

Update note October 2017

Introduction

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

Progress since the June update

On 25 July 2017 [the Home Office announced](#) that Sir John Mitting had been appointed Inquiry Chairman to succeed Sir Christopher Pitchford. Upon taking up the Chairmanship Sir John published [a two year update](#) detailing the progress of the Inquiry so far.

On 2 August 2017 the Chairman published a ['Minded to' note](#) on the Rehabilitation of Offenders Act 1974 and its impact on the Inquiry's work. This issue will be considered further at a hearing that has been listed for 20 November 2017.

The Chairman has issued 'Minded to' notes on 28 applications for anonymity, dated [3 August 2017](#) and [23 October 2017](#). He will hear submissions on these applications at the hearing on 21 and 22 November 2017 (although if time allows the hearings will commence on 20 November).

The Inquiry continues to consider anonymity applications in respect of former Special Demonstration Squad officers. These are considered on a case-by-case basis in line with the [3 May 2016 Legal Principles and Approach Ruling](#).

Since June 2017 the Inquiry has:

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

- Referenced that over 1,000 groups or organisations are referred to in Special Demonstration Squad documentation.
- Confirmed that wherever possible, the names of the groups infiltrated will be released when cover names are released.
- Released the cover names of four further undercover officers; "Rick Gibson", "Douglas Edwards", "John Graham" and "William Paul Lewis".

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- Confirmed that members of the public may have come into contact with these officers in connection with the following groups:
 - Troops Out Movement
 - Big Flame
 - Independent Labour Party
 - Tri-Continental
 - The Dambusters Mobilising Committee
 - Vietnam Solidarity Campaign
 - The Revolutionary Socialists Students Federation
 - The International Marxist Group
- Issued a [restriction order](#) over the real identity and cover name of HN7.
- Continued to review applications for core participant status, and on 1 August 2017 designated 'Jessica' a core participant in *Category [H]: Individuals in relationships with undercover officers*. In the same ruling one application was not granted. Details are on the [core participant page](#) of the Inquiry's website.
- Continued to invite and consider applications for anonymity from police officers within the Special Demonstration Squad and the National Public Order Intelligence Unit. This involves, where necessary and prior to publication, third party enquiries being made of close relatives affected by the use of a cover name taken from a deceased child, or with individuals known or believed to have had relationships with an undercover officer. On 23 October 2017 the Chairman issued [directions](#) for the progression of the Special Demonstration Squad applications.
- Continued to seek and receive evidence from police forces and state bodies relevant to the terms of reference, and to review that material for relevance.
- Continued to review a substantial body of material and evidence from Operation Elter (which is examining material in relation to the National Public Order Intelligence Unit).
- Opened up further lines of investigation around specific Special Demonstration Squad deployments.
- Continued the investigation of material from regional police forces; in particular material requested by the Inquiry to show where there were failings in undercover operations. A number of deployments are now under more detailed investigation.

Module Two (management and oversight of undercover police officers)

- Continued to receive and assess material provided voluntarily and in response to rule 9 requests from the National Crime Agency, the Home Office, the College of Policing, the Independent Police Complaints' Commission, the Crown Prosecution Service, the Metropolitan Police Service and the National Police Chiefs' Council.
- Issued further rule 9 requests asking for the provision of witness statements and material likely to be relevant to Module Two, including requests to the Metropolitan Police Service, the College of Policing, the Cabinet Office, and regional and national policing units and bodies.
- Continued its assessment of applications for restriction orders made over documents deemed to be relevant and necessary to Module Two.
- Continued to investigate document retention and assurance within the Metropolitan Police Service, including by the issuing of further rule 9 requests, the carrying out of inspections of material *in situ*, and obtaining copies of potentially relevant documents¹.

Inquiry Administration

Inquiry Chairman

The Home Secretary has appointed Sir John Mitting as the Inquiry's Chairman. Details are available on the Inquiry's website www.ucpi.org.uk. The Chairman will make a statement at his first public appearance on Monday 20 November 2017.

Inquiry progress and strategic review

The Chairman had committed to a strategic review of the Inquiry's work and to write to the Home Secretary to provide a revised time table for the Inquiry in the spring of this year. Following the hearing in April 2017, the Chairman updated the Home Secretary, providing her with his views on the future of the Inquiry by way of the [Ruling of 2 May 2017](#). Work on the strategic review is ongoing.

