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

EN1, EN33, EN34, EN35, EN36, EN38, EN39, EN40, EN41, EN42,

EN42, EN43, EN47, EN48, EN74, EN287, EN 288, EN289

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1. In the Minded to Note of 2 May 2018 the Chair is 'minded to' refuse only two of the 19 cover name restriction applications. He is 'minded to' grant 15 and the remaining two are deferred. The NPSCPs object to the granting of restriction orders in respect of each of the above officers.

Overarching submission

2. The NPSCPs are profoundly concerned at both the proposed outcome and underlying approach the Chair has taken in coming to his minded to position.

3. The 'minded to' note concerns officers who served undercover in the NPOIU. The NPOIU was established shortly before the Regulation of Investigatory Powers Act 2000 came into force and was, since shortly after its inception, subject to the Act's regulatory regime. The Act was introduced to secure compliance with the requirements of the ECHR and in particular the rights to privacy of those subject to the secret surveillance techniques to which it applied. Yet despite that regulatory framework undercover officers in the Unit engaged in serious wrongdoing causing grave harm to those they were spying on as a result. Indeed, it was precisely because those abuses came to light following the identification of

Mark Kennedy's undercover role that the Inquiry was established. And it is precisely because Mark Kennedy's identity is known that it has been possible to acquire a measure of understanding of what the nature and scope of his wrongdoing was. But there is much more to learn. For example, in proceedings currently before the IPT brought by Kate Wilson, who is a core participant, the Metropolitan Police have recently admitted that Mark Kennedy's cover officers and line manager were aware that he was conducting a close personal relationship with her and that they ought to have realised that that relationship was a sexual relationship, and that they acquiesced to that relationship[1]. This appears directly to contradict the MPS' earlier assertion through Assistant Commander Hewitt who, when issuing a formal official apology to Ms Wilson and seven other women who had been similarly duped into relationships, stated that such conduct had never been authorised or used as a tactic. This suggests that even as late as November 2015, the MPS itself either had not fully grappled with the extent of management knowledge of sexual relationships conducted by former SDS and NPOIU officers, or, alternatively, of even greater concern, the words of the apology were cynically chosen to obscure the full truth. Both alternatives ought to trouble the Inquiry given the reliance it is placing on the MPS account and those of individual UCOs in granting anonymity applications.

4. Nor can it sensibly be contended that what went wrong in the NPOIU was limited to Kennedy and his managers / cover officers. There is known misconduct on the part of other former NPOIU UCOs, including Marco Jacobs (as to which see [67]-[71] below) and Lynn Watson. What is already known about these officers, because their cover was blown, demonstrates that, despite the supposedly strict regulatory environment, the system was failing at every level (managerial as well as on the ground). The full nature and extent of that failure must be uncovered. But this can only happen if the full nature and extent of the wrongdoing of the officers on the ground in undercover roles can be uncovered. We do not repeat

[1] The MPS' Defence is attached to these submissions at paras 8(1), (3) and (4), 12(4). See also wide media coverage on 21 September 2018 e.g. https://www.theguardian.com/commentisfree/2018/sep/21/i-was-abused-undercover-policeman-mark-kennedy; https://www.telegraph.co.uk/news/2018/09/21/police-chiefs-knew-undercover-officer-relationship-activist/; https://www.bbc.co.uk/news/uk-45596432

here our submissions that the Inquiry cannot do this if those spied on are not put in the know as to the identity of the spies. The NPSCPs have analysed the list of issues currently proposed by the Inquiry in relation to its Module One investigation of the NPOIU. Of the issues the Inquiry itself has identified, approximately two thirds cannot meaningfully be answered without input from non-state sources.

5. There is a further reason why it is essential to get to the truth about the NPOIU. While historical, the activities of this Unit reach into the present. As the Chair has disclosed, many of the officers continue to serve in the police and to engage in undercover work. There is a real risk that wrongdoing that goes undiscovered can continue unhindered. That is wholly inconsistent with the purpose of this Inquiry, which is not only concerned to understand what went wrong, but to do so for the instrumental purpose of identifying how to prevent this for the future.

6. The Chair has shown no appreciation of any of these critical considerations which provide the most powerful case for openness. Not only does the Chair's approach fail to have proper regard to the strength of the case for openness, by the same token, it fails to recognise the full measure of harm that will be done to the Inquiry's ability to get to the truth and fulfil its purpose if it grants the proposed level of anonymity. On the contrary, there are a number of references to the possibility of officers for whom the Chair is minded to grant anonymity nonetheless being able to provide evidence in open without compromising their anonymity. We repeat submissions made earlier that there is a logical contradiction in this position. If officers are to give meaningful evidence in open, that is evidence that will enable those spied on to recognise their actions, such evidence will necessarily compromise their cover names. The reality is that if the Chair's minded to indications are replicated in the final decisions on anonymity, the Inquiry's investigations into the NPOIU will be fatally flawed from the outset and incapable of uncovering the nature and extent of what went wrong in the Unit; and incapable therefore of ensuring no repetition in the future.

