Applications by the Metropolitan Police Service for an extension of time for the making of restriction order applications and for a change by the Inquiry to its approach to investigation

Ruling

Introduction

1. The occasion for this ruling is an application made by the Metropolitan Police Service on 21 December 2016: (i) for an extension of time within which to submit applications for anonymity in respect of police officers who formerly served in the Special Operations Squad, the Special Demonstration Squad and the Special Duties Section (hereafter referred to collectively as “the Special Demonstration Squad”, save where the context otherwise requires) and (ii) that the Inquiry should consider a change of approach to its requirements for the delivery of restriction order applications seeking anonymity for those officers.

2. Coincidentally, the Inquiry is embarking upon a strategic review of its work because it has become clear that it will not be in a position to issue its report to the Home Secretary within the three year period anticipated when the Inquiry was opened on 28 July 2015. The Inquiry has undertaken to deliver to the Home Secretary a re-considered estimate for its programme towards the completion of its work. I have decided that the present applications present the Inquiry with a suitable opportunity to consult with core participants about the progress and working practices of the Inquiry so that I will be the better able to inform and advise the Home Secretary.

3. Pursuant to my directions the Inquiry has received, in advance of the hearing, the following written submissions:

Core participant(s)	Document	Author(s)	Date
Metropolitan Police Service	Submissions	Jonathan Hall QC Amy Mannion	23 Feb 2017
Counsel to the Inquiry	Note	David Barr QC Kate Wilkinson Emma Gargitter Victoria Ailes	2 Mar 2017
Slater and Gordon core participants	Submissions	Ben Brandon	22 Mar 2017
Peter Francis	Submissions	Ben Emmerson QC Maya Sikand	23 Mar 2017

Core participant(s)	Document	Author(s)	Date
National Crime Agency	Submissions	Andrew O'Connor QC Richard O'Brien	23 Mar 2017
National Police Chiefs' Council	Submissions	Sir Robert Francis QC Stephen Morley Cecily White	23 Mar 2017
Home Office	Submissions	Nicholas Griffin QC	22 Mar 2017
Co-operating group of non-police, non-state core participants	Submissions	Dan Squires QC Ruth Brander	23 Mar 2017
Trades union core participants	Representations	Gareth Peirce of Birnberg Peirce and Partners	23 Mar 2017
Metropolitan Police Service	Response	Jonathan Hall QC Amy Mannion	30 Mar 2017

Copies of Counsel to the Inquiry's Note and all of the submissions above are available on the Inquiry's website.

4. I have, in addition, received written representations from four core participants, Carolyn Wilson, "Jane", Kate Wilson and Kim Bryan, said to represent the views of "around 40" unidentified non-police, non-state core participants who met together on 26 March 2017 to discuss matters of mutual concern arising from their experience as core participants.

5. A public oral hearing was held at the Royal Courts of Justice on 5 and 6 April 2017. I received oral submissions from counsel and from Kate Wilson and Helen Steel, in person, to whom I gave leave at the hearing. As usual, I have received much assistance and I am grateful for the efforts made by core participants and the Inquiry's Counsel team to prepare their submissions within what I acknowledge was a tight timetable.

6. This ruling is arranged for ease of reference into four parts:

Part 1: Extension of time

Part 2: Changes of approach

Part 3: Factors governing progress and timetable

Part 4: Discussion and conclusions

Part 1: Extension of Time

Background

7. On 30 November 2016 the Inquiry had written to Ms Melanie Jones of the Directorate of Legal Services for the Commissioner of Police of the Metropolis expressing concern at the repeated missing of deadlines and making suggestions, such as an increase in resources, for improvement. The Metropolitan Police Service responded as was summarised in my Directions published on 15 February 2017:

> "2. On 21 December 2016 the Inquiry received four letters from Ms Melanie Jones, on behalf of the Metropolitan Police Service. The "second letter" related to the resources available to the Metropolitan Police Service for the preparation of risk assessments and applications for restriction orders. The "first letter" sought an extension of time for the delivery of applications. The third and fourth letters are peripherally relevant for present purposes. Copies of all four letters, together with the Inquiry's reply to the third letter, appear in Appendices A - E at the conclusion of these Directions...
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> 3. ...
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> 4. In August 2016 the Inquiry requested that applications for restriction orders made on behalf of police officers formerly employed by the Special Demonstration Squad should be received by the Inquiry on or before 1 March 2017. In her first letter, above, Ms Jones sought an extension of time until 1 October 2017. The Inquiry has neither granted nor refused the application but has requested that, in the meantime, the Metropolitan Police Service expedites the process of preparing risk assessments for existing applications."

8. As Counsel to the Inquiry explain at paragraphs 4 and 11 of their Note of 2 March 2017, the Inquiry considers that a central part of its work is its investigation of the Special Demonstration Squad and the National Public Order Intelligence Unit. The Special Demonstration Squad, including for this purpose the Special Operations Squad and the Special Duties Section, was in existence between 1968 and 2008. The conduct of some officers employed by the Special Demonstration Squad, on which I expand at paragraph 101 below, created, in large measure, the public concern that led to the decision to commission this Inquiry.

9. The contemporaneous documentary records of the Special Demonstration Squad for its early years are comparatively sparse. Thus, if the Inquiry is to investigate the

development of practices in undercover policing within the Special Demonstration Squad that then, or now, would be considered unsustainable or undesirable, it must do so by seeking the evidence of field officers, managers and backroom staff who were employed during its existence.

10. At paragraphs 48 and 49 of their Note, Counsel to the Inquiry explain that the Inquiry first sought to expedite consideration of applications for restriction orders made by core participant officers represented by Slater and Gordon (Tranche 1) and, for that purpose, also sought to expedite production of supporting risk assessment reports to be prepared by the Metropolitan Police Service. The objective of expedition of Tranche 1 applications was to enable me to provide, for challenge if necessary, an early example of my application of principle to restriction order applications and, hopefully, some time saving guidance for future applicants. I explain in summary the legal requirements imposed on the Inquiry by the Inquiries Act 2005 in Part 3 below.

11. The Inquiry's expectation of an early ruling upon Tranche 1 applications foundered for reasons that I shall explain. However, consistent with and consequent upon it, on 11 August 2016 the Inquiry sought from the Metropolitan Police Service further applications for restriction orders seeking, if so advised, anonymity in respect of all other officers formerly employed by the Special Demonstration Squad not being core participants represented by Slater and Gordon. The Inquiry asked that a first group of applications (Tranche 2) should be made by the end of October 2016 and that the remainder (Tranche 3) should follow by 1 March 2017.

The grounds for extension

12. In his written submissions of 23 February 2017 Mr Hall said that on 11 August 2016 it was understood by the Metropolitan Police Service that there were 147 Special Demonstration Squad officers. Mr Hall said that work on risk assessments had commenced about a year earlier. Two officers, "Jaipur" and "Karachi", with the assistance of a third, were in place to prepare risk assessments that would accompany applications for restriction orders. By September 2016 they had prepared 19 such risk assessments and 23 further officers had been interviewed in preparation for risk assessments.

13. However, in a witness statement dated 1 July 2016, made by Detective Superintendent Neil Hutchison in support of their own applications for restriction orders, that if successful would grant them anonymity, the roles of Jaipur and Karachi within "Operation Motion" were explained. In short, Jaipur and Karachi had acted and/or were to act (i) in liaison between former Special Demonstration Squad officers

and the Metropolitan Police Service Inquiry team and/or the Inquiry itself, (ii) also, to promote the individual welfare and security of the same officers, and for this purpose to conduct internal risk assessments as to their current circumstances, and (iii) further, to act as 'expert' risk assessors for the purpose of providing evidence to the Chairman of the Inquiry in support of restriction order applications made by those officers.

14. In my view, the performance of these multiple roles was bound to lead, and did lead, to accusations of perceived bias – an officer who was personally responsible for an officer's welfare and safety could not be regarded as an *independent* assessor of risk to the same officer. However professionally and conscientiously Jaipur and Karachi performed their tasks, their opinion on risk was open to the criticism that they had a personal interest in the outcome of the application.

15. The weight of the issue was acknowledged by the Metropolitan Police Service and, on 27 September 2016, Jaipur and Karachi were relieved of their duty to prepare risk assessment reports for submission to the Inquiry, and their existing reports were withdrawn. This meant that the search for suitable 'independent' risk assessors and the preparation of reports had to start again from scratch, save to the extent that the source material already gathered was available to the replacement risk assessors.

16. It is now estimated by the Metropolitan Police Service that, including managers and back room staff, the number of officers who need to be interviewed is up to 201 (of whom 168 were Special Demonstration Squad officers, the subject of the Inquiry's request of August 2016).

17. In his written submissions Mr Hall correctly identified the Inquiry's request that risk assessments to accompany applications made by former Special Demonstration Squad officers represented by Slater and Gordon should be given priority. These applications were made as long ago as March 2016 but their consideration has been bedevilled by delays caused largely by a failure to instruct medical experts who were prepared to be publicly identified (which was not the responsibility of the Metropolitan Police Service) and the withdrawal of risk assessment reports by Jaipur and Karachi described above (which was).

18. My consideration of a first batch of anonymity applications, which should have commenced in about July 2016, has, consequently, been delayed for 9 months to date. At the eve of the hearing the Inquiry awaited suitable risk assessment reports in support of all Slater and Gordon applicants formerly deployed with the Special Demonstration Squad and until 23 March 2017 it had awaited properly attributable medical reports in support of some of them.

19. Ms Jones set out in her "first" letter of 21 December 2016 the steps that were being taken to enlarge the Metropolitan Police Service Inquiry risk assessment team following the withdrawal of Jaipur and Karachi. Four or five risk assessors in all would be appointed, of whom one was already in post. They would be supported by four researchers and two contact officers. It was anticipated that the full team would be in place by 1 March 2017, following which risk assessment reports could be produced at the rate of not fewer than 16 per month, subject to staff holidays and absence. The Directorate of Legal Services would prepare restriction order applications as and when each of the risk assessment reports came to hand. Ms Jones estimated that by 1 October 2017 at least (16 x 7) 112 applications, supported by risk assessment reports, would have been submitted to the Inquiry.

20. Ms Jones acknowledged that the throughput of applications could, in theory, be increased further by the employment of greater numbers of risk assessors. However, she referred to her "third" letter as evidence of the difficulty that recruitment of suitable risk assessors presented and pointed out that any significant increase would require a commensurate increase in support staff. Ms Jones observed that the Metropolitan Police Service was "also concerned about the overall level of resources that it is appropriate or possible to dedicate to this process, given all the competing pressures on [it] both within the Inquiry and without".

21. In her third letter of 21 December 2016 Ms Jones repeated the Metropolitan Police Service's commitment to assisting the Inquiry to fulfil its terms of reference. She referred, however, to the scale of the task of locating and producing information from an estate as large and diverse as that of the Metropolitan Police Service. She claimed that notwithstanding the size of the task over one million pages of documents had been produced to the Inquiry. The Assistant Commissioner's Inquiry unit had authorised the recruitment of further staff so as to bring the total number from 25 to 100.

22. As to the task of recruiting suitable risk assessors, Ms Jones listed the qualities and qualifications required. They included, and I paraphrase:

    (i) qualification for security clearance;

    (ii) a willingness to commit to specialist work outside mainstream policing;

    (iii) an ability to make assessments of risk of harm that are expert, critical and objective;

    (iv) an aptitude for analysing and absorbing large volumes of material;

(v) a robust decision-making ability;

(vi) a capacity to bear and learn from critical appraisal.

Ms Jones had been instructed that suitable candidates were likely to have attained the rank of Detective Chief Inspector, although a minimum rank of Detective Inspector might be acceptable. So as to avoid the appearance of bias or conflict of interest the nature and fields of a risk assessor's former service would have to survive scrutiny.

23. In his written submissions of 23 February 2017 Mr Hall revealed that there were then in post two risk assessors. The start dates for two further provisionally selected candidates had not yet been fixed. Four researchers were due to commence induction training on 27 February 2017. Fourteen risk assessments were in progress and one had been completed.

24. It was acknowledged by Mr Hall that it was beyond the means of the Metropolitan Police Service to meet the deadline of 1 March 2017. He sought an "ambitious" extension of time to 1 October 2017.

The current factual position

25. At the hearing I was informed that the current factual position is as follows:

(i) The Inquiry has received expert medical reports in respect of all but one of the Slater and Gordon applicants who intend to rely on such evidence. Risk assessments remain outstanding.

(ii) On 31 March 2017 the Inquiry received two applications, supported by risk assessments, from officers being supported by the Metropolitan Police Service who sought restriction of their real identities.

(iii) On 4 April 2017 the Inquiry received a further anonymity application from an officer being supported by the Metropolitan Police Service.

(iv) Twenty-five (25) former members of the Special Demonstration Squad and its back room staff are now deceased. Three officers are seriously ill. Two officers cannot be contacted.

(v) The Inquiry has received confirmation from the Metropolitan Police Service that there will be no anonymity application in respect of one of the deceased officers.

(vi) Of the 168 former members of the Special Demonstration Squad referred to above, a decision by the Commissioner whether to apply for a restriction order has been taken in 18 cases.

Counsel to the Inquiry

26. Counsel to the Inquiry pointed, at paragraph 77 of their Note, to a failure by the Metropolitan Police Service to propose *any* date for the delivery of *any* application before 1 October 2017. In view of the drift in deadlines that has already occurred, this, they suggested, was not acceptable. Secondly, Counsel to the Inquiry doubt that even a deadline extended to 1 October is realistic in the light of progress actually made since 21 December 2016 (1 x risk assessment completed by 23 February 2017, 14 x risk assessments in progress).

