IN THE MATTER OF THE UNDERCOVER POLICING INQUIRY

RESPONSE TO CHAIR'S STATEMENT OF 29 MAY 2020 ABOUT THE CONDUCT OF TRANCHE 1 EVIDENCE HEARINGS
ON BEHALF OF
THE NON-POLICE, NON-STATE CORE PARTICIPANTS

Introduction

1. On 7 April 2020, the Chairman said:

   "The Inquiry is a public Inquiry. Unless there is good reason to the contrary, those whose conduct is under scrutiny and who are required to account for it publicly must do so in a manner which the public can observe… I cannot accept the proposals made by many of [the Tranche 1 former undercover officers] for shielding them from all but the legal representatives of the police and the Inquiry and a select and limited number of other legal representatives. To do so would convert that part of the Inquiry which is, for good reason, to be held in public into a set of semi-secret proceedings…"[1]

2. The NPSCPs fully endorse that statement and submit that ensuring that this remains a public Inquiry must be an absolute red line. Without it, public confidence in the Inquiry will be undermined[2]. In an Inquiry of this nature there is a "premium on achieving as public an Inquiry as possible, 'so that at the least to counter or neutralise the obvious alternative surmise, namely a sustained 'cover up''"[3]. That is a very real risk for this Inquiry, which has not been assisted by the

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[1] Chairman's statement on special measures applications by former undercover police officers in Tranche 1.
[2] Legal Principles Ruling, paragraph 82.
[3] Laws LJ in R(E) v Chairman of the Inquiry into the Death of Azelle Rodney [2012] EWHC 563 (Admin), citing the Chairman of the Azelle Rodney Inquiry at [26].

Inquiry's apparent lack of response to the IOPC's recent findings in Operation Hibiscus[4].

3. In addition to the importance of public scrutiny, effective participation by non-state CPs is critical to the Inquiry's success, both for its ability to get to the truth[5] and for its ability to establish justice for the families and victims of undercover policing[6]. It is also central to the Chairman's obligation under s.17(3) of the Inquiries Act 2005 to act with fairness and to be seen to do so[7].

4. For all of these reasons, the Chairman's commitment to conducting this as a public Inquiry, at which CPs, members of the public and the media can see and hear the evidence in real time, is an important one and should not be rowed back from. S.18(1)(a) of the Inquiries Act 2005 requires the Chairman to take such steps as he considers reasonable to secure that members of the public (including reporters) are able to attend the Inquiry or to see and hear a simultaneous transmission of proceedings at the Inquiry. In R(E) v Chairman of the Inquiry into the Death of Azelle Rodney, Laws LJ observed that it is "implicit in the whole process which Parliament has envisaged" for a public inquiry that, save where a restriction order is granted under s.19 IA, the public should be able to see and

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[4] The IOPC found evidence capable of supporting a reasonable conclusion that material relevant to the UCPI had been shredded by MPS personnel after a command circulation requiring such material not be destroyed; that an officer in the MPS Department of Professional Standards Department falsely told a colleague not to investigate this; that there are concerns about the efficacy of the steps taken by the MPS to preserve material relevant to the UCPI; and that a number of managers of the National Domestic Extremism and Disorder Intelligence Unit refused to engage with the IOPC's investigation. Operation Hibiscus final report: https://policeconduct.gov.uk/sites/default/files/Op_Hibiscus_Final_report_for_publication.pdf.

[5] See NPSCP submissions in light the Strategic Review, 21 June 2018.

[6] Written Statement made by the then Secretary of State for the Home Department, Theresa May 12 March 2015 announcing the establishment of the Inquiry: https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2015-03-12/HCWS381/

[7] Al Rawi v Security Service [2012] 1 AC 531 at [93]: "To be truly valuable, evidence must be capable of withstanding challenge. I go further. Evidence which has been insulated from challenge may positively mislead. It is precisely because of this that the right to know the case that one's opponent makes and to have the opportunity to challenge it occupies such a central place in the concept of a fair trial. However astute and assiduous the judge, the proposed procedure hands over to one party considerable control over the production of relevant material and the manner in which it is to be presented. The peril that such a procedure presents to the fair trial of contentious litigation is both obvious and undeniable."

hear the witnesses live[8]. In other words, only such departure from live public hearings as is justified under s.19 IA will be consistent with the scheme of the Inquiries Act 2005. There has been no derogation from that principle during COVID-19. Social distancing requirements and shielding raise challenges, but, consistently with the s.18(1)(a) duty, the fundamental priority for this to be a public Inquiry remains and the practical difficulties with securing public access can and should be overcome. In respect of the open evidence (i.e. that which the Chairman has not previously restricted under section 19 IA), public access must be secured either by the public, CPs and the media being able to see and hear a simultaneous transmission of proceedings or through in-person hearings.

5. The NPSCPs submit that the Chairman should not simply assume that in-person hearings will not be possible in November. The evidence doesn't support this assumption. From 4 July 2020 there will be a significant relaxation of the restrictions on social interaction, with restaurants, pubs, cinemas, visitor attractions, libraries, community centres and places of worship all being permitted to re-open. Courts are beginning to resume in-person hearings, with some jury trials having recommenced in late May. It is incumbent on the Inquiry to follow suit.

6. For the avoidance of doubt, whilst the NPSCPs welcome the proposed publication of an audio recording and transcript at some point after each hearing, this relates only to the Chairman's obligations under section 18(1)(b) IA. It does not constitute adequate public access and it does not touch on the Chairman's obligations under section 18(1)(a) IA. Nor does it fulfil the basic tenet of open justice, namely public scrutiny of the integrity of the Inquiry process. The whole point of delaying publication until after the hearing is so that the transcript and recording can be edited. However, it is that very factor – the denial of immediate, real time access to the proceedings – which undermines the purposes of open justice, namely holding the integrity of the process up to scrutiny, securing public confidence and avoiding the appearance of a sustained cover-up.

[8] [2012] EWHC 563 (Admin) at [21].

7. The submissions below address the issues raised in the Chairman's statement of 29 May 2020 and suggest measures for preserving the public nature of the Inquiry. It is submitted that unless the measures outlined in these submissions are adopted by the Inquiry, then balancing the interests of justice must tip towards holding in-person evidence hearings.

<u>The nature of the 'consultation'</u>

8. The NPSCPs welcomed the clarification from the Inquiry legal team in a meeting held on 3 June 2020 that everything contained within the Chairman's statement of 29 May 2020 is open to consultation. They had previously been concerned by what appeared to be a 'statement' of a concluded view on the part of the Chairman on all bar two of the issues addressed in the 29 May statement (division of the allotted time for opening statements and the possibility of live streaming with a five-minute delay to a room under the control of the Inquiry). This was compounded by the way the statement was presented by the Inquiry in its news release on its website: this appears to express a settled intention to start hearings on 2 November 2020 and then to state how hearings "will" be conducted[9]. This gives the impression of a pre-formed view, rather than a genuine openness to consultation.

