Application for an extension of time by the Metropolitan Police Service
Directions

Introduction

1. At paragraph 5 of my Directions of 29 September 2016 I wrote:

> *"In response to the written submissions made by counsel for the non-police, non-state core participants, Ms Ruth Brander, dated 16 September 2016, and questions raised by the Inquiry legal team, the Metropolitan Police Service, on 27 September 2016, indicated that it is withdrawing the risk assessments made by the officers known, provisionally, as Jaipur and Karachi. In short, the Metropolitan Police Service has accepted that it is both possible and desirable to identify risk assessors who are more independent of the applicants and their work. The Metropolitan Police Service is now urgently seeking to identify new risk assessors who will produce fresh risk assessments to replace those previously relied upon. It will be updating the Inquiry as soon as it is able to do so."*

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. Where necessary, the documents have been redacted to protect personal or irrelevant information, and information, upon representations made by the Metropolitan Police Service and/or the Independent Police Complaints Commission, it would damage the public interest at this stage to disclose.

3. By way of clarification of Ms Jones' redacted third letter, "Person A" has withdrawn their application to become a risk assessor; "Person B" is the subject of the Inquiry's reply dated 7 February 2017 at Appendix E.

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.

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:

> *"[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."*

Discussion

6. I do not propose to address the merits of the applications in this document but I do wish to consider their possible implications

7. At the preliminary hearing held on 22 March 2016 it was submitted on behalf of the Metropolitan Police Service that, in the overwhelming number of instances, the public interest balance applied under section 19 of the Inquiries Act 2005 would require that information about an undercover officer and their deployment should not be disclosed and that the evidence should be heard in closed sessions of the Inquiry[1]; it was further submitted that proper, if not enhanced, respect should be afforded to the institutional expertise of the police to assess the risk of harm to an individual or damage to the capacity of the police to prevent and detect crime[2]. I understood it to be implicit in these submissions that the Metropolitan Police Service was in a position to support with a risk assessment any applications for restriction orders made by its officers.

8. I now understand that the task of providing risk assessments and making applications for restriction orders is much more onerous than was anticipated by the Metropolitan Police Service. However, the applications both for a substantial extension of time and for a change of approach by the Inquiry affect the interests of other core participants and I consider that they should be the subject of oral argument in a preliminary hearing.

9. As to the suggested change of approach, it seems to me that the Metropolitan Police Service will need to explain in more detail the procedure it is proposing. It will

[1] See, for example, Restriction Orders: Legal Principles and Approach Ruling, 3 May 2016, paragraph 45
[2] See, for example, Restriction Orders: Legal Principles and Approach Ruling, 3 May 2016, paragraph 47

also need to address the question whether, and if so, how, the Inquiry can fulfil its terms of reference in relation to the Special Demonstration Squad without pursuing its present approach, which is to seek the evidence of every surviving officer so employed. Their evidence is clearly relevant to the Inquiry's terms of reference and my present view is that the Inquiry needs to see that evidence before I can make a judgement whether it is necessary to admit it. It seems to me probable that the evidence of the large majority of, if not all, the officers will be admitted in evidence in the Inquiry, in which case, sooner or later, applications for restriction orders will need to be made. It might have been otherwise if the Inquiry could be confident that the documentary records of the Special Demonstration Squad were fully preserved, but they were not.

10. Furthermore, the Metropolitan Police Service applications bring into focus the future timetable for the Inquiry. It seems to me clear that there is no reasonable prospect that the Inquiry will complete its work within the three year period originally envisaged in July 2015, and that it is unlikely that evidence hearings will take place in 2017. The Inquiry has undertaken to provide the Home Secretary with a proposed revised timetable in the near future. It would assist me to hear the views and proposals of core participants both as to the Inquiry's approach to its work and the principal factors that will determine its rate of progress.

Directions

11. With these objectives in mind my directions are as follows:

    (i) By 4 pm on Thursday, 23 February 2017, the Metropolitan Police Service is to submit to the Inquiry a skeleton argument in support of its applications for an extension of time and change of approach set out in its first and second letters of 21 December 2016; the Inquiry will on receipt circulate the document to core participants;

    (ii) By 4 pm on Thursday, 2 March 2017, the Inquiry's counsel team is to produce and circulate a note (a) in response to the applications made by the Metropolitan Police Service and (b) addressing the factors that are affecting and will affect the progress of the Inquiry towards the oral hearing of evidence;

    (iii) By 4 pm on Thursday, 23 March 2017, other core participants are to submit to the Inquiry any written response to the skeleton argument and note at (i) and (ii) above that they wish. The Inquiry will accept only a single joint written response from the co-operating group of non-police, non-state core

participants (for which funding for the services of one leading and one junior counsel is approved) unless I give prior authority for more than one response; the Inquiry will circulate the documents received;

(iv) By 4 pm on Thursday, 30 March 2017, the Metropolitan Police Service is to respond in writing, if so advised, to the documents circulated under (ii) and (iii) above;

(v) The applications will be heard over 1 – 2 days at the Royal Courts of Justice on Wednesday, 5 April 2017. Funding for the services of Ms Tamsin Allen, and one leading and one junior counsel only for the co-operating group of non-police, non-state core participants is approved unless I give prior authority for further representation.

12. For the avoidance of doubt, I do not expect written or oral submissions to address the merits of any arguments made in Ms Jones' third and fourth letters at Appendix C and Appendix D, save to the extent, if any, that they may affect the future timetable of the Inquiry.

15 February 2017

Sir Christopher Pitchford
Chairman, Undercover Policing Inquiry

APPENDIX A

TO THE DIRECTIONS DATED 15 FEBRUARY 2017

METROPOLITAN POLICE **TOTAL POLICING**

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21 December 2016

FAO: Piers Doggart
Undercover Policing Public Inquiry

By e-mail only: [redacted]

Dear Piers,

First Letter: SDS Restriction Order Applications Window

I am writing to seek an extension of time in connection with restriction order applications over former Special Demonstrations Squad (SDS) undercover officers.

There are a further three letters of today's date which address the following topics:

Second Letter: Restriction Orders Generally
Third Letter: Increase in non-legal resources and recruitment
Fourth Letter: Representation, Increase in legal resources, and Relativity.

Application to extend time for restriction order applications

The current window for the making of restriction order applications for any former member of the SDS (numbering approximately 116 undercover officers and 58 back office staff) closes on 1 March 2017.

I have addressed in my Second Letter why the process of applying for restriction orders, with or without the input of a risk assessor, is necessarily lengthy. I am aware that the Inquiry has sought not to apportion blame for the length of time that has passed to date.

In light of the number of additional non-legal and legal resources that the MPS will be seeking to secure, as described in my Third and Fourth Letters, and being realistic about the time it will take to have those individuals in post, I regret the MPS does need to apply for an extension of time in order to apply for restriction orders in respect of each former member of the SDS. The MPS respectfully invites the Inquiry to grant until **1 October 2017** for the making of restriction orders applications over all former SDS undercover officers for whom

applications are made.

