

IN THE MATTER OF THE UNDERCOVER POLICING INQUIRY

**NOTE ON BEHALF OF
THE NON-POLICE, NON-STATE CORE PARTICIPANTS
IN RELATION TO THE RESTRICTION ORDER APPLICATIONS OF
HN1, HN3, HN8, HN9, HN12, HN19, HN20, HN27, HN60, HN72,
HN355, HN353, HN6, HN21, HN28, HN53, HN76, HN86/ HN1361,
HN87, HN101, HN102, HN112, HN91, HN97, HN88, HN340, HN354,
HN155, HN106, HN44, HN65, HN67, HN80, HN90, HN303 & HN351**

INTRODUCTION

1. The NPSCPs object to the granting of restriction orders in respect of each of the above officers. As with previous anonymity applications, the Inquiry has made inadequate disclosure of the underlying material and the NPSCPs are therefore precluded from effectively participating in this process.
2. Further, such underlying material as has been disclosed was provided only a very short time before submissions were required to be filed: 31 documents in respect of the first 11 officers above were provided on 3 July; and a further 54 documents in respect of the remaining 24 officers on 9 July less than two weeks before the deadline of 20 July for service of submissions. That is all the time that the Inquiry allowed the NPSCP group, which comprises over 200 individuals, to read the material, consider and agree what submissions are to be made and for the submissions to be drafted, considered, amended and approved. The co-ordinator of the NPSCP group applied for an extension of time, but this was refused. This is in contrast to the position in relation to the MPS and individual officers who have been afforded many months to provide the material to the Inquiry. Such a procedure is neither fair, nor conducive to the Inquiry reaching properly informed decisions. It deepens the NPSCPs' concern that their

contribution is treated by the Inquiry as mere formality, rather than as an integral part of the process. This is apparent both in the current process for determining restriction order applications, but also in the substance of those decisions.

3. As the NPSCP submissions in response to the Strategic Review set out, the Chairman's approach to the granting of restriction orders fails to take proper account of the need to receive evidence and information from non-state participants during the substantive phase of the Inquiry. Non-state participation in relation to the broadest possible range of deployments is necessary if the Inquiry is to reach credible conclusions about the systemic issues raised in the terms of reference.
4. It is apparent from the Chairman's previous rulings, his comments in the forward to the Strategic Review and in his brief responses to the NPSCP Strategic Review submissions that he is not taking this into account. In particular:
 - a. he is not having proper regard to the impact of restriction of cover names on the ability of NPSCPs to participate effectively in the Inquiry; and
 - b. is not having proper regard to the impact of restriction of cover names on the ability of non-state individuals who are not already NPSCPs to come forward to provide relevant evidence to the Inquiry.
5. The NPSCPs do not suggest, and have never suggested, that these are the only factors to be taken into consideration by the Chairman when assessing whether or not a restriction order is justified under either s.19(3)(a) or (b) IA 2005. However, they are both material factors, which the Chairman has to date failed properly to consider, whether assessing the public interest balance under s.19(3)(b), or assessing whether restriction is required to give effect to the applicant's Convention rights for the purposes of s.19(3)(a), or for the purposes of fairness under s.17(3): see Legal principles ruling [152]; A3; C2(7) & (8); C3(7) & (8).

6. The vast majority of the Chairman's rulings and minded to indications make no mention at all of any negative impact on the public interest as a result of the restriction under consideration. Out of the 17 cover name applications currently under consideration, only 5 of the minded to indications acknowledge any negative impact at all of the restriction being granted. All of those 5 make clear how little weight is attached to what is lost see below in relation to HN355 [32]-[35]; HN21 [41]-[44]; HN101 [53]-[57]; HN102 [58] and HN91 [63]-[67].
7. Implicit in this approach is the assumption, as made explicit at (iii) of the Chairman's forward to the Strategic Review, that the Inquiry can fulfil its purposes even if it does not receive evidence from significant non-state witnesses. That is simply not right for all of the reasons set out in the NPSCPs' submissions in response to the Strategic Review.
8. The submissions below set out such points and concerns as the NPSCPs are able to raise on the current disclosure and in the brief time they have been afforded. They reserve the right to make further submissions and to ask for any restriction orders granted to be reviewed if and when further disclosure is made, or if fresh points become apparent once those who have been unable to consider the material fully in the limited time allowed have had a proper opportunity to do so.

"The deployment was unremarkable"

9. The Chairman makes this assertion in respect of four of the current officers (HN8, HN3 (Jason Bishop), HN19 (Malcolm Shearing), HN60 (Dave Evans)). In respect of a further four officers, it is stated that their deployments "appear" to have been unremarkable (HN355, HN20 (Tony Williams), HN353 (Gary Roberts) and HN354 (Vince Miller)).
10. As the NPSCPs have previously submitted, it is simply not possible at this stage of the Inquiry, and without having heard from non-state witnesses, for

the Chairman to conclude that a deployment was unremarkable¹. That is to assume one of the matters that the Inquiry is tasked with investigating.

