

1 Wednesday, 21 March 2018

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4 non-state, non-police core

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1 Submissions on behalf of the86

2 Metropolitan Police Service,

3 Commissioner's Legal Team by

3 MR HALL

4 (10.30 am)

5 Opening remarks

6 THE CHAIR: Can I begin by reminding everyone that although

7 electronic communications of what is going on in this

8 room are permissible, there will be a time delay of no

9 less than 60 seconds between words spoken and

10 information given out of the hearing room and any

11 communication or publication of those words using for

12 example Twitter or other social media. That delay

13 applies to any words spoken or information given in the

14 hearing at any stage during the day.

15 There will be no communication or publication by any

16 means of any words spoken or information given which any

17 person has indicated should not have been revealed in

18 public until the objection has been dealt with by me.

19 Subject to that, anybody is free to communicate what

20 is going on in the courtroom outside it.

21 Mr Barr? Forgive me, someone has not produced my

22 notebook. Catherine, could I have any notebook please?

23 Don't let that delay us.

24 MR BARR: Sir good morning. I appear today on behalf of the

25 Inquiry with Ms Wilkinson and Mr Mertens who sit to my

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1 right. To my left, Ms Kaufmann leading and Ms Brander

2 appear on behalf of the represented non-police,

3 non-state core participants. On the row one behind, to

4 my left, Ms Sikand appears on behalf of Mr Francis, and

5 further to the left on that row, Ms Steel appears in

6 person.

7 To my right, Mr Hall leading Ms Mannion appears on

8 behalf of the Metropolitan Police Service. To my right,

9 one row behind, Mr Sanders appears leading Ms Palmer and

10 Mr McAllister on behalf of those officers who are

11 represented by the designated lawyer team. Two rows

12 behind me to my right, Mr Morley appears on behalf of

13 the National Police Chiefs' Council and to the far right

14 of that row, Ms Woods appears on behalf of the officers

15 represented by Slater & Gordon.

16 The arrangements for this morning are that we are

17 going to deal with the individual anonymity applications

18 first, and then the legal issue that arises out of the

19 Lambert report second. The order in which submissions

20 are going to be made is that Ms Kaufmann is going to

21 start and be followed by those others who speak on

22 behalf of non-state, non-police core participants, or

23 for themselves in that capacity, and then we shall hear

24 from those acting for the Metropolitan Police and the

25 individual officers.

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1 Unless I can be of any further assistance, sir, it

2 is my job now to hand over to Ms Kaufmann.

3 Submissions on behalf of the non-state, non-police core

4 participants by MS KAUFMANN

5 MS KAUFMANN: Sir, what I'm about to say to you now does not

6 actually relate to the individual anonymity applications

7 under consideration today. As you know, I represent

8 about 200 individuals. We can't be precise about

9 exactly how many because some of the core participants

10 are groups and it is anyone's guess how many individuals

11 are represented as individuals within a particular

12 group.

13 Over the last few months, we have expressed to you

14 increasing concerns over the manner in which the

15 anonymity application process is being conducted and has

16 been conducted to date. We have now reached a point

17 where our concerns, we think, can no longer be ignored

18 and have come to a head.

19 The focus of my clients' now very grave concerns are

20 disclosure and, to be frank, yourself.

21 Disclosure, if I can deal with that first. We have

22 from the outset been at great, great pains to ensure

23 that the anonymity application process is as open as

24 possible in order, firstly, that due regard is had to

25 the need for openness and the way in which public

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1 confidence can be served through that. But also to
 2 ensure that disclosure is made in a way that will enable
 3 decisions to be taken on a properly informed basis, by
 4 which I mean that decisions are taken which, to the
 5 greatest extent possible, it is possible -- on the basis
 6 of to the greatest extent possible, testing of the
 7 police officers' contentions as to why anonymity orders
 8 are required.

9 Your response to us has consistently been that our
 10 argument is circular, and that you cannot provide more
 11 information. As with disclosure, so, too, with your
 12 reasons. These are scant and largely uninformative.
 13 You have never indicated once that you have taken into
 14 account the compelling public interest factors favouring
 15 openness as against anonymity. You have never explained
 16 why you have discounted those factors in favour of the
 17 interests favouring anonymity. And we agree entirely
 18 with the observations made on behalf of Mr Francis in
 19 the submissions that are currently before you for this
 20 hearing, and in particular paragraphs 4 to 6 of those
 21 submissions. I am going to read them in full because
 22 they so precisely echo my client's feelings. They say
 23 this:

24 "4. The opaque nature of the Chairman's reasoning
 25 has attained a new height in his 'minded to' note number

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1 3: In it he has dispensed with open reasons altogether
 2 in relation to his indications re HN109. This is so
 3 despite the fact that the Chairman is aware of the
 4 extreme frustration that his general approach to the
 5 restriction order process has caused thus far.

6 "5. A considered decision not to publish any open
 7 reasons at all, in the context of an officer in relation
 8 to whom the current risk of physical harm is assessed as
 9 'low' with any increase by revelation of real or cover
 10 name assessed as 'very low', signals a disregard for
 11 those, like Peter Francis, who have shown a real respect
 12 for the Inquiry's processes by not revealing information
 13 that they hold and in relation to which the Chairman has
 14 no power to restrict.

15 "6. Peter Francis has been prepared to engage with
 16 this judicial process (which he was instrumental in
 17 bringing about) in the belief that this process would
 18 fairly balance the public interest in openness with
 19 other factors at play. Failing to give any reasons for
 20 restricting both a real and cover name of a former
 21 undercover officer, who was a manager at a crucial
 22 period of time in Special Demonstration Squad history,
 23 and where there is no disclosed risk, significantly
 24 undermines the trust and belief in the Inquiry process
 25 that Peter Francis has shown to date, compounding his

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1 perception that there is a lack of mutual respect."
 2 Our argument has consistently been that the
 3 anonymity applications form an absolutely critical part
 4 of the process. If you don't get this right now, then
 5 so much of what has gone wrong with undercover policing
 6 operations, the operations of the Special Demonstration
 7 Squad and of the National Public Order Intelligence Unit
 8 will forever remain secret and that is precisely the
 9 problem that the Ellison inquiry ran into. And it arose
 10 exactly for the reason that the police officers'
 11 accounts could not be contested against the evidence of
 12 those people that the officers have been spying on.

13 My clients greatly fear that you are walking into
 14 the same dead end. In short, we have got precisely
 15 nowhere in relation to our attempts to ensure that we
 16 can meaningfully participate. It is now abundantly
 17 clear, particularly in light of the latest disclosure
 18 and minded to indications, those with which this hearing
 19 is concerned, that we simply cannot participate in this
 20 hearing in a meaningful way. You have our written
 21 submissions.

22 Your minded to indications in respect of two key
 23 officers close off all avenues for getting to the truth,
 24 in respect of what they were doing. And those two
 25 officers are managers. Managers at a key time. HN109

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1 is one of them and you have had the submissions of
 2 Mr Francis in relation to that.

3 There is this as well. We have just learnt in
 4 relation to Mark Kennedy, through an IPT application
 5 that is underway brought by one of Mark Kennedy's
 6 victims, a woman with whom he had a relationship when he
 7 was undercover, that not only is it affirmed that he had
 8 a relationship but it is also clear from what is
 9 admitted in the pleadings that his managers and his
 10 supervisors acquiesced in his having a relationship.

11 Now we know he had at least three relationships.
 12 That is activities on the part of the National Public
 13 Order Intelligence Unit, an organisation set up under
 14 the legal regulatory framework of Regulation of
 15 Investigatory Powers Act that was supposed to make sure
 16 that considerations were given to the private rights of
 17 individuals whose rights would be interfered with by
 18 operation of any undercover operation and that was
 19 authorised in those operations, or acquiesced in in
 20 those operations. This obviously signifies the
 21 importance of managers giving evidence in an open,
 22 public manner that is tested as much as possible.

23 THE CHAIR: What make you think that won't happen merely
 24 because the name of the individual is not made public?
 25 MS KAUFMANN: Because precisely what can't happen, as we

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1 have repeatedly said, is in relation to those officers
 2 nothing can be discerned about those activities when
 3 they themselves were undercover and that is, and
 4 remains, a very important part of your ability to get to
 5 the truth.
 6 We are not prepared actively to participate in
 7 a process where the presence of our clients is pure
 8 window dressing, lacking all substance, lacking all
 9 meaning and which would achieve absolutely nothing other
 10 than lending this process the legitimacy that it doesn't
 11 have and doesn't deserve.
 12 The second major concern that we have relates to the
 13 Inquiry panel itself. That falls into two parts. The
 14 first concerns the failure to ensure that the Inquiry is
 15 heard by exactly that, a panel representing a proper
 16 cross-section of society and in particular -- and this
 17 is absolutely essential for reasons I'm going to come
 18 to -- including individuals who have a proper informed
 19 experiential understanding of discrimination both on
 20 grounds of race and sex. Two issues that lie absolutely
 21 at the heart of this Inquiry.
 22 I'm sorry to say this, but instead we have the usual
 23 white upper middle class elderly gentleman whose life
 24 experiences are a million miles away from those who were
 25 spied upon. And the very narrow ambit of your

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1 experience is not something I'm simply creating out of
 2 thin air. It has been exemplified already in the way
 3 that you have approached these applications.
 4 I remind you of HN58. Your minded to note in
 5 relation to him, what you said at the hearing in
 6 relation to him and what you maintained in your decision
 7 thereafter. I remind you that your observation in the
 8 minded to note was that in your view it was very
 9 unlikely that HN58 would have had any intimate relations
 10 while undercover with those he spied upon because he had
 11 been married for many years.
 12 Now you will recall, because it was an extreme
 13 reaction, how everybody -- or perhaps not everybody but
 14 a very, very substantial number of people in this
 15 room -- responded when you said that. Or when it was
 16 tested and you repeated it in the course of the hearing.
 17 Your response was, and we would agree with it, that
 18 perhaps you are somewhat naive and a little
 19 old-fashioned.
 20 Yet what is for us even more alarming perhaps than
 21 your original observation is that despite the
 22 astonished, disbelieving, uncomprehending and dismayed
 23 response of everybody here, you maintained reference to
 24 those naive -- or reliance upon those naive and
 25 old-fashioned views that had originally been set out in

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1 your minded to note. And you did so not just in
 2 relation to HN58 but that reasoning showed itself again
 3 in relation to other officers.
 4 The core participants, the non-state, non-police
 5 core participants, do not want this important Inquiry,
 6 something that they so richly deserve to have conducted
 7 in an efficacious way, to be presided over by someone
 8 who is both naive and old-fashioned and does not
 9 understand the world that they or the police inhabit.
 10 And they have no confidence in the prospect of an
 11 inquiry being properly probing or understanding the
 12 evidence if it is conducted with an inquiry panel or
 13 chair as currently constituted.
 14 So, those who have expressed a view therefore ask
 15 that you recuse yourself from this Inquiry. Or if you
 16 are not prepared to do that, that you ensure that
 17 measures are taken to bring about a true panel. That is
 18 that you sit together with others who well understand
 19 the critical issues that shape and frame this Inquiry.
 20 And I remind you and everybody of the Macpherson
 21 inquiry, the Lawrence inquiry, and what a difference it
 22 made to the understanding and world view of Mr Justice
 23 Macpherson to sit with people who understood because
 24 they had experience of the issues that went to the heart
 25 of that inquiry.

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1 Now, as matters stand, those clients who have given
 2 instructions -- and you well know that many do not
 3 actively participate -- are not prepared to continue to
 4 participate in today's hearing. I am instructed,
 5 therefore, together with the entire legal team, to
 6 withdraw from this hearing while these issues are
 7 considered by you.
 8 That is all I have to say this morning.
 9 [Ms Kaufmann and the legal team on behalf of the non-state,
 10 non-police core participants leave court.]
 11 THE CHAIR: Ms Sikand.
 12 Submissions on behalf of Peter Francis by MS SIKAND
 13 MS SIKAND: Sir, you will have seen from our written
 14 submissions that the sum of the issues identified by
 15 Ms Kaufmann earlier on are of course issues that concern
 16 Mr Francis too. But, sir, we remain and remain in order
 17 to continue to engage with the process that as I have
 18 already said in our written submissions we have thus far
 19 shown a great deal of respect for, I hope you accept.
 20 THE CHAIR: I do.
 21 MS SIKAND: And we remain also because my client is a former
 22 Special Demonstration Squad officer who understands
 23 endurance. But it has been, sir, so far an endurance
 24 test and I hope you will forgive me for just a few words
 25 before I deal with the specifics.

