

POLICE SPIES OUT of LIVES

The Undercover Policing Inquiry Progress briefing 3: March 2017

This is an update on the Inquiry covering the period February to 11th March 2017. We hope to publish our next update at the end of April.

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

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Introduction

It's been a busy month, and the Inquiry has given greater clarity on a number of issues.

In respect of timescales, disappointingly, the Inquiry have stated that the determination of anonymity applications is unlikely to be completed for over a year from now, statements from most non-state witnesses will not be taken before 2018 and evidence hearings will not begin before 2019.

Also, as discussed in more detail below, the Inquiry is sticking firmly to its position that cover names and disclosure of documents to NSCPs will not take place until restriction order process has been completed.

However, although progress is still excruciatingly slow, the Inquiry does appear to be beginning to adopt a more robust approach in response to delays from the Metropolitan Police Service (MPS).

Inquiry Approach

A recent note from the Inquiry Legal Team (ILT) clarifies the Inquiry's area of focus. It states that investigation of Special Demonstration Squad (SDS) and the National Public Order Intelligence Unit (NPOIU) is a priority for the Inquiry. However, other units which pre-date the NPOIU will also be investigated, including the Animal Rights National Index. Units which post-date the NPOIU up to the current day, including the National Domestic Extremism Unit, will also be investigated to establish whether or not there is continuing cause for concern. The undercover policing activities of regional special branches will also be investigated.

The Inquiry has reiterated that it is taking a systematic approach to applications for restriction, starting with individual applications for anonymity from undercover officers, beginning with the SDS and now progressing (simultaneously) to those who worked in the NPOIU. Once these applications have been determined, the processing of restriction applications over documents will be able to proceed more swiftly, informed by the earlier decisions on anonymity. Only after this process has been completed will any documents be disclosed to NSCPs.

5 April hearing

A hearing is taking place following requests from the MPS for:

1. an extension of time for restriction order applications on behalf of police officers formerly employed by the Special Demonstration Squad; and
2. a change in the Inquiry's approach to those restriction order applications.

Extension of time request

The Inquiry had ordered the MPS to provide anonymity applications for all SDS officers by 1 March 2017, having granted several extensions from the original deadline of 12 February 2016. You can read more about the delays on pages 10 and 11 of this briefing: <https://policespiesoutoflives.org.uk/uploads/2016/11/Inquiry-Progress-Nov16-1.pdf>

The MPS are now seeking a further extension to 1 October 2017 for former SDS officers to apply for anonymity. It appears that there are around 200 potential applicants for anonymity – although of those 40 are backroom staff and some will probably have died. This is in addition to the Slater and Gordon applications for officers who are being represented independently, most of which have also been subject to delays due to a lack of risk assessment and other supporting evidence.

The MPS justify the application for an extension of time on the basis that the task of sifting documents, preparing risk assessments and medical evidence and preparing anonymity applications is of too great a magnitude to be completed by March 2017 and even October 2017 is ambitious. They do not give any proper explanation of why this was not considered earlier, what alternative arrangements could be put in place, what other resources could be used or why it is not possible to start at the beginning and work through with the earliest deployments being dealt with at the start. It is likely that any risk to an officer deployed undercover in the 1960s and 1970s will be very low, given that they will have retired long ago.

On 2 March 2017 the Inquiry Legal Team (ILT) published a note (<https://www.ucpi.org.uk/wp-content/uploads/2017/03/20170302-Counsels-Note-for-hearing-on-5-April-2017.pdf>) setting out their current view on the MPS application. It suggests that the Inquiry is concerned about the delays and do not trust that the police would be able to meet their requested extension even if it were granted. It states that the Inquiry now requires the police to provide fortnightly progress reports. The ILT are suggesting that the MPS should be given a series of deadlines, ordering applications by priority, with the Slater and Gordon and SDS applications first. In the event that the police continue to fail to meet deadlines the ILT state that it may issue 'Section 21 notices' - requiring the police to provide the evidence needed to determine the application and it may reconsider whether the police should be allowed risk assessors if risk assessments are not being progressed.

Request for change of approach

The MPS are also requesting that only a limited number of SDS officers be required to give evidence to the Inquiry, reducing the number of officers that need to apply for anonymity. The MPS claim that it is disproportionate to require all officers to submit applications when evidence may not be needed from every officer and that the request aims to reduce unnecessary delay.

However, the ILT is opposed to the MPS suggestion stating that it is inappropriate and would result in further delay. The ILT note reiterates that it is the stated intention of the Inquiry to obtain a witness statement from every former Special Demonstration Squad officer who is capable of providing one. The note stresses the

Inquiry's commitment to a thorough and public investigation, the fact that surviving documents alone won't provide a complete or reliable record and the need to build up a comprehensive evidential picture using a breadth of evidence. The ILT also describe how requiring all SDS officers to go through the anonymity process means that it will be able to publish as much as possible of documents in the future; if some officers did not go through the process, and had to remain anonymous by default, the Inquiry would be prevented from publishing anything that risked exposing their identity, despite the fact that no evidence had been put forward which demonstrated that anonymity was required.

NSCPs must submit their submissions in response to the MPS application by 4pm on 23 March 2017.

Cover names and groups spied on

Cover names

In its note, the ILT gives a further indication about the Inquiry's intended approach to disclosure of cover names. At present, the Inquiry is maintaining its position that cover names will only be released following the determination of anonymity applications (except in cases where anonymity is not sought). It states that it would be unfair on individual officers and could potentially breach their human rights if cover names were automatically published following the expiry of the deadline for anonymity applications.

