

IN THE MATTER OF THE UNDERCOVER POLICING INQUIRY

**SUBMISSIONS ON BEHALF OF
THE NON-POLICE, NON-STATE CORE PARTICIPANTS
IN RELATION TO THE RESTRICTION ORDER APPLICATIONS OF
HN17, HN41, HN64, HN71, HN109, HN125, HN337, HN341, HN301,
HN336, HN343, HN347
TO BE HEARD 21 MARCH 2018**

INTRODUCTION

1. In light of the approach taken by the Chairman to (non)-disclosure in relation to anonymity applications, there is little the NPSCPs are currently able to say about the present tranche of applications to be determined on 21 March 2018. This is despite the fact that this tranche contains at least two significant SDS managers, who held their managerial roles during times of central interest to the Inquiry, and in respect of whom the Chairman is minded to grant complete anonymity (real and cover names). A further officer, HN41, is also recognised to have been “witness to an event of significant interest to the Inquiry” and there is “likely to be media interest in an aspect of HN41’s deployment” and yet s/he too is to be granted total anonymity.
2. In respect of one of the significant managers, HN109, we are told that we cannot even know anything about the Chairman’s reasons for favouring anonymity. This is in the context of a risk assessment which concludes that “there is little evidence to support the contention that N109 would be in physical danger”¹ and that although there is a risk of media intrusion “it would not be too negative or as impactive as N109 fears”². It is difficult to understand how the Chairman’s approach can be consistent with a public inquiry aimed at restoring public confidence. This is plainly an officer who held

¹ MPS risk assessment for HN109 [19.5].

² MPS risk assessment for HN109 [19.6].

a managerial role at a crucial time, during which field officers committed acknowledged human rights abuses, who is not in any physical danger and is not at significant risk of intrusion into his/her private life even if his/her real identity were to be confirmed.

3. It is incompatible with the Inquiry's ability to investigate the issues within its terms of reference and for it to command public confidence for Special Demonstration Squad officers to be granted anonymity and for cover names to be withheld on the unilateral and untested account of the applicants and the MPS, who have a direct interest in protecting their own reputations.
4. The NPSCPs therefore repeat their request for disclosure of the information set out at paragraph 36 of their response to the Inquiry's consultation on the process for publication of open versions of key anonymity applications and supporting evidence in respect of all of the officers to be considered at the 21 March 2018 hearing; or, where necessary, a gist along the lines indicated in the amended version of Counsel to the Inquiry's Annex A / pen portrait, provided at the 5 February 2018 hearing. Additional specific disclosure requests are set out in the following paragraph. In the absence of such disclosure, all that it is presently possible for the NPSCPs to do in relation to this tranche of officers is to raise the concerns and questions set out below. They reserve the right to make further submissions as and when information is obtained, including, applying for any restriction order made to be varied or revoked.

SPECIFIC DISCLOSURE REQUESTED

5. In addition to the information set out at paragraph 36 of the NPSCP response to the Inquiry's consultation, which is requested in respect of all of the officers for whom restriction orders are sought, the following specific requests are made:
 - a. True Spies: please identify by HN number all of the officers who appear in the BBC True Spies documentary series, by reference to the pseudonym under which they appear in that series. Plainly it was assessed that the information they provided to True Spies was not such as to expose them to unacceptable risk

