

## Undercover Policing Inquiry: Chairman's statement 20 November 2017

1. Good morning. My name is John Mitting. As I'm sure you know, I took over as chairman of the Inquiry from the late Sir Christopher Pitchford on 25 July 2017. This is my first public appearance as chairman of the Inquiry and I wish to take this opportunity to outline the approach which I intend to take to the Inquiry and to say something about its future progress.
2. First of all I wish to pay tribute to Sir Christopher whose untimely illness and early death prevented him from continuing to conduct the Inquiry and bringing it to a successful conclusion. He regarded the task as of great importance. He took meticulous care to establish the Inquiry on a sound footing. He succeeded in doing so. Members of the public who may have played a part in the events which the Inquiry is investigating have been invited to participate and many have become core participants. Provision has been made for their legal representation. The administrative structure necessary to permit the Inquiry to investigate and report has been established. There is an efficient, well-managed and harmonious team. The basic legal principles upon which the Inquiry will be conducted have been laid down in his opening remarks and in his ruling on the legal principles and approach to restriction orders. When I took over from him everything essential to fulfilling the task of finding out what happened and reporting upon it was in place, except a fully working IT system. I know that he commanded the respect of all of those who participate in the Inquiry. He is a hard act to follow.
3. In the last sentence of paragraph 17 of his opening remarks, Sir Christopher said "The Inquiry's priority is to discover the truth." That is my priority. It is only by discovering the truth that I can fulfil the terms of reference of the Inquiry. I am determined to do so. In making procedural decisions about the conduct of the Inquiry I will do nothing which I can legitimately avoid which makes fulfilment of that intention more difficult. I will also make no decision whose purpose is not to fulfil that aim.
4. In the recent past, I have listened to some of the accounts, posted on the Internet, of women who entered into intimate relationships with male undercover officers. They are eloquent and moving. Each of them is entitled to a true account of how and why they came to be induced to conduct an intimate relationship with a man deployed for police purposes with an identity and background which was not his own. Each is entitled to know whether his superior officers knew of the relationship and, if so, whether they sanctioned or encouraged it and, if not, what they did about it. It is only by an exhaustive investigation of the facts, using all of the statutory tools available to the Inquiry, that the truth can be determined.

## UNDERCOVER POLICING INQUIRY

5. How and why groups supporting the campaign of the parents of Stephen Lawrence came to be infiltrated by undercover officers and what was done with information acquired by them is one of the central issues which the Inquiry must investigate. The deployments occurred nearly 20 years ago. They have already been the subject of three separate investigations. Despite that, a definitive judgement about them has not yet been made. It is not difficult to understand that this has compounded the anguish already caused to them by the racist murder of their son and the manner in which it was investigated by the police. Tools available to the Inquiry, which were not available to previous investigators, may permit me to make that judgement.
6. In the course of reading into the Inquiry I have learnt of other deployments which gave rise to a real risk to the life and safety of undercover officers and to that of others. Skill and courage would have been required to undertake them. When the risk to the officers remains, the ability of the Inquiry to receive evidence in closed session will afford the principal, perhaps the only, means by which these deployments can be examined and assessed.
7. The three examples to which I have referred are important in themselves. They also serve to illustrate the varied techniques which can be deployed to enable me to get at the truth. In the first example, restriction orders in respect of the real name of female core participants have been made and are available in the cases of those who have not yet come forward. Where a claim of an intimate relationship with an undercover officer is admitted or found by me to be true, they have a compelling moral claim to know the true identity of the man with whom they had that relationship. When there is material which gives rise to a suspicion that such an intimate relationship may have been formed by an undercover officer in a cover name, there is a compelling practical reason to require the cover name to be published: to reveal to the woman or women concerned that they may have had an intimate relationship with a man in an identity not his own. In the second example-deployments in and around the Stephen Lawrence campaign- the evidence of undercover officers and more senior officers will be given and tested in public. Evidence from other sources will be received. The cover name of any undercover officer central to the relevant deployments will, subject to any representations yet to be made on behalf of the officer, be published. It is in principle right that senior officers responsible for the deployments and those who received and made use of information produced by them should account for their actions in public and in their real name. In the third example, it is very unlikely that anything can be said about the deployments other than in the most general terms and inconceivable that anything could be published which could lead to the identification of the undercover officers.

