

IN THE UNDERCOVER POLICING INQUIRY

SUBMISSIONS ON BEHALF OF THE NON-POLICE, NON-STATE CORE PARTICIPANTS RE THE CHAIRMAN'S 'MINDED TO' NOTE DATED 23 OCTOBER 2017 CONCERNING RESTRICTION ORDER APPLICATIONS

Closed hearings

1. It is noted that on 10 October 2017, the Chairman held closed hearings in respect of the restriction order applications of HN16, HN26 and HN81. This was notwithstanding the written submissions on behalf of the NPSCPs that they (and other CPs and the media) should first be afforded an opportunity to make submissions at an open hearing. The NPSCPs maintain their submission that such an approach was contrary to the principle of open justice and not conducive to public confidence in the Inquiry's process. The NPSCPs will address this issue at the hearing on 20-22 November 2017 in light of its relevance to the way in which future anonymity applications are determined.

HN16, HN26 and HN81

2. The NPSCPs welcome the proposed refusal of the restriction order applications in respect of the cover names of these officers, but maintain their objections to restriction of real names. The NPSCPs refer in particular to [104]-[109], [190]- [197], [179]-[180] and [183]-[189] of their 5 October submissions.
3. The 23 October minded to note continues to address the issue of publication of real names solely in terms of whether it is necessary for fulfilment of the terms of reference, rather than taking openness as the starting point and acknowledging that there is a public interest in open justice and Article 10 rights that falls to be weighed in the balance. This is an issue of very significant concern to the NPSCPs. Further, in any event,

there are a number of very good reasons why publication of an officer's real name may be necessary for the fulfilment of the terms of reference - see [108] of the 5 October submissions. The minded to note does not give any indication that these have been considered.

4. It is not possible for the NPSCPs to make further case specific submissions in respect of HN16 and HN26 given the current lack of disclosure. They repeat their request for proper disclosure, as set out in the 5 October submissions. In relation to HN16, counsel to the Inquiry's explanatory note of 3 August 2017 indicates that an open version of an up to date risk assessment would be published. To date no further documents have been disclosed.

HN58

5. The NPSCPs welcome the indication that HN58 could give evidence about the discharge of his managerial duties in his real name. However, they strongly contest the proposal that evidence about his undercover activities could be given entirely in closed session. For all of the reasons set out at [123] & [124] of the 5 October submissions there is a very significant public interest in public investigation of this officer's conduct whilst undercover. It is not understood how the Chairman is able to conclude that "not much of public value would be lost" were evidence of HN58's undercover deployment to be conducted in private and further information is sought in this regard. In respect of other officers, for example HN16, HN26 and HN81, the Chairman does now appear to acknowledge that it will not be possible properly to investigate their deployment without hearing from those on whom they spied. Why should the position be different in respect of HN58? In particular, how would it be possible to investigate the question as to whether the misconduct which went on during his watch as head of the SDS was pioneered by him during his time undercover without seeking evidence from those on whom he spied? Entirely closed investigation of HN58's undercover deployment would not be able to reach any safe or meaningful conclusions on this issue and would render the

Inquiry unable to report on this potentially very significant aspect of the unit's development.

6. At present it appears that the public interest in obtaining evidence in relation to HN58's undercover deployment from those other than the police has been overlooked. However, if and to the extent that it has been taken into account, but is considered to be outweighed by the risk to HN58 of disclosure of his cover name, the NPSCPs dispute this for the reasons set out at [125] – [131] of their 5 October submissions.

HN104

7. The NPSCPs do not consider that anything disclosed by the Inquiry to date provides good grounds for altering their stance in respect of publication of this officer's real name. For all of the reasons set out in the 5 October submissions, the basis of the application disclosed to date is completely rejected. The NPSCPs have asked for significant additional disclosure and cannot consider altering their stance unless proper information is provided to them promptly and well before the hearing as requested. If HN104 were genuinely at risk from those on whom he spied then that risk would already have materialised given that his real identity is widely known amongst those groups and individuals. The reason why NPSCPs have not thus far chosen to publish his real name was to allow him time to inform his children and his family of his role. It is now around 18 months since the story broke. This is adequate time and there are good reasons why the Inquiry should publish his real name – see [108(b)-(e) & (g)] of the 5 October submissions. There is currently very significant public concern over abuse of women and institutional sexism generally. Many individuals, from all walks of life, are having their past conduct held up to scrutiny and are being held publicly accountable for it. There is nothing in the material disclosed to date to justify a police officer, who used the shield of his undercover deployment to perpetrate abuse, being permitted to shield himself from public accountability.

Disclosure

8. The 5 October submissions and the annexes thereto set out detailed requests for further disclosure and submissions as to where the present level of redaction is excessive. The NPSCPs have since asked in correspondence for a response, but none has been given. It is requested that disclosure be made in good time in advance of the 20-22 November hearing in order for the hearing to be conducted on a properly informed basis and in order to avoid the need for further submissions, in the event of disclosure only being made after the hearing.

PHILLIPPA KAUFMANN QC

MATRIX

RUTH BRANDER

DOUGHTY STREET CHAMBERS

6 November 2017