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1 You will have seen from our written submissions that
2 there is an ever-increasing frustration not just in
3 Ms Kaufmann's camp but in ours. Sir, you know the
4 history of this Inquiry and how it came about, and you
5 know, sir, the role that Mr Francis played in, as
6 I said, you know before, shining a light on some
7 practices which may in due course be found by you to be
8 unacceptable --
9 THE CHAIR: Forgive me a moment. Can I just ask that the
10 door there is closed. Thank you.
11 Yes.
12 MS SIKAND: Sir, you know full well that when Theresa May as
13 Home Secretary in 2015 announced this public Inquiry she
14 made a commitment that this Inquiry would review
15 practices in the use of undercover policing, that you
16 would establish justice for the families and the victims
17 and make recommendations for future operations and
18 police practice.
19 Sir, in making that commitment she was aware that
20 obviously both her and Ellison did not achieve that
21 objective. Sir, she was also aware following the
22 Stephen Taylor report in January 2015 how disturbingly
23 little the Home Office knew about the Special
24 Demonstration Squad and its practices despite its secret
25 funding of it, sir, and it is clear that the Home Office

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1 knew even less after the Special Demonstration Squad
2 severed its funding ties with the Home Office in 1989.
3 Sir you know that the period that followed after it
4 cut itself free was, to use one of the risk assessors'
5 euphemisms, a lively period. To put it more seriously,
6 a critical period and certainly a period of great if not
7 the greatest significance to this Inquiry.
8 Sir, this is an Inquiry -- of course you know
9 this -- into how unchecked secrecy led to violations or
10 potential violations of the rule of law. This, sir, as
11 far as Peter Francis is concerned, is the last chance to
12 look at things openly and yet so far, sir, you have
13 maintained complete anonymity in relation to all the
14 significant officers in that period so far, apart from
15 HN81. But so far as the managers are concerned, in your
16 ruling last time on HN58 and in your minded to in
17 relation to HN109 and HN337.
18 There is an obvious irony in that, sir. We say how
19 can Theresa May's published objective be met? You say
20 hold fire -- I am sure you would say to me, hold fire,
21 in due course if you bear with me the truth may well be
22 out. But, sir, as Ms Kaufmann said, we take the view
23 that these procedural hearings are absolutely crucial
24 because they will determine the way in which this entire
25 Inquiry will be conducted in due course.

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1 Sir, part 3 -- now that Ms Kaufmann has quoted me,
2 I return the favour in her absence -- part 3 of the
3 non-police, non-state core participants' submissions
4 make the point that your restriction order decisions are
5 made on the unilateral and untested account of the
6 applicants, and the Metropolitan Police Service, who of
7 course --
8 THE CHAIR: That is wrong in fact.
9 MS SIKAND: Well it is difficult for us to know otherwise
10 from what you have disclosed to us.
11 Sir, as Mr Francis indicated to you directly at the
12 last hearing, he and his fellow officers were trained to
13 practice deceit in order to be successful. That was
14 their thing. Thus it is imperative to have other voices
15 or at least maximise the chances of obtaining them, and,
16 sir, the commitment to openness -- as encapsulated in
17 Sir Christopher's legal principles rules -- has to be
18 where you start, but that is, with respect, not
19 demonstrated thus far by your rulings taken as a whole
20 and in particular in relation to HN109, foreshadowed,
21 sir, by your approach to HN58.
22 I will come to the specifics when I address you on
23 each of those officers. But, sir, in one of your
24 earliest rulings -- I think it was August -- when
25 dealing with HN81, you described using a closed hearing

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1 after your minded to -- although it wasn't a final
2 decision -- as an exceptional course. Those were your
3 words. But these hearings, sir --
4 THE CHAIR: We learn from experience, and experience so far
5 has shown that the practice of offering closed hearings
6 to those officers whose cover names I'm minded to
7 disclose works.
8 MS SIKAND: Sir, be that as it may, what we have now is what
9 you quite rightly considered to be exceptional are now
10 normalised. They are incorporated into a normalised
11 process.
12 THE CHAIR: One learns from experience. That is what
13 experience has shown to be a sensible course.
14 MS SIKAND: Yes, sir, but all it does so far as public
15 confidence and perception is concerned is add yet
16 another layer of secrecy.
17 The disclosure we get, sir, remains absolutely
18 minimal. And now, sir, you have personally demonstrated
19 to us that you are prepared to give us no reasons at all
20 without even, for example, citing a national security
21 imperative by way of explanation. That, sir, as I have
22 said in our written submissions, we take to be a sign of
23 disrespect.
24 Sir --
25 THE CHAIR: Forgive me, it is not intended to be. There are

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1 reasons for the bald statement made in HN109's case,
 2 upon which I'm not going to expand. But it is not
 3 a sign of disrespect to anybody.
 4 MS SIKAND: Sir, we will come to HN109 in a moment.
 5 But it is extraordinary to us, as we said in our
 6 written submissions, that you could not have said
 7 a little bit more, given the disclosure that you did
 8 give us which doesn't speak to any issue of concern.
 9 But I will come to him in a moment.
 10 Sir, Ms Kaufmann has already talked to you in terms
 11 about what you have described as your old-fashioned
 12 ways. I don't want to make a personal attack in any
 13 way, but what I want to say is this: this additional
 14 consideration that you have added into your
 15 decision-making process -- just to spell it out, you
 16 said whether it is more likely that wrongdoing of
 17 broadly a sexual nature would have been committed by an
 18 officer who has remained married to the same person,
 19 et cetera.
 20 This you yourself have described as naive and
 21 old-fashioned. But, sir, with respect, old-fashioned --
 22 which as you know is euphemistic and can mean a number
 23 of things not all of which are benign -- has absolutely
 24 no place in our submission in an inquiry that has to
 25 unpack issues of race, gender and class, and the way in

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1 which those intersect.
 2 There is no place in this Inquiry, in our
 3 submission, sir, for any old-fashioned stereotyping
 4 about either men or women, and, sir, what happens when
 5 you do that is so clear. You decide what we say is on
 6 an improper basis, that there is no likelihood of
 7 misconduct because of somebody's marital status. You
 8 then reach the inevitable conclusion that any
 9 interference with article 8 in particular is
 10 disproportionate. Thus the whole balancing exercise
 11 gets skewed.
 12 So, sir, that, we say, has made you fall into error
 13 and we ask you to please not do that when you carry out
 14 your future risk assessments and to reconsider the ones
 15 that you have made on this, we say, unlawful basis.
 16 Sir, unfortunately your approach to date has had the
 17 unwitting effect of placing Mr Francis personally under
 18 great pressure both privately and publicly. I suspect
 19 you don't read social media --
 20 THE CHAIR: I don't.
 21 MS SIKAND: But if you had, you will have seen that he has
 22 had pressure on him as a whistle-blower to step in and
 23 fill the gaps where you have maintained secrecy by
 24 revealing cover names. Especially in relation to his
 25 erstwhile managers. And, sir, you will know that he has

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1 not done that.
 2 THE CHAIR: I do indeed know he's not done that. And
 3 I commend him for it.
 4 MS SIKAND: But, sir, can I just make plain that it is not
 5 the threat of prosecution under the Official Secrets Act
 6 that has prevented him to date from doing so. That has
 7 hung over his head since March 2010 when he was splashed
 8 across the front pages of the Observer as a Special
 9 Demonstration Squad whistle-blower, but as indicated in
 10 our written submissions it has been his respect for the
 11 Inquiry process, a belief that the Inquiry will uncover
 12 the truth, as it has been mandated to, but that belief,
 13 sir, I have to say is now a rather more a desperate
 14 hope.
 15 It is also his belief that it is the duty of the
 16 Inquiry, not him, to reveal cover names. He also
 17 believes that you have a duty to be more open and honest
 18 in order to allow better engagement with the process.
 19 Here it is, a demonstration of what happens, even if it
 20 is a perception, but this is what has now happened
 21 because there isn't sufficient openness.
 22 Sir, in your minded to note, not only do you not
 23 give us any reasons about HN109, you don't even describe
 24 who he is, which you have done thus far in the main.
 25 You didn't initially with HN58, but then you did.

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1 But why would you do that, sir? All that does is to
 2 raise distrust and greater suspicion.
 3 Another reason for Mr Francis holding back -- and he
 4 wanted to make this clear and it may not make perfect
 5 rational sense but it's actually because he has a sense
 6 of loyalty to individual officers. Not to the unit and
 7 not to the Special Demonstration Squad. He asked me to
 8 make this public statement that he is dismayed that
 9 there appears to be an institutional reluctance by the
 10 majority of Special Demonstration Squad officers to
 11 voluntarily engage with an Inquiry which might --
 12 might -- change the way undercover policing is carried
 13 out, and it might change it for the better.
 14 Sir, those officers or some of them certainly seemed
 15 more enthusiastic to appear on the True Spies
 16 documentary back in 2002, despite being retired from the
 17 Metropolitan Police Service, than they are to engage
 18 voluntarily with this process.
 19 It may seem simplistic but actually Peter Francis
 20 really wishes that other Special Demonstration Squad
 21 officers could see that there is much to be gained from
 22 exploring both the victories of the past but also the
 23 mistakes. It may be an entirely naive desire but he
 24 wants me to say that publicly.
 25 THE CHAIR: I'm glad that makes two of us.

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1 MS SIKAND: It is good to be on the same page, sir.
2 So if I could, then, move on to our specific
3 submissions, with your leave.
4 THE CHAIR: Yes.
5 MS SIKAND: You will see, sir, that we have focused our
6 submissions on those officers in relation to whom you
7 have made a double minded to decision. So we haven't
8 made any submissions about those in relation to whom you
9 have agreed to disclose cover names.
10 THE CHAIR: I have noticed that. That has been Mr Francis's
11 consistent position.
12 MS SIKAND: It's consistent with Mr Francis's approach.
13 THE CHAIR: Yes.
14 MS SIKAND: As you know, sir, we have said repeatedly that
15 usually we think that would meet the public interest or
16 certainly it would permit the Inquiry to fulfil its
17 terms of reference.
18 THE CHAIR: Other considerations being equal, it is a view
19 I share. But they are not always equal.
20 MS SIKAND: Not evidenced by your rulings, sir, with the
21 greatest of respect.
22 THE CHAIR: You will have to wait to see the totality of
23 them. But it is a view that in principle I share, but
24 other considerations are not always equal.
25 MS SIKAND: They may not be, sir.

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1 In relation to significant periods in the Inquiry,
2 there is a different imperative, we say, and in relation
3 to particular officers such as HN109 and HN337, we say
4 you need to approach matters differently.
5 We said that in relation to HN58. We practically
6 got down on our knees in relation to that officer in our
7 submissions, but you ignored us and so --
8 THE CHAIR: On the contrary. I found HN58's circumstances
9 very difficult to determine. I don't mean factually to
10 determine what they were, but the outcome of the
11 applications I found extremely difficult, as is
12 demonstrated by my provisional change of mind.
13 MS SIKAND: Yes. But ultimately, sir, we have --
14 THE CHAIR: Your argument did not succeed in the end, but it
15 doesn't mean to say that I do not accept that I did not
16 accept it had force. I do. I simply came to the view
17 that I did for the reasons that I expressed.
18 MS SIKAND: Sir, thus far none of our arguments have
19 succeeded, so we are trying again. As I say, we have
20 hope. But as to how long that hope endures, I don't
21 know.
22 As I say, Peter Francis remains here today because
23 of his ability to endure in the main, but also because
24 of what this Inquiry means to him. Sir, he has turned
25 his life upside down by, you know, by bringing this

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1 about in some way, and therefore remains committed to
2 trying to expose the truth.
3 So there we are. But it doesn't make the statistics
4 any different. We know the number of names you have
5 released. We know how many of those were already in the
6 public domain, and in the main, sir, when you release
7 cover names they are of officers in their 60s and 70s
8 who, as I say, Peter Francis would describe as shallow
9 paddlers.
10 So if I could deal then in the sort of numerical
11 order, other than to say that it probably makes more
12 sense, sir, to deal with HN71 and 125 together because
13 they raise a similar approach and issues, so I don't
14 sort of repeat the same points with a gap in between, if
15 I may, and then deal with HN109 and HN337 consecutively,
16 unless you want me to deal with them in the order they
17 are set out in my submissions.
18 THE CHAIR: You take your own course. I find it slightly
19 easier, but only slightly, if you deal with it in the
20 order in which they are set out.
21 MS SIKAND: I would rather make matters easier.
22 Submissions on behalf of Peter Francis by MS SIKAND re HN17
23 THE CHAIR: If that is right, we begin with 17, don't we?
24 MS SIKAND: Yes.
25 THE CHAIR: In paragraph 11 of your written submissions, in

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1 the second sentence, you say:
2 "On HN17's own account he was not only arrested
3 a number of times, he was also convicted."
4 Can you tell me where that comes from?
5 MS SIKAND: From the risk assessment. It may be that I have
6 read too far into it, insofar as Ms Kaufmann's
7 submissions ask in particular can you identify whether
8 in fact he was convicted. But I will take you to it.
9 In the risk assessment which would be behind tab 2,
10 page 5.
11 THE CHAIR: Tab 2. And the risk assessment is section 4.
12 MS SIKAND: Yes.
13 "The group(s) and/or their associates have
14 a potential for exacting violence on others. N17
15 believes there will be photographs of N17 during the
16 deployment in existence. N17 was arrested in cover name
17 on one or more occasions with others. Some convictions
18 resulted. There are third party concerns, and others
19 who may be affected if a restriction order was not
20 issued. N17 describes the SDS managers as generally
21 very good ..."
22 THE CHAIR: Before you proceed, may I say something about
23 that?
24 MS SIKAND: Of course.
25 THE CHAIR: I thought that was what this was based upon.

