IN THE UNDERCOVER POLICING INQUIRY

SUBMISSIONS ON BEHALF OF
THE NON-POLICE, NON-STATE CORE PARTICIPANTS
RE
THE CHAIRMAN'S 'MINDED TO' NOTE DATED 3 AUGUST 2017
CONCERNING RESTRICTION ORDER APPLICATIONS

INTRODUCTION

1. These submissions are made on behalf of the non-police, non-state core participants ['NPSCPs']. They address the 'minded to' indications given by the Chairman in his note dated 3 August 2017 ['the minded to note']. Submissions are made in relation to:
   a. Part 1: the overall approach to the granting of restriction orders indicated by the minded to note;
   b. Part 2: closed hearings;
   c. Part 3: the generic evidence in support of restriction order applications;
   d. Part 4: the specific minded to indications.

2. The NPSCPs' overarching submission is that, despite its assertion to the contrary[1], the minded to note fails to follow the legal principles identified in the previous Chairman's 85 page ruling on the applicable legal principles ['the legal principles ruling'] and is fundamentally flawed. It contains not a single reference to open justice or the value to be attached to it. This is in stark contrast to the legal principles ruling which makes clear that openness and accessibility is the starting point in the Inquiry's proceedings, in conformity with section 18 of the Inquiries Act 2005 and the common law presumption of open justice[2]. Nor do the reasons provided in the minded to note indicate that the factors identified in the legal principles

[1] Minded to note [20].
[2] Legal principles ruling [89] and A11.

ruling as telling in favour of openness have been weighed in the balance, properly or at all.

PART 1: THE OVERALL APPROACH TO RESTRICTION ORDERS

Failure to acknowledge the correct starting point and to take account of the public interest in openness

3. The legal principles ruling makes clear that:
   a. the starting point in the Inquiry's proceedings is openness[3];
   b. this is because the "whole point" of the Inquiry is to allay the public concern that caused the Secretary of State to institute the Inquiry in the first place[4]; and
   c. privacy would tend to damage public confidence in the Inquiry's ability to get at the truth and, secondly, unpublished and untested evidence would tend to increase speculation about the reliability and impartiality of the Inquiry process.[5]

4. The NPSCPs do not contend that this means that restriction orders can never be justified in the context of this Inquiry. But it does mean that a decision to grant a restriction order will not be lawful unless it acknowledges the public interest in the openness of the Inquiry, weighs it in the balance and addresses why the factors identified in the legal principles ruling as telling in favour of openness are outweighed by the countervailing interests in favour of restriction. The minded to note fails to do this.

5. The consequences of the approach indicated by the minded to note would be a one-sided Inquiry that is largely limited to the police's own account. This would neither restore public confidence nor allay public concern. For the reasons developed below, the current approach indicated in the

[3] Legal principles ruling [82] – [89].
[4] Ibid. [82].
[5] Ibid. [104].

minded to note is materially flawed and were restriction order decisions to be taken on that basis they would be unlawful.

Why openness is important in this Inquiry

6. As the legal principles ruling rightly acknowledges, this Inquiry was established to investigate matters of very significant public concern: see paragraphs 6, 90 and 91 of the ruling[6]. The severity of public concern was acknowledged by the then Home Secretary when she announced the Inquiry's terms of reference, describing the undercover policing practices unearthed by Mark Ellison QC as "appalling"[7] and "profoundly disturbing[8]". This was reiterated on her behalf by Mr Griffin QC during the legal principles hearing. Mr Griffin also acknowledged the importance of the Inquiry as a means of restoring public trust and confidence in the police:

> "[52]Mr Griffin QC emphasises the seriousness with which allegations of misconduct in undercover policing have been and are treated by the Secretary of State, who is committed to restoring public confidence in the police "by uncovering the truth of these allegations, and doing so in as open a way as possible." …";
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> "[53]… Mr Griffin QC reminded the Inquiry that the Secretary of State had expressed her "shock and grave concern" at the contents of the reports of Mr Mark Ellison QC into the allegations made by Peter Francis and others. There is, Mr Griffin submitted, a "need for the greatest possible scrutiny into what has taken place" and it is "imperative that public trust and confidence in the police is maintained". In the Secretary of State's view "the public must have confidence that the behaviour described in both the Ellison Review and the Operation Herne reports is not happening now and cannot happen in the future"…"

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[6] See also [101] of Ruling of 2 May 2017 re MPS application for extension of time.

[7] https://www.gov.uk/government/news/home-secretary-announces-terms-of-reference-for-undercover-policing-inquiry.

[8] www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140306/debtext/140306-0002.htm

7. The importance of openness was reiterated by the then Chairman in his ruling of 2 May 2017:

> "The public concern expressed by the then Home Secretary that caused her to commission the Inquiry notwithstanding the earlier publication of the Operation Herne and Ellison reports, and the breadth of the Inquiry's terms of reference demonstrate the need for a statutory, and therefore, so far as possible, public inquiry into undercover policing generally, and the infiltration of social justice campaigns by the Special Demonstration Squad and the National Public Order Intelligence Unit, in particular."[9]

8. In a democratic society with policing by consent, which "*depends on public approval of their existence, actions and behaviour and on their ability to secure and maintain public respect*"[10], the importance of maintaining public confidence in the integrity of the police is a very significant public interest.

9. The legal principles ruling explains the link between the openness of the Inquiry's proceedings and its ability to allay public concern:

> "[93] Having regard to the expressions of public concern already made by the Secretary of State and by elected representatives in the House of Commons about the subject matter of this Inquiry it seems to me doubtful that the public's concern will be allayed by an investigation held largely in closed proceedings from which the public and non-police core participants are excluded."

> "[102] …In the nature of things closed hearings of most of the relevant evidence would tend to undermine the objective of the Inquiry to allay the concerns of *the public* even if the conclusions

[9] Ruling of 2 May 2017 on MPS application for extension of time [157(i)].

[10] https://www.gov.uk/government/publications/policing-by-consent/definition-of-policing-by-consent.

and recommendations of the Inquiry were useful to the sponsoring department of Government."

10. It is of note that the Ellison review itself acknowledged the limits of its ability to make definitive findings concerning Peter Francis' claims, because of its inability to test the competing accounts of Peter Francis as against other SDS officers. Ellison considered that a public inquiry that can see and hear the evidence being tested, and which also considers the wider potential SDS issues raised, might be better placed to make definitive findings[11].

11. Further, lest it be suggested, as it has previously been on behalf of the MPS, that it may be sufficient for the Inquiry to test the evidence in closed hearings[12], that was a position that was squarely rejected by the previous Chairman in the legal principles ruling. The Chairman recognised three significant reasons why this could not be the case:
    a. In order for the Inquiry to fulfil its objective of allaying public concern, it is necessary for there to be public confidence in its conclusions and that in turn requires public confidence in its process – and that requires openness[13];
    b. In relation to many of the central issues in the Inquiry, it will be necessary to obtain evidence from non-state witnesses in order to make a properly informed determination. It will not be possible to do this without relevant disclosure being made[14];
    c. Fairness requires that those with a legitimate interest in the Inquiry are able to participate in its proceedings. And that requires openness[15]. The Chairman in his ruling of 2 May 2017 viewed it now to be "generally accepted that the disclosure of cover names is

[11] Ellison, summary of findings p.30.
[12] See legal principles ruling [101].
[13] Ibid [35]; [93]; [101]-[104] & A3.
[14] Ibid. [110]-[111].
[15] Ibid. [106]-[109], [111], [112].

necessary, where possible, to enable core participants, witnesses and the public to participate effectively in the Inquiry."[16]

12. These conclusions reflect the general importance attached to open justice, which is "one of the most precious in our law" [Baroness Hale, R (C) v SSJ [2016] 1 WLR 444 [1]; Lord Dyson, Al Rawi v Security Service [2012] 1 AC 531 [10] & [11]] and "at the heart of our system of justice and vital to the rule of law" [Lord Toulson, R (Guardian News & Media Ltd) v City of Westminster Magistrates Court [2013] QB 618 [1]]. See also Lord Judge CJ in R (Mohamed) v Secretary of State for Foreign and Commonwealth Affairs (No 2) [2011] QB 218 at [38] & [39]:

> "[38] … The public must be able to enter any court to see that justice is being done in that court, by a tribunal conscientiously doing its best to do justice to law. For that reason every judge sitting in judgment is on trial. So it should be, and any exceptions to the principle must be closely limited…
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> "[39] There is however a distinct aspect of the principle [of open justice] which goes beyond the proper scrutiny of the processes of the courts and the judiciary. The principle has a wider resonance, which reflects the distinctive contribution made by the open administration of justice to what President Roosevelt described in 1941 as the "first freedom of speech and expression". In litigation between the executive and any of its manifestations and the citizen, the principle of open justice represents an element of democratic accountability, and the vigorous manifestation of the principle of freedom of expression. Ultimately it supports the rule of law itself."[17]

[16] 2 May 2017 ruling [191].

[17] This passage was also cited with approval by Lord Neuberger in Al-Rawi v Security Service [2012] 1 AC 531 at [17].

13. The rule of law and the democratic requirement that governments be held to account mean that the case for disclosure will always be very strong in cases involving alleged misconduct on the part of the state: Lord Clarke JSC, Al Rawi & others v The Security Service & others [2012] AC 531 at [102]. In the context of a public inquiry into alleged police misconduct it is legitimate to place a "premium on achieving as public an Inquiry as possible, 'so that at the least to counter or neutralise the obvious alternative surmise, namely a sustained 'cover up'": Laws LJ citing the chairman of the Azelle Rodney Inquiry in R (E) v Chairman of the Inquiry into the Death of Azelle Rodney [2012] EWHC 563 (Admin) at [26].

14. The free flow of information and ideas to inform political debate is also relevant to the allaying of public concern:

> "It is a safety valve: people are more ready to accept decisions that go against them if they can in principle seek to influence them. It acts as a brake on the abuse of power by public officials. It facilitates the exposure of errors in the governance and administration of justice in the country…" [Lord Steyn in R v SSHD, ex p Simms and O'Brien [2000] 2 AC 115, 126F-G]

15. The importance of the public being able to know and the media being able to report on the names of those involved in proceedings has also been emphasised:

> "What's in a name? "A lot", the press would answer. This is because stories about particular individuals are simply much more attractive to readers than stories about unidentified people. It is just human nature. And that is why, of course, even when reporting major disasters, journalists usually look for a story about how particular individuals are affected. Writing stories which capture the attention of readers is a matter of reporting technique, and the European court holds that article 10 protects not only the substance of ideas and information but also the form in which they are conveyed: News Verlags GmbH & Co KG v Austria 31 EHRR 246, 256, para 39… More

succinctly, Lord Hoffmann observed in Campbell v MGN Ltd [2004] 2 AC 457, 474, para 59, "judges are not newspaper editors". See also Lord Hope of Craighead in In re British Broadcasting Corpn [2010] 1 AC 145, para 25. This is not just a matter of deference to editorial independence. The judges are recognising that editors know best how to present material in a way that will interest the readers of their particular publication and so help them to absorb the information. A requirement to report it in some austere, abstract form, devoid of much of its human interest, could well mean that the report would not be read and the information would not be passed on. Ultimately, such an approach could threaten the viability of newspapers and magazines, which can only inform the public if they attract enough readers and make enough money to survive."

[Lord Rodger in In re Guardian News and Media Ltd and others [2010] 2 AC 697 [63]; see also Lord Steyn in In Re S (A Child) [2005] 1 AC 593 at [34]].

16. The applicability of the principle of open justice and the factors underpinning it in the context of public inquiries has been confirmed at the highest level: Kennedy v Charity Commission [2015] AC 455.

17. The public interest in openness also finds expression in Article 10 ECHR. While Article 10 does not guarantee a right to be provided with information, where information which would otherwise be imparted is subject to restriction, such restriction constitutes an interference with freedom of expression which includes both a freedom to express and receive information: see e.g In re Guardian News and Media Ltd and others [2010] 2 AC 697 at [34]; R (BBC) v Secretary of State for Justice [2013] 1 WLR 964 at [34]. This applies in the context of an inquiry established under s.1 of the Inquiries Act 2005, where there is a statutory presumption

in favour of access to the Inquiry's proceedings and to information in its possession[18].

18. The courts have considered the balance to be struck between competing Article 8 and Article 10 rights where individuals seek to restrain reporting of their identities in a number of different contexts, both in the context of the reporting of court proceedings, criminal and civil, (e.g. In Re S (A Child) [2005] 1 AC 593, In Re BBC [2015] AC 588, In Re Guardian News and Media [2010] 2 AC 697, R (C) v SSJ [2016] 1 WLR 444) and in contexts unrelated to court proceedings (e.g. PJS v News Group Newspapers Ltd [2016] AC 1081, McKennitt v Ash [2008] QB 73). It is now clear that whatever the context, there is a common over-arching structure to the court's approach:

    (i) neither article has precedence over the other,

    (ii) where their values are in conflict, what is necessary is an intense focus on the comparative importance of the rights being claimed in the individual case,

    (iii) the justifications for interfering with or restricting each right must be taken into account and

    (iv) the proportionality test must be applied.

    [PJS [20]; In Re S [17]; Mosley v News Group Newspapers Ltd [2008] EWHC 687 (QB) [28]]; Khuja v Times Newspapers Ltd. [2017] 3 WLR 351 [22] & [23].

[18] NB. The decision of the majority in Kennedy v The Charity Commission [2015] 1 AC 455 is not contrary to this conclusion. The issue in Kennedy was whether Art 10 gave rise to a right to information about an inquiry that had properly been held in private. It did not address the issue as to whether Article 10 rights are engaged when determining whether proceedings should properly be held in private. That issue was considered by the Court of Appeal in A v Independent News and Media [2010] 1 WLR 2262 in the context of proceedings in the Court of Protection. The Court of Appeal held that Art 10 rights are engaged in determining whether the proceedings should be open. Further that was in a context where the presumption was in favour of closed proceedings. A fortiori, Art 10 is applicable where domestic law provides for a statutory presumption in favour of openness – see further [15]-[20] of the written submissions on behalf of the media served in relation to the legal principles hearing. The Chairman's observations at [200] of the legal principles ruling that the media does not have a right of access to inquiry proceedings properly held in private is directed only at the issue that arose in Kennedy, it does not affect the logically prior issue that in determining whether or not proceedings are properly to be held in private, Art 10 rights are engaged, particulary in the context of a statutory presumption in favour of open proceedings.

19. It is absolutely clear that what cannot be done is for the Article 8 balancing exercise to be conducted without careful consideration being given to the Article 10 rights of the public and the media, as, on the face of the minded to note, appears to have been the case here.

20. Further, the cases in which the courts have grappled with the Article 8 / Article 10 balance are instructive in demonstrating the level of importance attached to open justice and therefore the degree of Article 8 intrusion that will be required in order to justify a departure from it. In In Re S (A Child) [2005] 1 AC 593, the House of Lords found that the public interest in the open reporting of the names of those facing criminal trial is of such magnitude that even evidence of a "significant increase" in the risk of causing psychiatric injury to the defendant's vulnerable eight year old son was not sufficient to justify maintaining his mother's anonymity. This is to be contrasted with the level of interference (if indeed it meets the threshold of an Article 8 interference at all) on which the Chairman is minded to grant restriction orders in relation to the present applications: "no risk to… safety and minimal risk of intrusive interest" [minded to note [10] re HN294 – see further submissions at [145] below]; low risk of interference with private and family life [HN329 – see [154] below]; would prefer to be "left in peace" [HN330 – see [155] below].

21. It is right that In Re S (A Child) was considering anonymity in the context of criminal proceedings, rather than a public inquiry. However, as discussed above, the public interest in openness in the context of this Inquiry is very high indeed, given that the "whole point" of the Inquiry is to allay the public concern that has arisen in relation to the undercover policing of political and social justice campaigns and that openness is critical to the Inquiry's ability to do so. In explaining why the public interest in openness in this Inquiry is of such importance that it is likely to override an officer's

expectation of confidentiality, the legal principles ruling describes the public interest in the context of this Inquiry as "an exceptional one"[19].

22. For all of these reasons, the public interest in openness and the factors underpinning it must be significant considerations in every restriction order decision and if it is determined that they are outweighed by the factors in favour of restriction, then this must be explicitly addressed. It is submitted that a decision which fails even to mention the public interest in openness is unlawful and cannot instil public confidence in the Inquiry's process.

Failure to take into account the rights of others

23. In addition to the failure to take into account the public interest in openness and the factors underpinning it, the minded to decision also makes no mention of account being taken of the rights of any individuals affected by the proposed restriction order, other than the applicant. This again is a material omission.

24. In the previous Chairman's ruling dated 14 July 2016 in respect of disclosure of deceased children's identities, at [35], the Chairman held that "*[w]here the state (or a public authority on behalf of the state) holds information that is closely concerned with the enjoyment of the private life of the interested person, Article 8… may give rise to a positive obligation to provide an "effective and accessible" procedure by which an application for disclosure can be decided*."

25. The then Chairman accepted that the Inquiry provides a mechanism by which the relatives of deceased children can seek access to relevant information that engages their Article 8 rights and that the procedure by which the Chairman must fairly resolve the balance between the interests of an individual seeking to obtain disclosure of such information and any

[19] Legal principles ruling [166].

countervailing public interest in non-disclosure is that provided by sections 18 and 19 of the Inquiries Act 2005 [35(7)].

26. It is submitted that this conclusion is not limited to the relatives of deceased children, but applies to any individual whose Article 8 rights are engaged in respect of information that a restriction order would seek to withhold. This would include all those whose personal lives have been significantly affected by the conduct of undercover officers. However, the rights of these individuals to information in the possession of the state about matters closely concerned with their private lives receives no mention in the minded to note.

27. Further, there is an additional way in which the Article 8 rights of others is required to be weighed in the balance when determining restriction order applications. As previously brought to the Inquiry's attention in the witness statement of Harriet Wistrich, dated 31 May 2017, served with the NPSCPs' submissions on disclosure of personal files, in the cases of some of the women who had intimate relationships with undercover officers, the continued absence of disclosure of information pertaining to their experiences is causing them recognised psychiatric injury. It is distressing to those individuals to read in the minded to note of consideration being given to "a slight risk of causing a stress reaction"[20] to an officer or of an officer's wish "to be left in peace"[21], whilst the evidence of the recognised psychiatric injury being caused to them as a result of non-disclosure is not even mentioned.

28. Further, in relation to some groups and individuals, in particular those in Category J, for example in relation to the Monitoring Group, the non-disclosure of relevant officers' identities and roles is having a chilling effect on their ability to support bereaved families and other victims of racism, because of on-going suspicion about infiltration by police. It is of real

[20] HN58, minded to note [4].
[21] HN330, minded to note [15].

importance that those who need the help of these organisation are able to access it and to have full trust in them. This requires a full and proper public investigation of what has occurred so that public confidence is restored. To the extent that fear of police infiltration is inhibiting individuals from participating in inquests and other legal processes concerning the death of a relative, Article 2 rights are engaged. Again these are factors which appear to have received no consideration according to the minded to note. A further example of on-going detriment arises in relation to blacklisting. It is believed that information gathered by undercover officers and compiled in databases by the National Extremism Tactical Co-ordination Unit continues to be accessed by private companies.

29. It is submitted that in determining restriction orders, the effect that the granting of the order would have on the rights of others to information closely concerned with the enjoyment of their private life rights, to effective participation in political and community life and to access to procedures for investigating deaths involving state responsibility must be taken into account. So too must the impact that granting the order would have on the psychological integrity of all of those affected, not just that of the applicant.

PART 2: CLOSED HEARINGS

30. As noted above, the ability of the Inquiry to achieve its mandate to allay public concern depends on its ability to command public confidence in its conclusions, which in turn depends on public confidence in its process. As the previous Chairman identified, restriction order decisions are central to the Inquiry's ability to fulfil its terms of reference[22]. Therefore the means by which such important decisions are reached is a crucial part of the Inquiry's process, which must itself command public confidence. They are key to the subsequent effectiveness of the Inquiry.

