

**WRITTEN OPENING STATEMENT ON BEHALF OF THE FOLLOWING
NON-STATE, NON-POLICE CORE PARTICIPANTS (“NSPCPs”)**

- (1) NEWHAM MONITORING PROJECT**
- (2) HUNT SABOTEURS ASSOCIATION**
- (3) EMILY APPLE**
- (4) RHYTHMS OF RESISTANCE**
- (5) NICOLA BENGE**
- (6) GUY TAYLOR**
- (7) NRO**
- (8) INDRA DONFRANCESCO**
- (9) MEGAN DONFRANCESCO-REDDY**
- (10) MORGANA DONFRANCESCO-REDDY**
- (11) CLANDESTINE INSURGENT REBEL CLOWN ARMY**
- (12) JENNIFER VERNON**
- (13) ASA WINSTANLEY**
- (14) ATIF CHAUDHURY**
- (15) MCD**
- (16) VSP**
- (17) CERI GIBBONS**
- (18) SMASH EDO**

INTRODUCTION AND OVERVIEW

1. Undercover Officer (“UCO”) EN34 (whose assumed undercover name was “Lynn Watson”) was trained to be a clown by a Core Participant (“CP”) we represent, and can be seen in footage waving a feather duster, engaging in mock military marching and apparently enjoying her deployment as a street entertainer. UCO HN118 (whose assumed undercover name was “Simon Wellings”) used his time undercover to build an orange military tank out of cardboard and plywood with

another CP we represent, and to pose with it at a demonstration against the arms trade. This is what the debacle of the last 50 years of undercover political policing looks like. It goes from the farcical – yet deeply damaging – involvement of the State in activist organising and campaigning, to the outrage of the deceitful relationships of trust formed with our CPs, and to the abusive intimate liaisons which have been the subject of submissions by others, which have been profoundly devastating for those involved. This is what millions of pounds of money – siphoned from budgets that could have been allocated to the police to protect our communities, or that could have been allocated to other public budgets, to the NHS, to schools, to libraries or to the arts – was misspent on. It was misspent over the course of decades and decades of rogue, clandestine activities by the police, monitoring justice campaigns, anti-racism and anti-police violence groups, environmental campaigns, community and solidarity networks, animal rights groups, and the political activism of rebel clowns, musicians, artists, campaigners, and others, the vast majority of them on the political left, whose aims and objectives were to seek to build a fairer, more equal, more just world for all.

2. We use the term ‘rogue’ with some caution. The evidence of who in power in the police and Government knew or approved of what and when, still remains unconfirmed. This is not only because of the obsessive secrecy of the State agencies involved, responsible for such serious intrusions into the political and private lives of vast numbers of citizens. But it is also due to the unprecedented lack of transparency in this Inquiry process, which has fundamentally undermined its workings to date, has sapped the trust of victims of undercover policing, and will ultimately undermine the entirety of the Inquiry unless confronted and reconsidered by its Chair.
3. Statutory public inquiries under the Inquiries Act 2005 (“the Act”) are established by Government ministers, in order to investigate matters of acute public concern; but it is the appointment and role of the Chair, structurally independent of Government, which is at its heart of a public inquiry, and key to its role and

function of uncovering the truth about the matter under scrutiny. One of the key functions of a successful public inquiry is to maximise disclosure, as Parliament intended through section 18 of the Act. To that end an inquiry must be conducted in the full glare of, and with the full buy-in from, those affected, from the media and from the general public. The hint, and key to the success of a public inquiry is in the word “public”. The more constrained the disclosure made, the less meaningful engagement and dialogue with the Core Participants and others affected, the less public the Inquiry’s investigations, the greater the restrictions the Chair imposes on access to the evidence and to hearings, the greater it shrouds itself in secrecy, the less confidence anyone will be able to have in it, and the less able it will be to meet its objectives.

4. It is astonishing that it should need to be emphasised at this stage of the proceedings – five years since the Inquiry was established, and at the stage when Core Participants are empowered by Rule 11 to make opening statements – that even the very ability to make a meaningful and effective opening statement has been undermined. It has been undermined by the Inquiry’s failure, in purporting to fulfil its terms of reference (“TOR”), to identify the groups infiltrated by UCOs, much less to identify the UCOs who were deployed directly or indirectly in respect of each CP. It has been undermined by the Inquiry’s failure to provide meaningful and timely disclosure, or to seek the meaningful assistance of and collaboration with those who were subject to and the victims of undercover policing. It is simply extraordinary that, to date, insofar as the real or assumed names and details of UCOs are known to CPs, it is almost exclusively because of the work of activists in uncovering and unmasking those UCOs, not due to the Inquiry’s own processes.
5. When we refer to the failure by the Inquiry to make meaningful and timely disclosure, we emphasise that none of the CPs we represent have received anything like full and proper disclosure in the past five years. Such limited disclosure as there has been has been generic, consisting of little more than the so-called ‘Tradecraft Manual’, itself redacted in parts, and early ‘Annual Reports’

of the police Special Demonstration Squad (“SDS”), dating from 1972-1974, disclosed a mere seven days before the deadline for service of this opening statement. Our CPs have not received from the Inquiry disclosure of a single document relating to their own surveillance or infiltration, not a single piece of material about the decision made to deploy UCOs against them, not a single photograph or piece of footage, nor a single policy, protocol or regulation relevant to the Inquiry’s TOR, in the five years since the Inquiry’s inception.¹

