

UNDERCOVER POLICING INQUIRY

PRELIMINARY HEARING: APPLICATIONS BY THE METROPOLITAN POLICE SERVICE  
IN RESPECT OF THE SPECIAL DEMONSTRATION SQUAD

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Wednesday, 5 April 2017

(10.30 am)

Opening remarks by THE CHAIR

THE CHAIR: Good morning, everyone.

I have received several messages of concern --

(A problem with the audio equipment)

-- can somebody please attend?

I wish to express my appreciation for those messages of goodwill that I have received. I am afraid that physically I am not the same person that you saw last



1 summer, but hopefully I can make myself understood.

2 If you don't follow what I am saying, please repeat  
3 the recent example and tell me to speak up. In all  
4 other respects I'm told that I am the same person, which  
5 is why I'm still here, at least for the time being.

6 I want, I am afraid, to repeat what I have said on  
7 previous occasions about the house rules for this  
8 hearing. Nobody may record anything in this room except  
9 those who are responsible for transcribing. Secondly,  
10 would you please make sure that your mobile phones are  
11 either switched off or on silent. Please remember,  
12 thirdly, that you cannot make phone calls from this room  
13 while we are sitting.

14 Lastly, you know, I am sure, that text and Twitter  
15 are allowed, but you may not transmit any information  
16 that you have heard in this room until at least  
17 60 seconds has elapsed, the reason being, as you know,  
18 that anything that ought not to be broadcast must be  
19 stopped and it can only be stopped if someone gets up  
20 and reminds us that it should not.

21 Now the reason we are here today is to consider  
22 applications from the Metropolitan Police Service of  
23 which you are well aware. At the same time, it has  
24 become obvious to me that this Inquiry is not  
25 progressing at the rate that was expected. Therefore,

1 I want to take this opportunity to hear from you as to  
2 the ways in which the Inquiry can be assisted to get to  
3 the meat of its work as soon as it reasonably can. That  
4 is why I have received many written submissions on all  
5 three subjects which I can assure you I have read in  
6 full.

7 I have also received a request from Kate Wilson to  
8 be permitted to address me orally. I am not going to  
9 waste time today by asking her to justify that request,  
10 but I am going to give a short time -- ten to  
11 fifteen minutes -- for her to address me after the submission  
12 of Mr Emmerson on behalf of Peter Francis.

13 Moments before I came into this room, I received yet  
14 another request -- far too late -- but I may give leave  
15 to Ms Steel to address me for up to ten minutes.

16 What I'm going to do next is to invite Mr Barr to  
17 introduce the legal teams to you and to outline how he  
18 proposes that we should proceed. We will take a break  
19 at 11.45 or thereabouts in order to give the  
20 transcribers and no doubt me a rest.

21 I am told that it is important that those who do  
22 speak, speak into a microphone. That is in order for the  
23 transcription to be improved later. So if you don't  
24 have a microphone in front of you, please pinch one.

25 Mr Barr?

1 Update on Inquiry progress by MR BARR, COUNSEL TO THE  
2 INQUIRY

3 MR BARR: Thank you, Sir. I appear before you today with  
4 three of my junior counsel. To my immediate right,  
5 Ms Wilkinson, to the right of her, Ms Gargitter, to my  
6 left, Ms Ailes.

7 Next, to my left is counsel for the non-police  
8 non-state core participants, Mr Dan Squires, who is  
9 leading Ms Ruth Brander.

10 To the right of Ms Gargitter is counsel for the  
11 Metropolitan Police Service, Mr Hall, leading  
12 Ms Mannion.

13 Behind me to my far left, Mr Emmerson appears on  
14 behalf of Mr Peter Francis. To his right,  
15 Mr Nicholas Griffin appears on behalf of the  
16 Home Office, leading Ms Davidson.

17 To my right and behind me, Sir Robert Francis  
18 appears on behalf of the National Police Chiefs'  
19 Council, leading Ms White.

20 To his right is Mr O'Connor, who appears on behalf  
21 of the National Crime Agency, leading Mr O'Brien, and to  
22 my far right, on the rear bench, is Mr Brandon, who  
23 appears on behalf of those officers who are represented  
24 by Slater and Gordon.

25 So far as the proposed speaking order is concerned,

1 I propose first to make some introductory remarks to  
2 bring everyone up to date with factual developments  
3 since we published our note dated 2 March, and to  
4 summarise our observations on the submissions which have  
5 been made since then.

6 After that, Mr Hall will make his applications on  
7 behalf of the Metropolitan Police Service and will be  
8 followed by counsel for the National Police Chiefs'  
9 Council, the National Crime Agency and the separately  
10 represented police officers. Then, if he wishes to,  
11 counsel to the Home Office may add anything before we  
12 move to Mr Squires on behalf of the non-police non-state  
13 core participant group and Mr Emmerson for  
14 Peter Francis.

15 We will then turn, as you have already said, Sir, to  
16 Ms Kate Wilson and Ms Steel before hearing any reply,  
17 subject of course to leave, and then any reply from  
18 Mr Hall and myself.

19 I understand that Ms Wilson's written submissions  
20 are currently being circulated.

21 THE CHAIR: Thank you.

22 Before you go on, Mr Barr, not everybody knows who  
23 this chap is on my right. He's not another chairman.  
24 He is my hands and arms. This is Milo Smith and I'm  
25 grateful to him for sitting alongside me to turn pages.

1 Thank you.

2 MR BARR: So I will turn first, if I may, Sir, to the  
3 factual update.

4 Slater and Gordon have now provided the Inquiry with  
5 expert medico-legal reports in relation to all bar one  
6 of their clients who wish to rely upon medical evidence.  
7 One of their clients has provided additional medical  
8 evidence, although not an expert report.

9 At the time of writing, the Inquiry has not received  
10 the risk assessments in relation to Slater and Gordon's  
11 clients which the Metropolitan Police Service has been  
12 requested to produce and which are the Inquiry's first  
13 priority.

14 On 31 March -- that is last Friday -- the Inquiry  
15 received anonymity-related responses from the  
16 Metropolitan Police Service in relation to three former  
17 Special Operations Squad personnel. The position can be  
18 summarised as follows.

19 In two of the three cases an application is made to  
20 restrict the officers' real names, but not their cover  
21 names. The Inquiry will publish the cover names as soon  
22 as it has completed its pre-disclosure process, which  
23 includes checking whether there is anyone who should be  
24 given advance notice of the publication.

25 The third officer is deceased. The



1 Metropolitan Police Service has not been able to supply  
2 the Inquiry with the cover name used by this officer and  
3 is not seeking to restrict publication of the officer's  
4 real name. The Metropolitan Police Service has informed  
5 the Inquiry that it is currently establishing whether  
6 the officer has any surviving next of kin. The Inquiry  
7 will wish to inform the next of kin before publishing  
8 the officer's real name.

9 Yesterday the Inquiry received an anonymity  
10 application in respect of a further officer. In this  
11 case an application is made to restrict both the real  
12 and cover names of the officer.

13 Members of the Inquiry legal team recently met with  
14 counsel acting for the Metropolitan Police Service, who  
15 provided a detailed explanation of the approach which  
16 the Metropolitan Police Service is taking to the  
17 preparation of applications for anonymity. We note that  
18 counsel for the Metropolitan Police Service have  
19 helpfully appended a flow-chart summarising that process  
20 to their submissions in response, dated 30 March 2017.

21 Although it is clear that the Metropolitan Police  
22 Service is now increasing the resources which it is  
23 allocating to the anonymity process, two aspects of the  
24 approach which has been adopted by the  
25 Metropolitan Police Service call for comment by the

1 Inquiry legal team and are these.

2 First, the Metropolitan Police Service is only  
3 approaching former Special Demonstration Squad officers  
4 to establish their stance on anonymity and risk at  
5 a late stage in the process. We would have preferred to  
6 see the Metropolitan Police Service engaging with the  
7 officers about these questions at a much earlier stage  
8 so as to enable a more focused approach to the  
9 identification and assessment of any risks.

10 We accept that the investigation of risk cannot  
11 begin and end with the officer, who might, for example,  
12 subjectively believe that the level of risk is greater  
13 than is objectively the case. However, an undercover  
14 officer's understanding of his or her own deployment is  
15 a good starting point for the investigation of the  
16 question of whether any harm might arise from the  
17 disclosure of their cover or real identity. We consider  
18 that engagement with the officers themselves should now  
19 be a priority.

20 Second, the Metropolitan Police Service has recently  
21 decided not to provide its risk assessors with current  
22 thematic risk assessments produced by personnel at the  
23 Counter Terrorism Policing - National Operations  
24 Command. This unit is a successor of both the National  
25 Public Order Intelligence Unit and the National Domestic

1 Extremism and Disorder Intelligence Unit. The former is  
2 at the heart of the Inquiry's substantive investigations  
3 and the latter is the subject of multiple ongoing  
4 investigations by the Independent Police Complaints  
5 Commission relating to the allegedly improper  
6 destruction of documents.

7 The Inquiry understands that there remains other  
8 evidence which may be provided to the risk assessors  
9 with the assistance of members of this unit to inform  
10 the overall assessment of risk. We regard it as  
11 particularly important that the Metropolitan Police  
12 Service takes steps to ensure that neither the personnel  
13 involved from this unit nor their managers include  
14 persons who are being investigated for alleged document  
15 destruction or are otherwise conflicted from an  
16 objective assessment of risk.

17 The Inquiry has sent a [request under Rule 9 of the Inquiry  
18 Rules 2006] seeking further information about the identities of  
19 those who will be involved and conflict management in relation  
20 to this process.

21 The Inquiry yesterday received a copy of the  
22 protocol which the Metropolitan Police Service requires  
23 its own risk assessors to adhere to. We have circulated  
24 this to all core participants.

25 Turning to the questions of contact with and legal

1 representation of the 168 former members of the Special  
2 Demonstration Squad, we understand the current position  
3 to be this.

4 Mr Francis and the nine Slater and Gordon clients who  
5 served with the Special Demonstration Squad are  
6 separately represented.

7 Six other officers have been identified by the  
8 Metropolitan Police as requiring separate  
9 representation.

10 Three officers have not been contacted by the  
11 Metropolitan Police because they are believed to be  
12 seriously ill. The Inquiry is taking steps to verify  
13 the position.

14 The Metropolitan Police has not been able to contact  
15 two former officers for reasons which have been  
16 explained to the Inquiry. The Inquiry is considering  
17 whether there are realistically any further steps which  
18 can and should be taken to try to trace these officers.

19 The Metropolitan Police has not yet established  
20 contact with seven former so-called "back-office" staff.  
21 Its efforts to contact them are continuing.

22 The Inquiry has recently been informed that the  
23 Metropolitan Police now intends to offer legal  
24 representation and not merely legal support to all of  
25 the former Special Demonstration Squad officers with

1 whom it is in contact and who do not require separate  
2 representation.

3 The Metropolitan Police has informed the Inquiry  
4 that 25 former Special Demonstration Squad officers are  
5 deceased. 17 of these are former undercover police  
6 officers and eight former "back-office" staff.

7 Of the 168 former members of the Special  
8 Demonstration Squad, the Metropolitan Police has made  
9 decisions about whether to apply for restriction orders  
10 in respect of 18.

11 The Inquiry has written to 54 members of the  
12 National Public Order Intelligence Unit who are believed  
13 to have been either undercover police officers or cover  
14 officers; 26 undercover officers, 28 cover officers.  
15 All of those who have replied have indicated an  
16 intention to apply for anonymity. 12 have provided an  
17 outline of their application with evidence. Legal  
18 representation has been confirmed by all but 17.

19 I turn now to summarise the Inquiry legal team's  
20 observations on the core participants' submissions  
21 insofar as necessary.

22 Having considered all of the written submissions, we  
23 remain of the view that it would be preferable to set  
24 specific deadlines for the submission of tranches of  
25 applications for anonymity together with all necessary

1 evidence or confirmation that no application is being  
2 made.

3 We also remain of the view that the change of  
4 approach to the anonymity applications process proposed  
5 by the Metropolitan Police Service is problematic and  
6 should not be adopted for the reasons which we set out  
7 in our note dated 2 March 2017.

8 The very recent submission of risk assessments by  
9 the Metropolitan Police affords the Inquiry the  
10 opportunity now to assess their quality and utility. We  
11 remain of the view that if the Metropolitan Police is  
12 unable to produce risk assessments in a reasonable  
13 timescale, then there are alternative approaches  
14 available.

15 It will be a matter for the Chairman, having heard  
16 submissions from the core participants, whether and, if  
17 so, to what extent the timetable should be reinforced  
18 through the use of notices under section 21 of  
19 the Inquiries Act [2005].

20 THE CHAIR: Can I stop you there, Mr Barr, to ask what risk  
21 assessment you are referring to as "recently submitted"?

22 MR BARR: These are the risk assessments which accompany the  
23 applications which arrived on Friday and yesterday.

24 THE CHAIR: Okay.

25 MR BARR: We are grateful to the non-police non-state core

1 participants for their suggested approach to tranching  
2 applications and their draft directions.

3 Their first proposal is that the Inquiry should  
4 write to all former members of the Special Demonstration  
5 Squad, the National Public Order Intelligence Unit and  
6 their predecessor and successor units, insofar as they  
7 are contactable, effectively seeking to establish their  
8 basic position on anonymity.

9 In relation to the Special Demonstration Squad, the  
10 Inquiry's letter to the Metropolitan Police dated  
11 11 August 2016 sought from it, amongst other things,  
12 confirmation in the case of each officer whether an  
13 application for anonymity would be made.

14 Responses in the case of all officers were due to  
15 have been provided by 4 November 2016. A complete  
16 answer to that request remains outstanding in that there  
17 are only 18 cases out of 168 in which the  
18 Metropolitan Police Service has informed the Inquiry  
19 whether an application for anonymity will be made.

20 The Inquiry's approach to the National Public Order  
21 Intelligence Unit to date has been to seek to establish  
22 at the outset the officers' position on anonymity in  
23 addition to other things. To date, all respondents have  
24 intimated an intention to apply for anonymity. However,  
25 we propose continuing with this approach with further

1 former members of this unit. Our current view is that  
2 a tranced approach is likely to be more efficient  
3 overall, given the limits on the resources of all those  
4 involved in the process.

5 The Inquiry has been prioritising its investigation  
6 of the Special Demonstration Squad and the National  
7 Public Order Intelligence Unit, although not to the  
8 exclusion of all else. We consider that this remains an  
9 appropriate strategy. However, when the Inquiry does  
10 turn to the latter unit's predecessor and successor  
11 units, we agree that establishing whether or not  
12 a witness seeks anonymity is an important initial step.

13 The non-police non-state participants' second  
14 proposal is that the Chairman should give early  
15 benchmark rulings. We agree to the extent that early  
16 rulings will act as a guide to those who have yet to  
17 decide whether to make an application for anonymity and  
18 to those who have a pending application for anonymity.  
19 It is for this reason that the Inquiry legal team is  
20 particularly keen for a first tranche of applications to  
21 be submitted and determined.

22 The non-police non-state core participants' third  
23 proposal relates to the identification of those officers  
24 who are deceased and suggests that there should be  
25 a presumption that the officer's cover name should be



1 released. Self-evidently there can be no risk of harm  
2 to the deceased officer.

3 However, the force which formerly employed the  
4 officer will need to be afforded the opportunity to  
5 consider whether or not there are other grounds for  
6 applying for a restriction order, either on public  
7 interest grounds or harm to third parties. It is also  
8 becoming apparent that in some older cases the cover  
9 name of an officer is not at present known and will  
10 require investigation.

11 In terms of the priority which these cases are  
12 afforded, their resolution seems unlikely greatly to  
13 assist with providing guidance to future applicants, nor  
14 is dealing with them early as a group likely to enable  
15 hearings to be commenced earlier. Applications  
16 involving difficult issues are more likely to provide  
17 guidance.

18 In order to progress towards the hearing of  
19 a particular section of Module One, all of the anonymity  
20 applications relating to that section need to be  
21 determined; for example, all Special Operations Squad  
22 applications need to be determined before we can  
23 progress to the hearing of that subsection.

24 We submit that there is a strong case for  
25 prioritising those applications, the determination of

1           which is most likely to contribute to useful guidance  
2           and/or best assist the progress of investigations  
3           towards the commencement of the evidential hearings.

4           The non-police non-state core participants' fourth  
5           proposal is that a schedule of HOLMES nominal numbers is  
6           published, identifying each officer's years of  
7           deployment, the identity or cipher of supervisors with  
8           dates and the names of groups infiltrated. It is  
9           proposed that that is done for the Special Demonstration  
10          Squad, the National Public Order Intelligence Unit and  
11          their predecessor and successor units.

12          We submit that what needs to be explored about this  
13          proposal is whether and, if so, to what extent it risks  
14          pre-empting the restriction order process by putting  
15          into the public domain information which might be used  
16          together with information which is already in the public  
17          domain to piece together the identity of a person before  
18          his or her anonymity application is fairly determined.

19          Turning to the publication of the names of groups  
20          infiltrated by undercover officers, the Inquiry legal  
21          team considers that there are real difficulties in  
22          dealing with this issue before individual applications  
23          for anonymity are determined. The problem is the risk  
24          that disclosing the name of a group which has been  
25          targeted might pre-empt the determination of an

1 anonymity application by indirectly identifying an  
2 undercover police officer.

3 The non-police non-state core participants'  
4 submissions also rightly record that the Inquiry has  
5 been concerned to prioritise the anonymity process and  
6 has doubts about the appropriateness of publishing at  
7 an early stage the names of groups infiltrated in the  
8 abstract. Unlike the publication of an officer's cover  
9 name which allows those affected by that officer's  
10 deployment to come forward, the publication of the name  
11 of a group on its own does not permit a focused response  
12 from the public.

13 The non-police non-state participants' fifth  
14 proposal is for the disclosure to identifiable  
15 non-police non-state core participants of police files  
16 about them. This request goes beyond the scope of the  
17 Inquiry which is required by its terms of reference to  
18 investigate undercover policing. The Inquiry's current  
19 intention is in the first instance to provide non-police  
20 non-state core participants in due course with the  
21 relevant and necessary documents which they need to make  
22 a witness statement.

23 The non-police non-state core participants' sixth  
24 proposal concerns steps to ensure that all Special  
25 Demonstration Squad and National Public Order

1 Intelligence Unit officers who can be contacted are  
2 contacted. As I have already explained in my factual  
3 update, information of this sort is being provided by  
4 the Metropolitan Police to the Inquiry in relation to  
5 the Special Demonstration Squad. It will be done in  
6 relation to the National Public Order Intelligence Unit,  
7 although it is in large part not a matter for the  
8 Metropolitan Police Service because officers from the  
9 latter unit were drawn from many different police  
10 forces.

11 The non-police non-state core participants' seventh  
12 proposal is to the effect that preliminary witness  
13 statements should be taken from the former holders of  
14 certain offices, such as ministers and very senior  
15 police officers. The Inquiry legal team agrees that  
16 this is a proposal which deserves consideration, however  
17 we consider that, in the case of people being asked  
18 about matters many years ago, the provision of  
19 memory-refreshing documents, insofar as they can be  
20 provided, will be very important. The Inquiry is  
21 already considering such an approach in relation to  
22 surviving officers from the Special Operations Squad.

23 Turning to the choice and priority of tranches of  
24 applications for anonymity, we remain of the view that  
25 these should be as set out in paragraph 75 of our note

1 of 2 March 2017, namely: first, the applications of  
2 Slater and Gordon clients; second, the applications of  
3 officers from the Special Operations Squad; third, the  
4 application of those whose anonymity status needs to be  
5 determined in order to process documents relating to the  
6 deployment of those officers who have already been  
7 officially confirmed.