- and, as such, there should be no barrier to the same information being disclosed in connection with their HN numbers;
- b. the current risk assessment in respect of HN64 refers to an SDS analysis dated December 2002, which concluded that the True Spies broadcast “did not add any existing threat (which in all but a few cases was minimal anyway).” Please disclose the December 2002 analysis, in gisted form if necessary. Please indicate, by HN number, which officers were assessed as being at minimal risk and which were the “few cases” in which risk was assessed as being more than minimal. To the extent that the level of risk is thought to have changed between the time of the 2002 analysis and now, please explain why this is so;
 - c. HN17: please disclose whether the convictions, referred to on p.5 of his/her open risk assessment, that are said to have resulted from HN17’s arrest related to HN17 him/herself or others – i.e. whether it was HN17 who was convicted, or third parties, or both; if third parties were convicted, please disclose what steps the Inquiry will take to ensure that the requirements of disclosure and a fair trial were complied with and that no miscarriage of justice took place? Please disclose how the Inquiry will establish whether or not HN17 acted as an agent provocateur without hearing from those convicted. If the convictions were those of HN17 him/herself, it is presumably the case that the criminal court was misled as to the identity and role of HN17. Please disclose how the Inquiry will make public such misconduct and will it cause the restriction order (in the event that it is granted) to be revisited?
 - d. HN41: please disclose the event of significant interest to the Inquiry to which HN41 was witness;
 - e. HN71: please disclose on what basis the risk of serious violence has been assessed in relation to this officer given the absence of any risk assessment.

ON-GOING CONCERNS ABOUT OUTDATED AND UNSUPPORTABLE REASONING

6. At the hearing on 5 February 2018, Ms Kaufmann, Ms Sikand and Ms Steel all raised concerns about the Chairman’s repeated reliance on his knowledge of former undercover officers’ personal circumstances as a basis for concluding that there is little likelihood of wrongdoing during those officers’ deployments, and therefore less

of a need for their deployment to be investigated and consequently less imperative for their cover names to be disclosed.

7. In response to Ms Kaufmann's submission that it is impossible to rule out wrongdoing on the basis of an individual's personal or family circumstances, the Chairman explained his reasoning as follows:

"Of course it is impossible to rule it out, but you can make a judgment about whether or not it is more or less likely. We have had examples of undercover male officers who have gone through more than one long-term permanent relationship, sometimes simultaneously. There are also officers who have reached a ripe old age who are still married to the same woman that they were married to as a very young man. The experience of life tells one that the latter person is less likely to have engaged in extra marital affairs than the former³."

8. In response to further challenge on this issue from Ms Steel, the Chairman accepted being "somewhat naïve and a little old-fashioned" and undertook to revisit his views⁴.
9. It is of some concern, therefore, that the same reasoning continues to be relied on by the Chairman in respect of two of the significant officers in this tranche, referred to above: HN41 and HN337. It is right that the 'minded to' indications in relation to these officers were written prior to the 5 February hearing, but it is not simply a case of the Chairman not having thought it necessary to amend them. It is clear that the Chairman persists in holding those views, because they are repeated in the most recent 'minded to' note published since the February hearing, on 7 March 2018, in relation to HN83: "what I know of the personal circumstances of HN83, then and now, are inconsistent with personal wrongdoing during the deployment"⁵.
10. The assumption that propensity for wrongdoing can be discounted on the basis of a man's marital history is demonstrably wrong. It was out of date when Caulfield J expressed similar reasoning in Jeffrey Archer's libel trial 30 years ago. Rolf Harris and

³ Transcript of 5 Feb 2018 hearing p.78.

⁴ Transcript of 5 Feb 2018 hearing p.119.

⁵ Fifth minded to note, 7 March 2018 [9].

Stuart Hall are further well-known examples⁶. In respect of former undercover officers who are known to have had sexual relationships whilst deployed, it is understood that Mark Kennedy and John Dines both remained married until their conduct whilst deployed was exposed. At most a continuing marriage may be evidence that any wrongdoing has not yet come to light. It is not any basis for assuming it did not occur. Officers have obvious reasons for denying that they engaged in wrongdoing and, if successful in their applications for restriction of their cover names, they are likely to succeed in ensuring that the evidence to the contrary can never come out.

