

IN THE MATTER OF

THE UNDERCOVER POLICING INQUIRY

SUBMISSIONS ON BEHALF OF THE CAT H CORE PARTICIPANTS

ASSURANCES RE FINDINGS OF FACT

Exhibits to these Submissions are in the format CHCP/Tab/Page No.

A. SUMMARY

1. These submissions are made on behalf of Cat H Core Participants (“**Cat H CPs**”)¹ (i.e. women who were deceived into sexual relationships by undercover police officers (“**UCOs**”)), in support of a request for a general assurance that (“**General Assurance**”):

- (1) If they do not to respond to allegations (including contemporaneous reporting, and related questions under Rule 9 (“**Rule 9**”) of the Inquiry Rules 2006 (“**Inquiry Rules**”)), about their conduct, character, political affiliations and/or other associations, especially (but not only) where that evidence derives from the UCOs who deceived them into intimate relationships, their decision not to do so will not lead to adverse findings about them personally, to criticism of them as individuals or to any other adverse consequences for them personally.
- (2) If they do respond to those allegations, this will not lead to damaging adverse findings about their individual conduct or characters, as opposed to more general findings about i) the activities of groups of which they were part, ii) any other issues within the Inquiry’s Terms of Reference

¹ These submissions are made on behalf of ‘Alison’, ‘Bea’, ‘C’, ‘Ellie’, Denise Fuller, Donna Mclean, Belinda Harvey, Eleanor Fairbraida, ‘Jenny’, ‘Jessica’, ‘Lisa’, ‘Maya’, ‘Madeleine’, ‘Monica’, ‘Naomi’, ‘Rosa’, ‘Ruth’, ‘Sara’, Helen Steel, and Kate Wilson, and the term “Cat H CP” is to be read accordingly wherever it appears in these submissions.

(“**ToR**”), including misogyny or unacceptable attitudes in the police force or iii) the conduct of UCOs or the police towards them.

2. Should the Inquiry agree to provide the General Assurance, we would propose that, for those Cat H CPs who will participate in the Tranche 2 hearings in July-November 2024 (“**Tranche 2 Cat H CPs**”), they are provided with the opportunity to make clear the extent to which they invoke the General Assurance in their individual responses to the Rule 9 Requests. The Cat H CPs make clear that their request for that General Assurance to be given relates to all Tranches and stages of the Inquiry and is sought on behalf of all Cat H CPs included within these Submissions.
3. The Cat H CPs make this request in the following context:
 - (1) The Inquiry was established to examine the conduct of the police, *‘not those on whom they were reporting’* (see Undertakings Ruling, 26 May 2016 (“**Undertakings Ruling**”), at §57 (emphasis added)). That is why *‘police officers and civilians do not have the same status in the Inquiry’* (Undertakings Ruling, at §57).
 - (2) Consequently, and in marked contrast to the Police and some other State Core Participants, none of the Cat H CPs were designated as core participants, whether in that Category or in any other Category, on the basis that they might face criticism under Rule 5(2)(c) of the Inquiry Rules (see Core Participants Ruling, 21 September 2016 (“**Core Participants Ruling**”), at §§20, 24, 28; 46-50 and; 115-132). Instead, their designation was made because they may have played a direct and significant role in and/or have a significant interest in the matters to which the Inquiry relates (Rule 5(2)(a)-(b) of the Inquiry Rules).
 - (3) None of the issues within the Inquiry’s ToR or the List of Issues require findings of fact in relation to the alleged criminal conduct or activities of individuals other than police officers. At most what is required is findings about the *‘activities of groups of political, social justice, environmental and other campaigners for the purpose of assessing (i) the justification*

for their infiltration by undercover police officers and (ii) the effects, beneficial or otherwise, upon the public of undercover policing' (Undertakings Ruling, at §51, (emphasis added)).

- (4) The involvement of the Cat H CPs has therefore proceeded on the consistent expectation that their evidence and involvement would, at most, lead to adverse findings about the groups in which they were involved, and that they themselves would not be the subject of criticism.
- (5) The procedural protections for them as non-state Core Participants (“NSCPs”) have accordingly been different to those afforded to the police participants. The evidence available upon which the Inquiry would make these findings is incomplete, and of poor quality.
- (6) Further, and in any event, the Inquiry has already found, in its Interim Report, that the Special Demonstration Squad (“SDS”)’s principal purpose of assisting uniformed police to control public order in London did not justify the intrusive means used in the long-term deployments of UCOs and that, had the use of these means been publicly known at the time, the SDS would have been brought to a rapid end (see Interim Report, Chapter 6, Analysis and Conclusions, at §28). That means a broad finding of lack of justification concerning the SDS’s operation from its earliest existence has already been made. Even if *‘[t]he long-term infiltration of political or single-issue groups by a unit of a police force could ...have been justified if its purpose was to prevent or investigate serious crime, including terrorism and activities akin to it’* (Interim Report, Ch 6, at §27 emphasis added) this was not the purpose of the SDS, and incidental contributions to the prevention or investigation of such crimes could not alter that overarching conclusion.
- (7) The Cat H CPs are victims of abuse. Both the courts and the police have accepted that the sexual relationships which UCOs conducted with them amounted to inhuman and degrading treatment contrary to Article 3 ECHR, and were abusive. The Metropolitan Police Service (“MPS”) acknowledged in a series of apologies given to the Cat H CPs from 2015 onwards that the relationships were *‘abusive, deceitful, manipulative and wrong’*; that they were *‘a violation of the women’s human rights, an*

abuse of police power and caused significant trauma, and that “*none of the women with whom the undercover officers had a relationship brought it on themselves*” [CHCP/1/2]. The Courts meanwhile have recognised that such relationships ‘*grossly debased, degraded and humiliated*’ the Cat H CPs and ‘*and interfered with [their] bodily integrity*’ thereby amounting to a breach of Article 3 ECHR (see IPT Remedy Order of 24 January 2022 (“**IPT Remedy Order**”) at Annex A, at §1(i) [CHCP/2/6]).

(8) The Cat H CPs should not suffer further harm as a result of their engagement with this Inquiry.

4. In all these circumstances the Cat H CPs submit that, if the Inquiry were, in its Final Report, to make any adverse findings of fact about them individually or about their personal conduct based on evidence from the UCOs, particularly those who abused them (whether that evidence is in contemporaneous documents or in statements to the Inquiry) this would be:
- (1) Inconsistent with the ToR and unnecessary.
 - (2) An unreasonable and disproportionate use of the Inquiry’s powers and resources.
 - (3) A breach of the Cat H CPs’ longstanding legitimate expectation as to the basis for their involvement with the Inquiry.
 - (4) Unfair, given the different due process and procedural protections they have been afforded by virtue of their different status to the UCOs and police state bodies whose activities are under examination, the late notification of the possibility that their personal conduct might be subject to criticism, and the poor quality and partial nature of the evidence available.
 - (5) A breach of their rights under Articles 3 and 8 ECHR given the trauma and severe distress to them of being exposed to personal criticism by the Inquiry, particularly where that criticism is based on evidence from the UCOs who entered into unjustified and unlawful sexual relationships with them.

