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## COUNSEL TO THE INQUIRY'S EXPLANATORY NOTE TO ACCOMPANY THE 'MINDED TO' NOTE IN RESPECT OF APPLICATIONS FOR RESTRICTION ORDERS OVER THE REAL AND COVER NAMES OF OFFICERS OF THE NATIONAL PUBLIC ORDER INTELLIGENCE UNIT AND ITS PREDECESSOR/SUCCESSOR UNITS

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### Applications

1. On 2 May 2018 the Chairman published a 'Minded to' note regarding applications for restriction orders over the real and/or cover names of a number of officers who were seconded to the National Public Order Intelligence Unit and/or those units which preceded and succeeded it.
2. The purpose of this explanatory note is to summarise:
  - a. The provisional decisions made by the Chairman to date, as set out in his 'Minded to' note dated 2 May 2018;
  - b. The background to the National Public Order Intelligence Unit and, where relevant, its predecessor and successor units; and
  - c. The Inquiry's approach to receiving and determining anonymity applications made on behalf of police officers (and in particular undercover officers) who were seconded to the National Public Order Intelligence Unit.

### The 'Minded to' position and overview

3. The position set out in the Chairman's 'Minded to' note, dated 2 May 2018, is as follows:

Nominal	Position
EN1	The cover name "Marco Jacobs" has been published. The real name cannot be published.
EN33	Neither the cover nor real name can be published.
EN34	The real name cannot be published. The Chairman refuses to make a restriction order in respect of the cover name.
EN35	There will need to be a closed hearing before a decision can be made.
EN36	Neither the cover nor real name can be published.
EN38	Neither the cover nor real name can be published.

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Nominal	Position
EN39	Neither the cover nor real name can be published.
EN40	Neither the cover nor real name can be published.
EN41	Neither the cover nor real name can be published.
EN42	Neither the cover nor real name can be published.
EN43	Neither the cover nor real name can be published.
EN47	Neither the cover nor real name can be published.
EN48	Neither the cover nor real name can be published.
EN74	Neither the cover nor real name can be published.
EN287	The application for a restriction order in respect of his real name is refused.
EN288	Neither the cover nor real name can be published.
EN289	The real name cannot be published. The application for a restriction order in respect of the cover name will be determined later.
EN327	EN327 is the same person as HN66, addressed in the <a href="#">fifth 'Minded to' note</a> in respect of Special Demonstration Squad anonymity applications. The real name cannot be published. The application for a restriction order in respect of the cover name is refused to the extent that it would prohibit disclosure of the names by which EN327 was known by members of the groups targeted.
EN507	Neither the cover nor real name can be published.
EN808	Neither the cover nor real name can be published.
EN1001	Neither the cover nor real name can be published.

4. The primary focus of this part of the anonymity process has been on undercover officers seconded to, and deployed by, the National Public Order Intelligence Unit. The National Public Order Intelligence Unit was in existence between 1999 and 2010. The Inquiry's investigation of this period has also identified officers who worked with the unit from which the National Public Order Intelligence Unit developed, the Animal Rights National Index, and the National Public Order Intelligence Unit's successor unit, the National Domestic Extremism Unit. Both those units are the subject of investigation by the Inquiry. Where applications for anonymity on behalf of such officers have been received by the Inquiry and a provisional decision has been made by the Chairman, those provisional decisions are included in this 'Minded to' note: see, for example, EN287, EN289 and EN808.
  
5. The officers who are believed to have done work in connection with undercover policing for the National Public Order Intelligence Unit have each been allocated a

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nominal by Operation Elter, the police investigation of the National Public Order Intelligence Unit. For ease of reference and to assist the process of inspecting and obtaining evidence held by Operation Elter, the Inquiry has adopted those nominals. Those officers' nominals therefore contain the prefix "EN", which stands for "Elter Nominal". This approach is consistent with the approach adopted to date by the Inquiry in connection with applications for anonymity concerning Special Demonstration Squad undercover officers. Those familiar with the work of the Inquiry in connection with the Special Demonstration Squad will be used to seeing nominals with the prefix "HN", which stands for "Herne Nominal", Operation Herne being the police investigation of the Special Demonstration Squad.