8 After that, tranches of officers from the Special  
9 Demonstration Squad in chronological order appears to us  
10 to be an approach which will best assist the Inquiry to  
11 prepare for the oral hearings.

12 We share the non-police non-state core participants'  
13 concerns about document preservation. The Inquiry has  
14 recently requested that members of the Inquiry team be  
15 permitted to visit Counter Terrorism Policing -  
16 National Operations Command.

17 We note the proposal in the non-police non-state  
18 core participants' suggested directions for a fully  
19 reasoned and evidenced application for any restriction  
20 order over the evidence and submissions provided in  
21 support of an anonymity application. In practice, parts  
22 of the application will need to be provided by way of  
23 closed evidence and submissions because it would  
24 otherwise reveal the identity of the officer in question  
25 or another matter over which restriction is sought.

1           No restriction order is required in such a case  
2           because this information is potentially restricted  
3           evidence under Rule 12 of the Inquiry Rules 2006. Moreover,  
4           we consider that the process set out in the Inquiry's  
5           process map for determining key anonymity applications,  
6           which ensures that you, Sir, will decide in cases of  
7           dispute what evidence is provided in the open  
8           application and provides for you to consider the need  
9           for disclosure of closed evidence to individuals in  
10          accordance with Rule 12(4), ensures fairness and avoids  
11          undue delay.

12          We also note the proposal in the non-police  
13          non-state core participants' directions for an addition  
14          to the process of separation of open and closed evidence  
15          to ensure the appropriate protection of their privacy by  
16          incorporating the relevant parts of the draft  
17          restrictions protocol. We agree that appropriate  
18          protection of their privacy must be incorporated into  
19          the procedure and will not publish private information  
20          without following the procedures set out in the draft  
21          restrictions protocol. It is right to note that the  
22          time which this will take in cases where it arises was  
23          not fully reflected in the illustrative timeframe  
24          appended to our note of 2 March 2017.

25          Turning now to the submissions made on behalf of the

1 trades unions, the Inquiry's investigations will  
2 incorporate investigation of the cases of the trades  
3 union core participants in both Module One and Module Two.  
4 It is and will continue to be a part of the  
5 investigation of the Special Demonstration Squad and the  
6 National Public Order Intelligence Unit. It has also  
7 been incorporated into the Inquiry's work to date in  
8 relation to undercover policing by police forces more  
9 widely.

10 Moving to the submissions made on behalf of the  
11 National Police Chiefs' Council, we agree that  
12 applications for anonymity by former members of the  
13 National Public Order Intelligence Unit should be  
14 prioritised and tranced. This is the approach which is  
15 already being taken.

16 We agree that some mechanism should exist to avoid  
17 a waste of time and resources in the event that there is  
18 a seemingly very strong case for anonymity on a narrow  
19 ground. The approach which the Inquiry is taking with  
20 the applications for anonymity by National Public Order  
21 Intelligence Unit officers already allows for early  
22 consideration on that ground.

23 In cases where it considers that a particular ground  
24 appears very strong, the Inquiry legal team will place  
25 before you, Sir, documents which provide a summary of

1 the application for anonymity and the evidence in the  
2 form of a signed personal statement from the officer.  
3 These documents are the first in a series of documents  
4 to be provided to the Inquiry by a National Public Order  
5 Intelligence Unit officer seeking anonymity. If you,  
6 Sir, consider that this evidence is sufficient such as  
7 you would make an order for anonymity irrespective of  
8 any other ground that might also be advanced, you will  
9 publish a "Minded to" note and the applicant will be  
10 notified that he or she can pause the preparation of any  
11 resource-intensive evidence. As has been the position  
12 to date, any "Minded to" note will provide an  
13 opportunity to those who wish to oppose it to do so. If  
14 the chairman does not agree that it is a clear case for  
15 anonymity, the applicant will follow the normal course  
16 of providing a fully evidenced and argued application.

17 In addition, an exceptional process has been set up  
18 for applications for anonymity in respect of Special  
19 Demonstration Squad officers. In seemingly very strong  
20 cases for anonymity on a narrow ground, an application  
21 can be made on that narrow ground similarly to be  
22 followed up with a full application only if the chairman  
23 considers it necessary. A "two bites of the cherry"  
24 approach, however, should not be the norm. Such  
25 applications should not be submitted by the



1 Metropolitan Police Service in respect of Special  
2 Demonstration Squad officers without prior discussion  
3 with the Inquiry legal team.

4 So far as guidance is concerned, applicants for  
5 anonymity already have the guidance as to risk  
6 assessment published by you, Sir, on the Inquiry's  
7 website and dated 20 October 2016. As we have already  
8 made clear, we consider that further guidance will be  
9 available from the rulings on anonymity which you will  
10 make in due course.

11 We recognise that there is likely to be a need for  
12 forces which are responsible for the safety of former  
13 National Public Order Intelligence Unit staff to be  
14 provided with any information necessary to ensure their  
15 safety.

16 We agree that determination of applications for  
17 restriction orders over cover names are a higher  
18 priority than applications for the restriction of  
19 publication of real names. However, in practice,  
20 consideration has to be given to whether publication of  
21 a cover name will lead to the disclosure of the real  
22 name. If and insofar as paragraph 33 of the National  
23 Police Chiefs' Council's submissions suggest that there  
24 may be a quicker route to the disclosure of cover names,  
25 we would welcome development of that proposal.

1           Sir, that concludes any response to the submissions  
2           which the Inquiry has received. May I now invite  
3           Mr Hall to make his applications?

4   THE CHAIR: You may, but before Mr Hall addresses me,  
5           it occurs to me, Mr Barr, that outside the strict issue  
6           of whether an extension should be given and whether  
7           a change of approach is justified, I will need to  
8           consider the variety of suggestions to which you have  
9           referred in today's note. I am not going to be able to  
10          rule on which I accept and which I reject, it seems to  
11          me, except possibly on the basis of principle, but what  
12          they will do is inform the future direction of the  
13          Inquiry's investigation after further consultation with  
14          those who are concerned.

15   MR BARR: Sir, yes.

16   THE CHAIR: So core participants should not regard today's  
17          hearing as all or nothing, but part of the continuing  
18          process of attempting to fulfil the terms of reference  
19          as soon as possible.

20   MR BARR: That is right.

21   THE CHAIR: Good.

22           Mr Hall?

23          Submissions on behalf of the Metropolitan Police Service by

24   MR HALL

25   MR HALL: Sir, before I start, I hope I may be permitted to

1 say that we hope it is a very significant period of time  
2 before your physical condition requires that you hand  
3 over the chairmanship and we wish you all the best and  
4 very well for the future.

5 THE CHAIR: Thanks.

6 MR HALL: So turning, if I may, to the Metropolitan Police  
7 Service's application for an extension. I will be  
8 longer in this part of my submissions and then I will  
9 deal more briefly with the second issue, the change of  
10 approach because, as I have said, our views are much  
11 less important than other people's views on that topic.

12 Sir, the extension. We do seek an overall  
13 extension, with your permission, to 1 October 2017, but  
14 on a phased basis, which I will describe in due course.  
15 I acknowledge that this has been a slower process than  
16 all desired and I will outline, if I may, some of the  
17 reasons for it in public. It is right that people  
18 should hear why that has been. But I can be clear about  
19 the objective. It is not to conceal; it is not to  
20 delay. It is to ensure that proper informed and robust  
21 decisions are made on what is an unprecedented scale.

22 Each individual who is affected by undercover  
23 policing quite understandably wishes to see matters  
24 progressed in their cases and, if it is justified in the  
25 public interest, to see that matters are disclosed, and

1 we do get that. But the Metropolitan Police Service is  
2 dealing with the entire piece; that is the real and  
3 cover identities of all Special Demonstration Squad  
4 officers. That is over 160 staff in total and we have  
5 to do that systematically and in many cases from  
6 a complete standing start.

7 The short point that I will come to in a bit more  
8 detail is that the Metropolitan Police does now have  
9 a robust risk assessment process. We agree that the use  
10 of this system must not be allowed to delay matters  
11 unduly and that what is required are smart decisions on  
12 when the full risk assessment process will be needed and  
13 when it will not be. We are trying to do what we can to  
14 identify those cases where we can take matters more  
15 quickly, where it is safe to do so, and I will come to  
16 proposed directions, if I may, in a moment.

17 I would like, if I may, just briefly to detail in  
18 public some of the facts regarding the work on the  
19 Special Demonstration Squad. I know the Inquiry is  
20 aware of this from the fortnightly update letters that  
21 the Metropolitan Police Service sends to the Inquiry.  
22 There are 168 identified Special Demonstration Squad  
23 officers. The Metropolitan Police has completed  
24 searching their -- I'm going to give the full name --  
25 it's a Relativity database. It is a bespoke system

1           which allows sophisticated searching to be done of  
2           documents. And the police has completed searching the  
3           Relativity database for documents and tagging -- that is  
4           noting down -- what are believed to be relevant  
5           documents against search terms in relation to 131 of  
6           those officers.

7           Those searches will need to be occasionally updated  
8           as more material is loaded on to Relativity, but  
9           essentially those have been done and so far the  
10          Metropolitan Police Service counsel team has created  
11          60 profiles setting out in considerable detail and  
12          useful detail facts regarding the individual officers  
13          and their deployments. We absolutely welcome the  
14          Inquiry having sight of those and using those in any way  
15          that they choose. The Relativity database currently  
16          holds 735,000 documents and those documents are  
17          themselves multi-pages.

18          I do need to address the question of general delay  
19          and to rebut any suggestion that the Metropolitan Police  
20          is not working tirelessly to assist the Inquiry. It  
21          will be recalled -- Sir, forgive me, because I know that  
22          you will know and your counsel team will know -- that  
23          the anonymity process is just one aspect of the  
24          Metropolitan Police Service's work. We have procured  
25          the Relativity software at a cost of over £1 million,

1 over 735,000 documents have been loaded on and there are  
2 legal issues concerning the use to which Relativity can  
3 be put, which means that even loading the documents onto  
4 the system is not straightforward. All documents,  
5 before they are passed to the Inquiry using Relativity,  
6 require careful consideration and weeding before they  
7 are passed on one system as opposed to being passed on  
8 a different system.

9 In addition to this, the police has received  
10 47 separate Rule 9 requests, many of which are long and  
11 detailed. No complaint is made, but in some cases we  
12 are required to research -- effectively a piece of  
13 historical research -- the entire history of the  
14 Metropolitan Police Special Branch and their use of  
15 undercover police officers.

16 Just in the case of some particular operations which  
17 the Inquiry legal team have asked us to look at --  
18 I give the example of Operation Edzell -- there are over  
19 300 boxes of material to process. There have already  
20 been restriction order applications made over particular  
21 documents and these have proven very complicated,  
22 involving numerous meetings with the Inquiry legal team  
23 for which we are very grateful and a minute attention to  
24 line-by-line detail.

25 The Inquiry encouraged the Metropolitan Police to

1 recruit many people to deal with effectively bulk  
2 document restriction order applications. That was done,  
3 with all the complexities of recruiting the right  
4 people, carrying out conflict checking, getting security  
5 clearance and training. Hardware needed to be installed  
6 and the Metropolitan Police is in fact moving floors --  
7 the relevant team is moving floors -- installing extra  
8 IT facilities to accommodate the growing team that needs  
9 access to the data. The cost alone of that was over  
10 £500,000.

11 There have been immensely difficult legal issues  
12 regarding the question of representation which the  
13 police is on its way to solving in a way that is  
14 acceptable to the Inquiry and, at the same time, as  
15 Mr Barr has correctly noted, there have been very  
16 serious allegations made, in particular regarding one  
17 unit, about shredding and unlawful access, including to  
18 journalists' emails. These have required very careful  
19 handling in consultation with the Independent Police  
20 Complaints Commission and of course the Inquiry.

21 There are numerous issues regarding the sensitivity  
22 of the documents and that is not an exhaustive  
23 description of the work that is going on in the  
24 Metropolitan Police Service, together with trying to  
25 respond to the Special Demonstration Squad anonymity

1 side of things.

2 As at 21 December of last year, the  
3 Metropolitan Police's expenditure on the Inquiry was  
4 £4.2 million. That cash figure has now grown to just  
5 over £5 million. If one includes lawyers there are over  
6 100 individuals engaged on the Inquiry. Next year the  
7 costs of the Metropolitan Police are projected to be in  
8 excess of £10 million. It goes without saying that this  
9 is at a time of budgetary pressure and a loss of  
10 frontline staff and that does relate to the next issue,  
11 which is how long the Inquiry will take and whether  
12 there is a way of focusing more successfully on what  
13 people really want to achieve from the Inquiry.

14 Can I turn then to the anonymity process in  
15 particular? Why do I say "process"? Well, given the  
16 number of officers, quite understandably the  
17 Metropolitan Police has been encouraged by the Inquiry  
18 legal team to think of applications as a process and  
19 that is perfectly sensible. It has therefore proved  
20 necessary to design the system, the process, to staff  
21 it, to resource it and to get it running. In creating  
22 that process the police have considered principally your  
23 ruling on the general principles from May of last year  
24 and the note that you issued on the risk assessment  
25 process dated 20 October 2016, in which detailed



1 expectations were set out. Also we have at all stages  
2 considered what the Inquiry legal team has suggested.

3 We are aware that the applications in relation to  
4 the Special Demonstration Squad are not the only  
5 applications we may need to make. It is therefore  
6 important to get the system right when we deal, for  
7 example, with what I call "crime undercover police  
8 officers".

9 So that everyone is aware of why the process did not  
10 start instantaneously, one aspect is that there has been  
11 an unprecedented level of scrutiny by the Inquiry legal  
12 team of the process before it has been allowed to get to  
13 work.

14 Take, for example, the identity of the risk  
15 assessors. The Metropolitan Police was encouraged to  
16 and did change our views on Jaipur and Karachi which the  
17 Inquiry fairly recognised led to inevitable delay in  
18 starting the process. The Inquiry has wanted to consult  
19 on the identity of the new risk assessors. That is  
20 understood, but it, for example, led to the withdrawal  
21 of one candidate because of the lengthy uncertainty  
22 caused by the process of consultation, not in fact  
23 because he was conflicted.

24 It meant that the period between recruiting one of  
25 the current assessors, Dave Reid, and him starting work

1 was 28 days. In the case of his colleague,  
2 Mr Shannahan, there was a period of 81 days before he  
3 could actually start work.

4 Three more risk assessors have been recruited,  
5 Mr Walker, Mr Lockie and Mr Veljovic. Those names were  
6 passed to the Inquiry legal team on 6 and 8 March  
7 respectively and in their case the Metropolitan Police  
8 has decided not to wait for the approval process, but  
9 simply to instruct them to start work and accept the  
10 risk if they are not subsequently approved.

11 There has been scrutiny of all individuals involved  
12 in the process to ensure that they are conflict-free  
13 above and beyond the process of being  
14 Metropolitan Police officers. The Inquiry legal team  
15 has had as much access as it has wanted, it has been  
16 given the opportunity to comment on the protocols which  
17 have now been published and the Metropolitan Police  
18 Service has been required to apply for restriction  
19 orders over some of the documents read by the risk  
20 assessors; for example, there is a document which  
21 illustrates the mosaic effect. That itself has required  
22 a separate restriction order application.

23 The point that I am building up to is that now the  
24 system is in place we would like to use it.

25 The current position is that six risk assessments

1 have now been completed by the risk assessors. As of  
2 today a further 24 risk assessments are in process.  
3 That rate will increase significantly as we become more  
4 practised and we recognise that a full risk assessment  
5 will not be required in every case but it will be in  
6 a substantial number.

7 In relation to Slater and Gordon officers, in some  
8 cases -- but I emphasise not in all -- there has been  
9 a reluctance by the officer to engage with the risk  
10 assessor and that has led to some delay. In other cases  
11 difficult issues have arisen, including, for example,  
12 access to information which is held on the unit which is  
13 at the centre of the allegations involving shredding.  
14 If one does not get that information from them,  
15 i.e. up-to-date current intelligence dealing with risk, we  
16 will need to get it from somewhere else. So these are  
17 not easy issues.

18 We agree that one cannot take for granted that  
19 speaking to the officer is the magic bullet. Even  
20 assuming that an officer who was deployed many years ago  
21 remembers the details of his deployment -- and that  
22 cannot be taken for granted, bearing in mind the age and  
23 health of some of the officers that we are dealing  
24 with -- the decision on whether a restriction order is  
25 necessary over his real and cover name does not begin

1 and end with the officer's views. Someone has to  
2 consider whether there is a risk to someone else apart  
3 from the officer. Someone has to consider whether or  
4 not there has been disclosure into the public domain or  
5 official confirmation.

6 As you stated, Sir, in your ruling with regards to  
7 "neither confirm nor deny", paragraph 145 of your  
8 ruling, whether that is of weight will depend upon the  
9 particular circumstances. Similarly, with respect to  
10 the question of confidentiality, any belief on the part  
11 of the officer that their identity would be kept  
12 confidential -- see paragraph 166 of your ruling -- it  
13 depends on whether disclosure of the deployment is  
14 necessary and that must depend upon understanding what  
15 the officer's deployment consisted of; for example, the  
16 outcome of any application may depend upon the question  
17 of wrongdoing.

18 Sir, in addition to that, in some cases assessment  
19 of risk depends upon specialist consideration where  
20 information has to be assembled in some detail before  
21 those special assessments can be carried out. There is  
22 no short-cut that we can see to carrying out searches  
23 and profiling in most cases, but we do agree that we  
24 need to be more flexible and we need to make smarter  
25 choices.

1           In short, we submit it would be wrong, wasteful and  
2 counter-productive to throw the baby out with the bath  
3 water. We now have a process. We are making use of it.  
4 It is fair to say that all legal teams, very much  
5 including ourselves, are feeling our way and some  
6 decisions would have been taken differently in  
7 hindsight. It is also worth saying that the risk  
8 assessors will continue to play a useful role after the  
9 Special Demonstration Squad has been dealt with,  
10 including, for example, National Public Order  
11 Intelligence Unit officers and crime undercover  
12 officers.

13           Sir, with that introduction, can I make a proposal  
14 for tranching? I sent this to Mr Barr last night.  
15 Can I perhaps just hand up -- I'm sorry to do this at  
16 the last minute -- a document.

17 THE CHAIR: Yes. Thank you. (Handed)

18 MR HALL: I will read it out so everyone can follow.

19           Sir, so that the Metropolitan Police Service can be  
20 held to account, we propose the following tranches of  
21 officers, and the starting point is that there are  
22 150 relevant names left to consider. We have suggested  
23 that if you are minded to grant an extension to  
24 1 October 2017, we are held account against three discrete  
25 dates.

1           So the first is 1 June 2017. By 1 June 2017, the  
2 Metropolitan Police to have made 40 decisions and  
3 applications where a decision is made to apply for  
4 a restriction order, to include, (a), the core  
5 participant applicants represented by Slater and Gordon;  
6 (b), the remaining persons who worked within the Special  
7 Operations Squad, that is the predecessor unit, between  
8 1968 and 1972, when no medical contact or other  
9 complicating factor arises; (c), a proportion of the  
10 real names of management and administrative back-office  
11 staff within the Special Demonstration Squad, again  
12 where no complicating factor arises, and we have  
13 proposed the first tranche of 12 persons between 1972  
14 and 1985.

15 THE CHAIR: Is that because you have already identified  
16 12 persons?

17 MR HALL: No, it was because we thought that if we started  
18 off with all of those people, we would not hit the date  
19 of 1 June and we have just divided it into time periods,  
20 so dealing with the earliest back-office staff first and  
21 then the later back-office staff later on.