[22] Legal principles ruling [3].

31. It is submitted that the current proposal to move straight to closed hearings in respect of three such applications, at least one of which concerns an officer (HN81) who is known to be of absolutely central relevance to the Inquiry, is unreasonable, unfair and not conducive to public confidence in the Inquiry's process[23]. Nor is it a necessary or proportionate interference with the Article 10 rights of the public, the non-state CPs and the media.

32. Therefore, although the directions dated 3 August 2017 do not invite submissions in relation to the proposal to hold closed hearings, the NPSCPs submit that to refuse to hear them on this issue would be unreasonable and unlawful. They therefore seek, for the reasons developed below, to persuade the Chairman instead to:

    a. review the disclosure made to date in respect of these officers. Annexed to these submissions is a table in respect of each individual application setting out where the NPSCPs contend that the present level of redactions is excessive and where further disclosure should be considered in order to ensure that the Inquiry is properly able to test the evidence advanced in support of restriction order applications so as to be able to determine them on a fair and accurate basis; and thereafter,

    b. hold an open hearing in relation to each officer in respect of whom a closed hearing is currently proposed, at which all CPs and the media, if they so wish, would have an opportunity to challenge the evidence adduced in support of the applications, and to address the Chairman on:

        i. the relevant legal principles applicable to that application;

        ii. the relative weight to be afforded to the competing considerations telling in favour of or against a restriction order in the context of that application;

[23] HN16 and HN26 may also be of central importance, but the current inadequate state of disclosure is such that the NPSCPs are unable to make specific submissions in relation to them, other than the necessarily limited submissions at [190]-[197] below.

iii. any countervailing evidence or arguments telling against assertions of fact or allegations of risk in the evidence served in support of the application, in so far as is possible in light of the redaction of "potentially restricted evidence" in accordance with Rule 12 of the Inquiry Rules 2006 ['the Rules'] [as to which see submissions at [53] below].

33. Once the above open submissions have been heard, if it were then to be considered necessary for the Chairman to hear evidence that is properly "potentially restricted evidence" within Rule 12(1)(a), or that is otherwise subject to a separate restriction order granted in accordance with s.19 of the Inquiries Act 2005, or argument pertaining to such evidence, all those not falling with Rule 12(3) of the Rules could then be asked to withdraw in order for that evidence and/or argument to be heard.

34. It is submitted that such a process, allowing for open participation by CPs, the media and the public to the greatest extent possible without undermining the purpose of the restriction order being sought, is consistent with the presumption of openness in the Inquiry's proceedings; the objective of allaying public concern; and the Chairman's statutory duty to act with fairness. To proceed straight to closed hearings would be contrary to those requirements.

35. The NPSCPs note that by letter dated 25 September 2017, the solicitor to the Inquiry has sought to clarify the scope of the proposed closed hearings in respect of HN81, HN16 and HN26. In particular, the letter clarifies that "[t]he purpose of each of the closed hearings is exploratory and may include one or more of the following:

i. To clarify the basis of the application for the restriction order sought;

ii. To assess the likely impact of the disclosure of the cover or real name of the officer on the officer and, if relevant the family of the officer;

iii. To identify any steps, other than the making of a restriction order as to identity, which can be taken to mitigate the adverse impact on the officer, and/or the family of the officer, of the release of the cover or real identity;

iv. To ascertain the steps which can or will be taken to protect the safety and welfare of the officer and/or family of the officer in any event."

36. The letter states that, in the case of HN81, the Chairman has explained the reasons for the closed hearing in his minded to note, namely to "receive representations by or on behalf of HN81 and discuss possible means of reconciling HN81's legitimate interests with those of the Inquiry." The letter states that, in the case of HN16, the purpose includes purpose (i) above and that nothing further can be said openly about the closed hearing for HN26 until after the closed hearing. The letter also clarifies that:

> "[a]fter the hearing and the publication of any further material, in each of the three cases if the Chairman is minded to make a decision other than to publish the cover name of the relevant officer, the Chairman will say so (by way of a 'minded to' decision) following the issue of which he will receive and take into account submissions from non-state core participants before making a decision. The Chairman will also, at the same time, issue a minded to decision in respect of the real identity, and then invite and take account of any submissions in relation to the true identity of each of the three officers."

37. This clarification is welcomed. However, it is respectfully submitted that the proposal to hold closed hearings in respect of these three officers without <u>first</u> having made adequate disclosure and without having heard from the other CPs, including the NPSCPs and Peter Francis, and, if they so wish, the media, remains unreasonable and unfair for the following reasons.

Excessive and unnecessary departure from open justice

38. Although section 19(2(b)), read with section 19(1), of the 2005 Act empowers the Chairman to impose restrictions on attendance at the Inquiry or any part of the Inquiry, section 19(3) makes clear that any such restriction must *only* be such as is required to fulfil one or both of the conditions specified in subsections 19(3)(a) and (b). In other words, any departure from openness must be no more than is strictly necessary for one of the specified ends.

39. The current proposal to move straight to closed hearings is an excessive and unnecessary departure from the principle of open justice. There is no good reason for excluding the non-state core participants (or the media) from making, in accordance with the procedure set out above, such submissions and making such challenge to the evidence as they are properly able in support of their legitimate interests in the process and outcome of these restriction order decisions.

40. Indeed it is important that they are afforded an opportunity to do so <u>before</u> any closed hearings are conducted in order to ensure that the Chairman has in mind, whilst he is conducting any closed hearing, their representations about:
    a. The correct legal principles;
    b. The respective weight to be attached to the competing public interests;
    c. Any challenge they have raised to allegations of risk set out in the open documents.

41. To conduct closed hearings without these considerations in mind would be unfair, risk proceedings going ahead on a flawed legal and factual basis and would deprive the Inquiry of relevant means of testing the officer's evidence. Although the letter from the solicitor to the Inquiry suggests that these hearings will not be determinative and that the NPSCPs will have an opportunity to make submissions after the hearings, the reality is that

the evidential picture that emerges from those hearings is likely to be highly influential if not largely determinative of the Chairman's ultimate decision. It is important, therefore, that those with an interest in the outcome, should have an opportunity to ensure that the hearing is focused on the relevant issues and that the Chairman is aware of the points that are challenged. It is not in the interests of the efficiency or effectiveness of the Inquiry to conduct a hearing without material submissions and evidence available to it and nor is it fair to NPSCPs, and others with a relevant interest, to only have an opportunity to seek to rectify matters after the event. The importance of affording an opportunity to make informed submissions prior to a decision being taken is well recognised, see, for example, the observations of Hooper LJ in R(P) v SSHD [2005] 1 Prison LR 84 [CA] at [58], in the context of a decision to segregate a detainee in a Young Offenders Institution:

> "...The best time to check on the factual basis by asking for the prisoner's comments is before the decision is made. As Jack J rightly observed once a decision is made, it is difficult to change it. This is particularly so when a decision has been made on a factual basis and when the person subject to the decision seeks to persuade the decision maker, after the decision has been made, that the factual basis on which he acted is wrong. Inevitably the decision maker will be reluctant to conclude that his original decision was wrong. Simon Brown LJ in R. v. SSHD ex parte Hickey (No 2) [1995] 1 WLR 734, at 744 made the point that "it is difficult to suppose that [a decision maker] can remain as open-minded as if no clear decision has been taken"

42. It is right that the solicitor to the Inquiry has now indicated that there will be an opportunity for the NPSCPs to make submissions before any final decision to grant a restriction order is taken in respect of HN81, HN26 and HN16. However, the reasoning of the above passage nonetheless applies. The effect of conducting a hearing on a particular basis will inevitably have an impact on the Chairman's thinking on the issue and the NPSCPs will be in the disadvantaged position of having to argue against an entrenched position, rather than having a fair opportunity for their position to be borne in mind from the outset.

43. This is not to say that the NPSCPs (and the media) should not also have an opportunity to make submissions following the outcome of any closed hearing, in light of any additional disclosure and/or indication from the Chairman in relation to the position he is minded to take. It would plainly be unfair for the Chairman to take into account matters that arise during the hearing, which can properly be disclosed, and not to afford those affected an opportunity to address them. However, this does not detract from the importance of ensuring that there has been a fair and open procedure from the start.

44. It is in any event in the interests of the Inquiry for it to ensure that it has as much information as possible available to it when it is "exploring" the officer's evidence. The second purpose of proposed closed hearings set out in the solicitor to the Inquiry's letter ([35] above), will plainly involve consideration of risk. It is important for all of the reasons set out in Parts 3 and 4 below that assertions of risk advanced in support of restriction orders are properly tested – see also [161] of the legal principles ruling. The NPSCPs and those against whom allegations of risk are made have an important role in this.

45. The right to be heard on the part of those affected by a decision, or against whom allegations are made, is an important corollary of open justice. Departure from this principle, by reaching decisions on the basis of evidence and argument from only one party is rightly recognised to be especially damaging to the integrity of the judicial process: Lord Brown in Al Rawi v Security Services [2012] 1 AC 531 at [83]; Upjohn LJ in In re K (Infants) [1963] Ch 381, 405-6.

46. It is not only in the context of adversarial proceedings that such considerations apply. Section 17(3) of the Inquiries Act 2005 requires the Chairman to act with fairness and natural justice is the essence of fairness:

> "The right to be informed of the case made against you is not merely a feature of the adversarial system of trial, it is an elementary and essential prerequisite of fairness." Lord Kerr, Al Rawi [89].

See also, Gillen J, at [41], in Re Witnesses A, B, C, K and N's Application for Judicial Review, Northern Ireland [2007] NIQB 30, applying Doody v SSHD [1994] 1 AC 531, HL at 560D-G in the context of the Billy Wright Inquiry.

47. The NPSCPs note also that under Rule 5(2), in deciding whether to designate a person as a core participant, the Chairman must consider whether "the person may be subject to explicit or significant criticism during the inquiry proceedings or in the report, on in any interim report." (emphasis added). This reflects the applicability of natural justice to the Inquiry's proceedings and makes clear that it applies not only to the inquiry's conclusions, but also to its process. This includes in the context of restriction order applications. It is inconceivable that the Inquiry would contemplate denying an officer the opportunity to refute allegations made about him or her in the course of the proceedings. How can the Inquiry be seen to be fair if it does not afford the same opportunity to those about whom allegations are made in support of restriction order applications?

48. Further, as discussed at [11(b) and (c)] above, it is no answer to the issue of fairness in this Inquiry that the Chairman and the Inquiry team will see all of the evidence. This is plainly not a situation where it would be fair, or conducive to getting to the truth, to rely solely on the police account of events. It is well known from the previous reviews that have taken place that there is a paucity of contemporaneous records; there has been mass shredding by the police of relevant material; such records as do remain are in disarray; and there is a history of material non-disclosure and deception of the courts by SDS and NPOIU officers[24]. Indeed this is part of the very reason for this Inquiry.

[24] The Stephen Lawrence Independent Review, Summary of Findings pp.11, 13, 15, 16, 17, 31. *R v Barkshire* [2011] EWCA Crim 1885 at [1]: "*…elementary principles which underpin the fairness of our trial processes were ignored*." Judge LCJ.

49. The fact that restriction order applications are subject to scrutiny by the Chairman and the Inquiry legal team cannot guarantee a just outcome if the evidence necessary to test the allegations is not available to them – see Lord Kerr in Al Rawi v Security Service [2012] 1 AC 531 at [93]:

> "…The central fallacy of the argument [that an independent arbiter is sufficient to guarantee the right outcome] lies in the unspoken assumption that, because the judge sees everything, he is bound to be in a better position to reach a fair result. That assumption is misplaced. To be truly valuable, evidence must be capable of withstanding challenge. I go further. Evidence which has been insulated from challenge may positively mislead. It is precisely because of this that the right to know the case that one's opponent makes and to have the opportunity to challenge it occupies such a central place in the concept of a fair trial. However astute and assiduous the judge, the proposed procedure hands over to one party considerable control over the production of relevant material and the manner in which it is to be presented. The peril that such a procedure presents to the fair trial of contentious litigation is both obvious and undeniable."

50. The fact that the present proceedings are inquisitorial does not affect the relevance of this reasoning. A decision maker, however astute and assiduous, cannot make a fair or accurate assessment if he shuts out the opportunity for countervailing evidence to be given.

51. It is of note in this regard, that the cases in which reliance on one-sided evidence has been upheld as a lawful in-road into natural justice have been in the context of a functioning intelligence system: see, for example, Tariq v Home Office [2012] 1 AC 452, and the cases there discussed at [28]-[37]. The material difference in this Inquiry is that it is the intelligence system itself that is under scrutiny, in the light of very serious concerns about its

functioning. In this special context, it would be self-defeating for the Inquiry to place untested reliance on the fruits of the very system it is supposed to be investigating. This is particularly so where these decisions will materially affect the Inquiry's ability thereafter to obtain the countervailing evidence it needs to conduct an effective investigation.

52. Further, for the reasons set out below, the NPSCPs would reject the contention, should it be made, that any further disclosure to them or participation on their part would undermine the purpose of the applications. They submit that the current level of redaction goes far beyond that required to protect the purpose of the applications. Annexed to this document are tables in respect of each of the applications addressed in the minded to note identifying where the NPSCPs consider the redactions go beyond that which is lawfully justified (see explanation at [53] below). It is submitted that further disclosure, as identified in the annexes, falls to be made in order to enable the NPSCPs, Peter Francis and the media, to make properly informed submissions.

The scope of the current redactions

53. Rule 12(2) of the Inquiry Rules 2006 provides that, subject to Rule 12(3), 'potentially restricted evidence' is subject to the same restrictions as it would be subject to if the order sought in the relevant application had been made. Rule 12(1)(a) defines 'potentially restricted evidence' as 'any evidence which is in the possession of the inquiry panel, or any member of the inquiry panel, and which is the subject of a relevant application which has not been determined or withdrawn'. Thus Rule 12 provides for non-disclosure of the very evidence the sought restriction order would, if granted, protect. It is an obvious practical measure designed to ensure that such applications are not self-defeating. However, Rule 12 does <u>not</u> provide for a general power to redact all/any evidence adduced in support of an application for a restriction order that the applicant would rather not share, only that which is the subject of the relevant application. Thus if the relevant application seeks restriction of the applicant's name, Rule 12

provisionally restricts any evidence that would reveal that name. It does not provide for restriction of the evidence explaining *why* that restriction is sought, except to the extent that that evidence would reveal the name. The NPSCPs contend that there are good grounds for believing that the current extent of the redactions to the evidence served in support of the present tranche of restriction order applications go significantly beyond that provided for by Rule 12[25]. The annexes to this document identify in respect of each application where the NPSCPs consider that the current redactions are, or may be, excessive.

54. Proper disclosure is not simply a matter of fairness, it follows from the submissions set out above that it is *necessary* for the fair and accurate determination of restrictions order applications for the Chairman to ensure that he has available to him relevant countervailing evidence with which to test the accuracy of the matters alleged in support of the applications. In many cases the ability of NPSCPs and others to provide such evidence will depend on sufficient disclosure being made.

55. The Inquiry must also weigh in the balance the fact that allegations of risk, particularly in relation to HN81, HN123, HN58 and any other officers who reported on family and justice campaigns, include those made in the context of the institutional racism found by Sir William Macpherson to have operated in the MPS at the time of HN81's deployment. There is no evidence to date of this Inquiry having taken any steps to ensure that it has the skills or evidence available to it to identify where institutional racism, or, in relation to the activities of other officers, institutional sexism, may be impacting on the issues the Inquiry is called on to determine, including in relation to restriction orders. These issues are central to the public

[25] It is acknowledged that it would be possible, **if the conditions in either s.19(3)(a) or(b) of the 2005 Act were to be met**, for the Chairman to impose a separate restriction order in respect of evidence served in support of the anonymity applications and in this way redact material that goes beyond 'potentially restricted evidence' within Rule 12. However, no notification has been given of any such restriction order having been made and none appears in the list of orders on the Inquiry website.

concern about the revelations that have emerged to date and it is essential that the Inquiry is properly equipped to address them.

PART 3: SUBMISSIONS ON THE GENERIC EVIDENCE

56. As indicated in counsel to the Inquiry's explanatory note to accompany the minded to note, the restriction order applications, in some cases, rely on the content of the generic evidence contained in:
    a. the Risk Assessment Briefing Note;
    b. the 'Cairo' statement dated 20 July 2017; and
    c. the Mosaic Report.

57. The NPSCPs point to the submissions made above at [44]-[51] as to the consequences for the Inquiry's ability to conduct an effective investigation and to command confidence in its conclusions if it does not critically test the evidence served in support of restriction order applications; and if it fails to demonstrate publicly that it is doing so.

58. The need for critical testing of the evidence applies both in relation to the specific applications and their supporting documentation (addressed in Part 4 below) and in respect of the generic evidence (addressed in the following paragraphs).

<u>Generalised assertions vs specific evidence</u>

59. Much of the content of the risk assessment briefing note, the Cairo statement and the Mosaic report ['the generic documents'] consists of general assertions, which, on closer examination of the specifics, do not stand up. For example, the risk assessment briefing note asserts categorically that the "secrecy of the [the SDS] was strictly maintained and allowed for the SDS to function for forty years without public or media exposure."[26] This is stated in support of the contention that SDS officers and, in particular, undercover officers, had an absolute expectation of privacy, which should be maintained in this Inquiry. However, this is

[26] Risk assessment briefing note [1.1].

belied by the fact that the MPS have themselves supported public disclosures about the unit when it has suited them in the past. In 2002, the MPS had actively encouraged former undercover officers of the SDS to participate in the television documentary series 'True Spies', with a number of officers doing so, some of whom speak openly on camera and discuss in detail how they worked[27]. Not only does the risk assessment briefing note fail to acknowledge this contradiction, but the Cairo witness statement addresses at length the risks attendant on publicity, also ignoring the MPS stance in relation to True Spies.

60. It is submitted that the Inquiry should attach little weight to general assertions and must focus on the specific evidence of harm relating to the particular application, just as it must in an application founded on public interest immunity: R v Chief Constable of West Midlands Police, ex parte Wiley [1995] 1 AC 274; R v H [2004] 2 AC 134; R (Binyam Mohamed) v Secretary of State for Foreign and Commonwealth Affairs [2009] 1 WLR 2653. This is in any event required if a departure from open justice and interference with Article 10 rights is to be justified: it is not "sufficient that [an] interference [be] imposed because its subject-matter [falls] within a particular category or [is] caught by a legal rule formulated in general or absolute terms: the Court has to be satisfied that the interference [is] necessary having regard to the facts and circumstances prevailing in the specific case before it." Sunday Times v UK (1979-80) 2 EHRR 245 [65] (emphasis added)].

61. The same approach is required in relation to assertions concerning the 'mosaic effect'. This accords with the legal principles ruling that when considering whether to make an order restricting disclosure of *any relevant piece of information*, the Chairman will be required to assess the risk and level of harm to the public interest that would follow from disclosure or

[27] For reference to the encouragement given to UCOs to participate in the documentary by Roger Pearce, then Head of Special Branch and himself a former SDS undercover officers, see The Guardian: "Leaked letter appears to undermine police bid for undercover secrecy", 18 March 2016.

non-disclosure of *that particular piece of information*[28]. The NPSCPs note that paragraph 18 of counsel to the Inquiry's explanatory note to accompany the 'minded to' note appears to suggest that this is now accepted by the MPS and that the risk of 'lateral mosaic effect' is being assessed on a case by case basis, rather than being asserted as of general effect in all cases.