11. In the case of Jason Bishop, the assertion is already demonstrably false. As the Inquiry is aware, Bishop is alleged to have been involved in the events surrounding the detention by police of coaches travelling to RAF Fairford in March 2003, which were the subject of a legal challenge, considered by all levels of court up to the House of Lords. As far as is presently known, Bishop's involvement was concealed from the courts. It is also possible that Bishop, as a member of Disarm DSEi at the material time, had relevant (and undisclosed) involvement in another prominent case, R (Gillan) v Commissioner of Police of the Metropolis [2006] 2 AC 307, which, was not only considered all the way up to the House of Lords domestically, but was also adjudicated on by the European Court of Human Rights. He is also known to have been arrested twice in his undercover identity: once driving a van of manure to the Guerrilla Gardening Mayday in 2000 and once at the G8 in Scotland in 2005 as part of a large-scale police operation. It is understood that on that occasion charges were dropped shortly before the defendants were due to appear in court². He is also known to have taken part in many instances of direct action involving criminal damage, both as a driver and as a participant. This is in no sense an "unremarkable" deployment.

12. Likewise in relation to Dave Evans, it is understood that Evans was Bishops' flatmate whilst deployed and was also arrested with him at the G8 in Scotland in 2005. Indeed, it is alleged that Evans was driving the minibus in which all of the arrestees were travelling at the time of their stop and arrest³. Further, Evans was deployed against Stop Huntingdon Animal Cruelty.

¹ See para. 4 of Note on behalf of NPSCPs dated 8 May 2018 https://www.ucpi.org.uk/wp-content/uploads/2018/05/20180508-NPSCP_note_9_May_2018_hearing.pdf

² <https://netpol.org/2013/07/25/jason-bishop-new-allegations-of-undercover-policing-of-protest/>

³ <https://www.thecanary.co/uk/2015/12/21/exclusive-undercover-police-revealed-scandal-spreads/>

Members of SHAC were arrested and sent to prison, raising questions about Evans' involvement in miscarriages of justice. As with Bishop, Evan's deployment was far from "unremarkable".

13. The NPSCPs are able to draw these points to the Inquiry's attention, because Bishop and Evans' cover names have been released. They are, however, alarmed that the Chairman should have described these deployments as "unremarkable" given that most, if not all, of the above information is already known to him. This exacerbates the NPSCPs' concerns about the same description having been used in respect of other deployments, such as those of HN8 and HN355, in the present cohort, and this being a factor in the Chairman's decision not to release the cover names, thereby precluding evidence and information to the contrary from coming out.
14. It is also of very significant concern to the NPSCPs that the Chairman has described Vince Miller's deployment as appearing to have been "unremarkable", notwithstanding that he has "voluntarily admitted to fleeting sexual encounters with different female activists during his deployment". The Chairman adds that this was "before his marriage." It is not clear whether, in the Chairman's view, it is the fact that the officer was not married at the time which makes it possible to dismiss the deception of women into a sexual encounter as "unremarkable". If the Chairman is placing reliance on the reference to "fleeting, disastrous relationships" in the Tradecraft manual, it is submitted that:
 - a. the Tradecraft manual does not authorise or endorse such relationships, it merely expresses the view that if an officer has "no other option" he should try to have "fleeting, disastrous relationships" rather than becoming involved with those on whom he was spying;
 - b. in any event, as far as the NPSCPs understand its status, the Tradecraft manual is not a statement of MPS policy or a set of instructions to UCOs;
 - c. further, even if the Tradecraft manual were to be read as purporting to condone "fleeting, disastrous relationships", this would not make them lawful or acceptable or "unremarkable". Indeed, it would only

underscore the public interest in open investigation, not only of the underlying conduct, but also of the extent of knowledge, complicity and/or endorsement of it within the MPS and other state bodies.

15. The NPSCPs have previously raised, in relation to HN302, that it is at least arguable that a sexual encounter, even if “fleeting”, which was conducted by someone whose entire identity was fabricated, for the purposes of furthering or maintaining an officer’s cover in circumstances where he had led the woman to believe it was for the purpose of mutual gratification, would constitute a deception as to the nature or purpose of the relevant act such as to vitiate consent⁴. The Chairman’s response was to reject this as a reason for needing to enquire into the deployment⁵. The NPSCPs find this an extraordinary conclusion. The explanation given by the Chairman was that to determine whether or not a criminal offence was committed would require him to infringe section 2(1) of the Inquiries Act 2005. However, with respect, that response is to miss the point of the NPSCPs’ submission. They are well aware of the prohibition contained in section 2(1) of the Inquiries Act 2005. However, this does not mean that the Inquiry is precluded from enquiring into conduct by UCOs on the basis that that conduct might be criminal, or might give rise to civil liability. If that were the case, the Inquiry would be unable to enquire into much of the conduct which led to it being set up in the first place. If an officer has, in the course of his or her deployment, engaged in activities which may contravene the criminal law, then that is likely to be an issue of significant relevance to a number of aspects of the terms of reference, and is something which the Inquiry must investigate. In expressing its conclusions, the Inquiry will, of course, have to ensure that it does not purport to express a concluded determination of any person’s criminal or civil liability, but nothing in s.2(1) IA 2005 precludes

⁴ See para. 12 of Note on behalf of NPSCPs dated 8 May 2018. “Monica” has now been granted permission in judicial review proceedings raising the issue of deception vitiating consent in the context of the refusal by the CPS to bring charges against Jim Boyling.

⁵ Restriction order ruling dated 15 May 2018, para. 5.

the Inquiry from investigating relevant conduct on the basis that the conduct in question might breach the criminal law (or give rise to civil liability).

