IN THE UNDERCOVER POLICING INQUIRY

SUBMISSIONS ON BEHALF OF CATEGORY F CORE PARTICIPANTS

FRANCIS BENNETT and HONOR ROBSON

FAITH MASON

MR LEWIS, MRS LEWIS and MS LEWIS

LIISA CROSSLAND and MARK CROSSLAND

BARBARA SHAW

FOR THE 26 JANUARY 2021 HEARING

Introduction

1. These submissions are made on behalf of Francis Bennett and Honor Robson, Faith Mason, the Lewis family, Liisa and Mark Crossland and Barbara Shaw who have been recognised as core participants ("CPs") at this Inquiry (as Category F) having become aware that the identities of their deceased loved ones were appropriated for the purposes of constructing the covert identities of SDS and NPOIU officers. It appears their recognition as CPs arises from rule 5 (2)(b) of the Inquiry Rules 2006 ("the Rules") in that they are each persons with "*a significant interest in an important aspect of the matters to which the inquiry relates"*, namely, the practices relating to officers' legend building[1]. They have been motivated to seek CP status and to participate in this Inquiry in order to understand how the abhorrent practice of using deceased children's identities came into being and why it was permitted, promoted and maintained; and to ensure that those responsible are identified and held accountable and that lessons are learned[2].

2. The Category F CPs' significant and direct interest in the subject matter of the Inquiry relates to the *practices* surrounding legend building including – as they see it - the absence of *any* necessity for adopting or maintaining the practice of appropriating the identities of deceased

[1] See the following sections of the Issue lists: §§19 – 24 of Module One Special Demonstration Squad; §§32 – 40 of Module One National Public Order Intelligence Unit; §13.11 of Module One Other Undercover Policing; and §§51 – 55 of Module 2(a) Special Demonstration Squad.

[2] As is more fully set out in the Category F CPs' Amended Opening Statement for Tranche 1 Phase 1, for example at §§8 - 10.

children ("the DCI practice"). Their particular interest extends beyond the evidence that relates specifically to the application of the DCI practice to their deceased relative and beyond the specifics of how that particular identity was researched and adopted.

3. As we expand upon below, evidence will be given in the forthcoming Tranche 1 Phase 2 (T1P2) about the initiation of this practice, the reasons for it and the extent to which the continued use of fictional identifies did or did not present a viable alternative. Evidence will be heard for the first time as to how officers went about identifying the deceased child's identity that they adopted and the extent to which there was involvement / oversight from their superiors. Accordingly, this forthcoming T1P2 will occupy a very central role in terms of the evidence to be heard by this Inquiry about the DCI practice. In the circumstances we submit that the Category F CPs, through their legal representatives, should be afforded a meaningful opportunity to participate in the investigation of those issues, as we propose below. We also respectfully submit that such an approach is proportionate and likely to be of assistance to the Inquiry.

4. Whilst our submissions at this stage are inevitably focused upon the forthcoming T1P2, we submit that the same logic will apply to Tranche 1 Phase 3 ("T1P3") when the evidence of SDS managers from the same period will be heard.

5. Our submissions are developed in the following structure:

   (a) The evidence relevant to Category F issues emerging from the Tranche 1 Phase 1 ("T1P1") evidential hearings.

   (b) The current position regarding T1P2 and the Category F CPs.

   (c) The Category F CPs' significant and direct interest in the issues to be explored in the T1P2 evidential hearings.

   (d) The Inquiry's definition of "*direct interest*" is not appropriate for the Category F CPs.

   (e) The role the Category F CPs should be afforded in T1P2.

Evidence emerging from Tranche 1 Phase 1

6. The evidence from officers deployed from 1968 - 1972 in relation to legend building appears to be broadly consistent: HN218[3], HN334[4], HN330[5], HN321[6], HN336[7], HN340[8], HN333[9], HN339[10], HN349[11] and HN343[12] each describe relying upon a rudimentary legend comprised of a cover name, a cover address and – in most instances – a cover employment. None of the officers used the identity of a deceased child or suggested that this was an available option used by other officers at the time. HN345's situation appears to have been unique in that he carried forward a fictitious identity that had been assigned to him while he was deployed as a Special Branch officer[13]. Although material details have been redacted it appears that the Special Branch methodology ensured that some documentation was available to support the fictitious identity relied upon by HN343 and was sufficiently robust to place a different undercover officer ("UCO") in receipt of welfare benefits in his cover name and thus maintain his cover[14].