27. Counsel to the Inquiry emphasised that the issue to which risk assessments are directed is "the route by which it is contended that publication of a cover name and/or real name, as the case may be, will cause harm to the officer and/or other persons and/or the wider public interest". A risk assessment depends for its authority on the quality of the underlying evidence on which it is based. They suggested that the Inquiry might conclude that police-generated risk assessments, that were responsible for prolonged delay, were not an essential component of the Chairman's consideration of restriction order applications, provided that the underlying evidence is produced. If necessary that evidence could be obtained under compulsion of a notice served upon the Commissioner of Police of the Metropolis under section 21 of the Inquiries Act 2005.

28. Mr Emmerson QC, on behalf of Peter Francis, submitted that the Inquiry's experience of the past twelve months and the problems associated with recruitment of suitable risk assessors had undermined the claim made on behalf of the Metropolitan Police Service, at the "Legal Principles" hearing on 22 March 2016, that its institutional expertise and experience of risk assessment deserved respect. In particular, as noted by Counsel to the Inquiry, risk assessors appointed by the Metropolitan Police Service would depend, for an assessment of risk from domestic extremists, upon "thematic assessments" prepared by National Counter Terrorism Police Operations Command.[1] Mr Emmerson argued that the alternative approach suggested by Counsel to the Inquiry required serious consideration.

[1] At the hearing the Metropolitan Police Service signalled a change: it would, in general, rely instead on thematic risk assessments prepared in 2012

Slater and Gordon core participants

29. In writing Mr Brandon endorsed the representations made on behalf of the Metropolitan Police Service as to the sheer scale of the task of preparing anonymity applications for large numbers of police officers. He was implicitly supportive of the application for an extension of time.

Peter Francis

30. In his written submissions Mr Emmerson did not engage specifically with the application for an extension of time, save to observe that the delay in production of risk assessments by the Metropolitan Police Service to date had been "interminable" and that, as above, consideration should be given to dispensing with them altogether.

National Crime Agency

31. In his written submissions Mr O'Connor was supportive of the application for an extension of time, because, first, in the view of the National Crime Agency, there was no short cut to an evidence-based evaluation of risk, secondly, the police services possessed the necessary institutional experience of assessment of risk and, thirdly, the scale of the task deserved recognition.

National Police Chiefs' Council

32. In his written submissions Sir Robert Francis QC, on behalf of the National Police Chiefs' Council, adopted a neutral stance as to the application by the Metropolitan Police Service for an extension of time. However, he drew attention to the scale of the task of producing risk assessments in support of applications for restriction orders made by officers formerly deployed with the National Public Order Intelligence Unit. It is similar to that faced by risk assessors for former employees of the Special Demonstration Squad. In the view of the Council the current timetable for the delivery of completed applications by former officers of the National Public Order Intelligence Unit, proposed by the Inquiry on 20 January 2017, is itself impossible to achieve and needs reconsideration.

Home Office

33. Mr Griffin QC had no substantive written or oral submission to make as to the applications made by the Metropolitan Police Service. He endorsed the "correctness" of the approach described by Counsel to the Inquiry at paragraph 87 of their Note,

reproduced at Part 3, paragraph 111 below, as to the scope of the Inquiry and the direction of its investigation.

Trades Unions

34. Ms Peirce's written representations do not engage specifically with either application but are relevant to proposals for a change of approach by the Inquiry, which I shall summarise in Part 2 below.

Non-police, non-state core participants

35. Dan Squires QC and Ruth Brander represent a co-operating group of non-police, non-state core participants who were or may have been significantly affected by undercover police operations targeted at activists who supported, variously, political, social justice, environmental and/or animal rights causes.

36. In general, their interest in the Inquiry is to be informed whether, for what purpose, to what extent and by whom they were either the subjects of reporting by undercover officers or were the victims of deceitful personal relationships formed by undercover officers as an incidence of their undercover role or for the purpose of acquiring intelligence.

37. In addition, many of the core participants in the co-operating group wish to expose to public scrutiny specific police misconduct of which they believe they were victims. I have listed some of the alleged misconduct investigated by Operation Herne and Mark Ellison QC at Part 3, paragraph 101 below.

38. For many who have in the intervening years acquired some knowledge, but incomplete knowledge, of their unwitting involvement in undercover policing, the slow progress of the Inquiry towards disclosure and publication is the subject of deep frustration, anger and distress. Their perception is that the Metropolitan Police Service has been making efforts "to stifle the Inquiry's effectiveness and prevent any details of wrongdoing in undercover activities being made public".[2] In the meantime, they note, sources of evidence are being lost through ill health and death. Furthermore, it is suspected that unlawful destruction of records may have occurred and this is currently being investigated by the Independent Police Complaints Commission.

39. In their written submissions, Mr Squires and Ms Brander did not engage specifically with the grounds advanced by the Metropolitan Police Service in support of its application for an extension of time. Instead, they proposed a radical change of

[2] Written submissions non-police, non-state core participants dated 23 March 2017, paragraph 5

approach and a much tighter timetable of their own with the object of securing early disclosure of undercover officers' cover names. I shall describe these proposals partly in the following paragraphs and partly in Part 2 below.

40. The non-police, non-state core participants join Peter Francis in doubting the worth of police risk assessment reports. As to the future timetable for delivery of (Tranche 1) Slater and Gordon applications, the non-police, non state core participants propose that the Inquiry should direct that (and I paraphrase):

(i) All evidence and submissions in support of a Slater and Gordon application must be received by the Inquiry by 19 April 2017.

(ii) Any application for an order restricting disclosure of the evidence and submissions at (1) above, providing full reasons, must be received by the Inquiry by the same date.

(iii) The non-police, non-state core participants to be given such access to the process of considering a paragraph (2) application as the nature of the application permits.

(iv) The Chairman to decide any paragraph (2) application by 10 May 2017.

(v) The Inquiry to resolve any privacy issues according to paragraphs 25 – 34 of its Draft Restriction Protocol (of 15 March 2017) by 7 June 2017.

(vi) Subject to any restriction order made under paragraphs (4) and (5), the Inquiry to publish the paragraph (1) evidence and submissions by 7 June 2017.

(vii) Any core participant wishing to respond to a paragraph (1) application shall file written submissions and evidence by 28 June 2017.

(viii) A two-day oral hearing of the paragraph (1) applications to be held on or about 12 July 2017. The Chairman will receive, in the course of the hearing, submissions calculated to assist him to identify thresholds and benchmarks that will provide assistance to further applicants.

(ix) The Chairman to give his rulings on paragraph (1) applications and issue guidelines and benchmarks for the assistance of further applicants by 2 August 2017.

(x) Subject to any restriction order made under paragraph (9), the Inquiry will make disclosure of the applicants' identities by 16 August 2017.

(xi) The Inquiry, by 9 August 2017, to supply all remaining undercover officers deployed with the Special Demonstration Squad and the National Public Order Intelligence Unit and their successors with the Chairman's guideline ruling, inviting them, by 23 August 2017, to specify whether and, if so, on what grounds they claim to have met the criteria for the making of an order granting anonymity.

(xii) The cover name of any officer who does not, by 23 August 2017, respond with a statement of intention to apply for restriction of its disclosure or publication to be published by the Inquiry by 6 September 2017.

41. As to applications assigned by the Inquiry to Tranche 2, the non-police, non-state core participants propose directions that follow the same sequence as for Tranche 1, requiring fully reasoned applications and evidence to be submitted to the Inquiry by 23 August 2017, leading to an oral hearing in October 2017 and a ruling by the Chairman by 15 November 2017; similarly, they propose that Tranche 3 (comprising officers employed 1968-1987) applications should be submitted by 20 September 2017, culminating in a ruling by the Chairman by 15 December 2017; any remaining officers would be required to submit their applications in stages between 18 October and 13 December 2017, depending upon their years of first undercover deployment.

Response of the Metropolitan Police Service

42. Mr Hall responded in writing to the written submissions made by other core participants in a document dated 30 March 2017.

43. In answer to the accusation made by the co-operating group of core participants that the Metropolitan Police Service has stalled the progress of the Inquiry for the purpose of concealing or delaying the disclosure of misconduct by its officers, Mr Hall:

(i) repeated his assurance of candour with and assistance to the Inquiry;

(ii) recognised that some aspects of covert policing would be made public by the Inquiry;

(iii) emphasised the care that must necessarily attend the process of gathering evidence in support of applications for restriction orders;

(iv) asserted that the nature and scale of the task facing the Metropolitan Police Service was unprecedented, requiring a unique project management challenge and systems that "are now largely in place and are functioning"; and

(v) pointed to the willingness of the Metropolitan Police Service to adopt improvements to its responses to the Inquiry that have been suggested by the Inquiry's legal team.

44. Mr Hall acknowledged that "it has taken time to design, recruit for … and resource" the Metropolitan Police Service's current model for assessment of risk. He explained how the current model would work in practice. In bare summary:

(i) The starting point for anonymity applications is a search of the Metropolitan Police Service's Relativity database on which over 735,000 Special Demonstration Squad records are currently stored. Those relating to an individual officer are cached. The computer terminals assigned to this and other tasks have been increased from three in July 2016 to twelve in March 2017 and will be increased again to 29 from April 2017. The document searches will be performed by both police officers and members of the Metropolitan Police Inquiry unit's legal team. The purpose of this method of working is to reconstruct the career of the officer so as, amongst other things, to identify areas of possible risk. So far 60 such profiles had been prepared to which the Inquiry was offered direct access. Mr Hall commented that the Commissioner's interest in seeking a restriction order relating to an officer may not coincide with that of the officer concerned. Simply seeking the view of the officer alone would not necessarily exhaust the search for the public interest in a restriction order.

(ii) A risk assessment will be prepared with the assistance of a "debrief" of the applicant, a review of the document cache, research of open sources, the Police National Computer and the Police National Database and, possibly, advice received from the Counter Terrorism Policing – National Operations Command that holds the current national counter terrorism and domestic extremism databases.

(iii) Necessary expert medical evidence will be obtained.

(iv) The package will be placed before the Commissioner, together with advice from her legal team, for a decision as to whether to make an application for a restriction order and, if so, in what terms.

(v) The application will be prepared and submitted to the Inquiry by the Directorate of Legal Services.

45. The management of this process is now led by a senior police officer, a lawyer in the Directorate of Legal Services and a member of the Metropolitan Police Service counsel team.

46. As to the proposal to dispense with expert risk assessments altogether, Mr Hall responded that such a course would not remove the need for a search for documentary evidence and for a debrief of the applicant to identify and explain sources of risk; nor would it allow for any follow up research rendered appropriate by either or both of the debrief and the document analysis. Mr Hall submitted that there was no adequate substitute, such as a lawyer, for a risk assessor appointed from the ranks of senior police officers to bring an experienced and objective judgement of risk of harm or damage to bear on the available source material.

47. During his oral submissions on 5 and 6 April 2017 Mr Hall, while emphasising the size and complexity of the burden placed upon the Metropolitan Police Service by the Inquiry, recognised the legitimate concerns of core participants who had been affected by the delay in making disclosure and in progressing applications for restriction orders. He acknowledged a requirement to make “smart decisions” that identified more quickly cases that did not need a “full risk assessment process” with the object of making early disclosure of cover names where that could take place without risk of harm or damage.

48. As to the progress of risk assessments, Mr Hall urged me to permit the newly installed system for preparation of risk assessments and applications for restriction orders the opportunity to be tested. At the time of the hearing five new risk assessors, whom he named, had been appointed following the recruitment effort described by Ms Jones, six risk assessments had been completed and 24 were in progress.

49. In response to the critical observations of Counsel to the Inquiry, Mr Hall proposed at the hearing that I *should* direct that risk assessments and applications for restriction orders be delivered to the Inquiry in stages such as the following (which I have paraphrased for clarity):

   (i) By 1 June 2017 the Metropolitan Police Service to have made 40 decisions (and, where the decision is to apply for a restriction order, to have made the application) to include:

      (a) 6 core participant applicants represented by Slater and Gordon;

      (b) 22 former members of the Special Operations Squad (1968-1972) who can be contacted and medical or other evidential complications do not arise; and

(c) 12 former members of the Special Demonstration Squad "back office" staff who can be contacted and medical or other evidential complications do not arise.

(ii) By 1 August 2017 the Metropolitan Police Service to have made a cumulative total of 100 decisions (and, where the decision is to apply for a restriction order, to have made the application) to include:

(a) applications that do not rely upon "full" risk assessment;

(b) priority applications notified by the Inquiry; and

(c) remaining Special Demonstration Squad "back office" staff.

(iii) By 1 October 2017 the Metropolitan Police Service to have made a cumulative total of 150 decisions (and, where the decision is to apply for a restriction order, to have made the application), including all outstanding cases.

50. However, the proposal is made with strings attached. It assumes the following:

(i) that where the "decision" referred to is a decision that a cover name can be disclosed "there will not be a need to make an application and therefore to carry out a risk assessment over a real name";

(ii) that where the decision is that the real name of a member of back room staff may be disclosed there will be a continuing need to scrutinise documents so as to ensure that nothing is disclosed (e.g. a link with infiltration of a dangerous criminal group) that would put that person at risk of significant harm;

(iii) that complications may arise in the gathering of information and evidence as to an officer's deployment that will prolong the process of decision making.

51. I consider that only the "assumption" at (i) in the preceding paragraph is controversial. Mr Hall, Sir Robert Francis and Mr Emmerson posed the question whether there was any need for the disclosure of the real identity of a former undercover officer when all sides agree that it is the release of cover names that is desirable, where possible, for the effective functioning of the Inquiry. I shall summarise these submissions further in Part 2 below.