22 THE CHAIR: All right.

23 MR HALL: That recognises the date priority that the Inquiry  
24 legal team have articulated; in other words deal with  
25 the oldest first.

1           Sir, that is the first tranche that we respectfully  
2 propose. The next is, by 1 August 2017, the  
3 Metropolitan Police to have made a cumulative total of  
4 100 decisions and applications where a decision is made  
5 to apply for a restriction order, to include firstly  
6 applications where a full risk assessment is not relied  
7 upon, for example, where the application is based upon  
8 medical evidence alone. But that is only an example.  
9 There may be other types of application; (b), the  
10 Inquiry's new priorities when those have been  
11 communicated, and we refer to paragraph 75 of Mr Barr's  
12 note; and, (c), the remaining back-office Special  
13 Demonstration Squad staff taking one up to 2007 when the  
14 unit closed. So that would be an additional 60 persons,  
15 total by 1 August 100 and then finally, by 1 October  
16 2017, the proposal is that all other decisions and  
17 applications where made are done. So that would take  
18 one up to the cumulative total of 150 decisions.

19           So, Sir, that is the proposal that we very  
20 respectfully put before the Inquiry. Can I mention the  
21 assumptions upon which the proposal is based? I think  
22 it is important to be clear as to what we see as matters  
23 lying behind our calculations.

24           Our first assumption is that where the  
25 Metropolitan Police, having assessed risk, agrees to the

1 release of a cover name and the individual officer  
2 agrees, obviously, there will not be a need to make an  
3 application and therefore to carry out a risk assessment  
4 over the real name.

5 Now that is the assumption that we have noted behind  
6 the non-state core participants' submissions and  
7 Peter Francis' submissions. So far as we understand,  
8 their concern is with cover names because cover names  
9 are the gateway to transparency, and we assume that the  
10 Inquiry will be selective over whether it is really  
11 necessary to disclose a real name, in which case one  
12 will only need to make a restriction order application  
13 and carry out a risk assessment on a limited number of  
14 real names, rather than over all real names, which is  
15 the current approach of the Inquiry legal team. So that  
16 is the first assumption.

17 The second assumption is that, where one is talking  
18 about back-office staff from the Special Demonstration  
19 Squad -- that is individuals who do not have cover  
20 names -- if the Metropolitan Police Service agrees to  
21 the release of the real name and the officer agrees,  
22 again there will be no need for an anonymity application  
23 at all, but it may be necessary, when you come to  
24 documents dealing with that person, to carry out a full  
25 restriction process when one asks what can one say about



1           that individual.

2           For example, let's say Mr X worked in the back  
3           office of the Special Demonstration Squad in 1983 and he  
4           happened to be working in relation to a very dangerous  
5           group. Now, it is one thing to simply say, "Here is the  
6           name of Mr X who worked in the Special Demonstration  
7           Squad back office", but it would be another thing  
8           entirely to publish a document linking Mr X with the  
9           dangerous work that he was doing. So one might need to  
10          have, when one came to documents referring to Mr X,  
11          a further restriction order process; the point being  
12          that anonymity or applications over anonymity does not  
13          resolve all issues to do with risk to individuals.

14          Sir, the third assumption -- and then I can see that  
15          we are getting close to 11.45, so if I can just deal  
16          briefly with the third assumption -- our third  
17          assumption which has proven accurate so far in practice  
18          is that it is not possible to say what precise issues  
19          will be thrown up in a similar officer's case. So we  
20          don't think that we can do a complete list by N number  
21          of when precisely we will finish each particular  
22          officer.

23          We recognise that there are certain officers, for  
24          example the Slater and Gordon officers, who must be got on  
25          with and they are in fact well on the way to completion.

1           We are, of course, happy to respond to any further  
2           details that the Inquiry legal team may give as to their  
3           priorities, but there is always a possibility that, for  
4           example, with an older officer, there might be a new  
5           medical diagnosis that might push matters back.

6           Sir, those are the three assumptions lying behind  
7           our proposed directions.

8   THE CHAIR: Thank you.

9           In your summary of the process by which you prepare  
10          a package for the Commissioner you say that the end of the  
11          process is a debrief. What do you mean by that?

12   MR HALL: Could I just turn to my right?

13   THE CHAIR: Yes.

14   MR HALL: Sir, may I revert to that after the break? Let me  
15          remind myself of our process and reply.

16   THE CHAIR: The reason I raise it now is so that you can  
17          think about it because I have some sympathy for the view  
18          that the starting point is the officer himself and not  
19          the record, although that process might be simultaneous.

20   MR HALL: Yes, I do see the force of that. If I just say  
21          this briefly and then I will revert in more detail  
22          afterwards: one of the difficulties of making a cold  
23          approach to the officer on an uninformed basis is that  
24          one may get the immediate response, "Well, I want  
25          anonymity", and we note that where National Public Order

1 Intelligence Unit officers have been asked, that is what  
2 they have uniformly said. So there may be something to  
3 be said for a halfway house, where one approaches the  
4 officer with some information. But I do recognise the  
5 force about not parking that until the end, but trying  
6 to build it into earlier on in the process.

7 THE CHAIR: Well, you would not only be asking him whether  
8 he wants anonymity; you would be asking him why --

9 MR HALL: Correct.

10 THE CHAIR: -- which might help you in your searches.

11 MR HALL: I agree, and if there is anything more on that,  
12 I will reply after the break. But there is a lot of  
13 force in that.

14 THE CHAIR: All right. We will return at 12.00 pm.

15 Apparently we are going to get some more microphones.

16 (11.45 am)

17 (A short break)

18 (12.16 pm)

19 THE CHAIR: Yes, Mr Hall.

20 MR HALL: Sir, to answer the question you asked me before  
21 the break, can I refer you, Sir, to the flowcharts  
22 which we produced attached to our submissions --

23 THE CHAIR: Yes.

24 MR HALL: -- and invite you to turn to the second page which  
25 is headed "Overview". It is in tab 11.

1 THE CHAIR: Thank you.

2 Yes.

3 MR HALL: Sir, if you refer to stage 4, you can see within  
4 that stage there are four blue boxes, the last of which  
5 states "Evidence strand and impact". That is the point  
6 at which the officer is approached for his views and  
7 steer on where he or she sees the risk as coming from.  
8 It in fact occurs simultaneously with stage 3.

9 THE CHAIR: Yes. My question was whether an earlier  
10 conversation with the officer would assist the process  
11 of searching Relativity.

12 MR HALL: Sir, I'm reluctant to try and answer that question  
13 now because I do know that the process of identifying  
14 search terms and conducting searches is a complicated  
15 one. I can see that it could if one is thinking about  
16 a particular person from whom risk is feared.

17 THE CHAIR: Yes.

18 MR HALL: May we effectively absorb those points? They are  
19 all well made, but I do know from the complexity of the  
20 process that there is, as I say, no magic bullet and it  
21 can only be a starting point.

22 THE CHAIR: I entirely understand why a search of available  
23 documents in databases needs to take place. Apart from  
24 anything else, it is useful to reconstruct the career of  
25 an officer not just for the purposes of an anonymity

1 application, but for evidential purposes so it is not  
2 time wasted. All I am suggesting is that if you see the  
3 officer first to get an overview, you may have a more  
4 informed introduction to your search. That is all.

5 MR HALL: Yes, I do follow and understand that. It may --  
6 I suppose, thinking about the most beneficial outcome,  
7 the most beneficial outcome is that one speaks to an  
8 officer who says, "There is something you really ought  
9 to know about my deployment", which then leads you to  
10 identifying such a clear head of risk that one could  
11 avoid going through the full risk assessment process.

12 THE CHAIR: Well, that is one possibility.

13 MR HALL: The difficulty, I think, with the Special  
14 Demonstration Squad is that so far that is not the  
15 majority of cases.

16 THE CHAIR: All right.

17 MR HALL: Sir, before I proceed -- I think I probably have  
18 about another half an hour, if I may. I am conscious of  
19 not taking up too much time. I need to correct an error  
20 that I made this morning. I said that there had been  
21 47 Rule 9 requests. Over the break a 48th one was  
22 received, signed by the Secretary, which is impressive  
23 because he has been sitting here throughout the hearing.  
24 So, with that factual correction, 48 Rule 9 requests  
25 have come in now to the Metropolitan Police.

1 THE CHAIR: All right.

2 MR HALL: Can I then turn to the alternative directions

3 which have been proposed by the non-state core

4 participants and just make some short observations?

5 Firstly, we note that their proposed directions are not

6 limited to Special Demonstration Squad officers, but

7 also refer to National Public Order Intelligence Unit

8 officers. I do not speak for the National Public Order

9 Intelligence Unit officers, as you know.

10 Secondly, the premise of the directions,

11 paragraphs 1 to 3, is that it does depend on what the

12 officer wants. As has been explained by Mr Barr

13 already, the public interest does not depend solely on

14 the view of the officer. It is a highly relevant

15 consideration, but not the only consideration.

16 Lest it be suggested at any stage that a risk

17 assessment process is not necessary, we strongly

18 disagree. By way of example only, one of the factors

19 that you will need to consider when determining

20 restriction order applications is what mitigation

21 measures could be in place as an alternative to

22 a restriction order application --

23 THE CHAIR: Mr Hall, I'm sorry to interrupt you, but there

24 is an annoying echo emanating from the device in front

25 of me.

1 MR HALL: Shall I just speak more loudly? I will carry on  
2 speaking.

3 THE CHAIR: Good. Thank you.

4 MR HALL: Lest it be said that one simply doesn't need risk  
5 assessments -- and we strongly would oppose that  
6 proposition -- one example of why one does, one example  
7 only, is the need to consider mitigating measures.

8 Of course police officers, who are aware of risk in  
9 the real world, know what measures are available to  
10 protect people and whether they are sensible, whether  
11 they will work or not. So there can never be a case of  
12 simply handing over the question of risk to, for  
13 example, the counsel team to try and work out on an  
14 uninformed basis, not to speak of all the, as we have  
15 indicated, strands of information which need to feed  
16 into the process.

17 Thirdly, the procedure that the non-state core  
18 participants suggest for making an application lacks  
19 a flexibility that one may think is desirable. In some  
20 cases we accept that fairness will require that the  
21 application for a restriction order is published and  
22 that there is some sort of process to make sure that as  
23 much as possible is put into the public domain or at  
24 least given to the non-state core participants. But we  
25 do invite the Inquiry to maintain a flexible rather than

1 a formulaic approach, as was done with, for example,  
2 Cairo and Jaipur and Karachi. If one takes account of  
3 the approach that has been proposed, where one has  
4 a further what you might call set of privacy  
5 consultations, in other words --

6 THE CHAIR: Forgive me, Mr Hall, I didn't adopt a flexible  
7 approach. I took the only approach available to me  
8 because, if there had been disclosure of the nature of  
9 the grounds, it would have created the very risk of harm  
10 that required the restriction order.

11 We have to say "ten four" at the end of every  
12 pronouncement.

13 MR HALL: It is very helpful for me. Whenever you ask me  
14 a tricky question, I can start fiddling with the  
15 microphone.

16 Sir, my recollection is that in one of the rulings  
17 that you made in relation to either Cairo or Jaipur or  
18 Karachi, you recognised that it was not conducive to go  
19 through a full restriction order process over the  
20 application.

21 THE CHAIR: That is true. I didn't understand you to mean  
22 that. Now I do.

23 MR HALL: I understand.

24 Sir, we do think that this is a point that is worth  
25 saying fairly starkly, that if one has the privacy



1 approach -- so, in other words, let's say one had an  
2 application over a real name because it is not only  
3 a real name case that this would arise, one goes to the  
4 affected person, a member of the public, and consults  
5 them about whether or not information about them that is  
6 currently relied upon by the police in support of the  
7 application should be given to other core participants,  
8 then one does set up a very elaborate scheme of  
9 consultation which will add many months to the process.  
10 According to the non-state directions, it would provide  
11 a gap of three months between the making of an  
12 application and its determination.

13 I do note that Mr Barr stated that if one  
14 incorporated that process, it could add further time --  
15 he has not specified, but one imagines significant  
16 time -- to the 2019 start date for hearings. So we do  
17 invite as a matter of principle that the Inquiry retains  
18 flexibility about how it approaches this. In some cases  
19 I recognise it will be necessary, but not in all of  
20 them.

21 Fourthly, we agree that as soon as there are rulings  
22 on the trickiest ones, that will be enormously helpful  
23 obviously. That will help all persons, individuals and  
24 institutions, to decide whether they make applications  
25 and how they make applications. There are issues about

1 the Rehabilitation of Offenders Act 1974 which I cannot leave  
2 unsaid, although Mr Barr has not addressed them, because  
3 it affects the consideration of restriction orders in  
4 this way: if an application relies upon a previous  
5 conviction and if counsel to the Inquiry are right --  
6 and we think they may be right, regrettably -- that you  
7 don't have the power as a judicial authority to provide  
8 effectively an exemption, then you could not get on with  
9 considering those restriction order applications.

10         Whilst there will be cases where one does not need  
11 to rely upon convictions, there will be cases where  
12 convictions are relied upon. So the sooner that matter  
13 is dealt with, the better. I know that that is in hand,  
14 but one cannot emphasise enough that that could be  
15 a road block to getting the sensible -- whether you call  
16 them "benchmark" or "decisions" -- that we all recognise  
17 would be desirable.

18         Fifthly, the non-state core participants suggest  
19 that a schedule of information could be prepared to  
20 allow them to check on the progress of the Inquiry by  
21 reference to the N numbers. Experience suggests that  
22 one could not agree to the release of all of the data  
23 that they specify in their directions because of the  
24 opportunity to aggregate and potentially undermine  
25 applications through the mosaic effect.

1           That said, the Metropolitan Police Service has been  
2 very open in its approach with the Inquiry. There are  
3 letters that are sent every fortnight to the Inquiry and  
4 we are happy to consider some way of allowing non-state  
5 core participants to see the progress that is being  
6 made.

7           It could be said, "Well, why not just create  
8 a publishable version of the letter that is sent every  
9 fortnight to the Inquiry?" The difficulty with that is  
10 that we are reluctant to see our work on anonymity  
11 applications diverted by having to make an application  
12 for a restriction order over a schedule or to consider  
13 what in a letter could or could not be safely published.  
14 The likelihood is that if the Metropolitan Police  
15 Service had to publish a schedule in the form suggested,  
16 we would have to apply on a precautionary basis to  
17 withhold the information; in other words, that step  
18 would not in fact advance transparency and at worse it  
19 would actually delay the progress that we hope to make.

20           Finally, Mr Barr has already addressed you on the  
21 question of whether or not you, Sir, could order the  
22 Metropolitan Police to release the files. As he says,  
23 that is completely outside the scope of the Inquiry's  
24 powers. Even if it was within your powers to order one  
25 core participant to disclose to another core

1 participant -- even then, as we have emphasised,  
2 handling raw intelligence material is incredibly  
3 complicated. There are no short-cuts, and even if you  
4 have the power to make that sort of order, it would  
5 simply not be possible to comply within the time  
6 suggested.

7 So, Sir, those are the submissions that I make in  
8 support of our application for an extension of time.  
9 Can I turn then briefly to the question of change of  
10 approach? I will be quicker in this part of my  
11 submissions.

12 THE CHAIR: Yes.

13 MR HALL: Sir, the police do not say that the scope of the  
14 examination of the Special Demonstration Squad should be  
15 narrowed. So far as we understand it, Counsel to the  
16 Inquiry say that the effect of not requiring full  
17 anonymity applications will have the practical effect of  
18 narrowing the investigation, but for the reasons stated  
19 in our written submissions, we don't believe that is  
20 correct, bearing in mind the Inquiry's powers; for  
21 example, the power to make restriction orders where it  
22 is conducive to do so without requiring a full  
23 risk-based analysis. You have a flexibility as to how  
24 you conduct your investigation, but I do wish to  
25 emphasise that there is no desire to inhibit what you

1 look at.

2 We have three submissions to make when considering  
3 the future progress of the Inquiry. First of all, there  
4 is that difficulty of dealing with intelligence  
5 documents and intelligence matters. In a normal  
6 criminal case involving a covert human intelligence  
7 source, which is after all what an undercover police  
8 officer is, prosecution counsel might, in a suitable  
9 case, be briefed as to the existence of the covert human  
10 intelligence source, and assuming exceptionally there  
11 was a need to make disclosure or a [Public Interest Immunity]  
12 application had to be made, that would be done in a controlled  
13 way, using the flexible processes under the Criminal Procedure  
14 and Investigations Act of 1996.

15 But what is in issue here is the disclosure of the  
16 raw intelligence documents and a line-by-line analysis  
17 of the documents which you might call "below the line";  
18 not simply the existence of and the reporting by an  
19 officer, but the day-to-day mechanics about how this  
20 very sensitive area of business is conducted. There is  
21 a terrible risk of giving away tactics that are in use  
22 today which the Metropolitan Police Service  
23 understandably wishes wholeheartedly to avoid.

24 It is because of this that we invite the Inquiry and  
25 the Inquiry legal team to consider more clearly both the

1 documents that need to be disclosed and the actual shape  
2 of the hearings that are going to take place. We do not  
3 believe that the process of making anonymity  
4 applications will resolve all the issues of sensitivity.

5 We suggest that if a realistic timetable is to be  
6 achieved, with all prior legal issues resolved so we can  
7 get on and hear evidence, it is necessary to make  
8 choices as to what is going to be considered at the  
9 hearing, so what officer, what deployment, and then work  
10 backwards; shake the tree and work out what are the  
11 sensitivities involved and then work backwards from  
12 that. Of course, any choices that are made don't need  
13 to be set in stone, but we do suggest that they need to  
14 be made.

15 The second submission is that we suggest that the  
16 terms of reference are incredibly flexible. They are  
17 flexible enough to allow, if that is what is decided, an  
18 intense focus on the Special Demonstration Squad and the  
19 National Public Order Intelligence Unit as the vast  
20 majority of the work of the Inquiry, with frankly  
21 limited consideration of non-Special Demonstration Squad  
22 and non-National Public Order Intelligence Unit matters.  
23 The Inquiry cannot, within a reasonable timescale, look  
24 at all undercover policing since 1968, and we submit  
25 that the scope in the terms of reference is as important

1 as the purpose in the terms of reference and that the  
2 Inquiry can achieve the purpose by limiting itself to  
3 the scope.

4 Thirdly, we invite the Inquiry to take a more  
5 focused approach generally, not simply in relation to  
6 the making of anonymity orders, but also in relation to  
7 documents. At the moment the Metropolitan Police  
8 Service is dealing with restriction order applications  
9 over documents on a line-by-line basis. Some of the  
10 detail that the Metropolitan Police is having to make  
11 restriction order submissions and provide evidence in  
12 relation to do not seem to be remotely important to the  
13 Inquiry's task, let alone necessary to publish; for  
14 example, the name of a current sensitive database.

15 The Metropolitan Police Service has been required to  
16 justify why that name should be redacted and has been  
17 challenged to provide yet further evidence as to why it  
18 might be damaging to the public interest to release the  
19 name. That sort of approach concerning whether  
20 a current database is called "X", "Y" or "Z" if repeated  
21 is hugely diverting of resources which may ultimately  
22 not advance the Inquiry's investigation very much. So  
23 we do invite the Inquiry legal team to be as selective  
24 as possible not only about what documents it wishes to  
25 publish, but also what parts of those documents it

1 wishes to publish. I am sure that with that sort of  
2 approach, the burden on both the Metropolitan Police and  
3 on the Inquiry team itself will be greatly relieved and  
4 allow everyone to move forward at a more certain pace.