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1 This is a gist of part of a risk assessment. It
 2 says "N17 was arrested in cover name on one or more
 3 occasions with others". That is a standard form of
 4 words used to avoid mosaic effect identification if more
 5 detail is given. On this instance, I can safely say he
 6 was arrested on one occasion only.
 7 MS SIKAND: And it did not result in his conviction?
 8 THE CHAIR: I have said what I can safely say.
 9 MS SIKAND: Sir, this is the problem of course. There is an
 10 exemplification right there as to what we are being
 11 asked to do. All we are saying is don't make us fill in
 12 the gaps, please don't make us read between sentences.
 13 Just tell us as much as you can so we can make sensible
 14 submissions.
 15 We silt there having to read through documents and
 16 work out what they actually mean. And yet you say to us
 17 that in order -- well, one assumes that we are here in
 18 order to have a proper open discussion to assist you
 19 eventually in reaching the proper correct decision in
 20 relation to anonymity. But why are we being asked all
 21 the time to read between lines when there are some lines
 22 which can just be firmly drawn? Why can't we be told
 23 there was only one conviction, or this officer himself
 24 was not convicted, or this officer was convicted with
 25 three others? Then we would not be led into error in

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1 our submissions. That's what I mean about the
 2 perception of disrespect, because we are not told enough
 3 and in our submission it is not the proper way to
 4 proceed.
 5 So, in any event, if he was arrested and if he was
 6 convicted, we don't know, because we are not told, about
 7 the nature of those offences that he was arrested for.
 8 We have already pointed out that this doesn't appear to
 9 sit well with his assertion that he always worked with
 10 integrity and in a professional manner, unless we are to
 11 assume from that that the Special Demonstration Squad as
 12 a whole took the view that getting arrested and
 13 convicted for serious or any violence was acting with
 14 integrity and in a professional manner.
 15 THE CHAIR: You are making a number of assumptions there
 16 which are not necessarily right.
 17 MS SIKAND: Sir, I have to make assumptions because you have
 18 just told me that you are not going to assist me any
 19 further, so I have to make those assumptions based on
 20 what you have disclosed to us.
 21 What I can see is that there is a man undercover who
 22 is an officer who has penetrated a group who, on the face
 23 of it, are from the Far Right and who on the risk
 24 assessment were capable of serious violence. That's
 25 what the risk assessor says. So the assumption I'm

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1 making is when he was arrested it was for an offence of
 2 violence. I don't know if it was serious violence, it
 3 may just be public disorder, but there is an element of
 4 violence.
 5 If he was convicted of it, then either he was off on
 6 a frolic of his own or it was something that was agreed
 7 upon by his managers. And if that is right, sir, that
 8 is something that obviously has to be explored. And you
 9 will say to me "Yes, I will explore it with him in
 10 a hearing on his own or without any other evidence that
 11 could speak to it".
 12 And that just goes to the point that we repeatedly
 13 make that what was the true extent of the violence that
 14 was used by undercover officers even in the Far Right?
 15 Was that something that managers took the view was the
 16 proper and proportionate way to act when infiltrating
 17 such a group, such as the political and other
 18 imperative?
 19 However unattractive it may seem, you have to
 20 collect that evidence from those who infiltrated. It is
 21 a simple point and probably, as I have said before, not
 22 made better with repetition, but in this case when you
 23 make the bald assertion that there is nothing in the
 24 nature of his deployment -- the nature of the deployment
 25 or what is known -- that would justify running the risk,

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1 is really an arrest and a possible conviction nothing?
 2 It is a rhetorical question because I know you will not
 3 answer it. You have already indicated that. But from
 4 what we have seen we don't accept that, it is not
 5 nothing and it is something that ought to be scrutinised
 6 properly.
 7 Sir, I'm saying that when you take the view that
 8 that is nothing then the rest of the balancing exercise
 9 gets skewed because then you don't go on to consider
 10 whether --
 11 THE CHAIR: Forgive me, the premise of your submission,
 12 I think, is that the Inquiry is not going to look into
 13 issues of that kind. It is.
 14 MS SIKAND: No, no. That is not the premise of my
 15 submission. The premise of my submission is that the
 16 Inquiry is going to look at it without any other
 17 evidence other than police evidence. It will be
 18 unchecked. That is the premise of my submission because
 19 what you're saying is there's nothing on the face of it
 20 that we see is problematic with the way in which HN17
 21 conducted himself, and we're saying but hang on a
 22 moment, there's already evidence that it's problematic
 23 because he was arrested, presumably in his cover name.
 24 We don't know if he was charged. We don't know if he
 25 was convicted.

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|--|--|
| <p>1 But if that is right, that is something that weighs 2 in the balance, and that is something that then should 3 cause you, sir, to reconsider the way in which you 4 conduct your risk assessment or your balancing exercise 5 when deciding not to disclose his cover name, and 6 consider whether there are, for example, measures that 7 you could put in place or the Metropolitan Police 8 Service could put in place to minimise any risk of 9 identification. 10 THE CHAIR: I explained my reasons in the case of HN17, 11 which involve a real risk of serious violence to him. 12 Your submission is that the fact that he was 13 arrested on one occasion during his deployment should 14 cause me to reassess the balance and possibly come down 15 in favour of exposing him to that risk. 16 MS SIKAND: Yes, yes. 17 THE CHAIR: Okay. 18 MS SIKAND: I do ask you to take that course. 19 Also I know the way in which you described HN17, 20 but, sir, this is a point -- and I hope you will forgive 21 me by raising this -- it is in a sense presentational. 22 But there is no reason why you couldn't have said in 23 your minded to note that he was an officer that 24 infiltrated the right wing because that is already there 25 amongst, you know, the documentation that he infiltrated</p> <p style="text-align: center;">Page 29</p> | <p>1 the fact that there is no known allegation of 2 wrongdoing. 3 You go even further. You say that it is very 4 unlikely that any plausible allegation of misconduct 5 against him could be made. 6 Sir, this is inconsistent with your decision in 7 relation to HN345 or HN347. We say what is the 8 difference here? Those two, 345 and 347, were deployed 9 in the 1970s. They had no known allegations against 10 them. But you are prepared to release their cover names 11 even though you have said that you formed the view that 12 anyone coming forward is an unlikely event. Therefore 13 we pose the question is this one of your assessments 14 whereby you take the view because he is married that 15 there could never be a plausible allegation against him? 16 Why, sir, do you differentiate between those 17 officers? We say that is inconsistent. We don't know, 18 because it has not been revealed to us, what the marital 19 status of HN345 or HN347 is. But we have said if that 20 was your consideration then that is an irrelevant one, 21 sir. 22 It may be that you will say that in this case you 23 have decided to give greater weight to an expression of 24 assurance of confidentiality. But, sir, we don't 25 understand that either because there have been a raft of</p> <p style="text-align: center;">Page 31</p> |
| <p>1 the Far Right and it just saves us having to go through 2 those documents and find out, you know, what was said 3 about him when you already know that and you know that 4 it could be found. It would just signal a clearer and 5 more open communication between the Inquiry and its core 6 participants, those of us who don't represent the 7 police. 8 Sir, moving on then -- unless, sir, you want to hear 9 from others now in relation to HN41? 10 THE CHAIR: I think that's a sensible course. Does anybody 11 have anything to say about HN17? 12 No. I think you may find silence the majority of 13 times. 14 MR HALL: Sir I was going to make a very, very brief 15 response to what was said this morning by Ms Kaufmann, 16 only very briefly. Shall I do that now or -- 17 THE CHAIR: No, we are dealing with individual officers now. 18 If there are any general points to be made later, make 19 them later. 20 MR HALL: I will do that. 21 THE CHAIR: Yes. 22 Submissions on behalf of Peter Francis by MS SIKAND re HN41 23 MS SIKAND: HN41. You have seen, of course, our written 24 submissions and the real point that we make about him, 25 about HN41, is you put a great deal of weight again on</p> <p style="text-align: center;">Page 30</p> | <p>1 officers who have talked about express assurances. 2 So, we have also been told by you -- or in the risk 3 assessment -- that his principal target group no longer 4 exists, so any risk that there is emanates from another 5 or less important target group -- 6 THE CHAIR: Risks emanate from individuals, not from groups. 7 MS SIKAND: Yes, but they are presumably people associated 8 with those groups during that time who would also be of 9 a similar age to him. You know, people change, sir. 10 Are they really likely to be such a threat? 11 This is particularly so in the context of the risk 12 assessor saying that HN41 was witness to an event of 13 significant interest to the Inquiry. Of course that, 14 you know, means nothing to us. But if it is 15 a significant event to the Inquiry, perhaps it would be 16 more open to give us some indication as to what that is, 17 because is this an event that is of such significance 18 that it should be tested, and if it is to be tested, 19 is it not possible that those that he spied upon may 20 bring something to the table which would allow you to 21 properly test it? I don't know, because, as ever, we 22 have not been given enough disclosure. 23 THE CHAIR: One of the problems of conducting the Inquiry is 24 one really can't decide everything at the start. There 25 are lots of issues that have to be decided as we</p> <p style="text-align: center;">Page 32</p> |

1 proceed. This is one of them. How evidence about this
 2 significant event is to be given is something that has
 3 not yet been determined. It will have to be.
 4 MS SIKAND: But, sir, it is very important that the
 5 procedural decisions that you make are as open as
 6 possible and as fair as possible.
 7 I understand that you are of the view that in due
 8 course we will all be able to see that these decisions,
 9 you had to make them, that you will be vindicated, the
 10 Inquiry will turn out, you know, we will have all the
 11 evidence we need and you will make findings and it will
 12 all be fine. And then you can say to us:
 13 "See, you should have trusted me."
 14 But, sir, the difficulty is that these hearings,
 15 procedural hearings, are of great significance not just
 16 because of the messages that they send to the public,
 17 but also to the officers who you are dealing with, but
 18 also because openness is so important at every stage of
 19 this particular Inquiry. Not just because it is
 20 a public Inquiry, but because of the point I have
 21 already made.
 22 This is an Inquiry into what goes wrong when secrecy
 23 is unchecked. So in each submission that we make we
 24 say, sir, have you really weighed in the balance and we
 25 are here to question that, and in the end we hope to

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1 assist you, because on the face of it we can't see
 2 a real distinction to be made between HN41 and HN345 and
 3 347 when you say there is nothing -- there is no
 4 plausible allegation of misconduct. With the added
 5 extra that he could give information about an event of
 6 significant interest to the Inquiry.
 7 So that's what we say. We say we would be grateful
 8 if you could reconsider the way in which you carried out
 9 your balancing exercise.
 10 If the fact that you think it is unlikely that there
 11 will be any allegations because he is married played
 12 a part in it, we ask you to set that aside, sir, for the
 13 reasons we have already set out in full.
 14 THE CHAIR: Okay.
 15 MS SIKAND: We can only ask, sir.
 16 THE CHAIR: Of course. This is a view that has been
 17 expressed to me not only publicly but also privately.
 18 And I said what I did in the hope that it would prompt
 19 reactions from people. It has done. And I have
 20 rethought the approach that I indicated.
 21 You will see in the case of HN41 that there are two
 22 reasons set out in the sentence which deals with this:
 23 "Given the nature of the deployment and the personal
 24 circumstances ..."
 25 That is a phrase that you will see in other minded

