

## IN THE UNDERCOVER POLICING INQUIRY

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### GENERIC SUBMISSIONS ON BEHALF OF THE NPCC IN SUPPORT OF APPLICATIONS FOR RESTRICTION ORDERS

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#### 1. INTRODUCTION

1. These submissions are made on behalf of the National Police Chiefs' Council (NPCC) to accompany generic grounds and evidence tendered in support of police applications for restriction orders.
2. By letter from the Inquiry dated 17 November 2016, the following recipients were invited "*collectively to produce an initial agreed common set of open and closed generic grounds, submissions and evidence*": the NPCC, the College of Policing, the Home Office, the National Crime Agency (NCA), the Independent Police Complaints Commission, the Crown Prosecution Service, the National Undercover Working Group,<sup>1</sup> and the Metropolitan Police Service (MPS).
3. The generic grounds comprise a list of categories justifying non-disclosure of information and have been supplied to the Inquiry in open and closed form.
4. The latest version of these grounds is dated 5 August 2017. That version has been used to formulate a "redaction tool" for use in the large-scale disclosure exercises to be conducted by the MPS and the NPCC for documents relating to the SDS and NPOIU, on the Relativity programme.
5. The generic evidence supplied by the NPCC comprises a witness statement from Alan Pughsley, Chief Constable of Kent Police, latest version dated 27 September 2017, which has also been supplied in open and closed form. It is understood that generic evidence in support of the grounds has also separately been supplied by other state core participants.

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<sup>1</sup> Of which Chief Constable of Kent Police, Alan Pughsley, is the current Chair.

6. The grounds and evidence have been the subject of discussions with the parties to the letter of 17 November, in accordance with the terms of that letter.
7. The following submissions on behalf of the NPCC address:
  - a) The legal framework within which applications for restriction orders fall to be decided;
  - b) The Inquiry's approach to applications for restriction orders;
  - c) The generic evidence supplied by the NPCC in the form of CC Pughsley's statement;
  - d) The two main justifications for the generic grounds, namely the harm which might be caused (a) to individuals and (b) to policing in general if certain information is disclosed during the course of the Inquiry;
  - e) The specific sub-categories being used for the redaction tool.
8. Detailed submissions on each of the sub-categories within each ground are contained in a separate spreadsheet.

## 2. LEGAL FRAMEWORK

9. The legal principles governing decisions to be taken under section 19 of the Inquiries Act 2005 – as to whether and, if so, in what terms the public disclosure of evidence, documents and information received by the Inquiry should be restricted – have been set out comprehensively in the ruling of 3 May 2016 (*"Restriction Orders: Legal Principles and Approach"*).
10. At paragraph 3 of that ruling, which followed submissions on behalf of core participants including the NPCC, it was said by the Chairman:

“There is a large measure of agreement as to the legal principles that apply to the decision-making process. What is controversial is the approach that I should adopt to that process and the weight that I should apply to competing and, at first sight, irreconcilable components of the public interest. I have concluded that this issue is central to the ability of the Inquiry properly to fulfil its terms of reference. For that reason the Inquiry has chosen to take an incremental route towards consideration of applications for restriction orders.”

11. The approach to be adopted to the “*public interest balance*” under section 19(3)(b) of the Inquiries Act 2005 was summarised in Part 6(A) of that ruling. The Chairman has indicated he will approach this exercise on a case-by-case basis, according to the nature and quality of the evidence received in support of an application.<sup>2</sup>
12. The principal competing public interest factors for consideration under section 19(3)(b) of the Inquiries Act 2005 were held to be:<sup>3</sup>
  - a) The need to allay public concern about the subject matter, process, impartiality and fairness of the Inquiry; and
  - b) The need to avoid or reduce a risk of harm to serving and former police officers and the need to avoid or reduce a risk of damage to effective policing.
13. These submissions are primarily directed towards the second of these public interest factors, of which it was further held:

“The main risk factors for harm to police officers and damage to effective policing is disclosure of (i) the true identity of present or former undercover police officers whether directly or indirectly and (ii) the operational techniques of undercover police operations.”<sup>4</sup>
14. These risk factors are addressed by the two main “umbrella” headings to the generic grounds, namely:
  - a) Harm to people, including officers and third parties; and
  - b) Harm to policing.
15. In assessing the risk of harm to officers and/or damage to effective policing, the Chairman held as follows:
  - a) The term “*harm*” will be construed widely so as to embrace interference with private life.<sup>5</sup> However, the greater the risk and the more severe the

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<sup>2</sup> Ruling of 3 May 2016, Part 6 para. A.12 at page 80/85.

