

## Update note June 2017

### Introduction

This is the Undercover Policing Inquiry's fifth update note. The purpose of these updates is to give a broad overview of the work that is being done by the Inquiry to progress its terms of reference and to explain in more detail some of the aspects of the Inquiry's work.

### Progress since the March update

On 31 May 2017 [the Home Office announced](#) that Sir John Mitting had been appointed as a panel member to the Inquiry and will succeed Sir Christopher Pitchford as Chairman at a date to be decided.

The Inquiry held [a preliminary hearing on 5](#) and [6](#) April 2017 to consider requests from the Metropolitan Police Service around the timing and approach to the Inquiry's investigation of the Special Demonstration Squad, the hearing also heard submissions from core participants on the topic. Further to the hearing the Chairman [issued a Ruling on 2 May 2017](#), and subsequent [directions on 18 May 2017](#). The directions set out the approach to be taken to anonymity applications by the Metropolitan Police Service with a view to the Inquiry receiving applications in monthly tranches through July, August and September. The 2 May ruling also set out the approach the Inquiry would take in respect of seeking evidence from all former officers employed by the Special Demonstration Squad.

The Inquiry continues to consider applications for anonymity from the Metropolitan Police Service. Anonymity applications are carefully considered on a case-by-case basis. It is anticipated that the Inquiry will hold hearings on anonymity in the autumn. The Inquiry continues to collect and assess potentially relevant documents on a large scale and to review evidence.

### Since March 2017 the Inquiry has:

#### *Module One (deployment of undercover police officers in the past)*

- Confirmed the names of two further undercover officers, [Roger Pearce – 'Roger Thorley'](#) and [Michael Chitty – 'Mike Blake'](#)
- Made a [restriction order over the identity of 'Jane'](#)
- Continued to review applications for core participant status, and made two new designations where the applicant demonstrated that they played (or may have played) a direct and significant role relating to the Inquiry's terms of reference, and where the

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applicant's experience is of important interest to the subject matter of the Inquiry. One application was not granted. [The ruling is here](#)

- Continued to invite and consider applications for anonymity from police officers within the Special Demonstration Squad and the National Public Order Intelligence Unit. This involves, where necessary and prior to publication, third party enquiries being made of close relatives affected by the use of a cover name taken from a deceased child, or with individuals known or believed to have had relationships with an undercover officer
- Continued to seek and receive evidence from police forces and state bodies relevant to the terms of reference, and to review that material for relevance
- Reviewed a substantial body of material and evidence from Operation Elter (which is examining material in relation to the National Public Order Intelligence Unit)
- Opened up a number of lines of investigation around specific Special Demonstration Squad deployments
- Commenced the investigation of material provided by regional police forces; in particular material requested by the Inquiry to show where there were failings in undercover operations. A number of deployments are now under more detailed investigation.

### *Module Two (management and oversight of undercover police officers)*

- Continued to receive material provided voluntarily and in response to rule 9 requests from the National Crime Agency, the Home Office, the College of Policing, Her Majesty's Inspectorate of Constabulary, the Metropolitan Police Service and the National Police Chiefs' Council
- Assessed module two material for relevance and necessity in order to develop relevant lines of enquiry
- Issued further rule 9 requests asking for the provision of witness statements and material likely to be relevant to Module Two, including requests to the Metropolitan Police Service, Her Majesty's Inspectorate of Constabulary, the Cabinet Office, and regional and national policing units and bodies
- Continued to seek evidence about the role of Special Branch in overseeing undercover policing carried out by the Special Demonstration Squad and others
- Assessing applications for restriction orders made over documents deemed to be relevant and necessary to Module Two

- Continued to correspond and issue rule 9 requests to the Metropolitan Police Service around issues of document retention and assurance.

## **Inquiry Administration**

### *Additional Inquiry panel member*

The Home Office has appointed an additional panel member, Sir John Mitting, who will take over from Sir Christopher Pitchford at a date to be announced. Details are available on the Inquiry's website [www.ucpi.org.uk](http://www.ucpi.org.uk).