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1 to decisions. I think HN83 is one of them. I can't at
 2 the moment say more about it. But you may rest assured
 3 that it is not only any view that I might have about
 4 whether or not they may have misconducted themselves
 5 because of their personal circumstances, but also
 6 because of the nature of the deployment.
 7 MS SIKAND: I understand that, sir. But I have, I hope,
 8 spoken to that in the sense that it may be -- and if
 9 I am wrong about that -- it may be when you make that
 10 initial assessment, because you put it really quite
 11 high, it is "very unlikely that any plausible
 12 allegations of misconduct against him could be made".
 13 Sir, I mean, that appears on the face of it to be
 14 supported by your insertion in your first paragraph of
 15 the words "is married".
 16 THE CHAIR: It seems every time I give information about an
 17 officer it is fired back at me as indicating an
 18 inappropriate reasoning process. Every time I don't,
 19 I'm criticised for not saying enough.
 20 MS SIKAND: Sir, that is unfair with the greatest respect.
 21 When you put weight upon that, it is not the fact of his
 22 marriage, it is the fact that you consider it to be
 23 a relevant consideration. Because in the main you tell
 24 us things that you consider to be relevant. You put it
 25 in because you consider it to be relevant. We say it

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1 isn't a relevant consideration. And we don't know.
 2 Sometimes you don't tell us.
 3 The other officers are cases in point, 345 and 347.
 4 You tell us -- we don't know. We don't know if they are
 5 married or not married, single, there is a mention of
 6 family, we don't know if they have a civil partnership.
 7 It is completely absent. So when you do put it in it is
 8 obviously that it is poignant to you, sir, and it is
 9 obvious that it has played some role in your
 10 decision-making process.
 11 If it hasn't, sir, then I will stand corrected. But
 12 it seems to me, given the way in which you have
 13 expressed yourself, that it is a consideration for you
 14 and we simply say to you to please once more revisit
 15 that, if that is your consideration. Because we
 16 genuinely don't think it has any place in conducting
 17 your balancing exercise.
 18 You have already said in your November statement you
 19 will release cover names unless --
 20 THE CHAIR: It is a forecast. I was careful to express it
 21 as a forecast and not as a principle, because every case
 22 does have to be decided on its own facts. My forecast
 23 was --
 24 MS SIKAND: Sir I'm aware of the caveats and I am aware of
 25 the fact that you used that very word, but what you did

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1 say is that you won't do it if there is a personal
 2 threat. You know, if there is an issue as to risk or
 3 where the public interest would not be
 4 disproportionately harmed or damaged. But not when you
 5 have formed a view that it is unlikely to happen because
 6 somebody is married. That plays no part in any
 7 balancing exercise.

8 What I am saying is you have decided about whether
 9 or not a particular officer is more likely to have an
 10 allegation made against him on the basis of his or her
 11 marital status. We say that is wrong and it can't carry
 12 on in our respectful submission.

13 It is a sort of rebuttable presumption that you are
 14 going to disclose the cover name unless there are other
 15 issues such as risk of harm. Not whether or not it is
 16 likely, because you have already indicated in November
 17 it would assist you to have evidence from others who
 18 could speak to the important issues as to the reason for
 19 the deployment, its justification and how it was carried
 20 out.

21 THE CHAIR: I agree.

22 MS SIKAND: So all I'm saying is if his marriage played
 23 a part, sir, please could you look at it again removing
 24 that from the equation.

25 THE CHAIR: Certainly. I will certainly reconsider as you

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1 have invited me to.

2 MS KAUFMANN: I then move on to HN64 sir.

3 MR HALL: Sir I was going to reply how HN17 if I may?

4 THE CHAIR: Are we back to HN17?

5 Submissions on behalf of the Metropolitan Police Service,
 6 Commissioner's Legal Team by MR HALL re HN41

7 MR HALL: I'm sorry, HN41.

8 Sir, some of the submissions made simply fail to
 9 register the possibility of real harm being caused.

10 THE CHAIR: Yes.

11 MR HALL: And the logic of the submission that all cover
 12 names must be published is that one has to leave out of
 13 account that risk of harm. Our submission is simply
 14 that that would not be to apply the ruling given by
 15 Sir Christopher Pitchford back in May 2016 which
 16 inevitably involves a degree of a balancing exercise.
 17 That is all I propose to say about HN41.

18 Reply submissions on behalf of Peter Francis by MS SIKAND re
 19 HN41

20 MS SIKAND: Sir, as you will know, we have had a much more
 21 nuanced approach even though Peter Francis's starting
 22 point has always been release all cover names, but
 23 I address each decision on its individual merits.

24 For example, we say we are unaware of anything to
 25 suggest that the release of his cover name would lead to

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1 identification of his real identity. So of course we
 2 are aware that if there was a disproportionate -- you
 3 know, if there was a real risk, you would factor that
 4 into your decision-making process. All we are saying is
 5 that it is the way you balance that because of course we
 6 are never given sufficient information to work out
 7 whether there is a sterile corridor or there isn't.

8 Sometimes it is a simple point that somebody could
 9 have the same first name, that is not uncommon. But we
 10 can only ask you because we are not privy to the
 11 information about the sterile or otherwise corridor to
 12 reassess it in the way that we can just bring a fresh
 13 eye to it to say that actually these are significant
 14 public interest factors that you appear not to have
 15 weighed in the balance.

16 We would like to say you should just reveal all
 17 cover names. We would like you to reach that
 18 decision-making process, but we are also utterly
 19 realistic about you having a duty to each officer and
 20 taking an individualised position. So I'm not sure that
 21 that reply was entirely necessary.

22 Submissions on behalf of Peter Francis by MS SIKAND re HN64

23 MS SIKAND: But in any event, HN64. All we can say is that
 24 as we have already said, Peter Francis knows who this
 25 officer is. There is no explanation as to why

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1 disclosure of his or her cover name would lead to his or
 2 her identification.

3 THE CHAIR: With respect, how can there be?

4 MS SIKAND: Well, sometimes we can have an indication of how
 5 likely -- presumably there is always some risk of
 6 a cover name -- it is not a science, this whole thing.

7 THE CHAIR: This is an issue that where I have indicated
 8 I have considered it carefully on the basis of the
 9 closed risk assessment and if relevant other material.

10 But the invitation to explain why there is a risk
 11 gives away the facts underlying the risks.

12 MS SIKAND: Yes. Of course, sir, there is the point that
 13 there are those that you -- looking at the way in which
 14 you have made your decision-making, there are those
 15 cover names which you would never have disclosed but
 16 which have been disclosed by the activists. And you can
 17 see there in all of those cover names the way in which
 18 the relationship between the cover and real names, how
 19 it has panned out. You can see it --

20 THE CHAIR: Indeed. They are very good at doing it.

21 MS SIKAND: Yes. But only in some cases, and also the
 22 ultimate risk of harm, you can see, has been -- so far
 23 as we are aware -- there has not been any physical harm
 24 to anybody.

25 There it is, we can't add further to those

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1 submissions. So we don't.
 2 THE CHAIR: Mr Hall, nothing in reply to that?
 3 MR HALL: No, thank you.
 4 THE CHAIR: Ms Sikand, the shorthand writers need a break.
 5 Would now be a convenient moment?
 6 MS SIKAND: Of course.
 7 (11.40 am)
 8 (A short break)
 9 (11.55 am)
 10 THE CHAIR: Ms Sikand.
 11 Submissions on behalf of Peter Francis by MS SIKAND re HN71
 12 MS SIKAND: Sir moving on to HN71.
 13 This is an officer in relation to whom there hasn't
 14 been a risk assessment. It would seem on the face of it
 15 for reasons of expediency this is a decision, so far as
 16 we can see, made purely on his perceived impact of
 17 involvement with the Inquiry.
 18 It is difficult to understand, sir, why there hasn't
 19 been a proper risk assessment particularly when on his
 20 own account he says that he found his initial meeting
 21 with the risk assessor reassuring.
 22 He, like a number of other officers -- including
 23 Peter Francis -- has suffered psychological symptoms
 24 arising out of his deployment. Those are of varying
 25 degrees of severity. And looking at the gist of

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1 Dr McLaren's analysis is that he suffered a depressive
 2 episode many, many years ago --
 3 THE CHAIR: Could I suggest that you read the reasons given
 4 in the open document rather than looking at the material
 5 that has been published in redacted or gisted form.
 6 MS SIKAND: I didn't ignore those.
 7 THE CHAIR: I am being criticised for including things in
 8 reasons that I shouldn't. Here I have given as clear
 9 reasons as I can. Do they make reference to
 10 psychological difficulty?
 11 MS SIKAND: Yes, sir, but there has been no risk assessment.
 12 So it is difficult to know how you have come to that
 13 without any risk assessment.
 14 THE CHAIR: Mr Francis will know the nature of some of the
 15 deployments and that not all of them require external
 16 assessment for one to be able to make a judgment about
 17 them. I have expressed, admittedly in brief language,
 18 the reason quite different --
 19 MS SIKAND: Yes, you've said he would be at real risk of
 20 serious violence by them or their associates.
 21 But are you saying, sir, that this is now your sort
 22 of approach going forward when you form the view, for
 23 example, that somebody -- you know, when you are aware
 24 of somebody infiltrating a particular group which is
 25 known or has been known for involving itself in violence

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1 or serious violence, that you will no longer carry out
 2 a risk assessment? Or ask for a risk assessment to be
 3 carried out? This is what has happened in this
 4 particular case.
 5 THE CHAIR: Yes. So?
 6 MS SIKAND: Yes, but is that how you are going to proceed
 7 from now on? Is not a risk assessment where you formed
 8 the view?
 9 THE CHAIR: I ask for or am provided with risk assessments
 10 where they are needed. They are not needed in every
 11 case. This is one of them.
 12 MS SIKAND: Then obviously I can't say anything further.
 13 THE CHAIR: Of course you can't. But I wanted to correct
 14 the misapprehension that it had anything to do with
 15 psychological or psychiatric risk or injury. I didn't
 16 say so, and it doesn't.
 17 MS SIKAND: Yes, sir, but the obvious assumption was that
 18 the perception of risk of violence was a perception
 19 based upon his psychological state of mind. Or
 20 certainly one that is exacerbated by his psychological
 21 state currently.
 22 THE CHAIR: Sorry, I'm not -- if --
 23 MS SIKAND: But if you are saying it is completely objective
 24 assessment by you, nothing to do with his psychological
 25 condition, then that is --

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1 THE CHAIR: I don't use stark words like "would be at real
 2 risk of serious violence" if all that there is is
 3 a perception on his part, or on the part of HN71, that
 4 he might be.
 5 MS SIKAND: It is always very helpful, sir, to have your
 6 clarifying words.
 7 THE CHAIR: I thought they were pretty clear as they were
 8 drafted, but never mind.
 9 MS SIKAND: As to why you would, essentially, not have
 10 a risk assessment. We didn't know that. If you had
 11 indicated -- I didn't understand your position to be
 12 that you would not have a risk assessment in certain
 13 cases or that you had a class of cases that would not
 14 have a risk assessment. Because reading through, it
 15 seemed to be a decision based on deadlines and
 16 expediency because he said he had a meeting with the
 17 risk assessor which he found reassuring but it didn't
 18 carry on.
 19 THE CHAIR: I have said what I'm going to about that. It is
 20 not based on deadlines and expediency.
 21 MS SIKAND: All right.
 22 Sir we now move on --
 23 THE CHAIR: I imagine there is nothing anyone wants to say
 24 about that?
 25 MR HALL: No thank you.