<sup>3</sup> Ruling of 3 May 2016, Part 6 para. A.2 at page 78/85.

<sup>4</sup> Ruling of 3 May 2016, Part 6 para. A.4 at page 78/85.

<sup>5</sup> And in such a case a separate Article 8 assessment will be made under s. 19(3)(a) of the Inquiries Act 2005: Ibid. para. A.10 at page 79/85.

harm the weightier will be the public interest in taking steps to avoid or reduce it;<sup>6</sup>

- b) An assessment of any pre-existing risk caused by self-disclosure or third party disclosure and alternative methods available to avoid or reduce a risk of harm or damage will be material considerations;<sup>7</sup>
- c) Reliance on the Neither Confirm Nor Deny (NCND) policy will be a material consideration, but the weight to be afforded to it will depend upon the "*precise risk of harm or damage*" its application seeks to avoid or reduce;<sup>8</sup>
- d) An expectation of confidentiality will be a material consideration but the weight to be attached to such an expectation will require examination as to whether it was an expectation of unqualified protection and, if so, whether such an expectation was reasonable in the circumstances.<sup>9</sup>

16. Of the factors relevant to the assessment of whether a restriction order would avoid or reduce a risk of harm to a police officer, these submissions address the following: (1) sources of possible harm; (2) the nature of possible harm including breach of confidentiality; (3) the identification of those who may be harmed; (4) any medical evidence on which an officer relies; (5) the existence and quantification of any pre-existing risk of harm, including a risk caused by self-disclosure or third party exposure or partial exposure; (6) the existence and quantification of any additional risk of harm that a restriction order would avoid or reduce; and (7) and (8) any means other than a restriction order which may be available, and the effectiveness of any such means.<sup>10</sup>

17. Of the factors relevant to the assessment of whether a restriction order would avoid or reduce a risk of damage to effective policing, these submissions address the following: (1) the degree of and reasons for the sensitivity of the

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<sup>6</sup> Ruling of 3 May 2016, Part 6 para. A.5 at page 79/85.

<sup>7</sup> Ruling of 3 May 2016, Part 6 para. A.6 at page 79/85.

<sup>8</sup> Ruling of 3 May 2016, Part 6 para. A.7 at page 79/85.

<sup>9</sup> Ruling of 3 May 2016, Part 6 para. A.8 at page 79/85.

<sup>10</sup> Factors listed at B.1 of the Ruling of 3 May 2016 (page 81/85).

material, including a breach of confidentiality; (2) the causative link between disclosure and damage; (3) the existence and quantification of any pre-existing risk of damage, including a risk caused by previous public disclosure; and (4) and (5) any means other than a restriction order which may be available.<sup>11</sup>

18. These submissions, like the evidence and grounds which they support, are generic in nature and not intended to apply to particular applications.
19. Because undercover officers are a species of covert human intelligence source (CHIS)<sup>12</sup> their deployments are subject to the provisions of the Regulation of Investigatory Powers Act (RIPA) 2000, including statutory welfare protection under section 29. The NPCC respectfully invites the Inquiry to have regard to these statutory protections when considering issues of disclosure.

### **3. SUBMISSIONS**

#### **3.1 Inquiry's approach to restriction order applications**

20. The NPCC recognises that the principal means available to the Inquiry to allay public concern in its subject matter, process, impartiality and fairness is public accessibility to its proceedings, which encompasses the effective investigation of the cases of the NSCPs, the accountability of the relevant police services, and the transparency of the process as a whole.<sup>13</sup>
21. The Chairman has indicated that the starting point is that no restriction order will be made, in the public interest of openness in the Inquiry and its proceedings, unless it is necessary in the countervailing public interest of the protection of individuals from harm and/or effective policing.<sup>14</sup>

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<sup>11</sup> Factors listed at B.2 of the Ruling of 3 May 2016 (page 81/85).

<sup>12</sup> Within the meaning of section 26(8) of RIPA 2000.

<sup>13</sup> Ruling of 3 May 2016, Part 6 para. A.3 at page 78/85.