9. This remains a concern, not least in light of the Inquiry legal team's recent confirmation that the original venue for the September hearings, Pocock Street, is not and never was available to the UCPI in November and that no attempt has been made to look for an alternative venue. This suggests that the Chairman has indeed already reached a concluded view in respect of in-person hearings. It also raises a question as to the basis for the observation made at paragraph 8 of the 29 May 2020 statement that the possibility of live streaming to a room under the control of the Inquiry would be of "limited value in enabling the wider public to witness the proceedings" in light of the limited numbers able to access the room. If no venues have yet been investigated, it begs the question, why not look for a venue big enough and/or multiple venues in order to secure proper public access?

[9] https://www.ucpi.org.uk/2020/05/29/virtual-hearings-november/

10. It is noted that the 29 May 2020 statement envisages virtual meetings between the Inquiry, core participants and recognised legal representatives taking place between the filing of written submissions and the issuing of a final statement. It is hoped, therefore, that despite the impression given by the 29 May 2020 statement and the subsequent correspondence from the Inquiry legal team, the Chairman will approach all matters raised below with a genuinely open mind and will listen to and actively consider the submissions and proposals made.

<u>Opening statements</u>

Live streaming

11. The NPSCPs welcome that opening statements will be live streamed. There is, however, no justification for there being a five-minute delay. The pre-COVID intention had been for opening statements to be made in open proceedings to which the public, CPs and the media would all have had access and would have been able to see and hear what was being said in real time.

12. S.19(3) IA requires restrictions on public access to be limited to that which is required by law, or which the Chairman considers to be conducive to the Inquiry fulfilling its terms of reference or to be necessary in the public interest. For hearings where there was to be no restriction on simultaneous public access to the hearing room, simultaneous public access should be afforded by other means. Further submissions are made in respect of live streaming of the Inquiry's proceedings more generally at paragraph 22 et seq below.

In-person hearings

13. In addition, as above, the NPSCPs do not accept that it will be "impracticable" to hold open in-person hearings in November 2020. Both the Grenfell Tower Inquiry and the Manchester Arena Inquiry currently envisage conducting socially distanced hearings in July and September 2020 respectively. Both will additionally be live streamed and it is understood that the Manchester Arena

Inquiry is looking to secure adequate venue space to provide a number of overspill rooms to which the proceedings will be live streamed for the public and media to watch from there. The NPSCPs note that the Inquiry legal team admit that the original venue is not available and that no steps have been taken to find alternative venues. This undermines confidence in any commitment to make the Inquiry public. It is extraordinary that there should be a public inquiry without any plan for public access.

14. For many NPSCPs, the coming together with others to witness the Inquiry proceedings is a very important part of the process. Many NPSCPs feel strongly that they have lived with the prospect of this Inquiry for more than six years, and with the aftermath of undercover policing for far longer. It is important to them that they are not robbed of the significance of coming together, in person, to hear the state bodies account for the practices to which they were subjected and to see and hear those practices being subjected to rigorous public scrutiny. Being together to witness the Inquiry in real time is important, both for developing a collective understanding of the evidence and process, and for being able to provide each other with support.

15. The practicalities of doing this are not insurmountable, even in the present circumstances, as the steps taken by the Grenfell Tower Inquiry and the Manchester Arena Inquiry make clear.

State opening-statements

16. There is a very significant imbalance between the position of the state CPs and that of the non-state CPs in this Inquiry. Not only is it the state's conduct that is under scrutiny, but additionally, state CPs have had access to the relevant documentation, whereas non-state CPs will, at best, get limited disclosure by way of publication of the hearing bundles (on the present proposal) less than five weeks before written opening statements are due to be served. This is in the context of the ILT informing the NPSCPs that there are 1,500 documents (approximately 7,500 pages) in Tranche 1 Phase 1 and that the reason for putting the hearings back to November 2020 is because of the redaction process: not because there will be extensive redactions (ILT states there will not be), but

because of the length of time required by the state bodies to read the documents. This is in the context of documents that they have had for years. The non-state CPs will have less than five weeks.

17. There has already been inordinate delay in the start of the evidential hearings, and in any significant disclosure being made to NPSCPs. On 29 January 2019, when the Chairman announced that the start of the evidential hearings would have to be postponed from June and July 2019, he stated that one of the principal causes of the need for postponement was: "The time which it has taken to obtain intelligence reports filed in 1968-1984 from those who hold them. The number of documents is large (approximately 25,000 pages)." He described the process then, in January 2019, as "nearly, but not quite complete."[10] In October 2018, the National Police Chiefs Council estimated that one expert is able to redact around 65 pages per day[11]. On that basis, even if only one expert had been assigned to the task of redacting the documentation (which would seem extraordinary), and allowing for weekends and annual holidays, the task of redaction of all of the Tranche 1 material, let alone the 7,500 pages of T1P1, should have been completed by now.

18. The NPSCPs have very significant concerns that the state bodies are repeatedly using alleged difficulties in accessing, processing and redacting documents as a means of delaying the start of the evidential hearings and putting off disclosure being made to NPSCPs. The Inquiry seems to accede to this continual delay and the consequential impact on disclosure. In the interests of transparency, the Inquiry is asked to confirm:
    a. how many documents are going to be disclosed in Tranche 1 as a whole?
    b. how many individuals are working on assessing the documents for redaction?
    c. how many pages remain to go through the redaction process?
    d. how many pages have already been redacted (and could therefore be disclosed to NPSCPs without further delay)?

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[10] https://www.ucpi.org.uk/wp-content/uploads/2019/01/20180129-Chairmans_statement_on_hearings.pdf
[11] NPCC meeting minutes 3-4 October 2018 https://www.npcc.police.uk/documents/minutes/CCC%203_4%20October%20Minutes_public.pdf

19. Further, in the context of the significant imbalance between the position of the state CPs and that of the non-state CPs in the Inquiry to date, it is not unreasonable for the Chairman to direct the state CPs to make full written opening statements, setting out their cases in respect of the issues identified in the lists of issues, and for these to be served a reasonable time in advance of the non-state opening statements. It is submitted that this would assist the Inquiry by identifying the state's position in relation to the key issues and would reflect the fact that it is the state CPs that have held all of the cards up to this point. Opening statements should be the time for their cards to be shown. It makes sense for this to be done in advance of service of the non-state opening statements, given the wholesale imbalance in access to the underlying material.

20. The Chairman has previously ruled out requiring state CPs to provide "position statements" on the basis that it would interfere with fulfilment of the manifold tasks which they are performing to permit hearings to start on time[12]. However, this is different. The NPSCPs are simply asking that the opening statements, which the state CPs will be preparing in any event, should set out their position in relation to the identified issues and that they should be served in advance of the non-state opening statements. Given that the state CPs have had (very significant) advanced sight of the documents, there is no unfairness is requiring their opening statements to be served first. Indeed, it is unfair to impose the same deadline on the non-state CPs as on the state CPs given that the former will have less than five weeks' access to only limited documentation, as compared to long-term, unlimited access to all documentation.

