

Monday, 5 February 2018

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1 (10.00 am)

2 Opening remarks

3 THE CHAIR: Can I before we begin remind everybody that it

4 is possible that matters will be addressed during the

5 hearing which will be sensitive. It is likely

6 eventually that I will be asked to make judgments which

7 can be put into the public domain. Therefore, it is

8 necessary that there should be a time delay of not less

9 than 60 seconds 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 or other social media or any other means of

13 communication.

14 This delay applies to any words spoken or

15 information given in the hearing, whether or not they

16 are given in evidence. There will be no communication

17 or publication by any means of any words spoken or

18 information given which any person has indicated should

19 not have been revealed in public until such time as the

20 objection to its publication is withdrawn or I have

21 ruled upon it.

22 It will, however, be permissible to use Twitter and

23 social media from within the hearing room to report on

24 any part of the proceedings, provided that any such use

25 accords with this restriction and doesn't involve

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1 photography or filming.  
 2 Mr Barr?  
 3 MR BARR: Sir, I appear this morning on behalf of the  
 4 Inquiry with Ms Wilkinson who sits to my right. To my  
 5 left are Ms Kaufmann, leading Ms Brander on behalf of  
 6 the non-police non-state core participants. To my left  
 7 in the row behind are Donal O'Driscoll and Helen Steel  
 8 who appear in person and Ms Sikand who appears on behalf  
 9 of Peter Francis.  
 10 Two rows behind me to my left, Ms Davidson on behalf  
 11 of the Home Office and Ms White on behalf of the  
 12 National Police Chiefs' Council. To my right is  
 13 Mr Sanders leading Ms Palmer and Mr McAllister, on  
 14 behalf of HN23, HN40, HN322 and HN348.  
 15 Behind me to my right, one row back Ms Mannion  
 16 leading Ms Hollos appears on behalf of the Metropolitan  
 17 Police Service. They are assisting HN241. Two rows  
 18 behind me, to my right, Mr Brandon appears on behalf of  
 19 HN58.  
 20 The proposed order in which we will take the issues  
 21 which have been listed for today are anonymity, images  
 22 and then submissions on the future separation process  
 23 and publication of open evidence in relation to  
 24 anonymity applications.  
 25 Unless I can assist you further, at this stage, sir,

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1 that was all I was proposing to say by way of  
 2 introduction.  
 3 THE CHAIR: Thank you.  
 4 Ms Kaufmann, I do note that a suggestion was made  
 5 that we should deal with consultation first, but I'm  
 6 anxious to ensure that I hear all your submissions on  
 7 the anonymity applications and I'm therefore going to  
 8 take them first.  
 9 MS KAUFMANN: Yes, sir. We received that indication.  
 10 THE CHAIR: Yes.  
 11 MS KAUFMANN: I should say that I do intend to look at the  
 12 consultation document when I am making submissions in  
 13 relation to the individual cases. Not in relation to  
 14 the question of by what process, which was the subject  
 15 of the consultation document, the Inquiry moves forward  
 16 in terms of redaction suggesting and so forth, but in  
 17 terms of some of the substance of what is contained  
 18 there with respect to the approach that the Inquiry is  
 19 taking to questions of disclosure, to the threshold of  
 20 risk and so forth.  
 21 THE CHAIR: I have no objection at all to your doing that.  
 22 MS KAUFMANN: Yes. I think it would speed matters along.  
 23 What I was proposing to do is a little bit like on  
 24 the last occasion, to start by looking at some of those  
 25 general issues because that will then speed the approach

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1 in relation to the individual applications.  
 2 THE CHAIR: As before you, you may take your own course.  
 3 MS KAUFMANN: I am grateful.  
 4 Submissions on behalf of the non-state, non-police core  
 5 participants by MS KAUFMANN  
 6 MS KAUFMANN: Can I just start by saying at the outset, on  
 7 behalf of my clients, that we are extremely disappointed  
 8 that what looked so promising at the last hearing in  
 9 terms of disclosure and the bases of the risk assessment  
 10 has turned out for us to be so alarming. We feel we are  
 11 in no better position now than we were before the last  
 12 hearing. On the contrary, we feel the situation has got  
 13 worse. There are an alarming number of cases where you  
 14 are in your minded to notes that we have not yet  
 15 addressed in terms of oral applications, but that we  
 16 have seen which set out your position, there are an  
 17 alarming number of cases where you are indicating  
 18 a minded to position of withholding both cover and real  
 19 names. You are doing so, it seems to us, on bases that  
 20 are highly questionable. And we will come to those in  
 21 relation to some of the individual applications here.  
 22 But before we do that, I just want to focus on some  
 23 of the general threads that inform the Inquiry's whole  
 24 approach to this exercise, and, in our submission, in  
 25 relation to which the Inquiry is taking a wrong turn

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1 which then explains why some of these alarming  
 2 positions -- minded to positions -- appear to have been  
 3 taken.  
 4 I should say in terms of how serious it appears to  
 5 us that if there isn't any movement, then it  
 6 increasingly seems to us that these oral hearings, or  
 7 the invitation of written submissions from us in  
 8 advance, look increasingly like window dressing and look  
 9 increasingly pointless in terms of actually having any  
 10 realistic prospect of having any influence upon your  
 11 decision-making.  
 12 That is a matter of great public concern, because  
 13 fairness obviously requires that we are able to  
 14 participate at this stage -- this critical stage which  
 15 is going to, as it were, frame the whole Inquiry going  
 16 forward -- because it is at this stage that the Inquiry  
 17 will determine just how much evidence is going to be  
 18 testable in any meaningful sense.  
 19 And so not only does this process require a fair  
 20 opportunity for us at this stage, but it is also  
 21 a process which insofar as it doesn't afford that fair  
 22 opportunity is going to do grave damage to public  
 23 confidence in the overall investigation, or Inquiry  
 24 rather.  
 25 So, as I said, I think the best way to do this is to

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<p>1 look at the consultation document. It is right that  2 that sheds some very helpful light upon what the  3 Inquiry's underlying approach is.  4 So if we can start with paragraph 9, just for the  5 benefit of everybody who doesn't necessarily have this  6 document in front of them, I am just going to read it:  7 "Withholding publication of the full risk  8 assessment, impact statement and medical evidence does  9 limit the core participant's ability to make submissions  10 on an application or to provide the Inquiry with  11 material evidence relevant to it. However, unlike the  12 position in adversarial litigation, the submissions of  13 core participants only add to the process if they raise  14 a point which the chairman is not already aware of."  15 We submit that that position is wrong for three  16 reasons.  17 Firstly, and fundamentally, it ignores the  18 importance of public confidence in this Inquiry and its  19 processes. It was established in light of and in order  20 to investigate completely improper conduct on the part  21 of the police, the Metropolitan Police Service, in the  22 context of a previously public inquiry, including  23 significant failure to make proper disclosure.  24 Secondly, how can public confidence be commanded  25 where this Inquiry fails to recognise the value of</p> <p style="text-align: center;">Page 9</p>	<p>1 HM58's case was his managerial role in respect of the  2 period of the infiltration of the Lawrence family, and  3 his role in respect of that.  4 Now, we alerted the Inquiry to that. Your answer to  5 us is, "Well, you didn't tell me anything I didn't  6 know". But the point is we weren't told that. Now on  7 what ground, in fairness or justice, were we not  8 provided with that material which was obviously of great  9 significance in terms of the compelling need for his  10 identity, his cover identity and his real identity, to  11 be disclosed? So it is not an answer to us to say,  12 "Well, I had that information and you couldn't have  13 added anything".  14 THE CHAIR: You slightly misunderstand the purpose of minded  15 to notes. It is to indicate in short form what I am  16 minded to do so as to prompt further submissions. In  17 closed from officers sometimes, in open from everybody.  18 MS KAUFMANN: But that misunderstands the point. Your  19 minded to note is what we had together with the other  20 matters that have been disclosed to us. None of that,  21 neither your minded to note nor the material that was  22 disclosed to us, informed us of a vital fact about this  23 particular officer that had a very, very clear bearing  24 upon the issues you had to decide should the cover note  25 be disclosed, should the real name be disclosed. Yet we</p> <p style="text-align: center;">Page 11</p>
<p>1 public scrutiny of the information that the police are  2 providing.  3 Thirdly, proper disclosure is not only about the  4 ability of the core participants to provide evidence  5 with which to test the police account. It is also about  6 the Inquiry securing public confidence in its process.  7 So that is the importance of public confidence.  8 Secondly, there is fairness to the  9 core participants. Now that duty as I have indicated  10 still arises even though this is an inquisitorial  11 process. That is absolutely clear from the legal  12 principles ruling 106, 107, 112.  13 Part of the very reason this Inquiry was established  14 was to establish justice for the families and victims of  15 undercover policing. So they have a legitimate interest  16 in its process and they are entitled to effective  17 participation.  18 In the case of some of the core participants, where  19 they have suffered conduct that crosses the article 3  20 threshold, the Convention itself gives them a right to  21 effective participation in the process. So that is  22 a separate right to the right and duty of fairness.  23 Now, HN58's case is a very, very good example of  24 what we mean by the importance in and of itself of  25 fairness. What was not disclosed to us in relation to</p> <p style="text-align: center;">Page 10</p>	<p>1 weren't told of it.  2 Your answer to that is, "You don't need to be told  3 about it because I know". Now that is a completely  4 wrong position to start from if you are properly having  5 regard to the need to have fairness and the need to  6 secure public confidence. Because we simply aren't  7 going to have confidence in this process if we are told  8 even though there are things you could be told about,  9 you are not going to be told about them because I know  10 about them. That is not the hallmark of a fair process,  11 it is not the hallmark of a process that is going to  12 command public confidence.  13 Thirdly, even if it were right -- we do not accept  14 that it is -- that we can only add to the process if we  15 raise a point that you are not already aware of, that is  16 not a reason for discounting the value of proper  17 disclosure. We repeat, this Inquiry cannot know in  18 advance whether the core participants will have evidence  19 or submissions that will be of value to you because you  20 don't know about it.  21 Secondly, take risk for example, now we may well  22 have evidence that is important in your evaluation of  23 risk. For example, where it is said by the police that  24 organisations, whatever they may be, that were  25 infiltrated were violent or contained individuals who</p> <p style="text-align: center;">Page 12</p>

1 had a violent disposition such that the officer is at  
2 risk, then obviously insofar as those organisations were  
3 ones to which core participants belonged, individuals  
4 were part of those organisations then the core  
5 participants can have something meaningful to say  
6 about it, and that will not come to light unless  
7 disclosure is made of matters such as -- this comes to  
8 material we have asked the Inquiry to disclose -- the  
9 nature of the organisation. Either the name of the  
10 organisation or if there is a good reason not to  
11 disclose that in terms of the risk that the officer will  
12 be identified, the nature of the organisation. Then  
13 submissions can be made about violence and threat coming  
14 from that organisation.  
15 But if we don't know that, we can't make any such  
16 submissions.  
17 Can we now move on to paragraphs 15 and 16, where  
18 the Counsel to the Inquiry addresses observations in  
19 relation to the non-disclosure of cover names.  
20 THE CHAIR: I think it was that to which you referred me  
21 before.  
22 MS KAUFMANN: I am sorry? Referred you when before?  
23 THE CHAIR: Paragraph 9 came from this document, not from  
24 the consultation document.  
25 MS KAUFMANN: I am so sorry. Was I referring to the

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1 consultation document?  
2 THE CHAIR: Yes.  
3 MS KAUFMANN: I am so sorry. At all times I have been  
4 referring to Counsel to the Inquiry's response to the  
5 consultation document and I am very sorry for the  
6 confusion.  
7 15 to 16 of that same document, Counsel to the  
8 Inquiry's document, again for the benefit of everybody  
9 here I am sorry I am going to read these, so that  
10 everybody understands what I am saying:  
11 "15. We agreed with the non-police, non-state core  
12 participants that where the Inquiry restricts an  
13 undercover officer's real and cover name the effect will  
14 be to inhibit the extent to which that officer's  
15 deployment can be investigated. The Inquiry will be  
16 able to conduct a closed investigation based on the  
17 documents and the evidence of police witnesses, however  
18 it will not be able to inform those affected by the  
19 officer's deployment and request their evidence. The  
20 inhibiting effect on the Inquiry is of course a factor  
21 which is taken into account when the decision to make  
22 a restriction order is taken and in public interest  
23 applications it is only where the factors in favour of  
24 restriction outweigh the factors against, that an order  
25 is made at all.

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1 "16. We note the concern explicit in paragraph 6(b)  
2 of the non-police, non-state core participants'  
3 submission that the Inquiry will limit itself to  
4 investigating currently known cases of wrongdoing,  
5 actual or alleged. The Inquiry has not so limited  
6 itself. It has already conferred that a large number of  
7 cover names will be published and the process of  
8 considering anonymity applications is continuing. So  
9 far as the Special Demonstration Squad is concerned it  
10 is already clear that a significant number of  
11 deployments can be investigated publicly. It is not  
12 necessary to discharge the terms of reference for every  
13 single Special Demonstration Squad officer's real and  
14 cover names to be published nor is it legally possible."  
15 So it is accepted that whenever a cover name is not  
16 disclosed, for obviously reasons there will be  
17 a detrimental impact but at 16 it is said that that is  
18 mitigated in no small measure by the fact that it is not  
19 necessary to discharge the full terms of reference for  
20 every single Special Demonstration Squad officer's real  
21 and cover name to be published.  
22 We submit that there are reasons that are not  
23 adverted to here which do emphasise the importance of  
24 revealing as many cover names as it is possible to  
25 reveal. That is which demonstrate a very pressing

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1 interest in revealing cover names. I will come on to  
2 those.  
3 Firstly, the Inquiry's task is not just to look at  
4 isolated incidents of wrongdoing. The task of the  
5 Inquiry is also systemic. It is required to look at,  
6 for example, questions about the role and contribution  
7 made by undercover policing towards the prevention and  
8 detection of crime. That is a really important issue  
9 for the Inquiry, because insofar as this undercover  
10 policing operation which was both expensive and highly  
11 intrusive and went on for a long, long time, did not  
12 actually contribute in a sufficiently meaningful sense,  
13 then that demonstrates an absence of proportionality.  
14 Now how can the Inquiry do that unless it reaches  
15 properly informed conclusions about the extent to which  
16 the group's undercover officers infiltrated were  
17 genuinely engaged in criminal activity or if engaged in  
18 criminal activity, criminal activity of a kind that  
19 merited the sorts of resources, deployment and  
20 intrusiveness that followed in these cases.  
21 It needs to look at whether allegations of  
22 criminality were fabricated or exaggerated in order to  
23 justify policing. And it can't accurately determine  
24 those issues on the basis of the police's account alone.  
25 Now exactly the same applies in relation to the

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<p>1 Inquiry's ability to examine the motivation for, the  2 scope of undercover policing operations. Again issues  3 critical to the proportionality of the deployments.  4 And we know from the evidence of Peter Francis that  5 there is conflicting evidence about the motivation for  6 and scope of deployments. How is the Inquiry going to  7 reach justifiable, properly evidence-based conclusions  8 on these issues without hearing from those spied upon?  9 Now if cover names are not revealed, then individuals  10 will not know they were being spied on at all.  11 It isn't any comfort, if I may say, in and of itself  12 that quite a lot of cover names are going to be  13 disclosed. It is notable that in relation to  14 a significant number of those cover names that are going  15 to be disclosed, that is precisely because the  16 individuals concerned have not objected or the  17 Metropolitan Police Service has not objected on their  18 behalf. Now purely as a matter of rationality, the  19 reason those individuals have probably not objected is  20 perhaps because they actually weren't involved in  21 wrongdoing and they don't have to hide anything. But  22 one reason why officers who do object may seek to object  23 is precisely because they do have things to hide, and so  24 we remain extremely concerned that a proper searching  25 analysis and assessment is done in relation to those</p> <p style="text-align: center;">Page 17</p>	<p>1 clear. The test of real and immediate risk does not  2 depend upon it being present now, it is real and  3 immediate if that contingency arises, but we ought to be  4 told in clear terms --  5 THE CHAIR: Forgive me. It is debatable. Where I say there  6 is a risk to physical integrity under article 8, what  7 I am seeking to indicate is that there is a risk of  8 quite serious harm which is contingent.  9 MS KAUFMANN: I would be, I would suggest, that going  10 forward it is incredibly important that we understand  11 the nature of the risk. If you are of the view that  12 should the risk materialise because the cover name were  13 revealed for example, then it would be of a kind that  14 crosses the article 3 threshold, we should be told that.  15 That should be the basis upon which we understand you  16 are taking the decision, because we have thus far  17 operated under a total misapprehension that when the  18 police have come forward and said --  19 THE CHAIR: Forgive me. Now you have pointed out the  20 misapprehension, I am happy to clarify it for the future  21 when making decisions and rulings.  22 MS KAUFMANN: I am grateful, because our submission is that  23 if the risk is less than something that crosses the  24 article 3 threshold -- if it is an article 8 risk --  25 then for well-established reasons of principle that</p> <p style="text-align: center;">Page 19</p>
<p>1 officers who are seeking anonymity.  2 In light of what is said there at paragraphs 15 to  3 16, it seems that some light is shed on why the Inquiry  4 is taking the approach it is in relation to withholding  5 disclosure of cover names. By which I mean it is  6 setting, it seems to us, far too low a threshold of risk  7 in its decision-making that withholding of the cover  8 name is justified.  9 We will come on to this in relation to the  10 individual applications but what we see repeatedly is  11 that a threshold of some kind of article 8 interference,  12 not an article 3 interference or article 2 interference  13 so not a threat of some sort of serious injury --  14 THE CHAIR: That is with respect a misstatement. Articles 2  15 and 3 are engaged where there is an immediate or present  16 and continuing risk to life or limb. It does not arise  17 in cases where the risk is contingent, hence although  18 I have overtly dealt with issues under article 8 because  19 of interference with physical integrity, that is not to  20 be taken as indicating that the risk to physical  21 integrity is, if it were to occur, trivial or small.  22 MS KAUFMANN: That is a very helpful clarification. For my  23 part, I would suggest that actually if the risk would be  24 one of conduct which would cross the article 3 threshold  25 should it arise, then that should be made absolutely</p> <p style="text-align: center;">Page 18</p>	<p>1 article 8 risk is something that simply falls to be  2 weighed in the balance against all the other factors  3 calling for disclosure. And our submission is that  4 given the compelling reasons for revealing cover  5 names --  6 THE CHAIR: Fine. But so long as you understand that I am  7 dealing usually with contingent risks of potentially  8 serious harm, then we are at least speaking about the  9 same topic.  10 MS KAUFMANN: Well that is very important. It is very  11 important and I am glad we've managed to clarify that.  12 Can I move on to paragraph 13. That is the Counsel  13 to the Inquiry's approach to the mosaic effect.  14 This is a very long paragraph. It breaks down into  15 three parts. I apologise to everybody here but in the  16 interests of saving time I am not going to read it, but  17 if everybody who needs to can read it quickly to  18 themselves, I will then make some submissions.  19 The mosaic effect does appear, given the number of  20 minded to decisions that are appearing to withhold cover  21 and real names, it does appear to be playing a large  22 part in your determinations or provisional  23 determinations about restriction orders and anonymity.  24 By which I mean that these are cases where the risk in  25 relation to the disclosure only of the cover name is</p> <p style="text-align: center;">Page 20</p>

1 identified as not being very substantial, but the  
2 concern is that disclosure of the cover name will lead  
3 to the identification of the real name and it is then  
4 that a greater risk materialises if the individual can  
5 be tracked down.  
6 Now, we can see from the disclosures made to us thus  
7 far that so far as the mosaic effect is concerned, we  
8 are basically told nothing whatsoever about the  
9 evidential basis for concluding that there is or is not  
10 likely to be a tracking down. From paragraph 13 of the  
11 note we now understand why. To put it shortly, it is  
12 because a Neither Confirm Nor Deny approached is  
13 effectively being taken in relation to disclosure of the  
14 mosaic effect.  
15 That is we can't say anything in cases where we can  
16 say anything because that might lead in cases where we  
17 can't say something to the identification of matters  
18 that would then lead to the revelation of that  
19 particular individual's identity. I see that you are  
20 look puzzled, but that's kind of how Neither Confirm Nor  
21 Deny works. We can't say anything in this case even if  
22 we --  
23 THE CHAIR: I was wondering how you got to the end of the  
24 sentence as coherently as you did.  
25 MS KAUFMANN: Being very familiar with Neither Confirm Nor

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1 Deny, sir, you will know exactly what I mean.  
2 THE CHAIR: Yes.  
3 MS KAUFMANN: That seems to be the basis on which we are  
4 told we can know absolutely nothing.  
5 Our submission unsurprisingly is that that is an  
6 unjustified approach and it certainly cannot justify the  
7 blanket non-disclosure that we have seen so far.  
8 Firstly, it is only necessary to disclose any  
9 material in relation to the mosaic effect where it is  
10 considered that its effect in the particular case  
11 provides a reason for not disclosing in that case -- for  
12 granting anonymity in that case of cover and real name.  
13 So in those circumstances the Inquiry is going to  
14 have to be satisfied that there is material by which the  
15 person can be identified. Now there cannot be any harm  
16 in disclosing some details about that material so that  
17 there can be proper accountability of the Inquiry's  
18 assessment of whether or not it is likely to lead to  
19 identification, and so that there can be proper input  
20 from us, because as the panel knows, as the Inquiry  
21 knows, there has been great success on the part of core  
22 participants and others in tracking people down and  
23 locating their real identities.  
24 Now if the panel remains satisfied after submissions  
25 that there is a real risk, it is not going to release

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1 the cover name and therefore that individual is not  
2 going to be tracked down through the release of the  
3 cover name, because we are only looking at mosaic effect  
4 once the cover name is released.  
5 But if the panel is not satisfied following  
6 representations that the risk is sufficiently high, then  
7 it will release the cover name and of course there is  
8 some possibility that efforts will be then made to track  
9 the individual down. No doubt efforts will be made to  
10 track the individual down. There is a possibility,  
11 despite the assessment that the panel has made, that  
12 that individual will be tracked down. But the point is  
13 that the Inquiry will in that situation in making its  
14 decision about whether or not to withhold the identity  
15 of the cover name have taken into account that risk.  
16 Ie its risk of the likelihood of being tracked down will  
17 take account of the concerted efforts that no doubt will  
18 be made. So we cannot see how there can be any  
19 justification for not disclosing some information.  
20 It may be that particular details cannot be  
21 disclosed, precise details, but some sort of gist, some  
22 sort of substance that supports the conclusions about  
23 risk in relation to mosaic is, in our submission,  
24 entirely justified.  
25 This brings us to a point that is not just relevant

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1 to this. It is also relevant to disclosure generally.  
2 It is an absence of creativity about how disclosure can  
3 be made in a way that doesn't threaten the very purpose  
4 of the application. That's what we attempted to do in  
5 our submissions on disclosure: to identify when it is  
6 possible to give evidence at a general level as opposed  
7 to a particular level.  
8 Now later we are going to come on to an example of  
9 how we say there is that lack of creativity. It is  
10 a response that we have put together to annex A that was  
11 prepared by Counsel to the Inquiry team as a document  
12 that it was presented as revealing and showing us why it  
13 would be so difficult to disclose more. We have had  
14 a look at that document and it won't surprise you to  
15 know that we have red marked it left, right and centre  
16 and identified what we submit are details that could  
17 easily and without risk to the officer be revealed and  
18 should be revealed.  
19 The two stand together. The same is true in  
20 relation to mosaic as it is in relation to issues of  
21 disclosure more generally.  
22 Can I just finally then touch on paragraph 13.3,  
23 which is medical information. We accept, of course,  
24 that disclosure of details in relation to  
25 an individual's medical circumstances is personal

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1 information to which privacy attaches. But we are in  
 2 the territory of balance and balancing the interests in  
 3 making meaningful submissions with the interests of that  
 4 individual. Now that balance is something that can be  
 5 struck again by providing some details, perhaps at  
 6 a greater level of generality than is provided in the  
 7 report itself, to enable us to make a meaningful  
 8 assessment of the extent, for example, of the  
 9 consequences to that individual should there be  
 10 disclosure.