16. The conduct of sexual relations by an undercover officer in his or her covert identity in the course of his or her deployment cannot properly be dismissed as “unremarkable” and ought properly to be recognised by the Chairman as a matter which requires investigation.

Disclosure of groups

17. The NPSCPs repeat their submission that the groups reported on by undercover officers should be disclosed far more comprehensively than they are at present. In the context of restriction order applications, this would enable RLRs to take targeted instructions from those NPSCPs with most relevant information to give and submissions to make. It is not accepted, in the vast majority of cases, that disclosure of the fact that a particular group was reported on would lead to revelation of a cover name, let alone revelation of a real name. Further, it is noted that even in relation to the officers whose cover names have now been disclosed (some of whom are seeking real name restriction) a full list of the groups they reported on has not been disclosed. There cannot be any proper justification for this – see further the NPSCPs’ submissions in response to the Strategic Review on the issue of “targeting” vs collateral intrusion and the impact on the Inquiry’s ability to get to the truth if it accepts the police account of the distinction. It is submitted that all of the groups that an officer reported on should be disclosed wherever possible and certainly where a cover name is not restricted.

Specific cover and real name applications

HN8

18. As above, HN8 is one of the officers whose deployment is described by the Chairman as “unremarkable”. The Chairman is “minded to” restrict both cover and real names on the basis of a real risk of interference with the

officer's physical integrity and the ability to perform socially useful and remunerative work. The Chairman's position fails to reflect the separation between this officer's real and cover names. Although the risk assessment assesses the risk of physical harm should the **real identity** be disclosed as "very high" (5) and the impact "serious" (4), it says that "*Were N8 to give evidence in his/her **cover name**, screening and voice modulation would mitigate the risk of harm to N8. If these precautions are in place, then in the risk assessor's opinion, the likelihood of the increase in risk of physical harm to N8 should N8's cover name be disclosed is **low (2) and is considered unlikely.***"

19. The risk assessment also acknowledges that this officer is likely to be of high interest to the media and interested parties⁶. This suggests that there is particular public interest in openness in relation to this officer. The NPSCPs note that he was arrested during the course of his deployment, but not charged. Did he accept a caution, or similar in his cover name? The additional information provided states that other members of HN8's target group were also arrested the same day and some were prosecuted and convicted of public order offences and received fines. What steps is the Inquiry taking to investigate whether HN8 was involved in potential miscarriages of justice and how does the Chairman consider that investigation to be adequate without receiving information from the non-state parties involved?
20. The NPSCPs submit that a "low", i.e. "unlikely" risk of harm ought not properly to be assessed as outweighing the public interest in openness, including, but not limited to, the ability of any NPSCP on whom HN8 reported to participate effectively in the Inquiry and the Inquiry's ability to receive relevant evidence and information from any non-state individual who is not currently a CP. This includes, but is not limited to, the investigation of whether HN8 was involved in miscarriages of justice.

⁶ See cross-ref at [19.7] of the RA to what is said at [16.1].

HN9

21. It is clear that this is a significant officer in that, not only was he deployed himself, but he also acted as a cover officer for a number of UCOs whose deployments are of interest to the Inquiry in the 2000s. The Chairman acknowledges that there is no risk to the safety of HN9 from any member of the target group, nor do members of the group pose any risk of interference with family or private life. However, the Chairman is “minded to” grant restriction of this officer’s cover and real names, because, in the opinion of Dr Busuttil, HN9 is at risk of suicide if his real or cover names were to be disclosed. The Chairman describes this opinion as “startling”.
22. The NPSCPs can only repeat the submissions they have made previously in respect of other officers who have made similar claims, or who claim that they will suffer psychiatric harm if their cover and/or real names are released. The Inquiry must be alert to the possibility of deception. SDS officers were trained, professional liars, many of whom successfully faked mental breakdowns as part of their exit strategies. They deceived close partners who had known them intimately and shared their daily lives for years.
23. Further, it is a notable feature of the anonymity applications that so many of the officers identify as liable to suffer from mental health problems or an aggravation of the same arising from the prospect of being identified as having acted undercover. This uniformity is in itself surprising given how varied and variable psychological robustness is across the general population. The sheer number and uniformity is also surprising where each of them volunteered to perform work which they would have known at the time and throughout their deployment placed them at risk of having their identity as an undercover police officer revealed.
24. The Inquiry should also be astute in its consideration of the timing of the onset of alleged psychiatric conditions. Those representing “Andrea” will write separately to the Inquiry about their concerns as to the timing of

events connected with Carlo Neri's alleged mental health problems. Undercover officers were trained to simulate mental health problems in order to avoid difficulties in the field. The Inquiry must ensure that they are not deploying the same techniques in order to avoid difficulties in this Inquiry.

25. Given the number of restriction orders that have now been granted, or which the Chairman is "minded to" grant, on the basis of psychiatric harm to the officer, the Inquiry should at very least be seeking second opinions. It is accepted that the Inquiry cannot force an officer to attend a medical consultation, but there is nothing to stop it *requesting* an officer to agree to such a course. The reasonableness or otherwise of any refusal could then be assessed.
26. It is also of note that the Inquiry has not taken any steps to obtain evidence from those who were the victims of undercover police as to the impact on them of the continued denial of information about what was done to them. Nor has the Chairman ever given any indication of having taken into account the evidence and information he has been provided with on this issue when assessing the necessity and proportionality of a restriction order, or the balance of public interest.
27. Disclosure should at very least be made of the groups on whom this officer reported so that any particular issues relevant to those groups can be drawn to the Inquiry's attention.