7. If due regard is paid for the need for openness it is submitted that three things follow:-

    a. The level of risk capable of outweighing the public interest in openness must be very significant, and even where significant, if that risk can be mitigated by other measures than granting anonymity, this is how the risk should be managed;
    b. The existence of a risk capable of justifying anonymity must be reliably established;
    c. Fairness requires that those adversely affected by anonymity decisions are given a meaningful opportunity to make submissions.

High threshold of risk and alternative measures

8. Insofar as it is possible to do so in the absence of proper disclosure, the assessment of risk in the particular officers' cases are addressed below. However, by way of overarching submissions, the following can be said:-

    a. The Chair has frequently treated the fact that an officer is still active including in undercover work as a reason to grant anonymity; it being considered disproportionate to compromise or terminate his or her current deployment. It is submitted that this is not capable of justifying the grant of anonymity. First, it gives the appearance that the Inquiry considers these officers have done nothing wrong such that they can safely be left to carry on in their policing roles, when the question whether they have engaged in wrong doing is precisely what the Inquiry is required to look into. Such an approach is fundamentally wrong in principle, but all the more so when it is already known that there was serious wrongdoing, including at management level, within the unit and so a very real question mark whether some of the officers still engaged in undercover work are replicating in that ongoing work the same wrongs the Inquiry was established to root out. If this Inquiry is to perform the serious job required of it, there will inevitably be serious consequences for the police, including removing officers whose conduct is to be examined from current undercover policing activities.

b. A risk of interference with private life in the form of hostile verbal responses from those spied on, or media interest, is simply insufficient to outweigh the need for openness. While unpleasant, such conduct will be short-lived and in all likelihood it will only happen if the officers have engaged in wrongdoing while in the NPOIU. As the Chair observed at an earlier hearing, a desire to express anger and a sense of betrayal through hostile verbal response is a natural human reaction. It is wrong for the Inquiry to treat such hostile, but non-violent, responses as a ground for granting anonymity.

c. A remote threat of physical ill-treatment is insufficient to outweigh the need for openness. By remote it is meant that on the basis of a robust risk assessment (see immediately below) the risk of the threat being carried out is low or impossible to assess but cannot be discounted. In such cases the threat should be managed by alternative means of protecting the officer.

d. Even where a more real and immediate threat of physical violence is reliably identified, where such a threat is present in relation to a significant number of officers, with the result that anonymity for one means anonymity for all and the resulting impossibility of getting to the truth because of the blanket secrecy that will follow, then serious consideration must be given to how the officers can be protected by alternative means before it can be concluded that such measures are disproportionate as against the need to get to the truth.

Robust evidence of risk

9. Again, given the damage that will be done to the fulfilment of the Inquiry's purpose if the Chair's current 'minded to' note is replicated in a final determination, it is vital that the evidential base on which the assessment of risk is carried out is robust. In fact the evidence is startlingly thin and lacking in rigour. Some of these applications are based on a fast track process under which no independent evidence has been sought in relation to risk. The entire assessment is based on the officer's own account of the work he has engaged in and the risks he believes that he faces. The

concern over delay is understood but the importance of getting these decisions right cannot be overemphasised because of the gravity of the impact of granting anonymity to the Inquiry being able to get to the truth and fulfil its purpose. It follows that evidence of risk must be robust. An officer's self-assessment can never be enough. We repeat that these officers have been trained to lie. From what we know already some have engaged in serious wrongdoing. It is inappropriate to start an inquiry of this kind from the premise that they are all telling the truth.

10. In non-fast track cases where a risk assessment has been obtained, it is impossible to know whether the risk assessor is compromised in some way or otherwise lacking in competence. Nothing has been disclosed about the risk assessors to demonstrate that they have the necessary expertise and independence. With the risk assessors engaged to conduct risk assessments in respect of SDS officers, their CVs were at least disclosed in advance and core participants were afforded an opportunity to make submissions as to their suitability. In respect of the risk assessors who have conducted the NPOIU assessments, nothing other than their names has been disclosed. Furthermore, the assessments are again based entirely on the officers' self-report. For the reasons already given, such evidence cannot provide an adequate basis for assessing risk given the serious implications of granting anonymity.

Meaningful participation of parties advocating openness

11. Again, given the damage that will be done to the fulfilment of the Inquiry's purpose if the Chair's current 'minded to' note is replicated in a final determination, it is vital that the NPSCPs are able to make representations against anonymity on as informed a basis as possible. As with previous disclosure, the disclosure in respect of these anonymity applications is seriously deficient and all submissions made earlier are adopted. At the very least, the name of the group(s) infiltrated during the officer's NPOIU deployment should be disclosed. It is not accepted that disclosing that information would undermine the purpose of the application and it would at least enable NPSCPs to know which anonymity applications are of most relevance to them. It would also enable NPSCPs to make representations about the nature of the group(s), which may contradict or challenge the evidence presented by the officers