7. From the accounts provided in their statements, none of these officers adopted the approach set out in the guidance *"Identity and Background Material"* contained in Conrad Dixon's document *"Penetration of Extremist Groups[15]"* although some believed others may have done so[16]. None of the UCOs described compromise of their rudimentary covert identities[17]. HN343 described a deliberate strategy of maintaining distance from his subjects so that his legend would not come under scrutiny[18] and HN348 outlined the value of maintaining a low profile and stated that doing so did not arouse suspicion[19].

8. The emerging evidential picture therefore appears to be that as at the end of 1972 there were no pressing operational imperatives driving the abandonment of a rudimentary approach to

[3] Day 9, p 119, ll 22 – 24 and p 120, ll 8
[4] Day 9, p 125 ll 19 – 20
[5] Day 10, p 3 ll 5 – 10
[6] Day 10, p 6, ll 19 – 23
[7] HN336's statement at §34 [MPS/0739316/8]
[8] Day 11, p 103 l 5 – 104 l23
[9] Day 14, p 2, ll 20 – 24
[10] Day 14, p 5, ll 2 - 5
[11] Day 14, P 8, ll 9 – 12
[12] Day 14, p 10, l 22 – p 11, l 7
[13] Day 14, p 36 l 6 – p 37 l 5
[14] HN345's statement at §99 [MPS/0741109/38]
[15] [MPS/0724119/8]
[16] HN349's statement at §20 [MPS/0740356/6]
[17] HN348 described being withdrawn from the field as a precaution, along with Jill Mosdell, because HN45's cover was comprised when he was *recognised* at a meeting: 1st statement at §107. There is no suggestion that the nature of his cover identity brought about that situation.
[18] HN343's statement at §40 and §48 [MPS/0739804/11-12]
[19] HN348' statement at §25, §51 [MPS/0741698/CLF] and Day 13, p 30 ll 1 – 5, p33 ll 21 – 25, p 71 ll 3 - 9

legend building and adoption of the abhorrent practice that has caused serious harm to the Category F CPs, attracted significant public opprobrium and undermined public confidence in undercover policing. Questions therefore arise for the T1P2 witnesses as to whether and when the picture as at 1972 altered, how reliance upon the identity of deceased children became an adopted practice despite its obvious limitations and whether alternative methodologies were available, considered and effectively relied upon too.

The current position regarding T1P2 and the Category F CPs

9. The Inquiry has indicated that T1P2 will cover the period 1973 – 1982. T1P3 is to cover the role played by SDS managers during the years 1968 – 1982. Publicly available material indicates that the first reliance upon the DCI practice by an UCO in the field occurred at some point between 1976 and 1981[20]; that is within the time frame to be examined within T1P2. Furthermore, the Inquiry has confirmed that there are "*a number*" of T1P2 officers who adopted the DCI practice and that: *"[e]ach of the officers has been asked how their legend was constructed and their responses are contained in their witness statements, which the Inquiry will publish in due course (subject to any restrictions)"*[21]. The important role that this topic will play is also foreshadowed by the Solicitors to the Inquiry's ("STI's") letter to Bindmans LLP dated 14 October 2020 indicating that *"the use of real individual's identities by former SDS undercover officers will first feature in T1P2. This will be introduced by Counsel to the Inquiry in the opening to T1P2"*.

10. An evidential examination of the operational experience and conduct of UCOs in the period during which reliance came to be placed upon the DCI practice will be critical to an understanding of how the practice came to be adopted at all and how it then came to be entrenched and relied upon over an extended period.

11. However, STI has indicated that none of the officers in T1 are "*associated with any of your clients*", as:

    - The evidence of the officer "*with whom Ms Robson and Mr Bennett are concerned*" (HN12[22]) will be dealt with during Tranche Two;

[20] Operation Herne Report 1 at §5.1.
[21] Letter from STI to Bindmans LLP dated 1 September 2020.
[22] HN12 is deceased. The other officers mention in this paragraph are alive, so far as we are aware.

- The officer "*linked to Ms Mason*" (HN122) is also Tranche Two;
- The Crosslands (HN16) are Tranche Three; and
- Ms Shaw (EN32) is Tranche Four[23].

