IN THE MATTER OF THE UNDERCOVER POLICING INQUIRY

SUBMISSIONS ON BEHALF OF
THE NON-POLICE, NON-STATE CORE PARTICIPANTS
IN RESPONSE TO GENERIC RESTRICTION ORDER DOCUMENTS

INTRODUCTION

1. The legal principles governing the redaction of documents are not in dispute. They are set out in the legal principles ruling of 3 May 2016. That ruling makes clear 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*."[1]

2. Despite acknowledging this, the NPCC and the MPS in their generic submissions and evidence in support of the redaction of documents seek to advance numerous arguments in favour of a generalised tendency to restriction. This mirrors the approach they look prior to the May 2016 ruling in relation to anonymity and the disclosure of cover names. The specific arguments are addressed in detail below and in the attached spreadsheet in response to that served by the NPCC. However, the fundamental point which the police submissions fail properly to grapple with is the exceptional context of this **public** inquiry. This context must be the starting point for all determinations of the balance of public interests for and against restriction[2].

3. The Inquiry was established specifically to address public concern about the past conduct and management of undercover police operations and to secure public

[1] Legal principles ruling 3 May 2016, p.79/85.
[2] Legal principles ruling 3 May 2016, [103] p.41/85.

confidence that in future undercover police operations will be conducted in compliance with the rule of law and with due respect for the rights of individuals[3]. Further, it was specifically and deliberately established as a **public** inquiry. This was because the large number of private inquiries that have preceded it have ultimately been unable to establish the full picture and consequently have been unable to allay public concern. In announcing the inquiry, the then Home Secretary expressly acknowledged that "*Only a public inquiry will be able to get to the full truth behind the matters of huge concern*…"[4] Sir Christopher Pitchford also highlighted the relationship between openness and the Inquiry's ability to fulfil its fundamental purpose of allaying public concern:

> "While the evidence can be considered by the Inquiry whether it is received in a closed hearing or in public, there remains the difficult question whether the process adopted by the Inquiry could win the confidence of the public if most of the evidence was received in private. In my view, this consideration goes directly to the issue as to whether a restriction order would have the effect of inhibiting the allaying of public concern in the subject matter of the Inquiry in one or other or both of two ways: first, privacy would tend to damage public confidence in the Inquiry's ability to get at the truth and, secondly, unpublished and untested evidence would tend to increase speculation about the reliability and impartiality of the Inquiry process."[5]

4. In short, the Inquiry was established expressly and specifically (i) to investigate undercover policing and in particular undercover political policing and (ii) to do so publicly in order to get to the full truth and to restore public confidence in a way that the preceding private reviews had been unable to do. For these reasons, the presumptions in favour of non-disclosure of CHIS or details of undercover operations that apply in other contexts simply cannot be translated across to this Inquiry as the NPCC and MPS seek to do. The very fact that it has been determined necessary to establish this as a **public i**nquiry, notwithstanding, and in full knowledge of, its subject matter, means that the balance of public interests for and against disclosure is specific to this exceptional context.

[3] Legal principles ruling 3 May 2016, [6], p.4/85.
[4] Oral statement to Parliament by the Rt Hon Theresa May MP, 6 March 2014.
[5] Legal principles ruling 3 May 2016, [104] p.41/85.

5. It is disappointing, therefore, that all of the police evidence and submissions are directed at establishing that disclosure is generally antithetical to the public interest. Nowhere is it acknowledged that there is a strong public interest, shared by the police themselves, in ensuring that past failings are brought to light, so that lessons can be learned and public concern can be allayed. This interest is both principled and practical. The principled need to ensure that undercover policing is conducted in accordance with the rule of law and fundamental rights is plain. But also from a practical point of view, an inquiry which fails to get to the truth is unlikely to allay public concern and will ultimately end up requiring yet further investigations, adding significantly to cost and delay. The history of the series of investigations into Bloody Sunday and Hillsborough provide two compelling examples of this. It is in everyone's interests to ensure that this Inquiry is as open as possible, both so it can elicit the evidence from non-police sources which it needs in order to get to the truth and so it is not viewed as a "sustained cover up"[6].

6. These considerations must be weighed in the balance against the NPCC and MPS exhortations to caution and resort to the "mosaic effect" and NCND where there is no direct risk of harm[7]. Given the exceptional context of this Inquiry, an overly cautious approach to disclosure is not the safe option. The Inquiry has to take a robust approach if it is to get to the truth and satisfy its mandate. An on-going cover-up will not make the problem go away.

7. In particular, the NPCC is fundamentally and categorically wrong to submit that: "*It should…. 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*."[8] Submissions to like effect were squarely and rightly rejected by Sir Christopher Pitchford in his legal principles ruling: first, privacy undermines the Inquiry's ability to get to the truth because it means it can hear only one side of the evidence; and second, it

[6] See the words of the Chairman of the Azelle Rodney Inquiry, echoed by Laws LJ in R (E) v Chairman of the Inquiry into the Death of Azelle Rodney [2012] EWHC 563 (Admin) [26].
[7] See, for example, NPCC submissions [24(c) & (d)]; MPS submissions at [5]-[7]
[8] NPCC submissions [99].

undermines the Inquiry's ability to command public confidence in its process and conclusions[9].

8. Redactions can and will prevent the Inquiry from pursuing its investigation effectively and in a way that commands public confidence. It may be that in some circumstances there is a risk of genuine harm of such magnitude that a redaction is justified, notwithstanding the negative impact it will have on the effectiveness of the Inquiry, but it is disingenuous to suggest that redaction does not have that cost. If the Inquiry is to get to the truth and allay public concern it must continually keep in mind the critical importance of openness to the achievement of those ends.

9. One of the central issues the Inquiry will have to address is the way in which the culture of extreme secrecy within the SDS and NPOIU enabled those units to operate with impunity. The NPSCPs submit that the continued blanket of secrecy for which the NPCC and MPS contend even in the context of the Inquiry is, at least in respect of historical units such as the SDS and NPOIU, far more about protection from scrutiny and accountability than any genuine risk of harm to individuals or current policing tactics or techniques. The Inquiry should consider carefully whether this is the case and, where it finds that excessive restriction is being sought, it should make a public finding to that effect.

10. The NPSCPs have requested disclosure of the redactions originally sought by the police CPs in relation to the Tradecraft Manual so that they may compare the level of redaction sought by the police with that ultimately found to be justified by the Inquiry[10]. This would enable the NPSCPs to gain a sense of the extent to which the Inquiry is actively scrutinising the redactions sought by the police and pushing back against them, and on what issues. The NPSCPs cannot see any reason why this ought not be disclosed given that the only additional material it will contain is that which the Inquiry has found does not require redaction. However, the Inquiry has not yet responded to the request. The

[9] Legal principles ruling, 3 May 2016 [104], [105], [109]-[111] & A3.
[10] Email from Lydia Dagostino on behalf of the NPSCP RLR group to Piers Doggart 10.4.18.

NPSCPs reserve the right to make further submissions in relation to the Inquiry's approach to redaction of documents once that disclosure has been made.

HOUSEKEEPING

11. The NPCC and MPS submissions refer to the generic grounds for restriction by letter – see paragraphs 60 and 63 of the NPCC submissions and paragraph 32 of the MPS submissions. However, the schedule of Open Grounds for Restriction that has been disclosed lists the grounds of restriction by number. It is assumed that at some point numbers have replaced letters and ground A = ground 1 etc. If this is not correct, please can the correlation between the grounds referred to in the submissions and those listed in the schedule be explained.