## UNDERCOVER POLICING INQUIRY

8. These three examples are in principle straightforward, but even they may give rise to unusual difficulties which must be addressed on their own terms.
9. Other deployments give rise to a wide variety of questions to which there is no single answer. Each must depend upon its own facts and upon the particular circumstances of the individual officer and, where relevant, of his family. What follows is not a restatement of the principles already expounded by Sir Christopher. It is a forecast, based on my experience of considering applications for restriction orders so far, of what the outcome is likely to be in broad categories of case. Like every forecast, it is subject to contingencies and will sometimes prove to be wrong.
  - i. In every case in which it can be done without disproportionate damage to the public interest or harm to the individual concerned, the cover name of a deployed undercover officer will be published. Publication may prompt valuable evidence from those outside the police about the deployment- whether it was justified; what happened during it; whether the officer so conducted him or herself as to harm the legitimate interests of others. Unless the cover name is published the full picture about a deployment may never be revealed.
  - ii. In most cases, senior police officers will be expected to account for their decisions and actions publicly and in their own name. An obvious exception is evidence given about a deployment about which nothing, or nothing specific, can be disclosed, for reasons of national security or because disclosure would put the life or safety of an officer at risk.
  - iii. Where publication of either the real or cover name of an undercover officer would give rise to a real risk to the life or safety of the officer at the hands of others, an appropriate restriction order will ordinarily be made.
  - iv. Except in cases in which the conduct of an undercover officer has given rise to a moral right on the part of those with whom he or she has interacted during the deployment to know the true identity, the real name of the undercover officer will generally not be published.
  - v. Factors personal to an undercover officer- health, well-being and a wish to maintain privacy will always be considered. They may sometimes be determinative. They are likely to carry more weight in the case of early deployments (in the late 1960s and 1970s) than in the case of later deployments.

## UNDERCOVER POLICING INQUIRY

10. None of these considerations will automatically lead to a particular outcome in a given case. I reiterate that these are forecasts of likely outcomes, not a statement of what must happen in every case. Each one will ultimately turn upon its own facts.
11. I hope that this statement will serve to inform core participants and fair-minded observers about my approach to the Inquiry and to the manner in which it will be conducted. I will also take this opportunity to correct a possible misconception arising of out cases which I have determined in my last 11 years as a High Court judge. I heard, alone or together with others, about 50 cases involving national security or the United Kingdom's international relations or both in which a closed material procedure was used. It was invariably deployed to protect one or both of those interests and for no other purpose. Questions of national security do arise in a small minority of the deployments to be investigated by the Inquiry. Where they do, I will do nothing to harm the interests of national security. But in the great majority of cases in which anonymity is sought, the reason has nothing to do with national security and everything to do with the human rights of the individuals concerned. My previous experience of cases involving national security affords no guide to my approach to applications based on quite different considerations.
12. I also wish to explain two of the limitations on my powers. I have extensive statutory powers to require the production of material and the giving of evidence by individuals present in the United Kingdom; but I have no effective power to compel anyone permanently outside the United Kingdom to do anything. The obtaining of any material or evidence from such a person depends upon his or her cooperation. Less than ideal solutions may be required to obtain anything of value. Secondly, I cannot require an individual to submit to a medical or psychiatric examination. All that I can do is to evaluate the medical or psychiatric evidence presented to me by that individual.
13. Before I turn to the future progress of the Inquiry, I have one more observation to make. I understand and share the determination of those who have been the targets of undercover deployments that where wrongdoing has occurred or mistakes have been made they should be discovered and acknowledged. The task of doing so will necessarily involve disruption to the lives of many former undercover officers and their families. Many of them retired years ago. Some will have done nothing to merit legitimate criticism. Many have genuine concerns about the impact on them and on their family of public revelations about their deployment. All of them are human beings and deserve to have their interests and feelings- in modern terms their human rights- properly taken into account. I will do so.