HN27

28. The Chairman states that "It has been suggested that HN27's deployment encroached upon the Stephen Lawrence campaign. The suggestion is erroneous."⁷ Please explain how the Chairman is in a position to reach a

⁷ "minded to" note 8 [10 .

concluded view on this in light of Bob Lambert's comments in his interview with Operation Herne, as reported at p.219 of vol 1 of the Ellison Review?

29. As with HN9, at very least the groups on whom this officer reported should be disclosed. The NPSCPs are unable to make further representations in respect of this officer on the current disclosure.

HN72

30. This is plainly another very significant officer. The Chairman is "minded to" restrict his cover and real names on grounds of the officer's physical health.
31. Again, the NPSCPs submit that disclosure should be made at this stage of the groups on whom the officer reported or caused other officers working under him to report, so that any issues specific to them can be raised for consideration.

HN355

32. This is one of the officers whose deployment the Chairman states "appears to have been unremarkable and unlikely to have given rise to the opportunity for personal misconduct". As set out above, there is no proper basis for such a view in the absence of any opportunity for non-state information or evidence, which is precluded by non-disclosure of the cover name. The Chairman states that he would have been minded to refuse restriction of this officer's cover name, but for the fact that HN355 is said to have an adult child (X) who, according to HN355 is "mentally unstable". HN355 is of the view that were X to discover HN355's identity it would damage, gravely, or destroy the relationship between them. According to HN355, X's ability to function as a normal adult depends on their relationship with HN355.
33. First, the NPSCPs find it surprising that the Chairman is, in effect, purporting to make a "best interests" determination in respect of X without any form of

representation of his/her interests independently of those of HN355. The NPSCPs note the Chairman's observation that he cannot seek any medical evidence to confirm what he has been told by HN355, because of X's entitlement to medical confidentiality. However, he could, at very least, appoint an independent advocate to address him in respect of X's interests. Further, if HN355's reported account of X's level of dependency is true, there must be other forms of evidence that are not confidential to X to support it.

34. The NPSCPs also note that, although the risk assessment assesses the risk of interference with HN355's family life as high in the event of disclosure of his/her **real name**, the risk of interference if only the **cover name** is released is assessed as "very low". Presumably this takes into account the impact on HN355's relationship with X and the distinction arises because X does not know HN355's cover name. If X does know the cover name, then what is it about its release in the context of the Inquiry that would lead to the consequences suggested? If X does not know the cover name- and therefore will not be in a position to link it to his/her parent- then it is not at all clear why it cannot be disclosed and why HN355 cannot give evidence in the cover name, behind a screen and with voice modulation, if necessary, so that X does not know it is him/her. Presumably this is why the risk assessment draws a significant distinction between the impact on HN355's family life of disclosure of the real name as opposed to the cover name.
35. As matters presently stand, on the Chairman's "minded to" indication, he is prioritising the avoidance a "very low" (i.e. "highly unlikely") and unsubstantiated risk of interference with the officer's family life over the effective participation of those on whom HN355 reported; the need for the Inquiry to receive non-state evidence and information in order to be able fairly and effectively to investigate a deployment that continued over a long period of at least 3 years; and over the importance of openness in securing public confidence in the Inquiry's process and conclusions. There is also no account taken of the Article 8 rights of those on whom HN355 spied.

HN6

36. The gist of the medical report in relation to this officer states that s/he told Dr Busuttil that s/he had a close relationship with one individual targeted and their family. Please provide further information about the nature of this relationship. Did HN6 have access to children, young adults or vulnerable members of the family? This is relevant to the public interest in the Inquiry having non-state evidence in order to be able to investigate effectively. The involvement of an undercover officer in family life is a very high level of intrusion, which requires investigation. This can only be done effectively with the participation of those who were spied on, which entails disclosure of the cover name.

37. Dr Busuttil is of the opinion that disclosure of the real or cover name would be likely to exacerbate HN6's mental health problems and that the response to treatment intervention would be poor. The NPSCPs repeat the submissions made above at [22]-[26] in relation to officers' reliance on alleged psychiatric symptoms. Further, in other contexts, psychiatric harm caused to a person under investigation would only in extreme circumstances constitute a reason not to pursue the investigation. By contrast, the Chairman appears to be accepting almost any suggestion of mental health problems as a reason for withholding an officer's cover name and thereby precluding his or her conduct from being effectively investigated.

38. It is noted also that HN6 was arrested in their cover name, but not prosecuted, please provide further details: were they charged; did they accept a caution; was the arresting force misled as to their identity; were others arrested at the same time; did any convictions result; if so, what steps is the Inquiry taking to investigate potential miscarriages of justice and how does the Chairman consider it to be possible to conduct an adequate investigation without receiving evidence from non-state parties?

