

Friday, 6 November 2020

(10.00 am)

MS PURSER: Good morning, everyone, and welcome to Day 5 of the opening statements in Tranche 1, Phase 1 of the Undercover Policing Inquiry. My name is Jacqueline Purser and I'm the hearings manager.

Today we will hear representations from core participants represented by Paul Heron the non-police non-state core participant group, the Fire Brigades Union and Unite and the National Union of Mineworkers.

For those of you in the virtual hearing room, please remember that unless you are asked to speak by the Chairman, please turn off both your camera and microphone, 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.

Good morning. Mr Scobie, before I ask you to begin your opening statement, I must correct something that I said to Dr O'Driscoll at the conclusion of yesterday's proceedings.

He expressed concern that the Inquiry should

1 investigate three issues: the interaction of undercover
2 units with the private sector, the international
3 element, and the relationship between
4 the Security Service and undercover units, in particular
5 the SDS.

6 I wrongly said that the first two were in my terms
7 of reference but the second wasn't; an obviously
8 nonsensical statement.

9 It is 1 and 3 which are in the terms of reference
10 and which I will investigate, but 2, the international
11 element, which is outside the terms of reference.

12 Thank you. Mr Scobie?

13 Opening statement by MR SCOBIE

14 MR SCOBIE: Good morning, sir. I appear along with
15 Piers Marquis from Doughty Street Chambers and
16 Paul Heron from the Public Interest Law Centre in our
17 opening statement on behalf of Lois Austin, Richard
18 Chessum, "Mary", Dave Nellist, Hannah Sell and Youth
19 Against Racism in Europe.

20 Before I embark, can I just give everyone some
21 notice of what you're about to hear. There are going to
22 be five chapters: an introductory one, chapter 1;
23 chapter 2 will be headed "The Purpose of and Need for
24 Policing"; chapter 3 will be the infiltration
25 of peaceful democratic organisations and the curtailment

1 of democratic activity.

2 There will be chapter 4, which is effectively
3 a nine-segment chapter, headed "The Use of Specific
4 Tactics Used by the SDS". And you'll know when we're
5 coming to a close when we move on to chapter 5, headed
6 "The Involvement of the State".

7 So let's go back, really, to chapter 1 and
8 the introduction.

9 We represent two core participants in Tranche 1,
10 Richard Chessum and "Mary", and core participants in
11 later tranches, Youth against Racism in Europe, YRE,
12 Hannah Sell, Lois Austin and Dave Nellist, the former
13 Labour Member of Parliament.

14 Their evidence will span the decades between 1974
15 and the early 2000s, and demonstrate that the most
16 invidious of the practices and tactics utilised by
17 the Special Demonstration Squad, or the SDS, were in
18 place at the very outset, and had been allowed or
19 encouraged to proliferate over more than 40 years.

20 Throughout that time, the state has targeted
21 peaceful democratic campaigns, in the full knowledge
22 that the individuals spied upon were not criminally
23 motivated in any way. The state has used subterfuge and
24 deceit to interfere with democratic organisations,
25 slowing progress towards better lives for its citizens.

1 The state has infiltrated legal, non-violent political
2 parties, spying on Members of Parliament elected to
3 serve their constituents.

4 The state has invaded the privacy of its citizens.
5 It has betrayed the trust of the its citizens.
6 The state has sexually violated and exploited its
7 citizens.

8 Richard Chessum and "Mary" will give evidence that
9 will rebut any suggestion that these tactics developed
10 over time, or that they were the work of "rogue
11 officers" without direction from above.

12 The bulk of the tactics that have outraged and
13 disgusted society, to the extent that this Inquiry had
14 to be called, were being used as far back as 1975.
15 These tactics were not aberrations; they were repeated
16 time and time again. They were systematic and systemic.

17 When you have the same tactics being used over
18 a period of at least four decades, it renders it
19 incredible that those tactics were not widely known
20 within the highest levels of government.

21 And then the question arises: to what extent
22 were they encouraged, endorsed or instigated by
23 the highest authority? When tactics like these are
24 being used for more than 40 years, there are only two
25 alternative scenarios. Either they were known about in

1 government, instigated, endorsed and allowed to
2 flourish; or successive governments were unable, or
3 unwilling, to prevent a secret police force functioning
4 with impunity and without oversight or authority for at
5 least four decades. Which of these two scenarios is the
6 most frightening and outrageous?

7 What the state has also done, from 1968 up until
8 today, is to do everything it can to make sure that
9 the facts and details of this do not come to light.
10 That approach has continued right into the preparation
11 of this Inquiry. For five years, the victims that we
12 are representing have been demanding information.
13 The delay has been unconscionable, and adds to
14 the punishment they have already been subjected to.
15 The disclosure that we have received from this Inquiry
16 has been piecemeal, limited and late. For vast swathes
17 of the subject matter relating to our core participants,
18 there has been nothing at all.

19 Is it the state that is being deliberately
20 obstructive? Or is it the police? Can the state not
21 control its police force to the extent of forcing it to
22 properly comply with the remit of this Inquiry? Or
23 is it the Inquiry itself which is failing?

24 The impact of this lack of sharing of information is
25 that non-state non-police core participants have been

1 excluded from the investigative process. If this
2 Inquiry wants us to assist, it needs to include us.
3 Currently, we are in the dark. The overwhelming feeling
4 amongst the non-state core participants is that they
5 always will be.

6 We will deal with the detail of the lack of
7 disclosure and the approach of the Inquiry later. For
8 the moment, it needs to be underlined that this opening
9 statement is made in the terms that it is, despite
10 the almost complete, and apparently deliberate, vacuum
11 of information from the state.

12 Chapter 1 -- or 2, in fact: Purpose of and need for
13 policing.

14 This is an inquiry into the police, who should exist
15 to safeguard citizens, and to prevent and deal with
16 crime. None of the people that we represent are
17 criminals.

18 Between the five of them, they have a grand total of
19 two fines. Even those incidents arose from
20 community-minded interventions: one to prevent a racist
21 altercation, and the other to prevent a 77-year old
22 decorated ex-paratrooper from being tried and imprisoned
23 because he could not pay his poll tax. Two fines that
24 reflect a tendency to criminalise peaceful, democratic
25 protest and civil disobedience; a theme that reoccurs

1 across the non-state non-police core participants more
2 generally.

3 All of our core participants are decent people, with
4 a common commitment to helping others.

5 The limited disclosure that we have seen in relation
6 to our Tranche 1 clients only are SDS and Special Branch
7 files, covering the period of 1974 to 1976. They
8 confirm the contentions of both Richard Chessum and
9 "Mary". But there is not even the slightest suggestion
10 that either of them were involved in any criminality in
11 any form. Across those files, there is no concern
12 raised about them being potentially involved in any
13 threat to public order.

14 Even as far back as 1970, there was a clear
15 recognition from the police that not all targets were
16 either engaging, or likely to be engaged, in acts
17 leading to public disorder. The police knew that they
18 were targeting innocents.

19 It must have been crystal clear to Rick Gibson,
20 the officer that spied on Richard Chessum and "Mary",
21 that both were vigorously anti-violence, and that
22 neither were concerned with any form of criminality.
23 And yet they were both subjected to intrusion in their
24 personal lives, with far-reaching ramifications in both
25 of their cases.

1 "Mary" was sexually violated by an officer acting on
2 the orders of the state. She has had to live with
3 the fact of that violation and the fact that it was
4 sponsored by the state.

5 Richard Chessum's life has been irrevocably,
6 unfairly and detrimentally altered.

7 In common with so many of the non-state
8 core participants, they were subjected to the wholesale
9 use of deceit, manipulation and exploitation by
10 the state, using a police force whose purpose is
11 purportedly to deal with crime.

12 Chapter 3: The infiltration of peaceful democratic
13 organisations and the curtailment of democratic
14 activity.

15 The Metropolitan Police Service's position is that
16 the SDS was conceived to limit the impact of public
17 disorder in the aftermath of the 1968 demonstrations in
18 Grosvenor Square.

19 It will be suggested that, originally, the SDS was
20 a justified means of achieving a legitimate aim, in
21 the context of public order.

22 Even if that were so, it is clear that within a very
23 short time, it had transformed into something else. It
24 became a tool used by the state to curtail
25 the activities of peaceful, democratic organisations.

1 The aims of those organisations were, and are, supported
2 by significant sections of society, but they happen to
3 be contrary to the policies of the state.

4 All of our core participants campaigned for social
5 justice, in defence of human rights, for peace, for an
6 end to discrimination. They campaigned for better
7 conditions for working people, better housing, better
8 opportunities for women. All of these campaigns were
9 run on an open and democratic basis. None of them were
10 secret.

11 Dealing with "Mary" and Richard Chessum
12 specifically, as the spying on them happened so long
13 ago, we can look back at the causes that they campaigned
14 for. And we can ask ourselves: what were those causes?
15 What were their aims? Were they helpful? Would they
16 have improved people's lives? Would they have saved
17 people's lives?

18 The Troops Out Movement argued that the withdrawal
19 of the British military from Northern Ireland was an
20 essential precursor to peace. They argued that
21 the bombings, the sectarian murders, the carnage that
22 blighted the lives of the people of Northern Ireland and
23 Britain would not end until British troops were out.

24 Was that a just cause? Well, hasn't history given
25 the answer to that? During the 1990s peace process,

1 successive British, Irish and US Governments, and all
2 the main Westminster political parties, accepted that
3 a demilitarisation process of Northern Ireland was an
4 essential step towards peace.

5 "Mary" and Richard Chessum campaigned against mass
6 incarceration without trial, internment, and other
7 draconian state measures in Northern Ireland and
8 Britain. They argued that these sweeping, repressive
9 powers acted as a recruiting sergeant for those disposed
10 towards violence, fueling and prolonging the conflict.
11 Was that a just cause? Again, hasn't history given
12 the answer to that question?

13 Richard Chessum and "Mary" campaigned for justice in
14 the aftermath of Bloody Sunday, arguing, again, that
15 state violence such as that just served to fill
16 the ranks of the Provisional IRA and Loyalist
17 paramilitaries, ensuring the cycle of violence
18 continued. Decades later, the inordinately protracted
19 Saville Inquiry provided some of the answers. The state
20 was forced to apologise. Too little, too late.

21 "Mary" and Richard campaigned for the Anti-Apartheid
22 Movement against the racist, segregationist policies of
23 the South African government, against atrocities like
24 the Sharpeville massacre, against a legal system that
25 actively discriminated against non-whites in

1 South Africa, at a time when the British state was
2 supportive of what was going on over there. Was that
3 a just cause? And once more, hasn't history given
4 the answer to that question?

5 They campaigned against institutional racism in
6 the police force, a fact confirmed by
7 the Macpherson Report.

8 In each case, ask yourself: were they, have they
9 been proved to be on the right side of history? Yet in
10 each case, the state interfered with, spied on, reported
11 on and actively sought to undermine the campaigns of
12 Richard and "Mary" and others, in each case prolonging
13 the violence.

14 The next chapter: The use of specific tactics. As
15 as I have said, we are dividing these into nine separate
16 tactics or devices used by the SDS.

17 So, number one: the targeting of non-criminal
18 political organisations.

19 The methods used by the SDS were tactics. They were
20 devices designed to achieve an end. For the most part,
21 it is clear that they were developed at an early stage
22 and used and reused over the decades. Those tactics,
23 alone and cumulatively, amounted to a strategy. It is
24 the evidence of their reuse that goes to the heart of
25 the question of the extent to which they were accepted,

1 endorsed, encouraged and authorised by those in
2 the highest authority.

3 The first and most fundamental tactic to address is
4 that, apparently in pursuance of the protection of
5 public order, organisations were targeted that posed no
6 threat to the public. The Troops Out Movement posed no
7 such threat. They were an open public campaigning group
8 that drafted alternative White Papers on legislation.
9 They organised public meetings and lobbies. They
10 organised demonstrations, in accordance with the right
11 to demonstrate. They spoke with elected representatives
12 and local councils and Parliament. They did what any
13 campaign group does, from Shelter to the Child Poverty
14 Action Group. The difference is policy. Their aims
15 were contrary to the stated policies of the state.

16 The infiltration of, and sustained spying on,
17 the Troops Out Movement was not to prevent crime or
18 public disorder. The police were used to infiltrate and
19 influence political movements. They used exploitation
20 and deceit to discredit and curtail the progress of
21 those political movements. This was not criminal
22 policing, it was political policing. And this tactic
23 was in place, at the very latest, by 1974, if not
24 significantly before. As with other tactics that
25 the SDS employed, it became embedded as a strategy.

1 Tactic 2: the infiltration of left and left-leaning
2 political movements only.

3 A notable theme that stretches across our
4 core participants and once more over the decades, is
5 that the infiltration of political movements was
6 overwhelmingly confined to movements to the left of
7 the political spectrum: trade unions, socialists,
8 anti-racists, internationalists and others.

9 From "Mary" in the early 1970s: who was involved in
10 campaigning against fascists, who at that time had
11 united under one organisation, the National Front.

12 "Mary" had been driven to campaigning by a firm
13 conviction that the state was doing little or nothing to
14 prevent this extreme right-wing organisation. She
15 watched National Front members smash up a meeting in
16 East Ham whilst police officers stood by.

17 Her conviction is given credence when one looks at
18 the activities of the SDS. There was no infiltration of
19 right-wing groups at all in those early days.

20 Richard Chessum, Lois Austin, Hannah Sell,
21 Youth against Racism in Europe and Dave Nellist MP were,
22 and are, all committed anti-racist campaigners.

23 Looking back now over 40 years of SDS infiltration
24 of activist groups, we do not know exactly how many
25 groups were infiltrated, because we have not been told.

1 It seems that there were over a thousand; and only
2 the tiniest of fractions, perhaps only three, were from
3 the right wing.

4 Wouldn't a unit that was genuinely prioritising
5 public order and violence be putting resources into
6 groups that actually go so far as openly advocating
7 violence?

8 But rather than concentrating on organisations that
9 fracture community cohesion, the concentration has been
10 on individuals and organisations, like all of our
11 core participants, who have spent their lives
12 campaigning for peace, workers' rights, better living
13 conditions, wages, jobs and the environment. What does
14 that say about the nature of the British state and its
15 priorities?

16 Again, this tactic has been in place since 1974 at
17 the very earliest. It was part of the strategy.

18 Tactic 3: political police officers: the obtaining
19 of high office in targeted organisations.

20 The infiltration of non-threatening and
21 non-extremist organisations coincided in the early
22 1970s, if not before, with the introduction of another
23 tactic. This one had been specifically prohibited in
24 the first days of the squad, for good and obvious
25 reasons.

1 In the Tranche 1 Phase 1 disclosure that was served
2 on 30 September this year, a document was provided that
3 had been penned by Chief Inspector Dixon, who founded
4 the Squad and was its earliest commanding officer. That
5 document, entitled "The Penetration of Extremist
6 Groups", attempts to lay down basic principles for this
7 type of operation.

8 In fact, it dealt primarily with practical issues
9 rather than ethical considerations. However, in
10 a section marked "Scope of Activities", it did lay down
11 one fundamental principle. It stated:

12 "A firm line must be drawn between activity as
13 a follower and a leader, and members of the squad should
14 be told, in no uncertain terms, that they must not take
15 office in a group, chair meetings, draft leaflets, speak
16 in public or initiate activity."

17 No rationale is given for this clear policy
18 decision. But one would hope that it was designed to
19 ensure that the police would not influence, or at least
20 would not be seen to be influencing, the direction of
21 the infiltrated political movements.

22 Interestingly, all of the early SDS officers who
23 have provided statements pre-1974, maintain that they
24 had not taken any positions of office within any
25 organisation.

1 Within a few short years, this policy had not only
2 been abandoned but had been completely overturned. By
3 1974 to '76, with the full knowledge of his superiors,
4 Rick Gibson had first assisted in establishing
5 the south-east London branch of the Troops Out Movement,
6 moved on to become the London Organiser, member of
7 the Secretariat and Convenor of the Secretariat, and
8 then the Joint National Secretary of the whole movement.

9 He was speaking at and chairing meetings -- not only
10 of the Troops Out Movement but also at the Marxist
11 discussion group Big Flame. He was producing
12 promotional material. He had access to national
13 membership lists. He had the potential for influencing
14 the direction of the movement as a whole.

15 We know from one SDS report that Gibson reported to
16 his superiors that he used his position to launch
17 a scathing attack on sectarianism within the movement.
18 He was effectively using his position to discredit
19 others within the organisation and assist in sowing
20 discord.

21 It is apparent that he used his advanced knowledge
22 of the locations of public meetings to enable uniformed
23 officers to attend the meeting venues and tell
24 the proprietors, falsely, that the Troops Out Movement
25 was an illegal organisation. The venues were encouraged

1 to cancel the meetings. Gibson used his position to
2 curtail the progress of the movement.

3 This political policing was undertaken with the full
4 knowledge of his superior officers. They in turn
5 submitted reports up and along the chain of command,
6 passing the information beyond the squad itself and
7 across, at the very at least, the different departments
8 of Special Branch and to MI5.

9 We do not know what material we have not had access
10 to, be it because of redaction, non-disclosure,
11 misplacing or shredding. We have not yet seen anything
12 in relation to our core participants in later tranches.
13 But what is clear from the material we have seen is that
14 rational policies designed to limit police activity and
15 prevent the police from exerting covert political
16 influence had been abandoned.

17 And that abandonment of policy was not the work of
18 a maverick officer, it was done with the full knowledge
19 and endorsement, not just of the commanding officers of
20 the SDS, but with Special Branch as a whole and
21 the secret service at the very least.

22 Any suggestion that it went no further than that,
23 that the Metropolitan Police Service, with the consent
24 and knowledge of the secret service, were acting
25 independently of government, just is not credible.

1 By 1975, the only ethical policy on the scope of
2 the SDS activity envisaged by Chief Inspector Dixon had
3 been entirely scrapped. The scrapping of that policy
4 gave police officers the platform to stifle, inhibit and
5 derail the progress of legitimate democratic political
6 activity.

7 The inhibition of that activity amounts to
8 the inhibition of democracy itself. This is state
9 interference with the right to organise, campaign,
10 demonstrate and to progress to a better world.
11 Political policing of the very democracy that Britain is
12 supposed to be proud of.

13 It is clear, once again, that what went wrong here
14 went wrong at a very early stage.

15 Tactic 4: the exploitation of trust and friendship
16 relationships.

17 Again, the statements provided by the pre-1974
18 officers maintain that none of them formed close
19 relationships with any of their targets. Whether that's
20 true or not remains to be seen. But, by 1974, it
21 certainly was not true.

22 Richard Chessum had been a lay preacher with
23 the Methodist Church and a member of the Christian
24 Socialist Movement. In the 1960s he worked at the South
25 London mission. He was actively involved in

1 the Fellowship of Reconciliation, an international
2 movement of people who commit themselves to active
3 non-violence as a way of life. He worked for
4 the mid-Bedfordshire Labour Party and for CND. He was
5 the secretary of his local United Nations Association.
6 He wanted to help people in this country and beyond. He
7 dedicated his life to doing that. He is a thoroughly
8 decent, caring and intelligent individual who campaigned
9 for peace and a better way of life for others. He has
10 spent the last 17 years setting up a charity for asylum
11 seekers, helping thousands of homeless and destitute
12 people.

