

IN THE UNDERCOVER POLICING INQUIRY

SUBMISSIONS ON BEHALF OF PETER FRANCIS

RE

THE CHAIRMAN'S FURTHER 'MINDED TO' NOTE DATED 20
DECEMBER 2017

RE HN58

1. These submissions are made on behalf of Peter Francis ('PF') in response to the further 'minded to' indications published by the Chairman in his note dated 20 December 2017 in relation to a restriction order application relating to HN58 ('the minded to note').
2. Para 1 of the minded to note openly acknowledges the importance of the evidence that HN58 can give to the Inquiry. The Chairman has now highlighted HN58's critical role in SDS deployments and their management and the fact that the Inquiry *must* inquire into them to fulfil its terms of reference.
3. We recognise that this restriction order application raises difficult issues which have caused the Chairman to change his mind by reverting to his initial, provisional decision of 3 August 2017 to restrict both cover and real names, having been temporarily persuaded to reconsider it by the written submissions of PF and the NPNSCPs. Indeed at the hearing on 21 November 2017, the Chairman said "But I have been persuaded that that view [to restrict both real and cover names] is not ultimately tenable. At any rate for the reason that I expressed" (transcript, 21 November 2017, p. 81, lines 12 – 13). At that stage the Chairman was considering disclosing HN58's real name (in line with his opening remarks on 20 November 2017 that senior officers should expect to account for their decisions in their real names) but withhold his cover name. During the course of that hearing, the Chairman accepted that the statements of principle he made

in his opening remarks in relation to his expectation that an undercover name would be published where possible, but not the real name, and the real name of a manager would be published, were in conflict “When a single individual fulfils the two roles...”, and in those circumstances he would have to revert to a case by case analysis (transcript, 21 November 2017, p. 89, lines 20 – 25; p. 90, lines 1- 2). As PF has already indicated, his experience of the later period of the SDS was that managers were usually former UCOs (transcript, 21 November 2017, p. 7, lines 19 – 25; p.8, lines 1 – 18) and thus this conflict will occur again. Indeed it does arise in the context of HN109, a former UCO who became a DI and SDS Manager in 1995 (*Ellison*, p. 211), and in relation to whom the Chairman has recently indicated a provisional intention not to publish either his real or cover name (Chairman’s ‘minded to’ note of 15 January 2018).

4. It is difficult to see on current reasoning/ disclosure why the two principles set out in the Chair’s opening remarks (of disclosing undercover names “In every case in which it can be done without disproportionate damage to the public interest or harm to the individual concerned” and “In most cases, senior police officers will be expected to account for their decisions and actions publicly and in their own name. An obvious exception is evidence given about a deployment about which nothing, or nothing specific, can be disclosed, for reasons of national security or because disclosure would put the life or safety of an officer at risk”) are in fact in conflict. On the Chairman’s analysis, if his real name were to be disclosed, there is “A small, but real, risk” to his personal safety (due to his role as a UCO) and further, if his *real* name were to be published, there would be a real risk that his *cover* name and details of his deployment would be discovered “by those interested in doing so”. Thus it seems, for unexplained reasons, that the risk would be the same, whether his real or cover name was disclosed. It is difficult to understand how it is the ‘Mosaic’ effect would in his case effectively work in reverse? We are unaware of any examples of the revelation of a real name leading to the disclosure of a cover name.
5. In any event, the risk to his personal safety is assessed as “small” by the Chairman (which is presumably the same as “low”)¹, and given that, other than Bob Lambert,

¹ PF indicated at the last hearing that he agreed with the MPS risk assessment and in his professional view the risk of physical harm is the lowest it can possibly be, knowing what he does about the group(s) infiltrated: transcript, November 21, p. 85, lines 4 – 7.

HN58 is probably the most important SDS Manager the Inquiry will hear from in relation to at least the N81 deployment, and given that his conduct as a UCO will inevitably have some bearing on his conduct as a manager, and may well affect the credibility of his account, it is crucial to learn as much as possible from others about his UCO role. This can only be done by disclosing his cover name. It is disingenuous to assert that there is no known allegation of misconduct against him when this may simply be because his ‘targets’ do not know who he is. ‘Misconduct’ is of course not limited to sexual relationships with targets, but could and should include racist or other unethical conduct.

6. At the last hearing, the Chairman asked PF if he knew of any his activities whilst undercover that would require HN58’s cover identity to be revealed. PF answered the question truthfully with a "No" (transcript, 21 November, p.85, lines 16 – 20). However, had he been asked the same question in relation to Bob Lambert, John Dines or Jim Boyling (for example), he would have also answered in the same way. This demonstrates that it is the NSNPCPs who are most likely to hold the answers to the behaviour of UCOs whilst deployed, not other UCOs.
7. It is vital to bear in mind that:
 - In the IPCC report into “the circumstances of a meeting between Acting Detective Inspector Richard Walton and an undercover officer on 14 August 1998” (14 January 2016), HN58 was identified as the subject of a gross misconduct investigation. He was served with the relevant notice and the allegation was set out, including that: “In August 1998, he was involved in authorising and had knowledge of a meeting between Acting Detective Inspector (A/DI) Richard Walton and an undercover officer who was deployed into one of the groups seeking to influence the Lawrence family campaign. He was aware that A/DI Richard Walton was seconded to the MPS Lawrence Review Team, which was, at that time, preparing a final submission on behalf of the Commissioner MPS, to the Stephen Lawrence Inquiry” (para 149). He refused to answer questions in interview although subsequently provided a statement. The IPCC found that “With such a close working relationship between Robert Lambert and N34, it is inconceivable that Robert Lambert

would have been able to make the arrangements for this meeting to take place without some knowledge on the part of N34.” (para 215).

- He was the senior officer in charge of the SDS when N81 was, on the face of it, *permitted* to be undercover, in his SDS role, with his targeted activists, in the public gallery of the Stephen Lawrence Inquiry.
8. Those two matters alone speak to his credibility. In addition, he was the officer who authorised PF’s own deployments from 1997 onwards. As already submitted by PF, in previous written submissions, given the low risk of harm identified (and in his view every single SDS officer will face a “small but real risk” of harm if their *real* name was disclosed), the balancing exercise must rest in favour of disclosure of his cover name. If that means his real name would also become known, then, given the low risk of harm, the public interest in openness outweighs the public interest in protecting him from harm.
 9. In relation to the compromise suggested at para 4 of the minded to note in relation to how HN 58 would give evidence– effectively allowing him to use a disguise (bearing in mind that any MPS “disguise” likely to be used, including prosthetics, will be very effective) and a cipher– in our view, that does not begin to allow the Inquiry or the public to properly assess his demeanour or credibility.
 10. Finally, PF considers that the determination of the restriction order application in relation to HN58 will be a bench mark ruling for future applications and will effectively determine the Inquiry's ability to establish the truth, particularly in relation to the Lawrence family deployments. We respectfully suggest that the final decision in relation to HN58 be made only after hearing oral argument at the 5 February 2018 hearing.

MAYA SIKAND

GARDEN COURT CHAMBERS

19 January 2018