The expectation is that the risk assessment team will comprise four to five risk assessors, supported by four researchers and two contact officers. This team is not yet complete. As at the date of this letter, one risk assessor is in post. Two further are in prospect, one of whom is awaiting vetting, and one (Person A) is due to begin in January 2017. We anticipate 12 assessments will be completed by these three unsupported risk assessors by 1 March 2017.

Allowing for recruitment and notice time, we expect the full team to be staffed by 1 March 2017. From this point we estimate the risk assessments could be completed at rate of no fewer than 16 per month. The total number of assessments required (assuming 112 required) will therefore be produced in five months from 1 March 2017. Allowing for holiday and absence, six months should be allowed.

A further month will be required for DLS to prepare the final restriction order applications. Whilst DLS will prepare applications (where sought) as soon as risk assessments and all other relevant materials are available (and therefore not leaving it until all risk assessments have been completed), we are mindful of the possibility of delays for example in engaging with elderly or sick officers. In these circumstances that additional month is sought as a precaution. It goes without saying that the MPS will strive to make all applications for restriction orders before 1 October 2017, and will provide applications (and inform of negative decisions) throughout the window as decisions are made.

Hypothetically, the date of 1 October 2017 could be brought forward were even more additional recruits (and in particular risk assessors) recruited. However, as addressed in my Third Letter, it is difficult to identify appropriate candidates (only three have been identified to date), and there would need to be a proportionate increase in other staff (again, with the recruitment difficulties identified) to research, identify and supply the necessary materials on which they could make their assessment. Even assuming that number of staff could be recruited in time, the MPS is 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 the MPS both within the Inquiry and without. In these circumstances, the MPS does not consider that an earlier date is realistically achievable.

I would therefore ask that the Inquiry extend the closure of the window for restriction order applications over former SDS officers until 1 October 2017.

Yours sincerely

[redacted]

Melanie Jones
Team Leader (Solicitor)

APPENDIX B

TO THE DIRECTIONS DATED 15 FEBRUARY 2017

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Your ref:

Our ref: [redacted]

[redacted]
Service not accepted by e-mail

21 December 2016

FAO: Piers Doggart
Undercover Policing Public Inquiry

By e-mail only: [redacted]

Dear Piers,

Second Letter: Restriction Order Applications Generally

This letter concerns the topic of restriction order applications generally. Firstly I invite the Inquiry to reconsider its decision to require full restriction order applications from every former SDS officer; secondly, I set out the MPS's response to the suggestion made by counsel to the Inquiry that risk assessors and risk assessments may not be necessary for the purpose of considering restriction order applications; and thirdly, I address the question of what documents the risk assessors may or may not see following their appointment.

There are a further three letters of today's date which address the following topics:

First Letter: Application to extend SDS Restriction Order window
Third Letter: Increase in non-legal resources and recruitment
Fourth Letter: Representation, Increase in legal resources, and Relativity.

Restriction Order applications in every case

I would invite the Inquiry to reconsider the current plan to require restriction order application decisions to be made for every former SDS officer at this early stage. The MPS recognises that a number of deployments will be properly subjected to close scrutiny by the Inquiry in meeting its Terms of Reference. This does not mean, however, that each deployment will need to be subjected to the *same* depth of review. The current plan, requiring the MPS to make restriction order decisions and prepare applications for every officer at the outset, may include a number of cases that the Inquiry ultimately will decide not to publish and therefore is disproportionate given the resourcing this will require and all the other demands being made on the MPS.

In more detail:

The gathering of information necessary to decide whether a restriction order application needs to be made is a huge task, which must be undertaken individually for each application. The process is necessarily painstaking. The question of whether a restriction order should be sought (or granted) depends upon the particular circumstances of the officer, his or her family, and other affected third parties, each of which must be properly considered. It further requires a full review of all details of what may be a lengthy deployment, including the remainder of the officer's career to assess whether other matters demand restriction. Finding, collating and reviewing the information relating to each of these strands for each individual is a massive and time-consuming task.

As the Inquiry is aware, the assessment of risk does not start and end with SDS service, since a number of individuals continued onto careers which themselves may generate risks and reasons for non-disclosure, requiring evidence to be prepared by a number of external organisations.

The process of considering the risk posed today by groups and individuals with whom deployed officers may have come into contact, is not straightforward: if those groups or individuals are no longer active in the same way, there is no current knowledge base to call upon; alternatively, if those groups are active then the dynamic nature of that risk needs to be considered (for example, the current increase in activity by the Far Right).

Many officers are reluctant to engage with the Inquiry process and in particular with the question currently posed: whether or not their identity should be restricted. They and their families may find the process of applying (via the MPS) for restriction harrowing and upsetting. Some are in advanced years. Some may need to undergo distressing and confusing psychological or medical assessment, which are themselves costly in financial resources. There is a real possibility that the Inquiry may not wish to hear from all these persons. Requiring restriction applications for every officer regardless, means that individuals the Inquiry may in fact have little or no interest in will need to go through this process anyway.

In all the circumstances, the 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 applications only for those cases it wishes to subject to more considered scrutiny.

Need for risk assessments and risk assessors

The MPS has given thought to whether it could speed up the process of considering and applying for restriction orders by dispensing with risk assessments all together. The MPS remains, however, strongly of the view that the process of considering and where necessary applying for restriction orders will be incomplete without expert assessment of the risk of harm presented by disclosure.

The MPS has an overriding duty to fully and fairly consider risk to its current and former officers. That requires an objective assessment of the risk to the officer and to affected third parties in their current working and personal lives, informed by experience of how risks of harm may be triggered, exacerbated and mitigated in the community. It also requires

knowledge and consideration of matters such as alternative protective security measures. These are not assessments that DLS and counsel could undertake alone.

That is not to say that the MPS will not take every means appropriate to streamline and accelerate the risk assessment process. The MPS has already done so in relation to its communicated decisions – many of which the NSCPs will be currently unaware - not to apply for restriction orders over the cover (and on occasion real) names of various former officers. Where it is possible to make a decision not to apply for a restriction order without having a full assessment from the new risk assessors, the MPS will do so.

However the MPS strongly considers that it would be dangerous and inappropriate to jettison the risk assessment process in the interests of expediency. Even assuming that some time would be saved by doing so, the MPS is of the view that it could not properly make a decision about these difficult issues without a risk assessment; there would in addition be a considerable loss of confidence by former UCOs were their cases to be considered by the MPS and Chairman in the absence of a risk assessment.

Access to material

On 6 December 2016 counsel to the Inquiry expressed concern about access by the new risk assessors to previous risk assessments drawn up by Operation Motion. This concern was further discussed at a meeting between Counsel on 13 December 2016. As we understood the Inquiry's position at one point, the suggestion was that it would be necessary to disclose publicly, subject only to a line-by-line redaction exercise, any document seen by the risk assessors whether or not relied upon in any restriction order application that might be made.