13 Richard came to the attention of Special Branch
14 because he wrote an article for a newspaper. And after
15 that, he was systematically spied upon, along with his
16 sister and his then girlfriend, who later became his
17 wife.

18 Richard was targeted by Rick Gibson, because he ran
19 the Socialist Society at Goldsmiths College in
20 south-east London. Prior to the involvement of
21 Rick Gibson, there was no branch of
22 the Troops Out Movement in south-east London.
23 Richard Chessum was encouraged by Gibson to set up
24 a local branch.

25 Gibson, inveigled his way into a friendship with

1 Mr Chessum, and cultivated that friendship to exploit
2 him. They socialised together, spending time in pubs,
3 going to football matches, eating with him as a guest in
4 his home on many occasions, invited in to break bread,
5 spending time with him and his partner.

6 The whole time, Gibson was reporting back
7 the intricate details of Richard Chessum's life to
8 the state; exploiting and betraying the trust given to
9 him by a decent man. For what purpose? Why?

10 That tactic was in place from 1974 and used over and
11 over again in the decades that followed.

12 Tactic 5: blacklisting.

13 That friendship and the details of Mr Chessum's
14 life, however innocuous, were passed back amongst
15 Special Branch and the secret service.

16 Despite his clear and acknowledged lack of
17 involvement in any criminality, despite his decency and
18 intelligence, and despite his university-level
19 education, he was refused job after job over the next
20 two decades.

21 He applied for teacher training courses and was
22 refused. He could not secure any lecturing positions.
23 Applications for research posts were rejected.

24 Overqualified though he was, he applied for a job
25 sorting mail at the Post Office. He scored 86% in

1 the entry test, and then again he was refused. When he
2 asked why, he was told that they were "not at liberty to
3 say". That is Orwellian.

4 Blacklisting was always a fear of campaigners. Such
5 was the concern that members of the International
6 Marxist Group used pseudonym party names precisely
7 because they were aware that political opinions could
8 lead to economic blacklisting. Richard Chessum was
9 "Churchill" and "Mary" was "Millwall".

10 That fear was not unfounded. In 2009,
11 the Information Commissioner established that thousands
12 of files had been held blacklisting workers purely on
13 the basis of their views. Peter Francis has admitted
14 that he and other undercover officers passed information
15 directly to blacklist companies working for private
16 industry and big business.

17 What was not known was the extent to which SDS
18 officers passed on information about decent citizens
19 that helped to ensure that they would essentially never
20 work again. Their whole lives were fettered and
21 restricted. Decent people were prevented from being
22 productive and fulfilling their potential, simply
23 because of their political opinions. The unlawful
24 victimisation of citizens because of their politics is
25 a scandalous use of police surveillance and public

1 funds.

2 Richard Chessum does not know if he was blacklisted.
3 He knows that a Special Branch file was opened on him
4 simply because he wrote a letter to a newspaper. He
5 knows that he could not secure employment for most of
6 his working life, despite his qualifications. We have
7 raised this issue with the Inquiry, and so far we have
8 heard nothing.

9 Tactic 6: sexual exploitation and targeting.

10 "Mary" was a student at Goldsmiths College. She was
11 a member of that college's Socialist Society, another
12 victim of a tactic of infiltration of places of learning
13 by Special Branch and the secret service.

14 She was involved in campaigns for student welfare,
15 providing crèches at the college, expressing support for
16 trade unions, hospital workers and miners. She had
17 a certificate in nursery education. She was committed
18 to helping others.

19 "Mary" knew Richard Chessum through
20 Goldsmiths College. She also campaigned for
21 the Troops Out Movement. And so she was also spied upon
22 by Rick Gibson.

23 But in her case, she was also sexually exploited by
24 him. Gibson made advances on her and initiated a sexual
25 relationship with her. "Mary" is clear, unsurprisingly,

1 that had she known that he was a police officer, there
2 is no way that she would ever have consented to any form
3 of relationship with him.

4 He used her for sex to consolidate his history,
5 cement his reputation and get closer to a group of
6 activists. Sex was used as a tactic of undercover
7 policing. There can be no doubt about it.

8 Sexual exploitation and manipulation was used by
9 the state to obtain information and disrupt political
10 activity by decent people. This is exploitation of
11 the most intimate kind. It is nothing less than state
12 rape.

13 And it was not a one-off. Gibson was involved in at
14 least four different sexual relationships with activists
15 in his time in the Troops Out Movement and Big Flame.
16 At least one of those was a long-term relationship, with
17 a victim whose emotional wellbeing was seriously
18 exploited, as well as her body.

19 After Gibson was outed as an undercover officer, he
20 wrote to her explaining his reasons for having to "go
21 away". He was lying, of course. This was an exit
22 tactic, that we will hear has been used time and time
23 again.

24 The exit tactic was used to further deceive
25 the many, many women who have been sexually and

1 emotionally abused at the hands of the state over
2 the following decades. It is the last in a series of
3 lies, and it was designed only to hide the fact that
4 this is what the state was doing.

5 Any presumption that sexual targeting started much
6 later in the history of the squad, or that it was an
7 occasional occurrence, or that the officers were
8 mavericks, has been shattered.

9 On behalf of the undercover officers, the Designated
10 Lawyers have sought to minimise both the frequency and
11 impact of this sexual violation, referring to "simply
12 one night stands ...of the kind that happen". That
13 claim does not stand up to even cursory scrutiny, but it
14 does give us an insight into the total disregard that
15 they had for the women they abused.

16 Sexual targeting and the accompanying exit strategy
17 were tactics that were in place from 1975, at the very
18 latest. They were repeated time and time again, to
19 the extent that they became part of the DNA of political
20 policing in Britain.

21 Tactic 7: theft of the identities of deceased
22 children.

23 Unconcerned as they were with the questionable
24 morality of targeting the living in the way they did,
25 the SDS also had no qualms about targeting the dead.

1 The Designated Lawyers on behalf of
2 the undercover officers have referred to this practice
3 as "the using of birth certificate information". They
4 have said that it is inappropriate to refer to
5 the practice as "theft".

6 Theft is the dishonest appropriation of property
7 belonging to another, with the intention of permanently
8 depriving them of it. We know that the identities of
9 deceased children were appropriated by the SDS. There
10 is no doubt that that was done dishonestly.

11 The memories of children have been permanently
12 stained by this tactic, without the slightest regard to
13 the impact on their families.

14 The Designated Lawyers may well seek to argue,
15 legalistically and robotically, about the nature of
16 property. But let's say it as it is: this is the theft
17 of the identities of dead children.

18 In terms of policy in 1968, all that has been
19 disclosed on the theft of the identities of deceased
20 children is Conrad Dixon's paper. Amongst the heavy
21 redactions in the section on "Identity and Background",
22 it states the following:

23 "On joining the squad an officer has to supply an
24 autobiography covering his new identity, and after
25 the various inconsistencies have been eradicated he

1 obtains the necessary papers to confirm it."

2 That entry suggests that the burden of identity
3 creation is placed on individual officers, with some
4 input from superiors or others to "eradicate
5 inconsistencies".

6 It is an interesting placement of responsibility
7 away from those in charge onto the individual officers
8 themselves. That is a theme that we expect to see
9 repeated throughout this Inquiry.

10 It's also interesting because it is so very short on
11 detail, with no explanation or guidance as to exactly
12 how new identities are to be forged, and how
13 the necessary papers are obtained.

14 Interestingly, every one of the witness statements
15 of the officers deployed in the very early days states
16 that they did not use the identities of deceased
17 children. Some express disgust that such a tactic would
18 be utilised. Disgust, no doubt, that the state would
19 sink to such a level, languishing in the sewers.

20 The heavily redacted SDS Tradecraft Manual, that's
21 been published as evidence, shows that by 1995,
22 the theft of the identities of deceased children and
23 research into the families of those children had long
24 been an established, routine practice. It was expressed
25 in robotic terms and exposed a lack of even basic

1 humanity.

2 The manual cautions:

3 "We are all familiar with the story of an
4 SDS officer being confronted with his 'own' death
5 certificate."

6 That SDS officer was Rick Gibson, who was discovered
7 by members of the Big Flame group at the time of
8 the infiltration of the Troops Out Movement and his
9 association with Richard Chessum and "Mary".

10 The response of SDS officers and managers is
11 shocking. The discovery of the death certificate should
12 have been a wake up call. It was the opportunity for
13 them to realise that what they were doing was appalling
14 and unlawful. It was their opportunity to stop.

15 Instead, they doubled down on the tactic. They
16 embedded it into a strategy to provide officers with
17 a new identity. Rick Gibson' discovery did not become
18 a lesson in their immorality. It became a lesson in how
19 not to get caught. It was a lesson in maintaining
20 secrecy whatever the cost.

21 Once more, by 1975, without any question of a doubt,
22 what went wrong had certainly gone wrong at this early
23 stage. The interference with democratic organisations,
24 the sexual violation of activists, and the theft of dead
25 children's identities.

1 Tactic 8: provocation of criminality.

2 Both Richard Chessum and "Mary" categorically state
3 that as far as they are aware, Rick Gibson did not
4 engage in encouraging or promoting activists to engage
5 in criminality.

6 Certainly by the early 1990s, that position had
7 changed.

8 Hannah Sell and Lois Austin joined the Labour Party
9 and the Labour Party Young Socialists when they were
10 teenagers. They have spent their lives working and
11 campaigning within the Labour movement generally, and
12 particularly as the leading figures in Militant Labour,
13 which became the Socialist Party. For decades they have
14 effectively dedicated their lives to campaigning for
15 a fairer society.

16 In the early 90s, they were aware of the rising
17 racist attacks across Europe, but particularly from
18 their perspective in London. They helped set up
19 Youth against Racism in Europe; a campaigning group
20 aimed at a united response to racism and racist
21 violence.

22 It was a mass protest movement, advocating peaceful
23 change, combating racism with socialist ideas rather
24 than violence, and campaigning around the concept of
25 jobs and homes not racism.

1 A significant part of their campaign was against
2 the British National Party in Tower Hamlets and
3 south-east London. In the latter, the British National
4 Party set up their headquarters in Welling. They began
5 recruiting locally, even outside of schools, and
6 the incidence of racist attacks increased significantly
7 and escalated in severity.

8 In February 1991, Rolan Adams was murdered. In
9 July 1992, Rohit Duggal was murdered. In April 1993,
10 Stephen Lawrence was murdered. That is real crime that
11 needed to be prevented. That is a job for the police.

12 YRE campaigned to close down the BNP
13 Welling Headquarters, lobbying the local council and
14 organising large demonstrations, to show that
15 the violence and racism was not acceptable and that
16 the closure of that office had widespread public
17 support.

18 It was in this context that they were infiltrated by
19 the undercover officer Peter Francis.

20 Peter Francis' deployment lasted for five years. It
21 started within YRE, but followed Hannah Sell and
22 Lois Austin, over the years, into Militant Labour.

23 Francis was followed into Militant Labour, then
24 known as the Socialist Party, by another officer, Carlo
25 Neri.

1 And I stop there to say there is an issue about
2 whether or not his real identity should be named. We
3 support that application, but we do not seek to take
4 the point here. But I only raise it now as a side
5 point, because it was raised this morning.

6 Tactically, Francis and Neri followed the SDS
7 playbook to the letter. They used the whole array of
8 dirty tactics that had been in play for at least
9 20 years.

10 Both targeted organisations that were endeavouring
11 to improve society. Both obtained officer positions
12 within an organisation, which entitled them to go to
13 regional and national conferences: Neri as branch
14 treasurer of the Hackney Socialist Party, involved in
15 recruitment; Francis as branch secretary for Hackney
16 Militant Labour. They both attended regional and
17 national conferences.

18 Francis, at the very least, stole the identity of
19 a deceased child.

20 Both formed close relationships with decent people
21 and betrayed their trust. Eating with them, drinking
22 with them, confiding in them, spending weekends away
23 together.

24 Both had exploitative sexual relationships with
25 members of the groups they were targeting. Each had at

1 least two such relationships. Francis admitted to
2 journalists that sexually exploiting activists was
3 indeed a "tool to maintain cover and glean
4 intelligence". It was a tactic.

5 But where they were fundamentally different to
6 Rick Gibson was their willingness to encourage and even
7 engage in criminality.

8 Francis has described himself as being a "natural
9 fighter", having a "very aggressive" dimension to his
10 personality.

11 Hannah Sell and Lois Austin within YRE argued that
12 defeating racists and fascists was a political task that
13 needed patient campaigning in working class communities.
14 YRE was prepared to defend itself against attack from
15 fascists, and on occasion had to do exactly that. But
16 the group's aims and methods were political.

17 Peter Francis, on the other hand, repeatedly tried
18 to persuade YRE activists to engage in violence with
19 fascists. He encouraged activists to attack others, not
20 only in direct opposition to the ethos and aims of YRE,
21 but also completely contradicting the stated aims of
22 the SDS and the purpose of the police force that is
23 supposed to protect us.

24 Hannah Sell has no doubt that he was consciously
25 trying to get them to do things that they could be

1 arrested for.

2 A few years later, in 2003, Carlo Neri took things
3 much further than Peter Francis had ever done. He took
4 anti-fascist members of the socialist party to show them
5 a charity shop in West London that was being used as
6 a front for raising money for fascists.

7 He told them that it was owned by a well known
8 Italian fascist who had been convicted, in his absence,
9 in Italy for being a member of the political wing of
10 the Armed Revolutionary Nuclei, a fascist terrorist
11 group. That group was implicated in the Bologna bombing
12 of 1980 which killed 85 people.

13 The shop was on a residential street. On more than
14 one occasion, Neri suggested that they firebomb
15 the premises. Burn it down.

16 Not only were those undercover police officers
17 encouraging crime, they were encouraging serious crime.
18 They were prepared to criminalise decent people. In
19 a case of that kind, a serious arson attack, they were
20 prepared to have law-abiding people imprisoned for
21 a very significant period of time. They were also
22 prepared to put the lives of local residents at risk.
23 Again, this was not an isolated example. This was not
24 the first or only time that an undercover officer
25 incited arson.

1 Provocation of serious criminality would not just
2 discredit organisations, it would destroy them. Why
3 were undercover officers encouraging criminality?
4 Was it to discredit? Was it because the SDS were trying
5 to justify their existence, creating crime where there
6 was none? Was it another extension of the strategy used
7 to keep their cover?

8 It raises another issue: as with all of these
9 tactics and strategies, has the use of these tactics
10 been stopped since the Inquiry was ordered in 2015? To
11 what extent are they all still ongoing?

12 Currently, the government is seeking to introduce
13 legislation that, if it remains in its current form,
14 would establish a framework for legitimising the use of
15 criminality in undercover work. Why is that?

16 And why now? Is it an attempt to undermine these
17 proceedings and fetter any recommendations that are
18 made?

19 Tactic 9: infiltration of political parties and
20 elected representatives.

21 The other aspect of Francis and Neri's deployments
22 that differed from most of the early SDS activity was
23 their infiltration of a political party rather than
24 a campaigning group.

25 This goes beyond state interference with democratic

1 organisations on single issues, and goes to the heart of
2 electoral democracy.

3 The infiltrations included putting officers into
4 the Labour Party, the opposition to government. This is
5 interference with democracy full stop.

6 Francis and Neri infiltrated and interfered with
7 Militant Labour and the Socialist Party, which we say is
8 the tip of the iceberg. Bearing in mind the leading
9 role of Militant supporters in Liverpool City Council,
10 the poll tax campaign and anti-racist campaigns, we
11 contend that political policing by SDS and MI5 was
12 sanctioned at the highest levels. This political
13 interference goes back historically at least to the mid
14 to late 1980s.

15 Dave Nellist was the Labour Party Member of
16 Parliament for Coventry South East from 1983 to 1992.
17 He was always, avowedly, a socialist member of
18 the Labour Party. He was a constituency MP who was well
19 known for his support of the Militant newspaper, and
20 a member of the Socialist Campaign Group, of Labour MPs,
21 which including Jeremy Corbyn, Tony Benn and Dennis
22 Skinner.

23 He was thoroughly committed to his constituents,
24 spending a significant part of his time in his
25 constituency, concentrating on local issues. Alongside

1 that local commitment, he nevertheless managed to
2 maintain one of the highest voting records in Parliament
3 throughout his nine years as an MP.

4 It was widely known throughout his time in
5 Parliament that he only retained part of his MP's salary
6 for himself and his family. Every year, he lived off
7 the average wage of a skilled worker in Coventry.
8 The rest of his salary was donated to the Labour
9 Movement and to socialist causes.

10 He organised the opposition to increases in MPs'
11 pay, forcing a vote in July 1987, arguing that
12 Members of Parliament should live at the same standard
13 as those they represented. 36 MPs voted against the pay
14 rise, whilst more than 400 voted for it.

15 Eventually, in 1992, he was expelled from
16 the Labour Party as a result of his dedicated opposition
17 to the poll tax and his support of the estimated
18 14 million people who could not or would not pay that
19 tax.

20 His constituency party was suspended and another
21 Labour candidate was imposed on Coventry South East.

22 Ironically, that was the year that he was awarded
23 the "Backbencher of the Year" award by the Spectator.

24 Later, in 1997, he helped launch the Socialist
25 Party, alongside Hannah Sell and others.

1 But whilst he was a serving Labour MP, MI5 contacted
2 the West Midlands Police Force, and having been tasked
3 to infiltrate Militant, they targeted Dave Nellist.

4 We know this only as a result of the police
5 admissions on a documentary programme "True Spies",
6 broadcast back in 2002. An agent, supposedly tasked to
7 infiltrate Militant, in fact cultivated Dave Nellist,
8 getting close to him, helping him and accompanying him
9 to meetings. The clear inference is that an
10 undercover officer was planted within his Labour Party
11 constituency office.

12 The targeting of Dave Nellist is different to that
13 of other MPs. He was not targeted on the basis that he
14 was associated with a campaigning group, he was
15 a constituency MP who happened to support the Militant
16 newspaper. His constituency office where he worked on
17 behalf of the people of south-east Coventry was
18 infiltrated by the West Midlands police. He was
19 a serving Member of Parliament in opposition to
20 the government of the day.

21 Apart from the fact that this was a blatant attack
22 on the functioning of our democracy, this infiltration
23 raises other issues.

24 The first is that the targeting was at the behest of
25 MI5. We know that from the very outset. In 1968,

1 the SDS was supplying material to the secret service.
2 Peter Francis maintains that he supplied MI5 with files
3 in relation to members of Militant. He states that he
4 outed an ineffective MI5 officer who was spying on
5 Militant.

6 Some critical questions arise that need to be
7 answered. How engaged was MI5 within the Socialist
8 Party? Why is the state putting agents into political
9 parties?

10 The state may not like the policies of
11 the Socialist Party, but their remit is to protect us
12 from terrorism and criminality. We choose who we want
13 to elect. That should be the essence of Parliamentary
14 democracy.