5. In these circumstances, and given that, as explained below, the process of responding to the evidence of the UCOs who abused them is itself causing them significant trauma, the Tranche 2 Cat H CPs seek the General Assurance in advance of their being required to respond to the Rule 9 Requests made of them by the Inquiry.

B. BACKGROUND TO APPLICATION

(1) Rule 9 requests

6. As part of the Rule 9 process, the Tranche 2 Cat H CPs have all received Rule 9 Requests to give evidence to the Inquiry. Those requests have been extensive. Restricted Annex 1 to these Submissions illustrates the types of question which the Tranche 2 Cat H CPs have been asked. Each has begun with the question:

Please provide a summary of your involvement in groups and/or campaigns (formal or informal) which promoted or were otherwise engaged in political, social/social justice, environmental or other activism, focussing on the period 1980-1996.

7. There have then followed detailed questions about the actions and beliefs of any such groups, and of the individuals in question. They include questions about whether the group would “*advocate, provoke or approve of public disorder*”; “*consider it necessary to break the law*”; “*use violence*”; and “*aim to overthrow parliamentary democracy*”. Further:
 - 7.1. Certain of the Tranche 2 Cat H CPs have been asked specific questions about individual allegations of criminal conduct which have been made against them.
 - 7.2. At least some of these questions appear to be motivated by slurs their abusers have made.²

² See Restricted Annex 1.

(2) **The impact on the Cat H CPs**

8. The impact of this process on many of the Tranche 2 Cat H CPs has been significant, and in some cases retraumatising. It has had a serious impact on their mental and physical health. They have experienced interrupted sleep, feelings of paranoia, stress, depression, and anxiety. There have also been bereavements and a health scare, compounding the above impacts. They have not been able to access the necessary counselling.
9. Further, their participation has had significant implications for their personal and professional lives outside of this Inquiry more generally. The effect of the Restriction Orders has caused them to feel that they have to withdraw from or lie to their family and friends about the events which occurred. At least one CP feels the consequences of this process are putting her job at risk.
10. If need be, certain of the Tranche 2 Cat H CPs³ would be prepared to serve, under protection of privacy, impact witness statements in support of these contentions.

(3) **Meeting with CTI, 9 February 2024**

11. The challenges of responding to these Rule 9 Requests, combined with a number of other issues, caused the Tranche 2 Cat H counsel team to seek a meeting with Counsel to the Inquiry (“**CTI**”). The purpose of this meeting was to explore ways in which various concerns⁴ of the Tranche 2 Cat H CPs might be addressed.
12. At that meeting (“**CTI meeting**”), CTI stated (among other things) that the Chair considered that it might be necessary to make findings of fact in relation to allegations of criminal conduct against individual NSCPs. That was not

³ ‘Jessica’, ‘Jenny’, Denise Fuller, Belinda Harvey, and Helen Steel.

⁴ Set out in the agenda shared with CTI on 9 February 2024 [CHCP/3/12].

something of which the Cat H CPs had previously been aware and is a matter of grave concern to the Cat H CPs as well as other NSCPs.

(4) **Letter from the Inquiry**

13. Following the CTI meeting, on 15 February 2024, the Inquiry Legal Team (“ILT”) sent the Tranche 2 Cat H CPs’ representatives an email requesting on behalf of the Chair that the Tranche 2 Cat H CPs serve submissions, setting out the detailed position regarding the assurance(s) sought by each of them individually.
14. On 20 February 2024, the Tranche 2 Cat H CPs’ representatives sent a letter to the Inquiry seeking clarity as to whether the Chair was intending to make findings of fact concerning the historic conduct of individual CPs and, if so, what the scope of those potential findings could be [CHCP/3/10].
15. The Chair responded on 21 February 2024 (“Chair’s letter”) [CHCP/4/14]. He stated that:

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 ██████ 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.

C. FRAMEWORK WITHIN WHICH THE GENERAL ASSURANCE IS SOUGHT

(1) Establishment of the Inquiry

16. In establishing the Undercover Policing Inquiry (“UCPI”) on 12 March 2015, the Home Secretary Theresa May said (emphasis added):

*“The work of Mark Ellison and Operation Herne has unearthed serious **historical failings** in undercover policing practices. As I said last year, I was profoundly shocked by Mark Ellison’s findings and committed to establishing a public inquiry to thoroughly investigate undercover policing and the operation of the SDS.*

I’m delighted to announce today that Lord Justice Pitchford has been appointed to lead the inquiry.

*While I initially said that Mark Ellison's further work and criminal investigations needed to conclude before the inquiry commences, it has become apparent that these pieces of work were much larger than initially envisaged. In the interest of **learning the lessons of past failures**, I have decided to establish the inquiry now while ensuring existing work is not affected.*

*Undercover policing is an essential tactic in the fight against crime but to improve the public's confidence in undercover work we must ensure there is **no repeat of these failings** in the future."*

17. The failings in undercover policing to which the Home Secretary referred included (see Operation Herne's Second Report, and the Mark Ellison Report) engaging in sexual relationships with members of the public, and spying on the Stephen Lawrence family campaign. In his Opening Statement to the Inquiry on 28 October 2020 ("CTI OS"), CTI reflected on the failings which gave rise to its establishment (see §§1-11) and then posed the following questions to be answered (see §12):

"To identify but a few: what exactly happened? How did these events come to pass? How widespread were they? Who knew about them? To what extent were they authorised, encouraged or accepted and by whom? Which groups were infiltrated? Why? How were targets selected? Was targeting influenced by racism or sexism? Was infiltration of the groups concerned justified? In which cases? If it was, was the extent of the reporting and the duration of the deployments justified? In what circumstances, if any, might the use of the undercover tactic to infiltrate political and activist groups be justified? If so, subject to what boundaries, management and oversight?"