in support of their own applications. Further, there are additional flaws in the gisting process in these cases. Where it is said that an officer is at risk of violence from operations s/he was deployed in that are unconnected to the matters the Inquiry is looking into, no detail whatever is given about those deployments, other than a very generalised description, such as the officer was involved in the arrest and conviction of a major drug dealer. It is not accepted that the need to protect the officer from the threat of harm prevents disclosure of more details about the nature of the operation and the officer's involvement in the same. For example, it could be said that the officer did/did not become deeply involved in the criminal gang, forming friendships and developing trusted relationships over X years/months. This consisted of his becoming a family friend, attending birthday parties etc. Not only can such details be provided without risk, but they are vital in making a sensible assessment of the threat and therefore meaningful submissions. If for example, the officer was merely involved in test purchasing or the arrest of a drug dealer then he is in no different a position to any other officer engaged in policing work, who day in day out, makes arrests of serious criminals in their real identity. There is a world of difference between such cases and those of officers who have inveigled themselves into a serious organised crime gang, developing the trust and close friendship of its members over time. Only in such an extreme case is the strong sense of betrayal on discovery of the truth which might generate a desire for revenge liable to be present. Cases where the officer was involved in test purchasing or gave evidence at a trial are right at the other end. It is of note that Mark Kennedy was himself a test purchaser prior to his NPOIU deployment. If Kennedy's background is such that, but for his identity having been revealed by other means, his cover name would have been restricted on the Chair's current approach, it is evident that the Inquiry will be incapable of getting anywhere near to the truth.

Individual NPOIU applications for restriction of both real and cover names

EN33

12. The gist of the application refers to EN33 having been a uniformed officer and also as having made test purchases of drugs and as having been involved in the arrest and conviction of a "major drug dealer". It is claimed in the application that there

is a risk that these individuals would recognise EN33 and seek to harm or kill him/her. However, the NPCC risk assessment states that the risk assessor was not provided with any information "*which assists with identifying risk in relation to that period.*" [4]. EN33 continued in undercover work post-NPOIU deployment, in the field of serious and organised crime, but many of the records that would help to assess the risk are no longer available [RA [7]]. S/he is now retired from the police force.

13. This was not a fast track case. However, the risk assessment by Andrew Large is "*officer led*" and therefore has "*the disadvantage that the starting premise for any assessment is reliant upon the officer's recollection of events and understanding of risk to themselves and third parties*." [37]. The RA states that he "*considers that there is a low risk of the true identity of EN33 being realised should EN33's [NPOIU] pseudonym be revealed*" [17]. 'Low' = 'unlikely' [3]. But at [20] he rejects the ability of protective measures to prevent revelation of EN33's real identity in the event of the NPOIU cover name being disclosed and at [21] puts the risk of harm occurring as "medium" = 'possible/may happen' (reiterated at [30]). This is plainly contradictory.

14. The Chair considers it desirable that EN33 should give evidence in public about his/her deployments, so precautionary measures will be required and "*it is unlikely that the whole of the evidence*" can be given in public. He further acknowledges that "*it would be desirable for members of the targeted groups to know the cover name… so as to be in a position to provide and give evidence*."

15. On the evidence available it is submitted that there is no reasonable basis for this officer to have concerns over his safety. As stated, there is no greater likelihood of anyone seeking revenge against a police officer upon discovery that he acted as a test purchaser than there is against any other officer involved in the investigation of a serious crime. In short, all police officers involved in investigating serious crime would similarly be at risk. It is said that EN33 is also at risk because, when a uniformed officer, he was involved in the arrest and conviction of a "major drug

dealer". Again, it is submitted this does not differ from any other police officer. We repeat the general submissions made at [11] above.

16. As for the risk arising from his undercover work in serious and organised crime, it is impossible to make meaningful representations because of the lack of detail about the nature and duration of his undercover work, but insofar as that work was not of the kind identified at [11] above as being of a kind capable of giving rise to a grave sense of betrayal, it is submitted that the risk of a revenge attack is fanciful even if those spied upon did take the unlikely steps of seeking out photographs of him posted by those spied upon in the undercover inquiry.

17. Finally, paragraph 17 of the risk assessment makes manifest the multiple contingencies upon which the threat assessment is based. The risk of harm is far too speculative to justify the grant of anonymity. The Chair himself has noted that it is important to hear from this officer, but we reiterate that it is impossible to understand how this officer can give any meaningful evidence in open without risking his undercover identity being discovered.

<u>EN36</u>

18. This officer was considered on a semi-fast track basis. The Chair observed at [10] of the 'minded to' note that he has "*potentially significant evidence to give about the management of the [NPOIU], if at all possible in public. If so, protective measures will be required*."

19. The gist of the application says this about risk: "*At least one operation poses a significant risk to the life of EN36*." [3] It also refers to potential risk to the lives of other undercover officers who EN36 interacted with during other deployments [5]. The submissions made in relation to disclosure and gisting at [11] above are repeated. It must be possible to say something more about the nature of the criminality under investigation and the operation in terms of what steps it involved this officer taking and over what duration, as well as disclosure of what it

is about the circumstances that gives rise to a reasonable fear of reprisals should his identity be revealed. As matters stand it is impossible to make any sensible assessment whether robust evidence of risk exists, let alone whether the risk disclosed is sufficient to outweigh the compelling interest in openness.

