IN THE MATTER OF THE UNDERCOVER POLICING INQUIRY

BEFORE SIR JOHN MITTING

SUBMISSIONS FOR THE PROCEDURAL HEARING ON 26th JANUARY 2021

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1. These submissions set out our views and concerns, and the views and concerns of the Non-State Core Participants ("NSCPs") we represent, about Tranche 1 Phase 1 ("T1P1") of the Inquiry, from the disclosure of the hearing bundle on 30th September 2020 to the conclusion of the evidential hearings on 19th November 2020. They should be read in conjunction with any submissions on behalf of the wider NSCP group.

2. Specifically, we address the following issues herein:

   a) The Inquiry's approach to the identification of additional NSCPs;
   b) The Inquiry's approach to disclosure;
   c) The Inquiry's approach to redactions;
   d) The Inquiry's approach to police witnesses;
   e) The Inquiry's approach to closed hearings;
   f) The Chairman's approach to rule 10 of the Inquiries Rules 2006.

Identification of additional NSCPs

3. The T1P1 hearings have brought into sharp focus the apparent failure of the Inquiry to identify from the material in its possession all those who are not currently NSCPs but were in fact targeted by undercover police officers and, subsequently, to take the necessary steps to investigate whether they are alive and, if they are, to ensure that they

are not only notified that they were targeted but are also encouraged to apply for NSCP designation.

4. One glaring example of this apparent failure is the direct or indirect targeting of those involved in the Black Power movement in the late 1960s and 1970s.

5. It was at paragraphs 8 to 10 of Appendix 2 in the opening statement of Counsel to the Inquiry ("CTI"), which was served on the NSCP lawyers on 28th October 2020, that it was first revealed by the Inquiry that a Special Demonstration Squad ("SDS") officer had given evidence in February 1969 at the trial of a Black Power activist for incitement to riot in respect of a leaflet he had distributed at a Notting Hill Vietnam Solidarity Campaign meeting in October 1968 (see also MPS-0739150). This was significant for several reasons:

   a) An SDS officer giving evidence at the criminal trial of a political target (as opposed to merely gathering information on political targets) was contrary to the basic principles of the SDS as set out in Chief Inspector Conrad Dixon's November 1968 paper, "Penetration of Extremist Groups" (see MPS-0724119).
   b) This was the first known example of an SDS officer giving evidence at the criminal trial of a political target.
   c) Not only did the SDS officer give evidence at trial but she was also commended for providing information that was later deployed during cross-examination by prosecuting counsel to undermine the evidence of four defence witnesses (see MPS-0739149).
   d) There are currently no NSCPs who were involved in the Black Power movement in the late 1960s and 1970s.

6. We are unaware of any efforts that have been made by the Inquiry to contact the said Black Power activist who is in fact alive, inform him that he was targeted by an undercover police officer and encourage him to apply for NSCP designation. Furthermore, we are unaware of any efforts that have been made by the Inquiry to contact any other Black Power activists who feature in SDS intelligence reports, inform them that they were targeted and encourage them to apply for NSCP designation.

7. We are aware that the Inquiry did contact one SDS target who was not a NSCP, although she had been the subject of undercover reporting, namely Diane Langford, and offer to send her a small number of documents in which she was mentioned, subject to a restriction order. This was in October 2020, a few weeks before the start of the T1P1 hearings. However, Ms Langford was neither encouraged to apply to be designated as a core participant nor issued with a formal request for evidence, despite having a direct interest in T1P1. On any view, this was a wasted opportunity. Following the conclusion of the T1P1 hearings, most of the relevant police witnesses having already given evidence, the Chairman granted Ms Langford's application for NSCP designation.

8. It is submitted that the Inquiry should disclose to all core participants the names of all those who were the subject of undercover reporting who, like Ms Langford, have been contacted by the Inquiry.

9. On a related note, we observe that there is no material in the T1P1 hearing bundle about the role of Special Branch or the SDS in the criminalisation of the Mangrove 9 who were Black activists arrested following a demonstration against police harassment in Notting Hill in August 1970 and subsequently tried and acquitted of incitement to riot. This was a watershed moment in the history of the Black community's struggle against racist policing. It is inconceivable that Special Branch or the SDS did not target the said demonstration or the subsequent grassroots campaign in defence of the Mangrove 9.

10. The absence of any material in the T1P1 hearing bundle about the Mangrove 9 must mean that the Inquiry decided not to include any material about the Mangrove 9 in the bundle, perhaps on the grounds that there was no NSCP connected with the Mangrove 9, or the police never provided the Inquiry with any material about their targeting of the Mangrove 9. Either way, the omission of the Mangrove 9 from the Inquiry's purview is another wasted opportunity.

11. The Inquiry needs to investigate to what extent Special Branch or the SDS infiltrated or otherwise targeted the Black Power movement in the late 1960s and 1970s. It is regrettable that such an investigation did not occur prior to the T1P1 hearings, given

that racist policing is such a critical issue for many NSCPs and so intrinsic to any proper understanding of undercover policing since the late 1960s.