15 This is not the only example of MI5 operating covert
16 surveillance of organisations within which Militant
17 supporters had won elected positions. When cabinet
18 papers from 1984 were released under the 30-year rule,
19 they revealed that Cabinet Secretary Lord Armstrong, at
20 the behest of MI5, presented a paper expressing concerns
21 about the election of Militant supporters in the civil
22 servants' trade union, CPSA.

23 Lois Austin is a full-time official for the Public
24 and Commercial Services Union, the PCS, which is
25 the current incarnation of the CPSA.

1 The result was the establishment of
2 the Orwellian-sounding "Interdepartmental Group on
3 Subversives in Public Life". With Prime Minister
4 Margaret Thatcher recorded as stating that the civil
5 service should be "very ready to sack subversive
6 troublemakers".

7 This was government-sanctioned victimisation of
8 democratically elected trade unionists. Meetings of
9 the interdepartmental Group were attended by
10 the Metropolitan Police Deputy Assistant
11 Commissioner and officials from the security services.

12 As for Dave Nellist, at what stage did the security
13 service and the police start to work so closely together
14 that MI5 was asking the West Midlands Police to
15 infiltrate a serving Member of Parliament?

16 How were the West Midlands Police in such a position
17 as to be able to manage that kind of a deployment?

18 This Inquiry has prioritised questions in respect of
19 the London-based SDS. But the West Midlands Police were
20 able to put an officer into an MP's constituency office.
21 They were spying on one of their own elected
22 representatives. This goes beyond the SDS. Political
23 policing was taking place nationwide.

24 How did this specific infiltration happen?
25 The Chief Constable must have been asked. Who was that

1 officer accountable to? How could such an assault
2 on democracy be sanctioned without asking high
3 authority? What authority?

4 Did the West Midlands write to the Home Office for
5 authority in respect of this request? If not, why not?
6 Is it really conceivable that they did not?

7 Which Home Secretary did they ask? Between 1983 and
8 1992. Was it Leon Brittan? Douglas Hurd? David
9 Waddington, Kenneth Baker? Who was it?

10 And how could a Home Secretary endorse this kind of
11 policing without recourse to the Prime Minister? Is it
12 really credible in any way that this could be the work
13 of a rogue or maverick minister of state, without
14 the highest authority being engaged?

15 And this brings us to the key question in this
16 Inquiry: how high did this go?

17 Chapter 5: the involvement of the state.

18 We know that at its conception, the SDS was
19 authorised and funded by the Home Office. We know from
20 SDS officer witness statements that there was a clear
21 feeling amongst the rank and file of the squad that
22 the unit had been ordered by the Home Office, and that
23 the Home Secretary, James Callaghan, had himself been
24 put under pressure from above to do something.

25 We know there was clear concern from the outset that

1 the existence of the squad could cause acute
2 embarrassment for the Home Secretary. The Home Office
3 needed assurance that a careful watch be kept to guard
4 against disclosure.

5 In 1969, Commander Smith of Special Branch wrote:

6 "The Home Office view may be that the exceptional
7 methods as practised by the Squad are only justified in
8 special circumstances when the importance of the product
9 outweighs the political danger run by the Government
10 should its existence and methods of operation be
11 officially exposed."

12 There was clear recognition of Home Office and
13 government involvement. And there was clear recognition
14 that the government was terrified of exposure.

15 We also know from the witness statement of David
16 Robertson that Special Branch would go to extreme
17 lengths to make sure that responsibility for the unit
18 was never discovered.

19 When his deployment was discovered by campaigners,
20 the fear of exposure within the Metropolitan Police was
21 so extreme that both the Head of Special Branch and
22 the Deputy Commissioner went to speak to him in person.
23 They instructed him to say that he was acting
24 "completely off his own bat". You carry the can.

25 Is "can carrying" going to become a recurring theme?

1 Interestingly, since our opening statement was first
2 submitted, we've been told by the Inquiry that David
3 Robertson will no longer be called to give evidence due
4 to health reasons. There will be no questions asked on
5 the detail of the visit to him by two of the country's
6 most senior police officers, or of his own apparently
7 livid reaction to that visit. In the Inquiry's opening
8 to Monday there was no reference to this important
9 point. An early example of cover-up sanctioned at least
10 by the very upper echelons of the police.

11 Richard Chessum, "Mary", Lois Austin, Hannah Sell,
12 YRE and Dave Nellist show that all of the tactics in
13 the playbook were in use for more than four decades. By
14 now, the tactics have become ingrained devices, endemic
15 to the whole system of undercover policing.

16 Are we really going to be told that all of this was
17 off the officers' own bats?

18 Thus far, the disclosure from the Inquiry has
19 consisted of material from police files only. On
20 the face of it, there have been no internal government
21 documents sourced from government files provided to us.

22 We do not know what, if any, work the Inquiry has
23 actually done on researching how far up the chain this
24 went. How far have Home Office and government files
25 been accessed in relation to the SDS? Does anyone

1 seriously think you're going to find the answer to
2 the ultimate question of accountability by asking
3 the police to provide you with this material?

4 We have heard in the Home Office opening statement
5 that they purport to have disclosed 6,000 documents to
6 the Inquiry.

7 Where are these documents? What do they deal with?
8 Why have they not been disclosed?

9 We've heard from the Designated Lawyers for the UCOS
10 on the one hand they claim there's been no SDS
11 infiltration of elected MPs, or justice campaigns, or
12 trade unions, and no involvement in blacklisting. On
13 the other hand, they say that Special Branch was charged
14 by the Home Office with assisting MI5. MI5, who
15 the Designated Lawyers say, actively received and
16 consumed the majority of the SDS intelligence. MI5,
17 who, again for the Designated Lawyers, apparently vetted
18 up to 3,000 enquiries a day, asked the Westminster
19 police to spy on a Labour MP and regularly infiltrated
20 trade unions.

21 Bearing in mind the astonishingly close links
22 the Designated Lawyers have accepted between the SDS and
23 MI5, and the obviously close links between MI5 and
24 the Home Office, are these not the areas that should be
25 being explored by the Inquiry?

1 Are the entire SDS being asked to carry the can by
2 the Home Office?

3 Accountability should be the ultimate aim and
4 responsibility of this Inquiry. You have the access and
5 resources. To date, we have seen nothing to suggest
6 that that responsibility has been undertaken to any safe
7 and satisfactory level. This has to be done.

8 It can be done. In other cases it has been done.
9 We refer particularly to the ongoing appeal of Ricky
10 Tomlinson and of the Shrewsbury 24. Campaigners have
11 unearthed declassified material in the National Archives
12 that show the extent to which the government, to
13 the very top, including the Prime Minister Ted Heath,
14 was interfering in and curtailing the activities of
15 trade unions.

16 This Inquiry has access to more than any campaigner
17 could ever have access to. It can be done. And so far,
18 the indications are that it will not be.

19 On behalf of all the non-state non-police core
20 participants, Ruth Brander will be dealing, in detail,
21 with the Inquiry's approach to disclosure and procedural
22 issues very shortly. So we will simply highlight some
23 of the main issues that have impacted on our
24 core participants so far.

25 It has been five years since this Inquiry was

1 announced. Our core participants in the later tranches
2 have not received a single statement or a single page
3 from the police files that were kept on them.

4 Richard Chessum and "Mary", in Tranche 1 and
5 Phase 2, due to be heard at the end of January next
6 year, have not received a single witness statement in
7 relation to the infiltration that they were subjected
8 to.

9 They've been told that the witness statements exist.
10 They've been given the cover names of three further
11 undercover officers that spied on them and asked if they
12 can comment on those individuals: Gary Roberts, David
13 Hughes, Jim Pickford.

14 Both Richard Chessum and "Mary" have made it clear
15 that after 45 years, it's difficult to remember
16 the names, and have asked if they could see photographs
17 to see if they can assist. We're talking about
18 photographs from 45 years ago, of two men who were
19 presumably in their 20s then and would be in their 70s
20 now, and one of whom is deceased.

21 We're talking about those photographs being shown to
22 our two core participants who were victims of their
23 spying, who are also both of advanced years and who have
24 lived blameless lives. Nothing has been forthcoming.

25 So "Mary" in particular has been told that other

1 officers infiltrated her life, but other than being
2 given their unremarkable cover names, has no idea who
3 they could be.

4 How can assistance be given to the Inquiry in
5 respect to the activities of these officers if
6 the Inquiry will not give us access to the material that
7 we need to assist them?

8 The documents that we have been allowed to see in
9 respect of the Troops Out Movement and SDS spying on
10 Richard Chessum and "Mary" are heavily redacted, with
11 chunks of material blacked out.

12 In any event, they are nothing more than sanitised,
13 secondhand reports of intelligence received. There is
14 no first-hand original material at all. There is little
15 or nothing in relation to policy.

16 Where is it? If the Inquiry doesn't have it, why
17 don't they have it? And what does that tell us of
18 the approach that the police and government are taking
19 to disclosure? Who is monitoring the police's approach
20 to providing material to this Inquiry? Why has there
21 not been a specialised team of independent investigators
22 to assist the Inquiry?

23 The files we have seen do show us one thing of
24 importance in respect of one group:
25 the Troops Out Movement. They show that many tens, if

1 not hundreds, of citizens were being spied on and were
2 the subject of Special Branch files. Just one group.
3 It is estimated that over a thousand groups were
4 infiltrated. How many innocent people have been spied
5 upon? How many people have had the course of their
6 lives changed irrevocably because the state did not like
7 their politics?

8 This spying was conducted on an industrial scale.
9 But how many of these individuals have been contacted
10 and told that they were direct or indirect targets of
11 undercover policing? How many have been asked for their
12 accounts? We can't ask them. We know who some of them
13 are, but for us to even have had sight of the material
14 in the first place we would have had to sign restriction
15 orders preventing us from disclosing their contents.

16 How is this an open inquiry, seeking to get to
17 the truth of what we contend are state crimes committed
18 over decades, on its own people?

19 We have not even been told the names and number of
20 groups that were targeted. We have had documents
21 provided with names of organisations blacked out. How
22 can the public get any idea of the magnitude of what is
23 state-sanctioned criminality and gratuitous abuse of its
24 powers?

25 Instead of being open with us, we are faced with

1 numerous anonymity applications, restricting
2 the identities of police officers. Having had their
3 rights to privacy abused by the state for such a long
4 time, those we represent are well aware of the need to
5 protect the privacy of the families of some of these
6 officers. But many of the applications refer to harm,
7 suggesting an element of danger that simply does not
8 exist.

9 The police are trying to steer this Inquiry to
10 a conclusion that there was criminality that had to be
11 prevented. This is nothing more than an attempt to
12 justify the unjustifiable.

13 We expect to see more of that, in the same way that
14 we expect to see investigations into accountability
15 going no further up the chain than some
16 undercover police officers and their direct superiors
17 being cut loose and rendered expendable.

18 If the democratic rights of ordinary citizens are to
19 be protected, this Inquiry has to go further than that.
20 It has to concentrate on the victims, properly include
21 them, provide them with the material and representation
22 that they need to be genuinely assisted. Otherwise,
23 they are being treated with a disdain that mirrors
24 the behaviour of the state and the SDS.

25 It has to lift the veil of secrecy that was

1 the trademark of the SDS and those in government that
2 ordered it. Otherwise, it will become simply another
3 tactic in the strategy of concealment and deceit.

4 It has to behave in an objective, open and
5 democratic way. It has to genuinely deal with
6 accountability. It has to properly investigate where
7 and with whom the responsibility lies. It has to delve
8 into the state's fear of discovery. It has to ensure
9 that it does not end up like the superior officer of
10 David Robertson, trying to find a way to make
11 the foot-soldiers "carry the can".

12 And when it has concluded, we seek not just
13 a condemnation of the methods, but an end to all
14 political policing, for a police force which is
15 democratically controlled and accountable to
16 the communities that they should be serving.

17 THE CHAIRMAN: Thank you, Mr Scobie.

18 May I correct one assertion of the facts that you
19 made?

20 MR SCOBIE: Yes, of course.

21 THE CHAIRMAN: You said that HN45 is not going to be called
22 to give evidence. That isn't correct.

23 MR SCOBIE: Ah, right.

24 THE CHAIRMAN: I was told, relatively recently, that he
25 suffered a medical condition which required urgent,

1 immediate treatment, which I understand he has received.
2 The condition has been independently confirmed to me.
3 It is such that I believe it will permit him to give
4 evidence in Phase 2. It is certainly the intention of
5 the Inquiry that he should be called to give evidence
6 for, amongst others, the reasons that you have
7 expounded.

8 MR SCOBIE: Thank you very much indeed. That's extremely
9 helpful to be given that updated information.

10 Thank you.

11 THE CHAIRMAN: We will now adjourn for 35 minutes, when we
12 will hear from Ms Brander.

13 MS PURSER: Thank you, everyone. We will now take a break
14 and we will be back at 12.15.

15 (11.38 am)

16 (A short break)

17 (12.15 pm)

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

20 Chairman.

21 THE CHAIRMAN: Thank you.

22 Ms Brander, you are now going to address the Inquiry
23 on behalf of the cooperating group of non-state
24 core participants.

25

1 Opening statement by MS BRANDER

2 MS BRANDER: Thank you very much, sir.

3 As you've indicated, I speak on behalf of
4 the cooperating group of non-state non-police core
5 participants: a group of individuals and organisations
6 who were spied on by the Special Demonstration Squad and
7 the National Public Order Intelligence Unit. That is
8 all of the non-state core participants in this Inquiry
9 apart from Peter Francis and the former wives of
10 undercover officers. It includes the families of
11 deceased children whose identities were used by
12 undercover officers.

13 The group is co-ordinated by Lydia Dagostino of
14 Kellys Solicitors, and all of the recognised legal
15 representatives of the non-state core participant group
16 have seen and contributed to the content of this opening
17 statement.

18 What I have to say supplements the statements that
19 have already been made and those that will be made
20 directly on behalf of individuals and groups by their
21 instructed lawyers, and in some cases by
22 core participants in person. This statement focuses on
23 the common themes and concerns that are shared by them
24 all.

25 The central theme is their desire to know the truth

1 about political undercover policing, and to see lessons
2 learned for the future. They want to know what was done
3 to them personally, and they want to know how it came to
4 be that secret policing operations were permitted to
5 infiltrate and undermine civil society in the United
6 Kingdom and beyond for over 50 years.

7 You, sir, began your tenure as Inquiry Chair, as had
8 Sir Christopher Pitchford before you, by committing to
9 discovering the truth.

10 In your initial statement, on 20 November 2017, you
11 said: "The Inquiry's priority is to discover the truth."

12 Unfortunately, sir, nearly every decision taken
13 since then has reduced the Inquiry's prospect of doing
14 so. The central problem is the overreliance on
15 the police to voluntarily give themselves up to
16 scrutiny, notwithstanding their appalling record in that
17 regard in all of the multitude of reviews,
18 investigations and court cases into the activities of
19 the SDS and the NPOIU that have preceded this Inquiry.

20 The second critical problem is the lack of weight
21 given to transparency in this Inquiry, not only as an
22 end in itself but as a means of getting to the truth,
23 and being seen to do so.

24 It is very welcome that these opening statements are
25 being broadcast online. However, under current plans,

1 as soon as the evidence begins, the publicly-accessible
2 broadcast will stop and access to seeing and hearing
3 the evidence will be restricted to just 60
4 core participants and lawyers who are willing and able
5 to take the risk of attending the venue in Central
6 London.

7 In light of the latest COVID restrictions, there
8 will be no public access to the hearing rooms at all.
9 There will be some accredited media who are allowed to
10 attend.

11 But the lack of public access is notwithstanding
12 that those giving evidence will be relaying events that
13 happened 50 years ago, and it is stretching credulity to
14 suggest that there won't be any significant risk to any
15 of them of their evidence being live-streamed.

16 You have said, sir, that the reason that it's not
17 possible to live stream the evidence is because of
18 the risk of breaching restriction orders.

19 However, as Mr Menon said in his opening statement
20 on Wednesday, if there is such a risk, it can and should
21 be overcome, just as it is in other inquiries, such as
22 the Inquiry into child sexual abuse, which plainly
23 considers matters of the utmost privacy and sensitivity.

24 None of the restriction orders in respect of
25 officers being called to give evidence in this phase was

1 granted on the basis of any risk of physical harm. All
2 were granted on the basis of the officer's wish to avoid
3 any risk of interference with their private lives, or
4 damage to their reputations, or in one case income.

5 One of the officers, HN336, whose cover name is
6 "Dick Epps", even appeared voluntarily on a television
7 documentary "True Spies", under a pseudonym. So
8 the irony is, sir, that he spoke more openly on national
9 television than he will do now in this supposedly public
10 inquiry.

11 Sir, on Wednesday, counsel for the Designated Lawyer
12 Officers complained that the open/closed divide in this
13 Inquiry means that the officers he represents have -- to
14 use his words -- "one arm tied behind their backs",
15 because they cannot speak openly and publicly about
16 the valuable work that they did.

17 Sir, how does that sit with the fact that what
18 prevents the officers in the present hearings from
19 speaking openly and publicly about their work is their
20 own applications for restriction orders, founded not on
21 any risk of harm but on concerns about damage to their
22 reputations?

23 If any of them is listening today, I wonder whether
24 they might not consider that it is actually, on
25 reflection, in their own interests to speak openly about

1 their deployments, so that the public can see and hear
2 for themselves what they have to say.

3 Sir, you granted the restriction orders relevant to
4 these officers back in 2017 and 2018, at a time when
5 the current situation was unimaginable. You did so on
6 the basis that publication of the officers' real names
7 would serve no useful purpose. At that stage, it was
8 anticipated that the officers would give evidence in
9 person in a hearing room, which anyone who wished to
10 could attend. The only consequence of the restriction
11 orders at that time was that we would not be told their
12 real names.

13 The situation now is a world away. The consequence
14 of these restriction orders now is that the evidence of
15 these officers will not be seen or heard by the public.
16 Nor by the vast majority of core participants.

17 Removing the restriction orders would now serve
18 the extremely useful purpose of enabling this to be
19 a "public" public inquiry -- at least this part of it.
20 And it would remove the inevitably discriminatory impact
21 of the current arrangements.

22 Sir, the refusal to live stream the evidential
23 hearings serves no one. It perpetuates the ethos of
24 defensiveness and secrecy, and it deprives those who
25 have been affected and those who wish to understand

1 the trajectory of political undercover policing in this
2 country from effectively participating. Reading
3 the transcript is simply not the same thing as seeing
4 and hearing the evidence being given.

5 The non-state core participants respectfully ask you
6 to reconsider this issue, sir, in light of the wholly
7 changed circumstances in which we now find ourselves.

8 In addition to the issue of live streaming,
9 the non-state core participants would like to put on
10 public record four fundamental concerns that they have
11 about the path the Inquiry is on, and to ask you, sir,
12 to have these in mind when making future decisions.

13 I will first briefly identify the four concerns in
14 outline and then expand on them in greater detail.

15 So, sir, the first concern, which you have already
16 heard from many of the advocates who have spoken on
17 behalf of non-state core participants: the non-state
18 core participants could and should be treated as
19 a significant resource for the Inquiry in its search for
20 the truth. Not just as a source of information about
21 their own individual cases, but in uncovering the deeper
22 underlying themes of relevance to the Inquiry's terms of
23 reference. Their opportunity to do that is restricted
24 on the present approach, because disclosure is limited
25 to a tiny number of individuals who are deemed by

1 the Inquiry to have a direct interest.

