

IN THE MATTER OF THE UNDERCOVER POLICING INQUIRY

**AND IN THE MATTER OF THE GROUP OF CURRENT AND FORMER MPS
OFFICERS REPRESENTED BY THE DESIGNATED LAWYER TEAM**

**THIRD WRITTEN OPENING STATEMENT ON BEHALF OF
THE DESIGNATED LAWYER OFFICER CORE PARTICIPANT GROUP
TRANCHE 1, PHASE 3: SPECIAL DEMONSTRATION SQUAD
ADMINISTRATION AND MANAGEMENT 1968-1982
FOR HEARING: 9 MAY 2022**

1. Introduction

1.1 This further opening statement is made on behalf of the DL officer core participant group which comprises 104 former members of the SDS and 11 former members of the NPOIU.¹

1.2 This statement supplements and does not repeat the above group's previous written and oral openings of 28 October and 3-4 November 2020 ("1st DL opening") and 20-21 April 2021 ("2nd DL opening"). The abbreviations used in those openings are adopted below.

1.3 It is understood that the inquiry currently intends to deliver an interim report on T1 and that it will give directly affected core participants an opportunity to make closing statements on this period before doing so. However, the precise scope of such a report, the format and timing of the evidential phase of T1 Modules 2(b)-(c) and the point at which T1 closing statements might be heard are not yet known.²

1.4 With this in mind, this statement addresses the following:

¹ There has been one change in the constitution of the group in the last year with the transfer of HN34 to DL representation and the passing of HN106. There remain 115 DL officers in total, including HN66/EN327 who was a member of both the SDS and NPOIU.

² The inquiry published a draft Module 2(b) issues list on 19 April 2022 and the DL will respond to this separately within the consultation window.

- (1) three key evidential matters which, it is submitted, require further investigation before any interim report on T1 could safely be delivered (parts 2-4 below);
- (2) three more miscellaneous matters arising out of the T1 evidence to date (parts 5-7 below).

2. Modules 2(b)-(c) and further MPS / MI5 evidence

- 2.1 The SDS was not an autonomous entity and it did not operate in a vacuum. It produced intelligence for consumption by the MPSB Squads (particularly 'C' Squad, but also 'B' and 'E' Squads), the Uniform Public Order Branch (A8) and MI5.
- 2.2 Specific intelligence requests and general intelligence requirements were submitted to MPSB by those key customers and could be met by SDS intelligence in a variety of different ways, at different levels and by different channels.
- 2.3 Furthermore, SDS intelligence reports were filed in MPSB's Registry and therefore informed its responses to numerous other requests and enquiries, including vetting enquiries.
- 2.4 From the SDS perspective, the T1 evidence gathered so far suggests that:
 - (1) most intelligence requests and requirements came from and most reports were sent to the MPSB Squads who in turn dealt with A8, MI5 and others;
 - (2) SDS intelligence reports were directly read within MPSB and MI5, but digested into sanitised "threat assessments" for consumption by A8;
 - (3) SDS intelligence was also communicated orally and sometimes recorded in documents other than "Special Reports";

- (4) there was also direct liaison between the SDS and MI5 which became increasingly frequent and regular as the T1 period progressed.³
- 2.5 Importantly, the MPSB Squads, A8 and MI5 were primarily interested in intelligence and not its source: those submitting requests and requirements might not “need to know” about the SDS, still less specify that it provide the intelligence sought; and many of those involved in the processing and consumption of SDS intelligence would also not “need to know” about the existence of the unit or the origin of the intelligence in question.
- 2.6 The unconscious consumption of so much SDS intelligence - particularly by A8 - means evidence as to its use and value will be difficult to trace, particularly in surviving documentary records.
- 2.7 The inquiry’s evidential investigation of T1 Modules 2(a)-(b) will bring this difficulty into stark focus. Module 2(b) “includes senior managers higher in the chain of command as well as police personnel who handled intelligence provided by undercover police officers” and Module 2(c) “includes a number of other government bodies with a connection to undercover policing, including the Home Office” (CTI’s T1P1 opening statement, §43.2).
- 2.8 So far as concerns Module 2(b), it is submitted that the inquiry will need to investigate the work of the MPSB Squads, particularly ‘C’ Squad, their liaison with A8 (in connection with public order “threat assessments”) and MI5 (in connection with intelligence requests and requirements and other enquiries) and the extent to which those Squads tasked the SDS or relied on its intelligence.
- 2.9 Whether as part of this or as part of Module 2(c), it is further submitted that the inquiry should obtain further documentary and witness evidence from MI5 as

