

Wednesday, 4 November 2020

(10.00 am)

MS PURSER: Good morning, everyone, and welcome to the third day of the opening statements in Tranche 1, Phase 1 of the Undercover Policing Inquiry.

Today we will hear the conclusion of the opening statement from Mr Sanders for the designated lawyer officers. We will also hearing opening statements from Slater and Gordon clients, Peter Francis, category M core participants, that is the families of police officers, and core participants represented by Richard Parry and Jane Deighton.

As a reminder, for those of you in the virtual hearing room, unless you are the Chairman or have been asked to speak by the Chairman, please turn off both your camera and video now, as Zoom will pick up on all noises and you will be on the screen.

I will now hand over to our Chairman, Sir John Mitting, to formally start proceedings.

Chairman.

THE CHAIRMAN: Thank you very much.

Mr Sanders.

MR SANDERS: Good morning, sir. I'm just ... I've got you as a very small picture at the top of my screen and I can't see you very well.

1 THE CHAIRMAN: Is that better?

2 Opening statement by MR SANDERS (continued)

3 MR SANDERS: Yes, that's it. Yes. Thank you.

4 Good morning, sir, and I will go straight into it.

5 I'm here again with Mr McAllister and Ms Palmer on  
6 behalf of the Designated Lawyer Officers, and we'll pick  
7 up with our opening statement.

8 Just to recap on what we covered yesterday in  
9 the first half of our opening, we went through  
10 the obligations of the Met Police and the fact that it  
11 was required to preserve and maintain public order, and  
12 to do so by traditional methods.

13 We then looked at the functions of Special Branch,  
14 and the Met Police Special Branch in particular, and  
15 the fact that it was required to provide public order  
16 intelligence to uniform branch and to provide  
17 counter-subversion intelligence to MI5.

18 Then looked at the particular challenges of public  
19 order policing, particularly in London, from 1968 to  
20 '82, to the operation and logistical challenges of  
21 managing large public events, dealing with public  
22 disorder, the resource implications of that for  
23 the Met Police, and the particular complications of  
24 the public order scene in London in the 60s, 70s and  
25 80s.

1           We looked briefly at the need for intelligence as  
2           a crucial part of public order policing, and  
3           the avoidance of both under-policing and over-policing.  
4           And then finished up looking at the intelligence  
5           reporting process which Special Branch and also the SDS  
6           used particularly in the period 1968 to 1982; and  
7           the fact that it was a hard-copy intelligence report  
8           process, which meant that a great deal of output and  
9           product from the SDS wasn't recorded in intelligence  
10          reports at all; and such as it was recorded in  
11          intelligence reports, not all of those are available to  
12          you, sir.

13          Then we simply finished with the point that caution  
14          is needed in relation to the making of findings, given  
15          the incompleteness of the evidential material available  
16          to you.

17          The Rule 9 requests that our clients have received  
18          and the Rule 9 witness packs that have accompanied them  
19          have been very much geared around what is available, and  
20          questions are asked about the reports. As we submitted  
21          yesterday, there's a great deal that was done that's not  
22          in -- either wasn't in reports or not in available  
23          reports. And that needs to be borne in mind; and one  
24          shouldn't think that the reports and the documents tell  
25          the whole story. And of course, that's why you're going

1 to be hearing from the officers themselves.

2 So today, we'll pick up at part 7 of our written  
3 opening and deal with parts 7, 8, 9. And I will, as  
4 discussed yesterday, endeavour to finish by 11.30.

5 So part 7 is to cover the contribution of the SDS,  
6 first in relation to public order policing and then in  
7 relation to counter-subversion. Part 8 will look at  
8 three specific issues that have been highlighted by  
9 the Inquiry and by Mr Barr on Monday.

10 So, 1, the scope of the SDS reporting, and then it's  
11 coverage; 2, the use of deceased children's identities,  
12 or information about deceased children's identities in  
13 the creation of undercover legends; and 3, sexual  
14 relationships entered into by undercover officers. And  
15 then, finally, we'll make a number of concluding  
16 submissions, as set out in part 9.

17 So starting with the contribution of the SDS, sir,  
18 and starting, first, with its primary function, which is  
19 public order -- which was public order.

20 As we outlined yesterday, there were very serious  
21 and considerable threats to public order in London,  
22 particularly during the period that we're looking at  
23 first, 1968 to 1982. These threats arose particularly  
24 in the context of political and protest groups, and most  
25 particularly in connection with demonstrations and

1 counter demonstrations mounted by opposed groups on  
2 the far left and the far right.

3 From the public order perspective, we say what  
4 matters most is that the SDS reporting facilitated more  
5 effective management of public order incidents by  
6 uniformed branch.

7 Now, that was, of course, all done further up  
8 the chain in another part of the apparatus than the SDS.  
9 SDS undercover officers and their managers weren't  
10 responsible for managing policing, uniformed policing at  
11 public order events. So, to a large extent,  
12 the evidence, such as it is and is available, as to  
13 the contribution of SDS intelligence to public order  
14 policing, that evidence will have to come from others,  
15 it can't come from the undercover officers, because they  
16 were simply collecting the intelligence and passing it  
17 up the chain.

18 There are in the documents general references to  
19 uniform branch finding the intelligence valuable and  
20 important and wanting it to continue to be provided.  
21 And there are some specific examples and in -- we've  
22 referred to some at paragraph 7.1.2 and 7.1.3 of our  
23 written opening. And there are other anecdotal examples  
24 in the evidence of the officers.

25 But, to a very large extent, because

1 the intelligence wasn't attributed to the SDS, and  
2 because by the time it reached uniform branch it didn't  
3 -- they would have had no knowledge of the SDS or where  
4 this information has come from, it is difficult to  
5 establish and to quantify the value of the contribution  
6 of that intelligence. But we say it was clear, and it's  
7 clear from the papers.

8 In addition to that, in our submission, it would  
9 assist you to hear from personnel within A8, and from  
10 personnel within the Special Branch squads that were  
11 providing A8 with threat assessments, based on, partly,  
12 SDS reporting.

13 In all the witness packs that we've seen, which  
14 I think are more than 40, possibly 44, I've seen one  
15 threat assessment that went from a squad to A8 in  
16 advance of a public order event. There's no -- nothing  
17 surprising or no cause for criticism in that, because  
18 the SDS wasn't producing threat assessments. But in  
19 terms of quantifying and assessing and ascertaining  
20 the value of the contribution of their intelligence to  
21 public order policing, the threat assessment process, we  
22 say, does need to be looked at.

23 Sir, if I can move now from public order to  
24 the secondary function of the SDS, which was providing  
25 intelligence to MI5, particularly in relation to

1 counter-subversion. And this is part 7.2 of our written  
2 opening.

3 To start with, we recognise that, by comparison with  
4 espionage and with terrorism, subversion is and always  
5 has been something of an amorphous concept, and that's  
6 difficult to necessarily grasp as a threat to national  
7 security. However, it was a real phenomenon in  
8 the 1970s and 80s; and it is still a real phenomenon  
9 now. Subversion exists. It's been the subject of  
10 recent reports from the Intelligence and Security  
11 Committee of Parliament. State-sponsored cyber attacks,  
12 state-sponsored election interference, state-sponsored  
13 social media misinformation campaigns are all instances  
14 of what can be described as "subversion": they're all  
15 subversive in nature.

16 And the same was true at the time in the 1970s and  
17 1980s, during the Cold War, when of course  
18 the Soviet Union represented a very real threat to this  
19 country.

20 So, our submission is that MI5 was bound to take  
21 subversion seriously, and was right to do so. And in  
22 its defence, it's right to bear in mind as well that  
23 central government required it to do so: that was  
24 a function of MI5 that was given to it by government.  
25 It follows from the fact that the main threat to public

1 order resided with political and protest groups and that  
2 the main source of subversion was political and protest  
3 groups that there was a great deal of overlap between  
4 the work of the SDS and MI5. And one can see in  
5 the papers that the Inquiry has disclosed and  
6 the references we have given in our written opening, one  
7 can see that they were both reporting on a very similar  
8 field of groups, and were both interested in the same  
9 groups, to a large extent.

10 Now, MI5 has publicly avowed and confirmed that it  
11 was involved in this work. So what one sees in  
12 the authorised history of MI5 by Christopher Andrew,  
13 which was published in 2009, are the following -- and  
14 this is at paragraph 7.2.1 of our opening.

15 We have, in the 1970s, 28% of MI5's resources were  
16 expended on counter-subversion. It was involved with  
17 the inter-departmental committee on subversion in public  
18 life. During the 70s and 80s, MI5 has confirmed that it  
19 undertook interception, eavesdropping and informant  
20 operations against the Communist Party of Great Britain,  
21 the Transport and General Workers' Union,  
22 the National Union of Mineworkers, CND,  
23 the International Socialists/Socialist Workers' Party,  
24 the International Marxist Group, the Workers'  
25 Revolutionary Party and the Revolutionary Socialist

1 League/Militant Tendency.

2 Also, it has been confirmed publicly that by  
3 the early 1980s, MI5 was dealing with 3,000 negative  
4 vetting enquiries a day and that there were 68,000  
5 government posts in the civil service and the military  
6 service which were subject to positive vetting. So it  
7 had a considerable vetting function. And as part of  
8 that, it was required to -- going back to the early part  
9 of the 20th century -- to ensure that communists and  
10 fascists couldn't take up government posts or military  
11 posts involving access to classified information. And  
12 that function continues to this day.

13 Furthermore, sir, as we set out at 7.2.2,  
14 The National Archive has released an MI5 assessment from  
15 1971, which shows that it had information on 27  
16 subversive groups, which were communist, Trotskyist,  
17 anarchist and extreme left, fascist, nationalist and  
18 racialist. Again, further evidence of considerable  
19 overlap between the coverage of MI5 and the coverage of  
20 the SDS.

21 I won't go through and give you references to it  
22 because they're set out in our written opening, but  
23 documents that you've released, sir, confirm the same.  
24 They show an MI5 interest in Trotskyists, anarchists,  
25 Maoists, even the Revolutionary Women's Union. They

1 show that MI5 supported the establishment and  
2 the continuation of the SDS, and even considered making  
3 a financial contribution to it at the outset.

4 They show that MI5 maintained very  
5 close "cooperation and liaison" with the SDS, and that  
6 the two consulted each other on a basis whose frequency  
7 can't be revealed but has been redacted and gisted  
8 to "regular".

9 They show evidence of the two organisations  
10 coordinating their operations and also de-conflicting  
11 their operations; that is to say, making sure that they  
12 weren't covering the same groups; and if one was  
13 covering this group, the other wouldn't need to do so,  
14 and vice versa.

15 The documents show that the SDS intelligence  
16 reports, almost all of them, or the vast majority of  
17 them, were copied to MI5 with "MI5 PF", "personal file",  
18 references numbers already added. So the two  
19 organisations were sharing their indices of files, so  
20 that they could pre-add file reference numbers to make  
21 it easier for each other to share information and then  
22 store it within their registries.

23 All of this, we say, points to the fact that MI5 was  
24 not simply a passive recipient of intelligence reports  
25 that were being sent to it by Special Branch, that were

1           originating with the SDS and that were of little  
2           interest; it was an active consumer of that  
3           intelligence; and rightly so given its functions.

4           We've also seen, which we set out in our written  
5           opening, that of the 44 witness packs that my team has  
6           reviewed so far, served on designated lawyer  
7           undercover officers, 22 of them, so half of them,  
8           containing intelligence reports which expressly  
9           cross-refer to or were written pursuant to MI5  
10          correspondence. And that might be simply picking up  
11          something that's in an MI5 document and contributing  
12          some information relevant to it, or it might be  
13          answering a specific question raised by MI5.

14          The witness packs have also contained, and we've  
15          seen from your team, sir, a small number of MI5  
16          documents which further demonstrate the close liaison  
17          and cooperation between the two organisations.

18          There are file notes, briefs for and debriefs of  
19          undercover officers, notes of meetings between  
20          the management of the SDS and with MI5 personnel, MI5  
21          comments on SDS intelligence reports and on what next  
22          steps should be, requests for information from  
23          Special Branch and from the SDS that have come from MI5,  
24          telexes and correspondence expressing thanks, praise and  
25          commendation for the intelligence that the SDS was

1 producing.

2 Now, it's important to emphasise at this point, sir,  
3 that there was nothing sinister or surprising or  
4 objectionable about this liaison and cooperation. It  
5 was entirely appropriate, and it was what both  
6 organisations had been charged with doing by central  
7 government in the public interest.

8 Each organisation had its own remit; they were  
9 institutionally separate; and there were occasions when  
10 they would say to each other, "That's not our job to  
11 cover that, that's your job." But given  
12 the considerable operational overlap between them, it  
13 was right and proper that they should be liaising. It  
14 would have been a waste of resources to have duplicated  
15 effort in covering the same groups, and there would have  
16 been a risk of undercover SDS officers reporting on MI5  
17 sources or vice versa, which confusion and possible  
18 compromise the result.

19 What is the relevance of this, sir? In our  
20 submission, it's that it shows that MI5 -- MI5's support  
21 for the SDS and its praise for the SDS clearly informed  
22 and bolstered the decision-making of the Home Office and  
23 the Special Branch when it came to the continued funding  
24 and operation of the SDS.

25 We say it's also important that Special Branch and

1 personnel within the SDS were bound to defer to and  
2 place weight on MI5's assessment that so many of its  
3 targets, of the SDS targets, were of concern and  
4 interest to them from a national security perspective.  
5 That was bound to have an influence on the police  
6 personnel involved. And there was no scope for them to  
7 gainsay or dispute the national security assessment of  
8 MI5.

9 So, in terms of where this leaves you, we say it  
10 means that the Inquiry can and should, so far as  
11 possible, without damaging the public interest,  
12 acknowledge and signpost the nature and degree of  
13 the relationship and cooperation between MI5 and the SDS  
14 in both qualitative and quantitative terms, and in as  
15 much detail as is possible, without damaging public  
16 interest, compromising sources and so on.

17 Now, much of this information, the detail of it,  
18 will necessarily need to remain closed. But in our  
19 submission, more can and should be made public about  
20 the very close cooperation and liaison between the two  
21 organisations than has been done so far. It's our  
22 impression that MI5 very much looks at whether  
23 something's been avowed in the Christopher Andrew book  
24 and draws the line at that point.

25 Now, the Christopher Andrew book was published

1           10 years ago. The decisions that were made about what  
2           should or shouldn't be released in that book are very  
3           different from those that need to be made now in  
4           the context of this Inquiry, bearing in mind the greater  
5           public interest that these proceedings have by  
6           comparison with simply a history.

7           The reason we say this matters for you and for your  
8           inquiry, and for the public's understanding of the work  
9           of the SDS, is that the relationship between the two  
10          organisations shows that -- (temporary loss of audio) --  
11          one cog in a much larger apparatus, and wasn't a rogue  
12          unit on a frolic of its own.

13          Secondly, this relationship, on occasion, explains  
14          the reasons for SDS action or inaction in particular  
15          areas in relation to particular groups.

16          Thirdly, your assessment of whether the intelligence  
17          that the SDS collected could or would have been  
18          collected by other means must necessarily take account  
19          of (a) what MI5 was doing and was capable of doing; and  
20          (b) what it would have done in any event if there had  
21          been no SDS.

22          Finally, it goes to an assessment of  
23          the justification for and the proportionality of  
24          the work of the SDS.

25          So, moving away from that to the specific issues

1 highlighted in your list of issues and in Mr Barr's  
2 opening on Monday; and I'm going to address you on  
3 three, as set out in our written opening.

4 So starting at part 8.1 of our opening with  
5 the scope of the reporting of the SDS.

6 First, the fact is that the SDS was not involved in  
7 any trade union blacklisting. There's no evidence for  
8 that; and indeed, there was no reason why it would have  
9 been. It had very little involvement or interest in  
10 trade unions, other than collaterally as an incident to  
11 its main reporting work.

12 Secondly, the SDS did not infiltrate or target  
13 justice campaigns, including the Stephen Lawrence  
14 Campaign, Members of Parliament or trade unions. Such  
15 individuals and groups were referred to in SDS  
16 intelligence reports if and to the extent that they came  
17 into contact with its true targets. But we say it's not  
18 right to suggest that anyone in those categories was  
19 a target of the SDS in the sense of a group against  
20 which an undercover officer was deployed and an  
21 undercover officer penetrated or infiltrated. There's  
22 an important distinction between direct targeting and,  
23 as drawn attention to in Mr Skelton's opening yesterday,  
24 collateral collection of other intelligence.

25 So far as concerns collateral intelligence, that is

1 inevitable when it comes to the collection of  
2 intelligence. I referred yesterday to the speech of  
3 Lord Sumption in the Catt case, where he emphasised that  
4 intelligence collection is often at the outset an  
5 indiscriminate process. And you will see that in many  
6 of the Rule 9 statements. Undercover officers are  
7 requested, "Well, why did you report this? Why did you  
8 report that?" And the answer is simply: "I was tasked  
9 to report everything that I saw, and it was for others  
10 to filter that and use it and assess it."

11 To give an obvious example, if an  
12 undercover officer's target group was attending a larger  
13 rally, that would be included in an intelligence report;  
14 and the names of those addressing that rally would  
15 inevitably be mentioned; and that might be a trade union  
16 leader or an MP. But it does not, in our submission,  
17 make sense to say that therefore the rally or the person  
18 addressing it was targeted or infiltrated by undercover  
19 police. It's simply a question of intelligence covering  
20 what was going on around the undercover officer. And  
21 that does not mean that there was surveillance of  
22 the person speaking at the rally, it's simply that that  
23 group was attending the rally. For this reason, talk  
24 about the SDS reporting on thousands of groups is, we  
25 say, misleading, because it's simply not the case.

1           In your update of July 2018, sir, you published  
2 a list of 67 groups that were directly primarily  
3 infiltrated by the SDS from 1968 to 2007. We say that's  
4 much closer to the -- to an accurate number. Of course,  
5 there are some groups that were infiltrated which aren't  
6 being made published [sic]. There were a number of  
7 infiltrations that covered different branches of  
8 the same group. So to a certain extent, dealing in  
9 terms of numbers and statistics is never going to give  
10 a complete picture. But the reality is very far from  
11 thousands of groups. And this is particularly the case  
12 when one bears in mind that the number of groups were  
13 essentially the same people -- either because they'd  
14 splintered or reformed or rebranded, or because they  
15 were a front organisation for a primary group.

16           In our submission, when one looks at the detail of  
17 the intelligence and the deployments, they were  
18 concerned with and about groups which might become  
19 involved in public disorder. And that was the purpose  
20 of the intelligence-gathering; and that was what the SDS  
21 was charged with doing.

22           Moving on, sir, to cover identities and the use of  
23 information about deceased children.

24           Roughly half -- I think it may be almost exactly  
25 half of the DL officers or the DL undercover officers

1 working for the SDS used information from the birth  
2 certificates of individuals who had died in childhood  
3 when creating their undercover identities.

4 This was adopted as standard practice by the unit  
5 from around 1973 until the mid-1990s, when  
6 computerisation of the register of births made this  
7 unnecessary. And so undercover officers deployed before  
8 and after this period did not follow this practice. So,  
9 therefore, in the Tranche 1, Phase 1 period, it's not,  
10 strictly speaking, relevant until one gets to Phase 2.

