Anonymity applications

Statement

1. On 5 February 2018, I heard oral submissions from Ms Kaufmann QC and Ms Sikand about the proposed changes to the process for dealing with anonymity applications by former members of the Special Demonstration Squad, which supplemented written responses made earlier. I have considered all of them. This is my written statement about them and about the process which the Inquiry will adopt for applications which have not yet been determined, including all of those made since August 2017.

2. The purpose of the proposed changes was to speed up the Inquiry's progress by avoiding unproductive effort in handling anonymity applications. I understand the purpose to be welcomed on all sides. The means of achieving that purpose are not. The starting point of Ms Kaufmann and of Ms Sikand is that the current process provides inadequate information to the non-police, non-state core participants, to permit them to make meaningful submissions. Ms Kaufmann submits that in all cases, save those in which a decision to refuse to make a restriction order in respect of both real and cover name is made, the Inquiry team should prepare a summary document "identifying, at a minimum, the key information identified" in paragraph 36 of her written response. Paragraph 36 contains 14 "key matters". This, it is said, will facilitate the taking of "big picture" decisions. There is no need for such a document. The 14 "key matters" identified are already taken into account by me when considering an application for a restriction order in respect of either real or cover name or both and by Counsel to the Inquiry when considering the redaction of documents submitted in support of the application. Thus far, only the 9th and 11th - (i) and (k) - have not arisen. She then submits that the Inquiry team should review the documents submitted in support of the application, with a view to ensuring that disclosure or a gist of the 14 "key matters" is made or provided. This is the same line by line exercise currently undertaken which has proved so time-consuming and unproductive in the case of applications for a restriction order in respect of the real name only by undercover officers. Her response makes no provision for participation by the provider of the documents – the Metropolitan Police Service, though I believe her to concede that, in the interests of fairness, such an opportunity would have to be given. Her proposal, therefore, amounts to the repetition of the current process, with the order in part reversed. It would lead to no saving of time or effort. It is not an acceptable solution.

3. I return to the submission that more should be disclosed, at this stage of the Inquiry. This is inevitably a matter of judgement in each case. It is a judgement which is

made by the Inquiry team, if necessary by me. I acknowledge that, at the margin, judgements about what can and cannot be disclosed may reasonably differ. Experience to date suggests that such differences would be unlikely to make a material difference to the amount of information which could, at this stage, be disclosed; and would certainly not satisfy the stated requirements of the non-police, non-state core participants. Counsel to the Inquiry explained in paragraph 13 of their written note dated 31 January 2018 why more disclosure than is currently made is unlikely to be possible. In paragraph 13.3, they cited one frequently arising circumstance. I attempted to explain why further disclosure could not be given in the case of HN16 in my ruling of 5 December 2017. Ultimately, the argument of the non-police, non-state core participants is circular and can, in an individual case, only be broken by the exercise of judgement by me. What cannot sensibly be done at this stage of the Inquiry is to conduct an investigation of scores of deployments on the basis of fully informed submissions and evidence from all sides: to do so would require the Inquiry to conduct a substantive inquiry into those deployments. This would also require an anonymity and redaction process, in which the same problems would occur. Judgements have to be made, on the basis of information which is necessarily incomplete, about the applications for anonymity. They are open to review, should it transpire that they were based on incomplete or misleading information. I can see no alternative to the present approach, improved by the changes proposed.

4. Subject to four qualifications, the Inquiry will adopt the changes proposed on 1 December 2017. The first is that the changes will apply to the small number of applications outstanding on 31 July 2017 as well as to those received after that date. The second is that they will apply to cases in which I have (after a closed hearing, if requested by an officer) refused to make a restriction order in respect of the real name: in such a case, nothing will be published. The third is that they will not apply to applications made by managers for a restriction order in respect of the real name only, which I would be minded to grant: in that event, the current process will apply. The fourth is that, in cases in which I have refused to make a restriction order in respect of the cover name (or name or names by which the undercover officer was known to members of target groups) that name or those names will be published before the open hearing of the application for a restriction order in respect of the real name.

22 February 2018

Sir John Mitting
Chairman, Undercover Policing Inquiry