<sup>14</sup> Ruling of 3 May 2016, Part 6 para. A.11 at page 79/85.

22. Thus, a balancing exercise needs to be performed. The NPCC accepts that when considering whether to make an order restricting disclosure, the Chairman will need to consider:
- a) The public interest in disclosure, and the risk and level of harm to the public interest that would follow disclosure of the information; and
  - b) The public interest in non-disclosure, and the risk and level of harm to the public interest that would follow disclosure of the information;
- before making a fact-sensitive assessment, in respect of the information concerned, of where the public interest balance should lie.<sup>15</sup>
23. It may be that, in relation to a particular piece of relevant information, the public interest in disclosure is outweighed by the risks attendant on disclosure and the means which would be required to avoid or mitigate those risks, or vice versa.
24. The NPCC respectfully submits that:<sup>16</sup>
- a) There is likely to be a very strong public interest in protecting the true identities of undercover officers and other CHIS, along with the tactics and methodology of deployment, which are matters of the utmost importance for all law enforcement agencies.<sup>17</sup>
  - b) In addition, there is a public interest in respecting the right to and expectation of privacy of other staff, for instance those in support and administrative roles, whose identity is not directly material to the work of the Inquiry or the concerns raised, even though their work may be relevant to how operations were managed;
  - c) The risk of disclosure of a seemingly innocuous piece of information contributing to a “mosaic effect”, which leads to the identification of an officer, is real;

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<sup>15</sup> Ruling of 3 May 2016, Part 6 para. B.3 at page 82/85.

<sup>16</sup> Further to submissions on behalf of the NPCC dated 12 February 2016.

<sup>17</sup> See, further and relatedly, the submissions made on behalf of the NPCC on the principle of NCND, dated 21 January 2016.

- d) A cautious approach is therefore justified, not least because the risks to any individual officer may span an entire lifetime;
  - e) There is a duty on police forces to make applications for restriction orders where in their judgment the public interest in the making of such an order outweighs the public interest in publication of the material in question;
  - f) The making of restriction orders is fact-sensitive and involves a careful balancing exercise;
  - g) In conducting the balancing exercise the Inquiry must act in a way which is compatible with Convention rights and where disclosure would result in a breach of Articles 2, 3 or 8 then this would require a restriction order to be made;
  - h) The Inquiries Act 2005 expressly permits the Inquiry to take into account material which is not put into the public domain when reaching its conclusions, and the purpose of the Inquiry is not / will not be frustrated by the granting of restriction orders.
25. The NPCC makes the following submissions on the generic evidence, grounds, and redaction tool.
26. References to paragraphs in the witness statement of Chief Constable Pughsley are in the form [AP §1, 2, 3].

### **3.2 Generic evidence**

27. Being generic in nature CC Pughsley's evidence is neither designed to apply, nor is it capable of applying, in the same way to every set of facts and circumstances.
28. The NPCC respectfully submits that, whilst the language of the statement may, in places, suggest that the evidence it contains will support applications in an unqualified manner, such language must be interpreted in the context in which

the statement was made, i.e. as generic evidence which does not take account of all countervailing circumstances which may pertain in an individual case.

29. The application of CC Pughsley's statement in a particular case may depend on whether an undercover officer has or has not been granted anonymity, whether in respect of a real and/or cover name. However, there may be justification for a restriction order even where anonymity has not been granted.
30. Now that the process for anonymity applications is underway, it is apparent that there are at least three possible categories:
  - a) Identities in respect of which an application for anonymity has been made and granted;
  - b) Identities in respect of which an application for anonymity has been made and refused;
  - c) Identities in respect of which no application for anonymity has been made.
31. Where an application for anonymity has been granted, special care will be needed to ensure that the effect of the anonymity order is not undermined by the disclosure of other information potentially capable, in isolation or in combination with other information, of identifying the officer.
32. Where the real and/or cover identity of an officer is known, either because it is already in the public domain or has been disclosed following an unsuccessful application for anonymity, there may be other information associated with that officer and his/her deployments – relating to third parties, other undercover officers, or tactics, techniques and methodology – which may still, due to its sensitivity, require an application for a restriction order to be made.
33. Similarly, the disclosure of information revealing a particular covert tactic, technique or methodology could have the collateral consequences of:
  - a) Exposing other undercover officers (past, present and future);

