

## **Peter Francis: Opening Statement of Undercover Policing Inquiry**

### **Introduction**

1. Mr Peter Francis is grateful for the opportunity to make an opening statement. Can I say at the outset that this will be a reasonably brief statement despite the fact that, in all probability, this Public Inquiry would not have been sitting here today if Mr Francis had not told the truth about what he saw with his own eyes, heard with his own ears and learnt as a result of his personal experience from his years as an undercover police officer.
2. There are three reasons why his opening statement today will be reasonably short. First, Mr Francis' expertise is as a serving and retired Special Branch officer. He is not a politician or a policymaker. He can only offer assistance to this Inquiry based on his experience as a former police officer. Whilst deployed undercover, Mr Francis pretended to be a left-wing campaigner but is not now a campaigner and has no desire to become a campaigner.
3. Secondly, Mr Francis has already paid a very high price for his openness about the time when he served as an undercover police officer. To date, he still has not been assured that he will not face prosecution under the Official Secrets Act for the public interest disclosures he made.
4. Those outside the police might regard that as an entirely theoretical issue. However, those outside the police will not be aware of the impact of Regulation K5 of the Police Pensions Regulations 1987 which allow a Chief Constable, or in this case the

Commissioner of the Police of the Metropolis, to remove the police pension of a former officer who was convicted for such offences.

5. Mr Francis still faces the potential of a criminal prosecution for the disclosures he originally made, despite them being so obviously in the public interest, and the threat of the loss of his pension. Mr Francis has already upset the police establishment by revealing wrongdoing that others would have preferred to remain secret. Unknowingly, he followed the Chancery dictum that there is "*no confidence in the disclosure of iniquity*".
6. He has sought assurances from the MPS that he will not be prosecuted for his original public interest disclosures which led to the setting up of this Inquiry and has received none. He thus continues to face the prospect of paying a very high personal and financial price for acting in the public interest.
7. Whilst we understand that giving assurances about prosecutions may be difficult, we invite the Commissioner to give him a cast iron assurance that no action will ever be taken against him or his police pension because of his past disclosures, before he gives his evidence in person to the Inquiry.
8. Thirdly, this will be a short statement because Mr Francis wishes to reserve what he has to say in detail to his statement of evidence. Time is marching on and he has invited the Inquiry to take that evidence, but to date he has not been asked to provide a statement. The sooner he gives a statement, the more he will be able to recall.

9. Mr Francis wishes to make a number of things clear at the outset. First, he considers that undercover policing has the capacity to be a legitimate tactic in the right circumstances.
10. Secondly, he considers that policing can only be carried out in a democracy in a transparent manner and with the broad consent of the population. That transparency – that the public know the truth of what is being done on their behalf – is very important to him. He accepts, of course, that at the time an undercover operation is being undertaken, the actions of undercover police officers cannot be transparent.
11. However, given that transparency in policing is vitally important to maintain consent, one of the issues the Inquiry will have to consider is when it is appropriate to inform people that individuals they thought were friends and colleagues were in fact sent by the State to lie and mislead in order to obtain evidence of criminality. The need for transparency means that keeping the lid on the box closed permanently is not an option.
12. The question about who should know, what they should know and when disclosure should be made is way beyond his expertise. But he feels that truth must come out in a timely manner, because citizens cannot be lied to by the State with impunity. There must come a time when the state comes clean to explain who has been lied to and why.
13. Thirdly, police organisations are only entitled to lie, cheat and deceive in the public interest if:
  - those undertaking these functions are subject to the strictest supervision and governance arrangements, and

- the underlying criminality is sufficiently serious to justify state-sponsored deception.

14. During the time when he worked for the Metropolitan Police Service - the MPS - it was perfectly clear to him that the MPS, as an institution, did not have sufficient integrity, governance arrangements and insight into the effects of undercover policing on both officers and those who were subject to surveillance to be trusted to carry out undercover operations which balance the interests of the Force and the interests of those who were the victims of state-sponsored deception.
15. It will be a matter for the Inquiry to determine whether the MPS has sufficiently transformed its approach to undercover policing so as to be trusted with this role. That is an issue for recommendations to be made by the Inquiry. All Mr Francis can do is to explain the shortfalls he observed and to draw attention to the fact that any assurances of reformed behaviour need to be treated with circumspection if claims to that effect are made by people whose job it is to lie for the state.
16. Lastly, Mr Francis is concerned that this Inquiry should gain a profound understanding of the burden of long-term psychological distress shouldered by those undertaking undercover work. The effects on those who do this work reverberate for many years into the future. His experience is that the duty of care owed by the police to its members is routinely breached because the MPS fails to understand the psychological toll taken by those who are required to lie and deceive others as a day job.
17. It is hardly surprising that, in a public service such as the police where truth is rightly expected of all police officers, those whose job it is to live untruths for extended periods of time will find themselves in the psychological shadows. He is concerned that this