11 So would it be a severe case of post-traumatic  
 12 stress disorder and so forth? But something that  
 13 enables some kind of evaluation of the significance and  
 14 bearing that that evidence properly ought to have when  
 15 weighed in the balance against all the factors calling  
 16 for disclosure.

17 Can I now turn to paragraph 12. I can read this  
 18 paragraph because it is much shorter:

19 "The Inquiry cannot realistically conduct a full  
 20 closed investigation of each undercover officer's  
 21 deployment before making a decision on anonymity. The  
 22 current process would ensure that the right outcome is  
 23 arrived at. If, exceptionally, it becomes clear later  
 24 in the Inquiry that a restriction order be reviewed then  
 25 it can be pursuant to section 25 of the Inquiries Act."

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1 Firstly, I repeat the obvious point, that if the  
 2 cover name is withheld it is very unlikely that later in  
 3 the course of the Inquiry it will become clear that it  
 4 should be reviewed precisely because nobody who is spied  
 5 upon will know that that is the case. It will be  
 6 a matter of pure chance whether or not information does  
 7 come to light to alert the Inquiry to the need to  
 8 review.

9 We accept of course that there is a limit. We  
 10 understand your concern that we are this far down the  
 11 line and we are still engaged in this process. But we  
 12 emphasise again how important this process is to getting  
 13 the substance of the Inquiry right and to it achieving  
 14 its end.

15 If this stage is not conducted with sufficient  
 16 breadth, then -- as I have said now on many occasions --  
 17 there is an incredibly serious risk that the Inquiry  
 18 will just get off to a false start, as it were, and it  
 19 simply won't be able to reach into the past as it ought  
 20 in order to fulfil its terms of reference.

21 Now, there are current indicators already of why the  
 22 Inquiry should be very cautious about taking the  
 23 approach it is and not reaching out more to the core  
 24 participants.

25 Firstly, the issue of mass shredding.

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1 We know that there has been material disclosure and  
 2 excessive secrecy on the part of the Metropolitan Police  
 3 Service in the context of the Macpherson Inquiry. That  
 4 was all identified by Ellison.

5 We know that there is and was, in relation to the  
 6 work of the Special Demonstration Squad Special  
 7 Demonstration Squad, a lot of shredding of material and  
 8 a real dearth of records. So a lot of, as it were,  
 9 contemporaneous independent evidence, that is evidence  
 10 from the officers written at a time when they didn't  
 11 have anything to hide, that may well never come to light  
 12 because it no longer exists.

13 We also know that there are demonstrable  
 14 inaccuracies even in the crumbs of disclosure we have  
 15 had to date. For example can I remind you of Ms Steel's  
 16 submissions at the hearing on 21 November. She pointed  
 17 to a description of her in the mosaic report as a "long  
 18 term and prominent activist in the field of animal  
 19 rights".

20 A field she had not been active in for 20 years.

21 That is significant, that inaccuracy, not only  
 22 because it throws into question of accuracy of what the  
 23 Metropolitan Police Service are reporting, but also  
 24 because the Metropolitan Police Service categorise  
 25 animal rights activists as being a potential source of

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1 risk of violence to Special Demonstration Squad  
 2 officers. So it matters, it matters in terms of the  
 3 evaluation of the risk that an individual is said to  
 4 pose.

5 Donal O'Driscoll recently himself received two  
 6 sentences of disclosure in relation to police  
 7 information held about him in response to a Data  
 8 Protection Act request.

9 One of those two sentences records an entirely  
 10 fictitious arrest. So there are real question marks  
 11 over the accuracy of the evidence.

12 There is also, in the witness statement of Harriet  
 13 Wistrich dated 31 May 2017, paragraphs 13, 73, 75 and  
 14 79, further examples which I can take you to but the  
 15 Inquiry can look at them in your own time.

16 So given the frequency of these inaccuracies in this  
 17 very limited amount of disclosure we have had, how can  
 18 the Inquiry be confident that the police material it is  
 19 relying on is accurate?

20 Our concern -- that is the non-state  
 21 core participants -- is not one that we have alone as to  
 22 the accuracy of what you are being told, it is shared by  
 23 officers. So Peter Francis has pointed out that the  
 24 Metropolitan Police Service as applicants would be  
 25 inclined to be defensive and to engage in overredaction.

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1 That is not surprising.  
 2 In addition, there is a further former undercover  
 3 officer, he didn't work in the Special Demonstration  
 4 Squad, his name is Neil Woods and he's actually here, he  
 5 was a drugs squad officer. He has also recently  
 6 expressed publicly his scepticism about the manner in  
 7 which the Metropolitan Police Service goes about  
 8 assessing risk. Now, he's here today and should you  
 9 wish to hear from him, he can give evidence, but we  
 10 could also put in a statement from him should that  
 11 assist you in any way, but it is yet another example of  
 12 where those inside the force do not share the view of  
 13 the Metropolitan Police Service as to the assessment of  
 14 risk and the weight to be attached to it.  
 15 Then of course there is the other important point  
 16 which we need to keep in mind, which is that in respect  
 17 of those officers whose identity has actually been  
 18 revealed to date none, so far as we know, have been  
 19 subjected to unlawful harm in the form of violence of  
 20 the kind that crosses the article 3 threshold, as  
 21 opposed to angry individuals remonstrating and seeking  
 22 to hold them to account verbally.  
 23 So given this, we strongly submit that it cannot be  
 24 concluded that a process which fails to obtain  
 25 meaningful participation from those who are able to test

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1 the police accounts is likely to arrive at the right  
 2 outcome. I have touched upon the assessment of the risk  
 3 that an officer poses as being an area where core  
 4 participants potentially have some very valuable  
 5 evidence to give.  
 6 This brings me just slightly tangentially, but  
 7 actually not, to previous submissions and your response  
 8 in relation to the Rehabilitation of Offenders Act,  
 9 because there you acknowledged and you accepted that in  
 10 relation to spent convictions where evidence of such  
 11 a conviction, if accepted, would be determinative of an  
 12 application for restriction order, then you would  
 13 consider giving those convicted persons the opportunity  
 14 to make submissions about them.  
 15 And if there was no good reason to refuse to give  
 16 that opportunity, you would do so.  
 17 Now we submit that precisely the same approach is  
 18 appropriate in relation to allegations of a risk of  
 19 violence that are based not upon the fact of a spent  
 20 conviction but that are based upon intelligence or any  
 21 other material coming from the police in respect of  
 22 which, firstly that same condition applies, that is, it  
 23 is likely to be determinative. And, secondly,  
 24 core participants are likely to be in a position to say  
 25 something meaningful about it, for example were they to

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1 know that the officer was attached to a particular group  
 2 and that group or somebody within that group -- not  
 3 necessarily needed to identify them unless it is a core  
 4 participant -- is liable to be violent then an  
 5 opportunity should be given to representations being  
 6 made on that point. That can only happen if disclosure  
 7 is made in some form of the allegation which founds the  
 8 risk.  
 9 I should just be clear that this was what Ms Allen  
 10 meant in her email of 14 December in response to your  
 11 ruling in relation to Rehabilitation of Offenders Act  
 12 and at paragraph 38 of our response to the consultation.  
 13 Just to resolve a confusion that I think has arisen,  
 14 that wasn't a submission that we were making solely in  
 15 relation to spent convictions. It was something that  
 16 applied to everybody.  
 17 Finally, can I then turn to annex A and to our  
 18 amendments to annex A so that we can see in concrete  
 19 shape and form how we say a lot more could be revealed  
 20 than is being revealed.  
 21 If I could hand that up to you. (Handed)  
 22 We have attempted at the footnote to explain all of  
 23 the amendments we have made which we say are matters  
 24 that could be revealed. I don't propose -- I don't  
 25 think it is going to benefit anyone -- I take you all

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1 through this, but this is something that we can each  
 2 read and no doubt submissions could be made on it by the  
 3 other parties as to why this is unrealistic. But that  
 4 is what we submit could realistically be done without  
 5 any risk to the officer concerned, and should be done.  
 6 So unless you, sir, have any questions to ask about  
 7 that at this stage --  
 8 THE CHAIR: I would like to do that which I always prefer to  
 9 do, which is to concentrate on real examples, real  
 10 cases, rather than hypothetical ones.  
 11 MS KAUFMANN: That is all I wanted to say by way of  
 12 background. I assume that we are going to deal with  
 13 this as we did on the last occasion. I now go on to  
 14 HN23 and then everybody makes submissions on HN23 and we  
 15 move on?  
 16 THE CHAIR: Yes, please.  
 17 Submissions on behalf of the non-state, non-police core  
 18 participants by MS KAUFMANN re HN23  
 19 MS KAUFMANN: This is exactly one of those cases where the  
 20 confusion that we have just identified has arisen, so we  
 21 had been working on the premise that even though the  
 22 risk assessment of the Metropolitan Police Service was  
 23 that this was an individual who would be at risk of  
 24 article 3 ill-treatment, we had understood you to be  
 25 disagreeing with that and to be framing --

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1 THE CHAIR: I have corrected that misapprehension --  
 2 MS KAUFMANN: Yes.  
 3 THE CHAIR: -- it is a contingent risk of serious harm.  
 4 MS KAUFMANN: Of serious harm. That obviously makes quite  
 5 a substantial difference to the picture. It underscores  
 6 the importance of disclosure, especially in relation to  
 7 the mosaic effect. Because of course if the risk is  
 8 contingent upon the real name being revealed, then --  
 9 THE CHAIR: I haven't said the factors upon which it is  
 10 contingent. But it is obviously contingent upon the  
 11 individual being identified by those who might pose  
 12 a threat to the officer.  
 13 MS KAUFMANN: Exactly, exactly. If his cover name is  
 14 revealed and that is not going to lead to a substantial  
 15 risk of his real name being revealed, then that  
 16 obviously has a bearing upon whether or not the cover  
 17 name should be disclosed unquestionably, and it is all  
 18 going to be a question of how big the risk is of,  
 19 through the mosaic effect, the real name being revealed.  
 20 Because if it were the case that you could say  
 21 categorically if the cover name is revealed his real  
 22 identity is not going to be disclosed -- it won't  
 23 through the mosaic effect have that result -- then of  
 24 course there would not be any good reason because of  
 25 that contingent risk not to disclose the cover name. So

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1 it always going to be in these cases where it is the  
 2 revelation of the cover name leading to the real name,  
 3 there is always going to have to be an evaluation not  
 4 just of the nature of the risk should the real name be  
 5 released but also the risk of the real name being  
 6 released itself. And that is going to be an incredibly  
 7 important factor in your determination.  
 8 So, as I say, that underscores the importance in  
 9 these cases where we are dealing with article 2 and 3  
 10 cases arising where through a real name being  
 11 identified, leading to a decision not to disclose the  
 12 cover name, evidence about the mosaic effect and  
 13 disclosure about the basis of the risk are incredibly  
 14 important.  
 15 This is a case in which there are many serious  
 16 redactions. We have made detailed representations about  
 17 that in our submissions. For the reasons I have gone  
 18 through, and for the reasons that are set out in the  
 19 example in the annex, we cannot see how the level of  
 20 redaction is justified. But there is also a concern in  
 21 this case that the risk assessment has been based on  
 22 allegations and intelligence relating to violence by  
 23 people within the group. So this throws up exactly the  
 24 problem that I was just speaking about.  
 25 If they are determinative, those allegations, if

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1 that is where the risk is being identified as lying or  
 2 as arising from, likely violence from those individuals,  
 3 then it becomes incredibly important that there is an  
 4 opportunity to make some submissions in relation to any  
 5 such allegations about that risk.  
 6 In this case, it is interesting that we have  
 7 nothing -- this does seem to be really a case where  
 8 a Neither Confirm Nor Deny approach is being applied to  
 9 this individual --  
 10 THE CHAIR: With respect it is not a Neither Confirm Nor  
 11 Deny approach. It is stronger than that. It is a flat  
 12 refusal to say anything about the deployment in open.  
 13 MS KAUFMANN: I am talking now about the mosaic effect.  
 14 So we know from this officer and from what he  
 15 himself or she says that they have no internet profile  
 16 or presence whatsoever. And yet we know nothing at all  
 17 about why this is a case in which it has been concluded  
 18 that the risk of his identification of his real name  
 19 through the disclosure of his cover name is too great to  
 20 be able to reveal his cover name.  
 21 I just repeat my submissions. We submit there is no  
 22 justification for not explaining the basis upon which it  
 23 is concluded, despite this individual's nonexistent  
 24 internet presence, that it would be possible to track  
 25 him down and identify him if his cover name is revealed.

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1 THE CHAIR: I am afraid that HM23 as HN40, they are examples  
 2 of deployments where you are going to meet a brick wall  
 3 of silence.  
 4 MS KAUFMANN: In those circumstances there is absolutely  
 5 nothing more I can say in relation to him and similarly  
 6 we might as well deal with HN40, because there is  
 7 nothing more I can say in respect to him.  
 8 Ms Brander has reminded me of this and it is an  
 9 important point and something that is dealt with in our  
 10 response to the consultation document, that insofar as  
 11 there are any indicators in relation to the particular  
 12 conduct of the officer of some kind of involvement that  
 13 may or may not indicate wrongdoing -- so for example  
 14 involvement in prosecutions, involvement in matters that  
 15 enabled that officer to be privy to privileged  
 16 information and so forth -- those kind of factors which  
 17 tell in favour of disclosure of the cover name should be  
 18 identified in order that submissions can be made in  
 19 respect of that.  
 20 I hear what you say, that nothing whatsoever can be  
 21 disclosed, and from my point of view of course I don't  
 22 know why that is, but it does seem very, very odd that  
 23 particular features of that officer's situation cannot  
 24 be disclosed such that -- it seems very difficult to see  
 25 how that disclosure of that alone, if there is such

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1 material, could possibly risk the identification of the  
 2 officer.  
 3 But other than that, there really is nothing we can  
 4 say in relation to HN23 and HN40 if we are meeting  
 5 a brick wall.  
 6 THE CHAIR: No, I am afraid you are meeting a brick wall in  
 7 these two cases and others. I did indicate in the  
 8 opening remarks that I made on 20 November that there  
 9 would be deployments that could only be investigated in  
 10 closed sessions and these are examples.  
 11 MS KAUFMANN: It strikes us as extraordinary that we cannot  
 12 even be told, for example, was this officer engaged in  
 13 a deployment in relation to left wing groups or right  
 14 wing groups. How on earth can the disclosure of that  
 15 fact alone put that officer at risk? Yet we don't have  
 16 disclosure even of that kind of information.  
 17 Or the broad period that the officer was engaged in  
 18 operations.  
 19 Disclosure of those two facts alone, how, from that  
 20 information, could we possibly deduce who the officer  
 21 is?  
 22 "This was an officer who was involved in left wing  
 23 groups in the 1970s or in the early 1980s ..."  
 24 THE CHAIR: You were in each case told the broad period.  
 25 MS KAUFMANN: We were told the period --

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1 THE CHAIR: That's it.  
 2 MS KAUFMANN: -- we are not told whether it is a left wing  
 3 organisation or a right wing organisation.  
 4 THE CHAIR: You are not.  
 5 MS KAUFMANN: It does seem utterly perplexing that that is  
 6 a bit of information the disclosure of which could  
 7 possibly put anybody at risk.  
 8 Left wing organisations could include thousands of  
 9 people in that period. Hundreds of thousands of people.  
 10 Right wing organisations equally. How does that  
 11 identify any particular individual? If that is the  
 12 approach, it is, frankly, utterly perplexing. I have  
 13 nothing more I can say on officers 23 and 40.  
 14 THE CHAIR: Does anybody else want to say anything about 23  
 15 and 40?  
 16 Ms Sikand.  
 17 Submissions on behalf of Peter Francis by MS SIKAND re HN23  
 18 and HN40  
 19 MS SIKAND: Sir, as you know we have made submissions on  
 20 behalf of both those officers on behalf of  
 21 Peter Francis. Sir, can I begin by making a very short  
 22 general point. It is one that Mr Francis wants me to.  
 23 In relation to what Ms Kaufmann has said about the  
 24 perceived pointlessness of continuing in participating  
 25 in what she described as window dressing, it is

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1 a frustration shared by my client insofar as the  
 2 disclosure has been so limited, and in particular in  
 3 relation to the issue of identification through either  
 4 the disclosure of a real name or the disclosure of  
 5 a cover name. In some cases you say, "If the cover name  
 6 is disclosed it will lead to identification of the real  
 7 name" and in some cases, such as HN58 you have put it  
 8 the other way. So it leaves us in an impossible  
 9 position particularly when in some of those cases unlike  
 10 perhaps the non-police, non-state core participants we  
 11 know who the officer is and who he infiltrated and have  
 12 our own view of the risk.  
 13 When I say "our own view" not my view, Mr Francis's  
 14 view, having been on the ground and an undercover  
 15 officer himself and knowing full well the nature of the  
 16 groups and the risks that they pose. So when you give  
 17 no information in the way that frustrates those who  
 18 Ms Kaufmann represents it also puts us in a particularly  
 19 difficult position because they are matters that, for  
 20 example, we know and could speak of but are unclear as  
 21 to whether we can because of the way in which you have  
 22 dealt with the disclosure exercise.  
 23 May I say, if for example, you take the view that  
 24 there is a risk of a real name being discovered by  
 25 disclosure of a cover name, it must be right that you

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1 give us some indication as to why it is you take that  
 2 view. This reworked document, annex A, with the example  
 3 of gisting served on us today seems to me if one looks  
 4 at it quite a sensible way of re-engaging in the  
 5 disclosure process.  
 6 Because what was provided to us by Counsel to the  
 7 Inquiry was something of a caricature as to what would  
 8 happen if disclosure was fuller, whereas this is  
 9 a sensible and serious response which shows you that in  
 10 fact it can be done by allowing us enough information to  
 11 effectively participate.  
 12 At the moment, we come here, we hope to assist but  
 13 we are not assisting because you will say, "Well,  
 14 actually, no, this is a brick wall". So it does beg the  
 15 question as to why it is we are invited here. Because  
 16 we do very much want to assist, sir.  
 17 THE CHAIR: I am aware of that. I was not saying that in  
 18 relation to all of the officers whose cases we are  
 19 considering today that you are, any of you, up against  
 20 a brick wall. You are only in relation to 23 and 40.  
 21 MS SIKAND: Sir, for example, if you say disclosure of  
 22 a real name would lead to disclosure of a cover name  
 23 because -- and we can only surmise why you say this --  
 24 for example, that officer has an online presence. And  
 25 most of them don't, and Mr Francis tells me that in his

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1 experience most Special Demonstration Squad officers  
 2 have no online presence. But say a particular officer  
 3 does, which is why you say the real name can disclose  
 4 the cover name. It is difficult to see how that can be  
 5 the only reason for there being a risk of  
 6 identification, particularly when that level of risk is  
 7 not told to us as you perceive it.