While this delay is unacceptable to many NSCPs, the Inquiry's communications do indicate that eventually many cover names will be released and that it recognises that 'at least potentially very

important evidence may only come to light if an officer's cover name is published.' The Inquiry notes that publication of cover names will mean that it can solicit evidence from members of the public resulting in a more thorough and satisfactory level of investigation. It has further stated that at least 42 officers with the SDS stole the identity of a deceased child and that this 'provides a minimum number of cover names which the Inquiry will need to publish (unless a restriction order is sought and made) if it is to continue to pursue the course decided upon in July 2016.'

The ILT also note gives some information about SDS officers, stating that the police have informed the Inquiry that 16 of the unit's 118 officers are dead, 3 have not been contacted due to ill health and 3 have yet to be located.

Groups spied on

As with the cover names, the Inquiry does not intend to disclose any details until after restriction order applications have been processed, stating that to invite the police to consider whether they wish to seek restriction of details of groups spied on would distract from completing the anonymity process. The Inquiry also states that in the absence of publication of the cover names of officers who targeted the groups, it would cause alarm to people who had been involved in those groups, some of whom may not have actually been affected by undercover policing. The Inquiry state that it is more appropriate for those who have been affected to become aware following the publication of cover names and that details of groups spied on will come in to the public domain once documents are published (so long as they are not subject to restriction orders).

Document shredding

It will come as little surprise to many NSCPs to learn that the IPCC are investigating allegations that the police destroyed documents following the announcement of the public inquiry. The latest allegations are that documents kept by the National Domestic Extremism and Disorder Intelligence Unit (NDEDIU) were shredded in May 2014, after the announcement of the public inquiry. This is a separate to the allegation of document shredding raised by Baroness Jenny Jones (<https://www.theguardian.com/uk-news/2016/nov/15/jenny-jones-calls-for-ipcc-to-investigate-alleged-destruction-of-her-police-files>), which is also under investigation by the IPCC.

One of the officers under investigation in relation to the shredding is 'Person B', who was set to provide assurances in respect of evidence provided to the Inquiry. The Inquiry has stated it is no longer appropriate for this person to perform this role.

The Inquiry were first made aware of the allegation in April 2016. After hearing about the allegations the Inquiry have obtained a series of witness statements from the police offering further assurances about the preservation of documents. It has also received confirmation that available mirror images of the National Counter Terrorist and Police Operations Centre's database are being securely held.

However, the Inquiry has stated that it is not willing to take possession of all potentially relevant police material to ensure that there is no further destruction as it believes that this would be unmanageable due to the quantity of material. It has also declined to hold a public hearing on the issue, stating this would be inappropriate in light of the ongoing IPCC investigation.

Secure database

The Inquiry has finally obtained a functioning secure database which is currently undergoing tests; the Inquiry hopes that it will be in full service shortly. The database will give the Inquiry the capability to load almost all of the material which it has received onto one platform, sort, search within and across documents, view associated data (e.g. document title or author), allocate reference numbers, electronically tag, note, redact and gist documents.

Pitchford's retirement from the Inquiry

Sadly, the Inquiry has announced that Pitchford has been diagnosed with motor neurone disease and will be unable to complete the Inquiry. He intends to continue working for the time being. Meanwhile, the Inquiry is recruiting an additional panel member who will eventually take over from Pitchford.

<https://www.ucpi.org.uk/wp-content/uploads/2017/02/20170220-press-notice-LJP.pdf>

Presumably the police will be lobbying hard for a replacement chair who is likely to protect their interests, and depending on who is recruited, this could have significant implications for the direction of the Inquiry.

Rehabilitation of Offenders Act

The ILT has also recently issued a note on the Rehabilitation of Offenders Act and how it may impact on the Inquiry. https://www.ucpi.org.uk/wp-content/uploads/2017/03/20170301_Counselors_Note_ROA1974.pdf

The Act renders certain convictions 'spent' after a specified period has elapsed. Once

a conviction is spent, the person convicted is to be treated as if never convicted, subject to a number of exceptions. This raises complications for the Inquiry, which may well want to investigate circumstances which necessitate discussion of spent convictions.

The ILT state that spent convictions could be relevant, in particular, to potential miscarriages of justice, the justifications put forward by the police for undercover policing and to UCOs applications for anonymity. It puts forward the proposition that the Inquiry cannot discharge its terms of reference and/or comply with its duty of fairness without receiving, considering and, where necessary, admitting evidence of spent convictions and/or circumstances ancillary to such convictions. It goes on to discuss interpretation of the provisions of the Act and whether the Inquiry should seek exemptions from the Act in order to meet its terms of reference.

This raises important issues of privacy for NSCPs with spent convictions. The deadline for NSCP submissions on the issues raised is 28 April 2017.

Witness process

In our last update we discussed the witness evidence process (<https://policespiesoutoflives.org.uk/uploads/2016/05/UCPI-progress-briefing-2pub.pdf>). The ILT's note recognises NSCPs' 'understandable reluctance to provide witness statements without seeing documents evidencing the undercover policing which affected them.' The note implies that the witness process is likely to involve:

- Initial statements taken from UCOs;
- Disclosure of relevant (possibly redacted) documents to NSCPs

following completion of the restriction order process;

- Witness statements from NSCPs;
- Opportunity for UCOs to respond to any allegations against them contained in the witness statements;
- Possible further restriction order requests in respect of UCO's later statement.

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