6. In terms of progress, the Chairman has now considered applications for anonymity made on behalf of a large proportion of the undercover officers who were deployed for significant periods of time by the National Public Order Intelligence Unit. A small number of such applications are yet to be considered because they are not yet complete. They will be considered as soon as the outstanding supporting evidence is received by the Inquiry. It is anticipated that applications for anonymity made on behalf of cover officers and senior managers seconded to the National Public Order Intelligence Unit will also be determined later this year.
7. In addition, the Inquiry has also considered (and may need to consider in the future) some anonymity applications made on behalf of undercover officers who were deployed for relatively limited periods by the National Public Order Intelligence Unit. An example of such an officer who features in the 'Minded to' note dated 2 May 2018 is EN1001. In relation to EN1001, who performed a peripheral supporting role in one operation for a short time in the late 2000s, the Chairman notes that it is unlikely that the Inquiry will need to receive or take into account evidence from EN1001 so as to permit it to fulfil its terms of reference.
8. In relation to the National Public Order Intelligence Unit, the Inquiry recognises that there may be some concern at the number of officers in respect of whom the Chairman is minded to make a restriction order which encompasses real and cover names. At the root of many of the challenges facing the Inquiry are the difficulties inherent in conducting a *public* inquiry into *undercover* policing. Those difficulties have been shown to be particularly acute in relation to determining these anonymity applications. As explained below, the Inquiry has followed and applied the now well-established principles which govern the Inquiry's approach to applications for restriction orders: see Sir Christopher Pitchford's ["Restriction Orders: Legal Principles and Approach Ruling"](#), dated 3 May 2016. In summary, applying those principles, the Chairman's provisional decision in many of these cases is that the work done by the officers before and/or after their secondments to the National Public Order

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Intelligence Unit is such that the risk to the public interest and/or the individual in revealing their real identities or the cover identities used by them during their secondments to the National Public Order Intelligence Unit outweighs the competing factors and therefore prevents public disclosure of those identities.

9. These provisional decisions will be the subject of an OPEN hearing on 5 July 2018, at which the core participants will have the opportunity to make submissions in relation to these provisional decisions.
10. CLOSED hearings in relation to the applications made on behalf of EN34 and EN35 are scheduled to take place before 5 July 2018.
11. Ahead of the OPEN hearing on 5 July 2018, in respect of officers where the Chairman is minded to restrict real and cover identities, the Inquiry will publish OPEN versions of the applications and supporting evidence. In relation to EN1 (“Marco Jacobs”), in respect of whom the Chairman is presently minded to restrict publication of his real name, an OPEN version of the application will be published but there will be no publication of the supporting evidence unless the Inquiry Legal Team considers that there is an unusual feature of a kind which the non-police, non-state core participants have not yet had an opportunity to respond to in earlier restriction order applications. This approach to the publication of anonymity applications and material relied on in support is consistent with the [Chairman’s statement in relation to anonymity applications, dated 22 February 2018](#).

### **The National Public Order Intelligence Unit: summary background**

12. In summary, the Inquiry’s present understanding is as follows: In or around 1986, the Special Branch network set up the Animal Rights National Index (sometimes referred to as ‘ARNI’). In or around 1999, the Animal Rights National Index was developed into the National Public Order Intelligence Unit. The National Public Order Intelligence Unit’s role was to manage all intelligence considered to relate to domestic extremism. The work of the National Public Order Intelligence Unit included carrying out undercover policing operations. In or around 2010, the National Public Order Intelligence Unit merged with the National Extremism Tactical Co-ordination Unit and the National Domestic Extremism Team (units sometimes referred to as ‘NETCU’ and ‘NDET’). These three merged units became the National Domestic Extremism Unit (sometimes referred to as the ‘NDEU’).
13. Officers, including undercover officers, were seconded to the National Public Order Intelligence Unit from the Metropolitan Police Service and regional police forces. Most if not all of the undercover officers had significant experience of being deployed as undercover officers in criminal investigations. In a number of instances, this

experience included being deployed against serious, organised crime. The length of the secondments to the National Public Order Intelligence Unit varied significantly. In many cases the undercover officers returned to police forces at the conclusion of the secondment and also returned to undercover deployments. Again, in a number of cases, those subsequent deployments were against serious, organised crime. The fact that these deployments took place relatively recently is also significant in that context. Furthermore, as made clear in the Chairman's 'Minded To' note, dated 2 May 2018, a number of the undercover officers seconded to the National Public Order Intelligence Unit either continue to perform undercover duties or are available to do so. It should be noted that these features of the working lives of undercover officers seconded to the National Public Order Intelligence Unit are not normally encountered by the Inquiry when considering applications concerning Special Demonstration Squad officers.