2 As you heard from Mr Menon on Wednesday, and
3 Mr Ryder and Dr O'Driscoll yesterday, even those few who
4 have received the bundle were given it just four and
5 a half weeks prior to the start of the hearing,
6 notwithstanding that it contains nearly 5,500 pages, and
7 we were simultaneously all preparing for these opening
8 statements.

9 The police have had that material for decades and
10 the Inquiry presumably has had it for months, if not
11 years.

12 Sir, the second concern is that by restricting
13 the cover names of undercover officers, refusing to
14 publish the names of all of the groups that were
15 reported on, and by delaying the publication of
16 photographs of officers whose cover names are not
17 restricted, the Inquiry is missing the opportunity to
18 enable members of the public to realise that they, too,
19 may have been spied on. And in doing so, the Inquiry
20 fails to enable those individuals, if they so wish, to
21 come forward to provide evidence to the Inquiry.

22 The Inquiry's terms of reference require it to inquire
23 into -- and I quote:

24 "... the scope of undercover police operations in
25 practice and their effect upon individuals in particular

1 and the public in general."

2 How can the Inquiry purport to do that when it is
3 closing down the opportunities for it to receive
4 evidence from affected individuals and from the public?

5 Sir, the third concern, in outline, is that
6 the Inquiry is placing very heavy reliance on
7 self-disclosure by the police, notwithstanding
8 the overwhelming evidence of the police seeking to cling
9 to secrecy at every opportunity.

10 Sir, the fourth concern that I will come on to
11 address you about is, with respect you, sir, as a single
12 individual who will be solely responsible for drawing
13 significant conclusions about political freedoms and
14 issues of institutional and individual racism sexism,
15 class and political bias in the police, and potentially
16 beyond.

17 With respect, these are not issues on which you have
18 any particular expertise, but you have repeatedly
19 refused to sit with a broader panel, at least until
20 the final lessons learned phase.

21 Whilst that is better than nothing, the lessons to
22 be learned can only be built on the facts found in
23 the previous modules of the Inquiry. If important
24 matters have been missed or given a particular
25 interpretation during the investigative phases, then

1 the hands of any subsequent panel are tied in terms of
2 the lessons to be learned.

3 So, sir, then turning in more detail to the first of
4 those concerns: the role of the non-state
5 core participants.

6 When Theresa May, as Home Secretary, announced
7 the establishment of this Inquiry in her written
8 statement to the House of Commons on 12 March 2015, she
9 said -- and I quote:

10 "The Inquiry will review practices in the use of
11 undercover policing, establishing justice for
12 the families and victims and making recommendations for
13 future operations and police practice."

14 This led those who were spied on to hope that they
15 would be at the heart of the Inquiry process and that it
16 would lead to them obtaining, at the very least,
17 disclosure of their personal files.

18 However, it is now five-and-a-half years on, and
19 with the exception of a very small number of non-state
20 core participants, those who are in Tranche 1, and
21 the Reel family, none has received any disclosure from
22 the inquiry about their situation. To the contrary,
23 requests for disclosure of personal files have been
24 dismissed by you, sir, as an unhelpful distraction.

25 Not only does this run contrary to the obligations

1 of the inquiry under the Data Protection Act 2018 and
2 the General Data Protection Regulation, it is
3 counter-productive for the Inquiry's ability to get to
4 the truth.

5 If the Inquiry had prioritised disclosure of
6 personal files from the start, or if it were to
7 prioritise this now, it would enable non-state
8 core participants to begin the process of gathering
9 evidence and of understanding how and when they were
10 spied on. Importantly, it would also enable them to
11 assist the Inquiry in identifying patterns and themes,
12 informed by the knowledge of what happened to them.

13 On 22 October 2020, just ten days before the start
14 of this hearing, the Inquiry published a disclosure note
15 confirming that:

16 "1. The Inquiry has not undertaken any systematic
17 search of Metropolitan Police Service records in respect
18 to the files relating to core participants affected in
19 Tranche 1."

20 And:

21 "2. That even in respect of those personal files
22 that it has reviewed, it did not request the whole of
23 the file, but rather members of the Inquiry legal team
24 sought to identify which parts of the file contained
25 intelligence originating from members of the Special

1 Demonstration Squad and other police reporting was
2 considered by the Inquiry to fall outside its terms of
3 reference, save, exceptionally, to the extent that it
4 went to the question of the justification or
5 proportionality of a deployment."

6 The non-state core participants are appalled by this
7 approach. They have repeatedly sought to explain to
8 the Inquiry why it will not work.

9 First, as stressed on behalf of the Designated
10 Lawyer's Officers in their own statement -- sorry, in
11 their opening statement -- and I quote:

12 "... there is no easy way of identifying and
13 differentiating SDS intelligence reports because they
14 were not marked as such or overtly attributed to
15 the unit."

16 Those are the words of counsel for the former SDS
17 officers.

18 You will have seen, sir, from a number of
19 the Tranche 1 and Phase 1 witness statements that many
20 times, the officers to whom particular reports are
21 attributed are not even able to say if the contents of
22 the report came from them.

23 In many cases, it will only be the person who is
24 the subject of those files who will be able to tell
25 the Inquiry what information about themselves must have

1 come from an undercover source.

2 Second -- sorry, sir.

3 The second reason why those files are essential is
4 that all of the material in the non-state
5 core participants' file, whether that be an individual
6 file or a group file, is relevant to the Inquiry's task,
7 because undercover officers had access to those files,
8 as Peter Francis has said, in order to work out how to
9 target -- and in the case of relationships we say
10 groom -- an individual or a group.

11 The entire contents of the file is therefore highly
12 relevant to the question of the impact of undercover
13 policing on individuals and members of the public. Both
14 of these points apply equally to group files as they do
15 to individual files. If the Inquiry does not obtain
16 the whole of the Special Branch, and indeed MI5,
17 personal and group files for the core participants, it
18 will inevitably be making decisions on a materially
19 incomplete basis.

20 A similar problem arises from your refusal, sir, to
21 make disclosure of the hearing bundle to non-state
22 core participants, whom you deem not to have a direct
23 interest in a particular tranche. This means that those
24 core participants and their lawyers do not get access to
25 the hearing bundle until after the hearing at which

1 the evidence is given. Now they may not even be able to
2 see and hear the evidence as it is given.

3 Again, this makes it virtually impossible for those
4 core participants to suggest relevant questions for
5 the witnesses, and is likely to lead to applications for
6 witnesses to be recalled once the documents have been
7 disclosed.

8 It is a positive development that the Inquiry has
9 very recently granted Dr O'Driscoll, from whom you heard
10 yesterday, access to the hearing bundle.

11 Dr O'Driscoll and his colleagues in the Undercover
12 Research Group have a huge amount of knowledge and
13 expertise in respect of undercover political policing
14 and its impact on civil society.

15 The non-state core participants welcome this
16 development and hope that it is the beginnings of an
17 acknowledgement by the Inquiry of the role that
18 non-state expertise can and should be playing in its
19 investigation.

20 However, Dr O'Driscoll is just one individual, and
21 he cannot, and nor does he seek to, represent
22 the diverse interests and experiences of other non-state
23 core participants.

24 The Inquiry is still a very, very long way from
25 the position that would enable it to benefit properly

1 from full participation by non-state core participants.

2 In short, sir, rather than drawing on
3 the perspectives and experience of the non-state
4 core participants to assist and inform its lines of
5 inquiry, the Inquiry is shutting out their effective
6 participation.

7 Not only is this intensely frustrating and
8 disappointing for them personally, but it deprives
9 the Inquiry of the plurality of sources and viewpoints
10 it needs to conduct a rigorous investigation. It will
11 also ultimately undermine public confidence in
12 the Inquiry's conclusions.

13 Sir, the second issue of concern that I want to
14 address on you is the restriction of public access.

15 As I highlighted earlier, the terms of reference
16 tasks the Inquiry, amongst other things, with examining
17 the scope of undercover police operations in practice
18 and their effect upon individuals in particular and
19 the public in general.

20 To date, the Inquiry has refused to take the steps
21 necessary to enable it to do that. On some limited
22 occasions, the Inquiry has taken steps to contact
23 certain individuals when it has discovered that they
24 were spied on in a way that the Inquiry wishes to
25 investigate, most notably when it has been discovered

1 that an undercover officer had a long-term sexual
2 relationship with that individual.

3 However, the majority of your procedural decisions,
4 sir, have had the effect of precluding those who don't
5 already know or suspect that they were spied on from
6 discovering that that was the case.

7 As Mr Ryder highlighted yesterday, the restriction
8 of cover names is a prime example of this and is of
9 particular concern in relation to the investigation of
10 the National Public Order Intelligence Unit; the unit in
11 which Mark Kennedy, the undercover officer who is now
12 known to have had sexual relationships with at least six
13 women, was deployed.

14 As things currently stand, it is understood that
15 only six cover names out of 21 undercover officers from
16 the NPOIU have been or will be published.

17 The consequence is that the vast majority of
18 the investigation of that unit will take place without
19 meaningful disclosure to, or participation from, those
20 who were spied on by it. The investigation will
21 therefore necessarily be limited and one-sided.

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

1 The non-state core participants have repeatedly
2 asked the Inquiry to publish a list of all the groups
3 that were reported on by the SDS and NPOIU, so that
4 members of the public will know if there is
5 a possibility that they were spied on.

6 Such a list would also be likely to increase public
7 interest in the Inquiry, because it would demonstrate
8 the reach of undercover policing.

9 It is still a common public misperception that
10 undercover policing has been limited to groups and
11 individuals involved in serious criminality.
12 Publication of the full list of groups spied on by
13 the SDS and NPOIU would dispel that impression.

14 As you heard from Mr Ryder and Dr O'Driscoll
15 yesterday, the non-state core participants do not accept
16 the targeting versus collateral intrusion divide.

17 As Mr Ryder amply demonstrated yesterday,
18 information was hoovered up by the SDS on entirely
19 benign and peaceful groups and retained for years.
20 Their structures and activities were manipulated and
21 distorted by undercover policing. That is not
22 collateral intrusion, and those groups have a right to
23 know what was done to them.

24 In turn, the Inquiry cannot assess the true impact
25 of undercover policing without giving them an

1 opportunity to be heard.

2 The non-state core participants have also asked
3 the Inquiry, when it releases cover names, to publish
4 photographs of the undercover officer in his or her
5 undercover identity. Again, this would be an important
6 means of enabling members of the public to come forward.
7 A photograph is much more likely to enable those who
8 have relevant evidence but who don't yet realise it to
9 come forward.

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

20 The Designated Lawyer Officers urged you in their
21 opening statement to -- and I quote:

22 "Expressly refute untrue allegations, exaggerated
23 and generalised claims and conjecture and [to] carefully
24 differentiate and quantify the extent of individual and
25 collective failings ..."

1 But how can you do that, sir, unless you enable
2 those who would be able to give the other side of
3 the story to come forward?

4 Sir, the third issue of concern is overreliance on
5 police documents and self-reporting. This is a source
6 of very significant concern.

7 The very body under investigation is being relied on
8 by the Inquiry as the principal source of evidence. In
9 cases where cover names are restricted, it will be
10 the only source of evidence.

11 This is in the context of: (1) policing units whose
12 entire ethos was to keep their operations secret; (2)
13 a woeful history of non-disclosure, both in the unit's
14 original operations and in response to the reviews,
15 investigations and inquiries that have preceded this
16 one; and (3) the significant wrongdoing, including now
17 admitted human rights violations.

18 These factors ought to dispel any presumption that
19 any of the deployments in these units was unremarkable
20 and not in need of rigorous scrutiny.

21 The context in which the Special Demonstration Squad
22 and the National Public Order Intelligence Unit operated
23 is important, because as you know, sir, unlike ordinary
24 -- by which I mean undercover operations into serious
25 criminal offending -- their primary purpose was

1 intelligence-gathering, not criminal investigation. And
2 this made a critical difference, because with criminal
3 investigations, the intention from the outset is that
4 the case will, if possible, end up in a court.

5 The undercover officers from these units knew that
6 his or her conduct -- sorry, undercover officers engaged
7 in criminal investigations know that their conduct will
8 be subject to judicial scrutiny at the criminal trial.

9 However, the spectre of oversight was entirely
10 absent within the political policing units, because it
11 was not their intention for their other undercover
12 operations to ever result in a trial.

13 This was recognised by Her Majesty's Inspectorate of
14 Constabulary, as it then was, in its 2012 "review of
15 national police units which provide intelligence on
16 criminality associated with protest".

17 And, sir, I have set out in the group's written
18 opening a relevant quotation from that report, which
19 I won't read through now but I would ask you to
20 consider, sir.

21 In short, the undercover officers deployed in
22 the political policing units knew, from the outset, that
23 it was very unlikely that they were ever going to have
24 to account for their actions, and this led inevitably to
25 a culture of impunity and an absolutist approach to

1 secretary that was untempered by the principles that would
2 ordinarily flow from interaction with the courts. And
3 therefore, when there was interaction with the courts,
4 this resulted in the non-disclosure and miscarriages of
5 justice that you heard about from Mr Ryder yesterday.

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

17 In 2014, the Stephen Lawrence independent review led
18 by Mr Mark Ellison QC was highly critical of the level
19 of recordkeeping within the Special Demonstration Squad,
20 and identified material non-disclosure to
21 the Macpherson Inquiry. As you know, sir, Mr Ellison
22 found that the SDS had had a spy, an MPS spy, in
23 the Lawrence family camp, and had arranged for that
24 officer to meet with a member of the MPS inquiry team at
25 the time that that team was drafting the Commissioner's

1 final written submissions to the Inquiry.

2 None of that was of course disclosed to
3 the Macpherson Inquiry.

4 Nor was it the only material non-disclosure to that
5 inquiry. Relevant intelligence arising out of
6 Operation Othona, an internal anti-corruption
7 investigation, was also withheld by the MPS,
8 notwithstanding two written requests from Sir William
9 Macpherson in relation to such material.

10 Further, the MPS's own internal review into that
11 non-disclosure was itself partial and misleading.

12 Mr Ellison described the internal review as -- and
13 I quote:

14 "... another example of the MPS providing misleading
15 reassurance to the family and to the public. In effect,
16 the review claimed, 'It's all right, we've looked at it
17 all again, there's nothing new, and there is no material
18 indicating possible corruption that was not revealed to
19 the public inquiry.'"

20 In other words, it was not just that there was
21 a problem with non-disclosure to the Macpherson Inquiry,
22 but that when the MPS had the opportunity to put its
23 house in order through its own internal review
24 mechanism, it failed to do so.

25 As Mr Barr noted in his opening statement,

1 Mr Ellison also found that the MPS had gathered and
2 disseminated within its organisation intelligence on
3 Duwayne Brooks, relating to divisions between himself
4 and the Lawrence family, the way in which he was going
5 to approach his defence to criminal charges, and his
6 expectations for his civil claim against the MPS.

7 Again, this has echoes of the examples Mr Ryder took
8 you through yesterday, sir.

9 In Mr Brooks' case, Mr Ellison noted that some of
10 the reporting included information about the complainant
11 in criminal charges against Mr Brooks, including
12 material that undermines the complainant's position.
13 Mr Ellison found that no consideration appeared to have
14 been given to the potential disclosure of that reporting
15 in the criminal proceedings, and that had disclosure not
16 occurred by other routes, it is possible that material
17 non-disclosure might have occurred.

18 Mr Ellison also raised questions about the motives
19 of the MPS, both in relation to the prosecution and in
20 their obtaining of intelligence in relation to
21 Mr Brooks' civil claim.

22 Sir, in addition to concerns about material
23 non-disclosure, there are also concerns about the
24 destruction of records.

25 As Mr Menon raised on Wednesday, there is evidence

1 that documents relevant to this Inquiry were shredded by
2 MPS personnel in May of 2014, after the intention to set
3 up this Inquiry had been announced, and after a command
4 circulation had been issued specifically stating that
5 such material should not be destroyed.

6 This allegation was investigated by the Independent
7 Office for Police Misconduct in Operation Hibiscus.
8 The IOPC published its findings in November of 2019.
9 Not only did it find that there was sufficient evidence
10 to support a conclusion that material relevant to this
11 Inquiry had indeed been shredded, it also found that an
12 officer of the MPS Directorate of Professional Standards
13 had been informed of this but had delayed taking any
14 action in respect of it. The IOPC also expressed
15 concerns that a number of managers within the MPS had
16 refused to engage with its investigation.

17 It is of great concern to the non-state
18 core participants that there has been no public
19 condemnation by the inquiry of the conduct uncovered by
20 Operation Hibiscus.

21 Similarly, the discovery that a former
22 undercover officer, whose cover name is "James Straven",
23 lied to the Inquiry, not once, but twice, in signed
24 witness statements in support of his application for
25 restriction orders. And this does not appear to have in

1 any way altered your approach, sir, to the similar
2 assertions of other officers denying that they engaged
3 in intimate relationships whilst deployed.

4 In granting restriction of cover names, you, sir,
5 have repeatedly asserted that the relevant deployment
6 appears to have been unremarkable, with no
7 acknowledgement of the fact that you cannot know that
8 without disclosing the cover name, so that those who
9 could give evidence to the contrary are able to come
10 forward. It is shocking that an assumption that
11 a deployment was unremarkable should play any part in
12 justifying restriction of a cover name, when such
13 restriction has the effect of preventing the Inquiry
14 from effectively investigating the very thing it should
15 be inquiring into.

16 The Metropolitan Police's extreme resistance to
17 disclosure in relation to the activities relevant to
18 this Inquiry, including the level of institutional
19 knowledge about undercover officers conducting intimate
20 relationships, will be addressed by Philippa Kaufmann
21 QC on Monday, in the context of the concerted efforts
22 made by the MPS to avoid making any form of disclosure
23 in civil proceedings initiated by the women. So I will
24 not rehearse that history now, but I would ask you, sir,
25 to bear it in mind.

1 I will say now that in light of all of these
2 factors, the non-state core participants have no
3 confidence that the police will volunteer full
4 disclosure in this Inquiry. There may be some tactical
5 disclosure of individual wrongdoing, but in order to
6 excavate the deeper systemic position, the Inquiry will
7 need to draw on information from other sources,
8 including the non-state core participants.

9 Worryingly, the culture of secrecy in respect of
10 the SDS does not appear to be limited to
11 the Metropolitan Police.

12 As has been noted in many of the opening statements,
13 an issue of significant importance in this Inquiry,
14 particularly in relation to the establishment of
15 the Special Operations Squad and its transition into
16 the Special Demonstration Squad, is the role played by
17 the Home Office.

18 As you have heard from others, sir, in the wake of
19 the findings of Mark Ellison QC, the then
20 Home Secretary, Theresa May, commissioned a review into
21 the full extent of the Home Office's knowledge of
22 the SDS.

23 Counsel on behalf of the Home Secretary mentioned in
24 his opening statement some of the findings of that
25 review, but he did not mention the fact that Mr Taylor

1 found very little documentation relating to the SDS
2 within the Home Office's own records. Mr Taylor
3 recorded that there was a consistent Home Office file
4 reference relating to the SDS, but concerningly,
5 the contents of that file were untraceable.

