IN THE MATTER OF THE UNDERCOVER POLICING INQUIRY

SUBMISSIONS ON BEHALF OF THE NON-POLICE, NON-STATE

CORE PARTICIPANTS FOR THE PROCEDURAL HEARING ON 26 JANUARY 2021

INTRODUCTION

1. The NPSCPs welcome the Inquiry's recognition of the need to learn from the experiences of the T1P1 hearings. These submissions highlight the fundamental importance of the Inquiry conducting its proceedings in a way that:

   i) is publicly accessible;

   ii) enables effective participation by core participants; and,

   iii) complies with its obligations under the Equality Act 2010 ['EA 2010'].

2. These submissions address the following matters in light of the experience of the T1P1:

   i) audio-visual streaming of the hearings;

   ii) the conduct of remote hearings;

   iii) wider access to the hearing bundle for NPSCPs and sufficient time in advance of the hearing to read it and prepare;

   iv) improved scope for NPSCP input into the Rule 10 questioning process; and,

   v) identifying and contacting civilian witnesses.

3. These submissions set out the positive proposals and submissions made on behalf of the NPSCPs. They are not intended as a comprehensive response to the submissions made on behalf of the Metropolitan Police, Designated Lawyers and other represented parties. Points raised by other parties will be addressed in oral submissions.

4. These submissions should be read in conjunction with the NPSCPs' 'Response to Chairman's statement of 29 May 2020 about the conduct of Tranche 1 evidence hearings', dated 1 July 2020[1] ['the 1 July 2020 submissions'] and the submissions on the Equality Impact Assessment UCPI November 2020 Hearings made on behalf of Richard, Audrey and Nathan Adams and Ken Livingstone, dated 15 October 2020[2] ['the EIA submissions'].

Summary of issues arising in T1P1

5. It was apparent to those who were able to attend in person at the Amba Hotel during the T1P1 hearings that the Inquiry team had made significant efforts in respect of the physical venue. However, unfortunately, due to the level of Covid-19 restrictions, very few people were able to attend in person and consequently only a tiny fraction of those who wished to have access to the hearings were able to do so.

6. The only alternative means of access was via the rolling transcript, which was impossible to follow for any length of time, could not be paused or searched, and was widely regarded as unworkable. It was a source of considerable frustration and criticism by CPs and the media. The level of media interest during the hearings was significant and reflects the public interest in the Inquiry's proceedings. The frustration expressed by journalists in being unable to follow, and therefore effectively report on, the proceedings highlighted the failure to afford a proper level of public accessibility.

7. The lack of access also precluded effective participation by those NPSCPs who were unable to attend in person (the majority); and, indeed, even those few who were able to attend were frustrated by difficulties in accessing legal advice or feeding in questions they wished to have asked of witnesses, because their RLR was not funded to attend; was not able to follow the evidence remotely because

[1] https://www.ucpi.org.uk/wp-content/uploads/2020/09/20200701-NPNSCP_Submissions_on_Chairmans_Statement_on_T1_Hearings_3_Annexes.pdf

[2] These submissions were formally supported by the wider NPSCP group – see email from Lydia Dagostino to the Inquiry Legal Team 19 October 2020 10:17.

of the ineffectiveness of the transcript; and, in some cases, did not have access to the bundle.

8. Even for those who had had advance access to the bundle, the time to prepare was too short, particularly given the overlapping preparation of opening statements, and it became clear during the course of the hearings that the Inquiry had not investigated potentially significant witnesses and lines of enquiry and that the Rule 10 process for proposing questions did not work well.

9. These factors left NPSCPs feeling excluded from the proceedings and reinforced the impression that the Inquiry does not consider that it has anything to learn from the non-state perspective. All of the factors need to be addressed for T1P2.

10. The extent to which NPSCPs wanted to participate is illustrated by the steps taken by Police Spies Out of Lives ['PSOOL'] to arrange near-live broadcasting of actors reading the transcripts in order to make them easier to follow; the time delayed tweeting of the evidence throughout the hearings by the Campaign Opposing Police Surveillance ['COPS']; and the attempts that were made to feed in Rule 10 questions.

1) AUDIO-VISUAL STREAMING

11. It is understood that the Inquiry is now actively considering audio streaming of the evidential hearings in T1P2. This would be an improvement on T1P1, but it would still fall short of the obligations to secure proper public access to the Inquiry proceedings and would fail to comply with the Chairman's obligations under section 18 of the Inquiries Act 2005 ['IA 2005'] and under the EA 2010.

12. The NPSCPs propose that audio-visual transmission of the evidence is made available. In short, there would be two feeds: one real time audio-visual feed to be viewed by the Chairman, ILT and all CPs, RLRs, members of the public and the media in attendance at the screening venue – as occurred at the Amba Hotel; and then a feed with a 10 minute delay which is publicly accessible via the internet.

13. Whether audio-only or audio-visual, the publicly accessible feed should be accessible to all via the UCPI website. The NPSCPs oppose the submission on behalf of the Commissioner of the Metropolitan Police that even an audio-only feed should only be made available on advance registration and only accessible at the time of transmission. Such measures run counter to the principle of ensuring openness.

Legal framework

14. Section 18 IA 2005 identifies the starting point of an inquiry held under the Act "*as one of openness and accessibility, in conformity with the common law presumption of open justice, subject to the making of a restriction order or restriction notice under section 19*."[3] S.18(1)(a) requires the Chairman, subject to any restriction order or notice, to "*take such steps as he considers reasonable to secure that members of the public (including reporters) are able to attend the inquiry or to see and hear a simultaneous transmission of proceedings at the inquiry*."

15. Given that the Inquiry must prepare for the April 2021 hearings on the assumption that ordinary in-person hearings will not be possible, publicly accessible simultaneous transmission of the proceedings is the only means by which members of the public are able to see and hear the evidence.

16. The question then is (a) do any restriction orders or notices imposed under s.19 preclude such transmission; and (b) is it reasonable to take steps to provide publicly accessible simultaneous transmission in all of the circumstances?

17. The Commissioner's Lawyers ['CL'] and Designated Lawyers ['DL'] submit that the restriction orders that have been granted prohibiting disclosure or publication of the real identities of those officers scheduled to give evidence in T1P2 preclude publicly accessible transmission of the officers' evidence (whether with or without a short delay). On that basis, it had been the NPSCPs' intention to set

[3] Legal Principles ruling, 3 May 2016 https://www.ucpi.org.uk/publications/restriction-orders-legal-approach-2/

out detailed submissions as to why those restriction orders must now be revisited. However, at a meeting with the Inquiry legal team on 15 December 2020, the Solicitor to the Inquiry, Mr Bishop, stated that the Chairman did not wish to hear and would not fund submissions seeking to re-open restriction orders.