GENERAL SUBMISSIONS

CTI's position

12. The NPSCPs note CTI's observation at paragraph 16 of their explanatory note that "The existence of a particular ground within the generic grounds [for restriction] does not mean that the Inquiry agrees that all information falling within that category should be restricted in accordance with section 19 of the Inquiries Act 2005, rather it indicates that the state bodies have identified it as a ground upon which they are likely to apply to restrict information, and the Inquiry accepts that the ground could in principle justify a restriction being granted."[11] [emphasis added]

13. It is respectfully submitted that this indication is ambiguous. If the underlined words from the quoted passage mean that the listed grounds could in principle justify a restriction being granted depending on whether (i) release of the particular piece of information in question is likely to cause harm to a person or to policing and (ii) the public interest in avoiding that harm outweighs the public interest in disclosing the information, then the NPSCPs accept that proposition, subject to the specific points made in relation to each ground in the submissions set out below and in the attached

[11] CTIs' explanatory note to accompany the publication of open generic restriction order documents etc. [16].

spreadsheet. However, if CTI intend by paragraph 16 to indicate that the Inquiry accepts that the listed open grounds are in and of themselves capable of justifying restriction, i.e. without further assessment of whether disclosure of the specific information in question is in fact likely to cause harm (consideration (i)) and, therefore only consideration (ii) - the balance of public interest – needs to be addressed, then it is submitted that such an approach is wrong. The assessment as to whether restriction of a particular piece of information is necessary must encompass both consideration of the likelihood of harm arising from disclosure of that specific information and the balance of public interest. The list of generic grounds for restriction cannot properly be used as a means of dispensing with the first consideration – i.e. in some way deeming that any piece of information falling within a listed category gives rise to a relevant risk of harm and therefore will be restricted subject only to being outweighed by a stronger countervailing public interest in disclosure of that specific piece of information. That would be to reverse the presumption of openness clearly identified in the legal principles ruling[12]. It would also be contrary to the rejection of class immunity: R v Chief Constable of West Midlands Police ex parte Wiley [1995] 1 AC 274; R (Mohamed) v Secretary of State for Foreign and Commonwealth Affairs [2009] 1 WLR 2653; Chief Constable of Greater Manchester Police v McNally [2002] 2 Cr.App.R 37.

14. The list of open generic grounds of restriction may be useful as a checklist of the categories of information which are likely to give rise to consideration for restriction, but it cannot stand as a means of circumventing the need for the Inquiry to consider whether, in respect of information which it deems to be relevant and necessary to its terms of reference, disclosure of that specific information would in fact be likely to lead to relevant harm. At some points in their submissions, the NPCC appear to accept this – see, for example, at paragraph 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."

[12] Legal principles ruling, 3 May 2016 [89] & A11.

Level of scrutiny required by the Inquiry

15. The NPSCPs recognise that the task of assessing documents for potential redaction in this Inquiry is an onerous one. However, as with decisions as to anonymity of UCOs, it is one that is critical to the success or failure of the Inquiry as a whole. It is of the first importance, therefore, that the Inquiry subjects the provisional redactions proposed by the police and other state bodies to rigorous scrutiny. This underscores the importance of the NPSCPs being able to see the level of redaction originally sought in relation to the Tradecraft Manual so they are able to gauge the extent to which the Inquiry is doing this - see [10] above.

16. The Inquiry cannot accept the police assessment of risk untested. The previous Chairman in his May 2016 legal principles ruling accepted the invitation of the police and the Home Office to treat with due respect the risk assessments made by "those who are expert in policing and the risks attendant on the exposure of identities and police operations". However, he also made clear that "this acceptance does not mean that I shall accept every expression of opinion offered to me, particularly when the opinion is offered at the level of generality. In the end I have the responsibility of assessing the public interest balance for and against restriction."[13] By the time of the hearing on 5 April the following year, when Sir Christopher had had further experience of the MPS risk assessment capabilities, he was significantly more sceptical about their level of expertise: "Now, in March of last year we were told that the Metropolitan Police were expert at risk assessment. Well, they are not – not in the sense that you and I were led to believe at that time."[14] The Inquiry must bear this in mind, together with the further points identified below when it is scrutinising the police evidence in support of redactions.

17. The police are demonstrably seeking excessive restriction. It is of note that the NPCC and the MPS are seeking to argue that even where information is already in the public

[13] Legal principles ruling, 3 May 2016 [161].
[14] Sir Christopher Pitchford, transcript of hearing 5 April 2017 p.135 lines 9-11.

domain, there may still be a public interest in the Inquiry restricting it. This contention is addressed in more detail at [23]-[28] below and in the attached spreadsheet, but it could only conceivably be correct in the most exceptional circumstances: where disclosure has been brief and contained and where disclosure of the same information by the Inquiry really would cause demonstrable harm. However, this is not the approach being sought by the police bodies. They are seeking a wholesale attempt to put the genie back in the bottle. This defensiveness over information that is already in the public domain only serves to aggravate public concern and furthers the appearance of a sustained cover-up. As set out above at [9], where this is found to be the case, the Inquiry should make an express finding to that effect.

18. A far more open approach is required from the Inquiry than has been taken to date. The NPSCPs have repeatedly expressed concern about the extent to which restriction orders have been granted to date in respect of cover and real names of former SDS UCOs. Because of the lack of disclosure of the underlying evidence said to justify these decisions, the NPSCPs have been unable to mount a challenge to them. However, the Chairman's ruling of 11 April 2018 in respect of HN15 – Mark Cassidy / Jenner – provides strong confirmation of the NPSCPs' concerns.

19. Although the Chairman refused to restrict Jenner's real and cover names, he indicated that he would have made a restriction order in respect of both but for two factors: (i) the cover name (Mark Cassidy) was publicly identified in February 2011 and the real name (Mark Jenner) was published in the Guardian newspaper in 2013; and (ii) Jenner now admits to having conducted an intimate relationship with "Alison" whilst undercover.

20. If this assessment is indicative of the Chairman's approach to restriction more generally, then the Inquiry has no prospect of being effective. The public interest in disclosure of this officer's identity could not realistically be higher: he infiltrated and sought to undermine two key community organisations (the Hackney Community Defence Association and the Colin Roach Centre) in their support for victims of police

misconduct; he had access to legally privileged material; and he was involved in blacklisting in the construction industry – in addition to his deceitful and abusive relationship with Alison. These factors should, on any reasonable approach, place him squarely within the Inquiry's remit for open investigation if it is to have any prospect of fulfilling its terms of reference and of allaying public concern. Only the very strongest level of harm arising from disclosure could properly justify restriction.

21. Even though the MPS risk assessment placed the level of risk of harm to Jenner as being "high", the facts of what has actually happened since Jenner's identity became public undermines the credibility of that assessment. Jenner's true identity has been public knowledge, nationally, since 2013. Not only was his name published, but also photographs; and his name and images have been published in print and online on many occasions since, including in Rob Evans and Paul Lewis' book. During those four years, he has not come to any harm and indeed he has continued to maintain a social media presence in his real identity. This does not support any realistic assessment of harm. The fact that the Chairman apparently considers that the risk of harm in this case would have justified restriction were it not for the fact that his identity is already in the public domain and he admits to having had a sexual relationship whilst undercover is a matter of deep concern.

22. The significance of wrong-doing. The NPCC and the MPS are right to acknowledge that alleged misconduct or similar concerns are relevant to consideration of whether restriction is justified: see legal principles ruling, 3 May 2016 [94] & [100]; Al Rawi v Security Service & others [2012] AC 531 at [102]. However, the Inquiry must also keep in mind that disclosure cannot and must not be dependent on allegations of wrongdoing. The unique circumstances of this inquiry mean that wrongdoing is very unlikely to come to light unless disclosure is made of sufficient information to enable those targeted to come forward. One of the unique aspects of this Inquiry is that the wrongdoing the Inquiry is tasked with investigating turns on the identity of the wrong-doer as an undercover police officer. If that fact is not disclosed to the victim then s/he is unaware that s/he has a basis for complaint. Further, given that the officer him or

herself is unlikely to disclose his/her own wrong-doing; and given that much of the relevant records, if they are still in existence at all, will depend on the officer's own self-report, the Inquiry is unlikely to uncover wrong-doing without hearing from the victim. Therefore, if the Inquiry is to be able to reach any credible conclusions as to the scope of wrong-doing by undercover officers it cannot let disclosure be driven by the existence of a pre-existing complaint.