12. It therefore follows that on the Inquiry's current approach, none of our clients will be recognised as having a "direct interest" in T1P2 (or in T1P3). In turn, as matters stand, this has the consequence that their representatives will not receive advanced disclosure of the witness statements or other documentation in advance of the evidential hearings and will be reliant on the daily transcript to learn for the first time about the important topics we have highlighted above, either as or after officers give their evidence (depending on the permitted funding arrangement). In turn, this will mean that those acting for the Category F CPs will have no meaningful opportunity to propose lines of questioning to Counsel to the Inquiry ("CTI") in advance of the relevant hearing. Furthermore, any opportunity to do so during the hearing, as the transcript is being read and evidence appreciated for the first time, will be extremely difficult and time-limited[24], assuming that it is even feasible to make contact with CTI / Ms Brander at that juncture (who will themselves be focusing upon the evidence and may also be receiving messages from other representatives about other topics being covered by the witness). Given the Inquiry's timetable for lodging submissions, this document is prepared without sight of completed submissions made by other Non-State Core Participants ("NSCPs"), but we understand that the experience of T1P1 has confirmed the practical limitations and difficulties with this kind of arrangement.

The Category F CPs' significant and direct interest in the issues to be explored in the T1P2 evidential hearings

13. The Category F CPs are understandably anxious to be permitted an opportunity to meaningfully participate in this next phase of evidence which they consider absolutely critical to the issues that concern them. We submit that in the circumstances such participation inevitably entails

[23] Details of the dates of each officer's deployment and the cover name in question is set out at §2, Amended Opening Statement on behalf of the Category F CPs. So far as the Lewis family are concerned, it appears that HN78's deployment will also be within the Tranche 3 time frame.

[24] And even this modest involvement assumes that there will be funding for Counsel to view the transcript contemporaneously on days when relevant officers are due to give evidence, which we do not believe has been permitted or confirmed hitherto.

their legal representatives being afforded an opportunity to consider the hearing bundle *before* the witness evidence is adduced.

14. At paragraph 68 of their Amended Opening Statement the Category F CPs identified the pressing unanswered questions that have preoccupied them since learning that the identities of their loved ones had been appropriated. Category F CP questions that should be answered – in whole or in part – by T1P2 (and T1P3) evidence include many of the fundamental issues regarding the DCI practice and the SDS' reliance upon it, including:

    (a) Who devised the practice and how long did it operate for? What did it entail?

    (b) Why was the practice adopted?

    (c) What involvement did managers and other senior officers have in its implementation or oversight?

    (d) What training or advice was given to officers in relation to this practice?

    (e) What information and documents were collated and relied upon in relation to each deceased person and their relatives?

    (f) To what extent did UCOs intrude upon the private and family lives of relatives and specifically, did surveillance take place and were there any intrusions following the completion of any of the officers' deployments?

    (g) Did UCOs also use false names for their undercover "*legends*"? To what extent was this practice available as an alternative and employed during the time that deceased children's identities were also appropriated? What, if any, constraints were there upon using false names and were such deployments completed without compromise?

15. The T1P2 evidence should also significantly assist with obtaining an understanding as to whether consideration was given by individual UCOs or their superiors to the personal circumstances of bereaved families and the potential consequences for them of the UCO's reliance upon their loved one's identity.

16. By the time of the period covered by the Tranche Two evidence hearings the DCI practice appears to have become embedded within the SDS. Affording some of the Category F CPs an opportunity to participate at that stage will only enable a very limited involvement, focused on

the adoption of the particular legend, but in circumstances where the UCO involved is likely to say that he was simply following what was by then an established practice (and he is unable to shed light on its inception or rationale). There is unlikely to be any meaningful opportunity to examine the reasons for the practice, its development or viable alternatives by that stage of the evidence.

17. We understand that the Commissioner of the Metropolitan Police and legal teams representing individual UCOs will be regarded as having a "direct interest" in T1P2, with the consequential opportunity for advanced receipt of the evidence bundle and the chance to suggest areas of questions to CTI after reviewing the same. As was flagged in the oral opening statement made on behalf of the Category F CPs[25], it is already plain that there are significant contentious areas, as was apparent from the T1P1 opening statement made on behalf of the Designated Lawyer officers in terms of the reason why the DCI practice was adopted and the extent to which there were viable alternatives.

18. The adoption of the DCI practice has also generated enormous public concern. To take an approach to "direct interest" and to advanced disclosure of evidence which effectively confines the participation of Category F CPs - in this important stage of the hearings - to only such aspects of the chronology that directly bear upon the identity of their loved one, is markedly unbalanced in circumstances where the State CPs (who have been involved in the adoption of the DCI practice) are fully enabled by the Inquiry to represent their client's position on every aspect of the Category F issues through all tranches of the Inquiry. We respectfully submit that this unequal approach is unlikely ultimately to assist the Inquiry in undertaking a full evidential exploration of this aspect of its remit[26].