Part 2: Changes of Approach

52. It became clear upon receipt of core participants' written submissions that possible changes to or developments in the Inquiry's approach to the restriction order process, and to the conduct of the Inquiry more generally, were of interest to many core participants and not just to the Metropolitan Police Service. I shall summarise the suggestions made in this part of my ruling, commencing with the request made on behalf of the Metropolitan Police Service that the Inquiry should be more discerning in its requests for restriction order applications from former members of the Special Demonstration Squad.

(1) The Inquiry's request for restriction order applications from all members of the Special Demonstration Squad and the National Public Order Intelligence Unit (See also Part 4, paragraph 164 below)

53. The suggestion from the Metropolitan Police Service that the Inquiry might adopt a more selective approach to its requests for restriction order applications from former Special Demonstration Squad officers was made in Melanie Jones' "second" letter of 21 December 2016, summarised as follows at paragraph 5 of my Directions of 15 February 2017:

> "5. In her second letter Ms Jones argued that the Inquiry's approach to the issue of restriction order applications was wasteful of resources and disproportionate because amongst the applications received there may be a number in respect of which the Inquiry "ultimately will decide not to publish". She concluded:
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> > *"[T]he Inquiry is respectfully invited to consider whether it may still be fair to all participants for the Inquiry to consider the documents it holds, and invite restriction [order] applications only for those cases it wishes to subject to more considered scrutiny.""*

54. Ms Jones emphasised the burden upon the Metropolitan Police Service of reconstructing the career of a former undercover officer for the purpose of identifying possible sources of risk to the officer.

55. Mr Hall also referred to the nature and depth of the risk assessor's analysis of the relevant evidence at paragraph 5 of his written submissions of 23 February 2017:

> (i) "To consider whether to apply for a restriction order and, if so advised, make the application, the [Metropolitan Police Service] needs (in summary) to reconstruct the officer's full deployment through available documentation, identify and

evaluate sources of risk, and obtain evidence of the impact of disclosure on the officer and his/her family. That application (which may involve consideration of third party interests) will

(ii) then need to be considered and, if contested, determined by the Chairman. Only after all anonymity applications for [Special Demonstration Squad] officers have been determined will witness statements be taken. Any witness statement will need to be considered for the purposes of any restriction order

(iii) application over that statement itself (again with the possibility of third party interests coming into play). Depending on the relevance of what is in that statement, the officer may or may not be called by the Inquiry at the evidential hearings."

56. Mr Hall makes the point that if the Inquiry was in a position to conclude that the evidence of a former Special Demonstration Squad officer was irrelevant or that it was unnecessary to receive their evidence, there would be no occasion for the making of an application for a restriction order. For example, a former officer may have no memory of significant events. Another may be infirm or unwell. The Chairman could reasonably exercise judgement and discretion when deciding whether it was necessary for the fulfilment of the terms of reference for the evidence of either of these officers to be received, especially where there existed other witnesses who were able adequately to cover the same ground.

57. Police officers formerly employed in the National Public Order Intelligence Unit were drawn from police services throughout England and Wales. For this reason the role of co-ordinating their responses to the Inquiry is being performed by the National Police Chiefs' Council, represented by Sir Robert Francis. In his written submissions of 23 March 2017 Sir Robert stated that the National Public Order Intelligence Unit comprised in all about 97 undercover officers, cover officers and managers, and 131 support staff. It is estimated that some 40 million documents relating to the National Public Order Intelligence Unit survive.

58. The Inquiry has, so far, made direct contact with some 51 former officers. Each of them has indicated an intention to apply for anonymity. In general, it is anticipated that an application will be prepared by the officer's legal representative with the assistance of a report from a "national assessor" appointed by the National Police Chiefs' Council. Responsibility for the security and welfare of the officer will remain with the home force.

59. Sir Robert Francis described, at paragraph 18 of his written submissions, the steps in the process of risk assessment to be conducted by a national assessor, whose completion is likely to take up to 41 days:

    (i) Research by the National Regional Operational Security Officer of available databases for the purpose of reconstructing the officer's career;

    (ii) Extraction of relevant information from material held by Operation Elter for the purpose of an internal inquiry into the National Public Order Intelligence Unit (comprising approximately 45.5 million files not yet in a readily searchable form);

    (iii) Identification of sources of risk;

    (iv) Evaluation of risk.

60. The National Police Chiefs' Council estimates that the first 50 applications will take some 6 months to prepare. There is no prospect that the Inquiry will receive the applications by the end of April 2017.

61. For these reasons, the National Police Chief's Council supports the call by the Metropolitan Police Service for a more focused approach to requests for applications for restriction orders. Sir Robert adopted the submission made by Mr Hall at paragraph 14 of his written submissions of 23 February 2017 in which he invited the Inquiry to concentrate its requests upon those individuals whose deployment or evidence the Inquiry is likely to wish to publish or investigate further at a hearing, in so far as that is possible.

Response of Counsel to the Inquiry

62. At paragraph 66 of the Note dated 2 March 2017, Counsel to the Inquiry explain the Inquiry's purpose in seeking to obtain witness statements from all those surviving former members of the Special Demonstration Squad who can provide one as follows.

    "66.1 The actions of certain Special Demonstration Squad members which have thus far come into the public domain (actual or alleged) are of sufficiently grave concern as to have been central to the setting up of this statutory public inquiry. It is therefore appropriate that the Inquiry investigates this unit thoroughly. Obtaining a witness statement from all those who can provide one is an important step towards the achievement of that goal.

66.2 Documents alone, where they have survived, are rarely likely to tell the full story. Witnesses can explain and put into context surviving documents. They can provide evidence about matters which are not recorded in writing.

66.3 The Inquiry's work to date suggests that the Special Demonstration Squad's documentary record is very thin in the period prior to computerisation in the mid-1990s. Accordingly, for a good proportion of the unit's history, there is a greater need for witness evidence.

66.4 Obtaining a large number of statements enables the Inquiry to build up an evidential picture on issues which require breadth of evidence, for example the extent to which deceased children's identities were used, or the extent to which officers were properly supported by the Metropolitan Police Service."

63. I can summarise, as follows, Counsel to the Inquiry's main reasons for challenging the wisdom and practicality of a selective approach to the request for applications from former members of the Special Demonstration Squad:

(i) the test for admission of evidence by the Inquiry is relevance and necessity. Given the breadth and depth of the issues raised by the terms of reference, it is unlikely that (a) the evidence of many, if any, of the officers will be treated as irrelevant or unnecessary to the fulfilment of the terms of reference, and (b) decisions about relevance and necessity could be made from the surviving documents alone;

(ii) the evidence of any officer admitted by the Inquiry is affected by section 18 of the Inquiries Act 2005 and must therefore be considered for disclosure and publication, subject to the making of a restriction order under section 19;

(iii) Early consideration of applications for restriction orders will enable the Inquiry (a) in appropriate cases, to publicise the cover name of a former officer in order to invite the participation of the public, (b) to commence the redaction of documents on the basis of a restriction order decision, rather than provisionally and subject to it and (c) to perform its obligations to the relatives of deceased children. In all three respects delay will reduce the efficiency and effectiveness of the Inquiry.

(2) Early disclosure of cover names (See also Part 4, paragraph 187 below)

64. The non-police, non-state core participants argued that by its failure reasonably to progress restriction order applications or make disclosure and, thus, its "stifling [of] the

Inquiry's effectiveness", the Metropolitan Police Service had forfeited any expectation of trust that further deadlines would be met. Mr Squires urged the Inquiry to give priority to the need to identify and publish the cover names of officers where that could be done without significant risk to the officer or their family. It is the view of the non-police, non-state core participants that the risk of harm to an officer whose cover name is released would be minimal, either because real identities are not readily discovered or because the profile of activists among whom they moved is, at least by now, comparatively benign. This is a view shared by Ms Steel.

65. Mr Squires invited the Inquiry to take the initiative by imposing directions such as the following:

    (i) The Inquiry, by 19 April 2017, directly to address all former Special Demonstration Squad and National Public Order Intelligence Unit officers (and their predecessors and successors), requiring them to state whether they seek restrictions on disclosure of their (a) cover name or (b) real name, or both, identifying in summary the grounds for restriction;

    (ii) The Inquiry to release the cover name of any officer who does not within 28 days notify the Inquiry of an intention to seek a restriction on its disclosure.

66. Both Sir Robert Francis and Ben Emmerson supported Mr Squires' submission that the Inquiry's principal concern should be to encourage early examination of the question whether a cover name could be disclosed.

67. In his oral submissions Sir Robert Francis, on behalf of the National Police Chiefs' Council acknowledged the Inquiry's preparedness to receive a shortened form of application for restriction, whose consideration could be expedited, where a narrow ground for restriction, such as a specific risk of harm, was obvious and compelling. Likewise, Sir Robert suggested, there may be cases in which an early concession could be made as to disclosure of a cover name because it was plain that no risk of harm or damage would arise from its disclosure.

68. Mr Emmerson submitted that only compelling evidence of a risk that an officer's real identity would be revealed by disclosure of their cover name (by means of a "mosaic" or "jigsaw" deduction) would justify a decision to withhold a cover name.

(3) Real and cover identities of deceased officers (See also Part 4, paragraph 206 below)

69. Mr Squires argued that the Inquiry should apply a presumption that the cover name of a deceased undercover officer should be published; this, presumably because any risk of harm to the officer had passed.

70. As to the real and cover identities of deceased officers, Mr Squires proposed that I should issue directions to the following effect:

    (i) The Metropolitan Police Service, by 19 April 2017, to notify the Inquiry of the particulars of all undercover officers deployed in the Special Demonstration Squad and the National Public Order Intelligence Unit and their successors who are now deceased.

    (ii) Any application for restriction of a cover or real identity of a deceased officer to be submitted, together with evidence in support, by 19 April 2017.

    (iii) In the absence of an application under paragraph (2) the cover name and/or real name of the officer to be published by the Inquiry by 3 May 2017.

    (iv) Applications to be determined by the Chairman following an oral two-day hearing to be held on about 12 July 2017.

    (v) Subject to any restriction order made under paragraph (4), cover names and real identities of the remaining deceased officers to be published by 16 August 2017.

(4) Cover names versus real identities (See also Part 4, paragraph 200 below)

71. The sequencing of directions proposed by the non-police, non-state core participants demonstrates an expectation that they will participate in the resolution of contested applications for anonymity of both cover names and real identities by (i) making representations as to preparation of open and closed versions of applications and evidence in support, (ii) making representations as to the disclosure of information affecting the Article 8 right to privacy under the European Convention on Human Rights and Fundamental Freedoms ("the European Convention") of persons other than the applicant and (iii) making written submissions in preparation for, and making oral submissions and/or tendering evidence at, oral hearings.

72. Mr Squires confirmed during his oral submissions the non-police, non-state core participants' view that "as a matter of principle" the Inquiry should consider disclosure of officers' real identities. Section 18 of the Inquiries Act 2005 requires disclosure,

subject to the imposition of a restriction order under section 19. There would be weight added to the principle of openness where, for example, an officer accused of wrongdoing had since gone on to hold more senior positions. The essence of Mr Squires' submission was that there was no trade off to be made such as non-disclosure of real identities in return for early disclosure of cover names.

73. On the contrary, in his written submissions Sir Robert Francis expressed the issue, as it relates to former officers of the National Public Order Intelligence Unit, in these terms:

> "If the Inquiry were content for undercover officers to give statements in their cover identities, there would be no need for corresponding anonymity applications. Alternatively, the Inquiry could consider the statements it receives before indicating whether any of those officers' evidence, and any corresponding anonymity applications, will be required."

74. Mr Emmerson expressed the view of Peter Francis that it is "hard to envisage any circumstances where [disclosure of an officer's real identity] would be necessary for the fulfilment of [the] terms of reference; but conversely, that would be almost impossible … if the cover names of undercover officers are not known to those on whom they may have conducted surveillance".

75. Mr Hall, during his oral response to Mr Squires' submissions, reminded me of the other side of the public interest balance, namely that, unless strong countervailing factors existed, it was not in the public interest to expose the names of covert human intelligence sources. Mr Hall suggested that the Inquiry might conclude that the real identities of undercover officers should never be disclosed in the absence of exceptional circumstances, such as a finding of misconduct.

(5) Early release of information by the Inquiry (See also Part 4, paragraph 212 below)

76. The non-police, non-state core participants argued that the delay in progress to date placed an obligation on the Inquiry to take action immediately, including the preparation and publication, within 28 days, of a schedule providing the following information:

    (i) the cipher by 'N' number of all former members of the Special Demonstration Squad and the National Public Order Intelligence Unit;

(ii) in respect of each such officer, the officer's (a) years of undercover deployment, (b) by name or cipher the officer's managers/supervisors and (c) the groups the officer infiltrated.

77. The non-police, non-state core participants seek this information so as to understand the scope of organisations targeted and, in consequence, of the Inquiry's Investigation, to follow the progress of anonymity applications, to monitor the Inquiry's openness and to enable interested persons to approach the Inquiry.

78. Mr Squires argued that while the early disclosure of certain of the groups infiltrated might lead to the 'jigsaw' identification of an undercover officer, it is most unlikely that the same could be said of the majority, and public confidence in the Inquiry's work would be improved by disclosure.