6. The Inquiry has even denied the CPs we represent the right to see such belated disclosure as has been made to those involved in the first phase of the evidential hearings. That is despite the obvious relevance to our CPs of understanding the genesis and evolution of undercover policing in the years leading up to the covert State action targeting them specifically, and despite this relevance having been repeatedly spelled out to the Inquiry in detail in previous written submissions. Because of that ongoing failure of disclosure, our CPs – who were themselves the people and groups being targeted and deceived by the State – are left to their own devices. They are left to attempt to rely on their own recollections of events, on media reports, open source material, and information gleaned from other, more open legal proceedings, in instructing their legal representatives and attempting to make sense of the Inquiry process and proceedings.
7. We are not aware of any previous Inquiry, statutory or otherwise, which has failed in quite the way this Inquiry has failed to make any meaningful disclosure to those most centrally affected. We are also unaware of any previous Inquiry which has displayed such a casual disregard for the ability of victims to effectively participate in the Inquiry process. That an Inquiry established to shed light on the secretive, undercover activities of the police against ordinary citizens, should itself perpetuate that secrecy and obfuscation is beyond irony.

¹ Albeit that one statement relating to a Restriction Order application referred to one of our CPs by name.

8. Disclosure failures necessarily serve to exclude those who were directly affected by undercover policing operations from the Inquiry. Secrecy and obfuscation not only fundamentally undermine trust and confidence, they also promote failure. It is of serious concern that the State bodies and operatives which are supposed to be under investigation, and which this Inquiry is supposed to be holding to account, suffer no similar impediment in their access to information: at present, they hold all the cards, seemingly dictating what information is and is not before the Inquiry, and is and is not provided to those whose lives and well-being they held in such disregard through their decades of spying and infiltration.

9. Rather than seeking to sideline CPs, or to keep them uninformed, this Inquiry should embrace their knowledge, and actively seek out their assistance. Without them, how can there be any real scrutiny of the material produced by the State? Without CPs being able to identify and question witnesses, meaningfully and in an informed manner, how can the Inquiry hope to ensure a full and thorough investigation of the matters in question? Without their input, there is the real risk of the Inquiry starting from the premise that reports, notes, contact sheets, assessments and other information produced by UCOs and their managers are truthful, correct and reliable. If that is the approach taken, there can be no possibility of the Inquiry getting to the truth of the matters in question. There can also be no possibility of ensuring the confidence of those directly affected or of the general public. The DNA of a Public Inquiry includes independence and rigorous scrutiny, not deference to a State narrative.

THE CORE PARTICIPANTS WE REPRESENT

10. We act for a group of groups, organisations, networks and individuals, who were involved over the course of the 1960s, 1970s, 1980s, 1990s and 2000s in various forms of activism. That included involvement in community and justice groups, environmental and animal rights campaigns, anti-racism, anti-war and anti-globalisation networks, solidarity campaigns, and various other social and political organisations. They have been classified by the Inquiry into a number of

different categories, notably “justice campaigns” (Category J), “political activists” (Category K), and “social and environmental activists” (Category L). However, there is in fact much fluidity and cross-over between the somewhat arbitrary categories.

11. The CP groups that we and others act for in this Inquiry represent only a fraction of the 1,000 groups known by the Inquiry to have been targeted by, infiltrated and spied upon by undercover policing over the course of the past five decades. However, the nature and breadth of our CPs gives a snapshot of the level and extent of undercover policing and of the extent of intrusion by UCOs into people’s political and private lives. It also gives an indication of the types of organisations and the nature of the activities that the State spent huge resources spying upon over the course of over fifty years. Those CPs are:

- (1) The **Newham Monitoring Project** (“NMP”), a community and justice organisation, operational for over three decades, which campaigned with and for the local community, against systemic racism and against racist attacks, and which undertook quasi-legal casework to advocate for and empower victims of police violence, racism and harassment. It was State-funded and its annual reports were provided directly to the police.²
- (2) The **Hunt Saboteurs Association** (“HSA”), which has campaigned for decades against hunting and associated blood sports, and which has been vindicated by legislative changes banning hunting with dogs and some other forms of ‘sporting’ cruelty to animals.
- (3) **Emily Apple**, an individual with an extensive activist background in various campaigns and networks; she was a founding member of **NETPOL** and **FitWatch**, organisations focused on monitoring police responses to protest

² Those reports should have formed part of the police disclosure to this Inquiry, and will form part of NMP’s evidence to this Inquiry.

activity, including the oppressive and sometimes unlawful monitoring of protesters, and excessive violent police tactics them.

- (4) **Rhythms of Resistance** (“ROR”), a network of samba drum players, which provided a soundtrack to political protest, amplifying its message through street performances, in support of various campaigns, and **Nicola Benghe**, who was involved in ROR and other groups.
- (5) **Guy Taylor**, who was the main organiser for **Globalise Resistance**, a progressive organisation, founded with the aim of bridging the gap between the traditional trade unionist movement and the anti-capitalist movement.
- (6) **NRO**, an individual involved in various campaigns and activist networks, around issues concerning social justice, including groups involved in providing online independent media and communication tools to the activist community and beyond.
- (7) **Indra Donfrancesco**, and **Morgana and Megan Donfrancesco-Reddy** – a mother and her two daughters, both of whom were minors at the time they were spied upon by the State – involved in the **Earth First!** environmental network.
- (8) The **Clandestine Insurgent Rebel Clown Army** (“CIRCA”), a group using clowning and other forms of street performance, to aid and support various campaigns and protests around issues of social justice, and **Jennifer Verson**, who was involved in CIRCA, including as a trainer, and other groups.
- (9) Three individuals – **Asa Winstanley**, **Atif Chaudhury** and **MCD** – with the **International Solidarity Movement** (“ISM”), which organised to send international observers to Palestine to monitor and seek to prevent violations of international law by the Israeli military in occupied territory

(10) **VSP**, an individual involved in numerous groups, networks and campaigns relating to social justice and environmental issues over the course of many years, including the **Cardiff Anarchist Network** / Rhwydwaith Anarchaidd Caerdydd (“CAN”),

(11) **Smash EDO** and **Ceri Gibbons**, who decline to make any further statement to the Inquiry at this stage.