11 The information from birth certificates of deceased  
12 children that was used generally included names --  
13 sometimes parts of names, sometimes whole names -- and  
14 sometimes dates and places of birth -- always dates of  
15 birth, sometimes the place of birth as well, would be  
16 woven into the undercover officer's legend.  
17 The information was blended to create the legend, it  
18 wasn't that undercover officers pretended to be a child  
19 who had died and sort of carried on living and was still  
20 alive.

21 Regrettably, the maintenance of  
22 a publicly-accessible register of every birth in the  
23 country in large bound volumes with multiple entries on  
24 each page meant that the practice was the only way to  
25 create a challenge-proof false identity. So if you were

1 someone who was clearly from this country and you had to  
2 give your name and your date of birth, then it would be  
3 possible to check whether that name and date of birth  
4 matched an entry in the register; and there was no way  
5 of inserting a false entry into the register, because  
6 they were bound volumes held at Somerset House, and then  
7 St Catherine's House, which would be inspected. And  
8 because each page had 30 or 40 entries, the addition  
9 of -- insertion of a new entry just wasn't possible.

10 So a practice was adopted in 19 -- or around 1973.  
11 We say a number of important points should be noted.

12 The reason for the adoption of the practice centred  
13 on a number of factors.

14 First, a number of SDS undercover officers were  
15 compromised or outed, or had to be withdrawn to avoid  
16 their compromise.

17 Secondly, the public compromise of one officer could  
18 have risked a domino effect of research and  
19 the compromise of other officers.

20 And, thirdly, the risks faced by undercover officers  
21 in the early 1970s were assessed to have increased. And  
22 in this regard, we've mentioned at 8.2.3 of our written  
23 opening the developments -- historical developments in  
24 the early 70s, whereby the public order scene,  
25 the Northern Ireland Troubles, meant that

1           undercover officers were at greater risk.

2           So one had the Angry Brigade bomb attacks that took  
3 place in 1970/71. The first Official IRA bomb attack on  
4 the mainland in 1972. The first Provisional IRA bomb  
5 attack on the mainland in 1973. And what one sees in  
6 the Commissioner's Annual Reports for 1971 and 1973 is  
7 a very valid concern that the use of explosives and  
8 violence for political ends was increasing, and might  
9 well increase further.

10           So that was the backdrop to the move to the adoption  
11 of this practice, and in many ways to the greater  
12 professionalisation of the SDS, the greater use of more  
13 careful planning with the creation of undercover legends  
14 and so on.

15           The practice itself, the use of deceased  
16 children's -- information about deceased children in  
17 the creation of false identities, wasn't invented by  
18 the SDS or the Special Branch, it was developed and used  
19 by other security, intelligence and law enforcement  
20 bodies. It was a lawful practice; it was not in any way  
21 against the law; and it did not involve "theft".

22           And, importantly, it was essential in protecting  
23 undercover officers of the SDS and of other  
24 organisations from compromise and possible harm.

25           This was a situation, sir, where, in our position,

1           those involved on the police side were faced with an  
2           unpalatable choice.  Either they could abandon  
3           the operation, abandon the SDS; and that might in turn  
4           lead to adverse consequences for public order policing:  
5           there may be more injuries, more deaths, more unrest.  
6           Or, alternatively -- possibly and/or -- greater use of  
7           paramilitary policing.  So water cannon, tear gas and so  
8           on.  So that was one option.

9           Another option was simply to put undercover officers  
10          out in the field at greater risk, with legends which  
11          weren't backstopped and which could be challenged and  
12          shown to be false.

13          Or, thirdly, was to use the information from birth  
14          certificates of children who had died.

15          As I say, it was an unpalatable choice and  
16          a difficult choice.  And in our submission, it's a good  
17          example of the point that this Inquiry should not judge  
18          individuals from the past by contemporary standards.

19          In this regard, we would emphasise that when one  
20          goes back to the 1960s and 1970s, they were different  
21          times.  My clients were all born at a point where they  
22          didn't serve during the Second World War or undertake  
23          National Service.  But there were many people in  
24          management in the Special Branch and in MI5 at the time  
25          who had served in the Second World War.  And this

1 practice dated back to that time. And it dated back to  
2 a time where people had different views about death and  
3 about risk and about life. And for those who invented  
4 this practice, or devised it, they were faced with much  
5 greater threats, and they had a different view about --  
6 about how one might approach the fact that someone has  
7 died, or the use of information about someone who had  
8 died, and about the greater public benefit of doing that  
9 in order to protect someone who was alive.

10 All of that said, as I've emphasised, as we've  
11 emphasised in our written statement, my clients, most of  
12 them have children, grandchildren, some have experienced  
13 tragedies of their own. And they all understand how and  
14 why the revelation of what was done could easily cause  
15 a great deal of distress and upset to the families  
16 concerned.

17 Some DL -- Designated Lawyer Officers were  
18 uncomfortable with the practice. Some regarded it as  
19 necessary and relatively standard tradecraft within  
20 the undercover world. All proceeded on the basis that  
21 there was no alternative, and that the families of  
22 the deceased children in question would never know and  
23 would never be told.

24 Beyond saying this, we would emphasise that no  
25 pleasure was derived from the use of the practice; no

1           disrespect or offence was intended by its use. It was  
2           not done lightly or gratuitously or callously. Those  
3           involved acted with the best intentions and in  
4           the understanding that they were acting in the public  
5           interest and in the performance of their duties as  
6           police officers.

7           Now, we recognise and respect the fact that this  
8           will not satisfy some. But we hope that it may be of at  
9           least some comfort to others in understanding how and  
10          why this came to be done.

11          Sir, if I could move to the third specific issue  
12          that we're addressing you on, and that's sexual  
13          relationships.

14          As we've set out in our written opening  
15          the Designated Lawyer Officer group has 74 undercover  
16          officers who were deployed by the SDS. There were two  
17          who were preparing to deploy when the unit was closed  
18          down. Of the 74 undercover officers, Designated Lawyer  
19          Undercover Officers, four had casual sexual encounters  
20          during their deployment and while in their undercover  
21          identities, two entered into longer term sexual  
22          relationships, and 68 did no such thing.

23          In terms of the casual sexual encounters, these  
24          were, simply, one night stands with women on  
25          the periphery of or unconnected with the relevant

1 officer's target groups. They had no deployment-related  
2 purpose or significance. They weren't done to obtain  
3 intelligence. And they were of the kind that happens  
4 between consenting men and women in social settings and  
5 in all walks of life.

6 In relation to the two Designated Lawyer Officers  
7 who had longer term relationships, the first, HN1, had  
8 a relationship with a member of his target group, which  
9 lasted for about a year, which was inappropriate and  
10 should not have happened. He recognises that, and you  
11 will hear evidence from him on that in due course.

12 The other Designated Lawyer Undercover Officer to  
13 enter into a long term relationship was HN91.

14 HN91 met their current, still ongoing, partner.  
15 The partner was not connected with HN91's target groups  
16 or their reporting. They met while HN91 was deployed,  
17 in a social setting. HN91 gave their cover name. They  
18 started dating. And HN91 then disclosed their real name  
19 and real identity. And as I say, the relationship is  
20 ongoing.

21 Including the above, including HN1 and HN91, it  
22 would appear at the moment to us that a significant  
23 minority of SDS undercover officers, around 16 out of  
24 117, did enter into intimate relationships which went  
25 further than simple one night stands or casual sexual

1 encounters while deployed and in their undercover  
2 identities. As made clear by the Metropolitan Police,  
3 by Mr Skelton yesterday, such relationships were  
4 operationally unnecessary, potentially and often  
5 actually harmful and, most importantly, wrong.

6 A number of the officers involved in such  
7 relationships were, we say, plainly unsuitable for  
8 undercover work.

9 So as well as hearing from those affected by such  
10 relationships, as you will do, sir, we say it's  
11 important, in order for you to fulfil your terms of  
12 reference, that you seek to understand how and why these  
13 things happened, so that, in particular, you may make  
14 recommendations about their avoidance in future and  
15 about future undercover operations.

16 In this regard -- and I emphasise this as clearly as  
17 I can: this isn't to excuse or to justify any such  
18 relationships, it's simply to highlight the need to  
19 understand how and why they might have occurred, and how  
20 and why they might have been avoided -- it is the case  
21 that, in order to do their jobs, undercover officers  
22 need certain personality traits. They need healthy but  
23 not excessive levels of confidence and ego, good  
24 interpersonal skills. They need an ability to handle  
25 stress and to compartmentalise different parts of their

1           life. They need to be able to form a connection with  
2           those that they are reporting on.

3           Now, those traits need to be counterbalanced by  
4           other traits. So, first, a grounded sense of real  
5           identity and police role, and the fact that  
6           the undercover life is a double life, a clear sense of  
7           boundaries, and an ability to avoid over-assimilation  
8           and over-identification.

9           For some personality types, undercover work creates  
10          a risk of crossing boundaries and losing sight of what  
11          the individual is supposed to be doing. Secrecy,  
12          the unreality of a double life, the sense of feeling  
13          a special elite member of a special elite group within  
14          an organisation, and the constant fear and stress around  
15          possible compromise, for some personality types, those  
16          are not conducive to the maintenance of good grounding  
17          or boundaries or the avoidance of over-assimilation and  
18          over-identification. And it's simply our submission  
19          that in order to better understand these factors, and in  
20          order better to identify suitable candidates for  
21          undercover work, one needs to consider the psychology  
22          and the psychological factors at play.

23          In that regard, it's our submission that the Inquiry  
24          should obtain up-to-date, independent expert input from  
25          clinical psychologists and/or behavioural scientists

1 with experience of undercover officers and their work.

2 And, as I say, that's not with a view to excusing or  
3 justifying bad behaviour, it's with a view to helping  
4 avoid its recurrence in future.

5 So moving on, finally, to our concluding section.  
6 So this is part 9 of the written opening.

7 First I want to address you on what we say are four  
8 key structural challenges that the Inquiry faces and  
9 must endeavour to address.

10 I know you, sir, and Mr Barr have repeatedly  
11 emphasised the inherent difficulties of conducting  
12 a public inquiry into a secret subject matter, and we  
13 recognise that those difficulties are significant. We  
14 say there are four real obstacles that you must  
15 overcome. They're not of your making, sir. Raising  
16 them isn't a criticism of you or the Inquiry, and we  
17 recognise that there's no easy solution. But we do say  
18 that these obstacles, these structural challenges, have  
19 important cumulative effects that need to be overcome.

20 The first is the difficulties imposed upon you by  
21 the terms of reference set by the Home Secretary. In  
22 our submission, these are simultaneously both overbroad  
23 and unnecessarily restrictive.

24 First, in relation to over-breadth,  
25 the extraordinary historical reach of the Inquiry, going

1 back 50 years, is in our submission too much. Many  
2 witnesses from the early phase of the Inquiry have died;  
3 others are elderly and unwell. Memories have faded;  
4 documents have not survived. And the task of  
5 reconstructing a history of the work of more than one  
6 unit over such a long period of time is, in our  
7 submission, too broad a task.

8 Simultaneously, the terms of reference are, we say,  
9 unnecessarily restrictive, because they exclude  
10 undercover police operations outside England and Wales,  
11 and they exclude undercover or covert operations  
12 conducted by any body other than an English or Welsh  
13 police force.

14 Now, those excluded matters are, we say, of  
15 fundamental importance to an understanding of the SDS,  
16 because the SDS undercover officers operated in Scotland  
17 and Northern Ireland and on the Continent. And  
18 the exclusion of undercover or covert operations  
19 conducted by other bodies other than English and Welsh  
20 police forces excludes other important matters: as I've  
21 already been stressing today, the work of MI5, and also  
22 the work of other intelligence services and police  
23 forces.

24 So, first, in our submission, the terms of reference  
25 complicate your task unnecessarily.

1           The second structural challenge which we say you  
2           face is one of an unquantifiable subject matter. In our  
3           submission a meaningful counter-factual assessment of  
4           what would have happened to public order over a 40-year  
5           period absent the intelligence provided by the SDS is  
6           all but impossible. You can of course find that SDS  
7           intelligence made a contribution; and when it comes to  
8           closing statements, we'll be saying that you should find  
9           that. But trying to work out what could or would have  
10          happened had the SDS intelligence not been available to  
11          those policing public order events is, in our  
12          submission, impossible.

13          As I was stressing yesterday, effective policing and  
14          the avoidance of both under-policing and over-policing  
15          are essential in order to avoid escalation in public  
16          order situations, injuries, loss and damage. As we  
17          outlined yesterday, there were thousands and thousands  
18          of significant public order events between 1968 and '82.  
19          There were thousands of arrests at those events. There  
20          were thousands of injuries to police officers at those  
21          events. And there were hundreds and hundreds of known  
22          injuries to members of the public at those events. And  
23          also there were two deaths.

24          What would have happened without reliable  
25          intelligence from the SDS? Well, we say that's

1 a question whose answer is impossible to find.

2 Under-policed events can get out of control.

3 Over-policed events can provoke an adverse reaction, and  
4 similarly get out of control.

5 How many more life-changing injuries or deaths would  
6 there have been without the intelligence from the SDS?

7 Would the police have had to resort to the use of  
8 plastic baton rounds, tear gas or water cannon to police  
9 such events?

10 Without the intelligence from the SDS, if more  
11 officers had been deployed on public order work, what  
12 would have been the consequences for those areas of  
13 policing left uncovered by the diversion of resources?

14 What would have been the effect on recruitment and  
15 retention within the Met when it was already  
16 under-complement throughout the period?

17 What would have been the impact on the work of MI5  
18 of not having available to it the intelligence from  
19 the SDS?

20 And, in particular, what would have been the impact  
21 on MI5's vetting work?

22 That may sound like a somewhat peripheral subject,  
23 but the vetting work was important. If someone was  
24 appointed to a sensitive post in government who was  
25 a member of a far-left organisation, who might be

1           sympathetic to the Soviet Union, who might be close to  
2           someone who was sympathetic to the Soviet Union, that  
3           would be an important matter if they were to get access  
4           to classified information. And if there were to be  
5           a leak as a result of that or as a result of a failure  
6           of vetting, there would be an inquiry and questions  
7           would be asked about how that was allowed to happen.

8           All of these matters, we say, are just impossible to  
9           quantify at this distance of time.

10          The third structural challenge which we say you face  
11          is in relation to interception of communications and  
12          the statutory bars that operate to prohibit disclosure  
13          of information about interception-related conduct and  
14          materials.

15          The scope of the Inquiry, going back to 1968 --  
16          (temporary loss of audio) -- the period prior to 1986,  
17          when mail and telephone communications were intercepted  
18          by MI5 and by Special Branch under prerogative powers.  
19          So on a non-statutory basis. Pre-1986 interception can  
20          be disclosed without breaching any statutory  
21          prohibitions. So I can freely say that the reasons for  
22          undertaking and for terminating some pre-1986 SDS  
23          deployments, tasks or steps, and the nature of  
24          the information that was available to those involved,  
25          can partly be found in interception-related conduct and

1 materials which fall within the recollection of those  
2 involved, and sometimes within the available documentary  
3 materials.

4 I don't say that there's a huge volume of  
5 transcribed intercepted telephone calls, but there is  
6 relevant material. Public interest reasons may prevent  
7 this being dealt with in open session, but it can at  
8 least be adverted to in open session. And I am not  
9 forbidden from mentioning it in general terms; you are  
10 not forbidden from mentioning it in your report in  
11 general terms, in your public report.

12 Neither am I forbidden from stating that  
13 the interception of communications by the police and by  
14 the intelligence services continued beyond 1986. It  
15 would hardly make sense, sir, for Parliament to  
16 legislate for the interception of communications from  
17 1985 onwards and for then the practice to cease all  
18 together. And we know from reports and decisions of  
19 the Interception of Communications Commissioner,  
20 the Investigatory Powers Commissioner, the Intelligence  
21 and Security Committee of Parliament, the Investigatory  
22 Powers Tribunal and the courts that interception has  
23 continued since 1986, and continues to this day.

24 However, in relation to such interception beyond  
25 1986, statutory prohibitions operate to prevent it being

1 referred to in public or disclosed in the course of  
2 legal proceedings.

3 So we have the Interception of Communications Act  
4 1985, Section 9, then the Regulation of  
5 Investigatory Powers Act 2000, Section 17; and now  
6 the Investigatory Powers Act 2016, Section 56, Schedule  
7 3.

8 These provisions impose statutory bars on  
9 interception-related assertions, disclosures, evidence  
10 and questions in court, tribunal and inquiry  
11 proceedings. And you've recently published a statement,  
12 sir, about these bars, confirming that they are of  
13 relevance to your inquiry.

14 They prohibit any public revelation of the existence  
15 or content of interception-related conduct or materials;  
16 and they severely restrict the scope for closed  
17 consideration by the Inquiry of related matters. And in  
18 relation to post-1986 interception, all I am permitted  
19 to say is that these provisions are capable of adversely  
20 impacting your ability to publicly get to the truth.

21 Fourthly and finally in terms of the structural  
22 challenges we say you face, sir, is the open/closed  
23 divide.

24 As a public authority, and as you have recognised,  
25 sir, you must act compatibly with Convention rights; and

1           you must avoid causing harm or damage to individuals or  
2           the public interest. As a result of that, you are  
3           obliged to deal with certain matters in closed session,  
4           and to restrict the publication of related information  
5           and identities.

6           In terms of my clients, 34 out of 74 deployed  
7           undercover officers and one undeployed  
8           undercover officer have restriction orders protecting  
9           their real and cover names: 16 of these were granted to  
10          protect the individuals against a deployment-related  
11          risk of harm; six were granted to protect against a risk  
12          of harm connected with post-deployment public service or  
13          on public interest grounds; and 12 were made on health  
14          or privacy grounds.

15          We make no bones about the fact that if  
16          the identities of some of our clients were revealed,  
17          they would be targeted and possibly killed. And you've  
18          recognised that in making restriction orders on  
19          the basis of a risk -- a real risk of conduct falling  
20          within Article 3.

21          Whether or not that's a contingent risk or an  
22          imminent risk is a slightly different issue. But it's  
23          recognised that some of the individuals working for  
24          the SDS were undertaking work that was so dangerous that  
25          if they were to be exposed now, their lives would be at

1 risk.

2 The consequence of this and the consequence of  
3 the need to deal with so much in closed is significant.  
4 What it means is that the more dangerous and the riskier  
5 deployments undertaken by SDS undercover officers will  
6 be the ones which are dealt with necessarily in closed  
7 session.

8 Conversely, the case for publicity and open  
9 treatment of undercover deployments will be stronger in  
10 cases where the officer concerned engaged in  
11 questionable behaviour or misconduct, or a relationship  
12 which has had an adverse effect on a member of  
13 the public.

14 The result of this is that the Inquiry's open  
15 proceedings will be skewed towards and will tend to  
16 focus on less dangerous and less risky deployments and  
17 on instances of misbehaviour and misconduct. And  
18 the concern that we have is that this will give an  
19 incomplete and therefore a false impression of the work  
20 of the SDS, and provide a platform for uninformed,  
21 unfair and exaggerated claims and allegations.