79. Secondly, the non-police, non-state core participants seek, within 56 days, the release to the individual core participant concerned any Special Branch file in which information about that individual has been collected. Mr Squires says that his clients "are losing patience with the Inquiry and have been waiting for years for the release of this information". He claimed that the non-police, non-state core participants were entitled to a response from the police under the Data Protection Act 1998. Now that the information sought was or would be held by the Inquiry "[a]s a matter of fairness, they should now be given as much disclosure of the files pertaining to them as individuals as it is currently possible to disclose".

(6) Assured contact with undercover officers (See also Part 4, paragraph 189 below)

80. Mr Squires urged that the Metropolitan Police Service should be required, within 7 days, to disclose to the Inquiry the name of any former undercover officer deployed with the Special Demonstration Squad, the National Public Order Intelligence Unit or their successors who had not so far been contacted, together with details of the efforts made, the officer's contact details, and the identity of any officer who is not represented by the Metropolitan Police Service.

81. The purpose of notification of this information is to enable the Inquiry to supervise the efforts made to locate and engage with all former undercover officers.

(7) Early 'state' witness statements (See also Part 4, paragraph 216 below)

82. The non-police, non-state core participants invite the Inquiry immediately to commence taking "preliminary" witness statements from present and former holders of the following offices: the Home Secretary; the Permanent Under Secretary of State for

the Home Office with responsibility for policing, including deputies and assistants; the Commissioner of Police for the Metropolis; the Commissioner for specialist operations; and the Deputy Assistant Commissioner for Security.

83. The purpose of this course is said to be to preserve at least some evidence in the event of illness or death of witnesses whose evidence is material to institutional responsibility for undercover policing.

(8) Narrowing of issues (See also Part 4, paragraph 218 below)

84. I have summarised above the argument advanced by the Metropolitan Police Service and the National Police Chiefs' Council for a more selective approach to requests for restriction order applications. If adopted, this approach may have the incidental effect of reducing the scope of the Inquiry.

85. Equally, it could be argued, time would be saved by the making of a strategic decision, now, to limit the number of events that will be investigated by the Inquiry. Such a course would, in the view of the non-police, non-state core participants and the trade union core participants, put at risk the ability of the Inquiry to fulfil its terms of reference.

(9) Preservation of documents (See also Part 4, paragraph 216 below)

86. Historical and recent allegations of unauthorised destruction of documents by persons within the Metropolitan Police Service responsible for their safe- keeping are currently under investigation by the Independent Police Complaints Commission. The non-police, non-state core participants repeat a proposal first made on 3 February 2016 that a member of the Inquiry team should be embedded with those in the Metropolitan Police Service whose task it is to trace, locate, preserve and sift documents for Inquiry purposes. Without personal presence, Mr Squires submitted, the Inquiry has no effective means of supervision.

(10) Legal representation at Inquiry hearings (See also Part 4, paragraph 223 below)

87. As a consequence of costs awards that I made following a ruling of 16 December 2015, Mr Squires and Ms Brander, instructed by Tamsin Allen of Bindmans LLP, represented a co-operating group of non-police, non-state core participants at the hearing that considered the current issues.

88. Shortly before the time for delivery of written submissions, I received an application from a minority group of non-police, non-state core participants represented by Jane

Deighton and Maya Devi Lal, seeking, in accordance with my directions for the current and previous preliminary hearings, permission to instruct junior counsel independent of Mr Squires and Ms Brander, on the ground that there were interests among the non-police, non-state core participants that required separate representation at the hearing. I was informed that a meeting between non-police, non-state core participants had been arranged for Sunday, 26 March 2017, following which further representations may be received.

89. I refused the application made by Ms Deighton and Ms Devi Lal because it was not demonstrated to me that separate representation was required: either the minority wished to raise matters that were not germane to the current procedural issues or it was not clear what interest of the minority was in any significant way different from or additional to that of the majority.

90. In their written submissions of 23 March 2017 Mr Squires and Ms Brander raised the "real difficulties that are being caused by the Inquiry's insistence that [the non-police, non-state core participants] be represented in relation to vitally important issues … by only one counsel team". There were 13 working days between receipt of the Note prepared by Counsel to the Inquiry and the deadline for submissions in response. The non-police, non state core participants argued that this was insufficient time within which to achieve a true consensus among many with a wide range of opinions. As a result some felt that their views were not being fairly represented.

91. Mr Squires sought, as a minimum, public funding for second junior counsel for future preliminary hearings. He requested more generous time limits for written submissions and travel expenses for core participants to attend meetings with lawyers and hearings of the Inquiry.

92. On the eve of the hearing I received written representations from Kate Wilson in the circumstances I have already described. The only additional submissions made by Ms Wilson, supported by Helen Steel, were that (i) unless exceptional circumstances were shown, the Inquiry should require the Metropolitan Police Service to disclose all cover names used against "political" undercover targets within 28 days and (ii) the non-police, non-state core participants should be entitled to instruct their own counsel teams to attend oral preliminary hearings without the prior authorisation of the Inquiry.

93. Ms Steel sought, in addition, public funding to enable her recognised legal representatives to attend hearings of preliminary issues whether or not the co-operating group was represented by solicitor and counsel as a group. Ms Steel also

called for a larger hearings venue sufficient to accommodate all core participants and their papers.

(11) More frequent hearings (See also Part 4, paragraph 232 below)

94. During his closing response Mr Hall invited the Inquiry to consider periodical hearings for the purpose of reviewing progress. He accepted that the Metropolitan Police Service should be, and at such hearings would be, called publicly to account.

Part 3: Factors Governing Progress and Timetable

95. The first important factor in a consideration of a future timetable for the Inquiry is the scope of its work.

The scope of the Undercover Policing Inquiry

96. The power to establish an inquiry under the Inquiries Act 2005 is given by section 1, which provides that the Minister may cause an inquiry to be held "in relation to a case" where it appears to her that "(a) particular events have caused, or are capable of causing, public concern, or (b) there is public concern that particular events may have occurred."

97. Those events or possible events that were of particular concern to the then Secretary of State for the Home Department, the Right Honourable Theresa May MP were identified in statements to the House of Commons made on 6 March 2014 (oral) and 12 March 2015 (written). The allegations about the conduct of historical undercover police operations that were examined by Operation Herne and Mark Ellison QC and formed the basis for the Secretary of State's concern have been summarised below at paragraph 101 (see also my remarks when opening the Inquiry on 28 July 2015, at paragraphs 2 – 8).

98. An inquiry established under section 1 of the Inquiries Act 2005 has the scope and jurisdiction given to it by its terms of reference established under section 5 (1)(b) of the Act. Section 5 (5) provides that functions conferred on an inquiry panel are exercisable only within the inquiry's terms of reference. Section 5 (6) specifies matters that the terms of reference will include, namely: "(a) the matters to which the inquiry relates; (b) any particular matters as to which the inquiry panel is to determine the facts; (c) whether the inquiry panel is to make recommendations; (d) any other matters relating to the scope of the inquiry that the Minister may specify."

99. For ease of reference I have appended the Inquiry's terms of reference to this Ruling.

100. Certain features of the terms of reference stand out:

    (i) Although the Inquiry is to examine, in particular, (a) the targeting of political and social justice campaigns and (b) the undercover operations of the Special Demonstration Squad and the National Public Order Intelligence Unit, its work is expressly not limited to those areas of inquiry. On the contrary, the Inquiry is required to inquire into undercover police operations conducted by the police forces of England and Wales in England and Wales since 1968;

(ii) In connection with both its narrower and wider investigations the Inquiry is to examine (a) the selection, training, welfare, management and supervision of undercover officers, (b) the motivation for and authorisation and oversight of undercover operations, (c) the effects of undercover policing on individuals and the public, and (d) the contribution made by undercover policing to the prevention and detection of crime.

101. In my Restriction Orders: Legal Principles and Approach Ruling of 3 May 2016, at paragraph 90, I identified the following areas of alleged wrongdoing during undercover police operations conducted by the Special Demonstration Squad and/or the National Public Order Intelligence Unit, that had emerged from the previously published reports of Operation Herne and Mark Ellison QC:

(i) Widespread and authorised use by undercover officers of the names of real children, since deceased, without the permission of their next of kin, to create undercover identities;

(ii) With tacit managerial approval undercover officers entered into deceitful and therefore abusive long term intimate relationships;

(iii) Undercover officers infiltrated “black justice campaigns”;

(iv) Officers gave evidence in criminal proceedings in an undercover identity not disclosed to the court;

(v) Undercover officers provided information for inclusion in an employers’ blacklist;

(vi) Undercover officers provided personal information about the family of Stephen Lawrence, deceased;

(vii) An undercover officer gave a secret and undisclosed briefing to the Metropolitan Police Lawrence Review Team;

(viii) The Metropolitan Police Service deployed an undercover officer to report on the activities of the parents of Stephen Lawrence;

(ix) The Metropolitan Police Service used an undercover operation to acquire personal and confidential information about Duwayne Brooks OBE;

(x) The Metropolitan Police Service failed, in the due administration of justice, to make disclosure of undercover activities to Crown prosecutors;

(xi) Undercover officers reported on the activities of elected politicians;

(xii) Undercover officers reported on the activities of trades unions.

102. It was clear to me that I would be required to reach conclusions as to, amongst other things: (i) whether any or all of the allegations made against undercover officers deployed in the Special Demonstration Squad and the National Public Order Intelligence Unit were true, (ii) whether practices such as those alleged were also true of undercover police operations conducted by police forces in the regions outside the Metropolis and (iii) in the case of any such practices, how and why they developed, and whether, when and for what reasons they ceased.

103. The scope of the Inquiry is, as I have noted, not limited to these allegations. The terms of reference embrace all significant aspects of the planning, organisation, management and performance of undercover police operations. For example, at paragraph 91 of my ruling of 3 May 2016, I also wrote:

> "There is a broader public concern about the targeting of groups active in social, political, justice and environmental causes. The ostensible justification for targeting these groups was the need to obtain intelligence about planned public disorder and crime. The Inquiry will need to examine the information gathered in the course of these operations; it will wish to discover how and for what purposes this information was processed and distributed in order to test whether the original authorisation for targeting was justified by previous and subsequent events."

The duty to report and the duration of the Inquiry

104. The terms of reference require that the chairman will report to the Home Secretary "as soon as practicable". A footnote to paragraph 10 states:

> "It is anticipated that the inquiry report will be delivered up to three years after the publication of these terms of reference."

I discuss what is "practicable" having regard to the issues raised by the Inquiry in the following paragraphs and at Part 4 below.

Receipt of documentary evidence from the police services

105. The Inquiry was made aware from the outset of its work that the police services were in possession of a very substantial quantity of electronic and hard copy documents relating to undercover policing. The police services expressed their willingness to produce to the Inquiry everything relevant to the terms of reference that the Inquiry

wished to see. Having regard to the breadth of the investigation that the terms of reference required, the importance to fulfilment of the terms of reference of any contemporaneous records available, and the need to preserve and secure those records, the Inquiry resolved at an early stage to commence its investigation with requests under rule 9 of the Inquiry Rules 2006 for production of documentary evidence and to seek assurance as to the preservation of the evidence.

106. By this means the Inquiry has already received a huge volume of electronic and hard copy material relating to undercover policing and several statements of assurance made both in witness statements and correspondence. The Inquiry considers that the records of undercover policing retained by the police services will form a vital resource, as a contemporaneous account of undercover operations and as a means for identifying necessary lines of inquiry and relevant witnesses.

The Inquiry's strategic approach to its task

107. The Inquiry will consider the evidence in three modules. In the first module the facts of undercover policing and undercover police operations will be examined. In the second module the Inquiry will examine systemic issues, concerned primarily with policy, authorisation, justification, management, supervision, training and welfare. There will be a degree of overlap between the first and second modules. The third module will examine lessons learned and look to the future of undercover policing.

108. It is with these modules in mind that the Inquiry team is considering and analysing the electronic and hard copy documentary records that have been provided to it.

109. I shall now explain (i) why the Inquiry examines documents received for "relevance and necessity", (ii) why the Inquiry prepares relevant and necessary documentary evidence for disclosure and publication and (iii) the role of disclosure of relevant and necessary documents in the making of witness statements and, therefore, preparation for oral hearings of evidence.

110. The Inquiry team's purposes are to: (i) identify documentary material that is *relevant* to the terms of reference; anything that is not relevant is outwith the terms of reference and will not be admitted into evidence; (ii) identify the *issues* to which the documentary material relates; a judgement is required by the Chairman, with assistance of the Inquiry's legal team, as to whether the receipt of the document in evidence is necessary for the fulfilment of the terms of reference; and (iii) identify *witnesses* who can provide relevant written or oral evidence that is necessary to the fulfilment of the terms of reference.

111. Not all relevant documentary material examined by the Inquiry will be admitted into evidence. In order to fulfil its terms of reference within a reasonable time frame and with an expenditure of public resources that can be properly justified, the Chairman will need to set priorities for the direction and depth of its investigations. I drew attention to the need for priorities and my approach to setting them at paragraphs 11 – 13 of my Core Participant Ruling 12 of 15 December 2016. I agree with the analysis of Inquiry counsels' Note of 2 March 2017 at paragraph 87 as follows:

> "The Inquiry is pursuing the approach which we have outlined above at paragraphs 3 to 10 in order to do justice to the terms of reference. The approach is intended to recognise that in some areas the Inquiry needs a breadth of evidence, whereas in others it will need depth. It also recognises that some undercover policing units merit more intensive scrutiny than others. Since the Inquiry is also required, by its terms of reference, to report as soon as possible, it is important that the approach that it takes to the breadth and depth of investigation is limited to that which is necessary to discharge its terms of reference. Obviously, what is needed in practice to achieve this goal is a matter of judgment for the Chairman and will depend upon what the Inquiry discovers as it investigates."