EN38

20. The period of EN38's NPOIU deployment has not been disclosed. S/he is said to have been deployed into one group "over several years" and reported on others. The Chair's 'minded to' indication states that "*members and associates of the group posed and still pose a real risk to safety*" and that publication of the cover name might lead to identification of the real name [13]. The Risk Assessment concludes that EN38 is at significant risk from the groups infiltrated, the threat, risk and harm being high. Because no details whatever are provided with respect to the deployments it is impossible to make meaningful representations. The submissions made on gisting and disclosure are repeated.

21. The Chair acknowledges that publication of the cover name might prompt information or evidence from members of the target group, but the risks would be disproportionate [13] and the ability of EN38 to fulfil "*valuable current police duties might be impaired*" [14]. For the reasons set out above, it is precisely because this officer is still engaged in police work that the Inquiry must fulfil its purpose by getting to the truth of the nature and extent of any wrongdoing at the time of his NPOIU deployment.

EN39

22. This is a fast-track officer. His/her application is made by the National Crime Agency.

23. The full reasons for the Chair being 'minded to' restrict this officer's real and cover names are set out in a closed note, but include the fact that EN39 is a serving officer who has been and can be deployed as a UCO 'minded to' [16]. For the reasons set out this is a powerful factor favouring disclosure not anonymity.

24. EN39 states in his second gisted witness statement that disclosing his NPOIU cover name would put into the public domain the work he carried out in order to build and develop his legend. S/he contends that this would place other UCOs who have used similar techniques under increased scrutiny [6]-[8]. It is not clear what, if anything, is different about this officer's legend building as compared with that of any of the other officers whose cover names have been / are to be disclosed. If this is a generic argument about legend building it should not be given weight.

25. The gisted application says that disclosure of EN39's NPOIU cover name would create a real risk that non-NPOIU cover names would also be exposed. This would place EN39 at a risk of physical harm, including from an individual suspected of murder [6.1]. The second gisted witness statement states that the NPOIU and non-NPOIU cover names are different, but "could be linked by other factors." [9]. The first gisted statement of EN39 explains that his other UCO deployments were into serious and organised crime.

26. Once again, no details whatever have been provided which enable meaningful representations to be made about the alleged risk of physical harm. There appears to be no good reason why the general nature of the investigative operations - in particular EN39's role, the criminal enterprises investigated and the basis on which it is asserted that there is a risk of revenge attacks - cannot be disclosed. There is no explanation as to what it is (if indeed anything) about the officer's role in these investigations which is thought to place him/her at greater risk than any of the police officers who investigate and disrupt serious criminal enterprises in an overt capacity. It is notable that the Chair's minded to decision suggests that the closed reasons for allowing the application in fact rest on the fact that the officer is still serving and can be deployed. Insofar as this, rather than a

risk of physical harm, is the reason for granting the application the submissions at [5] and [8(a)] above are repeated.

EN40

27. This officer is a serving police officer who, at least at the time of his/her witness statement (June 17), was deployed undercover. The Chair is 'minded to' restrict real and cover names on the basis of a real and immediate risk to life and limb - 'minded to' [17]. This is based upon the threat from the officer's post-NPOIU work, when he worked undercover in serious and organised crime groups linked to violence, firearms and drugs - RA [7]. It is these groups which in the risk assessor's view would have the potential to pose significant risks.

28. EN40's gisted witness statement states that s/he was deployed post NPOIU in drugs, firearms and homicide investigations, including a number of extremely violent targets - w/s [9]. It also states that EN40 fears violence from those against whom s/he was deployed whilst in the NPOIU - w/s [12]. The application states that not only is there a real and immediate risk to EN40's life, but also to those of his/her family, to other officers and to members of the public - application [5]; see also EN40's w/s [16].

29. The submissions made above are repeated, both with respect to the fact that the risk assessment is "officer led" and therefore "reliant upon the officer's recollection of events and understanding of risk to themselves and third parties" and the inadequacy of the gisting process and disclosure. Further, we reiterate that unless the officer formed close ties within organised and serious crime groups, such that a strong sense of betrayal is liable to be engendered should his true identity be revealed, s/he is in no different position than any overt officer deployed in the investigation of such groups. Anonymity cannot be justified simply on the basis of having engaged in the investigation of such groups.

30. Nothing about the time frame, duration or any other detail of this officer's NPOIU deployment has been disclosed. It is submitted that even if the Chair maintains his 'minded to' position these details should be provided.

EN41

31. The Chair's 'minded to' indication in relation to this officer is almost identical to that in relation to EN40, save that the risk appears to be lower / less immediate in relation to this officer, because, unlike with EN40, the interference is said to be unjustified on the basis of Art 8 as opposed to Arts 2 & 3.

32. The risk assessment considers the criminal groups infiltrated by EN41 while undercover after his NPOIU deployment to carry a high threat and risk of harm: [8] RA. These were serious and organised crime groups linked, inter alia, to violence, firearms and drugs: [6] RA.

33. Once again, we reiterate the inappropriateness of relying on the officer's account and assessment alone or on a risk assessment by others based solely or largely upon the officer's account. It is notable that this officer's own assessment of the risk posed by his/her pre-NPOIU work is not supported by Andrew Large's assessment. Thus, contrary to Mr Large's assessment, the officer him/herself considers that s/he is at "*substantial risk from those who were imprisoned as a consequence of [his pre-NPOIU] deployment if his/her identity is disclosed*." It is said that other undercover operatives would also be at risk - w/s [3].

