

IN THE UNDERCOVER POLICING INQUIRY

SUBMISSIONS ON BEHALF OF CATEGORY H CORE PARTICIPANTS

“ALISON”, “BEA”, “C”, “ELLIE”, DENISE FULLER, DONNA, BELINDA HARVEY, “JANE”,
“JENNY”, “JESSICA”, “LISA”, “LIZZIE”, “MADELEINE” “MAYA”, “MONICA”, “NAOMI”,
“ROSA”, “RUTH”, “SARA”, HELEN STEEL, “WENDY”, KATE WILSON

“LINDSEY”, “TBS”, SARAH HAMPTON, “ARB”, “AJA”, THOMAS FOWLER

“MARY”

FOR THE 26 JANUARY 2021 HEARING

Introduction

1. These submissions are made on behalf of twenty-two women who were deceived into long-term intimate sexual relationships with undercover police officers (“UCOs”), two women who were deceived into long-term close friendships which became sexual on one or more occasions, one woman and one man who were deceived into close long-term friendships and “TBS” who was conceived in the course of a deceitful relationship entered into by a UCO (“*the Category H CPs*”).
2. As has been acknowledged, the sexual relationships entered into by UCOs were unequivocally “*abusive, deceitful, manipulative and wrong*” and a breach of the human rights of those who were deceived¹. In the oral opening statement made on behalf of the Commissioner of the Metropolitan Police it was recognised that the sexual relationships should not have happened and that they caused immense suffering². The Category H CPs’ own opening statements underscored the profound nature of the damage they have been caused and the central importance for them of obtaining an understanding not only of their own particular experiences of having been the victims of fundamental deception, but also of the surrounding *practices* of the SDS³ and the UCOs it deployed.

¹ Apologies given by the Metropolitan Police Service in various of the civil claims brought by Cat H CPs.

² Day 2, p 7, ll 13 – 15.

³ The term is intended to include precursor and successor organisations.

3. The Inquiry is satisfied that the Category H CPs “*played or may have played a direct and significant role*” in relation to the subject matter of the Inquiry *and* that they have “*a significant interest in an important aspect of the Inquiry*” (rule 5(1) (a) *and* (b) of the Inquiry Rules 2006 respectively)⁴. The Category H CPs’ direct and significant role in the subject matter of the Inquiry arises from their having been subjected to gross interference with their bodily and/or personal integrity, which in turn gives rise to their direct and significant interest in aspects of the Inquiry beyond their immediate personal experience.
4. Within Module One this interest arises not only in the examination of the conduct of UCOs in forming relationships whilst deployed⁵, but necessarily extends to other important aspects of the Inquiry’s investigations, including how these secret units developed and evolved; how the attitude towards sexual relationships and using the Category H CPs came about; how knowledge and techniques were shared; who knew about the sexual relationships; who within the police sanctioned such behaviour over so many years; whether the behaviour was condoned or encouraged; if not, why it was not stopped, given the frequency with which it was occurring; the history of surveillance of the women while they were searching for missing partners; and the development of containment exercises when they were deemed to have found out too much⁶. An overarching interest of the Category H CPs is whether the treatment to which they were subjected was founded on a lack of respect for women’s autonomy and driven by institutional sexism.
5. These issues of significant interest to the Category H CPs are referred to below as “*the Category H issues*”.
6. The Category H issues accord with the Inquiry’s List of Issues for Module One including the recruitment, selection and training of UCOs⁷, the targeting and initial authorisations of UCOs⁸, the practice in relation to reporting⁹, the utility of the UCO deployments¹⁰, the management, supervision and oversight of UCOs¹¹, the extraction of UCOs and their post-deployment conduct¹².

⁴ Core Participant Ruling of Sir Christopher Pitchford, 21 October 2015 at [11] and [49].

⁵ List of Issues for Module One, Special Demonstration Squad, §§36 – 48.

⁶ Written Opening Statement on behalf of the Category H CPs represented by Birnberg Peirce, Hickman & Rose and Hodge Jones & Allen at §20.

⁷ List of Issues for Module One, Special Demonstration Squad, §§8 – 18.

⁸ Ibid at §§25 – 35.

⁹ Ibid at §§71 – 76.

¹⁰ Ibid at §§126 – 128.

¹¹ Ibid at §§129 – 138.

¹² Ibid at §§139 – 151.