11. It is also concerning that, as expressly acknowledged by the Chairman at the February hearing, his assumptions stem from his “experience of life”. This highlights a significant disconnect between his life experiences and those of the undercover officers and the people on whom they spied. This makes transparency and public scrutiny all the more important and increases concern about decisions that are being taken unilaterally behind closed doors.
12. The Chairman’s repeated reliance on an officer’s family circumstances as a basis for discounting the importance of disclosing a cover name is wrong. That such outdated reasoning was relied on at all is of concern, but that it is persisted in even after being challenged raises real questions about the Inquiry’s willingness to look beyond superficial indicators of respectability. As Peter Francis pointed out at the February hearing, it was a pre-requisite for SDS field officers to have the trappings of respectability. One of the issues at the heart of this Inquiry is the extent to which an agency of the state has been able to manipulate and abuse groups and individuals by casting them as dangerous or subversive in contrast to its own respectability. In order to be in any way effective, the Inquiry has to have the ability and the willingness to look behind the narrative the SDS (and its successors) presented.

⁶ Both men were convicted in 2014 of multiple offences despite having been married to the same person for nearly 60 years.

HN17 & POTENTIAL MISCARRIAGES OF JUSTICE

13. The Chairman is minded to restrict the real and cover names of this officer on the basis of a real risk of serious violence from the infiltrated groups or their associates. The NPSCPs' principal concern is that HN17 was arrested in his/her cover name on one or more occasions with others and "some convictions resulted"⁷. It is well established that ensuring that a miscarriage of justice does not occur will override the public interest in non-disclosure of an informant: Marks v Beyfus (1890) 25 QBD 494; R v Agar (1990) 90 Cr.App.R 318; DIL v CPM [2014] EWHC 2184 [26] & [27]. There is nothing in the minded to reasoning to indicate that account has been taken of the importance of identifying any miscarriages of justice, or whether, and if so on what basis, the Chairman has satisfied himself that it will be possible to identify and rectify any miscarriage of justice arising in relation to this officer without disclosure of the cover name. The NPSCPs' specific disclosure requests, in order that they can make properly informed submissions on this issue, are set out at paragraph 5c. above.

HN64

14. The Chairman is minded to restrict the real and cover names of this officer on the basis that the deployment posed risks to HN64's life and safety which, to an extent which cannot be precisely quantified remain. The NPSCPs presume, given the reference in the current risk assessment in relation to this officer, that he is one of the officers who appeared in the True Spies documentary. The NPSCPs request disclosure of the information set out at paragraph 5a and b in order to make properly informed submissions.

HN71

15. The Chairman is minded to restrict the real and cover names of this officer on the basis that if the true identity were to be discovered by members of the groups HN71 was deployed against s/he would be at real risk of serious violence by them or their associates. The Inquiry has confirmed that no risk assessment has been produced in respect of this officer; all of the disclosed evidence relates to this officer's medical

⁷ Risk assessment p.5

condition, but no reliance is placed on this in the minded to reasoning. As set out at paragraph 5e above, please disclose on what basis the risk of serious violence has been assessed given the absence of any risk assessment.

HN109

16. As noted above, HN109 was a manager within the SDS during a period when much of the known misconduct and significant events which gave rise to the establishment of the Inquiry took place. S/he was also previously deployed as an undercover officer. It is clear that, at the very least, s/he will have relevant evidence to give in relation to SDS contact with the Stephen Lawrence family campaign. A small excerpt from his/her interview with Operation Herne on this subject is quoted in the Ellison review⁸. HN109's evidence is likely to be controversial, given that it appears, from the small passage quoted, to conflict with Peter Francis' account. The credibility of HN109 will plainly, therefore be an issue. It is also apparent from the open version of HN109's personal statement in support of his anonymity application and from passages in the open risk assessment that it is HN109's case that he took steps whilst a manager to address some of the issues that arose through the conduct of some of the officers under his command. The risk assessment records HN109 as having been made responsible for "ensuring compliance with regard to the regulatory framework governing operations of numerous UCOs, including those of interest to the Inquiry."⁹ It is relevant, in this connection, that HN109 was a manager during the period that John Dines was deployed (1987-92), and thus during the period that Dines pursued a deceitful and abusive relationship with Helen Steel. It is likely that HN109's time as a manager also covered the period of Dines' "disappearance" and Ms Steel's attempts to search for him, during which she continued to be monitored by the SDS. It is also likely that HN109's managerial period covered at least part of the time during which Bob Lambert was deployed as a UCO, including the period during which he pursued deceitful sexual relationship(s), abandoned the son he had fathered whilst deployed and during which he is alleged to have been implicated in the planting of incendiary

