

POLICE SPIES OUT of LIVES

The Undercover Policing Inquiry Progress briefing 4: May 2017

This is an update on the Undercover Policing Inquiry covering the period mid March to mid May 2017. Our next update will be published in June.

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

Contents

1. 5/6th April Hearing
2. Disclosure of personal files
3. Protocols
 - 3.i. Draft disclosure protocol
 - 3.ii. Restriction protocol
4. Rehabilitation of Offenders Act submissions

In the period since the last update, a lot of time and energy was focused on the April hearing. Unfortunately, the outcome was disappointing and the hearing appears to have done little to move the Inquiry forward. Meanwhile, work has been continuing on the disclosure and restriction protocols and these are now significantly improved; NSCPs lawyers recently put in submissions on the final outstanding issues. Pitchford has also asked NSCPs to provide submissions on the important issue of disclosure of personal police files to NSCPs.

1. 5/6th April Hearing

The hearing took place following requests from the Metropolitan Police Service for:

1. an extension of time for restriction order (anonymity) 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.

A summary of Pitchford's key findings can be found here

<https://policespiesoutoflives.org.uk/summ>

[ary-april-5th-ruling/](https://www.ucpi.org.uk/wp-content/uploads/2017/05/20170502-ruling-MPS-applications-re-SDS.pdf)) and the full ruling is available here:
<https://www.ucpi.org.uk/wp-content/uploads/2017/05/20170502-ruling-MPS-applications-re-SDS.pdf>

This is a very short summary of some of the key points:

Extension of time request

Disappointingly, Pitchford agreed to grant the police more time to complete restriction order applications. He said that he didn't think the police were deliberately delaying the process and that he believes they now have a process for restriction order applications which will work. He says that the Inquiry Legal Team will meet with the police and, following discussions, a realistic timetable for the police to provide a 'representative sample' of applications will be published by 23 May 2017. Once Pitchford has ruled on this sample, priority will then be given to UCOs in chronological order, and to applications that need to be decided before work on UCOs that have already been officially confirmed can start.

Request for change of approach

Pitchford rejected the police's request for a change of approach in respect of restriction order applications and, among other things, confirmed that the Inquiry will continue to focus on all former SDS and NPIOU officers.

However, he also rejected many of the suggestions by NSCP barristers for how the Inquiry could be improved, including a presumption that the cover names of deceased officers will be released, allowing NSCPs access to restriction order applications so they could tell the Inquiry if they were based on false information, a request for release of dates of deployment of officers and groups infiltrated, a request

for funding for a permanent second barrister for NSCPs to allow representation of different opinions among NSCPs when necessary, a request for travel expenses for NSCPs to attend hearings and a request for hearings to be held in a different venue to the Royal Courts of Justice.

2. Disclosure of personal files

At the hearing NSCPs argued that the Inquiry was under an obligation to disclose to NSCPs their individual police files. Pitchford did not rule on this issue and has asked NSCPs to make submissions by 26 May 2017, setting out why the Inquiry has a duty to disclose information which is not relevant and necessary to the Inquiry's terms of reference.

This is an issue of huge importance to many NSCPs who argue that the Inquiry has a duty under both the Data Protection Act 1998, and Article 8 of the European Convention of Human Rights, to disclose all individual files to NSCPs (subject to legitimate redactions). NSCPs submit that disclosure is also vital to enable NSCPs to assist the Inquiry to understand what is relevant and necessary to its investigation. Individuals who have already received limited disclosure have found errors in their files - without input from the individual the Inquiry is unlikely to be able to ascertain whether all the information is accurate. Also, often the source of information contained in files is likely to have been disguised and without input from NSCPs the Inquiry will not be able to tell that it came from a UCO.

If you have thoughts on this issue or have relevant evidence arising from previous disclosure requests, please talk to your solicitor as soon as possible.

3. Protocols

As outlined in previous briefings, the Inquiry has been developing sets of rules for various procedures in the Inquiry (<https://policespiesoutoflives.org.uk/uploads/2016/11/Inquiry-Progress-Nov16-1.pdf> and <https://policespiesoutoflives.org.uk/uploads/2016/05/UCPI-progress-briefing-2pub.pdf>)

The Inquiry have now produced final drafts which have taken on board most of the concerns raised by NSCPs; outstanding issues are detailed below.