## UNDERCOVER POLICING INQUIRY

14. The principal sources of evidence by which the facts can be established are contemporaneous documents and the written and oral statements of witnesses. The task of obtaining documentary evidence is formidable, given the likely numbers of relevant documents in existence. It has been under way for some time. A wide variety of sources of documentary evidence, not confined to police records, has been identified and accessed by the Inquiry. Witness statements about the facts of deployments will be obtained from individual officers. They can only be published once it has been determined whether a restriction order should be made in respect of the officer's real or cover name or both. Non-state witnesses who can give evidence about particular deployments cannot sensibly be invited to provide a witness statement until the parts of witness statements of relevant officers which affect them, together with a package of supporting contemporaneous documents have been disclosed to them. This requires two applications for restriction orders to be determined: in respect of names and of documents. This is a large and time consuming task. It is not proving straightforward.
15. With the agreement of the Metropolitan Police Service, Sir Christopher laid down a revised timetable for the making of restriction order applications by the Metropolitan Police Service on 18 May 2017 in respect of the first three tranches of SDS applications. The timetable has not been fulfilled. Further, some applications have been made with the caveat that they are not complete- and so cannot be determined. Despite that, progress is being made. To date, decisions have been made not to apply for restriction orders in relation to real and/or cover names in 23 cases, which have been or will be published. I have determined one application (HN 7) and issued two "minded to" notes in respect of 39 officers. Decisions on the first 14 will follow soon after the hearings which follow this statement. Delays have occurred in making applications or in providing supporting material in 15 cases. There are a further 109 Metropolitan Police Service officers whose position remains to be considered. Applications for restriction orders will be made and determined in monthly batches. The Metropolitan Police Service have made proposals for the number and timing of applications to be made. Their original proposal envisaged that all would be made by the end of March 2018. Their current proposal puts the end date at least two months later.
16. Real progress can nonetheless be made. Applications are being made by reference to the rough chronological order of deployments. The aim of the Inquiry is to ensure that restriction order applications in respect of the name of undercover officers and their managers involved in early deployments are determined soon. Once that is done, witness statements from the officers concerned and relevant contemporaneous documents will then be obtained and, where necessary, redacted. This process can start and continue while the remaining applications for

restriction orders are made and determined. There is no need for all to be determined before any witness statements and documents are obtained. The task of seeking statements and other evidence from non-state witnesses about early deployments can then begin. This sequence can then be repeated in relation to later deployments on a rolling basis.

17. On 2 May 2017 Sir Christopher stated that substantive hearings were unlikely to begin before the second half of 2019. If even this distant date is to be achieved the processes so far undertaken by the Inquiry will need streamlining. Two particular problems need to be addressed.

### One: Document redaction

- i. The Inquiry and the Metropolitan Police Service hold a vast number of documents of potential relevance. The Inquiry must have the facility to search for, analyse and select those documents which are relevant and necessary to its purposes. Thus far, this exercise has been performed on a sample of documents and once, manually, in relation to an individual undercover officer. The documents selected were then supplied to the Metropolitan Police Service. The Metropolitan Police Service then applied for a restriction order in respect of substantial parts of the documents. In the view of the Inquiry team the redactions sought were excessive. Discussions then ensued. The Metropolitan Police Service has revised its position, but no conclusion has yet been reached. The issues raised by this exercise need to be brought to a head, both to determine them and to give guidance for similar future exercises. A closed hearing will be fixed for late January 2018 at which I intend to determine, at least provisionally, what redactions should be made.
- ii. Good progress has been made in setting up an IT system capable of handling documents in bulk. A document management system has now been installed and successfully tested. It is now in daily use and enables the task of searching for, analysing and selecting documents to be performed efficiently. Software has been developed by IT specialists contracted to the Metropolitan Police Service, working with the Inquiry's IT providers to permit the redaction process to be speeded up. It has been installed on the IT systems of both the Inquiry and the Metropolitan Police Service. So far, it has not achieved its aim. Unless and until it does, redaction will remain an obstacle to the timely completion of the Inquiry.
- iii. The current redaction process puts the initiative to propose redactions on the Metropolitan Police Service. If either or both of the problems identified remain,



## UNDERCOVER POLICING INQUIRY

the process may have to be altered. The Inquiry may have to assume responsibility for making draft redactions and then invite the Metropolitan Police Service to accept them within a tight timescale. This problem requires to be resolved soon. Once the capacity of the redaction software has been established, discussions with the Metropolitan Police Service legal team will begin to achieve a practical solution.

