THE UNDERCOVER POLICING INQUIRY

TRANCHE 1 CLOSING STATEMENT OF
THE METROPOLITAN POLICE SERVICE
14 FEBRUARY 2023

INDEX

PART A – INTRODUCTION AND SUMMARY OF THE MPS'S POSITION

Introduction

1. This is the written closing statement of the Metropolitan Police Service (MPS) for Tranche 1 of the Inquiry's work – covering the period 1968 to 1982. It will be supplemented by an oral statement on 20 February 2023, which will respond, as necessary, to the points made in the closing statements by Counsel to the Inquiry and the Inquiry's other Core Participants.

2. The MPS recognises that trust and confidence in policing has been undermined by the appalling criminal acts and behaviour of MPS police officers in a series of recent high-profile cases. None of these actions represent the professionalism, integrity and respect that the Commissioner expects from every police officer in the MPS.

3. The evidence gathered by the Inquiry in Tranche 1 has understandably ignited further debate and justifiable criticism of MPS officers – which resonate with the issues that confront the MPS in the present day, particularly officers' behaviour and attitudes toward women. The submissions the MPS now makes in respect of events that occurred 40 and 55 years ago do not seek to avoid that modern perspective, while recognising that the work of the Special Demonstration Squad (SDS) was undertaken without the legal framework and standards that govern policing today.

4. The MPS has previously apologised for the behaviours and actions of SDS officers who had sexual relationships with women when they were undercover, the use of deceased children's identities, the disproportionate or unnecessary recording of personal information (and that of children), and use of inappropriate language. Those apologies are repeated in this statement.

Summary of the MPS's position

5. **The legal framework**: There was no statutory framework for undercover policing in the UK during the T1 period, a situation for which the Government, not the MPS, was responsible. Judicial regulation by the courts was minimal. It would be wrong for the Inquiry to judge the SDS as if such a framework or regulation were in place and to make determinations on the legality of the SDS's operations. The civil and criminal courts never did so at the time (applying the law as it then was). Such findings would be prohibited by section 2 of the Inquiries Act 2005. They would also be unreasonable and unfair. The Inquiry is not a court and its proceedings are not a trial. Specific allegations have not been articulated by reference to facts that have been tested in an individual case. If this were to occur, the MPS would advance defences under both the civil and criminal law, the validity of which are not for the Inquiry to determine.

6. **The policing and training framework**: During the T1 period, there were no policy frameworks, formal standards, or training courses, nationally or within the MPS, for the management of undercover operations or the conduct of undercover police officers (UCOs). Independent governance or oversight did not exist. So, again, the MPS must be judged by reference to the absence of these matters and not by the application of modern standards. Overall, the training of SDS UCOs in this period was satisfactory, judged by the standards of the time and bearing in mind the pioneering nature of its long-term undercover deployments. This includes their training as officers of MPS Special Branch (MPSB) and their on-the-job training within the SDS itself. However, there are matters upon which they should have been given better guidance – including the prohibition on relationships.

7. **The justification for the SDS's work and its value**: The SDS's deployments into extreme left-wing groups were justified by the MPS and the Home Office *at the time* by reference to the public interest in obtaining intelligence relating to public disorder and subversion – both of which were perceived, in good faith, to be very significant problems during the T1 period. The deployments produced an immense amount of intelligence that was valuable, in quality and quantity, for the control of public order by the police (MPS A8 and uniform branch) and the counter-subversion work being undertaken on behalf of the Government by the Security Service and the Cabinet Office.

8. However, the SDS's work involved serious intrusions into the private lives of some of the individuals in the groups that it targeted and other people associated with them. In many cases, those intrusions lasted years. It is accepted by the MPS that the nature of the intrusions should have been evaluated at the highest level by the MPS, and by the Home Office (who authorised and funded the SDS) and the Security Service (who benefited greatly from its work), from an ethical perspective against the public interest in obtaining the intelligence sought. That is so despite there being no legal or procedural requirement to do so and despite society's views of personal privacy and human rights being far less developed than they are now.

9. It is not possible to say, 40-50 years on, which of the SDS's deployments might not have occurred, or have been managed differently, if this balancing exercise had been undertaken. That question was not pursued with the SDS's former managers and officers in their evidence. Nor, in the context of subversion, has it been pursued with the Security Service. The Inquiry will wish to bear in mind that, given the strength of concerns about public disorder and subversion, and the standards and values of the time, it may have been concluded by the MPS and the Home Office that it was still in the public interest for many of them to proceed.

10. **Sexual relationships**: It was wrong and inexcusable for UCOs in the SDS to have sexual relationships with women with whom they came into contact while working undercover. It is not clear, at this remove, that individual SDS managers were aware that these sexual relationships were occurring at the time. However, whatever their individual state of knowledge, they should have appreciated that there was a risk that such relationships could occur, and they should have taken effective measures to prevent them from happening.

11. **Deceased children's identities**: The use of the identities of deceased children by the SDS was believed to be necessary to minimise the risk that UCOs' false identities would be exposed during long-term undercover deployments. There was no other means of better managing that risk at that time (and none has been suggested during the course of the Inquiry). The MPS regrets that the Inquiry has chosen not to fully investigate the origins of the practice of using deceased children's identities, particularly within the wider UK intelligence community, which would have informed the assessment of its reasonableness. There is no evidence in any case that this practice was first conceived or developed in the MPS. Nonetheless, in respect of its own conduct, the MPS recognises the shock and distress experienced by some of the families of the children whose identities were used. This was not intended or foreseen at the time.

12. **Participation in crime and the criminal justice system**: It was necessary for UCOs to participate in low-level criminal activities, such as fly-posting, to preserve their undercover identities. However, some UCOs committed crimes for which there was no such justification. The courts should have been informed of the participation of UCOs in activities that were the subject of criminal charges.

13. **Personal reporting and the use of language**: The inclusion of personal information about individuals and their families is standard practice in intelligence reporting. However, there were occasions where this was disproportionate, for example, reporting on activists' young children. Some of the language used by SDS officers in their reports is outdated by the standards of today but was in common use at the time. Some of the language was inappropriate by the standards of the time or otherwise unacceptable. It should have been challenged by managers.

PART B - THE LEGAL FRAMEWORK

Summary

14. The MPS agrees with Counsel to the Inquiry's (CTI) five key propositions in paragraph 78 of their written submissions on the legal framework dated 5 October 2022 ('CTI's legal framework submissions'[1]):

    78.1 The Inquiry must not determine any person's civil or criminal liability.

    78.2 The Inquiry must not be inhibited from making factual findings or recommendations by any likelihood that liability might be inferred from its findings.

    78.3 The language of civil or criminal liability is to be avoided.

    78.4 The terms of reference should be construed compatibly with s.2 of the 2005 Act.

    78.5 The role of the Inquiry is to find facts and make recommendations. It is not the Inquiry's function to determine legal disputes.

15. However, in respect of the last of these propositions, there now *is* a major legal dispute within the Inquiry. In their opening statement for T1P3, dated 22 April 2022, counsel for the Category H Core Participants first argued that the deployments of SDS officers during the T1 period (and thereafter) were unlawful under the civil or criminal law of England and Wales. This prompted the Chairman to ask a series of legal questions at the conclusion of the MPS's oral opening statement.[2] CTI subsequently asked some of the SDS's former managers about whether they had considered the lawfulness of its operations.[3] Finally, in October 2022, CTI published their legal framework submissions.

16. Based on the Chairman's comments and CTI's submissions, the legal dispute is focused on whether, during their undercover deployments, SDS officers may routinely have committed (1) trespasses to property,[4] (2) burglaries,[5] (3) breaches of confidence,[6] and/or (4) breaches of Article 8 of the European Convention on Human Rights.[7] The MPS's primary position is that the determination of these four highly controversial legal issues is not for this Inquiry – for three reasons. First, the Terms of Reference do not require it. Second, it is prohibited by section

[1] https://www.ucpi.org.uk/wp-content/uploads/2022/09/20220929-cti-submissions-section_2_inquiries_act_2005.pdf
[2] Transcript, 9/05/2022, 149/1-150/24.
[3] Geoffrey Craft Transcript 13/05/2022 4/1-20 (he was not trained on and did not give thought to the European Convention on Human Rights and did not consider trespass in the context of undercover policing).
[4] CTI's legal framework submissions, §§29-54.
[5] CTI's legal framework submissions, §§55-60.
[6] CTI's legal framework submissions, §§61-72.
[7] CTI's legal framework submissions, §§73-75.

2 of the Inquiries Act 2005. Third, it is unfair and unreasonable. Each of these reasons is developed further below.

17. If, contrary to this, the Inquiry determines that it is lawful, in principle, to make determinations in respect of the four issues identified above, then – for the reasons explained below – the MPS's secondary position is that this would not result in a finding that SDS officers acted unlawfully during the T1 period.

The Terms of Reference

18. The relevant part of the Inquiry's Terms of Reference (TOR) for present purposes is as follows:

> To inquire into and report on undercover police operations conducted by English and Welsh police forces in England and Wales since 1968 and, in particular, to:
>
> …
>
> - identify and assess the adequacy of the:
>
> 1. justification, authorisation, operational governance and oversight of undercover policing;
>
> …
>
> - identify and assess the adequacy of the statutory, policy and judicial regulation of undercover policing.

19. The Inquiry is therefore fully entitled (and required) to make factual findings as to the nature and adequacy of the ways in which undercover policing was authorised, regulated and governed, over time, by (1) primary and secondary legislation, (2) Government policies, (3) police policies – issued by the MPS and nationally, and (4) the judiciary. It is not entitled to hypothesise as to what the law might have been, had certain cases been brought before the courts or arguments been run.

20. As is well-known, in the T1 era these matters were for the most part non-existent or under-developed. Most importantly, there was no legislative framework for undercover policing, which was not introduced until the enactment of the Regulation of Investigatory Powers Act 2000 (RIPA), Part II of which provided for the authorisation of covert human intelligence sources (CHIS). The Inquiry will no doubt wish to investigate why, for many years, the Government did not consider it necessary, or helpful, to introduce legislation to regulate UCO deployments by all constabularies, not just the MPS.

21. In respect of the final issue, judicial regulation, this may properly include the role of the Investigatory Powers Commissioner and the Judicial Commissioners,

together with their predecessors.[8] The Inquiry may also wish to consider how the criminal courts have managed the admission of evidence obtained by UCOs and other, non-police, CHIS; although this cannot be characterised as direct regulation of undercover policing deployments. (See, for example, *R v Mullins* (1848) 3 Cox CC 526, *R v McEvilly* (1974) 60 CR App R 150, *R v Christou* [1992] QB 979, and *R v Looseley* [2001] UKHL 53, [2001] WLR 2060.)[9] Additionally, it may wish to review the more recent judgments such as those of the Divisional Court in the judicial review brought by 'Monica'[10] and the Investigatory Powers Tribunal in the human rights claim brought by Kate Wilson.[11] These are *facts* that the Inquiry can readily 'identify and assess', in accordance with the TOR, in the same way that the civil courts approach foreign law in litigation, i.e. as matters to be adduced by expert or documentary evidence.[12]

22. A further matter to be identified and assessed is whether the MPS and its officers in MPSB and the SDS, or any other state bodies, particularly the Home Office, were aware of the applicable legal and regulatory framework within which the SDS conducted its operations.[13] This issue has already been pursued with the some of the SDS's managers from the T1 period.

23. However, the TOR do not, as CTI suggest, require the Inquiry to determine 'Whether undercover policing was conducted lawfully', 'the legality of tactics', or the 'the lawfulness of undercover policing, as it was carried out by the SDS'.[14] These issues cannot be found within the wording of the TOR and have not been included in any of the Inquiry's Issues Lists. Nor are they implicit in the wording of the TOR; or a necessary precursor to the determination of matters that are within the TOR – which can properly be discharged by the Inquiry making findings in respect of the four matters summarised above.

Section 2 of the Inquiries Act 2005

24. Public inquiries find facts and (in many cases) make recommendations. Unlike courts, they do not make the law[15] or produce judgments that determine civil or

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[8] The Investigatory Powers Commissioner's Office has produced a short history of the applicable legislation over the last forty years.
[9] Further cases are referred to in the subsection on 'Acting within the criminal and civil law', below.
[10] *R (Monica) v Director of Public Prosecutions* [2018] EWHC 3508 (Admin), [2019] QB 1019.
[11] *Wilson v Commissioner of Police of the Metropolis and National Police Chiefs' Council* [2021] UKIPTrib IPT 11 167 H.
[12] See, for example, rule 33.7 of the Civil Procedure Rules, 'Evidence of finding on question of foreign law'.
[13] The Module 1 SDS Issues List poses this question in respect of SDS officers (Q17) but no equivalent question has been included in the Module 2C Issues list for T1.
[14] CTI's legal framework submissions, §79.
[15] See the speech given by Lord Hodge, former Justice of the Supreme Court, at the Max Planck Institute of Comparative and International Private Law on 28 October 2019: 'The scope of judicial law-making in the common law tradition'.

criminal rights. However, their findings may need to be underpinned, explicitly or implicitly, by legal standards, e.g. as to what is the permissible use of force by a state agent. In such cases, they are not making the law, but rather identifying the law as it is known to apply to specific activities.

25. The prohibition in section 2 of the Inquiries Act 2005, together with the Explanatory Note,[16] reflect this important and nuanced position:

> **No determination of liability**
>
> (1) An inquiry panel is not to rule on, and has no power to determine, any person's civil or criminal liability.
>
> (2) But an inquiry panel is not to be inhibited in the discharge of its functions by any likelihood of liability being inferred from facts that it determines or recommendations that it makes.

26. It follows that it *is* permissible for the Inquiry to identify and assess the legislative and common law (judicial) frameworks for undercover policing, as they evolved from 1968 onwards. In respect of the latter, this may require an excursion into the law of criminal evidence, although the SDS and NPOIU were intelligence, not evidence, gathering units, so their work was not directly affected or regulated by admissibility decisions in the criminal courts. It may also require a recognition that, as stated above, until recently (see cases above) the civil and criminal courts have not applied the civil or substantive criminal law directly to the activities of UCOs and so, it may be said, have not 'regulated' their conduct.

27. However, it would not be permissible for the Inquiry to find that the SDS's activities in the T1 period were unlawful – because to do so would be to determine the liability of the Commissioner and his former officers under civil or criminal law. So far as the MPS is aware, the domestic civil courts have never determined any cases in which allegations of trespass to property, breach of confidence, or breach of human rights prior to 2 October 2000[17], have been levelled against UCOs; and the criminal courts have never determined any cases in which UCOs have been accused of burglary arising from their UCO work. Thus, the law applicable to those matters – the demarcation of what is or is not lawful – are not questions of *fact*. Instead, they are controversial and novel legal questions, which would need to be substantively determined – not, as the TOR require, *identified* and *assessed*. Determination of the issues identified by CTI at paragraph 79 of CTI's legal framework submissions would therefore require the Inquiry to assume, wrongly, the judicial function of a court.

[16] Quoted in §4 of CTI's legal submissions.

[17] The date that the Human Rights Act 1998 came into force, incorporating the European Convention on Human Rights into domestic law.

28. It is notable that none of the public inquiries cited in CTI's legal framework submissions at paragraphs 5 to 20 undertook the type of exercise that is being contemplated in this Inquiry: the determination of novel and contentious questions of law 50 years after the events in question. As matter of generality, the relevant law in each case was clear or immaterial to the Inquiry's factual findings. More specifically:

    a. In the Bloody Sunday Inquiry,[18] as the passages quoted by CTI demonstrate, the panel strictly avoided making any determinations as to the lawfulness of the shootings. The doubts it expressed about the lawfulness of the arrests made by the soldiers did not amount to determinative conclusions.

    b. In the Azelle Rodney Inquiry,[19] the question of unlawful killing had not previously been determined by an inquest. The chairman considered that Article 2 of the European Convention on Human Rights obliged him to consider whether the central event under investigation, the use of lethal force by the police, was lawful by reference to an established legal framework that incontrovertibly applied at the material time: section 3(1) of the Criminal Law Act 1977 and Section 76(1) of the Criminal Justice and Immigration Act 2008.[20]

    c. In the Litvinenko Inquiry,[21] as the passages quoted by CTI show, the chairman carefully confined himself to findings of fact and made no attempt to determine whether the poisoning fulfilled the legal criteria for a homicide offence.

29. CTI's comparison of the prohibition in section 10 of the Coroners and Justice Act 2009 (and its predecessor provision, rule 42 of the Coroners Rules 1984) with that in section 2 of the Inquiries Act 2005 is misplaced. Section 10 is focused on findings that have the appearance, 'framed in such a way as to appear', of civil liability, or criminal liability if on the part of a 'named person'. In respect of the former, this necessitates restrictions on the language that can be used in conclusions.[22] In respect of the latter, this allows inquests to reach conclusions (formerly known as verdicts) that *do* appear to determine criminal liability, e.g. unlawful killing, if they abide by the prohibition and omit the perpetrator's name. That is an essential part of their function, in discharge of the statutory

[18] CTI's legal submissions, §§5-6 and Appendix A.
[19] CTI's legal submissions, §§9-11.
[20] See, for example, the inquiry report at §§19.1-19.3.
[21] CTI's legal submissions, §§14-15 and Appendix B.
[22] The Chief Coroner's Guidance No. 17, 'Conclusions: Short-Form and Narrative', dated 7 September 2021, makes clear at §36 that 'words which suggest civil liability such as 'negligence', 'breach of duty', breach of Article 2' and 'careless' are not permitted as they may breach Section 10(2) of the 2009 Act.'

obligations prescribed by section 10(2).[23] Hence the coroner in *Pounder,*[24] a case to which CTI refer at paragraph 18 of their legal submissions, fell into error by not identifying the relevant legal framework governing the use of physical restraint in the secure training centre in which the deceased died.

30. *Pounder* provides no insight into the proper function of a public inquiry. The focus of section 2 of the Inquiries Act 2005 is not on the *appearance* of liability, or the omission of perpetrators' names, but on its *substantive determination*. It unequivocally prohibits any rulings or determinations in respect of a person's civil or criminal liability: 'not to rule on, and … no power to determine'. Thus, no comparable findings of lawful or unlawful killing, or conduct, can be made by an inquiry.

Fairness and reasonableness

31. In the absence of a court judgment determining, definitively, that the SDS's operations (or aspects of them) were unlawful under the civil or criminal law *as it applied in the period 1968 to 1982*, it would be unfair and unreasonable for the Inquiry to make such a determination for itself. To do so would breach public law principles, together with the specific statutory obligation on the Chairman to act with fairness when making any decision as to the conduct of the Inquiry (section 17(3) of the Inquiries Act 2005).

32. A finding of unlawfulness could not fairly be made in the abstract at a high level of generality, e.g. 'Entering people's homes using false identities for the purpose of covertly gathering information about them constitutes trespass to property'. It could only be made, as it would by a court, by examination of the facts in a specific case,[25] i.e. particular occasions when UCOs entered the private property of an activist on which he or she was gathering intelligence. As a starting point, the Inquiry would need to establish each of the essential facts in each case – the precise purpose of the entry, the intentions of the officer (including any reasonable suspicions), the nature of any permission given, and any actions taken or not taken – before turning to whether the conduct could be characterised as unlawful and whether any specific legal defences might arise on the facts. This has not occurred.

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[23] It also reflects the historical contribution coroners' courts have made to the prosecution of homicides. Until the power was abolished by section 56(1) of the Criminal Law Act 1977, inquests were permitted to conclude that a person was guilty of murder, manslaughter, or infanticide and to charge that person with those offences.

[24] *R (Pounder) v HM Coroner for the North and South Districts of Durham and Darlington* [2009] EWHC 76 (Admin), [2009] 3 All ER 150.

[25] This basic jurisprudential principle was forcefully articled in *Oxfordshire County Council v Oxfordshire City Council* [2006] UKHL 25, [2006] 2 AC 674; for example, Baroness Hale of Richmond at [136]-[137].

33. Even if the essential facts were established in a particular case, the exercise would still not be a reasonable or fair one in the context of the Inquiry's inquisitorial proceedings. In a civil or criminal trial, the Commissioner and/or the officers concerned, as defendants, would be entitled, pursuant to the principles of natural justice, fairness, and Article 6 ECHR, to:

    (1) Know the factual and legal case against them – which would be pleaded, factually and legally, in a statement of case or indictment;[26]

    (2) Answer that case – including by adducing witness and documentary evidence of his own choosing (not that of the Inquiry) and making submissions on the fact and law;[27] and

    (3) Test the claimant's evidence directly in cross-examination.[28]

34. Again, none of this has occurred. In respect of the first point, CTI discuss the groundwork for potential findings of illegality by the Inquiry in their legal submissions, but they do not express a clear conclusion on the critical question of whether and how those findings should be made. If, as they must, CTI have a view on these matters, then it should be made public so that the MPS, the DL (representing the individual officers), and the other Core Participants can respond to it.

35. The importance of fairness was recognised by Sir Thomas Bingham MR (as he then was) in the case of *R v HM Coroner for North Humberside and Scunthorpe, ex parte Jamieson* [1995] QB 1, when considering the public policy behind the former rule 42 prohibition in inquests:[29]

> [It] is fortified by considerations of fairness. Our law accords a defendant accused of crime or a party alleged to have committed a civil wrong certain safeguards rightly regarded as essential to the fairness of the proceedings, among them a clear statement in writing of the alleged wrongdoing, a right to call any relevant and admissible evidence and a right to address factual submissions to the tribunal of fact. These rights are not granted, and the last is expressly denied by the Rules, to a party whose conduct may be impugned by evidence given at an inquest.

36. Findings of illegality in respect of the T1 era would also not be reasonable or fair unless, before reaching them, the Inquiry had given careful, explicit,

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[26] *O'Reilly v Mackman* [1983] 2 AC 237 at 279 F-G.
[27] *O'Reilly* at 279F-G; *R (Miller) v Health Service Commissioner for England* [2018] EWCA Civ 144, [2018] PTSR 801 at [43].
[28] See, for example, *Bushell v Secretary of State for the Environment* [1981] AC 75 at 116D.
[29] See also Lord Lane CJ's famous observations on the fact-finding purpose of inquests, and the associated differences in procedures and rules, in *R v South London Coroner, ex parte Thompson* (1982) 126 SJ 625.

consideration to the question of whether such findings could safely be made 40-50 years after the index events. As the MPS said in its first opening statement, the immense passage of time means that the Inquiry is deprived of the evidence of many key witnesses – senior police officers, politicians, civil servants, and intelligence officers – and many relevant documents:[30]

> In some cases it may be clear what is missing; and it may be that reliable inferences can still be drawn from what remains or what those lost documents might have contained. But that may not always be the case. The Inquiry and its participants may be wholly unaware that significant, relevant, evidence once existed but has now been lost, and erroneous conclusions might be unwittingly and unfairly drawn as a result.

37. Public inquiries are not bound by the civil law of limitation, which acts as an important safeguard to protect defendants from having to face allegations which – due to the loss of significant witness and documentary evidence – can no longer be fairly tried.[31] However, it is instructive to recognise that there are many cases in which the courts have declined to adjudicate on matters of civil liability because it is no longer fair to do so.[32] If the Inquiry does conclude that it is permissible, in principle, to make findings on the legality of the SDS's work in the T1 period, then it must also consider carefully whether it is fair to do so given the passage of time.

The four allegations: trespass to property, burglary, breach of confidence, Article 8

38. For the reasons given above, the MPS considers that it would be unlawful and unfair for the Inquiry to make the determinations as to the legality of any of the SDS's operations or activities during the T1 period. Without prejudice to this position, the following paragraphs explain some of the problems of law that the Inquiry would have to resolve if it were to attempt to do so. These explanations cannot be exhaustive, as they are advanced in the abstract, without the necessary factual and evidential underpinning.

39. A further important caveat is that any consideration of the civil or criminal law must be based on the law as it would have applied at the relevant time. It is noted that many of the authorities relied on by CTI in their legal submissions were decided after (and in some cases two decades after) the T1 era. This highlights the artificial and unfair nature of the exercise. It cannot now be known how the

[30] MPS CL T1P1 opening statement, §§88-89.
[31] See the emphasis on the principle of fairness in, for example, *A v Hoare* [2008] UKHL 6, [2008] 1 AC 844, per Baroness Hale at [60]; *Cain v Francis* [2008] EWCA Civ 1451, [2009] QB 754, per Smith LJ at [64]; *Carroll v Chief Constable of Greater Manchester Police* [2017] EWCA Civ 1992, [2018] 4 WLR 32, per Sir Terence Etherton MR at [42.6].
[32] A paradigm example is the litigation brought by 40,000 plus claimants who alleged that the British Government was liable for their mistreatment during the Mau Mau uprising in Kenya in the 1950s. See *Kimathi and others v Foreign and Commonwealth Office* [2018] EWHC 2066 (QB).

common law might have developed had a civil or criminal case about an undercover police operation been brought against a police force and its officers before or during the T1 era.

(1) Trespass to property

40. Were a claim to be brought against the MPS for trespass by its UCOs, then – depending on the specific facts of the case – it may have been defended on one of several grounds.

