

IN THE MATTER OF THE INQUIRIES ACT 2005
AND IN THE MATTER OF THE INQUIRY RULES 2006

THE UNDERCOVER POLICING INQUIRY

**SLATER & GORDON OFFICERS' SUBMISSIONS
FOR THE HEARINGS OF 20-22 NOVEMBER 2017**

Introduction

1. This note has been prepared in response to the submissions of the Non-Police, Non-State Core Participants (“NPSCPs”), Guardian News Media Limited (“GNML”), and Peter Francis, which were served in advance of the hearings on 20-22 November 2017.

The following issues are addressed:

- (1) The appropriateness of closed anonymity hearings and redactions to supporting material;
- (2) The correct approach to determining anonymity applications;
- (3) The allegation of Peter Francis regarding Dr Busuttil;
- (4) The submissions of other Core Participants on the individual restriction order applications.

The approach of the Inquiry to anonymity hearings

2. The submissions of counsel for the MPS in relation to the approach taken by GNML are adopted.

Closed hearings and redactions

3. Objection has been raised to the procedural approach which the Inquiry has taken to anonymity applications. It is argued that there should be open hearings for applicants, because to proceed directly to closed hearings would be contrary to the requirements of fairness and openness (NPSCPs at [34]; GNML at [13c]). It is also said that the material provided to the Inquiry in support of the applications for anonymity has been excessively redacted (NPSCP at [53]; Peter Francis at [13]; GNML at [13(b)]).
4. Closed hearings and redactions are necessary to prevent the disclosure of potentially restricted information under Rule 12 of the Inquiries Rules 2006. As acknowledged in the NPSCP submissions, Rule 12 is “*an obvious practical measure designed to ensure that such applications are not self-defeating*”, which provides for the provisional restriction of any information which could prematurely disclose the subject matter of the application (at [53]).
5. The material which has been provided to the Inquiry in support of anonymity applications has been redacted only where necessary and in keeping with Rule 12. The potentially restricted material must be heard in a closed hearing, because to consider it in an open setting would either precipitately disclose the identity of the subject of the application or have such a chilling effect upon proceedings that a proper balancing exercise could not be undertaken.
6. This does not mean that other Core Participants are excluded from participation in the anonymity hearings. Open applications have been provided in relation to each officer and such supporting material as can be disclosed without undermining the applications has been made available. Core Participants will have an opportunity to make oral submissions regarding anonymity applications at the open hearings on 20-22 November 2017 and lengthy written submissions were provided to the Chairman in advance of the closed hearings. These submissions encompass both the general principles and approach which should be taken to anonymity applications and more focused submissions on the public interest balance to be applied in individual applications.

The test for anonymity applications

7. The NPSCPs and GNML have made submissions regarding the determination of anonymity applications under section 19 of the Inquiries Act 2005 which are not in keeping with the Principles Ruling of 3 May 2016. As submitted by the MPS (at [2]), there is no basis for revisiting the Principles Ruling, which sets out the approach to be taken by the Chairman.
8. The Chairman has applied the Principles Ruling in assessing applications for anonymity. The public interest in openness is a relevant factor to be considered when assessing proportionality under Article 8 and when conducting a balancing exercise under section 19(3)(b). The principle of openness does not trump all other considerations, and is subject to section 19 of the Inquiries Act (Principles Ruling at [83]). Moreover, the public interest in openness does not bear the same weight in each and every anonymity application. It must be assessed on a case-by-case basis and weighed against any countervailing public interest in non-disclosure or the risk of harm to the applicant and their family ([B.3]).
9. When determining the public interest balance, the Chairman is not required to take into account the Article 8 rights of Core Participants to access information about them which is held by the state, as suggested by the NPSCPs (at [26]). This argument was considered and rejected by the Chairman in the Principles Ruling (at [198] – [199]).
10. The Chairman can safely disregard the assertion made by GNML at [5e] that non-disclosure of the identities of former UCOs may reduce the circulation of newspapers and magazines by depriving them of the opportunity to add ‘human interest’ to their coverage of the Inquiry proceedings. It is always difficult to accurately assess and quantify such matters, but to date there has been extensive coverage by the media of the individual profiles and deployments of a number of UCOs which does not appear to have been inhibited by the absence of details of their real or (occasionally) cover names. There is no empirical evidence that GNML can point to that supports their contention that newspaper circulation will decline should the press be deprived of the opportunity to include the real and cover names of UCOs in their reports of the Inquiry’s proceedings.

11. It is argued on behalf of the NPSCPs that officers who have “done nothing wrong” have nothing to fear from disclosure of their identities (at [100]). This submission is misconceived. The fact that UCO’s were deployed to ‘social justice’ groups has been the subject of substantial adverse comment in the media and elsewhere: that individual UCO’s may not have been engaged in ‘wrongdoing’ (however defined) does not mean that their activities as ‘police spies’ have not attracted and will not continue to attract public opprobrium.
12. The findings of the Inquiry will not be published for several years, during which time the officers, if identified, will remain at risk of harm. Given the tone of much of the reporting on undercover policing to date, even if individual officers are vindicated by the Inquiry, there are scant grounds for optimism that those parts of the Inquiry’s findings will receive any or sufficient coverage such as to mitigate the risk of harm. There is also a real possibility that such findings will simply not be accepted. Irrespective of whether or not individual UCOs are ‘vindicated’ by the Inquiry the fact remains that many current or former members of the groups to which they were deployed will regard themselves as having been deceived over a period of many years. That sense of betrayal, legitimate or otherwise, gives rise to a real risk of reprisal that cannot be safely discounted.

Dr Busuttil

13. A question has been raised by Peter Francis regarding the impartiality of Dr Busuttil (at [5]). This issue has not been brought to the attention of counsel for the officers by the Inquiry and the correspondence referred to in Mr Francis’ submissions has not been provided to Slater and Gordon. As a result, it cannot be addressed in these submissions.

N15

14. N15’s anonymity application is maintained. A Revised Closed Application has been provided to the Inquiry.

N81, N26 and N16

15. Closed submissions have been provided to the Inquiry in relation to the anonymity applications of N81, N26 and N16.

16. All three officers maintain that the balance of the public interest does not require disclosure of their cover or real names because the risk of harm and the severity of the impact of disclosure upon their mental health and Article 8 rights outweighs the interest in the publication of their true identities.

N58

17. Both the Chairman, in his Supplementary Minded to Note (at [13]), and counsel for the MPS, in his submissions of 3 November 2017 (at [10]), have endorsed exploring the possibility of N58 giving evidence separately in relation to his managerial role and his deployment. In response, the submissions set out in the Closed Supplemental Application on behalf of N58 dated 13 July 2017 are maintained.

N104

18. The application of N104 for anonymity is maintained on the basis set out in the closed documents provided to the Inquiry.

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