At this stage it is unlikely that oral hearings of evidence can commence before the second half of 2019. More detailed information on a revised timetable will not be available until the completion of the strategic review. The review itself is being

¹ An earlier version of this update note incorrectly referred to 'seizure' of documents. The Inquiry does not have legal powers of seizure.

informed by the issues raised at the hearing on 5 and 6 April 2017, and the matters as set out in the Chairman's [Ruling of 2 May 2017](#).

Data Protection

The Inquiry reported itself to the Information Commissioner's Office following the publication of material associated with the 3 August 2017 'Minded to' note on anonymity.

Information Assurance

On 14 August 2017 the Inquiry published a further tranche of assurance statements submitted by the Metropolitan Police Service.

Work continues to further explore, test, and verify document retention and assurance by state bodies understood to be in possession of material of potential relevance to the terms of reference, in particular within the Metropolitan Police Service and in relation to the unit that is the subject of [current investigations by the Independent Police Complaints' Commission](#) concerning allegations of inappropriate handling and destruction of material. The Inquiry has been issuing rule 9 requests for further witness statements explaining the steps being taken to identify and preserve potentially relevant material, and chooses to inspect document repositories and material in situ where it considers it necessary to do so.

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

Witness statements

The Inquiry published for consultation its approach to [taking evidence from witnesses](#). Observations on the draft protocol were received from the National Police Chiefs' Council and the non-police, non-state core participants and are being considered by the Inquiry legal team. The '[A focus on...](#)' section in [the June 2017 update note](#) provides more detail on the topic.

Costs

As at 30 September 2017 the Inquiry has spent £8,004,700. A full breakdown of the Inquiry costs is available on the [Inquiry website](#).

Next steps

The next steps for the Inquiry are to:

- Issue a statement from the Chairman on the future conduct of the Inquiry on 20 November 2017.
- Decide whether or not to seek an exemption from parts of the Rehabilitation of Offenders Act 1974, arguments on which will be heard on 20 November 2017.
- Conclude the processing of the anonymity applications addressed by the 3 August 2017 'Minded to note', including an oral hearing on 21 and 22 November 2017.
- Continue the process of receiving, considering and determining anonymity applications by key individuals. On 23 October 2017 the Chairman [directed](#) that 19 named anonymity applications in respect of Special Demonstration Squad officers be filed by 31 October 2017. The Inquiry intends to publish further such directions on a monthly basis.
- Continue the process of requesting, receiving, reviewing and analysing documents and witness statements from state bodies.
- Continue to investigate the activities of individual undercover police officers.
- Circulate a draft list of issues for Module One for consultation.
- Conclude its preliminary negotiations with state bodies in regard to the preparation of generic restriction documents (i.e. open schedule, open generic evidence, and open generic submissions) relevant to applications to restrict information that appears in documents, and publish those generic documents in accordance with paragraph 11 of the restriction protocol.
- Continue to recruit additional personnel to enable the Inquiry to process information and documents being received from state bodies.

Looking further ahead

- We will complete a strategic review that will aim to obtain a more sophisticated estimate of how long the Inquiry will take on the current model. The strategic review will also consider whether there are realistic alternative models and what their consequences would be.

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- After the completion of the strategic review we intend to publish an indicative timetable for the Inquiry's delivery.
- We will continue our review of the evidence provided to the Inquiry to date, as well as seeking further evidence, and following lines of enquiry that arise as a result of our ongoing work.
- We will issue further rulings on anonymity applications.
- We will publish details of undercover officers where restrictions do not apply.
- In addition to the above we may also issue additional rulings that determine further applications for core participant status, and associated rulings on recognised legal representation and costs.

A focus on...

Closed anonymity hearings

The Inquiry remains committed to the presumption that the public should have access to its hearings, but also recognises that there are incidences where hearings to which access is restricted may be necessary; for example, where there is a need to discuss matters that are, or may be, the subject of restriction orders, or that cannot otherwise be made public. Such hearings are known as 'closed hearings'.

To date, the Inquiry has held three closed anonymity hearings in order to consider aspects of applications to restrict the disclosure and/or publication of the identities (real and cover) of three former undercover officers, the outcomes of which were published by way of a ['Minded to' note](#) dated 23 October 2017.