14. Indeed, as referred to above, it is these features of the working lives of undercover officers seconded to the National Public Order Intelligence Unit that have led the Chairman, in a number of cases, to determine provisionally that there would be a real risk of harm to the public interest and/or the individual if an officer's real and/or cover identity were to be published.

### **The Inquiry's approach to receiving and determining these applications for anonymity**

#### *The Inquiry's approach to restricting information generally*

15. The Inquiry has repeatedly set out its commitment to conducting the Inquiry as openly as it reasonably can. Sir Christopher Pitchford stated in paragraph 18 of his [Opening Remarks](#), dated 28 July 2015, "*This is a public inquiry to which, as the name implies, the public will have access.*" The Inquiry's website states that, "*The Inquiry is committed to being as transparent as possible and will release as much information about its work as possible, subject to legal or operational issues.*" In paragraph 9(i) of his statement dated 20 November 2017, the present Chairman, Sir John Mitting, stated:

*"In every case in which it can be done without disproportionate damage to the public interest or harm to the individual concerned, the cover name of a deployed undercover officer will be published. Publication may prompt valuable evidence from those outside the police about the deployment whether it was justified; what happened during it; whether the officer so conducted him or herself as to harm the legitimate interests of others. Unless the cover name is published the full picture about a deployment may never be revealed."*

That always has been, and continues to be, the Inquiry's starting point, when considering an application for anonymity on behalf of a current or former undercover police officer.

16. However, the Inquiry also acknowledges that the legal and operational issues which the Inquiry must have regard to during this process are complex. The police services and other state bodies are anxious that nothing should be publicly disclosed that would create a risk of damage to the public interest. Also, present and former police officers (as well as some non-police, non-state core participants and witnesses who may have been affected by undercover police operations) either have applied or will apply for anonymity on the basis that they wish to protect their rights under the European Convention on Human Rights.
17. Consequently, as Sir Christopher Pitchford stated in paragraph 12 of his "Restriction Orders: Legal Principles and Approach Ruling", dated 3 May 2016:

*"There is an obvious tension between two competing public interests that arise for consideration in this Inquiry:*

- (i) the need to examine as publicly as possible evidence, documents and information about undercover policing, a matter that has attracted widespread public concern; and*
- (ii) the need to keep secret evidence, documents and information about undercover policing whose disclosure may cause harm to the public or to an individual.*

*It is the correct balance to be struck between these two competing public interests that will be central to the Inquiry's consideration whether, and if so in what terms, to impose a restriction order on disclosure of evidence, documents and information under section 19 of the Inquiries Act 2005."*

18. The Inquiry is therefore consistently required to determine questions regarding what can and cannot be safely put into the public domain. Determining those questions requires a balancing exercise that necessarily involves assessing the risk and/or level of harm to the public interest or to an individual that would follow either disclosure or non-disclosure of the information in issue.
19. The Inquiry has always recognised that perhaps the most fundamental context in which this issue arises is when determining an application to restrict the real or, in particular, the cover name of an undercover officer. The Inquiry recognises that if an undercover officer's cover name can safely be published, then the Inquiry can solicit evidence from members of the public who might have been affected by that officer's

activities. Likewise, if an undercover officer's cover name can safely be published, then the Inquiry can receive the officer's evidence in public (with protections if these are necessary) and take steps to publish documents associated with the relevant deployment(s). However, the prerequisite for the taking of any of these steps is that an officer's cover name can safely be published. In a number of these cases, a principled approach to that question has led the Chairman to conclude, on a minded-to basis, that, were the cover name to be published, the risk to the public interest and/or officer's safety would outweigh the competing factors.