5 Sir, those are my submissions.

6 THE CHAIR: In your application written submissions, you  
7 said with regard to change of approach that, for  
8 example, there would not be any point in requiring an  
9 anonymity application from an officer who had an  
10 incomplete or unsatisfactory memory, for example.

11 I have reflected on that. Paragraph one of the terms  
12 of reference is concerned not just with possible  
13 misconduct, but the welfare of the officers themselves.  
14 At the moment I am finding it very difficult to accept  
15 that almost every single officer with a good or not so  
16 good memory who served undercover with the Special  
17 Demonstration Squad will not have something relevant to  
18 say. I use the word "relevant" for the moment for  
19 obvious reasons.

20 If that is the case and if I accept the submission  
21 that the Special Demonstration Squad is central to the  
22 terms of reference, why should the Inquiry not expect  
23 every single officer to make such statement as they can  
24 before I am expected to make a decision whether it is  
25 necessary for that evidence to be received?



1 MR HALL: Ten four. I'm turning my microphone on.

2 That approach could work in the way that we suggest.  
3 For example, there are ten officers who provide evidence  
4 that demonstrates a real concern about, for example,  
5 welfare. The Inquiry could take statements from those  
6 officers now. The Inquiry could form the view that one  
7 particular officer gave a very good example of what had  
8 happened in those ten cases. The Inquiry could decide  
9 that it wanted to call evidence from that particular  
10 officer and invite an anonymity application in relation  
11 to that officer. It would not be necessary to require  
12 anonymity applications in relation to all those  
13 officers, but, it could be said, well, then you have  
14 nine officers whose evidence you are taking into  
15 account, but you can't tell the non-state  
16 core participants and the public at large what is in  
17 their evidence unless there is a risk-based reason why  
18 one should not.

19 What we suggest is that, using your ability to make  
20 a restriction order because it is conducive to the  
21 function of the Inquiry, you could say, "Whether or not  
22 there is a risk in relation to those nine other  
23 officers, it is not conducive to publish their names  
24 because all of the information that we need to tell the  
25 public to explain this failure of welfare is contained

1 in one particular witness statement", and in your report  
2 you could say that, in addition to the witness statement  
3 of officer X, who also, for example, gave oral evidence  
4 on this point, you are aware of nine other officers  
5 where the same pattern has emerged in your report.

6 So, Sir, we don't believe that as soon as one takes  
7 account of evidence it is necessary to go through the  
8 restriction order process as it is currently being done.

9 THE CHAIR: All right. Thank you.

10 Thank you very much.

11 Sir Robert, let me get up your written submissions.

12 SIR ROBERT FRANCIS: You will find it in divider 9.

13 THE CHAIR: Thank you.

14 Submissions on behalf of the National Police  
15 Chiefs' Council by SIR ROBERT FRANCIS

16 SIR ROBERT FRANCIS: Firstly, Sir, can I associate myself  
17 with the personal remarks made at the beginning of  
18 Mr Hall's submissions to you?

19 Secondly, Sir, I have no intention of wishing to  
20 repeat what is in the written submission that you have  
21 received; just to highlight one or two matters.

22 Firstly, some general observations. We, the  
23 National Police Chiefs' Council, recognise obviously the  
24 importance of this Inquiry for the public generally in  
25 giving them confidence that the type of policing under

1 scrutiny is conducted in an appropriate manner and that  
2 there is proper accountability and learning in relation  
3 to conduct in policies which are not found to have been  
4 appropriate. There is also the legitimate interest of  
5 those who believe they have been wronged by  
6 inappropriate activity in this area to find out what  
7 happened and to ensure it does not happen to others.

8 We believe, Sir, that all concerned, including the  
9 National Police Chiefs' Council involved with this  
10 Inquiry, share the desire that its work be completed  
11 within a timescale which allows its findings and  
12 recommendations to be relevant, useful, and to the  
13 extent that this is within the remit and capability of  
14 a public inquiry, to bring satisfaction to anyone who  
15 has been wronged.

16 We are confident that the Inquiry does not intend so  
17 to conduct itself that its processes result in the  
18 destruction of a valuable weapon in the protection of  
19 the public from harm caused by crime and terrorism and  
20 we do not believe that is a necessary by-product of  
21 fulfilling the terms of reference.

22 The National Police Chiefs' Council is committed to  
23 assisting the Inquiry in any way possible within the  
24 resources it has and, like the individual forces  
25 involved, with due regard to the many other obligations

1           it has.

2           As with the Metropolitan Police, the National Police  
3           Chiefs' Council and the Inquiry face a formidable task  
4           in investigating what was done in the name of the  
5           National Public Order Intelligence Unit whose archive it  
6           has inherited.

7           We have set out, Sir, in our submissions what we  
8           believe to be the current state of play with the  
9           materials in our possession. It is vast in quantity,  
10          wide-ranging in its context and extremely challenging to  
11          access, let alone to search and to analyse.

12          So we deal with anonymity applications in our  
13          submissions, paragraph 6 and onwards. So we take  
14          a neutral stance on the detail of the  
15          Metropolitan Police Service application with regard to  
16          their anonymity process, but we think it important to  
17          ask you to note that we believe that applications in  
18          relation to the National Public Order Intelligence Unit  
19          officers face similar, if not greater, challenges as  
20          recognised by Counsel to the Inquiry at paragraph 17 of  
21          his note.

22          The scale of the potential task is large. We  
23          estimate on the information we currently have that there  
24          are 228 staff of National Public Order Intelligence  
25          Unit -- former staff, obviously -- of whom there are

1 97 undercover officers, cover officers and senior  
2 managers and 131 support staff.

3 We need to emphasise, Sir, that unlike the  
4 Metropolitan Police, each National Public Order  
5 Intelligence Unit officer approached by the Inquiry to  
6 give evidence will be making, if so advised, their own  
7 application. It will not be the National Police Chiefs'  
8 Council making the application. Our role is to  
9 facilitate as best we can that process.

10 There are a number of ways in which we think we are  
11 able to do that, but firstly we have agreed with the  
12 Inquiry an overall process which we hope is helpful.  
13 That is set out in the protocol at the rear of our  
14 submissions.

15 Just a few points, if I may, to highlight about  
16 that. Firstly we have arranged for risk assessors to be  
17 available. At the moment two are in place. As it were,  
18 their CVs have been scrutinised by the Inquiry and we  
19 apprehend that there is no objection to them undertaking  
20 this work. We see that their CVs are to be circulated  
21 more publicly.

22 It is denoting that the arrangements for the  
23 provision of assessment by those assessors includes  
24 an understanding that their report will be made  
25 available to the Inquiry, whether or not the officer

1 intends to rely to it and whether or not it is  
2 supportive of the application.

3 The second way in which we have sought to assist is  
4 by arranging for a panel solicitor to be available to  
5 advise and represent officers for the purpose of these  
6 applications where either the home force responsible for  
7 the officer elects to offer to fund this facility or  
8 some other arrangement can be made.

9 Some forces will be offering in-house advice and/or  
10 representation where no conflict is perceived and the  
11 officer agrees. We have contributed, as I say, by  
12 agreeing a process for making applications.

13 The next point I wish to make is this: the timetable  
14 for the processing of applications for National Public  
15 Order Intelligence Unit officers inevitably cannot be  
16 the same as it is for the Metropolitan Police Service,  
17 if only because that process has started at a later  
18 stage, triggered, as it were, by the letters that the  
19 Inquiry has been writing to relevant officers. Various  
20 attempts have been made to set timelines, but we  
21 apprehend that none has yet landed in a way which  
22 reflects the reality on the ground.

23 We suggest that the process involved may be more  
24 elaborate than that required for many  
25 Metropolitan Police Service officers because their

1           circumstances are likely to be different.  Firstly --  
2           the point has already been made -- the officers are  
3           employed or have been employed by a variety of forces,  
4           not just one.  Secondly, many officers who have  
5           undertaken work for the National Public Order  
6           Intelligence Unit will have had deployment in more than  
7           one operation, either within the National Public Order  
8           Intelligence Unit before or since they have worked for  
9           it.  In other words, in order to assess the risk to an  
10          officer or a risk to a tactic, it may be necessary to  
11          survey information not just within the National Public  
12          Order Intelligence Unit archive, which I will come back  
13          to, but also to collect information from other forces.

14                 The volume of material now held in relation to the  
15          National Public Order Intelligence Unit archive at  
16          Operation Elter is estimated at some 40 million  
17          documents.  For the technically minded, I'm instructed  
18          that what they think they have is 20 terabytes of data,  
19          only a fraction of which has been accessed at the  
20          moment.

21                 There are considerable technical challenges ahead in  
22          relation to accessing a considerable quantity of this  
23          information.  It is contained on a variety of computer  
24          hardware, all of which is physically now stored by  
25          Operation Elter, and some of it has proved difficult to

1 access.

2 It may be that much of the information turns out to  
3 be irrelevant either generally or simply because it  
4 is -- I am going to use the expression "technical  
5 garbage" -- but technical software or whatever, rather  
6 than actual information. But the difficulty, I suggest,  
7 that is faced is that a risk assessment may be  
8 incomplete, certainly in relation to the ability to  
9 manage any risk, until the whole of the archive is  
10 searchable.

11 One challenge will be the identification not only of  
12 the immediate contacts made by any individual undercover  
13 officer, but also whether there is risk to be arising  
14 from contacts of contacts and we understand that that  
15 should be a complex operation.

16 Mention has been made of generic assessments in  
17 relation to different groups, but there will be a range  
18 of risk which cannot be dealt with in that way, even if  
19 a generic threat assessment is available.

20 There are logistical issues which all those I think  
21 connected with this Inquiry have already faced in  
22 relation to the communication of classified material in  
23 that much of such material cannot be emailed and it has  
24 to be physically transferred from one place to another.

25 Sir, we have estimated -- and it is in our



1 submissions at paragraphs 21 onwards -- that one  
2 application may take 41 days to process. Obviously  
3 a number of applications can be processed in parallel.  
4 We estimate that a first tranche of 50 officers -- the  
5 first tranche of 50 officers -- who have already been  
6 approached may take some six months to process.

7 The up-to-date position in relation to applications,  
8 as we understand it, is that some eight applications  
9 have now been provided, but as has been noted, all the  
10 officers who have been written to by the Inquiry or the  
11 vast majority of them have indicated an intention to  
12 make an application.

13 Bearing in mind the size of the task involved, we  
14 have submitted and submit again today that it would be  
15 helpful for an early assessment to be made of which  
16 officers and which operations are likely to be the focus  
17 of the Inquiry and to allow applications from those  
18 officers to be prioritised.

19 Secondly, it would be helpful if an indication could  
20 be given with regard to back-room staff from whom  
21 evidence is unlikely to be required and whose identity  
22 is therefore unlikely to be thought relevant for the  
23 issues the Inquiry is required to investigate.

24 Thirdly, we welcome the Counsel to the Inquiry's  
25 indication, in relation to cases where there appear to

1 be compelling and immediate obvious grounds for an  
2 anonymity restriction order to be made, to enable that  
3 decision to be expedited without a full assessment  
4 process taking place.

5         Might I say that were that to be possible, one  
6 benefit would be to give relief to the officer in  
7 question and their families to have an early certainty  
8 about their position. One message that has been coming  
9 through the National Police Chiefs' Council in  
10 relation to these officers that have been approached is  
11 that the very receipt of the letter has produced a high  
12 level of anxiety and in part, of course, due to the fact  
13 that many of them, when undertaking the work that they  
14 were, did so under an expectation of anonymity. That is  
15 not for a moment to suggest that where it is proper for  
16 someone to be held to account or there are other good  
17 reasons for them to be identified, that that should not  
18 take place. There is no doubt that many officers have  
19 an anxiety which will be legitimate in relation to the  
20 risks they run about their identity being uncovered in  
21 relation to work which will be potentially of no concern  
22 to the Inquiry as work, but gives rise to risk.

23         We submitted also that we felt that it might be  
24 helpful were the National Police Chiefs' Council to be  
25 enabled -- obviously in consultation with the Inquiry --

1 to develop some guidance for officers' legal  
2 representatives with regard to the type of evidence and  
3 information that needed to be furnished to assessors and  
4 which the Inquiry expected to receive.

5 We understand and welcome the proposition that, if  
6 the difficult cases are taken early, some of that  
7 learning will come through those. But at the moment we  
8 are reluctant to communicate such learning as might  
9 already exist because it might be thought that that  
10 would contravene the Inquiry's requirement that we not  
11 communicate with forces and presumably others without  
12 their prior permission. So we absolutely understand  
13 that anything we do by way of guidance should only be in  
14 consultation with and the agreement of the Inquiry.

15 We have also suggested -- and we believe this is now  
16 accepted -- that at the end of the process of the  
17 assessment that it will be necessary for the information  
18 gathered to be shared with the home force of the officer  
19 to enable the risk management process to take place.  
20 That is whether, you, Sir, are minded to grant anonymity  
21 or whether you are not.

22 There is at all times a duty on the home force to  
23 protect officers in relation to any risk and they cannot  
24 undertake that role without the fullest information  
25 available. We understand and we would anticipate the

1 home forces to understand that that information should  
2 only be used for that purpose.

3 If I could turn, then, Sir, briefly to some of the  
4 points raised by the non-police non-state core  
5 participants?

6 THE CHAIR: How long do you think you will be, Sir Robert?

7 SIR ROBERT FRANCIS: Five minutes, particularly bearing in  
8 mind the hour, if that is all right.

9 THE CHAIR: Yes.

10 SIR ROBERT FRANCIS: Firstly, the proposition that all cover  
11 names should be released.

12 Sir, we say, I think with Counsel to the Inquiry,  
13 that the safety of undertaking what at first sight seems  
14 to be a tempting step cannot be presumed and actually  
15 requires some consideration, but a propos of what we  
16 say -- and Counsel raised it -- in paragraph 33 of our  
17 submissions, we recognise that there may be a category  
18 of case -- and I'm reluctant to try to give examples  
19 because they may be potentially misleading -- where it  
20 is obvious that release of the cover name would (a) be  
21 helpful in the conduct of the Inquiry and, secondly,  
22 pose no risk to a relevant officer.

23 It is the mirror, if you like, side of the  
24 suggestion that where there is a case where it is  
25 obvious that there is a risk on a limited investigation,

1 that the investigation should go no further. That is  
2 what we intended to convey by what was said in  
3 paragraph 33.

4 With regard to the suggestion that the real names of  
5 deceased officers be released, while we can see the  
6 potential force in that submission, there are, I am  
7 afraid, still risks to consider in relation to the  
8 families of those officers, other contacts, ongoing  
9 operations and potentially tactics.

10 So far as the N numbers are concerned, again that is  
11 a tempting suggestion, but the N numbers, we suggest,  
12 are only of relevance if associated with operational  
13 detail, and unless it is known what can be safely  
14 released in that regard, we suggest it would be unwise  
15 to publish a list. There is the danger -- unknown --  
16 of, as it were, facilitating the mosaic effect by such  
17 a publication.

18 Likewise, the disclosure of infiltrated -- names of  
19 infiltrated groups is not a question, we would suggest,  
20 that can be answered generally, but only in relation to  
21 specific cases.

22 With regard to the disclosure of individual files,  
23 we associate ourselves with the submissions made by  
24 Counsel to the Inquiry.

25 Sir, I have taken a little less than five minutes,

1 but if there is anything else I can assist you with, we  
2 are here to assist.

3 THE CHAIR: No, I'm very grateful. Thank you.

4 We will resume at 2 o'clock, please.

5 (1.02 pm)

6 (The short adjournment)

7 (2.00 pm)

8 THE CHAIR: I think it is Mr O'Connor.

9 MR O'CONNOR: Sir, I'm grateful. I will be very short.

10 Submissions on behalf of the National Crime Agency

11 by MR O'CONNOR

12 MR O'CONNOR: May I start, Sir, by affirming publicly that

13 as with the Metropolitan Police and the National Police

14 Chiefs' Council, the National Crime Agency is fully

15 committed to supporting this Inquiry. Sir, as you are

16 aware, but others may not be, the National Crime Agency

17 has been hard at work behind the scenes responding to

18 Rule 9 requests that the Inquiry has made of it,

19 disclosing documents and also is in the process of

20 making two, at present, anonymity applications. So we

21 have filed written submissions for today's hearing which

22 you should have, I think, behind tab 7 of your file.

23 THE CHAIR: I do.

24 MR O'CONNOR: Sir, you have those submissions. Unless there

25 are any particular matters you would like me to address



1 most recently this morning from the Counsel to the  
2 Inquiry, that if risk assessments can't be produced in  
3 time, then alternatives -- or alternative means --  
4 should be found. More radically, Sir, the non-police  
5 non-state core participants have said that the risk  
6 assessments are of doubtful utility to the process of  
7 deciding the restriction order applications and can be  
8 dispensed with.

9 Well, Sir, we disagree with both of those  
10 propositions if they are maintained. If, as it is  
11 suggested, Sir, the Slater and Gordon clients should  
12 forego their own risk assessments because the  
13 Metropolitan Police have taken too long to produce them,  
14 then in our respectful submission that would be quite  
15 wrong and unfair. The Jaipur and Karachi issues were  
16 nothing to do with the Slater and Gordon clients and they,  
17 the Slater and Gordon clients, have played no part in  
18 those delays.

19 We have heard this morning that the risk assessors  
20 are currently in the process of compiling reports for  
21 the Slater and Gordon officers. Those risk assessors have  
22 been approved by this Inquiry. Their names and CVs have  
23 been published, as I understand it, on the website and  
24 to our knowledge there has been no objection to their  
25 appointment.



1           Sir, once those revised risk assessments are  
2           received by us, we will have to reassess the restriction  
3           order applications that we made last year. The existing  
4           applications that have been with the Inquiry for some  
5           time now have been based in very large part on the risk  
6           assessments that were previously completed by Jaipur and  
7           Karachi and which of course, for perfectly  
8           understandable reasons, are no longer regarded as being  
9           of any value.

10           Sir, it is not possible at this stage to say whether  
11           any of the applications that we have made on behalf of  
12           our clients will require substantial revision in the  
13           light of and once we have received those revised or new  
14           risk assessments, but at the very least, Sir, the  
15           exercise will have to be performed and will take  
16           a little time. At present we don't know when the  
17           revised risk assessments are to be delivered, although  
18           we hear this morning that a deadline of 1 June has been  
19           fixed.

20           It is reasonable to assume, like the previous risk  
21           assessments, that we may get them not all at the same  
22           time on 1 June, but we may get some earlier, and of  
23           course we can begin to address the restriction order  
24           applications that we have made as soon as we have  
25           received the revised risk assessments.

1           Sir, so far as the non-police non-state core  
2 participants' position is concerned, they appear to  
3 posit an alternative scenario whereby the risk  
4 assessments are dispensed with altogether and the  
5 Inquiry conducts its own risk assessment on the basis of  
6 the underlying material. We would respectfully submit  
7 that this suggested approach is wrong for a number of  
8 reasons.

9           First, it appears to labour under the  
10 misapprehension that we, representing the individual  
11 undercover/former undercover officers who are  
12 core participants to this Inquiry, have access to any  
13 material, in particular any underlying material, which  
14 might be said to be relevant to the applications that  
15 they make. We don't. We will need to see it first  
16 before we are in a position to make any representations  
17 on it if that is what is suggested.

18           Secondly, it would no doubt take many weeks, if not  
19 months, it seems to us, to redact or otherwise cleanse  
20 the underlying materials before we were permitted to see  
21 it at all, let alone before it could be published. We  
22 assume that there is a good deal of material which the  
23 risk assessors have access to now, as they are  
24 completing their assessments, that we simply wouldn't be  
25 permitted access to for obvious security reasons. The

1 risk assessor, as well as performing several other  
2 rules, is a gatekeeper to that confidential information  
3 which is potentially relevant to the applications that  
4 are being made.