34. Once again, the gisting and disclosure are wholly insufficient to make meaningful representations about the alleged risk of harm. Again, there is no apparent reason why information about the broad nature of the operations and EN41's role cannot be made available that would facilitate this. We repeat the submissions made at [29] and [30] above in relation to EN40.

EN42

35. The position in relation to EN42 is curious. This is a fast track officer. The Chair is 'minded to' restrict both real and cover names on the basis of a real risk to the safety of EN42 and to others and the assessment that disclosure of the real or cover name would be likely to impair the ability of EN42 to discharge undercover duties in future - 'minded to' [19]. However, the Chair goes on to say that from what he knows it is unlikely that any member of the target groups against which EN42 was deployed by the NPOIU in the 2000s poses a real risk to the safety of EN42 and it is "*desirable that the evidence of EN42 about their deployment is provided or given in public, if that can be done without compromising anonymity. Careful thought, and a risk assessment, is required before any final decision can be made about the manner in which the evidence of EN42 is to be received*." - 'minded to' [20].

36. The officer's gisted w/s states that EN42 worked as a UCO doing test purchases for a number of years before joining the NPOIU. S/he gave evidence in a number of trials in a fictitious first name (with the permission of the court). A number of defendants received lengthy prison sentences - some are said to have been violent individuals - w/s [4]. EN42 also worked as a UCO in serious crime following the NPOIU deployment and continues to work as a UCO and in another covert role. S/he is currently deployed - w/s [5]. EN42 states that if his/her real or NPOIU cover name was released s/he and others would face a risk of serious physical harm from former targets in organised crime groups; an ongoing police investigation of a serious crime would be jeopardised; and the operation (relating to the investigation of a serious crime) on which EN42 is currently deployed would be jeopardised - w/s [3]. EN42 refers to the potential for him/her to be identified via the publication of photographs should his/her NPOIU ID be disclosed - w/s [7].

37. This case exemplifies the procedural flaws identified in the overarching submissions. The risk assessment is based solely on the officer's own evidence and assessment. The gisting process is wholly inadequate for meaningful submissions to be made, but even with the current level of disclosure, it seems highly unlikely that the nature of this officer's deployments in other operations

place him/her at any realistic risk of violent reprisals from former targets in organised crime groups.

38. If there is a risk to a current deployment then first, this must be balanced against the need for the Inquiry to get to the truth, together with the inappropriateness of the officer engaging in such activities until it is known to what extent s/he was engaged in wrongdoing in the NPOIU. Before any reasonable decision can be taken, further evidence is needed in relation to the particular investigation in which s/he is currently engaged to see whether and how that risk can be mitigated if the officer is removed. The case for this officer's identity being disclosed has all the more force because the Chair himself recognises the desirability of this officer giving evidence in public. We reiterate that there is simply no way in which this can be done in a meaningful way without disclosing the cover identity (or identities) that s/he used whilst in the NPOIU.

EN43

39. This is a fast track officer. S/he was deployed in the last years of the NPOIU's existence. S/he was deployed as a UCO in both criminal and non-criminal fields both before and after his/her time in the NPOIU. S/he is currently deployed in a covert role by a provincial police force. The Chair is 'minded to' restrict both cover and real names on the basis that publication of the NPOIU cover name would impair performance of current and future duties in the undercover field and may also put safety at risk- 'minded to' [22].

40. EN43 in his/her gisted w/s states that s/he believes that to reveal the scope of his/her NPOIU infiltration and his/her true identity would place him/her in significant danger of harm - gisted w/s [7].

41. This case again exemplifies the procedural flaws identified in the overarching submissions. The risk assessment is based solely on the officer's own evidence and assessment. The gisting process is wholly inadequate for meaningful submissions to be made, but even with the current level of disclosure, it seems

highly unlikely that the nature of this officer's deployments in other operations places him/her at any realistic risk of violent reprisals from former targets. It is notable that the Chair puts to the fore in support of anonymity, not risk of physical harm, but the impairment of performance of current and future duties.

42. As with EN42, if there is a risk to a current deployment then first, this must be balanced against the need for the Inquiry to get to the truth, together with the inappropriateness of the officer engaging in such activities until it is known to what extent s/he was engaged in wrongdoing in the NPOIU. Before any reasonable decision can be taken, further evidence is needed in relation to the particular investigation in which s/he is currently engaged to see whether and how that risk can be mitigated if the officer is removed.

EN47

43. This is not a fast track officer. The risk assessment was prepared by Richard Clarke. The only reason given in the Chair's 'minded to' indication in relation to this officer is the impact of publication of real and cover names on this officer's ability to perform his/her current "valuable undercover duties" - 'minded to' [24]. We repeat the overarching submissions on this point and the points made above in relation to EN42 and EN43 at [38] and [42] also apply.

44. Insofar as the Chair has also taken into account an alleged risk of physical harm, the overarching submissions on this point are repeated both as to the process by which the risk assessment is made and the high threshold of risk that is required before any such risk can outweigh the compelling need for disclosure.