Because anonymity applications made by any individual (whether a police officer or not) can lead to restriction orders being made, the evidence submitted in support of them cannot be disclosed or published in full as in many cases disclosure would defeat the purpose of the application; it is referred to as 'closed material' for that reason. Applications might also include reference to material that is said to be sensitive for other reasons, for example because it would reveal particular tactics used by undercover officers which the police intend to apply to restrict, or the identity of another person who is applying for anonymity. Such material must similarly be treated as 'closed material' by the Inquiry until any application to restrict the further disclosure or publication of it has been fairly determined.

As a result, if, as part of the process of considering an application for anonymity, the Chairman wishes to seek more information from the applicant, he must consider

whether that can be done in an open forum, or whether to do so risks causing the harm which the applicant is arguing revealing his or her identity will cause, or which might be caused by revelation of other sensitive information. If the Chairman concludes that a closed process is required in order to avoid such a risk, notwithstanding the presumption of openness in section 18 of the Inquiries Act 2005, then he can either ask the applicant to provide further 'closed' material or information in writing, or he can ask for the applicant and his or her lawyers to attend a hearing to which access is restricted, so that he can ask those questions directly.

We will publish any relevant information from a closed hearing that is necessary to publish in the interests of fairness and which can be published without undermining the purpose of the hearing having been held in closed session.

Notwithstanding the presumption of public access to the Inquiry's proceedings, therefore, closed hearings are a vital tool in enabling the Chairman to examine information and evidence that is put before him in relation to applications for anonymity; without them the Chairman could not undertake the full balancing exercise needed to examine competing and, at first sight, irreconcilable components of the public interest.

Key Inquiry statistics:

As at 31 October 2017 the Inquiry has:

- Held nine preliminary hearings, three of which were in closed session;
- Made more than 450 'Rule 9' requests for information from more than 50 organisations;
- Made three section 21 requests for information;
- Received over one million pages of evidence from the Metropolitan Police Service alone²;
- Received over 375 witness statements (not including further or replacement statements);
- Published 15 sets of directions;
- Published 47 rulings;

² Not all of the documents provided are relevant. For example, on one drive which has undergone preliminary review by the Inquiry, nearly 120,000 documents were provided of which over 90,000 comprise non-user generated files such as executable and help files for standard applications, printer drivers and manuals and other similar "documents" which are very unlikely to advance the Inquiry's investigations.

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- Published 15 Chairman's notes;
- Published 33 orders;
- Published 11 notes by Inquiry counsel;
- Designated 206 core participants, of whom 180 are receiving funding for legal costs from the Inquiry;
- Recognised 25 legal representatives acting on behalf of core participants;
- Received more than 60 formal submissions and position statements from core participants and others;
- Published determinations in respect of 32 anonymity applications; and
- 33 people working with the Chairman as part of the Inquiry team, with more being recruited as the Inquiry progresses.

Questions and queries

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

Background

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

The Inquiry's role covers undercover policing in its broadest sense; it is not limited to particular types of undercover policing³, its terms of reference are widely drawn and they require the Inquiry to find out what happened, and why, and to make recommendations as to how undercover policing should be carried out in future.

The opening statement said,

"I hope that during the course of its work the Inquiry will acquire a clear impression as to the manner in which undercover policing has been conducted in England and Wales since 1968. It seems likely that the Inquiry will expose both creditable and discreditable conduct, practice and management. As far as I am

³ The Inquiry is not restricted to political and social justice campaigns. It does not cover surveillance activities undertaken outside of undercover policing operations. The Inquiry's activities are limited to England and Wales.

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aware, this is the first time that undercover policing has been exposed to the rigour of public examination. At the conclusion of its investigation, the Inquiry will report to the Home Secretary and make recommendations as to the deployment of undercover police officers in the future...The Inquiry's priority is to discover the truth. This is a public inquiry to which, as the name implies, the public will have access."

The Inquiry's work will fall into three modules:

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

Module Two will look at the management and oversight of undercover policing. In particular it will look at the authorisation of and justification for undercover police operations. This will include the role not only of police forces but also that of other government departments such as the Home Office. In relation to undercover police officers, it will look at issues such as their selection, training, supervision and care after the end of an undercover deployment.

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

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