Information already in the public domain

23. As noted at [16] above, the NPCC seeks to argue that even where information is already in the public domain there may still be grounds for the Inquiry to restrict it on the basis that re-publication by the Inquiry will cause additional harm by providing official confirmation, raising the profile of the information and making it more readily accessible[15]. Much of Alan Pughsley's statement is directed to this point. The NPSCPs make the following submissions in response.

24. Information put into the public domain by the police. Where information has been put into the public domain by police there can be no proper basis for restricting it in this Inquiry. There are numerous examples of situations in which information about policing techniques have been put into the public domain by the police themselves, for example, through participation in the True Spies documentary, which was actively supported by the MPS. A more recent example is the Channel 4 programme 'Hunted', in which former MPS SO10 officer Peter Bleksley participated and in which techniques used by police are clearly publicly exposed for the purposes of entertainment. There are also numerous books written by former officers[16]. Information has also been put into the public domain by the police in response to Freedom of Information Act requests, see,

[15] NPCC submissions of 22 January 2018 [66]-[74].

[16] See, for example, disclosure of the roles of Special Branch officers Roy Habershon and Roy Cremer in connection with the Angry Brigade in Stuart Christies book "Edward Heath made me angry"; Peter Bleksley, 'The Gangbuster'; Neil Woods, 'Good Cop, Bad War'; Christian Plowman, 'Crossing the Line: Losing Your Mind as an Undercover Cop'; Phillip Etienne and Martin Maynard, 'The Infiltrators: The First Inside Account of Life Deep Undercover with Scotland Yard's Most Secret Unit'; Robert Flemming and Hugh Miller, 'Scotland Yard: The True Life Story of the Metropolitan Police'.

for example, in relation to the 1968 Black Dwarf investigation[17]; and the Special Branch reports written by founder of the SDS, Conrad Dixon, concerning the 1968 Vietnam war protests[18].

25. This level of exposure of information and techniques by police and former police is significant for two reasons. First, information disclosed in this way should plainly not now be redacted in the Inquiry. To seek to do so would make a mockery of the Inquiry. Second, the fact that such information has been put into the public domain by the police, or former police officers in circumstances where the police have not sought to restrain publication, demonstrates that the type of wholesale protection of information about police techniques advocated in the witness statement of Alan Pughsley is completely unsustainable.

26. Obvious and widely known techniques. Certain police techniques, for example the use of covert listening devices, covert cameras and telephone taps are so widely known about, it cannot sensibly be suggested that the use of measures of this nature fall to be redacted. It is, however, accepted that specific details of such techniques, such as technical details about their precise operation might in some circumstances fall to be redacted.

27. Level of risk. Where information that poses a genuine risk of harm to individuals and/or policing is already in the public domain in any form, it is likely that the police will already have taken remedial action – for example, an asset will have been abandoned or a technique modified. If it was not deemed necessary to take remedial action as a result of the public disclosure, then that suggests that the risk of harm is not that high. It would be surprising if, where a significant risk of harm arises, the police would rely merely on the hope that the disclosure would go unnoticed. In these circumstances, it is unlikely that publication by the Inquiry of information that is already in the public

[17] http://specialbranchfiles.uk/black-dwarf-files-overview/
[18] http://specialbranchfiles.uk/vietnam-war-all-files/

domain is going to lead to any significant increase in harm. If the police are satisfied that the subject matter of the sensitive information can continue to be used notwithstanding its release into the public domain, then the risk of harm arising in relation to it is unlikely to outweigh the public interest in the Inquiry being able to investigate it openly.

28. Credibility and effectiveness of the Inquiry. It would be highly damaging to the credibility of the Inquiry were it to seek to restrict information that is already in the public domain, particularly that which has been gathered by the victims of undercover policing in their efforts to bring the wrongs done to them to light. It is distressing and demeaning to the victims of undercover policing when the police persist in seeking restriction of information in this category. It would be even worse were the Inquiry to acquiesce in its restriction. Such information is likely to be central to the Inquiry's ability to assess the impact of undercover policing on those affected by it and consequently on the proportionality of deployments. As identified in the legal principles ruling, withholding from CPs and witnesses information that directly affects them compromises their ability meaningfully to contribute to the resolution of important issues in the Inquiry and to expect them to give evidence in circumstances where the police witnesses and the Inquiry are in possession of material evidence which they are denied is demeaning and unfair[19].

Distinction between historical information and current techniques.

29. A significant portion of the Inquiry's work concerns deployments which took place many years ago. Many of the techniques and assets referred to will be historic and no longer in use. There can be no significant justification for the redaction of such information. The NPCC themselves acknowledge this distinction[20].

Gisting

[19] Legal principles ruling [109] & [111].
[20] NPCC submissions of 22 January 2018 [92].

30. Wherever information is properly restricted, the greatest level of gisting consistent with avoidance of the identified risk should be provided. It is not accepted that the current level of gisting provided in documents supplied to date is as full, or as comprehensible, as it could and should be.

SPECIFIC SUBMISSIONS IN RESPONSE TO NPCC AND MPS SUBMISSIONS AND EVIDENCE

Redaction of names

CHIS

31. The NPCC contend that there is likely to be a very strong public interest in protecting the true identities of undercover officers and other CHIS[21]. The MPS position appears to be more nuanced, in that it recognises, at least to some extent, the exceptional context of this Inquiry [22].

32. First, a distinction must be drawn between, on the one hand, undercover officers and other CHIS operating under or in connection with the SDS, the NPOIU or any other police department within England and Wales in connection with the targeting, infiltration, or reporting on political or activist groups of a similar nature to those reported on by the SDS and NPOIU – in short undercover political policing; and, on the other hand, UCOs and other CHIS operating in connection with conventional crime.

33. In respect of the former, if restriction is sought over a name (cover or real), then an application should be made in accordance with the anonymity process already established in respect of the SDS and the NPOIU. For the avoidance of doubt, it is expressly submitted that such a procedure should apply to all CHIS (as defined in s.26(8) RIPA 2000) operating under or in connection with the SDS, NPOIU or other police units engaged in similar deployments, not just undercover police officers. The Inquiry's Terms of Reference relate to "undercover police operations", i.e. not exclusively to

[21] NPCC submissions of 22 January 2018 [24(a)].
[22] See [19]-[25] of MPS submissions of 14 February 2018.

undercover police *officers*. If the SDS, NPOIU or other police departments deployed, commissioned, or otherwise used third parties (other than officers) to establish or maintain personal or other relationships with individuals for the covert purpose of obtaining information etc. then that would fall within the Terms of Reference and should be investigated. It is noted that reference is made to third parties being recruited in this way in the True Spies documentary: see reference to the recruitment of a "top grade agent" from a private security company to infiltrate protestors against the Newbury bypass and subsequently animal rights activism[23]. As with UCOs, the true picture in relation to the activities of non-officer CHIS, can only come to light if their identities, or at least their cover identities, are released to those on whom they spied.

34. Similarly, the application of the full anonymity process should not be limited to the SDS and NPOIU, but should extend to all police departments within the geographical scope of the Terms of Reference who engaged in undercover police operations of a comparable nature to those conducted by the SDS and NPOIU – i.e. political policing. This is essential for determining the scope to which undercover policing was used for such purposes throughout England and Wales and also for assessing the extent to which the problems which have emerged in relation to the SDS and NPOIU were also prevalent in other regional Special Branch departments.

35. In respect of non-SDS / NPOIU CHIS (UCOs and others) deployed in connection with conventional criminal groups or individuals, it is accepted that the full anonymity process would not be practicable. It is accepted than in respect of documents pertaining to such deployments a more routine approach to the redaction of the names of CHIS will be appropriate, subject to particular considerations telling against redaction, such as potential miscarriage of justice or wrong-doing warranting open investigation by the Inquiry.