18. The NPSCPs respectfully submit that if, and to the extent that, current restriction orders are considered to present a barrier to publicly accessible audio-visual transmission of evidence that would otherwise have been available to be seen and heard by the public, the media and CPs at an in-person hearing, then those ROs must rationally fall to be reconsidered now that the factors telling against restriction have so materially shifted.

19. None of the relevant restriction orders was determined at a time when it was appreciated (or even contemplated) that their effect would be to exclude the public, the media and all bar a tiny minority of CPs, from seeing and hearing the evidence. Sir Christopher Pitchford's ruling on the legal approach to restriction orders makes clear that the granting of ROs, whether on the basis of compliance with section 6, read with Article 8 of Schedule 1, of the Human Rights Act 1998, per section 19(3)(a) IA 2005, or in the public interest under section 19(3)(b) IA 2005, is a question of balancing the competing interests telling in favour of or against restriction[4]. Plainly, it is a material change in circumstances that Covid-19 restrictions currently mean that publicly accessible transmission of the evidence is the only means by which members of the public, the media and the majority of CPs can see and hear the evidence. As such, if the ROs are said to preclude public access to seeing and hearing the evidence (given that the only means of doing so is now via publicly accessible audio-visual transmission), the balance must be reassessed.

20. None of the restriction orders precluding disclosure or publication of the real identities of any of the officers due to give evidence in T1P1 was granted on the basis of any objective risk of physical harm, risk to national security, or risk of

[4] Ibid pages 78-84.

disclosure of sensitive techniques or information. All were granted on privacy grounds, mainly on the basis that the officer wished to avoid "unwelcome media attention". It is submitted that that is not a sufficient, or lawful, basis on which to exclude the public, media and CPs from seeing and hearing open (i.e. otherwise unrestricted) evidence in a public inquiry and it was never intended that that should be their consequence when they were granted.

21. The courts have repeatedly emphasised that departure from open justice must be approached on the basis of necessity: Khuja v Times Newspaper [2019] AC 161 at [14]; Al-Rawi v Security Service [2012] 1 AC 531 (SC) at [11], citing Scott v Scott [1913] AC 417 (HL):

> "The open justice principle is not a mere procedural rule. It is a fundamental common law principle. In *Scott v Scott* [1913] AC 417, Lord Shaw of Dunfermline (p 476) criticised the decision of the lower court to hold a hearing in camera as "constituting a violation of that publicity in the administration of justice which is one of the surest guarantees of our liberties, and an attack upon the very foundations of public and private security." Lord Haldane LC (p 438) said that any judge faced with a demand to depart from the general rule must treat the question "as one of principle, and as turning, not on convenience, but on necessity."

22. The principle of open justice applies also in public inquiries: Kennedy v Charity Commission [2015] AC 455.

23. The ROs relating to the officers in T1P2, which, as the Chairman has acknowledged, would not have precluded the officers' evidence from being seen and heard at in-person hearings, cannot now justify such a fundamental departure from open proceedings. The change in circumstances is material and alters the balance to be struck.

24. Therefore, in the event that the Chairman is of the view that the current restriction orders do preclude publicly accessible audio-visual transmission of the officers' evidence, he is respectfully requested to indicate that he will hear (and fund) detailed submissions on the relevant ROs.

Reasonableness of providing for publicly accessible audio-visual transmission

25. As noted above, section 18(1)(a) requires the Chairman to takes "such steps as he considers reasonable to secure that members of the public (including

reporters) are able to… see and hear a simultaneous transmission of proceedings at the Inquiry".

26. In the current circumstances, where it is impossible for all bar a very few individuals to attend an in-person hearing, there is plainly an overwhelming public interest in putting in place alternative means of enabling the public, media and CPs to see and hear the evidence. The importance of the public seeing and hearing the evidence was acknowledged by the Chairman in his statement of 7 April 2020:

> "The Inquiry is a public Inquiry. Unless there is good reason to the contrary, those whose conduct is under scrutiny and who are required to account for it publicly must do so in a manner which the public can observe… I cannot accept the proposals made by many of [the Tranche 1 former undercover officers] for shielding them from all but the legal representatives of the police and the Inquiry and a select and limited number of other legal representatives. To do so would convert that part of the Inquiry which is, for good reason, to be held in public into a set of semi-secret proceedings…"[5]

27. Further, as set out in the submissions on the EIA dated 15 October 2020, restricting access to the audio-visual transmission of the evidence to those who are able to attend a venue in central London during the current public health emergency puts those with relevant protected characteristics (race, age, disability and pregnancy) at a particular disadvantage when compared with persons who do not share those characteristics.

28. Given this differential impact, the burden is on those seeking to restrict broader public access to the audio-visual transmission to show that such restriction is a proportionate means of achieving a legitimate aim; it is not for those seeking the contrary to justify broader access.

29. The general PSED duty binding on the Inquiry under section 149 EA 2010 is to have due regard to avoid unlawful discrimination and to advance equality of opportunity. It is a duty that must be complied with before and at the time a particular policy or decision is under consideration, as well as at the time it is implemented. The Inquiry cannot satisfy the duty by justifying a decision after it has been taken; rather the need to comply with the duty must form an integral

[5]https://www.ucpi.org.uk/wp-content/uploads/2020/04/20200414-chairmans_statement-special_measures.pdf paragraph 4.

part of the decision-making process. That requires the duty to be exercised *"in substance, with rigour and with an open mind"* in a way that influences the final decision (*R (Brown) v Secretary of State for Work and Pensions* [2009] PTSR 1506 at [92]).

30. The Inquiry is required to consider fully the potential impact of his decisions on people with different protected characteristics and to identify the potential mitigating steps to reduce or remove adverse impacts. The duty also requires the Inquiry to tackle the consequences of past decisions which failed to give due regard to the equality objectives (*R. (W) v. Birmingham City Council* [2011] EWHC 1147, para 151 (iv)).

31. The "due regard" that must given to avoid unlawful discrimination and to advance equality of opportunity is regard that is appropriate in all the circumstances *at the relevant time*. While the decision-maker may take account of relevant countervailing factors in play at the relevant time, he must be *"clear precisely what the equality implications are when he puts them in the balance, and he must recognise the desirability of achieving them"* (*R (on the application of Hurley and another) v Secretary of State for Business, Innovation and Skills* [2012] EWHC 201 (Admin), [2012] HRLR 374 [78]).