Progress of document examination

112. At the time of writing, the Inquiry is over 12 months behind its anticipated rate of progress in document examination. The Information Technology hardware and software capacity necessary for the receipt and processing of sensitive electronic documents from the police services has the following minimum features: (i) satisfactory security accreditation and (ii) handling compatibility with the system used by the Metropolitan Police Service.

113. The Inquiry was able to procure security accredited laptop computers for reading only of sensitive material in September 2016. It was provided with four terminals installed with compatible Relativity software that was accredited for testing in March 2017. Testing, training and uploading are currently taking place and capacity will increase shortly.

114. The principal reason for procurement of secure Relativity is its capacity for advanced storage and searching capacity, the secure transfer and management of documents and the cooperative exchange of redacted and gisted documents pursuant to or in anticipation of restriction orders made by the Chairman under section 19 (3) of the Inquiries Act 2005.

115. The effect of late provision of suitable Information Technology has been significantly to postpone the recruitment of a full legal team and the commencement of search, examination and analysis of electronic documents provided by the Metropolitan Police Service.

116. The redaction and gisting of sensitive police documents is a process that requires expertise, reliability and accuracy and, for that reason, considerable resources of time and money. The Inquiry has kept under constant review the necessity and proportionality of the process. I have concluded that the fulfilment of the Inquiry's purpose requires that this painstaking process should be maintained to completion, as I shall now explain.

117. The reason for redacting and gisting documents received in evidence is the paramount necessity of ensuring that no information is made public that will give rise to an unacceptable risk of harm to individuals or damage to the public interest, while otherwise performing the statutory duty of the Inquiry to carry out its investigation in a manner that is accessible to the public and for which it is accountable to the public. These obligations arise as follows.

Restriction orders

(1) The law

118. On 3 May 2016 the Inquiry published my Ruling on the legal principles that applied to applications for restriction orders and the approach that I should adopt to such applications. For present purposes it is enough for me to summarise as follows:

    (i) Under section 18 of the Inquiries Act 2005 the starting point for an inquiry established under section 1 is that, subject to section 19, the chairman should "take such steps as he considers reasonable to secure" that, among other things, the public should have access to the documents produced to the inquiry;

    (ii) Section 19 of the Inquiries Act 2005 empowers the Minister, by notice, and the chairman of the inquiry, by order, to impose restrictions on the disclosure and publication of information given to the inquiry. However, by section 19 (3) a Minister's notice or a chairman's order "**must specify only such restrictions** (a) as are required by any statutory provision … or rule of law, or (b) as the … [maker] … considers to be conducive to the inquiry fulfilling its terms of reference or to be necessary in the public interest, having regard in particular to the matters mentioned in subsection (4)" [emphasis added];

(iii) The Minister has said, through counsel, that she does not intend, save in exceptional circumstances, to issue a restriction notice under section 19 (2)(a) of the Inquiries Act 2005, but intends to leave to the Chairman the judgement as to whether and in what terms to make any restriction order under section 19 (2)(b);

(iv) Of the matters mentioned in section 19 (4) of the Inquiries Act 2005, to which the chairman must, in particular, have regard when considering whether a restriction would be conducive to fulfilment of the terms of reference or would be in the public interest, the first two are: "(a) the extent to which any restriction … might inhibit the allaying of public concern; (b) any risk of harm or damage that could be avoided or reduced by any such restriction". The third relates to the terms of confidentiality under which a witness may have received information to be given to the inquiry. The fourth is "(d) the extent to which not imposing any particular restriction would be likely (i) to cause delay or to impair the efficiency or effectiveness of the inquiry, or (ii) otherwise to result in additional cost (whether to public funds or to witnesses or others)".

119. It will be appreciated that there is an inevitable tension created by a public inquiry into a secret activity. There is a strong public interest in accessibility to a public inquiry; there is also a strong countervailing public interest in preventing the dissemination of information that would create a real risk of harm to individuals or damage to the state's capacity for preventing and detecting crime.

120. However, section 19 (3) of the Inquiries Act 2005 is mandatory in its requirement that the terms of a restriction on disclosure or publication should be *only* what is required by statute or a rule of law, or is conducive to the fulfilment of the terms of reference, or is necessary in the public interest.

121. It would have been possible, in theory, for the Chairman to make blanket restriction orders on the ground, under section 19 (3)(b) and section 19 (4)(d) of the Inquiries Act 2005, that in order to deliver his report as soon as practicable it was necessary to exclude the public from the process. I concluded that this would amount to an abdication of the Inquiry's responsibility to allay public concern and would, in many situations, actually prevent the Inquiry from fulfilling its terms of reference. Further, I have ruled that there can be no blanket anonymity given to undercover police officers and that there can be no blanket immunity from disclosure and publication of undercover operations merely on account of the fact that they were deployed and conducted undercover. Each application for a restriction order giving anonymity or restricting disclosure of details of a deployment must be examined on its merits. I

regard these conclusions as central to the performance of the Inquiry's statutory responsibility and, for that reason, settled.

122. In his written submissions to the Inquiry preparatory to the oral preliminary hearing on 22 March 2016 on the subject of the legal principles applying to restriction orders and my proper approach to them, Mr Griffin QC wrote, at paragraph 17:

> "In conducting that [public interest] balance both the interests of public access to inquiry proceedings and information and the need to protect sensitive police techniques should be afforded significant weight. However, where these two competing factors directly oppose one another, and subject to the overall requirement of fairness, the public interest in ensuring that police techniques remain effective should outweigh the interest in public access to information given that the Inquiry will have access to all relevant material for the purpose of its conclusions and recommendations."

123. While Mr Griffin's submission was directed at the techniques of undercover policing rather than the preservation of an undercover officer's anonymity, it is a submission that, in my view, has force and applies with similar force to all restriction order applications founded upon the need to avoid harm to the individual or damage to the capacity of the state to prevent and detect crime: when the weights of competing public interest factors appear to be evenly balanced, it may be that the ability of the Inquiry to function fairly will tip the balance for or against restriction.

124. I shall not attempt, in this ruling, to repeat my conclusions as to the manner in which the balancing exercise should be performed. It is sufficient that I should observe that the approach which Mr Griffin urged upon me requires a fact sensitive analysis and not a blanket prohibition on disclosure, let alone a blanket prohibition justified only by the saving of time and expense.

125. I shall next identify the likely burden on the Inquiry of applications for restriction orders and the Inquiry's proposals for handling them.

(2) Police applications

126. By way of example only, if, at one end of the scale, I am presented with satisfactory evidence that a former undercover police officer would be at real and immediate risk of death or serious injury should his real identity become known, I am almost certain to make a restriction order protecting his anonymity, both under section 19 (3)(a) and section 19 (3)(b) of the Inquiries Act 2005 because:

(i) to do otherwise would place the state in breach of Article 2 or Article 3 of the European Convention and the Chairman in breach of section 6 of the Human Rights Act 1998, and a refusal would constitute a gross unfairness to the officer at common law or under section 17 (3) of the Inquiries Act 2005; thus, a restriction order would be required under section 19 (3)(a) of the Inquiries Act 2005;

(ii) it would be necessary to avoid or reduce a risk of physical injury or death by making a restriction order which would therefore be in the public interest under section 19 (3)(b) of the Inquiries Act 2005.

127. At the opposite end of the scale may be a former undercover officer who has already self-disclosed and is at risk only of embarrassment and loss of reputation should he be associated further with misconduct or questionable conduct while acting in an undercover role. In that case I would be unlikely to make a restriction order granting that officer anonymity at the Inquiry.

128. Between these two extremes will be, I anticipate, many cases of officers who would not be at real and immediate risk of physical harm upon disclosure of their real identity, but who contend that disclosure would create an unspecific and speculative risk of physical harm and/or breach a reasonable expectation of confidentiality and/or amount to an unnecessary or disproportionate interference with their private or family life. Applications in this category will require close and conscientious examination of the evidence and an application of the principles and factors to which I referred in Part 6 of my ruling of 3 May 2016. At the present hearing I received helpful submissions on the question whether disclosure of a former officer's cover name may reduce or remove the need to disclose the officer's real identity. I shall discuss this argument further in Part 4 below.

(3) Non-police applications

129. There are, in addition, several non-police core participants to whom I have granted restriction orders giving them anonymity at the Inquiry. The Inquiry has already undertaken to restrict disclosure of irrelevant personal information. I am aware that some core participants may seek to restrict information about them or their activities, received and admitted in evidence by the Inquiry, disclosure or publication of which, they will argue, would constitute an unnecessary and disproportionate interference with their private and family life, contrary to Article 8 of the European Convention. Again, I anticipate there will be many occasions on which the Chairman will be required to carry out a careful examination of the merits before reaching a decision.

(4) No application

130. It should be noted that the obligation to consider the need to make a restriction order is not triggered by an application, although in practice an application will be the occasion for its consideration. The statutory duty to consider a statutory requirement, a rule of law and the public interest applies to all information received by the Inquiry whether it is accompanied by a request for a restriction order or not. There will be occasions when the Inquiry will have to raise the issue of its own motion.

(5) The process

131. In November 2016 the Inquiry published on its web site a process map describing the Inquiry's process for the consideration of key applications for restriction orders. It is published in its full and simplified forms.

(6) Decisions made

132. In July 2016 and February 2017 I made restriction orders granting anonymity to 'Cairo', 'Jaipur' and 'Karachi'. These officers did not fall within the categories that formed the subject of the Tranche 1 – 3 requests made by the Inquiry. Their evidence was relevant, in particular, to the Metropolitan Police Service's risk assessment and restriction order process.

133. In the case of non-police core participant applications, the Inquiry issued my 'Minded to' note on 10 August 2016 and my ruling on 13 September 2016 granting restriction orders giving anonymity to 23 applicants.

The document-handling process

134. The sheer volume of documents that the Inquiry will need to consider requires it to identify a fair but robust and efficient method of handling, from examination of a document to its disclosure and publication.

135. The Inquiry is seeking to agree with the Metropolitan Police Service protocols for the production and handling of documents provided by it to the Inquiry, for which the Inquiry will seek the agreement or acquiescence of non-police core participants. Failing agreement, the Chairman will need to impose a procedure that is both fair and conducive to the efficient management of the Inquiry. To the extent that the protocols are successful, and subject to experience and variation, it is hoped that they can be adopted for other bulk suppliers of documents to the Inquiry. It is anticipated that the agreed protocols will have some or all of the following features.

(1) Relevant and necessary evidence

136. Paragraph 10 of the terms of reference provides the Chairman with a discretion as to the material he examines and a further discretion as to the written and oral evidence the Inquiry receives. The Inquiry expects to examine most of the available records of undercover policing held by the Metropolitan Police Service. The Inquiry team will examine documents received from all sources, particularly from the police services, for relevance. If relevant, they will be retained until the Inquiry has been able to make a decision, under the guidance of the Chairman, as to whether it is necessary in fulfilment of the terms of reference to receive them in evidence.

137. Once a document has been identified as relevant and necessary the Metropolitan Police Service will be notified. This will trigger the redaction process, as to which see *(3) Redaction and gisting* below.

(2) Legal professional privilege

138. The Metropolitan Police Service may withhold material subject to its own legal professional privilege, under section 22 of the Inquiries Act 2005.

139. It is possible that the police services were and are in possession of documentary material over which a third party would be entitled to claim legal professional privilege and, therefore, exemption from production under section 22 of the Act. In view of the bulk of material produced and to be produced by the police services to the Inquiry, the Inquiry has, with the consent of its legally represented core participants, undertaken the burden of identifying such material, and taking the appropriate action, if possible after consultation with the third party whose privilege it is.

(3) Redaction and gisting

140. The Inquiry must give effect to restriction orders made by the Chairman that relate to the real or cover identities of police officers by ensuring that information that is restricted is neither disclosed nor published beyond those entitled to see it. Where possible, this will be achieved by a process of redacting or gisting of documents, so as to remove references to restricted information rather than by withholding the document itself.

141. It would be impracticable, if not impossible, for the Inquiry to receive advance applications from the Metropolitan Police Service for the restriction of all other categories of sensitive information relating to undercover deployment and techniques. What is required is a robust, transparent and fair procedure by which (i) redactions can

be proposed and agreed in pursuance of restriction orders relating to identity already made by the Chairman and (ii) applications for other restriction orders can be made together with the proposed redactions or gists required at one and the same time, so as to avoid multiple handling of documents, with the saving in time and costs that such a procedure implies.

142. With this objective in mind, the Inquiry has been assisting and will continue to assist the Metropolitan Police Service, the National Police Chiefs' Council and the National Crime Agency to develop a provisional, generic classification of grounds for seeking restriction orders and, therefore, redaction or gisting of documents.

143. Once the Inquiry has given notification that a document is relevant and necessary the Metropolitan Police Service will submit an application for a restriction order and/or propose the redactions and gists it seeks, justified by one or more of the grounds set out in the classification or on a ground that is, as yet, unclassified. Where a restriction order has already been made (for example, giving anonymity to a police officer) there should be no controversy save as to the extent of redactions required to give effect to the order. However, there will be very many occasions on which the Metropolitan Police will wish to seek redactions or gisting of documents not already the subject of a restriction order because they relate to sensitive details of a deployment and not to the identity of an officer.