62. This is welcomed, but it remains necessary for the Inquiry to retain a critical approach to assertions of 'lateral mosaic effect' even when they are advanced on a case by case basis. This is illustrated by the example cited in the Cairo statement at [49]. Cairo refers to the case of an undercover officer, 'Deano', who was not operating in the political and social justice sphere, but in relation to serious crime, whose identity was revealed when the drugs gang he had infiltrated discovered a hidden camera and recording equipment on his person. This is cited by Cairo as "[a]n example of the direct impact of the disclosure of covert methodology"[29]. However, it can hardly have been a revelation to the criminal community that undercover officers use hidden cameras and recording equipment. It is submitted that an argument based on the need to protect "methodology" of this nature could not properly justify the making of a restriction order.

<u>Expressions of opinion</u>

63. The Inquiry should also be cautious about the statements of opinion offered in the generic documents. For example, at paragraph 23 of the Cairo statement, Cairo offers his opinion as to the lack of justification for the exposure of the true identity of an undercover officer. This is a matter for determination by the Chairman on the basis of his own assessment of the public interest balance, giving due weight to the public interest factors telling in favour of disclosure. It is not a matter of evidence from a police officer. In any event, the foundation of Cairo's opinion is fundamentally flawed. He seeks to downplay the significance of the wrongdoing that has

[28] Legal principles ruling [152].

[29] Cairo statement [49].

already been acknowledged on behalf of the MPS. He states that *"[i]t is possible that this Inquiry will conclude that certain methods deployed by undercover operatives have become morally and/or ethically unacceptable over the passage of time*." This is to be contrasted with the wording of the apology issued by Martin Hewitt, Assistant Commissioner, on behalf of the MPS to the women who had been deceived into relationships with undercover officers. The apology acknowledges the officers' actions to have been wrong and describes the relationships as "*abusive, deceitful, manipulative and wrong*"; "*a violation of the women's human rights, an abuse of police power and caused significant trauma*"; "*a gross violation of personal dignity and integrity*"; "*it was a gross violation and [I] also accept that it may well have reflected attitudes towards women that should have no part in the culture of the Metropolitan Police"*[30]. This plainly reflects significant wrongdoing and, as noted above at [13], there is a particularly strong public interest in disclosure in respect of allegations of wrongdoing on the part of state agents.

Lack of independence

64. It has already been accepted by the Inquiry and the MPS that Jaipur and Karachi lack the requisite independence to be credible assessors of risk given the conflict with their professional interest in providing welfare support to former SDS officers. Further, it was stated at the time they were being advanced by the MPS as risk assessors that neither had been a member of the SDS. It is clear, therefore, that where the documents they have produced make assertions about what occurred within the SDS – for example in relation to assurances of confidentiality – they are not speaking from first hand knowledge, but on the basis of second-hand information. However, the sources of that information are not given. This is particularly relevant in relation to assurances of confidentiality, because the categorical assertion that such assurances were given at [1.1] of Jaipur's risk

[30] The full apology is available here http://news.met.police.uk/news/claimants-in-civil-cases-receive-mps-apology-138574?utm_campaign=send_list&utm_medium=email&utm_source=sendgrid

assessment briefing note is contradicted by other evidence – see further discussion of this point at [68] below. This raises concerns as to which other parts of the Jaipur documents are presented as categorical fact when this is not supported by the underlying evidence.

65. The NPSCPs also question Cairo's independence, given his professional connections to undercover policing.

66. Further, the fact that Jaipur, Karachi and Cairo are anonymous means that it is not possible for their evidence properly to be tested.

67. Perhaps most telling as to lack of objectivity is the failure of all of the risk assessments, both generic and specific, to confront the mismatch between the reality of what has actually happened in respect of each of the SDS and NPOIU officers whose identities have been disclosed to date and the wildly greater risks asserted in relation to the officers seeking to avoid disclosure. As set out at [74] below, not a single one of the SDS or NPOIU officers disclosed to date has been subjected to physical attack as a result of their identity becoming known. The failure of the risk assessments to acknowledge this, but to seek instead to elide the position of SDS and NPOIU officers with those who have infiltrated drugs gangs or football hooliganism, belies any claim to objectivity.

<u>Assurances of confidentiality</u>

68. As noted above at [64] above, paragraph 1.1 of Jaipur's risk assessment briefing note states categorically that before an officer was posted to the SDS, the management of the unit would make a visit to the officer's home, amongst other things to make assurances that the officer's identity would never be revealed. However, this is to be contrasted with:

    a. paragraph 16 of Cairo's statement which is more cautious: "*reassurance frequently extended to reinforcing the commitment of the MPS to safeguarding the true identity of the officer*.";

b. the indication given by Peter Francis that he was never promised life-long anonymity[31]'

c. the statements of some of the early officers within the present tranche of anonymity applications, which refer to a general understanding of secrecy, but not to any express assurances of anonymity[32].

69. As the legal principles ruling makes clear, assurances of anonymity will be something about which the Chairman will require evidence and which will be a material consideration in the determination of anonymity applications. However, (i) the Chairman will also have to consider the *reasonableness* of any officer's assertion that s/he believed s/he enjoyed an unqualified guarantee of confidentiality for life; and (ii) even if the officer's belief was reasonably held, confidentiality is but one of several material considerations and may not be decisive if the public interest otherwise requires[33].

70. In relation to the first of these factors, it is significant that Cairo states at [18] of his witness statement that his understanding is that the current and historic expectation in relation to anonymity within the SDS is reflected in the document copied into the body of his statement at [17]. This document makes clear that there are situations in which an undercover officer's identity might have to be disclosed, including under compulsion of law. This accords with the Chairman's finding at [165] of the legal principles ruling that any assurances given to officers must have been qualified and cannot have been absolute "*for the very good reason that every police officer is aware of the supremacy of a judicial decision on disclosure should the officer find that his activities have become relevant to a civil or criminal trial*."

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[31] Submissions on restriction orders on behalf of Peter Francis, dated 7 March 2016 [14].

[32] See witness statements of HN321 [3] and HN326 [18]; and risk assessments re HN329 [3.4] and re HN333 [3.4].

[33] Legal principles ruling [42].

71. Further, as explained in the legal principles ruling, while the public interest in preserving any assurance of confidence will be a consideration to be taken into account in conducting the balancing exercise that is required under s.19(3)(b) IA 2005 and in determining what fairness requires for the purposes of s.17(3) IA 2005, it will only be one of a number of factors. As the Chairman found at [166] of the legal principles ruling, in the particular context of this Inquiry: "*The public interest against which the expectation of confidentiality has to be measured is an exceptional one – the need to investigate as openly as possible the activities, management and justification for these very undercover operations so as to allay public concern*." For this reason, he ruled that "*while an expectation of confidentiality is both a material and weighty consideration it is not likely, except in unusual circumstances, to make the difference between disclosure and non-disclosure if disclosure is necessary in the fair pursuit of fulfilment of the Inquiry's terms of reference*."

72. It is noted that the "Designated Lawyers" on behalf of HN321, HN330, HN333 and HN343 have made submissions seeking to reopen the above ruling on the approach to assurances of anonymity. It is submitted that there is no proper basis for doing so. The ruling is correct in law and there has been no material development since that ruling to call into question its continued legitimacy. All of the arguments raised in the submissions made by Oliver Sanders QC dated 17 July 2017 were raised by the MPS and counsel to the Inquiry and considered by the Chairman at the time of the legal principles ruling[34]. If, notwithstanding the previous Chairman's clear ruling on this issue, the present Chairman is considering departing from this aspect of the legal principles ruling, then the NPSCPs would wish to make further submissions on the issue.

[34] Submissions on restriction orders dated 12 February 2016 served on behalf of the MPS – see in particular III.10-III.12 and V.32-V.39. Counsel to the Inquiry's Note on the Legal Tests Applicable to Applications for Restriction Orders 29 January 2016 – see in particular [86]-[90]. Legal principles ruling, 3 May 2016 – see in particular [38]-[42] and [162]-[166].

Risk of physical harm

73. The current redactions to the generic documents inhibit the NPSCPs' ability to make full submissions in relation to the assertions of risk of physical harm. For the reasons set out at [53] above, it is questioned whether the extent of these redactions is properly justified and the NPSCPs reiterate the need, both in compliance with the Chairman's statutory duty of fairness and in the interests of the Inquiry and the public of getting to the truth, to afford those against whom allegations of risk are made an opportunity to answer them and to hear from those who may have relevant countervailing evidence to give or submissions to make. On the basis of the limited material disclosed to date and without prejudice to their right to make further submissions once proper disclosure has been made the NPSCPs draw the Inquiry's attention to the following points.

74. The generic documents make repeated general assertions about the risk of physical harm to undercover officers in the event of their identities becoming disclosed. However, the reality of what has in fact occurred in the cases of the SDS / NPOIU officers whose identities have been disclosed is ignored (in the case of the absence of physical violence) or mischaracterised (in the case of lawful protest and legitimate media interest). It is submitted that the evidence of what has happened in relation to these officers is far more compelling evidence of what the risk is likely to be in the cases of other undercover officers who similarly infiltrated political and social justice campaigns, than the examples cited in the generic documents concerning infiltration of organised criminal gangs or football hooliganism. The reality is as follows:

    a. Rick Gibson was confronted by activists with the death certificate for his covert identity. No violence was used and he was expelled from the group after a lengthy tirade of abuse[35];

    b. A former UCO speaking under the pseudonym of 'Dan' gave an account in the True Spies documentary of having been taken to a pub and confronted by members of the group on whom he had spied.

[35] MPS risk assessment for Rick Gibson [4.12].

Other than becoming very drunk and the stress of his cover identity being disclosed, the officer was not subjected to any harm;

c. Simon Wellings had the details of the answer-machine message he had accidentally recorded put to him at a campaign meeting in the Barbican;

d. Mark Kennedy was invited to the house of friends where he was asked questions and given a chance to explain himself. Again there is no evidence of him being subjected to any violence;

e. Bob Lambert was exposed to a media campaign and public demonstrations when some of those he had targeted turned up at a public meeting to ask questions about how he had deceived them. There were also a number of lawful protests about his suitability to continue working as a university lecturer in light of his actions whilst undercover, including his entering into relationships which the MPS accept were "*abusive, deceitful, manipulative and wrong*", a violation of the women's rights and caused significant trauma. As submitted in more detail at [89] & [90] below, the generic documents are wrong to suggest that lawful exercise of Article 10 rights on matters of legitimate public interest constitutes harassment from which officers are entitled to be protected;

f. John Dines was approached by Helen Steel in Australia. Video footage of this is readily available and demonstrates the entirely lawful and peaceful nature of this. Even if it was uncomfortable for Mr Dines to be confronted with the fact of his past abuse of Ms Steel, there is no proper reason for him (or any other officer) to be protected from such discomfort;

g. Jim Boyling self-confessed to the woman he had targeted for a relationship. His identity has been long known to the campaigners on whom he spied including other women with whom he had relationships. Yet, neither Jim Boyling nor anyone connected to him has been subjected to violence;

h. Andy Coles has been the recipient of lawful protest after the media brought the story to public attention. However, again, discomfort felt

by a former public servant as a result of public concern over allegations of wrongdoing cannot be a proper basis for restriction. To the contrary, the importance of transparency and accountability of public officials (including the police) means that the public interest in disclosure is extremely strong [see [97] below].

75. Further, in addition to the above individuals, the full details of a number of undercover officers are known to the campaigners on whom they have spied. This includes the true identity and address of HN104 Carlo Neri[36] [see submissions at [134]-[137] below]. And yet in none of these cases has the individual, or anyone connected to them, been subjected to violence or harassment.

76. This evidence of what has actually occurred is of far greater relevance in assessing the likelihood of future risk to undercover officers who have infiltrated political and social justice campaigns than examples drawn from the infiltration of criminal gangs and general assertions of risk set out in the generic documents.

77. Some of the core participants within category M (families of undercover officers) also have relevant evidence to give in relation to the actions taken (or not taken) by the MPS in respect of potential compromises of their former partner's undercover identity and the mismatch between those responses and the degree of risk now asserted in the generic evidence and risk assessments.

Specific groups

78. Section 5.1 of the mosaic report and paragraph 10.1 of the risk assessment briefing note list a number of groups which it is said give rise to a 'very real

[36] See witness statement of Donal O'Driscoll dated 16.09.2016 at [14], served in support of the NPSCPs' submissions in relation to Jaipur and Karachi. Although "Carlo Neri's" true identity is known to the Undercover Research Group and to campaigners, they chose not to publicise his name at the time it became known due to sensitivities pertaining at that time which had nothing to do with any form of physical risk. The reasons for not disclosing "Carlo Neri's" real name no longer apply and, as set out at [134]-[137] below, it is the NPSCPs' position that there is no lawful basis for granting a restriction order in relation to it.

physical risk' for officers who were deployed to them. The NPSCPs make a number of points in relation to this.

79. First, it is noted that environmental and animal rights groups are not named, at least in the open versions that have been disclosed. If these groups are indeed not listed then the implication is that these groups do not pose a physical risk to the officers who infiltrated them. This is likely to be significant to the applications of a number of officers.

80. Second, there is a need for caution in respect of the categories that have been identified. It is submitted that many groups that fall within these broad categories do not pose a threat to individual undercover officers. Rick Gibson's role in infiltrating the Troops Out Movement provides an example of a group falling within the category of "Irish groups" but which did not prove to be a source of harm to the undercover officer who infiltrated it.

81. Third, it is presumed that the references to named anti-fascist groups are due to them being targeted by known undercovers Mark Kennedy, Mark Jenner and 'Carlo Neri'. However, none of these officers has been subjected to any physical harm as a result of his disclosure as an undercover. It is submitted again that this calls into question the validity of this aspect of the risk assessment.

82. It should be noted also in this connection that one of the complaints of those who were spied upon is that the nature of groups infiltrated was often mischaracterised by officers in order to justify the deployment. A separate, but related, concern is that targeting of lawful and peaceful groups has been portrayed as "collateral intrusion", when in fact it was entirely deliberate. This is a particular concern of the black justice campaigns, although it is also shared by other groups and individuals. For example, the collection of private information about individuals involved in lawful and peaceful groups has been portrayed as 'collateral intrusion' (in

the Second Herne report, for example). However, the NPSCPs believe that in many cases the collection of such information was in fact deliberate and authorised and in some cases a central purpose of the deployment, in order to disrupt the lives and political activities of the targets. Similarly, the police have indicated that there is no evidence that grieving families and justice campaigns were deliberately targeted, but that reporting on these campaigns was "collateral" to legitimate deployments. The NPSCPs do not accept that this is correct. These are important issues that the Inquiry is tasked with investigating. It must be careful not to pre-judge them by uncritically accepting the police evidence in support of restriction orders in circumstances where the restriction will thereafter prevent countervailing evidence from emerging.

Further caution in relation to general statements of risk

83. The generic documents make reference to the general level of threat to police officers from international terrorism and contend that this should be borne in mind when assessing the level of risk attendant on revealing the identity of an undercover officer. In counter to this, the NPSCPs point to the hundreds of serving and former police officers, not least those involved in Special Branch and Counter Terrorism activities, who post public personal profiles on networking sites such as Linkedin advertising their police experience. These include current and former counter terrorism officers, including Richard Walton, a key officer in the targeting of the Lawrence family (see submissions in relation to HN81 at [166] below) and until recently head of Counter Terrorism Command, making him one of the leading counter terrorism figures in the country. Another example is Roger Pearce, a former undercover officer who has appeared regularly on television, including commenting on undercover policing.

84. It is of note also that a number of undercover officers who have either been officially confirmed or identified by campaigners as such, including Mark Kennedy and Mark Jenner, continue to maintain social media profiles in their own names, including links to their family members.

85. It is submitted that the level of on-going public profile that these individuals maintain strongly suggests that the perception of risk on the ground is somewhat different to that being presented in the generic documents. This is supported by evidence that "Laura" is able to give about Jim Boyling's activities once he returned to regular policing following his deployment undercover.

86. Even in the context of undercover officers who have infiltrated serious and organised crime, there are a number who have published books detailing their experiences, several of which are published in their own names and with their own images[37]. And there have been multiple recent media stories about high profile trials of serious organised crime[38] and Islamic terrorism[39] where the role and covert identity of undercovers has been openly acknowledged in court and reported on. It cannot sensibly be suggested that the risk of disclosing the cover names of officers who infiltrated political and social justice campaigns, in some case many years ago, is greater than that faced by those who have infiltrated serious criminal or current terrorist organisations.

Risk of psychological harm

87. Paragraphs 10.4 – 10.8 of the risk assessment briefing note address the risk of psychological harm arising from an undercover's disclosure. It is submitted that this is pre-eminently a matter about which individual evidence is required, rather than generalised assertions. Whilst the risk of psychological injury which meets the threshold required for an Article 8 interference will be a relevant factor to be weighed in the balance when determining whether a restriction order should be granted, this must be a

[37] Peter Bleksley, *Gangbuster*; Christian Plowman, *Crossing the Line*; Stephen Bentley, *Undercover: Operation Julie – the inside story*.

[38] E.g. the 2016-17 trials of 24 Manchester defendants for, among other things, selling guns, based on the evidence of long term undercover officer 'John Sherwood'.

[39] E.g. the April 2017 trial of three Birmingham defendants accused of planning a terrorist attack and who were employed by a fake courier firm headed by an undercover officer named as 'Vincent'.

matter of evidence in the particular case. Consideration must also be given to the counterbalancing interests, including any psychological harm that would be caused to other individuals as a result of the restriction order being made and also the steps that can be taken to mitigate the harm other than imposing a restriction order.

88. In relation to the assessment of psychological harm, the NPSCPs note with concern the issue that has been raised by Peter Francis as to the independence of two of the psychiatrists who have prepared expert medical reports in respect of some of the officers seeking restriction orders. The NPSCPs submit that the question of Dr Bussutil and Dr McLaren's connections with the MPS, through The Priory Ticehurst Hospital, should be investigated and full disclosure made. Clarification is also sought from the Inquiry as to whether it was aware of the connection between The Priory Ticehurst Hospital and the MPS prior to the letter from Leigh Day on behalf of Peter Francis dated 20 September 2017 and if so, why this connection was not disclosed to the core participants.

Harassment

89. At [8.2] of the risk assessment briefing note it is asserted that "As the Bob Lambert case illustrates, the risk is not simply from those infiltrated but is from others who are on social media and who wish to campaign against and often harass those who acted as UCOs once they have been identified." Similar references to harassment are made at [10.2] and [10.12] of the same document and also in the 2016 Slater and Gordon applications on behalf of HN15, HN16, HN58, HN81 and HN123. As noted at [73(e)] above, the Inquiry must be wary of this conflation of 'harassment' with lawful protest and freedom of speech.

90. As far as the NPSCPs are aware, the public protests and online campaigns that have resulted where officers have been disclosed as having conducted deceitful relationships with women whilst undercover have all been non-violent and entirely lawful. They constitute lawful public expression on

matters of significant public interest and are not something from which the officers are legitimately entitled to expect protection. It is of note, by analogy, that the courts have repeatedly refused to prevent publication of the names of those suspected of criminal offences, even in circumstances where they have not been charged – see In Re Guardian News [2010] 2 AC 697 [66]. This is even without the added dimension of the allegations being related to conduct in a public office. As noted above at [13] above the public interest in disclosure is even stronger where there is an allegation of wrongdoing on the part of an agent of the state.

Mischaracterisation of researchers

91. Significant portions of the Cairo statement and mosaic report are dedicated to attacking the Undercover Research Group. The latter even contains sections entitled "Tracing John Barker"[40] and "Tracing Jim Sutton"[41], which seek to paint a negative picture of the efforts made by the women abused by those officers to seek to locate them. This is offensive and deeply unfair. As noted above, the MPS has accepted that the relationships formed by John Barker (Dines) and Jim Sutton (Boyling) with Helen Steel and 'Laura' respectively were abusive and gross violations of their human rights. The apology also makes clear that "*the women have conducted themselves throughout this process with integrity and absolute dignity*." To then suggest that their attempts to locate the men who had abused them, initially out of concern for their welfare and then latterly in order to understand why the abuse had occurred, was in some way wrongful beggars belief.