EN48

45. This officer was deployed in the NPOIU in the 2000s. S/he is not a fast track officer. The Chair is 'minded to' restrict cover and real names on the basis of real risk to safety posed by members and associates of the NPOIU target groups - 'minded to' [25].

46. There is a quite significant difference between the Chair's 'minded to' position and the application / witness statement. The latter make far more of the risk to EN48 from his/her post-NPOIU deployments into serious crime and contend that there is an Art 2/3 risk. The Chair finds only an Art 8 risk (because the risk of harm is contingent not immediate) - and only refers (at least in the open note) to the risk from the NPOIU deployment. EN48's gisted witness statement refers to deployments into drug-dealing, firearms distribution and extortion and states that EN48 would be at risk of violence or death from the individuals s/he targeted. It is also said that there are risks to other UCOs with whom EN48 worked - w/s [9]. It is also said that EN48 became a Level 1 source handling officer and handled very high profile informants. It is said that there would be a risk to those informants if they were seen with EN48 if his/her name were disclosed. EN48 is no longer a police officer - w/s [12]. It is notable that these assessments do not feature in the Chair's open 'minded to' indication. This underscores the inappropriateness of basing the entire risk assessment on the self-report of the officer.

47. Insofar as the Chair's assessment that there is a real risk to safety posed by members and associates of the NPOIU target groups is based upon the risk assessment of Richard Clarke, there are good reasons to be concerned as to the robustness of that risk assessment. All the overarching points are repeated. In addition, it is clear from [6] of the RA that the assessment by **senior officers**, including reflective assessments written some time after EN48's operations concluded, was that the risk of physical harm was **low**. No reasons are given by Mr Clarke or the Chair for rejecting these assessments, made by senior officers with detailed knowledge of the operations, and in a position to make assessments with the benefit of hindsight.

<u>EN74</u>

48. EN74 was deployed in the NPOIU in the 2000s. S/he has also been deployed undercover in relation to serious criminal investigations - gisted risk assessment

[11] & [12]. The Chair is 'minded to' restrict real and cover names on the basis that other duties gave rise to a real risk to life and limb which, to an extent which he says cannot be precisely quantified, remains. The Chair says it is not necessary to fulfil the terms of reference to run those risks - 'minded to' [26].

49. The application is made by the NCA and the risk assessment is prepared by the NCA (Glyn Hughes), rather than the NPCC. The assertion that the threat, risk and harm are high should the officer's cover name be revealed [para IV] is said to be detailed later on in the 'Expanded Rationale' section. This states at [5] that the risk would be of physical confrontation by criminals, activists and the media in breach of the officer's Article 8 rights. It is not clear what is meant here by 'physical confrontation'. However, given the inclusion of activists and the media, it cannot be taken as referring to actual violence. As previously submitted, there is no evidence of any of the former SDS or NPOIU UCOs who have been publicly disclosed having been physically attacked by activists, the media, or indeed anyone, as a consequence of their disclosure. As above, vocal protest, even if uncomfortable and unwelcome, is not a proper basis for restricting cover names in this Inquiry. As well as repeating all the overarching points, if and insofar as the only risk of harm this officer would face is of such a kind, this cannot possibly justify granting anonymity given the importance of openness in relation to the NPOIU's activities.

<u>EN288</u>

50. This is a fast track officer who assesses that s/he would face a risk to life, being in no doubt that s/he would be murdered if his/her identity was revealed - gisted application [3]. The threat is said to come from members of serious and organised crimes groups which the officer infiltrated over a number of years. The overarching submissions with respect to the process of risk assessment are repeated. It is wholly inappropriate to assess risk on the basis of the officer's say so. The gisting process is inadequate for the reasons given. It is entirely unclear whether this officer's engagement in undercover work created the sorts of

relationships with those inside the groups s/he infiltrated that is reasonably liable to give rise to a desire for retribution.

51. That a robust risk assessment is required in this case is all the more important given the Chair accepts that the risk of this officer's real identity being revealed should the cover name be disclosed is "not great". If, despite this low level of risk, the Chair is not prepared to run it, then the underlying threat of serious physical harm must be reliably established.

EN289

52. In this case the Chair is currently 'minded to' restrict the real name, but is deferring consideration of restriction of the cover name to a later date. It is said that EN289 undertook ad hoc deployments for the Animal National Rights Index / the NPOIU in the late 1990s, attending and reporting on approx. 6 marches. The gisted application states that EN289 "*did little more than attend a few demonstrations and feed back some basic intelligence on numbers and the potential for disorder. EN289 does not believe that he/she engaged with individuals at the demonstrations and there were no specific targets*." - gisted application [1]. It is said that s/he researched and obtained the identity of a deceased child as a cover name, but did not use it. According to the gisted application, EN289 cannot remember what his/her cover name was - [5]. S/he is doubtful that it could be traced to EN289 - gisted application [17]. The Chair is of the view that save in respect of the issue of building the cover name using the identity of a deceased child, the evidence of EN289 "*is of peripheral relevance to the Inquiry"* and that *"given that the cover name was not used, no purpose would be served by determining the cover name application at this stage*." - 'minded to' [31].

