IN THE UNDERCOVER POLICING INQUIRY

WRITTEN OPENING STATEMENT ON BEHALF

OF

THE CO-OPERATING GROUP OF NPSCPS

"The right to the truth is closely linked to the State's duty to protect and guarantee human rights and to the State's obligation to conduct effective investigations into gross human rights violations…and to guarantee effective remedies and reparation. The right to the truth is also closely linked to the rule of law and the principles of transparency, accountability and good governance in a democratic society.

…Truth is fundamental to the inherent dignity of the human person."[1]

INTRODUCTION

1. This opening statement is made on behalf of all of the co-operating non-state core participants ['NPSCPs']. It supplements the statements that have been made directly on behalf of individuals and groups by their instructed lawyers. It focuses on common themes and concerns that are shared by all of the co-operating group of NPSCPs, notwithstanding their disparate backgrounds, points of view and interests in the Inquiry.

2. The central theme that unites all of the non-state core participants is their desire to know the truth about political undercover policing and to see lessons learned for the future. They want to know what was done to them personally and they want to know how it came to be that secret policing operations were permitted to infiltrate and undermine civil society in the United Kingdom – and beyond[2] - for over fifty years.

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[1] Study on the right to the truth, conclusions and recommendations, Report of the Office of the United Nations High Commissioner for Human Rights, 8 February 2006

[2] The activities of the Special Demonstration Squad and National Public Order Intelligence Unit were not limited to England and Wales. Undercover officers from those units are known to have travelled to and worked in Scotland and Northern Ireland as well as several other countries throughout Europe. It is the NPSCPs' case that the activities of UCOs and their handlers that occurred in England and Wales in preparing for, managing

3. The Chair of the Inquiry began his tenure, as had his predecessor, by committing to discovering the truth: "The Inquiry's priority is to discover the truth."[3] Unfortunately nearly every decision taken since then has reduced his prospect of doing so. The central problem is over-reliance on the police to voluntarily give themselves up to scrutiny, notwithstanding their appalling record in that regard in all of the multitude of reviews, investigations and court cases that have preceded this Inquiry. The second critical problem is the lack of weight given to transparency, not only as an end in itself, but as a means of getting to the truth, and being seen to do so.

4. It is welcome that the opening statements are being broadcast online. However, as soon as the evidence begins, public access to the hearings will be restricted to just 60 people, many of whom will be lawyers[4]. This is notwithstanding that those giving evidence will be relaying events that happened 50 years ago and it is stretching credulity to suggest that there would be any significant risk to any of them of their evidence being live-streamed. The refusal to do so perpetuates the ethos of defensiveness and secrecy and it deprives those who have been affected and those who wish to understand the trajectory of political undercover policing in this country from effectively participating.

5. The NPSCPs would like to take this opportunity to put on public record four fundamental concerns they have about the path the Inquiry is on and to urge the Chair to have these in mind when making future decisions:

    a. The NPSCPs could and should be treated as a significant resource for the Inquiry in its search for the truth, not just as a source of information about their own individual cases, but in uncovering the deeper underlying themes of relevance to the Inquiry's terms of reference. Their opportunity to do that is restricted on the present approach, because disclosure is restricted to a tiny number of individuals

and debriefing on overseas activity, as well as contacts with overseas bodies that occurred in England and Wales, are all squarely within the terms of reference of the Inquiry.

[3] Chairman's statement of 20 November 2017.

[4] This is the case as at the time of writing. At a meeting held remotely on 20 October 2020, the solicitor to the Inquiry was unable to rule out access being limited yet further if COVID restrictions were to change.