41. The primary defence would be that the UCO had the requisite permission of the property's owner to be on the premises; and this consent was not vitiated by any 'mistake' on the part of the owner as a result of being 'tricked' by the UCO's false identity into believing that he or she was not a police officer. Reliance would be placed, by analogy, on the case of *Byrne v Kinematograph Renters Society* [1958] 1 WLR 762, referred to in CTI's legal submissions at paragraph 53. The court would be invited to reject the validity of the academic commentary referred to by CTI and its reliance on Australian case law that (1) was non-binding on an English court as, and (2) could be readily distinguished, factually and legally, in that the perpetrators of the alleged trespasses in each of those cases entered the premises with the intention of committing a tort or crime.

42. A further defence would be that, as a matter of public policy, the common law should permit police officers to enter premises using false identities if they do so, in good faith, for the purposes of preserving public order or in furtherance of the preservation of national security. Again, this is a fact-sensitive matter that would need to be judged based on the specific circumstances of the case and the socio-political context and policing concerns of the time. Finally, again as appropriate on the facts, a defence would be that the UCO had reasonable grounds for believing that a seditious speech would be made and/or a breach of the peace would take place, per *Thomas v Sawkins* [1935] 1 KB 249, cited by CTI at paragraph 40 of their legal submissions. As CTI correctly observe, at paragraph 41, the offences of sedition and seditious libel remained in force until their abolition by Parliament in the Coroners and Justice Act 2009 (section 73(a)).

(2) Burglary

43. The factual basis on which the Inquiry is proposing to consider the offence of burglary in the context of the SDS's operations in the T1 period is not clear. Specifically, it is not clear from CTI's legal submissions, what property might (even hypothetically) have been stolen. No allegations of potential theft have been put to the former UCOs themselves or their former managers.

44. As a matter of generality, the MPS does not accept that the Crown could prove the constituent elements of the offence of burglary under s.9 of the Theft Act 1968

(all elements of which the Crown would bear the burden of proving to the criminal standard), even before any potential defences were considered. For the reasons given above, it would be denied that an UCO was a trespasser.[33] It would be also denied that a UCO was acting dishonestly when acting in the course of his or her ordinary duties, by reference to the correct contemporaneous legal test, as prescribed in *R v Ghosh* [1982] QB 1053 at the very end of the T1 period, or one of the tests in the conflicting lines of authorities to which the Court of Appeal referred in that case. It is unclear how the Crown could establish that the UCOs did not believe that they had the right to the take the index property (regardless of whether there existed, in law, a basis for that belief).

45. The above summary is necessarily simplistic because the Inquiry, through its counsel or otherwise, have not advanced any facts on which a more comprehensive, definitive, analysis could be based.

(3) Breach of confidence

46. To succeed in a civil claim for breach of confidence by a UCO, a claimant would have to establish that the information in question had the necessary quality of confidence about it and that it came into the hands of the UCO by unlawful or dishonest means. The latter would be denied, for the reasons already explained. Depending on the nature of the information and the facts of the allegation, it could also be denied that the claimant has suffered any detriment (see paragraph 68 of CTI's legal submissions).

47. In addition, the UCO, or the Commissioner, would rely on the public interest defence that disclosure of the index information was limited to those with a proper interest in receiving it, i.e. with the MPS, other law enforcement agencies, the Security Service, or the Government. It would be argued that the prevention of disorder and/or subversion were proper policing purposes, just as the prevention and detention of crime were found to be in *Hellewell v Chief Constable of Derbyshire* [1995] 1 WLR 804, per Laws J at 810F. This issue would necessarily need to be considered by reference to the socio-political and policing concerns of the time.

48. It is noteworthy, in the context of public interest justifying a breach of confidence (or trespass), that when undercover policing was put on a statutory footing by RIPA, the necessity grounds for the authorisation of CHIS under section 29(3) included '(b) for the purpose of preventing or detecting crime *or of preventing disorder*', which is not limited (as is the corresponding ground for authorising

[33] See also *R v Smith and Jones* [1976] WLR 672, in which the Court of Appeal (Criminal Division) applied *R v Collins* [1973] QB 100 and *Hillen and Pettigrew v ICI (Alkali) Ltd* [1936] AC 65.

intrusive surveillance in section 32(3)(b)) to 'preventing or detecting serious crime'.[34]

(4) Article 8 of the European Convention on Human Rights

49. As CTI rightly acknowledge,[35] the Convention was not part of the law of England and Wales during the T1 era. An important point, which they do not make, is that the Convention, like the common law, is a living instrument, which both responds to and influences the individual and collective values and mores of the societies it serves, together with their governments.[36]

50. It would be possible for the Inquiry to identify and chart how the European Court of Human Rights in Strasbourg (and in the early days the European Commission of Human Rights) developed its Article 8 jurisprudence. So, for example, it was not until the late 1970s, i.e. towards the end of the T1 period, that the Court first delineated the meaning of the various component clauses of the article. In 1976 in *Handyside v United Kingdom*,[37] 'necessary in a democratic society' was interpreted as implying a 'pressing social need'. In 1979 in *Sunday Times v United Kingdom*[38] 'in accordance with the law' was said to require that the alleged interference must have some basis in domestic law and for that law to be accessible and foreseeable.

51. In 1978 in *Klass v Federal Republic of Germany*,[39] the court held that secret state surveillance necessitated the presence of adequate procedural safeguards, such as judicial oversight, against the abuse of citizens' rights. In *Malone v Metropolitan Police Commissioner* [1979] Ch 344, the High Court (Sir Robert Megarry VC) refused an application, brought in reliance on *Klass*, for a declaration that a telephone interception by the MPS, which had been authorised by the Home Secretary, was unlawful under Article 8. It did so on the basis that the Convention was not justiciable in England. The court also clarified that there was no general right privacy under English law. However, the judge expressed serious disquiet about the absence of legal safeguards and commented that 'this

[34] In the IPT's judgment in *Wilson*, at [253], it rejected the argument that, because of the breadth of conduct that could justify the deployment of a CHIS, section 29 of RIPA was not 'in accordance with the law' for the purposes of Article 8(2) of the Convention.
[35] CTI's legal submissions, §73.
[36] See, for example, *Glor v Switzerland* (Application No. 13444/04), 6 November 2009, at [75]. This means that a case such as *Ireland v United Kingdom* (1978) 2 EHRR 25, in which the European Court of Human Rights in Strasbourg, declined to find that the interrogation techniques used on Irish nationalist prisoners in the 1970s constituted torture, for the purposes of Article 3 of the Convention, might well be decided differently by today's values. The court itself has recently declined to revisit its earlier decision (*Ireland v United Kingdom* (2018) 67 EHRR SE1).
[37] *Handyside v United Kingdom* [1976] ECHR 5, 7 December 1976.
[38] *Sunday Times v United Kingdom* (1979-80) 2 EHRR 245, 26 April 1979.
[39] *Klass v Federal Republic of Germany* (1979-80) 2 EHRR 214, 6 September 1978.

case seems to me to make it plain that telephone tapping is a subject which cries out for legislation' (380F).

52. The Government chose not to introduce legislation on interception after the domestic decision in *Malone*.[40] But the mismatch between English human rights law and European human rights law in this period is exemplified by the fact that the applicant went on to succeed in his Article 8 claim before the Commission[41] and on 2 August 1984 in the Strasbourg Court (*Malone v United Kingdom* (1985) 7 EHRR 14). The latter made clear that, despite the UK Government's submissions to the contrary, the non-statutory framework for interceptions in the UK *was* unlawful for the purposes of Article 8, applying *Klass* and other cases. The next year, Parliament passed the Interception of Communications Act 1985, which came into force in 1986.

53. More difficult than the task of charting the development of human rights law in the UK and Strasbourg is that of identifying what the values and mores of UK society in 1960s and 1970s were, and how they have evolved over the last 50 years. This has not been undertaken by the Inquiry. It would require the assistance of experts, such as neutral historians, whom the Inquiry has repeatedly declined to instruct.[42] Such an investigation would, however, be essential if the Inquiry were to attempt to assess the events of the past through the lens of the Article 8, either as it has developed over time or as it is now.

54. What, for example, constituted 'pressing social needs' for the UK state between 1968 and 1982, when there were serious concerns about public disorder, subversion, and terrorism? This would need to be examined on a case-by-case basis by examining what the social need was said to be, e.g. a particular type of disorder, domestic extremism, or criminality. Did the contemporaneous problems of public order and subversion meet this definition? How should a balancing exercise between public and private interests, including an assessment of the proportionality of UCOs' intrusions, now be conducted in circumstances where no such exercise took place or was even thought necessary at the time, and the right to privacy as we now understand it had not yet been formulated? Whose contemporaneous judgements on these issues should be considered and accorded respect for their constitutional and institutional competence: the UK Government, the Security Service, the Commissioner of the MPS, the courts, the general public?

55. It should be noted that, even if the Inquiry were a trial, there would be no proper basis on which the IPT's judgment in the *Wilson* case could be retrospectively applied to the T1 period. That judgment was fact-specific and based on the

[40] See the analysis in [37]-[40] of *Malone v United Kingdom* (1985) 7 EHRR 14.
[41] *Malone v United Kingdom* (1983) 5 EHRR 385.
[42] In each of its written openings for T1P1, T1P3 and T1P3, the MPS has urged the Inquiry to obtain expert evidence to contextualise the issues it is investigating.

sufficiency of evidence in the National Public Order Intelligence Unit (NPOIU) documents as to what constituted a 'pressing social need' for the purposes of one deployment that occurred in the early 2000s. Notably, the IPT explicitly declined to make any generalised findings, stating at [286]:

> We certainly would not conclude that the use of UCOs, where there is reason to believe that domestic extremism is in existence, cannot be found to be necessary and meet a pressing social need even where there is very great intrusion into people's lives, and where some of those people will have no involvement whatsoever in criminality. However, on the facts of this case, the evidence produced by the Respondents does not show such a pressing social need.

56. Based on CTI's legal submissions, it appears that the Inquiry does not intend to resolve these questions and will not determine whether the SDS interfered with anyone's rights for the purposes of Article 8(1) of the ECHR, or whether any such interference was justified under Article 8(2). If the MPS has misunderstood this, the Inquiry is invited to say so and to give the MPS and other CPs time to address it. For present purposes, the MPS's position is that such findings would be prohibited by section 2 of the Inquiries Act 2005[43] and public law principles, for the reasons already given.

57. In any event, were a specific case under Article 8 to be articulated then, depending on the facts, the actions of the UCOs in question may have been defended by the MPS as being justified by reference to the principles of necessity and proportionality, as judged in the context of the social needs, mores, and values of the time. The court would be invited to recognise that the state bodies concerned with SDS operations – the MPS, the Home Office, and the Security Service – simply did not conduct the type of balancing exercise between public and private interests that is now known to be required by Article 8. It would be argued that it is anachronistic and unfair for a claim based on events in the 1960s or 1970s to be judged by reference to the type of structured analysis commended decades later in authorities such as *Bank Mellat v HM Treasury (No 2)*.[44]

58. In the context of Article 8 what the Inquiry *can* properly do, in fulfilment of its Terms of Reference, is identify that there was no statutory framework, and no clear common law framework, for undercover policing during the T1 era. This obviously runs contrary to the axioms of accessibility and foreseeability that the European Commission and the Strasbourg Court later identified and developed. Responsibility for that, of course, rests with the Government, not the police. The various Governments of the time either did not consider it problematic that there was no statutory framework for undercover policing, as they had in respect of

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[43] The Inquiry is invited to assume, as the Divisional Court did in *R (GS) v HM Senior Coroner for Wiltshire and Swindon* [2020] EWHC 2007 (Admin), [2020] 1 WLR 4889, at [82], in the context of section 10(2) of the Coroners and Justice Act 2009, that 'civil liability' for the purposes of section 2 of the 2005 Act includes state liability in the Strasbourg Court.

[44] *Bank Mellat v HM Treasury (No 2)* [2013] UKSC 39, [2014] 1 AC 700, at 770G-771D.

the interception of communications; or they did not consider it necessary or expedient to do anything about it. There is no evidence that the Home Office or the Government advised the MPS or other police services that the absence of a statutory framework for undercover policing was unlawful and they should desist from using it as a tactic.

59. There are many reasons why the Inquiry might conclude that it was unsatisfactory for undercover policing to continue for many years without the level of legal safeguards and independent scrutiny necessary for such an intrusive activity. It may wish to ask the Home Office to clarify why this was the case. But it does not need to reach the conclusion that undercover policing was unlawful through the artificial application of legal principles that did not exist at the time.

Acting within the criminal and civil law

60. During the T1P3 opening statements, the Chairman put it to counsel for the CL that "…on the whole, my understanding is that the police forces of this country have always sought to operate within the civil law, hence the need for warrants to perform acts that would amount to a breach of the civil law", and invited submissions on this issue.[45]

61. The police, like other agents of the state, should act within the confines of criminal, civil, and public law.[46] To do otherwise would undermine the rule of law[47] and, in consequence, the principle of policing by consent,[48] which consent will only be given where the police are seen to act lawfully. As Lord Griffiths observed in the Privy Council (Hong Kong) case of *Yip Chiu Cheng v The Queen* [1995] 1 AC 111:

> The High Court of Australia in *A. v. Hayden (No. 2)* (1984) 156 C.L.R. 532 declared emphatically that there was no place for a general defence of superior orders or of Crown or executive fiat in Australian criminal law. Gibbs C.J. said, at p. 540:
>
> > 'It is fundamental to our legal system that the executive has no power to authorise a breach of the law and that it is no excuse for an offender to say that he acted under the orders of a superior officer.'
>
> This statement of the law applies with the same force in England and Hong Kong as it does in Australia.

[45] Day 1, 9 May 2022, p150, lines 9-13.
[46] This issue was raised by the Chairman on Day 1 of the T1P3 hearings (Transcript /5/2022 150/9-13).
[47] Dicey's second principle of the rule of law concerns equality: 'every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals'.
[48] The Home Office sought to explain the origins of this principle in 2012.

62. The highest courts of England and Wales have, however, recognised that in some limited circumstances the police, and other state agencies, do go beyond the boundaries of the law in pursuit of law enforcement and national security objectives. This is a complex subject, which will require more careful consideration by the Inquiry and its CPs than can be afforded in the closing statement for this tranche of evidence. However, the following seven cases are identified by way of introduction.

63. In the Court of Appeal case of *Ghani v Jones* [1970] 1 QB 693, Lord Denning MR observed at 705D-E that:

> No magistrate—no judge even—has any power to issue a search warrant for murder. He can issue a search warrant for stolen goods and for some statutory offences, such as coinage. But not for murder. Not to dig for the body. Nor to look for the axe, the gun or the poison dregs. The police have to get the consent of the householder to enter if they can: or, if not, do it by stealth or by force. Somehow they seem to manage. No decent person refuses them permission. If he does, he is probably implicated in some way or other. So the police risk an action for trespass. It is not much risk.

64. In the Court of Appeal case of *Buckoke v Greater London Council* [1970] Ch 655, it was found to be lawful for the chief officer of London Fire Brigade to make an order that recognised that fire officers were subject to the law, but may nonetheless commit technical offences, such as crossing red traffic signals, in order to perform their duties. Lord Denning MR expressed this 'Conclusion' at 669H:

> We have considered here the firemen. Like principles apply to ambulance men and police officers. The law, if taken by the letter of it, says that they are not to shoot the lights when they are at red. But the public interest may demand that, when all is clear, they should follow the precedent set by Lord Nelson. If they should do so, no man should condemn them. Their chief officer says he will not punish them. Nor should the magistrates. Now that we in this court support what the chief officer has done, it means that, in point of practice, we have grafted an exception on to the strictness of the law so as to mitigate the rigour of it. It may now truly be said that firemen, ambulance men and police officers are to be excused if they shoot the lights when there is no risk of a collision and the urgency of the case so demands. The courts of the United States have done somewhat similar, but on rather special grounds: *Lilly v. West Virginia (1928) 29 Fed.Rep. (2d) 61.* We do it on practical grounds, but none the worse for that.

65. In *R v Mealey and Sheridan* (1974) 60 Cr App R 59, the Court of Appeal rejected an appeal by two men, supporters of Sinn Féin, who sought to overturn their convictions for conspiracy to rob on the grounds that they had been entrapped by a police informer. The Lord Chief Justice, Lord Widgery, made the following findings in respect of informants and undercover police officers at 61:

> So far as the propriety of using methods of this kind is concerned, we think it right to say that in these days of terrorism the police must be entitled to use the effective weapon of infiltration. In other words, it must be accepted today, indeed if the opposite was ever considered, that this is a perfectly lawful police weapon in appropriate cases, and common sense indicates that if a police officer or anybody else infiltrates a suspect society, he has to show a certain amount of enthusiasm for what the society is doing if he is to maintain his cover for more than five minutes. Accordingly one must expect, if this approach is made by the police, that the intruder who penetrates the suspect organisation does show a certain amount of interest and enthusiasm for the proposals of the organisation even though they are unlawful. But, of course, the intruder, the person who finds himself placed in the organisation, must endeavour to tread the somewhat difficult line between showing the necessary enthusiasm to keep his cover and actually becoming an agent provocateur, meaning thereby someone who actually causes offences to be committed which otherwise would not be committed at all.

66. In the House of Lords case of *R v Sang* [1980] AC 402, the Committee referred to a number of cases in which evidence had not been excluded from criminal proceedings despite it being obtained illegally. These included *Kuruma v The Queen* [1955] AC 197 and *Jeffrey v Black* [1978] QB 490, where evidence was obtained in unlawful searches by the police. See, for example, the speech of Lord Diplock at 435D-G;[49] and later, at 436G, where he recognised the continuing application of civil law and disciplinary rules:

> It is no part of a judge's function to exercise disciplinary powers over the police or prosecution as respects the way in which evidence to be used at the trial is obtained by them. If it was obtained illegally there will be a remedy in civil law; if it was obtained legally but in breach of the rules of conduct for the police, this is a matter for the appropriate disciplinary authority to deal with. What the judge at the trial is concerned with is not how the evidence sought to be adduced by the prosecution has been obtained, but with how it is used by the prosecution at the trial.

67. In the House of Lords case of *R v Looseley* [2001] UKHL 53, [2001] 1 WLR 2060, Lord Nicholls said at [3]-[4]:

> [3] Moreover, and importantly, in some instances a degree of active involvement by the police in the commission of a crime is generally regarded as acceptable. Test purchases fall easily into this category. …
>
> [4] Thus, there are occasions when it is necessary for the police to resort to investigatory techniques in which the police themselves are the reporters and the witnesses of the commission of a crime. Sometimes the particular technique adopted is acceptable. Sometimes it is not. For even when the use of these investigatory techniques is justified, there are limits to what is acceptable. …

[49] See also the Court of Appeal's judgment in the same law report at 422C-423C.

68. In *Yip Chiu Cheng*, Lord Griffiths observed at 118B that a US undercover agent (Needham) in a drugs smuggling investigation had chosen an investigative method which involved his commission of the criminal offence of trafficking in drugs by exporting heroin from Hong Kong without a licence, an offence which the agent intended to commit. Lord Griffiths commented that 'Nobody can doubt that Needham was acting courageously and with the best of motives; he was trying to break a drug ring.'

69. In *R (Privacy International) v Secretary of State for Foreign and Commonwealth Affairs* [2021] EWCA Civ 330, [2021] QB 1087, the Court of Appeal considered whether it was lawful for Security Service agents to participate in criminality both before and after the enactment of the Security Service Act 1989. The court held at [57]:

> … (1) First, the minority judgments below themselves explicitly accepted that in operational terms it was not simply desirable but 'necessary' (or 'essential') for the Security Service to have the power to run agents who participate in criminality (and that is also consistent with the de Silva Report).
>
> …
>
> (2) Second, in the circumstances of the present case it doubtless would be very surprising to many people that what is styled the rule of law should require the Security Service to desist altogether from running agents who participate in criminal activities, notwithstanding that that is in fact designed to expose and prevent extreme criminal conduct intended entirely, on any view, to subvert the rule of law and (very often) to take innocent human lives in the process.

70. However, the court also made clear at [77] that:

> It is evident that the 1989 Act does not itself purport in any way to grant general immunity in respect of participation in criminality. Since, as we have emphasised, the Guidance itself expressly states that an authorisation of an agent participating in criminality has no legal effect and does not confer, either on the agent or on those involved in the authorisation process, any immunity from prosecution, it follows that, in our view, it cannot properly be said that the 1989 Act or the Guidance seek to place the Security Service and its officers and agents above the criminal (or other) law. It cannot be said that they involve a suspension of or dispensation with the rule of law.

71. These cases do not demonstrate that the police, the Security Service, or any other state agency, are 'above the law'. On the contrary, they show how, in exceptional circumstances, the courts, applying the public policies that underpin the execution of the law, including the public interest and the principle of proportionality,[50] may decline to censure certain authorised activities of the state

[50] See the discussion in the *Privacy International* case at [87] and [90].

which would otherwise be unlawful. Why this is the case, and whether it is acceptable, are moral and political, not just legal, questions.

PART C - THE RESPONSIBILITIES OF THE POLICE

Public order

72. The first role of the police force is the maintenance of the Queen's/ King's peace, i.e. public order. The primacy of this duty is long recognised. In 1829 Sir Richard Mayne, one of the two joint first Commissioners of Police for the Metropolis, described the objects of policing in words that are still considered to encapsulate the fundamental principles of modern policing:[51]

> The primary object of an efficient Police is the prevention of crime: the next that of the detention and punishment of offenders if crime is committed.
>
> To these ends, all the efforts of police must be directed. The protection of life and property, preservation of public tranquillity, and the absence of crime, will alone prove whether those efforts have been successful, and whether the objects which police were appointed have been attained.

73. The attestation of police constables, set down in statute, struck a similar tone, drawing out the police constable's specific responsibility for the maintenance of the Queen's peace.[52] In his report into the 10-12 April 1981 Brixton Disorders, Lord Scarman emphasised the duty of the police to maintain 'public tranquillity':

> [T]he primary duty of the police is to maintain 'the Queen's peace', which has been described as the 'normal state of society', for, in a civilised society, normality is a state of public tranquillity. Crime and public disorder are aberrations from 'normality' which is it the duty of the police to endeavour first to prevent and then, if need be, to correct. It follows that the police officer's first duty is to co-operate with others in maintaining the 'normal state of society'. Since it is inevitable that there will be aberrations from normality, his second duty arises, which is, without endangering normality, to enforce the law. His priorities are clear: the maintenance of public tranquillity comes first…

74. Of course, public tranquillity must be balanced against the right to protest. The tension, in policing terms, is in ensuring a fair balance between individual rights and the general interests of the community. Lord Scarman considered the

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[51] These words have been transcribed at the outset of Metropolitan Police General Orders over the decades without gloss or amendment. See, for example, MPS-0747953/2 (Metropolitan Police General Orders and Regulations 1982).

[52] Police Act 1964 s.18 and sched 2 (as enacted): ''I … of … do solemnly and sincerely declare and affirm that I will well and truly serve Our Sovereign Lady the Queen in the office of constable, without favour or affection, malice or ill will; and that I will to the best of my power cause the peace to be kept and preserved, and prevent all offences against the persons and properties of Her Majesty's subjects; and that while I continue to hold the said office I will to the best of my skill and knowledge discharge the duties thereof faithfully according to law.''

balance between the preservation of peace and the right to protest in his report into the 1974 Red Lion Square disturbance, in these terms:[53]

> Amongst our fundamental human rights there are, without doubt, the rights of peaceful assembly and public protest and the right to public order and tranquillity. Civilised living collapses - it is obvious - if public protest becomes violent protest or public order degenerates into the quietism imposed by successful oppression. But the problem is more complex than a choice between two extremes - one, a right to protest whenever and wherever you will and the other, a right to continuous calm upon our streets unruffled by the noise and obstructive pressure of the protesting procession. A balance has to be struck, a compromise found that will accommodate the exercise of the right to protest within a framework of public order which enables ordinary citizens, who are not protesting, to go about their business and pleasure without obstruction or inconvenience. The fact that those who at any one time are concerned to secure the tranquillity of the streets are likely to be the majority must not lead us to deny the protestors their opportunity to march: the fact that the protesters are desperately sincere and are exercising a fundamental human right must not lead us to overlook the rights of the majority.

75. Lord Scarman's words reflect an ongoing challenge: in its 2021 report 'Getting the balance right? An inspection of how effectively the police deal with protests', HM Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) examined evidence of recent protests and demonstrations, and considered that 'when forces do not accurately assess the level of disruption caused, or likely to be caused, by a protest, the balance may tip too readily in favour of protestors. We conclude that a modest reset of the scale is needed.'[54]

76. These two statements, from 1974 and 2021, show the importance of a police response to public order that is *appropriate* to the event and to the level of disorder or disruption expected. It is of real – and not simply theoretical or indeed solely financial – significance. Taking 1978, by way of example, on more than 750 occasions, special policing arrangements had to be made in order to police demonstrations, processions and industrial disputes (and this was a year in which for two months a ban was in place on public processions in the Metropolitan Police District other than those of a religious festive or ceremonial character).