6 Mr Taylor found -- and I quote:

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

14 Again, this raises real concerns about the lengths
15 taken to maintain secrecy in relation to the SDS, and
16 highlights the problem the Inquiry will face in
17 attempting to reach conclusions founded on the state
18 records.

19 Sir, the fourth concern is, with respect, you
20 sitting as a lone decision-maker.

21 The non-state core participants have real concerns
22 that you, sir, sitting alone to determine the issues of
23 fundamental importance which arise in this Inquiry is
24 simply not the way to get to the truth.

25 You will be called on to decide questions around

1 political policing, institutional and individual racism,
2 sexism, class and political bias.

3 The Inquiry's terms of reference require it to reach
4 decisions about the motivation and justification for
5 undercover policing operations. In respect of the vast
6 majority of the groups spied on by the SDS and
7 the NPOIU, those are inherently political questions.

8 With respect, sir, you have previously made comments
9 which are indicative of a dismissive view of groups
10 whose political ideologies differ from your own, and
11 these will be referred to by Ms Kaufmann QC in
12 the opening statement on behalf of John
13 Burke-Monerville, Patricia Da Silva and Mark Wadsworth
14 on Monday.

15 This is a matter of real concern in an inquiry where
16 you will be drawing conclusions of such profound
17 importance to fundamental freedoms, including where
18 the line falls between freedom of political belief and
19 expression on the one hand, and activities, if any,
20 capable of justifying undercover policing on the other.

21 As you have heard, sir, the annual reports from
22 the early years of the SDS record groups such as
23 the Anti-Apartheid Movement and the Women's Liberation
24 Movement amongst those that were infiltrated. From
25 today's perspective, it is shocking that such groups

1 would be viewed as subversive, let alone sufficiently so
2 to justify being subject to intrusive undercover
3 policing.

4 With respect, how are you, sir, as a lone
5 individual, equipped to make decisions about which
6 movements and campaigns, if any, were and were not
7 justified as targets, especially as the Inquiry moves
8 towards the present day?

9 And on what basis can such determinations be made in
10 cases where those who were spied on are not given an
11 opportunity to give their own account, as will be
12 the case where officers' cover names are restricted, or
13 where full disclosure of group and personal files is not
14 made?

15 The Inquiry will also have to confront and address
16 the extent to which racism, sexism, class and political
17 bias were at play in the targeting and conduct of
18 undercover policing operations. Again, with respect,
19 sir, these are not issues on which you have particular
20 expertise or experience. And you have to date rejected
21 calls for a diverse panel to share the decision-making
22 with you during the first two modules of the Inquiry.

23 This is of concern because finding out what
24 happened, particularly when evaluating the motivations
25 and justification, is not a value-free process. You,

1 sir, as do we all, will inevitably bring to bear your
2 own life experiences and beliefs. There is now
3 a considerable body of contemporary scientific research
4 demonstrating how unconscious biases affect
5 decision-making in all fields, including judicial
6 fact-finding. And again, Ms Kaufmann QC will address
7 that research in greater detail on Monday.

8 A panel with a diversity of backgrounds and
9 experience would be an effective means of ensuring that
10 unconscious biases are identified and challenged.

11 If you are to sit alone, sir, you will bear
12 the heavy burden of having to scrutinise and challenge
13 your own preconceptions. That is a task made more
14 onerous by the Inquiry's lack of transparency and public
15 access, and its one-sided reliance on state records and
16 evidence.

17 Not only are you disproportionately exposed to only
18 one side of the story, but by minimising non-state and
19 public participation you reduce the opportunities for
20 external scrutiny and challenge to your own assumptions
21 and decision-making.

22 Sir, before I conclude, there are two points that
23 I wish to make in response to the opening statement on
24 behalf of the Designated Lawyer Officers.

25 First, sir, counsel for the Designated Lawyer

1 Officers urged you to guard against judging 20th century
2 actors by 21st century standards. In doing so, he
3 referred to the report from the Select Committee on
4 the petition of Frederick Young and others, from
5 6 August 1833. He described this in his oral statement
6 as your "predecessor committee", and, sir, in many ways
7 it is. Counsel for the Designated Lawyers referred to
8 it as supporting the lawfulness of undercover policing.

9 However, I would ask you to look at the report in
10 detail. Interestingly, it concerns the covert
11 infiltration by a police officer into local meetings of
12 the National Political Union of the Working Classes.
13 The officer concerned, officer Popay, was said to have,
14 whilst undercover, taken an active part in meetings and
15 to have attempted to incite participants to violence.
16 He also deceived his way into people's homes and
17 manipulated their empathy and generosity. Some
18 parallels with the accounts you have heard yesterday and
19 on Wednesday and today in relation to the SDS and
20 the NPOIU, you might find.

21 It is right, as counsel for the Designated Lawyers
22 said, that the 1833 Select Committee did not find
23 undercover policing to be unlawful per se. However, it
24 found Officer Popay's conduct to be deserving of
25 the committee's most grave and decided censure.

1 The committee observed that the employment of
2 policemen in plain clothes must be -- and I quote:

3 "... strictly confined to detect breaches of the law
4 and to prevent breaches of the peace, should these ends
5 appear otherwise unattainable."

6 What the Select Committee went on to say is also
7 critically important, and counsel for the Designated
8 Lawyers did not cite this part. I quote:

9 "At the same time, the Committee would strongly urge
10 the most cautious maintenance of those limits and
11 solemnly deprecate any approach to the employment of
12 spies, in the ordinary acceptance of the term, as
13 a practice most abhorrent to the feelings of the people
14 and most alien to the spirit of the Constitution."

15 So, sir, the public's shock and concern about this
16 type of political undercover policing is not a modern
17 day sensibility. In 1833, a Select Committee of
18 the House of Commons was identifying the need for
19 a strict necessity test, tightly confining the purposes
20 of undercover policing, and recognising that its use
21 more generally is abhorrent to the feelings of
22 the people and most alien to the spirit of
23 the constitution.

24 That must be right, sir. Political undercover
25 policing is not just a binary balance between the right

1 to protest and the maintenance of public order, as
2 counsel for the Designated Lawyers appeared to suggest.
3 The degree of intrusion into people's lives occasioned
4 by the political policing goes to the heart of political
5 and individual freedoms. Not just the right to
6 demonstrate publicly, but the right to a private realm
7 in which people can discuss their beliefs and values,
8 without being surveilled and blighted by the state.

9 It is beyond irony that counsel for the Designated
10 Lawyers, speaking on behalf of secret police officers,
11 should use the word "totalitarian" to describe
12 the people that they spied on in their homes, in public
13 houses, in meeting halls, for advocating on issues such
14 as sexual equality, anti-racism, social and political
15 justice and environmental change. Abhorrence of that
16 type of political policing is not a 21st century
17 development.

18 The second point I want to raise, sir, is in
19 relation to the Supreme Court decision in the case of
20 Catt. Several of the state openings have made reference
21 to the speech of Lord Sumption in that case. However,
22 it's important to remember that Catt was not a case
23 about undercover policing. The information recorded
24 about Mr Catt was obtained through open observation at
25 public events, and Lord Sumption made clear that that

1 was the starting point of his decision.

2 Second, the information gathered was not usable or
3 disclosable for any purpose other than policing. It
4 expressly would not be disclosable for any vetting or
5 employment purpose.

6 Third, it was not held on any personal or nominal
7 file relating to Mr Catt. A matter which Lady Hale said
8 would have altered her view of its lawfulness if it had
9 have been.

10 All of these factors underline the difference
11 between the type of intelligence-gathering under
12 consideration in Catt and the far more intrusive
13 activities of the SDS and the NPOIU.

14 And you will know, of course, sir, that when Mr Catt
15 took his case to the European Court of Human Rights,
16 that court found that the retention of even the overtly
17 obtained information about him had been unlawfully
18 retained.

19 So, sir, in conclusion, the non-state
20 core participants want this Inquiry to succeed. They
21 want it to be able to get to the truth. And they want
22 their participation to be meaningful. They want to
23 discover what was done to them, and to understand
24 the extent to which undercover policing -- political
25 undercover policing -- has affected and distorted civil

1 society over the last 50 years. They want their voices
2 to be heard, and they want the Inquiry to take seriously
3 the plurality of views and lived experiences of those
4 who have been subjected to political undercover
5 policing.

6 They want lessons to be learned for the future, so
7 that political freedoms and private lives are properly
8 protected, and that others are not subjected to
9 the gross abuses that many of them have suffered.

10 To this end, sir, they ask you to bear in mind
11 the following demands:

12 1. To facilitate proper public access to
13 the Inquiry's proceedings.

14 2. To enable non-state core participants to
15 participate meaningfully and effectively by giving them
16 disclosure of their personal and group files, access to
17 the hearings and to the documents in advance -- and
18 I would add, sufficiently in advance -- to enable them
19 to properly prepare, so that they can assist the Inquiry
20 with themes and questions.

21 3. Publish the full list of groups spied on. And
22 by that they mean all of the groups reported on,
23 including those that are claimed to be collateral
24 intrusion.

25 4. Publish photographs as well as cover names of

1 until you are invited to speak by the Chairman.

2 I will now hand over to our Chairman,

3 Sir John Mitting, to continue -- (feedback).

4 THE CHAIRMAN: There appears to be a technical problem at
5 the moment, where everything is being said twice. I am
6 afraid that if it continues, (feedback) going to
7 interrupt your opening remarks (feedback). I may
8 therefore have to ask that we -- (feedback) -- is
9 resolved.

10 (Pause)

11 Has the problem been resolved?

12 MS PURSER: Sir, if you would allow us to pause for a moment
13 so that we can ensure the problem is resolved, I'd be
14 very grateful. Thank you.

15 THE CHAIRMAN: Then could you permit me to go into
16 the break-out room while the problem is resolved.

17 MS PURSER: Yes, please, sir. We'll do so now.

18 Apologies, everyone. We will just resolve the issue
19 with the sound and we will be back as soon as we can.

20 Thank you.

21 (2.03 pm)

22 (A short break)

23 (2.09 pm)

24 MS PURSER: Welcome back, everyone. And apologies for
25 the issues with the sound just now. We are in

1 the afternoon session of Day 5 of our opening statements
2 and I will now hand over to the Chairman to continue
3 proceedings.

4 Chairman.

5 (Pause)

6 Please bear with us, everyone, whilst we fix another
7 slight technical issue. We will be back soon.

8 Please can the holding slide be put onto the screen.

9 (Pause)

10 Welcome back, everyone, and apologies for
11 the technical issue. I believe we are now ready to
12 restart the Day 5 afternoon session.

13 Chairman.

14 THE CHAIRMAN: Thank you.

15 Lord Hendy, I hope that you can now begin, albeit
16 a little belatedly. For once, I think the technical
17 problem was not of our making.

18 Opening statement by LORD HENDY

19 LORD HENDY: Yes, thank you, sir.

20 Sir, I'm instructed by the core participants,
21 the Fire Brigades Union and Unite the Union. I'm also
22 asked to mention other trade unions which are not
23 core participants, though some applied and were refused
24 that status.

25 These other unions are the Communication Workers

1 Union, CWU, the GMB union, the National Education Union,
2 NEU, the National Union of Journalists, NUJ, and the
3 National Union of Rail, Maritime and Transport Workers,
4 RMT, and the Public and Commercial Services Union, PCS.

5 Some of these unions may apply for core participant
6 status in due course, and other unions not represented
7 today may join them. It will depend on the nature and
8 extent of evidence emerging of infiltration and
9 surveillance of those unions by undercover police
10 officers. It will also depend on resources since, as
11 you will appreciate, sir, unemployment has risen by
12 a million since lockdown, and union membership levels
13 and hence union subscription income is consequently
14 imperilled.

15 Sir, the first point my clients wish me to emphasise
16 to the Inquiry is that trade unions are lawful
17 organisations which play a vital role in any democratic
18 society. Of course, even lawful organisations may
19 commit crimes. But undercover infiltration or
20 surveillance of a lawful organisation will require
21 a full and proper justification by reference to
22 a reasonable anticipation of criminal activity. My
23 clients believe that they were subject to undercover
24 police surveillance and infiltration, and they do not
25 believe that there will be shown any such justification.

1 They also wish to know what happened to
2 the information gathered by covert police operations.
3 There is evidence that some of it may have been supplied
4 to third parties, for the purpose of blacklisting active
5 trade unionists from work. As Mr Smith of the Blacklist
6 Support Group will develop. I'll mention this later.

7 In addition to the concern that there has been
8 unjustified spying on trade union activities which are
9 not merely lawful but also fulfil an essential
10 democratic function, the NUJ has an additional concern.
11 It considers that undercover policing has sought
12 clandestinely to glean from journalists information as
13 to their sources for published material: a serious
14 incursion into another fundamental aspect of democracy
15 and equally unjustifiable. The NUJ has written to
16 the Inquiry separately about this.

17 Though it may appear to be uncontroversial, my
18 clients wish me to explain how, through industrial and
19 political efforts, the law was changed, so that trade
20 unions and their fundamental functions ceased to be
21 deemed criminal and became lawful. It's relevant to
22 the question of any justification for covert
23 surveillance of trade unions.

24 Trade unions in a recognisable form have been in
25 existence in this country for the best part of

1 300 years. The description by Sydney and Beatrice Webb
2 in 1894 of a trade union as "a continuous association of
3 wage earners for the purpose of maintaining or improving
4 the condition of their working lives" remains accurate.

5 This function is primarily achieved by union
6 representatives -- lay or full time -- representing
7 workers in bargaining with employers, with a view to
8 achieving collective agreements setting terms and
9 conditions of employment. Whether agreement is reached,
10 and the content of such agreement if it is reached,
11 depends not just on the exchange of persuasive argument,
12 but on the relative strength of the bargaining position
13 of each side. From the union side, that leverage
14 sometimes derives from an insufficient supply of labour
15 but more usually derives from the threat, and sometimes
16 the use, of industrial action.

17 Unions have also sought to achieve the purpose of
18 maintaining and improving the condition of their working
19 lives by promoting legislation to that end and opposing
20 legislation which does not. This has inevitably led to
21 the funding and promoting of political parties.

22 Questions of the lawfulness of trade unions have
23 therefore turned on the lawfulness of the existence of
24 trade unions, the process of collective bargaining,
25 the organisation and conduct of industrial action,

1 including picketing, and the political activities of
2 trade unions in promoting legislation and supporting
3 political parties.

4 In the past, these issues have involved the criminal
5 law to a very great extent. The very existence of trade
6 unions was a criminal offence under the Combination Acts
7 of 1799 and 1800. Though repealed in 1824,
8 the formation of trade unions could be criminal on other
9 grounds, such as the taking of an oath, as the famous
10 case of the Tolpuddle Martyrs in 1834 showed. The Trade
11 Union Act 1871 legitimated trade unions as lawful in
12 both civil and criminal law, but only by exempting trade
13 unions from the civil law of restraint of trade, which
14 would otherwise have rendered them unlawful.

15 That exemption is still a necessary protection
16 against competition law, and is found in section 11 of
17 the Trade Union and Labour Relations (Consolidation) Act
18 1992.

19 So, trade unions are organisations which have had
20 Parliamentary legitimacy for the last 149 years. Today,
21 they are defined in section 1 of the 1992 Act by
22 reference to their principal function of "regulating
23 relations between workers ... and employers". The Act
24 provides mechanisms for the listing of trade unions by
25 the Certification Officer and their certification as

1 independent from employers. All the unions I represent
2 today are both listed by the Certification Officer and
3 certified by her as independent.

4 Sir, collective bargaining was regarded by --

5 THE CHAIRMAN: Lord Hendy -- (overspeaking) --

6 LORD HENDY: -- the law as a restraint of trade and the
7 enforcement of collectively agreed wage rates was
8 accordingly a criminal conspiracy as cases -- I'm so
9 sorry, sir.

10 THE CHAIRMAN: I apologise for interrupting you, but I'm
11 afraid you're going too fast for the stenographers.

12 LORD HENDY: Oh, I'm so sorry.

13 THE CHAIRMAN: I know you have supplied a written statement
14 which you are following carefully. However, could I ask
15 you to slow down, because they do have to take down what
16 you actually say, as well as what you've told us you're
17 going to.

18 LORD HENDY: Sir, I'm very happy to slow down. I'm in
19 perpetual fear of running out of time, as you'll
20 appreciate.

21 THE CHAIRMAN: Don't worry. For reasons that are outside
22 your control, in fact we have more time today than I had
23 anticipated, and we are not under quite the pressure
24 that we were.

25 LORD HENDY: I am very grateful, sir, I shall show down.

1 I apologise to the stenographers.

2 Sir, collective bargaining was regarded by the law
3 as a restraint of trade and enforcement of collectively
4 agreed wage rates was accordingly a criminal conspiracy,
5 as cases such as R v Journeymen Tailors of Cambridge in
6 1721 show.

7 During the 19th century, however, collective
8 bargaining and collective agreement ceased to be
9 regarded as criminal or indeed unlawful. By the end of
10 the century, Parliament accepted the reality of
11 collective bargaining, for example by the Fair Wages
12 Resolution of the House of Commons in 1896, and by
13 the end of the First World War, the promotion of
14 collective bargaining had become the policy of all
15 governments up until 1980. Chapter 1 of Part VI of
16 the 1992 Act is devoted to collective bargaining.

17 The threat of a strike in breach of contract, as
18 most are, was regarded also as a crime: conspiracy: R v
19 Bunn in 1872. And so was picketing: R v Hibbert in
20 1875. Only by the Conspiracy and Protection of Property
21 Act 1875 did they cease to be criminal offences in
22 themselves.

23 However, the organisation of industrial action
24 remained a civil wrong -- Taff Vale Railway in 1901 --
25 until the Trade Disputes Act of 1906. Since that Act,

1 trade unions have been free to organise and threaten
2 industrial action "in contemplation or furtherance of
3 a trade dispute" as the golden formula of the 1906 Act
4 puts it; replicated now in section 244 of the 1992 Act.

5 By 1942, Lord Wright was able to say in the Crofter
6 Handwoven Harris Tweed case:

7 "Where the rights of labour are concerned,
8 the rights of the employer are conditioned on the rights
9 of the men to give or withhold their services.
10 The right of workmen to strike is an essential element
11 of collective bargaining."

12 As is well known, the organisation of industrial
13 action has been the subject of various statutory
14 interventions since 1906: some diminishing civil
15 liability, some expanding it. The latest set of
16 restrictions were contained in the Trade Union Act of
17 2016.

18 The right to strike is now well established.
19 The balance being held in the light of the UK's
20 international obligations. Lord Justice Elias
21 encapsulated the principles in the leading case of
22 London and Birmingham Railway in 2011.

23 He said:

24 "Although the common law recognises no right to
25 strike, there are various international instruments that

1 do: see for example article 6 of the Council of Europe's
2 Social Charter and International Labour Organisation
3 Conventions 98 and 151. Furthermore, the European
4 Convention on Human Rights and Fundamental Freedoms has
5 in a number of cases confirmed that the right to strike
6 is conferred as an element of the right to freedom of
7 association conferred by article 11(1) of the Convention
8 which in turn is given effect by the Human Rights Act
9 1998. The right is not unlimited and may be justifiably
10 restricted under article 11(2) ..."