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1 THE CHAIR: We are now onto 109, I think, are we not?
 2 Submissions on behalf of Peter Francis by MS SIKAND re HN109
 3 MS SIKAND: Well, sir, you know that this is a extremely
 4 significant officer.
 5 THE CHAIR: I do.
 6 MS SIKAND: You will know that he was the detective
 7 inspector who recruited Mr Francis into the Special
 8 Demonstration Squad.
 9 THE CHAIR: I do.
 10 MS SIKAND: And that he did so in 1993. You will know he
 11 was his manager for a few significant and important
 12 months before Bob Lambert stepped in.
 13 But before I carry on, sir --
 14 THE CHAIR: Yes.
 15 MS SIKAND: -- because you have already told me don't look
 16 at the risk assessments, don't look at the papers we
 17 disclosed to you because they may bear no relationship
 18 with my decision-making process or they may not have
 19 played any part in my decision-making process. Using
 20 for example the last officer by example, we're disclosed
 21 the gist of a psychological assessment and that's it,
 22 and you say it doesn't matter, I have made a decision on
 23 a completely different basis, the evidential basis which
 24 has not been disclosed to you, and here we are with
 25 HN109 where you could not have a risk assessment that

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1 put the risk any lower than this one. In fact it even
 2 says "no risk" at some time, not even "low risk".
 3 So before I go into that, your lack of reasons --
 4 which you say are going to remain as they are with not
 5 even the slightest indication or further indication or
 6 any indication as to why you have just given us no
 7 reasons -- in order for me to say anything sensible to
 8 you other than what we have already put in our written
 9 submissions, I need to know from you that there is no
 10 relationship between that risk assessment and your
 11 decision.
 12 THE CHAIR: I am afraid I'm not going to add to the
 13 admittedly sparse statement made in the minded to note.
 14 MS SIKAND: Sir, you have to date given us, even if sparse
 15 and even if not accepted, some reasoning as would be
 16 normal in an inquiry of this nature to justify your
 17 decision-making process.
 18 In this case, you have disclosed to us evidence that
 19 makes your decision on the face of it look wholly
 20 irrational. You have given us not even in broad terms
 21 any reasons. You have not pointed to a national
 22 security imperative. You have simply declined to give
 23 us any reasons, and you have not even told us which
 24 statutory criteria has been met and what you have taken
 25 broadly into account when deciding where the public

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1 interest lies.
 2 So what has been disclosed to us and what we know,
 3 that this is an important manager in the significant
 4 period, we know that he was a manager in charge of the
 5 Special Demonstration Squad the night Stephen Lawrence
 6 was murdered, we know that he would have been
 7 instrumental in decision-making about targeting
 8 thereafter, and we know that, you know, he's a manager
 9 of individual undercover officers who will be of
 10 interest to the Inquiry, including my client.
 11 THE CHAIR: Unquestionably. And his evidence will be given.
 12 Precisely how it is going to be dealt with remains to be
 13 seen. My expectation is that it will be dealt with in
 14 the manner that permits it to be tested by those who
 15 wish to test it, in open proceedings, albeit that the
 16 appearance and so forth of HN109 may be shielded.
 17 MS SIKAND: Well, you have not said anything about the way
 18 in which his evidence -- in your minded to --
 19 THE CHAIR: I haven't, because I'm determining whether or
 20 not his real or cover name should have a restriction
 21 order in respect of them. I'm not determining --
 22 MS SIKAND: Yes, but you often gives us an indication --
 23 THE CHAIR: I do sometimes, because one has to look
 24 forwards. In this instance it is not possible to look
 25 forwards as to how it will be done in a manner which

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1 informs the anonymity decision save that my expectation
 2 is that by one means or another the evidence of this
 3 witness will be given in such a manner as permits it to
 4 be heard, at least, in public.
 5 MS SIKAND: Just so we understand where you are at. You
 6 accept that he is a manager of significant interest to
 7 the Inquiry.
 8 THE CHAIR: Yes.
 9 MS SIKAND: That he is a witness of significant interest to
 10 the Inquiry.
 11 THE CHAIR: Yes.
 12 MS SIKAND: That his risk assessments show that there is
 13 absolutely no risk of physical harm to him or his family
 14 even if his real identity is disclosed.
 15 Is it sir that --
 16 THE CHAIR: You have the risk assessment and I am afraid you
 17 have my answer, which is laconic to the point of view of
 18 being uninformative.
 19 MS SIKAND: Yes, but sometimes you say that you take a
 20 different -- sometimes you say, "Risk is a matter for
 21 me. I ask for the risk assessments but ultimately
 22 I take a view", and, sir, it is perfectly legitimate for
 23 me to ask you, do you take a different view about his
 24 risk than the risk assessor?
 25 THE CHAIR: I am very sorry, but I really am not going to

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1 expand on the laconic reason -- laconic statement
2 because it is not really a reason -- made in the open
3 document. There is a closed document which explains the
4 reason. It is going to remain closed.
5 MS SIKAND: Sir, this is a man as you know who appeared on
6 the True Spies documentary.
7 THE CHAIR: You say as I know, where do you get that from?
8 MS SIKAND: Because we know and I'm saying it. And in his
9 risk assessment he says:
10 "HN109 gave HN109's views on the True Spies
11 programme."
12 And although that doesn't indicate, obviously -- it
13 is in some police risk assessment speak and you may say
14 "We've just randomly asked various officers as to their
15 view about True Spies like we did with HN64", but of
16 course you don't --
17 THE CHAIR: Forgive me, the assertion that you made that he
18 appeared is not based upon the sentence on page 7 of the
19 risk assessment.
20 MS SIKAND: That's what drew us to check. He appears on
21 that programme, sir --
22 THE CHAIR: Forgive me. If it is based on that single
23 sentence then you have misread it.
24 MS SIKAND: No it is not.
25 THE CHAIR: Fine.

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1 MS SIKAND: That single sentence is just an indicator that
2 the True Spies documentary plays some role in the risk
3 assessor's risk assessment. It doesn't appear, sir, in
4 every risk assessment. It appears in certain risk
5 assessments as an issue to be addressed.
6 THE CHAIR: The sentence there is a short form of saying he
7 expressed his views on the True Spies programme. Not
8 that he expressed his views on the True Spies programme
9 but that he expressed his views about the True Spies
10 programme.
11 MS SIKAND: Yes, sir.
12 THE CHAIR: You may have different information which
13 suggests that he did indeed appear on the True Spies
14 programme.
15 MS SIKAND: Sir, we do, and he did.
16 THE CHAIR: Fine.
17 MS SIKAND: He appeared in 2002 and he appeared happily. He
18 was retired, there was no compulsion. He was, like they
19 all were, invited to take part in the documentary by
20 Roger Pearce. Sir, you will be aware that it was
21 a programme that the Metropolitan Police thought would
22 be a good one for retired Special Demonstration Squad
23 officers to take part in. You will be --
24 THE CHAIR: Someone in the Metropolitan Police Service did.
25 That's why the programme appeared. One of the things

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1 I may have to try to get to the bottom of is why that
2 decision was made.
3 MS SIKAND: Sir, we have made it plain -- and we have passed
4 on this communication -- but my client was written to by
5 Roger Pearce and he was told in October 2002 that:
6 "The Metropolitan Police Service has been keen to
7 support this project, and on the basis of firm
8 reassurance from the programme makers that operational
9 and personal security would not be compromised,
10 an invitation was extend to former Special Branch
11 officers to contribute to it in any way they thought
12 fit."
13 He goes on to say:
14 "Episode 1 will deal specifically with the covert
15 methods used to combat subversion and public order from
16 the anti-Vietnam War protests of 1968. A section of the
17 programme will outline the formation of the Special
18 Demonstration Squad and a number of former Special
19 Demonstration Squad officers are interviewed on screen,
20 none more recent than 1985. Legend building, trade
21 craft and areas of targeting are among the issues
22 highlighted and discussed in the first programme.
23 "The second and third episodes will examine left and
24 right wing extremism respectively.
25 "I remain convinced that the overall message from

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1 the programmes will be enormously to the credit of those
2 who served in Special Branch over the past four decades.
3 If you have any particular concerns or queries about the
4 series I will be more than happy to answer them."
5 And he writes to Mr Francis because he thinks that
6 Mr Francis would be interested in this programme.
7 That's why we pray in aid and have put in our
8 submissions that this was an officer who in 2002 clearly
9 was not concerned about any risk because he appears on
10 that programme in shadow and talks about his
11 deployments. And yet, sir, you are not prepared to tell
12 us why it is you think that his cover name shouldn't be
13 disclosed, particularly in your November criteria which
14 I know are simply aspirational in some ways.
15 You know, he fits one of your criteria. A manager
16 who ought to be accountable in his real name, let alone
17 his cover name. And so with HN58 you told us "Actually
18 I take the view that there is some risk to his personal
19 safety and I'm not prepared to take that risk"; in this
20 case I know you tell us nothing, but the risk assessment
21 makes plain that there is no risk.
22 So we say that there is absolutely no justification
23 for not revealing his cover name. You say that you are
24 entitled to tell us nothing, that there is no public law
25 difficulty with you telling us nothing, that you can

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1 disclose these documents that take a completely contrary
 2 position to yours, that he can appear on a programme in
 3 2002 and yet it is fine, just so I understand it, to
 4 tell us absolutely nothing. And that is a justified
 5 position. Obviously sir --
 6 THE CHAIR: You make an assertion of fact which I will have
 7 to look into. I certainly will do that. If that
 8 assertion of fact is wrong, then --
 9 MS SIKAND: We will take it back.
 10 THE CHAIR: Yes.
 11 MS SIKAND: If we are wrong, we will take it back. But,
 12 sir, as you know, we are very careful about the kinds of
 13 assertions we make about officers.
 14 THE CHAIR: Certainly, I am aware of that. But even the
 15 best informed insider can sometimes make mistakes.
 16 I don't know whether this is a mistake or not. It is
 17 something I will check.
 18 MS SIKAND: That is fine. If we are wrong, we will correct
 19 that position, sir. Because we are just not in the
 20 business of making assertions for the sake of it.
 21 THE CHAIR: I know. I accept that.
 22 MS SIKAND: It is just not the way in which Mr Francis likes
 23 to operate.
 24 So then --
 25 THE CHAIR: Have you finished on 109?

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1 MS SIKAND: I have.
 2 MR HALL: No, thank you.
 3 MS SIKAND: I haven't finished, sorry. Sir, Mr Francis
 4 reminds me to make the point that I think I made in my
 5 written submissions, that he's very -- I speak to it at
 6 paragraph 24 that his own concerns appear to be largely
 7 about the undercover officers he managed and the media
 8 intrusion of his real identity is confirmed. And simply
 9 that his concerns about those who he managed obviously
 10 don't make much sense because each of those who he
 11 managed knows who he is, and if they were minded to out
 12 him, they haven't done so thus far.
 13 But it is Mr Francis's view that those who he
 14 managed will be more likely to out him if you allow him
 15 to be cloaked with anonymity because they would probably
 16 take the view that he ought to be accountable in the way
 17 that you think officers in his band, managers in the
 18 particular significant period, ought to be accountable.
 19 So we say that should be actually a consideration
 20 and you should consider in the round that it would be in
 21 his interests to actually disclose his cover name or
 22 consider whether that level of secrecy is consistent
 23 when you look at the decisions you may or may not make
 24 in relation to those who he did manage.
 25

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1 Submissions on behalf of Peter Francis by MS SIKAND re HN125
 2 MS SIKAND: Moving on to 125. That decision, sir, is based
 3 upon his medical condition. We have said that it is
 4 obviously appropriate to factor in physical and
 5 psychological conditions. But once more it seems to us
 6 that a full risk assessment would actually reassure this
 7 officer and make it much more likely that he would be
 8 less stressed by the idea of his cover name being
 9 released, because on a risk assessment point of view it
 10 is unlikely there would be any real risk emanating from
 11 his infiltration of one left wing group in the 1980s.
 12 THE CHAIR: Again, if you read the note -- I know it is
 13 written in spare language -- but if you do read the note
 14 with care you will see that I have expert medical
 15 opinion that he has an incurable progressive medical
 16 condition. Not a psychiatric condition.
 17 MS SIKAND: Sorry? Sorry, sir, I may have misread it.
 18 I thought the point about it was that his stress would
 19 increase and that stress would then impact upon his
 20 neurological condition.
 21 THE CHAIR: Forgive me. The evidence which I have, which is
 22 closed for reasons of confidentiality only, is that he
 23 suffers from an incurable progressive medical condition
 24 and has done for 35 years.
 25 MS SIKAND: Yes.