53. In relation to disclosure of the real name, the Chair has concluded that this *might* impair performance of duties and *might* have some impact on mental health - 'minded to' [32]. It follows that the greatest harm that can arise from disclosure

of the cover name in this case is that it leads to disclosure of the real name with the potential impact on duties and the officer's mental health.

54. The submissions made above about placing reliance solely on the evidence of the officer are repeated. If the officer is not telling the truth about the extent of his deployment and involvement in the Unit this will not come to light other than if his cover name is sought and if found, disclosed, so that those affected can come forward. At the very least the Inquiry should be seeking official confirmation including documentary proof of the limited role the officer says he played. Given the limited nature of the risks this officer would face should his/her cover name be published, it is submitted that these do not outweigh the importance of openness in this Inquiry and of the Inquiry being able to - and being seen to be able to - test the officer's account.

EN507

55. This is a fast track officer who remains a serving police officer. Nothing has been disclosed about the timeframe or nature of his/her NPOIU deployment. The Chair is 'minded to' restrict his/her cover name on the basis that publication would substantially impair the ability of EN507 to undertake future undercover operations and would constitute an unjustified interference with his/her Art 8 rights. The Chair does not specify whether he thinks this is on the basis of risk of physical harm or other interference with private life - 'minded to' [34] & [35].

56. EN507's gisted witness statement states that the officer believes that disclosure of his/her real or cover ID would put him/her and his/her family at real risk of physical harm. It is said there are people who wish to seek retribution for sentences of imprisonment received as a result of this officer's work. The statement also refers to risk to on-going and future operations - gisted w/s.

57. The Chair's 'minded to' indication identifies the principal reason for restricting this officer's cover name is so that s/he can continue to be deployed. The

submissions are repeated that this is an insufficient basis to outweigh the need for openness and that instead current deployments should be phased out. Insofar as the Chair has also taken into account the asserted risk of harm, we reiterate the overarching submissions as to the inadequacy of the process of risk assessment and of gisting such that there is simply insufficiently robust material upon which to base a reasonable risk assessment. Moreover, in the absence of any reference in the 'minded to' indication to any risk of physical harm, it appears that the Chair does not consider this to be a significant factor in relation to this officer. In which case we repeat the submission that there is an insufficient basis on which to forgo openness.

EN808

58. This is a fast track officer. The open reasons are not supplemented by closed reasons: [39] 'minded to'. The Chair is minded to refuse disclosure of the cover name because it is 'not in the public interest' to disclose. He is minded to refuse disclosure of the real name because it would interfere with the private and family life of the officer and would not be justified by Art 8(2).

59. It is notable that this officer has been extremely careful in protecting his identity. S/he has no social media accounts in their name. Even if the officer is at risk from those in serious and organised crime whose groups s/he has infiltrated while undercover, there is no indication that there is any meaningful risk of his/her real identity being revealed so as to give rise to a real threat from members of such groups.

60. In respect of the nature and extent of any such risk should this officer's real identity be discovered, the Chair does not appear to have accepted his/her evidence as to its extent; being satisfied only that the risk is to the officer's private and family life. However, if the Chair does consider there to be a threat of violence, the overarching submissions on the inadequacy of relying on an officer's self-reporting and of the gisting so that meaningful representations can be made is

repeated. Again, as in all these cases, details which could readily be given about the nature of the officer's deployments into these groups have not been given. How long was s/he involved? What was the nature of his /her involvement? Did s/he build close bonds of trust/friendships? For instance, the gisted statement says that 'there is clear evidence that organisations can seek to identify undercover police officers who operate against their organisations'. Did the officer provide evidence that the organisations s/he had infiltrated had done this? Was that evidence corroborated by official documentation? Did that evidence relate to attempts to root out officers currently deployed, or to root out the identity of officers once the gang had been caught to exact revenge? If the former only, then how does that demonstrate a risk of retribution? All it demonstrates is gang members trying to ascertain that they do not have a mole.

EN1001

61. This is also a fast track officer. The gisted application is contradictory: at [2] it states that "*EN1001 has never been seconded to the [NPOIU]*", but at [4] it states that "*EN1001 used the same pseudonym [in some of his/her non-NPOIU deployments] as he/she used when seconded to the [NPOIU]*". The 'minded to' note states that EN1001 was not seconded to the NPOIU, but performed a peripheral supporting role in one operation for a short time in the late 2000s. It is stated 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. EN1001 was and is a serving police officer with a provincial force and has undertaken routine criminal undercover deployments, some of which were dangerous. The Chair concludes that the work done by EN1001 and other officers would be substantially impaired if either his/her cover or real name were to be published and that is not in the public interest. The Chair is also of the view that publication of real and/or cover names would be an unjustified interference with EN1001's Art 8 rights - 'minded to' [40]. There is a closed note in relation to this officer.