5 Thirdly, it seems to us that the purpose of a risk  
6 assessment is to obtain the assistance of a trained and  
7 experienced assessor of risk who has access to relevant  
8 material and who can express an evidence-based opinion  
9 as to the existence or otherwise of a particular risk.  
10 A major component of that risk assessment process, it  
11 seems to us, is not only the underlying material, the  
12 evidence-based part of the risk assessment process, but  
13 the actual views, the opinion, based on the relevant  
14 expertise and experience of deployments similar to those  
15 which are in issue in these proceedings, is what is of  
16 assistance to this Inquiry.

17 We have always assumed that this Inquiry considers  
18 that it would be assisted by the views of risk  
19 assessors, even if subsequently it decides not to agree  
20 with those assessments. But, Sir, we would strongly  
21 urge that the Inquiry continue with its current approach  
22 that hitherto it has regarded as being fair, reasonable  
23 and proportionate and not jettison the risk assessment  
24 process to gain a few weeks or months when so much time  
25 has been lost.

1           So far as the second issue is concerned, and that is  
2           the release of all cover names, again we would strongly  
3           urge the Inquiry not to adopt the approach advocated by  
4           the non-police non-state core participants to release  
5           all cover names.

6           If I could say just a few words about the process  
7           that we have gone through in deciding how to make, how  
8           to frame, the restriction order applications that we  
9           have made on behalf of the clients whom we represent.

10          You will know, Sir, that we currently represent ten  
11          clients, all former undercover officers. All of their  
12          applications have been carefully considered before, as  
13          you would expect, they were submitted. We immediately  
14          recognised that we did not need to make restriction  
15          order applications for Boyling and Lambert, for  
16          perfectly obvious reasons.

17          Where we considered it was safe to do so, we revised  
18          applications that had been for real and cover names for  
19          real name only, so that the cover names of Carlo Neri  
20          and Marco Jacobs could be released. As soon as we did  
21          that, the Inquiry released those names on the website.

22          So it follows, Sir, we say, that for the balance of  
23          the six clients we represent, we have taken the view  
24          that on the available information, including the  
25          existing Jaipur and Karachi risk assessments, there are

1           compelling grounds for making the applications that both  
2           cover name and real names should be restricted.

3           Now, Sir, if we get to the stage where, upon receipt  
4           of the new --the fresh risk assessments, we consider  
5           that there are grounds for revising the basis upon which  
6           we have submitted a restriction order application for  
7           those six officers, then you can be assured, Sir, that  
8           we will revise those applications accordingly.

9           So, Sir, unless there is anything else that I can  
10          assist with at this stage, those are the brief  
11          submissions that we would like to make today.

12       THE CHAIR: Thank you, Mr Brandon.

13                 Who is next?

14                 Mr Griffin?

15       MR GRIFFIN: Sir, I have nothing to add to the brief  
16          Home Office submissions at tab 4.

17       THE CHAIR: Thank you.

18                 Mr Squires, you are next on the list.

19       MR SQUIRES: I am grateful, Sir.

20                 Submissions on behalf of the non-police non-state  
21                         core participants by MR SQUIRES

22       MR SQUIRES: Sir, I first associate ourselves with the  
23          personal expressions and good wishes from this side of  
24          the court as well.

25                 Sir, I represent the non-police non-state core

1 participants. You should have our written submissions  
2 at tab 10.

3 THE CHAIR: We do.

4 MR SQUIRES: Sir, you should also have submissions from us  
5 dated 31 March in relation to the protocols, which I was  
6 not planning to say anything about today, save to draw  
7 a couple of more general points out of those. They were  
8 dated 31 March 2017.

9 Sir, we are grateful to make submissions on  
10 practical proposals for the progress of the Inquiry and  
11 particularly in relation to anonymity orders. We hope  
12 we have done that helpfully in draft submissions, but  
13 also in draft directions that we proposed.

14 I was not intending certainly to read out my  
15 submissions or go through all of the draft directions,  
16 but we did want to address broadly the Metropolitan  
17 Police Service application for an extension of time. It  
18 would appear that that has now effectively fallen away  
19 because we now have particular dates by which we have  
20 been told applications will made, so it is no longer,  
21 I think, being said everything on 1 October. But I will  
22 return to that.

23 I will then deal with the invitation to the Inquiry  
24 to narrow or -- as it was understood, to narrow its  
25 focus. Thirdly, two more general points that we raised

1 in our written submissions.

2 Before I turn to the more concrete proposals which  
3 we hope will be helpful in pushing matters forward, Sir,  
4 I would like to set out the profound concerns shared by  
5 my clients about the delays that the Inquiry is  
6 experiencing and what appears to us to be the role of  
7 the Metropolitan Police Service in those delays.  
8 I know, Sir, you have those set out in our written  
9 submissions, but I would like to briefly set those out  
10 in a public forum if I may.

11 My clients recognise the importance of the task that  
12 this Inquiry has been set to perform. It was said at  
13 the hearing last year by the Secretary of State who set  
14 the Inquiry up that the allegations of misconduct in  
15 undercover policing were being treated with the utmost  
16 seriousness and there was a commitment, she said, to  
17 restoring public confidence in the police by uncovering  
18 the truth of these allegations and doing so in as open  
19 a way as possible.

20 So we would certainly fully endorse those concerns  
21 and those aspirations and that is why my clients have  
22 become core participants. In volunteering to do so,  
23 they have committed a large amount of faith in the  
24 Inquiry's ability to get to truth about what happened to  
25 them as well as devoting a significant amount of time

1 and energy to the Inquiry process, which, Sir, as I am  
2 sure you will appreciate, is often difficult both  
3 because of the nature of what is having to be dug up  
4 about their past, but also simply on a practical level,  
5 which I will come back to, because unlike most other  
6 participants in the Inquiry, they are not paid for their  
7 time. Everything they do has to be juggled around other  
8 commitments.

9 So they do feel a profound frustration and, it has  
10 to be said, increasing disillusionment with what has  
11 happened to date. It is now more than three years since  
12 the Secretary of State announced in Parliament that  
13 there would be an inquiry and more than two years since  
14 the Inquiry was formally established. While no doubt --  
15 and we have heard about them today -- activities have  
16 been going on behind the scenes, much of which we are  
17 not aware of, the position from our side is that we  
18 don't know anything new that was not known, wasn't  
19 already in the public domain, wasn't discovered largely  
20 through the efforts of those that I represent.

21 Critically for my clients, nothing has been revealed  
22 by the Metropolitan Police Service as to the identity of  
23 any -- cover names of any officers, any groups spied  
24 upon. You have just heard from the Slater and Gordon  
25 representatives about consideration they gave to



1 revealing cover names, but those were cover names that  
2 were already in the public domain. So far, from our  
3 perspective, nothing new has been revealed.

4 The Inquiry will of course, in due course, determine  
5 the extent and scope of any wrongdoing by undercover  
6 officers, and while the Inquiry is concerned with the  
7 broader public interest of accountability, discovering  
8 what happened in the public interest, it will be  
9 recalled that one of the reasons for the existence of  
10 the Inquiry -- and that is what was said by the  
11 Secretary of State in Parliament -- was establishing  
12 justice for the family and victims of those who were  
13 subject to undercover operations.

14 That does mean that it is important that the Inquiry  
15 process, we say, recognises the central role of my  
16 clients and the central importance of not replicating  
17 any of the experiences that they have already had of  
18 being faced by walls of silence, being faced by an  
19 inability to discover anything at all about what  
20 happened to them.

21 From our perspective it is, I am afraid to say,  
22 impossible not to conclude that one of the difficulties  
23 faced by the Inquiry is the Metropolitan Police Service  
24 do not wish any details of undercover operations to be  
25 made public. We know from last year, the submissions

1 made by the Metropolitan Police Service was in effect  
2 that there should be no disclosure of any details of any  
3 undercover operations, save as officially confirmed.

4 That was rejected, but what we have had since then  
5 is a year in which, as we understand it now, there may  
6 not be a single application, anonymity application, that  
7 has been made or it may be -- we were not quite sure if  
8 we understood it correctly -- it may be that  
9 applications were made late last week or the first  
10 complete applications were made. But, again, we are not  
11 even sure whether that has occurred. So we do say that  
12 it is impossible for us to understand, if the  
13 Metropolitan Police Service was committed to releasing  
14 information as soon as it was able to and as much as it  
15 was able to, that we would be in this position a year  
16 later.

17 THE CHAIR: The calendar is this: in my ruling on legal  
18 principle, 3 May 2016, I said that I next intended to  
19 reach decisions on the first group of anonymity  
20 applications. The Slater and Gordon applications were in  
21 in June.

22 I had some, if not all, of Jaipur and Karachi's risk  
23 assessments. Concern was expressed by the Inquiry and  
24 by your team as to the independence of the risk  
25 assessment process. September 27, all their reports

1           were withdrawn. So the Metropolitan Police have had to  
2           start from scratch virtually. And here we are a year  
3           later after the oral hearing on legal principles and  
4           I still don't have an application in front of me  
5           supported by the necessary evidence.

6           That fact, to attribute to the Metropolitan Police  
7           a deliberate attempt to stifle the Inquiry is entirely  
8           another matter. It is quite different from lack of  
9           foresight, planning and resources.

10       MR SQUIRES: Sir, the submission was not intended to be one  
11           of bad faith. The submission was intended to be one of,  
12           if one wants to make applications --

13       THE CHAIR: What is this if it is not an accusation of bad  
14           faith? "Repeatedly sought to stifle the Inquiry's  
15           effectiveness ..."

16       MR SQUIRES: Sir, that was the submission about the -- the  
17           initial submissions were made that it should be entirely  
18           effectively made in private. The submission is now  
19           made, Sir -- I hope I'm making it fairly, but on behalf  
20           of my clients -- the concern is that if this was  
21           something the police wanted to move along quicker, it is  
22           our belief that certainly, for example, some cover names  
23           could start to have been released -- if one went away  
24           and thought very carefully and was committed to an open  
25           inquiry, more would have been done, we think, to release

1           some information, possible information, if that was --  
2           if officers, for example, had been given robust advice  
3           of whether there was any realistic prospect of their  
4           cover names not being released, at least something would  
5           have come out. That is our concern.

6           Sir, I do appreciate and we are aware of at least  
7           some of what has been going on over the last year, but  
8           the concern is that, from our perspective, to be back  
9           here a year later -- we appreciate there are  
10          difficulties -- but the concern is -- and the concern is  
11          particularly going forward to make sure that what  
12          happens from this date onwards is that there are robust  
13          and clear directions by which matters -- and I would say  
14          this. Again this perhaps links to my earlier  
15          submission -- and we would hope for an awareness and  
16          a recognition that openness is of real importance, not  
17          just to assist the Inquiry, which we have already heard,  
18          but that openness is a key, which was one of the points  
19          that we took, Sir, from your ruling from last May, and  
20          that, with that in mind, to go away and give -- from the  
21          Metropolitan Police and the individual officers' legal  
22          advisers -- very careful thought to whether in fact  
23          anonymity applications are going to be needed in  
24          relation to all officers and all cover names. So to  
25          that extent we do say -- if that is the mindset, we do

1           say more could have come out voluntarily or in a process  
2           than has done.

3   THE CHAIR:   That language I find much more acceptable.

4   MR SQUIRES:   Sir, yes.   Those are the submissions we make.

5           It may be a question of emphasis and a desire to reach  
6           a particular goal as soon as is possible.

7   THE CHAIR:   That is not to ignore that we have lost, if not  
8           wasted, a year of Inquiry time on this issue, and  
9           whatever happens from now on there will have to be very  
10          significant changes otherwise I will have to review  
11          whether it is necessary to have the risk assessment  
12          process in place.   But you must realise that I have  
13          a statutory duty.   It is personal whether or not to make  
14          a restriction order.   That is a responsibility which  
15          I take very seriously.   It cannot be delegated to anyone  
16          else --

17   MR SQUIRES:   Sir, absolutely.   That certainly is --

18   THE CHAIR:   -- either your side or theirs.

19   MR SQUIRES:   Sir, absolutely.   We certainly appreciate that.

20          That is why I hope in our directions what we have done  
21          is -- the attempt is to set out a robust, clear and  
22          detailed timeframe by which precisely that can happen,  
23          by dates that we are aware of and dates that can be  
24          enforced.

25   THE CHAIR:   Okay.

1 MR SQUIRES: Sir, the concern of my clients is at least most  
2 immediately to have the release of as many cover names  
3 as is possible and the identity of as many groups that  
4 were spied on as is possible as soon as possible. We  
5 entirely appreciate that is precisely through the  
6 process that has been identified for risk assessment.  
7 The question is: how can that be achieved?

8 So if I may briefly set out why that is a matter of  
9 such importance to my clients -- again I am sure it is  
10 well understood -- but it is important for three  
11 reasons: first, it will enable those who have waited  
12 anxiously now for some years to know critical questions  
13 about their past, to understand the nature of the  
14 relationships that they thought they were engaged in  
15 with people around them. If part of the concern and  
16 part of, Sir, your terms of reference is the effects on  
17 people of undercover policing, that is a critical matter  
18 and it is critical for my clients.

19 Secondly -- and this was identified, Sir, in the  
20 ruling from last year -- it is of enormous practical  
21 benefit to the Inquiry. The sooner that information  
22 comes out, the sooner people are able to come forward,  
23 know they were spied upon, collect information, begin to  
24 provide it to the Inquiry.

25 The concern, furthermore, in relation to that is

1           that some of the delay may be fatal to gathering  
2           information. We know that a number of Special  
3           Demonstration Squad officers have died. You see from  
4           our submissions that two former home secretaries and one  
5           Metropolitan Police commissioner have passed away since  
6           the Inquiry was announced, and one of the concerns,  
7           particularly from my much older clients, is to have  
8           these matters revealed as soon as they are able so that  
9           it is something they know and can participate in.

10           Third, Sir, the issue of delay is also important for  
11           public confidence and confidence in the Inquiry to know  
12           that the truth is going to be uncovered. Perhaps this  
13           is the way I might put the submission I made earlier.

14           We quote paragraph 8 from the jurisprudence of the  
15           European Court of Human Rights, which is that:

16           "When investigating allegations of wrongdoing by  
17           state actors, a prompt response by the authorities  
18           investigating allegations may generally be regarded as  
19           essentially maintaining public confidence in their  
20           maintenance of the rule of law and in preventing any  
21           appearance of collusion in or tolerance of unlawful  
22           acts."

23           Maybe that is -- the correct way to put the concerns  
24           I have expressed about delay is that that is what --  
25           those are the kind of concerns, or the converse of that

1 is that that is what delay does give rise to, a concern  
2 that the truth won't be ultimately uncovered.

3 Sir, you will see in our submissions that we do make  
4 general observations. This goes back to my point and  
5 this will tie into benchmark rulings about making  
6 realistic assessments of risk by those responsible for  
7 the officers and the officers themselves as soon as  
8 possible. And of course I appreciate the question of  
9 restriction orders is ultimately for the Inquiry, but of  
10 course it is going to be very much informed by those who  
11 seek restriction orders and the basis for doing so.

12 In relation, for example, to very old allegations or  
13 infiltration which may have occurred some 40 or 50 years  
14 ago, the prospect of release of cover names leading to  
15 any sort of risk one would have thought is going to be  
16 extraordinarily small. Again, that doesn't mean it  
17 doesn't need to be examined, but, if one thinks  
18 about it, for someone who 45 years ago was undercover --  
19 for someone to make a connection between their cover  
20 name and an individual today would need an extraordinary  
21 set of circumstances and we say vanishingly unlikely.  
22 The reason again that is important is because many of  
23 those officers will have been responsible for spying on  
24 people who are now also in their 80s or older, so the  
25 importance of that kind of information coming out, we



1 say, is of particular importance.

2 It is also the context, which I know, Sir, you have  
3 been reminded of before, that of course the real  
4 identities of at least five officers has been known for  
5 some years and none of them have suffered any harm, save  
6 for lawful protests in relation to one of the officers.  
7 Again, of course, that doesn't mean that will be  
8 replicated in every case, but it does suggest again that  
9 the hope will be that once these matters are examined,  
10 if they are examined quickly, it will become apparent  
11 that this is not a problem of safety.

12 Sir, that is why we say, in terms of going forwards,  
13 the importance now for our purposes is a clear and  
14 robust set of directions, both in relation to anonymity  
15 but also in relation to any other information that can  
16 currently be revealed, which will both enable the  
17 Inquiry, as far as my clients are concerned, to move  
18 forward and also for them to have the confidence that  
19 matters are going to be released and, indeed, for  
20 important questions for them to be made public.

21 Sir, you have our directions and you have our  
22 proposals. I will turn to them in a moment, but  
23 essentially what they are aimed at or one of the  
24 principal things they are aimed at is having a first  
25 tranche of applications in complete before you and, in

1 particular, so that there can then be a hearing to  
2 determine benchmark standards which will then be, we  
3 consider, of great use for everyone concerned for later  
4 on in the process. That is both because it should be  
5 able to set the tests that are going to be applied which  
6 others can then compare their cases to, but it should  
7 also lead to evidential findings, which again will not  
8 apply to everyone but may well be of use if there is  
9 someone else who has a similar profile.

10 So that thirdly they will also be important for  
11 determining what procedure is appropriate in relation to  
12 the applications, both in terms of how they are put from  
13 those making them, but also our potential involvement  
14 or -- more than potential -- part of our submissions is  
15 it is critical that we are also involved in that  
16 process, and you will see again when we come to the  
17 directions that part of it is to build in that process.  
18 The advantage of having that first tranche determined is  
19 we will be able to see how that works procedurally.

20 Sir, you will see again -- and we don't know that  
21 this has been opposed -- that the aim would be to have  
22 a hearing, we would submit, before the summer on a first  
23 tranche of applications. We will come in a moment to  
24 what our proposal is for that tranche. That is four  
25 months away, but that will enable real progress, we say,

1 to be made, and then into the rest of the summer and the  
2 autumn, when we have been told all the other  
3 applications will be made, they can be made in the light  
4 of -- and then considered in the autumn -- in the light  
5 of that initial ruling.

6 Sir, you have in our submissions and reflected in  
7 the directions seven proposed steps which we  
8 respectfully request the Inquiry to consider making.  
9 A number of them, I think, are not controversial so  
10 I will not deal with them in any detail. We would ask  
11 the Inquiry and Inquiry team to look at them when it is  
12 considering what to do next.

13 The ones I was intending to deal with are the ones  
14 we have heard responses on, which, as I understand it,  
15 are the ones that are controversial. The first I was  
16 going to deal with is what we describe as the "fourth  
17 step". It is at paragraph 19.

18 THE CHAIR: Yes.

19 MR SQUIRES: I realise my microphone was not on, but I don't  
20 think anyone was complaining.

21 THE CHAIR: I could hear you, but then I'm facing you.

22 MR SQUIRES: I now have the microphone on.

23 THE CHAIR: Yes.

24 MR SQUIRES: This is a direction that we sought to release  
25 a schedule of information. We have asked for it within

1 28 days, but it seems the objection to it is one of  
2 principle rather than practicality or date. The  
3 proposal is for the N number of former officers, their  
4 years of deployment, who supervised them, by N number if  
5 anonymity is sought, and the groups infiltrated. If  
6 I can just deal with those in two parts.

7 The first is the N number schedule. That is  
8 something that we say would be extremely helpful, again  
9 for our side, where we don't know the details of what is  
10 going on -- we are obviously not privy to  
11 communications -- but to have a sense of what the task  
12 is and what the scale is, what the picture is, of  
13 officer involvement; how many officers are there from  
14 early periods, from middle periods.