8 So what you called a contingent risk, where do you  
 9 place that risk? Is it a high risk, a low risk,  
 10 a medium risk, of there being an identification from  
 11 real on cover or cover to real? We ought to know that  
 12 so we can at least make meaningful submissions to you.

13 Peter Francis would say, for example, that when he  
 14 left the Special Demonstration Squad role, he was told  
 15 that he had to change his identity to the extent that he  
 16 would not be recognisable, and he would say that even  
 17 his own mother did not recognise him when he left the  
 18 Special Demonstration Squad such were the changes that  
 19 he made.

20 So even if there was an online presence of  
 21 a particular officer it would be impossible, we would  
 22 say, to be able to make the identification if it is  
 23 about some sort of visual presence on the internet. We  
 24 don't know. So we cannot make those submissions to you  
 25 apart from in these very general terms. So we do think

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1 that in order to secure our continued and effective  
 2 participation in this process, we do need to know when  
 3 you say that sterile corridor is no longer sterile. Why  
 4 it is you say that in broad terms and what you say the  
 5 risk is of the identification being made one way or the  
 6 other, whether it is real to cover or cover to real.

7 Of course we have made that point in our submissions  
 8 in general terms to say that we are well aware of the  
 9 cover names of a number of officers such as  
 10 Simon Wellings, Rick Gibson, Bill Lewis,  
 11 Douglas Edwards, Rod Richardson. These are cover names  
 12 that the Inquiry has confirmed to be cover names, but we  
 13 are unaware of any harm that has come to them since  
 14 their cover names have been officially confirmed.

15 So we also support Ms Kaufmann when we say we do not  
 16 understand why it is, sir, that you cannot say in broad  
 17 terms:

18 "This officer was involved in infiltrating an  
 19 extreme right wing group or an extreme left wing group."

20 Because we can't see why it is you can't give that  
 21 information. Because if you did, then we would then be  
 22 able to openly address you from Mr Francis's knowledge  
 23 of the risk broadly speaking of an extreme right group,  
 24 an extreme left group and how that operated on the  
 25 ground and how he sees that risk now manifesting.

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1 So in relation to HN23, as we have said in our  
 2 written submissions, he is an officer known to  
 3 Peter Francis and the group -- I will say "groups"--  
 4 that he infiltrated are also known to him. In  
 5 Peter Francis's admission, this is an officer who would  
 6 have valuable evidence to give you about the nature of  
 7 his deployment and -- I use "his" generically, sir, that  
 8 is not an indication of gender -- what he was asked to  
 9 do would be something that he needs to give evidence to  
 10 you about, because it is likely that there was a level  
 11 of violence authorised by Special Demonstration Squad  
 12 managers in his deployments and the difficulty with not  
 13 disclosing his cover name is that you cannot have his  
 14 evidence properly tested other than by those with whom  
 15 he possibly perpetrated that violence or who were  
 16 witnesses to it, in that group that he infiltrated.

17 So that's why we say it is of particular importance  
 18 that you do disclose this cover name.

19 As I say, without you giving us more as to why you  
 20 say the identification of the cover name would lead to  
 21 the real name, we can't see anything from our knowledge  
 22 that would suggest that that would happen. So we do  
 23 repeat our submission to you that his cover name should  
 24 be disclosed.

25 We are aware of the fact that he was subject to some

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1 kind of misconduct investigation, sir. What we would  
 2 like to know is was that in any way related to his time  
 3 as an undercover officer, as opposed to some other time  
 4 in his career. If that is right, why is it, sir, that  
 5 we have not been disclosed even gisted details of that  
 6 misconduct.

7 It may well be that you take the view it is because  
 8 that allegation was not upheld, but that is, in my  
 9 submission, nothing to the point because it may, for  
 10 example, throw light on why it is in fact it becomes  
 11 more important that his cover name is disclosed in case  
 12 there are allegations during his deployment that could  
 13 come to light by disclosing it. Those must be important  
 14 factors militating towards disclosure of his cover name.

15 Sir, as I say, without further disclosure I don't  
 16 think I can assist any further.

17 THE CHAIR: Yes. You don't want to say anything about 40?  
 18 MS SIKAND: I was going to follow Ms Kaufmann on 40 on this.

19 THE CHAIR: She has, I think, said she has no further  
 20 submissions given the blank wall up against which she  
 21 has come in relation to these two officers.

22 MS SIKAND: Is that right? Okay.

23 40, you have seen our written submission. This is  
 24 also an officer known to Mr Francis, and so are I say  
 25 groups, just because it is easier to say "groups" rather

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1 than "group", that he infiltrated. Once more, he is  
 2 unaware as to why you say the revelation of his cover  
 3 name would be more likely to lead to the discovery of  
 4 his real name than any other undercover officer. We  
 5 don't know, but we are assuming that is your position.  
 6 That particularly in his case, as in 23, you say for  
 7 some reason the revelation of his cover name would  
 8 disclose his real name.

9 Is that right, sir? If there is a particular --

10 THE CHAIR: I am sorry, I really am not going to respond to  
 11 questions even well-intentioned ones as yours is.

12 MS SIKAND: If that is the position, that just because these  
 13 two officers have infiltrated groups that are prone to  
 14 violence, that somehow that means it is more likely that  
 15 their real name would be discoverable from their cover  
 16 names, we say that is wholly wrong and there is no  
 17 rational basis for making that suggestion or relying  
 18 upon that for not disclosing his cover name.

19 It is Peter Francis's view that once more this  
 20 officer would have valuable evidence to give you about  
 21 the violence that was permitted by Special Demonstration  
 22 Squad managers to be used by Special Demonstration Squad  
 23 officers. And we say that, not just wanton violence,  
 24 sir, for the sake of it, but in order to maintain his  
 25 cover. We say this is evidence that you have to hear.

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1 Of course you say you will hear it, but we say can only  
 2 be properly tested if you reveal his cover name so that  
 3 you can hear from those who may have witnessed those  
 4 incidents.

5 We also say that in his first impact statement, sir,  
 6 his real concern seems to be about the release of his  
 7 real name. And he also cites the risk to his family as  
 8 his primary concern as opposed to the risk to him.

9 I know in his second witness statement he seems to  
 10 revise that view, but in his first statement that is his  
 11 fundamental concern. He speaks not of the risk to him  
 12 if his cover name were to be released.

13 Sir, we make that point in our written submissions  
 14 but the Dr Fox report, the gisted Dr Fox report, of  
 15 course the few lines that we have seen, it is difficult  
 16 to understand why it is that Dr Fox asserts that if  
 17 a restriction order is granted over both his real and  
 18 cover names there is a good chance of symptom recovery.

19 Sir, this doesn't sit at all well with his own  
 20 evidence which says in terms that his primary stressor  
 21 was the undercover work he did itself and his treatment  
 22 by the Metropolitan Police thereafter.

23 He expresses feelings of being left down and being  
 24 severely mismanaged post deployment. These are matters  
 25 that exist completely independent of anything to do with

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1 the revelation of his real or cover names. So how it is  
 2 his psychiatrist -- or the psychiatrist who assesses  
 3 him -- could just say, "If you give him a restriction  
 4 order he's going to get better". This is an astonishing  
 5 assertion, but it may be that the gisting has done the  
 6 doctor disservice but we say we don't understand that at  
 7 all.

8 In relation to whatever you do in the end,  
 9 regardless of what we say here, if you maintain your  
 10 position that you are going to let both his real and  
 11 cover names be restricted, he has to be able to give  
 12 evidence, we say, in open court because of the  
 13 importance of it.

14 So unless I can assist any further, sir.

15 Submissions by MR FRANCIS re HN23 and HN40

16 MR FRANCIS: Sir, could I possibly say something. As  
 17 I actually know these officers as we very clearly say.  
 18 What I would like to say I have not had a chance to do  
 19 the brief because this is all running now. These  
 20 officers are very capable of spinning a very believable  
 21 yarn, this is what we did professionally, we were  
 22 trained to do this.

23 These officers I know they do in public order terms  
 24 some very, very dangerous things. This man here is  
 25 a former undercover officer himself, Neil Woods, the

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1 author of "Good Cop, Bad War".

2 He personally has led to more imprisonment of  
 3 individuals totalling approximately 1,000 years for his  
 4 deployment from 1993 all the way to 2007.

5 I know statistically -- and I very much hope that  
 6 the Inquiry knows statistically -- that one man has led  
 7 to more imprisonment than the entire Special  
 8 Demonstration Squad from 1968 to 2008. He is sitting  
 9 here in his own name. I am sure he doesn't mind saying  
 10 he's actually brought his wife along today. He walks in  
 11 society freely and yet there is hundreds upon hundreds  
 12 of people who would like to pay that man back.

13 So my concern is -- and me personally I put have  
 14 great deal of my life into this public Inquiry revealing  
 15 the truth, and I would never wish to undermine you and  
 16 your authority here by revealing who these officers are,  
 17 but I have great -- huge -- concerns that these  
 18 professional liars are spinning you, the Inquiry and  
 19 definitely these poor solicitors they are working with  
 20 here, as they are having them over.

21 They had Operation Herne over totally, either  
 22 Operation Herne was a conspiracy with the Special  
 23 Demonstration Squad, which I do not believe -- I hope  
 24 I do not believe -- the Special Demonstration Squad has  
 25 had them over. My concern is they are having you over,

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1 sir. And that is no disrespect intended, that is the  
2 last thing I wish to do and I apologise for doing it  
3 this way, I just can't write Maya enough notes to be  
4 able to come across.  
5 THE CHAIR: Does anybody else have anything to say about 23  
6 or 40?  
7 MS STEEL: Could I just say something briefly.  
8 THE CHAIR: Of course.  
9 Submissions by MS STEEL  
10 MS STEEL: Thank you. I just want to say I personally think  
11 it is absolutely ludicrous that we can't be told for  
12 every officer, when we only have the number, the dates  
13 that they were deployed and the category of organisation  
14 at minimum that they were deployed into. We know that  
15 these political undercover policing units spanned the  
16 entire period that the Inquiry is looking into, so  
17 telling us which particular dates that these officers  
18 were deployed tells us nothing unexpected. We know that  
19 there were officers deployed into political groups  
20 during each of those periods. Telling us the categories  
21 tells us nothing that is unexpected. The Inquiry has  
22 decided the categories of core participants in this  
23 inquiry, so we know that all those categories of groups  
24 were infiltrated by undercover police officers. We also  
25 know that the Special Demonstration Squad participated

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1 in the "True Spies" documentary, which revealed the  
2 infiltration of left wing groups, right wing groups,  
3 trade unions, environmental groups, animal rights groups  
4 and so on. So revealing the categories of groups that  
5 individual N numbers spied on does not tell us anything  
6 unexpected. No secret information is gained by  
7 revealing that.  
8 If you don't end up revealing the name, then -- what  
9 are we going to do with that information? What are we  
10 going to do with knowing that officer H3000 whatever --  
11 I am just making up a number here, sorry, not a specific  
12 one -- infiltrated, you know, a far right group in 1990.  
13 What can we do with that information? Nobody can learn  
14 anything from that, we know that those groups were  
15 infiltrated. We know that they were infiltrated during  
16 that period. It tells us nothing new but it does enable  
17 us to be able to look into the individual officers and  
18 make submissions on a more informed basis that allows  
19 effective participation.  
20 And frankly the way that the Inquiry is currently  
21 conducting this process gives the core participants  
22 absolutely no faith that it is interested in learning  
23 the truth because it is basically believing everything  
24 the police says and saying, "I don't need to hear you  
25 because you haven't got anything you can tell us".

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1 And that in the end will result in a -- it is just  
2 a pointless waste of money if we are not being told  
3 enough information to effectively participate this  
4 Inquiry. It is not going to get to the truth and the  
5 whole purpose of this Inquiry is to stop the human  
6 rights abuses that were being committed by these units  
7 and you can't do that without our participation and it  
8 is a joke that we are being excluded from this process.  
9 It is an insulting joke, I have to say.  
10 THE CHAIR: Now is not the time for an extended debate  
11 between us about this, but you are not being excluded  
12 from this process.  
13 I have made it as clear as I can -- in as blunt  
14 a language as I can -- that some officers' identities,  
15 cover and real, are not going to be revealed. They are  
16 a minority. I assure you that the Inquiry when it looks  
17 into all the deployments that it can do publicly will  
18 invite and welcome and found its findings upon evidence  
19 from all sources.  
20 MS STEEL: We can't give the evidence if the cover names are  
21 not revealed.  
22 THE CHAIR: That is true in relation to those cases where  
23 that does not occur, I agree.  
24 Anyone have anything to say about 23 and 40?  
25 Mr Sanders you look as if you were minded to stand up.

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1 Submissions on behalf of designated lawyer officers by  
2 MR SANDERS re HN23 and HN40  
3 MR SANDERS: Yes, sir, very briefly because these are  
4 obviously two of my clients.  
5 Nothing particular to say other than just to mention  
6 that lurking in the background and as touched on I think  
7 in your exchanges with Ms Kaufmann. There is an issue  
8 about the satisfaction of the real and immediate risk  
9 test under articles 2 and 3.  
10 I think it is an issue where we may take a slightly  
11 different view to you, sir. It doesn't matter in the  
12 case of HN23 or HN40, it is not decisive in those cases,  
13 but there is a point in which we may take a different  
14 view to you, so I flag that as a possible issue.  
15 THE CHAIR: That is fine. There is, I think, legal  
16 uncertainty about whether or not -- at this rate, about  
17 the precise circumstances in which articles 2 and 3 are  
18 engaged. I have chosen to duck that issue by dealing  
19 with it under article 8. I have made the nature of the  
20 risk clear.  
21 MR SANDERS: I am grateful, sir.  
22 Nothing further to add, thank you.  
23 THE CHAIR: Anybody further?  
24 The shorthand writers I know are hoping for, indeed  
25 expecting, a break at about this time. We will stop for

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1 ten minutes.  
2 (11.24 am)  
3 (A short break)  
4 (11.35 am)  
5 THE CHAIR: Ms Kaufmann, I think we got to 241.  
6 MS KAUFMANN: I had 58, but we are on 241.  
7 THE CHAIR: You may take them in whatever order you like,  
8 I am not wedded to any particular order.  
9 MS KAUFMANN: I am happy to take 241.  
10 THE CHAIR: Fine.  
11 MS KAUFMANN: Just before I start on 241, just in the break  
12 I have had an opportunity to discuss matters with some  
13 of my clients, the non-state core participants.  
14 A concern was raised which I just wanted to make sure  
15 has not led you to misinterpret anything that I said  
16 earlier.  
17 When I was talking about the mosaic effect,  
18 I discussed the fact that my clients, if a cover name  
19 were disclosed, would be likely to try and identify the  
20 real name of the individual. It was pointed out to me  
21 that actually that is not necessarily true at all. For  
22 example, if a cover name were disclosed, and that  
23 individual were identified and it was clear that they  
24 had done nothing wrong beyond simply being an undercover  
25 officer, then it is very possible that steps would not

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1 be taken to identify the real name in those  
2 circumstances. I think it is important that we do know  
3 and you do know that in circumstances where allegations  
4 of wrongdoing are made that attempts have been made to  
5 identify the cover names and that has led to the  
6 revelation of a number of real names. And no injury has  
7 come to people.  
8 So certainly it would be proper to assume that there  
9 will be attempts to find the real name in circumstances  
10 where there has been wrongdoing, but not, if I can  
11 clarify, in circumstances where there is no indication  
12 of any wrongdoing.  
13 THE CHAIR: I'm not surprised to hear that, but I think it  
14 is quite right that you said it.  
15 MS KAUFMANN: Thank you.  
16 Submissions on behalf of the non-state, non-police core  
17 participants by MS KAUFMANN re HN241  
18 MS KAUFMANN: Turning to officer 241, so this is an officer  
19 who is now in his 70s. The period in which this officer  
20 was engaged is the 1970s. It is clear here that we  
21 really are dealing, it seems, with article 8 only risk.  
22 It is a low risk, but it cannot be dismissed as  
23 fanciful, is the way that it is put in your minded to  
24 note.  
25 THE CHAIR: Yes.

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1 MS KAUFMANN: We also know that this officer's cover was  
2 blown, that is in paragraph 16 at tab 18. And really  
3 from his point of view he wants cover really for his  
4 family against media intrusion.  
5 On the disclosure front, another case where we have  
6 nothing, but what we do know is there is a very low risk  
7 to physical safety, ie it is highly improbable, and  
8 I have to say given that this officer's cover has  
9 already been blown it is hardly surprising that that  
10 assessment has been made because if there were to be  
11 such a risk arising from revelation of his real name,  
12 that risk already would have materialised and it hasn't.  
13 This is a case which does throw up in sharp relief  
14 where it is that the balance is being drawn. This takes  
15 me back to the point I was making in opening by  
16 reference to Counsel to the Inquiry's response to the  
17 consultation: query whether because you are of the view  
18 that you can do a perfectly full and proper inquiry  
19 without revealing all the cover names, you are actually  
20 taking an approach which reduces the threshold for  
21 non-disclosure of cover names or means that where the  
22 level of risk is not an article 3 risk at all but is in  
23 this case --  
24 THE CHAIR: It doesn't approach it, it doesn't approach  
25 article 3.

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1 MS KAUFMANN: Exactly. So it doesn't approach article 3.  
2 We have a case here where we are really talking about  
3 a risk of some kind of intrusion in this individual's  
4 family life. Nothing worse. And that's obviously on  
5 the assumption that they have done some wrong, where  
6 that has justified your conclusion that the cover name  
7 should not be disclosed.  
8 Now in our submission that is only explicable on the  
9 basis that you have conducted an improper balance of all  
10 those factors that weigh on the other side in favour of  
11 disclosure. You say that the reasons why you have come  
12 down in favour of non-disclosure is that it seems very  
13 unlikely that publication of real or cover names will  
14 lead to evidence from non-state sources that would  
15 assist the Inquiry. To which we put the obvious  
16 question: well, why? And how on earth are you in  
17 a position to make that assessment now?  
18 Yes, this is an officer who was operating in the  
19 1970, but so was Rick Gibson. We will come on to  
20 Rick Gibson but what we now know about Rick Gibson -- we  
21 trailed it at the last hearing we now have a statement  
22 from him, from Mary -- is that that officer did engage  
23 back in the 1970s in the kind of misconduct that this  
24 Inquiry is looking into.  
25 As you said on the last occasion in relation to

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1 Rick Gibson, that is the period where it may be that the  
2 culture was being established and being set down. So  
3 given the importance of the revelation of cover names,  
4 if this Inquiry is to secure any evidence of wrongdoing  
5 in relation to a particular individual, given the  
6 importance that as many cover names as can safely be  
7 disclosed are disclosed for the Inquiry to discharge its  
8 function of looking at the systemic questions that  
9 arise, this very minor article 8 interference that falls  
10 in the balance on the other side, in our submission  
11 simply cannot outweigh the factors that favour  
12 disclosure.

13 Of course, that is simply in relation to the  
14 revelation of the cover name. And revealing the cover  
15 name is not going in and of itself necessarily to reveal  
16 the real name so it may be that the revelation of the  
17 cover name has absolutely no impact whatsoever on this  
18 particular officer because the real name will never be  
19 revealed. As I have just said, if in fact disclosure of  
20 this individual's cover name demonstrates or leads to no  
21 allegations of wrongdoing, then this officer is likely  
22 to be left entirely alone in terms of any searches even  
23 being made for the real name.

24 If, on the other hand, there is wrongdoing, then it  
25 is likely, as I have said, that attempts will be made to

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1 look at the real name. But as you yourself said at the  
2 last hearing, if there is wrongdoing, it is right that  
3 real names should be revealed. So we cannot see any  
4 justification for the decision that has been made here  
5 and we would invite you to revisit it and to give  
6 everybody comfort who wants to participate that is not  
7 a state actor and that was spied upon. Everybody  
8 comfort that you take seriously the need for disclosure  
9 of cover names if this Inquiry is to be efficacious, and  
10 that you won't let that need give for such unweighty  
11 contradictory private interests of the individual  
12 concerned.

13 I have nothing further to say on that, unless I can  
14 assist.

15 THE CHAIR: You are inviting me to revisit the decision that  
16 I was minded to make. I have not yet made a decision,  
17 but the decision that I was minded to make in the light  
18 of your submissions?