³ Recollections of direct liaison between the SDS and A8 vary, but this does not appear to have been significant.

to its liaison with the MPSB Squads, particularly ‘C’ Squad. In this regard, the “corporate” MI5 witness statement of “Witness Z” is helpful, but it suffers from a number of shortcomings:

- (1) it is a second-hand interpretation of contemporaneous materials, rather than a first-hand account from someone involved at the time and it expresses an inability to comment on various pertinent matters (§§50, 57, 93, 95, 105);
- (2) it was drafted “to ensure that it can be disclosed into OPEN in full” and “does not include sensitive information” (§7), i.e. it is written at a fairly high level of generality, does not descend into details or specifics and does not include anything MI5 deemed to be CLOSED;
- (3) it is a response to a rule 9 request and witness pack concentrating on a selection of recovered documents disclosing liaison between MI5 and the SDS itself and, to a lesser extent, discussions between MI5 and MPSB about the SDS - see CTI’s “Addendum Disclosure Note Regarding Tranche 1” dated 25 March 2021, §12, “Once all relevant non-reporting material relating to the relationship between the SDS and MI5 had been marshalled, the Inquiry sent MI5 a request under Rule 9 of the Inquiry Rules 2006 for a witness statement from a competent person, along with a pack of all relevant material”;
- (4) it therefore says very little about MI5 requests to the MPSB Squads which may have been passed on to or met by the SDS or which may have been responded to by reference to SDS intelligence (see esp. §§106-110 and note the large number of SDS intelligence reports referring or responding to “Box 500” correspondence which is not itself available);
- (5) other relevant matters are not covered, e.g. §§11-125 do not refer at all to the important roles of MI5 and MPSB in connection with vetting enquiries and the usefulness of SDS intelligence in that regard or explain

why MI5 kept such comprehensive records about the membership and supporters of (potentially) subversive groups.

2.10 It is submitted that further MPS and MI5 evidence as to the above is vital to an understanding of key inquiry issues as to the targeting and authorisation of the SDS, the dissemination of its intelligence, its interactions with MI5 and the justification for its operation and should be investigated as part of Modules 2(b)-(c) before any interim report on T1 could safely be delivered.

3. Other available sources of evidence

3.1 The 1st DL opening, §§8.3.6 and 9.3.7 and the 2nd DL opening, §§4.1-4.3 and 4.15 urged the inquiry to:

- (1) obtain independent expert evidence from one or more clinical psychologists / behavioural scientists on the selection and vetting of individuals suited to and the stresses and impacts of long-term undercover work;
- (2) obtain independent expert evidence from one or more academic historians on the political and socio-economic context in which the SDS operated;
- (3) disclose more information about its background reading and research.

3.2 The CL has also raised these points in submissions and correspondence.

3.3 The DL asked the inquiry about the above in a letter dated 14 October 2021, but received no response to the relevant questions. The CL did the same in relation to (2)-(3) above in a letter dated 24 March 2022 (referring to the DL letter) and received a reply dated 31 March 2022 which said only:

3. Appointment of a Neutral Historian

The Chair remains of the view that the circumstances of this Inquiry are such that no historian's report is required.

4. Chair's Reading

As previously indicated in planning meeting discussions, any reading that the Chair relies on will be put into evidence so that it can be scrutinised.