Whilst, subject to the Chairman's views, this does not appear to be the Inquiry's position now, it nonetheless provides an example of a potential obstacle to the production of proper and timely risk assessments which may be easily avoided.

If it were to be the case that the risk assessors should be insulated from any prior assessment or observation on the evidence by any other individual, it would be necessary to withhold from the assessor material which could be relevant to the assessment, such as:

(a) earlier risk assessments or records of dealings with former UCOs by Jaipur and Karachi (or ensure that they were first redacted of any opinions expressed by Jaipur and Karachi);

(b) assessments by any other person both during deployment and in response to any risk of compromise which may have occurred since deployment, including security responses, and their success or failures;

and it would require the MPS to acquire bespoke access to the MPS's electronic databases for the risk assessors, which would prevent access to documents which contained comments created by persons reviewing the documents, or which contain passages subject to LPP. There may be further ramifications.

There is a very real risk that controlling access to information in this way will lead to risk assessors not seeing, and so not considering, relevant information. The MPS invites the Inquiry to agree that it is not necessary or appropriate to control the risk assessors' access

to information in this way.

To weed the information that may be shown to the risk assessors will delay matters. Further, there would be a consequent extension in research time if the risk assessor must avoid any previous review, opinion or assessment, but yet assess matters such as historic compromise responses afresh.

Finally, to require a restriction order application to be made over any sensitive document that is seen (even though not relied upon), before the application can be seen by the other core participants, will itself lead to further delay.

It is suggested that the better course is to allow the assessors unfettered read-only access to the databases on which material is likely to be held, to the summaries of information held, to documents concerning historic management and treatment of risk, and to all previous assessments for an individual. This approach is fair because in due course (a) the risk assessors will need to disclose anything on which they ultimately rely in an assessment, subject to any restriction over that material; (b) the Inquiry will be able to require the MPS to disclose any other material if it is necessary to do so in the interests of fairness in order to understand the basis for a risk assessment (again, subject to any restriction over that material); and (c) the assessors' opinions may be challenged where appropriate. The MPS further observes that the process of risk assessment and the weight to be attached to any individual assessment will be subject to the Chairman's scrutiny in light of any submissions which may be made. In other words, this process will be fair.

In these circumstances, the MPS proposes (as indicated during the meeting on 13 December 2016), to permit the risk assessors unrestricted access to materials (save for documents subject to LPP Advices). As it has been throughout this Inquiry, the MPS will continue to be transparent and responsive to any observations the Inquiry has to make about this process.

Yours sincerely

[redacted]

Melanie Jones
Team Leader (Solicitor)

APPENDIX C

TO THE DIRECTIONS DATED 15 FEBRUARY 2017

METROPOLITAN POLICE **TOTAL POLICING**

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21 December 2016

FAO: Piers Doggart
Undercover Policing Public Inquiry

By e-mail only: [redacted]

Dear Piers,

Third Letter: Increase in Non-Legal Resources, and Recruitment.

Thank you for your letter dated 30 November 2016 concerning resources. This letter contains the MPS's response to your request for assurance that the MPS is devoting sufficient non-legal resources to the Inquiry. It also provides practical detail on the issues of recruitment and conflict of interest. In particular, I wish to explain why it is essential to be realistic about the speed at which the MPS is able to recruit suitable individuals to fulfil the necessary roles. In this context I also wish to refer to recent conflict of interest concerns expressed by the Inquiry regarding one of the MPS's risk assessors, Person A one of the NCTPOC's staff, Person B and regarding Chief Superintendent Marcus Barnett.

There are a further three letters of today's date which address the following topics:

First Letter: Application to extend SDS Restriction Order window
Second Letter: Restriction Orders Generally
Fourth Letter: Representation, Increase in legal resources, and Relativity.

MPS's Commitment to the Inquiry

The MPS notes that you have acknowledged that your letter of 30 November is not intended in any way to be read as a criticism of those in the MPS who are currently assisting the Inquiry, but have expressed some concern that the time has now come for MPS resources to be increased. The MPS is grateful for all the practical suggestions contained in those letters, and as communicated through the Inquiry's counsel team in its various meetings with the MPS counsel team.

The MPS is highly conscious of the reasons why the Inquiry was ordered by the Home Secretary and remains committed to assisting the Inquiry in achieving its Terms of Reference. This involves assisting the Inquiry in obtaining documents and information from many

decades of highly sensitive police work. The process of gathering information from across an organisation as large as the MPS, of considering it, and providing it to the Inquiry in a properly secure but comprehensive, ordered and searchable form, is immense. The process of considering whether or not the MPS is justified in applying for restriction orders over that information, relating as it often does to individual officers many of whom retired from the police many years ago, is necessarily labour intensive if it is to be done properly. The MPS is not aware of any other Inquiry or litigation in which restriction orders or Public Interest Immunity has had to be considered over so many public servants in relation to such lengthy periods of sensitive deployment.

Ensuring the right resources are in the right places as the Inquiry has progressed and continues to progress poses challenges for the MPS. The MPS is grateful for every indication from the Inquiry, as early as it is possible to provide it, as to the nature of the tasks that the MPS is to be asked to perform. By way of example, the Inquiry has now started to submit rule 9 requests to the MPS directed at the work of IMOS, and has indicated that the MPS must expect many more similar requests. All the files that need to be searched for in the current requests are paper-based. It is labour-intensive to copy the files for watermarking and delivery to the Inquiry, bearing mind that only particular scanners are able to copy the documents given their condition. It is clear that staff numbers in IMOS need to be increased and the MPS will do so.

In response to the Inquiry the MPS has to date disclosed over one million pages of documents. The total number of documents disclosed for the first rule 9 request alone was 593,237 (each document consisting of one or more pages). At one point, whilst the Inquiry was without its own secure electronic platform, this required the printing out of thousands of pages. The current expenditure by the MPS on responding to the Inquiry is £4.2 million. To put that figure in context this is the equivalent to the cost of funding approximately 80 constables for a year.

Further Resources

Turning to the question of non-legal resources, AC-PIT at present employs the equivalent of 25 full time police officers, police staff or agency staff. This is, of course, separate from the number of MPS officers and staff engaged in Operation Herne and Operation Elter.

Additional resources have been authorised for AC-PIT. The present proposal is to recruit a further 75 persons (police officers and staff) to assist in its response to the Inquiry, primarily to meet the upcoming demands for risk assessments, restriction order work, rule 9 compliance, and dealing with other issues arising in the course of the Inquiry.

The MPS has considered whether it would be appropriate to seek to recruit an even greater number of additional individuals. This is of course a unique Inquiry ordered by the Home Secretary, and one of undoubted importance to the public, the Core Participants and to policing generally. There are however severe limits to the resources – financial and in terms of deploying existing staff from their current roles – that the MPS is able to devote to inquiries into historic events, even Inquiries which will make recommendations as to the future. The MPS has numerous other competing diverse priorities of critical importance such as the terrorist threat level which is currently classed as severe and the response required to the HMIC Report into child protection. The MPS does not have unlimited resources and has to work within severe budgetary constraints which we have recently been informed are likely to

be squeezed further. The question of resourcing will of course be kept under review but is very unlikely to be capable of further increase.