92. Given that it polices by consent, the MPS itself has a significant interest in ensuring that serious wrongdoing on the part of its officers is brought to light and in ensuring that it does not happen again. This is wholly contrary to its castigation of those who have sought to bring that wrongdoing to light.

[40] Mosaic report [4.1] p.21.
[41] Mosaic report [4.1] p.22.

93. This argument applies also to the Undercover Research Group ['URG']. Many of the members of that group have been directly affected by the presence of undercover officers in their lives. All have friends who have been so affected. Time and again the URG has demonstrated that its work in investigating undercover deployments is directed at exposing wrongdoing and securing answers for those who have been subjected to it, not at obtaining revenge or at exposing officers to harm. Again it is worth highlighting that no officer whose identity has been made public through the work of the URG has been subjected to any physical harm as a result, whereas many, many individuals, including a number of those who have been granted CP status in this Inquiry, have been greatly assisted by URG in uncovering the gross violations of privacy that they suffered as a result of the actions of those officers. It is wholly wrong for the Mosaic report to imply that the URG's attempts to assist those campaigners who fear they have been spied on to get to the truth is in some way malign. The right to truth in regards to one's own life and personal history is an important aspect of the right to respect of private and family life. And as evidenced in the medical reports referred to in the witness statement of Harriet Wistrich dated 31 May 2017, denial of such information can have devastating psychological effects. The URG works to support those who need to uncover the truth about their own lives. Its work has been instrumental in uncovering many of the abuses that are now rightly recognised as requiring investigation through this Inquiry.

94. Further, the suggestion at page 13 of the mosaic report that URG has used illegal or illicit means to obtain information is strongly denied[42]. And the purported concern expressed at page 13 of the Mosaic report at the fact that a member of URG is a core participant in the Inquiry is wholly without foundation.

95. The approach taken in the generic documents to URG and to the efforts of Helen Steel and 'Laura' to bring wrongdoing by undercover officers to light

[42] A witness statement can be served to that effect if required.

ignores the fact that it is this work, and that of other campaigners, together with the disclosures made by Peter Francis, which have led to the establishment of this Inquiry.

Media intrusion

96. Paragraph [10.13] of the risk assessment briefing document and [5.4] p.37 of the mosaic report address media intrusion and suggest that this will be 'disruptive and distressing' for officers and their families. A number of the individual applications and risk assessments seek to rely on this as a basis for obtaining a restriction order also [see, for example, risk assessment in respect of HN58 dated 25.7.17 [16.2(vi)]]. As with the mischaracterisation of lawful public expression as 'harassment', the documents signally fail to take any account of the strong and legitimate public interest in media reporting on matters of public debate: see In Re Guardian News and the cases there cited at [51]. Many NPSCPs are concerned that it is precisely this rejection of all transparency that has led to the problems that are now under investigation in this Inquiry.

97. Further, in determining whether disclosure of information about an individual engages his or her Article 8 rights, the status of the individual is relevant. Article 8 affords state agents carrying out their official functions limited protection against media coverage. Where the information it is sought to disclose does not relate to aspects of the individual's private life, but rather to the discharge of his or her official functions, detriment to reputation, stress or anxiety are unlikely to be sufficient to constitute an interference with Article 8 unless they are such as to undermine the individual's "personal integrity". This is likely to involve ""an inevitable direct effect" on private life which is quite severe, such as ostracisation from a section of society." [Yeo [143]-[147]]. The NPSCPs submit that a number of the restriction order applications addressed in the minded to note do not meet the threshold for the engagement of Article 8. Specific submissions are made in relation to these in Part 4 below.

98. Further, in the event that media activity in relation to an officer were to cross the boundary from legitimate reporting on matters of public interest into matters that constitute an invasion of his or her private life, the remedy for this would be for him or her to seek injunctive relief and/or damages in the usual way.

99. The task of this Inquiry in determining a restriction order application is to weigh the risk of harm arising from disclosure against the public interest in the information being known. If the balance is in favour of the latter, then the fact that the officer may be subject to *lawful* media attention is irrelevant. That is not something from which s/he is entitled to be protected. If the concern is about *unlawful* media attention, then the remedy is to seek an injunction, which would require specific evidence establishing why the media activity would be a disproportionate invasion of privacy. The Inquiry must proceed on the basis that the media operates within a functioning legal system. It must be careful not to allow restriction orders to be used to injunct lawful reporting by the back door.

Reputational taint

100. In so far as the generic evidence and individual applications contend that disclosing a former undercover officer as such in the context of this Inquiry would expose him or her to reputational damage, it is submitted that this is not a reason the Chairman should accept as a basis for granting a restriction order. First, as explained in In re Guardian News and Media Ltd [2010] 2 AC 697 at [60], it ought not be assumed that members of the public are incapable of drawing the distinction between allegations and proof. This must apply with even greater force where officers are concerned about taint by association with other members of their former unit. Secondly, and importantly, if, as the officers contend, they have done nothing wrong, but rather to the contrary have carried out highly valuable work (a point made repeatedly in the documents filed in support of restriction order applications), then it is positively in their interests that this Inquiry is thorough and open so that their position is vindicated, any

wrongful allegations are disproved and public confidence in undercover policing is restored. In those circumstances their reputation and that of the MPS is enhanced by openness, whereas an on-going refusal to stand up to public scrutiny achieves the opposite.

Impact on family members

101. The NPSCPs accept that the impact of disclosure of an officers' identity on family members is a legitimate concern. However, it too is only one of the factors to be weighed in the balance when determining the case for a restriction order. It is apparent from the decision in In Re S (A Child) [2005] 1 AC 593 that there are circumstances in which the public interest in open justice is of such magnitude as to outweigh the rights of family members to protection from even very significant consequential harm.

PART 4: INDIVIDUAL APPLICATIONS

102. There are a number of over-arching points which apply to all or several of the individual applications. These issues are addressed first.

Inadequate disclosure

103. As set out at [53] above, the current level of redaction, and in some cases the failure to disclose relevant documents at all, goes far beyond that which is justified on the basis of it being "potentially restricted evidence" under Rule 12. Not only is this contrary to section 18(1) IA 2005 (unless additional, secondary restriction orders have been made about which the NPSCPs have not been informed), but for all of the reasons set out in Parts 1 and 2 above, it is contrary to the public interest and that of the Inquiry in ensuring that restriction order applications are determined fairly and on an accurate basis. Without proper disclosure, the NPSCPs are inhibited in their ability to make relevant submissions and to contribute to the testing the evidence and assertions of risk underpinning the applications. The submissions set out below are those which the NPSCPs are currently able to make on the present state of disclosure. These submissions are made

without prejudice to the making of further submissions once proper disclosure has been made.

The importance of real names

104. At the hearing which preceded the 2 May 2017 ruling, counsel for the MPS, the National Police Chiefs' Council and for Peter Francis submitted that if an officer's cover name was disclosed, the needs of the Inquiry would be met, save in exceptional circumstances.[43]

105. This submission was rejected by the then Chairman, who made clear that there would be no presumptive exemption from disclosure for real identities.[44] The present minded to note strongly suggests that the current Chairman has departed from this position. A clear example of this is the case of HN294.

106. HN294 is now deceased. As explained in the minded to note, he was deployed as an undercover officer in 1968 and 1969 and later went on to hold a managerial role in the SDS until 1974. He was therefore operative at the inception of the unit and continued to be involved in its running for a period of ten years: not an insignificant period. There is also said to be no information about his cover name. He is survived by his elderly widow and other family members. The Chairman acknowledges that "[t]here is no risk to their safety and minimal risk of intrusive interest in them even if his real name were to be published." However, he concludes that "[a]lthough the risk is minimal, nothing would be gained by running it."[45]

107. This clearly indicates that no weight whatsoever has been given to the public interest factors in favour of disclosure of real names and that the Chairman has effectively applied a presumption in favour of anonymity in the Inquiry. The point is also strongly illustrated in relation to the minded

[43] 2 May 2017 ruling [201].
[44] Ibid. [203].
[45] Minded to note [10].

to note's approach to HN58, discussed in detail at [114]-[131] below. The risks in relation to HN58 are 'some risk to personal safety' and 'a slight risk of causing a stress reaction' and on this basis the minded to note concludes that it is not necessary to fulfil the Inquiry's terms of reference to run these risks. No mention is made of the overwhelming public interest in HN58's identity being known given his central connection to one of the key issues this Inquiry was set up to investigate, namely SDS activity in relation to the Lawrence family campaign – see [119]-[122], [166] & [175] below.

108. It is submitted that this approach is wrong, not merely because it departs from the statutory presumption of openness and the rulings of legal principle set out by the previous Chairman, but also for the following reasons:

    a. Effectiveness of the Inquiry: for all of the reasons set out in Parts 1 and 2 above, this Inquiry cannot fulfil its terms of reference or allay public concern if it proceeds on a one-sided account of the evidence. It must obtain the accounts of those who were spied upon. In a case such as HN294, where the cover name is said to be unknown, the only means of enabling those who were spied upon to come forward is by publishing photographs of the officer, preferably from the time of his deployment. This would be precluded by a restriction order in respect of his real identity (the proposed orders seen so far would certainly preclude this). The minded to position would, therefore, shut out the possibility of any effective investigation of this officer's deployment;

    b. Accountability: as set out at [13] above, where there is an allegation of wrongdoing on the part of the state, the public interest in disclosure is especially strong. Although there is not presently any known allegation of wrongdoing on the part of HN294, this cannot be investigated, as explained above, without disclosing at least his image. For any officer in respect of whom there are known allegations of wrongdoing, the public interest in open testing of those allegations is very strong indeed (this would certainly include HN58, for example,

given his managerial role at the time of both infiltration of the Lawrence family campaign and at the time when undercover officers were engaged in intimate relationships whilst deployed – see further [118]-[122]);

c. Tracing career progression and corporate accountability on the part of the MPS: a very important issue in this Inquiry is the extent to which activities such as forming intimate relationships whilst undercover, or obtaining information on family justice campaigns, or using the identities of deceased children were known about in more senior echelons of the MPS and to what extent those who had engaged in such activities subsequently went on to hold management or senior positions within the force. Ensuring that this issue is properly and openly investigated is pivotal to reassuring the public that lessons will be learnt for the future. It entails open scrutiny of the career trajectories of those who served as undercover officers within the SDS (and NPOIU). The importance of enabling the public to make connections of this nature in relation to an individual was expressly recognised as a factor telling against anonymity in In Re Guardian News – see [68] & [69]. The approach taken in the minded to note in respect of HN58 raises real concerns about the Inquiry's commitment to openness on this issue;

d. Tracing career progression – outside the police force: there is also an issue about the extent to which former undercover officers who have left the force may have used (or may continue to be using) information gained during their time as undercover officers to advance their subsequent careers. It is known, for example, that Mark Kennedy went on to work for Global Open, a private investigation company set up by a former Special Branch officer, Rod Leeming, which investigated protest groups for corporate clients. Further, it is of concern whether any of the undercover officers who provided information to blacklisting organisations subsequently went on to work for companies in related industries – and whether there is a risk that information about individuals gained through their deployment

whilst undercover is still being passed on. Another example is where undercover officers who deceived women into intimate relationships whilst undercover have subsequently gone on to hold positions of trust, where other women may be vulnerable to an abuse of power;

e. Enabling whistleblowers to come forward: it may be that others within the police, or who have had contact with an officer following his/her time undercover, have relevant evidence to give, but without knowledge of the connection between the officer's real name and cover name would not realise that this is the case. An example arises from the Ellison review in relation to HN86. Peter Francis claims that it was HN86 who tasked him with gathering intelligence that might be used to 'smear' the Lawrence family campaign. Mr Francis also alleges that HN86 exhibited apparent racism. Ellison notes that this allegation has some degree of support from HN78's description of witnessing a possibly racially motivated incident involving HN86.[46] HN78 was able to give that evidence because s/he knows who 'HN86' is. Other officers with whom 'HN86' has worked in his real identity may also have relevant evidence to give on this issue, but they will not know this unless the connection between 'HN86' and his real identity is made clear. This is just an example. The same reasoning applies in relation to all those the Inquiry is tasked with investigating. The public interest in enabling whistleblowers to come forward will be particularly strong where the Inquiry is investigating allegations of wrongdoing;

f. The rights of those who were targeted: as set out at [24]-[26] above, where information in the hands of the state concerns intimate aspects of the target's personal life he or she has a right of access to it. For example, in respect of women who were deceived into intimate relationships, to deny them access to information about their abuser will constitute an interference with their Article 8 rights. In some cases the denial of such information is causing psychiatric injury.

[46] Ellison, Summary of Findings p.28 d).

This must be taken into account when assessing whether a real name is to be withheld;

g. The Article 10 rights of the media and the public to be informed on matters of public debate: as set out at [15], there is recognition at the highest level of the importance of the media being able to publish the names of those involved in legal proceedings. This interest is particularly strong in the context of a public Inquiry that has been established in order to allay very significant public concern.

109. For all of these reasons, it would be wholly wrong for the Inquiry to operate a presumption of non-disclosure of real names. The significant public interests in disclosure of real identities must be carefully weighed in the balance on the facts of each officer's case.

Caution as to the veracity of the evidence served in support of the applications

110. As the previous Chairman acknowledged, discharging his responsibility of assessing the public interest balance for and against restriction will involve critical assessment of the evidence[47]. In this regard, the NPSCPs would ask the Chairman to have in mind that the undercover officers whose evidence he will be considering were trained and highly practised in deception, including in faking psychological breakdown. Their skills in this regard were such that they were able to deceive partners who had lived with them and known them intimately for a number of years. Further, it is known that SDS officers deceived the courts and legal advisers and the unit as a whole "operated as if it was exempt from the developing duty of proper disclosure required of the MPS in legal proceedings."[48] Indeed one of the reasons this Inquiry became necessary is because of the very grave public concern about the withholding, by the MPS, of highly relevant information from a previous public inquiry. This Inquiry cannot, therefore, proceed from an assumption that because witnesses are or were police officers they will be telling the truth.

[47] Legal principles ruling [161].

[48] Ellison Summary of findings p.33.

111. There is particular need for the Inquiry to be astute in its testing of the evidence in support of restriction orders where redactions inhibit the ability of the NPSCPs and others to challenge or correct the matters asserted.

112. An example of a misstatement of risk that the NPSCPs are able to identify is contained in the restriction order application served on behalf of Bob Lambert (HN10). Paragraph 14 of that application purports to demonstrate a real and immediate risk to Mr Lambert and his family of physical harm by reference to "The long history of some of the infiltrated groups including ALF and London Greenpeace of conducting campaigns of violence and intimidation. This includes violence towards alleged infiltrators." This is in marked contrast to:

    a. the evidence of what actually happened when Bob Lambert was publicly disclosed as an undercover officer by London Greenpeace. Video footage of this event has previously been supplied to the Inquiry; and

    b. Mr Lambert's own description of London Greenpeace as "a peaceful campaigning group" in an open statement he made on 24 October 2011 to the organisation Spinwatch, in which he apologised "unreservedly for the deception [he] therefore practiced on law abiding members of London Greenpeace" and in which he included his professional address (further demonstrating his lack of concern about risk)[49].

113. Plainly Bob Lambert's restriction application is not one of those addressed in the minded to note, but the NPSCPs refer to it here as an example of demonstrable misstatement of risk in the context of a restriction order application. Further, the NPSCPs are only in a position to draw this instance to the Inquiry's attention, because the identity of 'HN10' is known. It is reasonable to expect that there are similar distortions in other

[49] A copy of the statement can be provided if required.

applications and their supporting documents, but which the NPSCPs are unable to challenge, because the identity of the applicant is unknown and significant parts of the supporting evidence are redacted. This again highlights the need for the Inquiry to ensure that it has the evidence available to it with which to test restriction order applications if it is to determine them on a fair and accurate basis.

The individual minded to indications

HN58

114. The Chairman has indicated that he is minded to restrict disclosure of both the real and cover identities of this officer and that it is likely that his evidence will be given from behind a screen[50]. The application made on behalf of HN58 is not only for restriction of his real and cover identities, but also that his evidence should be given at a closed hearing at which only the Chairman, counsel and solicitors to the Inquiry, counsel and solicitors for HN58 and essential court staff would be present[51].

115. The NPSCPs submit, for the reasons set out below, that HN58 is a very significant figure in this Inquiry and there is absolutely no proper basis for granting a restriction order in respect of his or her real or cover names.

The significance of HN58 to this Inquiry

116. The minded to note refers to HN58 as having had, from 1997 until 2001, a "managerial position in the [SDS], having earlier been deployed as an undercover officer." Nothing is said about the significance of this officer to the issues the Inquiry was set up to investigate and nor does any consideration appear to have been given to the strong public interests in disclosure of this officer's real and cover identities in light of his role. It is simply said that it is not necessary to fulfil the Inquiry's terms of reference to run the risks of "some risk to HN58's personal safety" and "a slight risk of causing a stress reaction".

[50] Minded to note [4].

[51] Draft order served by Slater & Gordon with the 2016 restriction order application.

117. This provisional conclusion, perhaps more than any other in the minded to note, exemplifies the complete absence of consideration for the public interest in openness as a means of allaying public concern and of getting to the truth in relation to the issues that gave rise to this Inquiry.

118. HN58 did not merely hold "a managerial position" in the SDS between 1997 and 2001, it is likely that he was head of the unit during that period. It is possible to establish this by careful cross-referencing between the report of the Ellison review and the IPCC report: Ellison Review – Walton, Lambert and Black[52]. Both of which are public documents. However, the NPSCPs question why this important fact is not made plain on the face of the minded to note given that (i) it is information that is in the public domain (albeit requiring some detailed analysis) and (ii) it is highly relevant to the public interests that should be taken into account in considering whether a restriction order is warranted.

119. It is clear, for example, that HN58 was Bob Lambert's line manager at the time of the 14 August 1998 meeting between HN81 and Richard Walton.[53] This meeting and the issues surrounding it are central to the events that led to this Inquiry being set up and are at the heart of one of the key issues it is tasked with investigating – this is discussed in further detail in relation to HN81 at [166]- [175]. It is known that HN58 was aware of the HN81 / Richard Walton meeting, at least shortly after it occurred, and that he had

[52] It is clear that HN58 is the officer who was investigated by the IPCC under the cipher N34 following the Ellison review. This is apparent from a comparison of p.229 of Volume 1 of the Ellison report and paragraphs 24 and 25 of the IPCC report Ellison Review – Walton, Lambert and Black: both documents refer to the endorsement made by this officer (N58/N34) on Bob Lambert's file note of the 14 August 1998 Walton / HN81 meeting and to the strategy report N58/N34 prepared in early September 1998. [79]-[83] of the IPCC Report refer to the "layers of management" within Special Branch - i.e. N34 (HN58), then N35, then Colin Black (who was at that time head of Special Branch). It is explained at [190] of the IPCC report that N35 was the Head of S Squad, which included the SDS, so if N34/HN58 was below him, but above Bob Lambert at the material time, then the inference is that N34/HN58 was head of the SDS. This is also supported by N35's statement, reported at [190] of the IPCC report that he (N35) had little day-to-day contact with operational undercover officers, but that this was managed by Robert Lambert and N34.

[53] See IPCC Report Ellison Review – Walton, Lambert and Black [75].

endorsed it as "An excellent meeting and a good example of the strides N81 has made over the last 12 months"[54]. Further, he was aware of the report written by Bob Lambert praising "…N81's unique insight into the behind the scenes machinations of the Lawrence campaign" and noting that this "has also proved invaluable to A/DI Walton who is currently attached to the Stephen Lawrence review team."[55]

120. The extent of HN58's role in facilitating this meeting and more generally his role in tasking HN81 (and others) in relation to the Lawrence family campaign and other family campaigns and justice groups will be central issues in this Inquiry.

121. Nor is this the only issue of significant public interest that occurred on HN58's watch. This was a time during which undercover officers were engaged in intimate personal relationships with those on whom they spied, for example, Jim Sutton/Boyling (1997-2000) and Mark Cassidy/Jenner (1995-2000).

