

## **IN THE UNDERCOVER POLICING INQUIRY**

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### **SUBMISSIONS FOR HEARING ON 31 JANUARY 2019 SERVED ON BEHALF OF THE NATIONAL CRIME AGENCY**

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- 1) These submissions are served on behalf of the National Crime Agency ('the NCA'). They address the questions posed by the Chairman in his note of 29 November 2018 which arise because of (a) the coming into force of the General Data Protection Regulation ("GDPR") and the Data Protection Act 2018; and (b) the opportunity for the Inquiry to consider intelligence reports provided by the Special Demonstration Squad ("SDS") undercover officers in bulk.
- 2) As to (a) the NCA's position, in summary, is that the coming into force of the GDPR and DPA 2018 does not significantly impact on the Inquiry's task, because of the relative similarity between the principles embodied in that legislation and those of the Data Protection Act 1998 ("DPA 1998") insofar as they are relevant to the Inquiry. Some suggestions as to minor amendments are made below.
- 3) The NCA's submissions on (b) are necessarily more limited than those of the MPS (whose submissions the NCA has seen in draft). The NCA has less of a direct interest in SDS documents than the MPS. Furthermore, the relatively limited number of relevant documents held by the NCA, when compared with the MPS and NPCC, means it also has substantially less experience in this Inquiry of the logistical issues which are raised by redaction exercises involving very large numbers of documents. Nonetheless, it is clear from the illustrative examples of reports (at Annexes A and B to CTI's Explanatory Note on Privacy) that the impact on the Inquiry's timetable of a redaction process will be very substantial. The NCA submits that the appropriate approach to take to redactions has to take account of the importance of maintaining the Inquiry timetable in this already long-running Inquiry.
- 4) As to the individual questions posed in the Chairman's note of 29 November 2018:

(a) How is effect to be given to the privacy and data protection rights of individuals named in SDS intelligence reports without undermining the public interest in the Inquiry being heard as much as possible in public?

5) The NCA agrees with and adopts the MPS's submissions on this issue.

(b) Do changes to privacy laws since the Restriction Protocol was finalised require the privacy section of that document to be amended?

6) The NCA's position is that the principles underlying the General Data Protection Regulation ("GDPR") and Data Protection Act 2018 ("DPA 2018") are, in so far as relevant to the Inquiry's task, not substantively different from that of the old legislation.

7) The privacy section of the Restrictions Protocol currently refers, at paragraphs **25** and **26(v)**, to the Data Protection 1998 ("DPA 1998"). It should be updated to refer to the GDPR and DPA 2018. Otherwise the NCA submits that no amendments are required.

(c) Do advances in the Inquiry's understanding of the documents justify amending the privacy section of the Restriction Protocol?

and

(d) Is any guidance needed as to the application of the Restriction Protocol?

8) The NCA agrees with and adopts the MPS's submissions on this issue.

(e) Do the coming into force of the GDPR and DPA 2018 have any further consequences for the publication of documents, witness statements and the taking of oral evidence?

9) The NCA does not consider that the coming into force of the GDPR and DPA 2018 have any further consequences for any of these matters.

**ANDREW O'CONNOR QC**

**RICHARD O'BRIEN**

**24 January 2019**