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Tuesday, 21 November 2017

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18 (10.30 am)

19 Opening remarks

20 THE CHAIR: Ms Kaufmann, you have finished your general  
21 submissions. I think in fairness to others I have to  
22 give them the opportunity of making any general  
23 submission that they may wish to.

24 I have received today an email from the media which  
25 indicates that they do not seek to depart from the

1           rulings made by Sir Christopher, which I think should  
2           narrow the area of open debate on this issue.

3           I have lost the batting order, I am afraid. That is  
4           entirely my fault. (Handed)

5           Thank you. Next is Mr Payter, according to the  
6           list, but it is actually Mr Hall.

7 MR BARR: On the list for the Special Demonstration Squad  
8           anonymity applications next on the list after Mr Bunting  
9           is Ms Sikand. I understand that Ms Sikand wants to  
10          suggest to you that she too should make some submissions  
11          on principle. If she still wishes to do so, now is her  
12          chance.

13          Submissions on behalf of Peter Francis by MS SIKAND

14 MS SIKAND: Sir, they are very short.

15          On behalf of Peter Francis I want to make just three  
16          points before we turn to the specifics of each  
17          application.

18          The first is this, it explains our overall approach  
19          to the specific applications. Sir, as you know,  
20          Peter Francis through his lawyers both orally and in  
21          writing has consistently stated that disclosure of cover  
22          names would usually meet the needs of this inquiry.

23 THE CHAIR: Yes.

24 MS SIKAND: By that I mean when balancing the competing  
25          public interest factors as identified by the previous

1 charge the balance should usually rest at disclosing  
2 cover names. We accept of course that there are  
3 exceptions to this, as identified by you yesterday  
4 morning, which include disclosing real names where as  
5 you say the conduct of an undercover officer has given  
6 rise to a moral right to know the true identity. In  
7 a sense at the other end, withholding a cover name may  
8 be found by you to be necessary in certain we say very  
9 limited circumstances.

10 Sir, Peter Francis is of the view, however, that we  
11 must keep an eye on the practical consequences of  
12 revealing true identities when you do decide to do so.  
13 It is something that you, sir, alluded to in discussions  
14 with Ms Kaufmann yesterday, when you said that you had  
15 no jurisdiction meaning you had no territorial  
16 jurisdiction and I think, sir, that that is a reference  
17 to an email exchange that we have now seen in the  
18 generic disclosure bundle between HN321 and the  
19 Metropolitan Police Service, in which he effectively  
20 says he will come to court, he will give evidence and  
21 will cooperate, but should his true identity be revealed  
22 he would effectively evade this jurisdiction. That is  
23 my understanding. So that is one of the practical  
24 consequences that Mr Francis alerts everybody to, but  
25 also it is his enduring view that the revelation of true

1 identities will not in most circumstances help you get  
2 to the truth insofar as you will be faced with some  
3 hostility from officers who are denied that.

4 The second point, sir, that --

5 THE CHAIR: Is that submission made in relation to deployed  
6 undercover police officers, their managers or both?

7 MS SIKAND: Deployed undercover police officers. We will  
8 come to the position so far as managers are concerned,  
9 I suppose, in relation to the specifics of the  
10 application in relation to HN58 --

11 THE CHAIR: Yes.

12 MS SIKAND: -- and the sort of split procedure that you have  
13 suggested. But we do have specific submissions in  
14 relation to --

15 THE CHAIR: Of course, and you will have the opportunity of  
16 making them in relation to specific officers. All I'm  
17 seeking at the moment is any general submissions that  
18 you want to make, as you have said, briefly.

19 MS SIKAND: In relation to senior officers, we accept  
20 straightaway as you have indicated yesterday that senior  
21 officers must be accountable. However we think senior  
22 officers need to be distinguished from Special  
23 Demonstration Squad managers, simply because in  
24 Peter Francis's experience those managers would usually  
25 have also have had an undercover role. I hear what you

1           say that this may not have always been the case, but  
2           certainly that was his experience up at least until 1997  
3           if not slightly later.

4   THE CHAIR:  Yes.  I think what he says about the later  
5           period of the Special Demonstration Squad is right.  But  
6           I think you will find that the earlier managers did not  
7           all come from the Special Demonstration Squad by any  
8           means.  Obviously right at the start they can't have  
9           done.  But even in the early days when it had already  
10          been established for a few years, I think we will find  
11          that not all did.

12  MS SIKAND:  I am sure in due course we will have evidence of  
13          this.  But of course he speaks to his experience and in  
14          relation to HN58 of course --

15  THE CHAIR:  You rightly highlight a problem which happens  
16          when someone moves from being an undercover police  
17          officer to being a manager.  I think as with all these  
18          cases it has to be dealt with on a case-by-case basis.

19  MS SIKAND:  Indeed.  Which is why I don't make an  
20          overarching submission in relation to senior officers,  
21          but we will certainly return to it in relation to HN58.

22  THE CHAIR:  Yes.

23  MS SIKAND:  Sir, the second point is really about seeking to  
24          put right some assertions that have been made by  
25          Mr Sanders on behalf of the officers he represents.  We



1 have heard what you have said about the role of  
2 assurances of confidentiality and the weight that you  
3 would accord them, whether express or implied, and say  
4 no more, therefore, about the way in which we say  
5 Mr Sanders has sought to reinterpret or go behind the  
6 previous chairman's ruling, as summarised by him at  
7 A8 -- the previous chairman that is -- other than to say  
8 that we agree with Ms Kaufmann that Mr Sanders has it  
9 wrong, but we need not trouble you as to why.

10 There is a related point, sir, which I wish to deal  
11 with. That is more about setting the record straight.  
12 You will be aware, sir, that Mr Sanders devotes a whole  
13 section in his submissions at paragraph 7 to the  
14 position of Peter Francis as he describes that  
15 particular paragraph.

16 Sir, his submissions are at tab 14 of the  
17 submissions bundle.

18 THE CHAIR: Yes.

19 MS SIKAND: That paragraph, we say, includes some  
20 surprisingly personal attacks on Mr Francis. We would  
21 like to take this opportunity to correct some of them.  
22 You will see, sir, 7.1, he submits that nothing can  
23 reliably be gleaned about the expectations of  
24 confidentiality of the DL officers from the statements  
25 or experiences of Peter Francis.

1           He then goes on to support this assertion, I think,  
2           by suggesting that Peter Francis has effectively failed  
3           to provide any evidence about what was said to him. He  
4           points, sir, to a submission that we made in March 2016.

5           He then goes on to set out in the following  
6           paragraph some criticisms as to how Mr Francis came to  
7           reveal his own identity, and ends by saying that  
8           Mr Francis is somehow firmly in the camp of the Guardian  
9           and the media.

10          First of all, sir, Mr Francis it must be clear is in  
11          nobody's camp. He stands alone. That must be clear not  
12          only from the position that he has occupied throughout  
13          but from his submissions as well, which are patently  
14          different from those of the Guardian insofar as the  
15          position the Guardian takes in relation to what you  
16          should or should not disclose in relation to real and  
17          cover names. So we refute that, if we need to.

18          In dealing with the evidential point made by  
19          Mr Sanders, sir, as you will know Mr Francis has not yet  
20          been approached by the Inquiry to provide witness  
21          evidence. No such formal request has been made. The  
22          assertion in his submissions of 7 March 2016 were  
23          deliberately bald and limited, given that at that date,  
24          sir, the Attorney General had not yet even granted an  
25          undertaking.

1           That undertaking did not come until 28 August 2016,  
2           and let alone the Inquiry having reached a position  
3           where they were in a position to request evidence. He  
4           has, as will be well known to the Inquiry, to the  
5           secretariat, offered to provide us evidence on more than  
6           one occasion and he has been told that he must wait for  
7           the formal request so he will do so.

8   THE CHAIR: I am grateful to him for his patience. We are  
9           attempting to do it more or less chronologically, which  
10          seems to make sense.

11   MS SIKAND: But, sir, to say he's keen to give his evidence  
12          is not to overstate the position.

13                 In dealing then very briefly, sir, in what he has  
14                 said, namely that he's never been promised "lifelong  
15                 confidentiality", and the suggestion that it cannot be  
16                 relied upon, there has been no evidence so far as we are  
17                 aware produced by the Metropolitan Police Service as an  
18                 institution -- as opposed to anything individual  
19                 officers may or may not have said in their personal  
20                 statements -- that we are aware of that casts any doubt  
21                 even on that very limited assertion that he made in  
22                 those 2016 assertions.

23                 Sir, Ms Kaufmann has made reference to Cairo's  
24                 statement --

25   THE CHAIR: Yes.

1 MS SIKAND: -- and it is statement of course that you will  
2 be familiar with. But if I may, sir, just trouble you  
3 for a moment to turn it up. It is in the generic  
4 evidence bundle behind tab 5. At paragraph 15, Cairo  
5 begins to explain there, sir, what the expectation of  
6 undercover operatives was in relation to the protection  
7 that they would be offered. Sir, you will see at  
8 paragraph 16, Cairo says that as part of the process of  
9 assessing and interviewing a prospective Special  
10 Demonstration Squad field officer more senior officers  
11 would attend the home address of the candidate. Then he  
12 goes on to say:

13 "Part of this purpose of the exercise was to provide  
14 reassurance to both the officers and their family about  
15 the nature and ramifications of the role."

16 He finishes that paragraph with this:

17 "The reassurance frequently extended to reinforcing  
18 the commitment of the Metropolitan Police Service to  
19 safeguarding the true identity of the officers."

20 So that is the highest he puts it, "frequently".  
21 But at 70 he then makes reference to a document which he  
22 describes as a memorandum which, sir, you know was drawn  
23 up by HN53. That is exhibited as exhibit 2. That  
24 follows behind tab 8, please.

25 If you look at Cairo's statement at 17, it explains

1 the context in which that document came into being. At  
2 17, sir, Cairo makes mention that that document came  
3 into being during the litigation that was brought  
4 against the Metropolitan Police Service by Officers A  
5 and B, two former Special Demonstration Squad officers.  
6 It is no secret, sir, that Officer A is Peter Francis.

7 This document, sir, only came into being because as  
8 far as Peter Francis is aware that litigation was the  
9 very first time that a light was publicly shone on the  
10 workings of the Special Demonstration Squad. As  
11 Ms Kaufmann has already pointed out, sir, if you look at  
12 the undertaking in the way that it is described there in  
13 2005, it is heavily qualified.

14 The confidentiality itself could be waived with the  
15 undercover officer's consent or, as is put there, under  
16 compulsion of law or statutory duty.

17 Sir, if you look at the exhibit itself, it suggests  
18 that this document was going to be rolled out, as it  
19 were, to all officers and they were going to be asked to  
20 sign it.

21 THE CHAIR: There were mutual promises, weren't there?

22 MS SIKAND: Yes. There were mutual promises as set out in  
23 2005. That is the first written document that we are  
24 aware of that seeks to evidence this mutual  
25 understanding.

1           And so bearing in mind that the Special  
2 Demonstration Squad came into being in 1968, sir, that  
3 is a significant period of time.

4           In any event, as we say, it came about after the  
5 litigation but importantly we say that despite the fact  
6 that the document itself says that it ought to be rolled  
7 out, that is to say given to officers before a new  
8 deployment and given also to those already deployed,  
9 paragraph 18 of Cairo's statement confirms that this was  
10 never done.

11           So we say that there is nothing in the public domain  
12 that casts doubt on anything that Peter Francis has  
13 asserted thus far about the promise of confidentiality  
14 to him.

15           Sir, it is accepted by Mr Sanders himself in his own  
16 submissions that there were varying degrees of promises  
17 made and mostly probably they were implied as opposed to  
18 expressed, so it is difficult to understand his  
19 submission on that point.

20           Lastly, on this point, he makes various assertions  
21 about the stage at which Peter Francis chose to reveal  
22 his true identity. Sir, I don't know that that has any  
23 bearing of any kind on the nature of the confidential  
24 relationship between the Metropolitan Police Service and  
25 any undercover officer. So unless you think that the

1 stage at which Mr Francis himself chose to reveal his  
2 true identity is one that I won't speak at length to  
3 that point, other than to say that there were various  
4 external and personal factors which led him to make the  
5 decision that he did. But we say that this probably is  
6 not the time or the place to go into details about  
7 that --

8 THE CHAIR: It isn't.

9 MS SIKAND: -- but it has been raised so we respond to it.

10 THE CHAIR: Forgive me, Ms Sikand, I don't mean to interrupt  
11 your flow, but this is precisely what I hoped would not  
12 happen. Namely that we would have a whole lot of points  
13 being made of a general nature -- or in your case rather  
14 more specific nature -- going to general principles  
15 which would inhibit me from determining the individual  
16 cases I have to.

17 MS SIKAND: I am most certainly not going to stand in your  
18 way and I have only been on my feet for a few minutes,  
19 sir, and I certainly don't ask for an hour and a half.  
20 But I do ask for just a few moments before we can move  
21 on to the obviously important task that lies ahead.

22 But it is important that assertions that are made  
23 that cast doubt on the credibility and integrity of  
24 Mr Francis, that I have the right at least to put them  
25 into their proper context.

1 THE CHAIR: You have done.

2 This is not, bluntly, the moment at which I could --  
3 even if I were minded to -- conceivably embark on  
4 an assessment of the credibility of various individuals,  
5 that comes much later.

6 MS SIKAND: I am grateful, sir. So then I will not say any  
7 more about the litigation and the way in which, in fact,  
8 the Metropolitan Police Service chose to conduct it as  
9 opposed to Mr Francis.

10 Sir, the third and my last point is really to  
11 clarify a matter that we raised in our written  
12 submissions of 4 October at our paragraph 5. Just  
13 because others have asked in their written submissions  
14 as to what that means, just simply this: Peter Francis  
15 had raised concerns about the relationship between the  
16 Metropolitan Police Service and the trauma service at  
17 The Priory Ticehurst.

18 THE CHAIR: Yes.

19 MS SIKAND: Sir, those were just concerns, may I make plain.  
20 We have not cast any aspersions about the individual  
21 experts at this stage, but simply that we had raised the  
22 point that Peter Francis, we raised the point publicly  
23 that Peter Francis himself was treated at The Priory  
24 Ticehurst in 1999 and 2000, and that he was sent there  
25 himself by the Metropolitan Police Service. His



1 co-claimant was also sent there.

2 That is why it is extremely surprising to note the  
3 contents of the letter which is at tab 21 of the generic  
4 evidence bundle, sir, which is a letter from the  
5 Metropolitan Police Service to the Inquiry in response  
6 to the Inquiry seeking further information triggered by  
7 our own correspondence with you.

8 If I can just take you to the second page, and the  
9 second-to-last paragraph, it is said there that although  
10 it can't be ruled out that individual Metropolitan  
11 Police Services officers may have been treated at The  
12 Priory in the past. It goes to say:

13 "That said, my enquiries with The Priory to date  
14 have not provided any positive indications that  
15 Metropolitan Police Services officers have been treated  
16 by The Priory or by either Dr Busuttil or Dr McLaren."

17 Sir, as I say, Mr Francis was, his co-claimant  
18 was --

19 THE CHAIR: You say that is wrong.

20 MS SIKAND: We say that is obviously wrong.

21 THE CHAIR: Yes.

22 MS SIKAND: Sir, for those who keep up with books written by  
23 former undercover police officers, Peter Bleksley has  
24 written in a book called "Gangbuster" that he was sent  
25 to The Priory Ticehurst by the Yard. So correspondence



1 with the individual officers.

2 Having said that, I suspect there is not a great  
3 deal I'm going to be able to say about individual  
4 officer's cases in any event.

5 THE CHAIR: That's what I anticipate. Three of them at any  
6 rate have been fully considered in the closed hearing in  
7 which you participated.

8 MR BRANDON: Yes. I am happy to deal with the general  
9 points now or deal with it all in one go. I suspect  
10 I will not detain you for long.

11 THE CHAIR: Entirely in your hands, whatever you prefer.

12 MR BRANDON: Why don't I deal with the general point now.  
13 To get it out of the way, then it may be that I will be  
14 very short when we come to the individual cases.

15 Sir, I only address the single issue which is real  
16 names and what has been submitted by Ms Kaufmann that  
17 the disclosure of real names is the key to this Inquiry  
18 getting to the truth.

19 Well, sir, we disagree. Sir, we ought to just point  
20 out that the position now taken by the non-state,  
21 non-police core participants is a little different from  
22 the position that had been taken at earlier hearings.  
23 Mr Squires appearing for the non-state in the April of  
24 this year hearing accepted that cover names rather than  
25 real names were the primary concern for the Inquiry,

1           albeit he did say of course that there were a range of  
2           views among the non-state, non-police core participants  
3           as to whether disclosure of real names was necessary and  
4           that there would be a public interest in the disclosure  
5           of real names only in some cases.

6           Sir, that is, for your note, at the transcript of  
7           5 April of this year at page 107.

8           Sir, the reasons we say that Ms Kaufmann gives in  
9           support for the release of real names cannot justify the  
10          assertion that it is essential to the Inquiry to getting  
11          to the truth or even that it is necessary.

12          Sir, just to deal with the two points made by  
13          Ms Kaufmann where the cover name is not known, it has  
14          been submitted, as you have heard, that where a cover  
15          name is not known the real name should be disclosed  
16          because it is the only means of linking the officer to  
17          the deployment.

18          Well, sir, we say it is not clear how publication of  
19          a real name would assist those who only knew the  
20          undercover officers by their cover names in any event.

21   THE CHAIR: That is a pretty obvious point which I think is  
22          possibly better debated in relation to individuals.

23   MR BRANDON: Very well, sir.

24          Again, in relation to individuals of course that  
25          point doesn't arise in relation to any of the officers

1           that we represent.

2   THE CHAIR:  No, quite.

3   MR BRANDON:  We say it can't be a principle of general  
4           application supporting the assertion that the Inquiry  
5           can't get to the truth without knowing what the real  
6           names are.

7           As far as whistle blowers are concerned, sir, we say  
8           that in relation to any allegations of wrongdoing which  
9           occurred during the course of deployments, of course  
10          relevant undercover officers, core participants, their  
11          cover names are known to Special Demonstration Squad  
12          colleagues and therefore they can come forward with any  
13          reports of wrongdoing should they wish to do so without  
14          disclosure of real names.

15          As far as allegations of wrongdoing which are said  
16          to have occurred outside deployment, we make the  
17          following very short submissions.

18          First, we say there is likely to be more than  
19          sufficient evidence on the documents that the Inquiry  
20          has and from the multiple witnesses that it will no  
21          doubt hear accounts from to assess the credibility of  
22          undercover officers' accounts without the need, really,  
23          to seek evidence of bad character arising from  
24          misconduct which may arise outside the period of their  
25          deployment.  To seek that information, we say, would

1           broaden the scope of the Inquiry beyond its terms of  
2           reference. It would make it unmanageable. It would  
3           impact upon its achievability. If allegations of  
4           wrongdoing are made that arise from a period outside the  
5           undercover officer's deployment, then those allegations  
6           of course would have to be assessed by you, sir, and we  
7           would face the prospect of potentially satellite  
8           litigation, trials within trials, over incidents of  
9           wrongdoing which may be many years before or after  
10          a deployment and which frankly have very limited  
11          relevance to the core task of the inquiry.

12                 Sir, as far as corporate police progression, if  
13          I can call it that, Ms Kaufmann has submitted there  
14          should be investigation of post Special Demonstration  
15          Squad careers of officers accused of wrongdoing to  
16          determine whether they were permitted to progress.

17                 Sir, you have already identified the significant  
18          practical difficulties with this proposal, but we say  
19          also it relies on a number of false assumptions. It  
20          assumes that those responsible for the progression of  
21          individual officers are aware of the Special  
22          Demonstration Squad at all, aware of the allegations of  
23          wrongdoing which may have been made or even recognised  
24          that it constituted wrongdoing.

25                 This leads me to perhaps the core point that I make

1           on behalf of the officers whom I represent, that they  
2           have approached this Inquiry on the basis that it is  
3           part of the Inquiry's task to assess whether allegations  
4           of wrongdoing are made out. If so, whether the conduct  
5           of individual undercover officers can properly be  
6           characterised as wrongdoing when assessed against the  
7           prevailing culture of the Special Demonstration Squad at  
8           the time and the extent to which their actions were  
9           known of, sanctioned or approved by senior management.

10       THE CHAIR: There are, as always in that sort of situation,  
11           two questions: whether objectively what they did was  
12           wrong and whether, subjectively, they realised it.

13       MR BRANDON: That is in relation to an assessment of the  
14           individual wrongdoing --

15       THE CHAIR: Yes.

16       MR BRANDON: -- but what we urge upon the Inquiry, and feel  
17           quite sure that this point has been made many times, is  
18           to assess that individual allegation of wrongdoing  
19           within a broader context of what the culture was at the  
20           organisation at the time, and what was and what was not  
21           known by senior management, what was within, if I can  
22           call it broadly force orders, and so on and so forth.

23           All of those issues fall to be considered by the  
24           Inquiry.

25       THE CHAIR: Certainly they do.

1 MR BRANDON: Sir, it is a point, sir, you have made of  
2 course, the Special Demonstration Squad was a secret  
3 branch. Its activities were not known within the  
4 Metropolitan Police Service, individual deployments were  
5 certainly secret and there is simply no reason why other  
6 officers outside the Special Demonstration Squad would  
7 have known what would have taken place within it, let  
8 alone be in a position to be able to assess whether that  
9 behaviour was appropriate during the course of  
10 an individual officer's deployment.

11 Sir, we say the reasons given can't justify  
12 a principle of general application supporting the  
13 release of real names. The decision to disclose the  
14 real identity of an officer is a significant step which  
15 necessarily increases the risk to those individuals and  
16 their families and the justification, if any exists,  
17 sir, must be assessed on a case-by-case basis.

18 THE CHAIR: I agree.

19 MR BRANDON: Thank you sir.

20 THE CHAIR: Thank you.

21 Mr Sanders next, I think, is it not?

22 Mr Sanders, I read your written submissions with  
23 a degree of surprise, because the issue about the  
24 status, importance and weight in the most general of  
25 terms to be given to assurances expressed or implied of



1 confidentiality has already been dealt with in  
2 Sir Christopher's rulings and I was not minded to depart  
3 from them. I'm not at all sure whether you are urging  
4 me to do so or not?

5 MR SANDERS: No, sir. Of course we weren't established at  
6 the time of the hearing and the ruling last year --

7 THE CHAIR: No.

8 MR SANDERS: -- so to a certain extent, we are taking our  
9 seat a bit late and I understand that in doing that  
10 other people have to stand up and there is a bit of  
11 grumbling and then we sort of occupy our place.

12 Submissions on behalf of the Metropolitan Police designated  
13 lawyers by MR SANDERS

14 MR SANDERS: I don't urge you to depart from the principles  
15 in approach ruling.

16 I do have a submission to make that Ms Kaufmann and  
17 Mr Bunting in his written submissions have put  
18 a particular gloss on it which isn't justified. So to  
19 be absolutely clear, I'm not, as Ms Kaufmann said,  
20 urging you to sideline openness. We recognise openness  
21 as a factor in favour of disclosure, and we recognise  
22 that it has weight. That obviously needs to be assessed  
23 in context, bearing in mind the type of proceeding and  
24 so on.

25 But my submission is that the expectations of former

1           undercover officers and the obligations owed to them  
2           also have a particular weight, an in-built weight, and  
3           that Ms Kaufmann falls into error in suggesting that  
4           that falls to be sidelined.

5           She says first that the expectations of undercover  
6           officers will automatically and always give way to the  
7           interests of openness.

8   THE CHAIR: I don't think she does say that. If she were to  
9           do it, I would not agree with her. But I don't think  
10          she does say it.

11   MR SANDERS: Essentially, my understanding of the  
12          submissions yesterday was that Neither Confirm Nor Deny  
13          went in the bin and the expectations of former  
14          undercover police officers followed swiftly afterwards.

15   THE CHAIR: That may be where she wishes to put them, but it  
16          is not my view at the moment.

17   MR SANDERS: I am grateful, sir.

18          Apologies, Ms Kaufmann then went on to suggest in  
19          effect that it is only a risk of physical harm or  
20          serious psychiatric/psychological injury of the kind of  
21          personal injury level which could justify a restriction  
22          order.

23   THE CHAIR: She did make that submission, I am not persuaded  
24          by it. I think we have, as I have said repeatedly, to  
25          look at individual cases and the individual facts of

1 individual cases. Which will involve different factors  
2 and the weight to be given to them all depends on the  
3 individual case.

4 MR SANDERS: Sir, absolutely.

5 My submission is that that submission is the  
6 departure from the principles in approach ruling.

7 There is an important point that I think that having  
8 heard the oral submissions yesterday and today, when we  
9 refer in our submissions to expectations and obligations  
10 of confidentiality, we are going beyond simply that  
11 issue in terms of section 19(4) (c). So in your  
12 assessment of questions of harm and damage, one material  
13 consideration in terms of the statute is conditions of  
14 confidentiality.

15 When we refer to the expectations -- the reasonable  
16 expectations -- of former undercover officers we are not  
17 looking at it in that narrow context, we are looking at  
18 it in the broader context of their reasonable  
19 expectations as a matter of fairness and as a matter of  
20 article 8 and so on. In my submission, the mistake that  
21 Ms Kaufmann makes is to read the part of  
22 Sir Christopher's ruling on section 19(4) (c) as being  
23 somehow dispositive of all of that package of rights and  
24 interests. In my submission that's not right and that's  
25 not the correct reading of it.

1 I would just like to take you very briefly to that  
2 part of the ruling --

3 THE CHAIR: Certainly.

4 MR SANDERS: -- and to nothing else.

5 I think it is authorities bundle 7, tab 141. There  
6 is a subheading on page 60 of 85, just above  
7 paragraph 162.

8 THE CHAIR: Yes. For anybody who is looking, it is actually  
9 tab 140.

10 MR SANDERS: Apologies. Thank you, sir.

11 THE CHAIR: Give me the page reference again, please?

12 MR SANDERS: 60 of 85.

13 Just above paragraph 162 there is the subheading  
14 there "Any conditions as to confidentiality subject to  
15 which a person acquired information that he is to give  
16 or has given to the Inquiry".

17 That is obviously a reference to the provision in  
18 section 19(4)(c). Then what follows is  
19 Sir Christopher's analysis of the considerations arising  
20 under that heading. We see at paragraph 165:

21 "I have indicated that in my view section 19(4)(c)  
22 ..."

23 So that is the context:

24 "... is couched in terms wide enough to embrace  
25 within the ring of confidentiality information and

1 evidence that will be provided by undercover officers to  
2 the Inquiry, not just confidential information given to  
3 the police services that they will provide to the  
4 Inquiry in documentary form."

5 Then he goes on:

6 "Subject to evidence I may receive, it seems to me  
7 likely that undercover officers will have embarked on  
8 their roles with a strong expectation that their  
9 employers would do everything that they properly could  
10 to protect them from public exposure."

11 Then there is a reference in the context of the  
12 Special Demonstration Squad, the distinction between the  
13 evidential and the intelligence-gathering roles. Then  
14 he says:

15 "However ..."