Timing and ordering of oral opening statements

21. The NPSCPs agree with the proposed ordering of oral opening statements as between the CTI, state bodies, former undercover officers and managers. NPSCP RLRs are actively co-operating with each other and with the RLRs for Peter Francis and anticipate being able to agree the division of time and order of proceeding between them. However, they make two requests:

[12] Chairman's Statement to Accompany the Hearings Protocol.

a. they ask that the Chairman allocates an additional two days to the NPSCPs and Peter Francis, so that there are five days for opening statements between them. This group comprises 15 different groupings of CPs and well over 200 people. Given the constraints of remote hearings (insofar as the hearings are to proceed remotely) and/or the impacts of any measures put in place to ensure in-person hearings, each hearing day is likely to be a maximum of five hours, giving approximately one hour per grouping. The start of evidential hearings has been a very long time coming and there is a lot that the NPSCPs (and no doubt Peter Francis) wish to say. It is their opportunity to identify to the Inquiry, to the state CPs and to the public, their thematic concerns, informed by their individual and collective experiences of undercover policing. The constituent groups are co-operating closely and will continue to do so to ensure that unnecessary repetition is avoided;

b. that the NPSCPs and Peter Francis be permitted to inform the Chairman of the division of time between them closer to the start of the hearings. It is appreciated that the Chairman will need to know in advance of the hearings how long it has been agreed that each counsel team and unrepresented CP has been allotted in order to ensure that they keep to their agreed time. However, it does not appear to be essential to have this resolved at this stage and it would assist the NPSCPs and their RLRs greatly if the division could be finalised when they are further forward with the preparation of opening statements, so the division, not only of time, but also of themes and content between the various groupings can be agreed between them. As above, the groups are collaborating to minimise overlap and avoid repetition. However, plainly it takes some time and care to co-ordinate between such a number of different teams with diverse interests.

<u>Live streaming of the evidential hearings</u>

22. The Chairman has previously ruled out live streaming of the evidential hearings on the basis that: witnesses have rights and interests that are entitled to proper consideration; the evidence of one witness may impinge upon the interests and rights of many others; it is “inevitable” that things will be said which cannot be broadcast to the wider world without infringing restriction orders; it is “inevitable”

that large parts of the evidence to be given by witnesses of all categories cannot be broadcast by live streaming and "likely" that there would need to be frequent interruptions in the live streaming; none of this would be conducive to achieving the best evidence from witnesses[13].

23. It is respectfully submitted that circumstances have materially changed since that ruling. If the Chairman decides against in-person hearings, the issue of live streaming of evidential hearings as a means of securing a public Inquiry has to be revisited. In those circumstances, live streaming is a necessary means (together with live transmission to expanded hearing rooms) of ensuring that the Chairman's obligation under s.18 IA to secure public access to the Inquiry's proceedings is met.

24. Lydia Dagostino, the RLR co-ordinating the NPSCP RLR group, wrote to the Solicitor to the Independent Inquiry into Child Sexual Abuse, seeking feedback on their experience of virtual hearings. The Solicitor to IICSA's clear view was that the hearings had been a success. Importantly, he also observed that "It is a key aspect of IICSA's approach, that it administers the Zoom meeting to minimise security concerns and livestreams all evidence given in Open session, to comply with the requirements of section 18 of the Inquiries Act 2005."[14] (emphasis added). The NPSCPs respectfully submit that IICSA's approach is correct.

25. As acknowledged by the (UCPI) Chairman, in rejecting the applications on behalf of the Tranche 1 state witnesses for special measures, there is good reason for those whose conduct is under scrutiny and who are required to account for it publicly, to do so in a manner which the public can observe. The NPSCPs would add that there is also good reason for the Inquiry process itself to be open to public scrutiny: "privacy would tend to damage public confidence in the Inquiry's ability to get at the truth and, secondly, unpublished and untested evidence would

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[13] Chairman's Statement about the Conduct of Evidence Hearings, 19 December 2018 [20].

[14] The full email from Mr Smith, Solicitor to IICSA, together with Ms Dagostino's email to him, is appended to these submissions.

tend to increase speculation about the reliability and impartiality of the Inquiry process"[15].

26. If the scope for in-person public scrutiny is reduced for COVID-19 related reasons, it is necessary to enable such scrutiny by other means. It is implicit in this Inquiry's status as a public inquiry, that the public must be able to see and hear the evidence live, wherever this is not precluded by a restriction order. If public health considerations require public access to be achieved by other means, that is not a basis for departing from the fundamental scheme of the Act. Providing access for non-state CPs is also critical to the Inquiry being able to get to the truth.

27. It is submitted that there is a need for two forms of live streaming of any evidence heard at remote hearings:
    a. A real time unmodulated audio and video feed, equivalent to the evidence seen at an open in-person hearing, should be live streamed to specific venues, at which CPs, members of the public and the media can attend, and directly to CPs and their RLRs.
    b. A video feed for public broadcasting on the internet, which could be modulated where a restriction order prohibits the public broadcasting of an individual's image.

28. The two feeds above perform different functions. The first provides those who would otherwise have been able to attend an in-person hearing with conditions as close to that as possible. Providing this feed directly to CPs and their RLRs gives this same opportunity for those CPs who cannot travel to a venue due to COVID-related restrictions. In particular, a number of CPs due to give evidence in later phases of Tranche 1 are likely to be in groups for whom travel to live streaming venues should be limited. CPs and their RLRs, who would have been able to see and hear the evidence at an in-person hearing should not be prejudiced by the public health emergency, and should be able to see and hear the witness in real-time, as they would otherwise have been, in order to make an assessment of the evidence and inform proposals for questioning.

[15] Legal Principles Ruling [104].

29. The second feed enables members of the public who are unable to travel to a venue to nonetheless follow the evidence. If the wider distribution of this feed were to be found by the Chairman to justify restriction orders entailing modulation of some of the evidence, this could be performed either through pixelation or other obscuring of the image or through selective camera angles. In order to ensure that such a hearing remains public, then any delay to transmission of the video feed required to enable modulation should be of a short duration.

30. Each of the factors identified by the Chairman as previously weighing against live streaming can be addressed by other means:

31. Rights and interests of witnesses and others mentioned in the evidence: where these are sufficient to meet the threshold for restriction under s.19 IA, then a restriction order can be made. However, that is likely to be rare in circumstances where the Chairman had already decided (pre-COVID) that the evidence should be given in public. COVID restrictions on in-person attendance cannot be used as means of introducing a lower threshold for privacy than is provided for under the statutory regime set out in sections 18 & 19 IA.

32. Inevitable that things will be said which cannot be broadcast without infringing restrictions orders: first, this is not "inevitable". This was a concern that was addressed in IICSA when the Chair of that Inquiry was considering the issue of live streaming. She concluded that "specific measures can be put in place to reduce to an acceptable level (if not remove entirely) the risk of a breach of any restriction order."[16] The experience from the IICSA remote hearings appears to have confirmed the Chair's confidence in this risk being manageable.

33. Although the subject matter of IICSA is plainly different to this Inquiry, the rights and interests protected by restriction orders in IICSA are, if anything, more sensitive than the rights and interests that the Chairman would be considering in the context of the open T1P1 hearings. That is because any evidence giving rise to a risk of serious harm to the individual or to state interests has already been

[16] https://www.iicsa.org.uk/key-documents/18167/view/2020-04-06-cpiros-provisional-determination-may-2020-hearing.pdf [33]

excluded from the open hearings by virtue of the restriction order process. What is left is evidence that the Chairman has already deemed can be seen and heard in public. If, there is a particular justification in an individual case for a restriction order to be extended for the purposes of live streaming to the general public feed, so that an individual's image is not broadcast to that feed, then that could be effected, where necessary, by pixelation of the officer's face, or by physical screening, or by the public camera not focusing on the witness' face. This need not affect the evidence viewed by the Chairman and those permitted to view it unmodulated. There would simply need to be separate feeds: one for general public transmission and one for the Chairman and everyone else entitled to view the evidence unmodulated.