⁸ The Stephen Lawrence Independent Review: Possible corruption and the role of undercover policing in the Stephen Lawrence case Vol 1 p.211.

⁹ Risk assessment p.7.

devices at Debenhams; also the time when [an officer whom it is understood the Inquiry is about to disclose] pursued a deceitful sexual relationship with 'Jessica', who at the time was still a teenager.

17. In short, there is every indication that HN109 is an extremely significant figure in this Inquiry and that there is the strongest possible public interest in him/her accounting publicly for the decisions s/he took in relation to actions which the MPS now acknowledges to have been serious human rights abuses. There would therefore have to be the most compelling reasons for restricting his/her cover and real names. However, the Chairman is of the view that nothing can be said publicly about his reasons for being minded to grant such restriction.
18. This is particularly concerning given that it is clear from the disclosed risk assessment that restriction cannot be justified on grounds of risk of harm or risk of interference with the officer's private and family life rights. Further, the risk assessment concludes that the likelihood of disclosure of HN109's cover name leading to revelation of his true identity is "very low"¹⁰.
19. It appears from the risk assessment that HN109's partner is afraid of other named SDS officers¹¹. However, that cannot be a rational basis for granting a restriction order as those officers will already be aware of HN109's identity.
20. In all of the circumstances, a decision to restrict disclosure of both the real and cover names of such a central figure, who is neither at risk of physical harm nor of sufficient interference with private life to justify anonymity, and to offer a wall of silence in respect of the reasons for so doing, is inconsistent with public confidence in the inquiry.

HN337

21. HN337 was also a manager within the SDS during a critical period - the mid-1990s - and was in part responsible for the recruitment and initial deployment of HN81,

¹⁰ Risk assessment p.7.

¹¹ Risk assessment p.4.

although it is said that s/he played no part in the deployment of HN81 into the group allegedly used to infiltrate the Lawrence family campaign¹². It is not known to what extent this contention may be challenged by others. The risk assessment acknowledges that this officer is highly likely to be of public interest “due to issues including the alleged misconduct of some of the operatives, and attempts to introduce mitigating policy and procedures.”¹³ HN337 was a manager during the period of Mark Jenner and Jim Boyling’s deployments, during which both UCOs pursued deceptive and abusive relationships with women and Jenner spied on trade unions. HN337 was also deployed as an undercover prior to his/her role as a manager.

22. During his deployment Mark Jenner infiltrated the Hackney Community Defence Association (HCDA) and the Colin Roach Centre (CRC). HCDA and CRC supported victims of police misconduct, investigated allegations against the police, helped to gather witness and other evidence from the local community and to lobby in support of police accountability. These organisations were instrumental in gathering evidence in respect of the Operation Jackpot investigation into allegations of drug dealing by Stoke Newington police officers. Mark Jenner attended members’ meetings and was privy to confidential information concerning numerous cases being pursued against the Metropolitan police and its officers arising from police misconduct. These included cases where police officers were accused of unlawful imprisonment and conspiracy to pervert the course of justice. In the circumstances a public examination of HN337’s managerial role – and his knowledge of the managerial decisions of his colleagues - is required when inquiring into SDS infiltration of organisations which intended to hold the police to account and whether managerial decisions were taken with a view to undermining those efforts.

23. The mid 1990s was also a period during which a number of justice campaigns were active. Those justice campaigns, including family members of those who have died in

¹² Minded to note 2 [36].