144. Where the Inquiry legal team provisionally accepts the grounds for redaction or gisting advanced, the document will be prepared for disclosure in the provisionally agreed form. In view of the importance of preserving from disclosure information whose disclosure would risk harm to an individual or damage to the public interest, the Inquiry legal team will adopt a cautious approach at this stage. If, thereafter, a core participant, witness or the media wishes to challenge the provisionally agreed redaction or gisting, the Chairman will resolve the issue under section 19 (3) of the Inquiries Act 2005.

145. If the Inquiry legal team does not provisionally agree the redaction or gisting sought, the Chairman will resolve the issue.

146. Any restriction order made may be varied or revoked by the Chairman, including upon later challenge, under section 20 (4) of the Inquiries Act 2005.

147. The draft protocol provides that the Metropolitan Police Service should notify the Inquiry if it considers that a third party state body, such as another police force, also has an interest in restriction, in which case, if the Inquiry is not persuaded by the

application made by the Metropolitan Police Service, it will invite further submissions from the third party and the procedure described above will be followed.

148. The Inquiry team's draft disclosure and restriction protocols are still in consultation.[3] Subject to completion of that process, it seems to me that a procedure that operates with the objectives proposed is likely to satisfy the criteria of fairness and cost effectiveness under section 17 of the Inquiries Act 2005.

(4) Privacy issues

149. The Inquiry expects that it will examine many documents that contain personal information about private individuals, usually historical in nature. The Inquiry cannot simply publish such information, even if it is relevant to an issue in the Inquiry, without first considering the Article 8 rights of the individual concerned. The Inquiry legal team has engaged with counsel for the co-operating group of non-police, non-state core participants for the purpose of reaching consensus as to the appropriate protocol for resolution of such issues. The latest iteration appears between paragraphs 25 and 34 of the Inquiry's draft Restriction Order Protocol dated 15 March 2017.

150. Counsel to the Inquiry, at paragraph 26 of the Draft Restriction Protocol, described the main provisions relating to privacy issues as follows:

"(i) Irrelevant and/or unnecessary personal information will be redacted by the Inquiry legal team (paragraphs 27 and 28 below).

(ii) Core participants and witnesses will have the opportunity to consider references to themselves in documents which the Inquiry proposes to use at the point in time when they are provided to them for the purposes of making a witness statement. They will then be able to make any application for a restriction order over such information (paragraph 29).

(iii) Readily contactable persons who are neither core participants nor witnesses will be contacted by the Inquiry and given the opportunity to make an application for a restriction order over any relevant and necessary personal information (paragraph 32).

(iv) References to relevant and necessary personal information relating to persons who are not readily contactable will be considered for redaction by the Inquiry legal team. The Inquiry legal team will decide whether to provisionally redact

[3] Copies of the 'draft disclosure protocol' and the 'draft redaction protocol' can be found on the Inquiry's website, together with an accompanying explanatory note.

references to such witnesses applying the relevant legal principles and mindful of the fact that the person affected will not have had an opportunity to apply for a restriction order (paragraph 33).

(v) If any issue arises which is not expressly covered by the protocol the Inquiry legal team will decide how to deal with it and will do so in a way which complies with the affected person's Article 8 rights, the Data Protection Act 1998 and the duty to act fairly (paragraph 34)."

151. Consultation upon the Restriction Order Protocol is not yet complete. However, it will be apparent that some such consideration by the Inquiry must be factored into the timetable before information is placed in the public domain.

(5) Preparation for oral hearings

152. The essential step to be taken before the commencement of oral evidential hearings is the taking of witness statements from witnesses whose evidence concerns the first selected segment of Module One.

153. For the purpose of making statements in preparation for oral hearings, fairness requires that witnesses are supplied with contemporaneous and other documents that they could reasonably expect to see. That process requires the redaction or gisting of documents as described in preceding paragraphs.

(6) Illustrative timetable towards evidential hearings

154. Attached to Counsel to the Inquiry's Note of 2 March 2017 are three illustrative flow charts. The object of their preparation was to provide some illustrative guidance as to the consumption of time required to:

(i) Determine anonymity applications made by former members of the Special Demonstration Squad adopting the procedure therein described. Assuming all applications are received by 2 October 2017, an optimistic date for completion, subject to third party intervention in the process, judicial review and unforeseen circumstances, would be April 2018.

(ii) Determine applications by the Metropolitan Police Service for redaction of documents concerning the Special Demonstration Squad. Assuming all applications are received by March 2018, an optimistic date for completion of redactions before presentation to witnesses, subject to further applications for removal of redactions and unforeseen circumstances, would be July 2018.

(iii) Take witness statements from witnesses in preparation for Module One oral hearings concerned with the Special Demonstration Squad. Assuming that the preceding timetables are kept, an optimistic date for completion of witness statements would be December 2018. However, this illustration factors in no additional time for the resolution of Article 8 privacy issues.

155. It is safe to assume, in my view, that if the Inquiry progresses according to the process thus far judged necessary there will be no Module One evidential hearings of issues concerning the Special Demonstration Squad before the second half of 2019.

Part 4: Discussions and conclusions

Preliminary matters

156. Three factors dominate my consideration of the present applications and my review of the progress of the Inquiry:

   (i) the scope of the terms of reference;

   (ii) the presumption of openness that arises from sections 18 and 19 of the Inquiries Act 2005; and

   (iii) the importance and complexity of the issues raised by the Inquiry's duty to consider the making of restriction orders under section 19 of the Inquiries Act 2005.

157. I think it appropriate to re-state conclusions that I have previously reached and to which I adhere:

   (i) The public concern expressed by the then Home Secretary that caused her to commission the Inquiry notwithstanding the earlier publication of the Operation Herne and Ellison reports, and the breadth of the Inquiry's terms of reference, demonstrate the need for a statutory, and therefore, so far as it is possible, public inquiry into undercover policing generally, and the infiltration of social justice campaigns by the Special Demonstration Squad and the National Public Order Intelligence Unit, in particular.

   (ii) There is no escape from and no short cut to avoid the complexities of the issues raised by the nature of a public inquiry into state activity that is carried out secretly.

   (iii) The responsibility of the Chairman is to reach the appropriate balance between the degree of public disclosure necessary to allay the concerns of the public and the non-disclosure necessary to protect individuals from harm and effective policing from damage.

158. As I have said, the terms of reference require the Chairman of the Inquiry to report to the Home Secretary "as soon as practicable". What is practicable must depend upon the particular exigencies raised by the subject matter of the Inquiry. In the present Inquiry the major factor determining practicability is the care needed to ensure that,

while remaining publicly accountable, the Inquiry does not jeopardise the public interest by making inappropriate disclosure.

159. The scale of the responsibility on the Inquiry has inevitably cast a corresponding burden on the Metropolitan Police Service, the National Police Chiefs' Council, regional police forces and the non-state core participants to meet the requests made by the Inquiry for preliminary submissions, documents and evidence.

160. Mr Squires, Ms Wilson and Ms Steel addressed me in cogent terms as to the discontent of the non-police, non-state core participants arising from, on the one hand, their belief, and in some cases, knowledge, that they have been the victims of police misconduct and, on the other, what appears to them to be a refusal by the Metropolitan Police Service and others to face up to and explain, in publicly accountable terms, how and why it happened. As they see it, they have been kept in the dark while the police conceal their wrongdoing and, for as long as they succeed, getting away with it.

161. Since this is the viewpoint of the non-police, non-state core participants it is not altogether surprising that they should demand that the Inquiry impose some radical measures, including the removal of the police risk assessment process and the setting of short deadlines breach of which would result in disclosure by default.

162. Notwithstanding my sympathy for the predicament of the non-police, non-state core participants and my concern at the repeated missing of deadlines, I do not accept that the Assistant Commissioner's Inquiry team has been deliberately obstructive towards the Inquiry's progress. The Inquiry team has been in daily communication with different members of the Assistant Commissioner's team and is in a good position to judge. For this reason some of the justification for the draconian measures proposed is removed.

163. It seems to me that the first decision I must review is the decision to seek witness statements from all former members of the Special Demonstration Squad and the National Public Order Intelligence Unit.

Is it appropriate to seek witness statements from all members of the Special Demonstration Squad and the National Public Order Intelligence Unit?

164. For the reasons developed in Part 3 above, I consider that it is necessary for the Inquiry to acquire, if possible, in respect of both the Special Demonstration Squad and the National Public Order Intelligence Unit (1968 - 2008), and particularly in the field of undercover operations targeting political, environmental and social justice activism, a thorough understanding of (i) their inception, development, management and

supervision, (ii) their purpose and objectives, (iii) their recruitment, training, appraisal, disciplinary and welfare arrangements, (iv) the political and command justification for authorisations of their operations, (v) their reporting arrangements, (vi) the destination and sharing of their intelligence reports, (vii) their measure of the success or failure of undercover operations, (viii) the personal conduct of individual officers while undercover and (ix) their accountability in the criminal justice system.

165. In my opinion, it is unlikely that the Inquiry could achieve this level of understanding of these organisations without seeking to obtain written statements, if possible, from all of the field and cover officers, managers, back room staff, senior officers and commanders who were responsible for undercover police operations. There can be no doubt that their evidence is relevant to the terms of reference. I also agree with Counsel to the Inquiry that although documentary records are an essential source of information, they are, in the early days, incomplete and could not alone, in any event, provide the Inquiry with the contextual colour and, hopefully, accuracy that accounts of personal experience will provide.

166. Neither the Metropolitan Police Service, nor the National Police Chiefs' Council, sought to argue that the Inquiry's request was inappropriate or unnecessary. Their chief concern is for the impact that this decision has on the restriction order process. They pose the question whether, for this reason, the Inquiry could be more selective in its requests for restriction order applications.

Could and should the Inquiry be more selective in its requests for restriction order applications in respect of Special Demonstration Squad and National Public Order Intelligence Unit officers?

167. Here, it is important to distinguish between the Inquiry's investigation, its admission of evidence and its disclosure and publication of evidence.

168. The Inquiry has available to it all the documents and evidence collected by Operation Herne and Operation Elter, which it is investigating, but it also wishes to obtain witness statements from the officers that are made for the much wider purposes of the Inquiry than was the case for the internal investigations.

169. Once the Inquiry admits documents and evidence, it *must* perform its statutory responsibility under sections 18 and 19 of the Inquiries Act 2005.

170. Given this responsibility, how would the Inquiry be able, in practice, to be more selective in its requests for restriction order applications? The Inquiry could proceed by (i) analysing the material already available, (ii) taking witness statements, (iii) making

decisions as to necessity and (iv) inviting applications for restriction orders in respect of those officers whose evidence it is necessary to admit. However, this method of working would have the effect of postponing until late in the process the redaction and gisting and, therefore, disclosure of a large quantity of documents, which, in turn, would have the further effect of prolonging the period before oral hearings could commence.

171. In order to prepare for the taking of witness statements and making decisions about necessity the Inquiry would need to receive from the Metropolitan Police Service or the National Police Chiefs' Council or the officer's home force a reasonably full summary of the officers' undercover and other deployment. This is the very research in which the Metropolitan Police Service and the National Police Chiefs' Council are currently engaged as the first stage in their risk assessment process. It is my view that, since very few of the officers employed by the Special Demonstration Squad will not be able to give evidence that is relevant and that it is necessary to admit, there is a distinct advantage to be gained by co-ordinating the three processes of evidence gathering, making restriction order applications and redaction/disclosure. The same may be said for officers formerly employed in the National Public Order Intelligence Unit, but further research will be necessary before the Inquiry can reach a reliable view as to whether in their cases some selectivity is possible without compromising the thoroughness of the investigation.

172. Furthermore, even if the Inquiry was later to conclude that it was not necessary to admit an officer's evidence, it would, nonetheless, be required to consider whether his or her name or other details should be redacted from documents for disclosure. For this reason, if no other, the assessment of risk to the officer would be required sooner or later.

173. It is my view that the Inquiry was fully justified in announcing its intention to seek evidence from all former officers employed by the Special Demonstration Squad. From the outset the Metropolitan Police Service has been aware of the burden of providing evidence in support of applications for anonymity by those officers. I do not consider that it is reasonably practicable for the Inquiry to adopt a different approach without further delaying its progress.

174. As I have said, the Inquiry's main priority was to expedite the receipt of a representative sample of completed restriction order applications, so that an early series of decisions could provide some assistance to later applicants. That opportunity has now been lost to most former Special Demonstration Squad officers because their applications are likely be received before the first series of rulings can be made.

However, as Counsel to the Inquiry have explained, once the first tranche of applications has been decided the Inquiry intends to process applications in approximately chronological order. There is scope for flexibility in future requests for applications from former officers of the National Public Order Intelligence Unit.

Can and should the Chairman proceed to decide applications for restriction order without risk assessment reports prepared by nominated risk assessors?

175. The Inquiry has not required 'independent' risk assessments from the Metropolitan Police Service; rather, this has been the means chosen by the Metropolitan Service to present evidence of risk to the Chairman.

176. The size and onerous nature of the task of supporting applications for restriction orders with expertly prepared and objectively considered risk assessments either was or should have been known to the Metropolitan Police Service not later than 23 March 2016, the second day of the Inquiry's oral hearing on the subject of the legal principles applying to applications for restriction orders.

177. At that hearing Mr Hall made clear the position of the Metropolitan Police Service that the vast bulk of the evidence should be heard in private: such was the risk of harm to individuals or damage to effective policing that would accompany disclosure of the identities of officers, including cover identities, and the details of undercover operations, that the public interest balance would be resolved in favour of making restriction orders.

178. Among other things, the non-police, non-state core participants argued, on the contrary, that unless cover names were published the public would be unable to participate in the Inquiry in any meaningful way.