(2) **Terms Of Reference**

18. This Inquiry's ToR, which were set against the backdrop of the failings identified in the Home Secretary's Statement, identify its Purpose as to (*inter alia*):
- 'investigate the role and the contribution made by undercover policing towards the prevention and detection of crime' (1(i))

- ‘*examine the motivation for, and the scope of, undercover police operations in practice and their effect upon individuals in particular and the public in general*’ (1(ii))
- ‘*identify and assess the adequacy of the...justification, authorisation, operational governance and oversight of undercover policing...*’ (1(iv)(a))

19. In relation to Miscarriages of Justice, the ToR require the Inquiry to, *inter alia*, ‘*...refer to a panel...the facts of any case in respect of which it concludes that a miscarriage of justice may have occurred as a result of an undercover police operation or its non disclosure*’ (3).
20. As for the Inquiry’s Scope, the ToR require it to, *inter alia*, investigate ‘*whether and to what purpose, extent and effect undercover police operations have targeted political and social justice campaigners*’ (4).
21. As these ToR make clear, and set out at para 3 above, the main focus of the Inquiry is to inquire into the activities of UCOs ‘*and not those on whom they were reporting*’, which is why ‘*police officers and civilians do not have the same status in the Inquiry*’ (Undertakings Ruling, at §57). Although it is inevitable that in the course of these enquiries into UCOs the Inquiry will consider evidence about the activities of the groups spied on for the purpose of ‘*assessing (i) the justification for their infiltration by undercover police officers and (ii) the effects, beneficial or otherwise, upon the public of undercover policing*’ (Undertakings Ruling, at §51), and that this evidence may relate to the activities of particular NSCPs, that does not mean the Inquiry should or is required to make findings of fact on the activities of those NSCPs. The purpose of hearing that evidence is limited to ensuring that the Inquiry does not ‘*stigmatise an officer or to exonerate him without an adequate means of testing the evidence on ‘both sides’’*’ (Undertakings Ruling, at §51). At most the Inquiry will be required to reach conclusions about the activities of groups.

22. As for miscarriages of justice, *‘the predominant public interest is in exposing any wrongdoing by police officers, or failure of disclosure by a prosecutor, that may have led to an improper or unsafe conviction, whether....the defendant was less culpable or not’* (Undertakings Ruling, at §22). In individual miscarriage of justice cases, the Inquiry *‘will do nothing that would interfere with the natural progression of their applications for leave to appeal and it will not adjudicate on their guilt or innocence’* (see Core Participants Ruling re Geoff Sheppard and Andrew Clarke, at §54; see also re Gerrah Selby, Jason Mullan, Thomas Harris and Debbie Vincent, Stop Huntingdon Animal Cruelty, at §59).

(3) Designation of Core Participants

23. The designation and participation of the Tranche 2 Cat H CPs as core participants was expressly made on the basis that each of them were *‘either in an intimate relationship with an undercover police officer or they were closely and personally affected by relationships made with an undercover officer’* and that *‘there are and never have been any circumstances where it would be appropriate for such covertly deployed officers to engage in intimate sexual relationships with those they are employed to infiltrate and target’* (see Core Participants Ruling, at §§46-50). They therefore understood that their designation was on the basis of Rule 5(2)(a) and (b) of the Inquiry Rules, namely that they *‘played or may have played a direct and significant role in relation to matters to which inquiry relates’* and *‘the person has a significant interest in an important aspect of the matters to which the inquiry relates’* as a result of those sexual relationships. That was basis on which their applications for Core Participant status were made. Unlike the police participants, and the Home Office (see Core Participants Ruling, at §§20, 24 and 28), there was never any suggestion that they would be *‘subject to explicit or significant criticism during the inquiry proceedings or in the report, or in any interim report’* (Rule 5(2)(c) Inquiry Rules).

24. That is equally true of those Cat H CPs like Helen Steel who were designated also under other categories (see Core Participants Ruling, at §§115-132). There too there was never any suggestion that they were being designated because they would be subject to explicit or significant criticism under Rule 5(2)(c) Inquiry Rules. Indeed, the Core Participants Ruling states of Helen Steel and other Social and Environmental activists, at §132:

Several important issues are raised by the successful applications. The first is whether and to what extent the organisations and individuals named were targets of undercover police operations. If they were, the second issue is: what was the authorised purpose of the infiltration. The third issue is: to what extent, if any, did the activities of undercover officers promote conduct subsequently reported to their handlers. The fourth issue is: what information was gathered and to what use was it put. In my judgment the successful applications meet the criteria provided by rule 5(2) and the issues raised by them are both difficult and substantial.

(4) Issues Lists

25. The Inquiry has produced Lists of Issues dated 5 July 2018; 30 September 2019 (revised 7 March 2022); and 22 July 2022. Those Lists of Issues specify that the Inquiry will consider:
- 25.1. What the reasons recorded for the targeting of each group and individual were, and whether those reasons justified the deployment (5 July 2018, §§31 – 32; 30 September 2019, §§63-64);
- 25.2. ‘[O]n what ground or grounds was each targeted group or individual selected’ (30 September 2019, §59);
- 25.3. In respect of reporting on social and environmental activists, what information was obtained about those groups and whether the surveillance was justified (5 July 2018, §§116 - 125; 30 September 2019, §§111 - 117);

- 25.4. What was *'the true purpose of each deployment'*, the *'conduct which each deployment [was] intended to detect, disrupt or prevent'*; and what the *'practical outcome'* of each deployment was (5 July 2018, §§33-35; 30 September 2019, §§199 - 201; 22 July 2022 §§34 - 36);
- 25.5. Whether the *'activities of the Special Demonstration Squad help[ed] the prevention, detection and prosecution of crime, in particular serious crime'*, whether they *'facilitate[d] the prevention and control of public disorder'*; and whether as a result the actions of the SDS could be justified (5 July 2018 §§126 - 128; 30 September 2019 §§199 - 201); and,
- 25.6. What involvement UCOs had in criminal activities (5 July 2018, §§49 - 54).

(5) **Findings in relation to Cat H CPs**

26. Upon settlement of a number of civil claims arising from the abuse perpetrated by the SDS and NPOIU, the MPS issued an apology which stated [CHCP/1/2]:

... these [sexual] relationships were a violation of the women's human rights, an abuse of police power and caused significant trauma.

[...]

They were wrong and were a gross violation of personal dignity and integrity.

27. The apology acknowledged and confirmed that:

...none of the women with whom the undercover officers had a relationship brought it on themselves. They were deceived pure and simple. I want to make it clear that the Metropolitan Police does not suggest that any of these women could be in any way criticized for the way in which these relationships developed.

28. In Wilson v Commissioner of Police for the Metropolis [2021] UKIPTrib IPT_11_167_H, concerning the UCO Mark Kennedy (“MK”) who deceived

Kate Wilson into a long-term intimate and sexual relationship, the Respondents conceded (among many other concessions) as follows, at §14:

MK's decision to deceive the Claimant into a long-term intimate and sexual relationship amounted to inhuman and degrading treatment of her under Art 3 of the ECHR.

The breach of Art 3 was aggravated by the fact that MK's principal cover officer was aware that MK was conducting a close personal relationship with the Claimant and the principal cover officer ought to have made enquiries as to whether it was sexual in nature.

The sexual relationship with the Claimant also constituted a gross violation of her right to respect for her private and family life under Art 8 of the ECHR.