77. The maintenance and protection of public order whilst not infringing the right of protest therefore was, and is, an important and significant aspect of the work of the MPS. The heavy preoccupation and resource burden of this work in the 1968 to 1982 T1 period is clear in the Annual Reports made by the Commissioner of the MPS and presented to the Home Secretary each year. The Reports include

[53] DOC088/7-8 at §5 (The Red Lion Square Disorder of 15 June 1974 – Report of Inquiry – Lord Justice Scarman).
[54] Page 10.

many pages and paragraphs dedicated to detailing the major political meetings, demonstrations and processions taking place in the capital in the year in question, along with, typically, a description of the overall tone and volume of such events. Across the period currently under investigation, they chart the ebb and flow of major events and police work necessary to maintain public order in the capital.[55]

78. What is considered an appropriate or acceptable policing response to public disorder will of course differ in different countries. The evidence in the T 1 period shows a great deal of concern at all levels about maintaining a 'traditional British' policing response to public order, i.e., a response that minimises confrontation and the use of force by the police. Several key features can be discerned:

    a. The aim should be to allow the protest to take place, whilst fairly protecting the majority from disorder.

    b. There is clear and repeated concern across the period that 'draconian' methods to police protest which were being seen on the continent and in the USA were not desired in the UK.

    c. For much of the period, the officers should be in normal police uniform, with little specialist equipment, and no specialist 'armoury'.

    d. In simple terms, the number of officers should be the fewest necessary to adequately meet the danger of disruption posed by the event in question, which includes best protecting the physical safety of participants, officers and the public.

79. Therefore, the 'traditional' British policing model for public order was (albeit in over-simplified terms) to prefer the lowest policing response sufficient to meet the need, as being the best way to respect the rights of the majority and avoid disorder, whilst also protecting the right to protest, and the safety of those involved and nearby.

80. To work, a model such as this required, and still requires, as much advance information as is possible about the event in question. In particular, ascertaining the 'appropriate' policing response to a given event, required an accurate advance assessment of the level of disruption which might take place. It is in this regard – the provision of reliable advance assessments – that the work of MPSB was so important to public order policing. All the more so in an era when political protest was instrumental to much public disorder. (The Inquiry is aware that contemporaneous records about individual demonstrations, including pre-

[55] A summary of some of the observations in the Commissioner's Annual Reports about public order in the capital over the years 1968 to 1982 is set out at Appendix A.

demonstration assessments, analysis and planning, have not been retained and so cannot now be adduced in evidence.)

The role of Special Branch

The key documents

81. On 15 June 1970, the Association of Chief Police Officers (ACPO), having consulted with the Security Service and others, issued its 'Terms of Reference' for Special Branch dated 8 April 1970.[56] These set out the responsibility and function of Special Branch and its offices at the outset (original emphasis):

> 1. RESPONSIBILITY
>
> Special Branch officers are police officers and are responsible through the head of the Branch to their Chief Officer.
>
> 2. FUNCTION
>
> Special Branch is responsible for acquiring security intelligence, both secret and overt (a) to assist the Chief Officer in the preservation of public order, (b) as directed by the Chief Officer to assist the Security Service in its task of defending the realm from attempts at espionage and sabotage and from actions of persons and organisations which may be judged to be subversive of the security of the State.

82. The wording of the second of Special Branch's responsibilities echoed that of the Directive given by the Home Secretary, Sir David Maxwell Fyfe, to the Director General of the Security Service on 24 September 1952, in which he stated (at paragraphs 2 and 3):

> The Security Service is part of the Defence Forces of the country. Its task is the Defence of the Realm as a whole, from external and internal dangers arising from attempts of espionage and sabotage, or from actions of persons and organisations whether directed from within or without the country, which may be judged to be subversive of the state.
>
> You will take special care to see that the work of the Security Service is strictly limited to what is necessary for the purposes of this task.

83. The 1970 Terms of Reference went on to state, under 'Tasks' (original emphasis):

> (3) TASKS
>
> (a) To provide the Chief Officer with intelligence affecting public order; and, on behalf of the Chief Officer, the Security Service with intelligence affecting national security.

[56] UCPI0000004459 (ACPO 'Terms of Reference for Special Branch', April 1970).

(b) On behalf of the Chief Officer to provide the Metropolitan Special Branch with intelligence affecting national security.

(c) With the approval of the Chief Officer to provide support to the Security Service in operations and enquiries including assistance in the operation of the Travel Notification Scheme for diplomats and officials.

(d) In consultation with the Security Service to collect, process and record information about subversive and potentially subversive organisations and individuals.

(e) To investigate or to assist in investigating offences having as their purpose the achievement of a subversive or political objective especially those relating to sabotage and against the Official Secrets Acts, consulting the Security Service as necessary.

(f) To investigate any subversive background to demonstrations and breaches of public order; and, in consultation with the Security Service, to certain industrial disputes.

(g) To report on any security implications in cases of possession of or dealing in firearms and explosives.

(h) To carry out all naturalisation enquiries, conduct any prosecution arising therefrom as necessary and co-operate with the Security Service on any specific security issue which may arise.

(i) To co-ordinate all aliens enquiries and supervise the maintenance of aliens records.

(j) To carry out enquiries relating to control of Commonwealth immigration.

(k) At Airports and Seaports to make arrests of wanted criminals, to detect offences and to gather security and criminal intelligence in collaboration with the Ports Office of the Metropolitan Special Branch.

(l) To carry out protection duties (usually in co-operation with Metropolitan Police) in respect of visits of Royalty, Foreign Heads of State and other important persons as the need arises.

(m) To maintain such records as are required and ensure the security of their content.

(n) To ensure the classified correspondence and papers are correctly handled in accordance with Government instructions for personnel and physical security.

84. The 1970 Terms of Reference were applicable to the work of all Special Branches, including MPSB, and the SDS as part of MPSB, throughout the T1 era. They were not replaced until 19 December 1984, when the Home Office produced its 'Guidelines on the Work of Special Branch'.[57] These too emphasised that '*All members of a Special Branch are responsible to the chief officer of the force*' (paragraph 2). They also restated that the two principal tasks of Special Branch were to

[57] UCPI0000004538/4 at §20 (Home Office Guidelines on the work of a Special Branch)

gather information about threats to public order and to assist the Security Service (original emphasis):

> 4. The work of a Special Branch arises from the chief officer's responsibility for the preservation of the Queen's Peace. Its work is to assist the chief constable in discharging that responsibility.
>
> 5. A Special Branch gathers information about threats to public order. Such information will enable the Branch to provide assessments of whether marches, meetings, demonstrations and pickets pose any threat to public order and help the chief officer to determine an appropriate level of policing.
>
> 6. A Special Branch assists the Security Service in carrying out its tasks of defending the Realm against attempts at espionage and sabotage or from actions of persons and organisations whether directed from within or without the country which may be judged to be subversive of the State. A large part of this effort is devoted to the study and investigation of terrorism, including the activities of international terrorists and terrorist organisations.
>
> 7. A Special Branch provides information about extremists and terrorist groups to the Security Service (or, in the case of Irish Republican extremists and terrorist groups, to the Metropolitan Police Special Branch).

85. At their conclusion, the Guidelines also defined subversion in the following terms:

> 20. … Subversive activities are those which threaten the safety or well being of the State, and which are intended to undermine or overthrow Parliamentary democracy by political, industrial or violent means.

86. As CTI points out in paragraph 34 of their Opening Statement for Tranche 1 Modules 2b and 2c, the 1984 Guidelines incorporated the subsequent definition of subversion given by Lord Harris of Greenwich, Minister of State at the Home Office, to the House of Lords on 26 February 1975 in these terms:[58]

> Subversive activities are generally regarded as those which threaten the safety or wellbeing of the State, and which are intended to undermine or overthrow Parliamentary democracy by political, industrial or violent means. Militancy in the pursuit of trade union or other disputes with employers is obviously not necessarily subversive. We might define terrorism, for the purpose of this debate, as the use of violence for political ends. Not all subversive organisations are terrorist organisations. Terrorist groups generally have subversive aims, but not all the groups which have operated against British interests have the aim of subverting Parliamentary democracy in this country. So much for questions of definition.

[58] UCPI0000034265 (Excerpt from Hansard regarding 'Subversive and Extremist Elements).

87. Witness Z has told the Inquiry that the Harris definition in fact derived from the Security Service itself some years previously, as recounted in *The Defence of the Realm*:[59]

> Subversion was eventually defined in 1972 by Director F (John Jones) as 'activities threatening the safety or well-being of the State and intended to undermine or overthrow Parliamentary democracy by political, industrial or violent means': a definition incorporated in an F Branch instruction in January 1973 and quoted in the Lords by a government minister two years later.

88. Under the Harris definition, to be considered subversive, the activities in question needed to be satisfy both limbs, that is to be (1) generally regarded as *threatening* the safety of wellbeing of the state, and (2) *intended* to undermine or overthrow Parliamentary democracy by political, industrial or violent means. Lord Harris did not elaborate on what kind of conduct would satisfy the first limb of his definition, i.e., what kind of conduct would constitute the requisite threat.

89. The 1984 Guidelines were also accompanied by a confidential covering letter, which stated (emphasis added):[60]

> 5. When a Special Branch is operating in support of the Security Service chief officers should attach importance to the need to consult that Service and to seek its advice as necessary. This is particularly important when collecting, processing and recording information about subversive or potentially subversive organisations or individuals. Under the definition of subversion given in the Guidelines (paragraph 20), an organisation currently operating within the law may nevertheless be subversive because its long term aims satisfy the definition and therefore be a proper subject of investigation. Senior officers must exercise strict control over the selection of targets for investigation when the current activities of an organisation are legitimate and peaceful. When intelligence is gathered on subversive organisations, very great care should always be taken not to give grounds for Special Branch enquiries being misrepresented as wrongful police interference in the exercise of civil and political liberties. This applies especially to coverage of demonstrations and protest marches, which will often provide an opportunity for the collection of information about subversive elements in a particular organisation.

The relationship between MPSB and the Security Service

90. Witness Z has provided a basic account of the nature of the relationship between MPSB and the Security Service,[61] which does not do justice to the complexity of the subject. MPSB was created in the 1880s, many years before the Security

[59] *The Defence of the Realm*, *The Defence of the Realm: The Authorized History of MI5* (Allen Lane 2009, republished with updated material in Penguin Books 2010) p591, based on Security Service Archives.
[60] UCPI000004584 (Home Office covering letter to the 1984 Guidelines).
[61] UCPI0000034350.

Service was brought into being. Both organisations have had various counter-subversion and counter-terrorism responsibilities throughout their existence, with primacy over specific matters (e.g. Irish-related terrorism) changing significantly over the years.

91. Prior to and throughout the T1 period (1968-1982), MPSB maintained a close working relationship with the Security Service in furtherance of the former's mandate, under the 1970 Terms or Reference, to assist the latter in its defence of the realm. The Service saw itself, and was seen by the Government, as the only state body competent to determine whether a group represented a threat to national security. That is why the Service, not MPSB, produced the overarching papers on subversion for the Cabinet Office throughout the T1 period and routinely advised the Government on subversion, via formal channels (such as the various committees on subversion) and directly by meetings between the Director-General, the Prime Minister, senior Cabinet ministers, and senior civil servants.

92. MPSB's function was to gather intelligence on subversion for the Security Service, not to analyse it. The Service's function was both to gather intelligence and assess it – which it did based on the entirety of the Government's intelligence-gathering apparatus, including its own intelligence and that produced by MPSB/SDS. It follows from this that it was necessary for MPSB to consult with and defer to the Security Service on the critical question of what constituted subversion and which individual groups met that definition. (That process of consultation and advice is referred to directly by the Home Office in its confidential covering letter for the 1984 Guidelines, quoted above.)

93. It was not constitutionally appropriate, necessary, or practical for the MPS to challenge the Security Service's assessments on those matters. MPSB and the SDS were entitled to trust that the Service's assessments were formed in good faith, pursuant to its Directive and the obligation to 'take special care to see that [its work] is strictly limited to what is necessary for the purposes of this task'. It was not part of MPSB's function to divert its resources into investigating whether the Security Service was fulfilling its charter appropriately. To have done so would have led to needless duplication of effort and, if the MPS had sought to conduct its own assessments and to have rejected those made by the Security Service, to the potential breakdown of their working relationship. Both these consequences would have undermined the efficacy of the UK's counter-subversion efforts at the time.

CTI's Opening Statement for Tranche 1 Module 2B and 2C

94. In their Opening Statement for T1M2B2C, CTI examine the nature of Special Branch's responsibilities by reference to the 1970 Terms of Reference, the 1984 Guidelines, and associated correspondence and documents. They do so in

parallel with a detailed consideration of the evolution of the concept of subversion and what they perceive to be its crystallisation into the 1975 Harris definition, which they then seek to apply to the work of the SDS. This leads them to their final, overarching, conclusion:

> Special Branch commissioned a study group formally to review the activities and objectives of the SDS in 1976 but its terms of reference were limited. The Home Office had the opportunity to consider whether or not to permit the continued existence of the unit every time it was asked for funding. Senior police officers visited the SDS, were aware of its existence and, at least in broad terms, how it operated. However, no one appears to have considered whether the level of intrusion occasioned by SDS long-term undercover police deployments was justified. No one appears to have addressed their mind specifically to the legality of the SDS' operations. No one appears to have considered whether (after its introduction) both limbs of the Harris definition were met. Had they done so, there is a strong case for concluding that they should have decided to disband the SDS.

95. There are several problems with CTI's analysis and their conclusion. The issues of justification and legality are addressed elsewhere in this closing statement. Therefore the focus below is on the final issue: the application of the Harris definition of subversion.

96. First, although CTI recognise that the Harris definition comprises two limbs (threat and intention), they do not provide their own interpretation of what a threat comprises for these purposes. Threats to the '*safety … of the state*' imply physical violence, albeit that there are few circumstances, short of revolution or war, that could threaten the physical safety of the state itself, as opposed to its citizens, politicians, officials and others (i.e. terrorism). Threats to the '*wellbeing of the state*' is more difficult to define and is open to wide interpretation. It does not denote physical attacks and unrest but could cover a range of public responses to state activities (e.g. dysfunction of the National Health Service) or the general disposition of the public towards the state (e.g. widespread discontent with the democratic system or the state's institutions).[62] The timing of the either form of threats' eventuation – within days, months, or years – is also not clear.

97. So far as the MPS is aware, the Harris definition has never been subject to full interpretation by the Government or the courts. Witness Z does not provide a detailed interpretation of it and was not invited by the Inquiry to give oral evidence on the issue.[63] CTI do not give examples of what they think it means; and themselves add another component to the definition that cannot be found in

[62] It is well-known, for example, that one of the present aims of the Russian state is to use covert means to undermine faith in democratic institutions.
[63] Witness Z, 1st Witness Statement, §§13-15: UCPI0000034350/4.

the original wording, a threshold of reasonable suspicion.[64] If the Inquiry – through its counsel or in preparing its reports – wishes to follow a particular interpretation of the Harris definition then, before doing so, it should make clear precisely what that interpretation is and then investigate it properly. This means obtaining the original documentary evidence and witness from the Security Service (not just evidence that is reliant on Christopher Andrew's access to secret archives) and the Government; plus witness evidence from the Security Service, the Home Office, and MPSB. Given the importance of the issue, this evidence would need to be tested orally.

98. Second, CTI have also not explained how their interpretation should have been *applied in practice*, including (1) by whom – not only by MPSB/SDS, but also by the Security Service and the Government (including the Cabinet Office and the Home Office), and (2) by reference to which particular deployments undertaken by the SDS. Important questions arise in this respect. Exactly which of the many groups or individuals that the Security Service and the Government considered subversive do CTI suggest did not meet the Harris definition? All of them? Some of them?

99. Third, CTI have ignored two further relevant factors in reaching their conclusions. First, the SDS's primary role was to gather 'security intelligence' on public order. As the 1970 Terms of Reference and 1984 Guidelines make clear, this was the principal function of MPSB and by itself provided justification, to the MPS and the Home Office, for the SDS's continuing existence (see below). Second, although CTI recognise that the MPS Commissioner and MPSB deferred to the Security Service's views on which groups were subversive,[65] they have not fully evaluated why it was necessary and appropriate for them to do so, including the points made in this statement, above, on the relationship between the two organisations.

100. Notwithstanding these difficulties, CTI seek to challenge the way in which the Government, the Security Service, and MPSB approached the identification of subversive organisations:[66]

> Whether in fact a potentially subversive organisation or person meets the Harris definition or could be the legitimate target for undercover policing are important questions for the Inquiry. So too are whether the long-term aim of a legitimate and peaceful organisation could bring it within the Harris definition or justify it being the object of undercover policing. We also question what was written about

[64] CTI's opening statement for T1M2B2C, final sentence of §98.
[65] CTI's opening for T1M2B2C, §97.
[66] CTI's Opening Statement for T1M2B2C, §35.

industrial militancy because it focuses upon intent rather than the two separate elements of the Harris definition: intention and threat.

101. These questions do not form part of the issues identified by the Inquiry in its Module 2B and 2C issues lists[67] and have not so far been investigated. Nevertheless, CTI proceed to provide their views on the answers to them in terms which brook no debate:[68]

> 69. The reports of the Cabinet Office records describe the groups infiltrated by the SDS in terms which add to the evidence admitted in previous phases which calls into question whether those groups in fact met the Harris definition of subversion. Parliament was informed that: "*The definition is such that both limbs must apply before an activity can properly be regarded as subversive*"….
>
> …
>
> 98. Parliament was informed that the Harris test comprised two limbs both of which had to be satisfied: intention and threat. Read on this basis and in the light of the evidence it is hard to see how the SDS' targets fell within both limbs of the Harris definition. Unless an individual or group could reasonably be suspected of meeting the definition, there can be no question of its infiltration being justified on the grounds of subversion.

102. These assertions require more careful evaluation by the Inquiry. Testing them properly would require the Inquiry to look more closely at the work of the Government and the Security Service during the T1 period. Even if this were permissible under the Terms of Reference, it would also require the Inquiry to exercise a degree of caution, given the institutional and constitutional competence of the Executive to determine matters of national security.[69]

[67] Module 2B Issues List; Module 2C Issues List.
[68] CTI's Opening Statement for T1M2B2C, §69.
[69] *R (Begum) v Special Immigration Appeals Commission* [2021] UKSC 7, [2021] AC 765, per Lord Reed at [109].

PART D - THE HISTORICAL AND SOCIO-POLITICAL CONTEXT

Introduction

103. The Inquiry is aware that the SDS was formed in late July 1968, comprising a small group of officers under the supervision of Detective Chief Inspector Conrad Dixon, with instructions to ascertain what information they could about the upcoming Vietnam Solidarity Campaign (VSC) demonstration scheduled to take place in central London on 26-27 October 1968. However, the SDS was only one element of a wider policing response to large scale public disorder, and so it is essential to place it in its historical, political and policing context.

104. In each of the MPS's opening statements during Tranche 1 it has emphasised the importance of the Inquiry obtaining neutral, independent evidence from an expert historian – so that the work the SDS can be properly contextualised and understood.[70] The Inquiry has repeatedly declined the MPS's request to obtain this evidence. As a result, it now falls to the MPS and other Core Participants to provide their own versions of what they judge to be the historical context – with the inevitable, unwelcome, consequence that those versions will be criticised and dismissed as partisan and incomplete.

105. Nevertheless, the exercise is an important one. What therefore follows is the MPS's account of the some of the events that bear upon the formation and function of the SDS during the T1 period.

The year 1968

Historical context

106. 1968 was only two decades after the end of the Second World War – many of those in high office and leadership positions in 1968 had served in that war. There were acute Cold War military tensions in the aftermath of the 1962 Cuban Missile crisis, and there were indicators that the existing response to internal Cold War threats was inadequate and needed to change.[71] The Vietnam War was in progress and was viewed by many as a Cold War era proxy war, with North Vietnam supported by the Soviet Union, China and other Communist States[72], and South Vietnam supported by the United States.

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[70] See, for example, the MPS Opening Statement for T1P3, §§39-50, 64.

[71] See the §1 of UCPI0000035236/2 (CAB 301-509 Security Service paper on Subversion in the UK Autumn 1967) on the 'relatively simple' approach to subversion which had been sufficient until 1967.

[72] The Soviet Union and China's only cooperation was in North Vietnam, during the war. Ideological disagreements between them arising from their different interpretations and applications of Marxism-Leninism led to Sino-Soviet estrangement by the mid-1960s and Mao's Cultural Revolution further

107. On 30 January 1968, the Tet Offensive was launched by the Viet Cong and North Vietnamese Army (PAVN) against the forces of the South Vietnamese Army (ARVN) and the US forces and their allies. Troops targeted major cities, military installations, and towns in South Vietnam. The increased level of combat resulted in increased casualties and conscription. This triggered a rapid decrease in American and international support for US troops in Vietnam. News of the casualties and damage led to increased activity from protest groups.

108. In addition to the important events in Vietnam and the reaction to them, there were numerous other international factors which contributed to the tension in 1968. The assassination of Dr Martin Luther King Jr. on 4 April sparked the 'Holy Week Uprising', mass protest rioting in several USA cities. In Germany, Andreas Baader was convicted of arson for bombing a department store in protest against US involvement in the war in Vietnam. In May 1968, civil unrest in France resulted in student occupation protests and rioting, with a mass march through Paris and successful calls for sympathy strikes. Charles de Gaulle fled and the national government effectively ceased to function. On 21 August 1968, Czechoslovakia was invaded by the Soviet Union and its Warsaw Pact allies following a period of political liberalization and protest in the country ('the Prague Spring'). October 1968 saw the start of civil unrest and the long-running 'Troubles' in Northern Ireland. Apartheid was enforcing racial segregation in South Africa.

109. Security Service Witness Z neatly summarises and describes the historical context into which the SDS came about:[73]

> [The Security Service's] priorities were influenced by the historical context of the Cold War at the time. The USSR's expansionist support of revolutionary movements worldwide, and incidents such as in Paris in May 1968 in which ultra-left student demonstrations turned violent and Communist-backed general strikes brought France close to revolution, meant there was sufficient concern to justify monitoring subversive groups in Britain who were seeking to undermine parliamentary democracy.

110. In addition, the 1960s in the UK had heralded a period of profound social change, as those born in the years after the end of WWII reached maturity. Traditional notions of morality, deference, and class had begun to be questioned and

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strained and severed relations between China and the Soviet Union. This 'Sino-Soviet split' has been considered one of the key events in the Cold War, equal in importance to the construction of the Berlin Wall, the Cuban Missile Crisis, the Vietnam War and Sino-American Rapprochement (Lorenz M Luthi, *The Sino Soviet Split: Cold War in the Communist World* (Princeton University Press: 2010), p.1). The Security Service considered that so-called 'pro-Chinese' groups in the UK 'came into existence as a result of the impact of the Sino-Soviet dispute on the CPGB's rank and file' and that this dispute had led to the growth of extremist groups (such as Maoist or Trotskyists) who posed a law and order threat, apparently because of the short-term risks they were willing to take (UCPI0000035236/2,6, 12; CAB 301-509 Security Service paper on Subversion in the UK Autumn 1967).

[73] Witness Z, 1st Witness Statement, §§55: UCPI0000034350/16.

challenged. The contraceptive pill had been made available through the NHS (in 1961). The death penalty had been abolished (Murder (Abolition of Death Penalty) Act 1965); abortion had been legalised (Abortion Act 1967); and homosexuality had been de-criminalised (Sexual Offences Act 1967). The use of recreational drugs had become more widespread. Commonwealth immigration had resulted in greater racial and ethnic diversity, but also political tensions (on 20 April 1968 Enoch Powell MP delivered his inflammatory 'Rivers of Blood' speech in Birmingham).

111. These international and domestic factors were having an effect on the protest scene. In 1967, the Security Service considered there was an 'increase in the nuisance value of those extremist organisations which lack the Communist Party's fundamental discipline and are willing to take short term risks', albeit here the threat was one of law and order and so was primarily a police responsibility.[74] The Security Service assessed that although the overall severity of the Cold War threat to the UK had decreased over time, it was now more complicated in its nature and so required a new form of response:[75]

> The aim of this paper is not to treat the current subversive threat historically, still less to suggest policy changes in the handling of it. It does aim however to show that, although the threat has diminished in gravity, it has become more complicated in its nature and in consequence may require more sophisticated treatment. It is for example no longer susceptible to the same relatively simple exposure treatment.

17 March 1968 anti-Vietnam war demonstration

112. On Sunday 17 March 1968, the VSC held a large-scale anti-Vietnam War demonstration outside the US Embassy at Grosvenor Square in London. It was not the first. Sizable VSC demonstrations had started in 1967. The demonstration in July 1967 had several thousand attendees and multiple arrests. A larger demonstration followed in October 1967 with approximately 10,000 attendees, which resulted in altercations with police at Grosvenor Square. However, the March 1968 demonstration indicated a step-change in the level of disorder.