who are deemed by the Inquiry to have a "direct interest" and because access to the evidential hearings is a practical impossibility for most;

b. By restricting cover names of undercover officers, refusing to publish the names of all of the groups that were spied on, and delaying the publication of photographs of officers whose cover names are not restricted, the Inquiry is failing to enable members of the public to realise that they too were spied on and, if they so wish, to provide evidence to the Inquiry. In doing so, it is difficult to see how the Inquiry can claim to be assessing "the scope of undercover police operations in practice and their effect upon individuals in particular and the public in general", (as its terms of reference require), when it is closing down the opportunities for it to receive evidence from affected individuals and the public;

c. The Inquiry is placing very heavy reliance on self-disclosure by the police, notwithstanding the overwhelming evidence of the police seeking to cling to secrecy at every opportunity;

d. The Chair is a single individual who will be solely responsible for drawing significant conclusions about political freedoms and issues of institutional (and individual) racism, sexism, class and political bias in the police – and potentially beyond. These are not issues on which he has any particular expertise or sensitivity, but he has repeatedly refused to sit with a broader panel, at least until the final "lessons to be learned" phase. Whilst this is better than nothing, the "lessons to be learned" can only be built on the facts found in the previous modules of the Inquiry. If important matters have been missed, or given a particular interpretation, during the investigative phases, then the hands of any subsequent panel are tied in terms of the lessons to be learned.

6. This opening statement will briefly expand on each of these four concerns.

THE ROLE OF NON-STATE CORE PARTICIPANTS

7. When Theresa May, as Home Secretary, announced the establishment of the Inquiry in her written statement to the House of Commons on 12 March 2015, she said that "The inquiry will review practices in the use of undercover policing, establishing justice for the families and victims and making recommendations for future operations and police

practice." This led those who were spied on to hope that they would be at the heart of the Inquiry process and that it would lead to them obtaining, at very least, disclosure of their personal files – something a number of them have tried to obtain via Subject Access Requests directly from the police, but without success.

8. However, it is now five and a half years on and, with the exception of the small number of NPSCPs in Tranche 1, and the Reel family, none has received any disclosure from the Inquiry about their situation. To the contrary, requests for disclosure of personal files have been dismissed by the Chair as an 'unhelpful distraction'. Not only does this run contrary to the obligations on the Inquiry under the Data Protection Act 2018, it is counter-productive for the Inquiry's ability to get to the truth. If it had prioritised disclosure of personal files from the start, or if it were to prioritise this now, it would enable NPSCPs to begin the process of gathering evidence and of understanding how and when they were spied on. Importantly, it would also enable them to assist the Inquiry to identify patterns and themes, informed by the knowledge of what happened to them.

9. This is not speculation. As outlined in the opening statement on behalf of many of the women in relationships, Kate Wilson has received some disclosure in respect of the personal information held about her in the course of her claim against the MPS in the Investigatory Powers Tribunal. That disclosure has enabled her to identify a number of significant points about, for example, the degree of knowledge on the part of Mark Kennedy's managers about their relationship. Information of that nature is not limited in relevance to Ms Wilson's own case, but has wider significance for the investigation of other UCOs who had, or may have had, relationships. Further, it is not information that was at all willingly volunteered by police. It was only disclosed through the determined tenacity of Ms Wilson. If information of that sort is only disclosed to NPSCPs in the Inquiry during the particular tranche when their evidence is to be heard, the Inquiry will miss the benefit of it at all earlier phases. That will significantly weaken the Inquiry's ability to investigate underlying patterns and themes and may result in witnesses having to be recalled.

10. A similar problem arises from the Chair's refusal to make disclosure to NPSCPs whom he deems not to have a "direct interest" in a particular tranche. This means that those CPs and their lawyers do not get access to the hearing bundles until after the hearing at which the evidence is given. Again, this makes it very difficult for those CPs to suggest relevant questions for the witness and is likely to lead to applications for witnesses to be recalled once the documents have been disclosed[5]. This is further compounded by the fact that without live streaming of the hearings, the vast majority of NPSCPs will not even be able to see and hear the evidence being given.

11. There is a very recent positive development, in that the Inquiry has granted Dr Donal O'Driscoll, of the Undercover Research Group, access to the hearing bundle. Dr O'Driscoll, and his colleagues in the Undercover Research Group, have a huge amount of knowledge and expertise in respect of undercover political policing and its impact on civil society. The non-state core participants welcome this development and hope that it indicates the beginnings of an acknowledgment by the Inquiry of the role that non-state expertise should be playing in its investigation. However, Dr O'Driscoll is just one individual and cannot, and nor does he seek to, represent the diverse interests and experiences of other non-state core participants. The Inquiry is still a very, very long way from a position that would enable it to benefit properly from full participation by non-state core participants.