22 It's in this context that one comes to the dreaded  
23 issue of NCND: the policy of secret intelligence  
24 organisations to neither confirm nor deny what they are  
25 doing or have done operationally in order to prevent

1 the compromise of sensitive matters, sources and so on.

2 In our submission, the NCND -- adherence to the NCND  
3 principle, which is often seen as a cloak allowing  
4 the intelligence organisations to operate unseen, can  
5 often in fact be difficult for them. It means that they  
6 cannot defend themselves against false claims and  
7 allegations. Where failings and shortcomings are made  
8 public, they cannot redress those by providing concrete  
9 work of the good, concrete evidence -- sorry -- of  
10 the good work that they have done. And the adherence to  
11 the NCND principle allows those on the outside to  
12 portray silence as evidence of guilt or cover-up, and to  
13 claim that what has not been disclosed is worse than  
14 what is known.

15 In this Inquiry, you have inevitably moved away from  
16 the NCND principle when it comes to undercover policing.  
17 But the result of peeling back part of the curtain, if  
18 not the whole curtain, means that those involved in  
19 the SDS are very much fighting with one hand tied behind  
20 their back, because what is behind the curtain is, in  
21 our submission, a very important part of the story and  
22 of the explanation for what the SDS was doing, and of  
23 the fact that it was doing good work, and of the fact  
24 that many of my clients took serious risk in the public  
25 interest.

1           Those, we say, are the four main structural  
2 challenges facing the Inquiry.

3           Moving on to part 9.2 of our opening, sir, which  
4 sets out our submissions on how you should meet those  
5 challenges.

6           Because of the obstacles and the constraints that  
7 you are under, you will not hear evidence in open about  
8 the following:

9           MI5 operations involving Designated Lawyer  
10 Undercover Officers, including at least one that was  
11 conducted in conjunction with an overseas intelligence  
12 service.

13           The Designated Lawyer Undercover Officer who was  
14 approached by a hostile foreign government agent who was  
15 in turn targeted by MI5.

16           The Designated Lawyer Undercover Officers who  
17 infiltrated and reported on far-right groups, including  
18 in conjunction with European police forces.

19           The Designated Lawyer Undercover Officers who  
20 infiltrated groups who I am not able to name or  
21 describe, but who were obviously extremely dangerous.

22           The Designated Lawyer Officer who was, on different  
23 occasions, threatened at gunpoint and violently  
24 assaulted.

25           The Designated Lawyer Undercover Officer who

1 infiltrated and reported on another group that I'm not  
2 able to name or describe.

3 The Designated Lawyer Officers whose homes and  
4 families had to be uprooted and relocated in order to  
5 avoid their compromise.

6 Simultaneous MI5 interest in and operations against  
7 SDS targets in cases where Designated Lawyer  
8 Undercover Officers believed or suspected that others  
9 around them were MI5 agents or informants.

10 And cases where decisions, tasking, changes of plan  
11 or withdrawals were informed by information or material  
12 obtained from liaison with MI5 or from other sensitive  
13 sources.

14 In our submission, the open/closed divide which you  
15 are bound to maintain in this case conceals  
16 qualitatively different matters from those on public  
17 view, not simply a further quantity of that which is on  
18 public view.

19 But this isn't a criticism of the Inquiry. You're  
20 bound to respect the Convention rights of  
21 undercover officers and of others who might be at risk  
22 from disclosure of sensitive information. But we do  
23 make positive submission that you should take steps to  
24 mitigate and redress the structural challenges that you  
25 face dealing with a public inquiry into a secret subject

1 matter. The steps we say you should take we have  
2 outlined as follows:

3 First, to acknowledge and maintain awareness and  
4 mindfulness of the limitations imposed on you by  
5 the combination of your terms of reference, relevant  
6 legal restrictions and the subject matter of  
7 the Inquiry. And also to acknowledge and maintain  
8 awareness of the importance of contextual factors, and  
9 the dangers of counter-factual speculation, hindsight  
10 bias and judging 20th century actors by 21st century  
11 standards.

12 The second step we say you should take is to clearly  
13 signpost, in as much detail as is safely possible,  
14 the nature of the matters being considered in closed  
15 session.

16 And, thirdly, when it comes to your report, sir, we  
17 say it's important that you, insofar as you are able to  
18 do so, expressly refute untrue allegations, exaggerated  
19 and generalised claims and conjecture, and carefully  
20 differentiate and quantify the extent of individual and  
21 collective failings. It's obviously the case the fact  
22 that one member of a unit or a small number of members  
23 of a unit did a certain thing does not mean that  
24 the other members of the unit did the same. It must be,  
25 in our submission, a function of this Inquiry to report

1 the truth. All concerned recognise and accept that.  
2 And that must mean as much of the whole truth as is  
3 possible.

4 It's also the case that the Inquiry Act requires you  
5 to avoid restricting information where publishing it  
6 would allay public concern. In our submission, more  
7 information about the dangerous, difficult work that  
8 the SDS officers did in the public interest would allay  
9 public concern about undercover policing. I appreciate  
10 that's a difficult task, but at the moment we say that  
11 more could be said about the more dangerous and risky  
12 deployments than has thus far been said, and that doing  
13 that and taking that step would allay considerable  
14 public concern.

15 Sir, coming to my closing points, the key  
16 submissions we make on behalf of our clients. As I've  
17 said, we are not going to waste your time with criticism  
18 of the decision to institute this Inquiry or its terms  
19 of reference, which we didn't set, or its cost to  
20 the public purse. None of that is down to you or your  
21 team. The Inquiry must proceed, and, as lawyers  
22 representing core participants, we are duty bound to  
23 assist you as much as we can. Our primary concern is  
24 that the Inquiry should avoid and mitigate  
25 the unfairness inherent in the structural matters that

1 we've addressed above.

2 To deal with two particular topics: first,  
3 the justification for the unit, and secondly, the way in  
4 which it operated. On behalf of  
5 the Designated Lawyer Officers we submit that the SDS  
6 was an undercover police unit which operated lawfully,  
7 effectively and in the public interest by collecting  
8 intelligence which was of use to the Metropolitan Police  
9 Public Order Branch in its work helping maintain and  
10 preserve public order and which was of use to MI5 in its  
11 work helping to counter subversion and protect national  
12 security. The SDS was a politically neutral cog in  
13 a much larger apparatus, and the operational colleagues  
14 and partners of the SDS all collectively assessed and  
15 agreed that the threats to public order and to national  
16 security posed by the individuals reported on were real  
17 and serious.

18 The use to which the Metropolitan Police  
19 Public Order Branch and MI5 put SDS intelligence is for  
20 them to address. SDS undercover officers can only said  
21 what they did in terms of passing information up  
22 the chain; others have to account for what they then did  
23 with that information. We say it was important  
24 intelligence and its use was in the public interest.

25 A number of opening statements, sir, concentrate on

1 the fact that some of the groups reported on by the SDS  
2 had well-meaning or even laudable causes. In our  
3 submission, this misses the point. The point is not  
4 that the individuals involved in those groups were all  
5 bad people, or that they had motives or intention.  
6 The point was that they were involved in public protest  
7 and demonstrations which were, and can be seen to have  
8 been liable to become, disorderly and to have involved  
9 unrest and injury to others.

10 The police must remain neutral and cannot favour one  
11 group over another on ideological grounds. There is of  
12 course a right to free speech and a right to protest,  
13 but there is, in our submission, no right to be heard or  
14 listened to by others. There is no right to disrupt  
15 others and there's no right to enforce your views on  
16 others. Protestors can express themselves, but equally,  
17 other people are entitled to ignore them all together.  
18 There is certainly no right to arrange or participate in  
19 public events without the police knowing and without  
20 the police being on hand to maintain public order. If  
21 there were such a right, if it were the case that people  
22 with a particular political opinion should be shielded  
23 from any intelligence-gathering, that right would have  
24 to be enjoyed by all. It cannot be said that  
25 the objectives of one group were well meaning and

1           therefore the police shouldn't have been interested in  
2           them, because if that were true, the same would have to  
3           apply for all groups, including groups on the far right  
4           and groups with dangerous objectives.

5           The reality is that a significant number of  
6           the groups reported on by the SDS had twin objectives,  
7           which were essentially totalitarian. They wanted to  
8           further their own views, but they also wanted to  
9           suppress and silence conflicting views. I'm referring  
10          here in particular to the far left against far right  
11          demonstrations and counter demonstrations.

12          The job of the police in a liberal democracy is to  
13          maintain order and enforce the law as determined by  
14          Parliament and the courts. They cannot become involved  
15          in favouring a particular group because of their  
16          political views, and in our submission, the SDS cannot  
17          be fairly criticised for helping the Metropolitan Police  
18          Public Order Branch do its job of preserving the peace  
19          for the people of this country. The fact that this may  
20          have had an impact on some groups and on their ability  
21          to disrupt other groups, or their ability to disrupt  
22          other members of the public, is not a ground for  
23          criticism.

24          So that's our primary case, as it were, on  
25          the justification for the SDS.

1           Turning to the more pragmatic topic of its operation  
2           and the way in which it operated. As we've set out in  
3           our written opening, most Designated Lawyer Officers  
4           will agree that the selection, training, supervision and  
5           after care procedures of the SDS did not meet 21st  
6           century standards, and most of them will agree that  
7           modern processes and procedures would have helped  
8           identify candidates who were unsuited to undercover  
9           duties, or who needed more guidance.

10           Some of my clients will go further than that and be  
11           critical of the Metropolitan Police and its management.  
12           They will give evidence that the significant demands and  
13           sacrifices of SDS service had a serious and  
14           disproportionate adverse impact on their health,  
15           wellbeing, families and careers. They will say that  
16           they were not properly informed of this impact in  
17           advance, that they were exposed to disadvantage and risk  
18           following and as a result of their SDS service, that  
19           there was a lack of after care, that closure of the unit  
20           in 2007 was mismanaged and that Operation Motion,  
21           the Metropolitan Police undercover --  
22           ex-undercover officer support unit, should have been  
23           established much sooner. And finally they will say that  
24           the Met could and should have done more to defend their  
25           contributions and reputations, and to protect their

1 welfare in the face of wild and exaggerated false claims  
2 and allegations.

3 However, they are, as I have said in the written  
4 opening, generally a phlegmatic bunch and they  
5 understand that what was done in the 70s and 80 was in  
6 general the best that people could do given  
7 the knowledge that they had at that time.

8 In wrapping up, sir, the final points we'd like to  
9 make are these.

10 The SDS undercover officers undertook work which was  
11 stressful and sometimes dangerous, which had a profound  
12 and permanent impact on many of them and their families,  
13 and, in the case of around one in five of them, which  
14 had a significant long-term impact on their mental  
15 health. They did all of this at the request of and on  
16 behalf of the state and in the interests of society as  
17 a whole. A true understanding of the history of SDS  
18 requires a thorough and informed investigation of  
19 the pressures placed on its members. For this reason,  
20 we submit that the Inquiry should obtain independent  
21 expert input from clinical psychologists and behavioural  
22 scientists on all of these issues in order to  
23 investigate them fully and fairly.

24 The SDS was a human institution, and like all human  
25 institutions it was neither infallible nor immune from

1 making mistakes. It was also a creature of its times,  
2 times which were very different to those we are living  
3 in now. What we would emphasise is that, taking all  
4 that into account, the failings of a few, the admitted  
5 egregious failings of a few, should not be allowed to  
6 overshadow the hard work, dedication and success of  
7 the many whose contribution left little trace and  
8 official records, is difficult to quantify and in many  
9 cases cannot be revealed.

10 That brings to an end our opening statement, sir.

11 THE CHAIRMAN: Thank you very much, Mr Sanders. We will  
12 resume at 11.45 when Mr Whittam will address us on  
13 behalf of a group of police officers represented by  
14 Slater and Gordon. Thank you.

15 MR SANDERS: Thank you, sir.

16 MS PURSER: Thank you everyone. We will now take a break  
17 and we will be back at 11.45.

18 (11.16 am)

19 (A short break)

20 (11.45 am)

21 MS PURSER: Welcome back, everyone. I will now hand over to  
22 the Chairman to continue proceedings.

23 Chairman.

24 THE CHAIRMAN: Thank you very much.

25 Mr Whittam, you are now about to address

1           the Inquiry, I think, on behalf of those  
2           undercover officers represented by Slater and Gordon.

3           MS PURSER: Mr Whittam, can you see and hear us?

4           MR WHITTAM: Yes, I can. I can see all the screens, but not  
5           myself being on the main screen.

6           Have I turned my video on?

7           MS PURSER: We can see you and we can hear you, Mr Whittam.

8           MR WHITTAM: Would you like me to commence, then?

9           THE CHAIRMAN: You didn't hear what you said. I invited you  
10          to commence on behalf of the Slater and Gordon clients.

11                           Opening statement by MR WHITTAM

12          MR WHITTAM: I'm very sorry, sir.

13                       As you know, I'm instructed by Scott Ingram of  
14                       Slater and Gordon Solicitors. We represent 12 former  
15                       undercover officers in this Inquiry. Only two of the 12  
16                       had a former supervisory role. One was  
17                       a detective sergeant, rising to the rank  
18                       of detective inspector. Another was a detective chief  
19                       inspector when he was posted to the Special  
20                       Demonstration Squad in 1998, long after the die had been  
21                       cast. By that time, he reported to two superintendents.  
22                       Above them was a chief superintendent and a commander.

23                       It's of interest that the Metropolitan Police Annual  
24                       Report for 1974 relates this -- and I quote:

25                       "... the operations of the special squad were placed

1 in July 1974 directly under the day-to-day supervision  
2 of a Chief Superintendent and Superintendent who were  
3 reallocated from other tasks in order to provide  
4 a further degree of control."

5 None of those who we represent have a corporate or  
6 institutional interest to protect. Significantly, they  
7 and their families' lives have been impacted adversely.

8 An uninitiated member of the public looking into  
9 these proceedings might be forgiven for thinking that  
10 the Inquiry was solely concerned with the vexed issue of  
11 relationships formed between undercover police officers  
12 and members of the public whilst those undercover police  
13 officers were using their cover names and actively  
14 portraying their legend.

15 As has become clear, the terms of reference of this  
16 Inquiry go far beyond that task.

17 However wide the terms of reference, sir, they do  
18 not include ascribing individual blame to particular  
19 undercover police officers.

20 Further insight as to the issues to be examined are  
21 found in the issues lists published by your Inquiry.

22 The other undercover policing issues lists includes  
23 operational failings and deficiencies. And the Inquiry  
24 will consider to what extent, if at all, undercover  
25 policing operations have gone wrong or been defective

1 for some reason. The headings include but are not  
2 limited to: poor support; agent provocateur/entrapment;  
3 ineffective governance and/or oversight; inappropriate  
4 authorisations, in other words unjustified  
5 authorisations for reasons including, but not limited  
6 to, inappropriate targeting or tasking; inappropriate  
7 risk management; recruitment failures; inadequate  
8 training and/or psychological support; inappropriate  
9 period of deployment; specific examples of inappropriate  
10 conduct -- sexual relations, commission of criminal  
11 offences, taking of controlled drugs, engaging in acts  
12 of violence; and inappropriate deployment of undercover  
13 tactics.

14 By way of an example, the issues for the Special  
15 Demonstration Squad include, but are not limited to:  
16 management and supervisory structure and function;  
17 training and guidance; targeting and authorisation; role  
18 of supervisors/managers; reporting -- justice campaigns;  
19 reporting -- the Stephen Lawrence Campaign and  
20 Duwayne Brooks OBE; management, knowledge of and  
21 attitudes towards relationships between  
22 undercover officers and targets/those upon whom they  
23 reported; participation in, or encouragement of, crime  
24 by undercover officers; undercover officers' involvement  
25 in criminal proceedings; infringement of legal

1 professional privilege by undercover officers.

2 Additional matters include: withdrawal from  
3 deployment; debriefing; the welfare of  
4 undercover officers and their families; interaction  
5 between Special Demonstration Squad managers and those  
6 responsible for overseeing its operations.

7 I interpose this comment. The Inquiry will have to  
8 look at the difference between those who became  
9 operational managers having been undercover officers and  
10 the Special Demonstration Squad and senior managers.

11 And, in addition, interaction with  
12 the Security Service.

13 While that may appear to be a laboured recitation of  
14 some of the issues to be considered, they are of  
15 particular relevance to the 12 former undercover police  
16 officers that we represent. Those issues make it  
17 abundantly clear that in addition to the members of  
18 the public affected by undercover policing, there should  
19 be a sharp focus on the impact of the deployments on  
20 many of the former undercover police officers and their  
21 families.

22 This opening statement was drafted before sight of  
23 any witness statements to be tendered to the Inquiry.  
24 We do not know what is coming, nor what is going to be  
25 disclosed to us. Further, it was drafted before any of

1 the former undercover police officers we represent had  
2 been provided with their individual witness packs that  
3 set out the topics that they're required to address by  
4 the Inquiry.

5 Public inquiries can be demanding for all those  
6 involved. As for a number of those we represent, it  
7 will become clear that their service and this Inquiry  
8 has had a significant impact on their mental health.  
9 The terms of reference were announced by  
10 the Home Secretary on 16 July 2015. At that time, it  
11 was anticipated that the report would be delivered up to  
12 three years after that date. There have been a number  
13 of significant interruptions, not least the sad and  
14 untimely death of the first chairman. That does not  
15 lessen the impact that such delay has had on those we  
16 represent. Some have had their identities protected,  
17 others have not. Some have been the subject of  
18 prolonged campaigns to expose those identities. Some  
19 have been the subject of considerable criticism before  
20 all relevant facts are known.

21 Of the 12 former undercover police officers we  
22 represent, a number did have relationships. It's  
23 important not to have preconceived ideas about such  
24 relationships. For example, a relationship was renewed  
25 after the truth about the status of the undercover

1 police officer was discovered. Another relationship  
2 continues to this day.

3 On 20 November 2015, the Metropolitan Police  
4 Service, in setting claims with seven women arising from  
5 long term intimate sexual relationships with undercover  
6 police officers, accepted that the cases demonstrated  
7 that there had been failures of supervision and  
8 management. In doing so, Assistant Commissioner Martin  
9 Hewitt said that the Metropolitan Police Service had  
10 concluded a mediation process that had reached  
11 a settlement, the details of which remain confidential.

12 He said:

13 "... arising out of the totally unacceptable  
14 behaviour of a number of undercover police officers."

15 And continued:

16 "The forming of sexual relationships by an  
17 undercover officer would never be authorised in advance  
18 nor indeed used as a tactic of deployment. If an  
19 officer did have a sexual relationship despite this (for  
20 example if it was a matter of life or death) then he  
21 would be required to report this in order that  
22 the circumstances could be investigated for potential  
23 criminality and/or misconduct."

24 Former undercover police officers are affected  
25 individually and significantly. Moral vilification can

1 have a lasting impact, particularly when no criminal  
2 offence has been committed and in other circumstances  
3 the identity of those former undercover police officers  
4 would not have been made known.