113. MPSB had advance notice of the 17 March 1968 demonstration and had been trying to gather intelligence on the activists' plans with some, limited, success.[76] However, it is also clear that MPSB were unable to gain access to some VSC

[74] UCPI0000035236/12 (CAB 301-509 - Security Service paper on 'Subversion in the United Kingdom - Autumn 1967').
[75] CTI are wrong to say, in respect of this paper, that it shows the Security Service believed the subversive threat to be in the process of 'diminishing' (CTI T1Mod2b and 2c Opening 27 January 2023).
[76] See CTI T1P1 Opening 22 November 2020 at p39 and following. Documents cited by the Inquiry that evidence MPSB's attempts to obtain advance intelligence on the demonstration are MPS-0730079, MPS-0730080, MPS-073081, MPS-0730082, MPS-0730083, MPS-0730075.

planning meetings,[77] and that conscientious efforts were being made to ensure police did not know of the organisers' plans for the event.[78]

114. In the event, the March 1968 demonstration was large – with some 10,000 protesters estimated to have attended – and violent. It culminated in a degree of public disorder that drew national and international attention, including nearly 200 recorded injuries (145 to police officers) and more than 230 arrests.[79]

115. The Home Secretary made a statement to Parliament the following day, in which he stated that, whilst the majority had protested in a peaceful way:[80]

> …there seems to be evidence that a not insignificant number of people also organise and come to these demonstrations with a view to provoking violence, and it is this facet of the matter which is extremely disturbing.
>
> As to the question of preparations which may have been made for violence— certain changes [sic – this should be 'charges'] are now being preferred and I would prefer not to say anything at this stage.
>
> It is true that a number of foreign nationals came to this country for the purpose of taking part in the demonstration.

116. Particular concern was generated by the tactics employed at the March 1968 demonstration by those who had travelled from continental Europe to take part in the protest.[81] These tactics included forming into a phalanx of protestors acting as a single disciplined unit, the front row carrying banner poles, charging forward with helmeted heads down forcing members of the public to scramble out of the way. These had been devised to respond to the different policing methods in use in continental Europe to deal with protestors, and they were

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[77] See, for example, the MPSB report at MPS-0730083, which describes how DS Phelan thought it inadvisable to try and gain admittance to a Vietnam Ad-Hoc Committee meeting at a public house on 7 March 1968; and MPS-0734309 which explains that HN68 was refused entry to a private meeting.

[78] See the MPSB report at MPS-0730075, which confirms that information was received that final arrangements for the demonstration would be decided at a briefing meeting to be held in London the evening before the demonstration, the reason for the lateness being to reduce the risk of the police finding out their plans. Note also the live Inquiry evidence of Tariq Ali, in which he accepted that there was secret planning for the March 1968 demonstration that was kept within the 'inner circle' that was effectively the National Committee (Tariq Ali transcript 11/11/2020 13/14-19).

[79] MPS-0730076 (Special Branch report on the Anti-Vietnam War demonstration of March 1968 organised by the VSC; and the Commissioner's Annual Report to the Home Secretary for 1968).

[80] https://api.parliament.uk/historic-hansard/commons/1968/mar/18/grosvenor-square-disturbances . The cited response is to the following question: ''First, if there is evidence that some at any rate of the organisers of the demonstration were preparing their followers for the use of violence, will he proceed against them with the utmost severity? Secondly, if it be the case that some people of foreign nationality at present resident here either as visitors or students have been abusing our hospitality by stirring up violence, will he have them immediately deported?''

[81] See, for example, the House of Commons debate of 28 March 1968: https://hansard.parliament.uk/Commons/1968-03-28/debates/8b78ce79-e8a5-43c8-bb79-201e00df9e3e/PublicDemonstrations(TrafalgarSquareAndGrosvenorSquare)

described by MPSB as 'effective and terrifying'. The author (DI Riby Wilson) expressed the view that 'were such tactics to be adopted generally by demonstrators, the number of police required to maintain effective control would be greatly increased'.[82] He concluded as to the March 1968 demonstration in general:

> The maintenance of law and order during public demonstrations depends to a great extent upon the goodwill which normally exists between police and those taking part. It has become increasingly obvious that the militant factions of the extreme left-wing and their student supporters show a complete disregard for public order and intend to challenge the authorities on every possible occasion….

Concerns about public disorder

117. On 28 March 1968, in response to the level of disorder seen at the October 1967 and March 1968 demonstrations, the MPS established a Working Party on Public Order with terms of reference to examine the present procedures and arrangements for policing public order, and to prepare and make practical recommendations for the better maintenance of public order in the streets.[83]

118. The Working Party reported on 12 July 1968.[84] Its Report examined the physical tactics of policing protest, but also emphasised the importance of a proper appreciation of the size and mood of the event or demonstration and those involved. The Working Party therefore assessed the primary means available to police of obtaining advance information about an event, which it considered to be the organisers, Special Branch, and the Press. Whilst it did not find general evidence of reluctance on the part of organisers to warn police of proposed meetings, demonstrations or processions, the VSC was a notable exception. Additionally, some organisers did not carry weight with the rank and file of their organisations (should the rank and file disagree with them or with police arrangements). A further cause of trouble was the:[85]

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[82] MPS-0730078: Special Branch report signed by Riby Wilson on the participation by aliens in public disorder. Note that it appears that the adoption of such tactics on a wider level was in contemplation: see, for example, MPS-07339572/2 (Special Branch report on a meeting of the Camden Human Rights Year).

[83] MPS-0748196/8 (§3: ''These demonstrations stemmed from the war in Vietnam, and they indicated the possibility of even more militant demonstrations in the future accompanied by organised violence of a type devised and developed by continental students. We have not, therefore, considered it necessary to include in this report on Public Order the lines of action available to police in connection with minor cases of hooliganism… having no bearing on, or relationship with, matters of general public or political interest'').

[84] Confirmed in 1971 follow up report, MPS-0748197/7 §2 (Report of the MPS Working Party on Public Order 1971).

[85] MPS-0748196/9 §8 (Report of the MPS Working Party on Public Order 1968).

> …current trend for members of other organisations or fringe elements to join in demonstrations, unasked and unwanted in many cases, who owe no allegiance to either the organiser or the true purpose of the demonstration, but who are prepared to use any form of demonstration as a platform from which they can gain publicity for their own ends. These unwanted supporters have no qualms about bringing discredit, or even seeking to bring discredit, on the 'host' organisation by acting in a disorderly manner to push their own particular brand of propaganda under the guise of supporting their 'hosts'.

119. This was significant not least because '[t]hese factors make it difficult for organisers, no matter how helpful they want to be, to give even approximately accurate figures of the support their events are likely to attract, nor are they in any better position to judge whether disorder will or will not arise.'[86] The importance of advance information to planning was emphasised:

> Any assessment of manpower required to control a demonstration must take into consideration the circumstances relating to the event, i.e. the nature of the demonstration, the places to be visited, the possibility of disorder…[87]
>
> The type of demonstration, the character of the organiser, the purpose for which it is to be held, and special political or public events currently topical are all circumstances to be taken into account when assessing police requirements.[88]

120. As to the provision of advance information by MPSB, the 1968 Working Party Report highlighted the risk of inaccurate information being provided:[89]

> The liaison between Special Branch and A8 is excellent, and much useful advance information is passed between them – but usually from the former to the latter. Inevitably some of the information cannot be verified because of the need to protect Special Branch sources, and this can lead on occasions to inaccurate information being produced. This is not surprising, however, as we have already commented on the fact that the size of the future demonstrations and the mood of the demonstrators cannot be foreseen even by many organisers who are at the heart of things. Whenever possible such information is checked and assessed in Special Branch before it is passed to A8. These confidential and anonymous pieces of information received from Special Branch cannot be ignored as they provide the background knowledge that assists in the assessment of events when considered with known facts, i.e. the organisers and their supporters' antecedent conduct, current political pressures, etc.

[86] MPS-0748196/9 §9 (Report of the MPS Working Party on Public Order 1968).
[87] MPS-0748196/10 §15 (Report of the MPS Working Party on Public Order 1968).
[88] MPS-0748196/11 §18 (Report of the MPS Working Party on Public Order 1968).
[89] MPS-0748196/9 §11 (Report of the MPS Working Party on Public Order 1968).

121. The firm view of the 1968 Working Group was not to change the methods or approach to public order policing to something closer to that seen on the continent:[90]

> …we are sure that arming the police or resorting to tougher physical measures against demonstrators would provoke retaliation against police by like violence. We believe that our present methods have the support of parliament and the public alike and that demonstrators know this and are fully aware that there are limits to the violence they display and beyond which they must not transgress. Although violence has reached a new peak in our demonstrations we believe that public reaction has called a stop to it – at least for the time being. …we hope the day will not come when it is thought necessary for police in this country to be armed and equipped in the manner of their foreign colleagues.

Concerns about subversion

122. The brand of protest seen in 1967 and 1968 did not raise purely public order issues. As the Security Service explained in its report on subversion for Spring 1968: [91]

> Since last October about a dozen protest demonstrations have taken place which have had a security significance as well as obvious law and order aspects. The injection of violence for political purposes is a new factor which differentiates these demonstrations from the old CND marches and even from the more militant activities of the Committee of 100 which were largely confined to the invasion of prohibited areas and lying down in the street. The change has been brought about by an increase in anarchism which is no longer of the armchair variety and which thrives on the publicity produced by clashes with the very governmental authority it is out to destroy.... There is no evidence that these activities have been co-ordinated from a central point, but two organisations have played a prominent part, the [VSC] and the Radical Student Alliance (RSA).

123. In May 1968, the Security Service was commissioned to prepare a further Cabinet Office paper specifically on the threat posed by students. They highlighted the practice of subversive groups influencing protest directly through students who are members, and indirectly through 'front organisations', where they can bring their influence to bear on the leadership. The influence of the Trotskyists and the VSC was discussed, including in respect of the March 1968 demonstration.[92]

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[90] MPS-0748196/11 §16, and see recommendation 2 at page 24 (Report of the MPS Working Party on Public Order 1968).

[91] UCPI0000035235/2 (CAB 301-509 – Security Service paper on ''Subversion in the UK – Spring 1968'').

[92] UCPI0000035234 (CAB 301-509 attaching Security Service paper on ''Subversive influences on Student Protest''). See also MPS-0722098/91-102 which is a detailed paper on student protest by the Security Service and provided to MPSB (as confirmed at MPS-0722098/5).

124. The July 1968 forecast from Western European security authorities – as well as from the Security Service – appears to have been that 'further trouble could be expected in the autumn', noting that 'elaborate plans were being made for a large scale demonstration in London' on 26-27 October 1968.[93] As Witness Z states:[94]

> At the time, the Security Service had an active interest in Maoists, Anarchists and Trotskyists, who were seeking influence through organisations such as the VSC. As a consequence, the subversive aspects of the VSC were of interest to Security Services. It is also clear the VSC demonstration posed a potentially significant law and order problem for the MPSB.

The formation of the SDS and the October 1968 demonstration

125. The October 1968 'Autumn Offensive' was announced by Tariq Ali in late May 1968 – in the immediate aftermath of the riots in Paris. He was quoted in the Guardian on 31 May 1968 as saying, 'don't be surprised if people decide to occupy the Bank of England'. [95]

126. Accordingly, plans began to be drawn up by the MPS to deal with the October demonstration. The need for better intelligence was clear. MPSB were represented on the 1968 Working Group on Public Order, and so will have been well aware of the concern expressed in the July report as to the accuracy of the intelligence provided and the importance of the same.[96]

127. Roy Creamer explained the need to change methodology to achieve the necessary advance information:[97]

> Q …in your experience, were, if I call them, traditional Special Branch methods of obtaining intelligence, in your opinion and experience, sufficient to deal with the public order problems that the police faced in London?
>
> A. Up to the Vietnam demonstrations in March, would it be, '67 or '68, I would have said yes, because generally speaking, they were smaller, they were less intense in the fact that the emotions that prompted them to demonstrate were not that heavy, and the police also had a -- how can I put it? They respected more… Now, after the March demonstration in London where a number of police were injured, of course it did change, and I think it was inevitable that we would have to increase our surveillance of left-wing groups a lot more. Just how that was to be done is, you know, up to the

[93] UCPI0000035232 (CAB 301-509 attaching minutes of a meeting on 24 July 1968 of the Official Committee on Communism (Home)).
[94] Witness Z, 1st Witness Statement, UCPI0000034350/27 §89.
[95] *Guardian* article at MPS-0738678. It will be a matter for the Inquiry whether it accepts Mr Ali's evidence that this was ''perhaps a bad joke'' (Tariq Ali Transcript 11/11/2020 48/18-21, 50/1-4), but it is submitted that given the events of 17 March 1968, and the wider 1967-1968 context, the police could not possibly responsibly disregard it as such.
[96] MPS-0748196 (Report of the MPS Working Party on Public Order 1968).
[97] Roy Creamer Transcript 16/05/2022 147/8-148/11.

> powers that be, but I realised that we couldn't go on the way we were. Because one sergeant and two constables, if he was lucky, would have to make an assessment for a demonstration and in fact most officers were reluctant to do it, because they said, 'Look, we're not fortune tellers. We're not weather forecasters. What's going to happen is not – we can't say.'

128. Certainly, MPSB management appreciated that they 'were very much on trial in that they were required to provide all the necessary information in advance for the benefit of the uniform branch…'[98] It is against all this background that, on 30 July 1968, Detective Chief Inspector Dixon was put in charge of a 'special squad', formed with the object of obtaining intelligence relating to the demonstration to be held on 26-27 October 1968.

129. There can be little doubt that the Security Service and Home Office were aware from the earliest days of the manner of work done by the SDS. Likewise, the police were left in no doubt as to the extent of concern these demonstrations were generating, up to the highest levels of Government:

    a. There is reference in a Security Service file note of 2 August 1968 to the 'special squad' and that the Security Service made arrangements for close liaison with DCI Dixon.[99]

    b. On 15 August 1968, the Official Committee on Communism (Home) met in the Cabinet Office. The meeting was attended by James Waddell, senior civil servant at the Home Office, and representatives of the Security Service. The minutes note that the Prime Minister had chaired a meeting of Ministers considering student unrest, and in particular the demonstration arranged for 26-27 October. The Committee was informed about the current state of planning for the demonstration, including the dissent within the organising committee, which the Maoists had successfully disrupted.[100]

    c. The next day (16 August 1968), Mr Waddell and representatives from the Security Service met with the Commissioner and Assistant Commissioner (Crime) of the MPS, as well as Commander Ferguson Smith of Special Branch. Mr Waddell stressed the Home Secretary's preference for traditional policing methods (rather than those seen on the continent): the Commissioner was able to express full agreement.[101] Commander Smith

[98] UCPI0000030045 (Security Service note for file about meetings on 1 and 2 August with MPSB).
[99] UCPI0000030045 (Note for File regarding a meeting at Scotland Yard held to discuss arrangements for the October 27th Grosvenor Square demonstration).
[100] UCPI0000035233 (CAB 301-509 – Minutes of a meeting of the Official Committee on Communism (Home) discussing student protest).
[101] And note https://hansard.parliament.uk/Commons/1968-10-24/debates/bd975f1b-c9cc-4ccd-8f0e-3d1d15906be7/DemonstrationsCentralLondon(27ThOctober) at Column 1599

'briefly outlined the action [MPSB was taking] to collect information prior to the demonstration and to keep in touch with groups of demonstrators on the day'.[102]

d. The MPS note referencing the 16 August 1968 meeting states that 'mention was made of the fact that the Prime Minister and the Home Secretary were seeking a situation report during the first week in September'.[103] The implication is that the work of DCI Dixon's squad would be fed into that report, because DCI Dixon would be preparing a briefing by the end of August.[104]

e. A clear description of the work of the SDS appears in a Security Service file note of 29 August 1968.[105]

130. As expected, DCI Dixon's summary of the intelligence picture as at 30 August 1968 was sent to the Home Office; others are likely to have been.[106] The Prime Minister discussed the upcoming demonstration with Ministers on 16 September 1968.[107] The Home Secretary presented to that meeting a view of the upcoming demonstration which accorded with MPSB (SDS) intelligence at the time.

131. On 20 September 1968, there was a meeting at which DCI Dixon briefed the Home Office and Security Service directly on the demonstration.[108] On the same date RA James (who attended that meeting on behalf of the Home Office) circulated internally a '*further*' report by MPSB about the demonstration, and commented on it.[109] More meetings and briefings took place between the Home Office and the MPS (including some with the Security Service), on, at the least,

[102] MPS-0730060/2 (File documents on meeting between the police, Home Office and the Security Service to discuss policy on demonstrations)
[103] MPS-0730060/1 (Memo from Commander Smith to Ch Supt Ops asking him to see a Special Branch memo)
[104] Which would appear to be MPS-0730065 (Special Branch report dated 30 August 1968, by DCI Dixon, providing update on progress for 27 October demonstration)
[105] UCPI0000030046 (Note for file regarding a meeting where mention is made of a new 'special squad' set up in Special Branch)
[106] As made clear by comments made by Mr Waddell, recorded at MPS-0724116, Home Office letter from Waddell on 16 December 1968 concerning Special Branch expenditure on accommodation.
[107] DOC053 (Note of ad hoc meeting of Ministers)
[108] MPS-0742196 (Minutes of the meeting)
[109] DOC053/8 (Memo from Mr RA James to Mr Stotesbury, both of the Home Office)

21[110] and 23[111] September, and 11[112] October 1968, to discuss the upcoming demonstration.

132. As to the intelligence collected by the first group of SDS officers, the following themes can be deduced:

a. The intelligence picture built and developed over the course of the operation.[113]

b. The 'main' VSC organisers were espousing a peaceful protest.

c. However, the VSC was not one single disciplined organisation but, under the umbrella of an Ad Hoc Committee, where 'The different organisations involved may all ostensibly subscribe to the main theme of the demonstration but some pursue it with very different ends to that publicly stated by the organisers.'[114]

d. Further, groups of Maoists and anarchists in particular were critical of the formal VSC leadership and were advocating violence and disruption.[115] However, as the demonstration approached, intelligence revealed that they were becoming more isolated.[116]

e. VSC groups at local and branch level were taking their own decisions about which lines to follow; some branches were so militant they were disowned

[110] MPS-0730095/3 §1 (DCI Dixon 23 September 1968 ''weekly progress report'' on the upcoming October demonstration)
[111] See DOC053/10 – which is unfortunately the publicly available version of this document and so contains redactions (at source) of sensitive information which had been provided to the Home Office by police.
[112] MPS-0730095/3 §1 (DCI Dixon 23 September 1968 weekly progress report on the upcoming October demonstration)
[113] See DCI Dixon's summary reports in the run up to the demonstration at MPS-0730061 (21 August 1968); MPS-0730065 (30 August 1968); MPS-0730066 (5 September 1968); MPS-0730063 (10 September 1968); MPS-0730064 (19 September 1968); MPS-0730095 (23 September 1968); MPS-0730096 (3 October 1968); MPS-0730084 (9 October 1968); MPS-0730091 (16 October 1968); MPS-0730092 (22 October 1968).
[114] Speech by Commander Ferguson Smith to ACPO Conference on 24 September 1968. See also MPS-0730063 (DCI Dixon's 10 September 1968 summary of groups/movements involved).
[115] See, for example, SDS report of a meeting of the Notting Hill VCS on 14 August 1968 (MPS-0722098/204); and DCI Dixon's summary of the intelligence accrued by 21 August 1968 which confirmed ''The pro-Chinese Moa-ist adherents are active at present and attending every meeting held in London to attempt to persuade all participants to accept the inevitability of violence on a large scale.'' (MPS-0730061)
[116] MPS-0730065 (DCI Dixon summary of the intelligence at 30 August 1968), MPS-0730095 (and then as at 23 September 1968)

by the official organisers. There were also differences within the branches, between the rank and file and leadership, as to the level of militancy.[117]

f. However, over this period MPSB began to gain a solid picture of both the main and the breakaway routes, potential 'targets' for the different factions (and assess the likelihood of their being attacked and direct counter measures to avoid this), and the likely gathering points for disruptive groups at the end of the procession.

g. In light of the intelligence, the SDS (typically in the person of DCI Dixon) was able to confirm who or what posed a risk and whether those risks were serious or negligible, i.e. he was able to assess them.[118]

133. On Sunday 27 October 1968, the protest against American involvement in the Vietnam War took place.[119] It was estimated to have been attended by around 25,000 people. On this occasion the police were well-prepared and the violence or disruption was minimal (and, as had become clear from the advance intelligence, largely confined to the Maoist and anarchist factions, who were prevented by police cordon from reaching their goal of the US embassy).[120] It appears that intelligence gathered by the SDS meant that the uniform police (and the Government) were forewarned of likely numbers and the tactics that the protesters might employ.[121] This intelligence facilitated clear planning as to where police should be stationed and in what numbers, and confirmed that there would be no need to utilise specialist protective equipment, change (and make more forceful) policing tactics, or – as was at one stage mooted – call in the armed forces. It enabled uniform police to counter those who were intent on causing trouble directly (rather than everyone), and to broadly maintain public order. This was despite the intentions and plans of certain factions.

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[117] MPS-0730065 (DCI Dixon summary of the intelligence at 30 August 1968)

[118] See, for example, DCI Dixon's report at MPS-0730066.

[119] The full MPSB report on the VSC 'Autumn Offensive', prepared on 28 October 1968, provides detailed review of the events of the day: MPS-0730093.

[120] https://hansard.parliament.uk/Commons/1968-11-07/debates/f79cff0a-a2ea-4e90-bd59-d7dad182c9ea/DemonstrationCentralLondon. The Home Secretary stated, in response to questions, that: ''Arrangements were agreed with the organisers on the route to be followed by the main body of demonstrators. Apart from some minor incidents and inconvenience to traffic, this self-disciplined precession gave the police no real cause for concern. The police were unable to secure any such agreement with those who were responsible for the separate and smaller procession to Grosvenor Square, where the organisers seemed unable to control their supporters and much disorderly behaviour took place.''

[121] See, for example, one set of operational instructions to uniformed police ahead of the October 1968 demonstration (MPS -0748326), which concerned the defence of known or suspected target buildings. These targets appear in intelligence reporting from the SDS (see, for example, reports at MPS-0730092; MPS-0722099/45).

134. The contemporaneous consensus was that the policing of the demonstration had been a success.[122] The contribution of the SDS was considered to be a significant component of that success.[123] The experience of the SDS demonstrated the effectiveness of undercover officers as compared to other means of intelligence gathering: the information produced was more comprehensive and reliable than that provided by informants.[124] Specifically, the view of MPSB was that the normal methods of intelligence gathering would have been totally inadequate to meet the situation and produce the quality required. As a result of the SDS:[125]

> a steady and most valuable stream of information was made available to our uniform colleagues, Home Secretary and Security Service. Without that information we would have felt completely in the dark about the exact plans and intentions of the demonstrators.

135. In conclusion, the use of the undercover tactic was **necessary** – in the face of serious and specific concerns about wholesale and significant public disorder, the valuable intelligence allowed the risk of disorder to be properly understood and evaluated, and the policing response directed to where it was most needed, with the effect that minimal disorder occurred. Personal intrusion was relatively limited. The Inquiry may therefore wish to conclude that this operation was adequately **justified**.

After the October 1968 demonstration

136. After the demonstration, concern with what might be done by Maoists, anarchists, Trotskyists and some others remained high, as did the pressure to monitor their intentions. It was put in this way by the Home Secretary to Parliament on 7 November 1968 (with emphasis added):[126]

> There are groups of people, who go under the names of Maoists, anarchists, Trotskyites and half a dozen other small factions, who are determined to provoke trouble with established authority, mostly in the person of the police, on any occasion when they can find suitable excuse for so doing. I have no sympathy with

[122] See the views expressed in Parliament as to the overall police response: https://hansard.parliament.uk/Commons/1968-11-07/debates/f79cff0a-a2ea-4e90-bd59-d7dad182c9ea/DemonstrationCentralLondon

[123] See, for example, MPS-0742200 (letter of thanks to MPSB from the US ambassador).

[124] See §§2-3 of the memo from Chief Superintendent Cunningham to Commander of MPSB (20 May 1969) setting out the Terms of Reference for the SDS (MPS-0728973/4).

[125] The words of Commander Ferguson Smith to the Assistant Commissioner (Crime), as part of his 9 November 1968 recommendation that the SDS be allowed to continue (and see also MPS-0730219/1-3, 5).

[126] https://hansard.parliament.uk/commons/1968-11-07/debates/f79cff0a-a2ea-4e90-bd59-d7dad182c9ea/DemonstrationCentralLondon

these people, nor have the overwhelming number of people in the country. **A careful watch must be kept of any intentions that they may have.**

137. There were already indications that the Trotskyists and others were planning further demonstrations on a wider footing – that is, seeking to generate interest beyond that of the Vietnam war.[127] In view of the ongoing threat, in November 1968 senior MPS officers – including the Commissioner - took the view that the SDS should continue. This was 'warmly welcomed' by the Security Service, who even agreed to consider funding the unit.[128]

138. However, the Commissioner undertook to discuss funding with the Home Office,[129] and Assistant Commissioner Brodie wrote to this effect on 21 November 1968. That letter made clear that the work being done was undercover work (not that this could have been misunderstood by this stage), and what was proposed was a 'long term operation… involving the penetration in depth of these organisations'. By 28 November 1968 the funding issue was 'solved'.[130] Mr Waddell confirmed in a meeting on 13 December his view that SDS intelligence was 'valuable', and that he saw good reasons to keep the unit in existence.[131] This view was reiterated in a letter on 16 December 1968 confirming Home Office funding and approval: 'It appeared to me that experience during the period before the October demonstration fully justified the extra effort which had been made by Special Branch officers…' Mr Waddell expressed a concern that the 'innovation' should not become 'an accepted part of the scene', and so it was agreed that the work of the squad would be reviewed again in the summer.

