

# IN THE UNDERCOVER POLICING INQUIRY

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## SUBMISSIONS ON BEHALF OF

PETER FRANCIS

RE

THE CHAIRMAN'S 'MINDED TO' DECISIONS RELATING TO

HN17, HN41, HN64, HN71, HN109, HN125, HN337 & HN341

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### Introduction

1. These submissions are made on behalf of Peter Francis ('PF') in response to the 'minded to' indications published by the Chairman on 14 November 2017, 15 January 2018 and 25 January 2018, in relation to HN17, HN41, HN64, HN71, HN109, HN125, HN337, HN341. The 'minded to' decision made in relation to each of these UCOs is that neither their real nor cover name will be published. PF restricts his submissions to those officers, consistent with his approach to date that the revelation of cover names will normally permit the Inquiry to fulfil its terms of reference.
2. We make these submissions notwithstanding the fact, to date, no written or oral submissions made by PF (or indeed the NPNSCPs) have persuaded the Chairman to depart from his 'minded to' indications. Of course, our submissions have been limited in their efficacy by both the inadequate disclosure and often opaque reasoning given in the 'minded to' notes.
3. Thus far, only 19 cover names have been released by the Inquiry, ten of whom were actually all already previously known to the NPNSCPs and in the public domain. The remaining nine cover names relate, in SDS parlance, to "shallow paddlers"<sup>1</sup> and are all, to

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<sup>1</sup> "At that time, some of the SDS officers were known as "shallow paddlers" because they spent only limited time with their targets. Others, like Officer A, were "deep swimmers" who immersed themselves in the role. During one operation to infiltrate an Animal Liberation Front cell, one officer is said to have

date, from the 1960s and 1970s. The one exception to that, to date, is HN81 – although his cover name is yet to be released.

4. The opaque nature of the Chairman’s reasoning has attained a new height in his ‘minded to’ note no. 3: in it he has dispensed with open reasons altogether in relation to his indications re HN109. This is so despite the fact that the Chairman is aware of the extreme frustration that his general approach to the restriction order process has caused thus far.
5. A considered decision not to publish any open reasons at all, in the context of an officer in relation to whom the current risk of physical harm is assessed as “low” with any increase by revelation of real or cover name assessed as “very low”, signals a disregard for those, like PF, who have shown a real respect for the Inquiry’s processes by not revealing information that they hold and in relation to which the Chairman has no power to restrict.
6. PF has been prepared to engage with this judicial process (which he was instrumental in bringing about) in the belief that this process would fairly balance the public interest in openness with other factors at play. Failing to give any reasons for restricting both a real and cover name of a former UCO, who was a manager at a crucial period of time in SDS history, and where there is no disclosed risk, significantly undermines the trust and belief in the Inquiry process that PF has shown to date, compounding his perception that there is a lack of mutual respect.
7. We repeat the general points made in our submissions dated 19 January 2018 in relation to  
i) the continued, unacceptable level of disclosure / over redaction plus general lack of indication of even the broad nature of the group(s) targeted, ii) the fact that the revelations of cover names to date have not led to the identification of a single real identity and / or any consequential harm, iii) that an infiltrated group was either extreme left or extreme right, cannot, of itself, be enough to prevent the revelation of a cover name. The extreme nature of a particular target group may well increase the risk to personal safety of a UCO if a *real* name was revealed, but it does not increase the likelihood of a *cover* name leading to

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lived in a squat for 18 months, virtually 24/7.”:

<https://www.theguardian.com/uk/2010/mar/14/undercover-police-far-left-secret>

the revelation of a real name. That will depend on the existence or otherwise of a “sterile corridor” between the two.

### Specific submissions

#### **HN17:**

8. HN17 is known to PF, as is confirmed in this exchange with Bob Lambert, in the *Ellison* Review, at p.214.

“Q: Were there any other officers within the unit at that time with direct tasking to Lawrence?”