By exploiting the imbalance of power that the Respondents had created between him and the Claimant to develop an intimate sexual relationship with the Claimant and to deeply infiltrate her social and family life in the role of her lover, MK debased, degraded and humiliated the Claimant.

MK showed a profound lack of respect for the Claimant's bodily integrity and human dignity.

29. In its Order following those proceedings, the IPT (per Lord Boyd of Duncansby, Lieven J & Prof Graham Zellick QC) declared that MK 'grossly debased, degraded and humiliated' Kate Wilson and 'and interfered with her bodily integrity' thereby amounting to a breach of Article 3 ECHR (IPT Remedy Order, Annex A).

30. In its ruling, the IPT held that the NPOIU's failure to ask questions about MK's sexual relationship 'indicates either a complete failure of imagination, or more probably a lack of interest in protecting women from breaches of Arts 3 and 8', at §232. In the context of Article 14 ECHR, the IPT held that it was 'worth emphasising the importance of the finding of discrimination in this case, and the relationship between the breaches of Art 3 and 8, and the discrimination that occurred. It appears from the evidence that the Respondents had very little concern about the impact of the highly intrusive surveillance by MK, and others, on women in particular. Given the very obvious risk of placing heterosexual male UCOs, for long periods, into the

lives of young women, including the Claimant, the failure to take adequate steps to protect them from breaches of their human rights is particularly stark’, at §311. In its concluding remarks, the IPT held that there had been a ‘formidable list of Convention violations, the severity of which is underscored in particular by the violations of Arts 3 and 14”, which revealed ‘disturbing and lamentable failings at the most fundamental levels’, at §344.

31. It concluded that, *‘[w]e recognise that the authorities viewed their conduct through the lens of public order, but that is not how it was experienced by the Claimant, whose bodily integrity, privacy and political activities were invaded without lawful justification’.*

(6) Section 2 Inquiries Act

32. Pursuant to s.2 Inquiries Act 2005:

- (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.

33. The relevant part of the Explanatory Note state (emphasis added):

The purpose of this section is to make clear that inquiries under this Act have no power to determine civil or criminal liability and must not purport to do so. There is often a strong feeling, particularly following high profile, controversial events, that an inquiry should determine who is to blame for what has occurred. However, inquiries are not courts and their findings cannot and do not have legal effect. The aim of inquiries is to help to restore public confidence in systems or services and by investigating the facts and making recommendations to prevent recurrence, not to establish liability or to punish anyone. However, as subsection (2) is designed to make clear, it is not intended that the inquiry should be hampered in its investigations by a fear that responsibility may be inferred from a determination of fact.

34. CTI’s Submissions to the Inquiry on s.2 of the Inquiries Act for T1, of 29 September 2022, stated:

21. *Our terms of reference, amongst other things, require the Chairman: “to identify and assess the adequacy of the: justification, authorisation, operational governance and oversight of undercover policing; selection, training, management and care of undercover police officers; [and] identify and assess the adequacy of the statutory, policy and judicial regulation of undercover policing”. There are a number of ways in which legal issues are relevant to these aspects of the terms of reference. For example, whether the methods used by undercover police officers were lawful is relevant to whether or not their work was justified and to whether authorisation, operational governance, training, management and oversight were adequate. Similarly, if undercover policing was being conducted in an unlawful manner, it will call into question the adequacy of statutory and policy guidance in particular. We will return to these issues further below in Part 3 of these submissions.*

...

78. *A number of key propositions, for the Inquiry, can be distilled from consideration of s.2 of the 2005 Act.*

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.*

79. *Whether undercover policing was conducted lawfully is relevant to aspects of the Inquiry’s terms of reference. The legality of tactics such as entering the homes of activists, taking and disseminating confidential information needs to be considered. The lawfulness of the SDS’s methods and operations generally is at least relevant to assessing the adequacy of justification, authorisation, operational governance, training, management and oversight of the undercover operations in Tranche 1. The lawfulness of undercover policing, as it was carried out by the SDS, is also relevant to the statutory and policy regulation of undercover policing (or, more specifically, the lack thereof) in the Tranche 1 era.*

80. *The Inquiry must not shy away from making the factual findings required to discharge the terms of reference. It can and must take into account the applicable legal framework, insofar as it is relevant to the terms of reference, but it must frame its findings in a way that avoids purporting to determine the civil or criminal liability of any person.*

D. SUBMISSIONS

(1) **Individual Findings of Fact Inconsistent with the ToR and Unnecessary**

35. The Inquiry was established, as both the Home Secretary's Statement, and CTI's OS make plain, to investigate failings in undercover policing so serious that they required further investigation and to ensure they are not repeated. The ToR were set with that goal firmly in mind.
36. It is no part of the Inquiry's Purpose or Scope to investigate the conduct of members of the public or to discover whether they have committed criminal offences, nor could the ToR reasonably be interpreted in that way.
37. It is well established that an inquiry must remain within its ToR. As held in R (EA) v Chairman of the Manchester Arena Inquiry [2020] EWHC 2053 (Admin); [2020] HRLR 23, at §45:
- The Chairman gains his authority and legitimacy from the Terms of Reference. The Terms of Reference define the scope and limits of that authority. It is the starting point for any analysis of how he can, and must, act.*
38. The ToR indicate what is excluded from an inquiry's consideration, as well as what is included. So, in EA, the Court held that the Inquiry into the Manchester bombing, constituted to 'investigate how, and in what circumstances, 22 people came to lose their lives in the attack', could not lawfully set out to investigate the circumstances in which survivors of the attack were injured, at §46. It was a 'fundamental error' to treat the inquiry as a general investigation into the circumstances of the bombing, rather than the investigation actually specified in the terms of reference.
39. The questions posed by CTI's OS, the issues identified for exploration by the Chair in his Core Participants Rulings (see above), and the Issues in the various Lists of Issues, are all consistent with that overarching purpose: namely establishing the full extent of, and reasons for, the failings of the

police, and ensuring they are not repeated. What is not required is any consideration of the facts which goes beyond the investigation of these failings and/or the historic conduct of the police. Particularly unnecessary therefore are any adverse findings of fact against individual Cat H CPs in relation to their conduct, character, political affiliations and/or other associations (and there is a real danger of additional serious and adverse impact on the privacy and health of Cat H CPs should such findings be made-see below). The Inquiry is constituted to investigate police abuses of power. The Inquiry is not constituted to investigate the actions of individual civilians over its period of reference, nor can it do so fairly (as set out at paragraphs 59ff below).

40. The Chair's letter of 21 February 2024 stated that the Inquiry cannot determine certain issues in the ToR – 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 – *'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'* (emphasis added). The Chair's letter concluded that, *'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'*.