12. A yet further problem is that the Inquiry's investigative approach has been to request specific documents, or documents relevant to a specific issue, rather than considering all material relevant to the SDS and NPOIU. That approach means that the investigation is limited by the Inquiry's pre-existing state of knowledge. This, compounded by the Inquiry's refusal to draw on the knowledge and insight of the non-state core participants until the eleventh hour, inevitably means that important information will be missed, or will arise after the initial evidence has already been given. The non-state

[5] The Chair has issued a Note on the application of Rule 10 of the Inquiry Rules 2006, which at paragraph 9, purports to restrict those who may submit proposals for the questioning of witnesses to CPs and witnesses in receipt of the bundle. That is contrary to Rule 10(4), which provides that the recognised legal representative of any CP may apply for permission to ask questions of a witness giving oral evidence.

core participants believe that other issues of significance are likely to arise once the material has been more widely considered.

13. In short, rather than drawing on the perspectives and experience of the NPSCPs to assist and inform its lines of enquiry, the Inquiry is shutting out effective participation by NPSCPs. Not only is this intensely frustrating and disappointing for the NPSCPs, it deprives the Inquiry of the plurality of sources and viewpoints it needs to conduct a rigorous investigation. It will also, ultimately, undermine public confidence in its conclusions.

RESTRICTING PUBLIC ACCESS

14. A further, related, problem is the Inquiry's refusal to take steps to ensure that it can accurately assess the true scope of undercover policing and its effect on the public. Although the Inquiry has, on some limited occasions, taken steps to contact certain individuals when it has discovered that they were spied on in a way that the Inquiry wishes to investigate – for example, when it has discovered that an undercover officer had a long-term sexual relationship – the majority of its procedural decisions have had the effect of precluding those who don't already know, or suspect, that they were spied on from discovering that that was the case.

15. The restriction of cover names is a prime example of this and is of particular concern in relation to the investigation of the National Public Order Intelligence Unit ["the NPOIU"], the Unit in which Mark Kennedy, the undercover officer who is known to have had sexual relationships with at least five women, was deployed. As things currently stand only 6 cover names out of 21 undercover officers from the NPOIU have been, or will be, published. The consequence is that the vast majority of the investigation of the NPOIU will take place without meaningful disclosure to, or participation from, those who were spied on by that Unit. The investigation will therefore necessarily be limited and one-sided.

16. Further, even where cover names have not been restricted, the Inquiry has done little to encourage members of the public to come forward if they have evidence to give. The

NPSCPs have repeatedly asked the Inquiry to publish a list of all of the groups that were spied on by the SDS and NPOIU so that members of the public will know if there is a possibility that they were spied on. Such a list would also be likely to increase public interest in the Inquiry, because it would demonstrate the reach of undercover political policing. It is still a common public misperception that undercover policing has been limited to groups and individuals involved in serious criminality. Publication of the full list of groups spied on by the SDS and NPOIU would dispel that impression.

17. The NPSCPs have also asked the Inquiry, when it releases cover names, to publish photographs of the undercover officer in his or her undercover identity. Again, this would be an important means of enabling members of the public to come forward. Cover names were deliberately chosen to be non-distinct and memories fade. If, for example, the name "Colin Clark" is released, as having been deployed in 1977, that may well not trigger many memories. A photograph is much more likely to enable those who have relevant evidence, but who don't yet realise it, to come forward. There are already known examples of individuals seeing photographs posted online from sources other than the Inquiry and thereby discovering that a person they had been close to was in fact an undercover officer. It is reasonable to assume that this would be a highly effective way of enabling more members of the public to come forward. It would also enable members of the public who might be concerned that they knew someone with the same name to ascertain whether it was indeed the person they knew or simply someone who shared that name.

18. By not being more proactive in its search for non-state evidence, the Inquiry is likely to miss significant information, in particular, in respect of its task of assessing the scope of undercover policing and its effect on the public. It is difficult to see how that task can be achieved without the Inquiry making a genuine attempt to ascertain how much public evidence might be forthcoming if it enabled people to know the full extent of the political and campaigning groups that were spied on.