- b) Enabling criminal organisations to adapt their behaviour to avoid infiltration by undercover officers; and
  - c) Preventing that tactic or technique being used in current or future operations.
34. Thus, in respect of all three categories of identity, there may be good reasons why information concerning those officers and/or tactics and techniques should not be in the public domain. The determination of anonymity applications therefore cannot be determinative of whether applications for restriction orders will be required and/or granted.
35. The NPCC respectfully submits that the collateral consequences of disclosure provide a further reason why CC Pughsley's evidence needs to be viewed in its context, as a witness statement containing generic evidence which may be used to support restriction applications in different ways, depending on the facts of a particular case.
36. The NPCC would also point out that CC Pughsley's statement was produced to support applications for restriction orders which will be made in respect of the vast quantity of documentation in the custody and control of the NPCC and other state CPs. It was not intended to support anonymity applications, although the NPCC recognises that some of the evidence it contains was and still might be relevant, on a generic basis, to such applications.
37. The NPCC does not consent to any distribution of the closed version of CC Pughsley's statement beyond those parties and their legal advisors who have been involved in its production i.e. the NPCC, the MPS, the NCA and the Inquiry, because its security and confidentiality cannot be guaranteed.
38. An open and/or gisted version of CC Pughsley's statement has been produced, which will be available to all CPs and the public.

### 3.3 Generic grounds

39. The open and closed grounds/sub-categories are the starting point for the large-scale disclosure and redaction exercise which is to be undertaken by the state CPs including the NPCC.
40. These grounds and sub-categories will be used by the personnel responsible for identifying and applying redactions. Their function is to provide a framework of potential justifications for applications for restriction orders. They are also designed to provide as much transparency over the nature of the redacted material as can safely be permitted. There may be overlap between different categories, where more than one category applies to a particular piece of information, and their application will inevitably depend on the context and cumulative effect of the information in a particular document.
41. The following submissions address the two primary justifications for restriction:
  - a) Harm to people, including officers and third parties; and
  - b) Harm to policing.

#### (a) Harm to people

42. The potential harm which could be caused to individuals – officers, former officers, and third parties – by disclosure of information relating to undercover policing, is relevant to generic grounds A to D.

#### (i) Physical, psychological, emotional

43. The role of undercover operative is among the most dangerous undertakings which any law enforcement agency can ask an individual to perform. Disclosure of information capable of identifying an undercover officer exposes that officer, and others connected to him personally and professionally, to the risk of retributive action perpetrated by groups or individuals previously unaware of the officer's true identity. Such retribution has included violent assaults against undercover officers and their contacts, examples of which can be found at [AP §143-150].

44. Action of this nature can be motivated by a desire for revenge or to deter law enforcement agencies from targeting them. The risk of such harm exists even if the operation of interest to the Inquiry involves targets who are not themselves likely to resort to violence.

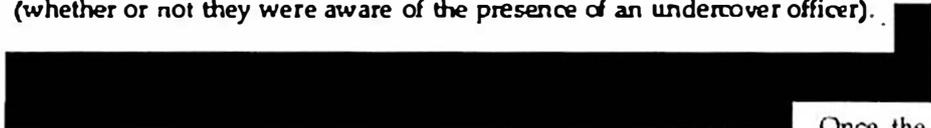


45. Violent retribution against undercover officers, and the fear of its possibility, inevitably has a serious impact not only on those officers directly affected, but on their colleagues, relatives, and other undercover officers who fear exposure themselves. Likewise harassment, threats or intimidation not amounting to violence or the threat of violence can be harmful to officers and their families.

46. Because criminal groups are highly motivated to identify and expose undercover officers, many officers operate under the fear that their role and identities will be exposed. This can have severe effects even where officers' identities remain protected, but actual exposure through the Inquiry would make that fear a reality.

47. Individual officers may, of course, submit medical evidence demonstrating the impact which disclosure of certain information has had or may have.

48. Harm may be caused not only to undercover officers and their families, but to other persons associated with the undercover officer during their deployment (whether or not they were aware of the presence of an undercover officer).



Once the identity of an undercover officer has been revealed there may be a real risk of

harm if others perceive (rightly or wrongly) that any particular person knew the true identity of the undercover officer and was helping them.