179. The Metropolitan Police Service responded that the Inquiry should give appropriate respect, and therefore weight, to its expertise in assessing a risk of harm to individuals or damage to effective policing.

180. It followed that, if the Metropolitan Police Service was going to make good the position it was taking, it would need to demonstrate with the assistance of authoritative risk assessments the harm or damage at risk, should restriction orders not be made, that would outweigh the countervailing need for fairness and public accountability. It seemed to me plain that, in order to earn the respect claimed for them, risk assessments would indeed need to be expert, critical and objective.

181. Experience has shown that the Metropolitan Police Service was significantly under-prepared and/or under-resourced for the task at hand. Two full time risk assessors were appointed whose other duties should have excluded them. Jaipur and Karachi are entirely free of responsibility. It appears that they could not have met the requirement for objectivity because they were professionally responsible for the security and welfare of the same officers who would be making applications for anonymity.

182. It seems to me that, as a result of insufficient forethought and planning, the Metropolitan Police Service is at least 12 months behind where they reasonably should have been in the preparation of risk assessments.

183. I do not regard the preparation of risk assessment reports as *essential* to my consideration of restriction order applications. I agree with Counsel to the Inquiry, Mr Squires and Mr Emmerson that it is the underlying evidence that is critical. However, I do consider that the steps belatedly taken by the Metropolitan Police Service to prepare for the task at hand are sufficiently robust to deserve and require testing.

184. Secondly, I note that the risk assessors could and should perform the important function of marshalling the evidence in a form that follows Part 6 of my Legal Principles Ruling of 3 May 2016 and Guidance Note of 20 October 2016 that, if efficiently done, will best assist the Chairman to reach timely decisions under section 19 of the Inquiries Act 2005. The risk assessors will also make judgements as to whether there are gaps in the evidence that require filling and/or they will direct additional research, if required. The performance of these functions should relieve the Inquiry's counsel team and the Chairman of time-wasting interruptions in processing applications, once received.

185. Thirdly, I accept Mr Hall's and Mr O'Connor's submission to the effect that there is value to the Inquiry in receiving a reasoned opinion of risk from a police officer, based on research, evidence and years of practical experience in operational circumstances, even if that opinion is neither conclusive, nor presumptive. Furthermore, I do not underestimate the positive effect that risk assessment by senior police officers will have upon former undercover officers' confidence in the restriction order process.

186. I conclude that the time has not yet come when I should dispense with police generated risk assessments. But I make it clear that further shortcomings in the risk assessment process may well lead to a change of practice by the Inquiry, especially if such shortcomings result in unacceptable delay.

Should the Inquiry require the police services to make early disclosure of cover names of undercover officers and, if a cover name is disclosed, is it necessary to require a fully risk- assessed application for a restriction order protecting the officer's real identity?

187. I have summarised in Part 2 the arguments advanced by the non-police, non-state core participants as to the reasons for applying a presumption, rebuttable only by compelling evidence, that the names used by officers while deployed undercover against political, environmental and social justice activists should be disclosed.

188. To the extent that the submission attempts to justify the presumption on the grounds of deliberate delay or, alternatively, lack of planning or diligence, I cannot accept it. The risk of harm or damage and the correct balance of the public interest contemplated by section 19 of the Inquiries Act 2005 do not change according to the motivation or diligence of the applicant.

189. The proposal that, in order to avoid further delay by the Metropolitan Police Service, the Inquiry should make immediate contact with all former officers of the Special Demonstration Squad and the National Public Order Intelligence Unit (to require a personal statement whether they seek restriction of a cover name or real identity or both and, if either, a summary of grounds in support), appears to proceed from an assertion that the Metropolitan Police Service is deliberately dragging its feet and cannot be trusted to process applications with proper diligence. Incidentally, it fails to recognise that officers deployed with the National Public Order Intelligence Unit were seconded from all over England and Wales and not just from the Metropolitan area.

190. While I have been critical of the performance of the Metropolitan Police Service, I do not consider that the assumption of deliberate delay is justified. Furthermore, I have no expectation that the proposed action would result in fewer applications to restrict cover or real names or in the saving of time. On the contrary, since I have concluded that officers should have the benefit of a police risk assessment process, it is my view that interventions by the Inquiry directly with the officers is likely to be counter-productive. Finally, as Counsel to the Inquiry and Mr Hall emphasised, it is not just the officer who may have an interest in seeking a restriction order; so also may the home force or another third party.

191. Nonetheless, I concur with the general view among core participants that the early release of cover names, where that can be achieved without significant risk of harm or damage, should be a priority for the Inquiry, as indeed it has been to date. It now appears to be generally accepted that the disclosure of cover names is necessary,

where possible, to enable core participants, witnesses and the public to participate effectively in the Inquiry.

192. At paragraph 18 of the Guidance Note on risk assessment issued by the Inquiry on 20 October 2016, I said, and it is worth repeating:

> "18. Section 19(3) of the Inquiries Act 2005 requires me to impose "only such restrictions" as other statutory provision or the public interest requires. Therefore, I will be considering whether a lesser restriction could be imposed (e.g. restriction on disclosure of an applicant's true identity and any other personal details capable of identifying them but disclosure of the applicant's undercover identity). The risk assessment should provide me, if possible, with a differential evaluation of risk. It should not be assumed that the application will succeed or fail in full. (Note paragraphs B.2 and B.3 at page 82 of the Legal Principles Ruling.)"

193. Both Mr Hall, on behalf of the Metropolitan Police Service, and Sir Robert Francis, on behalf of the National Police Chiefs' Council, were willing to examine ways of shortening the route to disclosure of cover names in the interests of progress. As Mr Hall put it, the police services need to make "some smart decisions". I welcome this development and I encourage further discussions between the legal teams with a view to mapping the appropriate route.

194. What then are likely to be the features of a case in which an early decision can be made to release an officer's cover name? I emphasise that there is no substitute for real cases, but the following observations may be of assistance during discussions between the Inquiry's counsel team and counsel for the police services.

195. As to procedure, it is an apparent feature of the process of risk assessment commissioned by the Metropolitan Police Service that the officer him/herself participates only at a "debrief" conducted after documentary and database sources have been researched. In the case of former members of the National Public Order Intelligence Unit, however, the Inquiry is approaching them direct. If the officer wishes to apply to restrict disclosure of a real or cover name or both, their application is prepared by their legal representative, supported by a personal statement, before a national or force assessor embarks on research and risk assessment. During the risk assessment process the assessor has access to any further information required from the officer through their legal representative.

196. It seems to me that the officer will be the obvious starting point for an assessment of risk. The officer is likely to know from personal experience what may be sources of risk

and whether security has been compromised on any earlier occasion. At the least the officer's preliminary statement would assist the search for further evidence.

197. It is a fundamental objective of an undercover deployment that the link between the undercover and real identities of the person deployed should be concealed. If and when an officer's cover is compromised elaborate arrangements may be necessary to preserve the officer's safety and welfare. Where, however, an officer completes a deployment with their cover intact, normal life can be resumed, subject to the taking of sensible precautions in order to avoid unwelcome recognition by former associates.

198. It follows that when an officer has retired from undercover deployment with the concealment of the link between their real and cover identities preserved, there is no obvious reason, from a security standpoint, why the cover name should not be revealed, provided that measures are taken calculated to ensure that the cover name is not thereafter linked to the real identity and personal details of the witness.

199. When no other public interest requires restriction, the circumstances in which a cover name may be suitable for release appear to me, therefore, to include the following:

(i) When the cover name is already in the public domain (for example, when the officer has given evidence as an undercover officer using the cover name and special measures, or the officer has, anonymously, self-disclosed);

(i) When, with the exercise of reasonable precautions by the officer, the cover name will not be associated with the real name and personal details of the officer;

(ii) When, although exposure of the cover name might lead to revelation of the true identity of the officer (for example, by means of a photograph), the consequential risk of significant harm is slight.

200. I turn to the question whether the early release of a cover name may lead to a saving of time and resources by removing the need to complete a full assessment of the risk that would attend disclosure of the officer's real identity.

201. Mr Hall, Sir Robert Francis and Mr Emmerson all submitted that if an officer's cover name was disclosed the needs of the Inquiry would be met, save in exceptional circumstances, presumably because the public interest in individual accountability would be outweighed by the countervailing public interest in the preservation of the confidentiality of a human intelligence source. When asked what would comprise

exceptional circumstances, Mr Hall responded that a finding of wrongdoing might qualify.

202. Mr Squires maintained that real identities should be the subject of the normal restriction order process; no presumptive exemption from sections 18 and 19 of the Inquiries Act 2005 existed for former undercover officers. He agreed that alleged misconduct by the officer might strengthen the public interest in disclosure, particularly when the officer had since been promoted.

203. I have the same dislike for a presumption that a real identity will not be disclosed in the absence of exceptional circumstances as I do for a presumption that a cover name will be disclosed in the absence of compelling circumstances to the contrary. I agree with Mr Squires that decisions on this issue should await real cases, evidence and properly marshalled argument on both sides.

204. I do see scope for *postponing* a decision as to disclosure of a real identity (whether a full risk assessment has been prepared or not) when the officer and his home force concede that the cover identity may be disclosed. This course might free up time for the risk assessors' consideration of priority cover name cases while preserving the anonymity of the officer pending a decision by the Chairman as to their real identity. However, on balance, I doubt that postponement will produce such a dividend in time-saving as would justify the risk of piling up real identity applications for late decisions, at least before the Chairman has ruled on the first batch of anonymity applications. Secondly, experience may teach that the complexity of the risk assessment process is such that if it is commenced at all it should be completed in one go.

205. If one of the police services considers that it has a suitable case for postponement on an interim basis I would be willing to consider it.

Should restriction order applications concerning the cover or real names of deceased officers receive exceptional treatment?

206. I accept the proposition that it is less likely that harm or damage will be risked by the disclosure of the cover identity or real name of an officer who has since died. I also accept that the Metropolitan Police Service should be asked to identify those officers to the Inquiry and to give consideration to the question whether any and, if so, what application for a restriction order should be made in such cases.

207. However, again I do not accept the proposition that it is appropriate to speak of a presumption; nor do I consider that priority treatment over other applications is appropriate or that the timetable proposed is realistic or that they would represent a

useful source of guidance for future cases. As with all anonymity questions, possible risks to third parties and other public interest grounds may have to be considered. Research as to the officer's cover name may be required. It is probable that the close family of the deceased will have to be consulted before any decision is made, and permitted to make an application if the Metropolitan Police Service does not. These matters require sensitive handling and a draconian direction is not appropriate.

What role, if any, should the non-police, non-state core participants have in the preparation of open and closed versions of police applications for anonymity?

208. At paragraphs 40 and 71 above, I have referred to the proposal made by the non-police, non-state core participants that (i) police applications for anonymity should be accompanied by a fully reasoned 'secondary' application justifying the closed version of the 'principal' application, its submissions and evidence in support and (ii) the non-police, non-state core participants should be given such access as is possible to the Inquiry's process of approving an open version of the principal application for disclosure.

209. This represents a layer of preparation and consultation that goes well beyond the Inquiry's intended procedure represented in the published flowcharts to which I have referred at paragraph 131 above. If adopted, it would result in further substantial costs and delay.

210. How could the proposal be made to work? It seems to me that, in general, if a secondary application such as that proposed was received in support of the open and closed form of the principal application, the Inquiry legal team would not be able to make disclosure of any part of the closed version without making an assumption as to the outcome of the secondary application and, perhaps, the principal application as well. Any gisting of the grounds or evidence would necessarily be at a level of generality that could not assist. Without disclosure, the non-police, non-state core participants could have no useful representations to make as to the appropriate resolution of the secondary application.

211. On the other hand, when the Inquiry team analyses the closed version of an anonymity application, it should be able to separate without delay what can be disclosed from what cannot be disclosed without undermining the point of the application. In my view, this aspect of the non-police, non-state core participants' proposals cannot sensibly result in a meaningful contribution to the restriction order process. Subject to exceptional circumstances that only the Inquiry can recognise, the Inquiry's legal team, and if necessary the Chairman, must, by reason of the very nature of the principal

application, be permitted to resolve the secondary disclosure issue without assistance from the non-police, non-state core participants.

Should schedules of information about deployment and organisations targeted be prepared for disclosure?

212. The Inquiry will undoubtedly wish to prepare a timeline of (i) undercover officers, cover officers, managers, back room staff and commanders and (ii) organisations and groups targeted by the Special Demonstration Squad and the National Public Order Intelligence Unit, and is in the process of doing so. The non-police, non-state core participants seek the release by the Metropolitan Police Service of the same information save that, if not already identified, the officers would be described by ciphers. If there was no risk of such information being used to make premature identification of undercover officers or to feed damaging speculation on the same subject I would consider approving the release of the information. However, I have no confidence that this is the case. The Inquiry will release such information as it can when the orderly and secure management of the Inquiry permits.

Should Special Branch files be disclosed to core participants?

213. Mr Squires, without developing his argument, submitted that the Inquiry was under a duty to require the Metropolitan Police Service to disclose to the individuals concerned the contents of any file held on them by its Special Branch. This was a submission that was beyond the scope of this procedural hearing and I invited Mr Squires to address it in writing to the Inquiry.

214. At first sight this submission appears to fall foul of the limited jurisdiction imposed on the Inquiry by the Inquiries Act 2005. The Inquiry has no jurisdiction outside its terms of reference. It may only admit evidence that is relevant to the terms of reference. It is tolerably well known that Special Branch obtained information about persons in whom it was interested from all sources available to it, public and confidential. The Inquiry cannot decide what evidence it will admit until it knows whether it is necessary to fulfil its terms of reference. The Inquiry cannot therefore decide upon admission and disclosure until it examines the material for relevance.