7. Evidence will be given in the forthcoming Tranche 1 Phase 2 (T1P2)¹³ about the first confirmed instances of UCOs having deceived women into entering into sexual relationships, including the experiences of “*Madeleine*” and “*Mary*”. This examination will necessarily entail consideration of the attitude towards women and sexual relationships within the SDS, practices - both formal and informal - in relation to the sharing of information, knowledge and techniques among UCOs and with their supervisors, the extent to which the existence of sexual relationships was known prior to 1983 and whether such conduct was sanctioned, condoned and/or encouraged. Critically it was in this phase that the first opportunities likely presented to take decisive action to *prevent* officers from entering into such relationships and to mitigate the risks arising from them.
8. We submit that the Category H CPs should be afforded a fair and meaningful opportunity to participate in the investigation of these fundamental Category H issues at the T1P2 stage. As we explain below, such an approach is not only appropriate in light of the gross intrusions they have undergone, but it is warranted by the nature of the particular information and insights they can provide, which, in turn are likely to be of significant assistance to the Inquiry in the discharge of its responsibilities. Additionally, in light of the trauma suffered by Category H CPs and their need to access information to process their experience, to heal and to begin to move on in their lives, facilitating their participation is the humane stance for the Inquiry to adopt. We also submit that the proposals we advance are proportionate in all the circumstances.
9. In these submissions we also address some related matters bearing upon the management of evidence relating to Category H and the participation of Category H CPs in T1P2. Specifically matters relating to disclosure (early and rolling disclosure; scope and witness packs), the arrangements for questioning by RLRs and the arrangements for contacting new prospective Category H CPs.
10. Whilst our submissions at this stage are inevitably focused upon the forthcoming T1P2, we submit that a similar logic in terms of access to the hearing bundle, will apply to Tranche 1 Phase 3 (“*T1P3*”) when the evidence of SDS managers¹⁴ will be heard.
11. Our submissions are developed in the following structure:

¹³ Covering the period 1973 – 1982.

¹⁴ Covering the period 1968 – 1982.

- (a) The evidence relevant to Category H issues emerging from Tranche 1 Phase 1 (“T1P1”) evidential hearings, the centrality of evidence to be heard in T1P2 to the Category H issues and the inadequacy of the current arrangements for T1P2.
 - (b) The Category H CPs’ significant and direct interest in the issues to be explored in the T1P2 evidential hearings.
 - (c) The Inquiry’s definition of “*direct interest*” is not appropriate for the Category H CPs.
 - (d) The role the Category H CPs should be afforded in T1P2.
 - (e) Related disclosure issues.
 - (f) Questioning by RLRs.
 - (g) Contacting prospective Category H CPs.
12. Whilst the Inquiry will note that there are some areas of overlap in these submissions with those advanced on behalf of the Category F CPs on 8 January 2021; there are also discrete, compelling considerations that arise in respect of the Category H cohort.

Evidence emerging from T1P2, the centrality of evidence to be heard in T1P2 to the Category H issues and the inadequacy of the current arrangements for T1P2

Evidence given in T1P1

13. The officers who gave evidence in T1P1 who were asked about the expectations upon UCOs in relation to intrusion upon the private lives of those they surveilled, gave broadly consistent evidence: UCOs were expected to maintain high professional standards; becoming involved in the private lives of their subjects would be an obvious breach of those expectations; any intrusion into the private lives would be wrong; and that entering into sexual relationships would be abhorrent:
- (a) HN328 stated that experience, common sense and instinct dictated that officers were not to get too involved in the personal lives of those being reported on and UCOs were expected to avoid personal and sexual relationships¹⁵.

¹⁵ Day 10, p 27, ll 18 – 11; p 35 l 17 – p 36 l 7.

- (b) HN336 considered forming a sexual relationship while undercover abhorrent and *“alien to my understanding of what we were there to do”*¹⁶.
- (c) HN340 stated that officers could be relied upon to conform with their training which was to *“act correctly and avoid getting into trouble”*¹⁷.
- (d) HN348 understood that the UCOs were to keep a distance, not to get involved closely with those they met undercover and that their role was as observers; *“to listen and learn and report back”*, that UCOs should absolutely not form close relationships and *“it was pretty much a rule not to get involved in the activists’ private lives”* and that senior officers would have considered one-to-one meetings with activists to be outside the UCOs’ remit¹⁸.
- (e) HN339 would *“never have dreamed of entering a sexual relationship with an activist”*¹⁹.
- (f) HN349 stated *“we would all have known that we should not have sexual relationships when deployed. This was common sense”*²⁰.
- (g) HN343 also stated that it was common sense not to have sexual relationships with members of groups that had been infiltrated²¹.
- (h) HN334’s view was that sexual relationships while undercover were *“a definite ‘no, no’”*²².

The evidence relevant to the Category H CPs in T1P2

14. In T1P2 we understand that evidence will be heard concerning the experience of: (i) *“Mary”* who HN297 deceived, along with at least two other activists, into entering into a sexual relationship with him during his deployment (1974 – 1976); and (ii) *“Madeleine”* who was deceived by HN354 into an intimate sexual relationship. HN354 has admitted to four sexual relationships during his deployment (1976 – 1979)²³.
15. The Category H CPs consider that the Inquiry’s examination of this evidence is of central relevance to the issues that concern them because it will encompass not only the first scrutiny of the abhorrent practice of UCOs forming intimate and sexual relationships with those who

¹⁶ Day 11, p 84, ll 4 – 15.

¹⁷ Day 11, p 110, l 11 – p 111, l 5.

¹⁸ Statement at [MPS/0741698-CLF].

¹⁹ Statement at [MPS/0736910/6].

²⁰ Statement at [MPS/0740356/5].

²¹ Statement at [MPS/0739804/11].

²² Statement at [MPS/07/46257- CLF].

²³ Core Participant Ruling 39 dated 6 January 2021 at §1.

were spied on, but also the role, if any, played by other members of the SDS, whether in encouraging / adopting such conduct and/or in turning a blind eye.