Regulation of Investigatory Powers Act 2000 ["RIPA 2000"]

[23] True Spies, Episode 3.

36. The NPCC and the MPS make reference to the provisions of RIPA 2000 and invite the Inquiry to have regard to them when considering issues of disclosure[24]. The MPS refer back to their submissions on restriction orders dated 12 February 2016 at paragraphs III.1 to III.12. The first point to note in respect of RIPA 2000 is that s.29 on which the MPS relies entered into force for the first time on 25 September 2000, it therefore post-dates the deployment of many of the CHIS with whom the Inquiry will be concerned. But in any event, there is nothing in the RIPA 2000 provisions, nor in the CHIS Code of Practice, which justifies blanket redaction. The case law in respect of disclosure of informants makes clear that it is for the court to balance the public interest in disclosure[25], and in the very specific context of this Inquiry, the factors governing the assessment of that balance are those set out in the May 2016 legal principles ruling[26].

Backroom SDS & NPOIU officers

37. The process in respect of the restriction of the names of backroom members of the SDS and NPOIU is already provided for within the on-going anonymity process. This should continue.

Other names (non-CHIS / non-SDS & NPOIU)

38. It is accepted that there is a public interest in respecting the right to privacy of other individuals named in documents provided to the Inquiry. However, it is not accepted that blanket redaction of all, non-CHIS, non-SDS / NPOIU names would be lawful or justified.

39. First, it is submitted that there should be a presumption that MPS officers of the rank of Superintendent and above should not be redacted. In forces other than the MPS, officers who were Head of Special Branch, or in the chain of command above them

[24] NPCC submissions of 22 January 2018 [19]; MPS submissions of 14 February 2018 [18]-[25].
[25] R (WV) v Crown Prosecution Service [2011] EWHC 2480 (Admin); DIL & others v Commissioner of Police of the Metropolis [2014] EWHC 2184 (QB).
[26] See in particular [80]-[83], [88] &[89], [93], [100], [103]-[112], [146]-[152] and summary Part 6 of the 3 May 2016 Ruling at p.78-85.

should not be routinely redacted. Officers of this level of seniority must reasonably expect that their functions as a public officer will be subject to public scrutiny and therefore, only if there is a properly evidenced risk of harm arising from disclosure should their name be redacted.

40. In respect of (non-CHIS / non-SDS / NPOIU) officers below the rank of Superintendent within the MPS, or Head of Special Branch in regional forces, together with other staff and third parties, if their name is assessed by the Inquiry to be relevant and necessary to its pursuit of the terms of reference, the process set out in paragraphs 26-34 of the restrictions protocol should be complied with.

Harm to people

(i) Physical, psychological and emotional

41. The NPCC submits that "the role of undercover operative is among the most dangerous undertakings which any law enforcement agency can ask an individual to perform." They refer to paragraphs 143-150 of Alan Pughsley's witness statement and highlight that "such retribution has included violent assaults against undercover officers and their contacts"[27].

42. However, as with previous evidence and submissions made on behalf of the police bodies, as far as the NPSCPs are able to tell in light of the level of redaction, all of the examples of physical harm cited relate to UCOs (or in one case a journalist) who have infiltrated serious criminal gangs. When one looks at the consequences for the former SDS and NPOIU officers whose identities have been revealed to date, not a single one has suffered any form of physical violence, or threat of physical violence. The worst that has occurred is that they have been publicly and vociferously held to account for

[27] NPCC submissions dated 22 January 2018 [43].

their misconduct – principally in the case of those who engaged in abusive sexual relationships[28].

43. There is a very significant difference between the vast majority of groups infiltrated by SDS and NPOIU officers and the serious and organised criminal gangs to whom the police repeatedly turn in their attempts to evidence risk of harm. The NPSCPs refer to the views expressed by former undercover officer Neil Woods, who infiltrated drugs gangs, when asked about his opinion on the risk to former SDS and NPOIU officers:

> "I have infiltrated people who casually rape, maim and murder people. And here I am, with my name on a book, I even tell people I live in Herefordshire, and you're telling me it's not safe to publish the details of someone who spent way too many years hanging round with a bunch of, for the most part, completely pacifist protestors against what they perceived to be social injustice? There is no comparison there. The idea that they are now at risk is utterly ludicrous."[29]

44. The above observations apply equally in relation to third parties who might have assisted SDS or NPOIU officers in the maintenance of their undercover identities. To the best of the NPSCPs' knowledge, not a single third party in this category has come to any harm. Alan Pughsley refers in his fourth witness statement to a third party who was approached by a journalist. However, he does not state that this approach was in anyway unlawful or oppressive or that it was persisted in. If such an approach to a third party is to be considered a factor weighing in favour of restriction at all, it must be one of very slight weight, as against the very significant public interests in favour of disclosure. As set out in the NPSCPs' previous submissions, particular scrutiny must be applied where a restriction is sought on the basis of media contact of this nature[30]. The Inquiry must proceed on the basis that the media operate within a functioning legal system which provides for other means of restraining excessive intrusion. Restriction

[28] See paragraph 74 of the NPSCPs' submissions of 5 October 2017 for a summary of the known consequences of disclosure of the identities of the former SDS and NPOIU UCOs whose identities had been disclosed at the time of those submissions. Since those submissions were drafted the identities of a further 15 officers have been disclosed and to the best of the NPSCPs' knowledge no harm has come to any of them.
[29] Campaign Opposing Police Surveillance, interview with Neil Woods, 25 January 2018: http://campaignopposingpolicesurveillance.com/2018/01/25/publish-spycops-names-ex-undercover/
[30] NPSCP submissions dated 5 October 2017 [96]-[99].

orders ought not to be used as a means of suppressing lawful reporting by the back door.

45. Account also needs to be taken of the very significant harm that is being caused to those who were the victims of undercover policing by the continued denial of information about why they were targeted, by whom and to what extent. Evidence in relation to the impact of this on some of the women deceived into relationships with undercover officers is given in the first statement of Harriet Wistrich dated 31 May 2017. However, the psychological and emotional impact of undercover policing is not restricted to those who had sexual relationships with UCOs. Many of those who know or suspect themselves to have been targeted are deeply affected by that knowledge or suspicion and have a legitimate interest in learning the truth about significant parts of their personal history. All of these factors must be weighed in the balance when considering the public interests weighing against restriction.

(ii) Legitimate expectation of privacy

46. Legitimate expectation of privacy cuts both ways. Those who were spied upon also had a legitimate expectation as to the privacy of their homes, correspondence, family relationships, personal and private lives and access to legal advice. In addition, they have rights to freedom of thought, conscience, political belief, expression and association. In order to investigate the extent of interference with these rights and to determine whether such interference was in accordance with the law, justified and proportionate, it will be necessary for the Inquiry to hear from the victims of the interference. In order to do so, it will be necessary for the victims to have disclosure of the information that directly affects them – see paragraph 109 of the legal principles ruling:

> "I accept that if core participants and witnesses do not have access to information that directly affects them, their ability meaningfully to contribute to the resolution of important issues in the Inquiry may be compromised. I anticipate that those issues may include (i) the adequacy of the justification for targeting, (ii) the effect upon them of the making of a relationship by an undercover officer for

the purpose of acquiring information and (iii) the effect upon them of the breaking of a relationship upon withdrawal of the officer from the field."

47. To date, the Chairman's anonymity decisions have afforded very significant weight to the privacy rights of undercover officers and have never acknowledged, at least no reference has ever been made in the reasons given to, the countervailing rights of the victims of the undercover officers' activity, save in the particular case of women who are known to have been deceived into relationships. Such an approach is unfair and should not be repeated in the context of the redaction of documents. The public interest balance for and against restriction must take into account the interference that has occurred with the fundamental rights of those who were spied on and the necessity of disclosure if those interferences are to be investigated effectively.