139. In the 26 November 1968 paper 'Penetration of Extremist Groups', Conrad Dixon, set out his blueprint for the structure of the future SDS, as well as his thoughts on its size, organisation, and recruitment. It was a blueprint drawing on the experience 'gained over the last four months'. According to the paper, the primary object of the squad would be 'to provide information in relation to public order problems' and the secondary by-product from the outset would be the enhancement of police knowledge of 'extremist organisations, and individuals active in them'.

140. During this period, concern about subversion and public protest did not diminish at Cabinet level. The 'Official Committee on Subversion at Home' was

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[127] See, by way of example only, DCI Dixon's report of 10 September 1968 (MPS-0730063).

[128] MPS-730219/2, Minute of 9 November 1968 – although the MPS did not, in the event, call upon the Security Service for funding: MPS-730219/5, Minute of 28 November 1968.

[129] See the exchange of MPS memos at MPS-0730219/1-3. The worked-up proposal was provided by DCI Dixon on 26 November 1968 (Penetration of Extremist Groups paper at MPS-0724119; endorsed by Chief Superintendent Cunningham at MPS-0730219/5). This paper appears to have remained in MPSB and was not escalated (see MPS-0730219/5).

[130] See minutes at MPS-730219/5, MPS-078973/18 and MPS-0724177.

[131] MPS-0724177 (Memo discussing a meeting which had taken place on 13 December 1968)

established[132] on 7 January 1969, with terms of reference 'To focus intelligence about communist and other subversive activities in the UK, to advise Ministers on appropriate measures (other than those in relation to the public service, which are within the purview of the Official Committee on Security) to counter these activities, and to co-ordinate such counter-measures.'

141. The Cabinet Office began to receive reports from the Security Service on the issue of subversion in the United Kingdom, which highlighted the prominence of the subversive threat in the minds of the British public as a result of the demonstrations of 17 March, 21 July and 27 October 1968, student disturbances, and the acts of Welsh extremists. The Security Service predicted further demonstrations in 1969 'on the 1968 pattern'. As to countermeasures (with emphasis added): 'Intelligence is essential and needs to be **maintained if not extended**. This means maintenance by the Security Service of the existing intimate relations with Police Forces, particularly the Special Branch of the Metropolitan Police…'. Further, 'Education of those in authority who need to know, including the Police, about the nature of the subversive threat should continue. The aim should be to put it into perspective.'[133]

142. At the meeting of the Subversion at Home Committee on 31 January 1969, points made included that: 'On the whole demonstration front, there was no reason for complacency, and the defensive arrangements made last year should continue until at least the summer.'[134] This must be a reference to the SDS, which was a defensive arrangement made the year before in the context of demonstrations, and had at this time been permitted to continue until at least the summer. The chairman summed up the meeting 'A good deal was going on, but the arrangements for obtaining and disseminating good intelligence were broadly satisfactory…'. The necessary counter measures[135] were therefore approved. In like vein, the Security Service was at pains, in meetings with MPSB, to assure the MPS that it remained 'intent on the utmost co-operations in the field of Trotskyist/Anarchist agents'.[136]

143. The review of the work of the SDS for the first half of 1969 began in May. On 20 May 1969, Updated Terms of Reference for the SDS were outlined by Detective Chief Superintendent Cunningham, reflecting a wider range of objectives.[137] It was put that, following the 27 October 1969 demonstration it was 'possible to

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[132] UCPI0000035237 (Its predecessor was known as the Official Committee on Communism (Home))
[133] UCPI0000035229 (CAB 134-3248 dated 23 January 1969, attaching Security Service note on 'Subversion in the United Kingdom')
[134] UCPI0000035230 (CAB 134-3248 - Minutes of a meeting of the Official Committee on Subversion at Home discussing Security Service note on 'Subversion in the United Kingdom')
[135] Drawn from UCPI0000035229 (CAB 134-3248 dated 23 January 1969, attaching Security Service note on 'Subversion in the United Kingdom')
[136] UCPI0000030766 (Note for file by the Security Service, regarding a meeting at Scotland Yard on 14 January 1968)
[137] MPS-0728973, part of the 1969 SDS Annual Report bundle

look at the larger canvas of the political scene to establish what the new aims should be'. The new aims were:

(1) To supply information about the intentions of militant left-wing extremists on the occasions of public demonstrations;

(2) Identification of those who engage in preliminary planning or who take part in such demonstrations;

(3) Obtaining evidence and identifying suspects in relation to breaches of the law before, during and after demonstrations; and

(4) Gathering and recording information for long-term intelligence purposes.

144. These four aims provide the Inquiry with an important tool for assessing the *value* of SDS work. It is submitted that the work of the SDS in the years following met these aims – although, it must be recognised that the goal of obtaining intelligence was of far greater significance than the identification of suspects in relation to breaches of the law at demonstrations. The Home Office, which both authorised and funded the work of the SDS, will have fully understood both what the work involved – long term undercover deployments – and what the purpose of the information was.

145. On 27 May 1969, the Home Office was asked by the MPS to authorise and continue funding the work of the SDS. Within the request there was recognition that there had been a lessening in violence at demonstrations over the previous months, but 'we certainly do not feel we are out of the woods yet'. The infiltrated groups were by then more security-conscious, so it was thought that if the need to re-infiltrate them arose: 'we would find our task vastly more difficult, and we doubt if we would be able to achieve the degree of success we have so far had'. The Security Service supported the Commissioner's view that the unit should continue. [138] The Home Office also agreed. They retained reservations, but expressly not in respect of the activity, but in respect of 'the unconventional nature of the accommodation', which might lead to criticism of the Home Secretary.

Home Office authorisations

146. Over the course of 1969, the groups infiltrated by the SDS expanded and changed in response to the new influences on public demonstrations.[139] The point is made

[138] MPS-0728973, part of the 1969 SDS Annual Report bundle

[139] Compare groups at MPS-0728973 (Memorandum of 20 May 1969) and MPS-0728973 – (Memorandum of November 1969). Note that by November 1969, Irish groups were becoming

in the 1970 SDS Annual Report, in which it is explained, by reference to the events of 1970:[140]

> …a clear pattern of cause and effect was observed which underlined the basic reasons for the formation of the [SDS]. When there was a sufficiently emotive issue – such as 'Stop the Seventy Tour' campaign which guaranteed broad based support and the attention of the mass media the extremists were able seriously to threaten the maintenance of order, making it imperative that advance information of their plans was available.

147. The years which followed developed a similar pattern. The SDS went about its undercover work, the SDS submitted Annual Reports on the unit's work to MPSB, which reported to the Home Office regularly, and the Home Office formally authorised and permitted the work to continue, and provided direct funding.[141]

Concluding comments

148. None of the correspondence, notes and other documents that are now available from the late 1960s demonstrate that active consideration was given by the MPS, the Home Office, or the Security Service, to the legality of the SDS's work or whether its intrusion into its targets' lives represented a moral cost that needed to be recognised, balanced, or justified. It cannot be ruled out, 55 years on, that these matters were discussed and not noted, or noted but not retained. But the more likely inference is that such concerns did not exist within the police, the Security Service and the Government at the time.

149. The contemporaneous documents indicate that Home Office was fully aware of the nature of the SDS's work, and expressed no qualms about the use of long-term, 'living-in', deployments.[142] Insofar as it had any reservations,[143] these were focused not on breaches of targets' personal privacy or the risks to the officers' safety, but rather the political consequences that might follow the unit's public exposure: 'the arrangements could, if made known in the wrong quarters, be a source of acute embarrassment to the Home Secretary.'[144] Such concerns are inherent to the covert and deceptive nature of domestic intelligence-gathering

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increasingly important, whilst the Anti-Apartheid movement was regarded as being a potential ''rallying point for the extremists'' who might exploit protests against the 1969/70 South African rugby tour

[140] MPS-0728972 (SDS Annual Report for 1970)

[141] For example, MPS-0728972 (SDS Annual Report for 1970); MPS-0722681 – letter to PE Brodie of 17 December 1971, referencing the previous authority given by the Home Office on 21 December 1970; MPS-0728970 – letter to JH Waddell of 21 February 1973, referencing the expenditure and authority provided by the Home Office on 21 December 1971

[142] A further example being at MPS-0724177 (Home Office letter dated 21 December 1973).

[143] C.f. CTI interpretation at §86 of the opening for T1Mod2b and 2c (27 January 2023).

[144] MPS-072413 (Home Office letter authorising continued MPSB expenditure on SDS accommodation) on 21 December 1970).

by the state and should not be read as being indicative of any unease as to the propriety of the SDS's work.

PART F - JUSTIFICATION AND VALUE

Preliminary

150. In this section, detailed consideration is given to the justification for the SDS's work during the T1 period (1968-1982) and the value it had to public order policing and counter-subversion, to assist the Inquiry in its identification and assessment of the adequacy of the contemporaneous justification for the work.[145] The analysis should be read in conjunction with:

    a. Appendix B – a chronology of relevant historical events during the Tranche 1 period.

    b. Appendix C – background summaries of the groups targeted.

    c. Appendix D – a case study of the 'Battle of Lewisham' in 1977.

Introduction

151. The Inquiry's Terms of Reference require it to 'identify and assess the adequacy of justification … of undercover policing'. In this Part, the MPS seeks to assist the Inquiry with these issues. The MPS has not attempted a complete analysis of each deployment, tasking, and report, by reference to its relevant context. That difficult task, insofar as it may be possible, is for the Inquiry. However, the *value* which can be found in the undercover work carried on by SDS UCOs in this period is considered along with some of the contemporaneous justification given, together with some factors which the MPS suggests that Inquiry may wish to have in mind when assessing its adequacy.

152. In drawing out the value which can be found in SDS work, nothing should be taken as any kind of suggestion that deployments of the type carried out by the SDS in this period – which were open ended, sometimes self-directed, and frequently conservative ('in case' they might become useful) - would be authorised today. They would not. *By modern standards*, the SDS's deployments in this period are unjustifiable, because of the way they were structured – not least because there was a failure to consider intrusion, necessity, and proportionality.

153. However, the Inquiry should not be assessing the adequacy of contemporaneous justifications simply by reference to whether they would be adequate today, and so it is in this regard that the MPS invites the Inquiry to acknowledge the value in SDS work where it finds it.

[145] As required by the Terms of Reference.

154. This Part is structured as follows:

a. A discussion of the approach to identifying and assessing the adequacy of the justification of SDS undercover work;

b. An analysis of the way in which SDS intelligence was valuable to public order policing in particular; and

c. A review of some of the SDS reporting and consideration of potential value in the deployments, organised by the main fields or areas of UCO deployments.

155. The above sections, and particularly the review of the deployments by field, should be read in conjunction with Appendix B, a chronology of relevant historical events during Tranche 1, and Appendix D, which provides a short a case study of the material available to police in respect of the 'Battle of Lewisham' in 1977.

Justification and value – discussion of approach

Identifying contemporaneous justifications

156. Identifying the contemporaneous justifications for SDS deployments is, relatively speaking, a simple task. The general aims of the SDS, at their highest, may be summarised in these terms:

> In furtherance of the responsibilities and function of MPSB, as set by the 1970 Terms of Reference, the SDS obtained intelligence that could not be obtained from other sources and which (1) assisted the uniform branch of the MPS in policing public order, and (2) assisted the Security Service in its counter-subversion work.

157. The available evidence shows the SDS was widely believed to be, and was, successful in meeting these two goals, which in the late 1960s and 1970s were closely intertwined, as public order was often fomented by groups whom the Security Service judged to be subversive. Contemporaneous justifications can also be identified within documents prepared at the time, including SDS's Annual Reports, the MPSB Annual Reports, in exchanges between the MPS and the Security Service, and within the Government level papers that the Inquiry has published. In evaluating the SDS Annual Reports in particular, it would be unfair and simplistic to dismiss them as mere marketing.

158. Further contemporaneous justifications can and should be identified by inference from the historical context. These would have been apparent to the managers at the time, but may not have been spelt out in detail in writing. The Inquiry also cannot be confident that it has secured all relevant evidence on this

point. Examples and indicators of these justifications are drawn out within the area and field analysis section below where they have been found. In terms of events and historical context, they can be seen within the Chronology at Appendix A. However, it is not suggested that the historical review that the MPS has prepared is comprehensive or is an adequate substitute for the absence of independent historical evidence before the Inquiry.

Assessing the adequacy of contemporaneous justifications

159. The thornier question is whether the contemporaneous justifications were adequate (the word used in the Terms of Reference). It is not clear how the Inquiry intends to approach this assessment. It may be at a high-level, as CTI attempt in their Opening Statement for Tranche 1 Modules 2B and 2C (discussed above). Or it may be more detailed: year by year, group by group, deployment by deployment, or report by report. A more detailed and contextualised approach is in principle preferable, but would require a complete evidential picture, which is lacking, such that care must be taken.

160. Two overarching factors may be relevant to assessing justification at the level of generality. First, the MPS frankly acknowledges that MPSB officers who authorised the deployments did not consider their intrusive nature and the right to privacy of the individuals targeted. Nor did they balance these factors against their value. For them, the value of the intelligence that the SDS produced (and it is clear they thought it had high value) was ample justification for its continuation.

161. Second, the way in which the SDS operated in this period was, in general, to undertake long-term, open-ended, undercover deployments into groups. This meant that a continuous stream of intelligence on public order and subversion was available. UCOs were then well-placed to gather specific intelligence on plans disorder public order in advance of it occurring, or to confirm that anticipated disorder may not occur.

162. It is not clear whether, in light of these factors, the Inquiry will simply conclude that no 1968-1982 justification for the SDS's work can have been adequate. That conclusion is not warranted, but if it is the Inquiry's position, the MPS would invite the Inquiry also to acknowledge that:

    a. In failing to recognise or consider the intrusive nature of undercover work MPS officers were acting in alignment with the general underdeveloped appreciation of privacy at this time within the police, the Home Office (which authorised the SDS's work), the Security Service (which received and uses its intelligence), and the Government (which consumed intelligence on the groups the SDS infiltrated).

b. This would not occur now, applying modern policing standards and under the current legal and policy framework (post-RIPA).[146] However, it would be wrong to judge the MPS and MPSB officers who authorised each of the SDS's deployments by simply applying modern standards. They were seeking to fulfil their responsibilities without the benefit of a legal or regulatory framework, and in an era before privacy rights were as highly valued by society, or properly articulated in domestic law.

163. If the Inquiry intends to go beyond these factors in its analysis, it is invited to consider the evaluation set out later in this Part of the reasons why SDS intelligence was of value in furtherance of the public interest. Appendix D on 'the Battle of Lewisham' provides a case study of how in practice intelligence built up in the context of public demonstrations and disorder.

164. Further, the Inquiry is invited to take note of the review which the MPS has carried out in respect of the major fields of SDS work between 1968-1982. It does not pretend to be a complete assessment (which, noting the evidential lacunae,[147] would not be possible in any event). This exercise shows:

a. The contemporaneous justifications, the value of the work, and how it was thought to be valuable at the time. It is, of necessity, a summary. However, the Inquiry is asked to be particularly careful in dismissing value in the absence of complete accounts or contextual evidence setting out a more complete historical picture.

b. In many cases the SDS's deployments also fulfilled MPSB's second function, the provision of valuable intelligence to the Security Service on groups which the Security Service judged to be subversive. Witness Z accepts this in their statement,[148] which has not been challenged.

c. The type of detailed, direct, intelligence that the SDS's UCOs routinely produced could not have been obtained by other means then at the MPS's disposal: open communications, attendance at public meetings, the use of informants and interceptions. Each of the groups planned their activities in private or in secret. Many individuals were security-conscious. Such methods would simply not have captured the quality and quantity of intelligence on the problems of public disorder and subversion, as they were perceived at the time.

165. When evaluating these points, it should be recognised that the MPS acknowledges that SDS methodology, which has been described as 'hoovering'

[146] The work is now regulated by RIPA and the RIPA CHIS Code of Practice (republished 2022), and guidance is provided in the College of Policing's Authorised Professional Practice (APP).
[147] See MPS Opening Statement for T1P3 dated 25 April 2022, §§31, 36-50 and 64.
[148] Witness Z, 1st Witness Statement, §123 (UCPI0000034350/38).

up information, led to the creation of many reports which, at the individual level, may not have been significant or valuable. It would not be right to say that the existence of some reports of lesser relevance undermine the adequacy of the contemporaneous justification. However, the MPS fully accepts that there may be a tipping point, where the reporting recovered is consistently of low value over time.

166. The Inquiry is asked to approach this assessment with care, taking account of what is said below as to how personal reporting might have value, recognising that negative intelligence has value, and noting that the benefit of hindsight is a luxury which was not available to SDS managers at the time. Nonetheless, in drawing out value where it can be found, the MPS does not wish to give the impression that it does not recognise that SDS reporting was of variable value,

167. Finally, the MPS would like to address a phrase which has become something of an undefined shorthand within the Inquiry. It has been suggested that there was some form of prohibition on a UCO taking up a 'position of responsibility' in a target group.[149] This phrase is not found contemporaneously and there was no such prohibition. The correct line is that a UCO was expected to be a follower not a leader,[150] and not to influence the direction of the group in which they were deployed. This line accords with the evidence of managers and UCOs on this topic[151], and reflects the prohibition on acting as an agent provocateur in the criminal context. There was value in UCOs assuming positions, such as secretary or treasurer, in which they could exploit access to better information about their targets.[152] So long as they are able to do so without crossing the line between follower and leader, or into agent provocateur, that value should be acknowledged.

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[149] For example in remarks about DCI Dixon, CTI noted that his 'injunction' appeared to have been abandoned and that 'The Inquiry will be considering what guidance was offered to officers regarding their positions of responsibility in their target groups…' (§67.8.7).

[150] The distinction DCI Dixon drew in Penetration of Extremist Groups, 29 November 1968, MPS-0724119/6.

[151] As regards the assumption of positions of responsibility, Trevor Butler stated there was a balance to be struck between acceptable recording roles and unacceptable direction setting and incitement. In relation to examples put to him (HN96 and HN155) his indicated he would regard their positions as a good thing because it would give greater access to membership and administrative things without putting the individual in a position which would be against SDS policy (Transcript Trevor Butler 20/05/2022 92/5- 97/9). Angus Macintosh explained that a role of treasurer was not discouraged, a role which involved future activities i.e. conspiracy would have been (Angus Macintosh Transcript 19/05/2022 33/12-34/4). Geoffrey Craft stated that in a group which wasn't committing serious crime, there was not in general any inhibition on assuming positions of responsibility, but SDS managers would not be comfortable with UCOs influencing the group (Transcript Geoffrey Craft 18/05/2022 77-78).

[152] The Security Service recognised the value of this: 'The ideal would be a permanent well-placed employee in each headquarters, not necessarily too high up in the organisation.' Security Service note for file, 13 November 1973, §2 (UCPI0000030049/1).

The value of the SDS to public order policing

168. In considering the question how demonstrations should be policed by uniform police officers, the desire shared at all levels was for British policing methods in new era of violent protest to continue to broadly reflect the model which had operated hitherto. That is, so far as possible and safe to do to, unarmed police officers, with a role designed to allow the demonstration or procession to take place, whilst managing the disruption it caused.[153]

169. The significance of the right to protest and express dissent was recognised to the highest levels.[154] The documents from 1968 and thereafter show that there was no appetite – in the police[155], the Government[156] or Security Service[157] – to resort to the types of methods and equipment employed on the continent or in the USA. These were the values brought to bear on the question of protest in this period. All this meant that accurate information about the plans of demonstrators, to ensure an appropriate police response, was considered to be essential. It was what facilitated the British policing model which the decision makers wished to maintain.

170. CTI raise the question whether a desire to maintain a police response characterised by having sufficient, but not excessive, police numbers is a 'valid' one.[158] With respect, it plainly was – and is – the desire of those in leadership positions that it should be achieved, as best as possible. This policing model aims to find the balance between permitting protest whilst protecting against

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[153] For example, see MPS-0748197 (Report of the Working Group on Public Order 1971).

[154] See for example, the view expressed by the Under Secretary for the Home Office, Mr Treverne, in Parliament on 4 April 1968: UCPI0000034080/12 (''First, I must express my agreement with my hon. Friend who said that what is so serious about this kind of behaviour is that it prejudices the peaceful right of demonstration with which it would be totally unjustifiable to interfere. We must not be so blinded by wild behaviour, as the Home Secretary said on the day following the disturbance, as to take measures which will prevent persons from demonstrating in good faith. …The traditional view has always been—and I hope that we shall maintain it—that persons having similar opinions, whatever one's view of those opinions, should have the right to organise themselves and put forward those opinions, provided they do not go beyond the limits set by the law in the interests of the community as a whole. ... What the law does, quite rightly, is to single out specific actions contrary to the interest of the community, without impairing the right of free speech, of which the right to demonstrate forms a very important part.'').

[155] See the discussion of the Working Groups on Public order, above.

[156] MPS-0730060/2 (File documents on meeting the police, Home Office and Security Service to discuss policy on demonstrations).

[157] UCPI0000035301. Speech by Mr Thistlethwaite of the Security Service of 24 September 1968: ''...Good intelligence translated by Special Branches into Police language not only alerts the Uniformed Police of disturbances ahead but enables them to provide sufficient police to protect but not excessive Police to provide the very provocation the opposition seeks. This delicate balance which we have so far been able to achieve has never even been sought on the Continent or in America. [A foreign official] needed a great deal of convincing by me that we were taking seriously the demonstration planned for 27 October because he had read in [a British newspaper] that there would be 6,000 police in the streets, a number he considered to be derisory.''

[158] CTI opening for T1Mod2b and 2c (27 January 2023) at §14.

disorder (as Lord Scarman and others advocated). It aims to provide sufficient numbers to best protect those involved in the demonstration, property, and the public at large, from harm. It also seeks to avoid excessive numbers which might provoke a violent response by reason of excessive show of force. It minimised the risk of police officers being withdrawn from other policing work elsewhere in the capital unnecessarily, at a cost to the wider populace. It minimised undue costs to the London taxpayer.

171. CTI also suggests the Inquiry needs to consider whether SDS intelligence contributed towards police achieving the goal of dealing with demonstrations with sufficient but not excessive police numbers. Several points can be made, which are developed below:

    a. The Inquiry's investigation, including gaps in the recovered paperwork, puts limits on what can be achieved in this regard;

    b. The view of the SDS managers and those who reviewed their work, was that in respect of public order the SDS made an important contribution to MPSB threat assessments;

    c. The view of those in MPSB preparing those threat assessments, to the extent they knew of the SDS, was also that SDS intelligence contributed significantly (even though they could not appreciate at the time, quite how much);

    d. Accurate MPSB threat assessments were '*vital*' to the work of MPS A Department (Operations) and specifically A8, which was responsible for the uniform public order policing of significant events;

    e. This view appears to have been shared by the Home Office, and was the basis for their continued authorisation of the SDS.

Investigation limits

172. Despite its efforts, the Inquiry is not in a position to exhaustively assure itself in respect of each event within the decade (many of which can be seen on the Chronology at Appendix B) whether the policing decisions on the ground were positively or negatively (or not at all) affected by SDS intelligence. The Inquiry's investigation, lengthy as it has been, simply does not allow for this. The Inquiry is well aware of the frequent concerns raised by former UCOs as to missing intelligence, and that the preponderance of that missing intelligence concerns the

public order aspect of the intelligence the officers provided. This has previously been noted by the Designated Lawyer on behalf of many of the officers.[159]

173. In addition, the Inquiry has not undertaken any kind of comparative analysis between policing models in different states (i.e. analysed the history of the policing of demonstrations in this decade in the UK as compared to countries operating with different policing). A proper comparative analysis would extend to how the UK's approach differed or did not differ, and then to what extent advance intelligence affected that.

The view within the SDS of the value of the work

174. It was evidently the view of those running the SDS that its intelligence had a manifest effect and was helping to reduce disorder at demonstrations. This is clear from multiple reviews of the SDS by successive managers. The consistently expressed view is that the work was necessary, had value and that value was sufficient to meet the risks incumbent in the operation. Albeit at the level of generality the Annual Reports and letter to the Home Office record these points:

    a. In May 1969, Chief Superintendent Cunningham's view was that 'Disorderly demonstrations are diminishing, due to some extent to superior intelligence supplied by the Squad' [160]

    b. In November 1970, Chief Inspector Saunders' view included that 'signs that the extremists are seeking outlets in small, isolated acts such the recent as petrol bomb incidents in London' necessitated 'the more sophisticated methods of penetration of the SDS than are necessary for coverage of the large-scale demonstration'[161]

    c. Assistant Commissioner Brodie put it as follows in his letter to the Home Office seeking funding for 1972:[162]

        I need hardly emphasise how important it is at the present time for Special Branch to be as well informed as possible of all activities of extremist organisations. During this past year we have witnessed a growth in violence attributable to political extremists, ranging from the IRA to the anarchist Angry Brigade. In between are numerous other political groupings which, when the opportunity arises, are all too ready to promote public disorder.