16. It is anticipated that the scope of the T1P2 evidence will encompass:
- (a) whether there was a change in the expectations placed upon or understood by UCOs in the few years after 1972 and if so, the circumstances that surrounded that change; and if there was none, how HN297 and HN354's conduct came to fall so significantly below the accepted expectations as to the standards of professionalism expected of UCOs.
 - (b) the extent to which the conduct of HN297 and HN354 was known by their peers and/or supervisors.
 - (c) the actions that were taken by their peers and/or supervisors in response to such knowledge, including the extent to which any consideration was given to the impact upon the victims of such conduct (including the potential for fathering of children) and the implications for future UCOs' deployments, their training and appropriate oversight.
 - (d) the extent to which such conduct / reactions to it was documented and the subsequently availability of such records.
 - (e) the extent to which HN297 and HN354's conduct and/or a lack of accountability for their departure from accepted professional norms, contributed to the subsequent abrogation of professional standards by such a large number of UCOs in the decades that followed.
 - (f) whether (and, if so, in what respects) parallels exist between the conduct of HN297 and HN354 and the behaviour of UCOs who subsequently engineered and maintained deceptive relationships.
 - (g) the conduct of HN297 and HN354 in the context of the operational experience and conduct of UCOs whose deployments were not characterised by gross departure from professional norms.
 - (h) the scale of this wrongdoing in the period 1973 to 1982 and its implications for the SDS and successor organisations in subsequent years.

The current arrangements for T1P2

17. On the Inquiry's current approach, only "*Madeleine*" and "*Mary*" would be recognised as having a "*direct interest*" in the investigation of these issues. 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"²⁴. In turn, the Inquiry has determined that only those CPs meeting that particular definition will be entitled to advance disclosure of the hearing bundle for that particular tranche / phase.

18. As matters stand, this has the consequence that 25 of the 27 Category H CPs (those other than "Madeleine" and "Mary") will not receive advanced disclosure of the witness statements or the other documentation in advance of the T1P2 evidential hearings, will not be able to provide information or instructions to their RLRs on the same and will learn for the first time when the evidence is being given about the important topics we have highlighted above (either as or shortly after officers give their evidence). Thus the vast majority of the Category H CPs will have no meaningful opportunity to propose lines of questioning to Counsel to the Inquiry ("CTI") via their RLRs or to raise other matters arising from the documentation in advance of the relevant hearing, notwithstanding the centrality of the topics summarised at §16 above to the Category H issues.
19. Furthermore, any opportunity to do so during the hearing, as the evidence is being heard for the first time, will be extremely difficult and time-limited²⁵, assuming that it is even feasible to make contact with CTI at that juncture (who will in any event be focusing upon the evidence and may also be receiving messages from other representatives about other topics being covered by the witness). This document is prepared without sight of all of the written submissions made by other Non-Police Non-State Core Participants ("NPNS CPs"), but we understand that the experience of T1P1 has confirmed the practical limitations and difficulties with this kind of arrangement.

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

20. The Category H CPs are understandably anxious to be permitted an opportunity to meaningfully participate in this next phase of the evidence which they consider – for the reasons set out above – to be of central relevance to the issues that concern them. We address below the assistance that they respectfully offer the Inquiry in respect of this phase and the relevance of the trauma they have suffered to the issue of their participation.

²⁴ STI's letter dated 29 January 2020.

²⁵ 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.

21. As their opening statements stressed, the Category H CPs have been motivated to seek CP status and to participate in this Inquiry not only to access information concerning their own personal histories but also to understand how and why UCOs came to form intimate relationships, why they were permitted to do so and the extent to which the potential damage to them as human beings was foreseen and disregarded. The personal histories of the Category H CPs' cannot be understood in isolation from the wider context in which their experiences arose; no demarcation can realistically be drawn between their experiences and the history and practices of the undercover units which surround those personal experiences.

Assistance

22. The Inquiry Chairman has already expressly acknowledged that the detailed accounts of the Category H CPs provided in the oral and written openings on behalf of the CPs represented by Birnberg Peirce, Hickman & Rose and Hodge Jones & Allen will be of significant assistance to the Inquiry in understanding the grounds for the Category H CPs' belief that the UCOs' conduct were not the actions of rogue individuals but the actions of a group of people with or without the knowledge of their superiors²⁶.
23. The Category H CPs' extensive knowledge and experience of the traits and techniques of the UCOs is an invaluable resource from which the Inquiry's T1P2 investigations are likely to derive significant benefit. It is in consequence of their lived experience that the Category H CPs bring an immensely valuable perspective to consideration of the T1P2 evidence and the formulation of questions arising. They will be alert to conduct that is inconsistent with the rogue officer explanations likely to be advanced. They will be able to identify any parallels that exist between the ways that the T1P2 UCOs behaved in terms of these deceptive relationships and their later experiences. Similarly, they will be able to propose lines of questioning that will assist in building upon the available evidence in terms of identifying potential parallels. In turn, such evidence will be directly germane to the Inquiry's understanding of the extent to which UCOs' practices were taught, encouraged or tolerated and the degree to which there was systematic and strategic reliance upon intimate relationships²⁷.
24. From the Cat H CP's perspective there are too many similarities between the tactics of the UCOs who deceived them and too many instances of UCOs entering into relationships, to draw the conclusion that these relationships were isolated instances of bad behaviour and poor

²⁶ Day 6, p 87, ll 6 – 16.