(ii) Legitimate expectation of privacy

49. All undercover officers carry out their duties and responsibilities, often at substantial personal risk and to the detriment of their private and family lives, in the expectation that their identities will be protected. This expectation arises and is sustained before, during and after an individual deployment. It is reinforced to officers throughout their careers that their identities will be protected.

50. The relatives of undercover officers also rely on the legitimate expectation that their rights to a private life for themselves, their families and friends, now enshrined in Article 8 of the Convention, will be protected from groups seeking to do them or their loved ones harm.

51. An actual or threatened compromise of an undercover officer's identity can result in that officer and his family needing to be re-housed and re-located, [REDACTED] which can cause significant and indefinite disruption to their private lives, see, for example, [AP §158-162].

52. [REDACTED]

(iii) Legitimate expectation of confidentiality

53. The understanding that personal and identifying information will be kept confidential is fundamental to the role of an undercover officer, as evidenced by the rules and procedures governing their deployment: see [AP §155].

54. Whilst undercover officers deployed to investigate criminality understand that they may be required to give evidence in court (subject to all the normal protections) and therefore that proactive protective steps have been taken

because of the foreseen possibility of the "legend" being exposed, undercover officers deployed only to gather intelligence would not have had such an understanding and would have expected their identities to remain confidential at all times.

55. All undercover officers are volunteers. The expectation that their identities will be protected is an essential foundation to their agreement to act in the service of police forces and the general public.
56. On occasions this expectation is threatened or damaged by corrupt officials, who provide information to groups seeking to expose undercover officers: see, for example, [AP §53] and [AP §160-1].
57. Were the expectation of confidentiality to be eroded further or countermanded altogether, the foundation for officers' cooperation would be critically undermined. This would have implications for the security of information in the hands of officers at risk of exposure, and an impact on future recruitment.
58. Such effects are not confined to an individual deployment or to officers affected by the particular disclosure in question but may extend to any operation in which the officer concerned participated, whether before or after the operation involved in the material under consideration.
59. Similar considerations apply in relation to assisting third parties: see paragraph 80, 84 and 85 below.

(b) Harm to policing

60. The potential damage which could be caused to the ability of law enforcement agencies to prevent and detect crime, as a result of disclosure of information about undercover policing, is relevant to generic grounds E to J, L and M.
61. The range of options within undercover policing is finite. The exposure of a tactic in any particular case will, inevitably, limit the extent to which that tactic

can continue to be used, if at all, thereby narrowing the remaining range of options.

62. This narrowing effect has the potential seriously to undermine the operational effectiveness of current and future undercover policing and, in turn, to cause harm to the public interest, which it may not be possible to anticipate or repair.
63. These submissions do not directly address grounds I and K. Specific submissions and/or further evidence will be required on these topics.

*(i) Reducing effectiveness of covert techniques by increasing public knowledge about them*

64. Undercover operatives are often the only viable method which can be deployed to obtain evidence against organised criminals and groups conducting a range of complex and serious crime.<sup>18</sup> Without the assistance of undercover officers, significant investigations of dangerous individuals and groups will be adversely affected.
65. The range of techniques employed by undercover officers are detailed in sections D and E of Chief Constable Pughsley's statement. The extent to which they can be deployed effectively is directly correlated to the extent to which they are familiar or known to members of the public.
66. The greater the public exposure of covert techniques, the greater the likelihood that any target group or individual will be able to detect an undercover officer and both prevent the tactic from being used effectively, and put that officer at risk of harm.
67. Organised criminals and terrorists will go to great lengths to detect and insulate themselves against infiltration by undercover officers: see, for example, [AP §32] and [AP §168-9]. There are websites and social media forums readily accessible online which are dedicated to exposing suspected covert officers and their tactics.

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<sup>18</sup> See submissions on behalf of the NPCC on the principle of NCND, paras. 37 to 39.

