

POLICE SPIES OUT of LIVES

This is an update on the Inquiry covering the period mid May to 22 June 2017. Our next update will be published at the end of July.

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

Introduction

With the appointment of Pitchford's replacement, Sir John Mitting, and the potential changes that this will bring, it seems an appropriate time to provide a brief overview of the progress made in the Inquiry to date, with links to further information. Ongoing issues are discussed in the second half of the update.

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The Inquiry so far...

We're now nearly two years into the Inquiry and it's often difficult to see what progress has been made. Significant delays, largely a

result of the police's failure to submit anonymity applications, mean that the Inquiry now estimates that evidential hearings won't take place until the second half of 2019. However, there has been limited

progress in some areas. Below is a brief summary of steps taken by the Inquiry so far.

Principles and protocols

A large part of the Inquiry's work has been establishing legal principles and protocols which will govern later stages.

Legal principles

Legal principles in the following areas have been determined:

The standard of proof when considering evidence, the Inquiry's approach to restriction order (including anonymity) applications, undertakings from the Attorney General to protect witnesses to the Inquiry from criminal prosecution, and disclosure of deceased children's identities used by UCOs.

Summaries of these decisions can be found here:

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

Disclosure and redaction protocols

These protocols are fundamental to the Inquiry process. The disclosure protocol sets out how material from the police will be requested by the Inquiry, and made public, subject to restriction orders. The restriction protocol applies to all applications for restriction orders over documents and other evidence produced to the Inquiry by the Metropolitan Police Service.

Final versions of these protocols have now been published:

<https://www.ucpi.org.uk/wp-content/uploads/2017/05/20170530-restriction-protocol-v1.0.pdf>

<https://www.ucpi.org.uk/wp-content/uploads/2017/05/20170530-disclosure-protocol-v1.0.pdf>

These final versions largely address concerns raised by NSCPs during the consultation process. You can read more about these concerns and how the protocols evolved here:

<https://policespiesoutoflives.org.uk/uploads/2017/05/May17-progress-briefing-public.pdf>

The Inquiry response to the last submissions can be found here:

<https://www.ucpi.org.uk/wp-content/uploads/2017/05/20170526-response-to-consultation-on-disclosure-and-restriction-protocols.pdf>

Anonymity applications

An ongoing focus of the Inquiry is anonymity applications for UCOs. This process has been repeatedly delayed by the police. Details of the delays can be found here:

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

Following the recent hearing on 5/6 April, Pitchford ruled that the police had not been deliberately delaying the process and granted more time for them to complete the anonymity applications. He has since ordered that the police make anonymity applications for SDS officers in tranches with deadlines of the first of the month in June, July, August and September. Approximately 15 - 20 officers are identified in each of these tranches.

There have been no updates from the Inquiry to date so it is not yet known if the 1 June deadline for the first tranche was met.

Evidence gathering

In tandem with these processes, behind the scenes, the Inquiry has been obtaining evidence from police forces and other relevant state bodies, and investigating the activities of individual UCOs. This work was inhibited for some time by the fact that the Inquiry did not have a working secure IT database where documents could be stored. Finally, this issue was resolved in spring this year.

However, until the anonymity and restriction order process has been completed NSCPs and the public won't be able to see any of this evidence. Nor will non-state witnesses be asked for information by the Inquiry Legal Team about where relevant documents could be found or about issues that they should consider in their investigations.

The Inquiry process dictates that anonymity applications must be completed before the restriction order process over documents relating to that officer can be undertaken. This means that until the police engage properly with anonymity applications, the process is effectively stalled.

Outstanding issues

Rehabilitation of Offenders Act

State CPs and NSCPs have made submissions on the issue of individuals' spent criminal convictions being considered during the course of the Inquiry. You can read more about this here:
<https://policespiesoutoflives.org.uk/uploads/2017/05/May17-progress-briefing-public.pdf>
The Inquiry is reviewing these submissions and intends to publish an update in July 2017.

Disclosure of personal files

NSCPs have provided Pitchford with submissions setting out why 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). The Inquiry is currently considering these submissions and will presumably respond shortly.

Witness evidence protocol

Anyone who provides evidence to the Inquiry, whether they have been granted core participant status or not, will be a witness. All witnesses will be asked to provide a written witness statement, and they may also be asked to give oral evidence at a hearing. The protocol sets out how the Inquiry suggests that evidence is taken:

<https://www.ucpi.org.uk/wp-content/uploads/2017/06/20170612-draft-witness-statement-protocol.pdf>

NSCPs submissions on the protocol are due by 7 August 2017.

Disclosure of cover names and individuals' files

Following the April hearing, Pitchford's position on the release of cover names remains the same - the restriction order process must be completed for each officer, and the risks of disclosure considered, before a decision can be made on releasing the officer's cover name.