122. There is plainly a very significant public interest in such serious allegations of misconduct on the part of a senior officer being subject to open scrutiny. This is important for all of the reasons set out in Part 1 above in relation to the allaying of public concern. There would need to be very weighty considerations telling against openness for a restriction order in respect of HN58's identity – real and cover names - to be justified. For the reasons set out at [125]-[130] below, the factors identified in the minded to note and in the open documents served in support of HN58's application do not come close to meeting this threshold and it is a matter of some real concern that the minded to note does not even refer to the significant factors telling in favour of openness in relation to this officer.

[54] Ellison Report V1 p.229 / IPCC Report [24].
[55] Ellison Report V1 p.229 / IPCC Report [25].

123. Further, it is not clear why the minded to note appears to attach no importance to the investigation of HN58's deployment as an undercover officer. It says "[w]hat matters is the evidence which HN58 can give about the discharge of HN58's managerial duties." However, this is contrary to the previous Chairman's ruling of 2 May 2017, which made clear that the evidence of every SDS officer's deployment is likely to be relevant and necessary to fulfilment of the Inquiry's terms of reference. It was for this reason that he rejected the MPS' invitation to narrow the scope of the Inquiry's approach to the restriction order process. It is submitted that this must be right. How, if HN58's cover name is not released, will the Inquiry investigate the impact of his deployment on those he reported on –and on the family of the deceased child whose identity he used? How will the Inquiry investigate whether he formed any intimate relationships during his deployment or if any miscarriages of justice may have occurred? How will it test his evidence about the extent of his tasking? How will those on whom he spied know to come forward to assist the Inquiry, or if some have already come forward, how will the Inquiry avoid the demeaning treatment identified at [111] of the legal principles ruling?

124. These are matters that are relevant to all SDS (and NPOIU) undercover officers and are factors telling in favour of disclosure of their cover names. However, they are of particular relevance in respect of HN58, in light of the managerial role that he subsequently went on to hold and of the practices that are known to have been utilised on his watch. If the Inquiry is to get to the heart of how these practices developed and at what level of seniority they were known about and endorsed within the MPS, it is highly material for it to investigate the extent to which HN58 engaged in them when he was deployed as an undercover and, if so, what role this played in his subsequent promotion. It would be quite wrong for the Inquiry to seek to compartmentalise his managerial role and ignore what went before during his time as a UCO. For this reason there is a particularly strong public interest in disclosure of his identity.

The bases on which the restriction order is sought

Article 3

125. Although both the MPS and Slater and Gordon applications advance the risk of an Article 3 violation as a basis on which the restriction order is sought, the assessment of risk indicated in the risk assessments do not come close to meeting the threshold of an objectively verified risk of real and immediate harm such as would engage Article 3. The 2016 risk assessment assessed the risk of physical harm as low. According to Appendix D to the 2017 risk assessment, a rating of 'low' means "the probability of the risk occurring is considered unlikely." The 2017 risk assessment assesses the risk of physical harm from the identified group as not significant. Further, in relation to the individuals identified in the risk assessment as having "a propensity for violence", the risk assessment concludes that "[s]ome are elderly, and I do not consider that they present a particular physical risk themselves." Rather the risk of physical harm identified is said to come from those who are now involved within the field that HN58 had previously infiltrated. The risk assessor himself acknowledges that the situation has developed since HN58's deployment; that he cannot expertly comment upon the specific details of the current threat and, significantly in terms of the Article 3 threshold, "there is no current intelligence suggesting an attack". It is submitted that this falls far short of the objectively verified "real and immediate risk" of serious harm that must be shown if an Article 3 risk is to be established. It is noted that the minded to note does not refer to the Article 3 threshold being met.

126. Further, in so far as the Slater and Gordon application refers to the risk of psychological harm in connection with Article 3, it is submitted that a "slight risk of causing a stress reaction" is again, nowhere near the Article 3 threshold. In accordance with Yeo, (see [97] above), it is questionable whether it would even reach the Article 8 threshold.

Article 8

127. The MPS application contends that disclosure of HN58's real or cover name would amount to a disproportionate interference with his right to private and family life and cross-refers to the subjective effect of disclosure set out at paragraphs 14.3 and 14.4 of the 2017 risk assessment. These paragraphs refer to "media intrusion" and "effect on friends and family". In respect of the former, the NPSCPs refer to the submissions set out at [96]-[97] above as to the inappropriateness of fears of media intrusion as a basis for granting a restriction order. If disclosure is otherwise justified, then an officer's concerns about being subject to lawful media coverage cannot be a basis for granting a restriction order. And it would be inappropriate for the Inquiry to anticipate *unlawful* media coverage in the absence of specific evidence showing that this would be likely. If unlawful media intrusion did occur, the officer would have other remedies available to him. Again, a restriction order should not be a means of injuncting the media by the back door.

128. In relation to concerns about the effect on family and friends, the risk assessment at [16.1] states "there is no evidence (as opposed to speculation) to suggest that N58's family would be adversely impacted by the revelation of N58's role as a former UCO. I therefore do not accept this as a significant factor." It is acknowledged that the risk assessment subsequently assesses the risk of interference with family and private life if HN58's real identity was confirmed as being high, but it does not specify what the nature of that interference is thought to be. Reference is made to "the potential for significant and ongoing media interest in the widest terms", but again, legitimate reporting on matters of significant public interest, as the issues arising in relation to HN58's role undoubtedly are, is not a proper basis for granting a restriction order.

129. In so far as the Slater and Gordon application relies upon other factors said to engage HN58's Article 8 rights (assurances of anonymity, subjective fears of violence and damage to property), the NPSCPs rely on the submissions set out at [68]-[77], [83]-[95] & [100] above. In relation to the

extent of HN58's subjective fears, it is noted that [15.1] of the 2017 risk assessment records that he declined physical risk assessment of his home. The NPSCPs question how extensive his fears are if he declined to avail himself of this protection. In any event, it is submitted that if and in so far as HN58's subjective fears do constitute an interference with his right to respect for his private and family life, such interference is necessary and proportionate given the very significant legitimate public interest in:

a. the Inquiry being able to get to the truth in relation to HN58's undercover deployment and the nature of the activities that took place whilst he was in day-to-day charge of the SDS; and

b. the Inquiry maintaining public confidence in its process and conclusions such that it is able to allay the significant public concern touching directly on the actions of this officer and those for whom he had direct managerial responsibility.

130. For completeness, in the event that the submission made at [19] of the Slater and Gordon 2016 application is still maintained, it is submitted that this is plainly wrong[56]. Slater and Gordon seek to argue that "The "requisite necessity" [for an interference with Article 8(1)] is not established for the purposes of Article 8(2) in inquisitorial as opposed to adversarial proceedings where the Article 6 rights of others are at issue". They seek to rely on the judgment of Girvan LJ in Re A and others' Application for Judicial Review (Nelson Witnesses) [2009] NICA 6 at [33]. However, the Nelson Witnesses case does not support the proposition Slater and Gordon seek to advance. Girvan LJ at [33] was not saying that the absence of Article 6 rights in an inquisitorial context means that the "requisite necessity" for an Article 8 interference can never be established, he was simply saying that Article 6 does not provide a justification for the interference as it does in adversarial proceedings. Having made this point, he expressly went on to acknowledge that, in his view, the question remained open as to whether an Article 8 interference was nonetheless

[56] The same submission is also advanced in the 2016 S&G applications on behalf of HN15, para 20; HN16, para 18; HN26, para 22; HN81, para 18; HN123, para 20.

justified on the facts of the case on grounds other than Article 6 rights. Further, the majority in that case (Kerr LCJ and Higgins LJ) both upheld the Inquiry's finding that the public interest in disclosure *did* justify any Article 8 interference in that case. The applicable test is as set out by Kerr LCJ at [24] of his judgment: "*a risk falling short of that required to activate article 2*[57] *of ECHR falls to be assessed simply as one of a number of factors in an even-handed evaluation of competing interests rather than as a matter which requires to be offset by compelling justification*."[58] This is reflected in the previous Chairman's discussion of the relevant legal principles at [177]-[193] of the legal principles ruling and at C3 (with reference back to A3) where he set out the steps to be taken in determining an application for a restriction order founded on a claimed interference with Article 8 rights.

131. For all of the above reasons, the public interests in the Inquiry being able to get to the truth and to allay public concern in relation to HN58 are of such weight that if there is indeed an interference with his Article 8 rights or those of his family as alleged, this is clearly justified.

<u>HN68</u>

132. The approach taken to this application in the minded to note is a further strong example of the Chairman having erroneously adopted a presumption of anonymity rather than openness. The minded to position is that the cover name will be released, but that the real name will be restricted. This is said to be on the basis that it is unlikely that publication of the real name would prompt the giving or production of evidence necessary to permit the Inquiry to fulfil its terms of reference. Evidence about HN68's managerial duties can be given by reference to his cipher. Publication of his real name would be "likely" to interfere with the right of

[57] The NPSCPs acknowledge that a risk meeting the Article 3 threshold would fall into the same bracket as a risk meeting the Article 2 threshold, although Article 3 is not expressly referred to by Kerr LCJ.

[58] See also Kerr LCJ at [38] and Higgins LJ at [11] of his judgment in the same case.

his widow to respect for her private life under Article 8 and it is "unlikely" that such interference would be justified under Article 8(2)[59].

133. It is submitted that the minded to position is materially flawed for three reasons:

a. it fails to take any account of the significant public interests in disclosure of real names as set out at [108] above. This is particularly important in relation to officers who went on to hold managerial positions within the SDS as explained at [108(c)] above;

b. the view expressed that disclosure of the real name would be unlikely to prompt the giving or production of evidence is wrong for two reasons. First, as set out at [108(a)] above, in so far as restriction orders in relation to real names will also preclude publication of an officer's image, this is likely to have a material impact on the ability of those affected by a UCO's deployment to realise that they have relevant evidence to give. This is especially the case in relation to officers, like HN68, who were deployed a long time ago. It may be that images of a UCO would prompt memories in a way that a name would not. Secondly, as set out at [108(e)] above, disclosure of real names would enable those who subsequently worked with an officer in his/her real name to come forward in the event that they have relevant evidence to give. Again, this is of particular relevance in relation to officers who went on to hold managerial roles;

c. the Chairman's indication that publication of HN68's real name would be likely to interfere with the right of his widow to respect for her Article 8 rights is simply not borne out by the evidence. The likelihood of such interference is assessed in the MPS risk assessment as being "low"[60]. Using the explanation of these categories set out in appendix D to the MPS risk assessment for HN58, "low" means "the probability of the risk occurring is considered unlikely." [emphasis added]. There is simply no evidence to support the Chairman's

[59] Minded to note [5].

[60] MPS risk assessment p.15.

provisional conclusion that an Article 8 interference is "likely". It is appreciated that in an email to Operation Motion, HN68's widow has expressed concern about the prospect of intrusion by the media and "other campaigners" into her life and those of her adult children, but it is respectfully submitted that those concerns are not objectively well-founded, as demonstrated by the MPS risk assessment. It is submitted that her subjective concerns, whilst of course deserving of respect, are not such as to constitute an Article 8 interference, but even if they were, there are other means of addressing them. They cannot possibly outweigh the strong public interests in favour of openness in the Inquiry's proceedings.

HN104 – Carlo Neri

134. The cover name of Carlo Neri has already been confirmed. However, the MPS and Slater and Gordon applications on behalf of "Mr Neri" seek restriction of publication of his real name. The Chairman has indicated that he is minded to grant such a restriction on the basis that the right of HN104 and his partner to respect for private and family life would be infringed by publication of his real name and that such interference is not necessary to fulfil the terms of reference of the Inquiry. It is said that it is possible that this may need to be revisited in light of evidence that may be given by others.

135. It is respectfully submitted that there is no proper basis for the granting of a restriction order in respect of HN104's real identity. The application is made on the false premise that HN104's real identity is not known to those on whom he spied and that if it were to be known he and his family would be at risk of violence and harassment from them. In fact, those on whom he spied, including those associated with No Platform, are in a position to give evidence to the Inquiry that they are fully aware of HN104's real identity and whereabouts and have been for over 18 months. During that time, none of the consequences said to be feared by HN104 and his family members has occurred. Further, much of the information known about

HN104's real identity, including, for example, about his family business and its location, was passed on by HN104 himself to those on whom he spied during the course of his deployment. He also showed photographs of his real family and referred to his sister and child by their real first names. The fact that he shared such information whilst undercover is strongly indicative that he was not, in reality, as fearful of those he targeted as he now purports to be.

136. This case affords a clear example of the role NPSCPs have to play in ensuring that restriction order applications are determined on a fair and accurate basis. The Chairman is simply not in a position properly to assess the merits of the application without ensuring that he has the material available to him from the NPSCPs with which to test the basis on which it is advanced. If the NPSCPs' evidence is accepted, then the basis for the application falls away. Any residual Article 8 interference as a result of wider publicity of HN104's real name is wholly outweighed by the public interests in disclosure set out at [108] and [13] above.

137. Finally, in respect of this application, the NPSCPs wish to register their real concerns about the view expressed at [8] of the minded to note that "[m]embers of the infiltrated groups, including those who claim to have had a sexual relationship with him, do not need to know his real name to be able to give evidence about acts committed in his cover name." First, the reference to those who "claim" to have had a sexual relationship with him is demeaning. The MPS has made admissions of liability in respect of this officer's sexual relationships whilst undercover. It is a matter of acknowledged fact, not a mere "claim". Second, it is of significant concern that the Chairman wholly overlooks the Article 8 rights of those who were subjected to "abusive, deceitful" and "manipulative"[61] sexual relationships by an agent of the state to information about such an intimate part of their private lives. No account is taken of the interests of those women in knowing the name of the man who abused them, nor of the significant

[61] The words used in the MPS apology to the women in the DIL litigation.

interest in him being publicly accountable. Such omissions do not enhance public confidence that the Inquiry is properly alive to, or equipped to investigate, the significant issues around institutional sexism that arise in relation to the abusive practices of the SDS and NPOIU.

HN123

138. The minded to note indicates that the Chairman is minded to grant a restriction order in respect of HN123's real and cover names on the basis that personal statements from HN123 and his/her partner express concerns that were HN123's identity to be revealed during the Inquiry this would impact on their personal safety and potentially on HN123's health. These statements have not been disclosed, even in gisted form, and nor has the MPS risk assessment conducted by Mark Veljovic dated 30 June 2017, which is referred to at [2] of the Slater and Gordon supplemental application and which is repeatedly said in the MPS application dated 3 July 2017 to provide the evidential basis for the application. Thus none of the material evidence relating to this officer has been disclosed, even in gisted form. The NPSCPs are therefore not in a position to make detailed submissions in respect of this officer. It would be wholly wrong for the Chairman to proceed to make a final determination in relation to HN123's application without proper disclosure being made. The outline submissions made below are simply an indication of the significance of this officer to the Inquiry and his connection with the matters of grave public concern that led to it being established. The NPSCPs will have further submissions to make once disclosure has been made.

139. In terms of the public interest telling in favour of openness in relation to this officer, the minded to note simply says that "HN123 was involved indirectly in deployments affecting the Lawrence family and can give evidence about that under the cipher." It is said that "[t]o the extent that it is contentious, it can be challenged just as effectively, as if given in the real or cover name."

140. This materially downplays the significance of this officer and glosses over the extent to which his/her evidence is contentious. It is also of real concern that the Chairman is of the view that HN123's evidence can be effectively tested without disclosure of his/her cover name.

141. It is known from volume 1 of the Ellison Review that HN123 was posted to the SDS from 1993-1998. S/he was tasked to "left-wing groups" and had taken over from Peter Francis when in the back office[62]. Bob Lambert, in his interview with Operation Herne explained that HN123 had started fieldwork after he (Lambert) had arrived in management. Lambert said "*I am sure from day one the Stephen Lawrence case would have been on N123's agenda, and…they must have attended, started to attend meetings with the Stephen Lawrence campaign, almost goes as read that they would have been there…they would want to be inside the meeting, to have a speaker on the platform and so N123 is following close behind 'Pete Francis'…*"[63] [emphasis added].

142. The importance of HN123 to concerns around SDS reporting on the Lawrence campaign is also highlighted by the fact that s/he is identified in the Op Herne report into the allegations of Peter Francis as one of the individuals of "significant interest", because s/he was one of the undercover officers deployed at the time of the allegations with potential to report on the family[64].

143. It is clear therefore that HN123's evidence will be of "significant interest" on one of the central issues in this Inquiry – namely the circumstances in which SDS officers came to report on the Lawrence family campaign, the nature of their tasking and its impact on those on whom they reported. The importance of this issue has already been highlighted in relation to HN58 above and is discussed in further detail in relation to HN81 at [166]-

[62] Ellison V1 p.212.
[63] Ellison V1 p.213.
[64] Herne 2 p.37.

[175] below. The NPSCPs do not understand how it can be said that HN123's evidence can be effectively challenged if his/her identity is not disclosed. How will the Inquiry be able to obtain evidence from those on whom s/he spied as to the nature of his/her activities, including, for example, the level of interest s/he displayed in the Lawrence campaign; whether s/he played a role in steering the infiltrated groups towards the Lawrence campaign; the information to which s/he was privy etc.? Of particular concern is the implicit acceptance in paragraph 9 of the minded to note that HN123's involvement in deployments affecting the Lawrence family was indeed "indirect". That is surely one of the issues that the Inquiry should be investigating, namely the extent to which, as Peter Francis claims, SDS officers were explicitly tasked with obtaining information on the Lawrence family campaign and that the overlap with the Lawrences was not "indirect" or incidental at all, but entirely deliberate. This, and the similar issues that arise in relation to other family and justice campaigns, is one of the most politically sensitive issues in the Inquiry and one which cannot safely or sensibly be resolved without hearing from those who were spied on. It is of some significant concern, therefore, that the police account of the deployment as being "indirect" appears to have been uncritically accepted by the Chairman and that the central importance of ensuring that NPSCPs can be heard on this has apparently not been recognised.

144. Proper disclosure now needs to be made in relation to this officer in order that the NPSCPs, and others with an interest in the outcome of this application, can make properly informed submissions. Without this the Chairman is not in a position to determine the restriction order application on a fair and accurate basis and any determination on such a flawed basis would plainly be unlawful.

HN294

145. The NPSCPs' position in relation to HN294 is addressed at [106]-[108] above. As the minded to note acknowledges, there is "no risk" to the safety

of HN294's surviving family and "minimal risk of intrusive interest in them even if [HN294's] real name were to be published." There is an email from a son, or daughter-in-law of HN294's widow to the effect that HN294's children would be concerned about disclosure of HN294's identity. However, the MPS risk assessment found "no objective evidence that would suggest that the family would be traced."[65] There is, therefore, no proper basis for finding that publication of this officer's name would constitute an interference with the Article 8 rights of his surviving family and no proper basis for departing from the presumption of openness. Further, it is wrong to suggest that nothing would be gained by publishing this officer's identity. Aside for the very significant benefit of openness in the proceedings of a public inquiry, absence of restriction over HN294's real identity would enable photographs of him from the time of his deployment to be published, which may be of real assistance in enabling those on whom he reported to come forward. Indeed, given the absence of information about his cover name, this is the only means by which his deployment can be investigated. It is noted that the MPS risk assessment records HN294 as having been involved in the early management and decision making of the SDS[66]. His role is not therefore insignificant to the subject matter of this Inquiry. There is no rational foundation for a restriction order in relation to this officer.