68. These examples demonstrate that information in the public domain is used by such groups to expose undercover tactics and evade law enforcement. Technological advances and the Internet mean that information can be shared, analysed and pieced together more effectively than ever before.<sup>19</sup> This contributes to the “mosaic effect” discussed in previous submissions.<sup>20</sup>
69. Irrespective of its truth, some information has been put into the public domain by “self-declaring” officers, which creates a pre-existing and additional risk for any officers associated with those officers and officers who are still serving.
70. Although it may be thought that if information is already in the public domain, minimal harm will be caused by further disclosure of the information, this does not take account of the effects of accumulating, spreading, and confirming or corroborating information. Every time information about tactics or techniques is released into the public domain:
- a) It reinforces and reemphasises the use of the tactic or technique, reminding criminals that such a tactic might be used against them;
  - b) It may provide additional detail about the tactic that gives criminals a fuller understanding of how the tactic is used;
  - c) It indicates that the tactic or technique may still be in use;
  - d) It makes it more likely that criminals or other groups engaged in researching tactics and techniques will learn of the particular tactic or technique; and
  - e) It makes it more likely that serious criminals will take steps to counter the named tactic or technique.
71. The more widely spread the information is, the greater is the risk, in any particular deployment, that an undercover officer or a tactic will be discovered: see, for example, [AP §32.1-33]. The “mosaic” effect will be enhanced where there is more information publicly available to be pieced together.

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<sup>19</sup> Ibid., paras. 40 to 42.

<sup>20</sup> Ibid., para. 68.

72. Confirmation of the use or non-use of a particular technique has its own consequences: see [AP §34-35], [AP §56-58], [AP §93] and [AP §128-136]. This is part of the rationale for NCND. Disclosure of information by the Inquiry (as opposed to any other vehicle) would mean that relevant documents would be readily and permanently accessible, and the provenance of those documents would be verifiable.
73. These effects generally increase the risk that covert techniques will be discovered and exposed, and thereby reduce or eliminate altogether the prospects for using those techniques effectively in future.
74. There is a qualitative difference between information put into the public domain by targets, officers or social media forums and information put into the public domain by the Inquiry. Information disclosed by the Inquiry:
- a) Will be credible;
  - b) Will officially confirm what tactics are available for use by UK law enforcement [REDACTED]
  - c) Will act as a single, comprehensive source of information for anyone wishing to research undercover tactics in this country and across the world; and
  - d) Will be permanently available and easily searchable. No party to these proceedings retains the power to control disclosure in the way that is possible for parties in criminal or civil proceedings.

(iii) ~~Adversely affecting the ability of law enforcement to recruit and retain staff or members of the public to engage in or assist in covert law enforcement~~

75. The role of undercover officer is entirely voluntary and does not carry enhanced prospects of promotion or other career benefits. It does, however, carry substantial personal risk and the potential for substantial disruption to an officer's professional and private life: see, further, [AP §170].

76. Undercover officers perform their duties in the public interest, and having been specifically trained and recruited to this end, are not a readily replaceable resource.<sup>21</sup> An outline of the current training provided to undercover officers can be found at [AP §18-23].
77. The justification for protecting the identities of undercover officers and tactics applies equally to those involved in training. Information regarding the nature of the selection process and training provided to undercover officers, details of which are given at [AP §248-258], is similarly capable of revealing identities, tactics and techniques, and contributing to the mosaic effect.
78. The exposure, or threat of exposure, of covert officers or tactics is highly likely to disincentivise recruitment and retention of undercover officers. There is evidence to this effect from numerous sources, including current and retired undercover officers: see [AP §171-80].
79. The same reasoning applies to those who assist undercover operations, such as support staff, ██████████ and other members of the public. Any increased risk of exposure of undercover officers and/or tactics increases, commensurately, the risk to individuals who provide support to undercover operations.
80. Members of the public ██████████ provide such assistance in a variety of fields, see for example, [AP §181-4]. They do so on the explicit understanding that their assistance will not be disclosed. These individuals are likely to suffer damage to their interests and a real risk of harm, and to withhold future assistance, if that fundamental basis for their cooperation were to be removed.

*(iii) Disclosing information about ongoing investigations and prosecutions*

81. Any disclosure of information relating to ongoing investigations has the potential to compromise not only those undercover officers and/or tactics

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<sup>21</sup> See submissions on behalf of the NPCC on the principle of NCND, para. 63.

involved in the investigation, but the wider investigation, any connected investigation and any subsequent criminal proceedings.

82. Ongoing investigations generate information not only for the purposes of prosecution, i.e. apprehending persons guilty of crimes; but also intelligence, which can prove vital in preventing and foiling crimes before they are committed. This is particularly true in relation to terrorism offences.