34. Frequent interruptions: it seems unlikely that this would, in reality, be a significant issue in relation to the evidence to be heard in T1P1. The matters to be addressed occurred 50 years ago. It is unlikely that many very significant sensitivities remain. As in IICSA, there may be a few witnesses where the risk of inadvertent breach of a restriction order is sufficiently high to warrant their evidence not being live streamed, but given that these are all witnesses whose evidence, but for COVID, would have been seen and heard in open court, it cannot be the majority.

35. Not conducive to best evidence: for the reasons set out above, interruptions to a witness' evidence are not likely to be any more frequent if their remote evidence is transmitted to the wider public than if it were broadcast to a public hearing room – as was going to be the case pre-COVID. All of the officers in T1P1 were going to be giving evidence by remote means in any event, so the physical experience of giving evidence will be no different. If there are genuine concerns on the part of a particular witness of such magnitude that the Chairman is satisfied the s.19 IA test for restriction on public access to a simultaneous transmission of their evidence is necessary, then a restriction order can be made. However, even then, it should be the least restriction necessary, so technological or practical steps, such as pixelation or screening, should be considered before reaching a conclusion that no public streaming is possible.

36. In the event that there are concerns about recordings of evidence being made by members of the public, this can be addressed by appropriate warnings that doing so is prohibited by restriction order and that any breach will be certified to the High Court to be dealt with as a contempt of court. If necessary, those who wish to observe remote hearings can be required to register in advance. This is the procedure being adopted in respect of members of the public and the media wishing to view live streaming of other types of remote court proceedings, many of which will include evidence of equal or greater sensitivity than that arising in the open T1P1 hearings.

37. The critical point is that what is in issue is securing public access to evidence that would have been subject to public scrutiny in real time pre-COVID. The loss of that vital factor was not something previously weighed in the balance by the Chairman when reaching decisions on the restriction orders currently in place. Indeed, in relation to the officers currently under consideration, real name restriction orders were granted on the clear understanding that it would not preclude them from giving public evidence. The need for public scrutiny has not diminished. If it cannot be achieved in person, it needs to be facilitated by other means. The most obvious means is live streaming.

Live streaming to a room under the control of the Inquiry

38. As set out at paragraph 27 above, the NPSCPs submit that, in addition to live streaming generally, there is also a need for there to be a number of physical hearing rooms, at which CPs, RLRs, members of the public and the media can attend to watch and hear the proceedings streamed live. Live streaming generally is necessary in order to enable those who are unable, in the current circumstances, to travel to a physical hearing room. However, the provision of physical hearing rooms as well remains important for those who are able (with appropriate social distancing) to attend in person. Physical hearing rooms will enable CPs to see and hear the evidence together with one another and with their RLRs. This will facilitate the giving and receiving of instructions and will enable CPs to develop a collective understanding of the evidence and process and provide each other with support during the evidence.

39. The possibility of live streaming to a room under the control of the Inquiry is raised in the Chairman's statement of 29 May 2020. However, as noted above, the statement goes on to say that "[t]he understanding of the Inquiry is that this is technically feasible, but given the limited numbers able to benefit from it, of limited value in enabling the wider public to witness the proceedings."

40. The NPSCPs submit that there is no good reason for the numbers to be restricted as the statement suggests, all that it is needed is a bigger room, or series of rooms, as it is understood is being investigated by the Manchester Arena Inquiry. It is of real concern that UCPI has taken no steps to investigate venues that could accommodate this. UCPI has expended huge resources to date on redaction and restriction, it is not unreasonable for it now to deploy resources on achieving public access to those hearings which would have been public but for COVID-19. Whilst s.17(3) IA requires the Chairman to have regard to the need to avoid any unnecessary cost, given the critical importance of this being a public Inquiry, as previously recognised by the Chairman, it cannot reasonably be said that the cost of securing adequate venue space to facilitate real time public scrutiny of the proceedings is an unnecessary cost. There is nothing substantive to stop the Inquiry securing premises. When the issue of premises was raised at the 3 June meeting with the Inquiry legal team, CPs and RLRs suggested a number of possibilities: theatres, university lecture halls, exhibition centres.

41. The NPSCPs would welcome the opportunity of discussing with the Inquiry, at the virtual meeting contemplated at paragraph 13 of the 29 May 2020 statement, the ways in which effective hearing rooms could be arranged, perhaps in regional centres around the country, in order to enable CPs, the public and the media to see and hear the public hearings, as anyone attending the public hearings would have been able to do on the pre-COVID plan – i.e. in real time. Given the potential difficulties with using public transport during COVID, providing regional hearing rooms would be a reasonable adjustment to facilitate access for CPs and members of the public who would have difficulties in travelling to London.

42. Further, there is no good reason why transmission to such rooms should be with a five-minute delay, as suggested in paragraph 8 of the 29 May 2020 statement.

There was no proposal pre-COVID to exclude members of the public from the hearing room during open hearings to prevent them from seeing and hearing the evidence in real time. As above, it is the Parliamentary intent that in a public inquiry under the 2005 Act, subject to restriction orders under s.19, the public will be able to see and hear the evidence live. There has been no material change to justify a delay now. Attendees would be visible in the room, as they would have been in court, and the Chairman would be in a position to make an immediate restriction order in the event of anything being said or done that should not have been, in the same way he would were the same thing to have been said or done in open court.

"Direct interest"

43. Paragraph 6 of the 29 May 2020 statement contemplates core participants with a "direct interest" in the evidence being given and their legal representatives being able to hear (but not view) the "open" oral evidence of witnesses in real time. No reason is given as to why these core participants and their legal representatives would not be permitted to see the evidence, given that they would have been able to do so in open court. If the suggestion is that they might record an officer's image, it is unjustified. As the Chairman himself acknowledged in his statement of 19 December 2018, it would have been perfectly possible for anyone attending an in-person hearing to make a recording using a smartphone or other device but there have not been any instances of that occurring. There is no basis for assuming that NPSCPs and their RLRs would commit a contempt of court. Further, when real name restriction orders were granted, it was not weighed in the balance that their effect would preclude even CPs with the most narrowly defined "direct interest" from viewing the officer's evidence. Most of the real name restriction orders were granted on the basis of not much more (if anything) than a disinclination on the part of the officer to be named and the fact that the Chairman found that there was nothing of importance weighing against restriction being granted. Precluding even a "directly interested" CP from seeing the evidence *is* something of importance. A real name restriction order granted should not preclude a CP and their RLR from

being able to see and hear the officer's evidence, in real time, in circumstances where they would have been permitted to do so in open court.