### *Inquiry progress and strategic review*

The Chairman had committed to a strategic review of the Inquiry's work and to write to the Home Secretary to provide a revised time table for the Inquiry in the spring of this year. Following the hearing in April, the Chairman updated the Home Secretary, providing her with his views on the future of the Inquiry by way of the [Ruling of 2 May 2017](#). Work on the strategic review is ongoing. At this stage it is unlikely that oral hearings of evidence can commence before the second half of 2019. More detailed information on a revised timetable will not be available until the completion of the strategic review. The review itself is being informed by the issues raised at the hearing on 5 and 6 April 2017, and the matters as set out in the Chairman's [Ruling of 2 May 2017](#).

### *Data Protection*

At the hearing on 5 and 6 of April 2017 the non-state core participants raised issues around data protection and the Chairman agreed that it would be helpful to explore the issue in further detail when he had received written submissions from the non-state core participants. Those submissions have now been received and are being considered.

### *Information Assurance*

Since the last update the Inquiry has continued to issue rule 9 requests for witness statements and documents to maintain assurance on document preservation. In particular the Inquiry has sought assurance in relation to the unit that is the subject of [current investigations by the Independent Police Complaints' Commission](#) concerning allegations of inappropriate handling and destruction of material. Further signed witness statements have been obtained, underlying material has been requested from witnesses associated with the unit and those who have been involved in securing material within and from the unit, including Operation Elter. This information is being analysed and the Inquiry has conducted its own inspection 'in situ' of a particular set of records which has provided assurance in relation to those records. This work continues.

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The March 2017 update explained how the Inquiry has been identifying and securing access to relevant information to enable it to fulfil its terms of reference, and in parallel seeking assurances about document preservation from police forces and units, and other state bodies.

The assurance approach to particular police forces and other bodies and their material is subject to regular review by the Inquiry, and varies depending on the responses received and any other information that comes to the Inquiry's attention and which may affect its view on the security of certain types or sources of information.

## *Disclosure and Restriction Protocols*

The Inquiry has published a [response to a consultation of the protocols](#) and has now published the protocols that set out the way in which we receive [disclosure](#) and apply any necessary [restrictions](#). These protocols are initially for the Inquiry's dealings with the Metropolitan Police Service, but they will be applied with any necessary adaption to other core participants. For this reason we consulted widely on drafts of these documents.

## *Witness statements*

The Inquiry has published for consultation its approach to [taking evidence from witnesses](#). Observations on the draft protocol are invited by 4pm on Monday 7 August 2017. The '[A focus on...](#)' section below provides more detail on the topic.

## *Rehabilitation of Offenders Act 1974*

The Inquiry has received and is considering submissions on the potential impact on its work of the Rehabilitation of Offenders Act 1974. It intends to issue an update on this issue within the next month.

## *Costs*

As 31 March 2017 the Inquiry has spent just under £5,780,000. A full breakdown of the Inquiry costs is available on the [Inquiry website](#).

## **Next steps**

The next steps for the Inquiry are to:

- Continue the process of receiving, considering and determining anonymity applications by key individuals
- Continue the process of requesting, receiving, reviewing and analysing documents and witness statements from state bodies

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- Continue to investigate the activities of individual undercover police officers
- Respond to the submissions on data protection provided by the non-state core participants in response to the request made by the Chairman at the hearing in April
- Take forward the issues raised around the Rehabilitation of Offenders Act 1974
- Receive and consider any responses to our consultation on the draft Witness Statement Protocol, amend the draft as appropriate and issue a finalised version
- Circulate a draft list of issues for Module One for consultation
- Recruit additional personnel to enable the Inquiry to process information and documents being received from state bodies.