Inquiry should understand the world through the perspective of an undercover police officer.

18. He looks forward to clear recommendations being made concerning the level of psychological support to be provided to those who are called on to do this most difficult of work. That support must be commensurate with the psychological strains which inevitably arise for those who are asked to live a double life for the benefit of society and continue for as long as the effects continue.
19. Mr Francis joined the Special Branch of the MPS in 1990 and became a serving member of its ultra-secret Special Demonstration Squad - the SDS - between 1993 and 1997, which is period of particular interest to this Inquiry. His understanding was that the general remit of the SDS was originally to prevent public disorder during demonstrations and that this was the sole justification for targeting individuals and political organisations perceived to be 'subversive' or 'extremist' (a threat to the State).
20. Those targeted by the SDS were perceived to be subversives working against a concept of the 'State'. The targeting appeared to equate with what was perceived to be the interests of the State, and with the policies and the convenience of the government of the day, as well as the commercial interests of the private sector. Hence, for example, the SDS began with targeting those who expressed opposition to the war in Vietnam – a policy of a foreign government and not even the official policy of the UK government. At inception the focus was limited to what was described as the 'extreme left'. This chimes with the annual reports we have now seen, the first of which, dated 1969, includes a document from a Special Branch Chief Superintendent which disclosed its aims as:

- (a) To supply information about the intentions of militant left-wing extremists on the occasion of public demonstrations;
- (b) Identification of those who engage in preliminary planning or who take part in such demonstrations;
- (c) Obtaining evidence and identifying suspects in relation to breaches of the law before, during and after demonstrations; and
- (d) Gathering and recording information for long-term intelligence purposes.

21. In relation to the 'results' aspect of (d), the language of the report reflects the binary thinking of the time, with no regard for individual rights:

*'New entrants to the extreme left-wing political scene are being identified and recorded within weeks of their manifesting an interest in extremist affairs. Personal descriptions, addresses and occupations are obtained by officers working within groups, and this material is submitted personally or passed to officers engaged on normal enquiry work. A balanced view is thus obtained of these individuals from two aspects. New groups are being dealt with similarly (over 200 information reports have been submitted, and over 1,000 minor meetings attended, in addition to the coverage at major demonstrations.)'*

22. Of course, at this time the fundamental rights to freedom of expression (including protesting against the policies of the government of the day) and to private and family life were not enshrined in our legal system in the way they are now. Nonetheless, this Inquiry will be determining whether such incursions on individual rights were ever justified by the seriousness of any potential criminality, even in the particular socio-political context of the time.

23. We note in passing that none of the groups were proscribed organisations. Whilst internal police views of what constitutes a threat to the nation at any given time inevitably changes depending on the political compass of government of the day and the changing political, cultural, social landscape, Mr Francis' firm view is that it is *never* justified to target and spy on non-violent political campaigning groups.
24. Mr Francis felt compelled to leave the MPS in 2001, following the very significant toll on his psychological well-being that undercover policing had taken. His fragile mental health was a direct consequence of his exposure to the requirements of the job – legend-building was not just a game. Doing the job properly meant you could not slip in and out of your cover. It meant living a profound lie for most of his life which meant the 'real' Peter Francis was forced to retreat. This is something Mr Francis can and will talk about when his time comes.
25. Whilst the public stories of undercover policing during the life of the SDS rightly focus on the many victims of this barely and badly regulated State surveillance, and the resultant damage to them, dedicated officers like Mr Francis were also failed by the State. There was no emotional or psychological support on offer to him or his fellow-officers. In order to get the MPS to recognise the very significant damage it did to him, he had to resort to litigation, which, as is now well-recorded, was settled in 2006.