        With the Commissioner I have closely examined the record of work done during the year by this special Squad, and we are both agreed that the type of information

[159] See the Opening Statement for T1P1 by the Officers represented by the Designated Lawyer, §6.3.
[160] MPS-0728973/3 §4 (Review of 20 May 1969, 1969 SDS Annual Report).
[161] MPS-0728972/5 (1970 SDS Annual Report §25).
[162] MPS-0728971/1 (1971 Annual Report).

it obtains enables the uniform branch to plan more effectively to meet public order situations arising from demonstrations than in the years before the Squad was formed; at the same time, the Security Service, which maintains a close and effective contact with those running the Squad benefits greatly from the intelligence product it secures.

d. Assistant Commissioner Woods explained in the equivalent letter the following year (21 February 1973): 'Time and experience have brought increased sophistication and professionalism to these operations, and the potential for violence and public disorder in London in the year ahead fully justifies their continuance'. [163]

e. The Annual Report of 1973 includes a detail break down of the work the SDS had done for its 'chief customers' (Special Branch, 'A' Department, CID and the Security Service) and explains in clear terms the value of the work carried out by the SDS to each. There is no reason to doubt this important assessment, which the Inquiry is urged to consider with care[164]

f. The Annual Report for 1973 records 'Suffice it to say that, by modern standards, the year was not remarkable for the size, frequency or violence of public demonstrations in London, and intelligence of all those organised or significantly supported by the groups covered by the SDS was obtained in good time for effective police countermeasures to be taken'.[165]

g. Assistant Commissioner Woods wrote to the Home Office on 22 March 1974 and said of a lessening of pre-determined violent confrontation with the police: '…I believe this was in part measure due to the accurate, well-assessed reports emanating from the Squad. These enabled uniformed Divisional Commanders to apply adequate strength in numbers to containing potentially violent situations without any show of over-reaction which can inflame militant passions at times.'[166]

h. DCI Kneale emphasised, in the Annual Report for 1975, that 'The SDS provided accurate information about numbers taking part as well as the potential for public disorder on all the major, and most minor, demonstrations during the past year. On many occasions the organisers' estimates were widely inaccurate, and in some cases, particularly demonstrations and pickets arranged by 'splinter' groups, police were either not officially informed or could not contact the organisers. After the

[163] MPS-0728970/7 (1972 SDS Annual Review)
[164] MPS-0728970/10 (1972 SDS Annual Report).
[165] MPS-0728975/3 (1973 SDS Annual Report).
[166] Letter AC Woods to James Waddell (Home Office) requesting authorisation for the SDS to continue. MPS-0730906/1 at §4.

demonstrations, identifying particulars of those taking part were supplied to the officer reporting the event.'[167]

i. CI Craft emphasised in the Annual Report for 1976 that: 'The quality and quantity of material submitted by the SDS officers has been maintained at a consistently high level throughout the year under review. Whilst the value of up-to-the-minute information about forthcoming public order matters is easily understood, less obvious is the considerable saving in police time produced by a constant flow of reports about people and organisations involved in extreme political activity. These reports form an essential part of the base of information which enables Special Branch to provide accurate assessments of the strength and threat of demonstrations and to bring into the realms of reason the claims about numbers of participants made by the organisers.'[168]

j. In 1977 the point was again made in the Annual Report that the groups being infiltrated 'were committed to non-co-operation with the authorities (i.e. the police) and to causing the maximum disorder possible at public demonstrations. Rarely will they inform police officially of their intentions and the intelligence obtained by the SDS therefore, it is of paramount importance in the provision of effective public order policing, such information being passed with the necessary safeguards to A Department.'[169] In the same year particular examples of the value of SDS intelligence are given in the Review section.

k. The 1978 SDS Annual Report sets out details of the assistance given by the SDS to uniform police, MPSB as a whole, numerous constabularies and various departments of the Security Services. Items of particular interest 'where the SDS has been the main or sole source of information' were detailed and included in respect of National Front/Anti-Nazi League confrontations, extending to incidents which 'did in fact pass without undue incident, primarily because of the information obtained by SDS officers in the 24 hours preceding this event'; and identifying anarchists wanted by the police.[170]

l. The 1979 Annual Report noted that 'Information supplied by SDS staff was of great value in enabling uniform officers to deal effectively with the public order problems which arose both during the period before the [1979

[167] MPS-0730099/6 §20 (1975 SDS Annual Report).
[168] MPS-0728980/4 (1976 SDS Annual Report).
[169] MPS-0728981/6 (1977 SDS Annual Report).
[170] MPS-0728964/8 (1978 SDS Annual Report).

General Election] and on subsequent demonstrations held in connection with the death of [Blair Peach].'[171]

m. The 1980 SDS Annual Report highlighted the value of SDS intelligence about protesters demonstrating against the building of a nuclear power station, which had led to arrests; information supplied about right wing marches and associated counter demonstrations throughout the year; and in respect of the SWP's Right to Work march (to the assistance of Sussex Police).[172]

n. The 1981 SDS Annual Report covers the year in which the riots took place in Brixton. The SDS were able to confirm that, although efforts were made to exploit the situation in the aftermath of the riots, they were not instigated by members of subversive organisations.

o. Highlights from 1982 were neatly encapsulated in the letter from Assistant Commissioner Kelland to the Home Office seeking further authorisation to maintain the operation. He noted: 'There was much involvement in 1982 in seeking information about street disorder in London. We were also able to supply accurate information to our Sussex colleagues whilst the Prime Minister was attending the Conservative Party Conference. The Squad is now further tasked to gather intelligence about white extremists who are attempting to foment black discontent and about members of the animal liberation movement who are committing criminal offences'. [173]

175. The views of these managers should not be dismissed as some sort of conspiratorial desire to maintain the Squad regardless of its merit: there is simply no basis to presume they wished to put individual officers or the Commissioner in the way of harm for an unnecessary frolic. On the contrary, the same Reports contain examples of groups or deployments which were recommended to be discontinued on the basis they were not needed – undermining the suggestion made in some quarters that these Reports baldly overstate the threat in order to maintain the operation at all costs.[174] In addition, there is a fairly consistent view

[171] MPS-0728963/10 (1979 SDS Annual Report).
[172] MPS-0728962/8 (1980 SDS Annual Report).
[173] MPS-0730904/2 (Letter to Home Office dated 11 February 1982).
[174] See, by way of examples, SDS Annual Report 1973 at §10: the Communist Party is not a justifiable target (MPS-0728975/3); SDS Annual Report 1975 at §28: since the WRP's potential for public disorder appeared to have diminished, SDS coverage was to be withdrawn (MPS-0730099/8); SDS Annual Report 1976 at §9: recognising that, whilst it was essential to have intelligence of the activities of the far right as well as the far left, it was not necessary to place an officer into the far right given HN303's intelligence on them did not add anything of any real value to the already excellent Special Branch sources (MPS-0728980/4); SDS Annual Report 1981, confirming that subversive organisations were not involved in instigating the Brixton riots, the CND march in the same year was ''peaceful and good humoured'', confrontations between the extreme right and left wings did not materialise in light of the

which develops across the Reports that the ideal size of the operational squad is 12 undercover officers – with a view expressed that greater numbers would be 'unlikely to be cost effective'.[175] Again, this undermines the suggestion that management were engaged in empire building.

176. It is to be noted that in 1976 a '*complete review*' of the SDS, its activities and objectives was undertaken.[176] The terms of reference for the review were:

    a. Is there a continuing need for the SDS as constituted at present?

    b. Does the public order problem demand the coverage of the range of extremist subversive organisations currently effected?

    c. What proportion of the overall intelligence gathered is of primary benefit towards assisting uniform police to control public meetings and demonstrations, and that which is of interest mainly to the Security Service?

177. The conclusion was that although violent disorder had reduced, the popularity of street demonstrations had increased and there remained an ever-present potential for public disorder. As to what coverage was necessary, two aspects were considered to be of primary importance:[177]

> Firstly, the degree of involvement and manipulation exercised by the 'ultra left' in all protest organisations, particularly in ad hoc committees formed to arrange major demonstrations. Secondly, the number of splinter groups continually being formed, invariably consisting of militant elements. The latter do not recognise the need to liaise with the police regarding proposed demonstrations and pickets, many of which are organised at short notice, and coverage within, or access to, these organisations is essential if adequate police arrangements are to be made.

178. The importance of even negative intelligence on public order was emphasised by the working group, along with the 'very considerable' contribution made by the SDS to the national interest of the Security Service, which was a point that had been 'fully acknowledged'.[178] The findings of the working party were

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Commissioner's decision to impose a ban on processions under the Public Order Act 1936, and the anarchists did little of note during the year (MPS-0728985/9).

[175] For example, MPS-0730903/8 §4 (1983 SDS Annual Report)

[176] MPS-0730658 (Request to set up a study group to assess the continuing need for the SDS).

[177] MPS-07307745/1 at §2 (Findings of the working party set up to review the continued existence of the SDS).

[178] MPS-07307745/1 §3 (Findings of the working party set up to review the continued existence of the SDS)

therefore that there was 'every justification for seeking authority to continue the present working arrangements for the SDS'.[179]

179. It is to be noted that many of the SDS witnesses who gave accounts to the Inquiry typically and strongly affirmed the value of their work in respect of public order.[180]

The contribution of SDS intelligence to MPSB threat assessments

180. Since SDS intelligence was sanitised, even within MPSB, individual officers in MPSB would not always have known they were dealing with SDS intelligence.[181] Nonetheless, the view within MPSB management was that – as a body – SDS intelligence did assist in the production of their threat assessments. This is made clear in the MPSB Annual Reports, in which numerous examples of the fruits of SDS reporting can be seen.[182] It was also made clear to the members of the 1976 working group reviewing the SDS, which noted that in the preparation of threat assessments for uniform branch, 'Chief Superintendents of all operations Squads in the Branch speak most highly of the assistance rendered by the SDS'.[183]

181. The intelligence the SDS provided was not just as to specific incidents or events, but as to who was involved, with an accuracy which allowed events and commonalities to be pieced together and an understanding gained of the attitude of or threat posed by an individual. David Smith (former DCI of MPSB's C Squad) explained:[184]

> Over time, the desks developed a good idea what the various groups were about based on the SDS reports. It was this in particular that allowed for greater accuracy in the threat assessments that C Squad produced. Clearly if there was specific

[179] MPS-07307745/2 (Findings of the working party set up to review the continued existence of the SDS)
[180] See HN218 (First Statement) MPS-0740354/24 §68; HN326MPS-0738584/6 & 37 §§14 & 154; HN329 MPS-0738576/46 §253-4; HN330 MPS-0740328/17 §62; HN334 MPS-0746257/33 §153; HN336 MPS-0739316/4 & 26 §§13 & 115; HN45 MPS-0741095/18 & 21 §§ 67-69, 81 & 82; HN339 §51; HN298 MPS-0746258/20 & 63 §§74 & 219; HN343 MPS-0739804/29-31 & 44-45 §§122-127 & 175; HN347 MPS-0741697/17 §93 .
[181] Roy Creamer did not appreciate the range of SDS reporting in the 1970s due to the 'need to know' principle but now acknowledges that they fed in far more intelligence than he had appreciated (see MPS-0748287/18 at §36, where he gives the example of identifications).
[182] And as to express reference to the value of the SDS operation: it was 'emphatically illustrated' in respect of the 'agitation around the [1970] cricket tour' (MPS-0747835/3); it was anticipated that SDS work would be of value in respect of a risk the question of Rhodesian (as was) independence would bring people onto the streets (MPS-0747786/4); the disturbance at Red Lion Square was said to have underlined the value of MPSB intelligence assessments, and in that regard the work of the SDS had 'proved invaluable in keeping uniformed colleagues informed of the plans of demonstrators' (MPS-0747787/4).
[183] MPS-07307745/2 (Findings of the working party set up to review the continued existence of the SDS)
[184] David Smith Witness Statement at §15 (MPS-0748143/5).

information about an event that would also be woven in, appropriately sanitised where necessary. This permitted A8 to have the right resources in place.

The value of MPSB threat assessments to the work of A8 Branch/ public order police

182. The view of those within the MPS A8 Branch[185] who received and worked from MPSB information and threat assessments, was that these assessments were essential. The assessments would indicate whether a political demonstration was likely to be bigger or smaller than the organisers claimed, be opposed and/or become violent. They were relied upon by A8 Branch, and allowed that department to decide if the event could be policed locally by the division or centrally through A8 operations, and with what resource.[186] The evidence is that MPSB assessments were 'crucial'[187], 'extremely valuable'[188], including negative reports indicating a lack of interest[189], 'vital'[190] and 'absolutely critical' to their work.[191] MPSB 'worked hard not to exaggerate what the risks would be' and the assessments were 'as accurate as you could expect in the circumstances.'[192] Mr Speed explained:[193]

> We in A8 could not have done our job without the Special Branch assessments. Quite frankly, we could not begin to design an operational plan until we knew where the demonstration was taking place, how many people would turn up, the expected violence and whether there was to be any opposition. Once we knew this, we were able to talk about the number of uniform officers and the command structure required.

183. As to contemporaneous reviews, it is clear from the Working Group on Public Order Report of 1968 and the follow up Working Group on Public Order Report of 1971 that the importance of MPSB reporting to public order policing preparations was well recognised at the time. Further, if there was a hint in the 1968 Working Group on Public Order Report that MPSB assessments might suffer from inaccuracy due to the perils of verifying intelligence, that hint was

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[185] The MPS' operational response to public order events was coordinated by A8 Branch – part of A Department (Operations), since at least early 1968. It was responsible for co-ordinating any MPS-wide police public order response, which included anything from sporting fixtures and ceremonial events to political demonstrations and episodes of community disorder (see Antony Speed Witness Statement at §§29-30, §34 (MPS-0748205/13-15)).

[186] Antony Speed Witness Statement at §44, §58 (MPS-0748205/20, 28); Sir Charles Pollard Witness Statement at §39 (MPS-074834/14).

[187] Antony Speed Witness Statement §64 (MPS-0748205/30).

[188] Antony Speed Witness Statement §42 (MPS-0748205/19).

[189] Antony Speed Witness Statement §44 (MPS-0748205/20).

[190] John Cracknell Witness Statement at §30 (MPS-074339/12).

[191] Sir Charles Pollard Witness Statement at §46 (MPS-0748347/17).

[192] Sir Charles Pollard Witness Statement at §46 (MPS-0748347/17) (and see Antony Speed Witness Statement at §75 (MPS-0748205/35), giving an example of experience demonstrating the reliability of MPSB assessments).

[193] Antony Speed Witness Statement at §74 (MPS-0748205/34).

not present in the follow up report of 1971, in which the 'first class liaison between A8 Branch and Special Branch received particular mention'[194] The 1971 Report described the 'most difficult type of event to plan for', which was where small militant groups do not advertise or use the press and arrange their event by personal contact: 'In these cases they can organise spontaneous demonstrations and these incidents are particularly dangerous from the police point of view as a small fanatical group can cause considerable disruption and damage in a small space of time'. Considering these types of organisations, the Working Group concluded 'we are completely dependent on Special Branch for advance information of possible trouble'.[195]

184. The views of the Deputy Assistant Commissioner and Commander of A Department were also sought during the 1976 working group review of the work of the SDS. The SDS working group review records: 'I was assured that the information and assessments prepared by Special Branch regarding impending demonstrations is considered to be of extreme importance to the Uniform Branch, not only to assist in providing adequate police coverage but also to avoid over-reaction which could in itself lead to a provocative situation.'

185. The views of the A8 witnesses – whose evidence the Inquiry has not sought to challenge – and the contemporaneous MPS and SDS Working Group Reviews, should be accorded great weight. As to value it is not clear what evidence there is to contradict them. They are not offset by identifying isolated (or even a number of) individual items of SDS intelligence which did not assist with a specific threat assessment. That would be a false method.

Concluding comments

186. The Inquiry is bound to accept that a desire to maintain a 'sufficient but not excessive policing numbers' (i.e. appropriate to the predicted disorder at the event) model was valid, and that MPSB and therefore SDS intelligence made a valuable contribution towards reaching that goal.

187. The MPS does not accept that a desire to keep its public order response under review over the years, and to make changes to its policing of public order in response to changing times (such as providing defensive equipment, improving training, communications and other developments), is capable of undermining the validity of the overall aim, or the fact that advance intelligence assisted in forming the appropriate level police response to events (be that large or small, wide or directed).

[194] MPS-0748196 (Report of the Public Order Working Group 1968) and MPS-0748197 §9 (Report of the Public Order Working Group 1971)
[195] MPS-0748197 §18 (Report of the Public Order Working Group 1971)

188. Like the Working Group on Public Order Reports of 1968 and 1971, draft papers such as the one prepared on the day of the 'Battle of Lewisham' (13 August 1977) raise proper questions about how best to police large scale events. In the case of the draft paper, it dealt with an event at which opposing factions are involved, some of which wished to conceal their plans from the police.[196] Rather than endorsing a move to the draconian, the draft paper highlighted the utmost seriousness of the risk of changes to policing methods and consequential fall-off in public esteem and support which might occur 'if the violent revolutionary attempts being made from both ends of the political spectrum to destroy the traditional image of the police in this country were to be at all successful'. As to tactics, Deputy Assistant Commissioner Bryan said:

> I do not think we have yet exhausted the traditional possibilities for maintaining public tranquillity. Do we want a CRS or National Guard type development? We are certainly in a new era of violent demonstration which may demand some kind of alternative policing if it gets worse - and certainly at Lewisham we had information of intentions to use a rifle and petrol bombs about which investigations continue.
>
> The fundamental option is whether or not we seek to police demonstrations in accord with time-honoured tradition, or, in meeting violence with violence and in order to protect the innocent public and preserve the safety of the police we move towards paramilitary control of public disorder.
>
> Defensively, given that there is a limit to which gratuitous and often serious injury can be allowed to be inflicted on police, there is a clear need for improved protective equipment. This must take into account improved protection of vehicles and such personal equipment as will protect offices from missiles, corrosive fluid, tear gas and smoke. The increased vulnerability of mounted police and their horses is also a considerable concern.
>
> Offensively, there is a wide and distasteful range of 'weaponry', ranging from water cannon, smoke and tear gas, through to armoured carriers, rubber bullets and rifles. I do not think we are yet at the point where these should be given serious consideration.
>
> There is perhaps another way which could be developed and that is, by more recourse to the Police Mutual Aid Scheme to ensure that police are always present in such massive numbers to inhibit violence in the first place and more easily arrest offending demonstrators in the second. It was this tactic used in 1968 which finally ended the very violent demos in Grosvenor Square. Allegations of police provocation by numbers, does not pertain when the numbers are such as to prevent violence occurring.

189. This shows, first, that there was *not* any change in the desire that British police should not take the approach of foreign police forces, including by utilising any of the range of available 'weaponry' described. The draft paper did not advocate a move to more draconian police measures as a response to Lewisham – but used learning from that event to posit that increases in police numbers such that the

[196] MPS-0748340 (Draft MPSB paper following demonstration at Lewisham).

number which is 'appropriate' in a case such as this might be higher than had hitherto been thought. That is, in cases such as this where there was advance information of intention to clash with the police and the use of weapons, and unwillingness by the SWP to co-operate with the police, more may have been needed than had been put in place. In considering this issue, there is acknowledgement of the risk that increased police numbers might themselves provoke a reaction had been a concern before.[197]

190. Documents such as Deputy Assistant Commissioner Bryan's draft paper must be seen, along with the 1968 and 1971[198] Working Group Reviews as part of a continuum, a process of striving to improve the way public order is policed. In this regard it is to be noted that by 1984, the SDS had recognised the need for accurate intelligence to be all the greater at that time, in light of the Commissioner's then emphasis on *reducing* the number of officers engaged in policing major demonstrations.[199]

191. All of this is relevant to the consideration of how public order policing should take place – an important issue. But the question CTI poses for this Inquiry arising from Deputy Assistant Commissioner Bryan's draft document is 'did SDS intelligence assist the police to avoid more draconian policing tactics at demonstrations…?'[200] With respect, this is the wrong question. It ought to be: did SDS intelligence assist those policing public order to get the numbers (and locations etc) as close to right as possible, based on what was known beforehand (and not on hindsight)? The evidence across Tranche 1 is that it plainly did. How it operated in the Lewisham example is considered more closely at Appendix D: the 'Battle of Lewisham' case study.

The value of the SDS to the Security Service

192. The evidence obtained by the Inquiry indicates that the SDS's deployments also furthered MPSB's second function, the provision of intelligence to the Security Service on groups that the Service judged to be subversive. SDS reporting was routinely provided to the Security Service and MPSB/SDS answered a stream of requests for information throughout the T1 period.

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[197] As encapsulated in the 1968 speech by Mr Thistlethwaite of the Security Service at UCPI0000035301 para 10; in the 1968 Public Order Working Group Report at MPS-0748196 §16; and by AC Woods in a letter to the Home Office (22 March 1974) (MPS-0730906/1).

[198] For example, see in Public Order Working Group Report 1971 at §137, at which detailed study was made of alternative equipment, tactics and so forth, the conclusion was ''We remain convinced that our crown control techniques, based on traditional methods, are still appropriate in the prevailing conditions',' MPS-0748197

[199] MPS-0730902/7 §1 (1984 SDS Annual Report)

[200] Opening for Module 2b and 2c (27 January 2023) at §14-15

193. Witness Z accepts the value of this intelligence,[201] a conclusion which has not been challenged by the Inquiry. The limited number of Cabinet Office documents that are in evidence in the Inquiry, although not commented upon by Witness Z,[202] also establish that the groups targeted by the SDS were of genuine concern to the Government throughout the T1 period and that assessments of their activities and intentions were considered and relied on at the highest level of Government, including within the Home Office, the Cabinet Office, and by the Prime Minister.[203]
194. Important relevant documents are missing from the Cabinet Office papers, for example, the reports of the Interdepartmental Group of Subversion in Public Life ('SPL'), which senior officers in MSPB were entitled to receive.[204] Also missing are the minutes of the Committee of Ministers set up in 1972 and chaired by the then Prime Minister, Sir Edward Heath.[205] Nevertheless, as the CTI observe,[206] the available records clearly demonstrate a consistent appetite – it appears without reservation – for continuous, detailed, intelligence about subversive groups throughout the T1 period, complemented by a desire to take active steps to counter subversion. It is incontrovertible that the SDS's intelligence contributed to this process and to the Security Service's efforts to closely monitor each of the groups they identified to be subversive.

Field deployments

195. Appendix C of these submissions contains short analyses of the SDS's principal deployments from 1968 to 1982 into the following groups or fields:

    (1) Vietnam Solidarity Campaign

    (2) Stop the Seventy Tour

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[201] Witness Z, 1st Witness Statement §§119-123: UCPI000034350.

[202] It is unclear why, given the wealth of documentation that is available (including at the National Archives), Witness Z is not able to provide the Inquiry with an overview of subversion between 1968 and 1982. See the assertion in §50 that '*I am unable to provide, in the present day, a detailed and accurate overview of subversive activity between 1968 and 1983, nor am I able to comment, in any detail, on the level of concern any particular activity or group caused the Security Service at the time*.'

[203] For example, a briefing note for the chair of the Official Committee on Subversion at Home ('SH') on 10 March 1970 concerned the Stop the Seventies Tour committee (UCPI0000035275/2); a Security Service paper 'The Extreme Left in Britain' prepared for a meeting of the SH on 27 November 1970 concerned the Socialist Labour League, the International Marxist Group, the Revolutionary Workers Party, the International Socialists, the Communist Party of Britain, Marxist-Leninist, and referred to other groups infiltrated by the SDS at the time; the chairman of the SH wrote to Prime Minister enclosing a Security Service report on 'Subversion in the UK - 1972' (UCPI0000035255); Sir John Hunt wrote to the Prime Minister on 24 May 1979 attaching a Security Service Paper 'The Threat of Subversion in the UK' (UCPI0000035314).

[204] Gist of evidence concerning MPS attendance at, and access to records of the SPL committee (UCPI0000035307).

[205] Minutes of the first meeting of the Official Group supporting the Ministerial Committee on Subversion (UCPI0000035279).

[206] CTI's opening statement for T1M2B2C, §42.

(3) International Socialists / Socialist Workers Party and Splinter Groups
(4) Socialist Labour League / Workers Revolutionary Party
(5) International Marxist Group
(6) Maoist Groups
(7) Anarchist Groups
(8) Irish Support Groups

PART F - DISCRETE TOPICS

Introduction

196. This section addresses the following five discrete topics:

(1) Training

(2) Sexual relationships

(3) Personal reporting and language

(4) Criminality

(5) Deceased children's identities.

Training

197. The Inquiry's evidence demonstrates that SDS officers did not receive formal, course-based, standardised training for their undercover role. The MPS accepts that in the field of modern undercover policing, as in many other types of policing work, formal training is an essential tool for fostering professionalism, honing skills, and developing resilience. However, policing culture was different in the 1960s and 1970s, and, in particular, there were no established formal standards for undercover police deployments.