HN297 – Rick Gibson

146. The position in relation to HN297 is similar to that in relation to HN294. HN297 is deceased and the risk of interference with the private and family life rights of HN297's surviving family is assessed by the MPS as being "low and the impact could be reasonably managed without significant assistance."[67] As above, "low" means "the probability of the risk occurring is considered unlikely."[68] No communications have been disclosed from HN297's family indicating that there is anything to call into question this

[65] MPS risk assessment 27.7.17 [16.1].
[66] Ibid. [16.1].
[67] MPS risk assessment in respect of HN297 [19.2].
[68] Appendix D to risk assessment of HN58.

assessment. There is therefore no rational basis for the Chairman's minded to position that publication of HN297's real name would "be likely to interfere with the right of his widow to respect for her private life under Article 8" and that "[i]t is unlikely that such interference would be justified under Article 8(2)."

147. Further, the minded to position takes no account of the significant public interest factors telling in favour of openness in the Inquiry. It is noted that, as with HN294, HN297 also went on to hold a managerial position in the SDS following his undercover deployment. In all of the circumstances there is no rational basis for restriction of this officer's real identity.

HN321

148. The minded to note indicates a provisional decision to disclose this officer's cover name, but to grant a restriction order in respect of his real name on the basis that "[i]t is likely that disclosure of his real name would prompt intense and unwelcome media interest in him and so would give rise to serious interference with his and his family's right to respect for their private life under Article 8… which would not be justifiable under Article 8(2).

149. It is submitted that the minded to indication in respect of restriction of HN321's real name fails to have any regard for the public interests telling in favour of openness (see [108] above) and is unsupported by the evidence as to what is likely to occur in the event of disclosure of this officer's real identity. As set out at [96]-[99] above, concern about lawful media interest is not a proper basis on which to grant a restriction order, but in any event, as the MPS risk assessment confirms, there is "no evidence to substantiate N321's view that "… the result [of disclosure of his identity] will be reporters, cameras, and other media camped on [his] door step demanding that I give them an interview"[69]. The MPS risk assessment assesses the risk of interference with family and private life in the event of HN321's real

[69] MPS risk assessment in relation to HN321 [14.4].

identity being officially confirmed as 'low'[70] – i.e. "the probability of the risk occurring is considered unlikely."

150. It is acknowledged that HN321 has subjective concerns about the consequences for himself and his family, and these are factors to be taken into account, but there are other means of addressing these subjective concerns without compromising the public interest in openness in the Inquiry. It is submitted that there is no proper basis for granting a restriction order in this case.

151. For completeness, it is noted that the minded to note does not refer to the submissions made on behalf of HN321 (and others) founded on assurances of confidentiality. The NPSCPs' position in relation to those submissions is set out at [68]-[72] above. They note also that the evidential position in relation to this officer does not appear to support any suggestion of an express assurance of lifelong anonymity. The witness statement of HN321 at [3] indicates that his understanding was that he was not to discuss the activities of Special Branch outside the service and his expectation was that his identity would also be kept secret, but there is no evidence of any express assurance having been given.

<u>HN326 – Douglas Edwards</u>

152. As the minded to note indicates, similar considerations arise in relation to HN326 as arise in relation to HN321. Although the MPS risk assessment in relation to this officer assesses the risk of interference with family and private life in the event of this officer's real identity being officially confirmed as 'medium' rather than 'low' as in the case of HN321 (and HN329 and HN330, who are also in similar circumstances), there does not appear to be any reason why media interest would be any greater in respect of this officer than in relation to HN321 (or HN329 or HN330). Indeed, the assessment of 'medium' is founded solely on the risk assessor's view that "official confirmation of N326 as a former undercover operative

[70] Ibid. P.18 [16.2].

within the SDS has the potential to generate media interest and or attract a degree of unwarranted intrusion from other parties which will create distress to him and, more importantly, his wife." There is no objective evidence cited in support of this supposition.

153. As with HN321, it is submitted that subjective concerns about media intrusion can and should be addressed in other ways and do not outweigh the significant public interests in the openness of the Inquiry.

HN329 – John Graham

154. The minded to position in relation to this officer couldn't make it any clearer that no weight at all has been attached to openness. The MPS risk assessment finds the risk of interference with private and family life to be 'low' and share's HN329's view that such an interference would "appear unlikely". Save that HN329's impact statement expresses the view that he "would prefer that [his] real name and status as a former undercover officer didn't come out" because he doesn't "want to be associated with the idiot that caused all this", there is absolutely no indication that HN329 would suffer any adverse effects from disclosure of his real identity whatsoever and yet the minded to note nonetheless suggests that a restriction order in respect of HN329's real name is justified. This makes plain that no weight whatsoever has been attached to openness and that the Chairman is in fact applying a presumption of anonymity. It is a complete departure from the applicable legal principles.

HN330

155. The minded to note indicates the provisional view that this officer's real identity should not be disclosed. The cover names that he used cannot be disclosed as he cannot remember them. The NPSCPs note that the submissions made by the Designated Lawyers founded on assurances of anonymity are said to be made on behalf of HN330, although his (unsigned) impact statement does not mention him having been given any such assurance. Indeed the impact statement suggests that he considers it to be

a matter for the MPS as to whether it wishes to apply for anonymity for him or not. Emails from HN330 to the MPS cited in the risk assessment refer to his preference to "be left in peace and not to be additionally importuned…", but also to the fact that he does not consider himself to be at risk[71]. The risk assessment shares HN330's view that the risk of interference with family and private life in the event of his real identity being disclosed is low[72]. The same reasoning therefore applies as in relation to HN329 above.

HN333

156. The MPS has applied for a restriction order in relation to HN333's real name only. However, the Designated Lawyers on behalf of HN333 have made an application for restriction of both real and cover names. The minded to note indicates that the Chairman is minded to grant the restriction in relation to both real and cover names on the basis of a "very small" risk that if his cover name were to be associated with the valuable duties which he performed subsequent to his deployment, he would be of interest to those who might pose a threat to HN333 or his family.

157. It is submitted that again, there is no proper basis for a restriction order in respect of either real or cover names in this case. First, presumably, in referring to a "very small" risk, the Chairman is using a similar gradation of risk as used in the MPS risk assessments. If so, and the Chairman's "very small" risk is equivalent to the MPS "very low" risk, this means that "the probability of the risk occurring is considered highly improbable."[73] Further, that "highly improbable" risk is itself conditional on the cover name being associated with HN333's real name. The MPS clearly considers this to be unlikely given that it concludes that "If other factors were in place to further limit revelation or recognition of N333's true identity, the result of confirming the pseudonym is likely to be of little consequence to N333,

[71] MPS risk assessment re HN330 [7].
[72] Ibid. [16.2].
[73] See definition of terms at, for example, Appendix D to HN58 risk assessment.

but of potential reputational risk to the MPS if the pseudonym is confirmed."[74]

158. It is right that the Designated Lawyers team, on behalf of HN333 seek to argue that because the group he infiltrated was small and it is likely that some of its members will have died in the intervening 50 years, this will make it easier for surviving members and/or others to identify him.[75] However, this does not follow. Whilst the small size of the group might make it easier for former members to identify who was the spy in their midst, they would still only know this individual by his cover name. The size of the group does not increase the risk of the link being made between his cover name and real name.

159. In short, therefore, the public interest in favour of restriction of the cover name is the avoidance of a "highly improbable" risk of harm to HN333. Whereas the public interest in favour of disclosure is that without it there can be no proper investigation of his deployment at all, because there will be no means of eliciting evidence from those on whom he spied. This may be of particular significance if the reference to potential reputational damage for the MPS in the MPS risk assessment reflects a recognition that revelation of the cover name may lead to public exposure of wrongdoing[76].

160. In relation to disclosure of the real name, the MPS risk assessment concludes that the risk of attack from former associates is minimal, as is the risk of attack from current activists. The only possible risk identified is that the risk assessor could not "exclude a threat from an unconnected individual knowing, or becoming aware of, N333's former role as an undercover operative."[77] There does not appear to be any evidence or intelligence suggesting the possibility of such a risk, it is simply that it cannot be excluded. It is submitted that the Chairman is right to categorise

[74] MPS risk assessment [15.3].
[75] Designated Lawyers application for HN333 [7].
[76] MPS risk assessment [15.3].
[77] MPS risk assessment [16.1].

this risk as "very small". However, having rightly recognised the very small level of the risk, the Chairman is wrong to consider that it outweighs the strong public interests identified at [108] above in favour of openness.

161. For completeness, HN333 is one of the officers in respect of whom the Designated Lawyers submissions on assurances of confidentiality are made. However, the MPS risk assessment states that HN333 "received no specific assurance or guarantee of anonymity by senior officer(s). N333 states that there was only an "implied implication" of future anonymity."[78]

162. Further, in so far as HN333 contends that if his real name were to be disclosed he would be concerned that his reputation would be tainted by the activities of the later officers[79], the NPSCPs rely on the submissions set out at [100] above.

HN343

163. No documents have been disclosed in relation to this officer, save that he is one of the officers included in the Designated Lawyers submissions in relation to assurances of anonymity. It would be unfair and unreasonable for the Chairman to grant any restriction order before relevant disclosure has been made. The NPSCPs will make submissions in respect of this officer when they have received the relevant disclosure.

The officers who will be subject to closed hearings

164. The NPSCPs recognise that the directions of 3 August 2017 do not invite submissions from them in respect of the officers whose applications will be subject to closed hearings. However, for the reasons set out in Part 2 above, it is submitted that to proceed to such hearings without first hearing from the other CPs, including the NPSCPs and, if they so wish, the media, would be unreasonable and unlawful. As set out at [53] above and in the

[78] Ibid. [3.4].

[79] HN333 impact statement [10].

relevant annexes to these submissions, the NPSCPs contend that the present level of redaction is excessive and that further disclosure is required in order to ensure fairness, but also to ensure that the Inquiry is properly in a position to test the evidence of alleged risk advanced in support of the restriction order applications. The submissions set out below should not be taken to be a complete statement of the NPSCPs' position in relation to these officers and they expressly reserve the right to make further submissions in relation to them.

HN81

The significance of HN81 to this Inquiry

165. As the Chairman rightly identifies at [6] of his minded to note, concerns around HN81's deployment, the intelligence he gathered and what was done with that intelligence was one of the reasons for setting up this Inquiry.

166. Ellison's findings around HN81 were rightly described by Theresa May in her statement to the House of Commons as "profoundly shocking" [80]. He was "an MPS spy in the Lawrence family camp during the course of judicial proceedings in which the family was the primary party in opposition to the MPS"[81]. He met with Richard Walton, then a member of the MPS team tasked with preparing final submissions to the Macpherson Inquiry, during the period when those submissions were being prepared and passed on personal information about the Lawrence family and their campaign.

167. Further, the SDS was reporting on Duwayne Brooks in the period following the Macpherson Inquiry and during the period in which he was pursuing civil proceedings against the MPS[82]. It is likely that HN81 is also relevant to this issue (as may be HN123, HN58 and others).

[80] Statement to the HoC, 6 March 2014.
[81] Ellison, summary of findings p.23.
[82] Ellison, Vol 1 pp.278-300.

168. In his account to Operation Herne, N81: "noted that the group [he said he was targeting] didn't just focus on the Stephen Lawrence family and the reality was that they were constantly trying to 'cast their net' in order to become involved with a number of Justice Campaigns"[83]. Herne III confirmed that SDS records contained references to seventeen 'Justice Campaigns' in addition to the Stephen Lawrence Campaign[84]. These were campaigns intended to expose police misconduct and hold the police to account including in relation to predominantly black deaths in custody. The families/campaigns of Blair Peach, Cherry Groce, Joy Gardner, Roger Sylvester, as well as Winston Silcott, Trevor Monerville and Jean Charles de Menezes were just some of those 17 who were subsequently provided with heavily redacted intelligence entries by Operation Herne said to be the product of covert SDS intelligence gathering.

169. Peter Francis has explained that his intelligence gathering shifted in the mid-1990s towards the infiltration of community justice campaigns and that "by targeting these groups I was convinced that I was robbing them of the chance to ever find justice"[85]. Peter Francis has also said that he was directly tasked with gathering evidence on Bernie Grant MP[86] and it is well known that Mr Grant was actively involved in a number of the above mentioned justice campaigns during the period of HN81's deployment in the 1990s. In December 2015, the MPS informed Mr Grant's widow that a file on her husband may have existed, but if it did it has now been destroyed. Hearing live evidence from the key players – both those who spied and those who were spied upon – is therefore going to be the only means of getting to the truth on this important issue; the extent to which an elected Labour politician - one of Britain's first Black British MPs - who campaigned against police misconduct and deaths in police custody, was spied upon by the Metropolitan Police. It will also be the only means of

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[83] Herne III §11.2

[84] Herne III §1.4

[85] Rob Evans and Paul Lewis, Undercover, The True Story of Britain's Police (2013) (see especially pp 121 and 150-153)

[86] https://www.theguardian.com/uk-news/2015/mar/25/police-spied-on-labour-mps-whistleblower

getting to the truth on the many other issues where key records have been lost or destroyed, or where briefings were deliberately "off the record" as were those between HN81 and Richard Walton[87].

170. This is important because HN81 has given evidence to Ellison and Herne that he and his fellow SDS officers were not 'tasked or directed at any stage into any Justice Campaign' and Operation Herne concluded that there is "no evidence" of covert operations targeted against any of the respective families or Justice Campaigns.[88] These Herne conclusions directly contradict Peter Francis's account.

171. The NPSCPs are concerned that Peter Francis's allegations have, in other respects, proved to be undeniably accurate (e.g. the sexual and intimate relations and the tradecraft of using the death certificates of deceased children). HN81's account, that intelligence gathered on those seeking accountability for police misconduct and deaths in custody amounted to "collateral intrusion" is also undermined by the activities of Mark Cassidy (aka Mark Jenner) who not only infiltrated the Colin Roach Centre (CRC) and Hackney Community Defence Association (HCDA) (organisations supporting the victims of police misconduct) but also actively sought to undermine and subvert their activities from 1995 onwards.

172. That the MPS was engaged in gathering information on the "Stephen Lawrence camp" and other Justice Campaigns concerning black deaths in custody at a time when, as it knew, both the Home Secretary and the Prime Minister were expressing "extreme concern" about the MPS' credibility in the eyes of London's black community[89] and in the context of Sir William Macpherson's findings of institutional racism is a matter of the gravest public concern. The Core Participants in Groups G and J are concerned to establish the extent to which they were targeted, how and why they were

[87] See, for example, [26] of the IPCC report Walton, Lambert, Black.

[88] Herne III §13.1

[89] See Bob Lambert's written report of the meeting between Richard Walton and HN81 cited in Herne Report 2 at [21.1.8].

targeted, how the intelligence produced as a result was used and the extent to which such policing decisions were influenced by the institutional racism identified by Macpherson and the chain of accountability in terms of the failure to disclose to the Stephen Lawrence Inquiry the existence of police undercover activity in relation to the Lawrence family.

173. The degree of public outrage rightly engendered when the matters identified by Ellison and Herne came to light was recognised by both the Independent Review and the Home Secretary in announcing this Inquiry.

174. These are issues of real public concern that this Inquiry must address and HN81 is at the heart of them (as are HN123, HN58, Bob Lambert – and potentially others who have not yet been the subject of relevant disclosure). The Inquiry simply cannot get to the truth if (i) the evidence relating to the relevant officers, including HN81, is heard in closed proceedings (as is currently sought by HN81) and (ii) the only evidence the Inquiry considers is that of the police (which would be the consequence if non-police witnesses are unable to give meaningful evidence because they cannot be told what they are supposed to be giving evidence about) and if NPSCPs are unable to test the officers' accounts. Indeed, such a course is likely to exacerbate rather than allay public concern[90]

175. Nor is this solely a matter of public perception. There is a factual dispute involving N81 that the Inquiry *must* resolve if it is to fulfil part of its Terms of Reference. According to Operation Herne there is currently "no evidence" to support Peter Francis's evidence and undermine HN81's account. Any such evidence can therefore *only* now come if HN81 either changes his account or if his (and the identities of other SDS officers relevant to Groups G and J) are known and the CPs in Groups G and J are able to explain what activities they know he (and the other officers) undertook.[91] Therefore the Inquiry cannot *in fact* get to the truth of these

[90] See legal principles ruling [104].

[91] See Legal Principles Ruling para 105.

matters without hearing from those who were spied upon as to the activities of HN81 (and the other officers) within their groups. And they cannot do that without knowing their identities. Nor should they be asked to.

176. With regard to paragraph 16.1 of the Risk Assessment: establishing the truth should, on HN81's analysis, benefit him by exonerating him. In those circumstances it is surprising that he would assert that the contrary is the case and seek to shield his identity. It is simply not the case that whatever the findings of this Inquiry he will always be considered as 'the police spy in the Lawrence camp'.

177. Finally, at paragraph 111 of the legal principles ruling Pitchford LJ noted that there would be circumstances where "the officer, the police services, the Inquiry's legal team and I would know whether the person described by the witness was indeed an undercover officer but the witness would not…In my view, there may well be circumstances in which this process would demean and be unfair to the witness". It would be particularly demeaning for those core participants affected by HN81 who are grieving families and friends to give evidence in public whilst the officer himself hides behind a shield of anonymity. This is not least because of the impact of their bereavement but more importantly, because their loved ones died at the hands of the police and/or they have been failed by the state's investigatory authorities time and time again. This demeaning impact upon Group G and J CPs must be given significant weight when considering the correct process to be adopted in relation to HN81.

178. For these reasons, the public interest in disclosure of HN81's identity is of the first order. Only an exceptional countervailing interest could lawfully justify restricting its disclosure. It is submitted that the bases for seeking restriction thus far disclosed in the open material do not come close to such justification.

The bases on which the restriction order is sought

Article 3

179. The NPSCPs note that paragraph 6 of the Chairman's minded to note, addressing HN81's application does not refer to Article 3, but rather identifies the issue as being whether an interference with the Article 8 rights of HN81 and his or her partner would be justified under Article 8(2). It is respectfully submitted that this approach is correct: if a risk of interference is made out at all (as to which see [181]-[189] below), it is with Article 8 rights.

180. The open material disclosed does not support any real and immediate risk of any interference reaching the threshold of Article 3. The NPSCPs' submissions in relation to the alleged threat of physical harm are addressed at [181]-[186] below. In respect of the reliance placed in the Slater and Gordon 2017 application on an alleged risk of Article 3 breach arising from psychological harm, it is submitted that further disclosure would need to be made if the Chairman were, contrary to the impression given in paragraph 6 of the minded to note, minded to consider the Article 3 threshold to be reached. For the reasons set out below in relation to risk of physical harm, it is submitted that any impact on HN81's mental health arising from his subjective fears of physical harm is not borne out by the objective position. Whilst, therefore, it is a factor to be weighed in the balance, the overwhelming public interest in this Inquiry's ability to get to the truth and to allay the public concern that arises from HN81's deployment outweighs any interference with his/her Article 8 rights and other means must be taken to mitigate the impact on his /her Article 8 rights.

Risk of physical harm

181. First, for a risk of physical harm to be even a possibility, HN81 must establish that disclosure of his cover name would lead to revelation of his real identity. The previous Chairman rightly made clear in his ruling of 2 May 2017, that there can be no presumption that disclosure of a cover

name will lead to disclosure of the real identity, indeed the opposite is suggested:

> "when an officer has retired from undercover deployment with the concealment of the link between their real and cover identities preserved, there is no obvious reason, from a security standpoint, why the cover name should not be revealed, provided that measures are taken calculated to ensure that the cover name is not thereafter linked to the real identity and personal details of the witness."[92]

182. This is the case in respect of HN81 and the NPSCPs would endorse the submission made on behalf of Peter Francis at the April 2017 hearing that "compelling evidence" should be required before the Inquiry accepts that an officer's real identity would be revealed by disclosure of their cover name[93].