However, he said that the early release of cover names, where possible, is a priority and noted that it was generally accepted that the disclosure of cover names is necessary, where possible, to enable core participants, witnesses and the public to participate effectively in the Inquiry.

The issue of disclosure of individuals' files is now receiving proper consideration following NSCP submissions on the issue. It remains to be seen how Pitchford will respond.

Strategic review

In its March 2017 update the Inquiry explained that it was conducting a strategic review aimed at obtaining a more sophisticated estimate of how long the Inquiry will take on the current model, and whether there were realistic alternative models and what their consequences would be. A revised timetable would then be published.

Following the April hearing, Pitchford wrote to the Home Secretary setting out his views on the future of the Inquiry as set out in his ruling (in particular, he said that he believed that he should not 'in any way exclude issues or limit the depth of the investigation' and that he intended to still take evidence from all SDS and NPIOU officers and staff).

However, the June update from the Inquiry states that the strategic review is ongoing (including consideration of alternative models). The Inquiry noted in their response to the final disclosure and restriction protocols that the police have suggested that the current provisions of the protocol that have been incorporated to protect NSCP privacy should not be fixed until after the Inquiry has completed its strategic review. This presumably indicates that the police anticipate that the review could result in significant changes to the Inquiry approach.

[CP VERSION ONLY: Tamsin Allen recently wrote to the Inquiry on behalf of NSCPs asking for confirmation of the timetable for the completion of the review and also requesting that NSCPs are consulted before it is submitted to the Home Office if the Inquiry

is considering recommending any alternative model. As yet she has not received a reply.]

New panel member - Mitting

The Home Office has appointed Sir John Mitting as a new panel member. He will be assisting Pitchford for the time being, and will take over as chair of the Inquiry at a later date.

Mitting's background includes acting as Chairman of the Special Immigration Appeals Commission from 2007 to 2012 and Vice President of the Investigatory Powers Tribunal from 2015.

[NSCP VERSION ONLY: Potential NSCP responses to the appointment will be discussed at the lawyers and NSCP meeting on 4 July at 5pm at Bindman's offices. Topics under discussion will include the possibility of requesting a deputy chair to work with Mitting and/or a panel of assessors, and the pros and cons of these options. Assessors are generally experts who can provide assistance on specific aspects of an inquiry, examples in this Inquiry could be race or gender.]

NSCP protocol for agreement of submissions (NSCP version only)

As set out in the previous update, some NSCPs have found the process for agreeing submissions challenging, including those for the 5/6 April hearing. Problems have included the limited time frame for agreeing submissions among disparate NSCPs and also disagreement with lawyers about some of the arguments to be included.

The latest proposal for the process of agreeing future submissions on significant preliminary issues is as follows:

1. NSCP solicitors [RLRs] explain issue to their CPs and, if necessary, counsel gives advice on legal issues and parameters. There will need to be outline instructions to counsel at this stage which will set out the issue to be determined and provide relevant papers – but will not direct counsel towards a particular approach

2. Meeting with RLRs, counsel and CPs to take instructions on broad approach to be adopted in the submissions and CP priorities. CPs may wish to circulate to each other their views prior to this meeting.

3. If there are differences of view at this stage, counsel to consider whether all views can be accommodated in submissions or if there is a clear division which necessitates separate representation and separate funding application and submissions. This might range from a clear and serious conflict of interest to a significant strategic or tactical difference or difference of interpretation of the law.

4 . Counsel prepare first draft of submissions to embody position taken at meeting (subject to 3 above). Draft circulated and comments summarised by RLRs and sent back to counsel. CPs may want to share views among themselves at this stage as well.

5 . If division remains (or emerges) after reviewing submissions, RLR meeting to confirm that the alternative position needs to be put, the submissions can't be altered to accommodate other views, and to consider wording of funding application. If funding application to be made, alternative group (comprising all RLRs whose CPs instruct them to take the alternative route, including those with clients in both camps) will:

- a. Inform main group that they are making application
- b. Share draft application with the group (save as to any genuinely privileged or confidential information.

Co-ordinator to explain position to Inquiry and request additional time in order for separate group to make funding application and instruct counsel

6 . If funding refused, group can rethink. If funding granted, both groups will share their submissions as much as possible and keep each other informed throughout. Each group commits to avoid undermining the other and to preserve a united front against the MPS as much as is reasonable. Timescale for both to be revised so that both positions can be put at the same time.

This protocol will be discussed at the meeting on 4 July. If you are unable to attend the meeting, please let your solicitor know any feedback in advance of the meeting.

CP meeting (NSCP VERSION ONLY)

An NSPC meeting is taking place on 1 July 2017. This is an opportunity to meet and network with other CPs and to get up to date information about the Inquiry and campaigns around it. If you haven't already received an email about this from your solicitor and you are interested in finding out more, please email: contact@policespiesoutoflives.org.uk

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