²⁷ See further the Written Opening Statement of the Category H CPs represented by Birnberg Peirce Ltd, Hickman & Rose and Hodge Jones & Allen noted at §§255 – 265.

supervision and were not known to, acquiesced in or even encouraged by more senior officers. The written Opening Statement of the Category H CPs represented by Birnberg Peirce Ltd, Hickman & Rose and Hodge Jones & Allen noted at §19:

"It is by painstakingly piecing together the many fragments of their experiences that the important patterns and themes emerge. The women know how they have been shaped by their experiences and how, as a result, they are able to recognise things in each other's accounts that would not occur to those who have not experienced anything similar".

25. The written Opening Statement of the Category H CPs represented by Bindmans LLP contained similar submissions at §§93 – 96, arguing that, with access to the material documentation, they would be able to assist the Inquiry in joining the evidential dots and that the current narrow approach:

"...will not enable the Inquiry to fully and rigorously explore the fundamental issues that arise. By way of example, showing a pattern of common behaviour in the way that UCOs acted may strongly indicate that they were instructed or guided to behave in a particular way by superior officers. Similarly, common experiences of meeting official obstructiveness or obfuscation when trying to locate UCOs under their fake personas after they had disappeared, may speak of a sustained cover up, orchestrated at a higher level. Without the assistance of those affected by these forms of conduct, the Inquiry may not be aware of the material to explore or the questions to ask that would draw out this evidence."

26. From the perspective of our clients it is impossible to see how lies can be separated from truth absent their active participation, including through their scrutiny of the contemporaneous documents and witness statements.

Trauma

27. The importance of the Category H CPs securing as full an understanding as is possible of these matters is underscored by the opinions of their psychiatric and psychological advisers whose expert view is that this knowledge is needed to enable the victims to make sense of what was true and what was not and to facilitate their recovery²⁸. From the Category H CPs' perspective, they cannot move on in their lives without that knowledge nor can they achieve a reasonable understanding of their personal experiences without engaging in the chronology of how the UCOs came to enter into these intimate relationships and the sequence of events by which their supervisors came to learn and/or encourage the formation of such relationships. Facilitation of Category H CPs' meaningful participation in T1P2 evidence is a fair, appropriate and humane

²⁸ Written Opening Statement of the Category H CPs represented by Birnberg Peirce Ltd, Hickman & Rose and Hodge Jones & Allen at §21 and §292.

response in the context of the trauma that they have suffered and from which they are struggling to emerge.

28. Accordingly, we submit that the Category H 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 H issues are put to T1P2 witnesses²⁹.

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

29. Whilst we support the general submissions made on behalf of the NPNS CPs as to why the Inquiry's approach to "*direct interest*" involves an unduly narrow approach, we also respectfully submit that it is particularly inappropriate with regard to Category H, a category of CPs who in addition to being direct participants in the events giving rise to the need for a public inquiry have also been recognised as having a significant interest in other important aspects of the Inquiry's remit, namely the formation by UCOs of relationships while undercover and the broader context that appears to have permitted such behaviour to have become endemic within the UCOs' deployments.
30. We understand that the Commissioner of the Metropolitan Police (who already has much greater familiarity with the documentation) will be regarded as having a "*direct interest*" in T1P2, with the consequential opportunity for advanced receipt of the evidence bundle, the opportunity to take instructions thereon and the chance to suggest areas of questions to CTI after reviewing the same. In the absence of a clear statement of position from the Metropolitan Police Service it is unclear to what extent acquiescence and/or collusion by senior officers is accepted. It is however clear that contentious areas exist and will potentially expand as the evidence emerges.
31. The formation of intimate and sexual relationships by UCOs has generated enormous public concern. To take an approach to "*direct interest*" and to advanced disclosure of evidence which effectively confines the participation of Category H CPs - in this important stage of the hearings - to only such aspects of the chronology that directly bear upon interferences with their own bodily integrity and/or private lives, is markedly unbalanced in circumstances where one or more of the State CPs (who have – at best – tolerated the formation of those abusive relationships) are enabled by the Inquiry to acquire and contribute to the overview and to

²⁹ We address the practicalities of affording this from §36 below.

represent their clients' positions on the Category H 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 remit³⁰.

32. 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 fairness³¹ and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others).

33. Rule 5 of the Inquiry Rules 2006 provides:

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.

34. The practical consequence of the approach the Inquiry has adopted is to afford disclosure and attendant participation rights in respect of that element of a CP's status that has been achieved through the rule 5 (2) (a) route and to fail to have regard to the means by which a CP might

³⁰ We return to this issue, explaining why the currently proposed arrangements are inadequate when we address the role that the Category H CPs should be permitted, below.

³¹ All emphasis added.

effectively participate in respect of matters of significant interest to them which go beyond their particular role in the subject matter of the Inquiry.