The Inquiry will also of course appreciate that it is not simply a question of the cost of deploying manpower from other areas of the MPS, or in the case of agency staff, the financial costs of engaging them. There are also the associated costs of finding and retaining suitable workspaces, especially as office space is at a premium since the MPS, like other public organisations has over recent years been significantly reducing its property portfolio; of building or securing the right sort of IT access to the various information systems on which they will need to work; and of ensuring proper management and HR resources.

Recruitment

I would like to draw your attention to the practical reality of carrying out a recruitment exercise of the scale described above. The purpose of doing so is to explain why the devotion of additional resources that the Inquiry has asked the MPS to make will not be an instantaneous process.

In all cases, any person recruited will have to be suitable to have access to sensitive and in many cases highly sensitive documents (in other words, willing and capable of acquiring appropriate security clearance); be available to start (and therefore not currently needed in their existing post, and free of any notice period); ideally be available for the duration of the Inquiry; be free of conflict; and have the necessary skills and experience to deal with the particular role. The process of security vetting has taken well over a month for some of the staff that AC-PIT has recruited.

In addition there is the question of securing willing candidates to apply for roles in AC-PIT. Not all police officers and staff will regard working in AC-PIT as a desirable job compared to other jobs in policing; and in the case of police officers, prospective candidates may be unwilling to sacrifice opportunities which they may consider exist elsewhere in the MPS. Whilst it may be possible to move officers and staff to AC-PIT against their will, this is unlikely to be effective as it risks performance issues such as low standards of work, absenteeism and sickness.

The process of recruiting risk assessors presents particular challenges: challenges that are likely to be felt no less keenly by other legal representatives or organisations who wish to apply for restriction orders on the basis of risk. Given that the Chairman has made it clear that he expects the risk assessment to be expert, critical and objective, the MPS considers that recruitment of any risk assessors would require recruitment of people with experience of the following:

- Making complex assessments of risk where there are competing demands;
- Displaying resilience in making strategic decisions where significant opposition can be realistically expected;
- A management role in the decision making process where there is a significant threat to life;
- Assimilating large volumes of material;

- Capacity to promote confidence within diverse groups (the Inquiry, Core Participants, former officers etc.);

- Holding a position or rank where their decision making has been objective and independent, rather than unduly influenced;

- The capacity for taking responsibility for the process, ultimately ensuring as full an assessment as possible. This is imperative given the potential damage to the perceived integrity of the Inquiry if the assessment results in a restriction order being inappropriately applied for, or made. It is also crucial to the protection of individuals that identifiable or predictable risks are properly highlighted.

- Understanding of policing and familiarity with the way in which information is held by the police.

I am instructed that the majority of these qualities would most evidently be required in officers serving, or who had served, at a minimum level of Detective Inspector, and more probably at Detective Chief Inspector level. A distinction needs to be drawn between the collation of material required for a risk assessment (that may be done by individuals of lesser experience), and making assessments on the basis of that material. For the avoidance of doubt, the MPS does not believe that it would be at all feasible to identify suitable risk assessors who have no policing background.

Conflict Considerations

The difficulty in recruiting suitable staff to work in this area is compounded by conflict considerations. The MPS is live to the risk of conflict and the appearance of bias. Avoiding and managing conflict risks will have a real effect on the pace at which the proposed recruitment, described above, can take place. The MPS has been very grateful for the guidance and support provided by the Inquiry on issues such as the recruitment and instruction of Risk Assessors, and in drawing attention to the desirability of avoiding any potential conflicts of interest. However, whilst the MPS fully understands the Inquiry's motives, the MPS has found it increasingly difficult to recruit staff to work in this field whose previous associations are not open to some sort of questioning; and indeed the Inquiry's concerns have on occasion inhibited the ability of the MPS to respond to the demands of the Inquiry.

D/Supt Marcus Barnett

By way of example, the Inquiry has expressed concern about the position of Detective Chief Superintendent Marcus Barnett, who was appointed on 31 October 2016 to head the Assistant Commissioner's Public Inquiry and Corruption Review Operational Command Unit. This Unit comprises both AC-PIT and operations relating to corruption review. AC-PIT itself is headed at Superintendent level by D/Supt Dionne Mitchell.

The MPS has taken detailed instructions on this issue.

Attached to this letter is the OPEN witness statement of Detective Chief Superintendent Marcus Barnett dated 15 December 2016. You will see that he explains his previous

association with three former SDS officers, with Mark Kennedy, and a further officially confirmed undercover officer.

I recognise that it might be thought it would be possible to identify an officer to lead the unit containing AC-PIT who has had no contact with UCOs of interest to the Inquiry. I have obtained instructions regarding the recruitment of Mr Barnett from AC Helen King, who was involved in his selection and appointment. In fact, the ability to recruit a suitable individual was severely limited by the following collective considerations. The individual needed:

a. to be at a sufficient level of seniority. The MPS has 59 Chief Superintendents of whom 11 are Detectives. At Superintendent level there are 151 officers of whom 85 are Detectives. Not all of these will have experience of covert or discreet operations in the way described. Some will be recent transferees from other forces without the necessary organisational understanding. Many are in critical roles requiring the particular skills they have and therefore are not available for posting to this role.

b. to have sufficient detective experience, including covert or discreet investigative work, to understand the issues at play in terms of historic and current UCO operations and to enable him or her to oversee and mitigate risks to any person linked to UCPI disclosures. In due course high level, fast time responses may need to be put in place in relation to identified threats. The individual is expected to provide significant assurance to the Commissioner in relation to these matters and needs to understand the operational options available and how they can be accessed and actioned within the MPS

c. to have the intellectual ability to identify and address the complex and often competing requirements necessary to support the Inquiry and the MPS's response. AC King was satisfied from her knowledge of Mr Barnett that he has this capability and will apply himself effectively to gain the knowledge and insight the role requires.

d. to be able and willing to give a three year commitment to the role. This is a particularly limiting, but important, requirement. Senior police officers are in high demand for key organisational roles and tend to be moved on a regular basis (after 12-18 months is quite usual). Able officers also, understandably, seek promotion opportunities as they arise. It would be unfair (and in some circumstances unlawful) to prevent an individual from seeking promotion because the MPS needs continuity in a complex role such as this one. Of the Superintendent and C/Supt numbers listed above, a proportion will be able to retire within the next 3 years. Others will be seeking promotion to chief officer ranks (including outside the MPS), or to move role within rank to gain the professional development to do that. Mr Barnett has given a three year commitment to this role and been granted the rank of T/C/Supt. This provides as great a level of confidence that can be achieved that he will not have to be replaced (with the challenges that would create) within this period.