A: Well, as a starting point, pretty much across the far left... would have been at least two officers there... N123 (who started fieldwork after I had arrived in management)... and I am sure from day one the Stephen Lawrence case would have been on N123's agenda, and... they must have attended, started to attend meetings with the Stephen Lawrence campaign, almost goes as read that they would have been there... they would want to be inside the meeting, to have a speaker on the platform and so N123 is following close behind ‘Pete Francis’... they became quite close friends and times would have been at the same events... May well have been events specifically in support of the Stephen Lawrence campaign... N27 (also deployed into a different left-wing group) and would have come across Peter Francis, certainly both were at Welling... N89 was also a contemporary of Pete Francis and one of the team that I managed who infiltrated the far right and was always involved in the public order situations where it was sort of left and right attending... would be someone to whom Peter Francis would turn to for advice... as the Stephen Lawrence campaign developed it was, you know, very important to them in London and for their political purpose which was assessed to be subversive...N101 was another contemporary of Pete Francis who also reported... and would have had an involvement in Stephen Lawrence campaign issues... N15 similarly... **N17 also from the far right perspective another of his contemporaries...**

Q: To your knowledge did anybody report, did anybody get close to the Lawrence family and report on the Lawrence family not on groups that were using it?

A: Not to my recollection not at all... Well I mean I would expect to remember that to be honest...”

9. Based on the Chairman's approach to date, it appears that it will not be possible to persuade the Chairman to disclose HN17's cover name, as PF would wish to. The risk assessor and the Chairman take the view that the revelation of the cover name would be likely to lead to “eventual” identification (by those committed to doing so), which in turn

would put HN17 at “real risk of serious violence”. The risk assessor puts the likelihood of physical harm as high if his identity is discovered.

10. Whilst it seems clear that HN17 infiltrated the far right, PF is unaware of anything to suggest that release of his cover name would lead to identification of his real identity.
11. The Chairman says there is “nothing” in the nature of the deployment or what is known of HN17’s conduct that would justify running that risk. Yet on HN17’s own account he was not only arrested a number of times, he was also convicted. Were these for arrests / convictions for (serious) violence? This does not appear to sit well with his assertion in his impact statement that he carried out the work he was tasked to “with integrity and in a professional manner”.
12. The Chairman does not indicate that he has considered whether there are other measures that can be put in place to minimise any risk of identification and harm, should his cover name be released. Given that he appears to have been involved with those who acted violently, it would, in PF’s submission, be in the public interest to know about the true extent of violence used by UCOs such as him when infiltrating such groups. Evidence of that can only be garnered from those who he infiltrated, however unattractive their political beliefs may be.

#### **HN41**

13. The Chairman appears to put weight on the fact that there is no known allegation of any wrongdoing in relation to this officer. He goes further by stating it is very unlikely that any plausible allegation of misconduct against him could be made. It is difficult to understand why any differentiation is made on this front between HN41 and say, HN345 or HN347, both of whom were deployed in the 1970s, and against whom there are no known allegations, but in relation to whom the Chairman is prepared to release cover names, despite him forming the view that anyone coming forward is an “unlikely event”? Has the Chairman formed a view on the plausibility of any future allegation simply on the basis that this officer is married? The marital status of HN345 or 347 is not revealed. If this has been a consideration, we respectfully submit that it is a wholly irrelevant one. Further, it is unclear as to why an alleged express assurance of confidentiality should be given greater or different weight than others who have also alleged that they were given similar assurances.

14. In any event, even if there is a real risk that his real identity is likely to be discovered from his cover name (which is not at all clear from the risk assessment as disclosed), the Chairman has indicated that his principal target group no longer exists. Therefore, any risk could presumably only emanate from his less important target group (although there is no suggestion that his targeted groups were violent) or people associated with them, who must also be of a similar age to HN41. Is it really likely that such a threat still exists?
15. Paragraph 14 of the risk assessment states that "N41 was witness to an event of significant interest to the Inquiry". Without further detail, it is impossible to make any sensible submissions, other than to say, is this an event that those who he spied upon could give evidence about? If so, it is submitted that this would outweigh any speculative risk in disclosing the cover name.

#### **HN64**

16. This officer is known to PF. The risk assessment suggests disclosure of his/her cover name would lead to his/her identification. This is not explained. PF is unable therefore to make any meaningful submissions.

#### **HN71**

17. The Chairman has made a decision on risk, without it seems, a risk assessment having been carried out in relation to this particular officer. The application asserts, without further explanation, that the publication of his cover name would lead to disclosure or discovery of his real name. The decision is made purely on the perceived impact on his psychological well-being.
18. Absent a proper risk assessment, which appears not to have taken place for reasons of expediency, it is submitted that it is premature to make a restriction order in relation to both his real and cover name, particular when, on his own account, he says that he found his initial meeting with a risk assessor reassuring. Given the large number of officers, including PF, who have suffered psychological symptoms of varying degrees of severity, due to a lack of proper or any post-deployment support from the MPS, a proper risk assessment is all the more important, in order to import objectivity, and indeed reassurance, where appropriate.