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1 THE CHAIR: It is a condition which is affected by stress
 2 and the medical opinion, which I have summarised there,
 3 is that the stress of participating in the Inquiry would
 4 cause relapse and deterioration, not any threat from
 5 those in the group he infiltrated.
 6 MS SIKAND: So any kind of participation of any kind.
 7 THE CHAIR: Yes.
 8 MS SIKAND: All right. It is one of those situations where
 9 he appears to be another one of those officers who was
 10 not provided any treatment in relation to his
 11 psychological symptoms.
 12 THE CHAIR: Forget psychological symptoms. This is not
 13 about psychological symptoms.
 14 MS SIKAND: It is in the sense that they add to his stress.
 15 THE CHAIR: This is the impact of stress on an incurable
 16 progressive medical condition. It is quite different
 17 from saying he's psychiatrically disturbed.
 18 MS SIKAND: No, no, sir. We are talking at cross-purposes.
 19 The point is the stress is a psychological symptom which
 20 adds to his neurological condition.
 21 THE CHAIR: I have unequivocal medical evidence that the
 22 stress of participation in the Inquiry will cause
 23 relapse and deterioration.
 24 MS SIKAND: Sir obviously we would not want that to happen.
 25 THE CHAIR: Of course. There were a handful of cases where

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1 the medical condition of the officer or a relation of
2 the officer is such that I really cannot subject them to
3 it. This is one such.
4 MS SIKAND: All right, sir.
5 Submissions on behalf of Peter Francis by MS SIKAND re HN337
6 MS SIKAND: So then we move on to HN337.
7 THE CHAIR: Yes.
8 MS SIKAND: As you have indicated in your open note, and as
9 we know, he is another Special Demonstration Squad
10 manager.
11 THE CHAIR: Yes.
12 MS SIKAND: And he is one who had some responsibility for
13 HN81.
14 THE CHAIR: Yes.
15 MS SIKAND: Mr Francis tells me he was in fact the detective
16 inspector in charge immediately after Bob Lambert.
17 THE CHAIR: Yes. He will know that from his own experience
18 and knowledge.
19 MS SIKAND: Yes.
20 Once more what we have here is contrary to your
21 November indications. This is the third Special
22 Demonstration Squad manager in the crucial period that
23 you say you are going to give the full cloak of
24 anonymity to.
25 THE CHAIR: Again, I hope -- well I am sure you have read

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1 the reasons, and how do I deal with somebody over whom
2 I have no powers of compulsion at all?
3 MS SIKAND: Well, the difficulty is that he appears on the
4 face of it, when one looks at the risk assessment -- and
5 you can tell me if I'm reading in or reading in wrongly,
6 but at page 7 it says:
7 "N337 would like to continue to cooperate with the
8 Undercover Policing Inquiry process. A caveat is
9 given."
10 So it may not be rocket science that that caveat is
11 that you give him the full cloak of anonymity that you
12 are minded to.
13 Whilst I understand the limits of your powers of
14 compulsion, it seems to us that this is not a principled
15 decision.
16 THE CHAIR: It is based on practicalities. Can I put the
17 position to you starkly, not necessarily in relation to
18 this individual former officer but for all those who are
19 abroad who have valuable evidence to give. The Inquiry
20 has only one weapon in its armoury, which is to say we
21 will not accept the condition upon which you are willing
22 to cooperate with the Inquiry, namely we will -- because
23 there is no reason not to -- publish your cover or real
24 name or both.
25 That's the only weapon in the armoury, and it cannot

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1 always lawfully be deployed. Against that, where
2 someone in the position of HN337 demonstrates
3 a willingness to cooperate with the Inquiry and in fact
4 the only method of obtaining evidence from him which is
5 of significance is to go along with their request, then
6 how do I choose between those two options? Either I can
7 publish the cover name at least --
8 MS SIKAND: And the real name?
9 THE CHAIR: The real name there may be problems with, but
10 I can publish the cover name and that will at least
11 enable those against whom this officer was deployed to
12 be able to give evidence about the deployment. I will
13 then have just evidence from them and I will not have
14 critical evidence from this officer about his time as
15 a manager.
16 MS SIKAND: It may be the other evidence is more important
17 because if this officer is prepared to bargain with you,
18 sir, this is not an officer who is voluntarily assisting
19 you. He is really manipulating the Inquiry's process.
20 THE CHAIR: You are reading a bit too much into it. The
21 plain fact is I have no power of compulsion over those
22 who are abroad and who intend to remain there.
23 MS SIKAND: That may be so, sir, but we are still of the
24 view that you have to make principled decisions, not --
25 I know you are making a practical one -- because it

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1 sends out the wrong message sir.
2 THE CHAIR: Forget about messages for a moment. Let's look
3 at the consequences of taking the principled decision.
4 The principled decision may be that the risk of
5 publishing the cover name is, in terms of its impact on
6 the private and family life of the officer, tolerable.
7 MS SIKAND: It would seem so. He's not even in the
8 jurisdiction.
9 THE CHAIR: Travel is not that difficult, but forget that
10 for a moment.
11 MS SIKAND: But it is an extra hurdle.
12 THE CHAIR: There are all sorts of ways in which someone's
13 private and family life can be interfered with, not just
14 by physical confrontation but by other means as well.
15 MS SIKAND: Yes, but it is a balancing exercise when it an
16 is important --
17 THE CHAIR: Hang on. Let us assume for a moment that
18 everything being equal, the cover name can be released.
19 The consequence of that will be that the officer
20 will say --
21 MS SIKAND: "I'm not cooperating".
22 THE CHAIR: -- "If you are going to do that, I'm not going
23 to cooperate with you. You can get your evidence from
24 elsewhere".
25 We will lose evidence of considerable value in this

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1 instance if that were to occur.
 2 MS SIKAND: It would only be of considerable value if it
 3 could be tested. I mean, if this is an officer who on
 4 the face of it is being non-cooperative, doesn't see the
 5 value in actually cooperating with the Inquiry, and is
 6 using his jurisdiction as an advantage over simply
 7 saying "Yes, I do want to give evidence", it may be that
 8 what you do secure from him will be of little value in
 9 any event. It may be that you have now given him
 10 a cloak when he's not going to help.
 11 THE CHAIR: I have explained in paragraph 38 that there are
 12 considerations affecting the private and family life.
 13 MS SIKAND: Sir, you posit that as a possible alternative
 14 justification.
 15 THE CHAIR: No, I was trying, by putting it as starkly as
 16 I could, to see where your submission leads. It leads
 17 at the very least to a significant risk that evidence of
 18 real value to the inquiry will be lost.
 19 MS SIKAND: Yes, but the reason why we push this issue, sir,
 20 is because, you know, it is very easy to remove yourself
 21 from the jurisdiction if you want to.
 22 THE CHAIR: It is.
 23 MS SIKAND: And, you know, if that is the sort of trade-off
 24 that you publicly are prepared to make, then it may not
 25 bode well for other officers.

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1 THE CHAIR: The evidence of this witness is of significance,
 2 not least because he was responsible for the recruitment
 3 and initial deployment of HN81, and because, as you
 4 rightly point out, he was operational second in command
 5 at a time of great interest to the Inquiry.
 6 MS SIKAND: Yes.
 7 THE CHAIR: To say that his evidence can't be tested I think
 8 is an overstatement, because those who worked under and
 9 with him know who he is. Your client knows who he is.
 10 Statements can be made about his discharge of his
 11 managerial duties and questions can be asked about it.
 12 It can be tested, not perhaps to the full extent, as it
 13 would be capable of being tested if he were
 14 understanding in a witness box in this jurisdiction, but
 15 it can be tested.
 16 MS SIKAND: But sir, you have gone further with him than you
 17 did even with HN58 when you have said even some of his
 18 evidence about the discharge of his managerial duties
 19 will be given in closed session.
 20 THE CHAIR: No, evidence about the discharge of managerial
 21 duties in relation to operations which create a real
 22 risk to the safety of those who participated in them
 23 will be given in closed session for reasons of their
 24 safety. Not the safety of the manager. Although such
 25 considerations could arise, but that's not the principal

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1 reason.
 2 MS SIKAND: But the evidence about HN91 and the other issues
 3 of great significance to the Inquiry you envisage being
 4 in open session?
 5 THE CHAIR: Yes.
 6 MS SIKAND: With your disguise type --
 7 THE CHAIR: I have no idea how the evidence will be handled.
 8 MS SIKAND: You have not reached that stage yet.
 9 THE CHAIR: Given that this individual lives abroad, the
 10 probability is that there will have to be a television
 11 link or an audio link or one or the other.
 12 MS SIKAND: It may be, sir, that you will keep his
 13 corporation under strict review.
 14 THE CHAIR: Of course. Bluntly if the only method of
 15 getting evidence about his discharge of his managerial
 16 duties is for others to speak about it and he refuses to
 17 cooperate at all, then it may be necessary to revisit
 18 the decision that I'm minded to make about his
 19 anonymity.
 20 MS SIKAND: In the sense that you are now making a practical
 21 decision but if that practicality has no place, you will
 22 then make a principled decision.
 23 THE CHAIR: The decision is underpinned by principle but I'm
 24 determined to get at the truth and to receive the
 25 evidence that is necessary for me to fulfil that aim.

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1 This evidence, I think, is necessary to permit me to do
 2 that. Therefore I am going to try to get it. There is
 3 nothing unprincipled about that.
 4 MS SIKAND: We say, sir, that the process that you -- that
 5 the balancing exercise doesn't weigh into the balance
 6 somebody saying:
 7 "I won't do this unless you do that."
 8 So that is just holding you to ransom. That's not
 9 part of your, you know, balancing exercise.
 10 THE CHAIR: One can phrase it in a variety of ways, some of
 11 which are more polite than others. But faced with
 12 someone who is willing to cooperate but who can't be
 13 compelled to do so if he is minded not to cooperate, my
 14 inclination is to accept the willingness to cooperate
 15 and to give effect to the concerns which he has
 16 expressed about disclosure of real or cover name.
 17 MS SIKAND: Sir, Mr Francis asks me to make the point that
 18 you probably know. That means if you give this officer
 19 complete anonymity, as you are minded to, basically the
 20 entire management team for the time that HN81 was
 21 operating will have been given anonymity by you. We
 22 have Bob Lambert, though. That's just a fact, I think.
 23 THE CHAIR: I can't off the top of my head either accept or
 24 disagree with that proposition. I would have to go back
 25 and look at the documents.

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1 MS SIKAND: You can take that. Mr Francis has an
2 encyclopaedic memory.
3 THE CHAIR: Indeed. As a participant in the events, he
4 knows more about them at the moment than I do.
5 MS SIKAND: Yes.
6 Submissions on behalf of Peter Francis by MS SIKAND re HN341
7 MS SIKAND: So then moving on to HN341. It is difficult to
8 understand this decision in terms of you talk about
9 a risk. We understand that. We will try to unpack your
10 assertion, sir, that it is unlikely that members of the
11 groups against which HN341 was deployed would wish to
12 provide evidence to the Inquiry. So far as we are
13 aware, it is not as if those groups have disappeared or
14 are no longer in existence. So, we would want to probe
15 you as to why you reach that conclusion that it is
16 unlikely.
17 THE CHAIR: I set out two reasons, one of which is that and
18 the other is the grave illness of HN341's partner, which
19 I do know about but which for reasons of medical
20 confidentiality are dealt with entirely in closed.
21 MS SIKAND: Yes, you say, as I understand it, that even
22 disclosure of his cover name would impact upon her
23 illness.
24 THE CHAIR: Yes.
25 MS SIKAND: But, sir, could I just ask you to reconsider

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1 this balancing exercise in the same way that I did the
2 other officers, in the sense of don't start from the
3 position that somebody has no -- that there will be no
4 valuable evidence given about him or her by others
5 simply on an analysis which I'm not sure about. Maybe
6 this is another long-term partner, still married person,
7 but --
8 THE CHAIR: I have expressed myself slightly differently
9 here. It is unlikely that members of the groups against
10 which HN341 was deployed would wish to provide evidence
11 to the Inquiry.
12 MS SIKAND: So that is a different -- the likelihood is for
13 a different reason. The unlikelihood is for a different
14 reason.
15 THE CHAIR: Yes. We all know the spectrum of political,
16 environmental and other views who are represented
17 amongst the non-state core participants. And we all
18 know -- Mr Francis will know as well as anybody -- that
19 there are groups against whom Special Demonstration
20 Squad officers were deployed who are not represented at
21 all in this Inquiry.
22 MS SIKAND: No, and would not want to be core participants,
23 I am sure.
24 THE CHAIR: Pretty unlikely they want to play any part in it
25 whatsoever. But at any rate they have not shown any

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1 enthusiasm so far.
2 MS SIKAND: Well, sir, unless I can assist any further.
3 THE CHAIR: That is extremely helpful. As always,
4 Ms Sikand, I do welcome your submissions, even if you
5 feel you are pushing the ball uphill and not getting
6 anywhere near the top, and back down it goes and you
7 have to start again.
8 MS SIKAND: I hope one day, sir, I will actually maybe reach
9 the entrance to the goalposts or get up the hill
10 anything just a little bit closer sir. It would just
11 give me something to hope for and live for before the
12 next hearing of a procedural nature.
13 THE CHAIR: Yes. I think your time will come when we get on
14 to substantive issues. I have no doubt at all --
15 MS SIKAND: Sir that is no comfort whatsoever.
16 THE CHAIR: No, but you and Mr Francis clearly have a great
17 deal to contribute to the substantive part of the
18 Inquiry. I hope that the endurance that you speak of
19 will carry him that far because it is really important
20 that I hear what he has to say about that, and that
21 where it disagrees with the evidence of others their
22 evidence is properly tested, and I have every confidence
23 that you will test it properly.
24 MS SIKAND: Sir, I hope you hear us when we say that we take
25 the view that his endurance has been tested in these