16 In my submission this "however" has been  
17 misconstrued by Ms Kaufmann to mean that at this point  
18 Sir Christopher was really setting aside as essentially  
19 non-factors the expectations of former undercover police  
20 officers, because he goes on to say:

21 "However, I'm inclined to accept the submission made  
22 to me by Mr Emmerson QC that any assurance or  
23 understanding, even in the case of a Special  
24 Demonstration Squad officer, must have been qualified  
25 and could not have been absolute, for the very good

1 reason every police officer is aware of the supremacy of  
2 a judicial decision on disclosure should the officer  
3 find that his activities have become relevant to a civil  
4 or criminal trial."

5 Then:

6 "This reservation will apply with particular force  
7 to officers whose undercover activity was conducted for  
8 the purpose of acquiring evidence."

9 That as a proposition we don't dispute at all. Of  
10 course the expectations of former undercover officers,  
11 expectations of anonymity and confidentiality could not  
12 be considered absolute. There is no such thing as an  
13 absolute obligation of confidence. There must be  
14 limits. And of course they would have understood that  
15 if there was a court order requiring their  
16 identification then the Metropolitan Police Service  
17 would have no option but to comply with that, but in my  
18 submission that recognition of the fact that these  
19 obligations and expectations are inevitably qualified  
20 doesn't mean -- it is not some sort of key that one  
21 turns and then they just fall away as a factor. They  
22 remain in play and in my submission they remain very  
23 weighty and important considerations.

24 It is a misreading of this passage to suggest that  
25 in some way Mr Emmerson's submission led to them being

1 put to one side.

2 One has to bear in mind the extent to which the  
3 individual officers on a case-by-case basis would have  
4 understood their expectations to be capable of being  
5 qualified. In the case of Special Demonstration Squad  
6 officers, my submission is they had a very strong  
7 expectation that they would not be identified.  
8 Sir Christopher referred to civil or criminal trials,  
9 which obviously we are not in the context of a civil or  
10 criminal trial, but the expectation would be that if it  
11 came to criminal proceedings, the officer's evidence  
12 would not be relied upon. They would either be -- there  
13 would either be a public interest immunity claim or the  
14 prosecution itself would be dropped.

15 In terms of expectation, it would be that criminal  
16 proceedings would not lead to public identification or  
17 exposure and the same with civil proceedings, there  
18 would be a PII claim, there would be a settlement or,  
19 failing that, there would be some kind of order for  
20 anonymity and screening as one sees often in inquests  
21 involving the police and so on.

22 I accept entirely these expectations and obligations  
23 are qualified, but it is the extent to which they are  
24 qualified. In my submission that qualification does not  
25 mean they essentially fall away in the face of the

1 interests of openness and transparency.

2 THE CHAIR: I do not understand Sir Christopher to have so  
3 ruled.

4 MR SANDERS: No, and that is my submission.

5 It is my submission that Ms Kaufmann when she puts  
6 that spin or that gloss on this part of the ruling and  
7 then says, "These expectations, obligations, are  
8 effectively peripheral matters", that that is wrong.

9 Then at 165, as he goes on, he tales about:

10 "While an expectation of confidentiality is both  
11 material and weighty consideration it is not likely,  
12 except in unusual circumstances, to make the difference  
13 between disclosure and non-disclosure if disclosure is  
14 necessary in the fair pursuit of fulfilment of the terms  
15 of reference."

16 In my submission that again is important. It is if  
17 disclosure is necessary in the interests of fulfilment  
18 of the terms of reference.

19 THE CHAIR: He did however go on in the next paragraph to  
20 say that he considered that:

21 "... an expectation of confidentiality, while both  
22 material and weighty is not likely, ordinarily, to make  
23 the difference between disclose and non-disclosure if  
24 disclosure is necessary for the fair pursuit of  
25 fulfilment of the terms of reference."



1 MR SANDERS: Precisely, sir. It is the "if" there, "if  
2 necessary".

3 THE CHAIR: Yes.

4 MR SANDERS: The point I emphasise as well is that this is  
5 in the context of section 19(4)(c), and my submissions  
6 on expectations and obligations of confidentiality go  
7 beyond that and are bound up with the package of rights  
8 and interests that undercover officers, former  
9 undercover officers, have as a matter of article 8.

10 It is not the case that Sir Christopher was saying,  
11 "Well, they are there, but they are qualified and  
12 therefore we just put them to one side and forget about  
13 them". They are very much in the mix and in my  
14 submission they have a very powerful in-built weight on  
15 the other side of the scales to the openness.

16 So I'm not urging you to put aside or depart from  
17 the ruling, I'm simply making a targeted submission  
18 about what is the effect of paragraphs 165 and 166. And  
19 when one comes to the conclusion, obligations,  
20 expectations of confidentiality are at A8, B1, B2 and  
21 C4. So they are still there.

22 They go, in my submission, not only to harm and  
23 damage but also to the Inquiry's obligation under  
24 section 19(3)(a), which then imports section 6 of the  
25 Human Rights Act, which imports article 8 of the

1 Convention.

2 These are obviously general submissions, but I am  
3 only here today on behalf of HN321, HN330 and HN333, but  
4 coming to article 8 and the factors which weigh against  
5 public identification of these individuals, I make the  
6 submission that one has to look beyond Ms Kaufmann's  
7 physical harm, psychological/psychiatric harm, to the  
8 rights and interests that are protected by article 8.

9 It is well established that article 8 is concerned  
10 with the autonomy of the individual, the extent to which  
11 they have control over their identity, their private  
12 life and their family life.

13 In my submission, in that regard it is very  
14 important to keep in mind the effect on the undercover  
15 police officers of undertaking this work on behalf of  
16 the state. Undertaking undercover work was not simply  
17 a choice between traffic and ports; it's a very  
18 particular unique type of work which carries with it  
19 particular and unique stresses that the individual in  
20 the short term has to undergo while they undertake that  
21 work.

22 Also, as we say in our submissions, it has  
23 a life-changing effect on individuals and their  
24 identities, because of the effect of having to assume  
25 a false identity and having to maintain it over a long

1 period of time.

2 I accept in relation to HN321, HN330 and HN333 they  
3 weren't individuals who undertook this role for a long  
4 period of time. So that part of the picture is not as  
5 heavy in their case as it may be in other cases. But  
6 undertaking this work entailed restrictions on what they  
7 could disclose about their work and about their lives.

8 In the case of these police officers, two who are in  
9 their 70s, one who is in his 80s --

10 THE CHAIR: Can we deal with them as individuals when we  
11 deal with their cases?

12 MR SANDERS: We can do. Just in relation to article 8 --  
13 and I won't sort of spend long on it -- in terms of the  
14 factors that I say are important and they may play out  
15 differently for the individuals, the fact that you then  
16 go on and in living your life you, yourself, have to  
17 keep certain things secret, and you yourself have to  
18 take precautions about the extent to which you can have  
19 a public profile and so on, is important in  
20 an assessment of the article 8 interests in play. There  
21 were consequences for these individuals in terms of  
22 where they could live and so on.

23 In my submission, as you alluded to earlier, sir, it  
24 is a question of the obligations and the expectations  
25 being mutual. The state says to these individuals, "We

1 want you to undertake this work".

2 The state takes the benefit in terms of the  
3 intelligence of them undertaking that work. The state  
4 says to them, "You are not allowed to talk about it" and  
5 the state also says, whether impliedly or expressly,  
6 "You won't be exposed as a result".

7 All of that is bound up with article 8, with these  
8 individuals having lived their lives subsequently on  
9 that basis.

10 In my submission for the state now to say, "Well, we  
11 are going to have a public inquiry about that and that's  
12 all changed, sorry", isn't acceptable unless there is  
13 some credible allegation of misconduct or wrongdoing,  
14 which in the case of these three officers there isn't.

15 In my submission, Ms Kaufmann drew the analogy  
16 yesterday of Harvey Weinstein. On behalf of my clients  
17 it is just simply completely inapposite. There is no  
18 suggestion that my clients have done anything  
19 approaching what Harvey Weinstein did and so therefore  
20 tough luck -- therefore tough luck your family then have  
21 to sort of take the consequences of publicity and so on.

22 In relation to these individuals that is simply not  
23 the case and it is not an apposite analogy. One has to  
24 bear in mind of course the terms of reference of the  
25 Inquiry, which is an inquiry about all undercover

1           policing from 1968 onwards. It is not the case that  
2           simply because there is this Inquiry in relation to  
3           these issues everyone who worked in an undercover  
4           capacity during that period is liable -- unless there is  
5           some very strong reason in terms of physical harm,  
6           psychiatric harm -- to be identified.

7           In relation to the Special Demonstration Squad in  
8           this period, concerned with, for these clients, the late  
9           1960s, there has been no allegations not simply in  
10          relation to these individuals but in relation to  
11          anyone --

12        THE CHAIR: Again, can we please discuss those matters in  
13          relation to individual officers?

14        MR SANDERS: Sir, yes.

15          One point, just as a generic point, not limited to  
16          the officers, is the question of recruitment and  
17          retention and the impact which in our submission is  
18          a relevant consideration for you, the impact on future  
19          recruitment and retention of not just undercover police  
20          officers but of all covert human intelligence sources  
21          who might give information to confidential informants.

22          There is evidence before you, sir, in the risk  
23          assessment briefing note -- we have given the references  
24          in the skeleton argument -- and in the statement of  
25          Cairo. You have now also seen the statement of

1 Mr Pughsley, which provides further evidence about that  
2 and endorses the evidence of Cairo.

3 THE CHAIR: I think both you and I would be wise not to make  
4 any general assertions about it, after the debate that  
5 I had with Ms Kaufmann yesterday I learnt something that  
6 suggests that she might be right and I might be wrong.

7 MR SANDERS: I obviously can't address you on that.

8 THE CHAIR: Of course you can't. But that is one of the  
9 aspects of this Inquiry. Things keep on arriving which  
10 cause one to rethink decisions that you were reasonably  
11 confident about when they were made. Facts change, I'm  
12 not going to repeat Maynard Keynes's statement, but  
13 everybody knows what it is.

14 MR SANDERS: My apologies, sir?

15 THE CHAIR: I'm not going to repeat Maynard Keynes's  
16 statement about facts and changing, but everybody knows  
17 what it is.

18 MR SANDERS: Yes. I thought perhaps another witness to the  
19 Inquiry --

20 THE CHAIR: No, Lord Keynes.

21 MR SANDERS: In our submission there is powerful supportive  
22 evidence before the Inquiry. It is a matter of common  
23 sense, it is self-evident, if individuals do not have  
24 confidence that their anonymity will be maintained if  
25 they provide information to the state, then they won't

1 provide it. That forms the basis of this area of public  
2 interest immunity and the protection that in all  
3 common law jurisdictions is given to confidential  
4 informants.

5 THE CHAIR: It does when those who are not employed by the  
6 state are invited to provide information to it. All  
7 state agencies worldwide, including our own, provide  
8 near absolute promises about that. But we are not  
9 actually dealing with that situation precisely here.

10 MR SANDERS: We are not, but in my submission the general  
11 proposition holds good, because we are talking about  
12 individuals providing information for the state. Now  
13 whether they are doing it on a salaried basis or in  
14 return for one-off payments or for free, they will want  
15 to know that their confidentiality will be protected.

16 If an individual hears the fact that there is  
17 a public inquiry into a particular area means that may  
18 fall away, then that will have a bearing on their  
19 decision-making. So someone who is being approached by  
20 MI5 to provide information, if they think, well, maybe  
21 there is going to be a public inquiry -- no one would  
22 have thought there would have been this public inquiry  
23 as Ms Kaufmann accepted -- and all bets may be off, then  
24 that may influence their thinking.

25 We say that for that reason these expectations and

1 obligations going beyond simply section 19(4)(c) have  
2 a powerful in-built weight and we draw the analogy with  
3 the expectations and obligations arising in the case of  
4 journalist's sources. Of course they are qualified, but  
5 that doesn't mean because they are qualified they are  
6 easily set aside.

7 THE CHAIR: No, but there is a difference. Exactly what  
8 impact it has remains to be worked out, but there is  
9 a difference between people who provide information to  
10 the state or as you rightly remind me to the media who  
11 are given an expectation of confidence by those to whom  
12 they provide the information, and those who are working  
13 for the state or for that matter for the media who  
14 gather information.

15 MR SANDERS: Yes. I entirely agree there is a difference,  
16 but it doesn't mean that in this case those obligations  
17 and expectations can just be set aside. They are  
18 important and their frustration without good reason --  
19 without there being any suggestion that the individual  
20 did something that the state did not ask them to do --  
21 in my submission would have dangerous consequences.

22 THE CHAIR: I would hold your fire on that for the time  
23 being until all of the evidence on that issue is  
24 disclosed to the extent it can be, and I think a certain  
25 amount can be.



1 MR SANDERS: I am grateful.

2 Sir, that is all I want to say on the generality.

3 I understand you are then going to take each one in

4 turn, sir.

5 THE CHAIR: Yes, thank you very much.

6 Mr O'Connor?

7 MR O'CONNOR: Sir, we have put in some very short written

8 submissions. There is nothing I want to say to add.

9 THE CHAIR: Thank you.

10 Mr Griffin?

11 MR GRIFFIN: Sir I have no submissions at this stage.

12 Indeed my name can come off the list of counsel as you

13 now move on to consider the applications.

14 THE CHAIR: I shall put a line through it, thank you.

15 The shorthand writers do need a break and 11.30 is

16 about the usual time we have it. Would it be convenient

17 now? Let's do it.

18 Ms Kaufmann, can you give me an indication of which

19 one we are going to start with?

20 MS KAUFMANN: The order that was set out by the Inquiry. It

21 is going to be HN16.

22 THE CHAIR: Numerical order, splendid.

23 (11.30 am)

24 (A short break)

25 (11.42 am)

1 THE CHAIR: Ms Kaufmann, can I just say something before we  
2 begin. As we are about to embark on submissions which  
3 deal with real individuals, the possibility that one of  
4 us may say something which should not be said publicly  
5 at this stage of the Inquiry exists.

6 Can I remind everybody therefore of the formal order  
7 that is in place and applies to today's hearing as to  
8 every other one. There shall be a delay of not less  
9 than two minutes between any words spoken or information  
10 given in the hearing room and any communication or  
11 publication of those words or information using Twitter,  
12 other social media or any other means of communication.  
13 For the avoidance of doubt, this delay applies to any  
14 words spoken or information given in the hearing of any  
15 kind, given that we are not hearing evidence today.

16 There shall be no communication or publication by  
17 any means of any words spoken or information given which  
18 any person has indicated should not have been revealed  
19 in public, until such time as the objection to its  
20 publication is withdrawn or I have ruled upon it.

21 Subject to all of that, it is of course permissible  
22 to use Twitter and social media from within the hearing  
23 room to report on any part of the proceedings, provided  
24 of course it doesn't involve photography.

25 Thank you, Ms Kaufmann.

1 Submissions on behalf of the non-state, non-police core  
2 participants by MS KAUFMANN re HN16

3 MS KAUFMANN: Sir, we are dealing with HN16.

4 THE CHAIR: Yes.

5 MS KAUFMANN: Can we start with your minded to note at  
6 tab 9, it is the October minded to note, where you set  
7 out your reasons for being minded to disclose the cover  
8 name but not the real name.

9 THE CHAIR: Yes.

10 MS KAUFMANN: In paragraph 2, when identifying why you are  
11 minded to disclose the cover name, you identify why it  
12 is necessary to do so. Then you balance that against  
13 what you say is a small risk of significant interference  
14 with the right to respect for private life if it leads  
15 to the revelation of his real name.

16 THE CHAIR: Yes.

17 MS KAUFMANN: We, as you will know, sir, are concerned  
18 obviously with the disclosure of the real name, we are  
19 obviously happy that you are minded to disclose the  
20 cover name. Taking that as a starting point, we take  
21 from that, that should the real name be disclosed that  
22 will carry a risk of interference with his article 8  
23 rights or her article 8 rights.

24 What I want to do is try to trace through, insofar  
25 as we are able given the limited disclosure, what the

1 nature of such risks might or might not be.

2 In tab 3 of the anonymity applications bundle, we  
3 have the applicant to this officer's behalf by Slater &  
4 Gordon. In paragraph 14 we move on to issues related to  
5 interference with article 8 rights.

6 At paragraph 16 it is said that:

7 "His or her application for restriction orders if it  
8 is refused is likely to lead to the kind of intrusion  
9 suffered by Bob Lambert."

10 Who we all know about.

11 That is the first issue that I would like to address  
12 briefly. If it does lead to the kind of interference  
13 that Bob Lambert suffered, and it is because there is an  
14 allegation that this particular officer engaged in  
15 wrongdoing, then for the reasons that we addressed  
16 yesterday there is nothing wrong with that. That is  
17 something to which he can quite properly be subjected if  
18 he was engaged in wrongdoing.

19 If there is no evidence that this officer engaged in  
20 any wrongdoing, then our submission is that assessment  
21 is wrong. Because it is extremely unlikely that any  
22 officer in relation to whom there is no concern, once  
23 names are disclosed, that they engaged in wrongdoing, it  
24 is extremely unlikely they are going to be subjected to  
25 that kind of harassment. That harassment flows from

1 a sense of betrayal and anger at what the particular  
2 officer did.

3 So then the next issue that is addressed -- so our  
4 submission is that that risk is not a basis for  
5 non-disclosure of the real name.

6 THE CHAIR: I'm trying to choose my words carefully.

7 What you mean by "wrongdoing" and what I understand  
8 by "wrongdoing" in the context we are both discussing  
9 are not necessarily the same. I think it may be helpful  
10 if you would clarify what you assert is wrongdoing.

11 MS KAUFMANN: Yes. So if it came to light, for example,  
12 that this officer had intimate sexual relationships with  
13 women upon whom he was spying, or if it came to light  
14 that this officer was engaged in on the face of it  
15 racist undercover policing of justice groups, then it is  
16 likely that there will be a good measure of opprobrium  
17 in relation to those activities.

18 It is possible that the individuals who were  
19 affected would want to confront that officer with their  
20 wrongdoing, would want to go and meet them and address  
21 it and ask about it --

22 THE CHAIR: Forgive me, I was not asking what they might do,  
23 but what is understood by "wrongdoing" in your  
24 submission?

25 MS KAUFMANN: The mere fact of being an undercover police

1           officer is not in and of itself likely to result in that  
2           kind of Bob Lambert confrontation.

3   THE CHAIR:  It can't be categorised as wrongdoing full stop  
4           as a matter of definition, can it?

5   MS KAUFMANN:  No.

6   THE CHAIR:  So sexual relationships, racist attitudes  
7           displayed in the course of informing on justice groups.  
8           Is there anything else?

9   MS KAUFMANN:  For example if it came to light that  
10           an individual officer might have been involved in  
11           circumstances that led to a miscarriage of justice, that  
12           is another instance where it is liable to cause  
13           opprobrium.

14   THE CHAIR:  Forgive me for pressing but I want to have the  
15           categories identified as concrete examples so I can then  
16           respond and deal with them in a way which addresses the  
17           concrete examples on which you rely.

18           We have three so far.  Are there any others?  If you  
19           think of others and want to express others later I'm not  
20           stopping you.

21   MS KAUFMANN:  One possibility I can think of is that  
22           individuals who had very, very close personal but  
23           non-intimate relationships could feel incredibly  
24           betrayed as a consequence and therefore may want to draw  
25           to the attention of the undercover police officer whose

1 cover has been blown how they feel about that. But,  
2 again, what we are talking about in terms of the likely  
3 reaction once that is known, it is not harassment, but  
4 it is an understandable --

5 THE CHAIR: You appear, therefore, I think, to assert that  
6 engaging in a-- I call it confidential relationship, not  
7 sexual, with somebody for the purpose of the deployment  
8 could amount to wrongdoing?

9 MS KAUFMANN: Let me be careful to distinguish what is  
10 wrongdoing for purposes of the Inquiry and what is  
11 considered to be a wrong in a personal sense for the  
12 person affected.

13 THE CHAIR: Yes.

14 MS KAUFMANN: So for the individual affected, they have an  
15 incredibly -- I mean this happened to lots of  
16 individuals, they had a very, very close relationship  
17 with somebody who they thought was a true friend, a true  
18 confidante. So in terms of their own sense of  
19 wrongdoing, whether or not the Inquiry considers at the  
20 end of the day, and we can't gainsay what you will  
21 consider, that it was appropriate to develop these  
22 relationships over years and years and years. Let's  
23 imagine your conclusion was it was appropriate, it  
24 doesn't stop that individual feeling deeply, deeply  
25 betrayed.

1           The question is should that individual and should  
2           that individual's desire to confront an individual in  
3           a nonviolent, nonthreatening way, to say, "You know,  
4           this was deeply meaningful to me, do you know what  
5           impact it has had upon me?" Is that something they  
6           shouldn't be confronted by? In our submission, no.

7   THE CHAIR: From what you said to me, I think it is your  
8           submission that it is not merely what would objectively  
9           be regarded as wrongdoing, but also a sense of betrayal  
10          not arising from wrongdoing that might give rise to  
11          a wish to confront the individual officer?

12   MS KAUFMANN: Yes.

13   THE CHAIR: That is ordinary human nature, I readily  
14          understand it.

15   MS KAUFMANN: Yes. If that is all we are talking about,  
16          then in our submission that is that expression of  
17          ordinary human nature is readily understandable,  
18          entirely appropriate and is not something or the risk of  
19          it is not something that should cause this Inquiry to  
20          say, "Real names should not be disclosed, officers  
21          should be protected from that".

22                 In circumstances where if it has not happened it is  
23          extremely unlikely that anything is going to happen to  
24          the particular officer.

25                 I should say there are other areas of potential



1           wrongdoing, blacklisting is another area.

2   THE CHAIR: This is in the industrial field?

3   MS KAUFMANN: Yes, if it has become clear that an officer's  
4           undercover situation has led to blacklisting of  
5           individuals.

6           As well as officer's conduct leading to  
7           miscarriages, if there is evidence that the officers  
8           themselves have engaged in criminal activity in some  
9           sort of joint enterprise or encouraged others into  
10          criminal activity, that would obviously be an issue of  
11          concern.

12          Then another issue of concern is where officers have  
13          built relationships with the children of protesters.  
14          Again that is just another instance of where there  
15          having done so is going to cause an understandable  
16          natural human reaction of pain, betrayal and anger.

17          If -- going back to paragraph 16 -- the likely  
18          attention from protesters who might find out the name is  
19          going to be no graver than is said there, that is the  
20          risk of a Bob Lambert reaction, then in our submission  
21          for the reasons given that is not a reason not to  
22          disclose real names.

23          The next issue in relation to HN16 is risk of  
24          psychological harm. In paragraph 17, of the same  
25          document we are told the risk is high. We have

1 absolutely no disclosure in relation to the basis upon  
2 which that assessment is made. We have, in tab 7,  
3 a so-called gisted report of -- sorry, tab 7 -- of  
4 Dr Walter Busuttil -- I'm not sure how to pronounce his  
5 name, for which I apologise:

6 "Report includes opinion that should HN16's cover,  
7 undercover and true identity be revealed medical issues  
8 will become more severe."

9 That leaves us absolutely no wiser than we were  
10 without that information. How severe are they now?  
11 What does "more severe" mean? We obviously can't make  
12 any meaningful representations on that, and that brings  
13 us to a point that I touched upon yesterday, which is  
14 that in our submission the medical confidentiality,  
15 which obviously arises is not a reason in and of itself  
16 for this Inquiry to say there can be no disclosure  
17 whatsoever of an individual's medical --

18 THE CHAIR: I think I can offer you some reassurance about  
19 this issue.

20 I have of course seen the full report and I am  
21 satisfied, subject to any submissions that may be made  
22 on other sides, that the risk to health is not such as  
23 to amount to a major factor in the balancing exercise.

24 MS KAUFMANN: I am grateful for that. So if we can discount  
25 that then.

1           Then there is, at tab 10, paragraph 3, this is  
2           further written submissions of 11 October, and here in  
3           addition to risks said to arise in relation to physical  
4           harm, which have obviously been discounted by yourself,  
5           there is at 3:

6           "A real risk of loss of HN16's employment and  
7           reputation."

8           In relation to the risk of the loss of his  
9           employment, again I mean we can say absolutely nothing  
10          there. We don't know what he's doing, we don't know how  
11          realistic --

12       THE CHAIR: You don't know he's a he.

13       MS KAUFMANN: We don't. We don't. I assume most of them  
14          are hes, but we know not all of them are hes. But don't  
15          know whether he or she, what he or she is doing, so  
16          I can't make any meaningful representations on this.

17          Again, in circumstances where it is not going to  
18          lead to his identification, I again raise the question  
19          of why we cannot be told more and the basis upon which  
20          it is said that it would lead to his loss of  
21          employment --

22       THE CHAIR: Forgive me. Your submission, though, doesn't go  
23          to cover name where you support the decision that I am  
24          minded to make?

25       MS KAUFMANN: Absolutely, we are focusing here on real name.

1 THE CHAIR: We are focusing here on real name, in which case  
2 this part of your submission doesn't with respect make  
3 sense.

4 If disclosing the nature of the risk to HN16's  
5 employment will not lead to his identification, what  
6 possible purpose can it serve in considering whether or  
7 not the real name of HN16 should be published?

8 MS KAUFMANN: Sir, I think we might be talking at  
9 cross-purposes.

10 THE CHAIR: I think we might be.

11 MS KAUFMANN: This has been put forward by this officer's  
12 representatives as a reason for not disclosing his real  
13 name, because if his real name was disclosed, it is  
14 said, he will lose his employment.

15 THE CHAIR: Could we possibly refer to HN16 as HN16?

16 It is very difficult avoid doing so, but HN16 has  
17 not been identified as a man or a woman, it is simply  
18 HN16.

19 MS KAUFMANN: HN16's representatives are saying that if  
20 HN16's identity is disclosed, HN16 will lose her or her  
21 employment.

22 THE CHAIR: Yes.

23 MS KAUFMANN: I am seeking to address you on whether or not  
24 that factor which weighs in the balance against  
25 disclosure of the real name is one that you should take

1           into account as a reason not to disclose the real name.

2           This is on the back of all my submissions yesterday  
3           about there is no presumption and so forth --

4   THE CHAIR:  It is, surely you would concede, a relevant  
5           factor?

6   MS KAUFMANN:  Absolutely.  So the point I am making is  
7           I cannot make any meaningful submissions to you about  
8           the weight to be given to this factor, because I don't  
9           know anything about the nature of the employment,  
10          I don't know anything about whether or not this  
11          particular employment is something that this particular  
12          officer will be unable to engage in elsewhere should  
13          that officer's employment be lost and so forth.

14          The point I am making goes back to the issues of  
15          disclosure.  If this officer and disclosure of the  
16          nature of the employment of this officer is not going to  
17          put this officer's identity at risk, then we do not see  
18          why we cannot have some further disclosure about the  
19          nature of the employment and so forth and the reasons  
20          why it is said disclosure would be likely to lead to the  
21          loss of the job in order to make meaningful  
22          representations.

23          That's our point.  I am not making a point of  
24          substance, because I can't.

25   THE CHAIR:  Right, if I were to do that, then I am required

1 by the rules to go back to HN16 and his representatives  
2 and invite them to make representations about that  
3 submission. Then conceivably to hold a hearing to deal  
4 with them.