12. A more detailed overview of each of the CPs we represent,³ and of the particular questions to which they are seeking answers from this Inquiry process, is set out in the annexes to this Opening Statement. The annexes form an inherent part of this Opening Statement and are to be read in conjunction with it.

BASIC PRINCIPLES AND KEY POINTS

13. There are seven key points that our CPs seek to emphasise at this stage of the proceedings.

14. **First**, protest activity has a very long and very proud history in this country, in relation to issues ranging from slavery, to women’s suffrage, racism, nuclear disarmament, fracking, road building, and hospital mergers. A cursory glance at history demonstrates that it is the dissenters, campaigners and activists who are the drivers of progressive social change. Slavery was abolished as a consequence of mass campaigns, building upon and amplifying slave revolts; democratic rights to vote were established by successive social movements, from Peterloo to the Chartists; women’s rights have been hard won, by successive women’s movements, including the suffragettes. Protest and radical dissent have always, necessarily, involved friction with the State. An estimated one thousand suffragettes were imprisoned for having broken the law during their

³ With the exception of Ceri Gibbons and Smash EDO, as set out above.

campaign to establish the right of women to vote. Few would argue that their actions were not justified or that they were not on the right side of history.

15. As we have set out above, we count amongst the CPs we represent anti-war activists, whose campaigning has been vindicated by the 2016 conclusions of the Chilcot Inquiry into the Iraq war, which determined that war had been unnecessary and premised on false intelligence. We also represent anti-hunt activists, whose decades-long campaigning was vindicated by the ban on hunting with dogs in the Hunting Act 2004. The defining purpose of the NMP was vindicated by the McPherson Inquiry, which acknowledged the institutional racism of the Metropolitan police. Our CPs who have campaigned extensively against war crimes in Palestine, including during the 2009 Israeli military offensive in Gaza, have been vindicated by the determination by the Chief Prosecutor of the International Criminal Court that she is satisfied that war crimes have been committed, warranting the opening an investigation into those events. Melting ice-caps and accelerated global warming are a terrible vindication of our CPs active in the environmental movement. The list goes on.
16. The right to dissent and protest is something to be championed not vilified; protected not undermined, infiltrated, and disrupted by methods common with authoritarian regimes elsewhere. It is not for any limb of the State to insert itself into, curtail or spy on, political and social justice activists, or to seek to determine who is a 'good' and 'bad' dissenter, on the basis of political viewpoint. Indeed, it is of serious and significant concern that, of the approximately 1,000 groups that were targeted by the State, directly or indirectly, for undercover surveillance, all but a small minority were on the political left, as confirmed in the recently disclosed SDS Annual Reports. That gives rise to very serious concerns regarding the extensive political and ideological policing of individuals and groups in 20th and 21st century Britain.
17. **Secondly**, the common law permits citizens to act as they choose unless their actions are prohibited or regulated by law. Positive rights derived from the

European Convention on Human Rights (“ECHR”) – drafted in significant part by British lawyers, and ratified by Parliament in 1951 – were formally incorporated into domestic law through the Human Rights Act 1998. Further commitment to positive rights by the State was demonstrated by the United Kingdom’s accession to the International Convention on Civil and Political Rights (“ICCPR”) in 1976. The rights in those Conventions were themselves derived from international treaties and agreements, including the United Nations’ Universal Declaration of Human Rights (“UDHR”).

18. It is axiomatic to this Inquiry that its work must start with the basic proposition that undercover interference with the lives and activities of individuals and groups was in conflict with fundamental legal rights and protections, to which people in England and Wales were and are entitled to full enjoyment. Those rights include not only the rights to freedom of expression, assembly, protest and dissent; they also include rights to respect for private and family life, including respect for personal autonomy. All of those rights were flouted by undercover policing.
19. The actions of the State undermined the democratic process, by violating the civil and political rights of countless individuals and groups, across broad swathes of what can be broadly described as the political “left”, in what appears to have been politically and ideologically motivated policing. The invasion of privacy and the interference with personal autonomy caused and occasioned by undercover policing has ranged from significant and personally devastating breaches of trust, to gross violations of personal autonomy commensurate with that caused by serious sexual offending. The dishonest social relationships manufactured by UCOs, and their intrusion into the personal lives of individuals, their families and friendship groups, has caused lasting psychological damage to many victims of undercover policing, in what can only be considered a fundamental disregard for human dignity itself.
20. **Thirdly**, the extent of what is already known publicly – through the efforts of activists themselves – about undercover police activity from 1968 onwards is

almost incredible in both its temporal and physical dimensions. As referred to above, it is understood that at least a thousand organisations and countless individuals, have been spied upon over the course of more than 50 years. The sheer extent of the surveillance of private citizens, indicates that the activities of UCOs cannot properly be viewed as an aberration, or a necessary, limited and legitimate activity, which somehow crossed the line and went astray due to a few bad apples or wrong turns.

21. Such evidence as there already is in the public domain makes clear that the misuse of covert policing against individuals was extensive, widespread and systemic, deliberately targeting individuals and groups for their opposition to Government policy. Generations of senior police commanders appear to have authorised and colluded in a serious and widespread affront to fundamental rights and basic democratic norms, authorising huge expenditure to spy on citizens without concern for their fundamental rights, their wellbeing or welfare. It appears that successive Ministers and officials must similarly have authorised and colluded in the same. That truly is an appalling vista with which the Inquiry must grapple and for which it must account.