39. In respect of the risk of physical harm to HN6, the risk assessment refers to HN6 having links to several other UCOs during deployment⁸. The NPSCPs note that HN6 was deployed during the same timeframe as HN1 Matt Rayner. Rayner is alleged to have acted as agent provocateur in relation to the supply of a firearm to an activist who is now a CP in this Inquiry. That individual was convicted and is appealing his conviction on the basis of Rayner's activities. The NPSCPs have concerns that UCOs and their managers may have set out to implicate activists in connection with firearms in order to gain convictions and to discredit the movements with which they were involved. The Inquiry must have this in mind when assessing alleged risks of violence and ensure that the evidence of physical risk presented by the MPS and individual officers in support of anonymity applications has not been created as a result of undercover deployments. This requires the input of non-state evidence in order that the police account can be tested. The NPSCPs do not accept that there are not ways of doing this without disclosing the information the restriction order application seeks to restrict. They submit that further disclosure should be made in order to enable the Inquiry properly to test the evidence of alleged risk.
40. Further, and in any event, the concerns about the role of undercover police officers in encouraging activists to become involved in firearms is itself a matter of considerable public interest which tells in favour of the need to disclose cover names in order that it can be investigated effectively.
41. It is of note that this officer states in his impact statement that "The entire set up of the SDS at the time included working with the security services who would be involved in selecting our targets and debriefing us when we finished our deployment, and the Home Office, who I understood were authorising what we were doing. I met with officers from the security services and had a security service code numbers. This reassured me and others that what we were doing was legitimate and authorised." This is the

⁸ RA p.2.

first express reference the NPSCPs have seen to the involvement of the security services in the activities of the SDS and other undercover units under scrutiny in the Inquiry. It is plainly of significant importance to the Inquiry's terms of reference. The NPSCPs will write separately to the Inquiry in relation to this issue.

HN21

42. This officer voluntarily participated in the True Spies documentary under the pseudonym "Geoff". The Chairman acknowledges that his evidence about his deployment and service in the SDS and police service after it ended are of significant interest to the Inquiry. The Chairman was originally "minded to" refuse restriction of this officer's cover name⁹. However, following a further report from Dr Busuttil, the Chairman is now "minded to" restrict both cover and real names, "but only on the basis that detailed public evidence is provided by HN21 under his cipher, notwithstanding the risk that this may lead to the identification of his cover name."¹⁰ The Chairman states that "[t]his is a risk, which will almost certainly have to be run, to permit the Inquiry to get to the truth."¹¹
43. With respect, the NPSCPs do not understand this position. They agree that open evidence is undoubtedly critical to the Inquiry's ability to get to the truth. However, the principal reason why that is so is because it enables those who are in a position to test the officer's evidence, based on their own knowledge, to do so and, where appropriate, to provide their own evidence. However, that can only be done if they know who the officer is at least in his cover identity. Thus, if the Chair intends that the Inquiry is to get to the truth of this officer's evidence, it necessarily means that the officer will be required to give sufficient evidence as to enable those spied on by him to identify him in his cover name. If that is so, then the Chairman should simply

⁹ "Minded to" note 5 [2 .

¹⁰ "Minded to" note 9 [5 .

¹¹ Ibid.

refuse to grant him anonymity in respect of his cover name on the ground that the need to get to the truth outweighs the countervailing considerations.

44. If the Chairman does not take this course, the Inquiry is almost certain not to get to the truth in relation to this deployment. Requiring the officer to give open evidence, but agreeing to restrict his cover name, gives him every incentive to be economical with the truth, because the more truthful and complete he is, the more likely it is that those on whom he reported will be able to identify his cover name, whereas the vaguer and more inaccurate he is, the less likely he is to be identified. The Chairman has rightly identified the need for this officer to give evidence publicly, but, in the interest of the Inquiry getting to the truth, those on whom he reported must be able to know his cover name.

45. In respect of the psychiatric evidence in relation to this officer, the submissions made at [22]-[26] above are repeated. Again, the Chairman appears to be accepting any suggestion of psychiatric harm as a reason for restricting cover names and is taking no account of the psychiatric harm caused to those who were spied on. It is of note that the risk assessment assesses the risk of physical harm to this officer to be low even if his real identity were to be revealed and the risk of harassment is said by the Chairman to be nil or negligible. There is also said to be a strong sterile corridor between the real and cover name. The officer himself placed his role as an undercover officer in the public domain by choosing to appear in a documentary on national television. However, now that there is the opportunity for his evidence to be tested, by the Inquiry receiving accounts from those on whom he spied, he seeks to rely on mental health issues to avoid this. It is clear from True Spies that this officer was involved in reporting on some very significant matters, including the Grunwick dispute. The public interest in the Inquiry being able to get to the truth in relation to his deployment, by being in a position to receive evidence and information from those on whom he spied and by enabling them to test his evidence,

must constitute a legitimate aim, pursuit of which is necessary and proportionate in all of the circumstances.

HN28

46. None of the underlying material has been disclosed in relation to this officer. The NPSCPs do not accept that there is nothing further they can be told about this officer without risking revelation of his/her real and cover names. The Chairman states that “publication of the real or cover name is not necessary to permit the Inquiry to fulfil its terms of reference.”¹² Please explain the basis of this conclusion.

HN53

47. This is plainly a highly significant officer. He was both a UCO and, later was second in operational command of the SDS from 1998-2005. The Chairman acknowledges that his evidence is of significant importance to the Inquiry and must be given in public, albeit with protective measures to protect his identity. Whilst the MPS risk assessment assessed the risk of physical harm and interference with this officer’s personal and family life to be “very high” should his **real identity** be disclosed, the assessment is that the risk of harm and interference, should only the **cover identity** be disclosed, is “low”. The risk assessor is of the opinion that HN53 could provide evidence of their role as a UCO in their cover name¹³. The Chairman does not provide any explanation as to why he is “minded to” reject this assessment, nor does he provide any indication of having taken into account the harm to the public interest that follows from restriction of the cover name, given the “significant importance” to the Inquiry of this officer. In light of the assessment that the risk of harm to this officer is low were he to give evidence in his cover name, the significance of this witness to the TOR, and the inability of the inquiry to get to the truth without the meaningful participation of the NPSCPs who were spied on, it is submitted that the

¹² “Minded to” note 9, [7 .