5 When Assistant Commissioner Hewitt made those  
6 remarks in 2015, he knew that an inquiry was to take  
7 place.

8 He raised the spectre of criminality and misconduct.

9 First, criminality. Jim Boyling was investigated  
10 for an allegation of rape and the procurement of sexual  
11 intercourse by false pretences in the course of his  
12 undercover activities. The allegation related to what  
13 was a consensual relationship, albeit with an  
14 undercover officer using his cover name, which was not  
15 regretted until more than a decade later when his true  
16 identity was known. Such a criminal allegation is  
17 a heavy burden to bear.

18 The Crown Prosecution Service decided that there was  
19 insufficient evidence to prosecute Jim Boyling for  
20 either offence. That decision was challenged in  
21 the High Court. In 2018, the Lord Chief Justice,  
22 sitting in the High Court, decided that the proposition  
23 that the law should be extended to establish a new  
24 understanding of consent for the purposes of rape was  
25 not permitted.

1           The judgment included these passages:

2           "The claimant's case is founded on the proposition  
3           that dicta in the cases to which we have referred should  
4           be extrapolated to establish a new understanding of  
5           consent for the purposes of rape and all sexual  
6           offences. That would inevitably result in  
7           the criminalisation of much conduct which, hitherto, has  
8           fallen outside the embrace of the criminal law. Whether  
9           siting, as we are, in first instance in judicial review  
10          proceedings, or on appeal, such a step would not accord  
11          with principle."

12          Lord Burnett described his position -- that's  
13          Jim Boyling's position -- as follows:

14          "On the facts of the instant case, Mr Boyling did  
15          not create the circumstances which led to the encounter  
16          in the first place; he was responding to the orders of  
17          his superiors."

18          Secondly, with reference to misconduct: since  
19          the events with which this Inquiry is concerned, there  
20          have been significant changes in legislation that  
21          regulates the level and nature of interference that  
22          surveillance and active investigation can inflict on  
23          private lives.

24          In addition to those changes in legislation,  
25          the common law has developed as has public attitude and

1 opinion towards such interference.

2 The Special Demonstration Squad existed between 1968  
3 and 2008. As this Inquiry aims to get to the truth and  
4 provide recommendations for the future, it's important  
5 to consider some of the things that have happened since  
6 that period started.

7 As you've heard, in the year 2000, the regulation of  
8 covert human intelligence sources was placed on  
9 a statutory footing by the Regulation of Investigatory  
10 Powers Act. That regulation was further refined by  
11 the Investigatory Powers Act 2016. The use of covert  
12 human intelligence sources was made the subject to  
13 oversight by a commissioner, first the Intelligence  
14 Service Commissioner, and now the Investigatory Powers  
15 Commissioner, and also review by a tribunal.

16 Since the year 2000, there's been a resolute policy  
17 adhered to as much as possible by government agencies of  
18 neither confirming nor denying when a person is an  
19 informant. As you've heard this morning, that principle  
20 is NCND.

21 The courts repeatedly have upheld that approach in  
22 the criminal courts, albeit the rule is not absolute;  
23 for example, if adherence to it would be likely to cause  
24 a miscarriage of justice.

25 The courts have supported the protection of

1 information supplied in circumstances of an implied  
2 undertaking of confidentiality.

3 In March 2011, Security Service guidelines were  
4 issued on the use of agents who participate in  
5 criminality. Under the heading "Principles", it stated:

6 "The guidance explains the circumstances in which  
7 agent-running sections may use agents who participate in  
8 criminality and sets out relevant procedures ..."

9 Followed by a redaction. The guidance included,  
10 after a further redaction:

11 "... the nature of the work of the Service is such  
12 that its agents are frequently tasked to report on  
13 sophisticated terrorist and other individuals and  
14 organisations whose activities may pose a threat to  
15 national security and/or involve the commission of  
16 serious offences. In those circumstances, it may  
17 sometimes be necessary and proportionate for agents to  
18 participate in criminality in order to secure or  
19 maintain access to intelligence that can be used to save  
20 life or disrupt more serious criminality, or to ensure  
21 the agent's continued safety, security and ability to  
22 pass such intelligence."

23 As already I have stated, on 20 November 2015,  
24 the Metropolitan Police Service, in settling claims with  
25 seven women, accepted that the cases demonstrated that

1           there had been failures of supervision and management.  
2           And in 2018, the Lord Chief Justice confirmed  
3           the decision of the Crown Prosecution Service not to  
4           product Jim Boyling.

5           Then, in 2019, a number of parties challenged  
6           the government and the Security Services in the  
7           Investigatory Powers Tribunal about a policy that  
8           purported to "authorise" the commission of criminal  
9           offences by officials and agents of  
10          the Security Service. It was alleged that the policy  
11          was unlawful both as a matter of public law and as being  
12          contrary to the European Convention on Human Rights, as  
13          set out in Schedule 1 of the Human Rights Act 1998.

14          The Investigatory Powers Tribunal, like this  
15          Inquiry, sat both in public and in private.

16          At the Investigatory Powers Tribunal it was  
17          maintained by the Security Service that agent-running  
18          and its essential concomitant, participation in  
19          criminality, was an essential part of the work of MI5  
20          long before the Security Services Act 1989, which put  
21          the Security Services for the first time on a statutory  
22          basis.

23          By the smallest majority -- 3 to 2 --  
24          the Investigatory Powers Tribunal ruled the policy  
25          lawful and argued that MI5 officers could not function

1 without informants who could commit crimes, often while  
2 infiltrating criminal organisations.

3 On moving to contemporary attitudes. On  
4 24 September this year, the government introduced into  
5 Parliament the Covert Human Intelligence Sources Bill.  
6 The Government's position is that covert human  
7 intelligence sources are crucial in preventing and  
8 safeguarding victims from many serious crimes.

9 The government stated that participation in criminal  
10 conduct is an essential and inescapable feature of  
11 covert human intelligence source use, otherwise they  
12 will not be credible or gain the trust of those under  
13 investigation. This enables them to work their way into  
14 the heart of groups that would cause the public harm,  
15 finding information and intelligence which other  
16 investigative measures may never detect.

17 The government argues that the Bill provides an  
18 express power to authorise covert human intelligence  
19 sources to participate in conduct which would otherwise  
20 constitute a criminal offence. This is not a new  
21 capability: the Bill provides a clear legal basis for  
22 a long-standing tactic which is vital for national  
23 security and the prevention and detection of crime.

24 Given the government's attitude to covert human  
25 intelligence sources being involved in criminal

1 offences, and given the then lack of statutory framework  
2 or supervision before 2000, Assistant Commissioner  
3 Martin Hewitt's statement -- settlement statement in  
4 2016 needs to be put into context. Not least as it's  
5 recently been widely reported that the College of  
6 Policing has altered its advice. Apparently:

7 "If an undercover police officer engages in an  
8 intimate sexual relationship (for example, they perceive  
9 an immediate threat to themselves and/or others if they  
10 were not to do so), this activity will be restricted to  
11 the minimum conduct necessary to mitigate the threat.'

12 "Undercover officers will be expected to record it  
13 and report it to their senior officers 'immediately', so  
14 that it could be investigated and a decision made  
15 whether the operation should continue.

16 "'Referral to oversight and governance bodies must  
17 be considered where appropriate,'

18 "Senior officers overseeing the operation are also  
19 allowed to authorise 'communications of a sexual nature  
20 (for example online)' where these are judged 'necessary  
21 and proportionate' to achieve the 'specific operational  
22 objectives'."

23 Was Assistant Commissioner Hewitt talking about  
24 the requirement for authorisation as it existed in 2000  
25 when he made his statement?

1           Was he talking about the long-standing tactic which,  
2           as we've heard, is vital for national security and  
3           the prevention and detection of crime, that existed in  
4           the latter part of the last century, when there was no  
5           statutory regime requiring authorisation?

6           Might there be a risk that Assistant  
7           Commissioner Martin Hewitt elided what he learnt of what  
8           happened -- that undercover police officers had engaged  
9           in long-term intimate sexual relationships with members  
10          of the public -- with his knowledge of the need for  
11          prior authorisation under the statutory regime that did  
12          not commence until 2000?

13          His statement was made in the context of  
14          a confidential settlement between the Metropolitan  
15          Police and the seven women who brought the action.  
16          The former undercover police officers who were in  
17          the relationships played no part in the mediation  
18          process and do not know what the terms of the settlement  
19          were. The public does not know what the terms of  
20          the settlement were.

21          Sir, this Inquiry will have to scrutinise with great  
22          care the distance that it may be suggested lay between  
23          those who had, or should have had, responsibility for  
24          overall policy and conduct of the undercover police  
25          officers and the individual police officers. Is it

1 credible that no senior police officer knew about  
2 the relationships that had been formed? Did any either  
3 expressly authorise or condone the behaviour? Did any  
4 give tacit approval? Perhaps there were just too many  
5 relationships for the responsibility to rest solely on  
6 the individual officers who formed intimate sexual  
7 relationships.

8 Whilst this Inquiry will examine the structure put  
9 in place by the Metropolitan Police Service, it's  
10 important to note that in its Special Demonstration  
11 Squad issues list the Inquiry limits itself to the  
12 "management knowledge of and attitudes towards  
13 relationships between undercover police officers and  
14 targets/those upon whom they reported". It's important  
15 to understand that there were relationships with people  
16 who were neither targets nor directly reported on.  
17 The Inquiry does not appear to have made provision for  
18 the examination of such relationships which do appear to  
19 have existed.

20 Given the nature and functioning of the Special  
21 Demonstration Squad, it may be that everyone was too  
22 deferential to the principle of secrecy that clouds such  
23 operations. While the safety of those being deployed in  
24 the field is paramount, a structure must be in place to  
25 ensure that there is specific oversight of

1 the operation, the tactics deployed and the potential  
2 consequences of such deployment. Those consequences  
3 include the targets of the operation, other members of  
4 the public, the police officers and their families.  
5 This Inquiry will examine whether a former  
6 undercover officer was required to report a sexual  
7 relationship in order that the circumstances could be  
8 investigated for potential criminality and/or  
9 misconduct. Hindsight is no answer to what system was  
10 or was not in place. Assumption and expectation have no  
11 place in circumstances as serious as these.

12 Jim Boyling, in addition to the failed attempt to  
13 protect him for rape, has been subject to misconduct  
14 proceedings and the Metropolitan Police Service has  
15 commenced yet further misconduct proceedings against  
16 him. This Inquiry will throw light on whether, in  
17 the circumstances existing at the time, it amounted to  
18 misconduct to engage in a personal and sexual  
19 relationship "without a policing purpose".

20 What does "without a policing purpose" mean? For  
21 example, was it permitted to enter into a sexual  
22 relationship to maintain cover, rather than only when it  
23 was a question of life and death? It appears that  
24 the government of today is of the view that it may be  
25 necessary to commit a crime in order to be credible or

1 gain the trust of those under investigation and to  
2 enable agents to work their way into the heart of groups  
3 that will cause the public harm, finding information and  
4 intelligence which other investigative measures would  
5 never detect.

6 There is a general understanding, save in wholly  
7 exceptional circumstances, that the State will neither  
8 confirm nor deny whether a person was or was not an  
9 agent. This Inquiry has decided in some cases that  
10 principle does not apply to some of those whom we  
11 represent. Whilst it is accepted that the general  
12 principle of NCND cannot be run up a flagpole of  
13 convenience, if undercover police officers did not  
14 create the circumstances which led to the encounter in  
15 the first place but were responsible to the orders of  
16 their superiors -- I'm sorry, responding to the orders  
17 of their superiors, is it they, or the system that led  
18 to their deployment, that was at fault? There was an  
19 expectation, legitimately held, that the former  
20 undercover police officers would not have their true  
21 identities revealed.

22 We also represent a black police officer who was  
23 deployed as a member of the Special Demonstration Squad.  
24 The Inquiry may conclude that he was an extremely able  
25 undercover police officer. Because of his ethnicity,

1           once his cover name was known, he was far more readily  
2           identifiable than any other undercover police officer  
3           and once his real name is known he will be easily  
4           targeted by the media and campaigners.

5           The Inquiry will consider the interaction between  
6           the Special Demonstration Squad and  
7           the Security Service. Also it will consider the support  
8           given to undercover police officers after their  
9           deployment and what, if any, impact their undercover  
10          deployment had on their subsequent police careers or  
11          future deployment. Did the State positively benefit  
12          from the experience gained by members of the Special  
13          Demonstration Squad in future deployments immediately  
14          afterwards?

15          Dealing with two particular aspects of concern, our  
16          position is that:

17          First, none of the 12 former undercover police  
18          officers we represent tasked other officers to report on  
19          the family of Stephen Lawrence or Duwayne Brooks OBE.  
20          Nor were any of the 12 former undercover police officers  
21          we represent tasked to report on the family of  
22          Stephen Lawrence or Duwayne Brooks OBE.

23          Secondly, none of the 12 former undercover police  
24          officers we represent participated in breaching legal  
25          professional privilege.

1           Thank you, sir. Those conclude my opening comments.

2       THE CHAIRMAN: Thank you, Mr Whittam.

3           May I just clarify one point of your remarks. You  
4       referred a number of times to "agents of  
5       the Security Service". Those, in Security Service  
6       language, are informants who provide information to  
7       the Security Service, not officers of the Service, and  
8       I don't understand you to differ from that?

9       MR WHITTAM: I do not differ from that, sir. That's  
10      the recognised use of that word.

11     THE CHAIRMAN: Thank you.

12           Thank you, Mr Whittam. We're now going to hear from  
13      David Lock on behalf of Peter Francis. Is he there?

14                           Opening statement by MR LOCK

15     MR LOCK: I am, Sir John. Good afternoon, and good  
16      afternoon to everybody else who is listening.

17           I, along with my junior, Ms Sikand, act in this  
18      matter on behalf of Peter Francis.

19           Mr Francis is grateful for the opportunity to make  
20      an opening statement. But can I say at the outset that  
21      this will be a reasonably brief statement, despite  
22      the fact that, in all probability, this public inquiry  
23      would not be sitting here today if Mr Francis had not  
24      told the truth about what he saw with his own eyes,  
25      heard with his own ears and learnt as a result of his

1 personal experience from his years as an undercover  
2 police officer.

3 There are three reasons, Sir John, why his opening  
4 statement today will be reasonably short.

5 First, Mr Francis' expertise is as a serving and now  
6 retired Special Branch officer. He is not a politician  
7 or a policy-maker. He can only offer assistance to this  
8 Inquiry based on his experience as a former serving  
9 police officer. Whilst he was deployed undercover,  
10 Mr Francis pretended to be a left-wing campaigner, but  
11 today he is not a campaigner and has no desire to become  
12 a campaigner.

13 Secondly, Mr Francis has already paid a very high  
14 price for his openness about the time when he served as  
15 an undercover police officer. To date, he has still not  
16 been assured that he will not face criminal prosecution  
17 under the Official Secrets Act for the public interest  
18 disclosures that he made that led to this Inquiry.

19 Now, those outside the police service might regard  
20 that as an entirely theoretical issue. However, those  
21 outside the police may not be aware of the impact of  
22 Regulation K5 of the Police Pensions Regulations 1987  
23 which allow a chief constable, or in this case  
24 the Commissioner of the Metropolitan Police, to remove  
25 the police pension of a former police officer who is

1 convicted of such offences.

2 Mr Francis, thus, still faces the potential of  
3 a criminal prosecution for the disclosures he originally  
4 made, despite the fact that they are so obviously in  
5 the public interest, and as a result faces the threat of  
6 the loss of his pension, which is his only income in  
7 retirement.

8 Mr Francis has already upset the police  
9 establishment by revealing wrongdoing that others would  
10 have preferred to remain secret. Unknowingly, he  
11 followed the Chancery dictum that there is "no  
12 confidence in the disclosure of iniquity".

13 He has sought assurances from the Metropolitan  
14 Police Service that he will not be prosecuted for his  
15 original public interest disclosures which led to  
16 the setting up of this Inquiry but has received none.  
17 He thus continues to face the prospect of paying a very  
18 high personal and financial price for acting in  
19 the public interest.

20 Now, whilst we understand that giving assurances  
21 about prosecutions may be difficult, we invite  
22 the Commissioner to give a cast iron guarantee, an  
23 absolute assurance, that no action will be taken against  
24 Mr Francis, or that his police pension will be removed  
25 because of his past disclosures, and we invite that

1           commitment to be given before he gives evidence in  
2           person to this Inquiry.

3           The third reason why this will be a short statement  
4           is because Mr Francis wishes to reserve what he has to  
5           say in detail to his statement of evidence. Time is  
6           marching on and he has invited the Inquiry to take that  
7           evidence, but to date he has not been asked to provide  
8           a statement. He simply observes that the sooner he is  
9           asked to give a statement, the more he will be able to  
10          recall and the more accurate will be his recollections.

11          Whilst not being a policy-maker or campaigner,  
12          Mr Francis does wish to make a number of things clear.

13          First, he considers, and has always considered, that  
14          undercover policing has the capacity to be a legitimate  
15          tactic in the right circumstances. And those who  
16          deprecate the use of any undercover policing will not  
17          find he is an ally.

18          Secondly, he considers that policing can only be  
19          carried out in a democracy in a transparent manner and  
20          with the broad consent of the population. That  
21          transparency -- the right for the public to know  
22          the truth of what is being done on their behalf -- is  
23          very important to him.

24          He accepts, of course, that at the time that an  
25          undercover operation is being undertaken, the actions of

1 the undercover police officers cannot be transparent.

2 However, given that transparency in policing is  
3 vitally important to maintain public consent, one of  
4 the issues the Inquiry will have to consider is when it  
5 is appropriate to inform individuals -- sorry, to inform  
6 people that individuals that they thought were friends  
7 and colleagues were in fact sent by the State to lie and  
8 mislead them, in order to obtain evidence of  
9 criminality. And the need for transparency means that  
10 keeping the lid on the box permanently should not be an  
11 option.

12 The question about who should know, what they should  
13 know and when disclosure should be made is way beyond  
14 Mr Francis' expertise. But he feels that the truth must  
15 come out in a timely manner, because citizens cannot be  
16 lied to by the State with impunity: there must come  
17 a time when the State comes clean to explain who has  
18 been lied to and why, and to justify their actions.

19 Thirdly, Mr Francis' belief is that police  
20 organisations are only entitled to lie, to cheat and  
21 deceive members of the public in the public interest if,  
22 firstly, those undertaking these functions are subject  
23 to the strictest level of supervision and governance  
24 arrangements; and, secondly, that the underlying  
25 criminality is sufficient to justify state-sponsored

1           deception.

2           During the time when he worked for  
3           the Metropolitan Police Service, the MPS, it was  
4           perfectly clear to him that the MPS as an institution  
5           did not have sufficient integrity, governance  
6           arrangements and insights into the effect of undercover  
7           policing on both officers and those who were subject to  
8           surveillance to be trusted to carry out undercover  
9           operations which balance the interests of the force and  
10          the interests of those who are the victims of  
11          state-sponsored deception.