44. The NPSCPs also dispute the Chairman's apparently narrow approach to "direct interest". The Solicitor to the Inquiry has clarified in correspondence with the NPSCP co-operating group that "A 'direct interest' will arise where an individual is providing evidence to the Inquiry within the tranche, or is named within the open material."[17] The NPSCPs do not accept this narrow approach. All NPSCPs have a "direct interest" in the systemic themes to be addressed in the Inquiry. In Tranche 1, this includes the foundation of the SOS, the decision to continue and broaden the scope of undercover activities carried out by the SOS and the origins of the practices that were subsequently deployed by the SDS and thereafter the NPOIU (sexual exploitation, abuse of trust, abuse of friendships, derailing movements, use of the identities of deceased children, blacklisting, spying on elected representatives and the advent of political policing). These issues are of direct interest to NPSCPs, both politically and in terms of understanding what was done to them and how such practices developed, were supervised and sanctioned.

45. By way of example, Richard Chessum, who, on the division indicated in the 29 May 2020 statement, will give evidence in T1P2, has evidence to give about the activity of the deceased officer "Rick Gibson". That evidence is likely to cover matters which strongly suggest that the types of practice experienced by NPSCPs in later Tranches had their origins in the early days of the SOS / SDS. That is of "direct interest" to all NPSCPs: it suggests that those practices were not isolated instances and raises questions about the extent to which they were known about, utilised and developed by subsequent undercover officers and managers. It is important that that evidence is seen and heard in real time by any NPSCP who wishes to do so, not only for the benefit of the NPSCPs themselves, but also because those who have experience of later practices may well have relevant questions to propose (whether through Counsel to the Inquiry,

[17] Piers Doggart to Lydia Dagostino and all of the non-police, non-state recognised legal representatives, 29 January 2020.

or by their RLR applying for permission to question directly), based on their personal experience of being a target of undercover policing at a later point in the evolution of the SDS / NPOIU.

46. By way of further example, Lord Peter Hain, Jonathan Rosenhead and Ernest Rodker are to give evidence in later phases of Tranche 1. The officers concerned include HN135 (Mike Ferguson) and HN298 ("Michael Scott"). The timeframe of their evidence includes the Stop the Seventies Tour (which ran from 1969 until 1970) and other anti-apartheid and other campaign groups in the early 1970s. The Chairman's ruling on Lord Peter Hain's designation as a core participant states:

> "There is evidence that he and his colleagues on the Stop the Seventy Tour Committee were or may have been under surveillance by at least one undercover police officer deployed by the Special Operations (or Demonstration) Squad in the early years following its formation in 1968."

47. The rulings on the designation of Jonathan Rosenhead and Ernest Rodker include reference to UCO infiltration of campaigns against the British Lions Tour of South Africa in the early 1970s including the prosecution and conviction of UCO HN298 alongside activists for alleged offences on a demonstration in 1972.

48. The evidence of Lord Peter Hain, Jonathan Rosenhead and Ernest Rodker clearly overlaps with the timeframe for T1P1 (which runs from the setting up of SOS in 1968 to its renaming as SDS which took place sometime after November 1972[18]). The evidence of these CPs is likely to cover matters suggesting that techniques and practices deployed against them originated in and developed from matters addressed in T1P1. Similarly, there may be evidence that the genesis of failings relating to undercover officers' involvement in criminal prosecutions, management oversight and proportionality of policing also lies within the compass of T1P1. The true picture of later events can only be

[18] See Operation Herne, Special Demonstration Squad Reporting: Mentions of Sensitive Campaigns (July 2014) at 2.2: "The SOS was renamed Special Demonstration Squad (SDS) between November 1972 and January 1973.

appreciated through the connections with T1P1 and vice versa. Subdividing the evidence within Tranche 1 and excluding these CPs from seeing and hearing the evidence given in T1P1 would risk the Inquiry missing out on important evidence. What may, when viewed in isolation, appear as one-off instances of police failings, may in fact be part of a pattern or development of systemic behaviour.

49. Allowing CPs to see and hear the evidence in T1P1 in real-time, to make an assessment of the witnesses, and to pose areas of questioning based on the evidence as it develops, enables the full engagement of CPs in the evidence hearings and prevents valuable evidence from being lost. CPs are able to identify areas of questioning based on their own experience of practices which developed from (or were contemporaneous with) matters in T1P1 and to identify connections and relevant evidence which others may miss. Allowing CPs access to the evidence in real-time is therefore necessary in order to allow the Inquiry to obtain full evidence of the connections between matters in T1P1 and those covered in following phases and Tranches, and to guard against the risk of losing relevant evidence.

50. Excluding CPs from seeing and hearing the evidence in T1P1 also risks undermining public confidence in the Inquiry proceedings as a fundamentally public process. If CPs, including those who clearly have a close temporal and evidential connection to the evidence to be called in T1P1, are not permitted to engage fully with the evidence, then others will not have confidence that the opportunity has been afforded for all relevant aspects of the evidence to be tested and developed.

51. Enabling all NPSCPs to see and hear the evidence is not, as the Chairman has previously suggested "simply so as to permit different perspectives to be explored"[19]. The Inquiry is not omniscient. It is reasonable to expect that there will be aspects of the evidence about which NPSCPs, perhaps because they have experienced something similar to the circumstances a witness is describing, will have questions for a witness that would not occur to the Inquiry.

[19] Chairman's Statement to Accompany the Hearings Protocol, 18 December 2020.

52. At a meeting between the ILT and NPSCP RLRs on 3 June 2020, the Solicitor to the Inquiry explained that the restriction envisaged in paragraph 6 of the 29 May 2020 statement was intended to restrict access to the real time evidence to those who might have relevant questions for the witness. This appears to tie in with the Chairman's observation at paragraph 7 of his Statement to Accompany the Hearings Protocol[20] that "the purpose of permitting direct questioning of witnesses is to elucidate disputed issues of fact".

53. The NPSCPs make three points in respect of this:
    a. Rule 10(4) does not cut down the right of an RLR of a CP to apply for permission to ask questions of a witness in the way the Chairman proposes and it is an unlawful fettering of his discretion to seek to do so;
    b. even where permission to put <u>direct</u> questions to a witness is validly refused, a CP may still legitimately put questions to Counsel to the Inquiry for their consideration. The Hearing Protocol makes provision for this to be done at least one week before the day on which the relevant witness is scheduled to give evidence. However, the Protocol also recognises that late requests might legitimately arise. The NPSCPs submit that it is perfectly possible for valid and important questions for a witness to arise even whilst the witness is giving evidence. This is linked to the third point, below;
    c. the purpose of questioning is not solely to elucidate disputed issues of fact, but also to elicit evidence relevant to the Inquiry's terms of reference which has not yet been brought out by other means, including in questioning by CTI. An example given by the women in Category H is the uncovering of patterns of behaviour, across different relationships conducted by different officers, of using information recorded about a woman to "mirror" her interests in order to gain her trust. That was something that became apparent when the women spoke to one another and recognised patterns in each other's experiences. Apparently innocuous behaviour, or notes, for example, around a person's musical tastes, might not be considered

[20] 18 December 2019

relevant for questioning by the Inquiry, but to a woman in Category H, its significance to the methodology of SDS (and NPOIU) officers in building intimate relationships would be apparent – and would be something about which useful questioning could be suggested by her, even if the witness was not someone with whom she had direct involvement. Further examples of information the Inquiry will miss if it persists with its narrow view of "direct interest" are set out in the letter of 30 June 2020 sent on behalf of a number of the women in Category H.