## HN109

19. Not only does the Chairman say nothing about his ‘minded to’ justification, unusually, he gives no background at all about this officer in his note. As indicated in our last written submissions, HN109 was a former UCO who became a DI and SDS Manager. In his witness statement, HN109 says he was a UCO in the 1970s and returned to the SDS as a manager in the 1980s/90s (para 2). HN109 was the DI who recruited PF into the SDS in January 1993. He was his SDS manager for the first few important months and prior to Bob Lambert taking over this role. The *Ellison* report says this at p.211:

‘Ex-Detective Inspector N109: “There was never any reference made to ‘smearing’ in relation to the Lawrence family. Deployments into the support campaigns surrounding Stephen Lawrence were specifically to build a picture of the public order background... **Any meeting I was involved in was never about any family member. It was done to protect the family.**”’

20. HN109 was also the manager in charge of the SDS the night Stephen Lawrence was murdered (22 April 1993), alongside HN86 who was the DCI in charge. He would have been instrumental in decision making about targeting thereafter.
21. The risk assessment states at p. 4: “N109 was both a UCO and a manager. N109's role as a supervisor may be of interest to the Inquiry. N 109 was a manager of individual UCOs who will be of interest to the Inquiry.” Further, on p. 7 “N109 returned to SDS during a lively period for SDS with N109 being a manager of the unit” and “N109 had managerial issues with a number of nominals, including a specified officer and others of interest to the Inquiry”.
22. He is undoubtedly an important manager for the Inquiry’s purposes, given his managerial role at a crucial and “lively” period in SDs history.
23. The risk assessment makes absolutely plain that there is *no* risk of physical harm to this officer or his family even if his *real* identity is disclosed (see 19.5 of risk assessment). Thus whether or not there is a sterile corridor between real and cover name is effectively irrelevant for these purposes (see 19.7). PF is well aware of the group he infiltrated and

confirms that in his view the risk assessment is spot on (despite the fact HN109 appears to believe that the risk assessment is wrong – see para 3 of his statement).

24. HN109's primary concerns appear to be about i) UCOs he managed ii) media intrusion if his *real* identity is confirmed. In relation to the first, each UCO he managed already knows exactly who he is and is or likely to be fully aware of what has been said in the public domain to date, and yet, none have either "outed" him or harmed in any way. Indeed, if anything would make them change their minds, it would be the Inquiry's decision to protect HN109's identities whilst not necessarily doing the same for each of the UCOs, despite the "no risk" group he infiltrated.
25. In relation to the second concern, the likelihood of such media intrusion depends on whether revelation of the cover name would inevitably lead to the identification of his identity. However, no indication is given as to whether a sterile corridor is in place. Certainly, he says he has no social media presence so it appears that there is no reason why one is not in place. In any event, it is clear that both he and senior officers<sup>2</sup> took the view that there would be no risk at all to him in participating in the "True Spies" documentary in 2002 ("N109 gave N109's views on the True Spies programme", risk assessment, p.7). HN109 was prepared to appear on that programme and name his targets in 2002. If he was prepared to take that risk then and appear on a TV programme of that kind (albeit in shadow), it is obvious that the MPS took the view there was no risk at all to him, even if his real identity was revealed. It does not behove the MPS to now apply for a restriction order on the basis of a risk of interference with his Article 8 ECHR rights with no explanation for such a fundamental shift.
26. This is a SDS manager who ought to be giving evidence in his real identity in accordance with the Chairman's own November statement criteria<sup>3</sup>, and yet, the Chairman has made, on the face of it, an irrational indication to keep both his identities secret. It is obvious that in the absence of any risk of physical harm, that a risk of media intrusion cannot outweigh the public interest in this man being held accountable for his decision-making. The Chairman cannot even say, on the evidence that has been disclosed, and what PF knows, as he did with HN58, that his deployment created some risk to his personal safety.

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<sup>2</sup>The support and co-operation of the MPS was authorised by Commander Roger Pearce, a former SDS officer himself - HN85 (both his real and cover names have been confirmed by the Inquiry).

<sup>3</sup>Chairman's Statement, 20 November 2017, para 9 (ii).