### Looking further ahead

- We will complete a strategic review that will aim to obtain a more sophisticated estimate of how long the Inquiry will take on the current model. The strategic review will also consider whether there are realistic alternative models and what their consequences would be
- After the completion of the strategic review we intend to publish an indicative timetable for the Inquiry's delivery
- We will continue our review of the evidence provided to the Inquiry to date, as well as seeking further evidence, and following lines of enquiry that arise as a result of our ongoing work
- We will issue further Rulings on anonymity applications
- We will publish details of undercover officers where restrictions do not apply
- In addition to the above we may also issue additional rulings that determine further applications for core participant status, and associated rulings on recognised legal representation and costs.

## A focus on...

From time to time the Inquiry aims to provide a bit more detail on certain aspects of the Inquiry. For this update we are focusing on the process that the Inquiry proposes to follow to obtain *witness statements*

### *Witness statements*

This section covers the broad approach the Inquiry will take to obtaining witness statements. Further detail is available in the recently published [Draft witness statement protocol](#).

A witness, for the purposes of the Inquiry, is any person who the Inquiry intends to take evidence from. All witnesses who provide evidence will be expected to provide a witness statement. The evidence of a witness may also be given orally, at a hearing. In the course of our work, the Inquiry will take evidence from a wide range of people, extending well beyond the ranks of those who have been granted core participants status. The Inquiry continues to welcome contact from those who have evidence relevant to its terms of reference.

It is important to note that the Inquiry is required, by rule 9(1) of the Inquiry Rules 2006, to seek a witness statement by way of formal rule 9 request - this applies whether or not the witness is willing to give evidence and means the Inquiry has to write to all people it wants to take evidence from. Requests for evidence will either be sent to the witness's legal representative or directly to the witness themselves. The request will set out a description of the matters to be covered by the statement. The rule 9 request will set a time limit for responding to the request with the statement. Time limits will vary depending on the nature and extent of matters to be covered by the statement; any request for further time within which to respond must be made promptly and explain clearly how much further time is required and why.

The Chairman does have the power to compel the production of evidence, under section 21 of the Inquiries Act 2005, but our hope is that this power will only be rarely used.

A witness who has been sent a rule 9 request asking for a witness statement may draft the statement with their legal representative or may draft it without assistance. Alternatively a witness may ask for a meeting with one of the Inquiry solicitors (also attended by their legal representative, if they have one). It is important to note that the Inquiry's solicitors will only become involved in the process to assist in recording or finalising the statement; they will not be seeking to elicit evidence through questioning nor direct the content or thrust of the witness statement. It is very important to the independence of the Inquiry that the evidence is from the witness direct, informed by the guidance contained in the rule 9 request.

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For the purposes of the Inquiry, a witness statement should begin by setting out the date of the rule 9 request to which it responding, and a brief summary of the topic which the statement has been asked to cover. Where the statement is made on behalf of a government body, or an employer, it should make clear on whose behalf it is made.

Statements should be written in plain English and should be accessible to those with no previous knowledge of the subject matter covered, for that reason the use of acronyms is discouraged.

The Inquiry is aware that those who provide it with statements may wish to refresh their memories before finalising their statement from contemporaneous documents either held by themselves or by a third party. Where the document is held by the witness themselves, or by any employer, then the document may be seen by the witness before their statement is finalised provided that a clear reference to that review is made in the statement and, in the event that the document has not already been provided to the Inquiry, it is appended to the statement.

If the witness does not have access to documents that exist which would help inform the contents of their statement, then details of the documents should be provided to the Inquiry who will provide further guidance to the witness as to how to proceed.

The final statement should end with the words 'I believe the contents of this statement to be true', immediately above the signature of the statement maker.

Once the content of the statement has been finalised, it should be signed and dated. The statement will need to show the full name of the witness and the date on which it was signed on the front page.