22. **Fourthly**, the Inquiry's TOR have made clear that its investigations are to be confined to examining undercover *policing* and not the activities of other covert State agencies. This places significant limitations on the role of the Inquiry, and risks curtailing the Inquiry in its investigation of the extent of State intrusion in the lives of ordinary citizens. However, what it also highlights is that the focus of the Inquiry is not on the role of the State in infiltrating or disrupting terrorism and domestic extremism networks, which fall primarily within the remit of MI5. As the names of the SDS and the National Public Order Intelligence Unit ("NPIOU") indicate, the presumption is that they were tasked with intelligence gathering on demonstrations and public order. No State agency should therefore be allowed to attempt to justify the activities under investigation in terms of terrorism or domestic extremism. Given that the Home Secretary draws such a distinction in

the TOR, it would be perverse for State CPs to be permitted to then elide that distinction by way of purported justification.

23. That being said, the limitations of the TOR should not prevent the Inquiry investigating the nature and evidence of the organisational links between undercover policing and other covert State agencies. That should include the extent to which information obtained through undercover policing was provided to those other agencies, or the extent to which undercover policing was assisted, influenced, or indeed directed, by them.

24. **Fifthly**, the Inquiry's TOR confine the Inquiry to undercover policing by forces from England and Wales, conducted within England and Wales. This is deeply problematic. Whilst it is not unusual for a statutory public Inquiry to be established within one jurisdiction, there is no corollary requirement for the facts and evidence to be constrained to that particular territorial area. It is a matter serious concern that the Inquiry's TOR appear to have been deliberately drafted to attempt to exclude such evidence. It seems that this will lead to an approach by the Inquiry where its scrutiny of the activities of undercover policing by officers based in England and Wales will stop at Hadrian's Wall, even where those activities involved UCOs from forces in England and Wales travelling to Scotland. Likewise, where UCOs spied on individuals and groups beyond the UK, travelling to meetings and protests in other countries in Europe and beyond, the scrutiny by the Inquiry of their activities is apparently to stop at Dover or Heathrow. That appears to be the Inquiry's intention, even where individuals and groups were targeted for surveillance in relation to their activism occurring entirely outside of England and Wales, as in the case of the CPs targeted for their activism concerning Palestinian rights.

25. The absurd consequences of the way in which the TOR have been drafted have been made clear to the Inquiry and the Home Secretary, not only by CPs, but

also by Government officials.⁴ It is unclear whether the Inquiry itself has sought to question the ambit of the TOR in this regard. However, what is clear is that the failure by Inquiry to scrutinise important evidence about the activities by UCOs from England and Wales, outside of England and Wales, including spying activities on our CPs, will necessarily undermine its ability to undertake a full and frank investigation into the practices and excesses of undercover policing.

26. That being said, what is also clear, is that, despite the restrictions of the Inquiry's TOR, matters concerning the authorisation and planning in England and Wales for activities by UCOs outside of England and Wales itself plainly constitutes activities that occurred in England and Wales. That is also the case for matters concerning the preparation and funding for undercover policing activities outside of England and Wales, the liaison with authorities, including covert authorities, in jurisdictions outside of England and Wales, and the reporting back and debriefing following such activities: all of these are of themselves activities which occurred within England and Wales. Consequently, all those activities fall squarely within the Inquiry's TOR. Our CPs, many of whom were spied upon by UCOs abroad, and/or were apparently spied upon in England and Wales in relation to their overseas activism, expect those matters to be considered fully and in detail by the Inquiry.

27. **Sixthly**, the Inquiry's TOR include online activity. It is imperative that the Inquiry considers fully and in detail the nature, extent and tactics of online undercover policing operations and activity. That would include not only the online surveillance of individuals, networks and groups, but also the creation and management of online identities, and the capture, seizure and diversion of online communications. Undercover policing units are likely to have established online personae, running for many years, spying on, and collating information from individuals in different online fora, including through the pursuance of deceptive

⁴ Notably the Cabinet Secretary for Justice in the Scottish Government Cabinet, as per the correspondence set out in *Gifford, Petition of Matilda Gifford for Judicial Review* [2018] scotcs CSOH 108 (21 November 2018) at [8]-[15].

online relationships. There are also real concerns that UCOs and their handlers have used and misused data and information online to then justify and provoke police action against individuals and groups, such as raids on premises, and the seizure of servers or materials relating to activists and campaigns.

28. Those are matters of the utmost significance which the Inquiry must fully investigate, and in relation to which it must make full disclosure, if it is to be capable of establishing the truth. In order for the Inquiry properly to fulfil this aspect of its TOR, it is imperative that it ensures that it has the requisite expertise to seek out, analyse and understand that evidence, including to understand whether it has received full and complete information and records from the police. Confirmation is sought that this is available.
29. **Seventhly**, there has been significant and unjustified delay in the Inquiry to date, and a very uncertain timetable for the future. The maxim “justice delayed is justice denied” is particularly apposite. This is illustrated in the current passage through Parliament of the highly controversial Covert Human Intelligence Sources (“CHIS”) Bill. In circumstances where one of the key functions of any Inquiry is to make recommendations for the future, the extensive delay in the Inquiry proceedings to date represents a significant – and perhaps irreparable – missed chance. The delay in investigating and in reporting has deprived Parliament, and the general public, of the detail of the excesses of so-called “covert human intelligence sources”; it has also deprived them of informed recommendations regarding undercover policing, from an Inquiry set up in significant part for that very purpose.
30. Further to the above points, our CPs also adopt, but do not repeat, the procedural points made on behalf of all non-state CPs in the submissions by Ruth Brander.