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1 procedural hearings to date and that his confidence is
2 chipping away, particularly in relation to your
3 decision-making process in relation to HN58 and now the
4 position you have adopted in relation to HN109. It is
5 not enough to say "Just wait until 2019 or 2020", it
6 doesn't provide sufficient reassurance, sir.
7 THE CHAIR: The anonymity process is proving to be
8 troublesome and lengthy.
9 MS SIKAND: Yes.
10 THE CHAIR: I am anxious to get through it so that we can
11 get down to substantive issues. It is a process which
12 has to be gone through. It is deeply frustrating for
13 all sorts of people, I'm well aware of that. I do not
14 for one moment claim that every decision that I'm minded
15 to make, even every decision when looking back that
16 I will have made, would be accepted by everybody as the
17 right decision in the instance in the particular case.
18 I have to do my best. And I believe that when this
19 process is completed, everybody will see that in
20 relation to the Special Demonstration Squad enough
21 material is going to be dealt with publicly, some of it
22 in real name, some of it in cover name, to permit me to
23 get at the truth about the deployments.
24 MS SIKAND: Sir, before I sit down, we would welcome some
25 reasoning in relation to your decision to grant HN109

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1 complete anonymity, and we would welcome your
2 investigation into his role in True Spies and whether or
3 not we are correct in our assertion.
4 THE CHAIR: You have raised that question. I'm going to
5 look into it, and I will see what the outcome is.
6 MS SIKAND: Thank you, sir.
7 THE CHAIR: Thank you very much for your help.
8 Now I think we are on to the vexed question, are we
9 not, of the Lambert paper?
10 Who wants to go first on that? Mr Barr, anything
11 you want to say about that before we start?
12 MR BARR: Sir, there is not anything I wish to say. We have
13 considered all of the written submissions which were
14 made and we have noted that there is essentially
15 agreement as to the applicable legal principles.
16 THE CHAIR: Yes.
17 Mr Hall or Mr Sanders, which of you is going to go
18 first? The reason I raised this question arose out of
19 a closed representation that was made by your team to
20 me. You may recall it.
21 Submissions on behalf of the police officers
22 represented by the designated lawyer team by MR SANDERS
23 re The Lambert Paper.
24 MR SANDERS: Yes, sir, I think the sequence of events was
25 the reference to it in connection with HN155 at an

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1 earlier point --
2 THE CHAIR: Yes.
3 MR SANDERS: -- that then came out and went back into
4 a later point.
5 THE CHAIR: I am hoping in the course of today to hear the
6 submissions from you about HN155. I have invited
7 responses, but I have not yet made a minded to decision.
8 I have simply invited responses and I hope to have them.
9 MR SANDERS: Yes, we got clarification on that yesterday,
10 thank you, sir.
11 THE CHAIR: Yes.
12 MR SANDERS: In regard to what has been referred to as the
13 Lambert report, sir, there are really two issues. Issue
14 1 is the issue that is being raised for ventilation
15 today, which is as set out in your directions of
16 21 February: are Mr Evans and Mr Lewis entitled to
17 publish further information that is contained in the
18 report?
19 There is then a second issue which is not strictly
20 live today, which we have covered more briefly in our
21 written submissions, which is if so, if the conclusion
22 is arrived at, yes, they are so entitled, what relevance
23 does that have? Does that mean that the making of
24 a restriction order would be futile?
25 We will address you more briefly on that but

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1 focusing on the first question, the question identified
2 in the direction.
3 THE CHAIR: Essentially there is no disagreement between you
4 and the Guardian about the legal principles to be
5 applied. I am not intending to rule upon them. It is
6 not part of my function. Indeed I may not be permitted
7 to do so by the rules.
8 But I am grateful for the submissions made, because
9 it clears my mind about the underlying legal question
10 and it is not controversial.
11 I had hoped that I would be able to go on to ask
12 consequential questions, if there was agreement or if
13 there was disagreement that had been resolved or the
14 lines were clear, because the position is that
15 information which is confidential is capable of being
16 restrained by injunction, but it would require legal
17 proceedings to be brought to achieve that if the person
18 in possession of the confidential information were
19 minded to make it public.
20 MR SANDERS: Sir, yes.
21 THE CHAIR: There has been no appetite for bringing legal
22 proceedings in respect of obviously confidential
23 documents either principally on behalf of the
24 Metropolitan Police or anybody else. I agree it is
25 pretty unlikely that an individual officer would have

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1 done so in the past. I don't for the moment know
2 whether there is any current appetite for doing so now
3 that they are, as it were, collectively represented.
4 MR SANDERS: There certainly is an appetite for doing so, if
5 it becomes necessary. So the answer to that is yes.
6 There may be separate issues about funding and so on,
7 and representation.
8 THE CHAIR: You say separate issues about funding. Funding
9 from what source? The Inquiry could not fund such an
10 application.
11 MR SANDERS: Exactly so. The client or clients of mine
12 seeking to obtain an injunction may have to request an
13 indemnity from the Metropolitan Police Service or may
14 have to urge the Metropolitan Police Service to bring
15 proceedings as lead claimant. So there may be issues
16 about that.
17 In terms of appetite, the clients I have whose names
18 appear in the Lambert report would, if there were any
19 intimation that they were to be published, wish to seek
20 to restrain that.
21 THE CHAIR: Yes.
22 MR SANDERS: And in my submission they would have strong
23 grounds for doing so.
24 As you have just mentioned it, sir, the submissions
25 on behalf of the Guardian raised this jurisdictional

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1 point about whether you are entitled to determine or
 2 rule upon this issue which we of course accept that you
 3 are not --
 4 THE CHAIR: I'm not. I have never held myself out as being
 5 entitled to.
 6 MR SANDERS: We have approached it on the basis that as with
 7 so many other issues you need to form a view about what
 8 is possible and what is likely, and as part of that you
 9 need, rightly in our submission, sir, to consider this
 10 without purporting in some way to determine it.
 11 THE CHAIR: Quite. You and I are on the same page there.
 12 I don't think my task is simply to ask what does the law
 13 provide. Assuming it is put fully into motion what will
 14 the answer be? I would be doing something impermissible
 15 and not a useful exercise.
 16 MR SANDERS: Sir, yes.
 17 So, we have raised -- and these are really as it
 18 were preliminary objections -- we raised a number of
 19 points about the report itself and about whether
 20 Mr Evans and Mr Lewis ever had a copy. I know what your
 21 response is, sir, but if I could just --
 22 THE CHAIR: Of course.
 23 MR SANDERS: -- make the point. You have reached certain
 24 assumptions about that. We simply say that they are
 25 just that, they are assumptions. We understand --

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1 THE CHAIR: I would call them inferences which is the
 2 politer word for speculation or assumption, and I set
 3 out the reasons for it in the open note.
 4 MR SANDERS: Yes. So question 1, did Mr Evans and Mr Lewis,
 5 were they ever given a copy of the report? If so, was
 6 it redacted? Did it include everything that those with
 7 an unredacted copy can see, or was it partial?
 8 Did they retain it? Did they hand it back? Did
 9 they give undertakings to the source not to publish
 10 certain parts of it or more of it, and so on. So there
 11 are factual questions which must, we say, dictate or
 12 have to be satisfied before there could be any question
 13 of further information from the report being published.
 14 Then there is the question of have they got any
 15 intention to publish it.
 16 None of those issues are addressed in the Guardian's
 17 submissions. It is no criticism of them --
 18 THE CHAIR: You asked them whether they were going to
 19 publish and they asked who would apply to stop them.
 20 Unsurprisingly neither side were willing to answer those
 21 questions.
 22 MR SANDERS: We would apply to stop them.
 23 THE CHAIR: But if you were asked at this stage to say on
 24 whose behalf might you apply to stop them, I think the
 25 answer would be "Get lost", wouldn't it?

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1 MR SANDERS: If the Guardian were to ask on whose behalf
 2 would we apply to stop publication? Supposing it were
 3 intimidated -- and I am just using the Guardian as a label
 4 for the journalism organisation.
 5 THE CHAIR: Yes.
 6 MR SANDERS: Supposing the Guardian were to intimate that
 7 they were going to publish tomorrow the real name of
 8 HN155. In that situation HN155 would wish to seek to
 9 restrain them from doing so, on the basis that his name
 10 and his identity as an undercover officer is
 11 confidential, and on the basis that it is his private
 12 information and that its publication would be a misuse
 13 of that information. And it would be him seeking to
 14 restrain publication.
 15 It may be that the Metropolitan Police Service would
 16 be a co-claimant or the only claimant and would pursue
 17 his interests on his behalf. It may be him doing it off
 18 his own bat. But that is the position.
 19 THE CHAIR: In relation to 155, you invite me to determine
 20 his application on the footing that if the Guardian --
 21 the journalists -- have got a full copy of the report,
 22 and if they are minded to publish the name, and if they
 23 were to tell you beforehand that is what they were
 24 minded to do and being responsible journalists they may
 25 well do, then you would apply for an injunction to

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1 restrain them from doing so?
 2 MR SANDERS: Yes, sir.
 3 THE CHAIR: On the basis that the real name is confidential?
 4 MR SANDERS: Yes. Strictly speaking what is confidential is
 5 the information that the person with that real name was
 6 an undercover officer. He obviously goes around in his
 7 daily life using that name. It is not in and of itself
 8 confidential. What is confidential is the link to an
 9 undercover deployment with the Special Demonstration
 10 Squad.
 11 To go through the ingredients, that information is
 12 not in the public domain. The fact that the document --
 13 or a document containing that information -- is not
 14 confined within only police premises and is out in the
 15 wider world doesn't mean that the information is in the
 16 public domain. It is not generally accessible
 17 information.
 18 The report of course contains not only the names of
 19 individuals who were undercover officers, it contains
 20 the names of non-police individuals as well and it
 21 contains their confidential information and their
 22 private information.
 23 It is significant in my submission that the Guardian
 24 don't say in their submissions: no, there is nothing in
 25 the report that could be said to be confidential or

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1 private.
2 THE CHAIR: They have asserted in their open submissions on
3 the first round of anonymity applications that it is in
4 the public interest that the cover and real names of all
5 officers should be published.
6 MR SANDERS: They have, although if one looks at the book,
7 the limited information about 155 that's in the
8 report -- and that appears in the book -- is anonymised.
9 THE CHAIR: Yes.
10 MR SANDERS: So one may infer from that that it was
11 concluded that there wasn't a sufficiently strong public
12 interest justifying or requiring the revelation of his
13 real name in the book.
14 THE CHAIR: Another possibility is that for good
15 journalistic reasons they thought it better to approach
16 the individual that they had anonymised in the book to
17 see whether he would provide information to them.
18 MR SANDERS: Sir, yes. As you said in the minded to note --
19 I think it was mind to 5 -- they sought to write to him.
20 THE CHAIR: They did write to him.
21 MR SANDERS: Well, they wrote a letter that reached him,
22 strictly speaking.
23 THE CHAIR: Quite. It was an ingenious way to find him and
24 they did so.
25 MR SANDERS: They didn't find him.