15 The only objection to that, as I understand it --  
16 sorry, I also say that will be valuable for us to then  
17 track the progress of anonymity applications so that we  
18 can make submissions in a more meaningful and directed  
19 way when we are asked to be involved.

20 The objection was a possible mosaic identification  
21 effect, but it is, with respect, almost impossible to  
22 see how that would operate by being told whether an  
23 officer served within the force. We are not asking for  
24 when they were deployed on a particular undercover  
25 operation; simply when they operated within the unit

1           because as we understand it, we think the very sensible,  
2           if I may say so, suggestion from Counsel to the Inquiry  
3           is to move in chronological order -- it is simply for us  
4           to be able to know. It could be if the concern about  
5           identification is with exact years, it could even be in  
6           broader ballpark figures, but just so we know what the  
7           scale is that we are dealing with and when, and from  
8           that it is impossible to see, if you are told there are  
9           X number of officers within this window, how that could  
10          lead to anyone's identification.

11                       The more --

12   THE CHAIR: Mr Squires, I was not born yesterday. If you  
13           are told that three officers were employed undercover  
14           targeting a particular organisation between 1984 and  
15           1987, there is going to be speculation as to who those  
16           people, those officers, may have been. There is  
17           a website, "[Undercover Research Group]", which is dedicated  
18           to uncovering undercover police officers. The only point  
19           being made is that the more information that is revealed in  
20           advance of a reasoned anonymity decision, the greater  
21           the risk that the pieces would be put together so as to  
22           defeat the purpose of a restriction order.

23   MR SQUIRES: Sir, that is not our intention in asking for  
24           them. We were not asking for the years they were  
25           undercover.

1 THE CHAIR: Well, you may not be asking for them for that  
2 reason, but that is the problem with starting from your  
3 position without my having a full understanding of its  
4 possible consequences.

5 MR SQUIRES: Sir, I appreciate that. The request is really  
6 to give us a sense of which officers -- the numbers of  
7 officers that fall within different periods so we can  
8 see --

9 THE CHAIR: What is the magic of that information?

10 MR SQUIRES: We can then follow, when we are being told it  
11 should be done in tranches, it should be done at certain  
12 times, how many officers one is talking about falling  
13 into different categories. That was the purpose. It  
14 certainly was not an attempt by some back-door means to  
15 obtain information about identity. It was just to help  
16 us in that way so we have a sense of where officers are  
17 falling -- it may also be of assistance, of course, to  
18 know the numbers in the early years because obviously  
19 there will be clients who will want to push for those to  
20 be released if there is -- who may have been affected by  
21 them. So that was the purpose of that request.

22 THE CHAIR: All right.

23 MR SQUIRES: As I say, it was deployment. I can entirely  
24 appreciate if it said "undercover from this date to this  
25 date", someone can look and see who that person might

1 have been.

2 Sir, the second question, issue, was the groups  
3 infiltrated -- a list of the groups infiltrated. Again  
4 we should make clear that this is set out expressly in  
5 our submission. We entirely accept that we may not be  
6 able to get a full list now of all those groups because  
7 it may be that release of the names of some groups would  
8 lead to the identification of an officer. One could see  
9 that if you had a very, very small group and you are  
10 told you have been infiltrated, et cetera -- that's why  
11 in our submissions we have said that that is a matter  
12 for the police when they look at it to decide, "Well,  
13 actually, this number of groups we cannot release the  
14 names of".

15 THE CHAIR: This is the whole point of getting anonymity  
16 applications from every member of the Special  
17 Demonstration Squad, so that we can see the total  
18 picture. It might be that at the end of the process  
19 a great deal more information can be revealed than is at  
20 the moment contemplated, but without that overall view,  
21 I don't know what risk the Inquiry is taking by what may  
22 be premature disclosure.

23 MR SQUIRES: Sir, we appreciate that. That is why the  
24 suggestion was that it is the police who look at this  
25 question and decide that there are X -- we know -- there

1 is a list somewhere, we know that from Operation Herne,  
2 of 460 groups that the Special Demonstration Squad  
3 infiltrated. It is impossible to imagine that if the  
4 police looked at this, they would not say, "Well, quite  
5 a lot of them, there is not a difficulty in disclosing  
6 those". Again it goes to, from our perspective, the  
7 importance of information being released as soon as it  
8 is able to be released.

9 THE CHAIR: What is Mr Hall to understand by an order given  
10 by me, or rather a direction, that wherever possible the  
11 names of the groups and organisations that were  
12 infiltrated should be disclosed?

13 MR SQUIRES: If the police don't consider that releasing  
14 those would place any officer at risk, then --

15 THE CHAIR: How does he know until he understands the  
16 ramifications of the disclosure?

17 MR SQUIRES: Sir, it is possible -- as you say, if there  
18 is --

19 THE CHAIR: He can't do within 28 days of 5 April.

20 MR SQUIRES: Again, we hope realistically that what we did  
21 suggest was that if there was a need for caution, we  
22 accept there would be caution. But our concern, Sir, is  
23 that, at least on the Counsel to the Inquiry timetable,  
24 which may be a realistic one, anonymity applications are  
25 not going to be complete for another year. They put it



1 as April 2018. As I understand it, it is being said,  
2 "Names of groups cannot be released until we have the  
3 complete picture". It is another 12 months, and again  
4 that is on the current estimation. The concern is that  
5 that slips and again we find ourselves without further  
6 information.

7 So we hope, realistically and cautiously, the  
8 suggestion was that if the police think that  
9 information -- they are likely to need to or they may  
10 need to withhold the names of the groups, not to reveal  
11 them -- but if they are not going to, that we shouldn't  
12 have to wait 12 months or beyond for that to be  
13 released. Again, we say that particularly on behalf of  
14 those very early -- I think it's anti-Vietnam and  
15 anti-apartheid groups which were the first ones spied  
16 upon. Those people who were within sort of those groups  
17 do --I can't put it any other way -- wish to know and  
18 wish find that out sooner rather than later. So that is  
19 the basis of that submission.

20 THE CHAIR: All right. Thank you.

21 MR SQUIRES: Sir, the next one, which I appreciate may  
22 receive a similar response, but it is again an attempt  
23 to obtain information sooner rather than later, is the  
24 fifth suggestion that we make, which is the release of  
25 individual -- essentially it is individual files; it is

1 individual Special Branch registry files.

2 As we understand it, some of the core participants  
3 will have individual files on them stored by the police.  
4 In the Counsel to the Inquiry's response to our  
5 submissions, it was suggested that that was in police  
6 information. It isn't. It is only where there are  
7 specific individual files about people that they be  
8 released.

9 It is said -- I think it is said against me --  
10 "Well, that's not the Inquiry's role. That information  
11 isn't relevant". We do say it is extremely hard to see  
12 how an individual's file -- there may be questions about  
13 whether it can be released in full, and I will come to  
14 that in a moment, but that it is going to contain  
15 information that is not relevant again precisely because  
16 part of the Inquiry's role was to understand the impact  
17 on people of being the subject of undercover operations  
18 and these are, in effect, the undercover files.

19 Sir, you may recall --

20 THE CHAIR: In effect, you are saying a Special Branch file  
21 is an undercover file?

22 MR SQUIRES: It is likely to be information gathered from  
23 undercover activity, as far as we know. It may have  
24 other information on it. Our understanding is that  
25 that, at least for our clients, is going to be

1 a significant amount of the information -- or something  
2 that is called "registry files".

3 THE CHAIR: Very well.

4 MR SQUIRES: So you may recall, Sir, I appeared last year  
5 for a group of elected representatives.

6 THE CHAIR: Yes.

7 MR SQUIRES: You may again -- I had to remind myself, but  
8 you may recall that one of the concerns which had  
9 particularly been expressed by Members of Parliament in  
10 Parliament was for disclosure -- when these revelations  
11 came out -- of their individual files.

12 THE CHAIR: All that underlies my interruption is that  
13 I understand that Special Branch files may be full of  
14 information that has nothing whatever to do with  
15 undercover policing and may indeed be public  
16 information, but gathered in one place, about that  
17 individual.

18 MR SQUIRES: Sir, that is absolutely correct. I will come  
19 to that in a moment. That is one of the things that  
20 came out of Catt<sup>1</sup>, so one of the things that the  
21 National Public Order Intelligence Unit or various  
22 incarnations of it have done is to gather information in  
23 precisely that kind of way. There will be --  
24 information from the public domain as well can be placed  
25 in individual files. That is what the extremes of --

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<sup>1</sup> [2015] UKSC 9

1           what was called in Catt the "Extremism Database" was  
2           made up of. Apologies. That is absolutely right.  
3           I suppose I'm talking more generally in terms of the  
4           issues that the Inquiry is looking at.

5           It is hard to see how information gathered by the  
6           National Public Order Intelligence Unit placed on the  
7           Extremism Database or other information is not going to  
8           be relevant to the role the Inquiry has to play. But,  
9           Sir, the issue arises in a very particular way  
10          because -- and, Sir, I am sure it will be appreciated  
11          why that is a matter of significant concern to people,  
12          to have access to that information both about themselves  
13          and to be able to understand what happened to them.

14          The particular reason it comes up and the reason we  
15          raise it now is that -- Sir, again, as I am sure you  
16          will appreciate, there are rights under Article 8 [of the  
17          European Convention of Human Rights] to individuals to access  
18          private information, and one of the reasons that the storage of  
19          the information, particularly on the Extremism Database issue  
20          examined in Catt -- one of the reasons that was held to be  
21          lawful was because Data Protection Act [1998] principles apply  
22          to it. One of those Data Protection Act rights which ties into  
23          Article 8 is the ability to ask for personal information  
24          about an individual.

25          One of the difficulties that -- so some of my

1 clients have been provided with redacted -- we accept  
2 that -- redacted files of information collected about  
3 them. What is now being said in relation to people who  
4 make requests is -- under the Data Protection Act is,  
5 "That is a matter for the Inquiry. The Inquiry is  
6 looking at this issue". But that, Sir, leaves my  
7 clients in an impossible position because if it is being  
8 said that it is not a matter for the Inquiry because  
9 some of this may be information we will need to  
10 disclose, other information we wouldn't -- but on the  
11 other hand it is being said, well the answer to a Data  
12 Protection Act request is these are all matters seized  
13 by the Inquiry, what ends up happening will be unlawful  
14 denial of access to information because under the  
15 Data Protection Act one is entitled within 40 days to  
16 copies of any information that which can't be lawfully  
17 withheld.

18 So to some extent what we want to avoid is having  
19 other sets of litigation at the same time by people  
20 saying, "Well, the 40 days have expired. Can you please  
21 give me access to the file?" If we are told, "Well, the  
22 Inquiry is not dealing with that issue", that may be the  
23 route to go down. But that is why, Sir, you will see we  
24 specifically referred to Data Protection Act principles  
25 and that does mean redaction. Everyone accepts that.

1           You can redact information for reasons of national  
2           security, reasons relating to the investigation of  
3           crime. But that is why we propose that then.

4           As I say, it also will be, we say, of great help to  
5           our clients in again being able to move matters forward  
6           to assist the Inquiry because it will tell them a lot  
7           more about their interactions with the police. That is  
8           why that proposal is made and is made in the form that  
9           it is.

10       THE CHAIR: All right. Thank you.

11       MR SQUIRES: Sir, those were the more controversial of our  
12           suggestions, which is why I decided to deal with them  
13           orally.

14       THE CHAIR: I hope you don't mind me testing them. We are  
15           going to have to debate this within the Inquiry after  
16           this hearing has taken place, so if we can do it with  
17           the fullest possible explanation from you, so much the  
18           better.

19       MR SQUIRES: Absolutely. I entirely appreciate that.

20           I will come back to this question about relevance very  
21           briefly because it is touched on in the submissions on  
22           the protocol. But the reason I was not -- as I say,  
23           I understand that most of the other suggestions we made  
24           were less controversial and I hope they will just be  
25           considered by the Inquiry.

1           Sir, overall, as I said earlier, the aim was, from  
2           our submissions, to have a hearing before the summer  
3           which would test at least the principles and the way in  
4           which the process would work. What we have suggested as  
5           a first tranche of officers to test that -- you will see  
6           from our directions -- are the six Slater and Gordon  
7           applications. That is a significantly smaller first  
8           tranche than the one proposed or -- that is  
9           significantly smaller than the number of applications  
10          that the Metropolitan Police Service have said will be  
11          made by 1 June. They said there will be -- 40 decisions  
12          will be made in relation to 40 individuals and  
13          applications made where appropriate. The  
14          Slater and Gordon is a much smaller number.

15          So we do have an immediate concern that has arisen  
16          from today's discussion again about deadlines and  
17          realistic thought given to them is -- our understanding  
18          from Mr Hall's submissions was that by 1 June up to  
19          40 decisions would have been made and applications put  
20          forward, which would include the six Slater and Gordon --  
21          the six individuals represented by Slater and Gordon.

22          The submissions made on their behalf appeared to  
23          understand that risk assessments would be disclosed to  
24          them before 1 June and then they would have to go  
25          through some process of the time of which it was said

1           couldn't currently be known.

2   THE CHAIR: I think what was being said is that the  
3           application itself might have to be amended.

4   MR SQUIRES: Sir, absolutely. It certainly was. The  
5           question I had was about the timing because the  
6           submission or the Metropolitan Police Service proposal  
7           is to have complete applications from the first tranche  
8           in by 1 June. My understanding from the submissions on  
9           behalf of the officers at Slater and Gordon is that they  
10          thought they were going to be getting risk assessments  
11          from the Metropolitan Police Service some time before  
12          then. They would then comment on it.

13   THE CHAIR: Yes.

14   MR SQUIRES: It is not at all clear whether, in fact, they  
15          are suggesting that that is the date by which complete  
16          applications go in. We would just put down a marker and  
17          express our concern about that, that the one thing we do  
18          respectfully say going forward from this hearing is very  
19          clear dates -- we will come on to section 21 [of the Inquiries  
20          Act 2005] in a moment -- but very clear dates by which  
21          applications will be made. As I say, we have the three proposed  
22          tranches from the Metropolitan Police Service and we  
23          very much hope they will be reflected in directions.

24                 Sir, the proposal that we made in our directions was  
25          to ensure that there could be a hearing before the



1 summer. We were not suggesting all possibly  
2 40 decisions would be subject to that hearing, which we  
3 now have been told will be in by 1 June, but we did  
4 suggest that the timetable should be set so that the six  
5 Slater and Gordon applications can be heard, as we say, by  
6 the end of July, so within just under four months, which  
7 then will, as we say -- and so we also would stress or  
8 draw attention to -- you will see in our directions at  
9 paragraphs 6 to 9 there is a process by which  
10 information -- as much information as possible -- is  
11 disclosed so that we and other core participants are  
12 able to make submissions on that process.

13         There is a significant likelihood that we will be  
14 able to provide useful, we hope, evidence and  
15 submissions, particularly if, for example, it is said --  
16 we know this, for example, from one application that we  
17 have seen from Bob Lambert, which referred to one of the  
18 groups with which my clients were associated,  
19 London Greenpeace, as having a long history of  
20 conducting campaigns of violence and intimidation. Now,  
21 that is entirely refuted by my clients, but obviously  
22 that would be something we would want the opportunity to  
23 put in evidence to respond to. That's why the  
24 directions that we have proposed make that possible.

25         So, Sir, we have simply asked that the Inquiry and

1           you, when you consider those directions, will see how  
2           that would fit together and ensure that that part of the  
3           process or that part of the jigsaw is made possible.

4           Sir, we also then propose further tranches. It may be,  
5           though, that to some extent the precise details of those  
6           tranches -- leading to hearings in the autumn -- are now  
7           superseded because we are now being told that more than  
8           we thought would be done is now being said will be done.  
9           So it may be that some of those dates and the nature or  
10          what goes into those tranches can shift. We have now  
11          been told that all the applications will be in by  
12          1 October.

13          The hope is that if benchmark rulings are given in  
14          the Slater and Gordon cases, which we assume are going to  
15          be -- given their core participant status, will be  
16          people with significant undercover histories, if you  
17          like, the more complicated detail cases -- if rulings  
18          are going to be given in those cases, that should give  
19          a much better sense, we would hope, as to the approach  
20          that is being taken. And it goes back to my earlier  
21          submission, that it is very much hoped that, in the  
22          light of that, careful thought will be given to whether  
23          applications are in some cases sustainable.

24          Sir, in relation to risk assessments --

25   THE CHAIR: Could I ask you to pause a minute?

1 MR SQUIRES: Certainly.

2 THE CHAIR: Mr Squires, you are going on to another subject.

3 It is 3 o'clock. We will have a ten-minute break.

4 MR SQUIRES: Certainly.

5 (3.00 pm)

6 (A short break)

7 (3.15 pm)

8 THE CHAIR: Thank you.

9 MR SQUIRES: Thank you, Sir.

10 One issue that Mr Barr asked me to address, which  
11 I will do now, is our position on real names -- the  
12 position of my clients on real names as opposed to cover  
13 names being revealed.

14 THE CHAIR: Yes.

15 MR SQUIRES: I have to say it is a slight area of difficulty  
16 because there is a range of different views among the  
17 clients that I represent. The position certainly is, as  
18 I have already submitted, that cover names should be  
19 released as soon as possible because of all the benefits  
20 that has. We do understand, for example, from the  
21 National Police Chiefs' Council's submissions at  
22 paragraph 33 -- one of the things they say is there may  
23 be no difficulty in some cases releasing cover names;  
24 the difficulty may be with releasing real names.  
25 Obviously, in that position, there may be cases where,

1 as we have heard, no application is made in relation to  
2 a cover name, but only an application in relation to  
3 a real name, and that, of course, is no difficulty at  
4 all. Then the cover names can be released.

5 As to real names more generally, our position is  
6 that as a matter of principle it is something that the  
7 Inquiry does need to consider. The principle is  
8 openness. There needs to be a justification for not  
9 releasing a real name. If someone is going to be giving  
10 evidence anonymously or even behind a screen, that  
11 requires some sort of justification so there does need  
12 to be an application. It may be in some cases it is  
13 relatively straightforward.

14 There also is likely to be, again in some cases,  
15 a matter of public interest in knowing real identities.  
16 If, for example, the person has gone on to hold senior  
17 positions, someone accused of wrongdoing, there is  
18 a public interest in knowing who that person is.

19 So our position is that certainly one could not make  
20 any sort of submissions that as a matter of principle  
21 real names are never going to be required or a decision  
22 to make a restriction order in relation to all real  
23 names -- one would have thought applications do need to  
24 be made and do need to be considered. But, as I say,  
25 for all my clients the concern is to have the release of

1 cover names as soon as that is possible.

2 Sir, in relation to risk assessors, the concerns we  
3 expressed about risk assessors were, if it was the case  
4 that they are going to be delaying matters, then there  
5 is a question about whether they are in fact necessary  
6 and required in every case, particularly as, as we now  
7 understand it, what they are providing is generic  
8 assessments of risk rather than specific knowledge about  
9 particular groups, particular targets. That information  
10 needs to be provided to the risk assessors.

11 The question that will be for the Inquiry is whether  
12 a stage has come where risk assessment has proved such  
13 a delaying factor that the Inquiry simply looks at the  
14 underlying evidence. Ultimately it is going to be  
15 a matter for the Inquiry. You state in your ruling from  
16 May last year that risk assessments are of course  
17 treated with respect, but the more generalised they are,  
18 the less likely they are to be -- maybe if I quote you,  
19 Sir:

20 "This acceptance has not been that I should express  
21 every expression of opinion offered to me, particularly  
22 when the opinion is offered at the level of generality."

23 So one of the questions is whether risk assessors,  
24 who are themselves provided with information and have  
25 general knowledge of health and safety, are able to do

1 more than give general opinions.

