

**SUBMISSIONS ON PRIVACY ISSUES ON BEHALF
OF THE CATEGORY M NON-STATE CORE PARTICIPANTS**

1. The Chairman directed that the Category M Non-State Core Participants ('CPMs') have permission to make short submissions on the privacy issues which arise out of handling of the intelligence reports ('IRs') received by the Inquiry; it is not necessary for these submissions to delve into the legal principles, which it is anticipated will be canvassed in full by others. Accordingly, these submissions do not set out an exhaustive response to the issues raised by the Chairman in the *Preliminary Issue: Privacy, Note to core participants and directions for hearing* dated 29 November 2018 ('*Inquiry Privacy Note*'). They are intended to focus on the specific issues which concern the CPMs and their proposed resolution.

2. In granting the CPMs permission to make these submissions, the Chairman recognised that their interests in the present issues may not be identical to the wider Non-Police Non-State Core Participants ('NPSCPs'). That must be right. The CPMs have no interest in the names or identifying details in the IRs but a strong interest in the outcome of this important hearing for the following reasons:
 - a. **Openness:** That as much as possible of the information received by the Inquiry ought to be publicly available in unredacted form, consistent with the starting point in the statutory scheme of "*openness and accessibility, in conformity with the common law presumption of open justice*" (see the *Restriction Orders: Legal Principles and Approach Ruling* of 3 May 2016 ('*Restriction Orders Ruling*'), §89; see also §§82-88 and A.11).

 - b. **Expediency:** That the restrictions process is completed in a reasonable time to avoid undue delay to the Inquiry (see for example *CTIs Explanatory Note on Privacy*, at §19).

 - c. **Effective participation:** That those who have a particular interest in the outcome of the Inquiry - primarily the NPSCPs and the CPMs – be able to effectively participate in the process. That must include access to information which directly affects their interests (see §109 of the *Restriction Orders Ruling*: "*I accept that if core participants and witnesses do not have access to information that directly affects them, their ability meaningfully to*

contribute to the resolution of important issues in the inquiry may be compromised.”)

From the perspective of the CPMs, effective participation means an ability to properly understand and follow the evidence concerning the awareness and authorisation of their ex-husbands’ conduct within the SDS and the MPS more widely. That includes being able to understand who their ex-husbands were reporting to within SDS and where that information was being passed to. Taking for example, *Annex B to CTI’s Explanatory Note on Privacy*, it is important that the CPMs are able to see the tabulated information at the top of the document and the underlined dissemination instruction below it. They do not envisage that those details themselves will give rise to any privacy issues or require any redaction. But if the IRs are not provided at all, they will be denied access to this critical information.

3. The CPMs are mindful of the Chairman’s direction that their submissions need not delve into the legal principles. In those circumstances, they simply indicate that they agree with the premise of the *Inquiry Privacy Note* that it is in principle permissible to publish the IRs without redacting the names or identity of individuals, notwithstanding that doing so may reveal those individuals’ political opinions. The CPMs have no personal reason to seek to dissuade the Inquiry from taking that course, given their interests in an open and expedient process, which permits of effective participation.
4. However, if the Inquiry is minded to conclude that there is or must be an alternative course which can better accommodate the privacy interests of those concerned, the CPMs suggest a pragmatic two-stage approach, adapting two of the options set out in the *Inquiry Privacy Note* at §9(iv)-(v):
 - a. **Stage 1:** the IRs in their current state are disclosed to all relevant CPs and their RLRs. That disclosure is accompanied by a restriction that:
 - i. The IRs may not be used for any purpose other than in preparation for the Inquiry hearings;
 - ii. That none of the names or identifying details in any specific IR may be referred to in public at any hearing, without a written request in advance explaining the necessity of referring to that identifying information. If the Inquiry finds that there is justification, the person/s concerned to be notified and permitted to make an application if they so wish. Deadlines for both raising the request and making RO applications can be set on a rolling basis by reference to the respective hearing dates.

b. **Stage 2:** the Inquiry publishes at its conclusion:

- i. A chronology or narrative of the scope of the infiltration of each group, which summarises the broad content of the IRs (i.e. the nature of the meetings or context of the infiltration, the period of time over which there was such infiltration, the identity of the officer (real, cover or cipher, as appropriate) conducting the infiltration). It is anticipated that the Inquiry is likely to conduct this type of analysis in any event, in order to fulfil its fact-finding function, such that its publication should not be unduly burdensome or time-consuming.
- ii. A relatively small sample of the IRs, illustrative of the conduct of the UCOs both 'on the ground' and in the reports they were providing back to the SDS. Any person identifiable in the sample to be notified in advance and permitted to make an application for an RO.

5. This 2-stage process meets the following objectives:

- a. It respects the privacy of those identifiable in the IRs by not making them public, save for those selected to be part of the sample and only then once any applications for ROs have been heard. There is no reason to believe that the NPSCPs/CPMs would breach the restriction on the use of the documents. On the contrary, the conduct of the NPSCPs/CPMs to date demonstrates their willingness to abide by any ROs made by the Inquiry. Any breach would of course be subject to the s.36 Inquiries Act 2005 power to refer the matter for enforcement action in the High Court.
- b. It ensures that the NPSCPs/CPMs have access to all the information necessary to properly understand the issues, prepare for the evidence that they will give, and to respond to that which the Inquiry will hear. As with any complex evidential inquiry, and especially one which derives from a long background of secrecy and duplicity, it is very difficult at this stage to conclude that particular documents have no relevance to particular NPSCPs/CPMs. The links which may be revealed in those documents, or the context that they may provide, will be dependent on each NPSCP/CPM's own individual knowledge and experience. Absent their full disclosure to all NPSCPs/CPMs, the Inquiry is bound to lose the benefit of relevant evidence and observations. Simultaneously, the NPSCPs/CPMs are likely to lose the ability to properly and fully engage with the Inquiry process.

- c. The Inquiry puts into the public domain sufficient information to ensure that the public is properly informed about the scope of UCO conduct, both in general (in the chronology or narrative) and by way of specific examples. The latter is important to set the generality in its proper context and to ensure it is not unduly sanitised or anodyne. As the *Annex* documents demonstrate, much of the reporting was highly detailed and derisory.
- d. The evidential hearings take place in public as far as is possible.
- e. The Inquiry is not further delayed at this early stage by a very difficult and lengthy process of ROs or redactions. It is likely that very much of the identifying information in IRs will not be directly relevant to the issues on which the Inquiry will hear evidence. It will not be necessary for that identifying information to be specifically referred to in hearings. Where it is necessary, it can be the subject of specific consideration at the appropriate juncture. It is unnecessary and undesirable to attempt to resolve it at this stage, whether on a blanket or individual basis. By the time of the hearings, the issues will be considerably clearer and, in relation to privacy at least, considerably narrower than they presently are.

Helen Law

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23 January 2019