12          Now, it will be a matter for the Inquiry to  
13          determine whether the MPS has sufficiently transformed  
14          its approach to undercover policing so that it can now  
15          be trusted with this role. That's an issue for which  
16          recommendations will have to be made by the Inquiry in  
17          due course. All Mr Francis can do is to explain  
18          the shortfalls he observed and to draw attention to  
19          the fact that any assurances of reformed behaviour need  
20          to be treated with considerable circumspection if claims  
21          are being made to that effect by people whose job it is  
22          to lie on behalf of the State.

23          Lastly and most importantly, Mr Francis is concerned  
24          that this Inquiry should gain a profound understanding  
25          of the burden of long-term psychological distress

1           shouldered by those undertaking undercover work.  
2           The effects on those who do this work reverberate for  
3           many years into the future. His experience is the duty  
4           of care owed by the police to its members is routinely  
5           breached because the MPS fails to understand  
6           the psychological toll taken by those who are required  
7           to lie and deceive to others as part of the day job.  
8           It's hardly surprising that in a public service such as  
9           the police where truth is rightly expected of all police  
10          officers those whose job it is to live untruths for  
11          extended periods of time will find themselves in  
12          the psychological shadows. He's concerned that this  
13          Inquiry should properly understand the world through  
14          the perspective of an undercover police officer.

15                 He looks forward to clear recommendations being made  
16          concerning the level of psychological support to be  
17          provided to those who are called on to do this most  
18          difficult of work. That support must be commensurate  
19          with the psychological strains which inevitably arise  
20          for those who are asked to live a double life for  
21          the benefit of society, and it was recognised that those  
22          effects continue for a long time.

23                 Mr Francis joined the Special Branch of the MPS in  
24          1990 and became a serving member of its ultra-secret  
25          Special Demonstration Squad, the SDS, between 1993 and

1 1997, which is a period of interest to this Inquiry.  
2 His understanding was that the general remit of the SDS  
3 was originally to prevent public disorder during  
4 demonstrations, and that this was the sole justification  
5 for targeting individuals and political organisations  
6 perceived to be subversive or extremist, namely a threat  
7 to the State.

8 His experience is that those targeted by the SDS was  
9 perceived to be subversives working against the concept  
10 of the state, but the targeting appeared to equate  
11 the state and what was perceived to be in the interests  
12 of the state with the policies and the convenience of  
13 the government of the day, together with the policies  
14 and convenience of those with substantial interest in  
15 the private sector. Hence, for example, the SDS began  
16 targeting those who expressed opposition to the war in  
17 Vietnam, a policy of a foreign government, not even one  
18 which was the official policy of the UK Government.

19 At inception, the focus was limited to what now  
20 might be described as the extreme left. This chimes  
21 with the annual reports we've seen, the first of which  
22 is dated 1969 and included a document from  
23 the Special Branch Chief Superintendent which disclosed  
24 its aims as: (a) to supply information about  
25 the intentions of militant left wing extremists on the

1 occasion of public demonstrations; (b) identification of  
2 those who engage in preliminary planning, or take part  
3 in such demonstrations; (c) obtaining evidence and  
4 identifying suspects in relation to breaches of the law  
5 before, during and after demonstrations; and (d)  
6 gathering and recording information for long-term  
7 intelligence purposes.

8 In relation to the results aspect of (d),  
9 the language of the report reflects the binary thinking  
10 of that time with, Mr Francis would suggest, no regard  
11 for individual rights. It says:

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

24 Of course, at this time, the fundamental right to  
25 freedom of expression -- including of course protesting

1           against the policies of government of the day -- and to  
2           private and family life were not enshrined in our legal  
3           system in the way that they are now. Nonetheless, this  
4           Inquiry will, he trusts, be determining whether such  
5           incursions on individual rights were ever justified by  
6           the seriousness of potential criminality, even within  
7           the sociopolitical context of that time.

8           We note in passing that none of the groups were  
9           prescribed organisations, and whilst internal police  
10          views of what constitutes a threat to the nation at any  
11          given time inevitably changes depending on the political  
12          compass of the government of the day and the challenging  
13          political, cultural and social landscape, Mr Francis'  
14          firm view is that it is never justifiable to target and  
15          spy on non-violent political campaigning groups.

16          Mr Francis felt compelled to leave the MPS in 2001  
17          following the very significant toll on his psychological  
18          wellbeing that undercover policing had taken. His  
19          fragile mental health was a direct consequence of his  
20          exposure to the requirements of the job. Legend  
21          building was not just a game. Doing the job properly  
22          meant you could not slip in and out of your cover. It  
23          meant living a profound lie for most of his life, which  
24          meant the real Peter Francis was forced to retreat.  
25          This is something Mr Francis can and will talk about

1 when the time comes.

2 Whilst the public stories of undercover policing  
3 during the life of the SDS rightly focus on the many  
4 victims of this barely and badly regulated state  
5 surveillance and the resultant damage to members of  
6 the public, dedicated officers like Mr Francis were also  
7 failed by the state. There was no emotional or  
8 psychological support offered to him or his fellow  
9 officers. In order to get the MPS to recognise the very  
10 significant damage it did to him, he had to resort to  
11 litigation which, as is well recorded, was settled in  
12 2006.

13 Mr Francis began his journey of disclosure on  
14 14 March 2010 as Officer "A". He took the decision that  
15 ordinary people should know about the tactics used by  
16 the SDS because the public have a right to know what is  
17 done in their name and paid for by their taxes. He  
18 wanted people to judge for themselves whether they  
19 considered the conduct of the SDS was acceptable. His  
20 face was in silhouette, his voice distorted, although he  
21 was only thinly disguised. By 2011, The Guardian had  
22 published articles on undercover practices naming  
23 the source as "Peter Black", and in 2013 he unmasked  
24 himself as Peter Francis in the Channel 4 Dispatches  
25 documentary "The Police's Dirty Secret".

1           Many ask him why he chose to make his disclosures,  
2           and when he did, or indeed at all. In one question and  
3           answer session in June 2013, he said this:

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

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

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

21          Peter Francis' main cover identity was "Peter Black"  
22          and he struggled with becoming Peter Francis again. His  
23          understandable desire to find himself again partly  
24          precipitated his decision to disclose. He said this,  
25          and similar, at various points:

1           "The impact psychologically is to this day, I feel  
2 more like Peter Black than I do Peter Francis. But  
3 maybe participation in blowing the whistle will one day  
4 allow me to fully move on and become Peter Francis  
5 again."

6           In 2018, as part of this Inquiry process, he  
7 confirmed that he did not seek any kind of anonymity and  
8 he revealed his third cover name for the first time and  
9 that that name was associated with a deceased child. He  
10 had not made that disclosure earlier out of respect for  
11 the family of the child, but in making that last  
12 revelation, he was publicly speaking the truth.

13           Mr Francis' sole motivation for disclosing the inner  
14 workings of the SDS as he experienced them, whatever  
15 factions of the media might have said at the time and  
16 whatever others may say in due course, is that  
17 the public have the right to know the truth it is why he  
18 has patiently waited for the Inquiry to establish an  
19 objective truth. Both the late  
20 Sir Christopher Pitchford, the former Chair of this  
21 Inquiry, and the current Chair have underlined  
22 the importance of seeking out the truth, however  
23 difficult, however deeply buried within and beneath  
24 the secrecy. This is the obvious task of any chair of  
25 any public inquiry, but particularly so in this one

1 where the purpose is to examine secrecy against  
2 the background of the Right Honourable Theresa May's  
3 establishment in 2014, when she said:

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

12 Now, some of the disclosures that Mr Francis made  
13 all those years ago and which Operation Herne recorded  
14 as "allegations", have already been proven to be truths.  
15 There is now no doubt that SDS officers engaged in  
16 sexual relations whilst deployed and that the SDS used  
17 deceased children's identities in the creation of their  
18 covert identities. Operation Herne had to accept this  
19 to be true, although it was at pains to point out that  
20 such a practice was not unlawful, in the sense that it  
21 broke the criminal law. But that asked the wrong  
22 question, because it looked at the issue far too  
23 narrowly. It plainly was unlawful in that it breached  
24 the human rights of those unwittingly caught up in these  
25 police activities, as the payouts to some victims have

1           tacitly recognised.

2           This Inquiry will scrutinise these and his other  
3 disclosures, including how, and to what extent, the SDS  
4 targeted black justice groups, members of the Parliament  
5 and trade unions in due course. For that, both he and  
6 the public will have to wait until Tranche 3.

7           But it's because of his steadfast belief in  
8 the truth that Mr Francis remains a core participant,  
9 despite his earlier and well known reservations about  
10 the restriction order process which protected the cover  
11 names of a large number of officers. Most of what he  
12 knows is not caught by the restriction order process,  
13 since what he knows predates the Inquiry. When his time  
14 comes, he wants to give his evidence publicly and  
15 openly, and he invites the Chair to agree that this is  
16 what he should be able to do.

17           He was a whistleblower. Government guidance defines  
18 a whistleblower as follows:

19           "You're a whistleblower if you're a worker and you  
20 report certain types of wrongdoing. This will usually  
21 be something you've seen at work -- though not always.

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

25           "As a whistleblower, you're protected by law -- you

1           should not be treated unfairly or lose your job because  
2           you 'blow the whistle'.

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

6           But the reality is that whistleblowers always make  
7           unwelcome revelations. That is true across the public  
8           services. The doctor who revealed the problems of  
9           the Bristol Paediatric Heart Surgery practices was  
10          vilified and never worked in the NHS again. Police  
11          officers are office-holders, but they are still workers.  
12          Mr Francis made disclosures of wrongdoing in the public  
13          interest, and he is routinely and rightly described by  
14          the media as a whistleblower and has been so described  
15          by Counsel to the Inquiry in his opening earlier this  
16          week.

17          Whilst there are some employment law protections for  
18          whistleblowers, these have been shown to be largely  
19          illusory, and police officers like Mr Francis are in any  
20          event bound by the Official Secrets Act. There is  
21          currently no legal protection or other support --  
22          physical, financial or emotional -- available to those  
23          who disclose wrongdoing in the public interest after  
24          they have left a job, or indeed for those who are caught  
25          by the Official Secrets Act and/or if they disclose in

1 the public domain.

2 In a recent report, the Chief Executive Officer of  
3 Whistleblowers UK said:

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

20 Mr Francis is a whistleblower. He's not yet been  
21 produced for his disclosures, but neither has he been  
22 told that he will not be. He has never been officially  
23 recognised by the MPS as a whistleblower for his past  
24 public interest disclosures. The irreconcilable  
25 conflict between the Official Secrets Act and

1 the general acceptance that the whistleblowing of  
2 protected disclosures is in the public interest remains  
3 unresolved. Thus police officers and others are in  
4 effect required by law to maintain a public silence  
5 about their knowledge of wrongdoing even if that's  
6 affecting the public, and the police, as a public  
7 organisation, are therefore entitled to mark their own  
8 homework and hence decide if anything of past wrongdoing  
9 should be made public. The obvious conflicts of  
10 interest in such a process are clear. There are plenty  
11 of carpets in the MPS and they have been liberally used  
12 in the past to cover-up wrongdoing and it's an issue  
13 that we say this Inquiry will have to grapple with in  
14 due course.

15 Whilst the book, "Undercover -- The True Story of  
16 Britain's Secret Police" by Rob Evans and Paul Lewis,  
17 describes some of Mr Francis' time in the SDS and some  
18 of his deployments, his own detailed account has not yet  
19 been sought by the Inquiry. The Inquiry has chosen to  
20 work its way linearly through the chronology of events.  
21 This is despite the fact that his evidence is likely to  
22 be of general assistance to the Inquiry, whatever period  
23 it's examining. And, sadly, this is also despite his  
24 often-expressed need for closure which  
25 the witness-taking process would go some way towards

1           attaining.

2           Some five years in, he still awaits the formal  
3           request for a witness statement under Rule 9 of  
4           the Inquiry Rules, as well as his witness pack. He  
5           wants to speak formally through the process, but it does  
6           not wish to hear from him any time soon, and this is  
7           a source of real upset and concern to him. After all,  
8           it was his disclosures, his account to the Ellison  
9           review that triggered this Inquiry.

10          As is now known, the SDS operated for the majority  
11          of its existence without legislative legitimacy or  
12          judicial oversight. The intelligence gathered was  
13          sanitised so no prosecuting authority or a judge was  
14          aware of the role of undercover officers. And as  
15          Mr Francis revealed two decades later, a number of  
16          officers were arrested and prosecuted in their fake IDs.

17          Mr Francis has said publicly on numerous occasions:

18                 "I now think that no undercover officer should be  
19                 targeting political campaigners."

20          He is strongly of the view that such a draconian  
21          incursion into the lives of ordinary people in the UK  
22          expressing peaceable political opposition to the actions  
23          of the government of the day, or those of foreign  
24          governments, is wholly unjustified.

25          Mr Francis believes, as I said earlier, that

1           undercover policing can be a legitimate policing tool.  
2           He considers it essential to effectively combating  
3           serious organised crime and prescribed terrorist  
4           organisations. However, he considers that there is  
5           a level of serious criminality that must be reached  
6           before the state is justified in using the tactics of  
7           undercover police officers. Potential crimes must pose  
8           a serious and substantial threat to our society before  
9           undercover policing can ever be justified.

10           He recognised that what constitutes a serious and  
11           substantial threat to society will change according to  
12           the political and social landscape. Reading the SDS  
13           Annual Reports now, though, even through a 21st century  
14           lens, it beggars belief that the Women's Liberation  
15           Movement or the Croydon Libertarians could ever have  
16           been thought to pose a serious threat to society. There  
17           must be always objective evidence of such a threat.  
18           Additionally, and obviously, there must be a highly  
19           regulated governance system, with ultimate  
20           accountability residing with an independent judiciary.

21           Of course, as you have heard from the MPS,  
22           the systems are now in place and they are completely  
23           different to when Mr Francis was an undercover police  
24           officer, but that does not mean that the systems in  
25           place now are sufficient to prevent wrongdoing. He

1 feels that undercover police work continues to lack  
2 proper, detailed and rigorous scrutiny from a judge  
3 whose task is to ask whether the actions of the state  
4 are justifiable on a day-to-day basis. The role of  
5 the judge can only be to scrutinise the actions of  
6 the police on behalf of those who are being deceived, to  
7 be their voice in the system, to ensure that  
8 the state-sponsored deception is justified. It will  
9 often be justified where there is serious crime, but  
10 the system needs a high and continuous level of  
11 scrutiny.

12 This Inquiry is about what can go wrong when there  
13 is a lack of governance. Not only does it bring  
14 the police into disrepute, it can destroy human lives,  
15 both those of the surveillance targets and those of  
16 the officers asked to act in the line of duty.  
17 The system failed in numerous ways before and the job of  
18 the Inquiry is, so far as possible, that it does not  
19 fail in other ways in the future.

20 In closing, Mr Francis considers that any proper  
21 governance arrangements must at the very minimum:

22 (a) Recognise the impact of undercover policing on  
23 those persons who were not committing serious crimes,  
24 that were not serious and substantial threats to our  
25 society, and have an open system of offering

1 explanations to those who are adversely affected and  
2 the opportunity of those affected to seek compensation  
3 having been misled by state agents. This might, for  
4 example, include a statutory scheme for compensation of  
5 those innocently targeted.

6 (b) Provide for judicial oversight of ongoing  
7 undercover policing activity, both when planned, when  
8 being carried out and on review once completed.

9 (c) Provide a proper, structured mechanism for  
10 whistleblowing for both current and ex-employees so that  
11 there is a viable way to disclose malpractice without  
12 the threat of sanctions under the Official Secrets Act.

13 (d) Provide that support should be provided,  
14 crucially including psychiatric support, for both  
15 serving and former officers given that conditions, such  
16 as Post Traumatic Stress Disorder, are life-long  
17 psychiatric conditions with which other  
18 undercover officers have to live.

19 That's all Mr Francis wishes to say in opening, sir.  
20 He's grateful for the opportunity to say it and he looks  
21 forward to giving evidence in detail on his experiences  
22 in due course.

23 THE CHAIRMAN: Thank you, Mr Lock. He will have that  
24 opportunity. I apologise to him for the time it has  
25 taken before the Inquiry has been able to approach him

1 with as full a package of relevant documents as it can  
2 assemble. The task has not proven easy.

3 MR LOCK: I don't underestimate that, sir, and I'm sure  
4 Mr Francis will be extremely grateful for that candid  
5 apology.

6 THE CHAIRMAN: Thank you.

7 Mr McCullough, who I can see, is going to address us  
8 at 2.15 and the proceedings are now adjourned until that  
9 time.

10 MS PURSER: Thank you very much, everyone. We will take a  
11 break for lunch and we will be back at 2.15. Thank you.  
12 (12.47 pm)

13 (The short adjournment)

14 (2.15 pm)

15 MS PURSER: Good afternoon, everyone, and welcome to  
16 the afternoon session of the Day 3 opening statements of  
17 the Undercover Policing Inquiry.

18 As a reminder to everyone in the virtual hearing  
19 room, please turn off both your camera and microphone  
20 unless you are invited to speak by the Chairman.

21 I will now hand over to the Chairman,  
22 Sir John Mitting, to continue proceedings.  
23 Chairman.

24 THE CHAIRMAN: Mr McCullough, now is your opportunity to  
25 make an opening statement on behalf of the category M

1 core participants.

2 Opening statement by MR MCCULLOUGH

3 MR MCCULLOUGH: Good afternoon, sir.

4 As you know, my name is Angus McCullough, and  
5 together with Helen Law and Stefano Ruis, we represent  
6 the category M core participants.

7 We are most grateful to the Inquiry to have been  
8 allotted, at our request, an hour for this opening, but  
9 as I have recently indicated to the inquiry, I do not  
10 expect that we will fill that full hour. And I trust  
11 that news is not unwelcome. Certainly not as unwelcome  
12 as overrunning would be, I would anticipate.

13 In this opening statement we seek to give at least  
14 outline answers to the following questions: first, who  
15 are the women in category M and what were their common  
16 experiences?

17 Second, why are they so important to the Inquiry and  
18 how can the value of their contribution be maximised?

19 And, thirdly, briefly to consider what are they  
20 hoping for from this Inquiry and their involvement in  
21 it.

22 So, the category M participants were some of  
23 the wives, now the ex-wives, of undercover officers.  
24 They were the mothers of their children, the family they  
25 came home to. They were a vital part of the practical

1 operation, a way of trying to keep  
2 the undercover officers grounded, and of ensuring that  
3 they remembered which side they were on, and a tether to  
4 normal life.

5 We don't doubt that there are other wives or  
6 partners of undercover officers, officers whose conduct  
7 will be examined in this Inquiry, and potentially many  
8 others, but the three women we represent today are  
9 the only ones who are here as core participants to tell  
10 their stories.

11 Sir, it's worth highlighting at the outset that  
12 although, as it happens, the direct experiences of  
13 the individuals within category M fall within Tranche 3,  
14 the issues that their evidence raises and the same  
15 concerns and issues to explore seem bound to be  
16 similarly relevant to the earlier time periods in  
17 tranches 1 and 2.