### **The decision to blow the whistle and the search for truth**

26. Mr Francis began his journey of disclosure on 14 March 2010 as Officer A<sup>1</sup>. He took the decision that ordinary people would know about the tactics used by the SDS – because the public have a right to know what is done in their name and paid for by their taxes.

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<sup>1</sup> <https://www.theguardian.com/uk/2010/mar/14/undercover-policeman-infiltrated-violent-activists>

He wanted people to judge for themselves whether they considered the conduct of the SDS to be acceptable. His face was in silhouette, his voice distorted, although he was only thinly disguised. By 2011, the Guardian had published articles on undercover practices naming the source as 'Peter Black' and in 2013 he unmasked himself as Peter Francis in the Channel 4 Dispatches documentary 'The Police's Dirty Secret'.

27. Many have asked him why he chose to make the disclosures when he did. In one Q&A, in June 2013, he said this<sup>2</sup>:

*'I didn't want to go to prison. I have been personally threatened on several occasions that if I ever talked about my work in Special Branch - and especially the Special Demonstration Squad - I would be prosecuted under the Official Secrets Act.*

*The reason I have come forward now is, partially, because I cannot imagine in the present context the director of public prosecutions bringing a case against a whistleblower revealing important information that is in the public interest.*

*But the main reason is that since having my nervous breakdown in 2001 (a result of the stresses of the deployment and my failed attempts to try to reintegrate myself into the police service as 'Peter Black'), I now only reached a position where I feel that I am mentally and physically strong enough, to be able to deal with what they might throw at me.'*

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<sup>2</sup> <https://www.theguardian.com/uk/2013/jun/25/stephen-lawrence-peter-francis-webchat>

28. Peter Francis' main cover identity was 'Peter Black' and he struggled with becoming Peter Francis again. His understandable desire to find himself again partly precipitated his decision to disclose. He has said this and similar at various points:

*'The impact psychologically is to this day, I feel more like Peter Black than I do Peter Francis. But maybe participation in blowing the whistle will one day allow me to fully move on and become Peter Francis again<sup>3</sup>'.*

29. In 2018, as part of the inquiry process, he confirmed that he did not seek any kind of anonymity and he revealed his third cover name, for the first time, and that the name was associated with a deceased child<sup>4</sup>. He had not made that disclosure earlier out of respect for the family of the child. But in making that last revelation, he was publicly speaking the truth.
30. Mr Francis's sole motivation for disclosing the inner workings of the SDS as he experienced them, whatever factions of the media may have said at the time and what others may say in due course, is that the public have the right to know the truth.
31. It is why he has waited patiently for the Inquiry to establish an objective truth. Both the late Sir Christopher Pitchford, the former Chair of this Inquiry, and the current Chair have underlined the importance of seeking out the truth, however difficult, however deeply buried within and beneath the secrecy. This is the obvious task of any Chair of any public inquiry, but particularly so in this one, where the purpose is to examine secrecy, against the background of Theresa May's establishing statement in 2014:

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<sup>3</sup> <https://www.theguardian.com/uk/2013/jun/25/stephen-lawrence-peter-francis-webchat>

<sup>4</sup> <https://www.ucpi.org.uk/2018/01/25/cover-names-peter-francis/>

*'I do not say this lightly, but the greatest possible scrutiny is now needed into what has taken place. Given the gravity of what has now been uncovered, I have decided that a public inquiry, led by a judge, is necessary to investigate undercover policing and the operation of the SDS. Only a public inquiry will be able to get to the full truth behind the matters of huge concern contained in Mark Ellison's report<sup>5</sup>.'*

32. Some of the disclosures Mr Francis made all those years ago, and which Operation Herne recorded as 'allegations', have already been proven to be 'truths'. There is now no doubt that SDS officers engaged in sexual relationships whilst deployed and that the SDS used deceased children's identities in the creation of their covert identities. Operation Herne had to accept this to be true although it was at pains to point out that such a practice was not "unlawful" in that it broke the criminal law. That looked at the issue far too narrowly. It was plainly unlawful in that it breached the human rights of those unwittingly caught up in these police activities, as the pay outs to some victims have tacitly recognised.
33. This Inquiry will scrutinise these and his other disclosures, including how and to what extent the MPS targeted black justice groups, MPs and Trade Unions in due course. For that, both he and the public will have to wait until Tranche 3.
34. It is because of this steadfast belief in truth that Mr Francis remains a Core Participant, despite his earlier and well-known reservations around the restriction order process which protected the 'cover names' of a large number of officers. Most of what he

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<sup>5</sup> <https://www.gov.uk/government/speeches/the-ellison-review>

knows is not caught by the Restriction Order process since what he knows pre-dates the Inquiry. When his time comes, he will give evidence publicly and openly, and he invites the Chair to agree that that is what he must do.