2 Sir, we appreciate now what has been said about  
3 progress. This may be less of an issue if we have  
4 a timetable and are able to keep to it with risk  
5 assessments, of course. Sir, that is more information  
6 that will assist upon the decision being taken. But the  
7 concern was that if the risk assessment process -- which  
8 it has done so far for whatever reason -- has led to  
9 delays, careful thought needs to be given to it.

10 Sir, finally on the anonymity applications and  
11 timetabling -- it is [orders under section 21 of the Inquiries  
12 Act 2005] -- Sir, we would urge the panel, the Inquiry or, Sir,  
13 you, to consider making orders. We now have what we are told is  
14 a timetable. There is, as you have heard, our concerns  
15 about what has happened to date. We do say the time has  
16 now come to think very seriously about backing up the  
17 timetable so that we do move on quickly with section 21  
18 notices.

19 Sir, moving on to the invitation to, if I can put it  
20 this way, narrow the scope of the Inquiry or to focus on  
21 particular individuals, as we understood it the  
22 application or the suggestion was being made in relation  
23 to anonymity applications, it was said. This is -- what  
24 was said in the letter that prompted it of 21 December 2016  
25 was -- there was a question of whether it would be

1 possible to restrict the anonymity applications that  
2 were being made by the Inquiry, giving a sense of who it  
3 was intended to focus on.

4 As we understand it, the proposal is now to make  
5 anonymity applications for all Special Demonstration  
6 Squad members, so it is not clear whether this proposal  
7 is in fact being pursued. It may be later on down the  
8 line there is some suggestion about what the Inquiry  
9 does about its focus in terms of documents or its focus  
10 more generally. To that extent -- I will come to this  
11 in a moment -- there may well be some scope for limiting  
12 or focusing on what is examined, but we certainly would  
13 say there is no -- we respectfully adopt what is said by  
14 Counsel to the Inquiry -- there is no basis for  
15 suggesting that anonymity applications can now be  
16 dispensed with or presumed individuals in the Special  
17 Demonstration Squad or National Public Order  
18 Intelligence Unit can be presumed or simply granted  
19 anonymity on the basis that the Inquiry may not be  
20 looking at them, and particularly when it is said that  
21 that can be done on the basis purely of the documents  
22 where, as we know -- as we have been told -- in relation  
23 to some of the earlier periods, documents we are told  
24 are sparse.

25 Furthermore, we are simply not going to know, if

1           there has been serious wrongdoing, whether that is going  
2           to be reflected -- indeed it is unlikely to be  
3           reflected -- in documents. It is much more likely to  
4           come out if a cover name is released and people are able  
5           to come forward and say, "This is actually what the  
6           officer did". So we say there is no scope safely to  
7           suggest that some officer is not going to need their  
8           conduct examined and particularly given, we say, the  
9           rightful stress of the Inquiry to focus in real depth on  
10          the two relevant units.

11                 As I say, it would appear now in any event that that  
12          has fallen away because it is now being said that all --  
13          certainly from the Metropolitan Police Service point of  
14          view -- applications will be made for all undercover  
15          officers.

16                 Sir, in our submissions we also made two further  
17          points -- this is beginning at paragraph 41 -- of  
18          concern to the Metropolitan Police Service core  
19          participants. One is related to documents. It is  
20          obviously a concern that is now particularly acute,  
21          given the allegations which I know are being  
22          investigated by the Independent Police Complaints  
23          Commission about the destruction of documents.

24                 Sir, you will see there is a proposal that we make  
25          for a permanent presence of the Inquiry within the



1 Metropolitan Police to get a sense of documents,  
2 location, et cetera. Of course, all of that is a matter  
3 for the Inquiry and its resources, but the concern is --  
4 I am sure it is one that is shared -- that it is  
5 critical to understand -- and we appreciate there is  
6 vast quantities of information in different places --  
7 but how best to understand where that is to ensure it is  
8 all preserved to ensure all the relevant material is  
9 obtained.

10 We set out there a proposal in relation to that.  
11 I am told it is paragraph 45 of our written submissions.

12 Finally, Sir, from the written submissions we made  
13 on 23 March 2017 is the question of legal representation.  
14 Sir, you will see we deal with that at the end of our  
15 representations. On behalf of our clients, we wish to  
16 highlight the real difficulties that are being caused by  
17 the requirement they be represented in relation to the  
18 kinds of issues we have heard today by only one counsel  
19 team. The difficulty we face or my clients are facing  
20 is there are nearly 200 -- there are 178 -- individuals  
21 in our group. Understandably within that group there  
22 are significantly different views and significantly  
23 different priorities in relation to a number of the  
24 important issues of principle that are raised.

25 The difficulty we find is that members of the group

1 often find they are exasperated by the fact that -- or  
2 may I put it another way -- what we have found is trying  
3 to reach a consensus can prove extremely difficult and  
4 frankly it proves impossible, often, with the timescale.

5 So in this instance we had, I think, 13 working days  
6 to respond from when we received the Counsel to the  
7 Inquiry's submissions to putting our submissions in. In  
8 that time it proved extremely difficult -- indeed it  
9 proved impossible -- to reach a consensus view that the  
10 vast majority are able to sign up to. People have quite  
11 different opinions which they wish to express.

12 Because of those difficulties, we end up with  
13 submissions that at least leave some members of the  
14 group feeling they have had to compromise their views  
15 for the sake of reaching a consensus and for the sake of  
16 the timetable that is being set. So I would say that we  
17 certainly remain committed as a group to trying to reach  
18 a consensus view and to presenting only one set of  
19 submissions, but where that proves impossible it does  
20 lead to real frustration from those who don't feel that  
21 the submissions they wish to make are being properly  
22 put.

23 We have suggested -- or there is one set of  
24 suggestions in our written submissions and there is  
25 another in the submissions you received directly from my

1 clients on how this issue might be dealt with.

2 THE CHAIR: Is this the document presented by four of the  
3 core participants who attended the meeting on 26 March?

4 MR SQUIRES: Precisely, Sir, yes.

5 THE CHAIR: Were there any legal representatives present at  
6 that meeting?

7 MR SQUIRES: Sir, I'm told there were two legal  
8 representatives present.

9 THE CHAIR: Who were they?

10 MR SQUIRES: Jane Deighton and Mike Schwarz.

11 THE CHAIR: Right.

12 MR SQUIRES: So they make some points --

13 THE CHAIR: Just pause.

14 Are you aware of any representation made in writing  
15 by those four core participants which is significantly  
16 different from the submissions you have just made?

17 MR SQUIRES: Sir, yes. Their submission, which you will  
18 hear from, is a call to release all cover names  
19 I think -- within a month, I think, of this date is the  
20 submission that they were putting forward, which is not  
21 one that I was instructed to put forward on which  
22 a consensus was reached.

23 THE CHAIR: All right.

24 MR SQUIRES: The proposal that you have in our submissions  
25 of 23 March, which we hope is a relatively modest one,

1 is to be able to instruct a second standing junior  
2 counsel.

3 As you will be aware, the other core participants  
4 have standing QCs. We have not asked for that. You  
5 have seen we have had different people on different  
6 occasions instructed for particular hearings. The  
7 benefit of having a second standing junior counsel is  
8 firstly simply to provide assistance and someone who is  
9 able to be up to speed with all of the issues in the  
10 Inquiry, rather than having to come in as leader. That  
11 would have the advantage -- for example, if Ms Brander  
12 is not able to attend the hearings -- in fact, she is  
13 not tomorrow, but it looks like that is not an issue --  
14 we will have somebody else who is able to attend. It  
15 will also give the possibility, if there is a particular  
16 and discrete area which people, our clients, feel there  
17 is something which is not being said on their behalf  
18 because the consensus couldn't be reached, to make brief  
19 additional submissions. So that is the proposal that we  
20 put in those submissions.

21 In the letter of 28 March to which you referred,  
22 written directly by the four core participants, the  
23 suggestion was to be able, where necessary, to instruct  
24 separate counsel to make particular discrete additional  
25 points.

1 THE CHAIR: Mr Squires, I made it clear from the outset that  
2 where there was a contrary view that needed to be  
3 expressed, I would consider granting funding for that  
4 purpose. I have received at least two such requests  
5 which I have rejected on their merits. I did not  
6 receive a request by the four core participants who put  
7 in their late written submissions.

8 MR SQUIRES: Sir, no doubt you will hear from -- I think the  
9 problem there was timing. This may be a more general  
10 matter to raise. Where possible -- we appreciate it is  
11 not always possible -- but the more time that is able to  
12 be afforded to us, the more chance there is of us  
13 reaching --

14 THE CHAIR: I agree entirely. If I may say so, one of the  
15 impressive features of representation on your side is  
16 the cooperative effort that you make before these  
17 preliminary hearings.

18 You will appreciate, I think, that the reason for  
19 the short time-span this time was the need for me to  
20 consult the Home Secretary in the spring, so the sooner  
21 this hearing took place, the better for everyone. I am  
22 sorry that your time was somewhat truncated.

23 MR SQUIRES: Sir, we absolutely appreciate and we do  
24 understand and from our part, of course, we welcome the  
25 matter being pushed forward. We entirely appreciate --

1           this was not in any sense intended as a criticism, but  
2           one of the consequences of that is that it makes the  
3           task extremely difficult --

4   THE CHAIR: I understand that.

5   MR SQUIRES: -- to reach a consensus. That's why we do --  
6           you will see in our written submissions a suggestion for  
7           a second standing junior counsel, who would be able to  
8           play the role, if necessary, of representing something  
9           very brief if there is a minority view that is  
10          unexpressed, but also simply to assist more generally.

11   THE CHAIR: Even if that was done, I would probably ask for  
12          an email to the Inquiry asking for consent to that  
13          course.

14   MR SQUIRES: Do you mean on the individual occasion when  
15          that was done?

16   THE CHAIR: Yes.

17   MR SQUIRES: Sir, yes. Certainly that would, from our point  
18          of view, seem sensible.

19            So finally -- this is just picking up some points  
20          because they were referred to earlier but that are dealt  
21          with in the submissions on the restrictions and  
22          documents protocol. We have made various detailed  
23          suggestions. I'm certainly not intending to go into any  
24          of them, but if I may just raise two issues of general  
25          principle that are raised. Again, these are not likely

1 to be matters for final determination today, but we  
2 would ask if they can be considered.

3 The first is about determinations of relevance and  
4 necessity, which are obviously ongoing matters, and as  
5 the Inquiry receives more documentation it is going to  
6 be making more and more decisions as to what is relevant  
7 and necessary.

8 One issue in relation to that, which again, Sir, you  
9 will see in our written submissions, is a suggestion or  
10 an invitation or an offer from my clients to -- if they  
11 can assist the Inquiry in relation to those matters,  
12 that they be able to do so. In particular one of the  
13 suggestions you will see -- again without any particular  
14 timetable -- is possibly some sort of meeting directly  
15 with my clients so that they are able to express and  
16 explain some of their views and concerns about  
17 necessity. Also, that may well assist in terms of their  
18 understanding and engagement with the Inquiry.

19 We know from the Child Abuse Inquiry that this is  
20 something which had been at some point facilitated in  
21 a slightly different context, and that proposal is  
22 linked to the issue of relevance and necessity because  
23 my clients, many of whom have been living with the  
24 issues raised by this Inquiry in all manner of ways for  
25 some years, have got a lot of knowledge and information

1 and ability also to have a sense of what might or might  
2 not be relevant.

3 So the suggestion that including before the stage  
4 where they are formally giving evidence -- if they are  
5 able to assist and particularly, as I say, through  
6 having a sense, possibly at a meeting, of what they may  
7 be able to contribute, it may be able to add to the  
8 determination of relevance which has been made before  
9 their formal involvement.

10 THE CHAIR: Is this an offer made on behalf of all those you  
11 represent or just some?

12 MR SQUIRES: Sir, I think in those submissions, as with  
13 others -- and I think it was put in a caveat with our  
14 submissions -- they are approved by all of the lawyers,  
15 but not always by each one of the clients. I suspect  
16 that the proposal or the offer would be to meet all  
17 those who were willing and wished to meet. I certainly  
18 don't have instructions from every single person.

19 THE CHAIR: It sounds to me as though you are asking to be  
20 consulted on decisions that I have to make about the  
21 admission of evidence as necessary to fulfilment. Is  
22 that it?

23 MR SQUIRES: Yes, Sir, yes it is.

24 THE CHAIR: That is very reasonable.

25 MR SQUIRES: I am grateful. The suggestion is particularly,



1           if it could be considered, whether there may be some  
2           advantage of that at least on one occasion being done  
3           not through me, but through some -- if some forum could  
4           be arranged directly with those that I represent.

5   THE CHAIR:   What, like a seminar?

6   MR SQUIRES:   Yes, sir.

7   THE CHAIR:   Very unlikely.

8   MR SQUIRES:   That is the proposal.  It was done, I know, in  
9           the Child Abuse Inquiry or some sort of format was  
10          arranged.

11  THE CHAIR:   I don't care whether it was or was not.

12          A seminar will not happen.

13  MR SQUIRES:   That is the --

14  THE CHAIR:   Personal individual interests will always be  
15          considered.

16  MR SQUIRES:   Thank you, Sir.

17                That is the submission on relevance and necessity.

18                A second point on that is really one that I have  
19                already trailed, which is the issue of providing  
20                information that -- I will use this term broadly -- of  
21                personal interest to individuals, information stored on  
22                files, but which the Inquiry considers is not relevant  
23                to the discharge of its functions.

24                That is an issue which I have addressed you on  
25                briefly, but at some point that may well be something

1           that requires at least some sort of formal determination  
2           because certainly our submission is that there is also  
3           a role for the Inquiry in discharging the state's more  
4           general duty to ensure people have access to  
5           information.

6   THE CHAIR:   That may be a very controversial submission and  
7           won't be concluded in my ruling on these applications.

8   MR SQUIRES:   It was really to flag that up as a matter as  
9           the Inquiry is doing the relevant exercise.  I entirely  
10          appreciate and I certainly was not expecting that to be  
11          determined today.  That would be the submission and, of  
12          course, links in with the Data Protection Act  
13          submissions I made earlier.  At some point, if decisions  
14          are being made that certain things are not relevant for  
15          the Inquiry that would fall within this category,  
16          a determination, we say, will need to be made as to  
17          whether that is the appropriate -- whether the  
18          appropriate measure then is to nonetheless ensure they  
19          are disclosed, if they can be, subject to any  
20          redactions, or if the approach is just to send them  
21          back to --

22   THE CHAIR:   Evidence not admitted will not be disclosed or  
23          published.  That is the point.

24   MR SQUIRES:   Sir, then it does lead to this question about  
25          whether there is a wider role.

1 THE CHAIR: You mean a specific responsibility?

2 MR SQUIRES: Sir, yes.

3 THE CHAIR: That is difficult and better await another  
4 occasion.

5 MR SQUIRES: Absolutely, Sir. It was simply to place that  
6 for consideration as necessity decisions -- relevance  
7 decisions start to be made and, if things are starting  
8 to be sent back to the police saying, "Yes, this is  
9 personal details about person X but not necessary for  
10 the Inquiry" -- if is simply being said, "Well, that  
11 goes back to the police", at that stage --

12 THE CHAIR: Once it has, that would open up a different kind  
13 of application to the policemen --

14 MR SQUIRES: The question is whether that should be done in  
15 that way rather than through the Inquiry process because  
16 that takes us back to the Data Protection Act  
17 submissions I made earlier, whereas, as I understand it,  
18 the police's position is, "We are not dealing with any  
19 of them. That is for the Inquiry", which then leaves  
20 one in an impossible position.

21 It is simply to, as I say, flag up -- and I entirely  
22 appreciate that that is not a decision for today, but it  
23 will be a decision if relevant decisions are starting to  
24 be made.

25 THE CHAIR: I think it would be worth your considering

1 writing a short note to the counsel team to the Inquiry  
2 setting out what you say is the correct position in law.  
3 The question is: does the Inquiry have an obligation to  
4 make disclosure of any information which it does not  
5 admit in evidence?

6 MR SQUIRES: That will be very helpful. We will certainly  
7 do that.

8 Sir, the very final point was on the question of  
9 privacy. Certainly for my clients we are grateful for  
10 the changes that have been made to the protocol for  
11 disclosure dealing with individual privacy. It is  
12 obviously a matter of concern to our clients --

13 THE CHAIR: I sometimes think negotiating those protocols  
14 was much worse than negotiating the terms of Brexit, but  
15 thank you for your contribution, which you know has  
16 affected the views of the Inquiry counsel team.

17 MR SQUIRES: Absolutely, Sir. We are grateful for that,  
18 particularly in relation to privacy, which is obviously  
19 an important issue for my clients.

20 Sir, it is something that now will become  
21 an issue -- will become an almost immediate issue -- in  
22 relation to the anonymity applications because it may  
23 well be -- we will see what, Sir, once you have the  
24 complete anonymity applications, the next question will  
25 be: what can be disclosed and by what process should it

1           be disclosed to core participants so that they can  
2           participate?

3           That will be important both in determining how much  
4           can be disclosed to them so they can meaningfully  
5           participate, but also the process to ensure that  
6           information is not disclosed in such a way -- or in such  
7           a way that they are able to make representations if  
8           there are privacy issues that are involved.

9   THE CHAIR:   That is a bit Delphic for me.

10  MR SQUIRES:   I apologise, Sir.

11  THE CHAIR:   If and when the time arises, make specific  
12           submissions to me.  I do not think it is easy addressing  
13           me at this level of generality.  That's why I want these  
14           anonymity applications so that I can deal with real  
15           cases.

16  MR SQUIRES:   Absolutely.  It forms, hopefully, a very  
17           concrete part of our proposed directions because part  
18           of -- one of the stages will be to make disclosure of  
19           the anonymity applications to the core participants --

20  THE CHAIR:   Yes.

21  MR SQUIRES:   -- and that will then begin to raise precisely  
22           this issue.

23  THE CHAIR:   Yes.

24  MR SQUIRES:   It will be the first set of disclosure and  
25           that's when that part of the protocol will bite.  So it

1           was simply to make that point, Sir.

2   THE CHAIR: No more flagging up to be done?

3   MR SQUIRES: No. I have flagged my last one.

4   THE CHAIR: Thank you, Mr Squires.

5           Mr Emmerson?

6   Submissions on behalf of the PETER FRANCIS by MR EMMERSON

7   MR EMMERSON: Sir, I would like if, I may, just to make two  
8           small points on behalf of Mr Francis.

9   THE CHAIR: Yes.

10   MR EMMERSON: I am conscious that I may be swimming against  
11           the tide, but it is our submission that, having regard  
12           to the time that has passed, which you described  
13           yourself, I think, as "possibly wasted", but certainly  
14           passed, and the time that is likely to be occupied with  
15           the resolution of the applications on the timetable that  
16           is proposed by the Metropolitan Police Service, that  
17           this is a moment to pause and see whether there are ways  
18           of simplifying what is a relatively elaborate procedural  
19           architecture.

20           I'm conscious that you and the Inquiry team will  
21           want to consider all options. In any event, this is an  
22           iterative process and if the current proposals don't  
23           work or don't work continuously, then there may be  
24           a need to look again at what is proposed.

25           So with those comments in mind, it is and always has

1           been Mr Francis' position that only exceptionally will  
2           it be necessary to reveal the real name of an undercover  
3           police officer. Indeed, he finds it hard to envisage  
4           any circumstance where that would be necessary for the  
5           fulfilment of your terms of reference; but, conversely,  
6           that it will be almost impossible for the Inquiry to  
7           fulfil its terms of reference if the cover names of  
8           undercover officers are not known to those on whom they  
9           may have conducted surveillance.