3.i. Draft disclosure protocol

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

Legal professional Privilege

As discussed here (<https://policespiesoutoflives.org.uk/uploads/2016/05/UCPI-progress-briefing-2pub.pdf>) one of the main issues arising from the draft disclosure protocol related to documents provided by the police which appeared to be subject to the legal professional privilege (LPP) of a third party (e.g. an activist). LPP protects communication between a lawyer and client from being disclosed without permission of the client.

Following concerns raised by NSCPs, the protocol now provides that where the Inquiry receives third party LPP material relating to a NSCP or a witness, the NSCP or witness will “normally” get disclosure of that material when the Inquiry approaches her/him for a witness statement. For non-

NSCPs, if the document containing the LPP material is deemed by the Inquiry to be relevant and necessary, it will be redacted of all LPP material and then published once it has been referred to during the public hearings. At that point any person who recognises that the redacted parts are likely to contain their LPP material can apply to the Inquiry for disclosure of the unredacted document. If they are right about the document containing their LPP material and the Inquiry is satisfied as to their identity, then subject to any restriction order, the unredacted material will be disclosed to them.

Inquiry’s sifting of information provided by the police

The protocol sets out how the Inquiry Legal Team will consider information provided by the Metropolitan Police Service and decide whether it is relevant and necessary to fulfilling the Inquiry’s Terms of Reference.

In their submissions, NSCPs suggest that there should be a procedure which allows the Inquiry to draw on the knowledge and expertise of NPSCPs in identifying the relevance and necessity of documents - without NSCP input it is argued that the Inquiry may not be able to properly determine a document’s relevance. The submissions also assert that a mechanism should be established for making disclosure to NPSCPs of information concerning them as individuals, even if that information is not deemed to be relevant and necessary to the Inquiry’s investigation.

3.ii. 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 was whether the protocol would require the Inquiry to disclose personal information about individual NSCPs to those individuals before disclosing it to other people. Following concerns raised by NSCPs (see [here](https://policespiesoutoflives.org.uk/uploads/2016/05/UCPI-progress-briefing-2pub.pdf) <https://policespiesoutoflives.org.uk/uploads/2016/05/UCPI-progress-briefing-2pub.pdf>), the latest version of the protocol allows for all NSCPs, witnesses and readily contactable persons to see documents which refer to them before they are published, so they have an opportunity to apply for restriction orders if necessary. However, there are a few caveats in the current version:

- a. documents may still be shown first to state core participants or witnesses in unredacted form where the Inquiry considers it appropriate to take a witness statement from them before approaching an NSCP or witness. On such occasions any private information will be shown to the state CP/witness in confidence or subject to a provisional restriction order.
- b. Simultaneous disclosure of documents will be made to groups of NSCPs unless there is “reason to suppose that showing the document to all the non-state persons concerned will cause an unjustified interference with the right to privacy”

NSCP submissions in response to the latest version challenge these caveats.

4. Rehabilitation of Offenders Act submissions

The Rehabilitation of Offenders Act (ROA) 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 Inquiry Legal Team (ILT) have stated 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.

In their submissions NSCPs agree with the ILT about the potential relevance of spent convictions. However, they stress that consideration of spent convictions must be limited to that which is relevant and necessary for the purposes of the Inquiry. Additionally, considering the context of the Inquiry, there cannot be an assumed reliance on the convictions, and the Inquiry should take all possible steps to obtain the information necessary for it to examine critically the safety of spent convictions and the police account of the circumstances in which they arose. Further there is a distinction between consideration, by the Inquiry, of evidence relating to spent convictions, and publication by the Inquiry of that evidence. It is essential that the default position is that the identity of a rehabilitated person within the meaning of the ROA will not be made public in connection with his or her spent convictions, unless s/he consents to such publication. The full version of the NSCP submissions can be found here:

<https://www.ucpi.org.uk/wp-content/uploads/2017/05/20170502-submissions-re-ROA-1974-NPNSCPs.pdf>

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](https://twitter.com/out_of_lives)