¹³ Open risk assessment p.7.

application for anonymity in respect of the officer's cover name should be rejected.

HN76

48. Additional information from the gisted risk assessment discloses that a review of SDS operations in the last years of the existence of the SDS was highly critical of SDS UCOs, including HN76 "who was criticised for lacking communication skills and being unwilling to answer the author's questions. There is recognition of the potentially serious ramifications of HN76's deployment." This was in stark contrast to the positive assessments made of him within the SDS by his managers at the time. This indicates that this is a potentially significant officer in respect of whom it is important for the Inquiry to get to the truth in relation to his/her deployment. It is particularly important to identify whether his so called valuable intelligence was accurate and truthful.

49. The current disclosure is inadequate for meaningful representations to be made in respect of this important officer. Please disclose the group against which this officer was deployed and those with whom s/he interacted and/or reported on. If it is claimed that to do so would risk revealing the officer's real and/or cover names, please explain why this is the case. Please explain why it is not in the public interest to ensure that this officer's past conduct as a UCO with the SDS is effectively investigated, given 'the potentially serious ramifications' of this officer's deployment, the clear evidence of a mismatch between his assessed skill and competence at the time and on review, together with the fact that s/he continues to be serving police officer.

HN86/1361

50. It is disappointing that yet another very significant former SDS manager is unwilling to account openly for his actions. In these circumstances it is submitted that rather than obtaining evidence from this officer in circumstances where his account cannot be challenged and the Inquiry

cannot therefore be at all confident of getting to the truth, the officer's cover name should be disclosed so that those on whom he spied can come forward and give meaningful evidence. His work as a manager can be considered on the basis of the documentary records (it is clear that some do exist in respect of this officer's managerial work) and the evidence of those within the SDS who he managed, worked alongside or was managed by.

51. It is submitted that the groups on whom this officer reported whilst deployed should also be disclosed.

HN87

52. No open reasons are given for the Chairman's "minded to" position in favour of restriction of cover and real names. The NPSCPs do not understand how such a position can be justified. The open application served on behalf of HN87 by the designated lawyers sets out a number of grounds on which the application for restriction is made see application [6]-[8]. It is unclear why the Chairman is not able, at the very least, to indicate which of those grounds he is "minded to" accept.
53. The NPSCPs note that the risk assessment assesses the risk of harm to HN87 of disclosure of the cover name as being "very low" and the risk of interference with personal and family life is assessed as "low". Such risks would not therefore appear to be capable of justifying restriction of the cover name, particularly given the possible connection between this officer and a potential miscarriage of justice. The risk assessor states that he is satisfied that HN87 was not involved in the potential miscarriage of justice. However, the NPSCPs query how he is in a position to reach that conclusion in the absence of any information or evidence from non-state individuals. The NPSCPs note that the risk assessment records that HN87 believes that their identity is at risk from another UCO. However, presumably that UCO is already aware of HN87's cover and real names and so any restriction order is irrelevant in relation to them. In all of the circumstances, it is submitted that a "very low" risk of physical harm and a "low" risk of interference with

personal and family life ought not to be treated as sufficient to justify restriction of a cover name, particularly in circumstances where the officer may be connected with a potential miscarriage of justice.

HN101

54. This is another officer who is said to be resident outside of the UK and so the Inquiry is effectively left with the choice of acceding to his/her demand for a restriction order in order to obtain a witness statement, or publishing the officer's names in order to enable others to give evidence about him/her. The Chairman is "minded to" favour the former.
55. The Chairman states that members of the group into which this officer was deployed (the SWP) will be able to provide evidence about its activities, even if not about HN101 personally. The Chairman does not give any indication of having considered the potential for such a situation to be demeaning and unfair to non-state witnesses see legal principles ruling [111].
56. The "minded to" indication only addresses one of the groups with whom HN101 had contact whilst deployed. According to the Ellison Review, Bob Lambert in his interview with Operation Herne described HN101 as a contemporary of Peter Francis "who also reported.... And would have had involvement in Stephen Lawrence campaign issues..."¹⁴
57. Given the low level of risks to this officer should his cover name be revealed, the Chairman should not be held to ransom in granting an anonymity order to secure this officer's evidence where the consequence will inevitably be that there can be no public confidence that the Inquiry will get to the truth of what he did in his deployments. On the contrary the Chairman should disclose his cover name so that those who were spied upon can give direct evidence of his undercover activities. Insofar as the officer engaged in any wrongdoing this course is the only way in which such wrongdoing is likely

¹⁴ Ellison v.1 p.214.

to be identified. Evidence as to what the officer was directed and/or authorised to do can be given by his managers.

58. Finally, in relation to this officer, reference is made to the opinion of an “experienced counsellor and Eye Movement Desensitisation and Reprocessing therapist” that HN101 suffers from Post Traumatic Stress Disorder. As the Chairman acknowledges, the therapist is not medically qualified to make such a diagnosis. The submissions made at [22]-[26] above in relation to psychiatric evidence therefore apply with even greater force in relation to this officer. The Chairman should also have in mind that a number of NPSCPs suffer from PTSD as a consequence of the activities of undercover officers. In some instances this is being exacerbated by the on-going delay in releasing information.