41. The Cat H CPs accept that the Inquiry could rely on proven criminal conduct on the part of NSCPs (in other words, criminal conduct which has resulted in a conviction) compatibly with the ToR. That is not least because such proven criminal conduct will have been contemporaneously (or near contemporaneously) established and will therefore be relevant both to the lawfulness and justification of police activities at the time, and to the contribution made to preventing or detecting crime. It does not follow, and indeed would be inconsistent with the ToR, for the Chair to go further and

make findings of fact about individual NSCPs based on assertions (whether contained in police contemporaneous reporting or Witness Statements) about their alleged historic criminal conduct. Such new findings can have no bearing on the questions which the Inquiry has been established to investigate relating to the justification for and contributions made by undercover policing decades earlier. In particular it would be quite wrong, and would be inconsistent with the ToR, for the police to be able to use the evidential processes established by the Inquiry as a vehicle for retrospective justification of their activities. The police must be able to justify their activities on the basis of what was known, available, done or achieved **at the time**. The same is true of assessing the contribution of undercover policing to the prevention and detection of crime; this too can only properly be assessed by reference to contemporaneous evidence, material and events.

42. As for allegations made in contemporaneous reporting by UCOs, the relevance of evidence from NSCPs in response is limited to establishing whether the reporting reaches a sufficient threshold of reliability to justify the undercover operation, and /or whether it is obviously false, fabricated, partial or misleading (by omission or otherwise). It is not necessary to go further and establish on the basis of evidence given in the Inquiry whether the allegations made against particular individuals were accurate or not. The Inquiry is not a vehicle for a wide-ranging investigation into whether historic crimes were planned or committed, still less with a view to retrospectively justifying undercover operations, not least where the evidence was (apparently) not thought sufficient to justify prosecution at the time.

43. *A fortiori*, therefore there is no basis in the ToR for reaching adverse findings about the general conduct and character of NSCPs. This is particularly so in the case of the Cat H CPs where the men who are attacking their character and making accusations about their past conduct are often the same men who abused them and who may seek to damage their reputations in order to excuse their own (i.e. the officers') conduct. That would in no way enable the Chair to fulfil the ToR; on the contrary it would seriously undermine it.

44. Finally in relation to the involvement of police officers like Robert Lambert in serious criminal offences, the Inquiry's role is limited to investigating his misconduct. It is not its purpose or role to determine allegations made by him or other UCOs against NSCPs, save to the extent strictly necessary to decide on his own conduct. Even then the purpose of the enquiry would be only to decide whether to 'exonerate' him (see Undertakings Ruling at §51); it would not be necessary to reach conclusions about the individual against whom the allegations had been made. Any other approach would be inconsistent with the ToR, as well as disproportionate and unfair.

(2) **Unreasonable and Disproportionate Use of Powers and Resources**

45. An approach which is intended to lead to adverse individual findings of fact against NSCPs would involve an unreasonable and disproportionate use of the Inquiry's powers and resources, and would undoubtedly add considerably to the time required for preparation and examination in the Inquiry.

46. The Inquiry does not have unfettered discretion in deciding what findings to make. It must approach its ToR and its investigations rationally, without a 'demonstrable flaw' or 'serious logical or methodological error': *R (Law Society) v Lord Chancellor* [2018] EWHC 2094 (Admin), [2019] 1 WLR 1649, at §98. Acting reasonably involves using means which are proportionate to the ends pursued: *Pham v SSHD* [2015] UKSC 19, [2015] 1 WLR 1591, at §114, and which do not involve unnecessary hardship for individuals: *R (Khatun) v Newham LBC* [2004] EWCA Civ 55, [2005] QB 37, at §41.

47. These principles are reflected in s.17(3) of the Inquiries Act 2005, which provides:

In making any decision as to the procedure or conduct of an inquiry, the chairman must act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others).

48. The importance of adopting a proportionate approach to the Inquiry was also recognised in the Inquiry’s Standard of Proof Ruling of 13 January 2016 (“**Standard of Proof Ruling**”), at §13:

From time to time I shall have to make a judgement whether and to what extent a particular issue of fact will be explored by the inquiry. When doing so I shall have in mind both the importance of the issue in itself and its importance in the context of the Inquiry as a whole. The Inquiry will be manageable only if an appropriate sense of proportion is applied.

49. For the Inquiry to make findings of fact in relation to allegations of individual conduct by NSCPs, often from more than 30 years ago, would require an unreasonable and disproportionate deployment of the Inquiry’s limited resources and time, targeted at questions which, as set out above, the Inquiry does not need to answer.
50. In particular, reaching fair and reliable findings of fact against individual NSCPs in relation to specific criminal allegations would require the Inquiry to undertake detailed investigation into the locations, words and activities of specific individuals at specific points in time several decades ago. In the absence of a conviction, the Inquiry cannot reasonably or proportionately, or consistently with its ToR and its focus on the actions of the police and UCOs, reach findings of fact about the alleged individual involvement by NSCPs in criminality. Given the passage of time and the fact that the contemporaneous evidence consists of unsigned and often vague reports which lack sufficient detail for any proper analysis of the source or reliability of the allegations and would not come close to complying with the evidential standards of the day, still less those of the current time, it would be impossible for this investigation to be conducted in both a fair and a proportionate manner given that the NSCPs are not the focus of this Inquiry’s investigation (see further below).
51. The Tranche 2 Cat H CPs, for example, do not in the main have contemporaneous records of that period (in contrast to the UCOs). Given the passage of time, they are therefore reliant on trying to remember what was

happening on any given day, in some cases over 30 years earlier (for warnings about relying on memory alone: see e.g. *Gestmin SGPS SA v Credit Suisse (UK) Limited* [2013] EWHC 3560 (Comm), at §§19-20). For obvious reasons (as set out above), the evidence and contemporaneous evidence about the NSCPs derived from the men who were deceiving and spying on them is unreliable.

52. Unlike a court seized of a relevant issue, the Inquiry is not compelled to fall back on highly unreliable witness evidence: c.f. *Natwest Markets Plc v Bilta (UK) Ltd (In Liquidation)* [2021] EWCA Civ 680, at §51. It should instead, in order to act consistently with its ToR, give the General Assurance and decline to make findings of fact against NSCPs who are not the focus of the Inquiry.

53. In those circumstances, it is also an unreasonable and disproportionate use of the Inquiry's powers to investigate alleged individual offences by NSCPs. The Inquiry is placed in a position of very substantial power over not only those compelled to give evidence, but also those who give evidence voluntarily, and indeed those who (for a variety of legitimate reasons) may not be willing or able to give evidence at all. The Inquiry is convened with statutory powers, public funding and a prominent public platform through which it can scrutinise and (if it so finds) condemn the actions of individuals with very significant implications for personal and professional lives of those implicated. The Inquiry should avoid using the powers it has been given in order to investigate police misconduct, to investigate NSCPs for alleged criminality for which they were not prosecuted at the relevant time, particularly given the low evidential value of the material upon which such investigation would be based. The Cat H CPs respectfully submit that such an approach risks being oppressive.