5 All of this is going to put back the disclosure  
6 which I am minded to make of what everybody, as  
7 I understand it, really wants, the cover name of HN16.

8 MS KAUFMANN: Well, firstly it doesn't have to put back the  
9 disclosure of the cover name in any way, sense or  
10 form --

11 THE CHAIR: On the contrary, it does. These things have to  
12 be dealt with together.

13 MS KAUFMANN: I don't understand why they do. If you have  
14 taken a decision that the cover name is going to be  
15 disclosed and there is an entirely separate question of  
16 whether the real name would be disclosed, then they  
17 don't need to be considered together. This is something  
18 that you could look into after the event.

19 That is our first submission, you can get on with  
20 disclosing the cover name.

21 A second point is this: it is a decision for you as  
22 to whether or not the disclosure of further information  
23 about the nature of his employment and so forth is going  
24 to risk identification. If you conclude it is not going  
25 to risk identification, then why can't you disclose it?

1           On which point I should say that we wanted to  
2           endorse your proposed approach outlined yesterday, that  
3           it should be the Inquiry team's job to deal with  
4           redactions in the first instance.

5   THE CHAIR: Yes. That is a suggestion I made -- one of  
6           two -- for improving or streamlining the Inquiry's  
7           processes.

8   MS KAUFMANN: We would endorse that approach.

9           On this specific point, this is in a sense an  
10          example of this in action. Why could the Inquiry team  
11          not simply look at this material and reach a conclusion  
12          about whether or not the identification of this  
13          particular individual officer is going to be risked by  
14          disclosure of the nature of their employment and the  
15          reasons why they think they are going to lose their  
16          employment and make that disclosure if you conclude  
17          there won't be such a risk.

18   THE CHAIR: I know what the nature of HN16's employment is.  
19          I have considered it and I have reached a view about it.

20          I don't think at this stage I can say any more  
21          about it. Let me search for a form of words, I am  
22          afraid this problem is going to recur frequently.

23          The risk to HN16's employment is something that  
24          I have taken into account in arriving at the decision  
25          I am minded to make about disclosure of both cover name

1 and non-disclosure of real name. I am not prepared to  
2 say any more about the nature of the employment.  
3 I don't think I can properly do so.

4 MS KAUFMANN: I am grateful. And I am grateful that you  
5 have considered the position.

6 In those circumstances there is nothing more I can  
7 say in relation to this particular officer.

8 THE CHAIR: No. Thank you.

9 Mr Brandon, I think this officer being your client  
10 you have the right of first word.

11 MR BRANDON: I don't think there is anything I can say, sir,  
12 in open.

13 THE CHAIR: No.

14 Does anybody else have anything they wish to say  
15 about this officer?

16 Submissions on behalf of the Metropolitan Police Service by

17 MR HALL re HN16

18 MR HALL: Sir, only this behalf of the Metropolitan Police  
19 Service. We have not made an application in relation to  
20 this officer --

21 THE CHAIR: No.

22 MR HALL: -- but the suggestion is made that you should make  
23 a sequential decision, cover name and then real name.

24 Our submission would be that it might not be fair to  
25 deliver and act upon rulings sequentially, unless there



1 is very good reason to the contrary of our submission is  
2 that if you are going to reveal something confidential  
3 about an officer, then that officer should know the  
4 worst so they can prepare accordingly rather than to  
5 have one revelation about their cover name with the  
6 consequences that that could have, only to find out some  
7 weeks or months later that their real name is going to  
8 be disclosed as well.

9 We strongly support -- unless there is good reason  
10 to the contrary -- the idea of making complete decisions  
11 rather than doing it bit by bit.

12 THE CHAIR: Yes.

13 You have, I trust, seen the closed reasons which  
14 followed upon the closed hearing that I conducted in  
15 this officer as in other officer's cases.

16 MR HALL: Yes.

17 THE CHAIR: All decisions of this kind are subject to review  
18 under section 20(4), of necessity the possibility of  
19 review in the case of this officer is a real one.

20 MR HALL: That is why I qualified by saying "unless very  
21 good reason to the contrary", but in principle, one  
22 should attempt to achieve a complete decision at this  
23 stage.

24 THE CHAIR: On the basis that one can never say never,  
25 I agree with that submission. I think people are

1           entitled to know where they stand, subject to things  
2           changing.

3   MR HALL:   Of course.

4   THE CHAIR:  All right.

5           The next I think is HN26, is it not?

6           Submissions on behalf of the non-state, non-police core  
7           participants by MS KAUFMANN re HN26

8   MS KAUFMANN:  In relation to this officer the Metropolitan  
9           Police Service have only applied for a restriction order  
10          in relation to the real name, but in their risk  
11          assessment at tab 22, page 18, they identified a risk of  
12          physical attack if the cover name was disclosed as  
13          medium and medium harm resulting.

14          That same assessment was made in relation to the  
15          release of the real name.  We would submit that if no  
16          restriction order is needed to protect against physical  
17          harm in relation to their cover name, then equally that  
18          self-same risk assessment would not justify it in  
19          relation to their real name.

20          Your minded to note at paragraphs 10 to 12 of the  
21          October submissions at tab 9 sets out the reasons,  
22          having identified why you think it is necessary for the  
23          cover name to be disclosed, the reasons in the last  
24          three lines of paragraph 10 as to the countervailing  
25          interests and how they don't defeat the necessity of

1 disclosure are set out as being matters related to the  
2 article 8 rights of this particular individual, HN26.

3 Interference with article 8 rights, the nature of  
4 which are not identified. The particular likely  
5 consequences are not identified.

6 THE CHAIR: I think everybody ought to have in mind that  
7 when one is considering safety risks that some do engage  
8 article 3, both because of the source of the risk and  
9 because of its immediacy. Likewise article 2, if that  
10 were ever to arise. But both those factors can play  
11 a part in an article 8 assessment, even though not as  
12 freestanding claimed interferences with human rights.

13 If in the long run you face the threat of some  
14 degree of violence from someone as a result of an action  
15 by the state, then that does not engage article 3  
16 immediately because it is not an immediate risk. But it  
17 does engage your article 8 rights.

18 MS KAUFMANN: So threshold of article 3 not reached but that  
19 risk hanging over an individual engages their article 8  
20 rights?

21 THE CHAIR: Yes.

22 MS KAUFMANN: Yes, because of the worry and the concern --

23 THE CHAIR: If is not just the worry, it is if it matures.

24 But it doesn't impose upon the state an obligation under  
25 article 3 as would knowledge that if a decision is taken

1           someone will come round to the house armed with a weapon  
2           and inflict injury.

3   MS KAUFMANN:  So, again, that exemplifies -- I'm grateful  
4           for your expansion -- on what the possible bases are  
5           upon which the article 8 rights might be interfered  
6           with, because that introduces a threat of violence,  
7           a risk of violence, that obviously has a bearing upon  
8           your decision-making.

9           Again, it exemplifies the difficult position we are  
10          in, because we simply cannot make any representations in  
11          relation to that, because we don't know anything about  
12          the circumstances in which that risk is said to arise.

13          We don't know what groups this officer was involved  
14          in infiltrating.  We don't know whether the said risk of  
15          harm which, albeit not hitting an article 3 threshold,  
16          nonetheless feeds into article 8, we don't know whether  
17          or not that risk arises from the infiltration of those  
18          particular groups.  We don't know therefore whether or  
19          not something could be said by our clients in respect of  
20          the likely threat in respect of those individuals.

21          Therefore, we are left in a position where we are  
22          standing here with nothing sensible or meaningful to  
23          say, other than this is a very important decision-making  
24          process and you need to make sure that you have the  
25          relevant information before you.

1 THE CHAIR: Can I say that I am now confident I have it.

2 MS KAUFMANN: There is nothing more I can say in relation to  
3 this.

4 THE CHAIR: No.

5 MS KAUFMANN: I hear what you say and I'm not going to press  
6 any further in relation to that, but this is important  
7 moving forward because one of the questions that arose  
8 now was do you now go back if we submit now, not enough  
9 disclosure, do you go back and make further disclosure  
10 and that is going to hold up the process?

11 Moving forward, when you come to consider new  
12 applications, I press upon you our submissions now in  
13 relation to disclosure. Insofar as we have -- there are  
14 things we could say that you would be assisted in  
15 hearing from, because it affects our particular groups  
16 or so forth, in circumstances where you can satisfy  
17 yourself that disclosure is not going to risk  
18 identifying the officer, then we would urge upon you  
19 that when the exercise of redaction is being undertaken,  
20 proper consideration is given to our participatory  
21 rights and the way in which that assists you in reaching  
22 the right decision.

23 THE CHAIR: I think I can say, without disclosing anything  
24 that shouldn't be disclosed, that if I were to undertake  
25 that course in relation to this officer, it would

1           greatly increase the risk that the real identity of this  
2           officer would be revealed.

3 MS KAUFMANN: I am grateful for that.

4           Then just moving on to the risk in relation to the  
5           psychiatric condition. In a sense, it sounds as though  
6           it is neither here nor there given your assessment of  
7           the possible risk of future threat of violence --

8 THE CHAIR: On the contrary, the picture is complex. It is  
9           a factor.

10 MS KAUFMANN: It is factor?

11 THE CHAIR: Yes.

12 MS KAUFMANN: Yes. So again, if this were a factor that  
13           would tip the balance so that otherwise you were minded  
14           with all the other factors not to make disclosure as it  
15           were when balancing everything, then the absence of any  
16           details again in relation to the psychiatric report  
17           would be a matter that would be a cause for real concern  
18           for us, because we can't make any representations  
19           about it.

20           If at the end of the day your view is, "I am  
21           satisfied because of the other risks arising under  
22           article 8 [ie the risk to his article 8 rights through  
23           the risk of violence] that I am not going to disclose  
24           the real name", then in a sense the non-disclosure here  
25           makes no difference. So, again, that is not something

1 I can say anything sensible about, it is for you to  
2 consider.

3 THE CHAIR: Of course you can't.

4 MS KAUFMANN: So if it makes the difference, if it would  
5 make the difference, then we consider that that the  
6 absence of any disclosure here is a procedural problem  
7 that has to be resolved.

8 THE CHAIR: Whether it is correctly described as  
9 a procedural problem is moot. I am constrained in what  
10 can be disclosed by the particular circumstances of this  
11 officer's case at this stage in the Inquiry.

12 I simply cannot say any more about it than that, and  
13 I can't think -- and I have thought -- of a procedure  
14 which would permit non-state core representatives to  
15 provide information about this officer's deployment  
16 without frustrating the process.

17 I therefore have to ask, and I do ask, for the trust  
18 of those who do not know what I know in making difficult  
19 decisions as may eventually become apparent in the case  
20 of some individual officers like this officer.

21 MS KAUFMANN: Please just give me a moment, sir.

22 Those, then, are my submissions in relation to HN26.

23 THE CHAIR: Yes.

24 Mr Brandon?

25 MR BRANDON: Sir, would you mind if we followed the speaking

1           order that originally had been set out --

2   THE CHAIR:  Not at all.

3   MR BRANDON:  -- I say that because the Metropolitan Police

4           Service's position and our position on some of these

5           applications shall we say, is not --

6   THE CHAIR:  Are not always ad idem, I agree.

7   MR BRANDON:  They are not always the same.

8   THE CHAIR:  Certainly, Mr Hall, I think.

9   MR HALL:  I don't think there is anything I can usefully

10          add.

11  MR BRANDON:  Then in that case, there is nothing I wish to

12          say either, sir.

13  THE CHAIR:  No one else has any observation, I take it?

14          Good.

15          Next in the batting order is HN58, I think.

16          Submissions on behalf of the non-state, non-police core

17                  participants by MS KAUFMANN re HN58

18  MS KAUFMANN:  In your initial minded to in relation to HN58

19          you were minded to withhold both the real and the cover

20          names.  That is in paragraph 4.

21  THE CHAIR:  Yes I was.

22  MS KAUFMANN:  That was on the basis of some risk to his

23          personal safety and a slight risk of causing a stress

24          reaction.

25          We then made submissions --



1 THE CHAIR: Yes.

2 MS KAUFMANN: -- and those submissions both ours and those  
3 on behalf of Mr Francis, paragraph 116 of ours,  
4 paragraphs 16 to 19 in relation to those on behalf of  
5 Mr Francis, set out why this officer was a key officer  
6 in relation to the matters that this Inquiry is going to  
7 investigate. He was head of the Special Demonstration  
8 Squad in 1998 when he received Bob Lambert's report on  
9 a meeting with HN81 and Richard Walton.

10 Our first issue of concern is that none of this was  
11 ever set out in the original documents, so this is  
12 an issue of concern in relation to disclosure.

13 THE CHAIR: I accept your joint submissions that the  
14 activity of this officer as a manager is one of the key  
15 things that I have to investigate. I have changed my  
16 mind about how that can best be investigated, subject of  
17 course to representations which I anticipate hearing at  
18 a closed hearing later.

19 MS KAUFMANN: You have changed your mind, the position now  
20 is that you are minded to reveal the real name but not  
21 the cover name?

22 THE CHAIR: That is a proposal that I have advanced, because  
23 I understand the force of the submission that in the  
24 capacity of HN58 as a manager it is necessary and in the  
25 public interest that HN58 should account for actions

1           publicly --

2   MS KAUFMANN:   Yes.

3   THE CHAIR:   -- and in real name.

4   MS KAUFMANN:   Starting from that premise, our submission is

5           it does not go far enough.  Because he was a manager who

6           before he was a manager was an undercover officer --

7   THE CHAIR:   Yes.

8   MS KAUFMANN:   -- and his conduct as an undercover officer

9           falls to be looked at in just the same way as all the

10          other undercover officers in the Special Demonstration

11          Squad at this point in time.

12   THE CHAIR:   Indeed it does.  I know of nothing so far in

13          relation to this officer which would suggest that HN58

14          has done anything which would call for enquiry beyond

15          establishing what HN58 did.

16   MS KAUFMANN:   Yes, but that simply begs the question, as you

17          yourself have recognised in relation to HN81.

18   THE CHAIR:   Yes.

19   MS KAUFMANN:   It is only by disclosing the cover name that

20          we begin to give people the opportunity who were

21          affected by the undercover policing activities of

22          a particular officer to know whether or not that officer

23          engaged in anything wrong.

24                  As you will know, the only reason the wrongdoing has

25          come to light so far is because, apart from

1 Peter Francis, particular individuals have become  
2 suspicious in relation to particular officers.

3 THE CHAIR: That of course is right. Because of the  
4 revelations that have been made, it is possible to reach  
5 a provisional view in some cases that there may be more  
6 revelations and in others that there may not be.

7 MS KAUFMANN: That view will always be provisional and may  
8 indeed be entirely wrong --

9 THE CHAIR: Of course.

10 MS KAUFMANN: -- but what we do know about this officer is  
11 that he moved into a managerial position, like, for  
12 example, Bob Lambert, and we know about Bob Lambert's  
13 activities before, so his role as an undercover officer  
14 is obviously incredibly important in terms of looking at  
15 the culture he established in a managerial position. If  
16 in fact he did engage in wrongdoing it is fundamental  
17 that it comes out. In order to come out, his cover name  
18 must be disclosed. It is going to be the only way it is  
19 going to happen.

20 It is not a solution, we submit, to the function of  
21 this Inquiry in getting to the truth to only reveal his  
22 real name so that his managerial activities can be  
23 investigated. One then has to go back to the drawing  
24 board and assess whether or not disclosure of his cover  
25 name is going to be -- there are two choices. You

1           either disclose, we would submit, his cover name and his  
2           real name, or you disclose his cover name. But just  
3           disclosing his real name is not going to do the job.

4           Therefore you have to ask yourself, if I simple  
5           disclose his cover name, what is the risk going to be to  
6           him, to his safety, to his article 8 rights and so  
7           forth?

8           You have to ask the same questions if I disclose his  
9           cover and his real. In an ideal world you would want to  
10          disclose both, because you want him to account for his  
11          managerial role in his real name, but you also want to  
12          get to the truth of his undercover activities. In our  
13          submission your starting point should be, "If I can,  
14          having sufficient regard and giving sufficient weight to  
15          his rights under articles 3 or 8 safely disclose his  
16          cover name and his real name, that is the course I  
17          should take".

18          It is only if you conclude you cannot do that then  
19          you should ask yourself whether or not disclosing his  
20          cover name is going to sufficiently balance the rights,  
21          as it were.

22   THE CHAIR: Are you contending that disclosure of the cover  
23          name is of greater significance than disclosure of the  
24          real name?

25   MS KAUFMANN: I am not contending that, I am not contending

1           that. It is a difficult issue, but what I am contending  
2           is that in an ideal world you should disclose both.  
3           Because there are separate reasons --

4   THE CHAIR: Can we assume for the moment that the world is  
5           not ideal and you are being put to a preference, which  
6           would it be?

7   MS KAUFMANN: This is a difficult issue for the individuals  
8           involved and there would need to be disclosure of the  
9           groups infiltrated, the dates of the infiltration,  
10          before a view could be taken as to which of the two  
11          would be preferable. So it may be that this simply has  
12          to await that disclosure.

13                 You will understand there are a large number of  
14           different individuals that we are representing, and  
15           there are different factors that they weigh in the  
16           balance themselves. So that is an issue that would have  
17           to be looked into in light of that information so that  
18           an informed decision could be made by those who are  
19           affected, because at this moment we don't even know.

20   THE CHAIR: I'm going, I am afraid, to try to put you on the  
21           spot. On the basis of what is now known -- I appreciate  
22           that what is now known is incomplete as far as you and  
23           those whom you represent are concerned, highly  
24           incomplete -- do you have a preference and if so what  
25           is it?

1 MS KAUFMANN: I have no instructions, I cannot give you  
2 a preference. I have interest groups who may take  
3 conflicting positions. As you will understand, there  
4 are is a very broad umbrella. There is the Lawrence  
5 groups and the justice campaigns, then there may be  
6 others who were infiltrated whilst he was in his  
7 undercover policing role and there could be a conflict  
8 between the positions that they take.

9 At which point then that conflict would have to be  
10 dealt with by adequate and separate representation so  
11 that each person could put forward their position.

12 I have no instructions, I cannot tell you.

13 THE CHAIR: Okay. I have pressed you as far as I can  
14 reasonably do.

15 MS KAUFMANN: In a sense there is nothing further I can  
16 sensibly say further at this stage as to what direction  
17 you should go in.

18 There are very compelling reasons for disclosing  
19 both. We don't have information to make any meaningful  
20 submissions about the risk of serious harm. The first  
21 risk assessment put that as low, a later risk assessment  
22 put it as medium. But we don't understand the basis for  
23 the difference, we don't know who is said to pose that  
24 medium risk or why. And so we are in the same position  
25 as we are in relation to all the other risk assessments

1 of a risk of violence.

2 Similarly in relation to article 8. We don't know  
3 the nature of the alleged interference. We know that  
4 there is only a very slight risk of a stress reaction,  
5 so we can put away aside any psychiatric injury, but we  
6 don't know whether or not we are dealing with  
7 a situation where the concern is of a similar kind of  
8 activity or interaction as in the case of Bob Lambert.  
9 We don't know whether it is something more serious. If  
10 it is a similar reaction as arises in the case of  
11 Bob Lambert, we simple repeat our submissions in  
12 relation to that, either justifiable or it is not going  
13 to happen.

14 On what we have at the moment our submission would  
15 be that there are compelling factors to release both the  
16 cover name and the real name and that is the course you  
17 should take. But in the event that you are not in a  
18 position to take that decision now, then we would seek  
19 further disclosure and an opportunity to make further  
20 submissions.

21 THE CHAIR: Okay, the batting order may matter here because  
22 I know there are different views about this.

23 Mr Hall, I think you better go first.

24 Submissions on behalf of the Metropolitan Police Service by

25 MR HALL re HN58

1 MR HALL: Yes. Our initial application was that there  
2 should be restrictions over both, initially accepted by  
3 you, sir, and now you are minded to depart from that.

4 THE CHAIR: There are a number of possibilities and  
5 I indicate that I have changed my mind about the  
6 potential importance of this officer in his managerial  
7 capacity giving evidence in the real name.

8 MR HALL: May I say, we understand that and the question of  
9 what to do with officers whose managerial role may be  
10 more significant in the context of the Inquiry than  
11 their undercover role is something that we are wrestling  
12 with in relation to other officers as well and how best  
13 to assist you.

14 THE CHAIR: Yes.

15 MR HALL: We do recognise there is an issue here. Obviously  
16 one is looking at the personal safety and psychiatric  
17 harm to an officer. So it is a matter one is going to  
18 have to consider carefully and we welcome the  
19 opportunity to deal with that, I think, in closed  
20 because it is a nuts and bolts issue to some extent.

21 So far as the principles are concerned, it is right  
22 that as far as one knows there is no evidence of  
23 wrongdoing against HN58 in HN58's undercover role.

24 THE CHAIR: That is the position as of now --

25 MR HALL: As of now.



1 THE CHAIR: -- as always, no one can tell what might be  
2 revealed in future.

3 MR HALL: That's right.

4 So when one looks at where the current public  
5 interest balance lies, one might very well say --  
6 credibly say -- that the public interest in  
7 consideration of HN58's managerial role is more  
8 important in the context of the Inquiry, bearing in mind  
9 one can't look at the terms of reference in the  
10 abstract, we all know the significance of HN81's  
11 deployment to the setting up of the Inquiry, one might  
12 credibly say that is more important than what HN58 may  
13 or may not have done as an undercover officer.

14 As I will perhaps develop in relation to HN123, when  
15 we reach HN123's case, our stance is that it is not  
16 a good reason to disclose a cover name merely on the  
17 chance that something may turn up. But I will address  
18 that in relation to N123 when we reach that officer's  
19 case.

20 THE CHAIR: Yes. I mean that also arises in principle in  
21 the case of HN58; does it not?

22 MR HALL: I will happily deal with it then. I mean, I have  
23 made the point --

24 THE CHAIR: Yes. Given there is going to be almost  
25 certainly a closed hearing and this is an opportunity to

1           inform me of the factors that I should take into  
2           account. I think it is best for everybody publicly to  
3           take advantage of that to the extent that they can.

4   MR HALL: Of course.

5           We agree with the proposition that has been made by  
6           Mr Sanders, there is a fairness issue here. Of course  
7           there is -- this is to be fair to what is said, there is  
8           a chicken and egg situation. Unless one puts as much  
9           information out there as possible, one is never going to  
10          know what there is. But one is not dealing either with  
11          a perfect world or with an inquiry of unlimited  
12          duration. Nor is one dealing with abstract entities.  
13          One is dealing with people and our submission is that  
14          you can form, even now, a relatively sensible view of  
15          where the Inquiry really needs to shine the light.  
16          Things will crop up and it may in due course require  
17          reconsideration. We submit that you can make decisions  
18          now that are sensible.

19          You have a wealth of information available to you  
20          and you can decide now where to shine that light. We  
21          say it would not be right simply to throw out an  
22          identity, particularly where that carries risk to  
23          an individual or to their family members, hoping that  
24          something may come back. So that's the first point.

25          The second general point which I can make is we do

1 not agree that an exploration of an issue in closed is  
2 effectively shutting down the Inquiry.

3 First of all, as a matter of reality you, sir, even  
4 in a completely closed hearing will have the opportunity  
5 to hear from officers who give evidence, their evidence  
6 will be tested by yourself and by Mr Barr and perhaps by  
7 others. You will have documents by which to test their  
8 account and there is a volume of documents in this case,  
9 so that is not something to be left out of account, and  
10 you have the capacity to call for further evidence in  
11 order to ensure that you are getting the complete  
12 picture.

13 Now of course it is not ideal that one doesn't have  
14 all the people who may in principle be affected in the  
15 room assisting you, but we disagree strongly with the  
16 proposition that a completely closed hearing achieves no  
17 value. We know that is not right and we know that  
18 closed hearings happen and do achieve value.

19 THE CHAIR: Sir Christopher did reject the submission that  
20 you made, that the Inquiry globally could be conducted  
21 on that basis. I'm entirely satisfied that he was right  
22 to do so.

23 I am therefore focused on individual cases to see  
24 whether something can be done in the case of  
25 an individual officer which is not ideal if spread

1 across the whole piece.

2 MR HALL: Yes, I'm not reiterating the submission that the  
3 majority of this can be done in closed. Simply to make  
4 the point that there is value in a closed exploration of  
5 the evidence.

6 THE CHAIR: I think one has to face the fact that if there  
7 were, for example, evidence available that HN58  
8 conducted an inappropriate intimate relationship with  
9 a member of the public, that it would be unlikely to be  
10 disclosed unless the cover name of HN58 were to be  
11 disclosed.

12 MR HALL: I think one has to face up to that consequence.  
13 I mean that is a necessary corollary of my submissions.  
14 Because either one does disclose all the cover names  
15 irrespective of the risk to officers because they may  
16 have had a relationship, or one takes the view which we  
17 advocate respectfully, which is that one knows quite  
18 a lot now already and one can take sensible decisions.

19 There are cases where even though there has been no  
20 resolution of the factual issue -- take HN16's case for  
21 example -- the Metropolitan Police Service have formed  
22 a view not to apply either in relation to real or cover  
23 name.

24 One can take sensible decisions now, but I accept  
25 the point. It is quite possible and perhaps inevitable

1           that by not disclosing all cover names there are some  
2           pieces of information that one will never get. That has  
3           to be right.

4   THE CHAIR:   Indeed.

5   MR HALL:   But equally, the Inquiry has to make progress and  
6           one has a lot of information and one knows why the  
7           Inquiry was set up.

8           It is said sometimes, well, the terms of reference  
9           are so broad and they require the Inquiry to consider  
10          all undercover policing. My submission is that the  
11          terms of reference shouldn't be considered in the  
12          abstract. One knows why the Inquiry was set up. One  
13          knows the issues of concern, which is no doubt why we  
14          are starting with particular officers.

15   THE CHAIR:   In the case of this particular, on the  
16          information that is at present known to me and to you,  
17          it is far more important that this officer's managerial  
18          role should be subject to public scrutiny and in the  
19          real name of HN58, than is the possibility that  
20          something might have occurred during the deployment of  
21          HN58 as a undercover officer, which might occur.

22   MR HALL:   That is exactly what Sir Christopher recognised in  
23          his ruling.

24                Can I refer you to a passage? I am not going to do  
25          this much, but it is in the concluding sections. In the

1 summary at the end, one has section C at page 83.

2 THE CHAIR: Yes.

3 MR HALL: Under "Personal applications", Sir Christopher  
4 dealt first of all with an application based on risk of  
5 death or injury, relying on the fairness principle of  
6 common law under section 17(3) or 19(3)(b). One of the  
7 matters that the chairman will examine is at (5):

8 "The status of the applicant in the Inquiry and the  
9 importance of the evidence the applicant is to provide."

10 The same subsection is found under (c)(3), which is  
11 when one is dealing with human rights based applications  
12 at number 4.

13 My submission is that Sir Christopher recognised  
14 that one would have to form a view as to the likely  
15 importance of the officer at the restriction order  
16 consideration stage.