OVER RELIANCE ON POLICE DOCUMENTS AND SELF-REPORTING

19. This is a source of very significant concern. The very body under investigation is being relied on by the Inquiry as the principal source of evidence. In cases where cover names are restricted, it will be the only source of evidence. This is in the context of (1) policing units whose entire ethos was to keep their operations secret; (2) a woeful history of non-disclosure, both in the units' original operations and in response to the reviews, investigations and inquiries that have preceded this one; and (3) the significant wrongdoing, including, now admitted, human rights violations. This ought to dispel any presumption that any of the deployments was 'unremarkable' and not in need of rigorous scrutiny.

20. The context in which the Special Demonstration Squad and the National Public Order Intelligence Unit operated is important, because unlike "ordinary" undercover policing operations, their primary purpose was "intelligence gathering", not criminal investigation. This made a critical difference, because with criminal investigations, the intention from the outset is that the case will, if possible, end up in court. The undercover officer knows that his or her conduct will be subject to judicial scrutiny at the criminal trial. However, the spectre of oversight was entirely absent within the political policing units, because it was not the intention of their undercover operations to result in a trial. This was recognised by Her Majesty's Inspectorate of Constabulary ["HMIC"], as it then was, in its 2012 "review of national police units which provide intelligence on criminality associated with protest"[6]:

> "The Office of Surveillance Commissioners (OSC) provides a measure of oversight of compliance by monitoring the use of powers granted by Parliament. However, for most undercover deployments the most intense scrutiny occurs when the evidence they have collected is presented at court. Accountability to the court therefore provides an incentive for police to implement the system of control rigorously: but in HMIC's view, this incentive did not exist for the NPOIU. This is because NPOIU undercover officers were deployed to develop general intelligence for the purpose of preventing crime and disorder or directing subsequent criminal investigations, rather than gathering material for the purpose of criminal prosecutions. When HMIC compared the controls applied by

[6] https://www.justiceinspectorates.gov.uk/hmicfrs/media/review-of-national-police-units-which-provide-intelligence-on-criminality-associated-with-protest-20120202.pdf

the NPOIU with organisations that deploy undercover officers in other areas of serious crime, we found that they fell short of the standards demonstrated by the other units."

21. In other words, the undercover officers deployed in the political policing units knew, from the outset, that it is was very unlikely that they were ever going to have to account for their actions. This led, inevitably, to a culture of impunity and an absolutist approach to secrecy that was untempered by the principles that would ordinarily flow from interaction with the courts – such as fairness, proportionality and adherence to lawful parameters.

22. This culture of secrecy is so ingrained in these units that it is incomprehensible that the police records and evidence should now be approached by this Inquiry as a reliable – and in many cases, exclusive – source of information about their activities. This scepticism is borne out by the fact that there have been at least 19 investigations and reviews into the activities of one or other or both of these units and none has succeeded in getting to the full truth. Frequently the limited findings of one investigation have very quickly been undermined by a subsequent discovery of non-disclosure.

23. In 2014, the Stephen Lawrence Independent Review led by Mark Ellison QC was highly critical of the level of record keeping within the SDS and identified material non-disclosure to the Macpherson Inquiry. Mark Ellison found that the SDS had had "an MPS spy in the Lawrence family camp" and had arranged for that officer to meet with a member of the MPS Inquiry team at the time that team was drafting the Commissioner's final written submissions to the Inquiry. None of that was, of course, disclosed to the Macpherson Inquiry.

24. Nor was it the only material non-disclosure to that Inquiry. Relevant intelligence arising out of Operation Othona, an internal anti-corruption investigation, was also withheld by the MPS, notwithstanding two written requests from Macpherson in relation to such material[7].

[7] The Stephen Lawrence Independent Review, summary of findings pp.8-17.

25. Further, the MPS' own internal review into that non-disclosure was itself partial and misleading. Mr Ellison described the internal review as "*another example of the MPS providing misleading reassurance to the family and to the public. In effect, the review claimed "It's all right we've looked at it all again, there is nothing new, and there is no material indicating possible corruption that was not revealed to the Public Inquiry*."[8] In other words, it was not just that there was a problem with non-disclosure to the Macpherson Inquiry, but that when the MPS had the opportunity to put its house in order, through its own review mechanism, it failed to do so.