(3) **Breach of Legitimate Expectations**

54. The Inquiry is bound to adhere to the legitimate expectations which it has engendered in those who participate in it.

55. When a public inquiry (or similar inquisitorial entity) gives a sufficiently clear and unambiguous undertaking about how its proceedings will be conducted, that will give rise to a procedural legitimate expectation: *Re Finucane* [2019] UKSC 7, [2019] 3 All ER 191, at §64. Thus:

55.1. In *Barnard v Chief Constable of the PSNI* [2019] NICA 38, the NI Court of Appeal concluded that, in a series of meetings, the PSNI Historical Enquiries Team engendered a legitimate expectation that it would publish an overarching thematic report of its investigations into a series of murder cases, at §§62 - 64. The Court found that it would be unfair to disappoint that expectation, at §67.

55.2. In *R (Sargeant) v First Minister of Wales* [2019] EWHC 739 (Admin), the High Court held that a press statement issued by the First Minister's Office gave rise to a legitimate expectation that an investigation and its procedures would be set up independently. The First Minister had therefore acted unlawfully by involving himself in the setting up of that investigation.

56. Legitimate expectations can arise from implicit promises: *R (Heathrow Hub) v Secretary of State for Transport* [2020] EWCA Civ 213, [2020] 4 CMLR 17, at §§69-74. In the context of a public inquiry, the amount of time which has elapsed without a participant's expectation being contradicted is a weighty consideration when deciding to change course: *R v Lord Saville Of Newdigate* [2000] 1 WLR 1855, at §68(6) (concerning the anonymity of soldiers in the Bloody Sunday Inquiry).

57. In this case the purpose of the Inquiry as explained in the Home Secretary's announcement, the ToR, together with the Inquiry's conduct since it was

established, has given rise to a legitimate expectation on the part of the Cat H CPs that they would not be subject to adverse findings in relation to their own conduct and in particular in relation to allegations of criminality as follows. The Cat H CPs highlight, in addition to the matters set out in Section C above:

- 57.1. Neither the ToR nor the Lists of Issues refer to criminality on the part of NSCPs.
- 57.2. The Undertakings Ruling clearly accepted that police officers and civilians do not have the same status in the Inquiry, because it was the conduct of the former, and not the latter, which was under investigation, at §57.
- 57.3. The Core Participants Ruling did not refer to the conduct, involving alleged involvement in criminal activity, of NSCPs as one of the reasons for their designation. To the contrary:
 - 57.3.1. The Ruling stated that *‘there are likely to be several instances of mutual criticism during the course of this Inquiry, much of which will be on the margins of or outside the main focus of the Inquiry’s work, which will be the management and scope of undercover operations by the police’*, at §11.
 - 57.3.2. The Cat H CPs were designated because they fell within Rules 5(2)(a) – (b) of the Inquiry Rules, at §§46 – 50. There was no suggestion they might be subject to criticism.
 - 57.3.3. The Ruling made clear, in the context of Mr Sheppard and Mr Clarke’s involvement in the Debenhams incident specifically, that the Inquiry *‘will not adjudicate upon their guilt or innocence’*, at §54.
 - 57.3.4. The Ruling indicated the issues which the successful applications raised, and alleged criminality by NSCPs was not among them, at §132.
- 57.4. The Standard of Proof Ruling states that a variable standard of proof is appropriate since the Inquiry will consider *‘whether there has been misconduct or other failure of duty and, if so, in what areas and to*

what extent’, at §11. The misconduct in issue was, self-evidently, the misconduct of police officers, not anyone else.

57.5. The Interim Report's Foreword records that one issue being set aside for later was *‘the impact of the conduct of male police officers on women deceived into sexual relationships with them’*. There was no suggestion those women might be subject to adverse individual findings.

58. The Tranche 2 Cat H CPs’ discovery, at and following the CTI meeting, that the Inquiry apparently intended to make adverse findings of fact against individual NSCPs, including possible findings related to alleged criminal conduct, contrary to their previous understanding and belief, came as a considerable shock. They respectfully submit that, for all the reasons set out in these Submissions, the Chair should not and cannot now fairly, proportionately, or rationally resile from the expectation that has been engendered, and that instead the General Assurance should be given.

(4) **Procedural Unfairness**

59. In the context of this Inquiry, it would be procedurally unfair for the Inquiry to make adverse findings of fact against individual NSCPs for the following reasons:

59.1. As set out at paragraphs 73ff below, many of the Tranche 2 Cat H CPs have been given deadlines to provide their Rule 9 Responses prior to receiving full disclosure, including documents which have been referred to in the statement of UCO who is making the allegations against them. Requiring the Cat H CPs to produce statements without full disclosure of the documentation which the UCOs accusing them of serious wrongdoing have received, is unfair and contrary to the ordinary requirement that a party is entitled to know the case against them. That is so even in inquisitorial proceedings: *R (Bentley) v HM Coroner* [2001] EWHC Admin 170, at §67.

- 59.2. It is currently envisaged that the Tranche 2 Cat H CPs will give their oral evidence prior to the UCOs. They will not have the right to reply to the UCO's oral evidence or for their legal representatives to question the UCOs. The 'Chairman's further statement about the conduct of evidence hearings', of 30 October 2019 ("**Chairman's Further Statement**"), provides that, when there is a significant dispute of fact between the individual or individuals represented by the recognised legal representative and the witness, the questioning of a witness by a recognised legal representative will be both permitted and encouraged after counsel to the Inquiry, at §17. The Chairman's Further Statement envisages three scenarios in which this might occur: *'when it is alleged that an undercover officer has encouraged, incited or participated in a serious crime alleged to have been committed by a core participant; when a deceitful sexual relationship is alleged, but disputed by the undercover officer; when there are significant disputes of fact between a manager and an undercover officer who is a core participant about what each did or knew'*. The Chairman's Further Statement does not refer to, or envisage, a situation in which there is dispute about the NSCP's alleged involvement in wrongdoing.
- 59.3. The Tranche 2 Cat H CPs are being asked to respond to allegations from over three decades ago, often being made by the men who abused them, and in the main without detailed records of their own. It is unfair to expect the Cat H CPs to defend themselves against such allegations in those circumstances particularly given the passage of time. Far greater procedural protections would be required if this were to occur.
60. In addition, there is a difference in treatment between UCOs and the (Tranche 2) Cat H CPs, which cannot be justified, and would be irrational and unfair, if the Cat H CPs are also facing the possibility of individual findings against them. In particular, as the Tranche 2 Cat H CPs understand :