PURPORTED JUSTIFICATION FOR UNDERCOVER POLICING

31. In each case, we note that the CPs we represent were members of civil society, with legitimate aims, committed to campaigning on social justice and related issues. The focus of some of our CPs was distinct and self-contained, honed on one particular campaign or range of related issues. Other CPs were interconnected in a broader tapestry of campaigns and groups, focused on seeking to challenge the current system, and to create radical change within society for the benefit of the many.
32. Whilst some CPs' activities have been found to have included minor infractions of the law, such as public order or related offences, they were proportionate to the serious harm they sought to prevent, and legitimate, having regard to legal principles of justification, as indeed was repeatedly found in criminal proceedings.⁵
33. As stated by Lord Hoffman in the House of Lord in the case of *R v. Jones* [2006] UKHL 16 at [89]:

“[C]ivil disobedience on conscientious grounds has a long and honourable history in this country. People who break the law to affirm their belief in the injustice of a law or government action are sometimes vindicated by history. The suffragettes are an example which comes immediately to mind. It is the mark of a civilised community that it can accommodate protests and demonstrations of this kind. But there are conventions which are generally accepted by the law-breakers on one side and the law-enforcers on the other. The protesters behave with a sense of proportion and do not cause excessive damage or inconvenience. And they vouch the sincerity of their beliefs by accepting the penalties imposed by the law. The police and prosecutors, on the other hand, behave with restraint and the magistrates impose sentences which take the conscientious motives of the protesters into account.”
34. Plainly there has been a wholesale, fundamental breakdown in this convention on the part of the State over the course of the last five decades and more of

⁵ Including the Smash EDO factory “decommissioning” trial.

undercover policing operations. The police have shown no restraint whatsoever towards the CPs we represent and the many other groups and individuals who have been subjected to intrusive undercover policing as a result of their conscientious motives and actions. Indeed, instead of taking account of the conscientious motives of CPs, the authorities appear to have seized on those very motives as an excuse to undermine and disrupt CPs' activism and to infiltrate the minutiae of their private lives, causing untold damage and harm.

35. Our CPs were entitled to the full enjoyment of their civil and political rights, and of their rights to privacy and personal autonomy. They also were entitled to expect the State to proactively protect those rights, in accordance with domestic and international law, not to so seriously and fundamentally undermine them. The mass infiltration and spying by the police on individuals and campaign groups is far from the mark of the civilised community, to which Lord Hoffman refers.
36. It is in that context that the following pressing questions arise, to which the Inquiry must seek comprehensive answers: How can the State reasonably and properly justify the infiltration by UCOs of community and justice campaigns such as NMP? Is it a coincidence that the NMP was a black community justice organisation campaigning about police racism and brutality? How can the State reasonably and properly justify its infiltration of performing arts activist groups such as ROR and CIRCA, which used music, satire, comedy and art to amplify and enhance protest, often diffusing tension as they did so? How can the State reasonably and properly justify its intrusion into the private lives and political activities of individuals involved in seeking to uphold the international rule of law, through their entirely peaceful, non-violent and open solidarity with Palestinians in the occupied Palestinian territories? And to what extent did the State's intrusion into their legitimate activism place already vulnerable Palestinian individuals at further risk? How can those responsible for undercover policing reasonably and properly justify the infiltration of anti-war and anti-weapons campaigns, vindicated in significant part by the Chilcott Inquiry, the actions of

which, taken at their height, in the “decommissioning” of an arms factory, were found by a jury to have been legally justified? How can the State reasonably and properly justify infiltrating HSA groups, whose decades-long campaign was vindicated by history in the outlawing of hunting of live animals with dogs? What reasonable or proper basis was there for spying on anti-capitalist networks and others whose aim was to oppose the concentration of wealth in the hands of a few? What reasonable excuse could there have been for monitoring or subverting the contents of independent news sites such as Indymedia? What justification could there conceivably have been for spying on the young Donfrancesco family, who were concerned with trying to protect the environment from harm? What was the possible rationale or justification for the harassment of individuals for having set up entirely legitimate networks to monitor unlawful police excesses against protesters? What reasonable or proper basis was there for UCOs to have inveigled their way onto into key positions of responsibility on different campaigning organisations, and to what extent did they then use those positions to undermine the legitimate campaigns of the organisations?

37. Opening statements present a key opportunity for those under investigation by a public inquiry to assist the process by setting out the account and narrative of the facts which they assert to be truthful, and by making appropriate and clear concessions or admissions of wrongdoing as to what happened, why it happened and what went wrong. Such opening statements are capable of being of key assistance to the public inquiry in honing the issues for it to consider. Such opening statements are also capable of providing assistance, and sometimes reassurance, to participants, including victims of the activities under investigation.
38. It is as yet unclear whether State or Police CPs in this Inquiry will take the opportunity to assist the Inquiry and to give any succour to the thousands of individuals and groups they have spied upon, lied to, deceived and undermined, by making appropriate concessions or admissions in their opening statements. It is also unclear whether they will take the opportunity, in the alternative, to set out

any purported justifications they may seek to advance for their conduct and activities. However, the fact that the Inquiry declined to require them to provide 'position statements' and declined also to set out a list of issues which State and police CPs were required to deal with in their opening statements, bodes ill. It means that, in addition to refusing to provide CPs with meaningful and timely disclosure regarding the State's activities, the Inquiry has compounded that failure: it has done so by in effect allowing State agencies to avoid setting out their stall and to avoid providing an explanation for the egregious interferences with fundamental rights in which they have engaged over the course of the over five decades. That is a significant failure in the context of the Inquiry, where five years in, our CPs, the other NSPCPs and the general public have still not been given any explanation for the extensive surveillance by the State of their activities. Nor have our CPs been provided with any apology, or any reassurance that they do not continue to be the subjects of such State surveillance or will not be targeted in the future for their legitimate activities.