35. 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 H CPs in contravention of the Chair's obligations under Section 17 (3), for the following reasons:

- (a) 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 including those issues that are of significant interest to the Category H CPs.
- (b) The approach favours the police CPs who have inevitably played direct and significant roles throughout each of the historical phases into which the Inquiry has compartmentalised the evidence. It excludes the majority of Category H CPs from participation in the critically important evidential scrutiny of how the first deceptive relationships came to be formed, whether and to what extent the responsible UCOs' peers and supervisors came to be aware of what was occurring or had occurred and the existence of any lost opportunities to curtail the misconduct prior to 1983.
- (c) The police CPs have been placed in a position individually and collectively to defend their actions; fairness dictates that the Category H 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.
- (d) The withholding of disclosure that the Category H CPs rightly consider to be of fundamental relevance to the issues that concern them - until when / after the relevant witness gives evidence - arises against a backdrop of significant evidential restrictions which has served to create an atmosphere in which our clients consider that they are being denied an opportunity effectively to participate in this Inquiry.

The role the Category H CPs should be afforded in T1P2

36. We submit that for the reasons outlined above all the Category H CPs should be permitted to participate in T1P2 and that such participation should entail them being afforded an opportunity for their RLRs to consider the hearing bundle with them as individuals in good time

before the witness evidence is adduced and to have the opportunity to propose topics for questioning.

37. It may be suggested that CTI are in any event able to question the UCO witnesses appropriately and that the designated RLR and counsel for the NPNS CPs' group 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 H. However, with the greatest respect to all concerned, we do not consider this to be an adequate substitute. Nor does it remove the issues we have identified as inherent for Category H CPs in the application of the current "*direct interest*" test.
38. As we have already noted, this document is being drafted without sight of all the written submissions that will be made on behalf of the NPNS CPs. However, our understanding is that the experience of those involved in the T1P1 evidential hearings reinforces, rather than negates, these concerns.
39. The knowledge and perspective of victims adds significantly to the forensic scrutiny of evidence bearing upon the infringement of their rights. This general proposition is all the more apposite in circumstances where - as the Chairman has himself acknowledged³² - the particular experience of the Category H CPs individually and collectively has a vital forensic value in and of itself. Furthermore, the Inquiry will be assisted by the legal representatives of the Category H CPs, in conjunction with their clients, reviewing documents and proposing 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.
40. The point is illustrated by the questioning of HN345 in T1P1. The Category H CPs were unaware that HN345 had provided a statement in which he described seeking out one of his subjects some years after the end of his deployment. He had visited her house and learned from a neighbour that she had taken her own life. HN345's evidence was that the visit was "*an impromptu thing, just something I did*³³" and "*nothing to do with the job*³⁴" because he had "*just found her interesting as a human being*³⁵". The Category H CPs have reflected on this evidence and consider that a number of questions arise: whether HN345 shared the understanding of his

³² See §22 above.

³³ Day 14, p 58, ll 24 – 25.

³⁴ Day 14, p 60, ll 4 – 6.

³⁵ Day 14, p 60, l 25 – p 61, l 1.

fellow UCOs that they were not to become involved in the private lives of their subjects and that becoming involved in the private lives of subjects would be a breach of professional standards (see §13 above); whether HN345 considered that following his resignation from the police service he was released from the obligation to maintain professional standards in relation to his dealings with former subjects; whether HN345 appreciated that connecting with this woman (presumably by re-assuming his covert identity) would be an intrusion into her private life; whether he appreciated that absent any legitimate policing purpose it was wrong for him to have attempted to approach this woman relying upon personal information and an introduction that he had acquired in the course of his work as an UCO; whether he appreciated the potential harm he might cause to this woman from his approaching her in the manner that he had intended (including from her becoming aware that he had originally come into her life whilst deployed as a UCO); whether he discussed this event with any then current or past member of Special Branch/SDS; whether he was aware of any other UCO seeking to establish contact with a subject through interest in them as individuals rather than for policing purposes. The Category H CPs consider that the failure to explore those lines of questioning with HN345 potentially deprived the Inquiry of valuable evidence concerning an early breakdown in the maintenance of professional boundaries and the circumstances in which that arose. It was of course impossible for those Category H CPs who were able to follow the proceedings to absorb the evidence as it emerged and to communicate the nature of the questions that occurred to them to counsel (who was in any event instructed to represent the entire cohort of NSNP CPs).

41. Furthermore, bearing in mind that it is not anticipated that the T1P2 bundle will be disclosed to any CP until approximately eight 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 the designated RLR and counsel for the NPNS CPs' group (even if afforded some limited additional assistance) to be able to review the entire bundle from the perspective of each NPNS CP and then propose specific items for disclosure to specific CPs. (Who, in the case of most Category H CPs would not in any event then qualify for that disclosure on the Inquiry's current approach to "*direct interest*".)
42. We also suggest that maintaining the previous approach will not result in a significant saving of costs as regards the Category H CPs; on the contrary the approach runs the risk of causing costs to escalate. Presumably all the Category H CPs with their legal representatives will be afforded an opportunity to consider the T1P2 hearing bundle in the context of the T1P2 evidence in due course; the issue is only whether that consideration should occur before or after witnesses give

their evidence. Consideration that is limited to the later stage may identify that material questions have not been asked and/or obvious lines of evidential inquiry not followed, the Category H 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.

43. 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 H CPs is unlikely to be extensive, given that the Category H issues are discrete; the majority of Category H CPs have already been closely engaged with these issues over a lengthy period; their RLRs have also thereby acquired a specialist knowledge of this area; and care will be taken to avoid duplication and the overburdening of CTI. Remaining concerns about disproportionately can be addressed via the extent of the permitted costs award.