- 60.1. UCOs received all of their disclosure in one tranche, rather than in disparate batches with no chronological ordering or clarity about when that disclosure would be received and significant delay to deadlines set by the ILT. The Tranche 2 Cat H CPs initially welcomed rolling disclosure [CHCP/5/18], on the basis that the disclosure would be “*provided either before or at the same time as receipt of the rule 9 request*” [CHCP/6/21] and in good time before the Tranche 2 hearings. That has not happened, with the result that the rolling disclosure process as it is applied in practice is now causing the Tranche 2 Cat H CPs serious prejudice.
- 60.2. UCOs received all reports they are suspected to have written (among other things), while NSCPs, including the Tranche 2 Cat H CPs, are provided with only those reports which explicitly name them (rather than those which relate to e.g. groups of which they were a part). That is of particular significance because, among other things, officers had an incentive to write the women they were abusing out of their reports.
- 60.3. Given the content of their Witness Statements, it can be inferred that the UCOs have not been asked about their political beliefs, whereas the Tranche 2 Cat H CPs have.
- 60.4. Even though the UCOs are now civilians, they receive preferential treatment in respect of access to information and in particular, redactions. As the Chairman’s Note of 29 February 2019 – ‘Preliminary Issue: Privacy and Data Protection - Note regarding the Inquiry’s evidence gathering process’ – makes clear, the UCOs have been provided with documentation containing minimal redaction. The reason given for doing so was that, *[i]t is necessary for the officers to see such information in the documents so that they can refresh their memories, understand and answer the questions in the Inquiry’s request and give the best possible evidence*, at §5(i). By contrast, the documentation provided to the NSCPs has been and will be redacted, at §5(ii). This is despite the fact that, in preparing their R9 Responses, the NSCPs also need to *refresh their memories, understand and*

answer the questions in the Inquiry's request and give the best possible evidence'.

- 60.5. Given the timing of the R9 Requests for the Tranche 2 Cat H CPs, their recognised legal representatives (“**RLRs**”) will be working on their R9 Requests at the same time as bundle and hearing preparation is ongoing, while the UCOs have faced no such disadvantage.
61. If, contrary to the Tranche 2 Cat H CP’s prior understanding, the Inquiry is to consider individual allegations of wrongdoing, including criminal misconduct, against them, then they must benefit from the same procedures, and procedural protections, as the UCOs. The Inquiry is required to act consistently as an aspect of rationality; it cannot treat like cases differently without justification (*R (Middlebrook Mushrooms Ltd) v Agricultural Wages Board of England and Wales* [2004] EWHC 1447 (Admin), at §74; *R (British Sky Broadcasting Ltd) v Central Criminal Court* [2014] UKSC 17, [2014] AC 885, at §30; *R (Gallaher Group) v CMA* [2018] UKSC 25, [2019] AC 96, at §29.)

(5) Breach of Convention Rights

62. The position of the Cat H CPs is particularly acute. The Inquiry’s treatment of them engages and, if the Inquiry were to make individual adverse findings of fact, would violate their rights under Articles 3 and 8 ECHR.
63. The Inquiry is a public authority pursuant to s.6 of the Human Rights Act (“**HRA**”). It must act compatibly with the Convention rights, including Articles 3, 6 and 8 in undertaking its investigations and conducting its proceedings, especially insofar as they involve survivors of abuse: see *Y v Slovenia* (2016) 62 EHRR 3, at §§101 - 116; making reference to Article 56 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. In particular:

- 63.1. The Article 8 rights of witnesses must be protected when they give evidence: *SW v United Kingdom* (2021) 73 EHRR 18, at §61; *Y v Slovenia*, at §109.
- 63.2. The trauma which victims have suffered, and any possible reluctance to engage fully with the authorities as a result, must be taken into account and approached sensitively: *SM v Croatia* (2021) 72 EHRR 1, at §344.
- 63.3. It is necessary for the authorities to ‘*take measures to prevent [...] further traumatising*’ and to ‘*take sufficient account of [the victim’s] needs*’: *X v Greece* (App. no. 38588/21), at §86. In that case, the Court criticized the Greek authorities for failing to approach the case ‘*from the perspective of gender-based violence*’ and, critically, for failing to ‘*explore the available possibilities for establishing all the surrounding circumstances*’ in light of that, at §87.
64. A violation of Article 3 can arise where a survivor of sexual abuse is subjected to ‘*numerous interviews*’, ‘*contact with the alleged perpetrators*’ and ‘*intense questioning*’ without offering any alternative, leading to ‘*secondary victimisation*’: *B v Russia* (App. no. 36328/20), at §62.
65. Instead of protecting the Cat H CPs, the Inquiry is now suggesting that the Cat H CPs might face individual findings of fact concerning past conduct in an official report following a public Inquiry conducted by the State, when that Inquiry was established *inter alia* to consider how it was possible for them to be abused at the hands of the State and its officers.
66. The possibility of adverse individual findings is taking place in the context of the Inquiry process which already engages the Cat H CPs’ Article 3 and 8 ECHR rights. The Cat H CPs in particular rely on the following:
- 66.1. The Tranche 2 Cat H CPs have been asked invasive questions about their activities and political beliefs from decades ago.

- 66.2. The level of work required from the Tranche 2 Cat H CPs - both in terms of its emotional toll, and the hours required - is enormous.
- 66.3. The Inquiry has not protected the Tranche 2 Cat H CPs from scurrilous accusations and slurs made by their abusers. Instead, it has used its Rule 9 powers to put questions to the Tranche 2 Cat H CPs which reflect those slurs.
- 66.4. The Inquiry's structures - such as in relation to disclosure, order of evidence, and reporting restrictions - all make the engagement of the Tranche 2 Cat H CPs more traumatising.
- 66.5. The Inquiry has not recognised the scale of the contribution which Tranche 2 Cat H CPs are making, nor the emotional toll or other ways in which this is difficult for them.
- 66.6. There are no mitigation measures, such as counselling, in place.
67. Taken all that together, the Inquiry's proposed approach amounts to a serious interference with the Cat H CPs' Article 3 and 8 rights, which is either incapable of justification; or insofar as capable of justification, unjustified because it is unnecessary and disproportionate, for the reasons given above.

E. ASSURANCE SOUGHT

68. For the foregoing reasons, the Cat H CPs seek the General Assurance in the terms set out at paragraph 1 above.
69. As an example of how the General Assurance would apply, the Chair's Letter refers to certain 'specific issues' which he must investigate including *'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’.