39. We make clear that the CPs we represent do not accept that there could be any valid explanation or proper lawful justification for the nature and extent of the interference by the State in civil society. There could be no justification for the significant infringements of their civil and political rights. In particular, there could be no proper or lawful justification for the invasion of their privacy and interference with their personal autonomy, as deliberately perpetrated by the systems of undercover policing in this context. That being said, the nature and basis of any purported justification that the State CPs will attempt to put forward will necessarily be central to this Inquiry. That is because any purported justification necessarily requires a general framework of laws and regulation, and the application of that framework to the specific circumstances of the individual or group spied upon directly or indirectly. Consideration of any purported rationale for the State's actions in relation to our CPs therefore requires at a minimum:

- (1) the Identification of the precise legal and policy provisions in place at the relevant times purporting to justify the direct or indirect infiltration of or spying on any individual or group;
 - (2) the identification of those responsible within policing, the Government or otherwise, for (a) authorising undercover policing generally, (b) for authorising the infiltration of or spying on each particular individual or group, whether directly or indirectly, and (c) for maintaining that authorisation under review;
 - (3) the nature and detail of what information was held by the police about the individuals and groups spied upon, whether directly or indirectly, at or around the particular time they were spied upon, to justify the decision (a) to engage in undercover policing in relation to them, whether directly or not, and (b) to continue spying on them, its provenance and accuracy, and the checks undertaken to verify the same; and what information is still held and/or has been destroyed; and
 - (4) disclosure of the purported justifications advanced, if any, and of the materials on which they are based, and robust scrutiny thereof.
40. If the Inquiry is to meaningfully scrutinise any purported justifications advanced, it must require State agencies and officials to disclose the identities of who knew what and when, the identities of those who authorised the system of deployments, including their official positions, what was hidden, by whom, and what evidence has been destroyed, in particular what evidence has been deliberately destroyed since this Inquiry has been established.

SUPERVISION AND OVERSIGHT OF UNDERCOVER POLICING

41. In relation to each CP and generally, the Inquiry must ascertain the nature of the legal framework within which the undercover policing activities were undertaken.

Of critical concern is the nature and extent of the supervision of the undercover activities, including of the tactics adopted by UCOs.

42. It is of note that other covert activities undertaken by State agencies are subject to ministerial and parliamentary oversight. Thus, for example, MI5 falls under the control of the Home Secretary,⁶ and is subject to some oversight by the Independent Reviewer of Terrorism Legislation, and the Parliamentary Intelligence and Security Committee.
43. By way of contrast, and having regard to the lack of any disclosure, the nature and responsibility for the formal supervision of undercover political policing throughout the whole period from 1968 to date is unclear. The CPs are entitled to know who in Government, in Parliament and in the police and/or other State authorities oversaw the extensive and widespread undercover operations and infiltrations which are the subject matter of the Inquiry. They are also entitled to know who in Government and in the high command of policing approved and oversaw the specific direct or indirect infiltration of the groups and networks in which they were involved. Insofar as it appears that there was a complete lack of judicial supervision beyond the ordinary requirements of entry warrants, it is both incumbent on the Inquiry and fundamental to the democratic system to ascertain why such widespread intrusions into people's private and political lives appear to have been placed beyond the supervision of the Courts.
44. This lack of information about the oversight of undercover policing is so remarkable that the Inquiry should indicate at the outset of the hearing process what its understanding of the legal framework surrounding the deployment of UCOs was and remains from 1968 onwards.

⁶ Historically, MI5 reported directly to the Prime Minister. From 1952 this authority was delegated to the Home Secretary, and the Service was subsequently placed on a statutory basis by the Security Services Act 1989.

45. Moreover and particularly, it is incumbent on the Inquiry to determine: What were the relevant policies and guidelines within each relevant police force at the relevant times in question? Given how highly regulated policing in the UK has been for many years, it is inconceivable that there was not a framework of policies and standard operating procedures relating to this activity.
46. Who made the decision to subject such a significant section of the political left to such intrusive and egregious surveillance tactics? Who decided which groups to infiltrate, which individuals to target? Who authorised them to make those decisions? Who permitted individuals beyond those particular groups or individuals to be surveilled? Which senior Police officers approved the activities which are the subject of the Inquiry? What did the Association of Chief Police Officers (“ACPO”) (now the National Police Chiefs’ Council (“NPCC”)) know and what role did it play? Where is the evidence of the role that it played, and will it be called to account and give evidence?
47. Further down the ranks, who were the commanders and senior officers of the various undercover units? Did they not question the lawfulness and legitimacy of the infiltration of justice and community organisations and campaigns? How could they have possibly considered such activities to be compatible with their status as supposedly politically-neutral police forces and officers? How did they fail to apply any proper standard of supervision to so many UCOs, infiltrating so many organisations and so many lives, for so long? Is the reality that they did not disapprove? In which case, to what extent did political, institutional and personal prejudice against the targets of the units contribute to their targeting and to the seemingly wholesale disregard for their fundamental rights and personal wellbeing?
48. Given the depravity of the deceitful intimate “relationships” entered into by UCOs, the allegations of targeted racism from the NMP and others, and the clear inference that groups and individuals were targeted for their political beliefs and

tendencies, these are pressing questions for the Inquiry, the importance of which cannot be understated.