11 He went on:

12 "There is one respect, however, in which I think
13 that the recognition of a right to strike does have a
14 bearing on the issues before us ... counsel for the
15 employers, submitted that, since the unions were seeking
16 to take advantage of an immunity, the legislation should
17 be construed strictly against them. There is undoubtedly
18 some authority to support that submission: see for
19 example *Express Newspapers Ltd v McShane* [1979] ICR 210,
20 218, per Lord Denning MR. But I do not think that it is
21 a sustainable argument today. The common law's focus on
22 the protection of property and contractual rights is
23 necessarily antithetical to any form of industrial
24 action since the purpose of the action is to interfere
25 with the employer's rights. The statutory immunities are

1 simply the form which the law in this country takes to
2 carve out the ability for unions to take lawful strike
3 action. It is for Parliament to determine how the
4 conflicting interests of employers and unions should be
5 reconciled in the field of industrial relations. But if
6 one starts from the premise that the legislation should
7 be strictly construed against those seeking the benefit
8 of the immunities, the effect is the same as it would be
9 if there were a presumption that Parliament intends that
10 the interests of the employers should hold sway unless
11 the legislation clearly dictates otherwise. I do not
12 think this is now a legitimate approach, if it ever
13 was."

14 Sir, political interventions by trade unions were
15 initially confined to promoting legislation to
16 legitimatise unions and on matters of health and safety
17 at work, then expanded to supporting liberal party MPs
18 and subsequently founding their own political party,
19 the Labour Party, and funding it, its MPs and
20 candidates. Such political activities were found to be
21 unlawful in civil law -- though not criminal -- by
22 the famous Osborne judgment in 1910. Legal regulation
23 was substituted for unlawfulness by the Trade Union Act
24 of 1913, the provisions of which are largely reproduced
25 in the 1992 Act, mostly unchanged; though the 2016 Act

1 has altered the scheme in some particulars.

2 Sir, what this review of domestic law shows is that
3 there can be no legitimacy or justification for
4 the infiltration or surveillance of trade unions by
5 virtue of their mere existence or in the execution of
6 their usual functions. Parliament has taken these
7 matters out of the criminal law and must place them
8 outside the proper sphere of operations of the police.
9 Instead Parliament has chosen to regulate these matters
10 by means of the civil law enforced by employers, members
11 and the state regulator, the Certification Officer.

12 Of course, trade unions, their officers and their
13 members are human beings, and thus capable of crimes,
14 even while acting in their trade union capacities.
15 Fraudulent claims for expenses, breaking the speed
16 limit, parking on double yellow lines, obstructing
17 the highway, obstructing the police in the execution of
18 their duty are offences that do occur from time to time.
19 Occasionally people get carried away and threaten
20 violence when they should not. No doubt there is other
21 conduct committed by trade unionists in the carrying out
22 of trade union activities which would currently be
23 regarded as a crime.

24 But since the removal of the criminal law in
25 the 1870s, no one can seriously suggest that trade

1 unions in the United Kingdom have carried out any
2 criminal activity, and certainly none which could in any
3 way justify undercover police surveillance or
4 infiltration of trade unions. My clients would share
5 with Mr Peter Francis the view that while:

6 "... undercover policing can be a legitimate
7 policing tool ... essential to effectively combat
8 serious, organised crime and proscribed terrorist
9 organisations ... there is a level of serious
10 criminality that must be reached before the state is
11 justified in using the tactics of undercover officers."

12 Lord Justice Elias referred to the international
13 dimension. The legitimacy of trade unions and their
14 right to participate in political democracy, to bargain
15 collectively, to organise and support their members in
16 exercising their right to strike and to picket is
17 recognised and protected by a raft of international
18 treaties ratified by the United Kingdom. There's no
19 need to review them in any detail, but their longevity
20 and extent is worth mentioning.

21 The founding of the International Labour
22 Organisation in 1919, as part of the Versailles peace
23 agreement, recognised the fundamental right of trade
24 unions to exist and to act as such for the protection of
25 the interests of their members. It did more by

1 recognising the fundamental importance of trade unions
2 in democratic societies and to the maintenance of peace.
3 Almost immediately after the German surrender in
4 the Second World War, the victorious allies signed
5 the ILO's Declaration of Philadelphia at its conference
6 in May 1994. This began by stating:

7 "The Conference reaffirms the fundamental principles
8 on which the Organisation is based and, in particular,
9 that:

10 "(a) labour is not a commodity;

11 "(b) freedom of expression and of association are
12 essential to sustained progress;

13 "(c) poverty anywhere constitutes a danger to
14 prosperity everywhere;

15 "(d) the war against want requires to be carried on
16 with unrelenting vigour within each nation, and by
17 continuous and concerted international effort in which
18 the representatives of workers and employers, enjoying
19 equal status with those of governments, join with them
20 in free discussion and democratic decision with a view
21 to the promotion of the common welfare."

22 Trade unions were thereby recognised as not merely
23 legitimate but a necessary pillar of democracy.

24 The United Nations Declaration of Human Rights of 1948
25 contained the rights of freedom of assembly and

1 association. In 1949, the ILO adopted its most
2 fundamental convention, number 87, which requires member
3 states to guarantee the existence, autonomy and
4 activities of trade unions. Of particular relevance to
5 this Inquiry is Article 3 of that Convention, which
6 states:

7 "Workers' and employers' organisations shall have
8 the right to draw up their constitutions and rules, to
9 elect their representatives in full freedom, to organise
10 their administration and activities and to formulate
11 their programmes.

12 "2. The public authorities shall refrain from any
13 interference which would restrict this right or impede
14 the lawful exercise thereof."

15 In 1950 the ILO adopted an almost equally important
16 convention, 98, which guarantees the right to bargain
17 collectively.

18 The European Convention on Human Rights of 1950
19 contains the right to assembly and association in its
20 Article 11, but adds to the right of freedom of
21 association the right of everyone "to join trade unions
22 for the protection of his interests".

23 That latter phrase is the basis of the judgment of
24 the Grand Chamber of the European Court of Human Rights
25 that the right to bargain collectively is "an essential

1 element" of Article 11. That's the case of
2 Demir and Baykara v Turkey in 2009.

3 The court has also, in many cases, recognised
4 the right to strike derives from that phrase; and I've
5 cited some of the authorities.

6 It has also recognised the right to picket
7 effectively, even if that obstructs the highway. And
8 again, I've cited some cases in the written submission.

9 Of course, these rights are not unlimited, but
10 restrictions on them, whether imposed by domestic law or
11 by acts perpetrated or permitted by the state on
12 a particular occasion, must conform to Article 11(2),
13 which requires that such restriction be:

14 "... necessary in a democratic society in
15 the interests of national security or public safety, for
16 the prevention of disorder or crime, for the protection
17 of health or morals or for the protection of the rights
18 and freedoms of others."

19 The standard of necessity in a democratic society
20 is, in our submission, a high one.

21 There are many other treaties which have long been
22 ratified by the UK and which protect trade union rights:
23 the European Social Charter 1961, the International
24 Covenant On Civil and Political Rights 1966,
25 the International Covenant on Economic, Social and

1 Cultural Rights 1966, the Charter of Fundamental Rights
2 of the European Union of 2000.

3 Sir, the purpose of this exposition of the law on
4 trade unions is to make clear that trade unions are
5 lawful and respectable organisations, which pursue
6 activities recognised and protected by both domestic and
7 international law. They have emerged from the long
8 night during which they and their essential activities
9 were classed as criminal, through the grey dawn of civil
10 unlawfulness, into a daylight in which the law regards
11 trade unions and their functions as entirely legitimate,
12 though subject to restrictions.

13 Trade unions serve an essential function in
14 a democracy by representing the interests of working
15 people, not only at work but in many institutions of
16 society. They act as a balance to the growing power of
17 multinational corporations. The need for trade unions
18 has been highlighted by the consequences of COVID 19,
19 with tens of thousands of workers turning to them for
20 advice and representation.

21 Against this background, the burden of justifying
22 undercover police intrusion is correspondingly
23 heightened.

24 Nevertheless, it must be said that there are those
25 who, today and over many years, though grudgingly

1 accepting the legitimate existence of trade unions to
2 advise and represent individual members and so on, do
3 not consider as legitimate the essential trade union
4 function of harnessing the collective power of labour to
5 press for improvements to terms and conditions. This
6 school of thought considers that such activity
7 constitutes a distortion of the labour market which
8 should operate free of any such countervailing force.
9 My clients speculate that such an attitude may have
10 played a part in initiating and maintaining covert
11 surveillance of trade unions.

12 Sir, I turn to the role of unions in this Inquiry.
13 My clients wish me to express their deep dismay at
14 the fact that it is only now, five years after its
15 establishment, that the Inquiry is taking evidence.
16 Other core participants have made submissions about this
17 and I won't repeat them.

18 More disconcerting is the paucity of documents of
19 relevance to my clients which have so far been
20 disclosed, and that only recently. The disclosure
21 consists of two Special Branch reports on a couple of
22 meetings organised by the International Socialist Party
23 in the early 1970s, and six annual reports of
24 the Special Demonstration Squad. Neither provide any
25 evidence of any focus on undercover penetration of any

1 union, save in one particular respect to which I'll
2 come.

3 However, it is known that there has been undercover
4 police surveillance of unions. It's understood that
5 the National Public Order Intelligence Unit included in
6 its remit the monitoring of activities of trade
7 unionists. The Metropolitan Police Special Branch
8 established an "Industrial Intelligence Unit".

9 According to the report by Chief Constable Mick Creedon
10 in relation to Operation Herne and Operation Reuben,
11 which I shall refer to as "the Creedon Report",
12 the Industrial Intelligence Unit was:

13 "Formed in 1970 to monitor growing industrial
14 unrest, officers from the industrial unit used various
15 methods to report on the whole range of working life
16 from teaching to the docks. This included collating
17 reports from other units (from uniform officers to
18 the SDS), attending conferences and protests personally
19 and also developing well-placed confidential contacts
20 from within the different sectors. There is no
21 knowledge or record of the Industrial Unit using
22 undercover officers."

23 The absence of evidence uncovered by Chief Constable
24 Creedon is not conclusive that the Special Branch did
25 not use undercover officers in relation to trade unions.

1 The fact that it utilised reports from, amongst others,
2 SDS confirms that it did use information from undercover
3 police officers. It is also to be queried whether
4 the well placed confidential contacts were made aware
5 that they were supplying information to Special Branch
6 officers. If not, those officers were working
7 undercover.

8 Some, like Jack Winder, director of intelligence and
9 research at the Economic League, which I'll mention
10 later, was obviously well aware of the nature of his
11 regular meetings with a detective sergeant of
12 the Industrial Intelligence Unit in pubs local to
13 New Scotland Yard, as Chief Constable Creedon reports.
14 But these contacts apparently included union
15 representatives, most of whom it might be thought would
16 be reluctant to provide information if they'd realised
17 that they were speaking to Special Branch officers.

18 Later, Chief Constable Creedon explains that sources
19 were referred to as "contacts".

20 My clients conclude that, put shortly,
21 Special Branch's Industrial Intelligence Unit was,
22 amongst other activities, spying on trade unions.
23 The Metropolitan Police Special Branch was amalgamated
24 with the Anti Terrorist Unit in 2006 to form
25 the Metropolitan Police Counter Terrorism Command.

1 The Creedon Report says that the modern equivalent of
2 the Industrial Intelligence Unit is Operation Fairway
3 and the National Domestic Extremism and Disorder
4 Intelligence Unit's Industrial Liaison Unit. Whether
5 this falls under the Counter Terrorism Command is not
6 clear. But the inquiry may be assured that trade
7 unions, already deeply unhappy that they've been under
8 police surveillance, will be horrified to learn that
9 the surveillance of them falls under domestic extremism
10 and disorder. Their reaction if the responsibility
11 turns out to be that of the Metropolitan Police Counter
12 Terrorism Command may be imagined.

13 Sir, Peter Francis, an undercover police officer who
14 served in the SDS from '93 to 1997, has said that he
15 carried out covert surveillance of members of
16 the National Union of Teachers, now the NEU, the CWU,
17 the FBU and UNISON. Another undercover officer, Mark
18 Jenner, posed as a joiner to become a member of UCATT in
19 1996 to 1998. Senior union officers, many now retired
20 or dead, such as Ken Cameron, the former secretary of
21 the FBU, believed that they were spied upon by
22 undercover police officers. Some of the women
23 core participants who were subject to relationships with
24 undercover police were also active trade unionists. For
25 example, we understand that Helen Steel was a UNISON

1 safety representative and sat on a UNISON National
2 Committee. Donna McLean, who was a TNG shop steward
3 working in the homelessness sector, and "Alison" was an
4 NUT representative in Islington.

5 At this point, I must mention The Consulting
6 Association, the TCA as it was known. It was a secret
7 cartel, in the form of a limited company, set up by
8 a consortium of multinational construction companies to
9 maintain a blacklist of active trade unionists with
10 a few environmental campaigners in the construction
11 industry, with the objective of barring them from work
12 on the sites of some 44 construction companies which
13 paid it an annual subscription and a fee for each name
14 checked against the blacklist.

15 Established in 1993, it took over this work from
16 the secret employers' cartel called the Economic League,
17 which had a broader and more political brief and was
18 founded in 1919. It collapsed in ignominy after media
19 exposure and a Parliamentary inquiry.

20 The Consulting Association list included no less
21 than 3,213 names, though a few were duplicates.
22 The Economic League had some 33,000 names in its files.

23 The full extent of The Consulting Association's
24 activities was publicly revealed by virtue of a raid by
25 the office of Information Commissioner in 2009.

1 The ICO senior investigator has suggested that some of
2 the information found on Consulting Association files
3 can only have come from the police. He said:

4 "The information was so specific and it contained in
5 effect operational information that would not have
6 formed anything other than a police record."

7 The Creedon Report, the focus of which was the SDS,
8 did not find evidence to substantiate that, and proposed
9 that such information may have come from other sources.
10 He did, however, find that:

11 "Police, including Special Branches and
12 the Security Services, supplied information to
13 the Blacklist funded by the country's major construction
14 firms, The Consulting Association and/or other
15 agencies ..."

16 It doesn't need to be stressed that virtually
17 the only information of interest or use to
18 The Consulting Association was information about active
19 trade unionists, with a view to preventing them gaining
20 employment.

21 This is borne out by a specific telling incident
22 recorded in the Creedon Report. An individual sought
23 work with a television company making educational
24 videos. The company also did work for the construction
25 industry, and so contacted the Economic League to vet

1 the application. Chief Constable Creedon continues:

2 "The [Economic League] representative identified
3 X as a left wing sympathiser and therefore decided to
4 contact [Metropolitan Police Special Branch]'s
5 Industrial Unit, due to the perceived risk of X's
6 involvement in education."

7 Chief constable Creedon reports that
8 the Special Branch industrial intelligence officer, who
9 was apparently assigned to the engineering industry,
10 then made enquiries, presumably by checking the unit's
11 database, and, he continued:

12 "... returned to the [Economic League] asking for
13 any further information, stressing the matter's
14 importance due to the possible link to terrorism. This
15 was recorded as a fact by the [Economic League]
16 representative and passed on to the prospective
17 employer."

18 In consequence, unsurprisingly, the individual was
19 refused employment on the ground that he had
20 been "blacked by the security people". This sad tale
21 only came to light because the person concerned was
22 related to a retired chief superintendent who took
23 the matter up, in consequence of which, it appears, a
24 "thorough investigation was conducted and the issue
25 corrected".

1 The easy way an employee of the Economic League was
2 able to contact a Special Branch officer in
3 the Industrial Intelligence Unit and then get him to
4 check an individual on Special Branch files is frankly
5 extraordinary. The fact that the Special Branch officer
6 then gave the Economic League, a private enterprise body
7 unconnected with the police, confidential and highly
8 defamatory information, which was presumably secret, is
9 yet more staggering.

10 It is reasonable to conclude a systematic pattern of
11 collusion here. It is to be wondered how many job
12 applicants who don't have a relative who is a retired
13 chief superintendent may have lost employment by reason
14 of information secretly held on them and supplied to
15 prospective employers by the police.

16 Two further points are to be noted. The first is
17 that the Special Branch officer asked
18 the Economic League staff member for "any further
19 information". Chief Constable Creedon doesn't record
20 whether he received any, but clearly information about
21 individuals passed both ways.

22 Secondly, the information in the Special Branch file
23 in this case may not have been obtained by undercover
24 policing, and so might be suggested to fall outside
25 the Inquiry's remit. My clients would, however, submit

1 that the secret supply of information held in secret
2 police files by a police officer to a potential employer
3 without that fact being revealed to the individual to
4 whom it related is plainly an act of undercover policing
5 which the Inquiry should investigate. The fact that
6 the information was defamatory and incorrect only
7 fortifies the need for investigation. The fact that it
8 didn't relate to trade union activity is purely
9 fortuitous.

10 The vignette provided by the incident is
11 informative. It is, apparently, not a unique example of
12 the exchange of information, though the redactions in
13 the Creedon Report make it impossible to glean much from
14 the other instances cited there, including
15 the application for a job on the Jubilee Line found in
16 SDS files, and the regional director of
17 the Economic League who talked of police collusion and
18 the exchange of information.

19 It's obvious that the police must have appreciated
20 that the effect of passing information about workers to
21 either the Economic League or The Consulting Association
22 would be to enable employers to discriminate against
23 active trade union members by refusing them employment.

24 This is a deeply disturbing allegation which, no
25 doubt, the Inquiry will wish to probe, in accordance

1 with question 115 of the list of questions in
2 the Module 1 SDS issues list. Disclosure of the files
3 will be a prerequisite.

4 In his opening, my learned friend David Barr QC,
5 Counsel to the Inquiry, noted that undercover officer
6 HN336 provided some peripheral evidence on blacklisting.
7 Mr Barr said that HN336:

8 "... states that he was aware of the existence of
9 the Economic League whilst serving in Special Branch and
10 understood that the retiring Chief Superintendent of
11 C Squad joined the Economic League. However, he also
12 states that no relationship existed between the SDS and
13 the Economic League. As someone who later worked on
14 Special Branch's industrial desk, he may be able to
15 assist the Inquiry as to whether it might have received
16 intelligence from the SDS and how it was disseminated."

17 My clients would like to know a lot more about
18 Special Branch's industrial desk in due course.

19 The passing of information between the police and
20 the blacklisters should not be thought to be of historic
21 interest only. Though outside the temporal ambit of
22 this phase of the Inquiry, it's apposite to mention here
23 that on 6 November 2008, shortly before work began on
24 the Olympic park, a Detective Chief Inspector
25 Gordon Mills of the National Extremism Tactical

1 Coordination Unit met with personnel from
2 the construction industry, including The Consulting
3 Association. This was investigated by Chief Constable
4 Creedon, who found that the information passed consisted
5 of:

6 "... open source information, designed to highlight
7 the problems linked to protest movements and how
8 NETCU could assist."