54. The Chairman is, therefore, with respect, wrong to suggest that the utility of permitting questioning from NPSCPs (whether direct through their RLR or via CTI) is limited to circumstances in which they had direct involvement in the facts being addressed, and there is no proper basis for restricting access to viewing and hearing evidence in real time in the way envisaged in paragraph 6 of the 29 May 2020 statement.

55. In any event, even absent the possibility of suggesting relevant questions for a witness, there is no good reason for denying CPs access in real time to evidence that they would have been able to see and hear in the open hearing or over-flow room, but for COVID-19. As set out above, such access should be facilitated by live streaming and by live streaming to rooms at which CPs, their RLRs, the media and the public can attend.

Bundles

56. Paragraph 10 of the 29 May 2020 statement indicates that the Inquiry intends to publish the hearing bundle for November 2020 "to core participants" on 21 September 2020. The NPSCPs note that this does not appear to be restricted to those deemed to have a "direct interest" in the particular tranche, as had previously been indicated in the Hearings Protocol. The NPSCPs very much welcome that development.

57. As set out above, all NPSCPs have a "direct interest" in the thematic issues in the Inquiry, which are likely to emerge from examination of the individual deployments. Access to the hearing bundles in advance of the hearings will

enable them to ascertain which witnesses are likely to be of particular interest to them and will assist with ensuring that questions proposed to CTI are properly focused.

58. It will also help to counteract some of the significant imbalance caused by the fact that the state CPs have had access to the documents for years, whereas on the current proposal, the non-state CPs will only have access to them six weeks prior to the start of the hearings (five weeks before the deadline for submitting questions). As noted above, the NPSCP RLRs were informed by the ILT on 3 June 2020 that the reason it has been necessary to put the hearings back to November is because of the time it is taking the state CPs to read the documents for the purposes of the "public eyes" redaction process. In other words, the state CPs are being afforded months, or years, to read the documents, whereas it is currently proposed that the NPSCPs will be given just six weeks in advance of the hearings. This is unfair, but it would be even more unfair were disclosure to be limited only to the very small number of RLRs and counsel representing CPs in T1, plus Ms Brander, as had previously been proposed.

59. In addition to the wider disclosure, which is welcomed, the NPSCPs submit that the date for disclosure of the documents should be brought forward wherever possible. At the very least, disclosure should be staged so that as much documentation as possible can be disclosed as soon as it is ready, so that the NPSCPs and their RLRs can begin the process of going through it. For example, those documents that do not require any further redaction (operational documents, manuals etc.) should be disclosed now, followed by 500 documents on, say, 1 September; 500 on 14 September and the remainder on 21 September 2020.

60. Sufficient time for reading the material is not merely an issue of fairness in terms of affording NPSCPs and their RLRs adequate time to prepare for the hearings. It is also to be anticipated that NPSCPs may learn things through the disclosure which they find distressing and, potentially, destabilising. This has been the experience of the women in Category H in respect of disclosure they have received through other court and disciplinary processes. Even evidence which does not relate to an operation that involved an NPSCP personally may be

emotionally difficult to process, for example, if it reveals tactics that may also have been applied to them. For instance, if it were to be apparent from disclosure that, in building a legend based on the identity of a deceased child, UCOs had spied on the child's family, that might well be relevant to, and distressing for, other NPSCPs in Category F, because it would inevitably raise the question as to whether a similar practice had been applied to them. This shows both why "direct interest" cannot be narrowly confined in the way the Inquiry has sought to do and why it would be unfair for the Inquiry to make disclosure to NPSCPs only at the eleventh hour.

Practical issues arising from remote evidence

Integrity of the evidence

61. The Inquiry is respectfully requested to indicate what steps it is intending to take to ensure the integrity of witness evidence given via live link. For example, what steps will be taken to support witnesses with the technology and to ensure that they are not accompanied by anyone (or anything) that might influence or affect them in the giving of their evidence? The NPSCPs note that this is something that appears to have been raised in correspondence on behalf of other CPs. However, other than indicating that the Inquiry would not "as a matter of course" expect an RLR to be present with a witness when giving evidence, it has not indicated what measures it will put in place.

62. The NPSCPs submit that the Inquiry should arrange for witnesses to give evidence from a neutral location, for example a local court, where the privacy of the room from which they are giving evidence can be ensured and they can be assisted with the necessary technology. It is also submitted that the Inquiry should adopt the requirements of paragraph 4.21 of the Achieving Best Evidence Guidance and the National Standards for the Court Witness Supporter in the Live Link Room[21] in respect of anyone who is to be in the room with the witness when they are giving their evidence, including ensuring that they are:

[21] https://www.cps.gov.uk/sites/default/files/documents/legal_guidance/best_evidence_in_criminal_proceedings;

a. Someone whose identity has been approved in advance by the Inquiry;
b. Someone not involved in the case, who has no knowledge of the evidence and who has not discussed the evidence with the witness;
c. Someone who has received suitable training in their role and conduct; and
d. Someone with whom the witness has a relationship of trust.

Viewing the witness

63. The Inquiry is also requested to ensure that whatever remote platform is commissioned for the delivery of remote hearings, subject to any restriction order, it should enable participants to have a view of the witness at all times during the hearing of their evidence – i.e. it should be possible to view the witness, not only when they are speaking, but also when the questioner, or others, are speaking.

Time allowed for breaks and for taking instructions

64. It is now well recognised that virtual hearings are more tiring for all participants than in-person hearings. It is also more difficult for parties to give instructions to their legal representatives when they are not in the same location. The Inquiry is asked to bear this in mind when considering the structure of any hearing day involving virtual hearings, and to factor in regular breaks to enable instructions to be taken and, where appropriate, for any questions arising from a witness' evidence to be raised with Counsel to the Inquiry.

The availability of counselling

65. It is noted that it is open to witnesses to apply to the Inquiry for counselling support either before or immediately after giving evidence. The NPSCPs submit that wider provision is required. Some CPs, in particular those in Category H, are aware from other court and disciplinary processes that the experience of receiving disclosure and hearing evidence about the extent to which their private lives were undermined by undercover policing can be extremely traumatic. If

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the National Standards for the Court Witness Supporter in the Live Link Room are at Appendix L of the ABE Guidance.

evidence is to be given at a time when people are isolated from one another, there is a heightened need for the Inquiry to ensure that it provides adequate support for CPs throughout the process, not only immediately before or after giving their evidence. The NPSCPs would welcome the opportunity to discuss with the Inquiry Legal Team what provision could be made available.

Duration of the Inquiry

66. It would be wrong to assume the pandemic will endure for the duration of the Inquiry. It is crucial and sensible therefore that the arrangements made for initial hearings are considered to be just that. So, for instance, it is to be expected that the requirement for premises large enough for 1 + m social distancing will not be permanent. Any arrangements should therefore be kept under review.