10           That, in a sense, if one steps back for a moment, is  
11           the central tension that arises in all of these  
12           applications and in all of the procedural problems that  
13           have beset the Inquiry so far and that have necessitated  
14           the application for an adjournment. It is the public  
15           interest access which lies at the heart of it?

16           Can I, perhaps without sounding jejune, put it this  
17           way --

18   THE CHAIR: Without sounding what?

19   MR EMMERSON: Without being -- "jejune" was the word  
20           I used.

21   THE CHAIR: Could you translate that for me?

22   MR EMMERSON: Without sounding over-simplistic.

23   THE CHAIR: Thank you.

24   MR EMMERSON: The only circumstances in which cover names  
25           might not be disclosable is if there is a compelling

1 jigsaw or mosaic identification risk coupled with  
2 a serious risk of harm if the jigsaw identification risk  
3 were to materialise.

4 That is, in a sense, a prerequisite for the  
5 non-disclosure of a cover name because, if there is no  
6 such risk, then the disclosure of the cover name carries  
7 no public interest objection. So in any case we say  
8 where there is no compelling jigsaw identification risk,  
9 cover names can be safely disclosed immediately. We  
10 have seen the example of Slater and Gordon having done  
11 that in connection with two of their clients, and one  
12 assumes that they must have made an assessment of the  
13 risk of a mosaic identification, otherwise they would  
14 not have been able to reach the conclusion that they did  
15 reach.

16 So we note the position taken on behalf of the  
17 National Police Chiefs' Council by Sir Robert Francis in  
18 the submission at paragraph 33, which, without going  
19 through the whole paragraph, contains the sentence:

20 "If the Inquiry were content for undercover officers  
21 to give statements in their covert identities, there  
22 would be no need for corresponding anonymity  
23 applications."

24 Well, subject to the need to prioritise the question  
25 of jigsaw identification, we would respectfully agree



1 with that. That is how we understand that passage to be  
2 intended.

3 But that being the case, Sir, we would respectfully  
4 submit that the determination of restriction orders in  
5 respect of cover names now needs to be the priority for  
6 the Inquiry. That prerequisite for the non-disclosure  
7 of the cover name needs to be the priority for the  
8 Metropolitan Police. In other words the steps they  
9 should take, we would submit, are to prioritise the  
10 question: is there a credible justification for  
11 believing that there is a significant risk of jigsaw  
12 identification? If the answer to that is "no", then  
13 there is no objection to the disclosure of the cover  
14 name.

15 That would, in one swoop, sort out those which are  
16 potentially likely to have restriction orders because  
17 there could be identification and there could be a risk  
18 of harm and those which could not. So that is one way  
19 we say in which the entire process could be speeded up,  
20 by requiring the Metropolitan Police immediately to  
21 conduct a jigsaw identification exercise as its first  
22 stage across the officer cohort that it is concerned  
23 with, so that you know straightaway whether there are  
24 a number -- and it could be a significant number -- in  
25 relation to whom the cover names could be immediately

1 disclosed --

2 THE CHAIR: But don't you have to go through the whole  
3 process before you can answer that question?

4 MR EMMERSON: That is a question which I have to confess  
5 I do not know the answer to because I don't know how the  
6 procedure will actually work in practice. Obviously  
7 that would presuppose that you could not rule on any  
8 application until you had heard the last one. If that  
9 were right -- if the Metropolitan Police will say -- and  
10 it is a matter for them really to make submissions on  
11 this -- that you cannot know whether there is a risk of  
12 jigsaw identification until you have determined the last  
13 application --

14 THE CHAIR: The point I think, Mr Emmerson, may be that if  
15 you undergo this exercise that you are proposing, it  
16 will have to be a cautious approach. If it is  
17 a cautious approach, how much time is it saving in the  
18 long run because you have to do the whole thing twice?

19 MR EMMERSON: In a sense one can never know for sure how  
20 much time it will save until one has tried the exercise.  
21 It may be that the Metropolitan Police are in a position  
22 to tell you tomorrow that there is nobody in relation to  
23 whom it can safely be said at this point that there is  
24 no risk of jigsaw identification or it may be that they  
25 are in a position to know that a particular part of the

1 cohort that they are looking into have no risk of jigsaw  
2 identification. But that seems to me, with respect, to  
3 be a first step, since it is a prerequisite for there to  
4 be a restriction order, by which the Inquiry could very  
5 quickly identify if there was a group in relation to  
6 whom cover names could be immediately disclosed and then  
7 the Inquiry can substantively -- and the parties -- get  
8 on with their work.

9 It may well need to be refined as time goes on, so  
10 of course you are absolutely right that if there is any  
11 identifiable risk of a jigsaw identification, then the  
12 Metropolitan Police would wish and you would wish to err  
13 on the side of caution.

14 THE CHAIR: You will remember last March maybe in which  
15 there was a passage of conversation between myself and  
16 counsel as to how fairness could operate within this  
17 Inquiry, certainly so far as it affected the activists,  
18 without the cover names being known. So nobody can be  
19 in any doubt as to what my view is about the likely  
20 importance of cover names --

21 MR EMMERSON: Absolutely not, Sir.

22 THE CHAIR: But what it can't do in advance is to give some  
23 kind of blanket authorisation for the release of names  
24 before I understand the risk.

25 MR EMMERSON: Absolutely. Absolutely.

1 THE CHAIR: What I'm saying is, if I cannot do it, how can  
2 they without looking at the whole picture first?

3 MR EMMERSON: Well, I think the short answer to that is it  
4 depends on the factual position in relation to the  
5 cohort. If it is the position that there would be no  
6 individuals who could be ruled out on the basis that the  
7 jigsaw identification principle simply doesn't apply or,  
8 as you said, when they have been contacted, are  
9 themselves not concerned to pursue anonymity, then it  
10 would be possible for early applications to be dealt  
11 with without the need for you to be called upon to make  
12 restriction orders because those who are not in  
13 a position to make restriction orders ought logically to  
14 be the subject of disclosure as soon as ever possible,  
15 given the history.

16 THE CHAIR: So the process applied by the  
17 Metropolitan Police should be designed to identify  
18 likely cases for disclosure of cover names as soon as  
19 possible?

20 MR EMMERSON: Exactly.

21 THE CHAIR: All right.

22 MR EMMERSON: Exactly. That's all the point amounts to,  
23 that if there is to be, as a result of that access -- if  
24 there is to be a cohort of officers whose cover  
25 identities can be disclosed, then there is no reason why

1           they cannot be disclosed at this stage, given that there  
2           would be no basis for making an application to you for  
3           a restriction order unless that link could be shown.

4   THE CHAIR: All right.

5   MR EMMERSON: The second point I can take briefly. We do  
6           respectfully support the alternative laid down in  
7           Counsel to the Inquiry's first set of written  
8           submissions at paragraph 84 that it is in principle open  
9           to you, Sir, since it is entirely your responsibility to  
10          make the decision on risk and restriction orders, to  
11          dispense with what is opinion evidence on behalf of the  
12          Metropolitan Police Service. Certainly the materials on  
13          which any assessment would be based would need to be  
14          before you, but there is no necessity for the opinion  
15          evidence which goes with it to form part of that which  
16          you are required to consider.

17                 So we would align ourselves for that reason with the  
18          submission made by the non-police non-state core  
19          participants and made as an alternative fallback by  
20          Counsel to the Inquiry, that it would be open to you and  
21          appropriate to consider the applications, as would  
22          normally be the case in an inquiry where restriction  
23          orders are placed -- applications for restriction orders  
24          are placed before the chair or panel -- to consider them  
25          on their merits on the basis of the submissions that are

1 made and on the evidence that underlies.

2 It is not that complicated, however it is made to  
3 sound, for Mr Hall to write a submission to you about  
4 one particular witness explaining why there is a risk of  
5 jigsaw identification, for example. It can be made to  
6 sound extremely complex, but actually, that being the  
7 threshold test, Mr Hall is perfectly capable and  
8 perfectly well equipped -- as indeed with respect, Sir,  
9 are you -- to make a decision about whether that  
10 threshold risk arises.

11 So those are our submissions.

12 THE CHAIR: Thank you very much.

13 Is Ms Wilson here?

14 Would you like to come forward to a microphone,  
15 please?

16 Ms Wilson, I intend to finish between 4.10 and 4.15.  
17 Can I repeat that I have read everything you have  
18 written. I just need you to give me the highlights,  
19 please.

20 MS WILSON: I will do my best. I'm very nervous so

21 I apologise --

22 THE CHAIR: Don't worry. Take a deep breath when you need  
23 to.

24 Submissions by MS KATE WILSON

25 MS WILSON: Well, first of all I would like to thank you for

1 giving us this opportunity to speak. I understand that  
2 it is not how things are usually done. It has fallen to  
3 me to speak, but you already mentioned that several of  
4 us signed the letter that was written to you and it was  
5 written because we were asked to write it by a meeting  
6 of over 40 people and a lot of the points that we raised  
7 actually repeat what was sent in a letter on 1 February  
8 2016 and signed by 133 of the core participants.

9 We are all individuals with a very wide range of  
10 experiences who have been very, very deeply affected by  
11 the issues in question here. This Inquiry has very big  
12 implications for our lives. I have heard it said that  
13 the preliminary hearings that deal with legal questions  
14 and questions of process, it is not necessarily  
15 necessary for us to fully participate, and depending  
16 on --

17 THE CHAIR: Excuse me, no. Individually participate in the  
18 hearings, which is different.

19 MS WILSON: We will come to the question of the legal  
20 representation which has been raised already.

21 The issue is that the questions that are being  
22 addressed today very, very deeply affect us and they  
23 affect us in very different ways. I am not the only  
24 person that wanted to be able to speak today and I'm  
25 going to try to do justice to everything that was said

1 and I apologise in advance if I don't manage to do that.

2 We don't want to contradict the submissions made by  
3 Dan Squires, but in the face of the prospect of even  
4 more delays to this Inquiry, some of us really felt that  
5 those submissions didn't go far enough in expressing how  
6 strongly we feel about it. Where I think we differed  
7 with counsel is on what should be done when the police  
8 are obstructing the goals that I think all of us share  
9 and I think even you, yourself --

10 THE CHAIR: Even me?

11 MS WILSON: -- probably share.

12 Yes. Some of us have been really trying to get  
13 answers --

14 THE CHAIR: I'm the one who set the timetable.

15 MS WILSON: Exactly. We have been trying to get answers to  
16 these questions for many years. The last three years of  
17 the Inquiry process is simply an extension of that. We  
18 are not strangers to the blocking tactics used by the  
19 Metropolitan Police to avoid making disclosure. It is  
20 difficult for me to believe -- it came up earlier -- it  
21 is very difficult for me to believe that these delays  
22 are not in bad faith.

23 THE CHAIR: I understand your frustration. Believe me,  
24 anybody in the position of some of you would feel  
25 exactly the same.



1 MS WILSON: And many people do.

2 THE CHAIR: But you must remember that the Inquiry has been  
3 dealing with the Metropolitan Police behind the scenes  
4 for the whole of the last year and I will repeat to you  
5 what I said to Mr Squires, there is a great difference  
6 between what you are saying is deliberate sabotage and  
7 incompetence, failure to plan, and foresight as to what  
8 would be required of them when the crunch came.

9 Now, in March of last year we were told that the  
10 Metropolitan Police were expert at risk assessment.  
11 Well, they are not -- not in the sense that you and  
12 I were led to believe at that time. So I am quite  
13 prepared to accept that there have been failings, but  
14 I want you to distinguish between deliberate actions --

15 MS WILSON: Such as the destruction of documents.

16 THE CHAIR: That is nothing to do with what we are  
17 discussing today --

18 MS WILSON: I understand that.

19 THE CHAIR: -- which is risk assessment.

20 MS WILSON: But it adds to the frustration.

21 Anyway, the points that we raised in our letter are  
22 the question of the disclosure of cover names which has  
23 been discussed a lot, also the list of the groups that  
24 were spied on and the data that is held on us as core  
25 participants, starting with the Special Branch registry

1 files. All of this information is fundamental to the  
2 Inquiry and to us being able to reach the truth about  
3 what happened.

4 THE CHAIR: It is fundamental to your interests to get as  
5 much as you can as soon as you can --

6 MS WILSON: Absolutely.

7 THE CHAIR: -- but I have different responsibilities, which  
8 I must fulfil.

9 MS WILSON: I understand that. I wanted to say about the  
10 files that, in terms of your responsibilities to release  
11 the files, the fact that not all of the information in  
12 those files has been obtained through infiltration or  
13 that they include information that is in the public  
14 domain doesn't mean they are not relevant. As we have  
15 come to understand --

16 THE CHAIR: This is an argument for another day, as I said  
17 to Mr Squires --

18 MS WILSON: Right. Okay.

19 THE CHAIR: -- not for today.

20 MS WILSON: Okay. In that case we will not have that  
21 argument.

22 THE CHAIR: Thank you.

23 MS WILSON: The other issue is the question of delays.  
24 I wanted to say that actually a friend of mine who was  
25 a core participant has died recently without ever

1 finding the truth.

2 THE CHAIR: I'm very sorry to hear that.

3 MS WILSON: We were both among the younger core participants  
4 involved in this case and there are many, many elderly  
5 people who are affected. So I just wanted to stress  
6 that this is a -- it is a really urgent matter, and when  
7 you are considering the calls for further extensions and  
8 the tranches, just to think about what is at stake.

9 To say that -- the police have had ample time to  
10 prepare. I mean, I have personally been sitting across  
11 courtrooms from Jonathan Hall for at least four years,  
12 so it is extremely exasperating to hear him saying that  
13 the police are making a standing start. You just have  
14 to -- did they not see this coming?

15 The Inquiry has been in place for three years, the  
16 court cases started six or seven years ago on these  
17 matters and they are still not prepared to make any  
18 disclosure. I don't think it is just incompetence. Up  
19 until now, only seven names, as I understand it, have  
20 been confirmed. They are all registered in the public  
21 domain, but they are not even all of the names that are  
22 in the public domain.

23 The woman who was deceived by Mark Jenner into  
24 a relationship of over five years is still waiting for  
25 official confirmation that he was a police officer,

1           despite having received compensation and an apology from  
2           the Metropolitan Police.

3   THE CHAIR:  Ms Wilson, I'm very sorry, but you are  
4           retreading submissions that I have already heard.  It  
5           does not help you.

6   MS WILSON:  One of the reasons why we wanted to speak today  
7           was because one of the things that we are very  
8           frustrated about is a sense of a massive power imbalance  
9           within this Inquiry.  I'm not legally trained and six  
10          years of court battles with the police have been a steep  
11          learning curve, but I'm not bringing any legal know-how  
12          to this session.

13  THE CHAIR:  You are a very good public speaker.  Seriously  
14          you are.

15  MS WILSON:  Thank you.  I don't feel it.

16  THE CHAIR:  Don't think I have not applied my mind to all  
17          this before.  The process which I have approved is fair.  
18          I cannot spend public money on having 200 people with  
19          pretty well similar interests being able to conduct  
20          individual submissions on preliminary issues.

21  MS WILSON:  We are not asking for 178 people to be allowed  
22          to make individual submissions.  The things that we are  
23          asking for are for our own solicitors -- which I think  
24          is 11; it is not 200 by any stretch -- to have the  
25          possibility, where their clients have very particular

1 interests that they want represented, to be here to  
2 advise counsel. That is one of the fundamental --  
3 THE CHAIR: To advise their counsel --  
4 MS WILSON: To instruct counsel. Instead of having a single  
5 solicitor --  
6 THE CHAIR: Your own counsel?  
7 MS WILSON: No, no. We are not objecting to the principle  
8 that the non-state core participants are represented,  
9 where there is not a significant difference of opinion,  
10 by a single counsel. We are asking for our own  
11 solicitors to be able to instruct them.  
12 THE CHAIR: On a preliminary issue?  
13 MS WILSON: On a preliminary issue.  
14 THE CHAIR: Nobody must think that when it comes to giving  
15 witness statements and evidence that everybody is going  
16 to have the same representation. They are not. But  
17 where the interests are truly shared, then it is only  
18 right that we should have one voice, if possible.  
19 MS WILSON: We agree to having single counsel. What we  
20 request is that the solicitors who have been working  
21 with us for years, who understand our cases, be funded  
22 to instruct that counsel at the hearings if their  
23 clients feel it is necessary.  
24 THE CHAIR: Okay. Thank you for that. I will have to think  
25 about it and the ramifications.

1 MS WILSON: Then on the issue of alternative counsel that  
2 was raised by Dan, there is a problem with the need to  
3 apply for consent to fund that alternative counsel. The  
4 first thing is that, because we are not legally trained,  
5 we sometimes just need a second opinion, and it has  
6 happened that we have instructed alternative counsel,  
7 they have explained things, we have had a second opinion  
8 and we have gone "Okay". It is very exceptional that  
9 there has been a difference of opinion between core  
10 participants.

11 The problem is that, because of the time and also  
12 because, if there is a difference of opinion, by the  
13 time we have worked it out there is very little time  
14 left to instruct the alternative counsel, then we come  
15 to apply to you and we are actually having to make the  
16 argument to explain that there is a difference of  
17 opinion and what it is for you to judge it on its merits  
18 without having been able to work through it properly  
19 with counsel because we don't have funding --

20 THE CHAIR: So the application itself --

21 MS WILSON: The application to you --

22 THE CHAIR: -- is unsatisfactory?

23 MS WILSON: We need help from an alternative counsel in  
24 order to be able to make the application to make  
25 alternative representations.

1 THE CHAIR: I will think about that too.

2 MS WILSON: I'm completely lost in my notes.

3 THE CHAIR: Can I remind you that it is nearly quarter past?

4 MS WILSON: The other thing I would say: it is absolutely

5 terrifying for me to be standing here and it is very,

6 very difficult for us as core participants to trust this

7 process and that is nothing personal --

8 THE CHAIR: I understand.

9 MS WILSON: -- but just we are standing here at the heart of

10 the British state in some very intimidating rooms in

11 a very intimidating building.

12 There are not enough seats for the core

13 participants. My father came to hear me speak and there

14 was standing room only and he had to leave --

15 THE CHAIR: I am sorry to hear that.

16 MS WILSON: -- and there is massive array of state lawyers

17 who, from our perspective, are basically trying to

18 obstruct our access to the truth.

19 THE CHAIR: Please could I give you a note of explanation?

20 We have been in court 73 before, which was big enough,

21 I think, or we have had an overspill. We have to make

22 an assessment every time.

23 MS WILSON: It doesn't solve this sense of the state -- no

24 offence to any of you -- of the state lining up against

25 us to try to obstruct our access to the truth.

1 THE CHAIR: You think that includes me, do you?

2 MS WILSON: I hope not, but I don't know.

3 THE CHAIR: All right. I have heard you.

4 Any more?

5 MS WILSON: I think that is it. I mean, one last thing

6 I would like to say is I think there is a lot of strong

7 feeling that we need to remember who is being

8 investigated here. I am flabbergasted at how much

9 control the police, who are the abusers in this

10 situation, have over the evidence, over the process and

11 I really feel like we need to put the victims of

12 undercover police abuses at the centre of the Inquiry

13 process.

14 THE CHAIR: Thank you everyone for today.

15 We will recommence at 10.00 tomorrow morning. Is

16 Ms Steel here?

17 MS STEEL: Yes.

18 THE CHAIR: Will you be ready at 10 o'clock tomorrow?

19 MS STEEL: Yes, I will be, yes.

20 THE CHAIR: Thank you very much.

21 Right.

22 (4.16 pm)

23 (The hearing adjourned until 10.00 am, Thursday,

24 6 April 2017)

25