12. Ultimately, the wider burden of identifying additional NSCPs rests squarely on the shoulders of the Inquiry, given it is solely the Inquiry that is in possession of the voluminous amounts of material provided by the police and MI5, only a tiny fraction of which have thus far been uploaded onto the Inquiry's website, having previously been disclosed to a few NSCPs prior to the T1P1 hearings.

13. The inevitable consequence of not encouraging all those who were the subject of undercover reporting to apply for NSCP designation is that the Inquiry will obtain at best an incomplete picture of the nature and extent of undercover policing and its true impact on all those targeted.

14. It is submitted that the Inquiry should be proactive in its pursuit of the truth. It should contact all those who are not currently NSCPs but are alive and were the subject of undercover reporting and encourage them to apply for NSCP designation.

Disclosure

15. There has already been widespread complaint in the opening statements of NSCPs about the lateness and inadequacy of disclosure by the Inquiry. Suffice to say that we remain concerned about what we believe must be an extremely restrictive approach to what the Inquiry deems is relevant and necessary to fulfil its Terms of Reference, given the paucity of material disclosed thus far.

16. For example, if the Inquiry is only disclosing material about the activities of the SDS where there is a NSCP with a direct interest in those specific activities, there will inevitably be a considerable volume of relevant and necessary material that is being excluded from the hearing bundle.

17. We reiterate our request that the Inquiry take a less restrictive approach to disclosure in future tranches and phases. Additionally, we reiterate our request for the provision of a comprehensive schedule of all undisclosed material that has been provided to the

Inquiry, much like an unused material schedule in a criminal case, so that the core participants can know the gist of what material has been deemed irrelevant or unnecessary to disclose by the Inquiry and make representations, if appropriate, that certain documents are disclosed.

Redactions

18. Many of the documents disclosed in the T1P1 hearing bundle contained redactions. Most perplexing was the redaction of the names of some targeted political groups in the SDS annual reports (see Tab B of the T1P1 hearing bundle) and in some police witness statements (see, for example, HN349's statement at MPS-0740356, particularly paragraphs 23 and 34). According to the Inquiry's Open Generic Grounds for Restriction, most of these names were redacted to prevent "harm to people" as disclosure of the names would provide "sufficient other details to identify a person."

19. How can identifying a political group that was targeted by the SDS in the late 1960s or 1970s cause any "harm" to any person in 2021, unless the "harm" amounts to an undercover officer acting as an agent provocateur and being implicated in the incitement of serious crime? Such "harm" cannot justify redaction and non-disclosure in a public inquiry that is investigating the scope of undercover police operations and whether any miscarriages of justice may have occurred as a result of such operations or the absence of proper disclosure.

20. In any event, the possibility of identifying the real or cover name of a police spy from disclosure of a targeted political group is utterly fanciful. Redactions like this suggest that the police and the secret state have something significant to hide, other than merely the identity of police spies.

21. We ask the Inquiry to reconsider the redaction and non-disclosure of the names of certain political groups targeted by the SDS. There is an overarching interest in a public inquiry being as public as possible, particularly where, as here, there is alleged police misconduct. In the circumstances, there is no good or sufficient reason in law to hide the names of certain targeted groups from the NSCPs, the public and the media. The

public interest in knowing who exactly the SDS was targeting outweighs the state's obsessive desire for secrecy at all costs.

22. Finally, it is unclear from the redaction of people's names in the T1P1 hearing bundle what the Inquiry's overriding approach to privacy is. It does not seem to be based on whether a person is dead or alive. The names of some who are dead have been redacted, whilst the names of others who are dead have not. Likewise, the names of some who are alive have been redacted whilst the names of others who are alive have not. It is arguable that the names of the dead should never be redacted or only redacted in exceptional circumstances. Whatever is decided, there needs to be a consistent approach, and this approach should be made clear by the Inquiry to all core participants.

Police witnesses

23. There are two issues we wish to raise in relation to police witnesses:

    a) The Inquiry's decision-making as to which police witnesses are being called live and which are having their statements summarised;
    b) CTI's approach to questioning police witnesses.

24. On receipt of the T1P1 hearing bundle, it was apparent that the Inquiry had already decided which police witnesses were being called live and which police witnesses were having their statements summarised. Any representations made thereafter on behalf of the NSCPs to call a particular witness whose statement was scheduled to be summarised were met with short shrift by the Inquiry.

25. It would be preferrable if the Inquiry were to adopt a default position of calling all police witnesses, except those who for reasons of ill-health cannot give live evidence. Ultimately, it is live evidence that gives meaning and substance to the Inquiry. Summarising the contents of a statement is not the same thing evidentially, is a poor, second-best option and prevents any probing, testing, or challenging of the evidence.

26. Even if the Inquiry is not prepared to alter its current approach to witness selection, we would welcome some clarification as to the Inquiry's precise position on this issue and

whether it is prepared to reconsider decisions already made or whether witness selection is effectively a fait accompli by the time the hearing bundle has been served and the timetable fixed. We would welcome the opportunity to make representations, if we are of the view that a witness not being called has important evidence to give that should be further tested, probed, or challenged.