17 THE CHAIR: I doubt that even he, with his considerable  
18 knowledge and experience, appreciated that there might  
19 be a case in which the cover name had to be restricted  
20 but the real name not.

21 MR HALL: No. The reason that I refer to that is -- this  
22 is, I suppose, a response to one of the submissions in  
23 the principal that is made by counsel for the non-state  
24 core participants. She invites you to consider all  
25 officers as being of equal importance now. Our

1 submission is that one can and indeed must form a view,  
2 even if it is provisional, as to important at this  
3 stage.

4 THE CHAIR: Thank you.

5 Mr Brandon, I think Ms Sikand has something to say  
6 about this issue and I thought you might like to speak  
7 last.

8 MR BRANDON: Thank you, sir.

9 THE CHAIR: Ms Sikand?

10 Submissions on behalf of Mr Peter Francis by MS SIKAND  
11 re HN58

12 MS SIKAND: Sir, yes. You asked Ms Kaufmann whether she was  
13 prepared to make a choice, as it were.

14 THE CHAIR: Yes.

15 MS SIKAND: We are.

16 As you know, Peter Francis's position is that if you  
17 have to make a choice between disclosing a real name and  
18 then having effectively secret in relation to his  
19 undercover activities, the choices you should make is to  
20 disclose his cover name and have an open hearing in  
21 relation to that, although obviously we accept that  
22 there may have to be modifications.

23 The point about that is whilst we understand your  
24 point of principle that senior police officers should be  
25 expected to account for their decisions, particularly in

1 the case of a significant officer like HN58, given his  
2 senior role in the Special Demonstration Squad at that  
3 time, and knowing that he in fact managed HN81 and that  
4 is not a secret, one can work that out from the  
5 time-frame in which he was employed and the time at  
6 which he was said to be a boss.

7 Given the significance of HN81, we can understand  
8 that there is an additional public interest in his real  
9 identity being exposed, but that, as we understand it,  
10 is simple a point of principle about the accountability  
11 of senior officers as opposed to that that would reveal  
12 or secure further evidence, which would somehow cast  
13 light on his role as a manager at the time.

14 That is our understanding.

15 It is not because you say that if you expose his  
16 true identity you would be able to gather evidence that  
17 you would not ordinarily be able to if you disclosed his  
18 cover name.

19 THE CHAIR: I think that is right, however, the disclosure  
20 of HN58's real name and asking HN58 to account publicly  
21 for decisions as a manager involve considerations other  
22 than just the Stephen Lawrence campaign and the  
23 infiltration into groups supporting the campaign, and  
24 what was done with information gathered about the  
25 campaign and the Lawrences personally.



1           HN58 can speak of other things too and can, I think,  
2           properly be required to account for decisions in other  
3           instances as well.

4 MS SIKAND: If, for example, he gave that evidence in his  
5           cover name, that would not hamper the evidence gathering  
6           in relation to evidence that may contradict, for  
7           example, the evidence he gives in relation to his  
8           managerial role, because that evidence could be gathered  
9           from other officers who know who he is.

10 THE CHAIR: Which was my initial reasoning for deciding  
11           provisionally that I was minded to restrict both real  
12           and cover names. But I have been persuaded that that  
13           view is not ultimately tenable. At any rate for the  
14           reason that I expressed.

15           There is also -- although this is not at the  
16           forefront of considerations -- a practical problem.  
17           HN58's name is going to be all over the documents during  
18           the period when he had managerial duties. To impose  
19           upon anybody the task of going meticulously through all  
20           of the documents knocking out HN58's real name and  
21           putting in a cipher or a cover name is quite an  
22           exercise, and may not be perfectly executed.

23 MS SIKAND: Sir, I'm not sure that that is a legitimate  
24           reason for withholding his cover name and exposing his  
25           real name. I understand that it is an administrative

1           burden of the kind that the Inquiry would seek to  
2           avoid --

3   THE CHAIR: I am not putting it at the forefront. It is  
4           actually a factor that I am entitled to take into  
5           account, indeed I think required to take into account by  
6           section 17(3), but that is by the by.

7   MS SIKAND: Yes, I appreciate that it is something within  
8           the statute that you can take note of. But it is not  
9           something that is weighed in the balance in relation to  
10          your other decision-making processes so far as in  
11          relation to such officers. Given the importance of this  
12          particular officer, it is difficult to accept that that  
13          would be the decisive factor or indeed in any way  
14          determinative. I'm not sure that is what --

15   THE CHAIR: I am not putting it forward as a determinative  
16          factor. If it has to be done, it has to be done.  
17          I merely mention it as a factor that I suspect that the  
18          Inquiry and the Metropolitan Police would be grateful to  
19          be relieved of.

20   MS SIKAND: Sir, our position is simply this that whilst of  
21          course we are very pleased that you changed your mind  
22          and have openly changed your mind. We are grateful for  
23          that, we don't seek to make you change your mind again  
24          in a way that would be detrimental to our submissions  
25          that the undercover name is an important issue and that

1 disclosure should be made.

2 What we are saying is that if the sacrifice that you  
3 say has to be made in the circumstances, because you are  
4 not prepared for whatever reason to disclose both those  
5 names, we say that the principled course must be that  
6 you simply disclose his cover name. Because why would  
7 you take a different approach, sir, in relation to  
8 him -- I hear what has been said by the Metropolitan  
9 Police Service and Mr Sanders has described as fishing  
10 expeditions, but that doesn't sit well with what you  
11 have already said in relation to numerous other officers  
12 and indeed what you said yesterday morning in your  
13 opening note to the public, that in any case where it  
14 can be done without disproportionate damage to the  
15 public interest you would disclose the undercover name.

16 You yourself have said that that may promote  
17 valuable evidence being gathered.

18 THE CHAIR: Of course.

19 MS SIKAND: Why you would take a different position in  
20 relation to HN58 simply because you believe, for reasons  
21 unknown to us, that this officer would be in a different  
22 category to those that you have already said should  
23 generally -- should the risk factors --

24 THE CHAIR: There is a problem with those who have been  
25 undercover officers who go on to have senior management

1 positions. Their cases, along with a fairly large  
2 number of others, raise acutely difficult questions and  
3 this is one of them. I understand your position to be  
4 made as a matter of principle rather than on the basis  
5 of any information that your client has that he wishes  
6 me to take into account.

7 MS SIKAND: Sir, in relation to the risk factors that have  
8 been identified in relation to his undercover name, they  
9 are extremely low.

10 THE CHAIR: Forgive me.

11 It is conceivable that Mr Francis knows or believes  
12 he knows something about HN58 which if it were to be  
13 made public would support the proposition that his cover  
14 name should be disclosed. I don't understand that to be  
15 the position. If you are able to clarify it, I will be  
16 grateful.

17 MS SIKAND: Obviously Mr Francis knows who HN58 is.

18 THE CHAIR: Of course he does, but let me put it in simpler  
19 language.

20 Does he know something about what HN58 got up to as  
21 an undercover officer which if it were revealed would be  
22 necessary to make public and to investigate in public  
23 for the Inquiry's purposes to be fulfilled.

24 MS SIKAND: Sir, Mr Francis's position is this -- you know  
25 and the risk assessment says this -- that there is no

1 risk or there is a low risk or the lowest risk there can  
2 be of physical harm. You have already expressed the  
3 risk of psychological harm of releasing his cover name.  
4 Mr Francis knows who the groups were that HN58  
5 infiltrated and can say that he agrees with the risk  
6 assessment that any risk of harm is the lowest it can  
7 possibly be in the circumstances.

8 Given that those are the risks as enunciated by the  
9 Metropolitan Police Service's risk assessors, and given  
10 the low risk of psychological harm, there is  
11 a compelling reason for you to disclose his cover name.  
12 Notwithstanding your desire of course for him to be  
13 accountable in his real name.

14 THE CHAIR: Forgive me. The answer to my question, which  
15 was rather more focused than that, is that Mr Francis  
16 does not know of anything about the activities of HN58  
17 as an undercover officer which would require his cover  
18 name to be disclosed?

19 MS SIKAND: No.

20 THE CHAIR: Thank you.

21 MS SIKAND: Sir, I don't think I can assist any further.

22 THE CHAIR: Thank you. That is very helpful.

23 Mr Brandon, I think the floor is yours.

24 Submissions on behalf of HN58 by MR BRANDON

25 MR BRANDON: I'm going to make three very obvious points,

1           for which I apologise in advance.

2           The first is that in submission my learned friends  
3           have all referred to your decision.

4   THE CHAIR: It is not a decision, it is a decision that I'm  
5           minded to make but only after giving you the opportunity  
6           of making submissions in a closed session at which all  
7           of these issues can be fully ventilated.

8   MR BRANDON: That was going to be my second point, which was  
9           we are going to make submissions and we are going to  
10          seek to persuade you that the approach you took in the  
11          first instance was the correct one.

12   THE CHAIR: My intention is to adopt the same course as  
13          I did in relation to the three officers whose cases we  
14          considered in closed session earlier. Namely to give  
15          you full opportunity to make closed representations  
16          about it and indeed to put in any written material you  
17          may want. As you know, no oral evidence has been given  
18          so far as in these proceedings and I don't intend that  
19          it should do.

20          But if as a result of your submissions I am  
21          persuaded to go back to my original view or to take some  
22          view different from that which I am minded to at the  
23          moment, then the issue will be publicly ventilated again  
24          in the light of what I will then know.

25   MR BRANDON: Yes, sir.

1           The third very obvious point is that this is plainly  
2           a very difficult application for you to consider, sir,  
3           and I don't mean this at all facetiously, we are  
4           assisted by the submissions that Ms Kaufmann has made in  
5           identifying just the very problem that we will seek to  
6           address in the closed hearing.

7   THE CHAIR:   Yes.

8   Further submissions on behalf of the non-state, non-police  
9           core participants by MS KAUFMANN re HN58

10  MS KAUFMANN:  Sir, may I just say, given there is going to  
11           be a closed hearing, may I just say something to inform  
12           your discussions on where things seem to stand.

13  THE CHAIR:   Certainly.

14  MS KAUFMANN:  Yesterday, as Ms Sikand pointed out, you  
15           indicated that moving forward with this Inquiry where  
16           cover names can be disclosed without risks to officers  
17           that should be done because it is the only way of  
18           getting to the truth.  Here we know disclosure of cover  
19           name is not going to give rise to any significant risk  
20           in relation to HN58 --

21  THE CHAIR:   I am sorry, I interrupt that.  We do not know  
22           that.

23  MS KAUFMANN:  So the risk assessments suggest the risk is  
24           low of --

25  THE CHAIR:   Forgive me.  It is I who make these decisions on

1           the basis of material which includes the risk  
2           assessment, but my decision is not determined by the  
3           risk assessor's view.

4   MS KAUFMANN:  I see.  I see.  Well again we are entirely in  
5           the dark --

6   THE CHAIR:  Of course you are.

7   MS KAUFMANN:  -- we know nothing about your view as to the  
8           risk assessment, which is unhelpful to us because we  
9           can't make targeted submissions.  But now understanding  
10          your position to be that your assessment may be  
11          different, that may inform the basis upon which you are  
12          taking the view you are.  Because otherwise the way  
13          things look is that despite the statement you made  
14          yesterday, where we are dealing with a managerial  
15          position and the issue of principle comes into play,  
16          namely that you are of the view that such individuals  
17          should give their evidence in their own name and be  
18          accountable, then unless there is evidence of wrongdoing  
19          already out there in the ether, you will not disclose  
20          the cover name.

21                That is the trajectory that we have understood you  
22                to be going down, until you just introduced this  
23                possibility that there may be an element of risk here  
24                that we don't know about.

25                What I would like clarification on so that we can



1 hit the proper target is: is that your position? That  
2 in these cases of management, because you take the view  
3 as a matter of principle individuals should be  
4 accountable in their own name. Then unless there is  
5 already in existence evidence of wrongdoing, you will  
6 not release the cover name --

7 THE CHAIR: Forgive me, it is not as simple as that. It  
8 never is. I'm not willing to make a statement of  
9 principle beyond that which I have made in the remarks  
10 I made yesterday. It is obvious in the case of someone  
11 who has been an undercover officer who subsequently  
12 becomes a manager that the two outcomes that I stated  
13 I would expect to result from the application of  
14 established principles are in conflict.

15 MS KAUFMANN: I am afraid, forgive me, because I don't  
16 understand that. I understand there is a conflict  
17 between the desire than the individual gives evidence  
18 and accounts in their real name, but that doesn't  
19 necessarily create any conflict --

20 THE CHAIR: Hold on. I said that I expect that a cover name  
21 of an officer will be published. I expect that the real  
22 name of a undercover officer will not be published.  
23 I expect that the real name of a manager will be  
24 published.

25 When a single individual fulfils the two roles,

1 I think those two statements are in conflict and so one  
2 has to examine, as always, the individual facts.

3 MS KAUFMANN: One does. Into that balance one must put  
4 this, because it is going to happen in all managerial  
5 cases where the individual officer was an undercover  
6 officer before that management position.

7 What they did as an undercover officer and if there  
8 was wrongdoing is going to be very important in relation  
9 to what they later do in their managerial role. It is  
10 obviously a matter of very great significance.

11 THE CHAIR: I completely agree.

12 MS KAUFMANN: Therefore you are going to have to engage with  
13 the importance of getting to the truth in relation to  
14 their undercover activities in order for you to enquire  
15 properly in relation to their managerial functions.

16 So insofar as at the moment -- and I don't know all  
17 the other factors that you are considering -- there is  
18 a predisposition to prioritise giving evidence in that  
19 individual's real name, because they are accounting as  
20 a manager, over getting to the truth about all their  
21 activities that are relevant to may be managerial role.  
22 Then we would question that.

23 THE CHAIR: You would be right to question it. I have tried  
24 my best to say that these are not inflexible principles.  
25 They are expected outcomes and that each case has to

1           turn on the factors relevant to the particular case.

2   MS KAUFMANN:  I understand, but we are not being told things

3           we could be told about.  For example, that your

4           assessment is that there is a risk, despite the risk

5           assessments that have been made that signify the risk is

6           low if the cover name is disclosed, that you nonetheless

7           consider if the cover name is disclosed there is a more

8           substantial risk.  Because the risk assessments inform

9           us that the risk of harm if the cover name disclosed is

10          low.

11  MR BRANDON:  Sir, this is of course only physical harm.

12  MS KAUFMANN:  Yes, I absolutely understand it is only

13          physical harm, but yesterday --

14  THE CHAIR:  Hold on.  I have said in my original minded to

15          note that the publication of details about the

16          deployment would give rise to some risk to HN58's

17          personal safety.  It is not correct to say that I have

18          not said that, it is there in print.

19  MS KAUFMANN:  I'm sorry, but if that -- I apologise, that

20          then is my mistake.

21  THE CHAIR:  It is very easy to make these mistakes, I don't

22          hold it against you at all.

23  MS KAUFMANN:  But again details.  We are lacking in details.

24          We are lacking in any ability to make any meaningful

25          representations.  It just puts us in an impossible

1 position to know exactly is going on, as it were, in  
2 your mind when you are balancing what the various  
3 factors are, or what those factors even are.

4 THE CHAIR: Of course it is. It is in the nature of the  
5 process that you can't know everything that I know at  
6 the stage at which I decide whether or not to make  
7 a restriction order in respect of a name.

8 Your timing is impeccable, we will rise now until  
9 2.00 pm.

10 ( 1.00 pm)

11 (The short adjournment)

12 (2.00 pm)

13 THE CHAIR: Yes, Ms Kaufmann.

14 Submissions on behalf of the non-state, non-police core  
15 participants by MS KAUFMANN re HN68

16 MS KAUFMANN: I believe we are now on HN68.

17 THE CHAIR: Yes.

18 MS KAUFMANN: This officer is deceased.

19 THE CHAIR: Yes.

20 MS KAUFMANN: Therefore no risk obviously of physical injury  
21 from disclosure of cover or real names.

22 THE CHAIR: No.

23 MS KAUFMANN: In relation to his surviving wife there is  
24 a low assessed risk of interference with her private  
25 life, but the minded to decision is not to reveal the

1 real name --

2 THE CHAIR: Yes.

3 MS KAUFMANN: -- as opposed to the cover name.

4 In relation to this officer, regard needs to be had  
5 to an instrumental reason for releasing the real name,  
6 which is the ability to identify this particular officer  
7 because it is quite possible -- this being an old  
8 case -- that cover names will have been forgotten.  
9 Then, in addition to that, there are the factors that  
10 I identified as a matter of general principle falling  
11 for openness yesterday, and the need not to start from  
12 the presumption of not revealing real names.

13 In our submission, this is a case which exemplifies  
14 a wrong approach and the application of such  
15 a presumption, because there really is nothing here to  
16 weigh in the balance against disclosure. There is no  
17 risk of physical injury, minor risk of interference.  
18 Needless to say, if this is an officer in respect of  
19 whom there is no allegation of any form of misconduct,  
20 then there is no reason whatsoever to believe that the  
21 officer's wife is going to be in any way harassed by  
22 disclosure of the name.

23 Those are our short submissions on HN68.

24 THE CHAIR: Yes. Thank you.

25

1 Submissions on behalf of the Metropolitan Police Service by

2 MR HALL re HN68

3 MR HALL: Sir, just on a point of detail, I understand this  
4 is a case where the cover name is known and I know that  
5 you are not minded to restrict the cover name.

6 THE CHAIR: No.

7 MR HALL: I'm not going to try to persuade you otherwise in  
8 relation to the cover name, but we do maintain our  
9 application in relation to the real name. This case  
10 does raise an issue of genuine principle, because what  
11 has been said yesterday and in effect reiterated just  
12 now is that there is simply nothing to weigh against the  
13 general presumption of openness.

14 The Metropolitan Police Service disagrees with that  
15 proposition. Our submission is that a risk of harm,  
16 although here it is very much a question of personal  
17 upset and feelings, is relevant to the public interest  
18 balance. You have seen the evidence in connection with  
19 this, it is at tab 32.

20 THE CHAIR: Yes.

21 MR HALL: The elderly widow, who is in her 80s, she says  
22 that she trusted and understood that the identity of her  
23 husband would be kept confidential. She is worried,  
24 upset and distressed about the prospects for her if the  
25 identity is revealed, and -- pausing there -- the

1 submission was made this morning that the first time  
2 that effectively confidential undertakings arose were in  
3 connection with the A and B litigation in 2005, you were  
4 taken to tab 8.

5 In our submission that simply is not a knock-out  
6 blow. Cairo's evidence, paragraph 18, is that the  
7 document reflected what was already well-established  
8 practice. That is actually not surprising that it was  
9 established practice by that stage.

10 So we have a risk of harm and how, the Metropolitan  
11 Police Service asks rhetorically, is it in the public  
12 interest to ignore causing worry, upset and distress to  
13 an elderly lady who believed that her husband's identity  
14 would be kept confidential since 1968, so almost  
15 50 years.

16 This gives rise to what has been described in the  
17 context of Mr Francis's submissions earlier as personal  
18 considerations, but none the worse for that, because  
19 human beings are made up of personal considerations. So  
20 it is not enormous harm. That would be reflected in  
21 terms of weight, but it is harm to which the Inquiry can  
22 have regard. I will give you the paragraph reference,  
23 I think you have already been taken to it in connection  
24 with the principles ruling, but one has paragraph 165  
25 and again paragraph 154.

1           Paragraph 165, Sir Christopher said that  
2           confidentiality is relevant to the public interest  
3           balance. At paragraph 154, he noted that harm is wide  
4           enough to encompass any form of harm, not limited to  
5           physical or psychiatric harm.

6           On behalf of the Metropolitan Police Service we  
7           would resist any test that says you can exclude any  
8           particular type of harm. Or indeed I would resist  
9           a test of exceptionallism, in other words everything  
10          must be thrown out of the window except and unless there  
11          is something -- our submission, I hope, is simple:  
12          everything is relevant and should be considered in the  
13          public interest and given the appropriate weight on the  
14          particular facts of the case.

15          It follows that as a matter of principle we disagree  
16          that this sort of harm is not capable of outweighing the  
17          presumption of openness.

18          The second point I was going to make on this one  
19          simply mirrors the point I made in relation to cover  
20          names. It cannot be right, as was suggested yesterday,  
21          and in written submissions on behalf of the non-state  
22          core participants, that the Inquiry will not be  
23          effective unless you put the real name of an officer  
24          into the public domain so that one can investigate every  
25          detail of their life pre and post their deployment.



1           There would be two major prices to pay if that  
2 substance was taken.

3           Firstly, one would never finish this Inquiry.

4           Secondly, it would be unfair to cause upset just on  
5 the offchance that something discreditable about an  
6 officer might come up.

7           It is always horses for courses but we say in  
8 relation to this case, there is harm, it is relevant and  
9 it does outweigh the presumption of openness.

10 THE CHAIR: If HN68 had been alive, sentient and able to  
11 give evidence about his managerial position, the  
12 position might well have been different. It might have  
13 been more like HN58.

14           But this is somebody who is obviously not in  
15 a position to account publicly for his actions as  
16 a manager. I think, therefore, the only consideration  
17 I am faced with is whether or not his widow's right to  
18 respect for her private life outweighs the public  
19 interest in having his real identity disclosed.

20 MR HALL: I agree with respect, and it is obviously the case  
21 that with dead officers one is not going to be able to  
22 investigate as thoroughly as if the officers were alive.  
23 That will curtail the ability and the importance that  
24 will be placed upon this particular officer in the  
25 overall Inquiry.

1           I should say that I would wish to be heard were it  
2           said that there is a bright line or presumption in  
3           relation to managers because there are managers and  
4           there are managers. I think we have used, for the  
5           Metropolitan Police Service, the term "manager" really  
6           to mean anyone above undercover officer, so that would  
7           include sergeants and inspectors and the like.

8   THE CHAIR: There may be a grey area where the word  
9           "manager" is imprecise. I agree, we may need to look at  
10          those, but I was thinking of someone in the position of  
11          the detective inspector or detective chief inspector in  
12          charge of the squad.

13          There would have, I think, to be fairly good reasons  
14          why their real names should not be put into the public  
15          domain.

16   MR HALL: I would prefer to demur until that arises.

17   THE CHAIR: Yes.

18   MR HALL: I accept there is a stronger public interest in  
19          relation to the detective chief inspector, who is the  
20          head of the squad, which may not always result in the  
21          same outcome in relation to a detective inspector, but  
22          I don't need to address it because it doesn't --

23   THE CHAIR: No, quite. We will address it in due course.

24          As I said it is a forecast not a statement of principle  
25          and every case turns on its own facts.

1           The only point I was trying to make through you is  
2           that in relation to an officer who has died, then  
3           bluntly it doesn't matter from the point of view of the  
4           public interest whether his actions as a manager are  
5           described by reference to a cipher or by reference to  
6           his real name.

7           He cannot -- or in the small number of cases she  
8           cannot -- be called upon to account for actions because  
9           they have died.

10   MR HALL: Yes. Anticipating what could be said, well, one  
11           still needs to know the real name in case there is some  
12           nugget of information out there known about their  
13           subsequent career which could be relevant to the  
14           credibility that you put upon, for example, documents or  
15           actions done by that person.

16           You have our submission which is that that would be  
17           a fishing expedition that would not be justified.

18   THE CHAIR: There has to come a point, I think, at which the  
19           desire to know everything possible has to be curtailed  
20           in the interests of finishing things.

21   MR HALL: And I would venture to suggest also in the  
22           interests of fairness to individuals.

23   THE CHAIR: Yes. I can conceive that that might occur,  
24           although I'm entirely unaware of any suggestion that  
25           HN68's subsequent career requires to be examined to cast

1 light upon his actions as a manager or as a deployed  
2 officer.

3 MR HALL: Likewise.

4 THE CHAIR: His personnel record should, in principle, be  
5 available to be examined and if that throws up something  
6 then the issue may have to be revisited.

7 MR HALL: Quite.

8 THE CHAIR: Am I right in assuming that the personnel  
9 records of at any rate the managers are retained?  
10 I have certainly seen some, but I don't know whether it  
11 is that they are comprehensive.

12 MR HALL: I will just consult, if I may.

13 THE CHAIR: Yes.

14 MR HALL: In principle, yes, they do exist. That doesn't  
15 mean that they will always exist in every single case --

16 THE CHAIR: No, no document retention system is perfect.

17 MR HALL: In principle there should be personnel records,  
18 yes.

19 THE CHAIR: Thank you.

20 Anybody else? No.

21 This is a case where the interests of the widow are  
22 being looked after by the Metropolitan Police Service --

23 MR HALL: That's right.

24 THE CHAIR: -- directly?

25 MR HALL: That's right.

1 THE CHAIR: Ms Kaufmann, there is one issue upon which  
2 I would like, please, your submission. You submitted in  
3 I think one sentence that the real identity might permit  
4 the deployed undercover officer to be identified.

5 I can understand that submission, although I don't  
6 accept it, in relation to cases where the cover name is  
7 not known, but where the cover name is known, as it is  
8 here, what can the real identity add to that?

9 Further submissions on behalf of the non-state, non-police  
10 core participants by MS KAUFMANN re HN68

11 MS KAUFMANN: Because, let's imagine the cover name is known  
12 but nobody can actually remember the person by their  
13 cover name because the events took place a long time  
14 ago. That is one possibility. There is one officer who  
15 says in terms, "I can't imagine anyone would remember my  
16 name".

17 So disclosure of the real name may afford a means by  
18 which that person can be identified through photographs  
19 or whatever and so you can actually look at the image  
20 and identify who that individual was.

21 THE CHAIR: I can understand that contemporaneous  
22 photographs might, and there is a theoretical route to  
23 obtaining them, but I can't at the moment understand how  
24 disclosure of the real name even in theory could.

25 MS KAUFMANN: Through that theoretical route. In the modern

1 world it is quite possible that having disclosure of  
2 a name of an individual might lead to photographs of  
3 them at a particular point in time sufficiently far back  
4 for him to be recognised or her to be recognised as they  
5 were at the time.

6 Again, one can't gainsay it. It is exactly the same  
7 point as my response to Mr Hall's point, which is that  
8 we shouldn't go on some fishing expedition to look at  
9 potentially valuable information about individuals'  
10 future conduct or past conduct in their real name.

11 We shouldn't discount the possibility that valuable  
12 information will come to light serving the instrumental  
13 purposes of providing the Inquiry with relevant  
14 information just because we do not know about it at the  
15 moment.

16 THE CHAIR: I understand the principled arguments, I was  
17 simply concerned with the practicality.

18 MS KAUFMANN: It would not be a matter for you to concern  
19 yourself with. It would be a matter for other people to  
20 see if they can piece it together.

21 THE CHAIR: I was just querying the mechanism by which  
22 publication of the real name of somebody who has  
23 fulfilled managerial functions later on in life might  
24 trigger a recollection which the publication of the  
25 cover name would not.

1           I can't at the moment see how it could, unless  
2           a photograph of him in his appearance at the time was  
3           available.

4 MS KAUFMANN: Exactly, that's precisely the mechanism. But  
5           what we don't know is whether that mechanism is going to  
6           be available until the name is known and then people can  
7           search and try to identify. We don't know.

8           But you have to then ask yourself, is there a reason  
9           of sufficient force to say we don't try and undertake  
10          that exercise?

