-restriction-orders.pdf>.
13. Completed anonymity applications will then be submitted to the UCPI by the legal representatives. Any potential third party risks or equities will be highlighted to the Inquiry in the application where possible. They will also be highlighted to the Inquiry in the assessment report produced by the National Assessor(s), which will be made available to the Inquiry whether or not the officer relies on it in support of their application.
14. The UCPI will consider any potential third party risks or equities that may relate to each anonymity application and, if they deem appropriate, write to the relevant party (force or individual) seeking clarification and/or asking whether they wish to support any existing anonymity application, or make any submission, if necessary, by the report produced by the NPCC National Assessor(s).
15. Having considered all submitted applications, the Chairman of the Inquiry may request further evidence or information in relation to a particular application [insert flow diagram / "feedback loop"] before making any decision regarding the anonymity application.

#### Post Chairman's Decision Regarding Anonymity.

16. Should the Chair of the UCPI indicate he is not minded to grant anonymity for either the true identity or pseudonym, responsibility for managing any risks arising out of such disclosure will need to be addressed by the relevant force. It is likely that

independent of any assessment by the UCPI, a full risk management assessment will need to be considered by Forces. For the officer, such an assessment will be prepared by the officer's home force as the Chief Officer retains a duty of care for that individual. The home Force will always retain a duty of care to its officers and it is not an obligation that the solicitor, national risk co-ordinator or the NPCC can assume on behalf of Chief Constables. Where a risk arises to a third party, consideration of how the risk arising from any disclosure will be managed will need to be assessed on a case by case basis. It may be the case that the Chief Constable responsible for managing any risk arising out of a disclosure for a third party may not be the same Chief Constable who has responsibility for managing the risk to the officer.

17. It is the view of the NPCC that in order to manage any risks arising out of disclosure, all information relevant to the management of that risk which has been gathered to date as part of the co-ordination process will need to be made available to forces and the UCPI will be informed of any information provided. Chief Constables have made it clear that without full access to all available relevant information they would be unable to discharge their duties in relation to duty of care issues.
18. Having received all available information the relevant Chief Constable will then ensure an appropriate risk assessment is completed and risk management plan is put in place.



This flow chart was created 23rd March 2017 prior to any application being submitted and as a result this process map may need to be reviewed / refined as applications are received.