19 MS KAUFMANN: Yes.

20 THE CHAIR: Yes.

21 MS KAUFMANN: And to disclose at the very least the cover  
22 name.

23 THE CHAIR: We have had the debate about the cover names and  
24 real names generally last time.

25 MS KAUFMANN: Exactly.

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1 THE CHAIR: No need to have that again. But you invite me  
2 to revisit the decision about the cover name in the  
3 light of your submissions?

4 MS KAUFMANN: I do.

5 THE CHAIR: Right.

6 Ms Sikand.

7 Submissions on behalf of Peter Francis by MS SIKAND re HN241

8 MS SIKAND: Sir, we do ask you to revisit your discussion  
9 and we do take the view that on your only analysis your  
10 decision is irrational in relation to this officer.

11 Sir, you said that you had a commitment and  
12 a principled commitment to disclosing cover names in  
13 every case in which it can be done without  
14 disproportionate damage to the public interest or harm  
15 to the individual concerned. Given that commitment, and  
16 given what we know about this application, it is  
17 difficult to understand your decision, which is why we  
18 also urge you to revisit it.

19 We made these points in our written submissions. We  
20 note that HN241 did not target any violent groups. He  
21 says:

22 "In terms of the individuals I came into contact  
23 with, I remember one, I don't remember other names.  
24 I did not consider him to be a violent individual. He  
25 was a bit like Jeremy Corbyn, he never grew up."

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1 Well, he also goes on to say that he was unaware of  
2 any affect upon him from his deployment. He himself did  
3 not take any security measures at home. And on one  
4 occasion his identify was compromised and then he says  
5 in his statement, his identity was actually blown. He  
6 himself only asks for a restriction order in relation to  
7 his real name and his risk assessment puts a risk of  
8 physical harm if his cover name is disclosed as very  
9 low. And yet, sir, you have made the minded to decision  
10 that you have against that background.

11 Sir, I know Ms Kaufmann has just said it, but when  
12 you make a decision like that in relation to an officer  
13 like this against the evidence like this that we have  
14 seen, it is difficult to understand how it is you are  
15 making consistent decisions.

16 I don't mean that at all disrespectfully, sir, but  
17 this is an example of a decision which makes everybody  
18 stand back and say, "Hang on a moment, where did the  
19 balancing exercise go so wrong?"

20 We urge you, sir, to reconsider this.

21 THE CHAIR: Right.

22 If I were to reconsider this, obviously I would have  
23 to give the officer concerned and his legal  
24 representatives the opportunity of making whatever  
25 submissions they wish to, and possibly to hold a closed

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1 hearing.  
 2 It is not a case in which I would be particularly  
 3 keen to do so, but I think consistently with other cases  
 4 I would have to offer that opportunity. In those  
 5 circumstances, would everybody be content if I were to  
 6 make a ruling and decision after such a hearing or would  
 7 there have to be a further open hearing? It seems a lot  
 8 of legal effort and possibly expense on an issue that  
 9 may not ultimately be very important?  
 10 MS SIKAND: Sir, obviously, if you are minded to reveal his  
 11 cover name, then that would --  
 12 THE CHAIR: Of course, on the revised protocol that is  
 13 an end to the matter --  
 14 MS SIKAND: Yes.  
 15 THE CHAIR: -- but assuming that the revised protocol does  
 16 not apply, which this being an ancient case in terms of  
 17 our decision-making doesn't. Would anybody wish there  
 18 to be a yet further open hearing --  
 19 MS SIKAND: Sir, in the absence of further fresh evidence,  
 20 our advocacy if it failed today is not going to get any  
 21 better second time, unless we have further matters that  
 22 we can address you on.  
 23 THE CHAIR: No, of course.  
 24 Does anybody have anything to say about 241?  
 25 Ms Mannion?

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1 MS MANNION: Sir, yes.  
 2 Submissions on behalf of the Commissioner of Police of the  
 3 Metropolis by MS MANNION re HN241  
 4 MS MANNION: If you were minded to have a closed hearing, if  
 5 you are considering revisiting your decision, we would  
 6 certainly say that a closed hearing would be necessary  
 7 and I would be able in that forum to make more full  
 8 submissions to you.  
 9 Insofar as what can be said today, this is a case  
 10 where the risk assessor has found a low risk of harm  
 11 which would have a moderate impact and, sir, you have  
 12 found that it is not something which can be dismissed as  
 13 fanciful. Our submission is that does carry weight and  
 14 all risks of harm come to be assessed for their gravity  
 15 and carry weight in that way, whether it is an article 8  
 16 balance or in the public interest.  
 17 We would also emphasise that upset and fear for  
 18 family are relevant considerations which themselves  
 19 carry weight. Indeed, also that this officer indicates  
 20 they have maintained a total silence about their work  
 21 which would be undone and have an effect over many  
 22 decades of life as a result.  
 23 This is a case where the disclosure of the cover  
 24 name on certainly the Metropolitan Police Service's  
 25 assessment could lead to the real name. My submission

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1 is that has to be detailed in a closed forum if you wish  
 2 to test it. But the consequence of that means that if  
 3 the real name merited restriction, so too on these facts  
 4 does the cover name.  
 5 My other submission of principle, which is right to  
 6 say openly, is that our submission is that it is right,  
 7 sir, that you balance the harm against the status the  
 8 person is likely to have within the Inquiry, and the  
 9 importance of the evidence they may come to provide,  
 10 and, sir, the authority for that is in the principles  
 11 ruling at C3, subsection 5.  
 12 Those, sir, would be the submissions I would make in  
 13 this forum and I would urge a closed hearing if you were  
 14 considering revisiting the decision you were minded to  
 15 reach.  
 16 THE CHAIR: Thank you.  
 17 MR BARR: Sir, may I just rise to my feet to say that since  
 18 I made the introductions this morning, although it is  
 19 right to say that 241's application was made by  
 20 Commissioner's legal team when they were assisting 241,  
 21 Mr Sanders has drawn to my attention that he now  
 22 represents 241, so I correct myself on that point.  
 23 THE CHAIR: Yes.  
 24 In consequence of that, is there anything you want  
 25 to say, Mr Sanders?

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1 Submissions on behalf of designated lawyer officers by  
 2 MR SANDERS re HN241  
 3 MR SANDERS: Sir, nothing to add to what Ms Mannion said.  
 4 Obviously if there was a closed hearing, we would  
 5 participate in that.  
 6 THE CHAIR: Certainly. But if I were minded to revisit this  
 7 decision and give you the opportunity of making further  
 8 representations about it, is it your understanding that  
 9 HN241 would wish there to be a closed hearing.  
 10 MR SANDERS: Yes, yes.  
 11 THE CHAIR: Yes.  
 12 Ms Kaufmann?  
 13 Further submissions on behalf of the non-state, non-police  
 14 core participants by MS KAUFMANN re HN241  
 15 MS KAUFMANN: Can I say something about the process. Were  
 16 you minded to, if a closed hearing follows, the question  
 17 arises what would happen after that.  
 18 THE CHAIR: Yes.  
 19 MS KAUFMANN: If following that you were minded to maintain  
 20 the position we would ask that you provide another  
 21 minded to note so we can then make written submissions,  
 22 because of course your minded to position reached after  
 23 this process would have to take account of our  
 24 submissions now, submissions in closed --  
 25 THE CHAIR: Right. But you would be content to make written

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1 submissions unless I thought there was some reason for  
2 a further open hearing, you would be content that  
3 I should make a decision?  
4 MS KAUFMANN: We would, yes.  
5 THE CHAIR: Thank you. That is very helpful.  
6 My batting order has 322 next.  
7 Submissions on behalf of the non-state, non-police core  
8 participants by MS KAUFMANN re HN322  
9 MS KAUFMANN: 322 is a real only case.  
10 THE CHAIR: Yes.  
11 MS KAUFMANN: This officer is also in his or her 70s,  
12 doesn't actually recall what went on and was only  
13 deployed for two months in the Special Operations Squad.  
14 The real issue in relation to this officer is the issue  
15 that is going to come up later in relation to images.  
16 We don't have a cover name. Obviously the only way  
17 therefore that this individual can be identified is  
18 going to be from an image of the officer at the time.  
19 Our submission is that that image is obviously a very  
20 important piece of evidence that should be provided in  
21 order that this individual officer can then be  
22 identified so that any evidence can be brought forward  
23 by those upon whom he or she was spying.  
24 THE CHAIR: I can supplement the information in the minded  
25 to note about this officer.

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1 My belief is -- I say this having seen some  
2 documents recently and I hope I have the right  
3 officer -- that this officer did attend a number of  
4 small public meetings in the run-up to 27 October 1968  
5 demonstration but that is, as far as I know currently,  
6 the full extent of anything he may have done.  
7 MS KAUFMANN: If that is the only thing the officer did do,  
8 then there can't possibly be any harm from disclosing an  
9 image of that officer as they appeared at the time.  
10 Through doing that, we will discover whether or not  
11 that is actually correct. Because people will be able  
12 to identify that officer.  
13 THE CHAIR: I have not yet had to consider any redaction of  
14 documents, but my anticipation is that the documents  
15 with names redacted will be put into the public domain  
16 so that the deployment can be scrutinised by those who  
17 know anything about it.  
18 MS KAUFMANN: So if that is right, and if therefore through  
19 the disclosure of documents you are quite happy for  
20 people to try and identify this individual officer,  
21 there can be no objection to doing so with the  
22 additional vehicle of an image of the officer at the  
23 time insofar as there is an image of them.  
24 THE CHAIR: That depends upon there being one.  
25 MS KAUFMANN: Yes, of course.

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1 THE CHAIR: As far as I know, there is no image in the  
2 possession of the Inquiry.  
3 MS KAUFMANN: But there may be an image in the possession of  
4 the police. The point is one of principle not of  
5 practicality at the moment.  
6 If there is an image, there can be no objection to  
7 it being disclosed, and the concern is that at the  
8 moment the orders that are being made in relation to  
9 real names would prevent an image being disclosed. And  
10 so this officer's case is an exemplar of that problem.  
11 So first one has to address the principle: should images  
12 be disclosable?  
13 THE CHAIR: This is an example of a case where the weights  
14 on either side of the balancing exercise are feathers.  
15 MS KAUFMANN: We just don't know that. We do not know that  
16 and if it is a feather which we can be clear about --  
17 certainly we know it on one side of the balance and  
18 that's the harm that is going to come to this officer  
19 from disclosure, that is a feather. We do not know  
20 whether it is a feather on the other side and given that  
21 there will be no harm to the officer should disclosure  
22 of an image be made, given that you are quite prepared  
23 for other attempts to be made to identify this officer  
24 through the documentation that is going to be disclosed,  
25 there can be no justification for looking at whether or

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1 not other information can come to light which is  
2 meaningful and valuable.  
3 THE CHAIR: At the moment we are only concerned with name.  
4 We may eventually get to photographs at a different  
5 stage of the Inquiry.  
6 MS KAUFMANN: I raise image now because at the moment the  
7 way in which you frame a restriction order in respect of  
8 an individual's name prevents --  
9 THE CHAIR: We will come to that in due course. I think it  
10 has been misunderstood, but we will come to that in due  
11 course.  
12 MS KAUFMANN: I am not going to repeat the submissions about  
13 real name which we made on the last occasion --  
14 THE CHAIR: Yes.  
15 MS KAUFMANN: -- so that is exactly the same in relation to  
16 HN348. I am not going to waste time repeating those.  
17 You have our submissions. You have taken a different  
18 course. We are now focusing on images and so I will  
19 deal with those later then. There is nothing further I  
20 can say in relation to both those officers then.  
21 THE CHAIR: Ms Sikand, anything you want to say.  
22 Submissions on behalf of Peter Francis by MS SIKAND re HN322  
23 MS SIKAND: Sir, as you know we don't ask for the real names  
24 of either of those officers to be disclosed, but what we  
25 have said it may be that Special Demonstration Squad

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1 managers or other Special Demonstration Squad officers  
 2 could assist in identifying cover names. That is the  
 3 only suggestion we make. If the officer, her or  
 4 himself, has forgotten.  
 5 THE CHAIR: It is perfectly possible that this officer did  
 6 not have one. The recollection about deployment may not  
 7 be strictly correct but is in principle correct if  
 8 I have seen a representative sample of the documents.  
 9 MS SIKAND: Thank you, sir.  
 10 We can't say anything more about that, other than it  
 11 could well be that a Special Demonstration Squad manager  
 12 could assist. But we don't know.  
 13 THE CHAIR: From this era, I doubt that there are any living  
 14 managers --  
 15 MS SIKAND: There it is.  
 16 THE CHAIR: -- or at any rate, any who can assist who are in  
 17 a condition of health to assist.  
 18 MS SIKAND: Thank you, sir.  
 19 THE CHAIR: Ms Mannion, is this one of yours?  
 20 Or is it one of yours, Mr Sanders?  
 21 MR SANDERS: It is one of mine, sir.  
 22 THE CHAIR: Yes.  
 23 Submissions on behalf of designated lawyer officers by  
 24 MR SANDERS re HN322  
 25 MR SANDERS: The point that there was no cover name and

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1 there was no deployment whilst he belonged to the  
 2 Special Operations Squad/Special Demonstration Squad, so  
 3 the meetings he attended were while he was performing  
 4 his normal Special Branch duties.  
 5 THE CHAIR: I am not entirely clear that is right, but the  
 6 documents I have seen suggest it was under the SOS  
 7 umbrella, even though the nature of the duty was  
 8 ordinary Special Branch.  
 9 MR SANDERS: Very well. We possibly have not seen those  
 10 documents. The point is there was no cover name.  
 11 I don't think there is any suggestion in any documents  
 12 that he had a cover name.  
 13 THE CHAIR: I have not seen any.  
 14 MR SANDERS: He certainly doesn't think he did have one.  
 15 Not just that he doesn't remember it, but that there  
 16 wasn't one.  
 17 I don't think there is much more I can add.  
 18 THE CHAIR: Thank you.  
 19 Submissions on behalf of the Commissioner of Police of the  
 20 Metropolis by MS MANNION re images  
 21 MS MANNION: Sir, one response on the images point. I know  
 22 it is a matter we will return to again.  
 23 Simply to highlight that not having an image is, in  
 24 our submission a problem because you, sir, can't make  
 25 decisions about the effect of disclosure of any image

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1 without assessing its value or whether any other basis  
 2 for restriction arises from it.  
 3 THE CHAIR: We will discuss images when we get to it rather  
 4 than here.  
 5 MS MANNION: Certainly. Then there is nothing further to  
 6 say now, thank you, sir.  
 7 THE CHAIR: HN348. She had an unusual deployment and  
 8 speaking for myself I wonder why she was deployed into  
 9 this group. It is certainly one of the issues I will  
 10 have to look into in due course submission.  
 11 Submissions on behalf of the non-state, non-police core  
 12 participants by MS KAUFMANN re HN348  
 13 MS KAUFMANN: Yes, indeed. As I already indicated in  
 14 relation to HN322, I have nothing really further to say  
 15 in relation to her. Obviously one has to ask why she  
 16 was employed. Her case was one where we really need the  
 17 image again, perhaps we will deal with that later.  
 18 THE CHAIR: The naming stage, I can tell you that the group  
 19 was believed to have been a very small one and it is  
 20 conceivable that the publication of the name -- I think  
 21 it is Sandra, is it not -- may prompt a recollection on  
 22 the part of those who belonged to the group at the time.  
 23 MS KAUFMANN: Yes, we will come to that when we are looking  
 24 at images as to why that is not necessarily going to be  
 25 the case.

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1 THE CHAIR: But at the naming stage, from all that I know,  
 2 I doubt that there is anything more that can be done to  
 3 facilitate the investigation of this deployment into  
 4 this group, until we get to substantive phase of the  
 5 Inquiry.  
 6 MS KAUFMANN: It may be that if an image is disclosed, then  
 7 more can be done.  
 8 But we can talk about that later.  
 9 THE CHAIR: Right.  
 10 Ms Sikand?  
 11 MS SIKAND: Sir, no. You have already indicated there is  
 12 unlikely to be any Special Demonstration Squad manager  
 13 still alive who can assist and it seems that this is  
 14 a deployment the justification of which is something  
 15 that the Inquiry wants to consider but may not be able  
 16 to if there are no Special Demonstration Squad managers  
 17 to speak to it, because it seems quite an extraordinary  
 18 decision, but there we are.  
 19 THE CHAIR: Absolutely. Until I have heard the evidence  
 20 about it, I can only say that provisionally I agree.  
 21 One of the problems I do have to look at is why  
 22 undercover police officers were deployed into groups --  
 23 MS SIKAND: At all.  
 24 THE CHAIR: -- that were fundamentally harmless.  
 25 MS SIKAND: Of course, sir. Thank you.

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1 THE CHAIR: Do either of you have anything to say about  
2 this?  
3 MR SANDERS: No thank you sir.  
4 THE CHAIR: Okay.  
5 Now we have the problematic case of HN58.  
6 Submissions on behalf of the non-state, non-police core  
7 participants by MS KAUFMANN re HN58  
8 MS KAUFMANN: This is definitely article 8 territory.  
9 THE CHAIR: Yes.  
10 MS KAUFMANN: So I repeat again the concerns I just  
11 expressed in relation to the officer 241. In a sense  
12 this, in my submission, got off to a slightly false  
13 start in that your focus from the outset in relation to  
14 this officer was on real name disclosure because this  
15 officer was a manager. You have been engaged in looking  
16 at how that can be managed and so forth given the issues  
17 weighing in the balance against identification of his  
18 real name.  
19 In our submission, the much more important focus in  
20 relation to this officer is to make sure that the cover  
21 name is disclosed. Because revelation of the cover name  
22 will enable this officer's activities in the field to be  
23 looked at. We have discussed this before, but the  
24 importance of that of course is to look at how that  
25 culture in the field that that officer was part of then

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1 informed the managerial role that that officer engaged  
2 in. The period is, as we all know, a very critical one.  
3 THE CHAIR: Yes.  
4 MS KAUFMANN: He was engaged during the Lawrence Inquiry, he  
5 managed Jim Boyling, Lambert, and so forth. So a very,  
6 very critical officer.  
7 As we said before, his role as an undercover officer  
8 in the field is plainly important not just for all the  
9 reasons that we have given about why getting as much  
10 evidence as possible in relation to all undercover  
11 officers is important, but because of the particular  
12 nexus of events that were going on at this particular  
13 time.  
14 So unless there is a good reason not to disclose his  
15 cover name weighing in the balance on the other side, it  
16 should be disclosed. In our submission there simply is  
17 not that good reason. The risk is low, if his cover  
18 name is revealed, unquestionably so.  
19 THE CHAIR: It is, however, a risk to safety.  
20 MS KAUFMANN: Yes, but it is a low risk to safety.  
21 The reasons given by you in your latest minded to  
22 for refusing are: 1, the absence of known allegations of  
23 misconduct; 2, the nature of the deployment; 3, what is  
24 known of his family and person circumstances make it  
25 unlikely it would be necessary to investigate possible

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1 misconduct even if details of his deployment were made  
2 public.  
3 As to 1, we repeat what we have said before. The  
4 absence of a known allegation of misconduct is and has  
5 to be completely irrelevant at this stage for the very  
6 reason that if through the work of the non-state  
7 participants misconduct has not yet come to light in  
8 relation to this officer because their existence has not  
9 yet been identified, then you are not going to know of  
10 any misconduct even if there was misconduct.  
11 You are only going to know about it once, if there  
12 was misconduct, those who were spied upon know he was  
13 a spy or she was a spy. So that is not a good reason.  
14 It is not a reason that actually makes any sense.  
15 THE CHAIR: If you look at it the other way round, that  
16 there is an allegation of misconduct. That is a reason  
17 for disclosing the cover name. Therefore I think  
18 logically it must follow that if there is no allegation  
19 of misconduct, it can be part of a reason for not doing  
20 so.  
21 MS KAUFMANN: No, in my submission --  
22 THE CHAIR: I readily accept the proposition that you are  
23 making that you can't know until the cover name has been  
24 disclosed whether there is any allegation of misconduct.  
25 That, as an abstract proposition, is correct.