11          The only reason put forward in this case -- and it  
12          is a very stark example therefore of the balance between  
13          openness and the potential instrumental interests it can  
14          serve, plus the value of openness in and of itself, as  
15          against the concern of the widow not about being  
16          harassed but simply about the name of her husband coming  
17          out. That's the only concern she has, in our  
18          submission, the balance would be wrongly struck if that  
19          concern of the widow were to override the potential  
20          instrumental value of disclosure coupled with the  
21          general value that disclosure has in terms of this being  
22          an accountable public inquiry.

23 THE CHAIR: It is, I think you acknowledge in that  
24          statement, a balance to be struck. It is a matter  
25          therefore of judgment?

1 MS KAUFMANN: We made the submission yesterday, and I repeat  
2 it, that the balance is one which, in our submission, is  
3 not such that it is open for you to find it one way or  
4 the other. In our submission the balance clearly comes  
5 down in favour of openness.

6 That that interest in not having her husband's name  
7 put out in the public simply cannot outweigh those other  
8 interests that we have identified.

9 THE CHAIR: Okay. So it is not merely a question of don't  
10 identify, they are not capable of identifying -- sorry  
11 balancing --

12 MS KAUFMANN: That particular interest is not capable of  
13 outweighing the force and the weight to be given to the  
14 interests in openness and disclosure. And if it is, it  
15 really means that there will never be cases in which  
16 real names can be disclosed, save for where you are  
17 dealing with this principle. And the principle that it  
18 is a manager and therefore the manager's name needs to  
19 be disclosed.

20 If the interest of an individual in simply not  
21 having her husband named is sufficient to outweigh the  
22 interest in openness that I have identified, then there  
23 will not be any cases in which real names fall to be  
24 disclosed and that is the point we make --

25 THE CHAIR: With respect, that is a significant



1           overstatement. There are two instances that I have  
2           already identified and I do not exclude the possibility  
3           of more in which the real name will, I expect, be  
4           published.

5           One is where they are managers.

6           The other is where they have done something wrong.

7 MS KAUFMANN: Yes, absolutely. Putting those two situations  
8           aside, other than those two situations, if this interest  
9           on the part of a wife or a family member is sufficient  
10          to outweigh all the other factors weighing in respect of  
11          openness, in circumstances where one doesn't know yet  
12          that there has been wrongdoing, then it follows save for  
13          those two instances you have identified, that there will  
14          never be a revelation of real names.

15 THE CHAIR: Thank you.

16          I think the next one is HN81, is it not?

17 MS KAUFMANN: Yes, it is.

18          Submissions on behalf of the non-state, non-police core  
19          participants by MS KAUFMANN re HN81

20 MS KAUFMANN: This is another situation in which there has  
21          been a reconsideration on your part --

22 THE CHAIR: I think not, I think I said I was going to  
23          have --

24 MS KAUFMANN: Let me remind myself. I'm sorry.

25 THE CHAIR: I said there would have to be a closed hearing

1 and explained why.

2 MS KAUFMANN: Yes. Forgive me, I'm back on the right page  
3 now.

4 We are in a position where you are now minded to  
5 disclose the cover name and withhold the real name, as  
6 I understand it.

7 THE CHAIR: Yes.

8 MS KAUFMANN: In your minded to note, in tab 9, at  
9 paragraphs 5 and 6, you set out the basis upon which you  
10 identify the necessity of disclosing the cover name.  
11 You then recognise the potential adverse impact that it  
12 is going to have and that is an impact upon HN81's  
13 mental health and thereby an inference with his or her  
14 right to respect for private life and equally that of  
15 his or her partner. And conclude nonetheless that the  
16 disclosure is necessary.

17 Observations in relation to articles 2 and 3. To  
18 the issue here now I am going to address you on whether  
19 or not there should be disclosure of real name and not  
20 just cover name.

21 THE CHAIR: Quite, I assume that you are pleased about the  
22 decision I am minded to make about cover name.

23 MS KAUFMANN: Indeed we are, given the critical role of this  
24 officer in relation to the issues to be looked at in  
25 this Inquiry.

1           At the time that his role was disclosed to the  
2           public at large -- or hers -- this officer considered  
3           the risk of physical attack to be low. That was this  
4           officer's personal assessment.

5           Then in July this year, if we look at tab 40, the  
6           risk of physical attack has been assessed in the risk  
7           assessment, the Metropolitan Police Service risk  
8           assessment, pages 16 to 17 as a medium risk if real  
9           identity is revealed. It is a medium risk could  
10          reasonably be foreseen with a serious impact if it  
11          happened.

12          Again, we have absolutely no information whatsoever  
13          as to the basis on which that risk assessment is made.  
14          We are told that the risk is not from known groups but  
15          from others who might form a hostile attitude. That  
16          comes in tab 42, paragraphs 11 to 12 of Slater &  
17          Gordon's submissions.

18   THE CHAIR: I think I can assist you on the facts of this  
19          case, by saying that it is not the risk of physical  
20          injury or threat to safety that was determinative.

21   MS KAUFMANN: So it is an article 8 risk here?

22   THE CHAIR: Yes.

23   MS KAUFMANN: It is an article 8 risk.

24          Again, that brings us back to what is the nature of  
25          the risk? Are we talking about a risk of hostility of

1 the kind manifested towards Bob Lambert? One should  
2 remind oneself, Bob Lambert was a manager --

3 THE CHAIR: Can I just draw your attention to the words  
4 I have used in the public document:

5 "It is likely that this decision will have an  
6 adverse impact on HN81's mental health and so interfere  
7 with his right to respect for family and private life."

8 MS KAUFMANN: I'm grateful, because I have to grapple with  
9 a number of different points that are put forward. One  
10 of these was of hostility of that kind, so that has been  
11 put aside.

12 THE CHAIR: I entirely appreciate that. I appreciate that  
13 my words are laconic and have to be read perhaps more  
14 than once to realise what I'm getting at, but I draw  
15 your attention to that, because that is the  
16 determinative risk here, not physical safety.

17 MS KAUFMANN: Then I simply repeat the submissions I made  
18 before in relation to issues as to the psychiatric or  
19 the likely impact upon psychiatric health of disclosure,  
20 which is that we are in no position whatsoever to make  
21 any submissions because we know nothing about the basis  
22 of Dr Busuttill's analysis, we are simply told that there  
23 is a high risk of health issues at tab 39. We don't  
24 know if they can be mitigated in any way and we don't  
25 know anything.

1 THE CHAIR: I have explored that in the closed session in  
2 detail and with care.

3 One measure is referred to in the open reasons in  
4 paragraph 8.

5 MS KAUFMANN: That relates to disclosure of the cover name  
6 and the groups.

7 THE CHAIR: Yes, but it would apply also to real name if  
8 I were minded to do that.

9 MS KAUFMANN: Yes, sir.

10 THE CHAIR: HN81 is someone whose case has to be handled  
11 with great care so as not to inflict quite serious  
12 mental health damage.

13 MS KAUFMANN: Given the limitations of what I can say at  
14 this stage, I would simply urge that the issue of real  
15 name disclosure be kept under review should you maintain  
16 your position, as currently set out in your minded to,  
17 of not disclosing the real name. But that it be kept  
18 under review so that both the state of his ill-health  
19 can be kept under review but also the interests in  
20 favour of disclosure can continue to be weighed.

21 THE CHAIR: Of necessity, all of these decisions are kept  
22 under review, some of them more perhaps anxiously than  
23 others.

24 In a case in which there is the risk of quite  
25 serious mental health problem, then saying "I'm going to

1 keep it under review" is potentially itself a cause of  
2 further problems or of exacerbation of existing  
3 problems.

4 These are difficult and delicate questions and  
5 I think this is an instance in which actually disclosing  
6 more about the mental health condition of HN81 would not  
7 greatly assist you, but would risk harm to HN81. It is  
8 one of those cases where there is nothing more that  
9 could be done other than disclosing the full medical  
10 report. I could not, for example, require HN81 to  
11 submit to psychiatric examination at the behest of the  
12 non-state core participants or for that matter the  
13 Inquiry, and it would, I think, be wrong in principle  
14 even to attempt that.

15 This is one of those cases where frustrating though  
16 it may be for those who instruct you, and possibly even  
17 for you and those behind you, it is one of those cases  
18 in which no more can be said than I have already said.

19 MS KAUFMANN: Well that is all we propose to say then on  
20 this particular officer.

21 THE CHAIR: Thank you, yes.

22 Mr Hall?

23 Submissions on behalf of the Metropolitan Police Service by

24 MR HALL re HN81

25 MR HALL: Yes, briefly. But I will say one or two things,

1 the Metropolitan Police Service are very, very conscious  
2 of the importance of this officer's deployment to the  
3 Inquiry and the questions that need to be considered and  
4 answered, obviously in particular about the extent of  
5 HN81's interaction with the Lawrence family campaign  
6 through HN81's infiltration of an as yet unnamed group.

7 The Metropolitan Police Service, having said that,  
8 accepts your ruling on cover name. The Metropolitan  
9 Police Service has never advanced its own interest as  
10 a reason to restrict that cover identity but has only  
11 been concerned about the impact on HN81.

12 You have ruled that the importance of examining  
13 HN81's deployment justifies the identified risk of harm  
14 from disclosing the cover name and we do not challenge  
15 that conclusion.

16 I was going to say a fair amount about why we do  
17 maintain our application over the real name, but in  
18 light of the exchange that you have had with Ms Kaufmann  
19 and her realistic approach on being told that this is  
20 a genuine issue of mental health, I don't think I would  
21 help you by saying any more, apart from to say that we  
22 do strongly maintain our application in relation to  
23 restriction over the real name.

24 THE CHAIR: I think this can be said.

25 Although the question of the group or groups

1           infiltrated has not yet been addressed specifically,  
2           I can imagine no circumstances in which if the cover  
3           name is revealed the group or groups also would not be.

4   MR HALL:   Absolutely, yes.

5   THE CHAIR:  Thank you.

6           Mr Brandon.

7   MR BRANDON:  Sir, for very obvious reasons I'm not proposing  
8           to address you at all on this application.

9   THE CHAIR:  Thank you.

10  MS KAUFMANN:  So where to next?

11  THE CHAIR:  HN104, who for once has a name and agenda.

12           Submissions on behalf of the non-state, non-police core  
13           participants by MS KAUFMANN re HN104

14  MS KAUFMANN:  Carlo Neri.  The only issue here, as you know,  
15           is disclosure of real name, Mr Neri's real name, and the  
16           position of my clients in relation to that.

17  THE CHAIR:  Yes.

18  MS KAUFMANN:  Which is that the real name should be  
19           disclosed.  My clients know the real name already, as we  
20           have explained.  They have known it for some time.  They  
21           have not disclosed it on the basis that they felt it was  
22           appropriate for an opportunity and time to be given to  
23           Mr Neri and those of his former and current family  
24           members to prepare themselves for the fact of its  
25           disclosure.



1           They expected that this would happen as a result of  
2           an order in the course of this Inquiry, and that is the  
3           question with which you are now having to grapple. Do  
4           you do it or do we do it?

5 THE CHAIR: I think that is the question.

6 MS KAUFMANN: That's the question.

7 THE CHAIR: As I know you and those who instruct you know,  
8           the interest to which I referred in my second minded to  
9           note indirectly and obliquely were those of his former  
10          wife and two children of his first marriage. It is  
11          fundamentally their interests which are at stake here.

12          The interests of Carlo Neri personally play  
13          a negligible if any part.

14          Those of his current partner and his current family  
15          do play a part, but the issue that I think everybody has  
16          to face up to is what is the impact of revealing the  
17          real name on his ex-wife and perhaps more importantly  
18          their two children who bear his name.

19 MS KAUFMANN: My clients have considered that, whilst they  
20          understand the distress it is going to cause and don't  
21          intend or wish to cause that distress, what is a matter  
22          of higher principle to them is that this officer should  
23          be accountable for his conduct. He should be  
24          accountable for his conduct in his real name, which  
25          accords entirely with your cases repeatedly that those

1           who have engaged in wrongdoing should be identified.

2           His case has been settled by the Metropolitan Police  
3           Service on the basis that he did engage in such  
4           reprehensible conduct, and therefore the first point is  
5           that the interests in his accountability or in his being  
6           accountable outweigh the interests of the family  
7           members.

8           That has this further consequence, which is that  
9           because that balance has been struck by my clients  
10          themselves, it is inevitable that his identity is going  
11          to be disclosed one way or the other. Therefore, it is  
12          inevitable that that distress is going to be caused to  
13          the family members one way or another. That thereby  
14          weakens to the point of nil the value of any protection  
15          that you could afford to her and the children by  
16          refusing to disclose his real name.

17          Which in our submission means that that really  
18          leaves you in the position of doing what the Inquiry  
19          should do, which is to officially hold accountable those  
20          who engage in wrongdoing and therefore we submit it  
21          should be your decision to publicly and within the  
22          context of this Inquiry officially confirm his real  
23          name, rather than to leave it to my clients to do that  
24          in an unofficial way.

25          The consequence would be exactly the same for her,

1 but what would be different is it would be official  
2 confirmation and official requirement to account.

3 THE CHAIR: I understand that proposition. I also respect  
4 and commend the decision of the women I think it is  
5 concerned not so far to make public his name.

6 May I ask through you if I do accede to your  
7 submission, that they would hold their hand while the  
8 Inquiry seeks to manage the impact on in particular his  
9 two children itself?

10 MS KAUFMANN: I will take instructions on that.

11 THE CHAIR: Yes.

12 MS KAUFMANN: As soon as we can we will tell you the  
13 position.

14 THE CHAIR: Yes. It is not something that needs to be done  
15 instantly.

16 MS KAUFMANN: No.

17 THE CHAIR: I don't know how many individuals are in  
18 immediate contact, but we have a break in the middle of  
19 the afternoon anyway and if necessary it can be done  
20 later.

21 Can I take this opportunity of explaining a phrase  
22 that I used in my minded to note which you submit caused  
23 offence that these are "claimed" relationships.  
24 Admissions have been made by the Metropolitan Police  
25 Service, none have, so far as I know, yet been made by

1 Carlo Neri himself. Ultimately, it is not for the  
2 Metropolitan Police Service to decide these questions.  
3 If it has to be decided it is for me to decide them, and  
4 therefore I used a word which did not prejudge.

5 I intended absolutely no disrespect to anybody.

6 MS KAUFMANN: There is no reason now for us not to then  
7 continue.

8 Those are my submissions.

9 THE CHAIR: Quite. Certainly not. No, no, of course not.

10 Mr Hall?

11 Submissions on behalf of the Metropolitan Police Service by

12 MR HALL re HN104

13 MR HALL: I'm not sure what I can usefully add in the light  
14 of that exchange. It may be better for me to, if you  
15 will permit, wait until the outcome of that  
16 consultation --

17 THE CHAIR: Yes.

18 MR HALL: -- this is a desperately difficult matter. You  
19 know the Metropolitan Police Service's position in  
20 relation to our understanding the importance of true  
21 names to deceived women.

22 Equally, as I am sure Ms Kaufmann is acknowledging,  
23 the interests of children and third parties weigh in the  
24 balance. There is a management exercise, I think  
25 probably the less I say the better.

1 THE CHAIR: Very wise, thank you.

2 Mr Brandon?

3 MR BRANDON: Sir, we have a hearing I think fixed at some  
4 point in the future.

5 THE CHAIR: I have indicated that I would be willing to hold  
6 one, certainly, and you want one?

7 MR BRANDON: I think so, yes, please.

8 THE CHAIR: Then I think the hearing would have to be  
9 undertaken on a slightly different basis from that which  
10 applied to the previous cases, namely that this is about  
11 the real identity not the cover name. If I were, as  
12 a result of the hearing, minded to make a restriction  
13 order in respect of the real name, then I would give  
14 everybody else the opportunity of saying something about  
15 it after I reached that provisional decision.

16 MR BRANDON: Yes, of course, sir.

17 THE CHAIR: But provided that that is understood, then it  
18 seems to me that that is a sensible course.

19 MR BRANDON: Yes.

20 THE CHAIR: I don't think anyone else has any interest in  
21 this issue.

22 Ms Kaufmann, in those circumstances, I perhaps need  
23 to ask you to take instructions on whether the women  
24 concerned will stay their hand until after this process  
25 has been undertaken. It will not take all that long, it

1           will be a matter of weeks at most.

2   MS KAUFMANN: We will get our clients' instructions on that.

3   THE CHAIR: Thank you very much. That is very helpful.

4   MR BARR: Sir, the next officer that falls for consideration

5           is HN123. Before my learned friend Ms Kaufmann

6           addresses you, sir, I think it is right that I should

7           make clear to everyone that HN123 is no longer a core

8           participant, having indicated that HN123 did not want to

9           be a core participant any longer. Neither is HN123

10          legally represented.

11   THE CHAIR: Ms Kaufmann, in theory an open goal should be

12          easier to shoot at but it is not.

13   MS KAUFMANN: I don't take it as being any easier.

14          Submissions on behalf of the non-state, non-police core

15                  participants by MS KAUFMANN re HN123

16   MS KAUFMANN: This is an officer in relation to whom

17          currently you are minded neither to disclose the cover

18          name nor the real name.

19   THE CHAIR: Yes.

20   MS KAUFMANN: It is an officer where the prospects of

21          getting to the truth, should that position be

22          maintained, whatever the truth may be, are necessarily

23          wholly eroded because people simply will not be in

24          a position to come forward.

25   THE CHAIR: May be inhibited, to say it will be wholly

1 eroded I think is an overstatement. I quite appreciate  
2 it imposes a significant obstacle in permitting others  
3 to come forward.

4 MS KAUFMANN: The central role of this officer in relation  
5 to the Lawrence Inquiry is set out in our submissions at  
6 paragraphs 141 to 143, and in those of Mr Francis at  
7 paragraphs 21 to 24.

8 It is clear that the evidence is central relating to  
9 this officer, and so the potential damage from  
10 individuals affected by this officer's conduct not being  
11 able to come forward with evidence is all the greater  
12 because of the centrality of this officer.

13 THE CHAIR: I don't agree with you about this officer's  
14 centrality. You make the point that well we don't yet  
15 know, but I think that is the position, rather than we  
16 know the opposite.

17 MS KAUFMANN: Well, again, I of course can't gainsay that.  
18 But what we certainly don't know is the extent to which  
19 other additional valuable information could come to  
20 light which might shed a different picture on your  
21 current understanding of the situation, should the cover  
22 identity at the very least be known.

23 What it appears forms the basis of your minded to  
24 are not concerns about a risk to his physical safety so  
25 engaging articles 2 and 3, but more risks to his

1 article 8 rights arising from his own or her own  
2 psychiatric condition and concerns in relation to the  
3 partner.

4 I just want to confirm that that is correct.  
5 I don't want to go off on a wrong footing. As  
6 I understand it, this isn't a physical safety case, it  
7 is --

8 THE CHAIR: Insofar as physical safety arises at all, it  
9 arises under article 8 and not under 2 or 3.

10 MS KAUFMANN: Yes.

11 THE CHAIR: I have given the reasons why I made the decision  
12 and it is not focused upon that at all. It is focused  
13 upon what I have been told by HN123 and the partner.

14 MS KAUFMANN: Can I just point you to our request for  
15 disclosure which was sent in last week, on Thursday of  
16 last week. I don't know whether you have that with you.  
17 I can just read it to you and then I can seek some  
18 clarification so we can -- I don't want to start making  
19 submissions that are not necessary and are unhelpful.

20 THE CHAIR: I don't, I think, have the document.

21 MS KAUFMANN: We wrote:

22 "Disclosure limited to the gist of an outdated risk  
23 assessment from March 2016, which was presumably  
24 prepared by Jaipur or Karachi."

25 Sorry, that's what we have.



1           What we wrote about last week was the limits of what  
2           we have so far, which is the outdated risk assessment,  
3           this dating from 2016, and we highlighted the problems  
4           that there were with Jaipur and Karachi's independence  
5           and what I want then to clarify with you is that that  
6           problem as to the inadequacy of the disclosure in  
7           relation to risk is not something I need to concern  
8           myself with, because risk in terms of physical safety is  
9           not a factor.

10   THE CHAIR:  You are right.  I have set out the reasons for  
11           reaching the decision I am minded to make in the  
12           published note in paragraph 9.

13   MS KAUFMANN:  Yes.

14   THE CHAIR:  As always, it is couched in rather more general  
15           terms than you would like.  But it should at least  
16           disclose to you the mainspring of the reasons.

17   MS KAUFMANN:  Then similarly we complained about the risk  
18           assessment in relation to Mark Veljovic -- I'm not sure  
19           how that is pronounced.  We complained that we don't  
20           have that.  But again, the question I have and I assume  
21           the answer is we don't need it, because we are not  
22           concerned with a risk to physical safety and that what  
23           we are concerned with is his psychiatric health should  
24           there be disclosure.

25   THE CHAIR:  Yes.

1 MS KAUFMANN: So I can put that aside as well.

2 THE CHAIR: He has fears about it, as I have stated.

3 MS KAUFMANN: I understand he has fears, but I am talking  
4 about the objective foundation to his fears, which is  
5 what these risk assessments are concerned with.

6 If the objective foundation to those fears is  
7 something that you are taking into consideration, then  
8 the absence of any disclosure in relation to that is  
9 something that I would express concern about. I'm  
10 trying to clarify whether I need to press for disclosure  
11 or I don't need to because these matters are irrelevant  
12 to your consideration.

13 THE CHAIR: You don't.

14 MS KAUFMANN: I'm grateful.

15 What we are then left with is yet again a situation  
16 where an assessment is being made on the basis of  
17 psychiatric evidence that we have no access to and no  
18 information about in any meaningful sense, and which  
19 leaves me in the position again where I can't say  
20 anything meaningful to you in relation to this.

21 I cannot say, for example -- or I am not informed --  
22 whether or not the concerns that this officer has that  
23 are going to lead to a deterioration in his psychiatric  
24 condition are going to flow whether the cover name is  
25 revealed alone or where the real name is revealed, for

1 example.

2 I assume the concern is in relation to the cover  
3 name, even if the cover name is revealed this officer is  
4 going to suffer serious psychiatric consequences.

5 THE CHAIR: It is, I am afraid, a little more complicated  
6 than that. I am treading on eggshells here and I'm  
7 conscious of that fact.

8 I have stated that the decision that I'm minded to  
9 make is squarely founded on two personal statements,  
10 not, as one would expect to see in a case of this  
11 nature, medical reports. I am minded to make this  
12 decision because of all that I know about HN123 and his  
13 partner, and I make it on an express factual premise  
14 which may prove to be wrong, namely that he was involved  
15 only indirectly in deployments affecting the Lawrence  
16 family. I know that that factual premise is challenged  
17 by Peter Francis, the basis for the challenge I made  
18 need to explore with Ms Sikand, but I have made  
19 a decision on a factual premise and on the statements of  
20 HN123 and his partner.

21 Should the factual premise prove to be wrong, then  
22 of course I will have to revisit this decision. In that  
23 event, a professional medical opinion would, if it were  
24 to be available, play a far greater part, as would  
25 considerations of public interest.

1 MS KAUFMANN: If I might, I will just in light of that  
2 information for which I am grateful just make some  
3 submissions, which are that insofar as this particular  
4 officer has a concern in relation to disclosure of his  
5 or her cover name, which is not rationally based in the  
6 terms of the likely consequences of disclosure of the  
7 cover name. That is if it were the case that the  
8 disclosure of the cover name is not going to lead to  
9 revelation of the real name, there is not going to be a  
10 mosaic effect, such that the cover name can safely be  
11 disclosed. Then in my submission where there is no  
12 psychiatric evidence to support the alleged  
13 deterioration --

14 THE CHAIR: I didn't say there was none. I'm sorry to speak  
15 in riddles but it is more complicated than that. There  
16 is one person in the room who fully understands the  
17 position, apart from -- possibly better than I do. But  
18 this is genuinely a problematic case. If the factual  
19 foundation for the decision which I'm minded to make  
20 goes, then everything is open for review and for  
21 redecision.

22 MS KAUFMANN: The difficulty with that is that there may be  
23 other facts about this officer's undercover activities,  
24 apart from this officer's involvement in Lawrence, which  
25 disclose wrongdoing and without disclosure of the cover

1 name we are not going to find that out. If in fact this  
2 officer's stated concerns are irrational concerns in the  
3 face of what the implications of disclosure of the cover  
4 name are going to be, if in fact those irrational  
5 concerns are ones which a psychiatrist does not  
6 persuasively say are going to result in some sort of  
7 psychiatric injury --

8 THE CHAIR: I'm sorry, the concerns are not irrational. If  
9 one looks at it purely objectively, the article 3 risk  
10 is quite insufficient to give rise to a breach of his  
11 rights under article 3 if his cover name were to be made  
12 public.

13 In this instance I'm speaking about "his" because  
14 everybody knows it is a him and there is no possible  
15 interest to be served by pretending otherwise.

16 In an ideal world I would put a decision on HN123 on  
17 the back-burner and look at it later in the proceedings.  
18 In fairness to him and his partner, I can't. I have to  
19 make a decision on the basis of what I'm told by them,  
20 I think, in fairness to him.

21 The decision is necessarily provisional because it  
22 is based on the factual premise, but I simply cannot at  
23 the moment see any other way of doing it that protects  
24 legitimate interests and ensures that the Inquiry gets  
25 something of value from and in relation to HN123.

1 MS KAUFMANN: I keep coming back to, my concern is there  
2 seem to be a disjuncture -- it may not be a total  
3 disjuncture -- between what he is saying and his wife is  
4 saying and what is being said in support by  
5 a psychiatrist.

6 THE CHAIR: I'm sorry, it really is not as simple as that.  
7 I'm sorry, I can't tell you why it isn't as simple as  
8 that, but it is not. It is not that I have a medical  
9 report that says the concerns are daft and he's not ill,  
10 I don't.

11 MS KAUFMANN: No. Well there really is nothing further  
12 I think I can say on this point. It is a frustrating  
13 and difficult situation for us, because this officer  
14 clearly has relevant evidence to give. There is no  
15 doubt relevant evidence can be given by others about  
16 this officer --

17 THE CHAIR: Yes.

18 MS KAUFMANN: -- and at the moment --

19 THE CHAIR: I'm very anxious to obtain it. I don't want to  
20 put at risk the possibility of obtaining it, which is  
21 why he has to be handled with great care.

22 MS KAUFMANN: I have no further submissions.

23 THE CHAIR: No.

24 Ms Sikand, I think you probably go next on this,  
25 don't you.

1           Unless Mr Hall wants to saying something first?

2           No, you have the floor.

3           Submissions on behalf of Peter Francis by MS SIKAND re HN123

4           MS SIKAND: Sir, I am sorry if I missed this whilst I was

5           taking some instructions, but in the supplemental

6           application on behalf of N123, there is mention of

7           medical reports, at paragraph 1.

8           THE CHAIR: There are umpteen medical reports. I'm very

9           sorry, I really can't say any more than that. This is

10          not a case in which I have an up-to-date medical report

11          which sets out the problems and I am then able to say

12          that the fears of HN123 are rational or irrational.

13          That isn't the position, but there have been medical

14          reports.