26. There is evidence of a similar approach in relation to the allegation that documents relevant to the UCPI were shredded by MPS personnel in May 2014, after this Inquiry had been announced and after a command circulation had been issued specifically stating that such material should not be destroyed. This allegation was investigated by the Independent Office for Police Misconduct ['IOPC'] in Operation Hibiscus. The IOPC published its findings in November 2019. Not only did it find that there was sufficient evidence to support a conclusion that material relevant to the UCPI had indeed been shredded, it also found that an officer of the MPS Directorate of Professional Standards had been informed of this, but had delayed taking any action in respect of it. The IOPC also expressed concern that a number of managers within the MPS had refused to engage with its investigation[9].

27. It is of great concern to the non-state core participants that there has been no public condemnation by the Inquiry of the conduct uncovered by Operation Hibiscus. Similarly, the discovery that a former UCO, 'James Straven', lied to the Inquiry, not once, but twice, in signed witness statements in support of his application for restriction orders[10], does not appear to have in any way altered the Chair's approach to the similar

[8] Ellison summary of findings p.17 https://www.gov.uk/government/publications/stephen-lawrence-independent-review

[9] https://policeconduct.gov.uk/sites/default/files/Op%20Hibiscus_Baroness%20Jenny%20Jones_Op%20Gilbert_Summary_of_IOPC_conclusions.pdf

[10] The core participant ruling on behalf of 'Ellie' records that Straven denied, in a signed witness statement, having conducted a sexual relationship in his cover name with named women whilst deployed. One of these women was 'Ellie', another was 'Sara'. When he subsequently admitted this was untrue, he again lied in a further signed witness statement, stating that the best he could do by way of contact details for 'Ellie' was "a

assertions of other officers denying that they engaged in intimate relationships whilst deployed. In granting restriction of cover names, the Chair has repeatedly asserted that the relevant deployment 'appears to have been unremarkable', with no acknowledgment of the fact that he cannot know that without disclosing the cover name so that those who could give evidence to the contrary can come forward. It is shocking that an assumption that a deployment was 'unremarkable' should play any part in justifying restriction of a cover name, when such restriction has the effect of preventing the Inquiry from effectively investigating the very thing that it should be inquiring into.

28. The MPS' extreme resistance to disclosure in relation to the activities relevant to this Inquiry, including the level of institutional knowledge about UCOs conducting intimate relationships, is given in the Opening Statement on behalf of many of the women in relationships. This details the concerted efforts made by the MPS to avoid having to make any form of disclosure in the civil proceedings initiated by the women.

29. In light of this history, the NPSCPs have no confidence that the police will volunteer full disclosure to this Inquiry. There may be some tactical disclosures of individual wrong-doing, but in order to excavate the deeper, systemic position, the Inquiry will need to draw on information from other sources, including the NPSCPs.

30. Worryingly, the culture of secrecy in respect of the SDS does not appear to be limited to the MPS. An issue of significant importance in the Inquiry, particularly in relation to the establishment of the Special Operations Squad and its transition into the Special Demonstration Squad, is the role played by the Home Office. In the wake of the findings of Mark Ellison QC, the then Home Secretary, Theresa May, commissioned a review into the full extent of the Home Office's knowledge of the SDS. That review found very little documentation relating to the SDS within the Home Office records. A consistent Home Office file reference was identified relating to the SDS, but, concerningly, the contents of that file were untraceable. The review found:

guess at an old email address". In fact he had been in regular contact with 'Ellie' and had, not only an email address for her, which he knew to be current, but also a telephone number on which he had called her in the same month that he made the second witness statement.

> "there is no record to show where this file is or when it may have been destroyed. The absence of any current record of this reference number in Departmental systems is a concern given that the material would have been classified as Secret or Top Secret. It is not possible to conclude whether this is human error or deliberate concealment."[11]

31. Again, this raises significant concern about the lengths taken to maintain secrecy in relation to the SDS and highlights the problems the Inquiry will face in attempting to reach conclusions founded on the records.