¹³ Risk assessment p.8.

police custody and who have been granted CP status in this Inquiry, have been notified that the SDS held records about them.

24. Therefore, as with HN109, HN337 is likely to be a highly significant witness and there is a very strong public interest in him/her accounting publicly for his/her actions in relation to conduct which the MPS now acknowledges to have been serious human rights abuses. HN337's management of officers who entered into deceitful and abusive sexual relationships with women and who gathered evidence upon and infiltrated justice campaigns falls to be examined openly and publicly if this Inquiry is to do more than Operation Herne before it. The NPSCPs note that HN337 does not live in the United Kingdom and so the Inquiry has no statutory means by which it can compel him/her to provide evidence. However, it is to be hoped that an officer who purports, as HN337 does, to have behaved appropriately during his/her time in the SDS would be willing to give evidence voluntarily and would not seek to withhold relevant evidence from the Inquiry. The NPSCs' submissions about assumptions as to wrongdoing are set out at [6]-[12] above.

HN336 / 'Dick Epps'

25. The proposed restriction in relation to HN336 is in relation to real name only. This officer's cover name has already been released. It is also known that he appeared in the BBC True Spies documentary under the pseudonym 'Dan' and that following his SDS deployment he worked in the Industrial Intelligence Section and at the ports. In True Spies, 'Dan' talks about the Grunwick industrial dispute, Jack Dromey and other industrial unrest "in the docks, in the print, in Ford and other motor works." It is not clear to what extent he was deployed whilst undercover in relation to these issues, but this is clearly something the Inquiry will need to investigate, together with the extent to which information he obtained whilst undercover in the SDS was used in his subsequent career. The latter can only effectively be done if his real identity is disclosed so that those who had contact with him in his subsequent postings (whistle blower colleagues, representatives of companies with whom he had contact, members of the public) are able to come forward with any relevant evidence. Without disclosure of his real identity, the Inquiry will have only his account and

nothing with which to test it. Contrary to submissions previously made on behalf of the Designated Lawyers and the MPS, such a course is not a ‘fishing expedition’, but a proper investigative step in the context of an inquisitorial Inquiry tasked with getting to the truth.

THE REMAINING APPLICATIONS TO BE DETERMINED ON 21 MARCH 2018

26. Other than reiterating the points that have been made in respect of previous anonymity applications, in the absence of the disclosure requested in paragraphs 4 and 5 above, the NPSCPs are unable to make any further meaningful representations in respect of the remaining applications to be determined on 21 March 2018. Save to note that HN337’s personal statement at paragraph 11 supports the point that the NPSCPs have repeatedly made about the importance of the Inquiry releasing images of UCOs in their deployed identities. HN337 confirms that those within the groups s/he had contact with whilst deployed did not “offer up their surnames very often”. Thus if the Inquiry is genuinely committed to obtaining evidence from those spied upon, it must give consideration to the importance of obtaining and publishing images of former UCOs from the time of their deployment as a means of enabling those spied upon to recognise the UCO and therefore to come forward with any relevant evidence. To the extent that restriction orders in respect of officers’ real names will preclude this, this must be taken into account in assessing whether or not restriction is properly justified.

27. Beyond this, the current procedure in relation to real name applications, where only the application notice and none of the underlying evidence is disclosed, effectively excludes non-police core participants (not just the NPSCPs, but also Peter Francis), the public and the media from the process. All that the majority of the applications say is that the basis of the application is set out in particular passages of the underlying documentation – see, for example, paragraph 7 of the applications in relation to HN301 and HN347. Without the underlying documentation, there is nothing to indicate the factual basis on which the application is made and the NPSCPs’ are precluded from any meaningful participation in the process.

**PHILLIPPA KAUFMANN QC
MATRIX**

**RUTH BRANDER
DOUGHTY STREET CHAMBERS
19 March 2018**