198. In respect of the SDS's initial operation between August and October 1968, its officers were not recruited to a pre-existing role, and in some cases the work of these initial recruits went little beyond the type of enquiries plain clothes MPSB officers might conduct, save that the undercover officers would have a back story to rely upon and a false name to give if challenged, and returned to the same meetings time and again.[207]

199. Thereafter, as the work of the SDS extended, those in charge in this early period might fairly have concluded that the expertise in how to carry out an undercover role resided within the unit, rather than in any external course. For this reason, it may be said, the method of training developed whereby an officer due to be deployed would spend a period of time in the SDS 'back office' learning about the type of reporting being carried out, and the type of work done by the existing undercover officers, by processing that intelligence and visiting the safe house for the regular meetings and debriefings.[208] There can be no doubt that those in charge of the unit considered this period to be training, i.e. an on-the-job learning

[207] See, for example, HN329 Witness Statement at §19 (MPS-0738576).
[208] For example, Witness Statement of HN351 at §10 (MPS-0740332).

pathway analogous to an apprenticeship.[209] In a similar vein, whilst there was no formal in-deployment training, officers expected to receive informal advice and instructions during SDS meetings throughout their deployment.[210]

200. Additionally, those in charge of the SDS will have appreciated they could rely on the fact that in almost all cases, the new recruit was an MPBS officer. This would have meant they had undergone a rigorous selection process and training programme. The MPSB training programme was recognised to be very important. In the MPSB Annual Report of 1970, the Deputy Assistant Commissioner records for the benefit of the Commissioner:[211]

> I attach great importance to the new training courses[212] which are joint efforts on the part of the Security Service and ourselves. Two levels of instruction obtain - a general or junior course of 6 weeks duration, and a senior course of 2. The general course is designed for officers with about 6 months to a year's service in a force Special Branch, and the senior one is for experienced officers and those with supervisory duties. As a result of a close and critical analysis of the 1970 courses and adjustments to the syllabuses arising therefrom we now consider both to be pitched at about the correct level of instruction. On that basis we are going forward with 4 general and 2 senior courses in 1971. Officers from all over the country attend… A considerable amount of Branch time and effort is devoted to the running of the courses, but in my view, it is very much worthwhile.

201. By 1979, MPSB ran six initial training courses and two advanced training courses annually.[213] At this time the Initial Course ran for three weeks and was intended for all ranks up to Detective Chief Inspector who had recently transferred to Special Branch; and the Advanced Course ran for two weeks and was aimed at those with at least two years' Special Branch experience (the aim was to limit it to officers with supervisory roles). The Initial Course included sessions on the role of Special Branches and MPSB structure, the role of the Security Service, police/Security Service liaison, an introduction to the threat from subversion, subversion in industry, Trotskyists, Anarchists and the Alternative Society, 'subversion in the UK coloured community', A8 public order, the ultra left, public order in the industrial field, Trotskyists and public order, and right wing extremism.[214] The Advanced Course included sessions on the role and

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[209] Annual Report memo, 12 November 1969 at §5: '…a reserve of one or two officers under training, ready to infiltrate relevant organisations is in my view imperative' (MPS-0728973); Annual Report memo dated 19 March 1976 at §9, noting an officer who left the field could not be immediately replaced because of the need to train their replacement (MPS-0730099/4); Memo dated 18 October 1977, noting a vacancy on the Squad would be filled after a suitable training induction period (MPS-0730697).
[210] Again, for example, see HN351 at §13.
[211] MPS-07474835/6 (1970 MPSB Annual Report)
[212] MPSB training was re-organised in around 1970, leading, it would appear, to the 1970 Terms of Reference for a Special Branch: UCPI000004459.
[213] Explained by DAC Bryan in his letter to the Home Office dated 6 September 1979 (UCPI0000035109).
[214] A programme for the 1979 Initial Course is at UCPI0000034702.

responsibility of the Security Service, an introduction to the Service's study of subversion, the ultra left, international communism, current problems in the subversive scene, and left wing current priorities, and a session on A8 Branch and public order.[215]

202. It is also clear that, for the purposes of detailed written guidance, MPSB had its own comprehensive Standing Orders at this time.[216] SDS officers would also have, to a greater or lesser degree, some experience of MPSB enquiry work. 'Routine' MPSB enquiry work required officers to attend meetings of activists, sometimes discreetly (for example, attending meetings in plain clothes and being willing to give a false name if required), and report on their content.

203. In addition, selection for the SDS was typically on the basis of personal recommendation, thus indicating that the recruit's attributes had impressed an SDS officer or manager. There was an expectation that soundings would have been taken. Whilst 'personal approach' recruitment practices are now recognised to lack transparency, they were far more common across many policing and non-policing fields in this era (including the legal profession) than would be the case today.

204. However, the MPS accepts, in particular in respect of the topics which follow, the events make abundantly clear that considerably better training, guidance and support was needed by SDS officers than was supplied. The MPS does not shy away from that reality.

Sexual relationships

205. During the T1 period, 1968 to 1982, SDS officers had sexual relationships with women with whom they had contact while deployed. The MPS repeats the position it set out at the start of the Inquiry's hearings: those relationships were unacceptable and wrong. 'They should not have happened; and they have caused, and continue to cause, immense hurt and suffering.'[217] The MPS has read and listened to, and accepts, the evidence of Madeleine and Mary, who gave evidence to the Inquiry about the relationships they had with UCOs and the effects these have had on them.[218]

206. It is not possible to determine, at this remove, precisely how many UCOs had sexual relationships during this period; or the identities of all of the women involved. The available evidence indicates that it was a small minority of the UCOs who served in the SDS during this period. Although it does not detract, in

[215] A programme for the 1979 Advanced Course is at UCPI0000035110.
[216] DAC Bryan letter to the Home Office dated 6 September 1979 (UCPI0000035109).
[217] MPS T1P1 Opening Statement, page 4 §18.
[218] 'Mary', 1st Witness Statement, UCPI0000034181; Transcript 04/05/2021: 166/17 - 193/03; 'Madeleine', 1st Witness Statement, UCPI0000034313; Transcript 10/05/2021: 05/11 - 123/08.

any way, from the wholly objectionable conduct that did occur, most SDS officers maintained the professionalism and personal integrity that was to be expected of police officers in their position; and knew that they should do so. Several former SDS officers expressed the clear view, in their evidence to the Inquiry, that this type of conduct was wrong and that this would have been well understood at the time.[219]

207. The deployment of male police officers into groups in which they had regular and (in most cases) long-term contact with women created a clear risk that, left unchecked, some officers would start sexual relationships with those women. That risk, together with the unacceptable nature of such conduct, should have been fully and openly recognised by the SDS's managers. So too should the consequential risk that any sexual relationships could have a grave impact on the women concerned – none of whom, it can be assumed, would have wanted to have any form of sexual contact with an undercover police officer.

208. The SDS's managers should have taken robust and effective measures to prevent sexual relationships from occurring. Specifically, they should have made clear to the UCOs in formal, explicit, instructions and training that such relationships were prohibited and – absent an exceptional excuse such as the need to prevent otherwise imminent loss of life – would amount to serious professional misconduct. The MPS apologises, unequivocally, for the fact that none of this happened.

209. The evidence adduced by the Inquiry does not indicate that the SDS's managers in the T1 period authorised or encouraged UCOs to engage in sexual relationships to improve their cover or to further their efforts to gather intelligence.[220] However, there is some evidence suggesting that some SDS managers may have been aware that sexual relationships were occurring,[221] or were in possession of sufficient information to appreciate a risk that they were, and gave informal guidance that such relationships should be avoided.[222] This knowledge has been denied by the few managers who are still alive and in a position to give evidence in response.[223]

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[219] HN336, Transcript 16/11/2020: 84/06-07; HN304, Transcript 07/05/2021: 15/01-02; Geoffrey Craft, Transcript 18/05/2022: 16/22-17/09.
[220] Geoffrey Craft, Transcript 18/05/2022:68/05-17; Angus McIntosh, Transcript 19/05/2022: 79/14-80/02; Barry Moss, Transcript 13/05/2022: 132/1-7; David Smith, Transcript 16/05/2022: 96/12-97/11; Trevor Butler, Transcript 20/05/2022: 78/4-18.
[221] HN304, Transcript 07/05/2021: 12/09-22, 36/15-25, 40/15-42/03, 46/25-47/08, 52/05-53/08, 55/01-10; Unattributed excerpts from Closed Officer Evidence: MPS-0748061/49.
[222] HN34 Transcript 18/05/2022: 143/10-18; HN244 Transcript 19/05/2022 :26/03-16, 77/10-78/01; HN354/"Vince Miller", Transcript 11/05/2021: 16/25-17/09.
[223] Geoffrey Craft, Transcript 18/05/2022: 09/01-04, 22/22-24, 66/18-67/05, 75/13-20, 144/06-16; Angus McIntosh, Transcript 19/05/2022: 83/09-16, 83/22-84/13, 84/14-86/12; Derek Brice,

210. Faced with these conflicting and incomplete accounts, from a few elderly witnesses who are drawing on memories that are 40 to 50 years old, the Inquiry may consider that it is no longer possible, or fair, to make reliable findings as to what was or was not known or said by individual SDS's managers at the time. However, for the avoidance of doubt, the MPS's position is that – whatever the SDS's managers in fact suspected, knew, or said at the time – they failed to take effective steps to stop sexual relationships from happening.

Personal reporting and language

211. The aims of the SDS in this period, as set out in its 1969 Terms of Reference included: [224]

    a. Identification of those who engage in preliminary planning or who take part in [public] demonstrations.

    b. Gathering and recording information for long term intelligence purposes.

212. These 1969 Terms of Reference set out specific 'results' which were said to have been achieved by this stage:

> New entrants to the extreme left wing political scene are being identified and recorded within weeks of their manifesting an interest in extremist affairs. Personal descriptions are obtained by officers working within groups and this material is submitted personally or passed to officers engaged on normal enquiry work. A balanced view is thus obtained of these individuals from two aspects. New groups are being dealt with similarly.

213. This was an aspect of work which the SDS did which also supported the work of the Security Service.[225] There are a number of examples of the Security Service seeking specific (and general) information about individuals involved in a number of organisations.[226] The SDS undercover officers who gave evidence to the Inquiry confirmed their understanding that their role included reporting on

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Transcript 17/05/2022: 59/23-60/02, 70/21-71/09 Trevor Butler, Transcript 20/05/2022: 77/04-20, 79/03-18, 88/24-89/08, 89/14-19; David Smith, Transcript 16/05/22: 90/16-91/01, 97/12-19, 98/06-23; Barry Moss, Transcript 13/05/2022: 51/20-52/11, 134/08-12, 135/08-15, 136/08-10, 136021-23, 137/04-23, 142/18-143/04.

[224] MPS-0728973/3-4 (1969 SDS Annual Report).

[225] See, for example, Witness Statement of Geoff Craft (MPS-0747446/57) at §147 and live evidence at Transcript 18/05/2022 52/11-52/9, 53/23-54/4.

[226] For example, see the report at MPS-0739241, dated 10 March 1972, in which a request is made for the employment particulars of a named individual, and the information was supplied by the SDS (HN45).

individuals in this way;[227] and that their intelligence would be passed to the Security Service.

214. As the Inquiry's evidence demonstrates, it is certainly the case that the SDS gathered and recorded personal information, such as personal descriptions,[228] and other information such as details about individuals' addresses/house moves,[229] vehicles,[230] finances,[231] associations,[232] domestic arrangements,[233] and employment[234]. This reporting includes some highly personal details about individuals' private circumstances, events or activities. In some cases, there is reporting about children. The MPS invites the Inquiry to take into account five points when reviewing personal reporting.

215. First, the type of wholesale information 'hoovering' carried out by the SDS in this period would not occur in the context of undercover operations today. The SDS in 1968-1982 was operating in an era before careful, pre-planned and proportionality-assessed, targeting of the type required under RIPA and the APP Code of Practice. These governing instruments recognise the particularly intrusive nature of undercover policing, and, through concepts such as collateral intrusion, seek to minimise intrusion into the private lives of those who are not the target of the deployment.[235]

216. Second, even in the environment the SDS worked in – i.e. without a clear framework for assessing the risks of intrusion and minimising collateral intrusion – some of the language used by the officers in some of the reports was not acceptable. This includes rudeness, and derogatory or arrogant language which was objectionable even at the time. It has no intelligence value, and it is

[227] For example, HN45 Witness Statement at §65; HN301 Witness Statement at §81; HN353 Witness Statement at §24; HN200 Transcript 05/05/2021 175/22-176/07; HN354 Transcript 11/05/2021 203/20-204/12; HN126 Transcript 12/05/2021 228/12-230/12.
[228] For example, report of 24 March 1975 (UCPI0000006971), report of 22 October 1976 (UCPI0000021512), all including detailed physical descriptions.
[229] For example, UCPI0000015076 (26 November 1976), giving an address.
[230] For example, UCPI000009726 (22 May 1976), recording vehicle details.
[231] For example, UCPI0000011680 (30 January 1978), recording bank account details.
[232] For example, UCPI0000012280 (22 March 1976), noting the relationship between two members of IS.
[233] For example, UCPI0000010708 (23 July 1976) recording that Richard Chessum had married; and UCPI0000017523 (20 June 1977) recording a man's affair with a fellow SWP activist about which they were quite open, and the attitude of the man's wife to it.
[234] For example, report of 17 December 1974 (UCPI0000015005); 13 March 1974 (UCPI000006919); 20 March 1974 (UCPI000006949); 9 March 1977 (UCPI0000017789) reporting details of a variety of jobs held by individuals.
[235] See RIPA and the revised APP CHIS Code of Conduct 2022

not defended. Simply: it should not have occurred; when seen by managers it should have been amended, and the issue explained to the reporting officer.[236]

217. Third, however, officers should not be criticised for the use of language and terminology which is unacceptable now but was not considered problematic at the time. For example, the use of words such as 'coloured', which would not be used now, was commonplace in this period (and examples can be found in many places, including in Parliament[237]).

218. Fourth, the Inquiry should appreciate that many categories of personal information are capable of being relevant and valuable for intelligence purposes. Personal reporting is not improper per se, even highly personal reporting, which might be valuable and justified in certain circumstances. This point is developed further below.

219. Finally, it would not always have been obvious at the time, or be clear in retrospect, which intelligence was valuable and which should not have been sought and kept. Many SDS officers did not appreciate even when giving evidence what value individual items of intelligence might be capable of having – in an operational context this is understandable, particularly in respect of information where the greater intelligence value was to the Security Service rather than the police. As many SDS officers sought to explain in evidence to the Inquiry, it was not their role to analyse and assess the potential value of information 'on the spot'.[238] The decision whether a piece of information is relevant or of value was, and is, for the analyst of that intelligence, not the undercover officer recording it. Further, intelligence can have latent value that does not manifest until sometime after it has been gathered; or have been reasonably gathered but end up being of little value if the individuals or groups targeted prove to be harmless. As indicated, a core audience for much of this reporting was the Security Service, which has also retained copious SDS reporting in its records.

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[236] Examples of reporting which include arrogant, derogatory or rude phraseology include: UCPI0000010659, UCPI0000011525, UCPI0000021776, UCPI0000014258 (which also includes gratuitous medical information without a clear intelligence value), UCPI0000014174 at §6 (which Mr Moss himself acknowledged in his live evidence: HN218 Transcript 13/05/2022 at 110/25-111/9, 111/20-25).

[237] Consider the debate following the publication of Lord Scarman's 1981 report into the riots in Brixton: https://hansard.parliament.uk/Commons/1981-12-10/debates/14d3be58-4b41-4ca1-90a8-6f7c85a46dd4/ScarmanReport?highlight=%22inner%20city%22

[238] See, for example, HN340 Transcript 16/11/2020 113/12-21; HN45 Transcript 27/04/2021 41/19-42/4; HN96 Transcript 13/05/2021 96/21-97/12, 100/20-102/4; HN336 Transcript 16/11/2020 63/2-9; Craft Transcript 18/05/2022 52/13-25.

220. As to the types of information which might in principle be relevant and valuable for intelligence purposes, the Inquiry is invited to consider the following (not exhaustive) possibilities:

a. Personal descriptions assist with identification. In the era before cameras were commonplace, and when equipment was still large, personal descriptions, with as much detail as possible, were key to accurate identification.[239] Subject to the fact that there is no justification for rude or derogatory language, it should be borne in mind that descriptions are intended to be objectively useful to intelligence analysts.

b. Vehicle details and addresses also assist with identification and provide information about the individual's access and ability to travel (and in the SDS context, whether they might have need of an acquaintance with a car).

c. Employment details can assist with identification. They can also be of importance given the concern that individuals with subversive intent might infiltrate the civil service or other sensitive fields, or given the need to assess the extent of subversive influence within a given industry (a preoccupation which is apparent in the Cabinet Office papers). They might be relevant to understanding what access a person has to particular types of locations, equipment, training, finances or contacts, and what their activities are. Information about employment which might have value could extend to personal information which might affect employment, such as pregnancy.[240]

d. Financial information might be relevant to vetting, and to investigations into subversion or other matters, for example into funding for a group, or the viability of a proposed course of action. Bank details are important to facilitate other lines of investigations.

e. Associations and connections could be relevant to public order, to vetting, and to assessing the risks of the spread of subversion. Even apparently innocuous connections might have some latent intelligence value: the decision as to whether they did is for the intelligence analyst, not for the UCO, but in a given case it might be necessary to understand relationships (friendships, enmities, power struggles within and between groups). These connections may also provide means/route to infiltrate or be relevant to decisions whether to approach individuals as sources (it will be recalled

[239] The report at UCPI000013153 provides an example of how an analyst might link reports by description and therefore identify a single individual from a number of reports.
[240] See UCPI0000012161 (21 February 1975), indicating a woman was four months pregnant, and continuing ''She is a full-time employee of the [Young Socialist Section of the Workers' Revolutionary Party] and her work will naturally be affected by her confinement.''

that there were repeated requests for SDS/MPSB information for the purposes of 'talent spotting' for the Security Service).[241]

f. If a person is considered to be of interest, any significant life event might be considered to have intelligence value, for example for the purposes of identification, vetting, understanding of motives, or willingness to provide information/act as a source. Recording religion and attitudes to it may be of particular significance when reporting on particular communities.

g. Reporting on highly personal but often private life events, such as marital affairs, use of prostitutes, domestic violence, sexuality, and health matters is also present in the SDS materials. The MPS accepts that the recording and retention of such highly personal material should only have occurred with reason, and its particularly personal nature ought to have been recognised. However, it would not be right to conclude such matters could never be of intelligence value per se – they may be, for the same types of reasons set out above – when the circumstances justified it. Further, the recording of this information should not be assumed to be salacious: intelligence about a person's affair or sexuality in the 1970s may have had a perceived intelligence or vetting value then (much of which may be evaluated differently now). Intelligence about relationships can provide or update information about where an individual might be living or staying; intelligence about health matters may indicate a relevant vulnerability which has a proper intelligence value.

h. Reporting that an individual has a child living at their address and details about that child such as their age may also be relevant – for example it would be necessary information when risk assessing an operation, or may be significant for safeguarding or vulnerability assessments.

221. In summary, it can be appropriate to report and to retain even highly private, personal information about individuals, in the context of a properly justified deployment. The Inquiry is therefore urged not to make any finding, at the level of generality, about any class of information being 'off limits' for intelligence purposes. However, it is recognised that no special or directed guidance was given to SDS officers about the types of reporting (mentioned above) which was plainly sensitive and personal. The MPS accepts that it should have been clear to managers from the early days of the SDS that undercover officers had access to far more personal and private information than was available through normal MPSB enquiries. It would have been beneficial for some form of guidance on this topic be given to undercover officers – to ensure reporting remained relevant,

[241] See for example, UCPI0000031256 (7 December 1972) at §6; UCPI0000030776 (14 October 1977) at §4c; UCPI0000030772 (7 November 1977) at §2; UCPI0000030060 (21 December 1977) at §6; UCPI0000028795 (16 September 1982) at §11.

necessary and ethical. It is clear that this type of consideration simply was not in evidence in the intelligence community at this time, many years before RIPA.

222. During the course of the Inquiry particular attention was rightly given to reports by SDS officers concerning the activities of children.[242] However, there are circumstances in which such reporting may also be appropriate. For example, particular attention was given to reporting by HN126 on members of School Kids Against the Nazis (SKAN), a group which formed in around 1978 and could 'with short notice, get large numbers of school students onto the streets, should the need arise (for example, to heckle a National Front meeting)'[243].

223. SKAN was not infiltrated, but it was connected to the Socialist Worker's Party, which HN126 infiltrated. HN126 maintained that reporting information about members of SKAN which he came across during his deployment into the SWP would be appropriate given the public order and subversive threat they posed, their age notwithstanding.[244] It is now clear that at this time the Security Service was also 'particularly interested in information about … older pupils (14 or over) who are active in subversive organisations or in organisations which are exploited for subversive purposes such as the National Union of Students (NUSS)'.[245] This provides a good example of how the value and justification of particular reporting – in this case, in respect of both public order and counter subversion – may be very difficult to ascertain let alone assess at this remove.

Criminality and miscarriages of justice

224. The guidance in respect of engagement in criminal conduct which was in operation from close to the beginning of the T1 period was Home Office Circular 97/1969 (HOC 97/1969), concerning the use by the police of 'informants who take part in crime'.[246] Whilst recognising it was not possible to set down rules of general application, a number of key principles emerged. HOC 97/1969 was made public in part, in the form of a summary in the New Law Journal[247] which provided:

> **Police Use of Informants**
>
> A STATEMENT has been issued by the Home Office to the effect that as a result of 'recent judicial and public comment', the Home Secretary has sent a 'confidential circular' to the chief officers of police setting out the principles which should be followed where the police make use of informants. This is described in

[242] By way of example, see HN96 Transcript 13/05/2021 at 97/24-99/9.
[243] See summary in MPSB report of 3 January 1979 (UCPI0000013063).
[244] HN126 Transcript 12/05/2021 204/2-215/20 in respect of a sequences of reports about ''Child 1'' and 221/11-223/25
[245] Security Service request to Chief Constables of 16 December 1975 (UCPI0000034698), which was re-circulated in December 1978 (UCPI0000034697).
[246] MPS-0727104 (Home Office Circular 97/1969 on Informants who Take Part in Crime)
[247] May 29 1969, Vol 119, No 5392

the statement as 'an operational police matter, full details of which cannot be disclosed' but the guidance offered to chief officers of police in the confidential circular: 'takes account of the following points:-

1. If society is to be protected from criminals, the police must be able to make use of informants in appropriate circumstances. Informants, appropriately employed, are essential to criminal investigation and, within limits, ought to be protected.
2. Strict limits should be imposed on the extent of an informant's participation in a crime.
3. No member of the police force, and no police informant, should counsel, incite or procure the commission of a crime.
4. The police must not embark on a course which will constrain them to withhold information from or mislead a court in order to protect an informant.
5. There must be effective supervision by senior and experienced officers in the use of informants; and particular care must be given to the training of detectives in this subject. The Home Secretary has instructed HM Inspectors of Constabulary to pay particular attention in their inspections to arrangements made in forces for this supervision and training.'

225. Whilst perhaps not plain on its face that HOC 97/1969 would apply to police officers in addition to civilian informants, it should have been clear at least from two 1974 authorities, *R v McEvilly and Lee*[248] and *R v Mealey and Sheridan,*[249] that it did.

226. Unsurprisingly, few of the SDS officers who gave evidence to the Inquiry recalled HOC 97/1969 by name or recognised the Circular itself in its original format, but its central principles, at least insofar as not acting as an agent provocateur, were broadly understood by the majority.[250] Some recalled this type of guidance being given expressly in the context of the SDS work, others

[248] *McEvilly and Lee* [1974] Crim LR 239 (concerning an undercover officer, the question being whether their involvement gave rise to a defence of entrapment. The Court of Appeal held that there was no such defence in English law).
[249] *R v Mealey and Sheridan* (1974 Cr.App.R. 59 (which concerned a civilian participating informant, and in which the Court of Appeal again confirmed that there was no defence of entrapment in English law). In this case the Court commented on the summary of the HOC 97/1969 in the New Law Journal for 1969: 'Our attention has been drawn to the fact that the Home Office have issued some guidance to police officers to assist them in drawing the line between the acceptable co-operation with suspects and an unacceptable provocation of offences, and the extracts so far as they may be made public are to be found in the New Law Journal… and this Court would approve of them so far as they go.'
[250] See, for example, HN339 Witness Statement at §15 (MPS-0736910); HN351 Witness Statement at §11 (MPS-0740332); HN348 Witness Statement at §18 (MPS-0741698); HN299/342 Witness Statement at §28 (MPS-0745773); HN96 Witness Statement at §28 (MPS-0745772).

did not.[251] Roy Creamer suggested in his evidence that rules about agent provocateur were clear within the SDS from the outset.[252]

227. Many UCOs have informed the Inquiry that lawbreaking was not an issue in their deployments, as the groups into which they were deployed were not engaged in criminal conduct. However, a number of UCOs were involved in fly posting,[253] or conduct during demonstrations which would amount to obstruction,[254] both of which appear to have been tacitly authorised, and treated at the time as being conduct of a type necessary to show the requisite enthusiasm for their role and to maintain their cover.[255]

228. Four cases studies are considered below, which between them draw out a range of issues and allow the MPS to state its position in respect of them.