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1 But I have married it up to two other things in this  
2 man's case.  
3 MS KAUFMANN: Let's come to those in that minute, but let's  
4 go back to that.  
5 Yes, if there is an allegation of misconduct that  
6 makes the reason for disclosure even weightier. The  
7 fact that there is not an allegation of misconduct does  
8 not flip the balance as it were. It is not a factor  
9 weighing against disclosure. It just makes the weight  
10 for disclosure perhaps a little bit less.  
11 But I don't even accept that, because we start from  
12 the premise, which is accepted by you, that absent  
13 disclosure allegations of misconduct cannot -- cannot --  
14 come to the surface.  
15 That is a very compelling reason for disclosure.  
16 You don't need the additional weight of there being an  
17 allegation of misconduct to suddenly mean that these are  
18 pressing reasons for releasing cover names. They are in  
19 and of themselves -- this is in and of itself --  
20 a pressing reason for releasing the cover name. It goes  
21 directly to the efficacy of the Inquiry in fulfilling  
22 its terms of reference.  
23 So we do submit --  
24 THE CHAIR: In principle I agree with you, but I think we  
25 are arguing a theoretical point which is not of

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1 practical value. Therefore let's not, please, spend too  
 2 much time on the theory.  
 3 I know more about this man than you do, and hence  
 4 the two other observations that I have made. In the  
 5 light of those two observations, I think -- you submit  
 6 I'm wrong -- the fact that there is no outstanding  
 7 allegation of misconduct against him is a relevant  
 8 factor. No higher than that.  
 9 MS KAUFMANN: That brings us on to the other two factors.  
 10 In relation to the nature of the deployment, we  
 11 can't say anything because we have no idea what the  
 12 nature of deployment was.  
 13 THE CHAIR: Of course you can't.  
 14 MS KAUFMANN: But insofar as he was in the field it seems  
 15 very difficult to sustain that because of that it is  
 16 very unlikely he could possibly have done anything  
 17 wrong.  
 18 As to the third, we are genuinely perplexed how  
 19 something about his personal or family circumstances can  
 20 lead to a positive conclusion that this individual  
 21 cannot have done wrong whilst undercover. We know that  
 22 officers who were married were engaged in wrongdoing.  
 23 We know that homosexual officers were engaged in  
 24 wrongdoing, we know that even Catholic priests engage in  
 25 wrongdoing.

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1 THE CHAIR: Pause there, I think the example you have given  
 2 from the True Spies documentary is misstated, but we can  
 3 come back to that in a moment.  
 4 MS KAUFMANN: It is, we submit, impossible to rule out  
 5 wrongdoing on the basis of an individual's personal or  
 6 family circumstances.  
 7 THE CHAIR: Of course it is impossible to rule it out, but  
 8 you can make a judgment about whether or not it is more  
 9 or less likely.  
 10 We have had examples of undercover male officers who  
 11 have gone through more than one long-term permanent  
 12 relationship, sometimes simultaneously. There are also  
 13 officers who have reached a ripe old age who are still  
 14 married to the same woman that they were married to as  
 15 a very young man.  
 16 The experience of life tells one that the latter  
 17 person is less likely to have engaged in extramarital  
 18 affairs than the former.  
 19 MS KAUFMANN: People are infinitely surprising in how they  
 20 behave. It is that kind of generalisation which in my  
 21 submission is incredibly dangerous. There is no reason  
 22 for it. There is no good reason, based upon surmise  
 23 about your experience of human relationships, to say,  
 24 "I don't think this particular officer is likely to have  
 25 done that". I am sure the wives of the particular

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1 officers did not expect their husbands to be behaving in  
 2 that way. People do all sorts of things, specifically  
 3 in relation to sexual issues, that many other people  
 4 would never, ever have expected of them.  
 5 Also, even if you are right that wrongdoing is very  
 6 unlikely in relation to this particular officer, that is  
 7 not the only focus of this Inquiry. As we discussed  
 8 earlier, there are systemic issues that this Inquiry  
 9 needs to look at. It needs undercover officers' covers  
 10 to be divulged in order to get evidence about that.  
 11 Now even if you are right -- and we don't accept  
 12 it -- that you can put out of your mind the possibility  
 13 that this officer did wrong in his individual conduct.  
 14 The fact is if he, particularly at this time where the  
 15 systemic issues are very, very important for the  
 16 Inquiry -- that reason that he has not done wrong does  
 17 not even begin to answer why there is a pressing need  
 18 for his cover name to be disclosed in respect of the  
 19 systemic questions.  
 20 Given that we are dealing only with an article 8  
 21 issue, in our submission you have the balance wrong --  
 22 THE CHAIR: It is an article 8 issue which involves safety  
 23 as well as other considerations.  
 24 MS KAUFMANN: I understand that. But you have the balance  
 25 wrong because there is an additional compelling reason

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1 in respect of this officer as to why the cover name  
 2 should be revealed.  
 3 That is precisely because he was a manager and we  
 4 need to see how what he did in the field fed into his  
 5 managerial responsibilities. That is a very important  
 6 consideration.  
 7 When you look at it backwards, which is how you have  
 8 done it, taking the starting point that he is a manager  
 9 and therefore we need to reveal his real name, it  
 10 completely distorts the analysis which should focus  
 11 first on why does this officer's cover name matter in  
 12 terms of its revelation in this Inquiry, and for the  
 13 reasons I have given it really does matter.  
 14 If you have a concern that there is a risk in  
 15 revealing his cover name to him, or rather a risk in  
 16 relation to him should his real name be disclosed, then  
 17 the answer to that is don't disclose his real name even  
 18 though ordinarily that is what you would wish to do with  
 19 an officer in a managerial role. Or, as we have  
 20 suggested, separate the two.  
 21 THE CHAIR: I would like to explore that last possibility.  
 22 He is, as you know, known by a cipher given him to  
 23 by the Herne investigation, HN58.  
 24 You also know that an attempt was made by, I think,  
 25 the Ellison Inquiry to obfuscate the issue by giving him

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1 another cipher. That failed as it was bound to.  
 2 If his two roles are to be dealt with separately,  
 3 how on earth is the Inquiry to deal with that without  
 4 connecting them?  
 5 MS KAUFMANN: So what the Inquiry will do is it will deal  
 6 entirely separately with his managerial role, and he  
 7 will be giving evidence in his real name, and so far as  
 8 his undercover operations are concerned he will be  
 9 giving evidence in his undercover name or a cipher and  
 10 his undercover name will be known.  
 11 The two will be heard entirely operatically and  
 12 therefore there is no reason why the two should come  
 13 together at all.  
 14 THE CHAIR: He will be an officer giving evidence in a cover  
 15 name without a cipher being attributed to him. That  
 16 will immediately --  
 17 MS KAUFMANN: He could be given a different cipher.  
 18 THE CHAIR: -- that will immediately tell you who he is.  
 19 MS KAUFMANN: That is true, actually. Because you can't  
 20 give him a different cipher.  
 21 We will have to think about that. That may be  
 22 a problem. In which case, if it is a problem, the  
 23 answer then is you don't reveal the real name but you do  
 24 reveal the cover name.  
 25 So it is one of the cases where you make

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1 an exception to the general principle that you apply  
 2 which is managers should give their evidence in their  
 3 real name, because this is a better way for the Inquiry  
 4 to get the most evidence.  
 5 THE CHAIR: Think through the consequence of that. The  
 6 consequence of that is that his evidence as a manager  
 7 will have to be given with steps taken to ensure that he  
 8 cannot be identified outside, by screens and probably  
 9 voice distortion.  
 10 MS KAUFMANN: If you will bear with me just for a moment?  
 11 THE CHAIR: Of course.  
 12 (Pause)  
 13 MS KAUFMANN: As we understand it, it would be possible to  
 14 create some sort of disguise so that could he still, as  
 15 it were, be seen publicly. This talk of practicalities,  
 16 I have to say, are ones that are just that. They are  
 17 matters of practicalities.  
 18 THE CHAIR: Practicalities matter. When making decisions at  
 19 this stage which will influence practicalities later on,  
 20 I have to bear them in mind.  
 21 MS KAUFMANN: I understand that. To the extent that firstly  
 22 what one has to do is to try to see whether there are  
 23 disguises that can be used that will mean that the  
 24 individual can give evidence and be seen but not be  
 25 identifiable. That is step one.

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1 If that proves impossible then it may be there is  
 2 going to have to be some kind of screening or something,  
 3 which is not ideal and which is not the way forward one  
 4 would want. But if that means that very valuable  
 5 evidence can be obtained about their undercover role  
 6 then that is, in those circumstances, going to be the  
 7 cost.  
 8 THE CHAIR: So you are advocating that the solution that  
 9 I proposed, which is that he gives evidence in such  
 10 disguise as permits his demeanour and truthfulness to be  
 11 the subject of judgment by those who observe him and  
 12 that he should speak in his natural voice, you say that  
 13 that is secondary to disclosing his cover name?  
 14 MS KAUFMANN: No, that can stand side by side with  
 15 disclosing his cover name. Because that is a measure  
 16 that you are proposing to put in place as a way of  
 17 enabling him to give evidence in his real name but not  
 18 reveal his identity, as it were. And that is exactly  
 19 why that sort of measure could sit side by side with  
 20 revealing his cover name.  
 21 They are not incompatible; they run side by side.  
 22 THE CHAIR: All that depends upon the ease with which the  
 23 link can be made. In the light of what I have read,  
 24 I cannot discount the possibility that that link would  
 25 be made.

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1 I do emphasise that there underlies all this a risk,  
 2 a contingent risk, to his physical safety as well as all  
 3 the other article 8 considerations.  
 4 MS KAUFMANN: But it is put in this way, so the risk from  
 5 the known group is not assessed as significant. That is  
 6 from the people that were involved at the time when this  
 7 officer was actually engaged undercover:  
 8 "The risk of physical attack would appear to come  
 9 [this is in tab 15, page 15] from those currently  
 10 involved in groups currently in operation within the  
 11 known field or from people associated with contacts HN58  
 12 generated while deployed. Whilst I appreciate that the  
 13 situation has developed since this deployment, I cannot  
 14 expertly comment upon the specific details of the  
 15 current threat."  
 16 So we really are in a situation where we are --  
 17 there is no substantial evidence of any real risk at all  
 18 to his physical safety. There is no identification of  
 19 the level of the risk, the level of physical attack he  
 20 would face nor the likelihood of it. It is entirely  
 21 speculative.  
 22 In our submission, in that situation we are dealing  
 23 with something which does not properly fall to be given  
 24 very much weight at all on the other side of the  
 25 balance, given the importance of his cover name being

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1 revealed and given also the steps that will be taken to  
 2 ensure that if his cover name is revealed, his evidence  
 3 given in his real name is such that a link between the  
 4 two -- that is leading to his real identity -- is going  
 5 to be difficult to make.  
 6 In those circumstances, we submit that this is  
 7 a case where the balance comes down firmly in favour of  
 8 at the very least disclosure of cover name. Then giving  
 9 evidence in his real name as you have proposed.  
 10 THE CHAIR: The current proposal, which I am minded to  
 11 order, is that he gives evidence in public with the  
 12 modest elements of disguise that I have indicated under  
 13 his cipher.  
 14 MS KAUFMANN: Yes.  
 15 Then we do the same. You do it under the cipher  
 16 with him giving evidence in public and his cover name  
 17 having been revealed. That's the course one takes. And  
 18 we don't lose the valuable evidence of his cover name on  
 19 the basis of an entirely speculative risk.  
 20 THE CHAIR: All I can say is if I thought that disclosure of  
 21 the cover name would reveal information of great value  
 22 to the Inquiry which would be lost if it were not to be  
 23 disclosed, I accept you would have a powerful  
 24 submission.  
 25 I have to make a judgment about what impact

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1 disclosure of the cover name would have. The view  
 2 I have reached is that it is very unlikely to throw up  
 3 anything of value, whereas his evidence as a manager is  
 4 absolutely critical to the Inquiry and I want that  
 5 evidence to be given in as public a manner as possible.  
 6 MS KAUFMANN: Can I just clarify the reasoning that you have  
 7 just put forward to the effect that there is nothing  
 8 valuable that is going to be discerned through this  
 9 officer's role under cover is based upon the reasons  
 10 that you put forward in your minded to note?  
 11 THE CHAIR: Yes. There is a brief summary there, yes.  
 12 MS KAUFMANN: Those are our submissions on HN58.  
 13 THE CHAIR: Thank you.  
 14 Ms Sikand?  
 15 Submissions on behalf of Peter Francis by MS SIKAND re HN58  
 16 MS SIKAND: Sir, HN58 is probably the most important Special  
 17 Demonstration Squad manager the Inquiry will hear  
 18 evidence from.  
 19 THE CHAIR: Certainly, one of the most.  
 20 MS SIKAND: He was, as he you know, Mr Francis's manager  
 21 when he was --  
 22 THE CHAIR: Yes, forgive me, I am not quibbling but there  
 23 are other managers who were in place at a time of great  
 24 interest to the Inquiry who may prove to be equally  
 25 important.

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1 MS SIKAND: No, of course, of course. There may well be,  
 2 but we say this is probably the most important manager  
 3 you will hear from.  
 4 We could be wrong about that. It is not just  
 5 because he managed Mr Francis's deployments but for the  
 6 reasons that you have now publicly acknowledged and no  
 7 doubt for reasons that you haven't publicly  
 8 acknowledged, or been able to disclose. He is very  
 9 important.  
 10 The decision you make about him, we say, is  
 11 a benchmark decision. Sir, we know it is a difficult  
 12 decision, and that is demonstrated by your human change  
 13 of heart on two occasions. And we appreciate that, sir,  
 14 because it shows that you do change your mind when you  
 15 hear from us, sometimes.  
 16 On this occasion, we ask you to do so again. We do  
 17 so very seriously because this is a very important  
 18 decision about a very important officer and of course  
 19 you know you have to get this right for a variety of  
 20 reasons -- not least the integrity of this Inquiry --  
 21 but because this officer is of particular importance to  
 22 my client.  
 23 What we say is this. You have not explained to us,  
 24 sir, why you say that if his cover name were to be  
 25 published there would be a real risk his deployment

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1 would be discovered. There is some sort of mosaic  
 2 effect that you say his cover name is disclosed, that  
 3 means his deployment would be disclosed, that means the  
 4 risk that you have identified would become a real risk.  
 5 THE CHAIR: Yes.  
 6 MS SIKAND: We don't know why you say that.  
 7 We say that knowing who he is, what he did, and who  
 8 he infiltrated. We found that confounding when you say,  
 9 "If you were to reveal his cover name there would be  
 10 a risk of disclosure of his real identity and therefore  
 11 a risk ..." This is another one of the kind of mosaic  
 12 this way and that way, where whichever way you look at  
 13 it we are told actually there is a risk, but we are not  
 14 told why it is that risk is a real risk. I don't mean  
 15 the risk to his personal safety which you have already  
 16 identified as being real but small, but the risk of  
 17 disclosure of his real identity if you were to disclose  
 18 his cover name.  
 19 We don't know why you say that, but we say in this  
 20 case the public interest in knowing as much as possible  
 21 about this man is so profound that one of the ways that  
 22 you can get to the truth is to disclose his cover name.  
 23 Because even if you formed the view that on the face of  
 24 it there is no reason for you to suppose that there was  
 25 any misconduct whilst he was an undercover officer --

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1 for the reasons Ms Kaufmann has already indicated we  
 2 find that difficult to accept -- we do have evidence  
 3 that whilst he was a manager his conduct was less than  
 4 acceptable.  
 5 Now, it is not such a massive jump to say that if  
 6 this man was capable of behaving in this way whilst  
 7 under the cloth of a manager, a Special Demonstration  
 8 Squad manager, on the face of it he was prepared to  
 9 allow N81 to be running around in the public inquiry  
 10 into the death of Stephen Lawrence, carrying on  
 11 infiltrating spying, whilst in the public gallery of  
 12 a public inquiry, this man must have had something to do  
 13 with that decision, we say.  
 14 This man was investigated by the Independent Police  
 15 Complaints Commission and refused to answer questions.  
 16 Sir, you will know that the findings that they made  
 17 about him were less than palatable.  
 18 We know also that this man authorised  
 19 Peter Francis's deployments and you may think that the  
 20 justification for those deployments are very much  
 21 something that you would wish to consider in this  
 22 Inquiry, let alone what happened whilst he was deployed  
 23 but the justification in the first instance, and we also  
 24 know that the Independent Police Complaints Commission  
 25 found that because of his close working relationship

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1 with Bob Lambert it was inconceivable that Bob Lambert  
 2 would have been able to make the arrangements for the  
 3 meeting that we now know about between Richard Walton  
 4 and HN81.  
 5 We know that all of this happened whilst he was  
 6 a manager. We know all of this casts a great deal of  
 7 doubt on his credibility and integrity as a manager.  
 8 Why is it such a leap of faith to consider that there  
 9 may be similar issues about his integrity whilst  
 10 deployed undercover?  
 11 Sir, as far as we are concerned, those issues in  
 12 themselves are enough for you to think it is extremely  
 13 important and weighing in the balance the small risk  
 14 that you have identified against that, the public  
 15 interest clearly lies in disclosure of his cover name.  
 16 When you say in your minded to, sir, at paragraph 7,  
 17 that doing that could give no more information to the  
 18 public of the discharge of his duties as a manager, we  
 19 don't accept that.  
 20 We say once you have gone through that process, you  
 21 may have information that really does cast further light  
 22 on his role as a manager, which is why you must do it.  
 23 We say that he could quite properly give evidence  
 24 under a cipher once you have disclosed his cover name  
 25 and you can make the arrangements that you would do,

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1 like you would with any other officer, as to whether he  
 2 has screens or disguises or anything else other.  
 3 You, sir, have set out your two principled reasons  
 4 for disclosing where possible or where the public  
 5 interest allows it, et cetera, cover names where you  
 6 can, but also real names of officers who are managers,  
 7 because you say of course that is important because  
 8 morally they should be accountable. But where those two  
 9 interests or principles collide, as they do here, we say  
 10 what is it that the principle of him giving evidence in  
 11 his real name is nothing compared to the importance of  
 12 disclosing his cover name. Because that -- that action,  
 13 sir, could give you a great deal more evidence and  
 14 really the public knowing his real name compared with  
 15 that, there is no competition, we say.  
 16 In those circumstances, disclose his cover name.  
 17 Get the information that may or may not cast doubt on  
 18 his integrity. If it doesn't, it doesn't. But it's too  
 19 important an officer -- his evidence is too important to  
 20 this Inquiry as a whole for you to make the decision  
 21 that you have made in your minded to.  
 22 We ask you, sir, bearing all of that in mind to  
 23 please reconsider your decision.  
 24 And if you reconsider no other decision, sir, this  
 25 is the one you must reconsider, in our submission.