32. Importantly, this duty applies generally; it does not relate to identified or identifiable individuals. Consequently, and contrary to the approach adopted by the Chairman in relation to T1P1 and apparently also envisaged for T1T2, it applies not only to individual CPs with a direct interest, as determined by the Inquiry, in the particular evidential tranche in question. We submit the Chairman has regrettably taken a wrong approach in requiring CPs with protected characteristics to make individual applications to him, for him to assess on a case-by-case basis whether he considers that their individual circumstances require him to put in place mitigating steps to reduce or remove adverse impacts in their access to the hearings. Rather, in the context of a public inquiry, the duty to mitigate potential adverse impacts applies generally to all those, whether CPs, other individuals affected by undercover policing, members of the press, or the public generally, who have an interest in attending the Inquiry hearings, and who

by reason of a protected characteristic, such as age, race, disability or pregnancy, may be disadvantaged in their access to the hearings by a decision or policy considered or implemented by the Chair.

33. The general duty under section 149 EA 2010 is separate and distinct from the parallel duty under section 20 EA 2010 to make reasonable adjustments to ensure access of persons with disabilities to the Inquiry. That duty is also anticipatory, rather than reactive: the Chairman cannot wait for a disabled person to identify themselves to him before taking steps to avoid an identified disadvantage: he must give advance and ongoing consideration to issues of discrimination, and to measures that disabled people with a range of disabilities might reasonably require, *before* making any policy decision that may affect them. He must also put in place such adjustments as are reasonable to mitigate any disadvantage that disabled people might otherwise experience.

34. As in relation to the section 149 EA duty, what is "reasonable" depends on all the relevant factors: at present, one of the key relevant factors is the fact that, due to the ongoing public health emergency and Covid-19 restrictions, the only way in which many people with disabilities – and indeed other protected characteristics – will be able to see and hear the evidence in T1P2, is via publicly accessible audio-visual transmission. It is in that context that the reasonableness of that adjustment must be considered.

35. The Equality Impact Assessment (version 2.0) prepared for the T1P1 hearings acknowledges that:

> "The main way to mitigate the negative impacts of persons being unable to attend the screening venue because of their age, disability or due to pregnancy[6] would be to live stream the evidential hearings on a platform such as YouTube or Vimeo. However, due to security issues and decisions taken with regard to the conduct of hearings, this is not possible. The provision of a live streamed transcript is a way to provide near real time access to the evidential hearings to persons outside of the screening venue, whilst adhering to security measures."[7]

[6] Race appears to have been omitted in this section of the EIA.

[7] EIA dated 26 October 2020 p.7.

36. No EIA has yet been disclosed in respect of the T1P2 hearings, and we are informed that none has yet been completed. However, it is clear that restrictions on live streaming in T1P2 could not be justified on the basis of security issues, because none of the restriction orders pertaining to the T1P2 officers has been granted on grounds of security.

37. Presumably the reference to "*decisions taken with regard to the conduct of hearings*" is to the Chairman's decision to rule out live audio-visual streaming in his statement about the conduct of evidence hearings, dated 19 December 2018[8]. The reasons given for that decision are addressed at [31]-[36] of the 1 July 2020 submissions[9]. However, as set out above, that decision was made in a wholly different context, a year before the Covid-19 pandemic began, and at a time when current lockdown conditions were well beyond the Chair's contemplation: his decision plainly could not have taken them into account. The decision also plainly failed on its face to make reference to or take into account mandatory EA 2010 considerations. In short, it is not a fully reasoned, lawful, EA 2010-compliant decision, capable of sustaining a determination to refuse to provide for publicly accessible audio-visual transmission over two years later, in T1P2, in wholly different prevailing circumstances.

38. Moreover, what actually occurred at the T1P1 hearings fully supports the NPSCPs' submissions: it simply was not the case that "large parts" of the evidence given by the T1P1 witnesses during the open hearings would have required interruptions in the live streaming, as posited by the Chairman in his 19 December 2018 decision. To the best of counsels' knowledge, there were only two occasions during the whole of the T1P1 hearings when a witness' evidence was interrupted in order to enable a redacted or potentially restricted matter to be queried and the broadcast transcript to be edited. Such occurrences could easily be managed by building in a short delay in the public audio visual transmission. They certainly did not occur with sufficient frequency to justify

[8] https://www.ucpi.org.uk/publications/chairmans-statement-on-the-conduct-of-evidence-hearings/ - see in particular [20]

[9] See fn1 above.

restricting public access to seeing and hearing the evidence in the way that occurred in T1P1. And indeed, what occurred during the T1P1 hearings fully accords with that of IICSA when it publicly streamed audio-visual transmission of its evidential hearings, notwithstanding the extreme sensitivity of the issues being addressed – see [24] of the NPSCPs' 1 July 2020 submissions.

39. In terms of the rights and interests of the witnesses and achieving best evidence, given the Inquiry's obligations under the EA 2010 to have due regard to justify the disproportionate disadvantage to those sharing relevant protected characteristics, it is not sufficient or compliant with the EA 2010 simply to apply a blanket presumption that public transmission of a witness' evidence will have a detrimental impact on the witness' rights and interests or the quality of their evidence. Nor is it sufficient or lawful to determine that such detriment (if it exists) necessarily weighs decisively in the balance against the rights of those who, by reason of age, race, disability or pregnancy, are unable to attend the screening venue, or have equal access to the Inquiry's proceedings. That is particularly so when the Chairman could not conceivably have been *"clear precisely what the equality implications"* would be in 2021, when he determined in 19 December 2018 that *"live streaming of parts of the oral evidence is not a satisfactory solution to its publication"*. [10] He could not and did not properly put the relevant equality implications in the balance, nor did he address or recognise the desirability of achieving them.

40. Put bluntly, none of the T1P1 witnesses who gave evidence appeared to be especially nervous or daunted. It is far from clear why the concerns of the T1P2 officers about unwanted media attention should automatically weigh in the balance against the right of others, particularly people with protected characteristics, to be able to see and hear the evidence.

41. While, as set out above, the duty is a general one, the situation of individual CPs is nevertheless illustrative. Three CPs, Diane Langford, Martyn Lowe and Richard

[10] https://www.ucpi.org.uk/wp-content/uploads/2018/12/20181219-Chairman_statement-conduct_of_evidence_hearings.pdf, paragraph 20.

