IN THE MATTER OF THE INQUIRIES ACT 2005
AND IN THE MATTER OF THE INQUIRY RULES 2006

THE UNDERCOVER POLICING INQUIRY

SUBMISSIONS FOR THE HEARING OF 31 JANUARY 2019

ON BEHALF OF THE CORE PARTICIPANTS

REPRESENTED BY SLATER AND GORDON

Introduction

1. Pursuant to the Chair's note dated 29 November 2018, the process of reviewing the archives of SDS intelligence reports has raised difficult questions about how the Inquiry can balance the obligations conferred upon it by the General Data Protection Regulations ("GDPR") with the need to progress the Inquiry in a way that is expeditious, fair and cost-effective.

2. It is not practically possible, nor would it be a proportionate use of resources, for the Inquiry to contact each and every individual named in the intelligence reports to notify them of their inclusion and to permit them to make an anonymity application. The vast majority of those named in the reports will not be of interest to the Inquiry and are unlikely to be sought as witnesses.

3. This note raises issues specific to the former undercover officers represented by Slater and Gordon, including (i) the importance of former undercover officers being provided with unredacted reports prior to the provision of their witness statements and prior to the disclosure of those reports to the Non-State Non-Police Core Participants, and (ii) the importance of ensuring that any disclosure of the reports does not compromise the identity of those officers in respect of whom anonymity orders have been made. It then

considers the possibility of conducting hearings about deployments in private and sets out an alternative proposal for proportionate compliance with the GDPR.

Providing unredacted reports to former officers

4. The Chair has indicated that he is not willing to adopt the blanket approach of redacting all of the names contained in the reports, as he considers that this would render the documents unreadable. This approach is supported by the Slater and Gordon officers, for whom access to historical reporting in a form which can easily be read and comprehended is a prerequisite to drafting their witness statements. Without contemporaneous records which include the names of individuals, most officers will be unable to remember the events of their deployment in sufficient detail to assist the Inquiry, due to the passage of time and the detailed nature of the intelligence.

5. The provision of the SDS reports to the officers without redactions is essential if they are to provide witness statements that give meaningful details about their deployment. However, this in itself raises difficult issues in the context of the GDPR, as the officers were often not the authors of their own intelligence reports. Many reports attribute information to a particular officer, but were in fact drafted by a different officer following oral briefings. Some reports may never have been seen by the officer to whom they have been attributed and the reporting which they contain may not be an accurate representation of the events which occurred.

6. The fact that officers did not write their own reports means that it is even more important for the reports to be provided to the officers in an unredacted form at an early stage of the Inquiry, so that they might review them and confirm (i) whether they were the authors, and (ii) whether the information which they contain is correct. This exercise must be undertaken before witness statements can be drafted and certainly before the reports are disclosed to Non-State Non-Police Core Participants or publicly attributed to the officer in question.

7. There may be difficulties under the GDPR in the Inquiry providing the reports to the officers as third parties and this is not provided for in the Restriction Protocol, as paragraph 21(ii) states that unredacted documents will only be provided to the author or the original recipient. The Restriction Protocol should be amended to permit former

undercover officers to whom intelligence in a report has been attributed to view an unredacted copy of that report prior to drafting a witness statement.

Holding hearings in private

8. In his note of 29 November 2018, the Chair set out a list of possible options for managing GDPR compliance in relation to the reports. His first suggestion was that all but general evidence about the deployments should be given in private, within a "confidentiality ring". This does not require all of the evidence regarding the SDS to be given in private, but only evidence which has implications for the GDPR and which could potentially identify those who have been granted anonymity orders.

9. There are compelling reasons to adopt this suggestion. First, it would be far quicker and more efficient to adopt a blanket approach than to consider each named person individually. Significant time and resources could be saved by avoiding the consideration of anonymity applications or redaction decisions in relation to each individual named in the reports.

10. Second, conducting the hearings in private would remove any risk that the personal information of the named individuals could be inappropriately disseminated in violation of the GDPR. The consequences of breaches, even if inadvertent, can be severe. In July 2018, the Independent Inquiry into Child Sexual Abuse was fined £200,000 by the Information Commissioner's Office following an accidental release of personal information. Conducting portions of the hearings in private would significantly minimise the risk of breaches of the GDPR.

11. Third, conducting hearings in private would minimise the risk that officers in respect of whom anonymity orders have been granted may be accidentally identified through information contained in the reports. Officers may be identifiable due to their presence at meetings and events, their participation in acts of activism, their knowledge of discussions or private information contained in the reports or by process of elimination. The task of reviewing each intelligence report to ascertain that jigsaw identification is not possible will be lengthy and difficult. The Chair is aware that the consequences of identification would in a number of cases be severe.