(iii) Legitimate expectation of confidentiality

48. The NPSCPs' submissions in respect of the expectation of confidentiality on the part of undercover officers are set out at paragraphs 68-72 of their submissions of 5 October 2018. In short, this issue was addressed clearly and correctly in the legal principles ruling of 3 May 2016[31]. First, any alleged assurance of confidentiality must be clearly evidenced[32]. There is reason to understand that officers were not always promised life-long anonymity[33] and/or in any event must reasonably have understood that any assurance given could not be absolute[34]. But most importantly, in view of the particular and exceptional context of this Inquiry, any expectation of confidentiality "is not likely, except in unusual circumstances, to make the difference between disclosure and non-disclosure if disclosure is necessary in the fair pursuit of the Inquiry's terms of reference."[35]

[31] See in particular [162]-[166] &
[32] Legal principles ruling, 3 May 2016 [42].
[33] Submissions on restriction orders on behalf of Peter Francis, dated 7 March 2016 [14].
[34] Legal principles ruling, 3 May 2016 [165].
[35] Legal principles ruling, 3 May 2016 [166].

49. This conclusion must be right in light of the decision to establish a **public** inquiry into undercover policing. It is implicit in that decision that the need to investigate these issues of public concern by the mechanism of a **public** inquiry is such as to over-ride the weight that would be afforded to expectations of confidentiality in other contexts. The contrary approach, i.e. of allowing considerations of confidentiality to trump the importance of public investigation is anathema to the functioning of the inquiry. The overall balance between the need openly to investigate the matters within the Terms of Reference and the weight to be attached to confidentiality has been struck by the decision to hold this pubic inquiry in the first place.

50. If there are instances where it can be shown that there is a real risk of genuine harm from disclosure of a particular piece of information, then this may, exceptionally, outweigh the interest in effective pursuit of the Terms of Reference. However, generic recourse to expectations of confidentiality that would ordinarily apply in other contexts do not, and cannot, translate across in light of the exceptional premise of this Inquiry.

51. Similar considerations apply in relation to assisting third parties: if disclosure of information in relation to them is relevant and necessary to pursuit of the Inquiry's Terms of Reference then it should be disclosed unless there is an evidenced risk of harm of such magnitude as to outweigh the public interest in disclosure. A generic expectation of confidentiality cannot outweigh the public interest in open investigation of the matters falling within the Terms of Reference. That has been determined by the decision to establish the Inquiry.

<u>Harm to policing</u>

52. First, the matters of serious public concern which led to the establishment of this Inquiry have caused significant harm to policing and will continue to do so unless the concern is allayed and public confidence is restored. That is the whole point of the Inquiry. As with the balance between confidentiality and the openness required to conduct an effective investigation into the Terms of Reference, so too with the balance between harm to policing caused by open investigation and the harm caused by failing

to allay public concern: the context has been set by the Ministerial decision to hold a public inquiry. The police bodies are simply wrong to suggest that erring on the side of restriction is the cautious, least-harmful, safe option. It is not. The most fundamental risk of harm to policing lies in the Inquiry failing to conduct a sufficiently open and effective investigation to restore public confidence in undercover policing.

53. Second, as set out above, it is clear that the NPCC and the MPS are taking an excessively restrictive approach to disclosure of information. The NPSCPs attach to this document a spreadsheet in response to the NPCC's "Open Version of Spreadsheet Referred to in NPCC Generic Submissions". The NPSCPs' spreadsheet sets out their submissions in response to the specific points made by the NPCC in its spreadsheet. However, the over-arching points that the NPSCPs make are:

    a. the police bodies fail to acknowledge the extent to which information which they now seek to redact has already been put into the public domain by the police themselves, either in response to Freedom of Information Act requests, through online publication and through collaboration by officers with television programmes and books. See submissions at [24] above. There is no proper basis for now redacting such material. It is not accepted that the police can legitimately contend that material that they themselves have put in the public domain, or have not sought to restrain former officers from publishing, ought now to be restricted in this Inquiry;

    b. the Inquiry should adopt a very critical approach to the argument advanced in the statement of Alan Pughsley that a greater risk arises from information being confirmed by the Inquiry than where the information is already in the public domain from other sources – see submissions at [27] above;

    c. the police bodies fail to acknowledge the centrality of some of the information it seeks to restrict to the Inquiry's ability to fulfil its terms of reference – see submissions at [7], [8], [22] & [46] above.

Ability of law enforcement to recruit and retain staff or members of the public to engage in or assist in covert law enforcement

54. The NPSCPs note the confusion over the numbers concerning attendance on undercover training courses[36]. There is currently no clear evidence before the Inquiry, at least none that has been disclosed to the NPSCPs, to show that concerns about disclosure have had or are having a negative impact on the ability to recruit and retain staff or members of the public to engage in or assist in covert law enforcement. Furthermore, even if it is the case that numbers on undercover training courses are down on previous years, or fewer members of the public are willing to assist, it is just as possible that this is the result of the public concern about the wrongdoing that led to the establishment of this Inquiry and loss of confidence in the integrity of undercover policing. If that is indeed the cause, then it is in the interests of future recruitment and retention of staff to ensure that the swamp is properly drained and seen to be so, so that future recruits can have confidence that they are joining a properly governed operation and that the mistakes of the past will not be repeated.

55. The point is that in the absence of properly researched evidence about the effect on recruitment and retention and the reasons for it, the Inquiry ought not to be influenced by armchair theorising about potential causes. It ought also to question how much of the rest of the police evidence of "risk" is based on similarly speculative foundations.

<u>Low/relevance/necessity, disproportionality</u>

56. The MPS submit that restriction orders should be granted in respect of material whose relevance and necessity is low or absent, but which appears in a document which as a whole has been deemed relevant and necessary and where investigation of the need for redaction would be disproportionate[37].

57. The NPSCPs do not disagree with this submission at the level of principle, but the difficulty arises in relation to the matters that are to be identified as being of low, or no,

[36] Statement of Alan Pughsley [453]-
[37] MPS submissions [10]-[17].

relevance. First, by way of overarching submission, in line with the submissions made at [32]-[35] above in relation to names, a distinction should be drawn between the SDS, NPOIU and other units engaged in political policing and those engaged in the policing of regular crime. The number of officers deployed in relation to the former category is finite and will need to be ascertained for the purposes of the Inquiry in any event. It is not disproportionate in relation to this group of officers and these units to make specific enquiries in relation to any risk pertaining to them.

58. In respect of the examples given by the MPS of material of low relevance, the NPSCPs make the following submissions:

a. Warrant numbers: in respect of the warrant numbers of SDS, NPOIU officers and officers from units engaged in political policing, disclosure / redaction of warrant numbers should follow the Inquiry's decision in relation to anonymity unless there is a specific and evidenced reason why a risk of harm arises in respect of disclosure of a warrant number;

b. Names/roles of departments and nature of someone's historic work. An important issue here is where departments are no longer in existence there cannot realistically be any risk in their disclosure. It would be a waste of time and resources seeking to redact them and would result in documents being made unnecessarily difficult to follow. In any event, knowledge of their names and the role of departments is likely to be relevant to understanding the chain of command and the dissemination of information – these are not matters of low relevance. Certainly information that is already in the public domain should not be restricted, for instance, the names 'grey' and 'red' for Special Branch surveillance teams, the names 'A', 'B', 'C', 'D', 'E', 'P' or 'S' units within the MPS Special Branch; the names of units with the National Domestic Extremism Unit (e.g. CIU, NPOIU, NDET, NETCU); and ACPO Terrorism and Allied Matters Committee should not be restricted. In respect of the nature of an officer's historic work, any individual officer should be capable of identifying which of his/her previous activities are genuinely sensitive in nature. And in any event