183. However, in any event, the NPSCPs submit that the evidence of what has actually occurred when SDS and NPOIU officers have been identified undermines the contention that HN81 would be at risk of physical harm, even if his real name were to be disclosed. They point to [74] above, setting out the details in relation to the undercover officers who have been disclosed so far. Of particular relevance in relation to HN81 is the fact that neither Bob Lambert, nor Richard Walton has been subjected to any physical harm. Given that Bob Lambert was HN81's superior officer at the material time and appears to have had at least some responsibility for directing his conduct, it is difficult to see why the level of risk he and HN81 faced would not be comparable. Likewise in relation to Richard Walton. Walton's apparent role in delivering information from HN81 to the MPS team working on the Macpherson Inquiry is as shocking as HN81's, if not more so, given Walton's subsequent rise through the MPS ranks to head of Counter Terrorism Command. And yet there is no evidence of Walton

[92] Ruling of 2 May 2017 [198].
[93] Ibid. [68].

having been subjected to physical attack as a result, nor any apparent concern of such, given that he chooses to pursue an active public profile.

184. The NPSCPs note also, the reference in the 2017 MPS risk assessment at [4.11] to a risk assessment conducted in relation to HN81 at the time of his or her deployment, which assessed the chance of an attack on an exposed officer as being unlikely. This would appear to accord with HN81's own expressed view in March 2014 that, although the possibility could not be discounted, s/he did not believe there to be a high likelihood that individuals who discovered him/her would seek to do him/her serious physical harm[94]. It is of note that this statement was made at the time the Ellison review was published and so would have been made in the knowledge of the interest those findings were likely to engender.

185. It is submitted that the hard evidence of what has actually occurred to exposed officers, in particular those implicated in the same events as HN81, together with the contemporaneous risk assessment and HN81's reported statement of his/her perception of the level of risk of physical harm at the time Ellison reported are more compelling evidence of likely physical risk than the vague and generic assertions now made in the open material served in support of his/her restriction order application. If and in so far as the redacted material contains more specific allegations of risk, it is submitted that fairness and the importance of the Inquiry being able to get to the truth in respect of this matter, require very careful consideration to be given to whether the present level of redactions really are the minimum required in order not to defeat the purpose of the application. The NPSCPs contend, for example, that given that it is already public knowledge that HN81 infiltrated groups associated with the Lawrence family campaign, if it is alleged that any such groups pose a source of threat, it is unlikely to lead to the identification of HN81 to reveal which those groups are said to be. Doing so would enable those with relevant evidence to give to test the allegations of risk.

[94] See gisted risk assessment 11 March 2016 p.10 [8].

186. This is particularly important in light of Sir William Macpherson's finding of institutional racism within the MPS at the time HN81 was active. This Inquiry must be careful not to, and to be seen not to, taint its own proceedings by relying on allegations against groups and individuals that may be founded on racist assumptions.

<u>*Other forms of Article 8 interference relied on in support of HN81's application*</u>

Harassment

187. As set out at [89]-[90] & [96]-[99] above, the Inquiry must be careful to distinguish between lawful exercise of Article 10 rights, whether through lawful protest or media reporting, and harassment. The experiences of the undercover officers disclosed to date have been the former. There is no reason to expect that the position would be different in respect of HN81 and his partner. To the extent that it is necessary to do so, the MPS is able to put measures in place to shield them from excessive media intrusion or public protest.

Assurances of anonymity

188. The NPSCPs' submissions in relation to assurances of anonymity are set out at [68]-[72] above.

Interference with HN81's partner's Article 8 rights

189. As set out above, the NPSCPs' position is that HN81 is not at risk of physical harm. It follows that this is also their position in respect of his/her partner. In so far as HN81's partner has subjective fears, the same considerations apply as in relation to HN81. The public interest in this Inquiry being able to allay public concern in relation to HN81's conduct is such that interference with the Article 8 rights of HN81's partner, to the extent that this might occur, is necessary and proportionate.

<u>HN16</u>

190. It is of note that the MPS does not apply for any restriction order in respect of this officer. It is to be inferred from this that the MPS is of the view that any risks pertaining to this officer are not such as to outweigh the public interest in the disclosure of his/her cover and real names.

191. HN16 him/herself applies for restriction of his/her cover and real names and that s/he should give evidence to the Inquiry in closed proceedings from which everyone except the Chairman, counsel and solicitors to the Inquiry, counsel and solicitors for HN16 and essential court staff should be excluded.

192. At present insufficient disclosure has been made to enable the NPSCPs to make detailed submissions in respect of HN16's application. The minded to note at [2] simply states that "[d]etailed factors particular to this officer's circumstances require them to be considered at a closed hearing." Counsel to the Inquiry's explanatory note of 3 August 2017 refers at [30] to an awaited risk assessment and the directions issued on 3 August 2017 do not refer to HN16. CTI's note at [32] indicates that further directions will be made in relation to HN16 once the risk assessment has been received and such open versions of the documents as it is possible to publish have been published.

193. The NPSCPs understand from this that no closed hearing in respect of HN16 will take place prior to further directions and disclosure being made. On this basis, they do not seek to make submissions in respect of HN16 at this stage, save to note that in addition to the awaited risk assessment, there has also to date been no disclosure of the expert medical report referred to in CTI's note at [30] and they have only been provided with one, very general gist, of one personal statement, whereas CTI's note refers to statements in the plural. It is submitted that prior to any, or any further, consideration by the Chairman of HN16's application, full disclosure of the application and supporting evidence should be made to the NPSCPs, subject only to such redactions as are required by Rule 12(1) and (2), or any other

restriction order properly granted under s.19 IA 2005 and that they should be afforded an opportunity to make submissions in advance of any proposed closed hearing in order that they have a fair opportunity to address the Chairman as to the applicable legal principles and as to the relevant factors bearing on HN16's application, including, the public interest factors telling in favour of disclosure and the factors relied upon by the applicant in support of his/her application. Annex HN16 to these submissions identifies the redactions to the documents disclosed to date that are queried by the NPSCPs.

HN26

194. It is of note that the MPS does not apply for any restriction order in respect of HN26's cover name. It is to be inferred from this that the MPS is of the view that any risks pertaining to this officer are not such as to outweigh the public interest in the disclosure of his/her cover name.

195. HN26 him/herself applies for restriction of his/her cover and real names and that s/he should give evidence to the Inquiry in closed proceedings from which everyone except the Chairman, counsel and solicitors to the Inquiry, counsel and solicitors for HN16 and essential court staff should be excluded.

196. It is apparent that there is some level of dispute between HN26 and the MPS. HN26 plainly disagrees with the MPS assessment of risk, particularly in relation to disclosure of his cover name[95]. It is noted also that HN26 has declined to meet with the MPS risk assessor and that all correspondence between HN26 and the MPS has been through HN26's solicitor[96]. It is noted that HN26 has refused the services of Operation Motion to assess his/her physical security and to provide mitigating measures. The NPSCPs question how genuine HN26's fears are given that s/he has declined to avail him/herself of this protection.

[95] Slater and Gordon revised supplemental application [7(3)].
[96] Gisted risk assessment version 7 dated 24 July 2017 [10].

197. As with HN16, at present insufficient disclosure has been made to enable the NPSCPs to make detailed submissions in respect of HN26's application. Annex HN26 sets out the redactions to the presently disclosed material that are queried by the NPSCPs. They submit that proper disclosure should be made to them, and to those said to be a source of risk in relation to HN26, so the Inquiry has a properly informed basis on which to test HN26's contentions of risk.

HN7

198. On 3 August 2017, the Chairman granted a restriction order in respect of HN7's real and cover names under section 19(3)(a) IA 2005 on the basis that in the opinion of Professor George Fox, a consultant psychiatrist, there is a "significant' risk that HN7 will take his own life if his real or cover name were to be published. The Chairman found that the need to arrive at the truth in relation to HN7's deployment is unlikely to justify the interference with his rights that would occur as a result of disclosure. He observed that there is likely to be a good deal of other open evidence of similar and contemporaneous deployments from which conclusions can be drawn and that disclosure of his cover name would, therefore, be unlikely to prompt the giving or production of further evidence necessary to permit the Inquiry to fulfil its terms of reference. No opportunity was afforded to core participants, other than HN7 and presumably the MPS, to make any submissions in relation to HN7's application prior to the decision to grant the restriction order being made. Nor was any such opportunity afforded to the media.

199. By letter dated 4 September 2017, and therefore after communication of the final decision, and in response to a request for further information from the NPSCPs, the solicitor to the Inquiry disclosed submissions made by the Designated Lawyers on behalf of HN7, dated 20 July 2017.

200. It is revealed by the Designated Lawyers submissions that it had originally been the Chairman's intention to issue a minded to note in respect of HN7 and to afford CPs an opportunity to make submissions in relation to it. However, the Designated Lawyers submissions sought to dissuade him from that course and instead to move straight to granting the order. It was submitted by the Designated Lawyers that the publication of minded to reasons gave rise to a Catch 22 in that in order to enable core participants to make meaningful representations in respect of the minded to indication, it would be necessary to disclose details of HN7's medical condition, but that to do so would itself preclude subsequent disclosure of his identity, because the revelation of his identity in connection with his sensitive medical information would give rise to a separate breach of his rights. It was argued that this would allow "any challenger to complain that the prior publication of the "minded to" reasons and gist had effectively presented them with an unchallengeable decision as a *fait accompli*."[97] The solution proposed by the Designated Lawyers, and accepted by the Chairman, was to present an actual *fait accompli* in the form of a final decision.

201. It is submitted that this approach was wholly wrong. As demonstrated by the publication of the final ruling and the Designated Lawyers submissions, it would have been perfectly possible for the Chairman to have published a minded to note which does not disclose personal medical details which would themselves have prohibited publication of HN7's real name, let alone his cover name. In particular in relation to the cover name, it cannot sensibly be suggested that publication of very heavily gisted information in connection under a pseudonym engages the Article 2, 3 or 8 rights of the individual concerned.

202. It is submitted that core participants, including NPSCPs, should have been afforded an opportunity to make submissions before any decision to grant a restriction order was taken. As with the 'minded to' indications addressed above, there is nothing in the Chairman's ruling in relation to

[97] Designated Lawyers submissions [7].

HN7 to indicate that any account was taken of the rights of those who may have been affected by HN7's deployment. The conclusion expressed in the ruling that evidence of similar and contemporaneous deployments will be sufficient for fulfilment of the Inquiry's terms of reference proceeds on the assumption that HN7 did not enter into any intimate relationships during the course of his deployment, that no miscarriages of justice occurred and that he did not engage in any other wrong-doing. That is an assumption that is wholly untested without enabling CPs, including NPSCPs and Peter Francis, to make informed submissions.

203. It is submitted that very careful consideration should now be given as to the need to make disclosure of at least some information (for example, the groups spied upon, years of deployment undercover, any managerial position held) so as to enable those who may have been affected by HN7's deployment, or who might otherwise have relevant knowledge of it, to give evidence that would inform a proper assessment of the public interest in disclosure of this officer's cover and/or real names and therefore to assist in identifying whether there is a need to vary or revoke the current restriction order.

204. The Chairman has power under section 20(4) IA 2005 to vary or revoke a restriction order. It is submitted that the Chairman should now consider whether it is possible for information to be disclosed which would not be contrary to the restriction order currently in force, but which would allow submissions to be made and/or evidence to be given as to the public interest in disclosure of this officer's cover and/or real names.

CONCLUSION

205. For all of the reasons set out above, it is submitted that the overall approach to the determination of restriction orders indicated by the minded to note:
    a. demonstrates an unwarranted and unlawful departure from the legal principles identified in the legal principles ruling;

b. erroneously starts from a presumption of secrecy rather than openness and treats disclosure of real and cover names as requiring justification, rather than the other way around; and

c. fails to acknowledge the very significant public interest factors telling in favour of openness in this Inquiry, not least the ability of the Inquiry to command public confidence in its process and conclusions and thereby allay public concern; and the ability of core participants to participate and to assist the Inquiry in ensuring that it hears all relevant evidence and not just the police account.

206. In respect of the individual minded to decisions, the redactions to the material disclosed to date go far beyond that which is properly justified under Rule 12(1) and (2). Proper disclosure should be made in order to enable the NPSCPs, Peter Francis and the media to make informed submissions and to challenge the evidential basis for the applications. Without this, the Inquiry is left determining these applications, which are "central to the Inquiry's ability to fulfil its terms of reference", on a one-sided account of the facts and without proper regard for the significant public interests telling in favour of openness. This is neither fair nor conducive to public confidence in the Inquiry's process, and is ultimately destructive of its ability to allay public concern. Decisions taken on such a basis would be unlawful.

207. Further, the open evidence disclosed to date does not, for all of the reasons set out above, provide a proper basis for any of the restriction orders the Chairman has indicated that he is minded to make.

208. The Inquiry is respectfully invited to make proper disclosure, consistent with the presumption of openness and the statutory duty of fairness in respect of each of the applications addressed in the minded to note. Following such disclosure, it is submitted that open hearings should be held in respect of HN81, HN26 and HN16. In respect of the other officers addressed in the minded to note, the Chairman is respectfully invited to

reconsider his minded to indications in light of the submissions set out above; to issue a fresh minded to note applying the correct legal principles and addressing the factors telling in favour of openness as well as those telling against; and thereafter to afford CPs and the media the opportunity to make submissions in respect of the fresh minded to indications and in light of proper disclosure.

PHILLIPPA KAUFMANN QC
MATRIX

RUTH BRANDER
DOUGHTY STREET CHAMBERS
5 October 2017

ANNEX HN58

Document	Queried redaction	Nature of query
Slater & Gordon supplemental application 13.7.17	Paras 4-12	Why is no gist supplied of the redacted passages?
Risk assessment 25.7.17	Para 2	Why is no gist supplied of details of SDS deployment and HN58's current situation? And why are the details about HN58 in the public domain redacted at all? By definition these should be disclosable as they are already in the public domain. Redacting this obviously disclosable material only serves to increase the work of NPSCPs in making focused submissions and it impedes public understanding of the significance of this officer.
	Para 3.3	Please disclose a general indication of N58's target – eg far right group, left wing group, animal rights movement etc.
	Para 4.1	Why is it said that dates of deployment will reveal HN58's identity?
	Para 4.3	Why are these groups redacted? If the contact was "peripheral", as described, how would disclosure of these groups lead to his identification?
	Para. 4.11	Why can a gist of these risk assessments not be disclosed? We know in relation to HN81, for example, that a risk assessment from the time of his/her deployment found the chance of attack on an exposed officer as being unlikely. This is relevant to the credibility of later risk assessments.
	Para. 4.12	Please indicate, in gist form if necessary, whether it is known that HN58 entered into any significant relationships that would engage the Art 8 rights of the individual(s) affected?
	Paras 4.14, 10.2, 10.3 & 12	Please consider whether it is necessary in accordance with the need for RO applications to be determined on a fair and accurate basis to afford individuals mentioned in these sections a right of reply. Informing individuals that they have been identified as posing a potential risk of harm and inviting

Document	Queried redaction	Nature of query
		submissions from them could be achieved without revealing HN58's identity. If necessary, it could be done without revealing which application the risk is said to relate to.
	Para 4.18	Please provide a gist of this paragraph. Given HN58's connection with the activities of HN81 and Bob Lambert and his senior management role in the SDS at the time its officers were committing human rights abuses, such as entering into intimate relationships, it is relevant to know whether this officer received commendations in relation to this work.
	Para. 4.20	It is known that HN58 progressed to a senior management role in the SDS – possibly head of the unit from 1997-2001 (see main submissions at [118]). Given the matters this Inquiry will investigate that occurred 'on his watch' it is relevant to know whether he went on to hold further senior roles within the MPS thereafter. At least a gist indicating his general career trajectory within the MPS should be disclosed.
	Para. 5.4	Why is it said that this information would reveal HN58's identity? It is known that he was investigated by the IPCC under the N number N34. Why can any further details of formal investigation not be disclosed?
	Para. 5.7	If HN58 is currently within a position of trust in the community, this is relevant to the public interest in his identity being known.
	Para. 5.12	If details of HN58's physical health are relied on in support of a restriction order, then at least a gist should be supplied.
	Para. 8.2	Please provide a gist of this para.
	Para. 11	Consideration should be given as to whether it is necessary in accordance with need for RO applications to be determined on a fair and accurate basis to afford the groups listed in this section a right of reply.
	Para. 14.1	Please provide a gist of the perceived risk factors.

Document	Queried redaction	Nature of query
	Para. 15.3	Please provide a gist of the anticipated difficulty in revealing HN58's pseudonym.
	Para. 15.6	Please provide a gist of the issues concerning screening. This is of particular importance as the Chairman's minded to note indicates that "it is likely that HN58 will have to give evidence from behind a screen."
	Para. 15.8	Please provide a gist of the issues concerning prohibition of publication.
	Para. 16.2(iv) & (v)	Please provide a gist of the risks here discussed.
	Appendices F & G	Why is it necessary to redact these in full?
	Appendix J	Why has this not been disclosed?
Gist of psychiatric report of Prof G C Fox 18.1.17	Whole document	It is not accepted that this is an adequate gist of the report. It is wholly meaningless. It is noted that the minded to note refers to "a slight risk of causing a stress reaction recognised in the [ISCD10]" Why is it necessary to redact the statement recognising the expert's obligations? Does the report address ways in which the "slight risk of causing a stress reaction" may be addressed in the event that HN58's covert or real identity is disclosed?
Letter of Slater & Gordon 24.5.16	Whole document	This document is referred to at [1] of the supplemental application, but has not been disclosed to NPSCPs.
Open application on behalf of N58, Slater & Gordon 2016	Paras. 2, 4, 5, 9, 12, 13, 16	Why is no gist given in respect of these redactions?
	Para 8	Why can the number of years for which HN58 has remained anonymous not be disclosed? It is difficult to see how this information could reveal his identity.
Gist of personal statement	Whole of document	It is submitted that the gisting of this document goes beyond that which is necessary in order to avoid disclosure of HN58's covert and real identities. For example, why would the detail of the assurances given to HN58 reveal his identity? Further detail about the nature of HN58's fears of intrusion into his/her

Document	Queried redaction	Nature of query
		and family's private lives would not reveal his identity – eg is media intrusion feared? Protest by campaigners? Such detail is necessary in order to enable NPSCPs a proper opportunity to respond and for the public to understand the basis on which the application to withhold information of significant public interest is made.

ANNEX HN68

Document	Queried redaction	Nature of query
The submissions below are made on the premise that the Chairman's minded to indication, that HN68's cover name should be disclosed, remains provisional and therefore evidence that might reveal that information remains 'potentially restricted evidence'. If the minded to indication in respect of the cover name is made final, a significant amount of the redactions queried below should be lifted as they pose no risk of revealing the officer's real identity.		
MPS risk assessment 25.7.17	Para. 2	Why is the information as to whether HN68 had a relationship and was ever involved in the criminal justice system redacted? These matters would not reveal HN68's identity and they are relevant to the public interest in disclosure. In relation to the dates of HN68's deployment and later return to the SDS, this information is now disclosed in the minded to note. They should not be redacted here.
	Para. 4.2	Please disclose the group infiltrated, or if this is properly assessed to be 'potentially restricted evidence' within Rule 12, please provide an indication of the type of group – eg far right, left wing, anti-apartheid etc.
	Para. 4.3	If the contact was "peripheral", as described, how would disclosure of these groups lead to his identification?
	Para. 4.5-4.18, 6.4, 6.7	Please provide a gist in relation to these sections.
	Para. 8.2	Please disclose whether or not HN68's cover name is already in the public domain. This is relevant to the public interest in continuing to refuse to disclose it.
	Para. 11	Please disclose a gist of this section.
	Para. 15.1	Please provide details of any previous risk assessments and recommendations.
NB CTI's explanatory note at [33] refers to "additional threat assessments". These have not been disclosed. The NPSCPs query whether complete non-disclosure is genuinely necessitated by Rule 12 and/or any separate restriction order made under s.19 IA 2005. If not, disclosure is requested.		

