

**UNDERCOVER
POLICING
INQUIRY**

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Official Sensitive

Sir John Mitting
Chair
Undercover Policing Inquiry

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21 February 2024

Our reference: OS 1173

BY EMAIL ONLY

Lydia Dagostino - Kellys Solicitors lydia@kellys-solicitors.co.uk

Elizabeth Forrester ForresterE@birnbergpeirce.co.uk

Dear Lydia (on behalf of the NPSCPs' RLRs who have expressed a view) and Elizabeth (on behalf of the category H core participants),

Re: Submissions: (findings of fact serious criminality)

This letter is written in response to two letters dated 20 February 2024 sent by the category H NSCPs and the NSCPs as a whole. Both demand that I make clear what approach I intend to take to evidence about alleged or proven (by prior conviction) criminal conduct on the part of NSCPs and others named in the reporting and evidence of former undercover officers.

I first wish to make it clear that, until I have heard, read and considered the oral and written evidence about these issues I will not reach or express any finding of fact about them. The reason is obvious and does not require to be stated.

The terms of reference require me to address the following issues: the role and contribution of undercover policing towards the prevention of crime; the motivation for undercover policing

operations; the adequacy of justification for them; and miscarriages of justice resulting from or associated with undercover policing. They have already been set out in paragraphs 33, 34, 35, 126, 127 and 128 of the issues list dated 5 July 2018 [20180705_list_of_issues_module_one_SDS_final.pdf \(ucpi.org.uk\)](#), paragraphs 33, 34, 35, 199, 200 and 201 of the issues list dated 7 March 2022 [Module 2\(a\) Special Demonstration Squad Issues List \(ucpi.org.uk\)](#) and paragraphs 34, 35 and 36 of the issues list dated 22 July 2022 [Preliminary Module 2\(b\) Issues List - Special Demonstration Squad \(ucpi.org.uk\)](#). It is self-evident that I cannot determine these issues and so fulfil these aspects of the terms of reference without receiving evidence about and considering alleged or proven criminal conduct on the part of those who were the subject of reporting by undercover officers.

I cannot at this stage identify every issue of fact about which evidence will be required to enable me to discharge that task. To enable those who wish to make submissions on behalf of individual NSCPs, I can, however, indicate the principal issues likely to arise in Tranche 2 and the view which I hold now about how they must be investigated.

One of the specific issues which I must investigate to assist the Court of Appeal to determine the pending appeal of Geoffrey Sheppard and Andrew Clarke is the role, if any, played by Robert Lambert in the planting of improvised incendiary devices in Debenhams stores on 11 July 1987 and in the plans, if any, for the planting of further devices in the West End in September 1987, which led to the arrest of Geoffrey Sheppard and Andrew Clarke on 9 September 1987. The contemporaneous reporting of Robert Lambert includes allegations about the conduct of one NSCP other than Geoffrey Sheppard and Andrew Clarke which must be investigated publicly to permit me to reach conclusions of fact about such plans.

The combined issues of the contribution of undercover policing towards the prevention of crime, its motivation and the adequacy of its justification will require at least the following issues to be publicly explored: the plans referred to above; other serious criminal acts including home visits, arson and criminal damage committed or said to have been committed by animal rights activists; the claimed plan to contaminate Lucozade in department stores in 1991, about which [REDACTED] reported; and the alleged plan to commit serious acts of violence at the BNP bookshop in Welling on 16 October 1993, about which Trevor Morris reported. Reporting on alleged or proven acts of criminal misconduct at other public events must also be investigated, because the prevention of public disorder was one of the principal justifications relied on contemporaneously for the continued existence of the SDS.

**Name of undercover officer deleted at the request of RLR for a NSCP.*

The letter written on behalf of the NSCPs generally makes a number of demands about the manner in which the hearings are to be conducted in relation to such issues. They have already been determined. In paragraphs 11 and 12 of his ruling dated 13 January 2016, which incorporated paragraphs 35 to 39 of his minded to letter dated 17 December 2015 [160113-Standard-of-Proof-ruling-including-annexes.pdf \(ucpi.org.uk\)](#), Sir Christopher Pitchford said that a flexible standard of proof would be applied. In my statement dated 30 October 2019 [20191030-Chairman_further_statement-conduct_of_evidence_hearings_san.pdf \(ucpi.org.uk\)](#) I stated that cross-examination of witnesses would be undertaken by counsel to the inquiry, save in the circumstances identified in paragraph 17. Both remain the position. Further, as counsel to the inquiry made clear in their submissions dated 29 September 2022 [Counsel to the Inquiry's Submissions on Section 2 Inquiries Act 2005 and the Relevant Legal Framework applicable to Undercover Policing in the Tranche 1 Era \(ucpi.org.uk\)](#), while I cannot determine civil or criminal liability, I can and must make findings of fact about what occurred to enable me to fulfil the terms of reference.

The letter also states that witness statements will not be provided in response to rule 9 requests until the manifold demands in the letter are met. Those on whose behalf the letter was written must realise three things: that the time limit within which they have been asked to provide a witness statement will not be extended to accommodate this refusal; that if they do not provide a witness statement to the inquiry, their evidence cannot inform my conclusions; and that their future participation in the inquiry as core participants will be called into question.

A request for an extension of time by the category H NSCPs is made in their letter. I do not wish to impose upon them or their legal advisers an unachievable timetable; but they must realise that the time for general discussion has passed and the time for the making of concrete decisions has arrived. I will extend the time within which written submissions are to be made until **4.00 pm on Monday 4 March 2024**, but not beyond. Tranche 2 hearings will begin on 1 July 2024 and, to the extent that they have not already been settled, all major procedural issues will be determined in time to permit that to happen.

For the same reasons any written submissions which the NSCPs collectively wish to make must be received by the inquiry by **4.00 pm on Monday, 4 March 2024**. The inquiry does not invite and will not meet the cost of drafting and advancing submissions on issues which have already been determined.

Yours Sincerely,

A handwritten signature in blue ink, appearing to be 'J. Mitting', written in a cursive style.

Sir John Mitting