Chessum, all of whom are in their 70s and vulnerable to COVID, have strong direct interests in T1P2. Diane Langford's interests are set out in the "Contact with witnesses" section of these submissions. Martyn Lowe's interest arises as a member of London Greenpeace which was subject to police surveillance at the relevant time (and for which he has been provided with disclosure of relevant documents). Richard Chessum has a direct interest in the early evidence regarding the use of sexual relationships as a means of infiltration and surveillance and the appropriation of the identities of dead children, which will be before the Inquiry in T1P2. He also has a direct interest in other matters relevant to T1P2, including the creation of false identities, the attainment of high office by UCOs within organisations and the use of deceptive and exploitative friendship relationships by UCOs to gain trust, and maximise the information obtained and the influence exerted. On what basis should their ability to see and hear the Inquiry proceedings properly be curtailed?

42. Under the EA 2010, it is the adverse impact on those sharing protected characteristics that has to be justified; as under the IA 2005, it is the departure from openness that requires justification. Given that publicly accessible transmission is now the only means of enabling the public, the media and CPs to see and hear the evidence, any such failure to enable such access must be properly considered and justified on the on the basis of the current prevailing circumstances. There is no proper basis for the Chairman's contrary approach, which is to require CPs, including CPs with protected characteristics, to justify to him why they should be afforded the opportunity to hear and see the evidence.

Why an audio feed is not sufficient

43. There is a clear qualitative difference between audio-visual and audio only access to the proceedings. Whilst audio streaming is a step up from the transcript alone, because it enables pauses, hesitation, intonation and expression to be heard – all of which were very significant losses in T1P1 – being able to see, as well as hear, the witness enables the viewer to assess body language and demeanour.

44. Many of the NPSCPs spent significant periods of time with undercover officers and describe retrospectively deconstructing aspects of their behaviour. Some of the women in Category H, for example, have expressed a strong wish to have been able to see HN345 'Peter Frederick's' body language when he described returning some years after his deployment to visit a woman he had known whilst undercover. They wanted to know whether he displayed any of the physical signs they recognise from their own experiences. That type of information is lost on an audio only feed. There are other more mundane, but nonetheless important, examples where a witness's body language and facial reaction to a question asked may reveal more than the simple transcript or audio recording. It should also be noted that a witness's reaction to a question may dispel as well as confirm any doubts regarding their answers as recorded on a transcript.

45. There are also advantages in audio-visual transmission that relate to the ability to follow the evidence. It is much easier for those watching the evidence to stay focussed when they can see, as well as hear, the speaker.

46. The advantages of audio-visual transmission over audio-only are acknowledged in evidence cited by the DL in their submissions of 24 June 2020. The DL refer to the transcript of the evidence of Professor Dame Hazel Genn (in fact the cited passage is from Professor Richard Susskind) to the House of Lords Select Committee on the Constitution on the constitutional implications of Covid-19[11]:

> "One thing that is emerging quite clearly is that the video hearing, in broad terms, is better than the audio hearing. A lot more information is conveyed. For example, if we were all on an audio call, we would have a less rich experience. I can see your faces and your expressions. A second finding is that it is very tiring to do these hearings. Judges who are used to sitting for two and a half hours in the morning and in the afternoon report that more breaks are needed.
>
> A third thing that is emerging is that there needs to be ways for lawyers and clients to communicate with one another during the hearings, because they are not sitting together and are not able to write notes or talk to one another. A fourth thing that is emerging is that it is quite hard to handle cases where there are large bodies of documents involved. We do not have good document management systems to support these kinds of hearings.
>
> Generally, I think many people have been surprised at how effective a video hearing can be. Another finding or conclusion emerging is that partial hearings are not so effective and

[11] https://committees.parliament.uk/oralevidence/462/pdf/

> throw up questions of procedural fairness. That is to say, if some people are in a physical courtroom and others are communicating by video, there seems to be an imbalance."

47. For all of these reasons, whilst an audio transmission is preferable to the rolling transcript, it is significantly poorer than audio-visual transmission. Given that the departure from equal provision and public access has to be justified, the starting point should be publicly accessible audio-visual transmission, unless something less is justified in the circumstances of a particular witness.

Delay in transmission

48. It is acknowledged that there will need to be a short delay in the publicly accessible transmission of the evidence in order to enable any inadvertent breaches of restriction orders to be rectified. This was sufficient during T1P1 and there is no reason to consider that the position would be different during T1P2.

Continued need for a screening venue

49. It follows from the above that, even with publicly accessible audio-visual transmission of the evidence, there is still a clear and pressing need for a physical screening venue where the evidence can be viewed in real time by those attending. It was clear from the experience of T1P1 that there were significant difficulties with those who were not present at the venue being able to give and take instructions remotely and to feed in questions for the witnesses. This was partly due to the difficulties with the rolling transcript, but also because of the 10 minute delay and the difficulties with communicating remotely generally. Covid-19 restrictions permitting, it is essential to have a venue where those CPs and RLRs who are able to attend in person can do so in order to be able to view the evidence together and discuss it.

Improved transcript

50. Whilst it is clear that the rolling transcript was wholly inadequate as a stand-alone measure, there would be real benefit in having a pausable, text-based,

searchable near real time[12] publicly accessible transcript in addition to the audio-visual stream. This would assist with giving and taking instructions on the evidence, because it would make it significantly easier to identify a relevant piece of evidence on the transcript, rather than searching back through audio or video. The technological considerations in providing such a transcript are not great, particularly where a transcript of proceedings is in any event already being produced.

Individual applications for audio-visual feeds

51. The NPSCPs are grateful for the Chair's decision on 22 October 2020 to accept Rosa's application for an unmonitored live link to her home address. However, the NPSCPs are disappointed by submissions made on behalf of the Designated Lawyers Group that seek to treat this as a 'minded to' decision and that further intrusive measures should be sought to ensure compliance with the terms of the Restriction Order which Rosa has agreed to enter into.

52. There is no evidence or any other basis to suggest that Rosa will not comply with the terms of such an order. The suggestion that Rosa should be made subject to intrusive 'remote monitoring' in her own home does not appear to pay any regard to her personal background as the victim of appalling treatment as a result of police spying operations. It is Rosa's agreement to a Restriction Order which provides the safeguard, should any be needed, that the facilities afforded to her will be used appropriately.

53. The NPSCPs also dispute the suggestion by the Designated Lawyers that the decision in relation to Rosa 'led to' applications for video feeds for five other CPs (see paragraph [24] of Designated Lawyers submissions dated 06 January 2021). The substance of the applications for reasonable adjustments made by other CPs were based on independent grounds personal to those individuals and the decision to apply pre-dated the outcome of Rosa's application.