215. I mention this preliminary view so that Mr Squires can address it in any written submission he wishes to make.

What, if any, further steps should the Inquiry take that would best preserve the available evidence?

216. On behalf of the non-police, non-state core participants, Mr Squires proposed that the Inquiry should (i) require the Metropolitan Police Service to provide details of any former officer of the Special Demonstration Squad with whom it had not yet made contact, (ii) take preliminary witness statements from past and present holders of certain responsible offices of state and ranks within the police services and (iii) embed within Metropolitan Police Service teams responsible for document collection, retention and handling members of the Inquiry team so as provide some re-assurance that relevant records of undercover policing are being collected, retained and produced.

217. I am aware that measures are already in place designed to prevent the loss of available evidence.[4] However, I accept that the preservation of evidence is an important matter and I shall ask the Inquiry's counsel team to keep these matters under review in the light of Mr Squires' submissions.

Should the Inquiry, in the interest of expedition, narrow the scope of its investigation?

218. I shall not repeat here what I have already said at paragraphs 100 – 111 of Part 3 above about the scope of the Inquiry's investigation and its approach. Core participants and others will find in the twelve Core Participants Rulings that I have made since 20 October 2015 many references to the issues that I consider require investigation, including those that arise from information provided by unsuccessful applicants for designation as core participant.

219. This observation applies as much to the trades unions, whose views have been expressed by Gareth Peirce both in submissions and in correspondence, as it does to any other applicant for designation whose application I have granted or whose position is being kept under review.

220. It will clear from Part 3, paragraphs 112 - 115 above, that research of documentary material is in its early stages. I make plain that I do not take the view that the time has arrived when I should in any way exclude issues or limit the depth of the investigation. Neither do I consider that the time is right for a hearing to receive, as suggested by the trades unions in correspondence, the opinion of core participants as to suitable areas of research or investigation. I have said before, and repeat, that the Inquiry will consider any constructive suggestion in writing.

[4] Transcript of hearing 5 April 2017, pages 13 – 14, 18 and 19

221. The scope and ambition of the investigation are not responsible for the slow progress of the Inquiry thus far. However, the time will come, once the Inquiry has a better understanding of the overall picture, when some issues will have to take precedence over others in the expenditure of time and other resources. If this were not so there would be no foreseeable end to this Inquiry.

222. In due course, the Chairman will have to exercise judgement as to, among many other things, the direction of the Inquiry, the depth of the investigation into particular issues, and what witness evidence will be received orally and what in writing. It is not possible at this stage to anticipate what the Chairman's decisions will be but, like every other procedural decision made by the Chairman, they will be made fairly, as required by section 17 (3) of the Inquiries Act 2005.

What, if any, changes should be made to legal representation at and the frequency of preliminary and procedural hearings of the Inquiry?

223. Rule 7 of the Inquiry Rules 2006 requires the chairman of an inquiry, when making a designation of a recognised legal representative for core participants, to encourage agreement for the instruction of a single legal representative to represent a group with the same or similar interests in the inquiry and, failing agreement, make the designation him/herself.

224. Many of the non-police, non-state core participants in the present inquiry share similar interests in it but already had established relationships with solicitors whom they wished to represent them. I made designations according to their wishes on the understanding that where, in relation to preliminary issues of law and procedure, interests were common, there would be co-operative effort and a minimum of duplication.

225. Under section 40 (4) of the Inquiries Act 2005 the Secretary of State issued a Determination in relation to the making of costs of legal representation awards that applied to my consideration of any application for an award of costs from public funds in favour of a non-police, non-state core participant. Clause 2a of the Determination required me to make an award of costs only where I considered it "necessary, fair, reasonable and proportionate to make such an award".

226. When the non-police, non-state core participants applied for costs awards, Tamsin Allen of Bindmans LLP applied for an award both as recognised legal representative for her own clients and also as the solicitor co-ordinating the work of the twelve legal representatives who represented the co-operating group. This was a development that

I welcomed and approved, since it provided a means of ensuring that effort was not duplicated to the detriment of public funds.

227. The following is an extract from my first Costs Awards Ruling of 16 December 2015 in which I explained the working of the costs awards to the co-operating group in practice:

> “31. The responsibility of the recognised legal representatives of non-police, non- state core participants will be to identify their clients’ interest, if any, in the preliminary issue and the position they are likely to adopt in respect of it. That will require at least some contact and discussion with clients. As I understand it, Ms Allen will gather the views of her professional colleagues in order to identify common and conflicting positions among their cohort of core participants. It seems probable that this can be done by email communication at least in the first stages of the exercise. It is possible that a meeting of recognised legal representatives will be needed to complete the process and to identify (1) whether all can be represented by a single counsel team (junior and/or leading counsel), (2) if not, how many conflicting positions require separate counsel teams and (3) which counsel should be instructed. Exceptionally, it may be appropriate for the group to instruct one junior and/or leading counsel to attend the meeting and/or to give advice upon the issue of conflicting interests.
>
> 32. The next question is: who shall be responsible for the preparation of any written submissions to the Inquiry? This is a matter for the recognised legal representatives and their clients. However, the Inquiry will not require written submissions representing the same or a similar position from more than one lawyer. That would simply be wasteful of public resources. The recognised legal representatives for non-police, non-state core participants taking the same or a similar position can either instruct junior and/or leading counsel jointly or send a communication to the Inquiry indicating an intention to adopt the submissions of others. I would expect that in her role as co-ordinator Ms Allen would seek approval from her group of professional colleagues for the instruction of counsel to prepare written submissions on behalf of all the non- police, non-state core participants who were taking the same or a similar position. She would seek their approval for more than one counsel team only when a conflicting position had been identified. I recommend that in her co-ordinating role Ms Allen keeps in regular contact with the Solicitor to the Inquiry so as to consult and keep the Inquiry informed.

33. For the avoidance of doubt the Inquiry will undertake to distribute among recognised legal representatives and unrepresented core participants the written applications and submissions that it receives. If the material submitted is open and closed the Inquiry will not distribute closed material.

34. Once I have considered the written applications and submissions of the core participants it might be possible to dispense with an oral hearing altogether; alternatively, to limit the issues in respect of which I will require oral submissions. This has happened already with regard to the first three preliminary hearings: applications for designation of core participants and recognised legal representatives and costs awards. If the hearing is to take place the Inquiry will give approval for the instruction of counsel to attend the hearing depending upon the number of positions that require separate representation. I will not expect a recognised legal representative to attend any hearing at which the client is adequately represented by counsel."

228. These arrangements have worked well for each of the preliminary issue hearings and Ms Allen and Ms Brander are to be commended for their efforts to make it so. From time to time I have received an application from a minority for an additional award to fund the instruction of counsel to advance an additional or conflicting view. I have required a summary of the additional or conflicting view so as to make an informed decision as to whether such an award would be necessary, fair, reasonable and proportionate.

229. I reject the submission that these arrangements are in any way inadequate or unfair. In particular, the suggestion that the (present) thirteen co-operating legal representatives should be permitted independently to instruct their own counsel teams without further reference to the Inquiry is unsustainable. Neither do I think that the experience of the present hearing could justify the permanent instruction of an additional junior to sit alongside Ms Brander. I do not understand why Mr Squires and Ms Brander could not have given expression to the minority view so close was that view to that expressed on behalf of the majority.

230. I do accept that the timetable for the return of written submissions for this hearing was tighter than I would in other circumstances have wished. I apologise for the fact that this made Ms Allen's co-ordinating role more onerous than usual.

231. When the Inquiry is receiving submissions upon a preliminary issue I do not routinely approve funding to pay the travel expenses of core participants or meet the costs of attendance by their recognised legal representatives because (i) written submissions

are published in advance, (ii) counsel and Ms Allen attend on behalf of the group, (iii) transcripts of the proceedings have to date been published on the same day as each hearing, (iv) experience tells me that the hearings are not usually occasions for the taking of instructions on behalf of the group and (v) in these circumstances, it is reasonable to expect those who choose to attend to bear their own travel costs. If exceptional circumstances arise I will consider an application on its merits.

232. As to the frequency of preliminary hearings, the Inquiry holds a public hearing when a preliminary legal or procedural issue requires. Mr Hall said that he would welcome more frequent hearings so that the Metropolitan Police Service could be held publicly to account. I did not understand Mr Hall to be suggesting that more frequent public hearings would have improved the response of the Metropolitan Police Service to the Inquiry's request for risk assessments and I sincerely hope that in future the Inquiry can publish the successful meeting of deadlines without recourse to a procedural hearing such as the present. Public hearings are costly. They will be held when required but not as a substitute for the work that needs to be done outside the hearing room.

233. As to the accommodation provided at public hearings the Inquiry makes an assessment of likely requirements before each hearing. We do not always make the right provision and for that I apologise. The Inquiry will endeavour to improve its pre-hearing consultation as to likely numbers. However, it is unlikely that future hearings will be held outside the Royal Courts of Justice. Apart from the special security requirements that would be required at a commercial venue, costs would be very considerable.

What order should be made upon the Metropolitan Police Service's application for an extension of time?

234. I regard the scale of the disclosure and restriction exercise presented to the Inquiry and, therefore, to the Metropolitan Police Service, the National Police Chiefs' Council and the home forces as unique. The resources required to meet the challenge are substantial. While it is clear to me that in meeting the challenge the Metropolitan Police Service got off on the wrong foot, I am also clear that the failure to meet deadlines was not deliberate and was not the consequence of a spirit of evasion.

235. I am satisfied that a properly conducted risk assessment exercise conducted by experienced senior officers independent of the issues under consideration is the fairest, most reliable and most secure means of ensuring that the relevant material is placed efficiently before the Chairman for decision on applications for restriction

orders. I am satisfied that the Metropolitan Police Service now has in place arrangements calculated to meet the reasonable requests of the Inquiry for the processing of anonymity applications. I accept the assurance made by Mr Hall that timely consideration will be given to the Inquiry's suggestions for improvement, should they, in the Inquiry's view, become necessary.

236. For these reasons I shall grant the application. However, I share Counsel to the Inquiry's doubts that the arrangements now being made by the Metropolitan Police Service will meet a deadline extended to 1 October 2017. Ms Jones' own estimate in December 2016 was that by 1 October 2017 not fewer than 112 applications could be achieved. At the hearing Mr Hall proposed an order that, if met, would produce 150 applications, supported by risk assessments by the same date. It seems to me that any extended deadline that I impose must avoid setting up the process to fail a second time.

237. In my view, what is required is a direction that is aimed at the production of a representative sample of applications for consideration by the Chairman as soon as reasonably practicable.

238. After that, the Inquiry will need to receive applications at a rate with which the Inquiry can cope, giving priority (i) to the earliest years of service within the Special Demonstration Squad and, perhaps (ii) to those applications that need to be decided before the processing of documents relating to the deployment of officers whose identities have already been officially confirmed can commence.

239. I shall ask Counsel to the Inquiry to meet with the Metropolitan Police Service counsel team for the purpose of agreeing the details of a direction even if it is interim in duration. I expect to be able to issue the direction within 21 days of the publication of this ruling.

240. The Inquiry will discuss internally suitable measures to bring the first applications to a decision by the Chairman as soon as possible. I have in mind the implications of a change in the chairmanship of the Inquiry and the question whether the 'minded to' process should be dispensed with, at least on this occasion. If it is possible the core participants will be consulted and, in any event, they will be informed in good time.

Sir Christopher Pitchford — 2 May 2017
Chairman, Undercover Policing Inquiry

APPENDIX

Terms of Reference

Purpose

1. 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:

   (i) investigate the role and the contribution made by undercover policing towards the prevention and detection of crime;

   (ii) 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;

   (iii) ascertain the state of awareness of undercover police operations of Her Majesty's Government;

   (iv) identify and assess the adequacy of the:

      a. justification, authorisation, operational governance and oversight of undercover policing;

      b. selection, training, management and care of undercover police officers;

   (v) identify and assess the adequacy of the statutory, policy and judicial regulation of undercover policing.

Miscarriages of justice

2. The inquiry's investigations will include a review of the extent of the duty to make, during a criminal prosecution, disclosure of an undercover police operation and the scope for miscarriage of justice in the absence of proper disclosure.

3. The inquiry will refer to a panel, consisting of senior members of the Crown Prosecution Service and the police, 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. The panel will consider whether further action is required, including but not limited to, referral of the case to the Criminal Cases Review Commission.

Scope

4. The inquiry's investigation will include, but not be limited to, whether and to what purpose, extent and effect undercover police operations have targeted political and social justice campaigners.

5. The inquiry's investigation will include, but not be limited to, the undercover operations of the Special Demonstration Squad and the National Public Order Intelligence Unit.

6. For the purpose of the inquiry, the term "undercover police operations" means the use by a police force of a police officer as a covert human intelligence source (CHIS) within the meaning of section 26(8) of the Regulation of Investigatory Powers Act 2000, whether before or after the commencement of that Act. The terms "undercover police officer", "undercover policing", "undercover police activity" should be understood accordingly. It includes operations conducted through online media.

7. The inquiry will not examine undercover or covert operations conducted by any body other than an English or Welsh police force.

Method

8. The inquiry will examine and review all documents as the inquiry chairman shall judge appropriate.

9. The inquiry will receive such oral and written evidence as the inquiry chairman shall judge appropriate.

Report

10. The inquiry will report to the Home Secretary as soon as practicable. The report will make recommendations as to the future deployment of undercover police officers.