The MPS recognises that to provide the maximum confidence to the Inquiry and Core Participants, it might have been ideal had Mr Barnett never had any professional contact with any SDS or NPOIU UCOs or any UCO generally. However, the reality is that finding an officer with all the above qualities, who has not ever worked with individuals who either were who had been a UCO during their careers, is extremely difficult.

The purpose of the attached witness statement is transparency: to demonstrate that any risk

of a conflict of interest has now been identified, and is being addressed. The types of relationships Mr Barnett describes with officers that he worked with are common place within policing and not likely to generate any misplaced sense of loyalty in an officer of Mr Barnett's rank, who through his service will have worked with hundreds of officers in the way he describes.

I raise the matter now (a) because it will be seriously disruptive if Mr Barnett is unable to continue in his role; (b) because the case of Mr Barnett illustrates the complexity of recruiting suitable individuals for roles within AC-PIT. Whilst I appreciate that some of the recruitment considerations for Mr Barnett may not be relevant to recruiting staff at a more junior level, some of the same considerations will be relevant when identifying (a) further senior officers to work in AC-PIT as the Inquiry continues, (b) in connection with identifying suitably senior witnesses to provide evidence to the Inquiry on general aspects of undercover policing and (c) in connection with identifying suitable senior officers to give internal assistance on difficult issues such as restriction order applications.

Person A

By way of further example, in October 2016 retired former DI Person A was identified as a suitable person to carry out the important role of Risk Assessor for the MPS. Thereafter, the MPS provided a copy of Person A Curriculum Vitae to the Inquiry.

On 7 December 2016, you informed me that the Inquiry considered that it was inappropriate for Person A to continue as a risk assessor because of concerns raised by Jane Deighton on behalf of Duwayne Brooks MBE. I understand that Ms Deighton has raised questions which appear to be directed at establishing whether Person A was passing information gleaned from Mr Brooks to the MPS for covert purposes. I understand that the Inquiry is concerned that to establish whether Person A did or did not do that would require an investigation, and that since it would not be quick or efficient to do so, it might be easier to find someone else. The circumstances are of course that Person A was engaged by the MPS to investigate complaints by Mr Brooks, and prepared a report on that work which was provided to the Independent Police Complaints Commission.

The MPS has, of course, considered the Inquiry's view. However, it appears to the MPS that given the difficulties in identifying suitable risk assessors already encountered and likely to be encountered in the future, it would be wholly inconsistent with the need to make progress to abandon Person A. The MPS proposes to retain Person A to act as a risk assessor except for those connected to matters relating to Duwayne Brooks (to avoid any suggestion that he has preconceptions about the need for restriction orders in relation to such officers). This is notwithstanding the risk that he may in some capacity be subject to investigation by the Inquiry. However, it seems that this is a risk which exists for all officers who assist the Inquiry, since it is always possible that allegations may be made against them in connection with either past events or, potentially, in connection with their work with AC-PIT. The position of Person A is, however, clearly different from the issues identified in connection with Jaipur and Karachi.

We invite the Inquiry to appreciate that expectations that officers or staff who have any role in preparing for the Inquiry will be entirely free from any possible perception of a conflict of interest may be unrealistic, and if maintained will create serious practical and timing problems for the MPS in responding to the demands of the Inquiry.

Person B

By way of further example of conflict considerations, Person B is a Detective Sergeant in the National Counter Terrorism Police Operations Centre ('NCTPOC'), and was [redacted] He has long been identified by the MPS as the appropriate person to make, or assist in the making of, a response to r9-10B, r9-13 and r9-18 as insofar as they relate to document retention and RRD within the NDEDIU. Person B was the subject of allegations made in July 2014 by Sgt. Williams in relation to documents relating to Baroness Jenny Jones. You are aware that this matter was investigated originally; and then reinvestigated [redacted] As far as the MPS is aware there are no outstanding investigations in relation to Person B and he is available to assist the MPS in responding to document assurance matters.

However, the Inquiry has been unwilling to receive any evidence from Person B in the MPS responses to the Inquiry's questions on document assurance. Following the MPS re-investigation, the MPS on 26 August 2016 asked the Inquiry to reconsider its position on [redacted] Person B's involvement in responding to rule 9 requests on document assurance. I am not aware of a specific response on this point but there have been additional rule 9 requests since this date on matters that the MPS has stated are likely to be within Person B's knowledge. You then wrote to me on 4 November 2016 to indicate that it was the Inquiry's position that it would be inappropriate to receive evidence about document assurance from *anyone* who is or has been the subject of allegations of inappropriate deletion or destruction of documents. The effect of this is that the MPS has been unable to provide evidence from the individual who is best placed to assist the Inquiry, even though Person B has been cleared of any wrongdoing following a full investigation.

I do invite the Inquiry to reconsider whether it is tenable to maintain this approach, for two reasons. Firstly, the Inquiry is deprived of the ability to receive evidence from those who are most knowledgeable. Secondly, additional time and resources have to be expended in finding a suitable replacement who, himself or herself, is necessarily able to respond to the Inquiry's requests less efficiently. At all times the MPS is entirely transparent with the Inquiry as to any possible conflicts, and the Inquiry retains the ability to ask further questions and ultimately an individual such as Person B is answerable for his evidence. The MPS would suggest that the involvement of Person B does not prevent the Inquiry from being accurately informed of information held by the NDEDIU and how the NDEDIU handles that information.

Yours sincerely

[redacted]

Melanie Jones
Team Leader (Solicitor)

Statement made on behalf of:	The Commissioner of Police of the Metropolis
Witness:	Marcus Barnett
Statement No:	1
Exhibits Referred to:	
Date Statement Made:	21 December 2016

IN THE MATTER OF: PUBLIC INQUIRY INTO UNDERCOVER POLICING

Witness:	**Marcus Barnett**
Occupation:	Detective Chief Superintendent, Assistant Commissioner's Public Inquiry and Corruption Operational Command Unit
Address:	c/o Directorate of Legal Services, 10 Lamb's Conduit Street, London, WC1N 3NR

I believe the facts stated in this witness statement are true

Signed [redacted] .....

Dated 21/12/2016 .....

Introduction

1. I am a serving Metropolitan Police Service officer having joined in 1993.

Signature: [redacted] Date: 21/12/16

2. I currently hold the rank of Detective Chief Superintendent (DCS), and am head of the Assistant Commissioner Directorate of Professionalism's Public Inquiry and Corruption Review Operational Command Unit ('AC-PICR'). AC-PICR includes the Assistant Commissioner's Public Inquiry Team ('AC-PIT'), the unit previously headed by then Detective Superintendent ('D/Supt') Neil Hutchison, who has recently left the Metropolitan Police Service ('MPS') to become Chief Superintendent within Northumbria Constabulary. AC-PIT will now be led by D/Supt Dionne Mitchell following Mr Hutchison's move.