### Two: Restriction order applications

- i. Experience in dealing with applications for restriction orders to date suggests one measure which could be adopted to speed up the process without sacrificing anything of real value for core participants. The “process map” published by the Inquiry requires an applicant for a restriction order to prepare open and closed versions of the application and supporting evidence and submit them to the Inquiry. They are then submitted to critical scrutiny by the Inquiry team. Discussion then occurs between the Inquiry team and the applicant to see if redacted parts can be moved into open. This often occurs on a line by line basis. In cases of dispute, I am required to resolve the dispute. Final open versions are then published. In the first batch of applications considered, this process has taken a great deal of time and legal effort. The end result has, inevitably, been disappointing for non-state core participants. In the written submissions prepared for the restriction orders hearing, “proper disclosure” of redacted documents, in particular of risk assessments, is called for. These submissions may overlook the effect of rule 12 (2) of the Inquiry Rules 2006 or may precede a submission that I should determine that further disclosure is required to permit the application to be determined. In that event, I would be required to give the applicant an opportunity to make representations under rule 12 (4); and yet further delay would be built into the process. I understand that non-state core participants wish to learn as much as possible as soon as possible about deployments affecting them; but the only effect of insistence on extensive disclosure at this stage will be to delay the time at which substantive details of the deployments in which they are interested are disclosed to them.
- ii. I therefore intend to put out for consultation a proposal to change and simplify the process of applying for and determining anonymity applications. In cases in which no application is made to restrict the cover name (in the case of an undercover officer) only the open version of the application to restrict disclosure of the real name will be published. It will not be necessary to submit a redacted version of the risk assessment or of any other supporting document to the Inquiry. In cases in which an application is made to restrict the real

## UNDERCOVER POLICING INQUIRY

name and the cover name of an undercover officer and/or the real name of a more senior officer, the current process will continue to apply. If adopted, I would intend that the simplified process be used for all tranches of applications made after 31 August 2017.

18. The benefit to the Inquiry of taking this step would be significant. Inquiry and Metropolitan Police Service legal resources currently devoted to an unproductive task will be available to be devoted to the task of gathering, redacting and publishing substantive evidence. The time at which it can then be considered will be advanced.
19. Regular meetings take place between the Inquiry legal team and the Metropolitan Police Service legal team at which practical problems are discussed and, where possible, resolved. Discussions also take place between recognised legal representatives of non-state core participants and the Inquiry legal team; but they are usually conducted by email or telephone. A letter has been sent to them proposing that regular face-to-face meetings should take place with the Inquiry solicitor and other members of the legal team to permit practical problems and proposals to deal with them to be discussed, in much the same way as now occurs with the Metropolitan Police Service legal team. If this proposal is thought to be helpful, I invite recognised legal representatives to respond to it. I anticipate that, in any event, interaction between the Inquiry legal team and them will increase as the process of gathering evidence from non-state core participants gets under way.
20. An approach was made to the Inquiry earlier in 2017 by some of the traditional media to see if on the record meetings could take place with senior Inquiry staff about the workings of the Inquiry and its future progress- or about any other topic of interest to them. The Inquiry has accepted this proposal and the first such meeting took place this morning.
21. Consideration of the applications for restriction orders by officers must be done on an individual basis. This requires time. Three days have been set aside to deal with the first batch plus the Rehabilitation of Offenders Act issue. I would be grateful if those who wish to make submissions about restriction orders would focus them on individual cases. The principles upon which they should be determined have already been laid down in Sir Christopher's ruling. There is no need to revisit them. I welcome submissions on their application to individual cases and will consider them in that context.



## UNDERCOVER POLICING INQUIRY

22. I would like to conclude these remarks by reiterating the principal purpose of the Inquiry: to get to the truth about undercover policing. On any view, fulfilment of this purpose will impose a substantial burden on all who participate in the Inquiry. I do not wish to extend the time required to do so by a day more than is needed. To achieve that purpose and do so within a reasonable time will require hard and devoted work by the Inquiry team and the willing cooperation of core participants. I am confident of the first. I appeal to all core participants for the second.