18 Sir, the women, as wives of undercover officers,  
19 fulfilled their roles dutifully, both towards their  
20 husbands and the honourable causes they believed they  
21 were serving, namely the fight against crime, terror and  
22 violence, challenges of the highest public interest.  
23 These sacrifices came with a heavy price for their own  
24 lives and their families, and they believed they were  
25 making those sacrifices for all of us, for the public.

1           They have come forward to this Inquiry again with  
2 a sense of public duty, to help answer many of  
3 the questions that lie at the heart of this Inquiry's  
4 terms of reference. They can provide a unique insight  
5 both into the effect of the work of  
6 the undercover officers and those close to them, as well  
7 as into the involvement and conduct of those responsible  
8 for managing them. They come to this Inquiry willing to  
9 share that knowledge and that experience.

10           They're also hoping that the work of this Inquiry  
11 will provide answers. The inquiry will hear from many  
12 whose most intimate lives have been affected by  
13 the practices of undercover policing, heart-rending  
14 stories of betrayal and deceit. But there has been  
15 little focus on the harm done to the wives of  
16 undercover officers. Their sacrifices went way beyond  
17 those that they had willingly taken on, and have had  
18 a shattering impact on each of their lives, and that of  
19 their wider families, as they have come to learn  
20 something of the reality of their husbands' roles. This  
21 has cost each of them their marriage, and had a profound  
22 ongoing psychological impact. They hope that this will  
23 come to be recognised and that their voices are heard in  
24 this Inquiry.

25           So, sir, I turn to some common themes amongst their

1 experiences, and these are set out from paragraph 6 in  
2 our written opening statement.

3 Each of the women in category M has her own unique  
4 story to tell and consequences to describe, but there  
5 are common themes between them. And I would seek to  
6 highlight four features of these.

7 First, as I've already emphasised, each of these  
8 women were police wives. That was woven into their  
9 identity. At the outset, they saw themselves as part of  
10 the wider police service, investing in their husband's  
11 careers, and also seeing themselves as respectable  
12 members of the community.

13 When their husbands joined Special Branch, they felt  
14 the shared pride that came with such an achievement, as  
15 well as a sense of pride around what their husbands did  
16 in helping keep people safe and upholding the law.

17 When their husbands went undercover, they provided  
18 the support, unwaveringly. They willingly made all  
19 the sacrifices that went with that. They took on  
20 the burden of secrecy, unable to talk about the impact  
21 on them or their husbands. They lived in fear of  
22 reprisals, both at the time of deployment, and  
23 subsequently when the true nature of their husbands'  
24 activities became known, but they believed that their  
25 sacrifices were worth it for the cause. They did so

1 without, as they will describe, any proper support from  
2 the Metropolitan Police.

3         Years later, they found out that their marriages  
4 were based on lies, that their husbands' jobs -- of  
5 which they had been so proud -- had been vehicles for  
6 the worst kind of infidelity. They have been left to  
7 reconstruct their lives and those of their children,  
8 forever tainted by their connection with men who have  
9 behaved so appallingly. So what once brought them  
10 pride, now brings them shame and fear.

11         Second, each saw and experienced the significant and  
12 overwhelming impact that undercover deployments had on  
13 their husbands, and in turn on their families' lives.

14         From the personality changes that they witnessed  
15 their husbands undergo -- anger and distress from  
16 the pressure and no doubt, as it now appears,  
17 the deceit -- and the way in which those changes, bit by  
18 bit, eroded their marriages and distorted their family  
19 life.

20         The officer husband of one of the category M  
21 participants made an urgent demand that they and their  
22 young children must move immediately because of a risk  
23 that he had been identified by a person whose group he  
24 was infiltrating. This demand was reinforced by  
25 a personal visit to her home by Bob Lambert, who was by

1           then a senior officer tasked with the management  
2           of undercover officers in the SDS. Knowing what she now  
3           knows about the undercover officers' activities, she  
4           doubts the explanation she was given and believes that  
5           she was misled into making such a life changing move.  
6           She knows that this, and other significant family  
7           decisions, were made on the basis at least of  
8           half-truths and misinformation.

9           Third, they were all equally blindsided by  
10          the revolutions that have ultimately led to this  
11          Inquiry. None of them had any idea that in the name of  
12          policing, each of their husbands were having sexual  
13          relationships with other women. All were left shocked  
14          and devastated by the media coverage as it unfolded, and  
15          the media intrusion that accompanied it, which affected  
16          not only them but also their children and wider  
17          families.

18          Fourth, they were mothers of children born into  
19          relationships imbued with deceit. Some of their  
20          children were conceived or born during the currency of  
21          the very deployments with which this Inquiry is  
22          concerned.

23          Not only did they have to witness -- and help as  
24          best they could -- their children navigate relationships  
25          with fathers who were absent, angry or palpably altered

1 by their experience, sometimes being unable to reveal  
2 the truth to protect their children; but in the years  
3 that have followed since the deployments ended and  
4 the true nature of their fathers' conduct began to be  
5 revealed, they have had to help their children rechart  
6 the same relationships with entirely new and shocking  
7 knowledge, doing their level best to protect them at  
8 such a vulnerable time from the very public fallout and  
9 media attention. There was no support in the form of  
10 facts to help the children, or the women, to have a true  
11 understanding or certainty as to the actual situation.

12 So I turn, then, to the question, why are they so  
13 important to the inquiry.

14 The impact of their husbands' deployment on them and  
15 their families is only one aspect of the evidence that  
16 these women can give to the inquiry. They were in  
17 a unique position. They were both an integral part of  
18 the process and exploited by it. And it's those two  
19 features -- them being an integral part and exploited by  
20 it -- that puts them in, as I say, a unique and special  
21 position, in terms of the perspective of their evidence  
22 on this Inquiry.

23 They had a close-up view of the impact of undercover  
24 deployments on the undercover officers, and they saw  
25 the role the Metropolitan Police played -- and just as

1           importantly did not play -- in supporting the officers.

2           On occasion, they met senior Metropolitan Police  
3           Service officers in connection with their husbands'  
4           recruitment and work in the SDS. So each of them has  
5           direct evidence to give on what they were told and  
6           whether it was borne out by subsequent events.

7           Sir, the function of this opening is not to rehearse  
8           the evidence that they will give but to summarise five  
9           themes it will cover within the Inquiry's terms of  
10          reference. From their individual perspectives, they can  
11          give evidence to the Inquiry about matters that we've  
12          identified at paragraph 20 of the written opening, from  
13          letters (a) to (e).

14          At (a) we highlight the recruitment process to  
15          the SDS, including indications that the police  
16          specifically sought married men, so as to keep them  
17          grounded. Bob Lambert was a senior officer who told  
18          them this explicitly.

19          They will tell the Inquiry about:

20          The extent to which the MPS did or did not appear to  
21          give any thought to what that would mean for  
22          the officer's marriage or their children;

23          The lack of any apparent consideration of  
24          the collateral and life-long damage that the undercover  
25          work and the undercover relationships has now revealed

1 would cause;

2 The strong impression that the women had that they  
3 and their families were being vetted for their  
4 suitability in that supporting role, without any  
5 apparent reciprocal assessment of risk to them or their  
6 children, either from external parties, or from  
7 the officers themselves, and the enormous pressure their  
8 situation placed them under;

9 And the visits to their homes from senior officers  
10 and the encouragement to support their husbands to play  
11 their role, without any parallel commitment to providing  
12 adequate support.

13 (b). Their understanding of the type of work that  
14 their undercover officer husbands would be doing and the  
15 clear indication given to them that the groups to be  
16 targeted were serious and violent criminals or  
17 extremists, not protestors that posed no significant  
18 threat to the officers or their families. This aspect  
19 is particularly important given the enormous stress that  
20 the fear of reprisals caused for each of the women both  
21 during and after deployments. More broadly, it is  
22 significant in the context of the Inquiry's  
23 consideration of whether the Metropolitan Police was  
24 keen to encourage the impression externally that  
25 the targets were violent criminals and not

1 the protestors, campaigners or political groups that  
2 were in fact, as it now appears, being infiltrated.  
3 When the women found out the truth about the groups  
4 their husbands had been infiltrating, they were  
5 horrified, as this was at odds with the picture that had  
6 been painted to them.

7 (c). The practicalities of their husbands work and  
8 its impact on their families. The nights, days,  
9 weekends or weeks away, the work trips abroad -- that  
10 now look as if they were holidays with their  
11 unsuspecting partners or part of the extraction process  
12 at the end of a deployment. All this apparently done to  
13 maintain the lie of another life. But perhaps most of  
14 all, the isolation for them that came with it. Whilst  
15 their husbands had fellow officers, managers and  
16 supervisors to share their experiences with, these women  
17 had no one. They had never met each other, never even  
18 knew the others existed, until this Inquiry was set up.  
19 Such was the secrecy that there was no way for them of  
20 finding mutual support in friendships.

21 (d) is the lack of support -- practical, emotional  
22 or psychological -- that was available to the officers  
23 and their families, and the reality of its near total  
24 absence both during and after the deployments, even when  
25 it was expressly promised by or sought from the same

1 officers who had come into their homes and encouraged  
2 them in the first place. With one exception, that  
3 includes the many years that have passed since it was  
4 first publicly alleged that the undercover officers had  
5 been having sexual relationships with their targets,  
6 which for the wives was the first occasion on which they  
7 began to learn something of the true position. At no  
8 stage did the police approach them to warn them before,  
9 or to support them during, or to offer them help  
10 afterwards.

11 (e). They can give evidence as to the level of  
12 monitoring and supervision of officers, which at times  
13 for one officer appeared to one of the women to be near  
14 daily, undermining any suggestion that those more senior  
15 in the SDS did not know what was going on, on  
16 the ground.

17 Thus, sir, we submit that although the women in  
18 category M are small in number, the evidence that they  
19 can give is of the highest relevance to the central  
20 issues of this Inquiry.

21 For them to be able to maximise their value to  
22 the inquiry, as they wish and hope to do, and likewise  
23 maximise the quality of the evidence that they can give,  
24 it is important that the women are provided with  
25 the level of disclosure, disclosure which recognises

1 their role and their existing knowledge and experiences.  
2 So they will ask the Inquiry to trust them, trust them  
3 in that process, in the same way as the Metropolitan  
4 Police has trusted them over many years to keep their  
5 husbands' roles confidential. A trust that I should say  
6 each of them has scrupulously honoured throughout.

7 They, in turn, place their trust and confidence in  
8 the Inquiry that it will rigorously and transparently  
9 pursue answers to the questions before it. To that end,  
10 the officers' wives are determined to provide every  
11 cooperation and assistance that they can.

12 Finally, I turn to consider what the women in  
13 category M hope for from this Inquiry. They hope for  
14 three outcomes. First, they want some recognition,  
15 recognition of their existence and their roles, of  
16 the impact and damage on them and their children. They  
17 can see the apology from the Metropolitan Police, hard  
18 fought for, which has been received by some of the women  
19 who were targeted by undercover officers, an apology  
20 which was repeated by Mr Skelton in his opening  
21 statement on behalf of the Met yesterday. They cannot  
22 understand why they have not received an equivalent  
23 apology and why the Met has passed up this latest  
24 opportunity to acknowledge the wrongs that they too have  
25 suffered. They sacrificed so many aspects of their

1 lives for the police, and not once has anyone from  
2 the Met acknowledged, let alone apologised for, what has  
3 been done to them and their families.

4 They would like openness, transparency and answers  
5 to many of the questions that the Inquiry is posing.  
6 Applying the module issues to some of their own  
7 experiences, some of the key things they want to know  
8 are:

9 1. How were their ex-husbands selected for  
10 undercover work? How much of a role did the fact that  
11 they were married to these particular women play in  
12 this? Was the SDS in reality recruiting a package of  
13 husband with supportive and loyal wife? And was an  
14 emphasis put on family life that created a culture that  
15 encouraged the officers to have more children despite  
16 knowing that they were at the same time betraying their  
17 wives?

18 2. When the SDS was recruiting undercover officers,  
19 was there any assessment of the suitability of  
20 the family unit for this sort of work, or the impact it  
21 would have on them, or the risks and pressures that it  
22 would expose them to?

23 3. What explanations, assurances or undertakings  
24 were routinely given to families of undercover officers  
25 and were they true? Were these women lied to by

1 the senior SDS officers they met about the nature and  
2 role of their husbands' work?

3 4. What support was offered to  
4 the undercover officers? Were there any procedures  
5 the women weren't told about as to how they could raise  
6 concerns about the impact of the work on the officers,  
7 or their families, or was this just not thought about?  
8 Why, when they did raise concerns, were they not  
9 properly responded to?

10 5. Was there any training or support offered to  
11 other partners of undercover officers before or during  
12 deployments, and why did these officers' wives not get  
13 any training or support?

14 6. Who within the SDS knew about the sexual  
15 relationships between the undercover officers and their  
16 targets? Were those relationships encouraged or  
17 authorised? Why weren't the women told about  
18 the relationships at any stage before they were made  
19 public, despite the Met's awareness that that was about  
20 to happen?

21 And for the future, they hope for assurances that  
22 there is no place in policing for intimate relationships  
23 between an undercover officer and an unsuspecting  
24 target, that no other undercover officer partners or  
25 their families will be exploited, as these women have



1 the Chairman to continue proceedings.

2 Chairman.

3 THE CHAIRMAN: Thank you.

4 Mr Menon, you are now about, I think, to make an  
5 opening statement on behalf of core participant clients  
6 of Richard Parry and Jane Deighton. Your statement,  
7 I think, is going to be broken into two parts: the first  
8 part of which will be delivered this afternoon and  
9 the second tomorrow morning. If I'm correct, please  
10 pick your moment at which to stop.

11 Opening statement by MR MENON

12 MR MENON: Thank you, sir. Good afternoon.

13 Why has it taken 2,065 days for  
14 the Undercover Policing Inquiry to commence its  
15 substantive hearings having been established by Theresa  
16 May, then Home Secretary, as long ago as 12 March 2015?

17 Why such exorbitant delay when  
18 Lord Justice Pitchford, the original chairman  
19 of the Inquiry, stated in his opening remarks on  
20 28 July 2015 that he hoped to deliver his report to  
21 the Home Secretary within three years?

22 There was perhaps a little delay due to the change  
23 of inquiry chairman in 2017, when Lord Justice Pitchford  
24 sadly fell ill, passed away and had to be replaced by  
25 you, sir. There has certainly been a five-month delay

1 this year due to the COVID 19 pandemic and the ensuing  
2 lockdown.

3 However, neither of these reasons explains the total  
4 delay of more than five-and-a-half years. The main  
5 reason for that delay is clear.

6 Notwithstanding what was said on behalf of  
7 the Metropolitan Police Service in opening, the police  
8 have used every weapon in their arsenal and spared no  
9 expense to obfuscate, obstruct, undermine and delay an  
10 open, transparent and fearless public enquiry into  
11 undercover policing.

12 The police have deployed a simple  
13 strategy: the longer the delay, the better; the more  
14 kept secret, the better. Justice delayed is justice  
15 denied.

16 Hence the strategy of arguing that much of  
17 the Inquiry should be held behind closed doors to  
18 protect the identities of undercover officers and  
19 the techniques they used. Hence the strategy of making  
20 148 applications for restriction orders, principally for  
21 anonymity in respect of not only the real names of  
22 undercover officers, but often their cover names as  
23 well.

24 Hence the strategy of insisting that every document  
25 must be security-vetted and suitably redacted before it

1 can be disclosed to those spied on, namely the non-State  
2 core participants or their lawyers.

3 Meanwhile, some victims of police spying and former  
4 undercover police officers have died, and others are too  
5 ill or old to participate any longer.

6 Although much of the evidential basis for  
7 the restriction order applications made by the police  
8 have been withheld from the non-State core participants  
9 and their lawyers, there does not appear to be any  
10 evidential justification for the police asserting that  
11 a full and open inquiry, with real names and cover names  
12 disclosed, would expose any undercover officers or their  
13 families to the risk of physical injury, let alone death  
14 or inhuman and degrading treatment at the hands of  
15 a non-State core participant. The police have produced  
16 no evidence that any undercover officer whose real name  
17 or cover name is already in the public domain, and who  
18 was involved in spying on a non-State core participant,  
19 has suffered any physical injury result.

20 And as far as any reliance on the qualified right to  
21 respect for private and family life pursuant to Article  
22 8 of the European Convention on Human Rights is  
23 concerned, it is profoundly ironic that the very  
24 officers who infiltrated groups operating openly and  
25 lawfully, and who arbitrarily interfered in the private

1 and family lives of those they spied on, should now  
2 invoke Article 8 on behalf of themselves or their  
3 families. This adds insult to injury.

4 The police, from day one, have been deliberately  
5 trying to prevent the truth about undercover policing  
6 and the workings of the secret state from seeing  
7 the light of day. That is why the non-State  
8 core participants and their lawyers have repeatedly been  
9 raising concerns about the approach and tactics of  
10 the police, about the absence of equality of arms as  
11 between State and non-State core participants, about  
12 the endless secrecy, redaction and delay, about the 28  
13 generic grounds for restriction, about the unreasonable  
14 insistence on anonymity, about inadequate and late  
15 disclosure and about the mass shredding of documents.

16 It was the failure of the Inquiry to address many of  
17 these concerns and the overindulgence shown by  
18 the Inquiry to the police that led the non-State  
19 core participants and their lawyers to walk out of  
20 a preliminary hearing on 21 March 2018. Regrettably,  
21 there has been little improvement since then.

22 Yet the non-State core participants are still here,  
23 despite many doubting that the Inquiry will ever answer  
24 their questions, address their concerns or lead to  
25 change for the better. They remain determined to try

1 and do everything in their power to hold the police and  
2 the Inquiry to account, and ensure that the truth about  
3 undercover policing and the workings of the secret state  
4 are not covered up, as they largely were by  
5 Operation Herne, the 2014 investigation into the Special  
6 Demonstration Squad, by former Chief Constable  
7 Mick Creedon of Derbyshire Police.

8 The primary purpose of Operation Herne's four  
9 reports was to defend and restore public confidence in  
10 undercover policing, whilst acknowledging that there had  
11 been some misconduct, some collateral intrusion, some  
12 criminality and some lack of oversight by police  
13 managers. The reports maintain that such failings are  
14 historic, as neither the Special Demonstration Squad nor  
15 the National Public Order Intelligence Unit exist any  
16 longer.

17 The reports suggest that there is no evidence of any  
18 undercover officer acting as an agent provocateur and  
19 that at present, the amount of publicity received and  
20 the extent of the exposure of officers involved appear  
21 disproportionate to the allegations that have been  
22 forthcoming when compared to the extent of  
23 the undercover activity and the number of officers  
24 exposed publicly. Predictably, the reports deliberately  
25 seek to cover-up the role of the Security Service, MI5,

1 in using the Special Demonstration Squad to gather  
2 intelligence.

3 In short, the deficiencies in the Operation Herne  
4 reports are the inevitable consequence of asking police  
5 officers to investigate other police officers. Any  
6 attempt by the Inquiry to follow a similar path, given  
7 what we now know, would be a catastrophic mistake and  
8 contrary to the Inquiry's stated priority to discover  
9 the truth.