44. In summary we submit that the negative consequences of denying the Category H 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 H CPs advanced disclosure of the evidential material.

45. For similar reasons, we also submit that the exceptional nature of the Category H CPs' interests necessitates their having an opportunity to attend the T1P2 hearings with legal representation when UCO officers are giving evidence that bears on Category H issues. 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 envisage that such applications would only be made in clear-cut circumstances and that such questioning would only occupy a short period of time. We endorse the solution proposed by Mr Menon QC and Mr Parry at §34 of their submissions dated 12 January 2021 that the responsibility should be given to the NSNP CP representatives to allocate a 30-minute questioning opportunity among themselves. We understand it the experiences from T1P1 have underscored the difficulties of persisting with the previous arrangements more generally: see §19 above.

Related disclosure issues

46. Our submissions in the earlier part of this document have addressed the reasons why the Category H CPs should be afforded access to the T1P2 bundle. Analogous points will apply to the bundles relating to subsequent tranches.
47. The Category H CPs are anxious to follow the evidence as it emerges in relation to the first confirmed instances of UCOs entering into intimate and sexual relationships, in the context of the disclosure that relates to their own personal histories. Their narratives that will prove of significant assistance to the Inquiry (as has been acknowledged) will be strengthened and deepened by that opportunity.
48. By letter dated 30 June 2020 Birnbergs Peirce Ltd raised a number of disclosure issues on behalf of their Category H CPs. In particular, the letter pointed out that Category H CPs would be likely to need additional time to prepare their witness statements, over and above the Inquiry's usual timescales, given the traumatic and deeply personal recollections involved and the level of detail they would need to cover. The letter suggested that early disclosure of documentation would facilitate this process and that a failure to afford this would likely impact upon the CPs' mental health and impact upon their ability to provide their best evidence to the Inquiry. Rolling or staggered disclosure was suggested as part of this proposal. The letter also took issue with the Inquiry's restricted approach to the scope of disclosure, in particular confining it to documents that made express reference to the CP in question or otherwise appeared to the Inquiry to be relevant.
49. The response of the Inquiry Legal Team ("ILT") dated 15 September 2020 accepted the general proposition that Category H CPs are likely to have good reason for requiring more time than other witnesses to process the disclosure provided to them by the Inquiry and to provide their witness statements³⁶. Rolling, or "piecemeal" disclosure (as it was termed) did not find favour with the ILT. As regards the scope of disclosure, an approach in which the witness sees only the unrestricted documentation in which they are identified as well as "*all documents that they need to see to make an informed witness statement*" was maintained, albeit there was some acceptance that consideration of the latter would be informed by the points made and the examples given in the Birnbergs Peirce Ltd letter.

³⁶ An email from ILT to Birnberg Peirce Ltd sent on 14 December 2020 contained a further acknowledgement that, accepting the importance of obtaining best evidence, the Inquiry would disclose material as and when it was ready and that this may be in advance of a Rule 9 request for a statement.

Early / rolling disclosure

50. Whilst we welcome the ILT's recognition of the importance of early disclosure for the Category H CP witnesses in particular, we invite early practical consideration of the mechanism by which this can be achieved and invite prompt consideration of a timetable in this regard. The importance of this to our clients cannot be over-stressed; the late provision of disclosure will operate as a practical bar to the effective participation of Category H CPs who although committed to assisting this Inquiry have their own lives to lead and competing demands on their time.
51. Furthermore, in terms of rolling disclosure affording a partial solution, we respectfully but fundamentally disagree with the Inquiry's position that in order for the disclosure exercise to be conducted efficiently "*relevant documents should be considered with other contemporaneous documents*"³⁷ such that "*piecemeal disclosure to one or more non-state core participants of material directly relevant to them is unlikely to be practicable*". It merits re-emphasis that many of the Category H CPs have sought to gain access to the records that directly relate to the most private aspects of their personal lives for some ten years³⁸ and they have been denied that access in circumstances in which State and police CPs have had access to that material or at least a significant part of it. The State and police CPs have thus been able to rely on their records of the Category H CPs personal data, including sensitive personal data, for the purposes of preparing their public and legal stance in relation to this Inquiry, while the Category H CPs have not. This situation creates a gross imbalance among the CPs recognised by this Inquiry, which it is the Inquiry's duty and responsibility to address. The need to do so is all the more pressing for the reasons summarised at §27 above; the Category H CPs need access to this material to process and address the psychiatric sequelae of the trauma they have suffered.
52. The Category H CPs have a compelling case for disclosure of documents that relate to them as individuals to be provided separately and in addition to the chronological cycle of disclosure that is being adopted for all CPs.

³⁷ 15 September 2020 letter.

³⁸ Ms Wistrich's statement of 31 May 2017.