3.4 The inquiry's unwillingness to confirm or give reasons for its position on these proposals makes meaningful engagement or participation difficult:

- (1) The inquiry's position on the need for expert evidence from a clinical psychologist or behavioural scientist is unknown. It is submitted that such evidence is vital if the inquiry is to reach fair and informed decisions on the conduct of undercover officers undertaking such long-term deployments. The inquiry has no expertise in these matters, it could only benefit from hearing from someone who does and it could not rationally conclude that such an expert could not assist without knowing what they might have to say. That said, the inquiry may have every intention of calling such evidence.

- (2) The inquiry considers that expert evidence from a historian is not required, but the reasons for this conclusion are unknown. At the conclusion of the T1P3 evidential hearings, the inquiry will have heard from, on the one hand, former members of the SDS who believe that their reporting helped the MPS Uniform Branch maintain public order and MI5 monitor and counter subversion and, on the other hand, a small section of those reported on who believe that this reporting was unjustified and that any disorder or violence was caused by the far right and/or the police. The participation of those involved with anarchist and Irish support groups is minimal, the participation of those involved on the far right is and appears likely to remain nil. The inquiry will have no independent evidential basis for making secure findings of fact as to what the MPS was faced with on the ground at the time. Again, it is submitted that the inquiry could only benefit from hearing from an expert historian who could answer questions from all sides on this topic. History is an academic discipline and historians observe certain ethical and professional requirements - the inquiry could not rationally

conclude that it would not be assisted by expert input from this quarter.

- (3) The fact that the inquiry has thus far published extracts from a handful of contemporaneous newspapers and television documentaries, four pages of Sir Robert Mark “In the Office of Constable” (1978) and two pages of Christopher Andrew “The Defence of the Realm: The Authorized History of MI5” (2010) suggests that it intends to reveal very little about its background reading and research. Disclosure of particular passages that the inquiry intends to refer to in terms does not disclose the sources from which these have been drawn or indicate the basis on which they have been selected. If the inquiry published a full bibliography of its reading, core participants and the public could consider this and comment on the sources and any omissions.

4. Cover identities

- 4.1 The inquiry’s Module 1 issues list dated 5 July 2018 includes the following:

Legend building

19. *When and why did the practice of using deceased children's identities begin?*
20. *Who devised and/or authorised the practice?*
21. *What use did undercover officers make of the identities of deceased children?*
22. *What, if any, thought was given to the impact on the surviving family of a deceased child of the use for police purposes of their identity?*
23. *When and why did the practice cease?*
24. *What else did undercover officers do to build their legends prior to deployment?*

- 4.2 Issues 19-20 and 22-23 are repeated in the Module 2(a) issues list re-dated 7 March 2022, §§52-55.

- 4.3 It is already known that the practice of using information about deceased individuals who had died in or soon after childhood in the creation of undercover identities was used by the SDS for about two decades from the early/mid-1970s. However, it is also apparent that the inquiry has not uncovered

and is not currently scheduled to hear any evidence about why the practice was adopted, who devised it or who first authorised its use by the SDS.

- 4.4 In a letter to the inquiry dated 14 October 2021, the DL asked the inquiry the following:

[It] has been suggested that other agencies, e.g. MI5 and the KGB, used information about deceased individuals in the creation of cover / fictitious identities and that this may have informed or inspired the SDS... Please could you confirm if the inquiry has followed these suggestions up with MI5 or any other agency, i.e. in order to discover if the practice was more widely used and, if so, when, where, how and by whom? If the inquiry has done this, what information was provided? If not, please could the inquiry make enquiries along these lines?

- 4.5 The ILT replied on 18 November 2021 to say, “The Inquiry has not investigated whether the practice was more widely used, and the Chair does not intend to do so”. The CL asked the inquiry to reconsider this in a letter dated 24 March 2022 and the inquiry replied on 31 March 2022, “Your observations are noted however, as should already be clear from the issues list, the Inquiry’s investigation is confined to use of the practice by the SDS”.