3. As the name indicates, AC-PICR includes a separate corruption review strand. My role is to lead the strategic direction of both AC-PIT and the corruption review strands and to retain overall responsibility for both units within AC-PICR.

4. I became C/Supt of AC-PICR in November 2016. I was appointed by DAC Fiona Taylor and Assistant Commissioner Helen King.

5. I make this statement to set out details of my previous dealings with undercover officers including officers of the Special Demonstration Squad ('SDS') and Mark Kennedy who later joined the National Public Order Intelligence Unit ('NPOIU'). The remainder of this statement is set out as follows: firstly, I will set out my previous experience in a discreet policing unit; secondly, I will summarise my work with a former undercover officer called Christian Plowman who did not work in the SDS or NPOIU; thirdly I will set out my work involving test purchase officers including Mark Kennedy; and fourthly I will describe the MPS's approach to managing any potential appearance of conflict of interest.

Work on discreet unit

Signature: [redacted] Date: 21/12/16

6. I worked on a discreet policing unit within SC&O11 from June 2008 to February 2013 and again from February 2014 to March 2015. SC&O11 later became SC&O35 and contained specialist crime units.

7. My unit did not deploy undercover officers - but one aspect of its work was to provide support to undercover police operations through the provision of technical capabilities. The commissioning and oversight of undercover officers and deployments in all scenarios remained outside of my or my unit's control.

8. The unit comprised partly police officers and partly engineers. The police officers' role was to plan operations according to policing need and proportionality within the law. The engineers provided technical assistance and expertise to assist the officers in delivering against operational objectives.

9. The police officers within the unit were of all ranks up to D/Supt including Detective Constable ('DC'), Detective Sergeant ('DS'), Detective Inspector ('DI'), Detective Chief Inspector ('DCI') who was Head of Operations. The engineers were of various grades and led by a senior engineer. There was an overall Head of the unit who was a D/Supt.

10. In my first period of service in the unit at paragraph 64 above I was the DCI Head of Operations. I returned in the second period as the D/Supt Head of the unit. In this second period, I was based geographically away from the unit, at New Scotland Yard.

11. Two former SDS officers, known as [redacted] and [redacted] were at the unit when I joined. The former SDS officer known as [redacted] joined the unit towards the latter part of my tenure as DCI Head of Operations. Each of these three officers were DS's whilst in the unit.

Signature: [redacted] Date: 21/12/16

12. I believe that [redacted] left the unit and [redacted] retired during my first period of service. [redacted] remained on the unit during my time as D/Supt.

13. Whilst I was DCI I would mainly liaise with the DI's as they would directly report to me and I was their direct line manager. The DS's were a rank removed. However, the unit was small and I would have daily contact with DS's in the unit, including the three former SDS officers mentioned above, as part of normal office contact (such as greeting people while making tea / coffee) and work-related tasks.

14. As DCI, I was the second line manager of DS's which meant that I would review the line manager's comments on the officer's annual performance development review ('PDR') and confirm whether or not I agreed with the line manager's assessment. I do not remember completing the PDR's of the three officers mentioned above but I would expect that I did fulfil this role.

15. I did not see any of these three officers socially outside of work as part of my personal life and would not describe them as personal friends. In the unit I would have gone to social events, e.g. work Christmas events, and occasionally, to after work drinks. The three officers mentioned above would also have attended some of these events and I would have had social conversations with them on these occasions.

16. Although I had fewer dealings with [redacted], I would describe my relationship with each of the three as being a good and unremarkable working relationship. These working relationships were no different in character to those I have had, over the course of my career, with hundreds of junior staff. .

17. Whilst I was DCI I believe that [redacted] had a serious health incident which led me to go to his house for a welfare visit. [redacted] may also have been an acting DI in 2012, although I am not certain about this.

Signature [redacted] Date: 21/12/16

18. I did not know, when I joined the unit, about the SDS's existence. I first found out about the SDS from [redacted] or [redacted] or their colleagues when I asked about where they had served previously, as I would have asked about other people in the unit. I do not remember the precise circumstance or conversation in which I learned of the existence of the SDS.

19. I recall that both [redacted] and [redacted] were guarded in telling me about their previous service. Having been an officer involved with some sensitive areas of policing for considerable time I understood from the guarded approach that these officers may have had sensitive deployments and I did not push for too many details.

20. In relation to [redacted] I did not interview him or recruit him to the unit. I did not know [redacted] was a former SDS officer when he joined the unit. I do not remember when I first learned that he was a former SDS officer. I do recall that when I returned to the unit as D/Supt there was some welfare contact for former SDS officers because of media interest by that time. I was not involved in providing this welfare contact. I remember that I asked [redacted] if he was ok and whether he needed any particular or additional support at work; [redacted] did not raise any issues with me. I was not [redacted]s line manager at the time and I believe that this conversation was sufficient to let [redacted] know that the unit would provide appropriate support for him if he needed it.

21. In summary, as D/Supt Head of the Unit my role was more removed from day-to-day aspects of operations and involved more strategic issues including management of resources and setting the unit's policing priorities. I was also based away from the unit itself and worked mainly out of New Scotland Yard. My primary contact was with my DCI and the Head of Engineering. I had fewest dealings with [redacted] as I did not know him particularly well while DCI and then I became D/Supt with this more removed role.

Signature: [redacted] Date: 21/12/16

Former undercover officer

22. I have also worked with a former undercover officer called Christian Plowman and developed what I would describe as a close working friendship with him. However this was purely based on work and at no time did my friendship extend into my personal life and social circle. Christian Plowman was officially confirmed as an undercover police officer in proceedings before the Court of Appeal Criminal Division in *R v Tre Palmer and others* [2014] EWCA Crim 1681.

23. Whilst I was at Westminster (West End Central) I worked as a DC with Mr Plowman, most notably from around 2000 to 2003. This was on a crime squad where we worked closely delivering operations according to local priorities and mounting pro-active operations such as drugs / test purchase operations. I was then the DI in charge of the Borough Crime Unit at Westminster from March 2005 – October 2006 when Mr Plowman was a DC on the Hotel Crime Team employed as a Detective reactively investigating crimes.

24. As mentioned at paragraph 22 I developed a close working friendship with Mr Plowman as we worked together. I became aware some time later on that Mr Plowman was planning to leave the police as he was somewhat disillusioned. I tried to convince him to stay - as I was of the view that he had a lot to offer as a police officer. He did not want to and so he left the police. I do not remember the dates of this.

25. Our friendship came to an end quite abruptly after we had a disagreement, and that was the last time we ever spoke. I understand that for completeness the MPS has provided details of this disagreement to the Inquiry separately; I can confirm that it was nothing to do with undercover policing.

Signature: [redacted] Date: 21/12/16

Test purchase officer work

26. During my time at West End Central as stated above I was involved in running test purchase operations. These are relatively small-scale operations to prevent illicit drug dealing. In summary, a short-term undercover officer deployment is used to provide evidence of the sale of illicit drugs.