15          MS SIKAND: Sir, as you know, Peter Francis knows who N123

16          is --

17          THE CHAIR: Yes, he does.

18          MS SIKAND: -- and we have written to you privately as to an

19          aspect of that and how he knows him.

20          Peter Francis knows who he infiltrated.

21          THE CHAIR: Yes, but there is a difference of recollection,

22          I think, which needs to be explored between them about

23          exactly what happened.

24          MS SIKAND: Yes.

25          THE CHAIR: I know there are opposing views about some of

1 the issues into which the Inquiry is looking which have  
2 been fairly forcefully expressed by both of them.

3 MS SIKAND: Yes. You have seen the way both Ellison and  
4 Herne have expressed the differing views --

5 THE CHAIR: Yes.

6 MS SIKAND: -- and there is no point me repeating them and  
7 I have extrapolated from both of those reports in my  
8 4 October submissions.

9 THE CHAIR: Yes.

10 MS SIKAND: Some of the broader disputes between HN123 and  
11 Peter Francis about whether or not there was any general  
12 smearing of the Lawrence family.

13 THE CHAIR: Yes.

14 MS SIKAND: But I have also made reference to Bob Lambert's  
15 view, such that it is --

16 THE CHAIR: Yes.

17 MS SIKAND: -- about the role that HN123 played in relation  
18 to the Lawrence family campaign.

19 THE CHAIR: You have done.

20 MS SIKAND: Which contradicts of course the position, your  
21 premature -- somewhat premature finding of fact --

22 THE CHAIR: It is not a premature finding of fact. This is  
23 a misunderstanding. It comes no doubt from the laconic  
24 way in which I express things. That is the factual  
25 premise on which I am minded to make the order. If the



1 factual premise turns out to be wrong, then I have to  
2 start again. But I don't see how I can find out whether  
3 the factual premise is right or wrong until we have got  
4 into the substantive phase and I have heard from people.

5 One of the people from whom I must hear if possible  
6 is HN123.

7 MS SIKAND: Sir, there is also the difficulty -- so I also  
8 have to be careful about the way in which I express  
9 myself.

10 THE CHAIR: Yes.

11 MS SIKAND: But what we have put in our original  
12 paragraph 24, if I could take you there, is that at this  
13 stage of course, as I have already said, that  
14 Peter Francis has not been asked to provide any formal  
15 evidence and then I deal with the factual premise upon  
16 which you were operating in your minded to note, to say  
17 that the level of involvement, the chicken and egg  
18 scenario, the only way in which you can actually get to  
19 the truth of that, of where he was in relation to the  
20 Lawrences, to put it broadly, is if you release his  
21 cover name because then those who he infiltrated will be  
22 able to assist you.

23 What I can say is as far as Peter Francis is  
24 concerned, from what he knows about the group that he  
25 did infiltrate, whilst on the face of it were not

1 directly related to the Lawrence's direct campaign, it  
2 most certainly was on the fringes of it and interacted  
3 with it. I won't say anything further.

4 THE CHAIR: Quite right.

5 MS SIKAND: In those circumstances, it seems to us extremely  
6 important that you do disclose his cover name because  
7 those who then become aware of who he was will be able  
8 to assist you with that dispute, which is what you say  
9 in general terms about disclosure of cover names in  
10 terms of valuable evidence.

11 But given that this is a significant officer, and  
12 given that there is in some ways a defined factual  
13 dispute, the public interest in disclosure of his cover  
14 name we say becomes more real or the balance lies in  
15 favour of disclosure. And in terms of looking at -- our  
16 hands are tied in relation to the personal statements  
17 and what they say in order to make any meaningful  
18 submissions to you --

19 THE CHAIR: Of course.

20 MS SIKAND: -- as to when balancing the two --

21 THE CHAIR: I quite understand.

22 MS SIKAND: All we can say is that if you now make this  
23 decision on potentially a false premise, for the reasons  
24 that you say, because you want to give him some  
25 assurance because of the personal information that

1 I don't know about, you may be making the wrong  
2 decision. And it doesn't help to then revisit that  
3 wrong decision at a later date if the reason for making  
4 the decision early is to give him some finality.

5 So it seems to us that the principled way to  
6 proceed, or the most sensible way to proceed, is to  
7 release his cover name.

8 THE CHAIR: I am anxious to obtain evidence from HN123.

9 I may not do so if I adopt the course that you suggest.  
10 I think obtaining evidence from him is more important to  
11 the ability to find the truth than publishing his cover  
12 name to prompt evidence from the infiltrated groups  
13 which might cast some bearing on him.

14 Your client knows the personnel involved here. In  
15 the course of the substantive hearing, or conceivably  
16 before it, I would not encourage it but if in the course  
17 of the substantive hearing it becomes obvious that  
18 I have not been told the truth by HN123 about his  
19 deployment, and I think it would become fairly obvious  
20 if that were so, then I will have to revisit it. Not at  
21 an ideal stage but at a stage which might permit  
22 something to be rescued.

23 You say my decision may be wrong. I acknowledge  
24 that that is the case in many of these matters of  
25 judgment. This is a very difficult judgment in a very

1 unusual and difficult case.

2 MS SIKAND: No one envies your task, sir, but as  
3 I understand what you are now saying, what you are  
4 saying is you would like to delay this decision but you  
5 won't delay it; that you want to get on with hearing  
6 evidence from him --

7 THE CHAIR: Yes.

8 MS SIKAND: I have not quite understood. Do you mean  
9 evidence in the context of a fully blown inquiry or do  
10 you mean getting evidence from him through a different  
11 source, like now?

12 THE CHAIR: No, no, I don't mean that. I don't think it is  
13 right generally -- I don't think that is so in this  
14 case -- for me to obtain what would necessarily be  
15 closed oral evidence from participants. Or from, in  
16 this case, someone who is not a participant but who is  
17 a relevant figure.

18 I would never say never. It is conceivable that  
19 there would be circumstances in which I would have to do  
20 that, but I really don't want to do it and I don't think  
21 it is in principle the right approach.

22 MS SIKAND: But given that it seems, as I understood it, and  
23 please correct me if I have this wrong. As I understand  
24 it, that evidence would help you decide the nature of  
25 the restriction order you make.

1 THE CHAIR: No, no, we are at cross-purposes.

2 The evidence I'm talking about is the evidence which

3 would be given at a substantive hearing --

4 MS SIKAND: Which will test it.

5 THE CHAIR: -- to enable me to get to the truth about the

6 deployments in respect to the Lawrence campaign. I have

7 said I'm determined to do that. I am determined to do

8 my best to do that and I think that having some evidence

9 from HN123 is better than having none, which is a risk

10 that would be run if I were not to make the order that

11 I'm minded to.

12 MS SIKAND: Yes, sir, but of course that evidence if

13 elicited in the way that you anticipate would be

14 untested, certainly --

15 THE CHAIR: Hardly.

16 MS SIKAND: Sorry, not wholly untested, obviously, but if we

17 core participants are excluded from that hearing then it

18 is tested --

19 THE CHAIR: I do not for one moment have in mind that there

20 should be a closed hearing of his evidence. What I have

21 in mind is that he should give his evidence publicly,

22 perhaps with protective measures, but as you rightly say

23 your client knows a great deal about these matters even

24 though his views are not identical to those of everybody

25 else.

1 I really don't want to lose HN123's evidence and  
2 I emphasise that there is a risk that I will if I adopt  
3 a course other than that which I'm minded to adopt.

4 MS SIKAND: I don't think I can say any more, sir.

5 THE CHAIR: No, you have been extremely helpful and very  
6 tactful and I am grateful for your submissions.

7 MS SIKAND: Thank you, sir.

8 THE CHAIR: Mr Hall?

9 Submissions on behalf of the Metropolitan Police Service by

10 MR HALL re HN123

11 MR HALL: Sir, as you know, I have limited information about  
12 the nature of the application.

13 THE CHAIR: Yes.

14 MR HALL: I have limited information about his withdrawal  
15 from being a core participant and his communications  
16 with you.

17 THE CHAIR: Of course.

18 MR HALL: We would point, however, to two aspects of this  
19 case.

20 One is that this case illustrates if ever a case did  
21 that everything depends upon the particular facts.

22 Including in this case the current attitude of HN123.

23 These are all that features that would feed into the  
24 public interest.

25 The second aspect is just to note the context in

1           which HN123 makes the application and which we support  
2           so far as I understand it.

3           First of all, and I am taking this from, sir your  
4           minded to note. It is worth making the point publicly  
5           that he was deployed against a number of groups in the  
6           1990s, at least one of which advocated and practised the  
7           use of violence and that should not, as it were, go by  
8           the board when one is considering --

9   THE CHAIR: I accept that. All I'm saying is that the  
10           mainspring for my decision is not an article 3 risk.

11   MR HALL: Article 3 is very hard to get, I understand that.

12   THE CHAIR: Yes.

13   MR HALL: The second point, again taking it from the minded  
14           to note and of course, sir, because you wrote it you are  
15           very conscious of it, but it is worth me saying it  
16           because it affects our attitude.

17           He was diagnosed as suffering from significant  
18           mental health conditions, resulting at least in part  
19           from the effects of his deployment. In other words an  
20           officer, and may not be the only one of his type, who  
21           has been affected by his deployment.

22   THE CHAIR: It definitely is not.

23   MR HALL: And therefore one where the employer -- past  
24           employer -- feels a degree of moral beholdenness to  
25           someone who put themselves effectively in harm's way by

1 carrying out their job and those two aspects, in my  
2 submission, should not be overlooked.

3 THE CHAIR: Thank you.

4 That I think exhausts the submissions that can be  
5 made on HN123.

6 MS SIKAND: Sorry, sir, I have been asked to seek  
7 clarification, probably rightly, if you are able to, and  
8 forgive me if this is my inability to understand what  
9 you just said, but when you said you risk "losing" his  
10 evidence, what did you mean by that?

11 THE CHAIR: I'm not going to amplify that, there are  
12 a variety of possibilities.

13 MS SIKAND: Thank you.

14 THE CHAIR: Ms Kaufmann, we have reached slightly earlier  
15 than usual the point at which I'm going to give the  
16 shorthand writers their break. Would you be able to see  
17 if you can take instructions on the outstanding point or  
18 not?

19 MS KAUFMANN: We will do that.

20 THE CHAIR: Thank you very much.

21 (3.10 pm)

22 (A short break)

23 (3.17 pm)

24 THE CHAIR: Ms Kaufmann, I understand you have had the  
25 opportunity to take instruction but don't --



1 MS KAUFMANN: I haven't had --

2 THE CHAIR: You don't have the answer yet?

3 MS KAUFMANN: I don't have the answer.

4 THE CHAIR: Entirely understandable.

5 MS KAUFMANN: We are meeting tonight so I hope that I will

6 be able to give you an answer tomorrow, but I suspect it

7 won't be before then because there are various different

8 individuals.

9 THE CHAIR: That is entirely satisfactory. If the answer is

10 what I hope it will be and we have finished all the

11 other cases, would it be possible to communicate it in

12 writing?

13 MS KAUFMANN: Yes.

14 THE CHAIR: Yes. You might know by some time later today

15 whether that is so, so we don't have to reassemble here

16 all tomorrow just to hear one thing.

17 MS KAUFMANN: Absolutely, we will communicate that in

18 writing to the Inquiry team.

19 THE CHAIR: Thank you.

20 MS KAUFMANN: I think we are now on HN294.

21 THE CHAIR: Yes, we are.

22 Submissions on behalf of the non-state, non-police core

23 participants by MS KAUFMANN re HN294

24 MS KAUFMANN: This is an officer where he's deceased, we do

25 not know the cover name. So the only way to find out

1 about this officer and this officer's activities on the  
2 part of those who were affected by his conduct is going  
3 to be through disclosure of the real name. It may or it  
4 may not lead to the identification of the officer. We  
5 don't know that until we try. So there is actually here  
6 an important instrumental purpose behind disclosure of  
7 the real name, which in our submission has not been  
8 recognised in your minded to decision thus far.

9 THE CHAIR: Yes. That is partly because I had difficulty in  
10 understanding how other than by the luckiest of shots it  
11 could work. But we have been through that ground  
12 already.

13 MS KAUFMANN: We have been through it. It may or may not  
14 work, but it is the only viable way in which something  
15 can be achieved. Then we have to ask ourselves what  
16 goes into the balance on the other side.

17 Really, I simply repeat my submissions in relation  
18 to HN68. There is nothing, in our submission, the small  
19 risk of some minimal risk of intrusive interference,  
20 interest in the family, is insufficient to weigh against  
21 taking a step which could bring about the disclosure of  
22 information that will be or could be useful to the  
23 Inquiry.

24 THE CHAIR: This cases raises in fairly sharp focus an issue  
25 that arises less sharply in others. This is a very old

1 deployment. It is amongst the first, it is very short.

2 The nature of the deployment was into groups like  
3 the Vietnam Solidarity Campaign, I can't remember off  
4 the top of my head if 294 was deployed into that, but  
5 it's that sort of group. Namely political activists,  
6 not as sometimes happened a bit later those grouped  
7 together for living and other purposes, but people who  
8 simply came together from a variety of different homes  
9 and geographical locations to undertake political  
10 protest.

11 The chances in those circumstances of something like  
12 an illicit sexual relationship being formed, especially  
13 given the shortage of time, are pretty slim, I think.

14 MS KAUFMANN: Absolutely, that may be entirely correct. But  
15 the question is why not put into place a situation in  
16 which if anything like that did happen, it can come to  
17 light?

18 The only reason not to do it is because the  
19 disclosure of the name carries with it a very, very slim  
20 chance of leading to intrusion into the family life of  
21 the deceased's remaining family.

22 In our submission the balance clearly comes down in  
23 favour, therefore, of just trying to put in place the  
24 circumstances that would enable that information to come  
25 to light, because there is really nothing to be lost of

1           any moment or significance.

2           If in fact nothing comes to light, it is  
3           inconceivable that the wife of this particular officer  
4           is going to be in any way troubled by the disclosure of  
5           the fact that he -- I'm sorry, yes, apparently we do  
6           have contacts with people in the Vietnam Solidarity  
7           Campaign, so there are people who could come forward --

8   THE CHAIR: I don't doubt that is so. It was quite a big  
9           grouping, wasn't it, and certainly large numbers of  
10          people turned up for the demonstration in Grosvenor  
11          Square, which appears to have been the motive for the  
12          inception of the then Special Operations Squad.

13   MS KAUFMANN: There is an added interest in relation to this  
14          officer in that he was a manager, so if and insofar as  
15          any information does come to light of any wrongdoing,  
16          that would obviously be important to feed in in relation  
17          to his managerial role.

18          Against that we simply have the concern for  
19          admittedly his elderly surviving family and in our  
20          submission that just doesn't sufficiently weigh in the  
21          balance against the interest in getting to the truth  
22          whatever it might be. However unlikely.

23   THE CHAIR: There is an interest in the early history of the  
24          Special Operations Squad/Special Demonstration Squad  
25          which you have rightly identified. It is to learn how

1 the various practices which are now the subject of  
2 criticism came into existence, came to be adopted.

3 I don't think you are likely to get anything about  
4 that from a 1968 deployment.

5 MS KAUFMANN: I can't repeat my submissions any further.

6 There is a prospect and that prospect should be made --  
7 or it should be possible for that prospect to have  
8 materialised.

9 THE CHAIR: I understand that there are 19 living officers  
10 from the Special Operations Squad era, namely I think  
11 the first three years. Not all of them, as I know from  
12 one case, will be able to give evidence about the issues  
13 because of failing memory and ill health and so forth.

14 But one hopes that some will be able to and we may  
15 therefore get something of value about what I can,  
16 I think, properly refer to as the ancient history of all  
17 of this, and which will inform the critical question  
18 which is: how did the Special Demonstration Squad come  
19 to adopt the practices that it did? Which is I think  
20 partly a managerial and partly an experience question.

21 MS KAUFMANN: Those are then my submissions.

22 THE CHAIR: Yes.

23 Mr Hall.

24 Submissions on behalf of the Metropolitan Police Service by

25 MR HALL re HN294

1 MR HALL: Sir, I gratefully adopt what you have just said in  
2 dialogue with Ms Kaufmann as to the fact that there are  
3 a other ways of getting at the truth. Of course,  
4 because the officer is dead, inevitably his particular  
5 deployment, whatever happened, is not going to form an  
6 important part of the Inquiry because you can't get  
7 evidence from the officer himself.

8 THE CHAIR: No. His managerial role is much more important.

9 MR HALL: But again because --

10 THE CHAIR: All we can do with that is records and with  
11 those who can be told what his real name is, if they  
12 don't remember it, and can therefore give evidence if  
13 they can about what he did and didn't do.

14 MR HALL: Exactly.

15 As far as the harm on the other side, it has not  
16 been totally correctly described. It is at tab 58, it  
17 is not a case in which the application is made on the  
18 basis of a risk of intrusion actually happening.

19 THE CHAIR: No, is not.

20 MR HALL: It is a concern/fear.

21 THE CHAIR: This is an elderly lady whose family wish that  
22 she should be able to remain in peace. This is  
23 a problem that occurs in relation to these old  
24 deployments. Although Ms Kaufmann says with some force,  
25 well, there is not much in the weight on that side and

1           openness in those circumstances wins, I think one can  
2           ask well why should an elderly lady not be left in peace  
3           unless there is a good purpose in disturbing her.

4   MR HALL: That is right. I mean one looks at the final  
5           paragraph of the letter. One doesn't need to read much  
6           between the lines to see what is happening:

7           "This has been challenging to extract personal  
8           responses from my parent-in-law with minimum stress and  
9           ensuring the thoughts and wishes of a frail 85-year old  
10          are represented correctly."

11          It doesn't take much to understand what is going on  
12          there.

13   THE CHAIR: Quite.

14          In the next batch we actually have a living officer  
15          of the same vintage and age and the same considerations  
16          apply to him and his family.

17   MR HALL: Quite.

18   THE CHAIR: I really do wonder why so much effort is being  
19          expended upon these very early cases because I simply  
20          can't see they are going to tell us much about what  
21          happened in the Special Demonstration Squad, what went  
22          wrong in the Special Demonstration Squad.

23          That is HN294.

24          297, I think.

25

1 Submissions on behalf of the non-state, non-police core  
2 participants by MS KAUFMANN re HN297

3 MS KAUFMANN: It is H297.

4 THE CHAIR: Yes.

5 MS KAUFMANN: This is another officer who is deceased. His  
6 cover identity is known, Rick Gibson. The risk  
7 assessment in relation to interference with family life  
8 rights is low. Could be managed without significant  
9 assistance. That is on page 16, tab 62.

10 Our understanding is that this officer did in fact  
11 engage in at least two intimate relationships, which  
12 obviously puts a very different complexion on matters.

13 THE CHAIR: Indeed it does.

14 Is that because the cover name already known from  
15 sources other than the Inquiry has produced this  
16 information?

17 MS KAUFMANN: I assume that is the case.

18 Yes, it is the case.

19 So that puts a very different complexion on matters.

20 THE CHAIR: I agree it does.

21 MS KAUFMANN: We are dealing with a situation where putting  
22 into the balance on the other side against disclosure of  
23 the real name are really the sorts of factors that we  
24 have just been discussing in relation to HN294 and HN68.

25 THE CHAIR: Except, forgive me, HN294's deployment was right



1           at the start. HN297 is 1974 to 1976, that is probably  
2           in the period when practices started to be adopted  
3           routinely and things may have started to go wrong.

4 MS KAUFMANN: Exactly. In those circumstances we would  
5           submit that this is a case where the disclosure of both  
6           cover and the real name is something that should  
7           properly take place.

8 THE CHAIR: Can I ask whether the two individuals to whom  
9           you have, by inference, referred are willing to supply  
10          the Inquiry with short statements setting out what they  
11          know before I reach a final decision?

12 MS KAUFMANN: On this?

13 THE CHAIR: On this.

14 MS KAUFMANN: I would have to take some instructions on  
15          that.

16                 We would need to take some instructions on that.

17 THE CHAIR: Is that something you would be able to do  
18          overnight, as in the other cases?

19 MS KAUFMANN: I will find out.

20 THE CHAIR: Yes. No hurry, just do it calmly and  
21          systematically.

22 MS KAUFMANN: So, yes, those are my submissions on HN297.

23 THE CHAIR: Let's pause a moment while things are being  
24          found out. (Pause)

25 MS KAUFMANN: Sir, I'm not in a position now to say

1 anything --

2 THE CHAIR: No.

3 MS KAUFMANN: -- but we are going to continue with our  
4 endeavours to get instructions and we will inform you as  
5 and when we know whether we can provide you with  
6 a statement.

7 THE CHAIR: Thank you.

8 Given what you have said, I think the question is  
9 a narrow one. Should the real name be published now, or  
10 should that be deferred until after I have heard if they  
11 wish to give evidence, from the two women about their  
12 experience and upon being satisfied that what they have  
13 told me is true, then they have the moral right to which  
14 I have referred.

15 I think it therefore probably comes down to  
16 a question of timing.

17 MS KAUFMANN: Yes. Would you be happy for us to make  
18 submissions on that at the point at which we are able to  
19 provide you -- or not able to provide you -- with  
20 a statement?

21 THE CHAIR: To avoid convening everybody for what will be  
22 a very small exercise, let's see if we can deal with the  
23 position on one of two alternative bases.

24 As you know from what I have said, this is not  
25 a case in which -- and from what has been published in

1 the bundle of documents for the hearing -- this is not  
2 a case in which I have a statement from the widow.  
3 I have made an assumption about it. In those  
4 circumstances, the issue is, I think, a little simpler.

5 If I receive plausible statements from the two  
6 people you have referred to, then the weight to be  
7 afforded to openness to see if anything else turns up is  
8 much greater than in those cases where there is no such  
9 thing.

10 Furthermore, the likely end result would be that  
11 they will be told either by being published or being  
12 told for their own benefit, but not broadcast to the  
13 wider world unless they wish it to be, what the real  
14 name was.

15 Let's deal with it on the alternative bases. If you  
16 are able to provide me with the statements and they look  
17 plausible, then no doubt you would say "publish now".  
18 If you are not able to, then it may be that I will have  
19 to wait until I have heard from one or both of the two  
20 people concerned before making a decision about it. But  
21 I suppose it wouldn't have to await the substantive  
22 hearing, it could precede it.

23 The interests in not publishing would then, I am  
24 sure you would submit, form very little to counteract  
25 their right to know and the public right to know.

1 MS KAUFMANN: Yes.

2 THE CHAIR: Anyway, I think it does depend on whether or not  
3 I can be provided with statements now. I ask that,  
4 I won't take it amiss if I'm not provided with them.  
5 I would welcome an explanation if I'm not and it can all  
6 be done in writing.

7 MS KAUFMANN: I'm grateful. We will do that.

8 Mr Hall, anything about that?

9 Submissions on behalf of the Metropolitan Police Service by  
10 MR HALL re HN297

11 MR HALL: Yes, I think so. Because it raises quite a tricky  
12 and new area --

13 THE CHAIR: It does, yes.

14 MR HALL: -- that I have not done the thinking on.  
15 Obviously, dead, I'm not conscious of what the  
16 evidence is that the widow has put in --

17 THE CHAIR: I don't think there is any, which is why  
18 I expressed myself as I did.

19 MR HALL: Right.

20 THE CHAIR: I will check that. I have the files in my safe  
21 in my room here and I need to check that obviously. If  
22 that is right, and the form of words I have chosen  
23 suggest it is, then it really is an open goal and if  
24 I am faced with plausible evidence that something did go  
25 wrong and it is in the period when things may well have

1           started to go wrong, then the public interest in  
2           publishing becomes much more compelling.

3   MR HALL:  The only things I would wish to think about is  
4           that threshold of plausibility.  One would probably need  
5           to think a bit carefully about whether or not the  
6           threshold of a plausible allegation is enough to require  
7           the immediate disclosure of a name.  Because, as you  
8           say, the real issue here is the moral right to know.  
9           There is the side issue that maybe if you know the real  
10          name that may throw some more light, but in my  
11          submission that is less forceful.

12  THE CHAIR:  It is actually understanding what happened as  
13          well which caused a practice which undoubtedly occurred  
14          for whatever reason --

15  MR HALL:  There is that.

16  THE CHAIR:  -- of forming deceitful relationships with  
17          women, or possibly deceitful, but I think actually  
18          deceitful in most cases and possibly in some, whether  
19          this is individual officers going off piste or whether  
20          it is actually a practice is one of the things I have to  
21          try to get to the bottom of.

22  MR HALL:  Yes, we tried to get to the bottom of whether he's  
23          a manager and one of the difficulties is working out  
24          whether he was.  Our current view is that he was not  
25          a manager, although there are indications the other way.

1           I think what I'm building up to is to say I would  
2           rather not make a final submission now. I would welcome  
3           the opportunity to think about what we would be saying  
4           about the threshold, whether plausibility is enough,  
5           process, whether one should do it now or later.

6           Perhaps once a decision has been made by  
7           Ms Kaufmann, now, I would in these circumstances  
8           probably invite you to allow us to see what is said, not  
9           in any way to check or undermine what is said, but just  
10          so that whatever submissions we decide to make if any  
11          are made on the fullest information.

12        THE CHAIR: I know that there are deceased officers with  
13          elderly families whose applications I have considered  
14          and issued a minded to note about recently. It may be  
15          that the best thing to do with this is to put it back to  
16          be finally determined then with them. That will give  
17          Ms Kaufmann's team sufficient time to talk to the  
18          individuals concerned and to decide their course of  
19          action without being under tremendous pressure of time.

20        MR HALL: Yes, please.

21        THE CHAIR: Ms Kaufmann, is that an appealing suggestion?

22                As you know, I have issued a minded to note in  
23          respect of tranches 2 and 3, not for decision or debate  
24          today, obviously. My current thinking is that I will  
25          invite written representations in fairly short order,

1           then decide whether or not to hold a hearing similar to  
2           this in the light of those representations. And if  
3           there is to be one, that it would take place very early  
4           in the New Year, so that will give you some idea of  
5           timescale.

6 MS KAUFMANN: Yes.

7           Ms Brander is pointing out to me that in relation to  
8           your recent minded to note, obviously before we can make  
9           submissions we need the underlying material.

10 THE CHAIR: Of course you do. Such underlying material as  
11           there is after the elaborate but pretty unproductive  
12           process that has been gone through so far, of course you  
13           are.

14           Let me just think about that. That is in relation  
15           to the August tranches but not subsequent ones?

16 MS KAUFMANN: Whichever ones you are going to want our  
17           decision on, so that you then decide about them in  
18           January. Whichever ones they are that we are going to  
19           have to make submissions for the purpose of you making  
20           decisions on we are going to need.

21 THE CHAIR: Yes, I mean one of the things I put out for  
22           consultation -- I appreciate this is all being  
23           concertinaed and everything is being done at something  
24           of a gallop by reference to the past history of the  
25           Inquiry and some things, like the closed hearings I





1 revealed. That appears to be the condition.

2 If we were to put aside that condition at the  
3 moment, then in our submission his situation appears to  
4 be indistinguishable from HN68 in terms of the sorts of  
5 risks that we are dealing with. I know that he  
6 expresses concerns about media interest in him should  
7 his real identity be disclosed, but the fact is he's  
8 abroad.