THE CHAIR AS LONE DECISION MAKER

32. The non-state core participants have real concerns about the Chair sitting alone to determine the issues of fundamental importance which arise in the Inquiry. This includes questions around political policing, institutional (and individual) racism, sexism, class and political bias.

33. The Inquiry's terms of reference require it to reach decisions about the motivation and justification for undercover policing operations. In respect of the vast majority of the groups spied on by the SDS and the NPOIU, those are inherently political questions. The Chair has already made comments which are indicative of a dismissive view of groups whose political ideologies differ from his own. This is a matter of real concern in an Inquiry where the Chair will be drawing conclusions of such profound importance to fundamental freedoms, including where the line falls between freedom of political belief and expression on the one hand and activities, if any, capable of justifying undercover policing on the other.

34. The annual reports from the early years of the SOS and SDS record groups such as the Anti-Apartheid Movement and the Women's Liberation movement amongst those that were infiltrated. From today's perspective it is shocking that such groups would be viewed as "subversive", let alone sufficiently so to justify being subject to intrusive undercover policing. How is the Chair, as a lone individual, equipped to make decisions

[11]Investigation into links between Special Demonstration Squad and Home Office, Stephen Taylor, January 2015
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/411785/2015-01-06_FINAL_Report_on_HO_links_to_SDS_v2.4_REDACTED_FINAL.pdf

about which movements and campaigns, if any, were and were not justified as targets, especially as the Inquiry moves towards the present day? And on what basis can such determinations be made in cases where those who were spied on are not given an opportunity to give their account, as will be the case where officers' cover names are restricted, or where full disclosure of group and personal files is not made?

35. The Inquiry will also have to confront and address the extent to which racism, sexism, class and political bias were at play in the targeting and conduct of undercover policing operations. These are not issues on which the Chair has any expertise or experience and he has, to date, rejected calls for a diverse panel to share the decision making with him during the first two modules of the Inquiry. This is of concern, because finding out "what happened", particularly when evaluating motivations and justification, is not a value-free process. The Chair will inevitably bring to bear his own life experiences and beliefs. There is now a considerable body of contemporary scientific research demonstrating how unconscious biases affect decision making in all fields, including judicial fact-finding[12]. A panel with a diversity of backgrounds and experience would be an effective means of ensuring that unconscious biases are identified and challenged.

36. If the Chair is to sit alone, he bears a heavy burden of having to scrutinise and challenge his own pre-conceptions. That is a task made more onerous by the Inquiry's lack of transparency and public access and its one-sided reliance on police records and evidence. Not only is the Chair disproportionately exposed to only one side of the story, but by minimising non-state and public participation, he reduces the opportunities for external scrutiny and challenge to his own assumptions and decision making.

CONCLUSION

37. The non-state core participants want this Inquiry to be able to get to truth. They want their participation to be meaningful. They want to discover what was done to them, and to understand the extent to which political undercover policing has affected and distorted civil society over the past 50 years. They want their voices to be heard and

[12] This is referred to in some detail in the opening statement on behalf of John Burke-Monerville, Patricia Da Silva and Mark Wadsworth.

they want the Inquiry to take seriously the plurality of views and lived experiences of those who have been subjected to political undercover policing. They want lessons to be learned for the future so that political freedoms and private lives are properly protected and others are not subjected to the gross abuses that many of them have suffered.

38. To this end, they urge the Inquiry to:

    a. facilitate proper public access to its proceedings;
    b. enable non-state core participants to participate meaningfully and effectively, by giving them disclosure of their personal files; access to the hearings and to the documents in advance so that they can assist the Inquiry with themes and questions;
    c. publish the full list of groups spied on;
    d. publish photographs, as well as the cover names, of undercover officers, so that members of the public can know if they were affected; and
    e. expand the panel to include a diversity of expertise, perspectives and experience, not just for the "lessons learned" stage, but now, as soon as practically possible.

39. It is difficult to see how, without these steps, the Inquiry can deliver on its promise to get to the truth.

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26 OCTOBER 2020