It is also important that witnesses understand that they should provide comprehensive evidence in their statements, and should not omit details that they do not wish to be published. Whether or not the content of the statement may be published is a matter which the Chairman will consider, under his power to restrict evidence, once the statement has been completed and signed. For example, witnesses seeking anonymity should sign a statement in their true identity (but also referencing other pseudonyms); the Inquiry will not publish the statement until it has determined whether the identity of the maker should be restricted (and therefore redacted) and, if so, the extent to which that also requires consequent redaction to the statement of other identifying detail.

Once a witness statement has been finalised it will be published at a time considered appropriate by the Inquiry, with particular reference to the need not to taint or prejudice forthcoming evidence hearings.

## Key Inquiry statistics:

As at 15 June 2017 the Inquiry has:

- held six preliminary hearings;
- made more than 380 'Rule 9' requests for information from more than 50 organisations;
- made three section 21 request for information;
- received over one million pages of evidence from the Metropolitan Police Service alone<sup>1</sup>;
- received 335 witness statements (not including further or replacement statements);
- published 13 sets of directions;
- published 44 rulings;
- published 11 Chairman's notes;
- published 32 orders;
- published 10 notes by Inquiry counsel;
- designated 205 core participants, of whom 180 are receiving funding for legal costs from the Inquiry;
- recognised 25 legal representatives;
- received more than 55 formal submissions and position statements from core participants and others;
- published determinations in respect of 31 anonymity applications;
- received around 37 tranches of voluntary disclosure; and
- 35 people to work with the Chairman as part of the Inquiry team.

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<sup>1</sup> Not all of the documents provided are relevant. For example, on one drive which has undergone preliminary review by the Inquiry, nearly 120,000 documents were provided of which over 90,000 comprise non-user generated files such as executable and help files for standard applications, printer drivers and manuals and other similar "documents" which are very unlikely to advance the Inquiry's investigations.



## Questions and queries

The Inquiry has a full set of [frequently asked questions](#) covering matters such as how the Inquiry can be contacted, how people can engage with its processes, and what it means to be a core participant.

## Background

The Inquiry is an independent inquiry, led by a senior judge, Sir Christopher Pitchford, and supported by panel member, Sir John Mitting. The Inquiry was established under the Inquiries Act 2005 by the then Home Secretary to look at undercover policing in England and Wales since 1968.

The Inquiry's role covers undercover policing in its broadest sense; it is not limited to particular types of undercover policing<sup>2</sup>, its terms of reference are widely drawn and they require the Inquiry to find out what happened, and why, and to make recommendations as to how undercover policing should be carried out in future.

Sir Christopher Pitchford made his opening statement on 28 July 2015. In this statement he said,

*"I hope that during the course of its work the Inquiry will acquire a clear impression as to the manner in which undercover policing has been conducted in England and Wales since 1968. It seems likely that the Inquiry will expose both creditable and discreditable conduct, practice and management. As far as I am aware, this is the first time that undercover policing has been exposed to the rigour of public examination. At the conclusion of its investigation, the Inquiry will report to the Home Secretary and make recommendations as to the deployment of undercover police officers in the future...The Inquiry's priority is to discover the truth. This is a public inquiry to which, as the name implies, the public will have access."*

The Inquiry's work will fall into three modules:

**Module One** will look at what happened in the deployment of undercover officers in the past, their conduct, and the impact of their activities on themselves and others.

**Module Two** will look at the management and oversight of undercover policing. In particular it will look at the authorisation of and justification for undercover police operations. This will include the role not only of police forces but also that of other

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<sup>2</sup> The Inquiry is not restricted to political and social justice campaigns. It does not cover surveillance activities undertaken outside of undercover policing operations. The Inquiry's activities are limited to England and Wales.

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government departments such as the Home Office. In relation to undercover police officers, it will look at issues such as their selection, training, supervision and care after the end of an undercover deployment.

**Module Three** will be forward-looking and take evidence to assist the Chairman to make recommendations about how undercover policing should be conducted in future. It is anticipated that the Inquiry will receive evidence from expert witnesses and evidence about best practice in other jurisdictions.

## Contacts

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