9 If there is in fact no evidence of wrongdoing in  
10 connection with him, it is inconceivable why there  
11 should be great media interest and intrusion or interest  
12 and intrusion from protesters into his life.

13 As I indicated earlier, if there is evidence of his  
14 wrongdoing then that is to be expected and there is  
15 nothing wrong with that.

16 As I submit, there really is nothing to distinguish  
17 this case from HN68, other than the fact that he is  
18 abroad and he's indicated to you, sir, that he is not  
19 going to come back unless his identity is protected.

20 That is obviously a factor that you have to take  
21 into account, because as you say you want to make sure  
22 you get evidence before the Inquiry. We recognise that  
23 and we understand that.

24 All we can say, I would suggest, is that before you  
25 accede to that, whatever discussion can take place takes

1 place to reassure this individual as to the likelihood  
2 of the sorts of intrusion that he anticipates taking  
3 place to see whether or not in fact it is possible to  
4 persuade him that that is extremely unlikely but the  
5 interest in openness will be served should he give his  
6 true identity or agree to come back if his true identity  
7 is --

8 THE CHAIR: I don't think there is any question of anybody  
9 harassing him. But I do know something about his  
10 personal circumstances and I know the country in which  
11 he lives and the circumstances in which he lives, and  
12 I readily understand that there would be considerable  
13 disturbance to him and his family if his name were to be  
14 published.

15 In those circumstances, if he says, well, I won't  
16 cooperate if you publish my name, I'm put in a situation  
17 in which I think I have own one answer to give.

18 MS KAUFMANN: Yes, I can see the difficulties that presents.

19 THE CHAIR: Yes.

20 MS KAUFMANN: So there is nothing more I can say again on  
21 this particular officer.

22 THE CHAIR: No.

23 Mr Sanders?

24 Submissions on behalf of HN321 by MR SANDERS

25 MR SANDERS: Thank you, sir. This is a case obviously where

1 the cover name would be revealed. As you know, HN321 is  
2 in his 70s.

3 THE CHAIR: Yes.

4 MR SANDERS: He was deployed for a matter of months in the  
5 late 1960s, almost 50 years ago, against two groups that  
6 are now defunct, but not core participants in this  
7 Inquiry. He's a very peripheral figure.

8 In terms of his rights and interests under  
9 article 8 --

10 THE CHAIR: That is a nice moot point, isn't it, whether he  
11 has any if he's not within the territory of the  
12 United Kingdom?

13 MR SANDERS: Sir, I am happy to make submissions on that at  
14 some point, but I'm not prepared to do that today.

15 THE CHAIR: No, quite. I have had to look at this issue in  
16 other contexts and it is all fuzzy, like so much  
17 article 8 law.

18 MR SANDERS: Sir, yes.

19 In my submission, even if there were some issue  
20 about extraterritorial effect, when it comes to harm and  
21 damage, under the statute and when it comes to fairness,  
22 the same interests are very much in play and the same  
23 balancing exercise needs to be undertaken.

24 THE CHAIR: Yes.

25 MR SANDERS: The first submission I make in this regard is

1 Ms Kaufmann suggests that in effect it is a heads she  
2 wins tails I lose situation, because if the officer has  
3 done nothing wrong then publication of their real  
4 identity will have absolutely no consequences for them.  
5 If they have done something wrong, publication of their  
6 identity may lead to confrontation but that is too bad  
7 and they deserve that.

8 In my submission, that submission is based on  
9 a false premise because a former officer who has done  
10 nothing wrong is in a qualitatively and normatively  
11 different position from one who has done something  
12 wrong, in terms of what he can expect should be done  
13 which has an impact on his private life and has an  
14 impact on his expectations.

15 Because this is an individual who 50 years ago was  
16 asked to do something for the state, which the state  
17 benefitted from and which he did on a certain basis.

18 In the intervening 50 years he's lived his life on  
19 the instructions of the Metropolitan Police Service  
20 without disclosing that. He has not talked about that,  
21 hasn't been to the press, has not appeared on TV, hasn't  
22 talked to other people about it. All of that shapes his  
23 private life, shapes his identity, shapes his zone of  
24 interaction, his autonomy for the purposes of article 8.

25 Revealing to the world, revealing to people who

1 didn't know that about his past that that is the case is  
2 going to have consequences for him. Now those  
3 consequences may not sound as confrontation or  
4 harassment, but they are consequences which have  
5 ramifications which he does not wish to experience and  
6 which he's entitled to be protected from.

7 He has kept this secret. It is now too late for him  
8 to live a different life, for him to have a different  
9 50 years in which this is okay for him to discuss  
10 because other people are going to be discussing it. So  
11 in terms of his article 8 rights they have been wrapped  
12 up, shaped and defined by the secrecy that he was  
13 required to observe.

14 In my submission, bearing in mind there is not an  
15 allegation of misconduct, there is no suggestion he did  
16 anything other than what he was asked to do, to identify  
17 him -- because his cover name will be disclosed and  
18 anyone who says or remembers anything about him may come  
19 forward, but to disclose his true identity, first would  
20 not achieve anything. Secondly, is completely  
21 unjustified.

22 If you come to whether it would achieve anything,  
23 Ms Kaufmann posits two instrumental benefits.

24 One is that by disclosing his true identity we can  
25 look at his subsequent career and whether or not he was

1 in some way overpromoted.

2 In my submission, that's outside the terms of  
3 reference. But it is not achieved in any event by  
4 closing his true identity to the world. You, sir, can  
5 do that if you felt it was necessary and felt it was  
6 within your terms of reference, without that  
7 publication.

8 THE CHAIR: Yes, I think Ms Kaufmann's point about looking  
9 at subsequent career is to inform views about the time  
10 point he was with the Special Demonstration Squad. But  
11 this is such ancient history that that seems wildly  
12 unlikely to play any part. Furthermore, the groups into  
13 which deployments were made did not involve race, and it  
14 seems unlikely to have given rise to the sort of  
15 problems that arose later between the sexes.

16 MR SANDERS: Sir, yes. Because at this stage in the  
17 evolution of the unit it was very much attending  
18 meetings using a false name, but nothing more than that.

19 THE CHAIR: Yes. It is the sort of deployment that occurred  
20 long before the Special Operations Squad/Special  
21 Demonstration Squad were formed I think. The books  
22 about Special Branch say they used to turn up at public  
23 meetings and find out what was going on there decades  
24 ago.

25 MR SANDERS: Sir, yes.

1 THE CHAIR: Even a century ago.

2 MR SANDERS: Indeed.

3 The second instrumental argument is that by  
4 publishing his real name it may be that someone comes  
5 forward to say that he was in some way racist or sexist  
6 away from his undercover work.

7 In my submission, first that is outside the terms of  
8 reference. That is nothing to do with undercover  
9 policing. That is to do with an inquiry into everything  
10 about anyone who was an undercover police officer --

11 THE CHAIR: I can't do that and it's outside the terms of  
12 reference anyway, even if I could.

13 MR SANDERS: It would just become endless, because someone  
14 comes forward and say, "Well, I heard him make a racist  
15 remark", he can disagree. What is the point of this  
16 Inquiry conducting factual investigations into what  
17 happened in some other context?

18 THE CHAIR: His deployment is part of a significant bit of  
19 history, how the Special Demonstration Squad -- as it  
20 eventually became known -- came into existence and why.  
21 That is basically a high level question.

22 MR SANDERS: Sir, yes. I have nothing further to say on  
23 this.

24 THE CHAIR: No.

25 HN326 now --

1 MR HALL: Sir, sorry to interrupt.

2 THE CHAIR: Sorry, Mr Hall, I do apologise, I overlooked  
3 you.

4 Submissions on behalf of the Metropolitan Police Service by

5 MR HALL re HN321

6 MR HALL: Can I ask the question, at some stage I would like  
7 to respond to some of the propositions made at the level  
8 of principle yesterday and I was going to reply in the  
9 context of this officer.

10 THE CHAIR: Okay, fine.

11 MR HALL: But it can be any other officer, sir. But if you  
12 are willing to hear I was going to deal with a point  
13 which was addressed by counsel for the non-states  
14 yesterday, which was about the importance of real names  
15 for confrontations to take place.

16 What was said, at page 56 of the transcript, is that  
17 there was a public interest in "these people being held  
18 to account". Obviously I'm saying this in the context  
19 of this officer but it could be in the context of any  
20 other officer.

21 In my submission, one does need to ask yourself what  
22 is meant by "these people". It appears to be treating  
23 all officers identically. On behalf of the Metropolitan  
24 Police Service, we would submit that it is inappropriate  
25 to start off on the footing that all officers are



1 identical.

2 Officers will have done many different things, some  
3 of them very commendable, some of them very  
4 uncommendable, but the notion that in general one needs  
5 to get at the real name in order to "hold these people"  
6 to account really appears to be the bad apple/rotten  
7 barrel theory. In other words the entirety of the  
8 Special Operations Squad/Special Demonstration Squad  
9 over its time has been up to such terrible practices  
10 that as soon as you are an officer from that unit you  
11 are one of these people and you need to be held to  
12 account.

13 Obviously I will be submitting that would be an  
14 inappropriate stance to take, because it involves  
15 generalising and as we know these cases turn on their  
16 particular facts.

17 The second point, related point -- Mr Sanders just  
18 touched upon this -- was this notion of confrontation.  
19 The submission is made, well, really officers have  
20 nothing to fear at all, because if they have done  
21 something wrong then they deserve to be confronted. If  
22 they have not done anything wrong, then they have  
23 nothing to fear about being confronted and any  
24 confrontation would be so de minimis it wouldn't matter  
25 anyway.

1           Our submission is that cannot be right.  If  
2           a person -- let us take an elderly officer, but it could  
3           be a more recent officer -- has genuine subjective  
4           fears, why, we ask, should they be disregarded because  
5           in fact counsel tells you that they have nothing to  
6           fear.  A genuine fear is a genuine fear and is an aspect  
7           of harm, however founded or unfounded.

8           In any event, the Metropolitan Police Service does  
9           not agree that the submissions that are made about only  
10          happening justly or just confrontation only happening  
11          when it is deserved means that those officers have  
12          nothing to fear.  Because it does rather depend upon  
13          what you mean by "wrongdoing".

14          When you put that to counsel, the list of potential  
15          wrongdoing expanded somewhat alarmingly.  So it  
16          comprised miscarriage of justice, racist attitude,  
17          sexual relationships obviously, close personal  
18          relationships and, sir, you teased out in dialogue that  
19          is simply fulfilling the meaning of a covert human  
20          intelligence source.

21   THE CHAIR:  I don't actually understand Ms Kaufmann to say  
22          that that either does or necessarily does amount to  
23          wrongdoing.  But she was merely pointing out -- I think  
24          correctly -- the circumstances which might give rise on  
25          the part of someone to whom that had occurred to

1           confront the person in their real name and existence.

2   MR HALL:  It is undoubtedly right that human beings will  
3           feel betrayed when they find out they have had someone  
4           from the state looking at their business and deceiving  
5           them.  That is of course right as a matter of human  
6           reality.  Really the punchline of the submission is that  
7           that is a legitimate reason for giving out the real  
8           names.  My point is simply no it is not.  The point of  
9           the Inquiry is to get to the truth, it is not to give  
10          people an opportunity to confront.

11   THE CHAIR:  I think her point was that people who feel  
12          betrayed will in some circumstances wish to confront the  
13          person who has betrayed them.  But that's ordinary human  
14          activity, it is not unlawful and you have to put up  
15          with it.

16   MR HALL:  I think her submission was actually aimed at the  
17          point of this hearing, which is does it weigh in the  
18          balance?

19                I think her submission is it does weigh in the  
20          balance.  That that natural desire to confront people is  
21          itself a reason why you should release real names.  If  
22          I am wrong I am wrong, but our submission is that that  
23          is not something that should lead the Inquiry to release  
24          a real name.  Because were it the case, one would be  
25          saying, probably in every case of a lawful undercover

1 deployment, well there is bound to be someone deployed  
2 so we better put their real name out there so that  
3 person can understandably confront them.

4 In our submission, wrongdoing -- of course there are  
5 going to be areas of grey but that is a million miles  
6 away from the sort of sexual relationships we are  
7 talking about. We would be very worried indeed about  
8 mission creep, so that one starts off with wrongdoing  
9 which we all know, we can see it, and then one gets into  
10 wrongdoing which is really nothing to do with the poor  
11 conduct of the officer themselves but something quite  
12 fuzzy.

13 THE CHAIR: It is not in principle wrongdoing, it is  
14 performance by the undercover officer of his or her job.

15 MR HALL: Absolutely, statutorily based. Where done under  
16 statute, entirely lawful. That is what section 29 says,  
17 it is lawful.

18 Other aspects that have been suggested as types of  
19 wrongdoing are blacklisting as an outcome of the  
20 information received, that does seem to be an  
21 extraordinarily wild category.

22 THE CHAIR: That is a outcome rather than an act. It may be  
23 that it includes wrongdoing by the person gathering the  
24 information, but it may not necessarily.

25 MR HALL: But it may not. It may have nothing to do with

1 the poor officer who has reported, and it happens that  
2 his intelligence has been taken by another part of an  
3 organisation and handed -- it is not wrongdoing.

4 Similarly, my learned friend said that anyone who  
5 has engaged in criminal activity. Again, that cannot be  
6 right, because as we know criminal activity will be  
7 authorised.

8 THE CHAIR: A bit of flyposting is one thing, but there are  
9 other acts alleged and in one or two instances which are  
10 admitted to have occurred which don't fall into that  
11 category.

12 MR HALL: Absolutely, it depends upon the facts but we do  
13 not accept that simply because someone has engaged in  
14 criminal at this time -- you have the point.

15 The other one that we noted is the definition of  
16 racism, which was that they were targeted into a black  
17 justice campaign. Again, it cannot be right to say that  
18 that is wrongdoing on the part of an officer -- personal  
19 wrongdoing -- because if they were targeted into a black  
20 justice campaign.

21 There may be a compelling or a good ground to  
22 release the cover name in such a situation --

23 THE CHAIR: I think that that issue is more likely to arise  
24 in relation to managerial decisions than conduct on the  
25 ground by undercover officers.

1 MR HALL: That must be right. And I am grateful, yes. It  
2 can't be right to say of an officer who was carrying out  
3 his or her --

4 THE CHAIR: If it is managerial decisions then the  
5 likelihood is that they will be disclosed.

6 MR HALL: The accountability is different, yes.

7 THE CHAIR: No, but the likelihood is that the real name  
8 will be disclosed so that any information about that  
9 person, subsequent career included, will be available  
10 anyway.

11 MR HALL: As I have previously indicated I don't accept the  
12 position that anyone who is a manager --

13 THE CHAIR: I know you don't. But if my forecast is right  
14 then the problem will not arise in practice, or at any  
15 rate will rarely arrive in practice.

16 MR HALL: Yes. I will confront that as and when it arises.  
17 Just to complete the submissions on confrontation,  
18 all of these "wrongdoing" were put forward as reasons  
19 for releasing the real name. We respectfully disagree  
20 that they are reasons for releasing the real name,  
21 whether it is of this particular officer or indeed any  
22 other officer.

23 THE CHAIR: As I understand it, it was advanced on the basis  
24 that well this is what openness will do. It will permit  
25 these various categories of case to be explored and

1           that's why you should do it.

2   MR HALL:  Ah, well, that's the fudge.  Yes, it will allow  
3           them to be explored all well and good terms of  
4           reference.  What is in fact being said is that there is  
5           an extra benefit that the Inquiry should allow,  
6           positively take into account the side of openness, which  
7           is confrontation.

8   MS KAUFMANN:  No.

9   THE CHAIR:  I don't think so, I don't think that is fair --

10  MS KAUFMANN:  Shall I put it how I put it?

11           The consequence of disclosing the real names insofar  
12           as it means that individuals will be confronted by those  
13           who feel they have been betrayed is not a reason not to  
14           disclose the real names.  It is quite the opposite of  
15           how you are putting it.

16           The fact that it will have this consequence and  
17           interfere with article 8 rights in that way, is not  
18           a reason not to disclose, because that is a natural --

19  THE CHAIR:  I think I had understood you correctly and I did  
20           understand Ms Kaufmann's submissions in that sense.

21  MR HALL:  I am grateful, and I was wrong about how you put  
22           it, but the consequences of the confrontation are, we  
23           would submit, clearly material depending on what they  
24           are --

25  THE CHAIR:  And they will vary from case to case.

1 MR HALL: And they will vary.

2 THE CHAIR: Confronting a fit middle aged man with what he's  
3 done 20 years before is one thing. Confronting the  
4 85-year old widow of a deceased officer is quite  
5 another, and there is anything in between.

6 MR HALL: Yes.

7 Perhaps where I still do differ from Ms Kaufmann is  
8 the sanguine view that where a confrontation takes place  
9 one has nothing to worry about, because only in cases of  
10 genuine wrongdoing will confrontation really take place  
11 and where it does take place it will be proportionate or  
12 lawful in that way.

13 THE CHAIR: It is not always confrontation either. It is  
14 simply unwelcome attention from the local media, one's  
15 neighbours, the people with whom one works if still in  
16 employment. All of those sort of things.

17 They are factors, they may or may not count heavily,  
18 it remains to be seen. It all depends on the individual  
19 case.

20 MR HALL: If we are talking about real names then the only  
21 circumstances, we would submit, in which one is in  
22 practice going to release those real names is the long  
23 term sexual relationships or perhaps more senior  
24 managers. So the confrontation that is going to arise  
25 there is in quite a limited category of cases.



1 THE CHAIR: I am not excluding the possibility that there  
2 will be other situations in which it arises, but those  
3 are the two obvious ones.

4 MR HALL: Yes. The reason why one should not be sanguine  
5 about what confrontation means is that of course what  
6 one person understands by wrongdoing -- Ms Kaufmann  
7 assures you that really this is what they understand by  
8 wrongdoing -- will not necessarily be shared by others.  
9 What is viewed as a proportion and lawful sort of  
10 confrontation, I am sure Ms Kaufmann speaks for all of  
11 her clients, I don't doubt that for a moment, but of  
12 course one is not simply dealing with the core  
13 participants, those who Ms Kaufmann represents, but one  
14 is also dealing with other people who may take a very  
15 different view as to the consequences of a deployment  
16 and one is not simply talking about now but one is  
17 talking about the rest of an officer's natural life.

18 So it is a pretty big decision to say "don't worry  
19 about the consequences of confrontation". We say do  
20 worry, and officers are entitled to worry about that,  
21 which is why a real name ought, in our submission, only  
22 to be exposed in the more narrow categories that you  
23 have outlined.

24 Ms Kaufmann of course is saying -- and there is no  
25 point in hiding the difference between us -- she's

1           really saying, "Don't worry about real names at all",  
2           and our submission is do.

3   THE CHAIR: She, I think, accepts that where there is a risk  
4           to life and limb then different considerations apply.  
5           I think her remarks are addressed to those cases where  
6           there is not such a risk.

7   MR HALL: Yes, her remarks are addressed to lesser cases and  
8           she invites the Inquiry to be sanguine about all those  
9           other human consequences, whether it is the effect on  
10          neighbours, children, livelihoods, jobs and whatever.

11   THE CHAIR: In the end it all depends and it all depends on  
12          the individual facts. There is no getting away from  
13          that and that is why this exercise is being undertaken  
14          to look at the case of each officer. So to take 321, as  
15          an individual, even if he were not abroad and this was  
16          the only way of getting his evidence, the concerns he  
17          expresses about the circumstances in which he lives  
18          would still be real.

19   MR HALL: Yes.

20                 Sir, I think that is all, then, I need to say on  
21          that.

22   THE CHAIR: Ms Kaufmann, I suspect if we do them at a gallop  
23          we might finish this afternoon. I'm not going to compel  
24          everything to do them at a gallop and it may be that  
25          there is something to be said for having a bit of time

1 left over tomorrow morning so that esprit d'escalier can  
2 be voiced.

3 MS KAUFMANN: Yes, I think we have four more to get through.

4 THE CHAIR: Let's embark on them. I am not intending to  
5 stop until 4.30. That was not, as it were, an oblique  
6 way of saying, "Shall we stop now?"

7 MS KAUFMANN: I think that we are now on HN326.

8 THE CHAIR: Correct.

9 Submissions on behalf of the non-state, non-police core  
10 participants by MS KAUFMANN re HN326

11 MS KAUFMANN: Tab 68 is this officer's personal statement,  
12 which is very frank, expresses no fears for personal  
13 safety. Wants to carry on living a quiet life, doesn't  
14 want press intrusion, all very understandable, but  
15 doesn't express any concerns for physical safety.

16 We do have a risk assessment, which at paragraph 13  
17 says that the risk of physical harm is medium but there  
18 is no basis given for this at all. That seems to be  
19 contrary to the officer's own view.

20 Obviously I can't say anything meaningful whatsoever  
21 about that risk assessment, but if we are assuming that  
22 the risk assessment does not bear out any realistic risk  
23 to this particular officer's life should the real name  
24 be disclosed.

25 Then again this is an instance -- and I hear

1 everything that you say about these cases being old  
2 cases and so forth -- where disclosure of the real name  
3 is going to have very limited impact, if any, upon this  
4 particular officer. But it is an aspect of holding the  
5 police to account in respect of their activities, public  
6 confidence in the Inquiry process, and the article 10  
7 interests of the press being served.

8 It is really no different to the HN68 case.  
9 I really don't have any further submissions to make  
10 on it.

11 THE CHAIR: That is very economical.

12 This I think is one of yours?  
13 Submissions on behalf of the Metropolitan Police Service by

14 MR HALL re HN326

15 MR HALL: It is one of mine. Same point, very superficial  
16 deployment, almost 50 years ago.

17 It looks like this gentleman kept the code of  
18 secrecy very strongly. He says he didn't even tell his  
19 parents. He says disclosure of my real name causes me  
20 worry and concern. No reason to doubt that that is  
21 a genuine concern.

22 The submission is made that the police need to be  
23 held to account, I don't know what that means in this  
24 context. His cover identity, Douglas Edwards, is  
25 revealed. Quite what is meant by "holding to account"

1 is difficult to understand. It is not said that this  
2 officer has done something wrong as far as I understand.  
3 It entirely ignores the basis upon which officers  
4 undertook this sort of work.

5 It reduces it to almost meaninglessness --

6 THE CHAIR: I think it is at a time when it was genuinely  
7 understood that everything would be kept secret --

8 MR HALL: Yes.

9 THE CHAIR: -- rather than any express, still less written,  
10 promise being made.

11 MR HALL: But nonetheless valid for that.

12 THE CHAIR: Of course.

13 MR HALL: Judged by his actions, not telling anyone at all.

14 THE CHAIR: It is an immensely attractive promise, secrecy,  
15 isn't it. I'm going to tell you something and you must  
16 not tell anybody about it, it gives it an importance  
17 that it otherwise might not have.

18 MR HALL: Maybe. I mean, I'm not going to go there, if  
19 I may not, because secrecy is important obviously. But  
20 also it is a point Mr Sanders makes. However actually  
21 unnecessary it may have been, if a person constructs  
22 their entire life on the basis of that secrecy, doesn't  
23 tell their neighbours, their friends, their family and  
24 the like. It just seems extraordinary without some  
25 pretty good reason to pull all that away. It just

1           distinguishes these cases from the ordinary case in  
2           which a party to a litigation or an individual in an  
3           inquest seems anonymity. That is how they have built  
4           their lives. And it is not so much granting  
5           restrictions but taking them away, restrictions which  
6           they would naturally expect to exist.

7           Our submission is that even though one is in the  
8           territory of subjective worry and concern, those are  
9           relevant considerations and outweigh the presumption of  
10          openness on the facts of this particular case.

11       THE CHAIR: Yes.

12                 HN329 next, I think.

13       MS KAUFMANN: Yes.

14       Further submissions on behalf of the non-state, non-police  
15                 core participants by MS KAUFMANN re HN326

16       MS KAUFMANN: Can I just say that obviously even though  
17                 these events took place a long, long time ago, we do  
18                 have core participants in relation to these events.

19                 Three of them were here yesterday concerned with  
20                 1968.

21       THE CHAIR: I don't doubt that there are people still alive  
22                 who are deeply interested --

23       MS KAUFMANN: Deeply concerned and interested.

24       THE CHAIR: Indeed one or two of them have become well known  
25                 public figures since and are core participants.

1 MS KAUFMANN: Indeed.

2 Submissions on behalf of the non-state, non-police core  
3 participants by MS KAUFMANN re HN329

4 MS KAUFMANN: So 329, this is another.

5 THE CHAIR: Same box, isn't it?

6 MS KAUFMANN: Same box, way, way back. Personal statement  
7 at tab 72. Of significance that this officer doubts  
8 that anybody would actually remember the cover name, so  
9 there is that instrumental purpose that might be served.

10 I should add this, that in relation to the use of  
11 real names way back when in 1968 and 1969 -- when the  
12 names of deceased children were not being used -- my  
13 understanding is that quite often the cover name would  
14 use the same first name as the real name. So actually  
15 disclosure of the real name may trigger memories in  
16 relation to that individual.

17 Also there is then also the possibility of putting  
18 the picture together through disclosure of the real name  
19 and ways in which that can lead to identification  
20 through other sources.

21 This statement is a pretty laid back statement,  
22 actually. The only expression of concern from this  
23 particular officer is set out at paragraph 22:

24 "I would prefer that my real name and status as  
25 a former undercover officer didn't come out. I don't

1 want to be associated with the idiot that caused all  
2 this, because it is a question of being tarred with the  
3 same brush."

4 So, yes, would prefer it not to come out. But not  
5 actually any serious sense of a risk to his own  
6 safety --

7 THE CHAIR: There is no question of safety. He appears to  
8 be a reasonably phlegmatic person who takes things in  
9 his stride.

10 MS KAUFMANN: Yes. In a sense it is neither here nor there  
11 for this individual whether it comes out or not. That  
12 is one of the reasons why we say, well, then, it should  
13 come out. Because it is better to be open for all the  
14 reasons that we have advanced than to impose secrecy  
15 where it is not needed.

16 Can I double this up with the next officer because  
17 it is very similar?

18 THE CHAIR: I better just hear if Mr Halls has anything to  
19 say about this one.

20 Is this one of yours, Mr Hall?

21 Submissions on behalf of the Metropolitan Police Service by

22 MR HALL re HN329

23 MR HALL: Just to say where an individual is phlegmatic,  
24 that is precisely why one needs to look at their words  
25 with care and weight. Where this phlegmatic individual



1           has expressed a preference one can sensibly read into  
2           that that he has constructed his life and would rather  
3           be left alone.

4   THE CHAIR:   Exactly, we are dealing with a preference  
5           against an offchance that something might conceivably be  
6           discovered.   These are two interests of pretty tiny  
7           weight.

8           Next one.

9           Submissions on behalf of the non-state, non-police core  
10           participants by MS KAUFMANN re HN330

11   MS KAUFMANN:   The next one I think is again Mr Sander's  
12           client.   That is tab 74, personal statement.