### *Receiving and determining anonymity applications concerning National Public Order Intelligence Unit officers*

20. The investigation of the National Public Order Intelligence Unit continues to be a priority for the Inquiry. The Inquiry has commenced officer-by-officer investigations of those undercover officers who were deployed for significant periods of time by the National Public Order Intelligence Unit. Accordingly, the Inquiry has provided an opportunity for all such undercover officers who were seconded to the National Public Order Intelligence Unit and of whom the Inquiry is currently aware to apply for anonymity.
21. The Inquiry's approach to receiving and determining anonymity applications made on behalf of police officers (and in particular undercover officers) who served in the National Public Order Intelligence Unit has been the subject of some previous commentary: see in particular [Counsel to the Inquiry's Note for the Hearing on 5 April 2017](#), dated 2 March 2017, and [Counsel to the Inquiry's Supplementary Note for the Hearing on 5 April 2017](#), dated 4 April 2017.
22. In summary, the approach adopted has been as follows:
  - a. Letters were sent to undercover officers, cover officers and some managers associated with the National Public Order Intelligence Unit, informing them of the Inquiry's interest in obtaining evidence from them, the availability of legal representation and the opportunity to apply for anonymity. The Inquiry was able to deliver those letters via the police forces with responsibility for the officers/former officers concerned. Officers secured legal representation and replied to the Inquiry to indicate whether or not they wished to apply for anonymity.
  - b. A system for the production of risk assessments in relation to such officers was agreed with the National Police Chiefs' Council. Risk assessments are produced by two risk assessors engaged by the National Police Chiefs' Council

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for this purpose who operate in conjunction with the Operational Security officer network that exists across the country within Regional Organised Crime Units.

- c. Once legal representation was established, timetables were then set in relation to the first tranche of anonymity applications, with the Inquiry's primary focus, initially, being on the undercover officers who were deployed for significant periods of time.
- d. The applicant for anonymity was required to produce a summary application setting out the grounds on which the restriction order would be sought and a personal statement from the officer setting out why they wished to apply for anonymity. These statements would ordinarily contain information about the officer's deployment history. At that stage, the officer was also required to provide written confirmation as to whether or not they intended to rely on either expert medical evidence or, if necessary, an expert risk assessment report.
- e. As explained in Counsel to the Inquiry's Supplementary Note for the Hearing on 5 April 2017, dated 4 April 2017, the Inquiry agreed with the submission made on behalf of the National Police Chiefs' Council that a mechanism should exist to avoid delay and wasted resources in the event that there is a seemingly very strong case for anonymity on a narrow ground. In cases where it considers that a particular ground appears very strong, the Inquiry Legal Team will place before the Chairman the signed personal statement from the officer. If the Chairman considers that this evidence is sufficient that he would make an order for anonymity irrespective of any other ground that might also be advanced, the applicant will be notified that they can pause the preparation of any further evidence. Regarding the minded-to note dated 2 May 2018, the Chairman has made provisional decisions on this basis in relation to EN39, EN42, EN43, EN507, EN808 and EN1001.
- f. If, having considered those documents, the Chairman wishes to be provided with further information in relation to an application, the Inquiry will request it. If the Chairman considers, in light of that further information, that the evidence is sufficient that he would make an order for anonymity irrespective of any other ground that might also be advanced, he will prepare a minded-to decision on that basis. Regarding the 'Minded to' note dated 2 May 2018, the Chairman has made provisional decisions on this basis in relation to EN36 and EN288.
- g. If the Chairman does not agree that it is a clear case for anonymity, the applicant follows the normal course of providing a fully evidenced application, including a full expert risk assessment report. Regarding the 'Minded to' note dated 2 May 2018, the Chairman has considered the following applications on

the basis of material which includes a full expert risk assessment report: EN1, EN33, EN34, EN35, EN38, EN40, EN41, EN47, EN48, EN74, EN287, EN289 and EN327. EN327 is the same person as HN66, addressed in the fifth 'Minded to' note in respect of Special Demonstration Squad anonymity applications. EN327/HN66 was deployed by both the National Public Order Intelligence Unit and the Special Demonstration Squad.

- h. When the Chairman is satisfied that he has the information he needs properly to determine an application, he does so on a 'Minded to' basis. Anyone who wishes to oppose a provisional decision will have the opportunity to do so.
23. As set out above, these provisional decisions will be the subject of an OPEN hearing on 5 July 2018. CLOSED hearings in relation to the applications made on behalf of EN34 and EN35 are scheduled to take place before 5 July 2018. Ahead of the hearing on 5 July 2018, as set out above and in accordance with its established practice, the Inquiry will publish OPEN versions of the relevant application material.

STEVEN GRAY

02 May 2018