PARTICULAR ISSUES

49. We have set out above the general fundamental issues of extensive, and seemingly unaccountable, undercover political policing for any political system that claims to be open and democratic. The following specific issues are also of critical concern, and must inform the approach of the Inquiry to its task, if it is properly to meet its TOR:

- (1) The mass infiltration of justice campaigns, community groups and political campaigns is anathema to a free and democratic system because it necessarily improperly interferes with civil and political rights and freedoms, such as free expression, assembly and protest, in a manner which is not reasonable, necessary or proportionate. That is particularly so where it is plainly targeted at one side of the political spectrum.
- (2) Mass undercover political policing of the type uncovered also interferes improperly with individual privacy and personal autonomy, in a manner which is not reasonable, necessary or proportionate. The issues of intimate deceitful 'relationships' are addressed by others, but non-intimate deceitful relationships also constitute a significant and profound interference with these rights. The infiltration by the State of private and family home life can only be justified in the clearest and most serious of circumstances, which must be carefully regulated by law. The deliberate insertion by the State of UCOs into the lives of individuals – and by extension into their family homes and into the lives of their families, friends and communities – involves a serious and gross violation of personal rights and autonomy of the individuals specifically targeted, but also of many others indirectly surveilled. Some of our CPs have been so profoundly betrayed by people they considered to be close friends, that they find it difficult to trust again,

impacting significantly on their personal relationships. Others feel a profound sense of responsibility and guilt for having unwittingly introduced people they love and care about to UCOs, who went on to deceive them so seriously and severely, including through deceptive intimate “relationships”. For many, important events in their lives, births, deaths, weddings, milestone birthdays will forever be tainted by the involvement of UCOs.

- (3) The infiltration by UCOs of legitimate political activities necessarily involves a serious and significant chilling effect on democracy. The lifeblood of democracy is the freedom to hold and express ideas and views, to show dissent and to protest. Freedom of conscience and freedom of expression mean nothing at all if limited to the protection of views which support and champion the State. The mass infiltration by State agents of swathes of the political left, of justice campaigns, community groups, solidarity campaigns and networks, political groups and activists and of those associated with them, has necessarily bred distrust and undermined the very fabric of that activism. Indeed, there are significant concerns that this in itself was a likely object of undercover policing.
- (4) The deployment and engagement of UCOs seems not to have been operationally neutral. UCOs appear to have been involved in encouraging, assisting or facilitating direct actions and activities which might have been considered unlawful. They also appear to have routinely acted in a “Santa Claus” role, providing logistical help with funding and transport, to facilitate events or activities that could not otherwise have gone ahead, which they then proceeded to spy upon.
- (5) UCOs also appear to have often sought to assume key organisational roles or positions of responsibility within individual campaign groups and networks, including handling groups’ funds, and/or positioning themselves on organising committees. This appears to have been done not only to spy upon, but also seemingly to disrupt, frustrate or undermine, the legitimate

activities of those organisations and network. CPs describe, in particular, UCOs spreading discord in groups. This represents a serious interference by the State with the democratic process and a fundamental undermining of civil society activity. Real questions arise as to whether and to what extent was this was a *modus operandi*, sanctioned by policing commanders and members of the political establishment.

- (6) UCOs have been involved in protests, incidents and activities, in relation to which criminal charges have been brought against activists, and in some cases the UCOs themselves. There is a real risk of miscarriages of justice having resulted, including through the non-disclosure of the covert status of a UCO and/or through a UCO failing to provide exculpatory testimony for individuals on trial.

PROCESS

50. In terms of process, we have repeatedly complained about the abject failure of disclosure in this Inquiry, and the Inquiry's lack of meaningful engagement with the NSPCPs. We note further that little substantive progress has been achieved in the five years since this Inquiry was established, beyond ensuring that most of the State agents involved have had their identities protected. This has contributed to a lack of confidence in the ability or inclination of the Chair and the Inquiry to robustly scrutinise the activities of the State agencies involved. From the perspective of our CPs we remind the Chair that this Inquiry should:

- (1) deliver a full and transparent narrative of undercover political policing in this country over the period from 1968 to the date at which he submits his report, a date which now looks to be many years in the future;
- (2) ascertain historical failures and ensure accountability by identifying those responsible; and

- (3) make robust recommendations for preventing further such assaults on the democratic process, and the gross interferences with civil and political rights and privacy and personal autonomy identified above, from occurring in the future.

SPECIFIC QUESTIONS TO WHICH ALL OF OUR CPs SEEK ANSWERS

51. In each case our CPs submit that it is imperative that the following is ascertained:

- (1) All information held on police systems, regarding each CP and/or any group or individual associated with them, covering the time period UCOs were and/or still are deployed in their case. This information should be disclosed without further delay. Until such disclosure is made, our CPs are unable to effectively participate in the Inquiry. The detail and content of the information held at the time decisions were being made in relation to our CPs and/or groups/individuals associated with them is vital to the understanding of any purported justification for the undercover activity and its extent.
- (2) The nature and extent of the destruction of files relating to each of our CPs and/or the groups/individuals they were involved with, prior to and during the currency of the Inquiry.
- (3) The use to which the information and intelligence proved by UCOs was put at the time, with which State agencies, bodies, individuals within and outside it was shared and/or disseminated, and what checks were in place to ensure its accuracy and truth. This should include the extent to which information and intelligence provided by UCOs was used to justify the ongoing and long-term infiltration of groups or spying on individuals. It should also include the extent to which information provided by UCOs fed into other policing decisions, including decisions to place “markers for

violence” or other alleged illegal activities on CP files and/or categorising them as “domestic extremists”.