### **Who is a whistleblower?**

35. Government guidance<sup>6</sup> defines a “whistleblower” as follows:

*‘You’re a whistleblower if you’re a worker and you report certain types of wrongdoing. This will usually be something you’ve seen at work - though not always.*

*The wrongdoing you disclose must be in the public interest. This means it must affect others, for example the general public.*

*As a whistleblower you’re protected by law - you should not be treated unfairly or lose your job because you ‘blow the whistle’.*

*You can raise your concern at any time about an incident that happened in the past, is happening now, or you believe will happen in the near future.’*

36. Whistleblowers always make unwelcome revelations. That is true across the public services – the doctor who revealed the problems of the Bristol Paediatric Heart Surgery practices was vilified and never worked in the NHS again. Police officers are “officer holders” but they are still workers. He made disclosures of wrongdoing in the public interest, he is routinely - and rightly - described by the media as a ‘whistleblower’.

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<sup>6</sup> <https://www.gov.uk/whistleblowing>

37. Whilst there are some employment law protections for whistleblowers, these have been shown to be largely illusory<sup>78</sup>. And, police officers like Mr Francis are in any event bound by the Official Secrets Act.

38. There is currently no legal protection or other support, physical, financial or emotional, available to those who disclose wrongdoing in the public interest *after* they have left a job (or indeed for those who are caught by the Official Secrets Act) and/ or if they disclose in the public domain. In a recent report, the CEO of Whistleblowers UK said this:

*“Whistleblowers are the vital element of a transparent society, these are the people who demonstrate integrity and commitment to their organisation and the public. They should be the best friend of the CEO as they are the first line of defence against crime, corruption and cover up. There is rarely a day when whistleblowing is not in the press, however what often makes the story newsworthy is the treatment of the whistleblower and the impact of the failure to act on disclosures to the public at an early stage. The global pandemic provides the ultimate example of the value of whistleblowers as the key to avoiding or averting a catastrophe. Dr Li Wenliang’s alert could have prevented hundreds of thousands of deaths and a global economic downturn estimated to value close to £5 trillion”<sup>9</sup>.*

39. Whilst Mr Francis has not been prosecuted for his disclosures, neither has he been told that he will not be. He has never been ‘officially’ recognised by the MPS as a legitimate

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<sup>7</sup>[https://www.met.police.uk/SysSiteAssets/foi-media/metropolitan-police/priorities\\_and\\_how\\_we\\_are\\_doing/corporate/operation-herne---report-2-allegations-of-peter-francis-operation-trinity](https://www.met.police.uk/SysSiteAssets/foi-media/metropolitan-police/priorities_and_how_we_are_doing/corporate/operation-herne---report-2-allegations-of-peter-francis-operation-trinity)

<sup>8</sup> <https://www.appgwhistleblowing.co.uk/>

<sup>9</sup>[https://a02f9c2f-03a1-4206-859b-06ff2b21dd81.filesusr.com/ugd/88d04c\\_56b3ca80a07e4f5e8ace79e0488a24ef.pdf](https://a02f9c2f-03a1-4206-859b-06ff2b21dd81.filesusr.com/ugd/88d04c_56b3ca80a07e4f5e8ace79e0488a24ef.pdf)

whistle-blower. The irreconcilable conflict between the Official Secrets Act and the general acceptance that the whistleblowing of protected disclosure in the public interest is unresolved. Thus, police officers and others are, in effect, required by law to maintain a public silence about their knowledge of wrongdoing affecting the public. The public organisation is entitled to “mark its own homework” and hence decide if anything of its past wrongdoing should be made public. The obvious conflicts of interest in any such process are clear – there are plenty of carpets in the MPS and they have been liberally used to cover up wrongdoing. It is an issue that we say this Inquiry will have to grapple with in due course.