70. In relation to this specific incident, and in keeping with the General Assurance sought, the Cat H CPs submit that:
 - 70.1. While the Chair will consider the role, if any, played by Robert Lambert, he should not make any findings of fact in relation to any NSCP against whom allegations have been made since it is not necessary to do so and the evidence was not considered sufficient or reliable enough to prosecute at the time;
 - 70.2. In referring to allegations made by Robert Lambert (whether contemporaneously or by way of his evidence), the Chair should refer in general terms to ‘other individuals against whom allegations are made’, rather than making reference to allegations against a NSCP which necessarily involves a narrower subset of individuals and directly brings into issue the role and conduct of NSCPs; and
 - 70.3. The Chair should not otherwise identify any other individual against whom Robert Lambert has made allegations.
71. Further, and *a fortiori*, in keeping with the General Assurance, the Chair should not make adverse findings as to the general character, political affiliation, or non-criminal conduct of a Cat H CP.
72. The MPS apology acknowledged that, *‘none of the women with whom the undercover officers had a relationship brought it on themselves. They were deceived pure and simple. I want to make it clear that the Metropolitan Police does not suggest that any of these women could be in any way criticized for the way in which these relationships developed’*. The Inquiry should not do anything that undermines, or is perceived as undermining, this apology.

F. OTHER MATTERS

(1) Disclosure

73. One of the matters which is of particular concern to the Tranche 2 Cat H CPs, as referenced at paragraph 59 above, and which was raised in the CTI meeting, is the process by which documentation is disclosed. The disclosure to the Tranche 2 Cat H CPs has been piecemeal, arriving in different tranches over an extended period of time, with no particular structure (for example, it is not chronological), frequent delays and coupled with requests to some of the Tranche 2 Cat H CPs subsequently to delete documents which have been disclosed. The experience of receiving batches of disclosure with no certainty about when that disclosure will arrive and what it will contain, and then receiving disclosure of material containing unfounded attacks on their characters from the men that have abused them, has been particularly distressing for the Tranche 2 Cat H CPs.
74. For most of the Tranche 2 Cat H CPs, the Inquiry had previously set deadlines for serving R9 Responses in advance of those Cat H CPs receiving all of the relevant disclosure and, most starkly, without receiving all of relevant exhibits which are referenced in the Witness Statements of the (former) UCOs.
75. The UCOs have therefore had access to documents with which to prepare their Witness Statements but those documents have not been provided to the Cat H CPs when responding to that evidence. Not only does this raise real issues of due process, it is causing great distress to the majority of the Tranche 2 Cat H CPs.⁵ By way of example:
- 75.1. As a particularly notable example, the Tranche 2 Cat H CPs' RLRs are aware that the evidence of one Cat H CP from a corresponding criminal process has been provided to the former UCO but has not yet

⁵ Bea does not seek any further disclosure.

been disclosed to the Cat H CP herself, despite requests. The only explanation that has been provided is that the evidence is still going through a process of security clearance before it is disclosed to the Cat H CP. No explanation has been given as to why it was possible to provide it to the former UCO, who is also a civilian.

- 75.2. As another example, the Tranche 2 Cat H CPs RLRs are also aware that one Cat H CP has been provided with disclosure which is directly relevant, and of assistance, to another Cat H CP. No explanation has been given as to why these documents have been provided to one Cat H CP and not the other.
76. The details of the first of these examples are set out in Restricted Annex 2.
77. The Tranche 2 Cat H CPs now understand, as a result of a letter from the Inquiry on 4 March 2024, that the Inquiry is open to re-considering the current R9 deadlines in order to ensure that NSCPs have had proper disclosure before they are required to provide their R9 Responses [CHCP/10/30]. That is welcome.
78. However, the letter also stated that disclosure to a NSCP need only be “*substantially complete*” in order for that NSCP to produce a R9 Response. As set out above, it is not fair to expect the Tranche 2 Cat H CPs to respond to witness evidence from UCOs without seeing the material on which that witness evidence is based. The Tranche 2 Cat H CPs respectfully ask the ILT therefore to ensure that this disclosure is received at a minimum.
79. Further, given the matters set out in Restricted Annex 2, the Chair is respectfully asked to rule that the material referred to in that Annex be disclosed to the relevant Tranche 2 Cat H CP immediately.

(2) **Restriction Orders**

80. Another matter of great concern for the Tranche 2 Cat H CPs, as referenced at paragraph 8 above, is the fact that they are unable to speak to each other, their family or friends due to the terms of the ROs. This is leading to real feelings of isolation, and is compounding the trauma of the Rule 9 Process. They would benefit greatly from being able to speak freely with each other, not for any improper purpose but in order to minimise the harmful impact of reading the reports and statements of their abusers. Other Cat H CPs, having been through a similar experience, understand the nature and impact of the abuse and are therefore best placed to offer comfort and support.
81. In the meeting with the CTI, it was suggested that the terms of the ROs could be varied but that a consequence of doing so may be that the Cat H CPs would be asked questions about the nature of their discussions in preparing their evidence for the Inquiry. This is to treat the Cat H CPs as if their individual actions are subject to scrutiny by the Inquiry, which for the reasons given above, should not be the case.
82. The Inquiry has previously refused applications to allow Cat H CPs to be listed on each other's ROs. As examples, on 24 February 2023, a request was made by one Cat H CP for other women in Cat H to be added to her RO for purposes of support [CHCP/7/22]. On 6 March 2023, the Inquiry refused to grant permission until after her witness evidence had been served in order to ensure the evidence was her own [CHCP/8/24]. A similar application was made by a different Cat H participant on 17 July 2023 [CHCP/9/27] and refused on 4 August 2023, without the proviso that such contact would be possible after the service of witness evidence [CHCP/9/26].
83. The Cat H CPs respectfully invite the Chair to reconsider, in light of the real harm which the current approach is increasingly causing (and described

above).⁶ The purpose of the ROs is the protection of the private data of individuals named within the disclosed documents. It is not an appropriate or practical means by which to guarantee the quality of evidence, not least since Cat H CPs are free to discuss their unprompted memories with each other. For at least some of the Tranche 2 Cat H CPs, there is also no evidential overlap which would justify this approach as the CPs did not know each other in the relevant period, were not part of the same groups and were not under surveillance by the same UCO. Further, it is the Tranche 2 Cat H CPs' understanding that NSCPs who were members of a specific group are included on each other's ROs and are therefore permitted to speak to each other in accordance with the terms of the relevant RO. It is unclear why the situation should be different for the Cat H CPs as a matter of principle.

84. Accordingly, the Chair is respectfully asked to reconsider his approach and to indicate that he is willing to consider applications to vary the ROs to permit the Tranche 2 Cat H CPs to whom these submissions relate to discuss their disclosure with each other (at the very least, where there is no evidential overlap).

G. CONCLUSION AND ASSURANCES SOUGHT

85. For the above reasons, the Chair is respectfully invited to give the General Assurance sought.

CHARLOTTE KILROY KC

JOANNA BUCKLEY

TOM LOWENTHAL

6 March 2024

⁶ As above, certain of the Tranche 2 Cat H CPs would be prepared to provide impact statements to the Inquiry, were the Inquiry to consider this necessary.