- (4) A list of all UCOs who were deployed to report on each CP and/or groups/individuals associated with them, and/or of all UCOs who did so report on them whether directly or indirectly, and a list of their supervising officers, the dates of their deployment, and disclosure of all such reports, notes, and contact sheets relating to each relevant deployment. Importantly, all CPs seek information as to when they ceased being targeted for undercover policing and/or whether they still remain under surveillance directly, indirectly, in person or virtually.
- (5) The rationale and basis of each decision to allow UCOs to spy on each of our CPs directly or indirectly, and the basis for their continued deployment then and/or now, and disclosure of documentation relevant to each decision. This question is important of itself but it will also illuminate any case where an undercover activity was undertaken with respect to one individual or group (a) in order to access others, and/or (b) where it impacted on others without authorisation having been given.⁷
- (6) A list of all UCOs who had any significant contact with each of our CPs, the groups in which they were active and/or others within those groups, as a result of their deployment in respect of others. All reports, notes and contact sheets relating to this contact should be disclosed.
- (7) The number and identities of all UCOs who engaged in deceptive intimate ‘relationships’ with our CPs and/or individuals in their social circles and/or in the groups in which they were active, and the purported rationale and authorisation for such abuses.

⁷ The Inquiry must use the exception in Schedule 3, para 22(1) of the Investigatory Powers Act 2016 to require disclosure of intercept evidence relevant to deployments.

- (8) The nature and tactics of spying and surveillance activities, including the use of tactics of the encouragement and financing of particular activities, and/or the subversion of others, including the extent to which UCOs were directed and/or permitted to undermine or disrupt legitimate protest and campaigning activities by our CPs and/or the groups or individuals associated with them; and the purported rationale and authorisation for those activities.
- (9) The nature and tactics of online surveillance, including the use that was made and continues to be made by UCOs of online tools to surveil activists and to infiltrate, monitor and/or disrupt activist groups, and the social justice movement.
- (10) The extent to which specific email addresses and other false online identities were/are still being used by UCOs to monitor organising around social justice and free speech issues, including:
- (a) the nature and extent of “online” undercover policing, including the numbers of police officers or agents involved and/or the numbers of online identities created and managed;
 - (b) the command structure in place, including the links with other police forces and other State agencies in England and Wales, the rest of the UK, and abroad.
 - (c) the practices and safeguards (if any) in relation to the same, including safeguards around the forming of deceptive online relationships;
 - (d) the longevity of online identities, and whether identities are “passed down” from officer to officer, such that they may be operational for significant periods of time; and in particular;
 - (e) whether online identities created many years ago, continue to be “run” by UCOs or agents; and
 - (f) whether new online identities continue to be created.

- (11) The statutory, regulatory and policy authority and basis for undercover policing generally, and for each deployment and continued deployment directly or indirectly against our CPs or groups/individuals they were associated with, and whether such deployment decisions complied with that framework.
- (12) The rules and safeguards put in place concerning the surveillance by and/or collation of information by UCOs of individuals, groups or networks in relation to whom they had no mandate to infiltrate, but with whom they came into contact socially or through cross-over links or activities.
- (13) The chains of command involved in each unit deploying UCOs, and the state of knowledge, supervision and authority for their general activities and individual decisions.
- (14) The state of knowledge and level of supervision of undercover political policing in Government and Parliament.
- (15) The links, including formal and informal operational links between undercover policing, including the SDS and NPIOU, with:
 - (a) other policing bodies in England and Wales, including Police Special Branch;
 - (b) other State agencies, including covert State agencies, and the interplay between overt and covert surveillance;
 - (c) police and other State agencies in other parts of the UK; and
 - (d) police and other overt or covert State agencies in other countries, including countries in which UCOs were deployed, and/or in relation to which information and intelligence appears to have been gathered from CPs, including but not limited to France, Germany, Hong Kong, Ireland, Israel, Italy, Poland, Russia and Spain.

- (16) The role of officers in England and Wales in relation to the sanction and planning of undercover activities by UCOs outside of England and Wales, and responsibility for their direction and oversight, including what safeguards were in place to ensure that fundamental rights were protected.
- (17) The extent to which information and intelligence obtained by UCOs and the police units involved, was shared with corporate or other private concerns, including corporate spies, and the nature and extent of any collaboration with the same.

ANNEXES

52. We set out in the annexes appended to this statement some basic details relating to each of our CPs,⁸ accompanied by a list of certain key questions and issues in relation to which they seek answers from this Inquiry process.
53. However, the information provided in the annexes is provided with the following caveat. The CPs whom we represent are disappointed and dismayed that after five years of this Inquiry, the individuals and groups who have been infiltrated, duped and spied on by the State have been kept, by the Inquiry, in the position of knowing nothing more than they did five years ago about the reasons for their targeting by the State, or the detail of that targeting.
54. In order to attempt to progress the Inquiry, and to attempt to obtain a benefit for themselves from its process, they are left themselves to provide the Inquiry with information, from the best of their own recollections, about their own surveillance by the State. Those who do so do so to exhort the Inquiry to consider key matters in relation to which they deserve a thorough and effective investigation, and full and frank answers.

⁸ With the exception of Smash EDO and Ceri Gibbons, as set out above.

55. It is deeply problematic that they should find themselves in that position. Parliament must have intended Rule 11 to be effective. The Inquiry should have ensured the provision to CPs of sufficient material and information from State agencies, in a timely manner, upon which for them to make cogent submissions in opening. It is a significant and serious failure by the Inquiry that it has failed to do so.

CONCLUSION

56. This Inquiry relates to interference with civil, political and human rights undertaken on an industrial scale, over decades. It involves investigating policing which grotesquely interfered with democratic rights themselves. The Inquiry has a choice. It can drag these activities out into the light of open justice where wrongdoings of the past can be determined and narrated, accountability established, and robust recommendations made to prevent such state-sponsored abuses continuing into the future; or it can continue to operate in the shadows with a preoccupation for secrecy. The rule of law requires the former. The latter can only result in failure and whitewash.

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26 October 2020