Scope of disclosure and witness packs

53. Furthermore, the 30 June 2020 letter explained in detail why the narrow scope of documentation to be provided to each potential witness (as described at §49 above) was a matter of huge concern to Category H CPs. In short, for the reasons that the letter explained, illustrated with specific examples, the Inquiry would often not be in the best position to determine what was relevant, particularly in relation to the material concerning the Category H CPs. Yet, such documentation was vital to the Category H CPs in order to assess and draw attention to the extent of the intrusion into their lives.
54. This potential practical difficulty in *identifying* relevant documents is another reason why disclosure to Category H CPs should be commenced as soon as practicable. In this respect, we rely without repetition upon §§269 – 287 of the written Opening Statement on behalf of the Category H CPs represented by Birnberg Peirce Ltd, Hickman & Rose and Hodge Jones & Allen, which sets out the extraordinary history of the Category H CPs' attempts to access the records that concern them and the importance of that disclosure now being provided as fully and as swiftly as possible.
55. It is apparent from §§23 – 24 of Counsel to the Inquiry's Disclosure Note Regarding Tranche One ("*Counsel's Disclosure Note*") that the Inquiry has already taken care to tag all documents entered into the electronic document platform by reference to individual CPs (and that efforts have been made to conduct that exercise retrospectively as necessary); a mechanism by which the Inquiry will continue to build a document set relating to each Category H CP as disclosure is provided to the Inquiry. It will therefore be a relatively straightforward exercise to generate a bundle pertaining to each individual Category H CP and to re-generate those bundles as the Inquiry is seized of relevant document tranches. The documents within those bundles may already be redacted or can efficiently be redacted without consideration of *all* the surrounding contemporaneous documents. To the extent that there are concerns regarding the cumulative effect of disclosure upon the protection of identities, the ILT will of course have in mind the need to weigh in the balancing exercise the grave and serious human rights infringements which such documents concern. Critical to affording the Category H CPs a reasonable opportunity to understand their experience and to raise questions arising is to see not only elements that are specific to them but the adjacent records that will reveal the pattern of intrusion and the tactics of the UCOs (including collaboration among them). Thus, the disclosure of documents that make reference (whether explicitly or implicitly) to a particular CP will not of itself amount to reasonable disclosure in respect of that CP but it is appreciated that it may be more convenient

to disclose the contextualising documents within the chronological approach favoured by the Inquiry. The Category H CPs proposal that they should have by way of rolling disclosure first, the best possible disclosure of documents that explicitly or implicitly refer to them and secondly, the broader document set that is being marshalled chronologically by the ILT and disclosed to all CPs, is born of pragmatism and recognises the constraints upon the Inquiry's resources (see further at §60 below).

56. In this context we invite further consideration by and explanation from the Inquiry in relation to Registry Files; referred to in Counsel's Disclosure Note as "*mixed' Special Branch files*". As will be appreciated it is the Category H CPs' understanding that the Registry Files (whether pertaining to them as individuals or the organisations with which they associated) contain the most significant information bearing upon their experience including how they came to be selected as targets and how the deception of them was accomplished. Counsel's Disclosure Note appears to acknowledge at §19 that all SDS records contained within the Registry Files are relevant to the Inquiry's work but that the entries from other sources would only be relevant to the extent that they bear on the question of the justification for or proportionality of a deployment. So far as the Category H CPs are concerned the entries – from whatever source – that touch upon them as individuals are clearly relevant to the proportionality of their having been targeted and clearly relevant to the deceptions of which they were the victims. Most particularly the Category H CPs seek disclosure of the content of those files – which they reasonably anticipate will have been a primary source for those who deceived them - so as to understand the extent, the method and the purpose of the unconscionable intrusions upon their lives.
57. Similarly, any additional Personal files pertaining to CPs and Bulk files pertaining to the organisations with which they were associated are clearly relevant to investigation of the nature and extent of intrusion upon the lives of the Category H CPs and should be disclosed accordingly.
58. Particular considerations apply in relation to the investigations that were instigated by the Metropolitan Police Service when the fact of specific intimate sexual relationships emerged. The Category H CPs consider that there can be no reasonable justification for the ongoing delay in disclosing discrete categories of documents that relate to them as individuals or as a category of victim³⁹; the fruits of such investigations are one obvious example. We note that the Metropolitan Police Director of Legal Services has extended an offer by letter dated 8 January

³⁹ The documents collated and generated by Operation Herne and by internal reviews of the SDS and NPOIU are obvious examples here.

2021 to facilitate re-prioritisation of Inquiry work requests. We propose that this category – documents collated and generated in connection with internal investigations – should be prioritised so as to facilitate prompt onward disclosure to Category H CPs.

