

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 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 respectively 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 Catt¹, 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 --

¹ [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 rereading 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