Conclusion

67. The bottom line for any adaptation of the Inquiry's process as a result of COVID-19 must be that this is, and must remain, for good reason, a public Inquiry. The intention behind such an inquiry is that there be public access to the Inquiry's proceedings so that the public can see and hear the evidence live, unless a restriction order is justified under s.19. Where previously the Chairman has determined that CPs, the public and the media were to have live access to the evidence at in-person hearings, such access can and should be achieved by technological means in order to fulfil the Chairman's obligations under section 18(1)(a) IA. This should include live streaming generally and live streaming to public hearing rooms where CPs, their RLRs, the public and the media can gather, socially distanced as necessary, to see and hear a simultaneous transmission of proceedings. The only alternative is full in-person hearings.

RUTH BRANDER
DOUGHTY STREET CHAMBERS
1 July 2020

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Undercover Policing Inquiry

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30 June 2020

Dear Sirs

We write on behalf of our Category H clients regarding the disclosure of documents and provision of witness evidence.

Early disclosure

Lydia Dagostino wrote on behalf of NSCPs on 23 April 2020 setting out in detail why all civil society witnesses should be given at least 3 months to provide statements and supporting material following the receipt of Rule 9 letters and disclosure.

In the Inquiry's response dated 30 April 2020, you explained that the "time within which a witness is asked to respond to a request for evidence is primarily set according to the volume of material provided within the witness pack and the extent and nature of the evidence that the witness is expected to provide. Where an individual, with good reason, requires additional time – and this can be allowed without substantial impact on the overall timetable – such a request receives sympathetic consideration."

You also acknowledged in your letter that it would be possible to adopt a flexible approach to disclosure in some circumstances, specifically agreeing to consider requests for early disclosure from elderly or otherwise vulnerable NSCPs.

It is our view that there are good reasons why the majority of Category H CPs will require additional time to produce their witness statements and we write now to request early disclosure of documents to our clients. As you are aware, the nature and extent of the deception practiced by undercover officers has had a significant harmful psychological impact on the women who were deceived into relationships by these officers.

The Inquiry has rightly recognised that the practice of officers deceiving women into intimate relationships during their deployments is central to the Inquiry. The Inquiry will want to investigate this issue fully, and will therefore require extensive evidence from the women affected. Reviewing the officers' statements and related documentary records from the time will involve our clients in reliving traumatic memories & experiences, and time will be required to deal with the emotional impact of this. It is not a process which can be fairly completed in three weeks.

With respect to volume, many of our clients were deceived into relationships which lasted years and in addition to the UCO with whom they had a relationship, it is likely they all came into contact, in some way, with cover officers and other associates of their 'boyfriends.' A significant number know they came into contact with other undercover officers whose cover names have been released by the inquiry. Given this level of contact, we would expect there should be large volumes of disclosure that they will need to consider in order to provide their witness evidence. In the event there is very limited documented evidence to be provided, this too will be relevant as an issue to address in their witness statement as it would imply improper/absent recording of undercover activity by the relevant officers.

Much of the evidence provided by Category H CPs will be of a deeply personal nature. The women shared their most intimate lives with these officers and suffered the gravest deception. Many of the women we represent have been attempting to discover the truth about what happened to them for over a decade. Despite years of litigation, with the exception of Kate Wilson (who is bringing proceedings in the Investigatory Powers Tribunal), none have obtained any disclosure. When they are finally provided with documents by the Inquiry, the emotional impact is likely to be huge. They will need a considerable amount of time to be able to properly consider the documents and process the information within them in order to provide their evidence.

We know the impact of disclosure is likely to be significant from our history of working with this group of women and observing the impact of discovering and then finding out more about the nature of the state intrusion in their lives, for example when they learned through meeting each other that individual officer behaviour actually fitted a pattern. We know that when Kate Wilson was provided with some disclosure in her IPT claim, the processing of this information was not only time consuming but also emotionally consuming. Having tight deadlines to respond in the civil claim relating to issues that were particularly emotionally charged, would often produce stress responses for the claimants, limiting their ability to engage in the case under time pressure. Rosa describes the impact in the following terms:

"It is not merely revisiting traumatic times but the revelations contained in seemingly innocuous documents which turn our lived realities upside down, due to the dramatic change in the apparent motivations of officers and new awareness of the coordination which underpinned those relationships on the part of the officers and the extent of the operations. The shock is often amplified by the opening up of contemporaneous tender memories we sealed off from ourselves due to revulsion on discovery of the operations which are then starkly juxtaposed with the new information. We are going through this process in need of truth and justice and to stop these practices happening to others as well as closure for ourselves."

If the women are not given sufficient time to review disclosure and provide their evidence it is likely to have a detrimental impact upon their mental health. It will also inevitably restrict their ability to provide their best evidence to the Inquiry, limiting the potential for the Inquiry to fulfil its terms of reference.

Rolling disclosure

In your letter of 30 April, you explained that the “timing of the provision of documents to witnesses that the Inquiry approaches for evidence depends on factors that are not solely in the Inquiry’s gift. State bodies with an interest in the material are entitled to seek restriction of all or part of each document within a witness pack, on the grounds of public interest, before it is sent to the witness. Applications for restriction can take varying lengths of time to resolve.”

We understand why the restriction order process may mean that disclosure of some documents is delayed. However, there is no reason why this should result in delay to the disclosure of all documents to a witness. The Inquiry could adopt a pragmatic approach. Instead of providing each CP with all documents at one time in a witness pack, the Inquiry could provide rolling or staggered disclosure to CPs, especially those who require early disclosure. This would allow for time to consider and process some of the disclosure while restriction order applications are pending on some documents.

Full disclosure

A further concern is that we understand that disclosure provided to T1 witnesses has been limited, with the Inquiry attempting to determine which documents are relevant to each CP. This approach is of huge concern to our clients. Whilst we accept that relevancy has been ruled as a legal principle upon which disclosure should be determined, unfortunately, as we illustrate with examples below, the Inquiry will not be often in the best position to determine what is relevant. This is the case for all NSCPs, but it is particularly acute with regards to Category H CPs.

We have raised this issue previously, see in particular paragraphs 75-91 of Harriet Wistrich’s statement dated 31 May 2017. Since that time, disclosure in other cases, including Kate Wilson’s IPT claim, has provided further evidence that documents held by the police often contain inaccuracies or significant omissions which will impede the Inquiry’s ability to determine their relevance. For example, Mark Kennedy’s authorisations record that Kate Wilson first became a target of his operation on the basis that she was a key activist in a housing co-operative in Leeds. In fact, Kate was not involved in the Leeds co-operative, she was based in Nottingham at the time and rarely spent time there. It was in fact ‘Lisa’ who Mark went on to have a relationship with that was involved in that housing cooperative. Another document, dated 13 June 2008, which appears to be Mark’s cover officer’s log, details how Mark attended a wedding that weekend. The note states that Mark would “be with others tonight but just social prior to the wedding.” It is not recorded that Mark attended the wedding with Lisa and they spent the weekend there together as a couple and the Inquiry would not know this without Lisa’s input. Further, it was a

significant weekend in their relationship and having sight of evidence relating to it is important to Lisa.