19. The importance of advanced disclosure of the relevant UCOs' witness statements is underscored by the indication in STI's letter to Bindmans LLP of 1 September 2020 that *"very few"* contemporaneous records pertaining to legend building have been secured[27] (with the principal source of information being the UCO's accounts).

[25] Day 6, p 135 l22 – p136 l 11

[26] We return to this issue, explaining why the currently proposed arrangements are inadequate when we address the role that the Category F CPs should be permitted, below.

[27] The Amended Opening Statement on behalf of the Category F CPs drew attention to one of the very few documents that we are aware of in this regard, namely the memo from HN294 dated 21 February 1973, see §14.

20. Accordingly, we submit that the Category F CPs have a significant and direct interest in T1P2, that they should receive prior disclosure of the hearing bundle to facilitate their participation in T1P2 and that they should be afforded every reasonable opportunity to assist the Inquiry in ensuring that all necessary questions concerning Category F issues are put to T1P2 witnesses.

The Inquiry's definition of "direct interest" is not appropriate for the Category F CPs

21. The Inquiry has defined a "*direct interest"* in a particular tranche of evidence as arising *"where an individual is providing evidence to the Inquiry within the tranche or is named within the open material"*[28]. In turn, the Inquiry has determined that only those CPs meeting that particular definition will be entitled to advance disclosure of the hearing bundle. Further, that disclosure will not be provided where a particular CP's "*evidential input*" was unnecessary to inform the Inquiry's interrogation of witnesses.

22. Whilst we support the general submissions made on behalf of the NSCPs as to why this involves an unduly narrow approach, we also respectfully submit that it is particularly inappropriate with regard to Category F, a category of CPs who were not themselves direct participants in the events giving rise to the need for a public inquiry in the sense of having any direct interaction with UCOs, but who have a significant interest in a very important aspect of the Inquiry's remit, namely the DCI practice.

23. Section 17 of the Inquiry Act 2005 provides:

> ***17 Evidence and procedure***
>
> *(1) Subject to any provision of this Act or of rules under section 41, the procedure and conduct of an inquiry are to be such as the chairman of the inquiry may direct.*
>
> *(2) In particular, the chairman may take evidence on oath, and for that purpose may administer oaths.*
>
> *(3) In making any decision as to the procedure or conduct of an inquiry, the chairman must act with fairness*[29] *and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others).*

24. Rule 5 of the Inquiry Rules 2006 provides:

[28] STI's letter dated 29 January 2020.
[29] All emphasis added.

5.—

(1) The chairman may designate a person as a core participant at any time during the course of the inquiry, provided that person consents to being so designated.

(2) In deciding whether to designate a person as a core participant, the chairman must in particular consider whether—

(a) the person played, or may have played, a direct and significant role in relation to the matters to which the inquiry relates;

(b) the person has a significant interest in an important aspect of the matters to which the inquiry relates; or

(c) the person may be subject to explicit or significant criticism during the inquiry proceedings or in the report, or in any interim report.

(3) A person ceases to be a core participant on—
(a) the date specified by the chairman in writing; or

(b) the end of the inquiry.

25. The practical consequence of the approach the Inquiry has adopted is to give primacy – in terms of prior disclosure and participation - to those who have achieved CP status through the rule 5 (2) (a) route, as opposed to individuals who have achieved CP status through the route provided for at rule 5 (2) (b).

26. Further, we respectfully submit that to maintain the approach thus far adopted by the Inquiry in relation to T1P2 would give rise to conspicuous unfairness to the Category F CPs in contravention of the Chair's obligations under Section 17 (3), for the following reasons:

(a) It is an approach that appears to place CPs who have played a direct or significant role in the matters to which the Inquiry relates in a more advantageous position than those who have been burdened – as with the Category F CPs – with the *consequences* of the actions of others.

(b) It fails to afford properly interested CPs with an opportunity to effectively participate and to support the Inquiry in reaching conclusions as to the central issues.

(c) The approach favours the police CPs who have inevitably played direct and significant roles in what the Category F CPs consider to be unconscionable breaches of their fundamental rights and those of their deceased relatives (see §§17 – 18, above).

(d) The police CPs have been placed in a position individually and collectively to defend their actions; fairness dictates that the Category F CPs should be put in an equivalent position so as to articulate their questions and raise challenges to the evidence of police CPs as appropriate.