- 4.6 However, the issues lists are not so confined and, even if they were, they do not purport to exclude other matters falling within the inquiry’s terms of reference. The issues lists in fact ask who devised the practice and it must therefore be relevant that it was obviously not devised by anyone in the SDS. Furthermore, a number of DL officers believe or suspect that the practice was used by MI5 and other agencies and, if this is right, it is relevant to the inquiry’s consideration of why the practice was adopted by the SDS and what thought might have been given to the impact on families. It would be one thing if the use of the practice by the SDS was unprecedented or unique and quite another if it was simply the adoption of standard tradecraft used by other agencies.

- 4.7 Although it was suggested in “True Spies” that the practice came from Frederick Forsyth’s “The Day of the Jackal” (1971) and some officers clearly made some kind of association with the book or film, there is no evidence of a direct connection and the idea that there was one is implausible. (A link is suggested

in the first witness statement of HN34 Geoff Craft dated 7 December 2020, §116, but he will give evidence that, while the practice was mirrored in “The Day of the Jackal”, he has no reason to think it came from the book or the film [MPS-0747446/49].)

- 4.8 Furthermore, the practice is not presented as novel or secret in “The Day of the Jackal”, see pp.62-63:

Before starting his daily watch at London Airport he had decided to operate throughout the whole of the forthcoming assassination under a false identity. It is one of the easiest things in the world to acquire a false British passport. The Jackal followed the procedure used by most mercenaries, smugglers and others who wish to adopt an alias for passing national boundaries. First he took a car trip through the Home Counties looking for small villages. In the third cemetery he visited, the Jackal found a gravestone to suit his purpose, that of Alexander Duggan who died at the age of two and half years in 1931 ...

Back in London he presented himself at the Central Registry of Births, Marriages and Deaths... A search of the records showed that the child in question had been registered precisely according to the enquirer's information, but had died on 8th November, 1931, as the result of a road accident. For a few shillings the Jackal received a copy of both birth and death certificates ...

- 4.9 Indeed, Mr Forsyth very kindly spoke to the DL and explained that he was told about the practice by a British mercenary involved in the Biafran war in the late 1960s. Mr Forsyth was covering the conflict as a freelance war correspondent at the time. He said he would be happy to confirm this in a witness statement if that would assist the inquiry.
- 4.10 That the practice was known about more widely is also consistent with the fact that it was used by criminals until this was clamped down on by Operation Wisdom about 20 years ago (Select Committee on the European Union, “37th Report: A Common Policy on Illegal Immigration” (5 November 2002, HL 187), §77 and Mick Creedon, “Operation Herne. Report 1. Use of Covert Identities” (July 2013), §6.2).
- 4.11 Finally, and of particular relevance in the context of this inquiry, the identities of deceased individuals were used in the creation of false identities in the

security and intelligence sphere more generally. Indeed, not only is it implausible that the practice was dreamt up by the SDS or borrowed from popular culture, it represented the standard and seemingly only way in which a securely back-stopped false identity could be established in the UK prior to computerisation. This fits with the reference to the practice as the “traditional method of finding a false identity (using a genuine birth certificate)” (Mick Creedon, “Operation Herne. Report 1. Use of Covert Identities” (July 2013), §4.3).

4.12 In this regard, HN34’s witness statement records that he was already aware of the practice before his transfer to the SDS following his involvement in a KGB-related investigation and prosecution (*ibid.*, §§30 and 116 [MPS-0747446/13 and 49]). The case was *R v Cecil Mulvena* in 1966-1967 and contemporaneous media and Hansard coverage show: HN585 Matt Rodger (then a DCI, later Commander MPSB 1971-1976) was the or a lead detective on the case; Mr Mulvena had obtained the birth certificate of a dying disabled man - John Foreman - and used it to obtain a passport for a contact in the “Russian trade delegation” called “Sergei”; Mr Mulvena pleaded guilty to two offences under the Official Secrets Acts and was sentenced to four years imprisonment by Mr Justice Chapman at Essex Assizes sitting at Chelmsford; and *The Times* ran a post-conviction editorial piece on 28 January 1967, “‘Valid’ Passports for Agents: Mulvena Case Exposes the Loopholes” (see **Appendix A** to this statement).