27. Furthermore, there is absolutely no known justification for not revealing his cover name, given the Chairman's November position. The fact that the risk assessment states that "There is no 'documented intelligence' to suggest that H109 was involved in any inappropriate sexual relationship", is of course, nothing to the point. Is there any documented intelligence about any SDS officer entering into any sexual relationships other than what has been gathered over time by the NPN SCPs and the media? And as identified above, the Chairman has indicated that he will reveal cover names of other UCOs operating in the 1970s against whom there are no known allegations, precisely in order to ensure that those who might have a complaint, can raise it.
28. In conclusion, it is submitted that:
- a) There is no rational basis for the Chairman's indication on anything disclosed or known to PF;
  - b) If there is a basis, the Chair has a duty to give open reasons, at least in broad terms, as to what the basis for his decision is;
  - c) At the very least, he should indicate which of the s. 19 criteria have been met and what matters he has taken into account in deciding where the public interest lies.

### **HN125**

29. Whilst it is of course appropriate to factor in physical and psychological conditions, in the absence of a risk assessment it is not possible to make any sensible submissions. It may well be that a full risk assessment would reassure this officer and make it more likely that he would be less stressed by the idea of his cover name being released. It appears unlikely that there would be any real risk emanating from his infiltration of one left wing group in the 1980s. As submitted in relation to HN71, a proper risk assessment is all the more important in these circumstances, in order to import objectivity, and indeed reassurance, where appropriate. Crucially, this officer appears not to have been provided any treatment at all for his psychological symptoms which stem from HN125's undercover work.

### **HN 337**

30. The Chairman has indicated that HN337 is another SDS manager, and one who had some responsibility for HN81. He was in fact the DI in charge after Bob Lambert. Again,



contrary to his November public indications<sup>4</sup>, this is the third SDS manager in the crucial period in the 1990s, that the Chairman is minded not to reveal the real identity of, let alone the cover identity. Prior to his managerial role, HN337 was deployed against four unnamed groups in the 1970s. The Chairman has gone further than he did with HN58, by indicating that at least some of his evidence in relation to the discharge of his managerial functions will be in closed session.

31. The Chairman does not appear to have made his ‘minded to’ decisions on the basis of an unjustified risk of physical harm to HN337 if his cover name is disclosed (there is a somewhat unclear assertion in the risk assessment: “The likelihood of physical attack if the cover name is officially confirmed will result in an increase in that the perceived risk is probable to occur at some stage”, p.8), but rather because these appear to be the terms dictated by HN337 (para 37 of ‘minded to’; p. 7 of risk assessment: “N337 would like to continue to co-operate with the UCPI process: a caveat is given”). The caveat is in reality a trade-off.
32. The alternative justification provided by the Chairman is that revelation of either or both real and cover names would interfere with the Article 8 ECHR rights of both him and his partner, but he does not set out the nature or severity of the intrusion or why that intrusion is unjustified. If, as we are told, HN337 does not live in the UK, surely an Article 8 intrusion is somewhat remote? On his own account, HN337 says he does not have safety and security issues, particularly as he lives outside the UK, and also makes clear that he is “particularly concerned about publication of his real name”.
33. It is respectfully submitted that his cover name should be published, as there is no or no proper basis for saying that there would be “disproportionate damage to the public interest or harm to the individual concerned”<sup>5</sup>. It is respectfully submitted that the Chairman should not be prepared to make an unprincipled decision because an officer is effectively using the fact the he is outside the Chairman’s jurisdiction as a bargaining chip. Such a course simply increases public concern and, ultimately, sends out the wrong message.

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<sup>4</sup> Chairman’s Statement, 20 November 2017, para 9 (ii).

<sup>5</sup> Chairman’s Statement, 20 November 2017, para 9(i).

## HN341

34. The chairman indicates that HN341 was deployed in the 1970s against two un-named groups and that “it is unlikely that members of the groups against which HN341 was deployed would wish to provide evidence to the Inquiry”. It is not suggested anywhere that these two groups are no longer in existence, so it is unclear as to how or why the Chairman has reached that conclusion. In any event, assertions of the unlikelihood of there being valuable evidence, as well as assertions about the unlikelihood of misconduct, is to approach the problem from the wrong end. As per the Chairman’s November statement, the fact that disclosing a cover name may provide valuable evidence, operates as a presumption, which can be overridden if to do so would cause disproportionate harm to the person or the public interest.
  
35. It is however impossible to make meaningful submissions as to whether disclosure of the cover name “would permit individuals who might wish HN341 harm to discover the true identity”, and the likelihood of that happening, given the inadequate level of disclosure.

MAYA SIKAND

GARDEN COURT CHAMBERS

18 MARCH 2018