ANNEX HN104 – Carlo Neri

Document	Queried redaction	Nature of query
Slater & Gordon application 25.7.16	Paras. 1, 2, 5, 6, 9, 12(2), 13, 14, 16-26	Why is it not possible for a gist to be provided in respect of these paragraphs – at least providing an indication of the nature of the matters they are addressing?
	Para. 12(2)	It is submitted that the Inquiry should take steps to ascertain whether the individual referred to in this sub-paragraph is already aware of HN104's real identity. If so, then the allegation of risk that is said to arise from this individual in the event of HN104's real identity being disclosed is undermined.
Slater & Gordon open supplemental application 21.7.17	Paras. 5-7	Please provide a gist of the redactions to these paragraphs.
Gisted psychiatric report of Professor Fox 8.3.17	Whole document	It is not accepted that this is an adequate gist of the report. Why is it necessary to redact the statement recognising the expert's obligations? What is the nature of the "health issues" that it is said will be destabilised? Does the report address ways in which the "health issues" may be addressed in the event that HN104's real identity is disclosed?
Carlo Neri [104] Statement in Support of Anonymity Application dated 1.11.16	Whole document	Please provide gists of the redactions to this document.
N104P-Impact Statement of partner 28.7.2016	Whole document	Please provide gists of the redactions to this document.
N104R statement of "relative"	Whole document	Please provide gists of the redactions to this document.
Para. 1 of the Slater & Gordon supplemental application, dated 21 July 2017 refers to an MPS risk assessment dated 1 March 2016, a personal statement of N104 dated 18 February 2016 and a medical report dated 20 June 2016. These documents have not been disclosed.		

ANNEX HN123

Document	Queried redaction	Nature of query
Slater & Gordon supplemental application 20.7.17	Paras. 5 & 6	Please provides gists of the redactions to these paragraphs. It is stated that HN123 no longer wishes to rely on material previously filed in support of his/her application. It is submitted that if there has been a material change in basis for HN123's application that should be disclosed as it may be relevant to his/her credibility and/or to aspects of the public interest balance telling in favour of or against restriction.
Slater & Gordon application 14.3.16	Paras. 2, 4 , 5, 9, 10, 11, 12, 14, 15 & 17	Please provides gists of the redactions to these paragraphs.
	Para. 15	Please consider whether it is necessary in accordance with the need for RO applications to be determined on a fair and accurate basis to afford the individual referred to in this section a right of reply. Informing the individual that they have been identified as posing a potential risk of harm and inviting submissions from them could be achieved without revealing HN123's identity.
The MPS application dated 3.7.17 repeatedly states that the evidential basis for the claims made in the application is to be found in the risk assessment but none has been disclosed, other than that prepared in 2016 by Op Motion. Para. 2 of the Slater & Gordon supplemental application dated 20.7.17 refers to a risk assessment prepared by Marc Veljovic dated 30 June 2017. This document has not been disclosed. The minded to note at [9] states that personal statements of HN123 and HN123's partner are and will remain closed. Why can a gist of those statements not be provided?		

ANNEX HN294

Document	Queried redaction	Nature of query
MPS risk assessment 27.7.17	Sections 4 and 12	Please unredact all of the redactions in these sections. Disclosure of this information would not lead to disclosure of this officer's real identity, but disclosure of the groups that he infiltrated and the individuals mentioned in section 12 might enable those affected to come forward to assist the Inquiry.
	Section 14	Please unredact all of the redactions in this section. Disclosure of the matters discussed here would not lead to disclosure of the officer's identity, but would enable NPSCPs to understand the basis on which the application is made.

ANNEX HN297 – Rick Gibson

Document	Queried redaction	Nature of query
MPS risk assessment 27.7.17	Paras. 4.20 & 5.1	Please provide details of whether HN297 received any commendations in relation to his undercover work and of his career path. This is relevant to the public interest factors telling in favour of disclosure of his real name.

ANNEX HN321

Document	Queried redaction	Nature of query
MPS Risk assessment 27.7.17	Para. 2	Please provide a gist of later police career. This is relevant to the public interest in disclosure of HN321's real name.
	Para 4.3	If the contact was "peripheral", as described, how would disclosure of these groups lead to his or her identification?
	Para. 4.5	Please provide a gist of HN321's tasking.
	Paras. 4.11 & 15.1	Please provide a gist of previous risk assessments.
	Paras. 4.12 & 4.13	Please provide gists of the matters discussed in these paragraphs
	Para. 4.18	Please provide a gist of any commendations received by this officer in relation to his/her UCO role. This is relevant to the public interest in disclosure of HN321's real name.
	Para. 5.4	Please indicate whether HN321 is subject to any formal investigation relating to his time in the SDS.
	Para. 5.12	If HN321's physical health is relied on in connection with his/her application for a restriction order, please provide at least a gist of the information contained in this section.
	Paras. 6.7, 8.2	Please provide gists of these sections.
	Para. 7	Please explain why HN321 did not meet with the risk assessors.
	Paras. 12.2-12.4	Please consider whether it is necessary in accordance with the need for RO applications to be determined on a fair and accurate basis to afford individuals listed in these sections a right of reply. Not, in this case, to address risk, because the risk assessment concludes that there is no risk from the groups infiltrated, but so they might assist in identifying any matters which add to the public interest in disclosure.
	Paras. 13.1, 13.2, 14.2	Please provide at least a gist of these sections. There is no reason to think that such information would reveal the identity of HN321, but knowledge of it is necessary in order to make informed submissions about the public interest balance.

Document	Queried redaction	Nature of query
	Para. 14.3	What is the justification for redaction of "Discussion of the comparison between media intrusion in the case of another UCO and that possible for N321"? Given the reference to media coverage in respect of the other officer, at least the cover name of that officer must be in the public domain.
	Para. 16	Please provide a gist of whether or not there is evidence of misconduct and whether HN321's real or cover details are in the public domain. Please also provide a gist of any health issues that are relied on in support of the application and of any risk to others.

ANNEX HN326 – Douglas Edwards

Document	Queried redaction	Nature of query
MPS Risk assessment 31.05.17	Paras. 4.12 & 4.13	Please disclose this information. There is no basis for these paras. being redacted given disclosure of the cover name.
	Para. 4.14	Please consider making contact with these individuals given that the cover name has been released. They may have relevant evidence to give about this officer's deployment.

ANNEX HN329 – John Graham

Document	Queried redaction	Nature of query
MPS Risk assessment 31.05.17	Paras. 4.12 & 4.13	Please disclose this information. There is no basis for these paras. being redacted given disclosure of the cover name.
	Para. 4.14	Please consider making contact with these individuals given that the cover name has been released. They may have relevant evidence to give about this officer's deployment.
	Para. 16.1	Please indicate whether there is any evidence of misconduct. This is relevant to the public interest in disclosure.

ANNEX HN330

No further disclosure is sought in respect of this officer, unless any further documents have been provided to the Inquiry in support of his application for anonymity other than:

a. application submitted on behalf of the MPS
b. notice of supplemental submissions – Designated Lawyers
c. N330 risk assessment dated 31.5.2017
d. unsigned and undated witness statement of N330

ANNEX HN333

Document	Queried redaction	Nature of query
MPS risk assessment 02.05.17	Para. 4.4	Please provide gist of N333's area of operation, details of any arrests and details of any behaviour that may raise risk.
	Paras. 4.11 & 15.1	Please provide gist of previous risk assessments.
	Paras. 4.12 & 4.13	Please provide gist of relationships entered into or other behaviour that could heighten risk and of any arrests.
	Para. 4.18	Please provide details of any commendations awarded in relation to HN333's undercover work.
	Para. 5.12	If HN333's physical health is relied on in support of his application for a restriction order, please provide gist.
	Para. 10.4	Please indicate the degree of probability identified by the risk assessor of the cover name leading to disclosure of HN333's true identity.
	Para. 12	Please consider whether it is necessary to make disclosure to any of the individuals referred to in this section as they may have evidence to give that is relevant to the public interest in disclosure of this officer's cover and/or real names.

HN334

No disclosure has been made in relation to this officer, save that which is contained in paragraph 17 of the minded to note. Full disclosure is requested of all relevant documents, including this officer's application, any application made by the MPS in relation to this officer, and all supporting documentation served in relation thereto.

ANNEX HN81

Document	Queried redaction	Nature of query
Slater & Gordon application 3.7.17	Paras 5-8	Why is it not possible for a gist to be provided in respect of these paragraphs – at least providing an indication of the nature of the matters they are addressing?
	Paras 13-16	As above
Risk assessment 28.6.17	Para 4.1	Why can't the dates of deployment be disclosed?
	Para 4.3	Given that it is public knowledge that HN81 had contact with groups connected with the Lawrence family campaign and with black justice groups, why can't the names of those groups be disclosed. If the contact was "peripheral", as described, how would disclosure of these groups lead to his or her identification?
	Para 4.11	Please indicate if the DI whose name has been redacted is an individual who features elsewhere in the material before the Inquiry and, in particular, whether s/he has an HN number?
	Para 6.7	Please disclose, if necessary in gist form, whether it is said that there are other deployments relevant to risk – e.g deployment into criminal gangs, far right groups, football hooliganism etc.
	Para 10.2 p.12 & Para 12	Please consider whether it is necessary in accordance with the need for RO applications to be determined on a fair and accurate basis to afford individuals listed in these sections a right of reply. Informing individuals that they have been identified as posing a potential risk of harm and inviting submissions from them could be achieved without revealing HN81's identity.
	Para 11	Given that it is known that HN81 infiltrated groups associated with the Lawrence family campaign, it is queried whether naming those groups would lead to his/her identification. Consideration should be given as to whether it is necessary in accordance with the need for RO applications to be determined on a fair and accurate basis

Document	Queried redaction	Nature of query
		to afford the groups listed in this section a right of reply.
	Paras 13.1 & 14.1	Why can HN81's perception of risk not be gisted?
	Para 13.2	Why can a gist not be provided outlining any relevant medical or psychological factor?
	Para 14.2	Why can the discussion of the nature and gravity of the risk not be disclosed or at least a gist provided?
	Para 14.3	Why can the effect of any media intrusion not be disclosed? It is difficult to see how doing so could lead to HN81's identification.
	Para 14.4	Why can the potential effect on family and friends not be disclosed? Provided the individuals are not named, it is difficult to see how doing so could lead to HN81's identification.
	Para 15.1	Why can previous risk assessments and recommendations not be disclosed – in gisted form if necessary? The ref to a risk assessment from the time of HN81's deployment at [4.11] is noted. Why can others not be disclosed?
	Para 15.3	Why can at least a gist not be given of the anticipated result of revealing pseudonym?
	Para 16.1 & 16.2	Why is there no gist of the "discussion" in these paragraphs?
	Appendices A-E	Why is it necessary to redact these in full?
Psychiatric report of Dr Walter Busutill 15.2.17	Whole document	It is not accepted that this is an adequate gist of the report. Why is it necessary to redact the statement recognising the expert's obligations? What is the nature of the "health issues" that are said to arise? Does the report address ways in which the "health issues" may be addressed in the event that HN81's covert or real identity is disclosed?
Open application on behalf of HN81 2016	Paras 2, 4, 9, 13	Why is no gist given in respect of these redactions?
	Para 8	Why can the number of years for which HN81 has remained anonymous not be disclosed? It is difficult to see how this

Document	Queried redaction	Nature of query
		information could reveal his/her identity?
	Para 13	Consideration should be given as to whether it is necessary in accordance with the need for RO applications to be determined on a fair and accurate basis to afford the groups/individuals mentioned in this section a right of reply. This could be achieved without revealing HN81's identity.
Gist of personal statement	Whole of document	It is submitted that the gisting of this document goes beyond that which is necessary in order to avoid disclosure of HN81's covert and real identity. For example, why would the detail of the assurances given to HN81 reveal his or her identity? Further detail about the nature of HN81's fears of intrusion into his/her and family's private lives would not reveal his or her identity – eg is media intrusion feared? Protest by campaigners? Such detail is necessary in order to enable NPSCPs a proper opportunity to respond and for the public to understand the basis on which the application to withhold information of significant public interest is made.

ANNEX HN16

Document	Queried redaction	Nature of query
Open application on behalf of HN16 2016	Paras 2, 4, 8, 9, 13	Why is no gist given in respect of these redactions?
	Para 4	Please provide an indication of the nature of the group targeted – eg Far right, left wing group, animal rights etc.
	Para 8	Why can the number of years for which HN16 has remained anonymous not be disclosed? It is difficult to see how this information could reveal his/her identity?
	Paras 12 & 13	Please consider whether it is necessary in accordance with need for RO applications to be determined on a fair and accurate basis to afford the groups and/or individuals mentioned in these paragraphs a right of reply. It is submitted that this could be achieved without revealing HN16's identity.
Gist of personal statement	Whole of document	It is submitted that the gisting of this document goes beyond that which is necessary in order to avoid disclosure of HN16's covert and real identities. For example, why would the detail of the assurances given to HN16 reveal his or her identity? Please provide a more detailed gist of the nature of the violence said to have been witnessed by HN16 during his/her deployment – was it violence against persons or property? Please provide the timeframe during which HN16 was deployed. This is relevant to the assessment of the level of threat HN16's target are likely to continue to pose. If HN16's "ill health" is relied on as a basis for granting a restriction order, please provide further details. Such detail would not lead to his/her identification, but is necessary in order to enable NPSCPs a proper opportunity to respond and for the public to understand the basis on which the application to withhold disclosure is made. If HN16's cover name is withheld it will preclude effective scrutiny of

Document	Queried redaction	Nature of query
		his/her deployment. It is therefore a significant decision.
CTI's explanatory note of 3.8.17 refers at [30] to personal statements (plural). The NPSCPs have been provided with a gist of only one personal statement. Reference is also made at [30] of CTI's note to the Inquiry having been provided with an expert medical report in respect of HN16. Again this has not been disclosed to the NPSCPs.		

ANNEX HN26

Document	Queried redaction	Nature of query
Slater & Gordon revised supplemental application 21.7.17	Paras 2, 7, 8, 9, 10, 11, 12, 13	Why is it not possible for a gist to be provided in respect of these paragraphs – at least providing an indication of the nature of the matters they are addressing?
Risk assessment 24.7.17	Para 1.4	Why is it not possible for a gist to be provided as to whether or not HN26 was the subject of an investigation?
	Para 2, 4.1, 4.2	Why can't the dates of deployment be disclosed? It is known that HN26 must have been first deployed around November 1994, because Herne 1 [5.4] refers to him/her as being the first officer to obtain a completely fictitious identity and that this was rolled out from November 1994. Please provide a gist of the nature of the target group – eg Far right, left wing, animal rights etc.
	Para. 4.3	If the contact was "peripheral", as described, how would disclosure of these groups lead to HN26's identification?
	Para. 4.6	Please provide a gist of the discussion in relation to other behaviour which may increase risk.
	Para 4.7	Why can the discussion of previous risk assessments not be disclosed?
	Paras 4.9, 13.2	Please provide a gist of the reason why HN26 has failed to provide details of key associates and of the risk assessor's analysis of likely key associates.
	Para 4.13	Please indicate whether or not there is information to suggest that HN26 entered into any relationships that would or might be of significance to this Inquiry and provide a gist of the discussion in this section. This is of obvious relevance to the public interest in disclosure of HN26's cover and real names.
	Para 4.16	Please indicate whether this section contains information pertaining to any convictions connected with HN26's deployment. Again, this is of obvious relevance to the public interest in disclosure of HN26's cover and real

Document	Queried redaction	Nature of query
		names.
	Para. 4.21	Please indicate whether HN26 received any commendations in relation to his deployment as a UCO.
	Paras. 5.1 & 6.1	Please indicate in gisted form if necessary if HN26 went on to hold any senior or managerial positions within the police and if he went on to hold any position in any private company with which information may have been shared as a result of his deployment as a UCO.
	Paras. 5.2, 5.3, 6.2, 6.3, 8.9, 8.11, 8.12, 9.7, 11.2, 16.1, 16.2, 17.1, 17.2, 17.3, 18.1, 18.3, 18.4, 18.5, 18.6, 18.8, 18.9, 18.10, 18.11, 18.12, 19.1	Please provide a gist of these sections, or the parts of these sections which have been redacted.
	Paras. 8.1 & 8.4	Please provide a gist of these sections re 3rd party concerns.
	Paras 14 & 15	Please provide a gist of the discussion in this section. Consideration should be given as to whether it is necessary in accordance with need for RO applications to be determined on a fair and accurate basis to afford any groups mentioned in this section a right of reply.
	Para. 15.2	Please explain the nature of any violence referred to in this section – eg violence against persons or property.
	Para. 15.4	Please give details of the type of activity described as harassment in this section.
	Para 19.2	Under the part of this section headed "Increase in risk of physical attack if real identity officially confirmed" the RA refers to the risk of the cover name being revealed. Please confirm whether this is an error and the RA was intending to refer to the real name? If not, please confirm what the increase in risk of physical attack is assessed to be if HN26's real identity is officially confirmed.
Gist of supplemental personal	Whole document	It is submitted that the gist is inadequate. It provides no information about the concerns HN26 expresses. The

Document	Queried redaction	Nature of query
statement of N26, undated but provided to Inquiry 17.7.17		NPSCPs question whether this level of redaction is strictly justified under Rule 12, or any other restriction order granted in accordance with s.19 IA 2005.
Gist of medico-legal psychiatric report	Whole document	It is not accepted that this is an adequate gist of the report. Why is it necessary to redact the statement recognising the expert's obligations? What is the nature of the "health issues" that are said to arise? Does the report address ways in which the "health issues" may be addressed in the event that HN26's covert or real identity is disclosed?
Slater and Gordon application 2016	Paras. 2, 4-10, 13, 15, 16, 17, 18, 20, 21	Please provide a gist of the redactions to these paragraphs. It is of concern that in a number of places even the paragraph numbers have been redacted. There cannot possibly be any justification for this and must demonstrate a lack of care in ensuring that redactions are kept to that which is strictly necessary in accordance with Rule 12 and any separate restriction order that has been granted in accordance with s.19 IA 2005.
The revised supplemental application on behalf of HN26 refers to two further documents which have not been disclosed to the NPSCPs: (i) the risk assessment of Graham Walker dated 17 Jul 2017 (a risk assessment prepared by Mr Walker dated 24 July 2017 has been disclosed) and (ii) the risk assessment of Kevin Shanahan dated 12 June 2017.		

ANNEX GENERIC EVIDENCE

Document	Queried redaction	Nature of query
Mosaic report	p.3 of 39	Given that John Dines has officially been confirmed by the Inquiry as a UCO what is the justification for this redaction? Please unredact.
	p.4 of 39	Please provide a gist of this redaction
	p.12 of 39	Please provide a gist of this redaction
	p.13 of 39	Please provide a gist of the first redaction on this page.
	p.19 of 39	Please provide a gist of the first redaction on this page. Re the second redaction, a gist has been provided, but if the gist is a fair reflection of the redacted content it is difficult to see on what basis redaction could possibly be justified. Please reconsider whether the redaction is indeed justified.
	p.21 of 39	Please provide a gist of this redaction
	p.24 of 39	Please provide a gist for each of the redactions on this page
	p.25 of 39	Pleas provide a gist of the redacted material on this page.
	p.27 -31, 34 of 39	Please provide a gist for each of the redactions on these pages.
Risk assessment briefing note	[1.4], [2.1], [2.2], [3.5], [3.6], [3.9], [3.10], [5.3] on pp.14 & 15, [6.2], [8.3], [8.4], [10.15]	Please provide a gist for each of the redactions in these paragraphs.
	[9.1]	Please disclose the names of the forensic psychiatrists referred to in this paragraph. This is relevant for the identification of any link between these doctors and those who have provided the expert reports in support of anonymity applications. There is no proper basis of the redaction of the names of these doctors.
Cairo witness statement 20.7.17	[2]-[11]	Please disclose whether Cairo ever held a position in any of the following: Special Branch, the SDS or NPOIU
	[17], [24], [26], [38], [49], [53], [54], [56]-[59], [61]-[64], [67]-	Please provide a gist for each of the redactions in these paragraphs.

Document	Queried redaction	Nature of query
	[69]	
	Exhibits	Please provide these