27. As far as the questioning of police witnesses by CTI during T1P1 is concerned, we note that there was hardly any testing, probing or challenging of what police witnesses had to say, even when their evidence bordered on the absurd. The one exception was the questioning of HN348 ("Sandra"). The general approach of CTI to questioning was one of the principal reasons that those counsel for the NSCPs who were present at the T1P1 evidential hearings felt compelled on occasion to apply for permission to ask a few further questions pursuant to rule 10 of the Inquiries Rules 2016.

Closed hearings

28. The T1P1 hearing bundle includes the statements of two former undercover police officers, namely HN333 and HN349, whose real and cover names are subject to restriction orders preventing their publication. During T1P1, the Inquiry indicated that these two officers would be giving the entirety of their evidence in closed hearings.

29. Other than the fact that HN333's and HN349's real and cover names are subject to restriction orders preventing their publication, we have been given no other explanation for why none of their evidence can be given in open session. We have not been told if the sole reason is to preserve their anonymity or if there are any other reasons to do with public interest immunity. The unredacted parts of their statements do not contain anything that at face value justifies the need for closed hearings. Consequently, we assume that the need for closed hearings is predicated on those parts of their statements that have been redacted or on the contents of additional statements that have not been disclosed in the T1P1 hearing bundle.

30. It is submitted that HN333, HN349 and any other police witnesses whose real and cover names are subject to restriction orders preventing their publication should only give evidence in closing hearings about matters of such sensitivity that a departure from

open justice is strictly and exceptionally necessary. The rest of their evidence should be given in open session. If there is any on-going concern about the witnesses being seen or heard by the NSCPs, the public or the media, then special measures such as screens or voice distortion can be used to prevent the identification of the witnesses. However, it would be contrary to open justice, which is a fundamental principle of common law and not a mere procedural rule, for any police witness to give evidence about non-sensitive matters in a closed hearing from which the NSCPs, the public and the media are excluded.

Rule 10

31. Of all the issues the Inquiry may wish to address at the procedural hearing on 26th January 2021, the Chairman's approach to rule 10 of the Inquiries Rules 2006 is perhaps the most important and contentious.

32. Whilst rule 10(1) envisages that, generally, only CTI will question witnesses giving oral evidence at an inquiry, rule 10(4) explicitly recognises that the recognised legal representative of any core participant may apply for permission to the inquiry chairman to ask questions of any witness giving oral evidence.

33. Of the seven police witnesses who gave oral evidence in T1P1, we only applied for permission to ask questions pursuant to rule 10 in respect of three, namely HN329 ("John Graham"), HN328 ("Joan Hillier") and HN345 ("Peter Fredericks"). The reason we applied for permission to question these three witnesses was primarily to assist the Chairman in his pursuit of the truth. Relevant and necessary issues which we had included in our questioning templates submitted to the Inquiry in advance had not been explored at all or had, in our view, been insufficiently explored. There were also a few follow-up questions we wanted to ask that had arisen from the answers given during questioning by CTI. When permission to ask questions on specific issues was granted, our questioning was always brief, as was the questioning by Ruth Brander on behalf of the wider NSCP group and Owen Greenhall on behalf of his clients.

34. Rather than require counsel for the NSCPs to apply for permission to question on a witness-by-witness basis, repeatedly setting out the issues on which the witness is to be

questioned and whether the questioning will raise new issues or, if not, why the questioning should be permitted, we invite the Inquiry to adopt a more generous and collaborative approach by setting aside 30 minutes per witness to be divided between those counsel for the NSCPs who wish to ask questions. Such an approach would have the following advantages:

a) In the long run, it will save time.
b) It will not result in order being disrupted or the floodgates opening.
c) It is unlikely that the full 30 minutes will be used in respect of most witnesses.
d) It will allow the NSCPs to participate more effectively and meaningfully in the Inquiry. There is a world of difference between CTI asking questions about issues that have been raised by the NSCPs in their questioning templates and counsel for the NSCPs asking questions themselves on behalf of their clients.

35. If any counsel for the NSCPs were of the view that 30 minutes was not enough time in respect of a particular witness, then s/he would have to apply to the Inquiry for permission to question for longer than 30 minutes. However, we do not anticipate this arising frequently, if at all.

36. The NSCPs who we represent (and we anticipate most other NSCPs as well) are keen to participate as effectively and meaningfully as possible in the Inquiry. They have so much knowledge and experience to offer the Inquiry in its pursuit of the truth. They have a better understanding than anyone else about the impact of undercover policing when it deviates from the prevention and detection of crime and targets people for unrelated and ulterior purposes. It would be a wasted opportunity if the Chairman failed to take full advantage of the knowledge and experience of NSCPs by prohibiting or unduly restricting their counsel from asking questions that might ultimately be critical to his pursuit of the truth.

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