

POLICE SPIES OUT of LIVES

The Undercover Policing Inquiry Progress briefing 2: February 2017

This is an update on the Inquiry covering December 2016 to the end of January 2017. PSOOL intends to produce monthly updates which will provide a summary of developments and issues arising, with links to further information where possible.

Undercover officers are referred to as UCOs and non-state/police core participants are referred to as NSCPs.

Contents

1. Officers confirmed
2. New core participants
3. Protocols
4. Witness evidence process
5. Costs
6. Release of cover names, groups, and individual's files
7. Next steps

Officers confirmed

The Inquiry has confirmed that John Dines (cover name, John Barker) was an undercover officer. It also confirmed that Rod Richardson and Simon Wellings were spycops; these two are seeking restriction orders to prevent their real identities being disclosed. However, this

information had already been in the public domain for some time following exposure by activists.

New Core Participants (CPs)

During this period Pitchford reviewed 9 new applications for CP status; 2 of the

applicants were designated as NSCPs. He has stated that a number of the refused applications will be kept under review. His ruling can be found here:

<https://www.ucpi.org.uk/wp-content/uploads/2016/12/161215-ruling-core-participants-number-12.pdf>

Protocols

The Inquiry has been developing sets of rules for various procedures in the Inquiry. We outlined some background information on the draft protocols in this update:

<https://policespiesoutoflives.org.uk/uploads/2016/11/Inquiry-Progress-Nov16-1.pdf>

Restriction protocol

This protocol will apply to all applications for restriction orders over documents and other evidence produced to the Inquiry by the Metropolitan Police Service.

The main point of contention for NSCPs is whether the protocol will require the Inquiry to disclose personal information about individual NSCPs to those individuals before disclosing it to other people. The Inquiry will have a huge number of documents to process, and NSCPs have little idea of what information is held, including whether it is even accurate. NSCPs want the information to be provided so individuals have the opportunity to request redactions or a restriction order. So far the Inquiry has said that this would be too arduous a task. NSCP lawyers have asked the Inquiry to reconsider, providing a note setting out the legal framework for why NSCP's privacy rights should be protected. The Inquiry has not yet replied.

Another issue of concern is the privacy rights of people who were spied on but who are not CPs (or CPs who withdraw from the Inquiry at a later stage). Only a small percentage of people who were targeted by UCOs have been granted CP status, many are not CPs because they have not applied and others because Pitchford has refused their applications. At present the Inquiry intends to publish the full names of any elected representatives/public officials and the first name and surname initial of all other non CPs referred to in documents. Public officials will have no privacy protections and others will be clearly identifiable to anyone who knows them. As these people are not participants in the Inquiry, they will not be given any opportunity to make representations to restrict the disclosure of their details. Some NSCPs' solicitors raised concerns about this with the Inquiry in January and are currently awaiting a response.

Disclosure protocol

This protocol sets out how material from the police will be requested by the Inquiry, and made public, subject to restriction orders.

The main issue arising from the draft disclosure protocol relates to third party legal professional privilege (LPP) - the rule that communication between a lawyer and client cannot be disclosed without permission of client.

It is known that LPP has been breached, for example when UCOs have been jointly represented in court cases with activists, but the extent of the problem is unknown. At present the protocol appears to suggest that an NSCP would only be contacted in order to discover if material was privileged

or not. NSCP lawyers have requested that the Inquiry creates a log of LPP breaches and the identity of those affected. It would then be able to refer to the log if an NSCP wanted to find out if their LPP has been breached and it would also allow the scale of the problem to be understood. The Inquiry has not yet responded.

Witness evidence process

The Inquiry suggested a witness evidence process at a meeting with NSCP lawyers in November. The proposal was that NSCPs would provide witness statements once they had received whatever disclosure the Inquiry deemed necessary. Officers would then be asked to provide their witness statements after viewing NSCP statements. While not raised as a formal protocol, it seems the Inquiry is considering this format as a basic template for obtaining witness evidence, to be amended as the Inquiry views necessary, depending on the category of CP and other factors.

The proposal is problematic for a number of reasons. First, it doesn't guarantee that NSCPs will be provided with all information held on them. Second, NSCPs will be expected to give further personal information about themselves before knowing who the UCOs were, what they were doing and why and on whose instructions. It is being argued that not only is the proposal unreasonable, but it would also limit the ability of NSCPs to provide useful statements to assist the Inquiry.

Following consultation with clients, NSCP lawyers have suggested the following alternative default procedure:

- Disclosure to CPs of all relevant information (following the privacy protocol referred to above). We suggest that the proper starting point is the disclosure to each of the CPs (including organisational CPs) of the whole of their nominal/registry files, if they exist;
- NSCPs who wish to/are able to provide bullet points to add to their CP applications and to guide the areas of inquiry;
- UCO prepares witness statement in light of disclosure and bullet points/CP application;
- NSCP responds to UCO witness statement

The Inquiry has not yet provided a response.

Costs

The Inquiry controls what work solicitors can be paid to undertake for their clients. Recently, it has been adopting a more restrictive approach, raising some concerns. A key example is the refusal to pay for a solicitor to provide a legal update at the CP meeting which took place in November.

The November CP meeting was called by NSCPs to enable collective discussions on the Inquiry. A lawyer was asked to attend to give a legal update as many CPs felt overwhelmed with the volume of information coming out of the Inquiry and did not have a clear understanding of what was happening. Feedback was positive and it seemed that those attending found this part of the meeting useful.

However, the Inquiry refused to authorise a solicitors attendance at the meeting (and pay their costs) on the basis that there was no particular call for a group meeting at that time as individual lawyers were keeping their clients updated.

The approach of the Inquiry is concerning and suggests a limited understanding of the needs of NSCPs and the importance of their full engagement in the process.

Release of cover names, groups and individuals files

A key demand of NSCPs is the release of the cover names of all UCOs, the groups spied upon and disclosure of NSCPs files.

The Inquiry's intention is to drip feed details of UCOs if the officer does not request anonymity or if their request is denied. Several officers have recently been named, but this will be a lengthy process.

In respect of groups, the Inquiry seems to be saying that once officers have been named, the relevant groups will know that they were spied upon. This approach is hard to justify. Recently NSCP lawyers asked the Inquiry to at least release the names of groups spied upon by officers who have already been identified by the Inquiry. A response has not yet been received.

At present the Inquiry is only suggesting providing NSCPs with the evidence that it deems relevant. This is unacceptable to most NSCPs who want to see all information held on them. The suggested

witness protocol outlined above would allow for full disclosure of NSCP data.

Next steps

Over the next few months, the protocols detailed above will be finalised. The deadline for anonymity applications for officers who served with the Special Demonstration Squad is 1 March; it is hoped that the Inquiry will start processing these applications shortly after. Applications from officers who served with the National Public Order Intelligence Unit will be sought next. Finally, it is hoped that the Inquiry's secure database will be fully functioning at some point soon (enabling it to begin processing documents properly) but the Inquiry has not confirmed when this is likely to happen.

Disclaimer: This briefing was prepared to the best of our ability by the support group, Police Spies Out of Lives, and if it contains any factual errors we will endeavour to correct them. Please contact us by email, contact@policespiesoutoflives.org.uk or twitter @out_of_lives