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1 THE CHAIR: All right. They managed to get a letter to him.
2 MR SANDERS: And the book obscures some information about
3 him.
4 THE CHAIR: Yes, it does. But it is not a bad journalistic
5 technique to say to somebody from whom you wish to get
6 information: we know quite a lot about you already but
7 we would like to hear your own side of the story in
8 rather greater detail than we know it now.
9 In relation to one former undercover officer whose
10 cover name was published by the Inquiry, something
11 precisely to that effect happened.
12 MR SANDERS: Sir, indeed.
13 So in terms of the public interest in the name being
14 published, I accept there could be an argument about
15 that.
16 THE CHAIR: Yes.
17 MR SANDERS: And it would depend on what the defendant, the
18 person seeking to publish, knows about the individual
19 and what they say is the public interest in the
20 revelation of that individual's name. I know as
21 a general proposition the Guardian's submissions were:
22 everyone should be named, real and cover. But that's
23 just as a starting point. I can't conceive -- I don't
24 think anybody could seriously read their submissions as
25 saying that a name should be published in circumstances

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1 where that individual following publication will be
2 killed. That can't be the position of the Guardian.
3 THE CHAIR: Agreed.
4 MR SANDERS: It can't be the position that they would say
5 a name should be published if the consequence of
6 publication is that the individual would commit suicide.
7 These are the outliers. So although they have asserted
8 there is a public interest in these names generally,
9 they don't, in my submission, in reality, assert that
10 that is necessarily the case, and they would have to
11 accept that it may not necessarily be the case.
12 In relation to not only 155 but the other
13 individuals mentioned in the report, Mr Evans and
14 Mr Lewis, assuming they have a copy of the report,
15 assuming it was not redacted and so on, they would know
16 some names. They don't know necessarily what the
17 deployment was of those named individuals.
18 THE CHAIR: If they have the report, they know what is said
19 about it in the report.
20 MR SANDERS: Yes, exactly. That is far from comprehensive.
21 In relation to my clients, it is relatively anecdotal
22 and relatively peripheral, the way in which they appear.
23 Mr Evans and Mr Lewis don't have that information.
24 They don't know anything about the personal
25 circumstances --

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1 THE CHAIR: I don't agree with the former proposition that
2 it is -- it forms quite a significant part of the
3 report, the paper.
4 MR SANDERS: Yes, apologies sir. What I mean by peripheral
5 is that it is not about their deployments. It is by and
6 large about other issues.
7 THE CHAIR: Indeed, but those are other issues into which
8 I have to inquire.
9 MR SANDERS: I understand that. But from the perspective of
10 Mr Evans and Mr Lewis, what do they know about the
11 individuals' names, what could they say those
12 individuals did and in terms of the public interest in
13 revealing that they were undercover officers. Simply
14 the report itself is very limited. Also what they don't
15 know is what is the Operation Herne nominal number for
16 these people named.
17 THE CHAIR: That is true, but I expect --
18 MR SANDERS: Apart from the one that you have given them.
19 THE CHAIR: That is true, but I suspect it is a pretty
20 flimsy barrier.
21 In any event, I understand your submission, which is
22 that there is something real to be argued about and you
23 will argue it if you can. Ie, if you are funded.
24 MR SANDERS: Sir, yes. I should say it is not just if we
25 get advance notice. An application could be made -- an

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|---|--|
| <p>1 emergency application -- as you know any hour of the day 2 or night following publication and in relation to both 3 breach of confidence and misuse of private information, 4 although more so misuse of private information. The 5 fact of short-lived prior publication doesn't preclude 6 restraint. So if it appears in the Guardian, there 7 would still be a case for restraint. 8 THE CHAIR: Right. 9 MR SANDERS: In my submission, it must be significant, it 10 must be telling, that Mr Evans and Mr Lewis chose not to 11 put these names in the book. That must reflect some 12 kind of caution about that, and it can't be consistent 13 with them thinking there is a real strong public 14 interest in these names being known. So that is one 15 important factor. 16 They know -- well, they know that they have limited 17 information about those involved, they know that 18 article 8 rights are engaged, and also article 2 and 3 19 rights in some cases may arguably be engaged. 20 So in my submission, first they know there is an 21 assertion to that effect. 22 THE CHAIR: They do in, I think, one instance, yes. 23 MR SANDERS: They know it is more than one. They know that 24 from our submissions it is made clear. 25 So from our perspective, they are unlikely to</p> <p style="text-align: center;">Page 81</p> | <p>1 which in your thinking is of significance. Because that 2 will be a very similar exercise for any judge in the 3 interim applications court considering an injunction. 4 Because the question is -- 5 THE CHAIR: I think I would be trespassing there into 6 territory which is beyond my statutory capacity and 7 I don't think I should do that. 8 I'm more concerned with identifying whether there is 9 a real issue to be determined and whether or not, if 10 there is, steps will be taken to enforce your side of 11 the issue. 12 You have reassured me about that. I'm therefore 13 looking to the future and on the basis of that 14 assurance, the view that I had formed that it would be 15 futile to make an order would not be right. 16 MR SANDERS: Sir, yes. I will come back to the futility in 17 the second issue. 18 Just pausing and looking specifically at 155 because 19 from our perspective it is unclear to us why 20 a particular approach is taken to 155 in minded to 21 number 5, when the same approach is not intimated in 22 relation to other police officers and other -- 23 THE CHAIR: The reasoning is simple. I can explain it. It 24 is because they have written to him. 25 MR SANDERS: If that is the issue, we simply say it is not</p> <p style="text-align: center;">Page 83</p> |
| <p>1 publish this information and even less likely to publish 2 the information without notice. Whether or not there is 3 notice, there are grounds for seeking to restrain 4 publication. 5 THE CHAIR: And that is an issue which I cannot and do not 6 intend to determine. If there some plausible argument 7 about it, then it is for others to deal with it, not me. 8 MR SANDERS: Absolutely, sir, although we do place -- and 9 invite you to place -- some weight on your assessment 10 about publication. So take an example of 155, the 11 minded to note is that publication of his real name -- 12 because there is no application in relation to his cover 13 name, cover name will be published, individuals will be 14 able to come forward and so on. In relation to his real 15 name, your assessment is that publication of that would 16 be incompatible with his article 8 rights. 17 THE CHAIR: At the moment that is what I am minded to 18 conclude. 19 MR SANDERS: Yes, minded to. 20 THE CHAIR: But in the light of the submissions I received 21 today I'm going to go back over that and put out 22 a proper reasoned minded to decision, and I am going to 23 reconsider. 24 MR SANDERS: Sir, absolutely. But in circumstances where 25 you have come to that view, that should be something</p> <p style="text-align: center;">Page 82</p> | <p>1 relevant that they have written to him. So what? They 2 attempted to contact him. They sent a letter which 3 reached him. He didn't reply. The fact that they did 4 that doesn't tell us anything about the likelihood of 5 them seeking to publish this, or the likelihood of them 6 being able to publish it. 7 We don't know. They may have written to other 8 people, or attempted to write to other people mentioned 9 in the report. They may have sought to track down 10 people mentioned in the report. We just don't know. 11 And for somehow HN155 to suffer an adverse consequence 12 because he was the one that they reached, in my 13 submission there is no logical reason for that to 14 happen. 15 THE CHAIR: I was rather hoping that we might finish these 16 submissions and then adjourn rather than adjourn and 17 then come back and carry on. 18 MR SANDERS: I'm absolutely happy to press on. I don't have 19 much further to go. 20 THE CHAIR: Your position as explained now is much clearer 21 than it was in my mind at least when all this exercise 22 started. Now I understand it, I'm persuaded by you that 23 the exercise would not be futile for the reasons that 24 you have explained. Therefore it comes down to what 25 should the Inquiry do in the exercise of its powers</p> <p style="text-align: center;">Page 84</p> |

1 under section 19 to restrict or not restrict names.
 2 MR SANDERS: Sir, yes. In relation to 155, we would say
 3 unless you revisit it and change your mind about this,
 4 but if you were minded --
 5 THE CHAIR: I will issue a proper minded to note and you
 6 will then have the opportunity of addressing things if
 7 the decision I was minded to make was adverse to your
 8 client's interests. So I don't think you need to say
 9 anything more about that at this stage. You will have
 10 a proper opportunity to address it then.
 11 MR SANDERS: I am very grateful.
 12 Just very briefly on the second issue and the
 13 futility point is just to set out our stall on that,
 14 which is even if it were the case that Mr Evans and
 15 Mr Lewis say in relation to 155 intended to publish his
 16 name, sought to publish his name and we were unable --
 17 were that to come to pass, we were going to be unable to
 18 prevent that. Even if that were the case, it would not
 19 in my submission justify refusal of a restriction order.
 20 THE CHAIR: That argument has consequences. It would mean
 21 that when I read in the risk assessment that the sterile
 22 corridor is fragile because journalists know about it,
 23 I would have to ignore that as an element in the
 24 equation and assume that the law would be rigorously
 25 applied and that therefore the sterile corridor would be

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1 maintained. That is not a realistic attitude.
 2 MR SANDERS: Apologies, sir, my point was supposing I were
 3 wrong on issue 1, and supposing it were the case that
 4 Mr Evans and Mr Lewis were in one year's time going to
 5 publish HN155's name and I was not going to be able to
 6 get an injunction to stop that. Even if that were the
 7 case, it doesn't mean a restriction order now is futile
 8 or that a restriction order now shouldn't be made. That
 9 follows from your status and your function as a public
 10 authority.
 11 If we are right that publication of his name, his
 12 real name, the fact he was an undercover officer is
 13 incompatible with his convention rights, then section 6
 14 of the Human Rights Act prohibits you from taking that
 15 step.
 16 The fact that it is going to happen in a year's time
 17 would not justify you doing that. Because effectively
 18 you would be saying here is HN155. He's in a room, he's
 19 inside. There is a door into the outside into the cold.
 20 Even if in a year's time someone is going to come and
 21 that throw him out of that door, that doesn't allow you
 22 to do that now simply because it is going to happen
 23 further on down the track.
 24 THE CHAIR: I don't accept that submission. But I don't
 25 think it arises.

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1 MR SANDERS: I have made the point. If it ever does arise,
 2 we can always revisit --
 3 THE CHAIR: We can revisit it as need be. Thank you very
 4 much for your submissions, as always.
 5 MR SANDERS: Thank you, sir.
 6 THE CHAIR: Mr Hall, do you have a distinct position from
 7 Mr Sanders?
 8 MR HALL: No, I have nothing useful to add at all on that.
 9 I would like one minute if I may --
 10 THE CHAIR: Of course, you take the time that you like.
 11 Submissions on behalf of the Metropolitan Police Service,
 12 Commissioner's Legal Team by MR HALL
 13 MR HALL: This is simply to respond very, very briefly to
 14 the submission of Ms Kaufmann this morning. It would be
 15 odd, I think, to leave that unaddressed.
 16 She of course made a submission that either the
 17 chairman should recuse himself or that a means should be
 18 found to increase the panel. Sir, no formal application
 19 was made, and in any event she did not stay to see it
 20 through.
 21 If that was an attempt to put pressure on the
 22 Inquiry to avoid looking at the individual applications
 23 for anonymity on their own merits, applying the May 2016
 24 ruling, then we would invite you to ignore it.
 25 If an application for a change in the Inquiry panel

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1 is pursued -- and I don't know if that would be
 2 addressed to you or to the Secretary of State, I simply
 3 don't know --
 4 THE CHAIR: I actually have the last word on that.
 5 MR HALL: Well, if an application then was made to you
 6 formally, then obviously that would have to be addressed
 7 at the appropriate time if a formal application was
 8 made, but so far as anonymity is concerned, we invite
 9 you to disregard that threat and continue to decide the
 10 applications on their merits on a case-by-case basis.
 11 THE CHAIR: Unsurprisingly, I agree.
 12 MR HALL: Thank you.
 13 MS SIKAND: Sir, may I just clarify to Mr Hall that the
 14 procedure of appointing a panel is to write to the
 15 Secretary of State first.
 16 THE CHAIR: Certainly.
 17 MS SIKAND: Or it's the Home Secretary, depending who set up
 18 the Inquiry. It is happening in Grenfell and other
 19 inquiries, we know it happened in Lawrence. So the
 20 procedure is to write to the Home Secretary who then
 21 consults with you.
 22 THE CHAIR: Yes, that's already been done.
 23 MS SIKAND: That has, as I understand it, been done.
 24 THE CHAIR: Yes.
 25 MS SIKAND: As I understand Ms Kaufmann's submission, she

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1 was inviting you to take a positive approach to that
 2 consultation that you will be having. Insofar as --
 3 THE CHAIR: Why do you put it in the future?
 4 MS SIKAND: Or if you have had it already. Because you have
 5 not told us and I don't know. I was simply correcting
 6 Mr Hall's assertion or assumption that there needs to be
 7 an application to you. There doesn't. There has
 8 already been a letter to the Home Secretary.
 9 THE CHAIR: No, no. The route is to ask the Home Secretary,
 10 but ultimately I have the last word on it.
 11 MS SIKAND: Sir, yes. Although it is expressed as
 12 a consultation. Whatever it is, if you do have the last
 13 word, then the plea to you was to be positive about it
 14 and sit with a panel. That is my understanding of her
 15 submission.
 16 THE CHAIR: I think her submission had better speak for
 17 itself. I think for you and I to discuss it in her
 18 absence would be impolite.
 19 MS SIKAND: No, of course not, sir. I was just correcting
 20 the procedural approach to the question of a panel.
 21 THE CHAIR: Yes. That I think is right, Mr Hall. That's
 22 strictly the route by which you do these things.
 23 Anything else?
 24 MR HALL: No thank you.
 25 THE CHAIR: No. Thank you all.

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1 (1.17 pm)
 2 (The hearing adjourned to a date to be fixed)
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