4.13 Moreover, the Mulvena case was by no means unique. For example, the KGB agent who masterminded the Portland Spy Ring in the 1950s, Konon Molody, used the alias “Gordon Lonsdale”. The real Mr Lonsdale was a Canadian who had died in Finland in his late teens and whose papers were obtained by the MGB (a predecessor to the KGB) and used to found Mr Molody’s alias. One of the lead MPSB detectives in that case was HN151 Ferguson Smith (then a DCI, later Commander MPSB 1969-1972) and the arrests and trial were the subject of extensive media coverage. See also Christopher Andrew, “The Defence of the Realm: The Authorized History of MI5” (2010), pp.485-486 referring to

Lonsdale as Molody's "dead double" and, more recently, Trevor Barnes "Dead Doubles" (2020). The latter records at p.293 that shortly after the trial in 1961:

MI5's Soviet counter-espionage section 'discovered that KGB agents were obtaining from Somerset House [the London archive of UK birth, death and marriage certificates] birth and death certificates of dead children, whose identities were under consideration by the RIS for illegal cover purposes'. Using these certificates of dead children, the Russians could obtain documents in the children's names to create false identities for their agents, who were known as 'dead doubles'. The Security Service put in place a system for checking applications for birth and death certificates to spot ones which might have been made by the KGB.

- 4.14 The source of the quotation is not specified, but if MI5 did have such a system in place, it might have been triggered by SDS officers establishing their cover identities and this would have made liaison between the two about the practice even more likely. Moreover, it is unthinkable that false identities were not needed and used in the context of other security, intelligence and police operations undertaken by MI5 and others.
- 4.15 This is important given the T1P1 and T1P2 opening statements of the Category [F] core participants. In this regard, the DL understands from CTI's T1P1 and T1P2 opening statements and correspondence with the ILT that:
- (1) the inquiry has thus far been able to identify, trace and inform 24 families that at least some information about a deceased relative was used by an SDS or NPOIU undercover officer in the creation of their undercover identity;
 - (2) a further three families were informed by journalists that at least some information about a deceased relative was used by an SDS or NPOIU undercover officer in the creation of their undercover identity;
 - (3) seven of the above families indicated their disapproval of this having been done to the inquiry and the inquiry has no information as to the views of the remaining families who may have approved, disapproved or been indifferent;

- (4) the inquiry informed Michael Scott that his birth certificate was used by HN298 in the creation of his undercover identity, but Mr Scott did not wish to be a core participant or give evidence.

4.16 According to the inquiry website, the above has thus far led to the designation of Category [F] core participants in connection with four SDS undercover officers and one NPOIU undercover officer. These officers created cover identities using information derived from the birth certificates of deceased individuals who died in childhood (HN16, HN78, HN122 and EN32) and a further individual who died shortly after his 18th birthday (HN12).

4.17 In terms of the designated Category [F] core participants, it is submitted that any parallel use of the practice by other agencies, particularly MI5, would shed considerable light on two of the major themes developed in their opening statements:

- (1) First, they describe the practice as disgusting, abhorrent, unconscionable, callous, discreditable, unlawful and a product of secrecy and isolation. If the practice was in fact standard tradecraft and used by counterpart agencies involved in similar work, this would put these claims in context and might make the approach of the SDS more understandable.
- (2) Secondly, they invite the inquiry to consider whether or not any viable alternative methods of creating secure false identities were available to the SDS. If other agencies, were using the same practice, this would tend to suggest that no such methods were available or, at least, that it was reasonable for the SDS to conclude as much. Conversely, if other agencies were using a different method this might cast doubt on its use by the SDS or, if the alternative was insecure or objectionable, it might cast that use in a more favourable light.

4.18 While it might be necessary to hear some evidence about these matters in closed, it should nevertheless be possible to deal with them in open on a high-level or gisted basis and without disclosing sensitive operations or techniques of MI5 or any other agency.