13           This individual is even more phlegmatic.

14           Paragraph 15:

15           "Finally, whether or not the Commissioner of Police  
16           wishes to apply for my anonymity to be respected is  
17           a choice to be made by him or her, as the case may be."

18           So really not concerned in the slightest.

19           Dealing again very briefly with this, this officer  
20           is simply not concerned about it.

21           In those circumstances, let us know the officer's  
22           real name.

23   THE CHAIR:   Right.

24           HN330 is one whose cover name was not known but as  
25           a result of another officer is now known.

1 MS KAUFMANN: That is all I propose to say in relation to  
2 this officer.

3 THE CHAIR: Snap, Mr Hall?

4 MR HALL: Yes, I think it is a DL one.

5 THE CHAIR: I am sorry, it is Mr Sanders, isn't it?  
6 I do apologise.

7 Anything to add to what Mr Hall has said about this?  
8 Submissions on behalf of HN330 by MR SANDERS

9 MR SANDERS: Just to confirm that we make the application on  
10 his behalf on his instructions.

11 THE CHAIR: Quite.

12 MR SANDERS: What he may have said in correspondence with  
13 the Metropolitan Police Service prior to being given  
14 legal representation and taking advice is one thing.  
15 The application is made, he doesn't wish his real name  
16 to be published. He's in his 80s, his deployment was  
17 very, very short in 1968, all Grosvenor Square related  
18 and then just the same submissions as I made for 321.

19 THE CHAIR: Yes, thank you.

20 MS KAUFMANN: We are actually on HN333.

21 THE CHAIR: HN333. We are going to finish.  
22 Submissions on behalf of the non-state, non-police core  
23 participants by MS KAUFMANN re HN333

24 MS KAUFMANN: HN333 is a real and cover name minded to  
25 withhold. The Metropolitan Police Service applied only

1 to withhold the real name. We see in relation to the  
2 reasons a very small risk that:

3 "If his cover name were to be associated with the  
4 valuable duties which he performed subsequent to his  
5 deployment he would be of interest to those who might  
6 position pose a threat to him or his family."

7 A very small risk, that is in relation to the cover  
8 name.

9 We ask ourselves if there is only a very, very small  
10 risk, that is that it is highly unlikely, what is the  
11 basis for refusal to disclose the cover name in this  
12 particular officer's case? We are, I am afraid, at  
13 something of a loss as to what the basis is that this  
14 individual should be treated differently to the other  
15 individuals where at least the cover name is being  
16 disclosed.

17 I don't know whether it is possible to shed any  
18 light upon that.

19 THE CHAIR: I can't, I am afraid. There are closed reasons  
20 as you know and I am afraid I can't say any more about  
21 them than is in the open note.

22 As you know, this is a judgment that I have made and  
23 it is not based upon the published risk assessment.

24 MS KAUFMANN: No. Well I mean in those circumstances, there  
25 is really absolutely nothing I can say.

1 THE CHAIR: I readily appreciate that.

2 MS KAUFMANN: It seems like a very strange decision to us,  
3 but we are unable to identify why it looks strange and  
4 therefore to say anything sensible about whether it in  
5 fact is an illustration of you taking a wrong turn. We  
6 simply can't say anything.

7 THE CHAIR: You are quite right, I agree with that.

8 Ms Sikand wants to say something about it I think.

9 Submissions on behalf of Mr Peter Francis by MS SIKAND  
10 re HN333

11 MS SIKAND: Sir, only that as you know we have said  
12 something in writing about this officer. Not because  
13 he's an officer known to Mr Francis but because of  
14 the principle position and we talked about what  
15 Ms Kaufmann has to say about that it is difficult to see  
16 on the face of what we have been disclosed why you would  
17 make a different decision in relation to this officer,  
18 given the levels of risk et cetera.

19 THE CHAIR: Again, Mr Francis knows of no fact which  
20 supports the submission which you make on his behalf  
21 that the cover name should be disclosed?

22 MS SIKAND: It is a different era of officers, as you know.

23 THE CHAIR: Of course. It is self-evident, but I was just  
24 confirming it.

25 MS SIKAND: That's right.

1 THE CHAIR: Yes. Thank you.

2 Ms Kaufmann?

3 Further submissions on behalf of the non-state, non-police  
4 core participants by MS KAUFMANN re HN333

5 MS KAUFMANN: All I would want to say is just as a marker  
6 for the future, this is an officer whose activities were  
7 confirmed in the early period.

8 THE CHAIR: Yes.

9 MS KAUFMANN: Obviously as we move forward and we get to  
10 officers whose activities arose in the period with which  
11 this Inquiry is really concerned --

12 THE CHAIR: Yes.

13 MS KAUFMANN: -- this is obviously, this sort of gisting, is  
14 going to cause great problems for us because those  
15 officers will be important in relation to the Inquiry's  
16 activities and to the extent that we are totally shut  
17 out from saying anything meaningful or understanding  
18 anything meaningful it will be much more difficult.

19 THE CHAIR: I appreciate that.

20 There will be decisions I'm minded to make, the  
21 explanations for which will leave you none the  
22 wiser. I am afraid that it is unavoidable. I do my  
23 best to explain what I'm doing, but sometimes I know  
24 I don't always succeed and sometimes I can't explain.

25 This is one of those cases where I can't say any

1 more than is in the open note.

2 Mr Sanders?

3 Submissions on behalf of HN333 by MR SANDERS

4 MR SANDERS: Sir, very little to add other than just to  
5 highlight the additional closed letter that we sent in  
6 relation to this former officer dated 8 November. It  
7 was just one further matter, closed matter --

8 THE CHAIR: I don't believe I have seen that, but thank you  
9 for drawing it to my attention.

10 Closed letter, 8 November?

11 MR SANDERS: Yes, it is --

12 THE CHAIR: It is possible I have seen it and I have  
13 forgotten about it, but I don't recollect having seen  
14 it.

15 MR SANDERS: Obviously, if it has gone astray, then we will  
16 provide --

17 THE CHAIR: A vast amount of material comes in. Quite often  
18 I see almost everything, but you will appreciate that my  
19 capacity to remember things is not infinite and I may  
20 therefore have seen the letter and forgotten it.  
21 I can't at the moment bring it to mind. I will look at  
22 it.

23 MR SANDERS: I am grateful.

24 There is nothing more I can say in open about this.

25 THE CHAIR: No.

1           HN343, the disclosure exercise such as it is has not  
2           been performed and therefore I am not inviting any  
3           submissions on HN343. We will put HN343 off to a later  
4           date.

5           Mr Barr, anything you want to say in conclusion?

6           Discussion re statement of Louise Meade.

7   MR BARR: There is one matter, sir, which has not been  
8           publicly ventilated and I think it would help if I said  
9           something about it.

10           That is to explain the inclusion in the bundle of  
11           the statement of Louise Meade, which was done at the  
12           behest of the Inquiry legal team.

13   THE CHAIR: Yes.

14   MR BARR: We decided it was necessary to prepare for  
15           publishing that statement and publishing it because of  
16           what we had read in the statement of Chief Constable  
17           Alan Pughsley, on whom the Metropolitan Police Service  
18           wish to rely in support of the proposition that the  
19           revelations about undercover policing in recent years  
20           and the institution of this public Inquiry have deterred  
21           and are deterring the recruitment of undercover police  
22           officers.

23           The relevant section of Chief Constable Pughsley's  
24           statement are at tab 18 of the generic bundle right at  
25           the very back, pages 13 and 14, paragraphs 425 onwards,

1 where the Chief Constable cites a paragraph from Cairo's  
2 witness statement. That citation includes a very proper  
3 acceptance by Cairo that there may be several  
4 explanations for a decline in applications which he had  
5 been aware of.

6 The Chief Constable then goes on to try to reinforce  
7 that argument with some statistical evidence, which  
8 appears to have been derived from the College of  
9 Policing.

10 Louise Meade is the head of selection and assessment  
11 for the College of Policing, she leads and manages the  
12 selection and assessment department. Her statement is  
13 93 pages long and I don't propose to go through it in  
14 any detail at all. What I would like to say is that what it  
15 effectively communicates is that there has been a great  
16 deal of thinking and change in the recruitment processes  
17 for undercover police officers since 2011. Part of  
18 which has been to focus on ensuring that unsuitable  
19 candidates are deterred at the earliest possible  
20 opportunity and therefore only the most suitable apply.

21 It follows from that, and from the statistics which  
22 she's published, which do not establish a fixed pattern  
23 or statistically reliable trend, that we consider that  
24 it cannot be said that there is any statistical basis in  
25 the light of the evidence currently before the Inquiry



1 to support the proposition that Chief Constable Pughsley  
2 was trying to advance.

3 And that the proper acknowledgement by Cairo that  
4 there may well be alternative explanations for any  
5 trend, if there had been one, was quite proper. We  
6 therefore wish to draw that to public attention so that  
7 if my learned friend for the Metropolitan Police Service  
8 wishes to say anything, he can do so now.

9 MR HALL: I have not prepared to deal with this point, other  
10 than to observe that it is very important not to misread  
11 statistics.

12 THE CHAIR: Yes.

13 MR HALL: I don't know whether or not ultimately the  
14 proposition which has been accepted for decades by the  
15 courts that revealing identities of those who do  
16 valuable service in a confidential way will have an  
17 impact upon recruitment and retention. I don't know  
18 whether or not the statistics will bear that out or not.  
19 I doubt that whatever the statistics say I will abandon  
20 reliance on that proposition.

21 But if statistics are an issue, and if there is  
22 a previous perceived inconsistency, probably better to  
23 get to the bottom of it if only to discount them.

24 THE CHAIR: Yes. The fact is that at the moment the issue  
25 is not clear cut at all.

1 MR HALL: No.

2 THE CHAIR: Ms Kaufmann's submission made to me yesterday  
3 has a sounder foundation than perhaps she may have  
4 realised, although I may not be doing her full credit  
5 and her research may have been more up to date than  
6 mine.

7 MR HALL: She may know more than all of us.

8 Anyway, I think where I left it with Mr Barr was to  
9 say that unless objection was taken we would invite the  
10 National Policing Improvement Agency to see whether or  
11 not there is in fact a difference between what Pughsley  
12 says and what Meade says, and if there is explain it.

13 That would, I think, be done by Sir Robert's client  
14 rather than mine. I think that is where we left it.

15 THE CHAIR: Yes.

16 MR HALL: It is probably better not to leave this  
17 unresolved, otherwise one is simply in the position of  
18 one person says one thing, the other one says something  
19 else.

20 THE CHAIR: I doubt that it ever will be resolved, finally.  
21 I think it is one of these continuing debates most  
22 likely. I doubt, in any event, to be blunt that it  
23 makes that much difference. I have to get at the truth.  
24 If the truth is uncomfortable and deters people from  
25 volunteering to be undercover officers, so be it.

1 MR HALL: I think we would, on behalf of the Metropolitan  
2 Police Service, say that that has to register. I mean,  
3 the purpose of this Inquiry is to discover the truth,  
4 but it is not to prevent the tactic from operating  
5 again. That might -- because of the way in which things  
6 are shaping up it seems unlikely, but that consideration  
7 might play a part in certain cases where one has to  
8 accept that the imperative of allowing undercover  
9 deployments against let us bear in mind really serious  
10 crimes as well as the sort of policing that we are  
11 looking at here, has to go on.

12 It is not a case of saying, you know, let justice be  
13 done, may the heavens fall. Because what is in issue  
14 here is jolly serious, as Cairo explains in Cairo's  
15 statement.

16 THE CHAIR: I acknowledge that it is. I strongly doubt that  
17 anyone will make the suggestion that I should pull my  
18 punches, if I am minded to deliver them, in the  
19 interests of future deployments.

20 I would be very surprised if they were to be made  
21 that I would accede to them.

22 MR HALL: That is because you would be punching, as it were,  
23 when you had made findings --

24 THE CHAIR: Yes.

25 MR HALL: -- and you had exposed wrongdoing and the

1           imperative of exposing wrongdoing would be a pretty  
2           powerful punch. But we are not at that stage at the  
3           moment, we are at an earlier stage.

4   THE CHAIR: No, no we are miles away from it.

5   MR HALL: Which is why the proposition that one disregards  
6           the risk to recruitment and retention when one is  
7           thinking about people against whom nothing is known of  
8           anything wrong, that would be the wrong approach.

9           One has to have an eye to what a future officer  
10          might think if all that it takes for his or her future  
11          wellbeing to be jeopardised is for the possibility that  
12          they have done something wrong to be ventilated. Then  
13          one has an inquiry, or one has a court hearing and  
14          immediately the judge or the person in charge of  
15          the tribunal says, "Well, now an allegation has been  
16          made, tough luck".

17   THE CHAIR: I understand that, but when I get as near to the  
18          bottom of what went on as I can, I will say what I find.  
19          I will not alter what I am minded to say because of the  
20          possibility of its impact on future recruitment.

21          If what I can say cannot be said without damage to  
22          a serious public interest, such as national security or  
23          the policing of serious crime, then I will say it  
24          privately. But I am at the moment entirely unpersuaded  
25          that I should pull those punches which can be deployed

1 publicly because of a possible impact on future  
2 recruitment.

3 MR HALL: If I may say, one has to keep a red line between  
4 those two parts of the Inquiry. It was a point we made  
5 in our written submissions and I have not repeated them,  
6 but I will mention them now.

7 We are not at that stage. We are at the  
8 investigative stage where it would be unappetising for  
9 future recruits -- I will say on this on the basis of as  
10 it were common sense and what Cairo says, and he's given  
11 evidence to that effect. Undesirable for them to think,  
12 "All you need is an inquiry and then everything comes  
13 out, whatever is known".

14 At the moment the Inquiry is investigating and our  
15 submission has always been in fact that we know why we  
16 are here. There are some very bad cases of the  
17 long-term relationships, there is the matter of the  
18 Lawrence Inquiry which must be got to the bottom of.  
19 I'm not being exclusive, but those are the key reasons  
20 why we are here.

21 There are officers about whom nothing wrong is known  
22 and there is no indication that they have done something  
23 wrong. What one cannot do, we would submit -- contrary  
24 to undertakings, contrary to expectations, contrary to  
25 the covert human intelligence source code of conduct, is

1 to sacrifice those interests simply because something  
2 may ultimately come up.

3 What you are talking about, sir, is pulling punches  
4 at the end of the process. I fully understand that, but  
5 I would resist the submission that the interests of  
6 recruitment and retention count as nothing at this  
7 stage. At this stage they do count quite a lot.

8 THE CHAIR: I agree they are a relevant factor. But until  
9 we can get somewhere nearer to a sound factual basis for  
10 a conclusion, it is all assertion and speculation.

11 MR HALL: With respect, we disagree. I don't like to  
12 disagree but we do. Cairo is an authoritative source of  
13 evidence.

14 One is in that difficult position. Of course Cairo  
15 is a police officer. He might be expected to say  
16 something that would support the institution of the  
17 police. He's not an expert. He's not a Professor, but  
18 when one is asking what might be the impact be upon the  
19 cadre of future recruits and those who are currently  
20 serving in the field, where else does one go, apart from  
21 someone in Cairo's position who has all of that  
22 knowledge and experience and it is not simply anecdote,  
23 we submit, coming from a senior officer of that stature.

24 If one needs to hear from or explore further by all  
25 means, but we respectfully resist the notion that

1 nothing will do apart from statistics.

2 THE CHAIR: You are pushing an open door there, the old  
3 saying about lies and statistics is true. I don't need  
4 to be persuaded that I shouldn't rely on one set of  
5 statistics. All I have observed is that the position is  
6 not as clear cut as I had originally thought it to be.

7 We shall see where in individual cases this factor  
8 becomes relevant. And on the basis of individual cases,  
9 which I intend to decide according to their own merits,  
10 we will see whether it has any impact on future  
11 recruitment. I'm at the moment disinclined to do a top  
12 down exercise which says -- just as I'm disinclined to  
13 do it for the sake of openness full stop --

14 MR HALL: Yes.

15 THE CHAIR: -- that well, there is this risk, therefore you  
16 ought always to err on the side of avoiding it.

17 MR HALL: In fact it probably does not really arise on the  
18 cases we have looked at. I mean none of us have  
19 actually talked about it, which probably illustrates it  
20 is not going to determine it either way. But, if you  
21 like, I'm simply putting down a marker that if it does  
22 arise we would submit, as I think is common ground, it  
23 can't depend upon statistics and we do say that there is  
24 evidence which ought to be given due weight from Cairo.

25 We obviously have not gone into it here, but

1           somewhere within the six or seven volumes of  
2           authorities, there is a lot of judicial dicta to that  
3           effect.

4   THE CHAIR: I accept all of that, but the current batches of  
5           cases that I have so far considered, and issued minded  
6           to notes in respect of them, I simply can't see how that  
7           issue arises. I can't see that deciding an individual  
8           case in the manner that I am minded to gives rise to the  
9           risk of which you speak.

10           If that is so in relation to the last 50 or 60  
11           officers, then I think it is pretty unlikely to apply in  
12           the future. But we shall see.

13   MR HALL: Exactly. I mean if the matters are decided in the  
14           way you have indicated I agree. But obviously I'm  
15           responding to submissions that all of them should come  
16           out --

17   THE CHAIR: Right.

18   MR HALL: -- and we say, actually that could have an effect.

19   THE CHAIR: This is a high level submission in response to  
20           the high level submission that Ms Kaufmann has made --

21   MR HALL: Yes.

22   THE CHAIR: -- and you say that there are other  
23           considerations, and this is one?

24   MR HALL: Yes.

25   THE CHAIR: If that is the purpose, then you are pushing at



1           an open door but beyond that alarm bells are beginning  
2           to tremor.

3   MR HALL:  We will think about it, but on the face of it it  
4           seems to us that if statistics matter -- there is a big  
5           question mark -- we ought to try to see if there is some  
6           way of reconciling them for understanding them better.  
7           That is what I think we would be minded to do, even  
8           though ultimately it is likely that it will not resolve  
9           matters either way.

10   THE CHAIR:  My suspicion is that it will be interesting but  
11           wasted effort.

12   MR HALL:  We will see.

13   THE CHAIR:  Yes.  We can see.

14    Submissions by MS STEEL.

15   MS STEEL:  Could I speak for a moment, sir?

16   THE CHAIR:  Yes, you may.  You have a particular point  
17           I think about --

18   MS STEEL:  I do.  I have not been very well, I have not  
19           managed to finish reading the documents.  I had wanted  
20           to prepare something properly and I thought I was going  
21           to get overnight to do it.

22   THE CHAIR:  I am sure you will appreciate that I'm a bit  
23           reluctant to get everybody back here tomorrow.

24   MS STEEL:  I understand that.  That's why I'm doing it now  
25           slightly on the hoof.

1 THE CHAIR: Fine.

2 MS STEEL: The key reason that I wanted to speak, obviously  
3 I'm in full agreement with the submissions made by the  
4 lawyers for non-state core participants, but personally  
5 I wanted to draw your attention to the fact that there  
6 are numerous inaccuracies within a lot of these  
7 documents, and some of them relate to me personally and  
8 I find it quite insulting to -- to see and read them and  
9 know that the police are being funded to promote these  
10 inaccuracies.

11 THE CHAIR: Yes.

12 MS STEEL: And I think it is important that you know that  
13 from my perspective and the perspective of many of the  
14 women, we have seen the lies that these undercover  
15 officers are capable of, and just how convincing they  
16 are. They are professional liars. And I think that it  
17 is really important to bear that in mind when taking  
18 into account statements that they may make to you in  
19 letters or things that they may say to psychiatrists.  
20 They are professional liars.

21 It doesn't mean that everything that they say is  
22 a lie, but I just think it is important thing to take  
23 into account.

24 I particularly wanted to just refer to the statement  
25 of Mr Pughsley, which has just been mentioned, because

1           in paragraph 164 he talks about me tracing John Barker,  
2           and he refers to it as me tracing the man I knew as  
3           John Barker. He doesn't refer to me tracing the man who  
4           abused me and the motivation for that was to find out  
5           the truth about the abuse that he'd committed on me.  
6           And that is included in a section on where the heading  
7           is "Harm to individuals".

8 THE CHAIR: Could you give me a moment while I turn this up?

9 MS STEEL: Sorry.

10 THE CHAIR: Please don't apologise.

11                     This is tab 18 in the generic bundle; isn't it?

12 MS STEEL: Yes. Paragraph 164.

13 THE CHAIR: Yes.

14 MS STEEL: This is in the heading under "Harm to individuals  
15           of the fact that they might be traced".

16 THE CHAIR: Yes.

17 MS STEEL: Well the reality is that this man is an abuser  
18           and that is the context for me tracing him.

19                     Actually, the reason I was tracing him was he had  
20           faked such a good -- I was worried he was suicidal.  
21           That was why I tried to trace him, that is how  
22           professional these liars are.

23                     It is not something -- you know, the implication is  
24           that there is something suspicious about it. It is  
25           quite insulting to see it there. But also just to say

1           that straight after paragraph 164, there is no  
2           conclusion and then there is 120 paragraphs that are  
3           missing that are not gisted. I would like to know are  
4           they all about me or are some of them about me too? Is  
5           that being withheld from me?

6           You know it is quite insulting and distressing to  
7           see this material being produced, used against you, when  
8           you have already had your life invaded in this way over  
9           the course of very many years.

10           And I know that other women feel the same about  
11           things they have read about them as well.

12   THE CHAIR: May I say, before you continue, and of course  
13           you can, that although I know in general about your  
14           story -- by "story", I mean history, I don't mean tale  
15           or anything like that -- while I know in general about  
16           your history and the efforts that you made to find the  
17           man, John Dines, I have not yet read sufficiently into  
18           it to have a really detailed understanding. I have been  
19           focusing on other things.

20   MS STEEL: Right. Well, I had a two-year relationship with  
21           John Barker --

22   THE CHAIR: I do know that, yes.

23   MS STEEL: -- and he feigned a breakdown at the end of it in  
24           which he wrote me long, convoluted letters, long-winded  
25           letters, all about his personal distress, the fact that

1 he -- he indicated that he was feeling suicidal, he had  
2 been rejected by his family.

3 There was all sorts of emotional manipulation in  
4 there that made me very, very worried about his  
5 wellbeing, and that was why I tried to find him. He  
6 also told me at the time that he was still in love with  
7 me and he would come back if he could sort his head out.  
8 I worried that he was going to commit suicide, and  
9 that's why I tried to trace him down in South Africa.

10 THE CHAIR: I do know about that part of your history.

11 MS STEEL: Okay.

12 THE CHAIR: And I have read that. But I don't claim to have  
13 a full understanding of everything that you experienced.

14 MS STEEL: No. But I am just saying that to see it  
15 reprinted here as though it was something, you know,  
16 dodgy, or this poor policeman that is having his life  
17 intruded into by -- it is just, like, insulting to read  
18 it, basically.

19 Then, as I say, there is the 120-paragraphs after  
20 that that have been redacted. I don't know what they  
21 say. I would like to know what they say, especially if  
22 they are talking about me or about the other women.

23 In the mosaic report, the mosaic effect, there is  
24 again another paragraph tracing John Barker. And  
25 I wanted to say this as well because Cairo has been

1 mentioned as some great source of information: in all of  
2 these documents, if I had the time to go through them  
3 I could point out lies in all of them and inaccuracies  
4 in all of them.

5 This paragraph 4.1 describes me as a long-term and  
6 prominent activist in the field of animal rights.  
7 I have not actually been involved in the animal rights  
8 movement for over 20 years. It is not that I don't want  
9 to be associated with it, but it just demonstrates the  
10 factual inaccuracies of these documents that are being  
11 put in front of you, and the public money that is being  
12 used to basically put this stuff over.

13 I can't go through all the inaccuracies. I have not  
14 had time to read all the documents, I have not had time  
15 to prepare it.

16 THE CHAIR: No.

17 MS STEEL: The other couple of points that I just wanted to  
18 draw to your attention is that the police are holding  
19 all the evidence in this Inquiry, and yet the Inquiry is  
20 into them.

21 They are causing all the massive delays. We have  
22 heard a lot about the impact on officers' mental  
23 wellbeing: well, actually there is a massive impact on  
24 the mental wellbeing of those of us who were spied on as  
25 well and the delays contribute to that impact on our

1           mental wellbeing.

2           There is a real feeling of power imbalance between  
3           the two sides: the resources at their disposal, the  
4           representation, the time that we get to read these  
5           documents, understand them and discuss them with our  
6           lawyers and indeed with each other.

7           The two points I just wanted to make briefly, you  
8           mentioned yesterday about the possibility of releasing  
9           the names of the groups spied on. I personally think --  
10          and I think that most, if not all, of the core  
11          participants think -- that would be a good step to take  
12          immediately. It would start to restore some faith in  
13          whether anything is actually going to come out of this  
14          Inquiry.

15          Also, Mr Hall referred earlier to the key reasons  
16          for this Inquiry being the relationships and the  
17          Stephen Lawrence Inquiry --

18   THE CHAIR: Those, he said -- I think, if I understood him  
19               correctly -- are what prompted it. It is what led the  
20               Home Secretary to say there should be an Inquiry.

21   MS STEEL: Yes.

22   THE CHAIR: But the remit of the Inquiry is much broader  
23               than that.

24   MS STEEL: Yes. I mean, what I wanted to say is that  
25               basically these units are about political policing and

1 I think they need to be seen in that context.

2 This is not about investigating crime. These units  
3 are about intelligence gathering. Well, actually in  
4 a democracy you are supposed to be entitled to take part  
5 in political activity. I think the release of the names  
6 of the groups that were spied on would help to show, you  
7 know, who was being spied on, and then people can say  
8 why were they being spied on? It is actually a critical  
9 question that the public have a right to know what  
10 groups were being spied on.

11 A final point is to say that I think releasing the  
12 files of the groups spied on would be a very key issue  
13 too. My understanding is that they are already  
14 sanitised as to the sources of the information. I just  
15 wanted to say that the FBI, for example, if you go on  
16 the FBI website, they released the files relating to  
17 groups -- political groups -- that they investigated in  
18 the 60s, 70s, 80s and even some more recent than that.  
19 I think that releasing those files and releasing the  
20 names of the groups spied on would help to restore some  
21 of the faith in the Public Inquiry and the feeling that  
22 at the moment the police have got everything and we are  
23 all being kept in the dark.

24 That's essentially it for now. Thank you.

25 THE CHAIR: Thank you, Ms Steel, for that.



1           You have put into words, and eloquent words, the  
2           viewpoint of yourself and of others in a similar  
3           position. All I can do is to assure you that  
4           I understand it. I am not, I am afraid, going to do  
5           exactly what you have asked me to do to publish all the  
6           files and all the names of groups immediately. This is,  
7           I am afraid, a slow and methodical process, which I'm  
8           trying to speed up, so that we will all get to the  
9           position which you want to get to, which is to have the  
10          truth exposed.

11           I'm going to do my best to do it, but I thank you  
12          for your submissions.

13           We will deal with the remaining things by  
14          correspondence, please.

15   MS KAUFMANN: In writing, we will.

16   THE CHAIR: Thank you.

17           Can I thank everybody for attending and the  
18          submissions that they have made. I hope that all have  
19          found it as useful an exercise as I have.

20   (4.55 pm)

21           (The Inquiry adjourned to a date to be fixed)

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