consideration will already have been given to the previous duties of all officers who have been through the anonymity process, so the work will already have been done in respect of these officers;

c. Names or identifying details of people, where it is unclear whether or not the name is sensitive. The NPSCPs submit that names should be dealt with in accordance with the submissions at [32]-[40] above - i.e. a distinction should be drawn between records pertaining to the SDS, NPOIU and other units involved in undercover political policing on the one hand and units involved in undercover policing of regular crime on the other. Material relating to the former is of central relevance to the Inquiry's work. It is not disproportionate in relation to those units to ascertain whether or not a name in records pertaining them is sensitive. Indeed it is necessary for the Inquiry to do so: it is at real danger of missing significant information if names in relation to those units are routinely redacted without ascertaining their role and relevance;

d. The specific words of a commendation received by an officer: again a distinction should be drawn between the SDS, NPOIU and other units that undertook political policing and those concerned with undercover policing into regular crime. The specific words used in a commendation in respect of the former may well be relevant to the terms of reference in a number of ways: they may indicate that senior officers were (or were not) aware of relevant conduct on the part of the officer; or that an officer was commended for conduct that is now under question in the Inquiry. For example, in the DIL litigation, DIL relied on a commendation given to Andrew 'Jim' Boyling. Commendations in relation to officers who served in the SDS, NPOIU and other units engaged in undercover political policing should be disclosed unless redaction is justified on the basis of risk of harm and the balance of public interest;

e. Text that appears erroneously on a given page: again the same distinction should be drawn between political policing units, including the SDS and NPOIU, and units engaged in the policing of regular crime. It is sometimes the case that errors of this nature in fact reveal something very significant - for example, that two previously unrelated documents were being viewed together. If such "errors"

were to be routinely redacted then discoveries of this nature would be missed. This sort of error is unlikely to arise frequently, so it is not disproportionate for consideration to be given as to whether redaction is properly justified on the few occasions that it arises;

f. References to liaison with foreign agencies or travel abroad, where it is unclear from the document whether that liaison or travel is public knowledge: in relation documents pertaining to the SDS, NPOIU, or other political policing units, it is very important that such information is not routinely redacted without consideration of whether the redaction is specifically justified. First, it is rarely likely to be apparent from the face of the document whether or not the liaison or travel was public knowledge, so the approach advocated by the MPS would result in the automatic redaction of such matters even where they are already in the public domain. That would be very damaging to the Inquiry's credibility, as set out above. Secondly, and more fundamentally, liaison with foreign agencies and travel abroad may be of direct relevance to significant issues within the Terms of Reference, not least the impact on those spied upon. A number of the women who had relationships with undercover officers travelled abroad with them, it would be wholly wrong for information pertaining to that to be routinely redacted. Likewise, where liaison with foreign agencies concerned individuals within England and Wales, this is of relevance to those individuals and the impact that any consequences from that liaison had for them - for example, border checks, refusal of visas etc. Given that it is unlikely to be possible to tell from the face of a document what the impact was on those affected, it is very important that such information is only restricted where this is properly and specifically justified on the basis of an evidenced risk of harm and on a proper assessment of the balance of public interest.

59. The MPS state that their list of examples of information which they contend it would be disproportionate to risk assess is not exhaustive [MPS submissions at [16]]. The NPSCPs have set out above their objections to every single one of the categories the MPS has identified - at least where the information pertains to SDS, NPOIU or other political

policing units. It is likely the NPSCPs will have similar objections to further categories. It is submitted that no category of information should be routinely redacted unless or until the NPSCPs have had an opportunity to make submissions in relation to that category.

Internal procedures

60. The MPS acknowledges that restriction will not be appropriate in relation to internal procedures which are not sensitive and that whether something is sensitive will be fact-specific [MPS submissions [42]]. Relevant factors will include "the broadness of circulation of that information", by which the NPSCPs assume is meant the extent to which the information is already in the public domain, as well as the broadness of the circulation of the information within the police. As set out above, restriction of information that is already in the public domain will rarely be justified.

61. The MPS also acknowledges that references to internal procedures may be relevant and necessary [MPS submissions [46]]. The example given is where the Inquiry wishes to examine whether a particular internal procedure was adequate. The NPSCPs submit that there are likely to be very many aspects of internal procedure that are highly relevant to the Inquiry's investigations. This includes many of the matters identified by the MPS as being sensitive. For example, details of who had access to sensitive documents, facilities and other resources are likely to be highly relevant to assessing who directed and authorised undercover activity, who had knowledge of what was being done and who had access to its products. The same applies in relation to details of the circulation, handling or management of sensitive documents, facilities and other resources. Such details are in no way "coincidental to the focus of the Inquiry's investigation." [MPS submissions [46]]. They are centrally relevant to it and to the Inquiry's ability to allay public concern through achieving accountability for the police and providing transparency for the conclusions and recommendations of the Inquiry. Restriction of such information ought only to be granted where a specific risk of harm is established and the risk is of a nature and of such magnitude as to outweigh the significant public interest in disclosure.

CONCLUSION

62. For all of the reasons set out above, restriction of documents and the information within them will have a direct and significant impact on the Inquiry's ability to get to the truth and on its ability to command public confidence in its process and conclusions. Redactions must, therefore, be carefully scrutinised and only permitted where the principles laid down in the legal principles ruling of 3 May 2016 are satisfied. The NPSCPs submit that, to date, the strength of the public interest in favour of openness in the exceptional context of this Inquiry has not been properly recognised, indeed frequently not even referred to, by the Inquiry in its decisions. That approach must not be replicated in the Inquiry's approach to the restriction of documents.

RUTH BRANDER
DOUGHTY STREET CHAMBERS

19 April 2018

NPSCP response to open version of spreadsheet referred to in NPCC generic submissions

Umbrella Term	Open Category	NPSCP Submissions
HARM TO PEOPLE Names; other details that might identify a person who should not be identified; signatures and handwriting	1. Subject to AO	It is accepted that where an officer is subject to a properly imposed restriction order preserving his/her anonymity then details which would reveal his/her identity will need to be redacted. However, this is subject to the caveat that the NPSCPs consider that many of the anonymity orders granted to date are unlikely to be properly justified. The impact that this will have on the Inquiry's ability to make proper disclosure will be the first of many knock-on effects that excessive anonymity will have on the openness and effectiveness of the Inquiry. Such decisions must be kept under active review as the Inquiry progresses. Further, and separately, even where an anonymity order has been granted, it does not follow that all details about the activity of the officer concerned will necessarily need to be redacted. If there is information about the officer's activities that is relevant and necessary to the Inquiry's TOR that would not lead to the officer's identification then that information should not be redacted unless redaction is necessary on some other ground.
	2. Subject to PA i.e. where a decision on anonymity is pending	As above.
	3. Name This might apply to a sensitive identity or be applied on privacy grounds.	The NPSCPs' submissions in respect of the redactions of names are set out at [31]-[40] of their submissions document served with this spreadsheet.
	4. Sufficient other details to identify a person This is intended to be used in relation to a person whose identity is restricted	It is accepted that where a name has properly been restricted on one of grounds 1-3 above, then details that would identify that person will fall to be restricted. However, as above, it does not follow that all details about his/her activity will necessarily need to be redacted. If there is information about the officer's activities that is relevant and necessary to the Inquiry's TOR that would not lead to the officer's identification

Umbrella Term	Open Category	NPSCP Submissions
	by reason of an anonymity order, provisional anonymity, any other sensitive reason, or on privacy grounds.	then that information should not be redacted unless redaction is necessary on some other ground.
	5. Signature/Handwriting	It is accepted that where a restriction order is in place preserving an individual's anonymity, that individual's signature and handwriting will fall to be redacted. However, where an individual's identity is not restricted, there should be a cut-off point for restriction, so that signatures and handwriting from more than 20 years ago are not restricted. After that period of time the risk of a signature or handwriting being of use for the purposes of fraudulent copying is negligible. No restriction order should be made unless it is necessary. The NPSCPs note that the MPS has previously released documents relevant to this Inquiry containing unredacted signatures – see, for example, reports on the Vietnam Solidarity Campaign from 1968, which contain the unredacted signatures of Conrad Dixon and Arthur Cunningham – available at https://www.documentcloud.org/documents/2494420-16th-oct-1968-weekly-report-on-preparations-for.html This demonstrates that the MPS does not consider that historical signatures necessarily pose any significant risk of fraud. It would be unjustified and damaging to the Inquiry's commitment to openness if it adopts a more restrictive approach to redaction than has previously been adopted by the police bodies themselves.
	6. Sensitive personal details For example: contact details, medical details, financial details	It is accepted that where sensitive personal details are irrelevant to the Inquiry's ToR they should be redacted. However, where such information is relevant and necessary to the Inquiry's ToR the balance of public interest for and against disclosure must be assessed. There may be circumstances in which there is a strong public interest in disclosure of some level of information concerning sensitive personal information – for example, information about the psychometric testing of UCOs, or of the impact of deployment on their mental health.