The last two examples help illustrate why some of our clients fear that the Inquiry will be unable to identify the extent of surveillance they were subjected to because they won't necessarily be identified in documents and/or alternatively, the extent to which undercover officers strayed beyond their 'permitted' authorisations by undertaking activities that were not recorded. One concern is that if they were not official targets of the operation, officers may have attempted to hide the extent that they spent time with them by omitting them from records. Such omissions may not be limited to the UCO with whom they had the relationship, but may be replicated in the reports of other UCOs who were, for example, present at the same events.

Equally, our clients are likely to be able to identify the importance of seemingly innocuous information, where as the Inquiry will not realise its significance. One example came to light during Jim Boyling's disciplinary hearing in 2018. Rosa had sight of a statement he provided to the police in 2011 during an investigation into whether his relationship with her constituted a sexual offence, where he referred to Rosa, saying that "she was working as a waitress" when he first met her. That information might seem innocuous and irrelevant, but it is not. The information was false; Rosa never worked as a waitress. Boyling used this, in conjunction with other inaccurate information included in his statement, to present Rosa as someone who was apolitical. This assisted his defence and Rosa states that this was expressly referred to in the CPS decision not to prosecute. The Inquiry is also in danger of believing similar seemingly innocuous false imagery and information without input from the woman affected. As this example illustrates this could have serious consequences.

Further, Boyling told Rosa, when he reappeared in her life, that he and Bob Lambert would often insert lines from songs into their reports for their own entertainment. This example demonstrates that not only is this something that the Inquiry should be alive to in contemporaneous documents, but that Boyling continued the practice of inserting lines from songs into documents for fun in legal proceedings many years later, raising the possibility that this could also occur in documents produced for the Inquiry.

These examples illustrate why the Inquiry's ability to identify relevant documents is necessarily limited. Unlike our clients who have first hand knowledge of events, the Inquiry's understanding is limited to the information or misinformation contained within the police documents.

It is our view that at minimum our clients should be provided with all documents relating to the officer who deceived them into a relationship, along with the entire contents of any Special Branch Registry / Pink files on each woman. As it appears that UCOs were often primed with information about the women they went on to have relationships with prior to initial contact, this should not be limited to the time period they were in contact with the officer. The Inquiry's current approach will inevitably result in a failure to disclose crucial documents which help to explain how the relationship came about. For example an entry in a Registry file which relates to the woman's taste in music may appear harmless and irrelevant to the Inquiry Team,

but a number of the women were encouraged into relationships by shared tastes in music (among other things) with the officer, in a pattern which indicates that officers asserting shared interests with the women may have been a specific method of building rapport and ensnaring them into the relationships. Rosa provides a further example. Three months before meeting Jim Boyling, she recalls an early morning conversation at a woodland camp with Jason Bishop. She shared her memories of views she had held (when facing some difficulties as a 17 year old girl) about the spirituality of trees. During her relationship with Boyling, while they were in bed in Brixton, he recounted the information back to her, as if it was his own thoughts. Rosa is now certain that Bishop must have given this information to Boyling who then used it in an attempt to foster a greater connection with her.

The women should also be provided with documents relating to:

- any other officer with whom they came into contact;
- the addresses and locations where the women lived; and
- the groups, social and community centres, and activities they were involved in.

This will enable them to assess and draw the Inquiry's attention to the extent of the intrusion into their lives.

Even with disclosure on this basis, it is unlikely that all relevant documents will be disclosed and as the women review disclosure they will undoubtedly identify further documents in the Police or Inquiry's possession that will be relevant to their witness evidence. The Inquiry will need to allow time for the women to engage in this process and for the Inquiry to find and provide these documents to our clients.

Finally, we have previously highlighted the importance of full disclosure to assist in healing the psychiatric injury suffered by our clients. This has recently been emphasised again by an expert who examined one of our clients for a civil claim. The expert psychiatrist who diagnosed the client as suffering from PTSD is of the opinion that her prognosis depends on the outcome of the Inquiry. The expert warns that if the Inquiry fails to provide our client with a sense of closure and validation the risk of permanent incapacity is considerable.

All these above examples amount to significant and pressing reasons why our clients should be provided with disclosure on an ongoing basis as soon as possible and in any event with at least three months to provide their witness statements.

Yours faithfully,

Harriet Wistrich, Helen Stone, Cormac McDonough and Matt Foot

From:	martin.smith@iicsa.org.uk on behalf of Solicitors -
To:	Lydia Dagostino - Kellys Solicitors
Cc:	Solicitors -
Subject:	Fwd: IICSA and the UCPI [EXT]
Date:	09 June 2020 14:25:46
Attachments:	image002.jpg image004.jpg

Dear Ms Dagostino

Thank you for your email and your interest in IICSA. I am able to provide some summary factual information about this Inquiry, but it would not be appropriate for me to comment further.

Following submissions from core participants, IICSA's Chair decided on 6 April and 16 April 2020 to proceed with its investigation hearing relating to child sexual abuse in religious organisations and settings by way of virtual hearing. The hearing was held successfully from 11 May 2020 for two weeks, and is, we believe, the first inquiry hearing of its type ever to be held in the UK. The transcripts and video recordings of our virtual hearing are available on this page of the Inquiry's website.

IICSA's Chair has determined that the Inquiry's next hearing, commencing on 29 June 2020, will also take place virtually. The position for hearings this coming autumn is still developing and further submissions are likely to be sought from core participants before any decisions are made.

It is a key aspect of IICSA's approach, that it administers the Zoom meeting to minimise security concerns and livestreams all evidence given in Open session, to comply with the requirements of section 18 of the Inquiries Act 2005.

Regards

Martin Smith
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From:	Lydia Dagostino - Kellys Solicitors
To:	solicitors@iicsa.org.uk
Subject:	IICSA and the UCPI
Attachments:	image002.jpg image004.jpg

Dear Inquiry Legal Team

I am writing on behalf of the lawyers acting for the Non-State/Police Core Participants (NPSCPs) in the Undercover Policing Inquiry (UCPI).

We are about to prepare submissions in response to a statement from the Chair to our Inquiry, Sir John Mitting.

https://www.ucpi.org.uk/wp-content/uploads/2020/05/20200529_Chairmans-statement-T1.pdf

We are endeavouring to work together to ensure that the Inquiry remains on course, whilst striving for the maximum possible engagement and access for our clients (and the wider public) in light of COVID-19 and the limitations imposed by the pandemic.

With this in mind, we are keen to know more about how the technology your Inquiry is using (Zoom) is working in practice.

We are keen to get as much input as possible from all users, including the people behind the scenes, in particular to explore what works well, how things can be improved and how the technology can be utilised to achieve best results (and effective engagement by all).

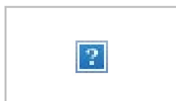
We welcome any feedback you are able to provide, over and above the material already in the public domain.

We are all having to think creatively but it would be useful to know how different systems work practically, so that we can have a better understanding as to what is effective and achievable.

We understand that you may already be liaising with members of our Inquiry's legal team but nevertheless are keen to hear from you directly.

We look forward to your response.

Lydia Dagostino (on behalf of the NPSPCs' RLRs who have expressed a view)
lydia@kellys-solicitors.co.uk



COVID-19 NOTICE
In line with government guidelines, some staff are working remotely until further notice. We remain fully operational.
Where possible, please send all correspondence and documentation by email rather than post.

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