[12] It is accepted that such transcript may be subject to any short (e.g. 10 minute) delay imposed on any publicly broadcast audio/visual transmission.

2) THE CONDUCT OF REMOTE HEARINGS

54. The necessity in present circumstances to receive evidence from witnesses who are participating remotely inevitably gives rise to some difficulties. The following points address the NPSCPs concerns.

Ensuring the integrity of witness' evidence

55. The NPSCPs have concerns over steps taken to ensure the integrity of witness' evidence when given over remote link, in particular regarding warnings not to discuss evidence with others in the same room as the witness. The NPSCPs made submissions in relation to this issue at [61] and [62] of their submissions of 1 July 2020. However, it did not appear that these concerns were addressed in relation to the T1P1 witnesses, with the exception that the individual in the room with the witness was asked to remain on camera throughout. On a number of occasions persons present in the room with a witness giving remote evidence were described as being there to provide support with the technology. However, it later became clear that the person was a member of the legal team assisting the witness. Apparently, no warning was given to witnesses not to consult with their legal representatives during breaks in their evidence.

56. This absence of basic assurance measures, at best, gave the appearance of a lack of rigour in respect of the integrity of the witness' evidence. It ought to be uncontroversial that all witnesses should, at the start of their evidence, and, where necessary, thereafter:

    i) be asked to identify, by name and role, who is in the room with them and what the purpose of that person's presence is;

    ii) be asked to identify the documents to which they have access and confirm that any copies of documents are unmarked;

    iii) be told not to discuss their evidence with any other person during any breaks in their evidence.

Chairman to remain visible

57. It was helpful during the audio-visual transmission to the Amba hotel that the Chairman remained visible throughout the hearings. However, on the occasions that hearings were broadcast over the internet, only the current speaker was visible. This made it impossible for those viewing to observe the Chairman's reactions to what was being said. The NPSCPs would ask that arrangements are made for the Chairman to remain visible on the screen throughout the transmission of future hearings. Similarly, when a witness is giving evidence, the witness, the questioner and the Chairman should all remain visible throughout.

Audio-visual recording of the evidence to be retained

58. The NPSCPs renew their submission that the Inquiry should make and retain an audio-visual recording of the proceedings, including the evidential hearings. Not only will this be an important record of the proceedings for future researchers and historians, but where, as has in fact occurred in relation to T1P1, a witness comes forward after a relevant witness pertaining to them has given evidence, it may well be of assistance for them to see as well as hear the relevant evidence.

Closed hearings

59. As noted above, the principle of open justice and the factors underpinning it apply just as much in the context of a public inquiry as in litigation: Kennedy v Charity Commission [2015] AC 455. See also, Laws LJ citing the chairman of the Azelle Rodney Inquiry in R (E) v Chairman of the Inquiry into the Death of Azelle Rodney [2012] EWHC 563 (Admin) at [26]: in the context of a public inquiry into alleged police misconduct it is legitimate to place a "*premium on achieving as public an Inquiry as possible, 'so that at the least to counter or neutralise the obvious alternative surmise, namely a sustained 'cover up'"*.

60. It is therefore departure from open hearings that must be strictly justified. This is also reflected in the starting point of openness under section 18 IA 2005. This means that:

    i) the need for a closed hearing should be closely scrutinised;

ii) measures short of closed hearings should be considered first;

iii) even if part of an officer's evidence is sufficiently sensitive to require a closed hearing, those parts of his or her evidence which do not require closed proceedings should be heard in open proceedings;

iv) where closed hearings take place, steps should be taken to make as much as possible public, including:

a) publication of the reason why the evidence must be heard in closed – this could be by reference to the Open Grounds for Restriction, but more information should be provided where possible;

b) disclosure of the broad subject matter of the evidence to be given, or gisting.

v) after the hearing, fresh consideration should be given to whether any/all of the evidence given can be disclosed and this should be kept under review as the Inquiry proceeds. If withholding of a recording or transcript of the hearing continues to be justified, then any parts that can be disclosed should be disclosed. If that is not possible, then gisted disclosure should be made.

vi) the Inquiry should indicate how it proposes to communicate to NPSCPs and their RLRs the responses to any questions proposed by, or on behalf of NPSCPs in closed proceedings.

61. The NPSCPs would welcome the publication of a protocol confirming that the above steps will be taken in respect of closed hearings

3) ACCESS TO BUNDLES

62. The late provision of access to material prior to T1P1 plainly had significant repercussions in terms of the smooth running of the hearings. Timely access to material/disclosure is a fundamental issue about which there appears to be almost universal agreement.

63. The current position, as we understand it, is that the Inquiry proposes to provide access to the T1P2 bundle eight weeks in advance of the T1P2 hearing. The *possibility* of rolling disclosure prior to that date has also been flagged.

64. That is an improvement on the T1P1 position (with only six weeks of prior access, at a time when Opening Statements were also being drafted) but it is not a solution, particularly given that (a) we understand that there is approximately twice as much documentation in relation to T1P2 than T1P1 and that (b) there are T1P2 opening statements to be prepared by those directly involved in that Tranche.

65. We propose that, in respect of future tranches, hearing dates are fixed around the dates on which disclosure can be made rather than vice versa and that that procedure is established as a point of fundamental principle. The Inquiry should fix a date by which full disclosure can be made, make a realistic assessment of the time in which that material can be effectively marshalled by the RLRs, and then and only then, fix hearing dates. The focus should be on striving towards having hearings heard properly rather than quickly.

66. The assessment of the time required to prepare should be undertaken, as far as possible, in consultation with the RLRs and should bear in mind the time needed to:

    i) read, absorb and cross-reference material;

    ii) take instructions;

    iii) identify and pursue lines of investigation, often as a result of those instructions;

    iv) identify potential non-state witnesses (the example of Diane Langford demonstrates the importance and value of our assistance and input);

    v) challenge redactions – the schedules of open grounds for redaction were only published on 9 October 2020;

    vi) identify if officers the Inquiry proposes to read should instead be called and to draft submissions on that issue;

vii) having absorbed the material and taken instructions, prepare considered applications for Rule 10 questions; and,

viii) have the proposed meeting with Counsel to the Inquiry to discuss the rationale for proposed Rule 10 questions.

67. It is worth repeating that the unique circumstances of this Inquiry mean that many of those affected by its subject matter cannot know that they have relevant evidence to give/relevant questions to ask until disclosure is made.