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1 Unless I can assist you further.  
 2 THE CHAIR: No, thank you.  
 3 MR FRANCIS: Sir --  
 4 THE CHAIR: Mr Francis, forgive me, I am going to interrupt  
 5 you.  
 6 MR FRANCIS: The conversation you have just had, that I have  
 7 been here, sir, unless we close this, it is not going  
 8 you are not going to allow me to make any other  
 9 submission written or otherwise, and what you were  
 10 saying was correctly that he was one of my managers, but  
 11 not the most important manager. He was only my manager  
 12 from 1997 onwards.  
 13 THE CHAIR: You misunderstood what I said. I am afraid this  
 14 is one of the reasons why these proceedings have to be  
 15 conducted by advocates and by those core participants  
 16 such as Ms Steel, who are representing themselves in  
 17 their own right.  
 18 MS STEEL: She's representing extremely well, what she  
 19 hasn't mentioned --  
 20 THE CHAIR: Hold on a moment.  
 21 MR FRANCIS: -- is that I personally have promised  
 22 Mr Lawrence, as in Stephen Lawrence's father, nobody  
 23 knows this other than my legal team. I have personally  
 24 met him and I said to him that I would promise him --  
 25 and I did -- that I would do absolutely everything for

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1 him because I and the Special Demonstration Squad let  
2 him down in the last Macpherson Inquiry. That is  
3 subject to me being thrown into prison, fined, house  
4 loss, I have been threatened by far more scary people  
5 than these people represent and anybody in this room.  
6 THE CHAIR: Mr Francis, I'm not threatening you, but I am  
7 afraid --  
8 MR FRANCIS: Just to say --  
9 THE CHAIR: Please listen to me a moment. These proceedings  
10 have to be conducted in an order for a reason.  
11 The order is -- I allowed it to lapse on one  
12 occasion already in your case, I'm not going to do so  
13 again. If you have submissions to make, they must be  
14 made through Ms Sikand. If you talk to her -- because  
15 we won't finish proceedings by lunch time -- over lunch  
16 and she needs to come back on something, she can do so.  
17 MR FRANCIS: As long as she can come back after lunch and  
18 speak on my behalf --  
19 THE CHAIR: Yes, she can. I must ask you now please to sit  
20 down.  
21 MR FRANCIS: You would have to call more than two Krispy  
22 Kreme security to get rid of me than you did last time,  
23 sir. But I will sit down.  
24 THE CHAIR: Ms Mannion?  
25

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1 Submissions on behalf of the Commissioner of Police of the  
2 Metropolis by MS MANNION re HN58  
3 MS MANNION: Sir, as you know, the Metropolitan Police  
4 Service readily accept that this is a very difficult  
5 case.  
6 You have heard from the Metropolitan Police Service  
7 in closed and you know that having given this matter  
8 detailed consideration our view is that the real and  
9 cover name need restriction on the facts of this case.  
10 I don't propose and nor could I repeat any of those  
11 submissions that you heard on those matters in closed.  
12 It is simply really to reiterate those points.  
13 You have our submissions in writing as well, sir.  
14 THE CHAIR: Mr Brandon, anything you want to say?  
15 Submissions on behalf of HN58 by MR BRANDON  
16 MR BRANDON: Sir, you have heard very extensively from me in  
17 closed. Of course it is very difficult for me to  
18 canvass matters which were dealt with at those hearings  
19 here in public.  
20 Perhaps I could just say a couple of things in  
21 response to that which has been said today.  
22 First, to deal with the suggestion that the orders  
23 which you propose to make would inhibit the ability of  
24 the non-state core participants to test the evidence of  
25 HN58, the minded to note, as it relates to the manner in

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1 which the practicalities of HN58 giving his evidence to  
2 the tribunal, of course envisage him giving his advice  
3 not from behind a screen, in public view, with an  
4 unmodulated voice, just with such facial disguise as may  
5 prevent any immediate identification of his real  
6 identity, which of course would be inconsistent with the  
7 order that you were minded to make.  
8 Sir, I had, of course, encouraged you to go much  
9 further than that.  
10 THE CHAIR: You do and you did. That's my bottom line.  
11 MR BRANDON: And I failed in that regard and I am not going  
12 to go there again, but it does seem to me that there is  
13 a danger in some of the suggestions that are being made  
14 and I appreciate it is very difficult to deal with the  
15 practical issues that arise in this case. But it seems  
16 to me that there is a danger in some of the suggestions  
17 which are being made as to alternatives which may in  
18 fact reduce the public nature of the evidence which this  
19 order permits HN58 to give. So that is the first point.  
20 The second point is my learned friend Ms Kaufmann  
21 has suggested that it is entirely speculative, the  
22 assessment of risk.  
23 Sir, we respectfully disagree. You have had the  
24 evidence. The evidence is available in public. It is  
25 a risk assessment premised on a very detailed assessment

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1 of available --  
2 THE CHAIR: Sorry, the risk assessment, the full risk  
3 assessment, is not public.  
4 MR BRANDON: But that part of it which my learned friend  
5 Ms Kaufmann referred to is.  
6 That does not, in our submission, disclose  
7 a speculative assessment of risk. You having considered  
8 that material and other material have reached a view  
9 that there is a small but real risk. We say that is  
10 different from a low risk, and importantly it is a real  
11 risk, and the real risk is to his personal safety. That  
12 means a risk of physical attack which would have  
13 a serious impact.  
14 In our respectful submission, that is very much  
15 a matter that must weigh in the public interest balance,  
16 and that is the reason why we say the decision that you  
17 have made in principle on that is a correct one.  
18 Finally, as to the suggestion that there are doubts  
19 that ought to be cast over HN58's credibility and  
20 integrity as a manager, I say this. He has been  
21 investigated on many occasions. There have been no  
22 findings. It is not correct to say that he has not  
23 committed, in response to the allegations put to him by  
24 the Independent Police Complaints Commission he provided  
25 a full written response and in our respectful submission

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1 the repetition of unfounded allegations made against  
2 this officer does not assist the process that you are  
3 engaged in today, sir.  
4 THE CHAIR: Thank you.  
5 Finally, 297.  
6 Submissions on behalf of the non-state, non-police core  
7 participants by MS KAUFMANN re HN297  
8 MS KAUFMANN: This is Rick Gibson.  
9 THE CHAIR: Yes.  
10 MS KAUFMANN: How things were left off at the last hearing  
11 was that we raised the issue that this was an officer  
12 who actually -- there was evidence that he had been  
13 involved in relationships. At that time, you said of  
14 the period of his deployment -- 1974 to 1976:  
15 "This was probably the period where the practices<sup>2</sup>  
16 started to be adopted routinely and things may have  
17 started to go wrong. And whether this individual  
18 officer was going off piste or whether it is a practice  
19 is one of the things I have to try to get to the bottom  
20 of."  
21 Since then we eventually did obtain a statement from  
22 one of the individuals --  
23 THE CHAIR: Who is known as Mary?  
24 MS KAUFMANN: Who is known as Mary.  
25 THE CHAIR: I have made a restriction order in respect of

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1 her real name.  
2 MS KAUFMANN: And you have.  
3 You have seen Mary's statement which does indicate  
4 precisely what we had indicated by way of hearsay on the  
5 last occasion, that not only did he have one  
6 relationship with Mary but also with another person, and  
7 that is as far as she knows -- as far as Mary knows.  
8 In those circumstances we submit there is  
9 a compelling reason for disclosure of the real name and  
10 that that compelling reason plainly outweighs --  
11 THE CHAIR: At the moment I'm concerned with whether  
12 I should make a restriction order in respect of the real  
13 name.  
14 I think the process may have been slightly  
15 misunderstood. It doesn't automatically follow that the  
16 Inquiry would publish the real name. The absence of  
17 a restriction order means that when a document comes up  
18 which is part of the Inquiry's record, the real name  
19 will not be deleted from it, if there is no restriction  
20 order.  
21 MS KAUFMANN: So what you would not do is say "Rick Gibson's  
22 real name is X"?  
23 THE CHAIR: I will discuss in a moment what I propose to do,  
24 but the idea, which may have engaged currency, that  
25 a refusal to make a restriction order will immediately

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1 result in the publication of the real name by the  
2 Inquiry is not always correct.  
3 MS KAUFMANN: What must happen is that any documents that  
4 are about the officer, that are disclosed with the  
5 officer's real name, can be linked with the officer  
6 Rick Gibson. Because otherwise it is impossible then to  
7 know that those documents relate to the person that  
8 everyone else understands, or those who were undercover,  
9 understood to be Rick Gibson. There has to be that  
10 coming together at some point when those documents are  
11 released, otherwise there is a potential that relevant  
12 material is not understood to be relevant by those  
13 non-state core participants.  
14 THE CHAIR: Right.  
15 MS KAUFMANN: That will have to happen at some point. In  
16 those circumstances you may want to reconsider whether  
17 or not you actually disclose the real name so there can  
18 be no confusion.  
19 THE CHAIR: What exactly is to happen in the case of 297,  
20 I will hear is submissions on first of all and I will  
21 then indicate to you, if I can, what I am minded to do.  
22 MS KAUFMANN: So submissions on whether or not there should  
23 be a restriction order on the real name. We submit, no,  
24 there shouldn't be in light of the statement you now  
25 have from Mary on the following basis.

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1 Firstly, you already made clear the moral obligation  
2 to disclose real names to women deceived into  
3 relationships. That was made very clear on the last  
4 occasion.  
5 THE CHAIR: Yes.  
6 MS KAUFMANN: Secondly, the possibility that this individual  
7 was a manager. We understand that that matter has not  
8 been involved and Mr Hall on the last occasion claimed  
9 that while it still had not been worked out whether he  
10 was a manager, the current view was that he wasn't, but  
11 there were indications the other way.  
12 So that is a possibility that has to be kept in  
13 mind.  
14 Then in the context of wanting to get to the bottom  
15 of when things started to go wrong, you did suggest that  
16 the public interest in publishing names becomes much  
17 more compelling and there is clearly an indication that  
18 things went wrong here.  
19 Against that, there is the risk of infringing  
20 privacy rights of his widow. But even in relation to  
21 that, it became clear at the last hearing that the widow  
22 had never actually been spoken to directly, and no  
23 statement was in existence from her on the file. This  
24 is a matter of surmise and we would submit that just is  
25 not a basis upon which to refuse disclosure of the real

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1 name when the other factors clearly require it.  
 2 So yes, those are our submissions as to why no  
 3 restriction order would be appropriate in this case.  
 4 THE CHAIR: Thank you.  
 5 Ms Sikand.  
 6 MS SIKAND: Sir, we have nothing to say about this officer.  
 7 THE CHAIR: Ms Mannion?  
 8 Submissions on behalf of the Commissioner of Police of the  
 9 Metropolis by MS MANNION re HN297  
 10 MS MANNION: Sir, this case poses a significant challenge in  
 11 that an admission or a denial of what has been said in  
 12 Mary's witness statement is not possible, because HN297  
 13 is deceased.  
 14 In the circumstances, our submission is at this  
 15 stage -- bearing in mind that you cannot have an answer  
 16 to the allegation -- is to restrict 297's real identity  
 17 until you have had a proper opportunity to investigate  
 18 the evidence concerning 297's deployment. That, sir, in  
 19 my submission, is what you had envisaged originally and  
 20 how the matters were expressed in your initial  
 21 statement, sir, when you referred to intimate  
 22 relationships being admitted or found to be true.  
 23 In our submission, that's the right course to take  
 24 in these circumstances.  
 25 In addition, in our submission, before you make any

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1 decision about a restriction order over real name --  
 2 particularly if you are changing from the position you  
 3 were minded to take -- you would need to receive  
 4 evidence from HN297's surviving family. It is wrong to  
 5 say that they have not been spoken to, although it is  
 6 right to say that there's not a witness statement  
 7 prepared.  
 8 They would, in my submission, be able to assist you  
 9 in potentially one or more of three ways.  
 10 They might have something to say about the content  
 11 of the allegations. It may be unlikely, but it is not  
 12 impossible.  
 13 They will almost certainly have some assistance for  
 14 you as to the potential impact of any disclosure in  
 15 these circumstances and on the factual situation that  
 16 now exists.  
 17 Lastly, sir, if you were to find a compelling moral  
 18 claim to exist in this case, no doubt you would also be  
 19 assisted by matters such as timing and practicalities by  
 20 hearing directly from the family. In our submission  
 21 that evidence would need to be obtained and put before  
 22 you before a final decision could be made if you were  
 23 going to change the decision you were minded to make on  
 24 the last occasion.  
 25 THE CHAIR: Ms Mannion, this was in the July tranche,

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1 I think.  
 2 MS MANNION: Yes.  
 3 THE CHAIR: There has therefore been six months in which the  
 4 family could make whatever representation it wished to  
 5 do so. You were, I think, in touch with the family, the  
 6 Metropolitan Police --  
 7 MS MANNION: Yes.  
 8 THE CHAIR: -- and nothing has been done in that six months?  
 9 MS MANNION: Sir, the application was put in shortly before  
 10 the minded to note on 3 August. At that stage, sir, of  
 11 course you were minded to restrict the real name.  
 12 Sir, it was only on Monday of this week --  
 13 I appreciate there was an indication before that time in  
 14 November -- that the witness statement was provided. So  
 15 in my submission it would be proper for you to hear in  
 16 light of that witness statement what the family wish to  
 17 say to you.  
 18 As I say, contact has been made before when the  
 19 application was being prepared, and firm views were  
 20 expressed. They would be different views no doubt -- or  
 21 certainly more nuanced views -- in light of the  
 22 evidence.  
 23 THE CHAIR: I have in mind also Mary's position. She has  
 24 not expressed a wish to participate actively in the  
 25 Inquiry. It may be that she simply wishes to be

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1 informed about an aspect of her private life a long time  
 2 ago.  
 3 Information which I have already stated in general  
 4 terms she's entitled to.  
 5 I have a statement from her which is coherent. It  
 6 doesn't appear to be exaggerated in any way. It goes  
 7 sufficiently into detail for me to be quite clear what  
 8 it is that she's saying. It is inconceivable that there  
 9 would be any evidence from the family which might  
 10 contradict what she said. In those circumstances, why  
 11 should I now make her wait to know the name -- the real  
 12 name -- of the man with whom she had this brief  
 13 relationship and why should she not be told now?  
 14 MS MANNION: Sir, we don't accept is inconceivable. I do  
 15 accept it is unlikely, but it is not inconceivable that  
 16 the family might have some evidential account to assist  
 17 you with.  
 18 THE CHAIR: The nature of the deployment is not in issue.  
 19 MS MANNION: No.  
 20 THE CHAIR: We know the groups against which he was deployed  
 21 and the times at which he was deployed.  
 22 If what she says is true, it is inconceivable that  
 23 he told his family anything about it. I simply don't  
 24 see how in the real world any material could conceivably  
 25 arise which might cast doubt on what she said.

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1 MS MANNION: Sir, I accept that, I have heard that, and all  
2 I'm asking is an opportunity be given in order to  
3 confirm, sir, that you are correct, perhaps.  
4 In any event, where I would put the weight of my  
5 submission is in terms of impact on private life and  
6 family life. Sir, these circumstances as they are now  
7 developing are different to the, as it were, simple case  
8 of an elderly widow who has lived her life with an  
9 understanding of a promise of confidentiality and the  
10 effects of distress and upset that might be caused in  
11 respect of that.  
12 There is now something specific. It may in the  
13 circumstances of their family mean that there are things  
14 you need to know, sir, that you don't at the moment  
15 know. I can't speculate, I am simply asking for an  
16 opportunity for you to receive evidence on impact.  
17 THE CHAIR: I think it is important that those who make  
18 applications based on family circumstances should  
19 understand that they have an opportunity to do so and if  
20 they don't take it, then it is unlikely that they will  
21 be given a future opportunity. Those circumstances  
22 apply here.  
23 MS MANNION: I appreciate that, sir. I am really referring  
24 to the witness statement and the factors that might  
25 arise out of it, so that you could be assisted on in

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1 respect of impact. On any view, the impact is different  
2 now.  
3 I'm not suggesting, sir, that there is anything that  
4 might be said to you that could or that would  
5 necessarily change any view that you had, but simply  
6 that you ought to take the time to receive evidence on  
7 what the impact is in light of the facts as they are now  
8 understood to be before you reach any decision.  
9 In my submission, that is what would be required by  
10 your duty of fairness under section 17.  
11 THE CHAIR: Why does my duty of fairness give rise to an  
12 obligation to allow the family two bites at the cherry?  
13 MS MANNION: I'm asking you to allow time for a statement as  
14 to impact in light of what is now known. Not in the  
15 abstract: would disclosure change or cause upset to me?  
16 Sir, in light of specific facts. That is why in my  
17 submission it arises.  
18 These are unusual facts, they may happen again and  
19 in my submission the proper way to deal with it would be  
20 in something such as this which would plainly affect the  
21 personal lives of the family and the private and family  
22 lives in a way that is different to a case where no such  
23 allegation of wrongdoing floats about at all, that you  
24 hear from the family simply before you make a decision.  
25 And until we have a statement to present to you from the

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1 family, in my submission we can't make a proper  
2 indication to you as to what weight that should carry.  
3 THE CHAIR: From whom would such a statement come?  
4 MS MANNION: I would -- there are surviving family members  
5 and I would anticipate either a spouse or children.  
6 THE CHAIR: Forgive me, it is not a subject for mirth.  
7 You don't know?  
8 MS MANNION: I don't know who would provide the witness  
9 statement. I know about the family unit to know that  
10 those would be the options of who would be the signatory  
11 on a statement.  
12 Contact has been had with the former spouse.  
13 THE CHAIR: Has the statement been shown from me?  
14 MS MANNION: Not yet, no, sir.  
15 I took instructions on that this morning. It has  
16 not yet been shown.  
17 THE CHAIR: Anything else, Ms Mannion?  
18 MS MANNION: No, sir.  
19 THE CHAIR: I will reflect on the question that you have  
20 made for a short further period of time in which to put  
21 in a statement.  
22 My current intention, whether or not I give you this  
23 time I state what my current intention is and I will  
24 reflect over the short adjournment whether you should  
25 have that time.

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1 My current intention is that the real name of HN297  
2 should be communicated by the Inquiry to Mary. We have  
3 her address and we have her witness statement signed in  
4 her real name.  
5 As a piece of private information, it would then be  
6 for her to decide what she wished to do with it. There  
7 would be no restriction order made and therefore no  
8 obligation upon her to deal with it in any particular  
9 manner.  
10 I will reflect over the short adjournment whether  
11 you should have time. It would only be a short time,  
12 I am afraid if I do grant it --  
13 MS MANNION: Sir, of course.  
14 THE CHAIR: -- in which to put in a further statement.  
15 MS MANNION: And, sir, if I might also have an opportunity  
16 to take instructions on the course you are minded to  
17 take subject to that --  
18 THE CHAIR: Of course. In which case it may be that we  
19 arrive at an agreed position or maybe we don't. We  
20 shall see.  
21 Ms Kaufmann, the question of photographs I think can  
22 be dealt with really rather shortly, therefore I would  
23 propose to raise it now. If I have misunderstood the  
24 position then we can deal with it at greater length  
25 after lunch.

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1 Submissions on behalf of the non-state, non-police core  
2 participants by MS KAUFMANN re images  
3 MS KAUFMANN: What might be worth doing, we have a statement  
4 which is from Donal O'Driscoll. It might be sensible if  
5 I hand that out now, we then rise and then we can just  
6 make short submissions about that at 2 o'clock and then  
7 follow on with the consultation point, neither of which  
8 I think will be very lengthy.  
9 THE CHAIR: No, no, they won't be. But I wanted if possible  
10 to deal with photographs in a sentence or two.  
11 MS KAUFMANN: Can I hand this up?  
12 (Handed)  
13 THE CHAIR: Yes.  
14 MS KAUFMANN: This is a signed copy, the rest are unsigned.  
15 The one I'm handing up is unsigned.  
16 THE CHAIR: Thank you.  
17 Does this have to do with photographs?  
18 MS KAUFMANN: It is all to do with images, yes -- sorry. It  
19 is not all to do with images; the second part is not.  
20 THE CHAIR: If I read --  
21 MS KAUFMANN: I am so sorry, no. The first is to do with  
22 inaccuracy of information, which I made reference to  
23 earlier on. The second part from 6 onwards is the  
24 importance of images.  
25 THE CHAIR: Okay.

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1 Thank you, I have read that. I am dealing with  
2 Tamsin Allen's email of 20 December, in which she raises  
3 the query about images with which I thought I was going  
4 to be asked to deal.  
5 MS KAUFMANN: First of all we have to address the principle  
6 about whether or not images should be disclosed where  
7 you have them in order to assist in identification of  
8 officers.  
9 THE CHAIR: Forgive me. That is a question that is some way  
10 down the line. That concerns the redaction of  
11 a document, a photograph, whether it should be withheld  
12 or disclosed.  
13 MS KAUFMANN: No, no, I am sorry. That is misunderstanding  
14 the position.  
15 What your restriction order does -- that is the  
16 email that Ms Allen wrote -- is where you withhold  
17 an individual's real name the restriction order prevents  
18 effectively disclosure of a photograph of them if there  
19 is a risk that that photograph might in any sense  
20 identify them.  
21 THE CHAIR: Sorry, disclosure by whom?  
22 MS KAUFMANN: By the Inquiry.  
23 So if you have a photograph -- the two go hand in  
24 hand. In cases where you are content, for example, to  
25 reveal a cover name or the cover name simply is not

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1 known and therefore it cannot be revealed, as a matter  
2 of fact, see Mr O'Driscoll's statement, it is very  
3 often -- or it will be the case in some, maybe many  
4 cases, that the revelation of the cover name is not  
5 going to enable people to suddenly understand who the  
6 individual was. Because they were known by their first  
7 name, for example, there were lots of Marks.  
8 It may be necessary in order for the revelation of  
9 cover name or its purpose to be realised, the purpose  
10 being so that people can know that X was an undercover  
11 officer, for a photograph also if available to be  
12 provided of them at the time. So that people can look a  
13 the photograph and say:  
14 "Ah, yes, that was Mark, I didn't know it was  
15 Mark Jacobs [or whoever], but now I understand this is  
16 the guy."  
17 So it is important means --  
18 THE CHAIR: Forgive me, if you are talking about photographs  
19 in the possession of the Inquiry --  
20 MS KAUFMANN: Yes.  
21 THE CHAIR: -- they are documents and they do not fall to be  
22 considered at this stage in the process.  
23 I understood Ms Allen to be concerned that those who  
24 have photographs of people they believe are Marco, let's  
25 say, would be putting themselves at risk of contempt

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1 proceedings if they were to publish them.  
2 MS KAUFMANN: No, that was not --  
3 THE CHAIR: To which the answer is no, there is no question  
4 of it.  
5 MS KAUFMANN: That wasn't the concern. Regrettably you have  
6 misunderstood the concern.  
7 It is:  
8 "There shall be no disclosure or publication made of  
9 any evidence or document given, produced or provided to  
10 the Inquiry which discloses ..."  
11 So these are documents in the possession of the  
12 Inquiry:  
13 "... which discloses HN333's real or cover  
14 identities."  
15 It is your documents, those which you are in  
16 possession of, which actually have a utility in helping  
17 non-state participants to identify --  
18 THE CHAIR: That is an issue which will have to be  
19 addressed, if it arises, at the document redaction  
20 stage.  
21 MS KAUFMANN: The reason we are raising it now is that it  
22 may be that that may be leaving things very, very late.  
23 For example, you have decided that certain  
24 individuals' cover names are going to be now disclosed,  
25 but that is going to take place after certain steps have

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1 been taken for the officers to be able to put measures  
 2 in place --  
 3 THE CHAIR: Forgive me, may I interrupt you a moment to  
 4 explain what I anticipate will happen?  
 5 MS KAUFMANN: Yes.  
 6 THE CHAIR: There is a witness protocol, as you know, which  
 7 involves a package of documents being put first of all  
 8 to the relevant undercover officer and then to anyone  
 9 who may have evidence to give about the deployment of  
 10 that officer.  
 11 It is at that stage that a decision will have to be  
 12 made about whether or not a photograph should be  
 13 included in that bundle of documents. It won't delay  
 14 anything. It will be the package of documents that is  
 15 given to the non-state core participant or other  
 16 non-state witness who is going to be invited to provide  
 17 evidence to the Inquiry.  
 18 MS KAUFMANN: Let's imagine a situation where a cover name  
 19 is disclosed --  
 20 THE CHAIR: Yes.  
 21 MS KAUFMANN: -- and the core participants come back -- it  
 22 is known for example what particular group that  
 23 individual was in but the core participants are unable  
 24 to identify it because they don't recognise, they don't  
 25 recognise the individual from their surname and it is

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1 very common name. You would not entertain an  
 2 application from them saying, "Could you release  
 3 a photograph of this individual so we can put it around  
 4 and try and get ourselves in a position that we can give  
 5 you relevant evidence, put statements together and so  
 6 forth?"  
 7 THE CHAIR: I am not for one moment saying I would not  
 8 entertain such an application. All I'm saying is that  
 9 I don't think it arises now.  
 10 MS KAUFMANN: Even if you were to entertain that later down  
 11 the line, the wording still, on its face, would appear  
 12 to prevent you from disclosing those photographs. So we  
 13 do need to revisit that wording.  
 14 THE CHAIR: We may need to revisit it. I am not convinced  
 15 we do. We may need to when it arises; it doesn't at the  
 16 moment.  
 17 MS KAUFMANN: Okay, I think we understand each other.  
 18 THE CHAIR: There is an enormous document redaction exercise  
 19 which has to be undertaken before we get anywhere near  
 20 a substantive hearing. We have to do these things in  
 21 order and it will be done at that stage.  
 22 MS KAUFMANN: Our concern is that at the moment, given the  
 23 wording of the order, that would lead you necessarily to  
 24 redact a photograph. That's the concern we have.  
 25 THE CHAIR: I note the concern. All I can say to you is

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1 that it is a real concern -- I appreciate it is -- and  
 2 it matters, and we will approach it without  
 3 a preconception. Certainly the precise wording of the  
 4 order will not prevent a photograph from being  
 5 disclosed.  
 6 MS KAUFMANN: Thank you.  
 7 THE CHAIR: If that is what you are after --  
 8 MS KAUFMANN: That's what we are after.  
 9 THE CHAIR: Can I take it that no one has anything further  
 10 to say on that issue? If not, I will rise until five  
 11 past.  
 12 (1.06 pm)  
 13 (The short adjournment)  
 14 (2.05 pm)  
 15 Order re HN297  
 16 THE CHAIR: Ms Mannion, HN297.  
 17 I have listened to what you have had to say. I am  
 18 going to make the following order.  
 19 By 4.00 pm on Friday you must tell me whether or not  
 20 you intend to put in material from the family, and if  
 21 the answer is yes, then you have until 4.00 pm on Friday  
 22 week to do so.  
 23 I will defer my final decision until I have either  
 24 received or considered either your answer or that  
 25 material.