12. Fourth, the live evidence given in relation to the reports will be complex and detailed, involving many names, dates, events and groups. This evidence is unlikely to be coherent and comprehensible if the hearings are held in public, as the officers will be required to use ciphers and to avoid giving any personal or identifying information about the subjects or individuals they will be discussing. One officer, whose case is not unusual, was associated with 55 groups and reported on many hundreds of individuals during the course of their deployment. In the context of a public hearing, each sentence which that officer produces describing their deployment is likely to require careful prior consideration and the application of de-identifying information for privacy purposes. If the hearings were conducted at least partially in private, the Inquiry would receive far more detailed and coherent evidence.

13. Fifth, conducting hearings in private would mean that the Inquiry would not be required to make difficult decisions with a view to disclosure regarding the relevance of documents or the significance of witnesses at this early stage, before witness statements are received. Instead, those decisions could be made at the conclusion of oral evidence. In order to maintain the public interest in transparency and accountability, following the hearings a redacted report of the evidence could be agreed between the parties and made public on the Inquiry website. The GDPR compliance exercise in relation to that final report would be far more manageable than it would be if it were undertaken for every intelligence report and every individual named therein.

14. However, it is acknowledged that to hear all but general evidence about deployments in private would significantly restrict public engagement in this Inquiry. If the Chair is unwilling to adopt this approach, an alternative proposal for managing GDPR compliance is set out below.

An alternative proposal

15. The following proposal incorporates a number of the options set out by the Chair in his note of 29 November 2018, along with sections of the existing Restrictions Protocol. Elements of the Restrictions Protocol should be retained, as they remain relevant and applicable following the introduction of the GDPR. For example:

a. Any unnecessary or irrelevant personal information (such as addresses, contact details, information about family members etc.) should still be redacted as a matter of course (paragraphs 27 and 28).
b. Those from whom a statement is sought should have the opportunity to make an application for a restriction order over references to them in documents which the Inquiry intends to use (paragraph 29).
c. It is important to retain the sections of the Protocol which state that "Persons who are neither core participants nor witnesses will be contacted by the Inquiry, unless in all the circumstances it would be disproportionate to do so, and given the opportunity to make an application for a restriction order over any relevant and necessary personal information" (paragraph 32).
d. Where it is disproportionate to contact individuals, the Inquiry team will consider redacting the material itself without an application (paragraph 33).

16. The proposal for the management of intelligence reports in compliance with the GDPR is as follows:

a. <u>The Inquiry should make an initial determination of which reports are likely to be relevant to the hearings and therefore disclosable and should deal only with those reports for the purposes of this issue.</u> The most difficult aspect of GDPR compliance in relation to the reports is the sheer volume of information and of names contained within. If the number of reports could be reduced by an initial review for relevance, this would assist in making the process more manageable. There is no need for the Inquiry to consider the GDPR implications in respect of an individual named in a report that it does not intend to publish.

b. <u>The Inquiry should redact all lists of names from the reports.</u> Many of the reports contain lists of attendees at events. Most of the persons included in these lists will not be of further interest to the Inquiry, and therefore it would be disproportionate to devote time and resources to an individual consideration of whether their names should be redacted. Moreover, the lists pose a risk to those officers who have been granted anonymity in respect of their cover names, as they may by process of elimination identify the author. The lists should therefore be redacted in full.

c. The Inquiry should publish the details of the dates of reporting and the groups which were dealt with in the relevant reports in advance of the hearings and set a time frame within which applications for anonymity may be made by those who believe they may have been named. This step will provide those who believe they may be named in the reports with an opportunity to confirm whether they are named prior to publication and, if necessary, to make an anonymity application. It is a proportionate method of complying with the GDPR, as it is far more cost-effective and efficient than contacting each named person. This opportunity should only be given to those named in the report other than in lists of attendees, as those individuals will have had their names redacted in accordance with the second stage of this proposal.

d. In relation to those named persons who do not contact the Inquiry within the set time frame, the Inquiry team itself should consider whether redactions are necessary, taking into account its obligations under the GDPR and paragraph 33 of the Restrictions Protocol. The Restrictions Protocol in its current form permits the Inquiry to make unilateral decisions about redactions. Where there are named individuals (other than those contained in lists of attendees), the Inquiry should consider whether there are compelling reasons why their names should be redacted. If the decision is made to redact the names and this raises objections, Core Participants should be able to make submissions to the Inquiry on the reasons why they should not be redacted, which the Inquiry can consider and determine as they arise.

e. Irrelevant personal information should be redacted as a matter of course, in accordance with paragraphs 27 and 28 of the Restrictions Protocol.

Conclusion

17. The Chair should adopt the first of his suggested options in his note of 29 November 2018 and conduct part of the hearings regarding individual deployments in private, within a "confidentiality ring". This would alleviate the difficulties posed by the application of the GDPR to the intelligence reporting of the former undercover officers.

18. If this proposal is not accepted, the Chair should adopt the alternative proposal set out above for the efficient management of disclosure and the application of the requirements of the GDPR to the Inquiry.

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