10 Consequently, sir, the choice is stark. Is  
11 the Inquiry going to blame the victims of undercover  
12 policing and provide the establishment with yet  
13 another get-out-of-jail-free card? Or is the Inquiry  
14 going to hold the State accountable for its unwarranted  
15 intrusion into people's lives, and for the many  
16 miscarriage of justice that it caused?

17 Is the Inquiry going to reduce the problem to a few  
18 isolated rogue officers and inadequate oversight of  
19 those officers? Or is the Inquiry going to acknowledge  
20 that undercover political policing since 1968 has been  
21 institutionally corrupt from top to bottom?

22 Is the Inquiry merely going to tinker around  
23 the edges, make the odd criticism and recommend the odd  
24 minor change, whilst leaving the edifice of the secret  
25 state largely untouched and unscathed? Or is

1 the Inquiry going to make bold findings and  
2 recommendations that lead to genuine transformational  
3 change for the better and prevent future wrongdoing?

4 I repeat: the choice is stark.

5 Having made those introductory remarks, sir, I turn  
6 next to the non-State core participants.

7 There are 219 non-State individuals and  
8 organisations who have been granted core participant  
9 status on the basis that they are likely to have  
10 significantly been affected by undercover policing, or  
11 significantly impacted by the work of the Inquiry.

12 They are only the tip of the iceberg. There are  
13 hundreds, if not thousands, of other individuals and  
14 organisations who undoubtedly meet the criteria. Some  
15 are unable to participate for reasons of ill-health or  
16 old age. Some have died. Some are aware that they were  
17 targeted by undercover officers, or unaware that this  
18 Inquiry is even taking place. Some have been refused  
19 core participant status or have chosen not to apply.

20 Special thanks are due to the Undercover Research  
21 Group who have been monitoring undercover political  
22 policing for years, and who have produced a list of all  
23 political groups and other campaigns that are known to  
24 have been spied on by undercover police officers since  
25 1968. Neither the police nor the Inquiry has produced

1 such a list.

2 I represent 12 of the non-State core participants.  
3 Together with Richard Parry of Saunders solicitors and  
4 Nick Stanage of counsel, I represent Tariq Ali, Norman  
5 Blair, Piers Corbyn, Ernie Tate, Myk Zeitlin, the  
6 Advisory Service for Squatters and the Friends of  
7 Freedom Press. And together with Jane Deighton of  
8 Deighton Pierce Glynn solicitors and Una Morris of  
9 counsel, I represent Audrey Adams, Nathan Adams, Richard  
10 Adams, Duwayne Brooks OBE and Ken Livingstone.

11 What about the larger groups, sir? Who are the 219  
12 non-State core participants, and what do they have in  
13 common?

14 Although there is undoubtedly wide diversity among  
15 the non-State core participants, the vast majority have  
16 been granted core participant status by the Inquiry  
17 because they were spied on as a result of their direct,  
18 indirect or perceived connection to political or social  
19 justice campaigning activity, be it against war, racism,  
20 inequality, police wrongdoing, animal cruelty,  
21 the destruction of the environment, the abuse of  
22 corporate power or the exploitation of workers. Many  
23 but by no means all the individuals spied on were  
24 activists. Others were simply victimised because they  
25 demanded justice or challenged a false police narrative,

1 or because of institutional racism and sexism in  
2 the police.

3 There are a few notable exceptions. There are, on  
4 my calculation, 13 non-State core participants who were  
5 either not spied on as such, or were spied on for  
6 reasons unconnected, even indirectly, with any political  
7 or campaigning activity. Whilst they, too, have been  
8 adversely and significantly affected by undercover  
9 policing, slightly different considerations apply in  
10 their cases. They are the nine family members of  
11 deceased children whose identities were stolen and used  
12 by undercover police officers, the three ex-wives of  
13 undercover police officers, and a former solicitor who  
14 was targeted for reasons unconnected with any political  
15 or campaigning activity.

16 As all those I represent are amongst the 206  
17 non-State core participants who were spied on because of  
18 their connection to political or campaigning activities  
19 or because of police racism, I want to start now by  
20 making 10 general points. Ruth Brander and other  
21 non-State core participant counsel will probably have  
22 more to say about some of these matters in their opening  
23 statements.

24 My first general point is incompatibility.

25 Sir, undercover policing as established by

1 Special Branch in 1968 is fundamentally incompatible  
2 with the norms and values of a truly democratic society.  
3 In a democracy, neither the police nor the security  
4 services should be spying on individuals or  
5 organisations and branding them as subversive simply  
6 because of political beliefs that are deemed  
7 anti-establishment or because of lawful activity that  
8 challenges the might of the State, or because of racism.

9 The right to protest is an essential element of  
10 a healthy democracy. We say the police and  
11 the security services should not operate beyond  
12 the reach of democratic institutions and outside  
13 the rule of law, acting as a political force serving  
14 vested interests. Rather, the police and  
15 security services should adhere to the same laws and  
16 rules as the rest of us.

17 My second general point is focus.

18 Whilst the key purpose of the Inquiry is broad,  
19 namely to investigate the role and contribution made by  
20 undercover policing towards the prevention and detection  
21 of crime, the Inquiry was in fact established because of  
22 a string of high profile scandals about secret political  
23 policing, scandals that only came to light because of  
24 the incredible courage and determination of those  
25 targeted and their supporters, particularly those women

1 activists who were unwittingly deceived into intimate  
2 relationships with undercover male officers, and  
3 Duwayne Brooks, Doreen Lawrence and Neville Lawrence,  
4 who for years have been campaigning against racism and  
5 corruption in the police.

6 It is also important to recognise Rob Evans and Paul  
7 Lewis for their must-read book "Undercover: The True  
8 Story of Britain's Secret Police", which was published  
9 in 2013 and tells the compelling story of over 40 years  
10 of state espionage.

11 In short, the Inquiry was established because  
12 the State could no longer turn a blind eye and was  
13 forced to investigate what had become a national  
14 embarrassment. Consequently, secret political policing  
15 must remain the focus of the inquiry. In any event, it  
16 would be surprising if any non-State core participant  
17 were to argue that undercover policing cannot be  
18 a necessary and at times invaluable law enforcement tool  
19 in the fight against serious and organised crime. After  
20 all, the non-State core participants targeted because of  
21 their connection to political or campaigning activity or  
22 because of racism were not engaged in serious and  
23 organised crime.

24 My third general point is scope.

25 As far as scope is concerned, the Inquiry is limited

1 in three significant respects. Firstly, of the Inquiry  
2 is investigating operations involving the use of  
3 undercover officers as covert human intelligence  
4 sources, and occasionally the use of other officers as  
5 spies. In other words, it is not investigating the use  
6 of electronic surveillance techniques, such as telephone  
7 tapping.

8 Secondly, the Inquiry is only investigating  
9 undercover operations conducted by police forces in  
10 England and Wales and not those conducted by police  
11 forces in Scotland and Northern Ireland.

12 Thirdly, the Inquiry is only investigating  
13 undercover police operations and not undercover  
14 operations conducted by MI5, or any other domestic  
15 intelligence service.

16 As far as MI5 is concerned, sir, the Inquiry will  
17 only consider interactions between the police and MI5 as  
18 was revealed by the documents. Consequently, any  
19 conclusions the Inquiry reaches in due course about  
20 secret political policing will inevitably be partial and  
21 incomplete. The fact that MI5 is largely escaping  
22 scrutiny is particularly worrying given it is common  
23 knowledge amongst academics and journalists that most,  
24 if not all, information gathered by Special Branch is  
25 shared with MI5 whilst the reverse is not the case.

1 The role of MI5, an organisation that operates almost  
2 totally undercover, notwithstanding its website that  
3 seeks to present the organisation as open and  
4 transparent, must be examined if the Inquiry is to reach  
5 meaningful conclusions about secret political policing  
6 in England and Wales.

7 My fourth general point is disclosure.

8 As far as disclosure is concerned, the picture is  
9 shocking, I'm afraid. The vast majority of non-State  
10 core participants, over 90% of them, and their lawyers  
11 have yet to receive any disclosure from the Inquiry  
12 after more than five-and-a-half years, other than  
13 the heavily-redacted Special Demonstration Squad  
14 Tradecraft Manual, which was disclosed in 2018, and  
15 a few Special Demonstration Squad Annual Reports, which  
16 were disclosed a few weeks ago on 15 October. They  
17 remain as much in the dark today as they were in 2015.  
18 Why are they still being denied disclosure?

19 What about the handful of non-State  
20 core participants, including three of those whom  
21 I represent, Tariq Ali, Ernie Tate and Piers Corbyn, who  
22 received some disclosure in December 2019 when asked by  
23 the Inquiry to provide witness statements pursuant to  
24 Rule 9 of the Inquiries Rules 2006? Specifically, they  
25 were given civilian witness packs containing extracts

1 from intelligence reports. However, they were not given  
2 a single witness statement by a single  
3 undercover officer or a single photograph to help them  
4 identify who had spied on them, before being asked to  
5 answer the Inquiry's detailed questions and produce  
6 their witness statements, largely about matters that  
7 occurred some 50 years ago. This made it all but  
8 impossible for them to provide any useful evidence about  
9 the activities of the undercover officers who spied on  
10 them, or about the effect of undercover policing on  
11 their lives.

12 They were then given access to the Tranche 1,  
13 Phase 1 hearing bundle just a few weeks ago on  
14 30 September, a bundle containing 1,094 documents  
15 totalling 5,471 pages. Given the bulk of this material  
16 was originally served by the police on the Inquiry,  
17 the police have had this material for however long it  
18 has existed, in other words decades, and the Inquiry has  
19 had it for years. But the select few non-State  
20 core participants and their lawyers given this material,  
21 which includes my solicitors, my juniors and me, have  
22 had just a few weeks to read the material, analyse it,  
23 cross-reference it, advise our clients, take  
24 instructions, decide what to highlight in this opening  
25 statement and identify what questions we want asked of

1 those witnesses due to give evidence in November.

2 It is unthinkable that this would have been  
3 countenanced in any other properly conducted  
4 proceedings. How is this fair? How is this due  
5 process? How is this equality of arms? How can this  
6 inspire any confidence that the Inquiry is taking  
7 the interests of the non-State core participants  
8 seriously?

9 But what is even more worrying than the lateness of  
10 the disclosure is the woeful inadequacy of it.

11 According to its website, the Inquiry has received  
12 in excess of 1 million pages of documents from  
13 the Metropolitan Police alone. Plus it has received  
14 further documents from other State bodies, including  
15 MI5. So far, less than 6,000 pages have been deemed  
16 relevant and disclosable, and then only to  
17 the above-mentioned select few.

18 Why is so little being disclosed? What is being  
19 withheld? How are the non-State core participants and  
20 their lawyers supposed to participate effectively in  
21 the Inquiry without proper and timely disclosure? To  
22 what extent is the Inquiry going to rely on undisclosed  
23 closed material in reaching conclusions about undercover  
24 policing? How many closed hearings are there going to  
25 be? Why in fact are any closed hearings taking place?

1           These are all urgent questions that must be  
2 answered. At the very least, sir, the Inquiry must  
3 provide the non-State core participants with  
4 comprehensive schedules of all sensitive and  
5 non-sensitive documents in their possession, much like  
6 unused material schedules in a criminal case.

7           Additionally, when the Inquiry uploads the documents  
8 that have been disclosed so far onto its website,  
9 the extent of the redactions, many in large black  
10 blocks, will become apparent to all. We have no idea  
11 whether these redactions have been made by the police,  
12 MI5 or the Inquiry. We have no idea, in respect of most  
13 of the redactions, whether they have been made on  
14 security grounds, or privacy grounds, or other grounds.

15           Just to give one example of an inexplicable  
16 redaction, the names of some of the groups that were  
17 spied on have been redacted from the Special  
18 Demonstration Squad Annual Reports recently served.  
19 Consequently, the list of spied-on groups that was read  
20 out by Counsel to the Inquiry during his opening  
21 statement on Monday was incomplete. Why have these  
22 redactions been made? What is the public interest in  
23 hiding who was spied on by the police in the late 1960s  
24 and early 1970s?

25           My fifth general point, sir, is shredding.

1           The non-State core participants have been concerned  
2           from the outset that the police would destroy  
3           incriminating documents. That fear was realised when  
4           the Independent Office for Police Conduct confirmed  
5           earlier this year that a secretive Scotland Yard  
6           intelligence unit shredded a substantial quantity of  
7           documents in 2014 despite an instruction the documents  
8           had to be preserved.

9           This was soon after Theresa May first announced in  
10          March 2014 her intention to establish an inquiry into  
11          undercover policing and before she formally established  
12          that inquiry a year later. The Inquiry must, with  
13          respect, investigate the destruction of documents by  
14          the police, notwithstanding the assertion by counsel for  
15          the Designated Lawyer Group that there has been no mass  
16          shredding of Special Demonstration Squad files or  
17          materials as part of a cover-up.

18          The destruction of documents, whether SDS documents,  
19          National Public Order Intelligence Unit documents, or  
20          another undercover unit's documents, is squarely within  
21          the Inquiry's terms of reference. Such flagrant police  
22          misconduct and possibly even criminality cannot be  
23          ignored.

24                 My sixth general point, sir, is racism.

25                 The police treatment of Black people in Britain has

1 always -- and I stress always -- been blighted by an  
2 entrenched racism that permeates the culture, ranks and  
3 structures of the police. When Sir William Macpherson  
4 concluded in 1999 that the investigation into the murder  
5 of Stephen Lawrence and the assault on Duwayne Brooks  
6 had been marred by a combination of professional  
7 incompetence, institutional racism and a failure of  
8 leadership, he was not telling the Black community  
9 anything that they did not already know and had not been  
10 saying themselves for decades. What was groundbreaking  
11 is that it was the first time that the British state had  
12 acknowledged the insidious role that systemic racism had  
13 played within a major public institution.

14 A significant number of the non-State  
15 core participants, both individuals and organisations,  
16 are Black. Consequently, an understanding of the nature  
17 and extent of police racism and the many ways that it  
18 impacts on the lives of Black people is imperative.

19 I'm afraid, sir, that there is concern amongst those  
20 who I represent that you sit alone during the evidence,  
21 refusing to support calls for a diverse panel to assist  
22 you during your determination of the facts, as Sir  
23 William Macpherson had. There is concern that the role  
24 of racism in undercover policing will remain  
25 misunderstood and unexplored. This is not simply

1 because these issues are outside your knowledge and  
2 experience. It is also because you told several  
3 non-State core participants and their lawyers at  
4 a meeting in September 2018 that the Macpherson  
5 definition of racism is controversial. Specifically,  
6 you expressed the view that when you look at racism, you  
7 primarily need to look at the motivation of the alleged  
8 perpetrator and not the perception of the alleged  
9 victim. This is disturbing to many. Indeed, it is  
10 contrary to how the police themselves now investigate  
11 racist incidents post-Macpherson.

12 It is essential that the Inquiry does not reverse  
13 whatever progress has been made over the years as  
14 a result of the courage and determination of Black  
15 people to stand up for their rights and fight against  
16 racism. We must continue the struggle to eliminate  
17 racism from our society. The Inquiry needs to play its  
18 part.

19 My seventh general point, sir, is burden.

20 From start to finish, the burden during the Inquiry  
21 should remain on the police to justify that  
22 the non-State core participants were legitimately  
23 targeted and that the methods used were lawful and  
24 proportionate. At no stage should the burden shift onto  
25 the non-State core participants, requiring them to

1 defend their actions or establish that they were wrongly  
2 targeted. Consequently, many of the Rule 9 questions  
3 asked of Tariq Ali, Ernie Tate and Piers Corbyn by  
4 the Inquiry are misconceived, to put it politely.

5 As Tariq Ali observes at paragraph 3 of his inquiry  
6 witness statement -- and I quote:

7 "Having now considered the very precisely targeted  
8 Rule 9 questions asked of me by the Inquiry, my strong  
9 feeling is that this Inquiry is likely to be a  
10 monumental waste of time. This is because the direction  
11 of travel is clear from the questions -- to dissect the  
12 politics of the victims of police spying, and therefore  
13 to turn the spotlight away from the actions of the  
14 police. This is the politics of 'blame the victim'. And  
15 no doubt I and others will be declared guilty. Even 50  
16 years on, the State is fighting exactly the same battle  
17 it was engaged in in 1968. This comes as not the least  
18 surprise."

19 Sir, with respect, this has got to stop. There must  
20 be a sea change of approach in respect of the Rule 9  
21 questions asked of non-State core participants in future  
22 tranches and phases; or the Inquiry is at serious risk  
23 of losing the continued goodwill of non-State  
24 core participants.

25 My eighth point is responsibility.

1           Because the Inquiry decided against requiring  
2           the State core participants to provide position  
3           statements in advance that set out their stall,  
4           the non-State core participants remained largely in  
5           the dark, until the written opening statements were  
6           received last week, as to whether any core participant  
7           other than Peter Francis would take responsibility for  
8           undercover police misconduct and show any contrition.

9           Although there is some recognition of wrongdoing in  
10          some of the written and oral opening statements of  
11          the State core participants, particularly in respect of  
12          the despicable practices of deceiving women activists  
13          into intimate relationships and stealing the identities  
14          of deceased children, there is also a wholehearted  
15          defence of undercover policing as an essential tactic in  
16          the fight against serious and organised crime.

17          But I repeat, this is a red herring. The targeting  
18          of the non-State core participants because of their  
19          connection to political or campaigning activity, or  
20          because of police racism, was never about the fight  
21          against serious and organised crime, despite being  
22          spuriously justified and funded in the name of  
23          preserving public order and/or countering subversion.

24                 My ninth general point, sir, is participation.

25                 We are in the middle of a pandemic. Infection rates

1 are rising, and from tomorrow we are back in lockdown.  
2 The Inquiry has decided to hold virtual hearings  
3 conducted remotely. Our oral opening statements are  
4 being live-streamed. They can be watched online by  
5 the non-State core participants and the general public.  
6 But the first phase of the evidence due to start next  
7 week is not being streamed, with the possible exception  
8 of certain civilian witnesses, other than to your home,  
9 sir, and to the Amba Hotel in Central London, where  
10 those attending can see and listen to the evidence in  
11 real-time.

12 The Inquiry's approach is different from  
13 the approach in other inquiries, including the ongoing  
14 Grenfell Tower Inquiry and the ongoing Independent  
15 Inquiry Into Child Sexual Abuse, IICSA, where there is  
16 streaming of all open hearings to the core participants  
17 and the general public. Even the closed hearings in  
18 IICSA are being streamed to the core participants, their  
19 lawyers and accredited journalists via a secure line.

20 The Inquiry's approach means that those who cannot  
21 attend the hearing venue will not be able to see or hear  
22 the evidence. Their access to the evidence will be  
23 restricted to an invitation to read a transcript of it.  
24 This is inadequate. Reading is not equivalent to, or  
25 even close to being equivalent to, the experience of

1           seeing and hearing a witness give evidence, either in  
2           person or on screen. It is also impractical to expect  
3           non-State core participants to read five to six hours of  
4           transcript each sitting day.

5           Justice requires those spied on to be able to see  
6           and hear those who spied on them. The Inquiry's  
7           approach amounts to a denial of justice and a denial of  
8           access to justice to the non-State core participants who  
9           are unable to attend the hearing venue. It also  
10          inhibits their effective participation in the inquiry.