59. We note in this context that the witness pack provided to “*Mary*” was just 40 pages in length and was comprised of reports of meetings where “*Mary*” was in attendance. Similarly, “*Madeleine*” received just 39 pages much of which was almost illegible and related merely to meetings at which she had been in attendance. There was nothing in either bundle referring to or indicating a sexual relationship with the UCOs. This gives rise to considerable concern and underscores the importance of providing a wider range of documents, which may well contain important clues or snippets of supporting information, apparent only to the Category H CP who was the subject of the deceptive relationship. See further above at §56 in relation to Registry Files.
60. It is acknowledged with realism that the Inquiry faces a formidable logistical burden in providing to each Category H CP full disclosure of each reference to him/her in the material already seized by the Inquiry, and which will continue to be received, and it is appreciated that disclosures pertaining to meeting, demonstrations and the like (where there will be references to very many CPs within one document) might best be achieved through the phased disclosure tranches (see further at §55 above). However, there are also documents where the Category H CPs is a primary focus (Registry, Personal and investigation files being examples) and it is in respect of those discrete document sets that we do seek early and ultimately full disclosure on behalf of this particular cohort.
61. Further, as will be appreciated, the practices in relation to reporting⁴⁰ are an important issue for the Inquiry’s consideration. Our clients are therefore anxious to have sight of the material that has been collated in relation to them, so as to assist the Inquiry in respect of this aspect of its investigation by identifying questions concerning the practice in relation to reporting and record keeping more generally. Our clients will have important perspectives to bring in relation to this aspect but again, identifying pertinent questions and ensuring they are resolved in good time will likely prove time consuming and militates in favour of very prompt disclosure of the witness packs that relate to Category H CPs.
62. The Category H CPs acknowledge that witness packs produced by the rolling method would likely need to be augmented in due course whether with additional documents or lesser

⁴⁰ List of Issues for Module One, Special Demonstration Squad, at §§71 – 76.

redactions and they offer their assistance to the Inquiry in ensuring as complete a bundle as is reasonable possible is eventually achieved.

63. Our clients are mindful that there will be a need to address with the Inquiry the reasons why various documents that are likely to have been brought into existence are not available. Both the Inquiry and the Category H CPs will be anxious to satisfy themselves that documents have not been kept away from scrutiny; inevitably the inquiries that will likely arise will take time to resolve. Provision of early and full disclosure is a necessary step before apparently missing documentation can be meaningfully addressed.
64. In conclusion on the topic of disclosure, we cannot state too strongly how the Inquiry's accommodation of this aspect of Category H CPs' needs would build confidence in the Inquiry's work among this cohort of particularly affected victims of UCOs misconduct.

Questioning by RLRs

65. Paragraph 17 of the written submissions made on behalf of the Slater & Gordon CPs asserts that all CPs should be treated equally as witnesses and in this respect reference is made to the Chairman's statement of 30 October 2019 where he identified three circumstances in which RLRs would be permitted to question witnesses. The second of those circumstances was where *"a deceitful sexual relationship is alleged, but disputed by the undercover officer"*. The Chairman went on to say that in each case where direct questioning was permitted, the person on whose behalf the questions were asked would be expected to be willing to give evidence themselves and if they were not, direct questioning on their behalf would not be permitted. The Slater & Gordon submissions go further, contending that a need for equality of treatment mandates that when the person on whose behalf the questions were asked gives evidence, ordinarily the RLR of the CP who was questioned, should be permitted to question the person on whose behalf the questions were asked.
66. As the point has been raised in these terms, we take the opportunity to address it in principle at this stage, albeit we suggest that it would also be appropriate to allow further, more detailed submissions, specific to a particular situation, to be made in due course.
67. We do not accept that equality is or should be the touchstone in this regard; the relevant UCOs and the Category H CPs are not in equivalent positions. Our clients are victims in the Inquiry, who have been designated CP status because there is sufficient evidence to show that they were deceived into a relationship with a UCO. Our clients suffered wrongful, deceitful, deeply

intrusive and damaging treatment. It should not follow that they should be subject to questioning by the lawyers representing their abusers, which may well have a deeply distressing and re-traumatising impact, in order for their own lawyers to ask questions of the relevant UCO/s. The markedly different circumstances do not warrant this spurious appeal to equality.

68. Furthermore, there is nothing in Rule 10 of the Inquiry Rules that limits the permission that may be given to a CP's RLR to ask questions of a witnesses in this way. Such a limitation could, of course, have been included had it been thought that this should be a pre-condition for the grant of permission.
69. For similar reasons we contend that the Inquiry's adoption of any rule that a CP should not be permitted to pose questions to a witness unless s/he is willing to him/herself face questioning would be unduly rigid and should be subject to exceptions in particular where the witness has been rendered so psychologically vulnerable - by reason of the exploitation they have suffered - that they are unable to give evidence in person to this Inquiry. In those circumstances it would be grossly unfair to permit their tormentors to profit from the harm that their wrongdoing has caused.

Contacting prospective Category H CPs

70. We have had sight of a draft section of Mr Greenhall and Mr Marquis' submissions addressing contact with civilians. We adopt those submissions without repetition, but we emphasise that the concerns there raised are particularly acute where there is evidence of sexual exploitation by UCOs of the individual who is contacted. We also make two additional points: first, it had been agreed but has not yet become the adopted practice of the Inquiry that all such contacts should initially be in person by a female member of the ILT;⁴¹ and secondly, all such contacts should be accompanied not only with the means for that individual to access specialist legal advice but the contact details of the organisation, Police Spies Out Of Our Lives, so that they will have access to informed pastoral support⁴². We regret that those protocols were not followed in respect of "*Madeliene*" who was contacted by the Inquiry in February 2020.

⁴¹ This was assented to by the Chairman at a meeting with Birnberg Peirce Ltd and some of their Category H clients on 13 December 2019.

⁴² Agreed by the Chairman at a meeting with Birnberg Peirce Ltd and some of their Category H clients on 9 July 2018.

71. We are grateful for the opportunity to expand upon these submissions orally and address any areas that arise at the hearing on 26 January 2021.

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