HN102

59. This is the one of the very few cases in which the Chairman acknowledges any detriment as a result of the Inquiry being unable to receive evidence from non-state witnesses as a result of cover name restriction, even then, it is not put any higher than the outcome being “likely to be imperfect”. No account is taken of the impact on the mental health and Article 8 rights of those spied upon.
60. The NPSCPs are unable to make further submissions in relation to this officer without further disclosure. It is submitted that any restriction order granted at this stage should be reviewed once the contemporaneous reporting of intelligence referred to in the “minded to” note has been identified and disclosed.

HN112

61. The Chairman was originally “minded to” refuse restriction of this officer’s cover name. However, following receipt of a further report from Dr McLaren, he is now “minded to” restrict both real and cover names. Mr Sanders QC, who acts for HN112, accepts that HN112’s concerns about release of his cover name are not founded on fact. However, the Chairman

is nonetheless “minded to” restrict it in order “to avoid any possible risk to his mental health; and to ensure that evidence, which may be of significant value to the Inquiry is not compromised by irrational anxiety on his part.”

62. The NPSCPs submit that this is a further example of the Chairman accepting almost any suggestion of mental health problems on the part of an officer as a basis for restricting the cover name. In this case, the medical evidence, or at least the disclosed gist of it, does not support any mental health detriment as a result of disclosure of the cover name. The gist of Dr McLaren’s April report records HN112 as having reported his subjective concerns that revelation of his cover name would give rise to managers of the SDS providing his real name to the press and/or taking other steps against him, but it does not record Dr McLaren as having expressed the view that release of the cover name would lead to any mental health condition. The matter identified by Dr McLaren as giving rise to a risk of triggering a recurrence of a mental health condition is the giving of evidence (whether written or oral) on the ending of HN112’s role in the SDS. The Chairman in his “minded to” note makes clear that HN112 will be required to at least provide written evidence, so it would appear that the matter which gives rise to a risk of harm, as identified in the medical report, will occur in any event. The gists supplied do not suggest that there is any separate or additional risk of harm to HN112’s mental health that arises from disclosure of the cover name.
63. In those circumstances, there is no sound basis for restriction of this officer’s cover name and it should be disclosed. The NPSCPs note that it is said that HN122 was never deployed and so his cover name was not in the public domain. However, they request confirmation as to what steps the officer took in the course of building his legend and whether this involved him in having contact with members of the public in his undercover name.

HN91

64. The Chairman states that “[e]vidence about the deployments [of this officer] must be received to permit the Inquiry to fulfil its terms of reference.” And

that, but for the fact that HN91 is still a serving police officer, performing a valuable and sensitive role, he would not have made a restriction order in respect of the cover name. The Chairman expresses the view that the interest in HN91 being able to continue his/her present role outweighs the interests of the Inquiry in receiving public evidence about all aspects of the deployments of HN91.

65. What is not clear is which aspects of the public interest in the Inquiry receiving public evidence the Chairman has considered. The fact that he refers to the interests of the Inquiry in receiving public evidence about *all aspects* of the deployments suggests that, as with HN21, above, he has in mind the value of evidence being public *per se*, but not the distinct interests in NPSCPs being able to participate effectively in the testing of the evidence as a result of knowing the cover name, and also of the Inquiry being in a position to receive meaningful non-state evidence on that basis. Those two interests are not divisible in the same way that public evidence *per se* is, i.e. they are all or nothing – non-state participants and witnesses either know the cover name or they don't, it's not a question of some parts of it being in public and others not.
66. It is notable that this officer entered into a relationship using his undercover identity. He says that there was only one such relationship, but, once again, the Inquiry cannot accept the untested truth of this assertion. The fact that the officer abused his undercover role to enter into a relationship (albeit not, he says, with a protester) plainly makes it particularly important in this case to get to the truth of the officer's undercover activities. Further, although HN91 maintains that his partner was not involved in any activism or campaigning, Jim Boyling (falsely) said the same about "Rosa" when he was first investigated. The Inquiry should not unquestioningly accept HN91's account.
67. Not only has the Chairman failed to weigh these factors in the balance, it is submitted that he has attached undue importance to the countervailing factor of the officer's current deployment.

68. The NPSCPs ask for disclosure of the groups on which this officer reported. It is noted that none of the members of the target groups posed or pose a threat to HN91's safety. They also request disclosure of the earlier version of the risk assessment prepared in relation to this officer so they are able to compare what changes were made.

HN97

69. HN97 raises a similar issue to HN91 in that the Chairman acknowledges that HN97's deployment "is of significant interest to the Inquiry and must be explored in detail to permit the terms of reference to be fulfilled", but nonetheless finds restriction of both cover and real names to be justified. In this case, this is said to be necessary in order to avoid a risk of harm to HN97; to avoid impairing the effectiveness of the Inquiry under section 19(4)(b) and (d)(i); and in order to avoid an unjustified risk of interference in the right of HN97 to respect for his private and family life under Article 8 ECHR. Again, what the Chairman fails to explain is how his conclusion that this officer's deployment "must be explored in detail to permit the terms of reference to be fulfilled" can be reconciled with restriction of the cover name. Again, it must proceed on the assumption that the deployment can be effectively investigated and sustainable conclusions reached on the basis of the police account alone. This is not the case, for all of the reasons set out in the submissions in response to the Strategic Review.
70. It is noted that the Risk Assessor is of the view that there will be an "overwhelming interest in this deployment by all interested parties, including previous members of the groups infiltrated, the media, and others."¹⁵ There is clearly therefore a significant public interest in open investigation of this deployment, that is, where the cover name is disclosed, in order that the Inquiry can get to the truth.