5. Expenditure of MPS resources

5.1 Part 7 of the 2nd DL opening addressed this topic in the context of suggestions by some that the redeployment of SDS resources elsewhere would have had a meaningful impact on crime or public safety in the capital. The DL submitted that the relative sizes of the MPS and SDS and the fact the unit's expenses were funded by the Home Office meant its disbandment and the redeployment of its officers could not have produced any such effect and would in fact have had a serious negative impact on public order policing and the MPS more generally.

5.2 The Commissioner's Annual Reports for 1968-1982 show the attested strength of the MPS rose from 20,539 in 1968 to 26,350 in 1982 and was fairly constant throughout the 1970s, hovering between 20,953 officers (1973 low-point) and 22,786 officers (1979 high-point).⁴

5.3 Given these figures and the respective sizes of the MPSB and SDS during the T1 period, it can be seen that:⁵

- (1) the percentage of MPS officers posted to MPSB was very small, generally hovered around 1.7-1.8% and never got as high as 2% - more than 98% of MPS officers were deployed elsewhere;

⁴ Attested strength of MPS:

1968	1969	1970	1971	1972	1973	1974	1975
20,539	20,897	21,307	21,497	21,460	20,953	21,024	21,420
1976	1977	1978	1979	1980	1981	1982	
22,430	22,239	22,197	22,786	23,691	25,161	26,350	

⁵ These figures can be derived using the precise size of MPSB as set out in its Annual Reports or the broad indication of "about 400" given in the note for the Home Secretary dated 3 June 1974 [UCPI0000034699].

- (2) the percentage of MPSB officers posted into the SDS as managers, back office staff or undercover officers was also very small and generally hovered below 5% - more than 95% of MPSB officers were deployed elsewhere;
- (3) the percentage of MPS officers posted into the SDS as managers, back office staff or undercover officers was miniscule and never got as high as 0.1% - more than 99.9% of MPS officers were deployed elsewhere.

6. Information about children

- 6.1 Part 9 of the 2nd DL opening addressed this topic. The inquiry has now disclosed a circular letter from MI5 to Chief Constables dated 16 December 1975 seeking information about subversive activities in schools [UCPI0000034698]. This is consistent with the approach of the SDS which reported information about children as and when this “came its way” (§2) (note the interest in “older pupils (14 or over)” at §1.i).⁶ It is also inconsistent with the suggestion that reporting information about children was wrong or inappropriate, particularly bearing in mind that all SBs were obliged to assist MI5 (1st DL opening, §§3.3 and 7.2).
- 6.2 Furthermore, the concern about what was happening in schools in the 1970s was not confined to the police or MI5. See, e.g. Julia Poynter, §59, “[The NF] were recruiting in schools, which worried a lot of us in the Walthamstow Branch” [UCPI0000034801/16].

7. HN354

- 7.1 The second witness statement of “Madeleine” alleges that part of HN354 Vincent Harvey’s supplemented witness statement dated 10 March 2021 was untrue (§14 [UCPI0000034818/4]).

⁶ See also, e.g. the MI5 request for information about School Kids Against the Nazis of November 1979 [UCPI0000029198/9].

7.2 The full unredacted version of that statement (which “Madeleine” has not seen) shows that this allegation is not correct and HN354 did not mislead the inquiry. Furthermore, the inquiry has been aware of his post-SDS career throughout.

8. Conclusion

8.1 On reviewing the above and bearing in mind that the worst of the pandemic appears to be behind us and the next evidential hearings are currently scheduled for 2024, the DL would suggest that the inquiry considers whether it might assist to hold one or more directions hearings before then. Regular bilateral planning meetings with the ILT are, of course, very useful, but part 3 above illustrates some of the difficulties that can arise when matters have to be pursued in writing - questions can go unanswered or be only partially answered and the scope for follow-up questions or discussion can be unclear. By contrast, hearings in front of the Chairman allow for the clarification or disclosure of important information and the resolution of intractable problems.

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22 April 2022

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**THIRD WRITTEN OPENING STATEMENT ON
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