(e) The withholding of disclosure that the Category F CPs rightly consider to be of fundamental relevance to the issues that concern them - until after the relevant witness has given evidence - arises against a backdrop of significant evidential restrictions. In addition to the restrictions that pertain to the true identities of most of the UCOs there have been heavy redactions of references in documents to the methodologies used to establish covert identities to protect sensitive policing techniques even when those techniques date from some 50 years ago and might well have been superseded. All of this creates an atmosphere in which our clients consider that they are being denied an opportunity effectively to participate.

The role the Category F CPs should be afforded in T1P2

27. It may be suggested in response to these submissions that CTI are in any event able to question the UCO witnesses appropriately and that Ms Brander and Ms Dagostino will be funded, as in T1P1, to review the disclosed evidential bundle and identify documents within it that ought to be shared with a particular CP, including those in Category F. However, with the greatest respect to all concerned, we do not consider this to be an adequate substitute.

28. As we have already noted, this document is being drafted without sight of completed submissions that will made on behalf of the NSCPs. However, our understanding is that the experience of those involved in the T1P1 evidential hearings reinforces, rather than negates, our concerns.

29. We stress that this submission is not in any way intended to suggest that CTI will be anything other than thorough and conscientious in the questions they pose in relation to the Category F issues but experience informs that the perspective of victims adds significantly to the forensic scrutiny of evidence bearing upon the infringement of their rights. Furthermore, the legal representatives of the Category F CPs will be able to review documents and propose lines of

questioning that stem from their particular focus on this area of the Inquiry's work. We respectfully suggest that real and meaningful assistance could be offered in this regard.

30. Furthermore, bearing in mind that it is not anticipated that the T1P2 bundle will be disclosed to any CP until six weeks before the evidential hearings are scheduled to begin; it is our view that the previously operated system is impracticable and unfit for purpose. It is simply not realistic to expect Ms Brander and Ms Dagostino (even if afforded some limited additional assistance) to be able to review the entire bundle from the perspective of each NSCP and then propose specific items for disclosure to specific CPs. (Who, in the case of Category F would not in any event then qualify for that disclosure on the Inquiry's current approach to "direct interest".)

31. We also suggest that maintaining the previous approach will not result in a significant saving of costs as regards the Category F CPs; on the contrary the approach runs the risk of causing costs to escalate. Specifically, the Cat F legal representatives will be afforded an opportunity to consider the T1P2 hearing bundle in the context of the T1P2 evidence; the issue is only whether that consideration should occur before or after witnesses have completed their evidence. Consideration that is limited to the later stage may identity that material questions have not been asked and/or obvious lines of evidential inquiry not followed, the Category F CPs will wish to make separate representations for those deficiencies to be remedied, which may prove to be a time consuming and costly exercise in itself. Furthermore, we note that the time that would need to be spent on considering the evidential bundle and proposing questions to CTI on behalf of the Category F CPs is unlikely to be extensive, given that the adoption of the DCI practice is a very discrete issue and the amount of relevant documentation is said to be limited. Any remaining concerns about disproportionately can be addressed via the extent of the permitted costs award.

32. In summary we submit that the negative consequences of denying the Category F CPs advanced access to the hearing bundle is disproportionate to the benefit that it is believed the Inquiry seeks to derive from this restriction. Furthermore, the imperative of fairness that we have already discussed and the assistance that is likely to be provided to the Inquiry in relation to this important topic also point to permitting the Category F CPs advanced disclosure of the evidential material.

33. In those circumstances, as we have indicated, it is anticipated that the Category F CPs' legal representatives will wish to propose lines of question to CTI following sight of the T1P2 bundle.

34. For the same reasons, we also submit that the Category F CPs' legal representatives should have the opportunity to attend the hearing (in all likelihood remotely) when UCO officers are giving evidence that bears on the adoption of the DCI practice. This would then enable application to be made pursuant to rule 10 (4) for permission to ask questions in the event of a significant matter not being covered by earlier questioning. We would only envisage making such applications in clear-cut circumstances and that such questioning would only occupy a short period of time. We understand that experiences from T1P1 have underscored the difficulties of persisting with the previous arrangements in this regard: see §12 above.

35. We are grateful for the opportunity to expand upon these submissions orally and address any areas of concern at the hearing on 26 January 2021.

HEATHER WILLIAMS QC

FIONA MURPHY

BINDMANS LPP

8 January 2021