Umbrella Term	Open Category	NPSCP Submissions
HARM TO POLICING Recruitment and training; backstopping and legend building; operational tactics; police assets; capacity and priorities; harm to ongoing investigations or prosecutions	7. Typical profile of UCO	For the reasons set out at [24]-[28] in the NPSCP submissions served with this spreadsheet, this ground should not be used to restrict material that is already in the public domain and well understood by NPSCPs. For example, the "Mosaic report" previously served by the MPS refers extensively to the work of the Undercover Research Group and the information published by that group in relation to common tactics and techniques used by SDS and NPOIU undercover officers. This information has been compiled from the accounts of many of those who have NPSCP status in the Inquiry. It cannot sensibly be suggested that there is any public interest in the continued redaction of references to such tactic and techniques in the police documents to be examined by the Inquiry. Such tactics and techniques are so widely published already that further publication by the Inquiry will not materially increase their prominence. If any of these tactics and techniques are still in use, then, given the extent to which they have already been publicised, this must be because it has been deemed that public knowledge is not a bar to their continued use. Nor is it convincing to suggest that official confirmation will give rise to additional risk. If there is truly any prospect of criminal gangs using this information to detect or avoid the use of such tactics against themselves then they would surely be using it already. They will not be waiting for the official imprimatur of the Inquiry before taking protective measures. By contrast, were the Inquiry to agree to the restriction of such material it would significantly damage public confidence in its commitment to genuinely tackling the issues of public concern which led to its inception.
	8. Nature of selection process or training	A distinction must be drawn between selection and training for the SDS and NPOIU and that used in relation to mainstream undercover work. It is understood that Special Branch undercover officers existed outside of mainstream undercover work and that their training and selection was different. Further, the nature of the selection and training processes in relation to the SDS and NPOIU are now historic. In those circumstances, disclosure of the selection and training processes material to those units does not have any significant implications for current policing.

Umbrella Term	Open Category	NPSCP Submissions
	9. Common features of a legend	For the reasons set out above in relation to "typical profile of a UCO" and discussed at [24]-[28] of the submissions served with this spreadsheet, common features that are already in the public domain and known to NPSCPs should not be restricted. Further, in all cases (i.e. whether already in the public domain or not) there will be a strong public interest in disclosure of any tactic or technique with engages criminality on the part of the UCO and/ or which is unethical and/or is intrusive of the fundamental rights of those against whom the tactic or technique was deployed and/or which is connected, or may be connected, with a miscarriage of justice.
	10. Creation / maintenance of a false life	The submissions in respect of ground 9 above are repeated.
	11. Sensitive techniques/ information that would undermine lawful policing. Including the use of sensitive police techniques and tactics - for example, but not limited to, the use of particular technical equipment, surveillance methods, covert online activity, ending a deployment, succession, internal procedures, and methods of addressing or preventing compromise.	The NPSCPs refer to their submissions set out at [24]-[28] & [52]- [55] of the submissions served together with this spreadsheet. The public interest in disclosure of techniques will be particularly strong where the technique in question engages criminality on the part of the UCO and/ or is unethical and/or is intrusive of the fundamental rights of those against whom the technique was deployed and/or which is connected, or may be connected, with a miscarriage of justice. Exit strategies provide an example of techniques where the public interest in disclosure is particularly strong. First, many exit strategies are well known and publicly documented, for example, the faking of a mental breakdown, or leaving to travel or take up a job overseas. There can be no proper justification for their restriction. The impact of exit strategies has had a significant effect on those with whom UCOs formed relationships – not only those in intimate sexual relationships. Investigating the extent of that impact, the extent to which such strategies were part of departmental policy, the extent to which they were supervised and directed by more senior officers, whether any consideration was given to the impact on those with whom the UCO had formed relationships are all matters falling squarely within the terms of reference and cannot be properly assessed without disclosure being made to those affected. A further example is the techniques used by UCOs when establishing relationships whilst deployed. Paragraphs [83]-[89] of the First Witness Statement of

Umbrella Term	Open Category	NPSCP Submissions
		Harriet Wistrich, dated 31 May 2017, address the experiences of some of her clients when they were first approached by Mark Kennedy and Mark Jenner. In particular, they are now concerned that information about their personalities and likes and dislikes had been fed to these officers for the purposes of enabling them to "mirror" their tastes and interests, as a means of facilitating the building of relationships. Again, the extent to which such information was collected by the police for the purposes of enabling UCOs to facilitate relationships and the extent to which this was a deliberate policy, the extent to which it was supervised and the extent to which the impact on those affected was considered are all highly relevant to the core matters the Inquiry is tasked with investigating and cannot effectively be investigated without proper disclosure being made to those who were spied upon. It is suspected that some of the redactions to the Tradecraft manual will cover information in the categories identified above. If that is right, it is submitted that such redactions are not properly justified.
	12. Targeting: who and how	The MPS accept that this category should not be used in relation to the targeting of SDS or NPOIU officers [MPS submissions [32]]. The NPSCPs agree. Information concerning the targeting of SDS and NPOIU officers should only be restricted where it has properly been assessed as being necessary to restrict the cover name of the officer concerned. As set out at [32]-[34] of the submissions served with this spreadsheet, the NPSCPs submit that undercover officers from other police units involved in deployments of a similar nature to those of the SDS and NPOIU (broadly 'political policing') should be treated in the same way as SDS and NPOIU officers/deployments.
	13. Length of deployment	As for ground 12 above.
	14. Starting a deployment	The MPS do not expressly refer to "starting a deployment" in their recognition that SDS and NPOIU officers are in a different category. The NPSCPs submit that the same considerations apply in relation to this ground as apply in relation to grounds 12 and 13 above and thus SDS, NPOIU and other political policing undercover deployments should be treated separately, with information about the starting of such deployments being disclosed unless the cover name of the officer concerned has been restricted.