27. The undercover officers used in such operations were referred to as 'test purchase officers' ('TPOs'). They were to my knowledge accredited, foundation level undercover officers and were available for deployment nationally. As part of this work I would have worked with numerous former TPOs. My role would have been to task the TPO and inform them about the location and individuals that were the subject of the operation and the operational plan. I do not recall the names of or details of the vast majority of these officers.

28. The media revelations relating to Mark Kennedy from 2011 onwards included pictures published of him. When I saw these I realised that Kennedy had been one of the TPOs at West End Central. I believe I only recall this because he has a distinctive look. His TPO work was not unusual and I had no different relationship with him to other TPOs. I did not manage Kennedy or have any particular working relationship with him. He was one of the officers supplied to the unit I worked in as an operational resource.

29. I did not include this contact in the form declaring personal associations because I had such little contact with Kennedy in the role described above, before he had joined the NPOIU, that I did not recall the work when filling in the form. I have only recalled this once I gave the issue of any potential work with former undercover officers further thought in the process of preparing this statement.

Signature: [redacted] Date: 21 12/16

30. I have reviewed the list of known SDS and NPOIU officers and I do not know and have not worked with any of them other than the three individuals and Mark Kennedy as noted above.

Future management

31. During the recruitment process to my present role, I have been open about the previous contact with former undercover officers. I have made it clear that I do not believe that it does actually impact my ability to perform my role negatively as I am able to, and will, treat these officers in the same way as I would treat any other officer that would be encountered in my role as DCS of AC-PICR.

32. However, I understand that it is essential that there are adequate safeguards against any bias or conflict of interest on the part of any officer dealing with matters relating to the Inquiry, and, for the purposes of reassuring the public, adequate safeguards against any *appearance* of bias or conflict of interest.

33. The MPS will adopt the following approach in the conduct of AC-PICR in relation to [the 3 SDS officers referred to at paragraph 10 above] Christian Plowman and Mark Kennedy :

    a. Any questions or issues relating to these officers that arise will be directed in the first instance to the D/Supt who is the head of AC-PIT. This includes work relating to risk assessment or applications for restriction orders.

    b. If the head of AC-PIT is unable to resolve the issue, this officer will not refer the issue to me but will instead refer the issue directly to the Deputy Assistant Commissioner who is my line manager.

Signature: [redacted] Date: 21/12/16

c. The MPS Directorate of Legal Services will not raise requests relating to these officers to me.

d. This approach means that I will not have any substantive decision-making specific to the three former SDS officers mentioned in this statement.

34. I believe that the above approach is sufficient to remove any appearance or impression of a conflict of interest. I am aware of the importance of this issue and will keep it under review.

Signature: [redacted] Date: 20/12/16

APPENDIX D

TO THE DIRECTIONS DATED 15 FEBRUARY 2017

METROPOLITAN POLICE **TOTAL POLICING**

OFFICIAL

DIRECTORATE OF LEGAL SERVICES

Director: Hugh Giles
Solicitor

10 Lamb's Conduit Street
London
WC1N 3NR

DX: 320101 Bloomsbury 12

Enquiries to: Melanie Jones

Direct line:
Facsimile:
Switchboard: [redacted]

Your ref:

Our ref: [redacted]

[redacted]
Service not accepted by e-mail

21 December 2016

FAO: Piers Doggart
Undercover Policing Public Inquiry

By e-mail only: [redacted]

Dear Piers

Fourth Letter

Thank you for your letter dated 6 December 2016 on the issue of legal representation and legal resources and your earlier letter dated 30 November 2016 concerning the use of Relativity.

There are a further three letters of today's date which address the following topics:

First Letter: Application to extend SDS Restriction Order window
Second Letter: Restriction Orders Generally
Third Letter: Increase in non-legal resources and recruitment.

Representation

The MPS has considered the two suggested models of representation for the purpose of ensuring fairness to current or former MPS officers.

At the outset the MPS acknowledges that it is necessary to be clear with all officers and former officers as to the role that may be played by the MPS' Department of Legal Services. The MPS fully accepts that there are officers, many of whom have been already identified, whose interests are divergent from those of the MPS and where fairness suggests that they should have the opportunity to seek separate representation.

On the other hand, the possibility that each current or former officer should have access to separate legal advice and representation (whether delivered by DLS, your Model One, or by separate firms, your Model Two) is impossible to achieve and I suggest impossible to square with the demands of this Inquiry.

There are two short reasons why the Models suggested are not possible. So far as Model One is concerned, DLS has only one client, the Commissioner. DLS will not "represent", that is, take instructions from, individual current or former officers. So far as Model Two is concerned, it would be most unlikely that MOPAC would agree to the funding of representation for every single officer whether or not a conflict has arisen. Nor would this seem to be an appropriate or proportionate use of public funds.

But there are broader reasons why the MPS considers that the current system – in which DLS represents the Commissioner but assists individual officers, who are not in conflict with the Commissioner, in their response to the demands of the Inquiry – is appropriate. Firstly, the Inquiry is dealing with a very sensitive and specialist area of policing business. DLS has, through being part of the MPS and as a result of experience in dealing with the Inquiry and the related litigation, a vast degree of institutional knowledge, understanding and experience which it would be hard if not impossible to replicate outside DLS. The way in which DLS and its counsel is able to interact with current and former UCOs and managers allows the MPS to draw out and identify information that is relevant to the Inquiry (whether to the Inquiry's consideration of the substantive issues, or matters such as restriction orders) over the extended timespan of the Inquiry's period of interest. Secondly, the MPS as an institution needs to respond to requests for information made by the Inquiry; but that information is sometimes held by, or is only capable of being located because of, individual officers and former officers. In these circumstances, the MPS would suggest that it is highly undesirable for former officers to be separately represented unless, as I have already acknowledged, fairness requires it. The MPS would anticipate that if all former UCOs are separately represented as a matter of automatic principle, there would bound to be massive delay and inefficiency. Assuming newly instructed solicitors were able to win the trust and confidence of the officers concerned, there is the huge amount of secure information that would need to be transferred and digested by them in order to provide representation.

Thirdly, the situation in which individual officers are witnesses in legal proceedings involving the MPS is not unusual (for example, in an inquest or civil claim against the Commissioner). The Commissioner is well used to assisting his current or former officers on matters such as anonymity without there being the need for separate representation.

DLS has started to consider and identify whether fairness requires that an officer have his or her own representation. As this is identified, letters advising the officer of the situation will be provided. However, the MPS is not always in a position to take quick judgments on such matters without considering the relevant documents. It is not the position, for example, that DLS or counsel could simply contact a former officer who was deployed in the 1980s and, after a relatively brief conversation, determine whether a restriction order should be applied for (or whether, owing to a conflict of interest, their position ought to be considered by other solicitors). This Inquiry is not the same, for example, as a single military incident inquiry where there is likely to be limited documentation that is uniquely relevant to each soldier.