68. The assessment and management of time required will plainly be assisted by:

i) *Proper funding*. This is a further fundamental issue, an unmanageable pressure and burden has been placed on the NPSCP legal teams as a result of unrealistic and intolerable funding restrictions. It is critical that:

a) Funding is authorised at an early stage for RLRs and counsel with CPs with a "direct interest" (as currently defined) in each Tranche to both prepare for and attend hearings. Those RLRs and counsel are then in a position, as they should be, to fully represent the interests of those CPs. It is inappropriate (and unconscionable in the light of recent events) for counsel with responsibility for the wider group to also be expected to represent the interests of "direct interest" CPs, as has previously been suggested and expected by the Inquiry in relation to both evidence and directions hearings.

and

b) Proper funding is authorised in respect of the wider group to ensure that the burden of preparation and attendance in respect of over-arching common issues is shared. We will need time to consider exactly how we propose this can be achieved.

ii) *Rolling disclosure.* Rolling disclosure of documents should be made where possible. It is notable, for example, that the proposed witness lists for T1P2 were released by the Inquiry on 10 December 2020. Those lists included an assessment of whether witnesses were to be called or summarised,

suggesting an advanced state of readiness by the Inquiry on that date. Despite that state of readiness, not one witness statement has been disclosed to the NSPCPs at the time of writing[13].

iii) *Early disclosure of CTIs statement.* The early disclosure of CTI's (Counsel to the Inquiry/his team) statement/overview of the bundle prior to access to the bundle being given (effectively "road maps" for P2 and later Tranches).

iv) *Bundle Index.* The production of an index for the bundle, including full list of all documents, including, at a minimum, the document number, date and title or summary.

v) *Summary of Bundle*. Early indication as to the nature and contents of bundles. For example, in respect of the T1P2 bundle, will this be an entirely separate bundle? If so, how will this integrate with T1P1, given that some CPs straddle the time frame and will need to refer to documents in both bundles?

vi) *Disclosure of photographs of UCOs*: The Chair has indicated that, where held, contemporaneous photographs of UCOs whose names are not subject to ROs will be provided to NPSCPs by the Inquiry. Similarly, contemporaneous photographs of UCOs subject to real-name-only ROs will be provided to CPs to view (with images being held by RLRs). The NPSCPs ask that such disclosure is provided at an early stage so that relevant evidential material held by NPSCPs can be secured.

vii) *Reconsideration of the redaction process.* In our view, there needs to be better gisting and earlier disclosure so that we have an opportunity to challenge redactions where appropriate and/or ask questions about them. By way of an example, it was not possible to ascertain whether HN336 "Dick Epps" went for a drink with a male or a female. Consideration should

[13] With the exception of some witnesses who had been scheduled to give evidence in T1P1 but were moved to T1P2.

be given to the balance in favour of disclosure when dealing with material that is several decades old.

viii) *Consistency of privacy redactions.* In addition, and in relation to privacy redactions, RLRs/their teams were given access to the CP bundles with documents that had some redactions to them on the basis of security concerns. The versions of the documents that were put in the T1P1 hearing bundle then had further redactions made on the basis of privacy. There is no issue with that in principle. However, there were some additional documents in the T1P1 bundle which related to some CP clients, these had privacy redactions but the relevant teams had not been given the unredacted versions in their CP bundles.

ix) *OPUS.* There are a number of problems/issues with OPUS, examples include:

a) When CPs were originally provided access to OPUS, the disclosure was arranged witness by witness i.e. with a folder for each witness including, first, that witness' statement and, secondly, exhibits associated with that witness. Within days that format had been internally rearranged into a less user friendly list of documents.

b) It had been our understanding that the purpose of providing the entirety of the bundle on one date was so that it was the complete bundle, and documents could then be considered in the context of others. However, following the initial disclosure of the bundle, multiple documents were subsequently added. We anticipate that the same may happen with future hearings, and therefore it is far preferable to receive as early disclosure of documents as possible, especially since this may lead to CPs being able to alert the Inquiry to further enquiries which it may wish to carry out as a result of the CPs having seen the disclosed evidence.

c) The inability to activate the "Recent Items" tab – this either needs to be activated (our preference) or, as a minimum, the Inquiry should

notify us and identify when and where documents have been added on a rolling basis. We understand that steps are being taken to address this issue.

d) Currently, the re-ordering/restructuring of documents within OPUS is not helpful and adds to the burden on legal teams. In particular, time is spent working out what the changes are and what documents have already been considered when this can be solved with the 'recent items' tab – providing notice.

Wider access to the bundles:

69. We appreciate that other teams will be making applications for wider access.

70. From the perspective of the wider group we have asked in correspondence that Dr. Eveline Lubbers be provided with access to the hearing bundles. By email on 11th of January 2020 we were invited to make submissions on this point at the 26th of January hearing. Our submissions are annexed in the attached email.

71. Dr. Lubbers' assistance will be invaluable. For example, it is notable that had she had access to the P1 bundle, it is inevitable that she would have spotted that Diane Langford had valuable evidence to provide to the Inquiry. Dr. Lubbers had been in contact with Ms Langford a couple of years ago, but her significance to the Inquiry was reinforced when Dr. Lubbers saw the documents as they were released and as the evidence emerged.

4) RULE 10 QUESTIONING

72. The T1P1 hearings were a learning process for all concerned. These submissions seek to identify areas of concern and to suggest proposals for improvement.

Areas of concern

73. The ability of NPSCPs to feed into the Rule 10 process during the T1P1 hearing process was impeded by the following factors:

i) Barriers on access to the bundle;

ii) Barriers on access to evidential hearings;

iii) Extreme pressures of time;

iv) Funding limitations;

v) Limitations on communication with CTI on Rule 10 questions; and,

vi) The process of seeking permission to put Rule 10 questions directly to witnesses

74. These limitations interact with each other and will be addressed under two distinct categories below: (a) Proposing Rule 10 questions in advance of the hearing; and (b) direct questioning of witnesses. Proposals for future hearings are also set out.

(a) Proposing Rule 10 questions in advance of the hearing

75. The CPs and RLRs are grateful for the efforts of the ILT in the process of suggesting and formulating Rule 10 requests during T1P1. Regrettably however, there were instances when the process did not proceed smoothly.

76. The barriers on access to the bundle by CPs impeded the ability of NPSCPs to feed into the Rule 10 process during T1P1. Clearly, Rule 10 questions cannot be proposed for a witness unless the extent of that witness's role and evidence is known in advance. Access to the T1P1 bundle for CPs who were not giving evidence in T1 was limited to a very small number of CPs and RLRs who were hence limited in their ability to input into the Rule 10 process.