83. Any compromise to an ongoing investigation is likely to undermine both of these critical functions on the part of law enforcement agencies.

*(iv) Adversely affecting the future flow of confidential information from members of the public, or domestic or overseas organisations*

84.



85.



*(v) Exposing assets (including but not limited to physical locations, databases and IT systems) to risk of compromise which could prejudice operational effectiveness*

86. The exposure of covert assets risks compromising any operation in which those assets have been or are being used and any undercover officers involved in their use or supply, or the wider operation.

87. Accidental compromise of covert assets occurs [REDACTED], see for example: [AP §197-8]. Rectifying these compromises, and addressing the attendant risks to individuals, consumes significant time and resource.

### 3.4 Redaction tool

88. The enclosed spreadsheet contains submissions on the grounds and sub-categories for redaction which are to be used for the Relativity "redaction tool".
89. The column entitled "Evidence in support" includes the relevant paragraphs in CC Pughsley's statement which, the NPCC respectfully submits, support the proposed category of restriction.
90. The NPCC's spreadsheet responses fall into three broad areas.
  - a) First, there are categories which the NPCC considers are supported by the generic evidence, sufficiently or insofar as is possible on a generic basis.
  - b) Second, there are categories which may not derive any further support from generic evidence. The NPCC respectfully submits that the determination of many applications for restriction orders will depend on the facts and circumstances of individual cases, and the application of the generic evidence to those particular facts and circumstances. Thus the next step in relation to some of the categories will be for the Inquiry to consider further specific submissions and/or evidence.
  - c) Third, the NPCC identified a number of categories where further generic evidence needed to be obtained. This has now been provided in the form of the third statement from CC Pughsley dated 27 September 2017.

### 4. CONCLUSION

91. The public derives great benefit from the legitimate and lawful use of undercover officers, tactics and techniques. Serious criminality is deterred, prevented and detected by the use of volunteer officers who put themselves at considerable personal risk to protect the public from harm.

92. The NPCC submits that a full and transparent inquiry can be conducted without the need for sensitive information about identities, tactics and techniques to be released into the public domain. Whilst there may be very limited instances when the Inquiry determines that it will be in the public interest for some sensitive information to be published because, for example, wrongdoing has been revealed, in most circumstances the Inquiry will be able to reveal the facts demonstrating wrongdoing without revealing information that prejudices the continued use of legitimate undercover policing tactics. There is a significant difference between the disclosure of sensitive historical data and disclosure of information which threatens to jeopardise current and future men and women in the field.
93. The NPCC encourages the Inquiry to remain at all times cognisant of the wider public interest in preserving the confidentiality of information which will, if disclosed by the Inquiry, damage the ability of law enforcement agencies to fight crime and protect the public. The Inquiry will, in any event, be cognisant of its independent duty to prevent harm to individuals and/or the public.
94. There are, in general terms, a variety of public interest reasons which could, in respect of any particular piece of information, justify its non-disclosure.
95. These submissions, together with the supporting grounds and evidence, seek to identify what these public interest reasons might be in an individual case.
96. The NPCC appreciates that the balancing exercise to be conducted by the Chairman will always be fact-specific. It will also be specific to the nature and likelihood of the risk presented by the proposed disclosure.
97. It is recognised that proposed redaction of material which is directly relevant to alleged misconduct or similar concerns will require greater scrutiny than material relevant only to the routine and appropriate conduct of undercover operations.

98. However, even in cases involving alleged misconduct, if publication of a piece of information threatens to expose an officer to a risk to life, the public interest in non-disclosure is highly likely to outweigh the public interest in disclosure. Similarly, if publication were to expose a tactic thereby compromising an ongoing operation or rendering any future use of the tactic almost or entirely obsolete, it is highly likely that the public interest in non-disclosure will outweigh the public interest in disclosure..
99. Due regard will need to be paid to the cumulative and corroborative effect of disclosing that piece of information in light of the information already in the public domain. It should also continually be kept in mind that no redaction prevents the Inquiry from pursuing its investigation of the concerns which led to the setting up of the Inquiry. The Inquiry can call for documents, information and evidence (including oral evidence) even in cases where redactions are made.
100. Above all, the public interest, in both disclosure and non-disclosure, will include the justification for using covert officers and tactics at all, in ongoing operations and as a tactic for law enforcement in the future.

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22 January 2018