62. The gisted application states that EN1001's other undercover work has primarily been as a test purchase officer, in which role s/he has given evidence at court

under a pseudonym. As noted above, the gisted application states that EN1001 has used the same pseudonym in some of these operations as s/he used when seconded to the NPOIU. The gisted application states that "*There must be a significant risk that if EN1001's pseudonym were to be published, EN1001 would be identified as a current serving officer and in doing so jeopardise EN1001's career, unit, the unit's officers and current live operations*." - [5]. [6] of the gisted application is also contradictory - it refers to EN10001's belief that there is a risk of retribution if his/her real name were to be disclosed or if it were possible to link EN1001's cover name to his/her real identity, but then it goes on to state that EN1001 is unable to state whether any of the suspects EN1001 has interacted with whilst working as an undercover officer could pose a risk to EN1001. [7] then goes on to submit that there are Art 2 risks arising from EN1001's identities being disclosed - see also [7] of gisted w/s.

63. The gisted witness statement indicates that EN1001 has given evidence against those arrested as a result of his work as a test purchase officer. This was always under a pseudonym and always screened from the public, although s/he was not always screened from the defendants in those proceedings - gisted w/s [5]. [6] of the w/s states that the whole of EN1001's current police unit would be compromised were his/her identity to be compromised.

64. All these contradictions underscore the inappropriateness of relying exclusively on the self-report of the officer. We repeat our overarching submissions on the need for a robust process of risk assessment and the inadequacy of the fast track process. Despite the poor gisting in this case it is tolerably clear that the officer has not engaged in work of an undercover nature other than test purchasing, which plainly does not put him at any greater risk of revenge attacks than a regular uniformed officer involved in the investigation of drugs crime.

65. If the officer did, as he says, only engage in very limited undercover work in the NPOIU, the prospect of disclosure of his cover name compromising any of his current deployments is remote in the extreme. If in fact it transpires that he is not telling the truth, such that those spied upon do identify him and make disclosures

on-line that are capable of leading to his true identity, then this officer should not, until the Inquiry has investigated those allegations, be carrying on with undercover work.

66. For the foregoing reasons it is submitted that there are no factors of sufficient weight or moment that justify granting the application in this case.

Real name only application

EN1 Marco Jacobs- represented by Slater and Gordon

67. Since this is a real name only application, only two application forms have been disclosed none of the underlying material. Indeed, it is clear from the second disclosed application (March 2018), that there were further earlier applications (March 2016 and July 2016) which have not been disclosed. The NPSCPs submit that the earlier applications should be disclosed before any decision is taken on anonymity. Even on the Chair's own approach to disclosure in relation to real name applications, the applications themselves fall to be disclosed.

68. The earliest of the application forms that have been disclosed (from Oct 2016) seeks to argue that EN1 is at high risk of physical harm from former associates. This contention has plainly been rejected by the Chair, because the 'minded to' note refers to the risk to EN1's safety as "small" - 'minded to' [2]. Given this exaggeration by EN1 of the risk to his safety, the Chair ought not to accept, as he does in his 'minded to' note, without any requirement for evidence beyond the officer's own account, EN1's contentions about his health and the impact of disclosure of his real name upon it. Given that EN1's assertions about one form of risk have been found to be overstated, how can it be safe to accept, without supporting evidence, his assertions about a different form of risk?

69. The Chair notes that EN1 disputes the claims of two women that he conducted a deceitful sexual relationship with them during the course of his deployment. EN1, in his application (March 18) suggests that neither woman ever made a complaint or provided a statement in support of the allegations and he queries whether the

allegations are being maintained. The women concerned, known in the Inquiry as 'Sarah' and 'Deborah', emphatically maintain the allegations that they were duped into such a relationship by him during his deployment. In May 2011, a complaint was formally lodged with the Special Investigations Unit (SIU) of the Metropolitan Police concerning the conduct of EN1 and his senior officers. The SIU proposed an overly restrictive approach to the investigation in that it declined to consider deployment, direction and control and sought to maintain NCND. In the circumstances there was no benefit to Sarah or Deborah in pursuing the complaint further.

70. The MPS were notified of the damages claims pursued by Sarah and Deborah related to the conduct of EN1 on 10 November 2011. These claims were issued in the High Court on 12 January 2012 and settled by way of a consent order on 30 May 2017. During the 5 years of litigation their allegations concerning the sexual relationships that they were each separately duped into by EN1 were set out in detail repeatedly during the proceedings. The allegations were, for instance set out in anonymity applications, the particulars of claim and later the amended particulars of claim and referred to at each Case Management hearing. The MPS and other police defendants in the civil proceedings never formally denied the allegations and paid substantial sums in settlement of the claims. After the conclusion of the civil proceedings thought was given to pursing a complaint since the NCND position had been abandoned and EN1's cover name was known. However, Sarah and Deborah learned in April 2018 that EN1 had retired from the police service and so in the circumstances a complaint could not be pursued.

71. In these circumstances, it is disingenuous in the extreme to suggest that neither woman ever made a complaint or provided a statement in support of their allegations. There is ample evidence of these relationships and no evidence that EN1 would suffer any harm such as to justify a departure from, what ought to be, the fundamental principle of openness in this Inquiry.

Conclusion

72. For all of the reasons set out above, the NPSCPs submit that the case for restriction is not made out in respect of any of these applications. If the Chair grants orders reflecting his 'minded to' indications this will preclude any effective investigation of the NPOIU as a unit.

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28 September 2018