

Statement on the Inquiry's Approach to Disclosing Photographs

1. The issue of publishing photographs was raised during the open hearing on 5th February 2018 where the Chairman at pages p108 line 21 to p 115 line 14 of the transcript discussed the issue and at p 113-115 confirms the following in response to submissions by Philippa Kaufmann Q.C. for the Non-State Core Participants:

THE CHAIR: Forgive me, may I interrupt you a moment to explain what I anticipate will happen?

MS KAUFMANN: Yes.

THE CHAIR: There is a witness protocol, as you know, which involves a package of documents being put first of all to the relevant undercover officer and then to anyone who may have evidence to give about the deployment of that officer. It is at that stage that a decision will have to be made about whether or not a photograph should be included in that bundle of documents. It won't delay anything. It will be the package of documents that is given to the non-state core participant or other non-state witness who is going to be invited to provide evidence to the Inquiry.

MS KAUFMANN: Let's imagine a situation where a cover name is disclosed.

THE CHAIR: Yes.

MS KAUFMANN: -- and the core participants come back -- it is known for example what particular group that individual was in but the core participants are unable to identify it because they don't recognise, they don't recognise the individual from their surname and it is very common name. You would not entertain an application from them saying, "Could you release a photograph of this individual so we can put it around and try and get ourselves in a position that we can give you relevant evidence, put statements together and so forth?"

THE CHAIR: I am not for one moment saying I would not entertain such an application. All I'm saying is that I don't think it arises now.

MS KAUFMANN: Even if you were to entertain that later down the line, the wording still, on its face, would appear to prevent you from disclosing those photographs. So we do need to revisit that wording.

THE CHAIR: We may need to revisit it. I am not convinced we do. We may need to when it arises; it doesn't at the moment.

MS KAUFMANN: Okay, I think we understand each other.

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THE CHAIR: There is an enormous document redaction exercise which has to be undertaken before we get anywhere near a substantive hearing. We have to do these things in order and it will be done at that stage.

MS KAUFMANN: Our concern is that at the moment, given the wording of the order, that would lead you necessarily to redact a photograph. That's the concern we have.

THE CHAIR: I note the concern. All I can say to you is that it is a real concern -- I appreciate it is -- and it matters, and we will approach it without a preconception. Certainly the precise wording of the order will not prevent a photograph from being disclosed.

MS KAUFMANN: Thank you.

THE CHAIR: If that is what you are after --

MS KAUFMANN: That's what we are after.

THE CHAIR: Can I take it that no one has anything further to say on that issue? If not, I will rise until five past. (The short adjournment).

2. Since that exchange I have become satisfied that steps can be taken from which an image, taken of an undercover officer contemporaneously to their deployment, could be used by researchers to discover the real name of that person. It is self-evident that even if someone chooses not to post images of themselves on social media/the internet, images may nevertheless be available due to attendance at photographed events such as public or family gatherings. Information on how to carry out this research is readily available online. If such steps were taken and the real name were discovered it would undermine the restriction order in place.
3. I intend to consider any application to restrict photographs of undercover officers and, where necessary, photographs of other individuals on a case by case basis. I can, however, indicate at this stage, that in the absence of any unusual factors, I am minded to adopt the following approach:
 - (i) where the undercover officer is deceased, and no restriction order is in place, I will not restrict the image.
 - (a) The image will appear in the pack of material provided to a non-state witness to assist them to give evidence.
 - (b) At the stage when the Inquiry publishes on its website more detail about an officer so as to prompt those affected to come forward to give evidence to the Inquiry, as well as additional information about which areas and which

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- groups the undercover officer operated in, where available, a contemporaneous image of how they appeared will be published.
- (ii) where the undercover officer has no restriction over cover or real name, I will not restrict the image. (a) and (b) above apply.
 - (iii) where the undercover officer has a real name restriction but the cover name is not restricted and has been published. (a) above will apply but with different handling arrangements from those applied to the other documents in the pack. When I decided not to restrict a cover name but to restrict the real name of an undercover officer, I balanced at that time, the investigative needs of the Inquiry, the privacy rights of the officer and the risk that by confirming the cover name, it might prompt the widespread publication of contemporaneous photographs of the officer which might lead to the disclosure of the real name. It is for this reason that when considering whether to restrict an image in such a case, I am likely to conclude that the image will appear in the pack of material provided to a non-state witness to assist them to give evidence but under a restriction order preventing its circulation to anyone except that non-state witness and requiring different handling arrangements from the other documents in the pack. The privacy rights of the officer in cases where I have restricted their real name, do not justify taking the step of publishing their undercover officer image on the Inquiry's website in light of the facts regarding facial recognition technology set out above.
 - (iv) Where the undercover officer has a restriction over the cover name, the image will be restricted.
4. I am now invited to consider the restriction of photographs bearing the image of SDS officers in Tranche 1. I am minded to determine the applications as set out above.

5. I therefore direct as follows:

If the Media¹ or any Core Participant is opposed to this indication of how I am minded to approach applications to restrict photographs on a case by case basis they should send their written submissions to the Inquiry by no later than **19 February 2020**.

Sir John Mitting

Chairman, Undercover Policing Inquiry

29 January 2020

¹ Guardian News & Media Ltd, Associated Newspapers Ltd, Independent Print Ltd, Independent Television News Ltd, Sky UK Ltd, Times Newspapers Ltd, and the BBC