¹⁵ Open risk assessment p.4.

71. Against this is the risk of physical or psychological harm to the officer or interference with private life, should his cover name be disclosed. At 19.1 the current risk of physical harm and interference with family and private life are assessed as very low. At 19.4 it is said that should the real name be revealed: "The risk assessor with reference to factors in section 19.1 notes that there would be an increase in the risk of physical harm to N97 but notes that cannot say for certain that the increase is significant. It is noted that if physical harm were to occur it is likely to be extreme. The risk assessor notes possible mitigation strategies. In the risk assessor's opinion, disclosure or exposure would result in a significant adverse impact to the psychological well-being of N97 and family in anxiety and distress". Thus, this is not a case where it is even being said that disclosure of the real name (let alone the cover) name will significantly increase the very low risk that the officer currently faces. It is recognised that the risks are then assessed to be medium with impact critical, but it is submitted these assessments are simply not reconcilable with the quoted passage. Given the importance of this officer and the consequential importance of disclosing the cover name, it is submitted that reliance cannot properly be based on an internally contradictory and unreliable risk assessment as a reason for granting anonymity.
72. Again, the NPSCPs request disclosure of the groups on whom this officer reported. The risk assessment at p.2-3 refers to an "interaction with police" during this officer's deployment, please provide details of the nature of the "interaction", including whether the police involved were misled as to HN97's identity and, if so, in what circumstances. Was anyone else arrested on that occasion? If so, were they charged / prosecuted / convicted? And if so, what steps is the Inquiry taking to investigate any potential miscarriage of justice?

Real name only applications

73. The NPSCPs maintain the submissions they have previously made in support of disclosure of real names in the public interest in the openness of the public

Inquiry. They also submit that all groups reported on by an officer should be published by the Inquiry, together with any photographs the Inquiry is able to obtain of the officers as they appeared at the time of their deployments, before any real name restriction order application is determined. This would enable those with relevant evidence and/or submissions a fair opportunity to come forward. If this is not done, then this should be basis for a restriction order being reviewed once fresh evidence or information is available.

74. Specific submissions are made in respect of the following officers.

HN1 - Matt Rayner

75. Core participant status has been granted to a woman who had an intimate sexual relationship with Matt Rayner whilst he was deployed and which he admits. This was expressly recognised by the Chairman, in his first public statement in the Inquiry on 20 November 2017, to be one of the circumstances in which a real name would be released.

76. The “minded to” indication states that there are significant risks to this officer’s physical safety and well-being and the well-being of his family. However, the NPSCPs submit that the level of risk to this officer is no greater than that in respect of Bob Lambert, or any of the other officers whose real identities have been disclosed to date. As previously raised, none has been subjected to any physical harm and although some have been subjected to protest, this has been within the bounds of lawful expression.

77. There are a very significant number of allegations of wrong-doing in relation to this officer, including, but not limited to, the fact that he engaged in a long-term deceptive intimate relationship; his involvement in at least one miscarriage of justice, which is currently under appeal; involvement in numerous direct actions, including in the sabotage of the 1993 Grand National steeplechase, causing £75m in losses to the betting and racing industries; and that he potentially had access to legally privileged material.

There is a strong public interest in this officer accounting for his actions publicly and in his real identity.

HN3 – Jason Bishop

78. Submissions are set out in respect of this officer at [11] above. Again, it is submitted that the extent of the allegations against this officer are such that there is a strong public interest in him accounting for his actions publicly and in his real identity.

HN19 – Malcolm Shearing

79. As noted above, the “minded to” indication in relation to this officer expresses the view that his deployments are unremarkable. That is not a conclusion that can properly be reached at this stage, prior to the Inquiry having received evidence from those who had contact with this officer in the field and are able to provide information and evidence about what he did.

HN354 – Vince Miller

80. Submissions are set out in respect of this officer at [14] above.

HN106 – Barry Tompkins

81. The “minded to” indication states that this officer was initially deployed against one group, but then on his own (authorised) initiative, infiltrated another. However, only one group has been disclosed by the Inquiry to date. Please disclose all groups reported on.

HN67 – Alan Bond

82. This officer’s medical condition is noted. The Inquiry is no doubt alive to the need for evidence to be obtained from this officer as soon as possible. The NPSCPs may have further submissions to make in relation to disclosure of his real name once his witness statement has been disclosed.

HN80 – Colin Clark

83. The “minded to” indication makes specific reference to this officer having “encountered and reported on” many groups. To date only two groups have been disclosed. Please disclose all groups reported on.

HN303 – Peter Collins

84. The “minded to” indication makes specific reference to this officer having been deployed against the Workers Revolutionary Party and reported on another. Please disclose the identity of the other group.

**PHILLIPPA KAUFMANN QC
MATRIX CHAMBERS**

**RUTH BRANDER
DOUGHTY STREET CHAMBERS**

20 July 2018