9 Unite, however, is not satisfied, and points out
10 that, within months, The Consulting Association
11 blacklist was deployed by construction employers to vet
12 workers before engagement on work on the Olympic park.
13 Trade unionists were, in consequence, refused work
14 there. Unite wonders whether personal information on
15 trade unionists in the construction industry could have
16 been passed, if not at that meeting but as a consequence
17 of it.

18 The Creedon Report notes that from 2007, officially
19 sanctioned Information Sharing Agreements, ISAs, were
20 reached with various outside organisations to share
21 personal information. The Creedon Report doesn't
22 disclose whether an ISA existed with the TCA,
23 The Consulting Association. In due course, the Inquiry
24 will no doubt investigate the propriety of these ISAs.

25 The blacklist in the construction industry is not

1 a matter of hearsay myth. It should be noted that
2 the manager of the Consulting Association pleaded guilty
3 to breaching the Data Protection Act by maintaining that
4 blacklist, and was find the maximum at that time of
5 £5,000. Fourteen participating construction companies
6 were served with enforcement notices. Furthermore,
7 civil claims were brought in the High Court for the tort
8 of conspiracy and other torts by 771 blacklisted workers
9 against an array of construction companies.

10 On Wednesday, 11 May 2016, shortly before the trial
11 was to commence, settlement was reached between
12 the claimants and Balfour Beatty, Carillion, Costain,
13 Kier, Laing, Sir Robert McAlpine, Skanska UK, Vinci,
14 Taylor Woodrow, and various individual directors of
15 those companies. The settlement involved an apology in
16 court by their counsel, who said this:

17 "The Defendants are here today to offer, through me,
18 their sincere and unreserved apologies to the Claimants
19 for any damage caused. The Defendants apologise as
20 providers of any information and for the loss of
21 employment suffered as a result of communication of
22 information during the operation of the Consulting
23 Association. They also apologise for the anxiety and
24 hurt to feelings caused as a result."

25 And they paid damages estimated to be around

1 £75 million for the 771 claimants, including legal costs
2 estimated at £25 million. Their liability was formerly
3 denied.

4 The defendants admitted that, apart from any
5 specific allegation recorded in a worker's file,
6 the mere communication of any information included in
7 the database bore the defamatory message that the worker
8 concerned might pose a risk of unjustified disruption on
9 any site on which he was employed. It was this that
10 ensured unemployment in most cases.

11 Mr Dave Smith will address you more fully about
12 the role of undercover policing and the blacklist. We
13 look forward to the police files, minutes, memos and
14 emails relating to it and all other contacts between
15 the police and the Economic League and subsequently
16 The Consulting Association, and the identity of
17 the officers from and to whom information was passed.

18 Sir, my clients have next to no evidence themselves
19 to put before the Inquiry save suspicions. Unions are
20 not top-down organisations and are not organised so as
21 to monitor and preserve information on such matters of
22 undercover police activities in relation to them, even
23 where it was known or suspected. They are thus reliant
24 on those reviewing the documents and those giving
25 evidence to the Inquiry.

1 Unfortunately, even before the tidal wave of
2 unemployment now breaking as a result of lockdown and
3 with it the loss of union members, my clients were not
4 in a position to pay for continuous legal representation
5 throughout this Inquiry, or to monitor disclosure in
6 order to identify evidence of relevance to them. They
7 will therefore be reliant on you and the Inquiry team to
8 alert them of matters arising which concern or might
9 concern them.

10 Sir, as to the very limited disclosure so far, there
11 are some matters on which I should comment.

12 And at this point, I would ask if the document
13 handler could put up the single sheet of paper which
14 I indicated at the outset I would like to refer to.

15 Sir, it's document {UCPI0000007920/14}. It's
16 a report dated 28 November 1973 on a conference held by
17 the International Socialist Party on 11 November 1973 in
18 Manchester, and it's headed "Special Branch".

19 From Mr Barr's opening, it appears that the report
20 was made by HN343, John Clinton. The appendices to this
21 report are largely redacted, but evidently record
22 the names and addresses of those in attendance. At
23 appendix B -- that's the page -- under
24 the subtitle "Organisation" there's a list of acronyms
25 with codes. Those acronyms represent trade unions in

1 existence in 1973. I'd like to take you, sir, through
2 those, if I may.

3 This follows, I should say, a list of -- a redacted
4 list of names and addresses, and this section of
5 appendix B is headed "Organisations", as you see.
6 The first acronym there is "APEX", which stands for
7 Association of Professional, Executive, Clerical and
8 Computer Staff. It's given the reference "400/73/155".
9 That union subsequently became part of what is now
10 the GMB union.

11 The second acronym is "ASTMS", which stands for
12 the Association of Scientific Technical and Managerial
13 Staffs. Its reference is "400/73/100". It merged with
14 other unions and ultimately became subsumed into Unite
15 the Union.

16 The third acronym is "AUEW", the Amalgamated Union
17 of Engineering Workers; reference "400/73/194". It,
18 too, merged with other unions, and ultimately became
19 subsumed into Unite the Union.

20 At the bottom of the list is the TGWU, reference
21 "400/72/67". That's the Transport and General Workers'
22 Union, which is the third of the unions cited, which
23 merged with other units and became Unite the Union.

24 There are three other unions listed there. CPSA,
25 which is the Civil and Public Services Association,

1 reference "400/72/111". That became ultimately subsumed
2 into what is now PCS .

3 NALGO, which is the National Local Government
4 Officers Association, reference "400/55/98", a union
5 which merged to become part of UNISON.

6 And NUT, National Union of Teachers, reference
7 "400/73/107", which merged to become what is now
8 the National Education Union.

9 Sir, I can help on the other entries there, just to
10 say that, four lines down, you have "Bryant Colour
11 Works". That's a reference to an industrial dispute
12 taking place at that time, at that company. You've then
13 got the Communist Party. You've then got "Con Mech",
14 which is a reference to another industrial dispute at
15 that time.

16 Then below the CPSA, you've got "Liaison Committee
17 for the Defence of Trade Unions". That was an
18 unofficial committee of trade unionists who had
19 organised initially against the Industrial Relations
20 Bill and then Act of 1971.

21 Then you see, sir, you've got a newspaper,
22 the Morning Star, and another newspaper,
23 the Socialist Worker. And then there are references to
24 the Pentonville 5 and the Shrewsbury 24, which I'll
25 mention in just a moment.

1 Sir, it's evident that these codes represent file
2 references. It looks as if "400" is the prefix used for
3 a file on a trade union. The code "400" distinguishes
4 trade unions from newspapers, or perhaps political
5 newspapers, which appear to be filed under "347":
6 Morning Star "347/73/24" and Socialist Worker
7 "347/70/39".

8 The second element of the code, the two-digit code,
9 may well be a reference to the year, meaning that all
10 the file references are to 1972 or 1973, with
11 the exceptions of NALGO, 1955, and Socialist Worker,
12 1970.

13 Appendix B also refers to the "Pentonville 5",
14 stating that there are "mentions on [various files]".
15 That language is confirmatory that the numbers relate to
16 files, but we can go a little further.

17 The Pentonville 5 were five London shop stewards in
18 the London docks, Messrs Clancy, Merrick, Steer, Turner
19 and Watkins, who were imprisoned in Pentonville Prison
20 for contempt of court in July 1972 by
21 the National Industrial Relations Court for refusing to
22 obey a court order to stop picketing a container depot
23 in East London. They were released after a few days on
24 the intervention of the official solicitor after
25 the threat of a general strike by

1 the Trades Union Congress. At that time dockers were
2 members either of the TGWU or the National Amalgamated
3 Stevedores and Dockers, NASD. The latter merged with
4 the TGWU in 1982, which in turn became part of
5 Unite the Union in 2007.

6 The first two references for the Pentonville 5 seem
7 likely to relate to files on the TGWU. It's not
8 immediately known whether any of the five shop stewards
9 were members of the NASD. If so, it's possible that
10 the reference with the prefix "346" is to a file on that
11 union, though that would not be consistent with
12 the theory that union files have the prefix "400".
13 Possibly "346" is a reference to a file on another kind
14 of organisation, perhaps a periodical given the number's
15 proximity to the number "347", which we have surmised
16 represents newspapers or political newspapers.

17 The page also refers to the "Shrewsbury 24",
18 "400/73/169 (3a, b) (4a)". The Shrewsbury 24 refers to
19 building workers, many, but not all, of whom were then
20 members of the Union of Construction and Allied Trades
21 and Technicians, UCATT, which merged to become part of
22 Unite the Union in 2017. Some, depending on their
23 trade, were members of other unions such as the AUEW, or
24 the TGWU, both of which subsequently became part of
25 Unite.

1 There had been a national building workers strike
2 over the summer of 1972, which concluded with
3 the Union's acceptance of an offer by the employers in
4 September 1972. Five months later, 24 building workers
5 were charged under the Conspiracy and Protection of
6 Property Act 1875 for a variety of offences, including
7 conspiracy to intimidate allegedly committed on
8 6 September 1972 during picketing in the strike. Three
9 workers, Messrs Tomlinson, Warren and McKinsey Jones,
10 were convicted and sent to prison in October 1973, and
11 three more at a subsequent trial at a later date.
12 The convictions were controversial at the time, and
13 since. Indeed, the Criminal Cases Review Commission has
14 now, we understand, referred the convictions to
15 the Court of Appeal.

16 It seems likely that the file references given in
17 relation to the Shrewsbury 24 are references either to
18 AUEW or to TGWU files, yet it's surprising that there's
19 no reference to a file on UCATT and that UCATT is not
20 mentioned on that page.

21 Sir, the third set of digits in these union files
22 might be thought to refer to page numbers, but this
23 seems unlikely since it would mean that each reference
24 is confined to only one page. It seems more likely that
25 the third set of digits refers to sections of the file

1 dealing with specific unions, or parts of unions, or
2 perhaps specific events since, if "400" is the generic
3 number for trade unions and the next double digit is
4 the year, there will be no number allocating the file to
5 a specific union, section or event.

6 We would appreciate a guide to the meaning of
7 the codes as soon as it can be provided. The Inquiry
8 may already have that information; presumably the police
9 have it now. My instructing solicitors sought further
10 disclosure in relation to the files the existence of
11 which have been revealed by this document. On
12 19 October of this year the Inquiry team responded and
13 included the following statement:

14 "We do not hold Special Branch registry files and
15 are not investigating Special Branch interest in trade
16 unions, only reporting on them by SDS
17 undercover officers, according to the Inquiry's terms of
18 reference."

19 Sir, with respect, that response seems to place an
20 unwarranted limit on the task the Inquiry has been
21 appointed to carry out. Your terms of reference begin
22 by stating the Inquiry's purpose thus:

23 "To inquire into and report on undercover police
24 operations conducted by English and Welsh police forces
25 in England and Wales since 1968, and, in particular, to

1 examine the scope of undercover police operations in
2 practice."

3 Under the heading "Scope", the terms of reference
4 state:

5 "The Inquiry's investigation will include, but not
6 be limited to, whether and to what purpose, extent and
7 effect undercover police operations have targeted
8 political and social justice campaigners. The Inquiry's
9 investigation will include, but not be limited to,
10 the undercover operations of the Special Demonstration
11 Squad and the National Public Order Intelligence Unit."

12 There then follows the definition of
13 the term "undercover police operations" by reference to
14 the phrase "covert human intelligence source" within
15 the meaning of section 26(8) of the Regulation of
16 Investigatory Powers Act 2000. Thus, the undercover
17 police activity to be investigated by the Inquiry is
18 manifestly not limited to the SDS.

19 THE CHAIRMAN: Forgive me for interrupting again, but do you
20 want the picture taken down?

21 LORD HENDY: Oh, yes, I'm very grateful, sir. We don't need
22 that any longer. Thank you, sir.

23 The six annual reports of the SDS -- or SOS as it
24 was known also -- are for the years 1969, '70, '71, '72,
25 '73 and '74. The annual reports take the form of

1 letters. They show the principal target for undercover
2 penetration, at least in that period, were left-wing
3 political groups and campaigns. There appears to be no
4 reference to surveillance of trade unions despite
5 references to various trade disputes forming
6 the backdrop to the activities of the political groups
7 under surveillance. This is curious given the apparent
8 existence of the Special Branch files referred to in
9 the surveillance of the 1973 International Socialist
10 conference. This might be explained by the fact that
11 the Annual Reports are of a small SDS section, whereas
12 the IS surveillance is apparently Special Branch.

13 The only entry relevant to covert operations in
14 relation to trade unions would appear to be in the 1974
15 Annual Report of the SDS dated 4 February 1975. It
16 states that the Shrewsbury 2 Defence Committee had
17 been "penetrated to a lesser degree". We gather from
18 Mr Barr's opening that this report too was made by
19 HN343, John Clinton. This committee is likely to have
20 been composed of trade unionists and is almost certainly
21 as successor to the Shrewsbury 24 Defence Committee
22 referred to earlier, reflecting the fact that two of
23 the original 24 defendants remained in prison in 1974.

24 The assertion of "penetration to a lesser degree"
25 poses the question as to what conceivable justification

1 there could be for SDS having penetrated it at all. It
2 seems unlikely that anyone in the SDS or Special Branch
3 can seriously have thought that such a campaign against
4 convictions was likely to lead to the commission of
5 criminal offences requiring the expenditure of
6 the limited resources of the SDS on undercover
7 penetration of it to any degree. The implication drawn
8 by some of my clients is that the purpose of
9 infiltration was to monitor whether the campaign was
10 having any success in accumulating evidence that
11 the Shrewsbury pickets were charged and convicted on
12 spurious evidence for political purposes, as was and
13 remains the widespread view in trade union circles.

14 What appears to be clear beyond doubt from the very
15 limited disclosure so far is that the police held files
16 containing material on at least seven trade unions.
17 It's an inevitable assumption that they held files on
18 others, and perhaps all trade unions, a point to which
19 I return. We assume that the absence of reference to
20 other unions in appendix B is because no attendees at
21 the IS conference, to which the report is devoted, were
22 known to be members of other unions.

23 The existence of files, of course, doesn't prove
24 undercover operations, but it's not an unreasonable
25 inference that the files contain material obtained by

1 covert means. The Annual Reports so far received for
2 the years up to 1974 in relation to the SDS do not claim
3 responsibility for covert infiltration of trade unions.
4 We look forward to the Inquiry's investigation of
5 whether there was such activity not recorded in those
6 Annual Reports.

7 If the absence of evidence of penetration of unions
8 by SDS is evidence that there was no such penetration by
9 SDS then it most likely was carried out by officers
10 other than those in SDS, at least up to 1974. For
11 the situation thereafter it is clear that the SDS was
12 involved in covert surveillance of trade unions since
13 former police officer Peter Francis, in a statement made
14 public on 13 March of 2015, stated:

15 "I would ... like to take this opportunity to
16 unreservedly apologise to all the Union members
17 I personally spied upon and reported back on whilst
18 deployed undercover in the SDS. Including those not
19 only engaged in working in the construction industry but
20 also those in the National Union Of Students ...
21 National Union of Teachers ... Communication Workers
22 Union ... UNISON and the Fire Brigades Union ...

23 "As everything I have previously stated, I am
24 prepared to repeat all this under oath at the public
25 inquiry and should UCATT or any other union or

1 the blacklisted campaigners wish me to, in any course
2 cases which they might bring against the relevant UK
3 authorities."

4 We note from the proceedings on Wednesday that
5 Mr Francis has not yet made a statement to the Inquiry,
6 although I think he is listed to give evidence to it.

7 What is now required is the disclosure of all
8 the files held by the police on all trade unions,
9 whether under these or any other references. We assume
10 that the inquiry team have, or will pursue such
11 a request with the police. We should like to know, or
12 be kept informed of the outcome of that inquiry.

13 Sir, we were reassured by my learned friend
14 Mr Barr's opening where he said that:

15 "The Inquiry will be considering the extent to which
16 SDS officers were tasked to report on industrial unrest
17 and in particular the involvement of trade unions in
18 political activism."

19 He also said:

20 "The Inquiry will be exploring how and why the SDS
21 reported on trade union-related matters and whether it
22 was justified."

23 We note that, apart from the sparse material cited
24 above, he expressed the view that:

25 "On the documents and witness statements obtained

1 for Phase 1 there is no evidence that any trade union
2 was specifically infiltrated by the SDS. Nor is there
3 evidence of direct contact between the SDS and
4 blacklisting organisations."

5 Sir, beyond what we have summarised in this, and
6 indeed in the other opening statements, we have no other
7 evidence of infiltration by the SDS in the period 1968
8 to 1973. However, my clients have the gravest doubts as
9 to the accuracy of the proposition stated by my learned
10 friend Oliver Sanders QC for the Designated Lawyer
11 Officers that:

12 "SDS personnel did not infiltrate or target justice
13 campaigns (including the Lawrences), Members of
14 Parliament or trade unions and were not involved in
15 trade union 'blacklisting' ... Justice campaigns,
16 Members of Parliament and trade unions were only
17 referred to in SDS intelligence reports if and to
18 the extent that they came into contact with those who
19 were being reported on."

20 Sir, in any event, neither his observation or
21 the previous one from Mr Barr suggests that
22 the Industrial Intelligence Unit of Special Branch did
23 not conduct undercover policing against trade unions;
24 its very existence suggests the contrary.

25 Furthermore, there was a close relationship between

1 SDS and MI5 to the extent that most information obtained
2 by the former was provided to the latter, as Mr Sanders
3 makes clear. He points out, amongst other things:

4 "MI5 monitored industrial unrest and mounted
5 interception, eavesdropping and informant operations
6 against the Communist Party of Great Britain, Transport
7 and General Workers' Union,
8 National Union of Mineworkers and the [Campaign for
9 Nuclear Disarmament] ..."

10 My clients would like to know what other unions were
11 so monitored and to this end share with Mr Sanders his
12 view that his clients recognise:

13 "... that what matters most is that the Inquiry
14 should receive full evidence about the close
15 relationship and cooperation between MI5 and the SDS."

16 Sir, it's in those circumstances that my clients
17 wait to hear the evidence and to see what further
18 disclosure there will be.

19 Before I metaphorically sit down, I must mention one
20 other matter of concern to my clients, though it's one
21 that formally lies outside, at least on the face of it,
22 the remit of this Inquiry. A Bill is currently before
23 Parliament, the Covert Human Intelligence Sources
24 (Criminal Conduct) Bill. It's been referred to by
25 several counsel in their opening statements. Though

1 covert human intelligence is regulated by the Regulation
2 of Investigatory Powers Act 2000, the current Bill will,
3 if enacted, permit the prior authorisation of crimes to
4 be committed by undercover police officers, amongst
5 others. The Bill is widely opposed by the trade unions
6 and many others. It seems to them extraordinary that,
7 this Inquiry having been appointed precisely to look
8 into the question of police covert human intelligence
9 sources, the government cannot wait even for
10 the evidence to be taken, let alone for you, sir, to
11 report your conclusions on the subject. It appears
12 disrespectful of this Inquiry.

13 The unions are also concerned that, under the Bill,
14 one justification for the prior authorisation of a crime
15 is if it's deemed necessary "in the interests of
16 the economic wellbeing of the United Kingdom". That's
17 clause 1.5. The unions foresee that no matter that
18 industrial action will be conducted lawfully,
19 the government will regard it, or industrial action in
20 particular industrial sectors, as detrimental to
21 the economic wellbeing of the United Kingdom, hence
22 permitting undercover police officers and others to
23 commit crimes to prevent, minimise or disrupt legitimate
24 trade union activity.