Legal Resources

The MPS does note very seriously the point made in the penultimate paragraph of your letter of 6 December 2016 as to the level of legal resources that are required, whatever model is adopted.

There are currently 14 DLS lawyers and counsel engaged.

The MPS proposes to increase the legal resources as follows:

- Core counsel team: two further junior counsel.
- A further team of 10 junior counsel tasked with supporting the redaction process expected to begin shortly under the redaction order protocol (either full time or working to a minimum period per week of 30 hours).
- In addition, DLS proposes to enter into an arrangement with an external firm of lawyers which will be able to provide additional resources to assist its work; and discussions are currently taking place.

Relativity

The MPS will seek to increase its current Relativity capacity to allow the uploading of further documents in the Inquiry. The Inquiry will be aware that obtaining new facilities of this nature is a procurement issue; however, I am informed that because of the urgency of this matter a contract could be awarded within a short time frame (estimate, end of January 2017). There are complexities in assessing precisely what will be required in terms of additional purchase from Relativity, and an estimate will need to be produced in order to obtain MOPAC approval for an urgent release of funds. The MPS is currently scoping the additional functionality required and will work as quickly as possible to secure MOPAC's agreement. At the same time the MPS will work to ensure that all associated issues such as additional IT infrastructure and accommodation are addressed.

Separate issue

On a separate note, we understand that the Inquiry has been considering for some time the possible impact of the Rehabilitation of Offenders Act 1974 on the progress of the Inquiry. We respectfully encourage the Inquiry to draw this matter to a head, as this does appear to be an issue that has the potential – if not addressed now – to damage the progress of the Inquiry very significantly.

Yours sincerely

[redacted]

Melanie Jones
Team Leader (Solicitor)

APPENDIX E

TO THE DIRECTIONS DATED 15 FEBRUARY 2017

UNDERCOVER POLICING INQUIRY
PO Box 71230
London NW1W 7QH

Piers Doggart
Solicitor to the Inquiry
Inquiry into Undercover Policing

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FAO: Ms. Melanie Jones

By email only to [redacted]

Tuesday, 07 February 2017

Dear Melanie,

'Conflict considerations' – issue raised in your third letter of 21 December 2016

Your third letter of 21 December 2016, within a section about "Conflict Considerations", invited the Inquiry to reconsider its position that it would be inappropriate for evidence about document assurance to be provided by those who are or have been the subject of allegations of inappropriate deletion or destruction of documents. This was raised with specific reference to Detective Sergeant Person B as well as more generally. We are surprised to be asked to reconsider this position, and decline in the present circumstances to do so, for the following reasons.

First, we do not consider this to be a simple conflict of interest issue, and therefore the fact that you have sought to be transparent about the matter only goes part of the way to allaying our concerns. The suggestion that the Inquiry might be satisfied because Person B would remain ultimately answerable for his evidence in our view demonstrates a lack of regard to the purpose for which the Inquiry seeks this evidence, namely to assure itself that the Metropolitan Police Service as an organisation is taking sufficient steps to ensure that potentially relevant information is being and has been adequately preserved. We consider this to be an issue for which the Metropolitan Police Service as an organisation is ultimately answerable, and not an individual witness.

There is, perhaps understandably in light of the events leading to this Inquiry, a level of public concern about the preservation of relevant material, in particular where police officers are responsible for preserving material that may be used to investigate the activities of themselves and their colleagues. Bearing this in mind, in relation to the SDS the Inquiry was able to take advantage of work previously done by Operation Herne and to request delivery-up of all original SDS material, of which we have received a significant quantity. We have not been able to take the same approach in relation to material relating to the NPOIU because no reasonably complete central repository of relevant material exists. Instead we have sought to obtain assurances that the Metropolitan Police Service (amongst others) is taking adequate steps to guard against the deliberate or inadvertent destruction or other interference with potentially relevant information. We have, by way of shorthand, referred to this generally as "assurance".

Based on the evidence provided by you so far, the Inquiry understands the NSBIS database held by NCTPOC (formerly the NDEU and NDEDIU, amongst other names, and a successor unit to the NPOIU itself) to be a repository that is very likely to hold (or in the past to have held) information that emanated from NPOIU

officers, including undercover officers. That is one reason why this aspect of assurance has been pursued with particular vigour with the Metropolitan Police Service. A second reason is that we were made aware in 2016 of allegations of inappropriate deletion or destruction of material within the NDEDIU which have caused us to have particular concerns in relation to assurance within this unit.

As a result, we asked you on 7 October 2016 to take and to preserve mirror images of the database and to suspend the application of the policy relating to routine review and destruction of material on it, to ensure that it would be possible for us to request delivery-up of all the available data. We recognise, however, that the NCTPOC NSBIS database is likely to contain, in addition to material of potential relevance, a significant quantity of highly sensitive material that is irrelevant and/or unnecessary, and consequently we have not so far considered this to be a proportionate step, instead seeking assurances from you as to preservation of relevant material on the database. We are keeping this decision under review pending ongoing assurance work.

It is in this context that the Inquiry has expressed the view that it would consider it inappropriate to receive evidence as to assurance from individuals who are or have been the subject of allegations of the inappropriate deletion or destruction of material. It is not simply a matter of conflict of interest, but what weight can properly be attached to assurances given by such a person.

In the case of Person B concern is heightened since the allegations are of the deletion of material within the NDEDIU. Your letter of 26 August 2016 invited us to reconsider our position regarding Person B once we had received from you material relating to a second review by the Metropolitan Police Service of the allegations concerning documents relating to Baroness Jones. That material arrived under cover of a letter dated 1 September 2016. When we wrote to you on 7 October expressing ongoing assurance concerns and requesting the suspension of the routine review and destruction policy on the NCTPOC NSBIS database, we did so having considered that material. I am sorry if it was not clear to you from the letter that those concerns continued to extend to the position of Person B as a witness to assurance, as well as to assurance more widely. In any event, I trust it has been clear to you that he is someone from whom the Inquiry continued to consider it inappropriate to receive assurance evidence. I explain the reasons for this in more detail, below.

We do agree that if allegations are investigated fully in such a way that the Inquiry can be assured that they are without foundation it would no longer be inappropriate to receive assurance evidence from the individual the subject of those allegations. But that is not the position in relation to Person B, so far as the Inquiry is concerned.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]. In the circumstances we do not consider it would be appropriate to receive assurance evidence from Person B or anyone else the subject of those or similar allegations.

Finally, although you cite difficulties caused by not being able to rely on evidence from Person B, I note that assurance rule 9 requests 10(b), 13 and 18 have been for the most part responded to by others. The most recently issued request - r9-25 - arose primarily from the evidence of Jeffrey Lamprey, who we would anticipate being in a position to answer most of the further questions asked. We are therefore not persuaded that avoiding assurance evidence from Person B causes any insurmountable difficulty which ought to cause us to review our position, in particular in the circumstances set out above.

Yours sincerely,

Piers

Piers Doggart
Solicitor to the Inquiry