77. Even for those provided with access to the bundle, the extreme time pressures placed on all concerned by the disclosure process meant that on occasion it was not possible for all Rule 10 requests to be submitted a full seven days in advance of the hearing date. Similarly, even when the deadlines were met, it was clear that CTI were under considerable, and understandable, pressure to respond to such requests in advance of the relevant witnesses giving evidence. On occasion, there were apparent inconsistencies in the stance to Rule 10 questions adopted by CTI or other matters requiring supplementary submissions from NPSCPs.

Particularly for counsel who were not in daily attendance at the hearing venue, the opportunities to clarify aspects of the Rule 10 process were limited.

(b) Follow up Rule 10 questions and direct questioning

78. It is in practical terms inevitable that relevant points for Rule 10 questions will on occasion arise for the first time during the course of a witness's evidence: either due to a witness giving evidence which has not been anticipated on the basis of their Rule 9 statement or due to matters which arise during the process of Rule 10 questioning by CTI leading to follow-up questions. The evidence of HN 336/Dick Epps in relation to the Stop the Seventy Tour is a clear example. HN336 gave evidence on a number of matters that went beyond the witness statement provided. Counsel for Lord Peter Hain was present at the hearing on the relevant date and was able to address these in a series of short questions.

79. However, on other occasions limitations on funding for RLRs and counsel to attend the evidential hearings have created a barrier to NPSCPs proposing follow up questions during the course of a witness's evidence and/or making applications to directly question a witness.

80. The difficulties were illustrated during the course of the final day of the T1P1 evidential hearings where RLRs for Lord Hain had proposed Rule 10 questions in advance for HN345/Peter Fredericks but were not funded to attend the hearing. The combination of difficulties in the Rule 10 procedure and the failure of the live transcript resulted in proceedings being halted whilst matters were addressed. These issues would all have been avoided had RLRs/counsel been present at the hearing. The rationale for the proposed questions could have been explained, the limits of CTIs response understood and any follow up questions either proposed to CTI or asked directly of the witness without delay.

81. The requirement to seek the Chair's permission in each and every instance where a Rule 10 question is put directly to a witness and not through CTI clearly adds to the procedural complexity of hearings. This is particularly so if it becomes necessary for the witness to be excluded from the hearing whilst the application

is made. Clearly such delays are avoided if NPSCPs are afforded the opportunity to put relevant questions without the need to apply for permission.

Proposed solutions:

82. The following proposals are made to alleviate the difficulties outlined above and to promote the instances when matters proceeded well:

i) Wider access to the bundle:

83. The need to assist the Rule 10 process is a further basis to support the provision of access to the bundle for Dr Eveline Lubbers as outlined above.

ii) Earlier access to bundle

84. The ability to submit focussed and relevant Rule 10 questions is a further reason to ensure that NPSCPs are given access to the T1P2 bundle more than 6 weeks in advance of the hearings.

iii) Funding for RLR/Counsel to attend hearings

85. The ability to explain the rationale behind proposed Rule 10 questions directly with CTI and/or to question witnesses directly, when needed, is another reason to increase funding for RLRs and counsel for NPSCPs to attend the hearing venue. It is often possible for counsel to verbally clarify the basis for a proposed question in a matter of moments, when drafting further written submissions will take several hours. Similarly, the greater understanding of the position of CTI enables future questions to be suitably focussed. Clearly the ability to pose follow up questions is greatly increased when counsel are present at the hearing venue.

86. We therefore submit that funding for RLRs/counsel of CPs with a 'direct interest in'/'directly affected by' the evidence of a given witness should not be narrowly construed. Where RLRs/counsel are able to attend more of the hearing dates, many of the issues outlined above can be ameliorated.

iv) Allocated time for NPSCPs to ask questions directly

87. We welcome the policy adopted in the final days of the T1P1 hearings of permitting advocates for the NPSCPs a short period of time[14] to put relevant follow up questions. It adds to the smooth running of the hearings, alleviates some of the difficulties of remote/socially-distanced hearings, increases the engagement of NPSCPs and, it is hoped, aids the Chair in his inquiry.

88. The NPSCPs support the continued adoption of a similar policy for future hearings. Counsel for NPSCPs clearly remain obliged to propose lines of inquiry anticipated in advance through CTI and may only use any allocated time for matters that were not reasonably foreseeable. Where matters do not clearly fit into this category, then the Chair's approval will still be sought, and similarly if further time than that allocated is required.

iv) Meetings with CTI

89. Many of the issues relating to the Rule 10 procedure arise from difficulties in NPSCPs explaining the rationale behind our proposed questions to CTI and similar misunderstandings relating to the responses received. There are clear advantages to the interactive nature of discussion between counsel for NPSCPs and CTI on these issues over written submissions. The NPSCPs therefore ask for meetings with CTI shortly in advance of the hearings in order to explain proposed lines of questioning. Whilst this will add to the commitments during what will inevitably be a busy time for those concerned, it is hoped that this will have an overall benefit to the Rule 10 process.

v) Timing of breaks in evidence to take account of the delay in the live feed

90. Where CPs and RLRs are following evidence by a delayed live transcript, the NPSCPs ask that consideration is given to the timing of breaks in evidence so that opportunity is given for instructions to be passed to advocates at the hearing venue who are to seek permission to ask questions of a witness.

[14] The NPSCPs support the proposal of 30 minutes put forward in submissions by Mr Menon QC dated 12th January 2021.

5) IDENTIFYING AND CONTACTING CIVILIAN WITNESSES:

91. The NPSCPs have concerns over the steps taken to secure evidence from civilian witnesses and the manner in which contact has been made.

92. This is illustrated in the case of Diane Langford, the 79-year-old former partner of Abhimanyu Manchanda who was herself active in many groups subject to police surveillance during the period covered by Tranche 1.

93. On 13 October 2020, Diane Langford received a letter from the Inquiry, briefly stating:

    i) that a public inquiry into undercover policing was taking place;

    ii) that the Inquiry had identified "a small number" of documents that made reference to her;

    iii) that those documents (and hence the references to her) were within the evidence of an officer (HN45/"David Robertson") who was to be giving evidence to the Inquiry approximately three weeks later; and,

    iv) asking her if she would like to receive them.

94. She was told that her receipt of those documents would be subject to a restriction order, without any explanation as to what that entailed. She was told that the Inquiry did not intend to issue her with a formal request for evidence. No reason was provided for why the Inquiry was contacting her and offering her sight of the documents.