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1 MS MANNION: I am grateful, sir, thank you.  
 2 THE CHAIR: Ms Sikand, you were taking instructions from  
 3 Mr Francis over the short adjournment.  
 4 Submissions on behalf of Peter Francis by MS SIKAND  
 5 MS SIKAND: I was, sir. First of all he wanted me to  
 6 apologise to you for him standing up for a second time,  
 7 but he wanted me to explain to you why he did that and  
 8 what he didn't say, and is happy now for me to say it on  
 9 his behalf.  
 10 THE CHAIR: Yes.  
 11 MS SIKAND: He wasn't at that moment able to tell me what it  
 12 is he wanted me to say, and because he knew that this is  
 13 our last opportunity, certainly here, to seek to  
 14 persuade you in relation to HN58, it was an issue  
 15 arising out of a discussion that you had had with  
 16 Ms Kaufmann when she asked you why it is you took the  
 17 view that the fact that HN58 was a respectable person,  
 18 a married man, why that should in any way impact upon  
 19 your decision-making process, and the conversation that  
 20 ensued, ensued.  
 21 He wanted me to make this point, which in our  
 22 submission is an important point.  
 23 By definition, to be a member of the Special  
 24 Demonstration Squad you did have to have that cloak of  
 25 respectability about you, otherwise you were not going

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1 to get into the Special Demonstration Squad. So you  
2 would have a wife and small children and, as  
3 Peter Francis would say, hopefully live in suburbia to  
4 give you that respectability and anonymity. So, you  
5 know, if you are a sort of roguish type it is most  
6 unlikely you are going to be allowed to join the Special  
7 Demonstration Squad. That's the first point.  
8 And he would say he fitted that profile. He had  
9 a wife, he had children, he lived in the burbs as he  
10 would say.  
11 But the second and more important point is this.  
12 You know, as a matter of fact, sir, Bob Lambert had  
13 a wife. Bob Lambert had a child. Bob Lambert then had  
14 more children in a relationship outside of his marriage.  
15 Bob Lambert was given an MBE, sir, for his services to  
16 the police in something like 2008. None of those  
17 matters, in fact, none of those -- if you were to look  
18 at Bob Lambert, you would have then made the decision  
19 that he was a respectable man based upon those external  
20 factors who could not possibly have been guilty of  
21 misconduct whilst an officer.  
22 That's important, we say, and that is what he wanted  
23 to say to you when he stood up earlier.  
24 THE CHAIR: Thank you for that. I understand the point.  
25 I can say in reply to it that my point was rather

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1 narrower than that. I was postulating the likelihood  
2 that somebody who had been married to the same person  
3 since he was a young man and is still married to that  
4 person, contrasting the likelihood that he would have  
5 undertaken one or more relationships with other women  
6 during his deployment, with somebody who as has  
7 unhappily been the case with many deployed officers had  
8 a chequered matrimonial career thereafter, that the one  
9 is less likely than the other to have strayed when  
10 deployed.  
11 That point may or may not be right. There is  
12 an awful lot of shaking of heads at the back of the  
13 courtroom.  
14 [Interjection from the public gallery]  
15 "Check the history of the other officers, you will  
16 find it is nonsense."  
17 THE CHAIR: I will check the history of the other officers  
18 and it may display an old fashioned idea in my own mind,  
19 but I have mind it plain and I have heard the strictures  
20 and will take it into account.  
21 MS SIKAND: Thank you, sir. We don't think that it is  
22 a good point --  
23 THE CHAIR: Fine.  
24 MS SIKAND: -- but of course there it is.  
25 MS STEEL: Could I briefly say something on this and another

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1 short matter?  
2 THE CHAIR: Yes, Ms Steel.  
3 Submissions by MS STEEL  
4 MS STEEL: Just on that point. I mean from what we know  
5 about Rick Gibson it appears his marriage is still  
6 intact and yet --  
7 THE CHAIR: Well, he's dead.  
8 MS STEEL: Well, okay, but it remained intact despite the  
9 fact that he had a relationship. I think that  
10 demonstrates that you can't rely on these things.  
11 Also, I just wanted to mention that we know of at  
12 least one of the undercover officers, and I think maybe  
13 two, who had relationships with people while they were  
14 undercover while their wives were pregnant. So, you  
15 know, if anyone thinks there is any morals about these  
16 officers, then, you know. I just think you need to  
17 think again, that is all.  
18 THE CHAIR: All right. I may stand accused of being  
19 somewhat naive and a little old-fashioned. In which  
20 case I own up to both of those things and will take into  
21 account what everybody says about it, and I will revisit  
22 my own views.  
23 MS STEEL: Thank you.  
24 The other brief matter that I wanted to just mention  
25 was in relation to whether the release of cover names or

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1 the likelihood of people finding out the real name from  
2 either the release of cover names or from images, and  
3 I just wanted to reiterate that when my partner  
4 John Barker disappeared it took me two years to find out  
5 that he had been using the name of a dead child.  
6 I actually had photographs of him both in his undercover  
7 persona with long hair and a mullet, and because he came  
8 back to me after he had seemingly been pulled from the  
9 Special Demonstration Squad, I also had photographs of  
10 him with short hair looking respectable as he must have  
11 looked in real life. But neither of those things  
12 enabled me to find his real identity, it was only  
13 through years of painstaking research and the fact that  
14 actually while we had been in a relationship he had told  
15 me information about his real identity that enabled me  
16 to eventually track down who he really was.  
17 And I think if you actually look at the names of the  
18 real officers names that have been uncovered by  
19 activists, they are all men who had relationships with  
20 women and it was with the information that was gleaned  
21 during the course of those relationships which enabled  
22 those women and activists around them to be able to  
23 finally find out the real identity.  
24 So as you have accepted that women have the right to  
25 know if they have been deceived into a relationship in

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<p>1 this way, I actually think that there is nothing to fear                  2 from the release of the cover names and the photographs,                  3 because it is actually a massively difficult thing to do                  4 to find the real name and no one is really -- you know,                  5 we know that the ones that have been released -- the                  6 real names that are out there, nothing has come to them.                  7 There is no reason why people are going to spend hours                  8 and hours tracking down real names and the reality is                  9 that they almost certainly would not be able to do it. It                  10 is an extremely difficult process.                  11 I do only know it because John actually wrote                  12 a letter to me while we were still in a relationship                  13 basically saying the real name of his father, and that                  14 enabled me eventually to track him down. So I just                  15 think that the cover names can safely be released and                  16 that they need to be released because if they aren't                  17 released people can't come forward to give the evidence                  18 about what they did when they were under cover.                  19 Thank you.                  20 THE CHAIR: Thank you.                  21 Can we now move on to the consultation? If we can,                  22 I am going to ask Mr Barr to open the debate.                  23 Submissions by COUNSEL TO THE INQUIRY, MR BARR re                  24 consultation on proposal to change the process of applying                  25 for and determining anonymity applications</p> <p style="text-align: center;">Page 121</p>	<p>1 open versions of the application and supporting evidence                  2 in exactly the same way that we have done to date.                  3 That, in practice, means that we are able to publish                  4 usually a combination of redactions and gists.                  5 It is not a blanket approach. The grounds on which                  6 material is redacted or if it has to be gisted are if to                  7 publish the full copy would defeat the purpose of the                  8 application. If it would defeat any other application                  9 or potential application, if it would be otherwise                  10 unlawful, for example, a violation of article 8 of the                  11 European Convention on Human Rights, or if the material                  12 is plainly irrelevant to the application and it would be                  13 disproportionate in terms of time and effort to redact                  14 it or gist it.                  15 In other words we publish as much as we lawfully                  16 can. In practice that means we publish an open                  17 application, a risk assessment usually with a heavy                  18 element of gisting, a redacted impact statement and                  19 a very high level gist of any medical evidence. Those                  20 documents, in addition to the minded to, sir, are what                  21 people have to respond to.                  22 Turning now to where we are proposing a change in                  23 approach, it is where you, sir, are minded to grant an                  24 application to restrict a real name.                  25 What we are proposing is this. That we would</p> <p style="text-align: center;">Page 123</p>
<p>1 MR BARR: Thank you, sir.                  2 We have already published a consultation paper and                  3 also written submissions. I am not going to repeat                  4 those documents but I do propose to summarise the                  5 proposals.                  6 What they would mean if implemented would be that we                  7 would continue normally to publish minded to notes                  8 before deciding what can and should be published of the                  9 application and supporting evidence.                  10 Sir, if you are minded to refuse an application, the                  11 applicant will usually be offered the opportunity of                  12 a closed hearing.                  13 If the applicant at that stage either accepts the                  14 minded to decision or you remain of the view that the                  15 application should be refused after a closed hearing,                  16 then the decision to refuse the application will be                  17 finalised and there will be no need to publish either                  18 the application or the supporting evidence at the                  19 anonymity stage.                  20 We quite accept we might have to revisit that                  21 question if there are issues of credibility, for                  22 example, at the substantive evidential stage.                  23 Sir, where you are minded to grant an application to                  24 restrict a cover name, whether alone or together with                  25 the real name, then the Inquiry legal team will prepare</p> <p style="text-align: center;">Page 122</p>	<p>1 publish the open application as before. This document                  2 makes clear the legal basis on which the restriction                  3 order is sought.                  4 People would also have your minded to note which                  5 communicates the reasons why you, sir, are minded to                  6 grant the order.                  7 We would also seek to ensure that the issue did not                  8 come to a final decision before the cover name had been                  9 published. This we consider to be an important step                  10 which may assist members of the public and                  11 core participants to come forward with evidence relevant                  12 to the issue of whether or not a restriction order                  13 should be granted over the real name.                  14 In addition, where an application contains a new                  15 feature about which argument has not been heard to date,                  16 then we will publish as much of the open evidence about                  17 this feature as we can lawfully publish so that it can                  18 be addressed.                  19 The question for today is whether, in the light of                  20 our experiences to date, including receiving extensive                  21 submissions on anonymity at the November hearing and                  22 further submissions today, it is necessary or                  23 proportionate to do more than this in real name only                  24 applications. In other words, would the redacted and                  25 gisted copies of the risk assessment, impact statement,</p> <p style="text-align: center;">Page 124</p>

<p>1 medical report if any, add anything of real material                  2 value to the cover name, the minded to decision and the                  3 application?                  4 That has to be weighed against the resource savings                  5 for the Inquiry and for the Metropolitan Police Service                  6 and those representing the officers. Preparing the                  7 redacted versions of the documents I have mentioned                  8 takes up considerable amount of the time of senior                  9 members of the legal teams, time which alternatively                  10 could be committed to advancing the substantive                  11 investigation.                  12 Finally, I should emphasise that what I am                  13 addressing at this stage is the question of what should                  14 be prepared for publication in relation to an anonymity                  15 application. I am not addressing the question of what                  16 can be published for the evidential stage of the                  17 Inquiry, which is an entirely different matter and one                  18 for another day.                  19 THE CHAIR: Mr Barr, I think something needs to be said in                  20 addition to that.                  21 The consultation paper has been issued in the                  22 context of ongoing applications by undercover officers.                  23 I anticipate that towards the end of the process we will                  24 get applications by managers.                  25 We may get some -- notwithstanding the view that</p> <p style="text-align: center;">Page 125</p>	<p>1 we had understood it to be applying both to the process                  2 of disclosure in relation to real and cover names as                  3 well as real names and we addressed the consultation on                  4 that basis.                  5 I understand now exactly that it was only ever                  6 intended to change the process in relation to real                  7 names, but we maintain the position that there ought to                  8 be a change both in relation to the process of                  9 disclosure with respect to real and cover names and real                  10 names, and we take the position that the same change                  11 should apply to both.                  12 The changes that we have identified are premised                  13 upon an acceptance, either in whole or in part, of our                  14 submission that there could be an awful lot more that is                  15 disclosed in this process than is currently disclosed.                  16 I simply repeat the points I have made before. I refer                  17 back to annex A as an exemplar of the sorts of things                  18 that can be disclosed and of course our submissions                  19 identified a detailed set of matters that in our                  20 submission can safely be disclosed in most, if not all                  21 cases and where there is difficulty in relation to                  22 a particular part of that list in any particular case                  23 then that would be a justification either for                  24 non-disclosure or for gisting, but at the moment we are                  25 presented with a blanket failure to disclose anything in</p> <p style="text-align: center;">Page 127</p>
<p>1 I have expressed that I expect that those in managerial                  2 positions will provide and give evidence in their real                  3 name. A close reader of the consultation paper might                  4 discern in it a reluctance on the part of the Inquiry to                  5 publish anything at all, other than the open                  6 application, where I am minded to restrict the real name                  7 of a manager.                  8 Nothing is further from the truth. That would be                  9 a situation covered by your exception, namely it would                  10 give rise to fresh considerations which had not                  11 previously been considered.                  12 MR BARR: Indeed, sir.                  13 Unless I can assist you further, that is all I have                  14 to say to introduce the issue.                  15 THE CHAIR: Thank you.                  16 Ms Kaufmann?                  17 Submissions on behalf of the non-state, non-police core                  18 participants by MS KAUFMANN re consultation on proposal to                  19 change the process of applying for and determining anonymity                  20 applications                  21 MS KAUFMANN: We are grateful to Mr Barr for the                  22 clarification about what the consultation process was                  23 intended to review and change and what it wasn't. You                  24 will have seen from correspondence over the last few                  25 days that we were genuinely confused about its ambit and</p> <p style="text-align: center;">Page 126</p>	<p>1 relation to all of those.                  2 Now if it is accepted that further disclosures can                  3 be made, then you will have seen that what we have tried                  4 to do is to identify the kinds of issues disclosure of                  5 which will help us make meaningful submissions.                  6 Meaningful in the sense that they may enable us to                  7 provide you with matters that actually could include                  8 things that you are not aware of, but meaningful equally                  9 in the sense that they will go to the issue of public                  10 confidence and fairness. So again, I do strongly urge                  11 very careful consideration to be given to that list and                  12 to whether or not more disclosure can be made.                  13 It is said against us that even if it were to be                  14 accepted that more disclosure could be made, the                  15 mechanism by which we propose that process takes place                  16 would add time to the whole process, and would be an                  17 unfair process because it would be impossible -- there                  18 is no room for the suggestion that the affected officers                  19 in the Metropolitan Police Service to make any                  20 representations, because what we are suggesting is that                  21 that is a process that is undertaken by the Inquiry in                  22 the first instance.                  23 On that second point, about whether or not the                  24 process we were suggesting is unfair in that sense, we                  25 have never said there should not be a mechanism for</p> <p style="text-align: center;">Page 128</p>



1 those affected, the applicants and the Metropolitan  
2 Police Service, to make their own representations. What  
3 we did suggest was that the process suggested by  
4 yourself at paragraph 17(3) of your opening statement on  
5 20 November, that is that the Inquiry assumes  
6 responsibility for making draft redactions or we would  
7 say setting out a draft list and redactions accompanying  
8 it, is followed by the Metropolitan Police Service and  
9 those affected having an opportunity to state whether  
10 they accept them or dispute within an agreed timetable.  
11 THE CHAIR: That proposal or that suggestion as to what  
12 might occur was made in relation to the substantive  
13 exercise. I didn't have in mind that it had any part to  
14 play in the anonymity exercise, not least because when  
15 I made that statement the system was not up and running  
16 to deal with the wholesale redaction or the volume  
17 redaction of documents. "Wholesale" is the wrong word  
18 in that context.  
19 The number of redactions required in large volume  
20 that will be required in the substantive phase.  
21 MS KAUFMANN: Yes. We would simply say there is no reason  
22 why that could not actually be applied in this context,  
23 even if that was not in mind at the time.  
24 THE CHAIR: The problem is that for anything like your  
25 proposal to be adopted, especially in relation to the 14

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1 items of information that you have identified in  
2 paragraph 36 of your written submission, that involves  
3 or would involve a very great deal of legal effort on  
4 the part of the Inquiry team and the Metropolitan team,  
5 which would be much better devoted to getting the case  
6 ready substantively.  
7 MS KAUFMANN: That brings us up against the fundamental  
8 difference between the position you take and the  
9 position we take --  
10 THE CHAIR: Yes.  
11 MS KAUFMANN: -- which is if you don't do it, then there is  
12 going to be a real risk of jeopardy to the Inquiry  
13 itself. If we don't get these sorts of documents or  
14 these items of disclosure then we cannot make any  
15 meaningful representations. You are much more likely to  
16 find yourself making cover name anonymity orders, in  
17 circumstances which you would not do if we were able to  
18 make more informed representations.  
19 We would submit, yes, it is definitely going to have  
20 an implication in terms of time, but that's why we  
21 listed what we are looking for. When the disclosure  
22 process is underway now, without that list, you are  
23 having to -- you, the police or whoever -- go through  
24 the exercise of deciding what we can see and what we  
25 can't. We are focusing the minds of all those involved

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1 in a very helpful way, I would have thought, in saying,  
2 "When you go through that exercise, focus on these  
3 things" and that actually should speed the matter up.  
4 That's what we were trying to do.  
5 What I fail to see is how that can actually slow  
6 things down as opposed to speed it up.  
7 THE CHAIR: The proposal was born of experience of the legal  
8 team conducting the exercise in the traditional manner  
9 for the June/July tranches.  
10 It is they who have done the work, not me. I mean  
11 I see the end product of the work, of course, and I have  
12 to make decisions based upon it, but I do know that it  
13 did take them a great deal of time and I still seriously  
14 doubt the utility of their having done it. Not in every  
15 instance, in some instances it is necessary, but in  
16 a significant number of cases it is simply diverting  
17 legal effort into a path that serves no useful purpose.  
18 MS KAUFMANN: There is a distinction here to be drawn  
19 between real names and cover names.  
20 At the moment in relation to cover names you are  
21 proposing to continue in the manner that you have thus  
22 far.  
23 Our proposal is that instead of an approach which is  
24 not focused on the things that we are able to say would  
25 be particularly helpful, the approach we are suggesting

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1 is that you do focus on these things which inevitably  
2 ought to speed the process up. They have to look at  
3 this. You accept that so far as the process is  
4 concerned in relation to cover names they still have to  
5 undertake the same process they were undertaking.  
6 THE CHAIR: Agreed.  
7 MS KAUFMANN: What we are suggesting is a way that could  
8 speed that process up. It appears as though proper  
9 thought and consideration has not been given to that  
10 yet, and it may be because our submissions have been  
11 read as applying only to real name, which is what you  
12 thought the consultation was all about, and therefore  
13 you have not actually thought about its utility as a way  
14 forward in relation to cover names.  
15 If that is the case, we would ask that you do think  
16 about it. Because if we can speed that process up that  
17 also has a bearing upon how one deals with the real name  
18 process. I understand and I accept it is less pressing  
19 in relation to real names, but it is extremely pressing,  
20 we would submit, in relation to cover names. What you  
21 have been saying about there being no utility is just  
22 ringing huge alarm bells for us in relation to cover  
23 names.  
24 THE CHAIR: Yes, I was not suggesting the lack of utility in  
25 relation to cover names.