Umbrella Term	Open Category	NPSCP Submissions
	15. Code-name(s)	Where code-names have previously been disclosed in respect of UCOs, they should not now be redacted. For example, it has previously been disclosed that Mark Kennedy's code-name in the Ratcliffe-on-Soar case was UCO133. Further, code-names of the format "UCO" and then a number do not reveal anything about the methodology of code-names more generally. In circumstances where code-names are relevant and necessary to an issue to be investigated by the Inquiry they should be disclosed unless it can be shown that doing so would lead to harm of a nature and degree that outweighs the starting point of openness in the Inquiry's process and any other particular public interest in their disclosure.
	16. Format of intelligence	This ground of restriction is strongly contested. In terms of MPS Special Branch, and in particular, the SDS, the format of intelligence is historical in nature. Disclosure of the format would not pose any risk of harm to current methods. In any event, it is understood that since the late 1990s, UK police have adopted the 'National Intelligence Model'. This process has been publicly disclosed in various documents released by the police - see, for example, https://ict.police.uk/national-standards/intel; http://library.college.police.uk/docs/npia/NIM-Code-of-Practice.pdf; https://www.avonandsomerset.police.uk/about-us/freedom-of-information/previous-foi-requests/information-sharing/intelligence-handling/. Similar arguments arise in relation to other records and formats, such as the standard Special Branch reports, examples of which have been released to journalists in response to FOIA requests - see SpecialBranchFiles.uk. There is no justification for restriction of formatting that has already been explained in the public domain by police bodies and/or is historical in nature. The police contention that disclosing the format in which intelligence is documented risks compromising the system, because it makes intelligence easier to forge and assists those trying to 'blag' information, is untenable given the level of information the police themselves publish in relation to the formatting of intelligence material. Likewise, the police argument that formatting should be routinely redacted as a matter of course does not hold up given that restriction of the formatting would require the

Umbrella Term	Open Category	NPSCP Submissions
		contents to be transcribed for disclosure. Where there is no proper basis for the restriction of formatting this is a waste of time and resources and risks errors being made and relevant evidence being "lost in translation". Of particular relevance is the use of 5x5x5 intelligence forms. The format and guidance in relation to this format is available publicly on-line - see, for example http://library.college.police.uk/docs/APPref/how-to-complete-5x5x5-form.pdf; https://www.app.college.police.uk/app-content/intelligence-management/intelligence-report/; http://library.college.police.uk.docs/APPref/5x5x5-Information-Intelligence-Report.pdf. It is known from the Ratcliffe-on-Soar disclosure that the 5x5x5 intelligence format was used by the NPOIU. Information in this format, including the ranking of intelligence, authorship and dissemination, is likely to play an important role in understanding a number of issues under the Inquiry's ToR. Further, it, in itself, is understood to be in the process of being moved to the 3x5x2 model, and so is becoming historic: https://www.btp.police.uk/pdf/FOI%20Response%20363-16%20Data%20Uploads%20to%20PND.pdf. It is of some significant concern to the NPSCPs that the police seek to redact formatting when the above information has been put into the public by the police themselves.
	17. File references	Similar arguments apply as in relation to ground 16 above. Many file references are already in the public domain. A distinction should be drawn between historical file references and those which are current and not already in the public domain. The former category should not be restricted.
	18. Names of sensitive operations	The NPSCPs accept that it will be appropriate to restrict the names of genuinely sensitive operations and departments where it is established that disclosure of the specific information in question would give rise to a risk of harm of such nature and degree as to outweigh the public interest in disclosure. However, it is not accepted that operation names and the names of departments should routinely be redacted on the basis of expediency. First, the contention that it would take a disproportionate amount of resources to ascertain which operations/departments are genuinely of on-going sensitivity is unconvincing. Any genuinely sensitive operation or department will have

Umbrella Term	Open Category	NPSCP Submissions
		been risk assessed by the relevant force as part of the on-going management of risk. That will happen in any event and entirely independently of this Inquiry. If the operation or department has not been so assessed then it is unlikely to be genuinely sensitive. It is disingenuous for the police not to acknowledge the wider processes that forces undertake in respect of the management of information and the risks pertaining to them. It is submitted that proper consideration must be given to the relevance of operations and departments referred to in the documents the Inquiry receives and where these are relevant and necessary to the ToR, the existing processes for managing sensitive police information should be drawn on in order to assess whether restriction is properly justified, taking into account the risk of harm arising from disclosure of that piece of information and the balance of public interest for and against disclosure.
	19. Sensitive asset and/or infrastructure This might apply, for example, to a physical or electronic asset	A distinction should be drawn between assets and infrastructure that are currently in use and those which are historic. It is not accepted that where assets, such as covert addresses, are no longer in use the level of residual risk is such as to justify restriction. The submissions served with this spreadsheet make the point that none of the former SDS or NPOIU officers disclosed to date has suffered any form of physical harm or threat of physical harm. The suggestion that harm might be done to the current occupiers of covert addresses on the basis that those addresses were once used by the SDS or NPOIU, or comparable units engaged in political policing, is fanciful. By contrast, disclosure of covert addresses used by such units is likely to be an important part of the narrative when investigating the impact of deployments on those spied upon. Likewise there is likely to be significant public interest in disclosure of assets and infrastructure that were used to infiltrate those targeted by such units, given that this is likely to be relevant to the nature and degree of the intrusion. In these circumstances, assets and infrastructure used by the SDS, the NPOIU and other units engaged in similar deployments should be subject to specific assessment of the risk of harm arising from disclosure and the balance of public interest. They should never be routinely redacted as a matter of course.

Umbrella Term	Open Category	NPSCP Submissions
		In relation to references to databases, the names and existence of a number of databases are already in the public domain. These should not be redacted. In relation to other databases, where these are assessed as being relevant and necessary to the Inquiry's terms of reference, a specific assessment of the risk of harm arising from disclosure of their name and existence should be conducted, along with a specific assessment of the balance of public interest in their disclosure. Where the names of databases are to be restricted, ciphers should be assigned.
	20. Location of documents	It is accepted that geographical locations need not be disclosed. However, where descriptive locations are already in the public domain, for example the "Special Branch Registry", then such descriptors should not be restricted. Where such descriptors are not already in the public domain they should not be restricted unless disclosure gives rise to a genuine risk of harm of such nature and level as to outweigh the public interest in disclosure. Where such descriptors are properly restricted, a cipher should be assigned in order that it is possible to ascertain where documents have come from the same location.
	21. Capacity	The NPSCPs understand "capacity" in this context refers to numbers of undercover officers and budgets and expenditure on undercover operations. If this understanding is correct, then it is submitted that this ought not to be a ground for restriction in respect of the SDS, NPOIU and any other historical department which conducted comparable undercover deployments. Some of this information is already in the public domain in respect of the SDS. In any event, given the historical nature of these departments the risks identified in Alan Pughsley's witness statement in respect of the release of such information does not arise. Further such information is of significant relevance to the Inquiry's ToR and there is strong public interest in its disclosure in relation to these units.
	22. Focus of resources	The same arguments apply as in relation to ground 21 above.
OTHER Including national security; harm to	23. Damage to commercial interests/ suppliers e.g. tendering	A distinction should be drawn between current and historical material. Such information that is relevant to the Inquiry's ToR should not be redacted unless there is a genuine risk of harm in relation to disclosure of the specific information of a nature

Umbrella Term	Open Category	NPSCP Submissions
international relations; damage to commercial interests; reporting restrictions in place in other legal proceedings; and sensitive information considered to be of limited relevance/necessity where it would be disproportionate to require a full application to restrict		and degree that outweighs the public interest in disclosure. Further, information falling within this category should not be restricted where it relates to blacklisting, the passing of information relating to individuals or groups to third parties, or where the SDS, NPOIU or other comparable units have engaged or co-operated with corporate or private covert operatives.
	24. Warrant number	The NPSCPs' submissions in respect of warrant numbers are set out at [58a] of the submissions served together with this spreadsheet.
	25. Names/ roles of departments	See submissions in relation to ground 18 above and at [58b] of the submissions served with this spreadsheet.
	26. Nature of someone's historic work (where only current work relevant)	See [58b] of the submissions served with this spreadsheet.
	27. Sensitive: other A gist will be applied where possible to do so without undermining the restriction made	CPs should be afforded an opportunity to make submissions in respect of any grounds arising in this category as and when they are relied upon as a basis of redaction.
	28. Sensitive and outside the Inquiry's ToR This is intended to be used where information appears in an otherwise relevant and necessary document but falls outside the ToR and is sensitive	It is accepted that if information is genuinely sensitive and falls outside the Inquiry's ToR then it may properly be restricted. However, only genuinely sensitive material should be redacted on this basis.

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19 April 2018