(1) The arrest of HN68

229. On 26 June 1970 HN68 (deployed 1968-1974, now deceased) was arrested at a demonstration which had been planned on 25 June 1970 (and reported to MPSB by telephone and in writing).[256] This appears to have been the earliest example of this occurring to an SDS officer. HN68 was subsequently one of five men convicted of obstruction of the highway following a guilty plea entered at Bow Street Magistrates' Court on 27 June 1970.

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[251] HN348 recalls being told about agent provocateur in the context of the SDS (Transcript 18/11/2020: 12/7-11; 19/21-20/11); managers Paul Croyden, David Smith and Angus Macintosh recall officers being briefed on this at the outset of their deployments: see Witness Statement of Paul Croyden at §64 (MPS-0747192); live evidence of David Smith at Transcript 16/05/2022 15/13-16/9, 18/9-24, 24/22-25/15; Witness Statement of Angus MacIntosh at §169 (explaining that feeding ideas into the group on the commission of a crime would be wrong, but the UCO's presence or general enthusiasm for the cause could not always be avoided as part of the role) (MPS-0747548)).

[252] Roy Creamer Second Witness Statement at §15 (MPS-0747215/6).

[253] For example, HN339 Witness Statement at §65 (MPS-0736910/19); HN345 Witness Statement at §64 (MPS-0741109/26); HN354 Witness Statement at §25 (MPS-0744903/5); HN321 Witness Statement at §81 (MPS-0747158/25).

[254] For example, HN321 Witness Statement at §81 (MPS-0747158/25); HN353 Witness Statement at §70 (MPS-0740413/27)

[255] This was the view of manager Barry Moss: see 2nd Witness Statement at §73: 'I would have seen [flyposting] as something that was necessary for their cover as long as they were not the person who suggested it' (MPS-0747797/45); and David Smith: see Transcript 16/05/2022 15/20-16/9. Some such conduct was understood as necessary for undercover work generally: see *R v Mealey and Sheridan* (1974 Cr App.R 59 at p61: '…common sense indicates that if a police officer or anybody else infiltrates a suspect society, he has to show a certain amount of enthusiasm for what the society is doing if he is to maintain his cover for more than five minutes').

[256] Report at UCPI0000016118 of 25 June 1970 which records at §9 the plan to demonstrate at the Home Office the following day – which had also been reported by telephone; report at UCPI0000016116 of 26 June 1970 which records the arrests at that demonstration; and report at MPS-0732204 which records the convictions on 27 June 1970.

230. HN68's contemporary, Barry Moss, recalls knowing about a likely arrest of HN68 before it occurred (he was not sure of the offence) and a plan, agreed in the SDS office, that HN68 was to accept the arrest, offer no resistance and plead guilty.[257] This appears to reflect the circumstances of the 1970 arrest, in the sense that it may have been anticipated from the day before that the arrest would occur; and the outcome accords what HN68 did in respect of his 1970 arrest.

231. Given the circumstances as described in the contemporaneous report,[258] and the fact there is no evidence to indicate whether the Court was informed of the presence of an undercover officer, the MPS acknowledges that the Inquiry may be considering a Referral to the Miscarriages of Justice Panel in this case.

232. On 21 February 1971 HN68 was reported (not arrested) for taking part in an unauthorised street collection in aid of Sinn Féin, and, as he was in his car when approached by local officers, was also required to produce his driving licence to Wimbledon Police Station. Being an Irish matter, it was reported to MPSB by local police. Local police investigating HN68's vehicle quickly established that was in fact a police vehicle.[259] This must have provided a clear lesson to the early SDS management in the importance of proper backstopping,[260] and it is in stopping the enquiries about the car and its connection to Scotland Yard that MPSB wished its name to be kept 'in the background'.[261] The evidence does not show that MPSB 'directed' the course of a caution. The Inquiry is invited to conclude that there is nothing untoward in the conduct of this matter by the SDS and MPS.

233. A *possible* further arrest of HN68 took place in 1974, after which HN68 was withdrawn from the field because of a possible compromise (recognition by uniformed police officer).[262] Again, there is no indication that anything untoward occurred.

(2) The prosecution of HN298

234. As the Inquiry knows, in 1972 HN298, in his cover identity, was convicted of obstructing the highway after trial. A number of issues arise from this. First, during the course of the preparation for trial HN298 reported the contents of conversations between his co-defendants and their lawyer. It appears clear that no guidance was given to SDS officers (formally or informally) about the special character of legally privileged material, nor any particular care taken in this case

[257] Barry Moss Witness Statement §12 and §79 (MPS-0740354).
[258] Report at UCPI0000016116 at §4
[259] MPSB records at MPS-0735864
[260] It may also explain the first sentence of §17 in the SDS Annual Report of 1971 (MPS-0728971/6).
[261] Cf CTI Opening for T1P1 at §69.10
[262] David Smith Witness statement at §60 (MPS-0747443/27); David Smith Transcript 16/05/2022 84/21-86/14.

once it had been identified. Given the special character of this category of information was well known even in 1972, this should have been recognised, but was not.

235. This case may be symptomatic of the wider failure within the SDS, MPSB, and police at the time to recognise the particularly intrusive nature of undercover work, or to consider whether any limits should be (self) imposed on reporting in light of the vastly enhanced access to confidential information which the tactic opened up (see also the subsection above on personal reporting). Now, deployments which are targeted towards or which might lead to the discovery of legally privileged information are considered to be particularly sensitive and subject to particularly close authorisation and monitoring procedures.[263] The reporting which HN298 made of privileged information would not have been justified now.

236. Second, it is clear that the SDS and MPSB management allowed the prosecutions of HN298 and his co-defendants to proceed but did not make disclosure to the prosecution or court of the involvement of an undercover officer. The MPS accepts the reality of this non-disclosure: the prosecutor and court were misled. The guidance which made clear the correct and appropriate course (HOC 97/1969) was in place at the time. This misleading of the court should not have occurred, it was wrong; and this should have been appreciated at the time by all those within the MPS hierarchy who were made aware of this case. It appears that those in charge of the SDS prioritised the security of the unit and advantage to the deployment[264] over disclosure to the court, and/or failed to consider how appearing in a false identity was misleading a court[265] – but they were incorrect to do so. Whilst disclosure would have needed to be carried out securely and with great care, it should, nonetheless, have occurred. The MPS notes that, following the Inquiry's referral to the Miscarriages of Justice Panel, some of these convictions have now been overturned at Kingston Crown Court. The MPS apologises to Professor Jonathan Rosenhead, Christabel Gurney OBE, and Ernest Rodker, and the other individuals concerned.

237. Third, HN298 was convicted in his cover name, and using the same date of birth, as a living individual: Michael Scott.[266] Whilst it is not clear that the real Michael Scott ever received a conviction on their own record for this matter,[267] that they

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[263] See CHIS Revised Code of Practice December 2022 at §§9.10-9.11, §§9.54-9.87 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1123687/Revised_CHIS_Code_of_Practice_December_2022_FINAL.pdf

[264] See MPS-0526782z (memoranda including SDS and MPSB management discussion of these events).

[265] See David Smith Transcript 16/05/2023 100/23-104/16

[266] HN298 Witness Statement at §17 (MPS-0746258/6)

[267] The conviction in 1972 pre-dates the Police National Computer (PNC), and is not present on that system now amongst records held on microfiche which contain data held on persons who first came to notice before the computerisation of records, but it is not clear that it was never there as it might have been weeded under 2009 ACPO rules no longer in place: see Karen Progl Witness Statement at §4, §21, §28 (MPS-0747684); Katie McAleer Witness Statement, §§2-3 (MPS-0747688).

might do was plainly a risk which should have been identified at the time. However, there is no evidence that SDS/MPSB management were alive to this risk or took any positive steps to ensure no conviction was recorded against the real Mr Scott. Plainly, if this conviction was recorded against the real Mr Scott, it was wrong. The MPS apologises to the real Michael Scott, if he is alive, for this and for the risk having been run in his case.

(3) The assault of Gerry Lawless by HN298

238. HN298 has described that, in 1974, he was told that Gerry Lawless (of TOM) had said HN298 was a spy. That evening, driving home, he saw Mr Lawless and confronted him, during which episode HN298 assaulted Mr Lawless by punching him to the face. [268]

239. HN298 informed his managers of the assault after it took place. He recalled their expressing reluctance that he would attend the next meeting (although he did, with managers nearby for support), but he did not recall any mention being made that he should or should not have punched Mr Lawless.[269] David Smith[270] and Derek Brice[271], who managed or may have managed HN298 in this period were not asked about this incident. Geoffrey Craft[272] was asked but did not recall the incident. However, in his evidence he made clear that, had he known, it was 'something we'd have had a look at and decide should that man be left in the field, because clearly he's not under control in those circumstances'.[273]

240. The indications are that HN298 was redeployed/redirected to the WRP at this point: after one further attendance, HN298 ceased attending meetings at which Mr Lawless might be present, and began reporting on WRP.[274] This is, perhaps, because the type of consideration that Mr Craft identified would be likely to happen had taken place.

241. There is, however, no evidence that consideration was given to a disciplinary process in respect of HN298's conduct. Mr Craft explained in his live evidence the perceived difficulties for management in disciplining officers who engaged in misconduct in the course of their SDS work.[275] The MPS is clear that UCOs, whatever the nature of their deployments are (and should always have been) subject to the same conduct regulations as all other officers. It is recognised that

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[268] Account in HN298's Witness Statement at §§168-169 (MPS-0746258/48) and Transcript 04/05/2021 at 136/3-140/18.
[269] HN298 Transcript 04/05/2021 at 141/6-20.
[270] DS in the SDS back office until Summer 1974.
[271] DI in the SDS back office until Autumn 1974.
[272] Possibly a DI in the SDS back office during 1974.
[273] Geoffrey Craft Transcript 18/05/2022 145/21-146/16.
[274] Account in HN298's Witness Statement at §§170-172 (MPS-0746258/48)
[275] See Geoffrey Craft Transcript 18/05/2022 at 25/7-15 (in the context of Richard Clark), and 146/12-16 (in relation to HN298).

the secret nature of undercover work, and the need for fair discipline, would have made the management of that particularly challenging. However, the answer to those challenges is not – and never was – to effectively leave officers' conduct unregulated. This early impotence in the face of misconduct may explain incidents the Inquiry will consider in later tranches, in which discovered misconduct was managed poorly, and in which some UCOs appear to have behaved as if impervious to discipline.

(4) The arrest and charge of HN13

242. HN13, who is deceased, was arrested and charged twice during his 1975-1978 deployment with CPE(M-L). Once in September 1977, with the charge dismissed at Barking Magistrates' Court on 12 April 1978 (but some of those charged with HN13 were convicted). The second arrest dates to 15 April 1978, HN13 was thereafter tried alone and convicted at Camberwell Green Magistrates' Court of threatening behaviour (s.5 of the Public Order Act 1936).[276]

243. There is evidence that HN13's arrests were considered by senior officers, up to the Commissioner.[277] Geoffrey Craft[278] confirmed, in respect of the Barking matter, that no disclosure was made to prosecution solicitor or counsel, but disclosure was made to the court:[279]

> I briefed the magistrate that this was an undercover officer working under his undercover name, but it was a secret operation, that he would maintain that name. My concern also was that because he was arrested with this -- these other people, who liked to make public displays, the chances were that he -- they might try to kick up in the dock and behave badly, that he would be obliged to maintain his cover, to join in.

244. Disclosure was also made to the court in respect of the Camberwell Green matter, on the basis HN13 was 'a valuable *informant*' (original emphasis).[280]

245. The view of Deputy Assistant Commissioner Bryan expressed at this time was that the risk of arrests 'provided it is controlled, supervised and measured in the way we do it – its commensurate with the importance of the intelligence we derive'. There is also an indication of Michael Ferguson's[281] view of the management of arrests too: an October 1979 Security Service note records 'Ferguson remarked that certainly for the more trivial offences [UCOs being involved in illegal behaviour] was of no real hindrance to their operation since

[276] Memoranda at MPS-0526784.
[277] MPS-0526785/5 and MPS-0526784/3, 5
[278] DCI head of the SDS until the latter part of 1977 (when he was promoted to Superintendent).
[279] Geoffrey Craft Transcript 18/05/2022 86/1-22
[280] Memoranda at MPS-0526784/4, 6
[281] DCI from 1978.

they were often able to insulate their sources even though this sometimes meant not prosecuting other offenders'.[282]

246. Whilst the course of conduct taken by police in respect of HN13 does not mirror the approach which would be take in the modern day,[283] the approach differed from the course taken in respect of HN298's conviction in at least the following ways: first, there is clear evidence of the involvement of very senior officers (noting the active engagement of Deputy Assistant Commissioner Bryan and the briefings to the Commissioner); second, there was in both cases disclosure to the court (albeit that its adequacy cannot be assessed). Accordingly, it is arguable that the court was not misled. It has not been established what the courts did with the information or how they approached the trials of the co-charged in light of it.

247. As the Inquiry is aware, the convictions of those charged with HN13 on these two occasions were referred by Operation Herne's Operation Shay to the CPS in November 2014 as being potential Miscarriages of Justice, but were not taken further.[284] The MPS recognises that the Inquiry may wish to give consideration to the matter of a further referral to Miscarriage of Justice Panel.

Deceased children's identities

248. The MPS acknowledges, as it did at the start of the T1P1 hearings,[285] that insufficient consideration was given by the SDS to the impact the practice might have had, if revealed or discovered, on the families concerned. For the reasons explained, that impact was neither intended nor foreseen. But for the families, it has been significant and the MPS apologises again for the shock and distress that they have suffered.

249. It is not clear precisely when the SDS first started using deceased children's identities or what prompted it to do so. There is some evidence to suggest that the practice was popularised by *The Day of the Jackal*, a novel published in 1971, but this is far from conclusive.[286] Whatever the correct position, the practice was already in use by the time the managers who have provided evidence to the

[282] Security Service note of meeting with HN135 on 2 October 1979 at §3 (UCPI0000028810).
[283] Noting that '[HOC 97/1969] correctly stated a constant principle: the court must not be misled. Subsequent case law has established what is required: the prosecutor must be informed and must decide whether or not it is necessary to inform the Court; the circumstances in which he may not do so are rare in the extreme; it is for the trial Court to decide what, if any, disclosure should be made to the defence to ensure that justice is done: see *R v Patel and others* (2001) EWCA Crim 2505 and *R v Early* (2002) EWCA Crim 1904.' (Chairman's first reference to the Miscarriages of Justice Panel.)
[284] Report to the CPS regarding a potential miscarriage of justice due the involvement of HN13 in a prosecution (MPS-0722618).
[285] Opening Statement T1P1 MPS CL 22/10/22 §22.
[286] Live evidence of HN34 Geoffrey Craft Transcript T1P3 18/05/22 – 3/13.

Inquiry joined the SDS. They either authorised its continued use[287] or informally maintained the pre-existing practice.[288]

250. From the mid-1970s it was standard practice for UCOs to use children's identities as part of their legend building. This corresponded with an increase in the length of the undercover deployments[289] and the move to infiltration of more security-conscious organisations.[290] These two factors created a significant, ongoing, risk that the UCOs' false identities would be uncovered – thereby terminating their work and, more importantly, exposing them to a real risk of physical harm. As observed by Angus McIntosh (HN244):[291]

> [A] UCO with no birth certificate or entry in the register of births would be vulnerable to compromise if a member of their organisation attempted to research their past; compromise or exposure would pose a risk to their safety, their family's safety and the SDS.

251. It was therefore essential for UCOs to create credible identities that could withstand proactive, close, scrutiny, including checks of the birth records which, at the time, were publicly available in hardcopy at the General Records Office.[292] It was not possible to falsify entries into these records. So using the identity of a real person was considered necessary for safety purposes. It also had the secondary advantage of giving UCOs access to hardcopy birth certificates, which they needed to obtain driving licences and passports in their cover identities.[293] The person in question needed to be born at about the same time as the officer to avoid suspicion as to the disparity between age and appearance. But it should not be a living person, who might be known to a member of the group, or be discovered (by research or accident), or by dint of the deployment, gain a Special Branch file. For all these reasons it needed to be someone who had died.

252. The use of a deceased's person's identity still carried an inherent risk that that the UCO's 'death' would be exposed by reference to the corresponding public records of deaths. Using the identity of deceased child was believed to minimise this risk by maximising the difficulty of finding the associated record. It also

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[287] Witness statement of HN34 Geoffrey Craft MPS-0747446 §115.

[288] Witness statement of HN218 Barry Moss MPS-07447797 §65; witness statement of HN244 Angus McIntosh MPS-0747578 §157.

[289] See for instance the evidence of HN218 Barry Moss Transcript T1P3 13/05/22 -63/9.

[290] See for instance the evidence of HN244 Angus McIntosh Transcript T1P3 19/05/22 – 63/12.

[291] Witness statement of HN244 Angus McIntosh MPS-0747578 §155.

[292] As stated in footnote 11 of the MPS's T1P2 opening statement, the General Records Office was located in Somerset House until 1970 and thereafter in St Catherine's House.

[293] Live evidence of HN218 Barry Moss 'I didn't see any other way of – of being able to get the supporting documents than having a birth certificate' transcript T1P3 13/05/22 – 62/24; live evidence of HN307 Trevor Butler who says that the practice was necessary because 'I didn't have any alternative suggestions for obtaining their identity, their birth certificate, passport, whatever' transcript T1P3 20/05/22 – 41/25.

meant that other personal records that could jeopardise the UCO, e.g. of employment or education, would be non-existent or difficult to find. A hostile researcher may not have thought to look for the death of a child or may not have wanted to search many years of historical archives. The manner in which the records were kept, in separate ledgers, made it more difficult to establish a link between birth and death,[294] particularly in circumstances where the child had been a little older when they died, because birth and death certificates would not be located near each other.[295]

253. In summary, in the T1 period the use of deceased children's identities was believed to be the only effective, practical, and safe means of preserving SDS officers' false identities.[296] While the practice was not entirely without risk, it remained the securest method available. This view prevailed notwithstanding the fact that the link between the birth and death had been established during the deployment of one officer, HN297, and had led to him being compromised and withdrawn from the field. During the Inquiry, no one has yet identified an alternative method which would have been as effective and safe at the time. The Inquiry is asked to accept that this was a necessary practice, in all the circumstances, or alternatively, that it was reasonable for the SDS's managers to have believed it to offer the best solution.

254. Given the highly secretive nature of the work undertaken by the SDS, it was not anticipated by anyone that the tactic of using deceased children's identities would become public, thereby causing distress to their families.[297] It was 'inconceivable that bereaved families would become aware'.[298] As Trevor Butler (HN307) told the Inquiry:[299]

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[294] Witness statement of HN34 Geoffrey Craft MPS-0747446 §155.

[295] HN354 states in evidence that he believed it was preferable to take the identity of someone who had died a little older because this would increase the number of death searches that needed to be made and therefore increased the size of the 'haystack'. There were separate indices for each quarter, and you had to know the geographical area so if the child died aged 5, that would mean that a member of the public looking for a death certificate would have to search 20 incudes. If the child had moved from the birth area, that made it more complicated still. N354 chose someone who was born outside London because he believed that people would be less inclined to travel if they decided to try to trace the parent Transcript T1P2 11/05/21 – 26-34. The evidence of HN200 is in similar terms: Transcript T1P2 05/05/2021 – 158/3.

[296] Witness statement of HN218 Barry Moss MPS-07447797 §65 and remarks in evidence Transcript T1P3 13/05/22 – 63/2-3.

[297] See for instance the witness statement of HN34 Geoffrey Craft MPS-0747446 §115, Transcript T1P3 18/05/22 – 21/7; witness statement of HN218 Barry Moss MPS-07447797 §65; witness statement of HN244 Angus McIntosh MPS-0747578 §157; witness statement of HN307 Trevor Butler MPS-0747658 §109

[298] Witness statement of HN34 Geoffrey Craft MPS-0747446 §115.

[299] Transcript T1P3 20/05/22 – 41/14.

> Q. Did you consider the risks that a family might find out that a police officer was using the name of their deceased child?
> A. At the time, no, I didn't consider that.
> Q. Looking back now, do you think it was a necessary practice?
> A. I think it was probably a necessary practice. I didn't realise at the time that the families of the deceased children would learn of the system and become distressed by it.

255. In its opening statement for T1P3, the MPS formally requested that the Inquiry investigate where the practice of using deceased children's identities originated, including whether it was used by the other UK state bodies, such as the Security Service, prior to its use by the SDS.[300] The answer to that question is important. It is directly relevant to the assessment of whether the use of the practice may have been reasonable at the time because (1) it represented standard practice within the intelligence community, and objectively confirm that (2) there were no other, practical and safe, methods for preserving the long-term security of UCOs or other covert human intelligence sources.

256. At the start of the T1P3 hearings, the Chairman declined the MPS's request (also made by the Designated Lawyer Officers), on the grounds that it would not illuminate the origins of the practice within the SDS and he was reluctant to pry into the past practices of the Security Service.[301] Following this, the MPS wrote to the Security Service directly to ask if they would clarify the position. However, they too declined to do so. From the MPS's perspective, these responses have resulted in a significant missed opportunity to assess the SDS's use of deceased children's identities by reference to its proper historical context.

[300] Opening Statement T1P3 MPS CL 28/04/22 §61.
[301] Transcript 09/05 2022 147/9-148/25.

PART G - CONCLUSIONS

257. It may be helpful to summarise the MPS's general conclusions on Tranche 1 by reference to the Inquiry's Terms of Reference.

258. First, **the role and contribution of made by undercover policing towards the prevention and detection of crime**. The evidence adduced by the Inquiry demonstrates that in 1968-1982 that the intelligence produced by the SDS made a valuable contribution to the prevention and policing of public disorder in London and to the national countersubversion work of the Security Service and the Cabinet Office.

259. Second, **the motivation for, and the scope of, undercover police operations in practice and their effect upon individuals in particular and the public in general**. The motivation of the SDS was to obtain intelligence, which was not otherwise available, to support the policing of public disorder by the MPS and the countersubversion work of the Security Service. The scope of its operations was commensurate with the complexity of that task, which required the infiltration of a range of disparate groups over long periods. The Inquiry has heard evidence about the effect the SDS's work had on the individuals' targeted. The MPS acknowledges, as it has at the outset of this statement, that the nature of the personal intrusion into people's lives should have been recognised at the time and balanced against the public interest in the deployments proceeding.

260. Third, **the state of awareness of undercover operations of Her Majesty's Government**. The Home Office and the Security Service were aware of the SDS's operations including the nature of the work it did and its field of targets. The breadth of and depth of knowledge within the UK Government, particularly at prime ministerial and ministerial level, has not been ascertained by the Inquiry.

261. Fourth, **the adequacy of the justification, authorisation, operational governance and oversight of undercover policing**. The justification for the SDS's work is clearly expressed in numerous documents and has been summarised above. The adequacy of these justifications is more complex to assess. The SDS's work was authorised and funded by the Home Office (the Home Secretary was the police authority for the MPS), and its work was approved by the MPS Commissioner via the chain of command in MPSB.

262. In the 1960s and 1970s, there were no national or MPS policies governing the authorisation, operational governance, and oversight of undercover policing. No external bodies were involved. Insofar as these activities occurred, they did so without the formality and structure subsequently associated with RIPA, the Codes of Practice and the Authorised Professional Practice for CHIS (set down by the College of Policing). Instead, the SDS's work was managed in the same way as other MPSB work – the direction of the SDS's work being set by senior

MPSB officers and the specific deployments overseen by the SDS's own managers. Nonetheless, the MPS accepts that the serious nature of the intrusions into individuals' private lives necessitated consideration and evaluation by the MPS, the Home Office, and the Security Service at the time.

263. Fifth, **the adequacy of the selection, training, management and care of undercover police officers**. Again, these matters must be assessed by reference to the standards of the day. The type of selection, training and support which is now recognised as an essential part of undercover policing was simply not part of policing, or wider societal culture, in this period. Against that yardstick it was generally adequate, even if, as will become clear in later Tranches, much more needed to be done (a point which the MPS recognised at the outset of the Inquiry).

264. Finally, **the adequacy of the statutory, policy and judicial regulation of undercover policing**. There was no statutory framework for undercover policing during the Tranche 1 period. Policy regulation did not exist. This was plainly inadequate, if understandable, given the still nascent nature of the tactic. Judicial regulation only occurred in a limited and general way, by reference to the legal admissibility of evidence in the criminal courts. No judicial authorisation or oversight regime existed. It is not known, and cannot now be known, if anyone in the Government or the MPS considered that this situation was unsatisfactory or required remedying. The managers of the SDS, and their more senior officers in MPSB, were therefore operating in the Tranche 1 period without the benefit of a regulatory framework to assist them in their work.

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FOR THE MPS

14 February 2023