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1 On the contrary, if I were minded to make  
2 a restriction order in respect of both real and cover  
3 names then the full exercise is gone through. That is  
4 what the proposal says.  
5 Your, as it were, indicators, of what we should be  
6 looking for is helpful, I am grateful for it. I am not  
7 for one moment suggesting that there is a lack of  
8 utility there. I am suggesting that there is a lack of  
9 utility when it comes to a minded to decision to publish  
10 the cover name but not the real name of an uncover  
11 deployed officer.  
12 MS KAUFMANN: I understand that. I am grateful. I am glad  
13 that we are now all speaking from the same page and my  
14 submissions should be taken in two parts.  
15 I incredibly strongly urge the panel not just to be  
16 guided by the issues which we have helpfully identified  
17 as being helpful to us, but actually to think about  
18 a disclosure process that focuses on those in the way  
19 that we suggest.  
20 In relation to real names --  
21 THE CHAIR: Forgive me. While we are on this particular  
22 topic, disclosure is somewhat more problematic than that  
23 in individual cases. What can be disclosed and what you  
24 want to see disclosed are different things. You are  
25 inevitably going to be disappointed in at least some,

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1 possibly the majority, of cases, about what can be  
2 disclosed at this stage.  
3 MS KAUFMANN: I understand that. We can see that there has  
4 been a fundamental difference in the position that we  
5 have expected and you have felt able to disclose or to  
6 give us.  
7 THE CHAIR: Yes.  
8 MS KAUFMANN: It may be that going forward this response to  
9 the consultation, what has happened today, will enable  
10 you to go back and think, "Well, actually, is there more  
11 we can disclose in these individual cases?" And do it  
12 by reference to that list. Even if you don't feel able  
13 to disclose everything on that list in an individual  
14 case, it can still provide the framework by which you  
15 decide upon what to disclose and how to disclose it to  
16 us. That would be much more effective as a way forward,  
17 we would submit, than the way that things have gone so  
18 far.  
19 Again, I just repeat that our annex A, which to us  
20 appears to indicate that much, much more can be  
21 disclosed than has been understood on your side, is  
22 worthy of careful review to inform your assessment of  
23 whether you can actually disclose more. That is the  
24 position in relation to covers.  
25 THE CHAIR: You will have noticed, I think, that when it

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1 comes to rulings and decisions as opposed to minded to  
2 notes, that they are usually somewhat fuller. The  
3 closed versions certainly are, and the open versions are  
4 sometimes as well.  
5 MS KAUFMANN: That doesn't help us, because rulings are  
6 after the event. We are talking about -- and that is  
7 an important point. If you feel you can disclose more  
8 in your rulings, why are you not disclosing it before?  
9 THE CHAIR: I can answer that. The problem is that the  
10 obligation which is statutory on the Inquiry not to  
11 publish anything before making a ruling which would  
12 frustrate the ruling if it is to be in favour of  
13 a restriction order. That inhibits what we can say  
14 before then.  
15 MS KAUFMANN: We understand that. Bearing that in mind,  
16 that is the basis on which we made the amendments to  
17 annex A. Keeping that in mind as at all times the limit  
18 of what you are able to say.  
19 And we do not understand why you cannot disclose  
20 more. For example -- the obviously example again is are  
21 these left wing groups, are they right wing groups? The  
22 broad parameters of when people were involved and  
23 undercover. Issues going to whether or not an officer  
24 was privy to privileged information and so forth or  
25 might have been engaged in miscarriage of justice --

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1 THE CHAIR: Are you suggesting a checklist under which each  
2 is ticked or crossed? For example, privy to legally  
3 qualified information is as far as I understand the  
4 position -- my knowledge of these things is obviously  
5 incomplete because I have not conducted the Inquiry  
6 yet -- that is a very limited aspect of undercover  
7 deployment which needs to be investigated.  
8 Of course it needs to be investigated but it only  
9 arises, so far as I know, in a few cases.  
10 MS KAUFMANN: But where those cases arise -- it is not going  
11 to be something you disclose in every case if it doesn't  
12 arise, but where it does arise, disclose. It is  
13 important. It is important for us to make submissions  
14 because that goes to the balance that you are going to  
15 draw between disclosure and nondisclosure.  
16 Because if there is in that officer's case evidence  
17 that they may have been involved in discussions of  
18 a privileged nature, that is a reason for disclosing  
19 cover names so that evidence can be given about it. So  
20 those sorts of bits of information are ones that we need  
21 to know about if the disclosure of them is not going to  
22 risk undermining the purpose of the application.  
23 That is our position on cover names. We submit the  
24 same position should apply in relation to real names.  
25 It is very clear to me you profoundly disagree with

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1 that --  
 2 THE CHAIR: I do.  
 3 MS KAUFMANN: -- but our submission is exactly the same  
 4 should apply to both, but there is no question, in our  
 5 submission that more can be disclosed in relation to  
 6 cover names, should be disclosed for all the reasons  
 7 I have identified and the process we have set out is not  
 8 going to extend the exercise is that is currently  
 9 undertaking and is going to continue to be undertaken.  
 10 On the contrary, it will actually reduce the time.  
 11 Just one last point that comes up in the  
 12 consultation. It is not strictly speaking on this, but  
 13 just if I might say something about it. It is the issue  
 14 about real names and disclosure of real names -- actual  
 15 disclosure of real names -- in relation to  
 16 post-deployment conduct. That is dealt with in  
 17 paragraph 3 of the Counsel to the Inquiry's response.  
 18 I just wanted to say that I think this misses the  
 19 point about the importance of a real name in that  
 20 context. It is accepted now by the Inquiry that  
 21 post-deployment conduct is relevant and falls within the  
 22 remit of what the Inquiry is looking at.  
 23 THE CHAIR: Maybe. I am not committing myself to  
 24 investigating every undercover officer's post-deployment  
 25 employment.

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1 MS KAUFMANN: No. No. But it is not dissimilar to the  
 2 situation in relation to cover names in that of course  
 3 unless people know who worked with that individual that  
 4 they were in fact an undercover officer beforehand, and  
 5 therefore the real name is out there, they are not going  
 6 to know that they have evidence to come forward with.  
 7 This has been characterised as a fishing expedition  
 8 on our part, but that is a mischaracterisation. Just as  
 9 with the disclosure of the cover names, it is just  
 10 a matter of fact that if and insofar as officers were  
 11 using in an abusive way information, tactics and so  
 12 forth that they obtained in their role as undercover  
 13 officers, it will only come to light if that connection  
 14 can be made and that connection can only be made if the  
 15 real name is disclosed.  
 16 It is not about finishing. It is just about what --  
 17 if you are going to look at that, because there could be  
 18 an issue about it, how are you going to get the  
 19 evidence. That is the only way.  
 20 Unless I can assist you further, those are our  
 21 submissions.  
 22 THE CHAIR: Thank you. That is very helpful.  
 23 Ms Sikand?  
 24 Submissions on behalf of Peter Francis by MS SIKAND re  
 25 consultation on proposal to change the process of applying

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1 for and determining anonymity applications  
 2 MS SIKAND: Sir, as you know, we just made a very limited  
 3 point about this consultation because we have never  
 4 pressed upon you the importance of disclosure of real  
 5 names, our focus has always been on cover names.  
 6 But what we have said in that regard, that we are  
 7 concerned about the disclosure and its processes in the  
 8 same way that Ms Kaufmann has already set out for you.  
 9 We are not suggesting the procedure that she is, but  
 10 we have made the point that disclosure to date in our  
 11 view is simply not as full as it could be. We have  
 12 suggested -- it is, we think, a sensible suggestion --  
 13 that the separation process could be dealt with slightly  
 14 differently and that would bring about, we think, better  
 15 disclosure and a cultural change in the way in which  
 16 disclosure is being made, where if the redactions are in  
 17 the first instance made by your legal team as opposed to  
 18 by those who seek the restriction order, in our  
 19 submission there are bound to be overredactions in the  
 20 first place.  
 21 I hear what Counsel to the Inquiry says in his  
 22 response in a footnote to his submissions on this point,  
 23 that it won't save any time, but it is not just about  
 24 time saving. Because goodness knows we have not saved  
 25 much time so far on this particular process. Not just

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1 because of separation, because before you took over as  
 2 chairman we had had plenty of delay by reason of there  
 3 being no applications before the Inquiry and that wasn't  
 4 a separation process delay, so that is a cumulative  
 5 delay which is part of the history of this very process.  
 6 But we suggest and submit that you could consider  
 7 looking at this process in a different way and trying it  
 8 in a different way, letting your legal team make the  
 9 redactions in the first instance and then batting it  
 10 back to the Metropolitan Police Service or whichever  
 11 core participant.  
 12 That is our submission. We think that it will make  
 13 a difference to the disclosure that we have been given.  
 14 THE CHAIR: You suggest that, as I understand it, after the  
 15 stage at which I have issued a minded to note --  
 16 MS SIKAND: Yes.  
 17 THE CHAIR: -- not before?  
 18 MS SIKAND: Yes, of course. We are not suggesting it would  
 19 make a difference if we got it before, because as long  
 20 as we have the right to make submissions to you about  
 21 your preliminary indication, as long as we get it --  
 22 otherwise we end up, sir, in these meaningless  
 23 submissions to you where we look at each other, we want  
 24 to assist, we are all here, but we can't assist.  
 25 We do take issue, sir, with the comment by Counsel

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1 to the Inquiry at paragraph 9 -- it was alluded to by  
2 Ms Kaufmann earlier in a different context -- in which  
3 he says:  
4 "However, unlike the position in adversarial  
5 litigation the submission of core participants only add  
6 to the process if they raise a point which the chairman  
7 is not already aware of."  
8 With the greatest respect, that is to misunderstand  
9 even the inquisitorial process in our view. How is it  
10 that we know what it is that you know, and how would we  
11 know that you would not be assisted by something that we  
12 don't know about, sir?  
13 THE CHAIR: I am afraid, it is completely unavoidable that  
14 position. I know things you don't know and you know  
15 things that I don't know.  
16 MS SIKAND: Exactly. But, sir, to suggest that we could  
17 only assist you in relation to a point that you don't  
18 know about misses the point, if I may say so, because of  
19 course it is not just about the disclosure it is about  
20 the interpretation or the weight or the legal analysis  
21 that you may apply to a particular piece of information.  
22 We could assist you, we hope, sir, in a different  
23 analysis, in a different approach. Obviously you may  
24 take the view it is the wrong approach but it is still  
25 our role as core participants, because that is what we

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1 are, to assist you.  
2 We don't think that that is a proper statement of  
3 what our role is at paragraph 9 and that's why we say  
4 could we look at the whole disclosure process, the  
5 overarching aspect of it again, please, sir.  
6 Thank you.  
7 THE CHAIR: Thank you.  
8 Ms Mannion?  
9 Submissions on behalf of the Commissioner of Police of the  
10 Metropolis by MS MANNION re consultation on proposal to  
11 change the process of applying for and determining anonymity  
12 applications  
13 MS MANNION: Sir, as you know, you have seen our response to  
14 the consultation, our written submissions. We agree  
15 with the proposal. I'm not seeking to repeat anything,  
16 just making two very small points.  
17 1, Mr Barr explained the change for real name  
18 applications which is proposed and indicated that that  
19 change would only be possible in circumstances where the  
20 cover name could be published before the hearing.  
21 We understand that. It is simply to flag that if  
22 there were to be a case where for whatever reason we  
23 would say that were unfair, we would flag that at the  
24 time an application is made and it may be that the  
25 longer system would have to take place there. Simply to

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1 flag that it is conceivable such a thing might happen.  
2 THE CHAIR: The consultation is about what should normally  
3 happen, not what should happen in exceptional  
4 circumstances.  
5 MS MANNION: Exactly. I mention it merely to indicate that  
6 we would certainly be live to that and would assist  
7 wherever we think that might occur.  
8 Secondly, although I'm grateful to Ms Kaufmann's  
9 clarification that any proposal the Inquiry adopts, we  
10 would submit that any document or any gist or redaction  
11 over a document the Metropolitan Police Service has  
12 ownership of, or equity in, should only happen by  
13 consultation just as would be in our submission fair.  
14 Sir, you were addressed briefly about  
15 post-deployment conduct in the context of restriction  
16 order applications. I don't know, sir, whether you want  
17 me to address you or respond on those points?  
18 THE CHAIR: Now is your opportunity, if you want to?  
19 MS MANNION: Sir, again, it is in our written submissions in  
20 any event, but our submission is that just because  
21 management of an individual's post-deployment conduct  
22 might be relevant in a particular circumstance doesn't  
23 mean that it always will be. The Inquiry is not  
24 exhaustively required to explore every remote  
25 possibility.

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1 In any event, we would suggest to you that post  
2 deployment is an area where the Inquiry is well able to  
3 conduct at the very least some fairly extensive initial  
4 investigation of its own.  
5 THE CHAIR: It is fairly easy to conceive of circumstances  
6 in which it might be highly relevant. If, for example,  
7 an officer was deployed into a field within or connected  
8 with trade union activity, and then went on to join one  
9 of the private concerns that deal with inquiries into  
10 the background of prospective employees, then that would  
11 be highly relevant.  
12 Purely hypothetical, I am not suggesting that  
13 that -- I am only speaking about what I know now. At  
14 the moment it is purely hypothetical, but if it were to  
15 arise, then I would readily agree that that is  
16 a post-deployment employment that needed to be looked  
17 into.  
18 MS MANNION: Of course.  
19 Sir my submission would be that the Inquiry is going  
20 to be able to see where those types of red flags might  
21 exist and be able then to modify its approach  
22 accordingly. Our position would be that as a general  
23 position, a public speculative search for  
24 post-deployment conduct should not be a basis to refuse  
25 a restriction order where it is otherwise merited. That

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1 is really our baseline submission.  
 2 THE CHAIR: The position at the moment is that if there is  
 3 a risk assessment, and sometimes if there is only an  
 4 impact statement, I am provided with information about  
 5 that.  
 6 MS MANNION: Yes, indeed, sir.  
 7 Those are my submissions, sir.  
 8 THE CHAIR: Thank you.  
 9 Mr Sanders.  
 10 MR SANDERS: No, thank you, sir.  
 11 THE CHAIR: Mr Brandon? Your part in this aspect of the  
 12 Inquiry is almost over, isn't it?  
 13 MR BRANDON: Yes, I thought you probably would not want to  
 14 hear from me, sir.  
 15 THE CHAIR: Thank you.  
 16 Mr Barr, anything you want to say arising out of the  
 17 debate we have had?  
 18 Submissions in reply by COUNSEL TO THE INQUIRY, MR BARR re  
 19 consultation on proposal to change the process of applying  
 20 for and determining anonymity applications  
 21 MR BARR: Only very briefly and by way of clarification. It  
 22 might assist if I explain why we think the proposal made  
 23 by my learned friend Ms Kaufmann would not be any  
 24 quicker.  
 25 It is because in addition to preparing a summary

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1 document of the kind that was presented today, it is  
 2 also because in addition their proposal would involve  
 3 line-by-line redaction of all the underlying evidence.  
 4 In other words, what we are already doing plus  
 5 a summary, we could obviously do a summary document  
 6 alone more quickly but that would involve publishing  
 7 less information than we do already which is not, as  
 8 I understand it, the thrust of my learned friend's  
 9 submissions.  
 10 It is the additional work which we think would take  
 11 longer.  
 12 THE CHAIR: I think the Inquiry, including both you and me,  
 13 need to reflect upon what in those cases where something  
 14 like the old exercise is undertaken could further be  
 15 published over and above what now is. We will need to  
 16 think about that in principle and see how it works out  
 17 in practice.  
 18 MR BARR: Indeed we will, sir.  
 19 THE CHAIR: Those, I think, conclude the submissions don't  
 20 they?  
 21 MS KAUFMANN: They do. Can I just say one thing in relation  
 22 to your decision-making?  
 23 Submissions on behalf of the non-state, non-police core  
 24 participants by MS KAUFMANN re timetable  
 25 MS KAUFMANN: Sir, there is a very short timetable, as you

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1 know, for seeking to challenge any decisions that you  
 2 make by way of judicial review.  
 3 There is about to be in a few days half term.  
 4 Certainly for my part and Ruth's part we are mothers of  
 5 school age children and we are not going to be here over  
 6 half term.  
 7 All I would ask is if you are extremely efficient  
 8 and make your decision in the next week to ten days,  
 9 would you please consider not taking a point on delay so  
 10 that we could get ourselves back and up and running,  
 11 should we consider that a challenge is appropriate?  
 12 THE CHAIR: Half term varies a little from school to school,  
 13 as I understand it.  
 14 MS KAUFMANN: Ours starts from the end of this week for  
 15 a week.  
 16 THE CHAIR: Right. So if decisions were to be published  
 17 on -- let me try to rephrase this --  
 18 MS KAUFMANN: The 19th is when we are back.  
 19 THE CHAIR: The Inquiry does not like to publish things on  
 20 Friday, it prefers to do it on Thursday. But if any  
 21 decision were to be published on the Thursday before you  
 22 get back, would that fit in with your timetable?  
 23 MS KAUFMANN: It would obviously be better for us if it  
 24 could be published on the Monday when we actually are  
 25 back. Because 14 days is an incredibly short time at

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1 the best of times.  
 2 THE CHAIR: It is a time which only the Administrative Court  
 3 can extend.  
 4 MS KAUFMANN: Yes. So you can influence the amount of time  
 5 we have to deal with a very short timetable by  
 6 publishing on the Monday as opposed to the Thursday.  
 7 THE CHAIR: Are those who represent and the courtroom  
 8 generally, would it be content if I were not to publish  
 9 decisions which I will by then have made in the majority  
 10 of cases until the Monday that you come back?  
 11 MS KAUFMANN: I can probably speak on behalf of everybody  
 12 and say yes, on the basis that if we are going to  
 13 challenge those decisions they would much rather that we  
 14 have a proper opportunity to do so.  
 15 THE CHAIR: That is a small request to make, and I will  
 16 agree to it.  
 17 MS KAUFMANN: I am grateful.  
 18 THE CHAIR: Can I mention something about the future  
 19 progress of the anonymity hearings? We have still  
 20 a number of tranches to go. I have made minded to  
 21 decisions in some already and some are just coming in,  
 22 the latest batch has arrived last week as I understand  
 23 it.  
 24 My expectation is that all decisions relating to  
 25 Special Demonstration Squad and National Public Order

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<p>1 Intelligence Unit deployed undercover officers and, in  2 the case of the Special Demonstration Squad, managers  3 will be the subject of minded to decisions that would  4 permit hearings, closed in some cases open in all if  5 needed, in March, May and July.</p> <p>6 My aim is to try and finish this process -- apart  7 from the odd inevitable straggler which one can never  8 hope to cope with in a strict timetable -- by the end of  9 July, with the final decisions rulings published in  10 early August. In that way, we can then begin to get on  11 with gathering substantive evidence and any obstacles to  12 doing so should per change judicial review be cleared.</p> <p>13 MS KAUFMANN: Yes.</p> <p>14 THE CHAIR: Can I take it that in the remaining batches that  15 everyone does want to have an open hearing? I know you  16 may say, well, some open hearings are more important  17 than others, but in principle does everyone wish to have  18 an open hearing?</p> <p>19 MS KAUFMANN: Yes, I think so.</p> <p>20 THE CHAIR: In general? Yes. Right.</p> <p>21 MS KAUFMANN: Yes.</p> <p>22 THE CHAIR: In that event, we will try to identify dates  23 sufficiently long in advance for you to put them in your  24 diary, because were you to make --</p> <p>25 MS KAUFMANN: They are already in mine. The Inquiry has</p> <p style="text-align: center;">Page 149</p>	
<p>1 been very efficient. I think is all diarised now; we  2 have big windows blocked out.</p> <p>3 THE CHAIR: Excellent.</p> <p>4 If last minute applications were to be received  5 because you are in the Supreme Court, Court of Appeal or  6 somewhere more importantly than this Inquiry, then they  7 might not be very favourably received. Indeed the  8 answer might be a blunt no. But I throw that out in the  9 hope that it doesn't arise.</p> <p>10 Thank you, all.</p> <p>11 (2.56 pm)</p> <p>12 (The hearing concluded)</p> <p>13  14  15  16  17  18  19  20  21  22  23  24  25</p> <p style="text-align: center;">Page 150</p>	

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