95. Ms Langford requested copies of the documents and engaged in email correspondence with the Inquiry. On 28 October 2020, only two days before the hearings commenced, she was sent a bundle of 28 documents. It is of note that no mention had previously been made to the documents of HN348 "Sandra" that also made reference to Ms. Langford. HN348 was mentioned only after Ms Langford herself raised the issue of "Sandra". It is also worth noting that the bundle of 28 documents was not fully representative of the material bearing her name in the possession of the Inquiry (a further 20 documents have since been identified).

96. Due to the potential risk of Covid contamination (increased due to her age), Ms Langford waited for some days to open the bundle. When she did open it she was, unsurprisingly, shocked to see a Penal Notice which said that if she disclosed the documents to anyone or published them she could be imprisoned, fined or have her assets seized. This had not been mentioned to her in any of the preceding correspondence. As a result, she was afraid to contact anyone regarding the documents she had received.

97. At no point was she advised that she was likely to be entitled to legal advice funded by the Inquiry or given any information on how she might access such advice. The only reference to legal advice in the letter concerned obtaining additional copies of the documents where the letter stated that if she required "an additional copy for any reason (e.g. for the purposes of obtaining legal advice), [she would] need to make an application to the Inquiry to vary the Restriction Order."

98. Fortunately, on 18 November 2020 Ms Langford was contacted by Eveline Lubbers from the Undercover Research Group, and was put in touch with Lydia Dagostino in order that she could obtain legal advice and consider providing evidence to the Inquiry.

99. It is plain on the face of the T1P1 documents, that the Inquiry had been in possession of for some time, that it was highly likely that Ms Langford would have important information and/or a significant role to play in respect of:

    i) The Women's Liberation Front and the Women's Equal Rights Campaign, particularly bearing in mind how innocuous those organisations were, how wasteful the deployment was, and how there was no witness or CP engaged to assist the Inquiry from the activists' perspective.

    ii) The Maoist perspective generally. Maoist groups feature extensively in T1, have been the subject of criticism and had hitherto been entirely unrepresented in the Inquiry.

    iii) Abhimanyu Manchanda, who also features extensively in the T1 documentation. Bearing in mind that Mr. Manchanda is deceased and that

Ms. Langford was his partner, she is evidently best placed to deal with areas of evidence that deal with him and his apparent prominence in terms of the rationale for the foundation of the SDS.

100. Further there were examples, on the papers, of Ms. Langford being criticised. One of those examples, was expressly raised by her, with the Inquiry in the run up to the T1 P1 hearing.

101. Further, and particularly worryingly, a simple Google search leads to an extract of Ms. Langford's memoirs "The Manchanda Connection", which names and provides details about her and her former partner's interaction with HN45 Dave Robertson, including significant information about the end of HN45's deployment and evidence of serious police misconduct.

102. The whole saga raises important concerns in respect of:

    i) The Inquiry's approach to identifying potential Non-State Core Participants or witnesses, with obvious triggers indicating relevant and important evidence being overlooked or ignored.

    ii) The method of contacting such individuals and civilians more generally. The timing and manner of the approach to Ms. Langford were entirely conducive to ensuring that she played no part in the Inquiry at all.

103. Despite assurances to the contrary, this is not the only time that this has happened. Additional concerns have now arisen in relation to the Inquiry's approach to the recently designated Category H CP, "Madeleine"; that will be the subject of submissions from the Category H representatives.

104. A number of questions clearly arise and have been raised in correspondence with the Inquiry, including but not limited to, firstly in respect of the Inquiry's approach to obtaining Non-State evidence:

    i) What was the basis on which Diane Langford was not invited to be a CP or even to provide a witness statement?

    ii) Why was there such delay in both contacting and sending the material to Ms Langford, given the date of the oral hearings?

iii) To what extent are previous applications for CP status being reviewed in the light of this failed approach?

iv) What steps are being taken to review the documentation to identify other instances where significant evidence may have been missed?

v) What steps are being taken to ensure that this doesn't happen again?

105. In respect of the methods used for contacting civilians/potential witnesses/CPs:

i) How many other Non-State individuals or organisations were sent the same letter in T1?

ii) Who are they?

iii) When were they contacted by the Inquiry and when was material sent to them?

iv) Why did the Inquiry not invite these civilians to provide witness evidence or to make an application for CP status?

v) Why was there no mention of access to legal advice and/or potential support?

vi) Why weren't the Inquiry's own procedures followed?

106. We have requested updated copies of all template letters that have been/will be sent to civilians (including trade unionists), so that we can provide feedback on the content and how the Inquiry must consider a change of approach in contacting civilians. As a minimum, correspondence must refer to access to independent legal advice funded by the Inquiry (at least at the critical initial stage) with details of the co-ordinator and a list of support groups.

107. If any other non-state individuals who are not CPs have been sent similar letters, contact needs to be re-made urgently advising them of their basic rights, as any tribunal must do. It is imperative that the non-state civilian is provided the details of the co-ordinator, who will be able to take the appropriate steps.

108. Bearing in mind that the original number of documents sent to Ms Langford was not an accurate representation of the actual number of documents referring to

her, there needs to be some improvement in the search methods used by the Inquiry[15]. Decisions can only be made as to the potential importance of a civilian if there is a full picture as to the coverage of them.

109. If these questions are not answered and appropriate safeguards not put in place to ensure no repetition:

i) there is an increased danger that police witnesses will need to be re-called in the event that a potential civilian witness only realises that they have evidence to give, having seen their name (for example) in the media;

and, most importantly:

ii) valuable non-state evidence will be lost and the Inquiry will inevitably be drawing conclusions from an imbalanced and one-sided state perspective.

CONCLUSION

110. A fundamental concern for NPSCPs is the extent to which the Inquiry intends to secure the active engagement of NPSCPs, to maintain their confidence in the Inquiry and to genuinely test the police account. This concern manifested itself in T1P1, not only through the very late disclosure of the bundle, restricted to a very limited number of NPSCPs; but importantly, it appears that significant steps, which would have secured additional non-state evidence were not taken.

111. The NPSCPs wish to actively participate in the Inquiry and assist the Chairman is his task in seeking the truth of what happened. The barriers described in these submissions -some principled, some practical- are highlighted in order to assist in exploring potential solutions to the difficulties posed with the ultimate aim of ensuring that a full and fearless examination of the evidence is possible and lessons are learned for the future of undercover policing.

[15] This issue over search methods also raises concerns over whether all relevant documents are being provided to CPs and witnesses more generally.

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