#### **Mr Francis’s account of his experiences as a UCO**

40. Whilst the book, *‘Undercover – the True Story of Britain’s Secret Police’* by Rob Evans and Paul Lewis<sup>10</sup>, describes some of Mr Francis’s time in the SDS and some of his deployments, his own detailed account has still not been sought by the Inquiry. The Inquiry has chosen to work its way linearly through the chronology of events. This is despite the fact that his evidence is likely to be of general assistance to the Inquiry whatever period it is examining; and sadly, this is also despite his often-expressed *need* for closure – which the witness taking process would go some way towards attaining.
  
41. Some five years in, he still awaits the formal request for a witness statement under Rule 9 of the Inquiry Rules as well as his ‘witness pack’. He wants to speak formally through the Inquiry process, but it does not wish to hear from him any time soon. This is a source of real upset and concern to him. After all, it was his disclosures, his account to the Ellison Review, that triggered this Inquiry.

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<sup>10</sup> Published 25 June 2013.

### **Undercover policing, its utility and the rule of law**

42. As is now known, the SDS operated for the majority of its existence without legislative legitimacy or judicial oversight. The intelligence gathered was sanitised, so no prosecuting authority or judge was aware of the role of UCOs and as Mr Francis revealed two decades later, a number of officers were arrested and prosecuted in their fake IDs.
  
43. Mr Francis has said publicly on numerous occasions that *'... I now think that no undercover police officers should be targeting political campaigners'*<sup>11</sup>. He is strongly of the view that such a draconian incursion into the lives of ordinary people in the UK expressing their political opposition to the actions of government of the day or to those of foreign governments is wholly unjustified.
  
44. However, Mr Francis believes that undercover policing can be a legitimate policing tool. He considers it essential to effectively combat serious, organised crime and proscribed terrorist organisations. However, he considers that there is a level of serious criminality that must be reached before the state is justified in using the tactics of undercover officers. Potential crimes must pose a serious and substantial threat to our society before undercover policing can be justified.
  
45. He recognises that what is 'a serious and substantial threat to society' will change according to the political and social landscape. Reading the SDS annual reports now, through a 21<sup>st</sup> Century lens, it beggars belief that the Women's Liberation Movement or the Croydon Libertarians could ever have been thought to pose a serious threat to society. There must always be objective evidence of such a threat.

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<sup>11</sup> <https://www.theguardian.com/uk/2013/jun/25/stephen-lawrence-peter-francis-webchat>

46. Additionally, and obviously, there must be a highly regulated system, with ultimate accountability residing with an independent judiciary. Of course, as you have heard from the MPS, the systems now in place are completely different to when Mr Francis was a UCO – but that does not mean the systems in place now are sufficient to prevent wrongdoing.
47. He feels that undercover work continues to lack proper, detailed and rigorous scrutiny from a Judge whose task is to ask whether the actions of the state are justifiable on a day to day basis. The role of the Judge can only be to scrutinise actions of the police on behalf of those who are being deceived – to be their voice in the system to ensure that state-sponsored deception is justified. It will often be justified but the system needs a high and continuous level of scrutiny.
48. This Inquiry is about what can go wrong when there is a lack of governance. Not only does it bring the police into disrepute, it can destroy human lives, both those of surveillance targets and those of officers asked to act in the line of duty. The system failed in numerous ways before – the job of the Inquiry is – as far as possible – to ensure that it does not fail in other ways in the future.
49. Mr Francis considers that any proper governance arrangements must, at the very minimum:
  - a. Recognise the impact of undercover policing on those persons who were not committing serious crimes that were not serious and substantial threats to our society, and have an open system of offering explanations to those who were adversely affected, and the opportunity for those affected to seek

compensation for having been misled by state agents. This might, for example, include a statutory scheme for compensation;

- b. Provide for judicial oversight of on-going undercover policing activity – both when planned, when being carried out and on review once completed;
- c. Provide a proper, structured mechanism for whistleblowing for both current *and* ex-employees so that there is a viable way to disclose malpractice without the threat of sanctions under the Official Secrets Act; and
- d. Provide support – including psychiatric support - for both serving and former officers, given that conditions such as PTSD are lifelong.

**DAVID LOCK QC**

**MAYA SIKAND**

29 OCTOBER 2020