25 One justification for the Bill is that it's said

1 that the Bill will regularise what already happens. If
2 that is really so, my clients wish to know what, if any,
3 crimes were carried out by undercover police officers in
4 relation to trade unions and trade unionists and trust
5 that the Inquiry shares their concerned interest in
6 answering this question.

7 The unions assume that presently no
8 undercover officer could be instructed by superiors to
9 commit a crime. If the Bill becomes law, such an
10 officer will be refusing to obey a lawful instruction if
11 she or he refuses to commit a crime when instructed to
12 do so by a superior who has obtained authorisation. My
13 clients, highly experienced in disciplinary proceedings,
14 consider such an undesirable situation is a matter of
15 "practice" at which the Inquiry should look within its
16 terms of reference.

17 Sir, there is just one other matter, which will take
18 my two minutes to deal with, which has arisen today.
19 Finally, then, sir, my clients note that the issue of
20 the non-disclosure of the identity of
21 undercover officers arose this morning. That's not for
22 discussion now, but my clients wish me to make clear
23 that they share the concerns of Mr Smith and those
24 expressed earlier today by Mr Scobie and Ms Brander on
25 that issue. Trade union members need to know the faces

1 Opening statement by MS PIERCE

2 MS PEIRCE: Thank you.

3 Speaking for the NUM, we associate ourselves with
4 what's been said for the other unions, and the purpose
5 of additional remarks is to draw attention of
6 the Inquiry to the union's experience over a period of
7 time in the early 1980s, up to the early 1990s.

8 The experience was the experience of deliberate
9 destruction of the civil and political rights of
10 the union's members and beyond them their families, and
11 the communities in which they were living and working.
12 The whole force of the state was deployed for an
13 explicit political agenda. The experience was so
14 shocking and the evidence much -- at the time, much of
15 even greater significance, very recently, is clear.
16 It's so clear, it's believed it will assist this Inquiry
17 to revisit what was in fact, and was intended to be,
18 fundamental to determining the political infrastructure
19 of Britain in the decades that followed.

20 The unusually clear facts go beyond focusing on one
21 particular organisation or agency or subgroup of an
22 organisation, for instance the police, and consider
23 the overarching state itself. And it helps to
24 understand the ease with which destruction of
25 fundamental rights occurred and the ease with which

1 police could be deployed in that destruction.

2 It's important to know the NUM's life span. It was
3 established in 1945 for miners in Scotland, Wales and
4 England. In 1947, the coal industry was nationalised:
5 the contribution of the miners to the war effort was
6 respected, the failure of private mine ownership and
7 the importance of the coal industry was the prime source
8 of power integral to the strength of Britain.

9 It was in the 1970s in particular that the Union, in
10 part through industrial action, could make significant
11 advances, securing the most basic of entitlements for
12 its members -- reasonable pay and safer conditions.
13 The life of a miner was always grim and dangerous. His
14 life expectancy severely truncated.

15 The union's total commitment was to consolidate
16 improvement and to contribute to the trade movement as
17 a whole -- the trade union movement as a whole.
18 The union was strong and secure. And yet, in 1979
19 the newly elected government, with Mrs Thatcher as prime
20 minister, set in train a plan to make the union and its
21 members the focus of exceptional and primarily secret
22 initiatives. These included the security service and
23 the police. All these, including the government,
24 cultivated selected media.

25 Some of those initiatives were too flagrant to

1 remain secret. Others have only recently come to light.
2 Others suspected remain to be discovered.

3 There are two aspects of the union's experience of
4 relevance to this Inquiry. One is the extent of
5 influence on decision-making, the responsibility of
6 the state itself, not subdivided into agencies and
7 sub-agencies, police or security services. It is this
8 that has come belatedly, and most chillingly, from
9 the release of cabinet papers under the 30-year rule,
10 papers in the private foundation of the former prime
11 minister.

12 The second issue is the evidence of what was
13 unashamedly and openly happening in the scene at the
14 time, when it was part of an agenda on the part of
15 the state. And when the state elects to deploy every
16 aspect of its authority, including the police, to
17 achieve its political ends, this is what transpired at
18 the time. And this much, the second aspect, has been
19 long known.

20 It's recognised that the outcome of
21 the miners' strike of 1984/85 was fundamental in
22 determining the political and social nature of Britain
23 in the decades that followed. And it's equally
24 recognised the NUM found itself facing the concentrated
25 power of the state in an unprecedented form: nationwide

1 police deployment, roadblocks, thousands of arrests and
2 large scale use of force by the police. The way in
3 which police forces across the UK were instrumental in
4 attempts to defeat the miners has been, for 30 years,
5 the subject of intense criticism; an unconstitutional
6 preclude, without any Parliamentary authority, to
7 introduce the militarisation of policing of public
8 order, criminalising of disobedience to police orders
9 and the introduction of the practice of kettling protest
10 gatherings. These constituted the public face of what
11 happened in the miners' strike, and the implications
12 were seen and understood even at the time.

13 The evidence came from court proceedings, from
14 journalists' investigations, from a preliminary
15 Independent Police Complaints investigation into what
16 happened at Orgreave Coking Plant in 1984. It is in
17 some tragic similar fault lines at Hillsborough by South
18 Yorkshire Police a few years later.

19 The Inquiry can have and see openly available
20 evidence of the police involvement in the criminal
21 process to wrongly arrest, accuse, fabricate evidence
22 against individual members of the NUM; the use of
23 unprecedented police violence, premeditated; and
24 collusion by the police in their actions by and with
25 the national media; the use of informants, infiltrators,

1 provocateurs, bugging and surveillance on an industrial
2 scale; and the manipulation of evidence to attempt to
3 implicate senior NUM officials in criminal acts.

4 All of these aggressive and unlawful intrusions were
5 countenanced by the authorities appointed to maintain
6 the safety of the nation by lawful means. None were to
7 do with the claimed defence of democracy and were
8 the very opposite. And in parallel, false accusations
9 were broadcast with maximum publicity at the time.

10 The extravagant and extraordinary language of
11 the government was adopted by senior police, talking
12 about "war", "battles" and "battlegrounds".

13 The virulence of the government's words went way beyond
14 any boundaries of modern day British political life.

15 In the summer of 1984, the Prime Minister said:

16 "We had to fight an enemy without in the Falklands.
17 Now the war had to be taken to the enemy within, which
18 is a much more difficult fight and more dangerous to
19 liberty."

20 All of the language consistently used was of
21 conspiracy, subversion, of enemies of the state. All of
22 these signals of unambiguous clarity being given to all
23 government agencies and the police as to why and how
24 the gloves should come off in the war with the NUM.

25 There is no criminal offence of secondary picketing

1 with a gathering of large pickets, but police
2 intercepted vehicles, stopped pickets, dispersed what
3 they called "excessive numbers", claimed extended powers
4 to turn back miners on pain of arrest. Pit villages
5 were cordoned off; villages occupied often by police on
6 horseback in riot gear; imposing curfews; preventing
7 villagers from leaving. There is no possibility that
8 this constituted a lawful bar to freedom of movement or
9 expression of opinion.

10 Chief constables were lending each other officers,
11 creating de facto standing armies. 11,300 miners were
12 arrested in the course of the year-long strike; 7,000
13 miners were interested; 5,500 put on trial; 960 sacked
14 and 200 imprisoned.

15 The most exceptional manifestation of the war
16 happened at Orgreave. 95 miners arrested, almost
17 a third with riot, carrying up to life imprisonment,
18 the charge. But in the middle of the first trial,
19 the trial had to be abandoned, because evidence of mass
20 fabrication of evidence was too overwhelming for
21 the trial to continue. More than 100 police witnesses
22 had been instructed to sit in schoolrooms and have
23 statements dictated to them.

24 A significant number of officers could be shown from
25 photographic evidence never to have encountered

1 the person they said they'd arrested and whom they'd
2 seen committing an offence. Notebooks disappeared; one
3 at a luncheon adjournment from the witness box.

4 But overall, a major question of why, when there was
5 severe limitations on picketing, were thousands
6 encouraged to attend Orgreave en masse that day?

7 A senior officer confirmed the police had assumed
8 exceptional powers never debated by Parliament and had
9 deployed militarised police, mounted police charging
10 into the crowd, followed by short shield police units
11 told to "incapacitate" demonstrators like a war movie.
12 Miners suffering life threatening injuries. Most
13 importantly, the senior officers claim that this was
14 a pre-elected "battleground of his choosing".

15 Sadly, this was not new. The floors of the cells in
16 Rotherham police station that night covered in blood and
17 vomit, miners with severe head injuries going in and out
18 of consciousness, needing urgent hospital treatment. It
19 was not greatly different from the experience of
20 Southall in 1979, where horses had charged into
21 a peaceful crowd objecting to the presence of
22 National Front in a borough near to London. Dozens of
23 head injuries, members of community groups in intensive
24 care and Blair Peach dead.

25 What was different in 1984 was that the police were

1 part of a careful plan conceived of years before. As
2 one Welsh miner said, "We were like the Belgrano, there
3 to be sunk."

4 We were struck by some aspects of the contribution
5 of Mr Sanders on behalf of individual officers, and his
6 emphasis on the need and also the achievement of police
7 interventions, the concept that as yet unexplained
8 deployments were justified on the basis of spectres of
9 prevention of public disorder for protecting national
10 security.

11 It must be of importance, we suggest, in
12 understanding how perceptions are generated and how
13 outrageous unlawful behaviour can follow and to
14 appreciate those connections. This is what happened
15 during the miners' strike.

16 The very recent part of the NUM's understanding is
17 as important. The second critical issue, beyond what
18 the police did, comes from cabinet papers released under
19 the 30-year rule.

20 Long suspected, not known, and the reason for
21 the strike was not to achieve greater pay or safer
22 conditions, but to protest against the suspected closure
23 of pits -- destroy the livelihood and the communities in
24 which that livelihood was sustained. Those communities
25 were, and still are, profoundly affected. Further

1 brutality and determination of the exercise what we now
2 see was the plan. Nevertheless, it's still shocking to
3 read the minutes of secret meetings before the strike,
4 the confidential report of the new head of the NUM,
5 confirming an intention to close 75 pits.

6 The beginning of the plan required wholesale
7 secrecy. The 75 pits meaning the loss of 70,000 jobs
8 and decimating entire areas of South Wales, Scotland and
9 the North East. The minutes, the Prime Minister says --
10 and all of this is there to be seen -- was to be kept to
11 a minimum or not at all. Oral meetings to be the order
12 of the day.

13 Equally shocking in the papers to be found at Kew,
14 the National Archives, is a letter, after the strike
15 wished for by the government had begun, is a letter sent
16 by Mr MacGregor and endorsed by the prime minister,
17 telling the miners that it was wholly untrue:

18 "Your leaders have told you the Coal Board is out to
19 butcher the coal industry and that we plan to do away
20 with 70,000 jobs, we plan to close 86 pits.

21 "If these were true, I would not blame miners for
22 getting angry and being worried. These things are
23 absolutely untrue. I categorically and solemnly say you
24 have been deliberately misled."

25 It's retrospectively through these minutes that the

1 presentation at the time of the police and their actions
2 can be properly and truthfully assessed.

3 There was a report from years before that planned
4 for the destruction of the union, talked about
5 selecting:

6 "Trying to provoke a battle in a non-vulnerable
7 industry ... A victory could win industries like
8 the railways ... the most likely area is coal ...
9 the chosen battleground could be the docks."

10 The plan considered what it would take, acknowledged
11 catastrophic implications, that there are whole towns
12 dependent on steelworks, coalmines which would severely
13 be deprived if the full efficiency policies are carried
14 out.

15 But nevertheless, what was envisaged was a tactic of
16 starving the miners and their families, of withdrawing
17 all social security benefits, to ensure that they would
18 be brought into line. The plan was to destroy
19 the union. It was considered that it's there to be seen
20 in the NUM's statement lodged with the Inquiry. There
21 are extracts which are from those documents now to be
22 seen. Considered as necessary was to be, as well as
23 cutting off the supply of money to the strikers, was
24 the concept of fragmentation, of causing miner to go
25 against miner. Divisions between miners in safer mining

1 areas with greater prospects of their pits continuing.

2 These policies, it was considered, should enable us
3 to succeed in the policy of fragmentation. "We must be
4 prepared to deal with the problem," and dealing with
5 the problem involved the police.

6 The stage being set for the strike, it was
7 the government who wanted the strike. It wanted
8 the strike by the miners union, and intended to
9 manipulate it. But what was presented throughout was
10 the police acting under their own discretion. We forget
11 that there's a limitation on time. Example after
12 example of these secret minutes, of the wish to
13 manipulate processing of arrests, the expressions of
14 dismay at police failures to make sufficient deemed
15 arrests, repeated references to the Prime Minister's
16 complaint, emphasising the need for severe sentencing to
17 be broadcast publicly, encouraging publicity for that.

18 And dissent with agreement with chief constables who
19 expressed concern about the quality of evidence and
20 wanting to delay trials, changing the minutes so that
21 the chief constables would wish for accelerates trials,
22 discussion of moving cases out of the Yorkshire area to
23 more friendly courts -- described the Old Bailey and
24 more friendly courts.

25 Ministers were told the line to take was that

1 the dispute should be seen as a matter of law and order
2 and that it's a matter for the police, entirely
3 the police discretion. Although, quick to condemn
4 claimed violence of miners and praise encouraged for
5 police for their efforts.

6 Even before Orgreave, concerns over police evidence
7 and the way the police were behaving was being raised
8 within the Cabinet. But the frequent references to
9 interaction between the courts, the necessity of
10 the government helping to create a climate of fear, in
11 which those arrested, including at Orgreave, and charged
12 with riot contemplated their future, created
13 the impression, perceived at the time by the miners,
14 that the courts and the legal process were being unduly,
15 inappropriately intertwined with perceived political
16 imperatives.

17 The NUM in its initial application drew attention of
18 the Inquiry to other initiatives which lead to suspicion
19 of the collusion, the secret and covert activities.

20 The NUM does not know if police from the squad that
21 is the subject matter of this Inquiry were deployed in
22 relation to its members. They have raised with
23 the Inquiry a number of their concerns, including
24 reference by a former chief constable to a meeting of
25 chief constables in the presence of a Home Office

1 representative bringing a personal message from
2 the Prime Minister convinced the official reporting that
3 a secret communist sell was orchestrating strike,
4 complaining "the fact the police could not prove this
5 conspiracy existed was because of the weakness of our
6 intelligence-gathering".

7 It was urged upon the police chiefs the necessity of
8 a secret public intelligence unit to infiltrate and
9 monitor groups that threatened order, to go beyond
10 Special Branch investigation of subversive groups
11 intended to concentrate on legitimate groups like
12 the NUM.

13 All of this leads to puzzlement and concern that
14 there is confusion as to roles, as to responsibilities,
15 as to definitions, as to lines that are drawn
16 artificially or not artificially.

17 For instance, the NUM noted in the run-up to
18 the miners' strike reports of MI5 giving Special Branch
19 officers advanced training in an MI5 school outside
20 Portsmouth. And criticisms by MPs at the time,
21 including Tam Dalziel, commenting on the lack of
22 definition of responsibility between police and the
23 secret service, freedom of manoeuvre of the secret
24 service expanding during the strike because of
25 the undefined division of responsibilities between

1 the local police and others and deferring to the members
2 of the Special Branch described as "MI5's
3 foot-soldiers", running their own dirty tricks during
4 the strike. Reported as often singling out miners for
5 arrest and provoking violent incidents.

6 The NUM does not know any more than these fragmented
7 indications. And it thinks it of most importance to say
8 to the Inquiry what it can put before it in
9 the documents that have been released concerning their
10 industrial action and what was done to that is that
11 perhaps artificial divisions, divisions of
12 responsibility, are inappropriate, and that there is
13 a greater responsibility to be addressed to the state
14 itself.

15 Ironically, one of the cases, of many drawn to
16 the attention of the Inquiry -- the right to strike,
17 the right to protest, the right to freedom of
18 expression, the right to personal integrity -- the one
19 case that the NUM would like to draw to the Inquiry's
20 attention is a case from which we benefit, the freedom
21 of expression decided by the European Commission,
22 the European Court of Human Rights. It's the case of
23 Helen Steel and Dave Morris v UK. The case is
24 informative on the right to freedom of expression.

25 The irony, of course, amongst ironies, is that those

1 two committed, dedicated protesters, fighting an action
2 by a global corporation over many years of their lives
3 for the publication of a pamphlet, discover years later
4 that it was contributed to by an undercover officer.
5 The point that we would make: what is the role of
6 the state? Who knew what about that factor? Who
7 thought it appropriate or not to reveal it? Who thought
8 it right to address the European Court, or not?

9 It's the contradictions and the clashes between
10 roles and decision-making and those who are on
11 the receiving end that are confusing in asking this
12 Inquiry how to focus.

13 We believe that the experience of the NUM in
14 the early 1980s goes into the 1990s, but in space of
15 time today all we can consider is perhaps the worst of
16 the worst of the worst of years: 1984 and 1985.

17 What the NUM asks is that the Inquiry consider how
18 the actions of the police and covert investigation, or
19 covert consideration, extended not just to the 200
20 members at the time, or their families, or their support
21 groups, but in the never-ending ripple effect beyond,
22 into the whole of society.

23 The year of the strike was one of intense hardship.
24 The solidarity of the communities involved was
25 extraordinary. And it reached out to solidarity from

1 beyond: the miners and their families had to be fed.

2 The right of miners to protest had to be supported
3 politically and morally, as well as legally. And yet
4 the undertone and the instructions were explicit. If
5 the miners were the enemy, all had volunteered on
6 the enemy side in the war.

7 We draw this -- these references and the deep
8 suspicions to the Inquiry, and to allow the disclosure
9 that might enable, not just the contacting of hundreds
10 of individuals whose memories could be searched, that's
11 fundamental, but those who reached out to groups and
12 welcomed them into soup kitchens, volunteers collecting
13 coal not dole and their privacy. Most of all, the right
14 to freedom of expression.

15 The NUM believes that every indication of what it
16 can put forward to this Inquiry shows that what happened
17 to the union was beyond the bounds of any justification
18 of lawfulness. It was a plan for national security and
19 public order, to be an excuse for the plan that was
20 wished for. And that plan was itself wholly, totally,
21 outrageously unlawful.

22 Thank you, Chair.

23 THE CHAIRMAN: Thank you, Ms Pierce.

24 That concludes our proceedings for today. We will
25 resume at 10 o'clock on Monday. But I should notify

1 everybody that there is a matter that I have to deal
2 with immediately before then that might mean we have
3 a slightly later start, although I do not intend that we
4 should.

5 Thank you, Ms Pierce.

6 Until 10 o'clock on Monday.

7 MS PURSER: Thank you, everyone. That concludes
8 the hearings for today and for this week. We will
9 resume on Monday, 9 November, at 10 am.

10 Thank you.

11 (4.16 pm)

12 (The hearing adjourned until 10.00 am
13 on Monday, 9 November 2020)

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