11          So, we are left with an inquiry into undercover  
12          policing where some of the proceedings are shrouded in  
13          secrecy and the police are being kept hidden from most  
14          of those they spied on and most of the general public.

15          Why is this happening? The Inquiry says that  
16          streaming would be incompatible with the protection of  
17          the rights and interests of witnesses and would infringe  
18          restriction orders already made. But this argument,  
19          with respect, is untenable for a number of reasons.

20          Firstly, if there is any risk that a witness might  
21          infringe a restriction order, there can be a short time  
22          delay in the streaming, so that the offending words can  
23          be edited out. This is not difficult to do and is being  
24          done in other inquiries.

25          Secondly, if, quite fantastically, it is being

1 suggested that a non-State core participant might copy  
2 a clip of footage or a section of audio and disseminate  
3 it, this is offensive. It ignores that every  
4 restriction order includes stringent enforcement powers,  
5 and that anyone attending the hearing venue could also  
6 make a recording and disseminate it.

7 Thirdly, given the profound impact that the pandemic  
8 will have on the ability of non-State core participants  
9 to attend the hearing venue, the Inquiry should revisit  
10 the restriction orders granted on privacy grounds to the  
11 eight retired undercover officers due to give oral  
12 evidence in November, and reconsider whether they remain  
13 justifiable as a matter of law or should be lifted.

14 So which non-State core participants are being  
15 excluded?

16 Firstly, there are those who cannot travel to  
17 the hearing venue because they or someone with whom they  
18 live are at risk of becoming sick or even dying of  
19 COVID-19. Black people, disabled people and those over  
20 the age of 60 are all at greater risk of this than  
21 others, and are therefore particularly disadvantaged by  
22 the lack of live streaming. The Equality Act 2010  
23 exists to protect people from suffering such  
24 disadvantage because of their race, disability or age.  
25 The Inquiry made these arrangements without properly

1           considering its duties under the legislation,  
2           arrangements that are plainly discriminatory.

3           Secondly, there are those who cannot travel to  
4           the hearing venue for a host of other reasons, to do  
5           with safety, living far from London, the risk of losing  
6           a job, or other commitments.

7           Sir, even at this late stage, you can change  
8           the arrangements and allow those non-State  
9           core participants who cannot attend the hearing venue to  
10          see and hear the evidence on their computers, tablets or  
11          telephones via a secure link. We know, sir, that you  
12          recognise the risk of travelling to the hearing venue.  
13          You have decided to chair the inquiry from your home  
14          with the benefit of live streaming. If you feel it is  
15          best not to travel, how is it just to expect others to  
16          do so?

17          Finally, my tenth general point, sir: objectives.

18          What do the non-State core participants who were  
19          spied on because of their connection to political or  
20          campaigning activity or because of police racism want  
21          from the Inquiry?

22          Given the multiplicity of ways that the non-State  
23          core participants were targeted by undercover officers  
24          and their differing experiences, there will undoubtedly  
25          be a wide range of objectives amongst the non-State

1 core participants. However, those whom I represent, and  
2 perhaps many others, too, have the following three  
3 general objectives in common.

4 Firstly, those whom I represent want answers chapter  
5 and verse, not just scraps of intelligence. They want  
6 full disclosure of all the documents created by  
7 the undercover officers and their managers. They want  
8 full disclosure of all the files kept on them by  
9 Special Branch and MI5. They want similar access to  
10 that gained by the victims of spying by the STASI in  
11 the former East Germany, who have been able to see all  
12 the documents held on them since the STASI was disbanded  
13 in 1990.

14 Specifically, they want to know who spied on them.  
15 But they want more than just the cover names of  
16 the spies. They want to know when, where, why and how.  
17 They want to know the nature and extent of the spying.  
18 They want to know who authorised the spying and who  
19 exactly was in the know. They want to know what  
20 information was gathered and what use was made of  
21 the information. They want to know with whom  
22 the information was shared and to what extent  
23 the government was complicit. And some want to see  
24 those who spied on them, hear them and look them in  
25 the eye with the full knowledge of their true identities

1 as undercover officers.

2 MI5 has publicly stated that it holds files on  
3 hundreds of thousands of people. Special Branch has its  
4 own files. If the Inquiry has these files, why are  
5 the non-State core participants being denied access to  
6 their own files, even in redacted form? If the Inquiry  
7 does not have these files, how can the Inquiry hope to  
8 get to the truth when obviously relevant material is  
9 being withheld from it?

10 Secondly, those whom I represent want  
11 accountability. They want the Inquiry to declare that  
12 they were wrongly spied on and reach robust conclusions  
13 of fact from which others may infer civil or criminal  
14 liability.

15 Thirdly, those whom I represent want change. And by  
16 change I mean change for the better, not change that in  
17 fact strengthens the hand of the secret state. They  
18 want the Inquiry to recommend that all police units and  
19 squads spying on those engaging in ordinary political  
20 and campaigning activity are immediately disbanded and  
21 outlawed, and that concrete steps are taken to ensure  
22 that such units and squads are not resurrected under  
23 a different guise in the future. Nothing less will do.

24 Sir, before I turn now to the activities of  
25 the Special Demonstration Squad, it is important to note

1 that undercover political policing and the secret state  
2 did not suddenly come into existence in 1968. The State  
3 has been secretly spying on the people for centuries,  
4 long before the formation of the Metropolitan Police in  
5 1829. Recently, Special Branch, established by  
6 Scotland Yard in 1883, has been actively engaged in  
7 the covert surveillance of police activists. Whilst its  
8 initial focus was on the activities of Irish  
9 nationalists in England, it soon began targeting others:  
10 immigrant groups, anarchists, suffragettes, socialists,  
11 communists, trade unionists, pacifists,  
12 anti-colonialists, and the list goes on. Anyone  
13 perceived by the State as having militant or subversive  
14 ideas was fair game, thus belying the pretence that we  
15 do not have any political police in Britain.

16 The Cambridge English dictionary defines "secret  
17 police" as:

18 "A police force that secretly collects information  
19 about people who oppose the government and tries to make  
20 such opposition weaker, often using illegal and violent  
21 methods."

22 This is what Special Branch has been doing for  
23 137 years.

24 As Tony Bunyan observes in his authoritative 1973  
25 book, "The History and Practice of the Political Police

1 in Britain", the contention that we live in a society  
2 where, increasingly, it is ideas which are policed is  
3 still one many people are not prepared to recognise, yet  
4 this is precisely the premise of the Special Branch.

5 What did dramatically change in 1968, sir, was  
6 the creation by Special Branch of a new squad of  
7 undercover officers who would transform themselves into  
8 pretend political activists and live their fake  
9 identities for months, later for years. How did this  
10 initiative, the brainchild of Detective Chief Inspector  
11 Conrad Dixon come about?

12 1968 was a year of protest around the world,  
13 including Britain. There was growing alarm within  
14 the Labour government of Harold Wilson at the burgeoning  
15 protest movement in Britain, particularly over  
16 the Vietnam War. Although Wilson had refused to send  
17 British troops to Vietnam, he had given qualified  
18 support to the American war effort, thereby helping  
19 internationally to legitimise American policy in  
20 Vietnam. There were many, both inside and outside  
21 the Labour Party, who were strongly opposed to Wilson's  
22 complicity.

23 When Detective Chief Inspector Dixon proposed his  
24 initiative as a means of gathering more reliable  
25 intelligence about upcoming anti-war protests,

1 the Labour government was so supportive about -- excuse  
2 me. When Detective Chief Inspector Dixon proposed his  
3 initiative as a means of gathering more reliable  
4 intelligence about upcoming anti-war protests,  
5 the Labour government was so supportive that it  
6 initially agreed to fund DCI Dixon's new squad directly  
7 from the Treasury, although subsequent funding came from  
8 the Home Office.

9 The new squad started life as  
10 the Special Operations Squad, SOS, before being renamed  
11 the Special Demonstration Squad, SDS, in 1972. For  
12 the remainder of this opening statement, I'm going to  
13 refer to this new squad as "the SDS".

14 Insofar, sir, as the State core participants have  
15 addressed to you on the period between 1968 and 1982  
16 being marked by an upsurge in unrest and disorder in  
17 Britain, we reject the suggestion, as far as those  
18 targeted by the SDS are concerned, that  
19 the preponderance of the violence was inflicted by  
20 protestors on the police as opposed to vice versa.  
21 Let's not forget that the two fatalities during this  
22 period, namely Kevin Gateley and Blair Peach, were both  
23 protestors who were killed by the police. It is  
24 important, in our submission, that history is not  
25 distorted even if a resolution of this matter is beyond

1 the remit of the Inquiry.

2 Nonetheless, it is accepted that the SDS was  
3 a departure in British policing. The deployment of  
4 officers to infiltrate political groups on a long-term  
5 basis had not been done before, with one possible  
6 exception in the 1920s. Previously Special Branch had  
7 gathered intelligence and carried out surveillance from  
8 the outside. The reason for this was, at least in part,  
9 to avoid the charge of behaving like agent provocateurs,  
10 something traditionally associated with  
11 the secret police in European states prior to the Second  
12 World War. We are unlikely ever to discover to what  
13 extent undercover officers entrapped the innocent and  
14 caused miscarriages of justice.

15 There was also a marked operational difference from  
16 the outset between the SDS undercover officers, who  
17 infiltrated political groups, and more traditional  
18 undercover officers, who infiltrated criminal gangs.  
19 SDS officers gathered inside information about  
20 the political groups they were spying on, and  
21 the information was fed back to their handlers and then  
22 on to MI5. They were not tasked to gather evidence for  
23 use at trial. Only exceptionally were they called as  
24 prosecution witnesses in court, Helen Crampton of SDS  
25 being one example. They were deep undercover.

1           Consequently, their methods and tactics were able to  
2           escape legal scrutiny for decades.

3           By contrast, officers who infiltrated criminal gangs  
4           were generally involved in much shorter operations.  
5           They did gather intelligence and frequently were called  
6           as prosecution witnesses in court. In other words,  
7           the primary objective of the SDS was never to prevent or  
8           detect crime, or engage in genuine law enforcement.  
9           The primary objective of the SDS was always to spy on  
10          those perceived in one way or another to be political  
11          opponents of the State or the status quo.

12          The SDS followed strict lines of command. It had  
13          more than simply a close working relationship with MI5,  
14          it was subordinate to MI5. Most, if not all, its  
15          reports were copied to Box 500, shorthand for MI5, its  
16          operational parameters were known and sanctioned by  
17          the Home Office, there was political control, and both  
18          Wilson and the Home Secretary James Callaghan must have  
19          known of the squad's initial formation.

20          The SDS was never politically neutral, as was  
21          wrongly asserted by counsel for the Designated Lawyer  
22          Group of 113 undercover officers in his opening  
23          statement. The SDS had a clear political orientation on  
24          the right of the political spectrum. It represented  
25          the hard end of the state apparatus, naturally

1 conservative in culture, politics and outlook, and its  
2 officers were politically vetted by Special Branch so to  
3 be. The targets of the SDS were initially all on  
4 the left of the political spectrum and were routinely  
5 labelled as domestic extremists. Hundreds of groups  
6 were spied on. This was secret, anti-democratic  
7 political policing. Only later, in the mid-to-late  
8 1970s, did some far right and fascist organisations  
9 apparently begin to attract police attention, but this  
10 was very much an afterthought.

11 What is frightening, when one reads the disclosure  
12 recently provided by the Inquiry about the early  
13 activities of the SDS, is the fact that nobody in  
14 policing, or in government, seemed to have the slightest  
15 concern about the legality or the morality of what  
16 police spies were doing. There was no proper risk  
17 assessment, or any risk assessment for that matter, of  
18 whether the covert methods being used were in accordance  
19 with the law, or necessary in a democratic society, or  
20 in pursuit of a legitimate aim, or proportionate or  
21 otherwise human-rights compatible. There were no  
22 safeguards to guard against the risk of abuse of  
23 discretionary power. It was all sanctioned with a nod  
24 and a wink.

25 It did not matter that those being spied on were

1           neither criminals nor even tangentially implicated in  
2           criminal activity. That was irrelevant as far as  
3           the police and the government were concerned. In  
4           the name of law and order, or national security, or  
5           defence of the realm, the SDS was given free rein to  
6           engage in intrusive espionage, regardless of  
7           the consequences for those targeted and regardless of  
8           the consequences for our democratic norms and values.

9           It is perverse that today of all days, on the 70th  
10          anniversary of the signing of the European Convention on  
11          Human Rights, counsel for the Designated Lawyer Group  
12          has warned you, sir, of the dangers of what he  
13          calls "hindsight bias" and "judging 20th century actions  
14          by 21st century standards", as if British people in  
15          the 1960s, 70s, 80s and 90s did not care about privacy,  
16          or the right to be left alone by the state, or other  
17          fundamental rights and freedoms.

18          It is worth remembering what Peter Wright, a former  
19          MI5 officer, said in his 1987 bestseller "Spycatcher":

20          "For five years we bugged and burgled our way across  
21          London at the state's behest while pompous bowler-hatted  
22          civil servants in Whitehall pretended to look the other  
23          way."

24          Sir, the Inquiry might be tempted, looking back at  
25          the early decades of the SDS, to conclude, as the State

1 core participants invite you to do, that the lack of  
2 oversight and regulation is no longer a problem. After  
3 all, we now have statutes like the Human Rights Act  
4 1998, the Regulation of Investigatory Powers Act 2000  
5 and the Investigatory Powers Act 2016. Since 2000 we've  
6 had the Investigatory Powers Tribunal, a judicial body  
7 currently headed by a serving Court of Appeal judge,  
8 which operates independently of government to provide  
9 a right of redress to anyone who believes they have been  
10 a victim of unlawful action by a public authority using  
11 covert investigative techniques. And, since 2017, we've  
12 had the Investigatory Powers Commissioner's Office,  
13 currently headed by a retired Court of Appeal judge,  
14 that provides independent oversight and authorisation of  
15 the use of investigatory powers by intelligence  
16 agencies, police forces and other public authorities.

17 So, sir, are the worst excesses of the SDS and  
18 the National Public Order Intelligence Unit a thing of  
19 the past? Is it unthinkable that the police and MI5  
20 today, in 2020, would engage in similarly intrusive  
21 domestic espionage or would similarly flout the rule of  
22 law whilst spying on individuals and organisations like  
23 the non-State core participants? Sir, I'm afraid, it  
24 would be extremely naive and extremely shortsighted to  
25 conclude that the police had learnt lessons and moved

1 on, or that the secret state is now subject to proper  
2 and rigorous judicial and Parliamentary scrutiny and  
3 oversight.

4 Take the reluctance, for starters, of counsel for  
5 the Metropolitan Police Service to answer your questions  
6 on Tuesday and be drawn on the current scope of  
7 undercover policing.

8 Take, next, the open judgment of the Investigatory  
9 Powers Tribunal in what has come to be known as  
10 the "Third Direction" case, which should dispel any myth  
11 that judicial scrutiny and oversight is the answer. In  
12 a challenge brought by four non-governmental  
13 organisations, Privacy International, Reprieve,  
14 the Committee on the Administration of Justice and  
15 the Pat Finucane Centre against the Foreign Secretary,  
16 the Home Secretary, GCHQ, MI5 and MI6, the tribunal held  
17 in December 2019 by a majority of three to two that  
18 there was an implied power in the Security Service Act  
19 1989 for MI5 officers and agents, in appropriate cases,  
20 to commit unspecified criminal offences and that this  
21 power was lawful under domestic public law and  
22 the European Convention on Human Rights. This decision  
23 is currently under appeal.

24 Meanwhile, the government has introduced the Covert  
25 Human Intelligence Sources (Criminal Conduct) Bill,

1 which can only undermine, if not obliterate, any faith  
2 in Parliamentary scrutiny and oversight. This alarming  
3 and misconceived bill, which is currently making its way  
4 through Parliament, creates a new regulatory regime for  
5 authorising state agents, whether deployed by  
6 the police, MI5 or other named public authorities, to  
7 commit criminal offences. It places no express limits  
8 on the types of criminal offences that can be authorised  
9 and committed, and bars survivors of abuse like  
10 the non-State core participants from seeking redress  
11 through the courts by granting immunity from prosecution  
12 and immunity from civil liability to those who have  
13 committed authorised criminal offences. And most of  
14 the Parliamentary Labour opposition abstained on  
15 the second and third reading of this bill this month --  
16 some would say shamefully -- with only 17 Labour MPs on  
17 the second reading and 34 Labour MPs on the third  
18 reading, defying the whip, rebelling against the party  
19 leadership and voting against it.

20 In 1968 it was the Labour government, together with  
21 the police and MI5, who inflicted the SDS on left-wing  
22 political activists. And in 2020, most Labour MPs, in  
23 deference to the police and MI5, are failing to oppose  
24 Tory legislation that would legalise crime by state  
25 agents and erode the separation of powers. The future

1 is bleak, I'm afraid.

2 As oversight and regulation of undercover policing  
3 are squarely within the Inquiry's terms of reference,  
4 several critical questions arise. To what extent has  
5 there been any, or adequate oversight of undercover  
6 policing since 1968, or any restrictions placed on what  
7 undercover officers could do? What precisely was  
8 monitored and sanctioned and by whom? Who exactly knew  
9 within the police, MI5 and the government what  
10 undercover officers on the ground were doing? Was there  
11 any judicial or Parliamentary oversight? To what extent  
12 was judicial or Parliamentary oversight effective in  
13 protecting the rights of those spied on? What systems  
14 of oversight and regulation of undercover policing exist  
15 in other democratic states? Are undercover officers in  
16 other democratic states given as much free rein to  
17 violate the rights of those spied on as  
18 undercover officers in England and Wales? In terms of  
19 best policy and practice, what can we learn from other  
20 democratic states?

21 We trust the Inquiry will leave no stone unturned in  
22 establishing the facts regarding the oversight and  
23 regulation of undercover policing in England and Wales  
24 since 1968 and ensuring that we never again have  
25 the kind of unwarranted domestic spying on an industrial

1 scale that has plagued the last 50 years of our history.

2 Sir, that completes the first half of my opening  
3 statement. I appreciate I've finished a little bit  
4 earlier than I thought I was going to, but would that be  
5 a convenient moment to adjourn and reconvene tomorrow  
6 morning?

7 THE CHAIRMAN: It would indeed. You've reached, I know,  
8 a natural break in your opening statement and it makes  
9 perfect sense that you should complete the second half  
10 of it in one go tomorrow morning.

11 MR MENON: Thank you very much.

12 THE CHAIRMAN: Would you prefer to start at 10 tomorrow  
13 morning?

14 MR MENON: Absolutely.

15 THE CHAIRMAN: Thank you.

16 Then we will adjourn the proceedings of the Inquiry  
17 until 10 o'clock tomorrow morning.

18 MS PURSER: Thank you, everyone. The opening statements are  
19 now finished for the day. We will resume at 10 am  
20 tomorrow when Mr Menon will conclude his opening  
21 statement. Thank you.

22 (4.27 pm)

23 (The hearing adjourned until 10.00 am on Thursday,  
24 5 November 2020)

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