

POLICE SPIES **OUT**of**LIVES**

Open Inquiry, Open Justice

A guide to the submission by non-police non-state Core Participants to the Public Inquiry into Undercover Policing, in response to police and state requests for secrecy.

About this guide

On 22-23 March 2016 a crucial hearing will take place in London, as part of the Public Inquiry into Undercover Policing. The two day preliminary hearing is set to determine if the inquiry will be open and transparent or whether it will be a secret process, which would largely exclude both the public and non-state Core Participants.

In advance of the hearing, different sets of Core Participants to the Inquiry have made submissions, setting out their legal arguments for the Chair's consideration.

In their submissions, several police bodies and the Home Office **argued that the Inquiry should largely be held in secret and that the policy of Neither Confirm Nor Deny should be upheld throughout**. In a previous briefing, we provided an overview of these secrecy submissions.

Now the non-police non-state Core Participants (NSPCP) – that is, people who are part of the inquiry because they were affected by the police infiltrations – have had their submission published on the Inquiry website. They support the principle of open justice, and **argue that it is essential that the public inquiry is just that: public**.

For this crucial hearing, we believe strongly that every member of the public should have a chance to understand what is at stake.

To aid this understanding, we have produced this guide to the 'open justice' submission, which consists almost wholly of extracts from the submission itself.

This summary is an essential companion to our earlier Q&A briefing on the police and state requests for secrecy. That earlier briefing can be found here:

<https://policespiesoutoflives.org.uk/uploads/2016/03/Secrets-beyond-lies-briefing.pdf>

All of the above submissions, and others, can be found at the Inquiry website:

<https://www.ucpi.org.uk/witness-statements-and-submissions/>

Overview of the legal framework for the submissions and the factors that the inquiry Chair must consider when deciding these issues.

What are ‘restrictions’ in a public inquiry?

‘Restrictions’ refer to restriction of access to both people attending at the Inquiry and documents considered as part of the Inquiry.

The main legislation which sets out the rules governing public inquiries is the Inquiries Act 2005 and the Inquiry Rules 2006.

Section 19 of the Act gives the Chairman (Lord Justice Pitchford) and the Minister who called the Inquiry (the Home Secretary, Theresa May) the power to create ‘closed material procedures’ where restrictions are placed on attendance and/or to disclosure of documents provided to the Inquiry.

These restrictions can *only* be put in place if

- 1) they are required by law;
- 2) if the Chairman or Minister considers it assists the Inquiry in fulfilling its aims; or
- 3) if it is necessary in the public interest.

It is expected that the majority of restriction applications will be made on public interest grounds. Unsurprisingly, state core participants and non-state core participants’ hold conflicting views on what is in the public interest within the context of the Inquiry.

A restriction imposed by the Chairman is done by way of a ‘restriction order’; a restriction imposed by the Minister is done by way of a ‘restriction notice’. The Inquiry has stated that it expects the state core participants to apply for restriction orders from the Chairman, rather than restriction notices from the Minister.

What has the public Inquiry team said so far about restrictions?

The Inquiry legal advisers have highlighted the ‘strong public interest in the Inquiry being able to carry out its work and get to the bottom of the matters which it is required to investigate.’ They have stated that where a restriction application is made on public interest grounds, ‘the public interest in the restriction sought has to be weighed in the balance against the public interest in an open and thorough Inquiry which will address the public concerns which have led to the Inquiry being set up.’

*The above overview was originally published in **Secrets beyond lies: the police and state’s requests for secrecy** <https://policespiesoutoflives.org.uk/uploads/2016/03/Secrets-beyond-lies-briefing.pdf>*

Key:

We believe it is valuable for the public to read the actual words submitted by those affected by undercover policing, so we have quoted extensively and used the following key:

All text in black is taken directly from the submission

With the relevant paragraph number shown on the right.

Some text from the submission **is shown in bold**; this is **our added emphasis**. The submission itself is plain text.

Grey text is our summarising, to the best of our understanding.

MPS = Metropolitan Police Service

NCND = Neither Confirm Nor Deny

NPSCPs = Non-Police non-State Core Participants in the Public Inquiry

Introduction

The submission begins:

"The central premise of these submissions is that **if this Inquiry is to be effective and fulfil its terms of reference, it must be open**. Any application for a restriction order must, therefore, be approached (as counsel to the Inquiry rightly point out) as an exception to **the primary position of open justice**; it must be fully justified and must place no greater restriction on openness than is strictly necessary."

para 1

The submission seeks to "assist the Inquiry" in examining legal principles applicable to restrictions. But, it goes on to say, it first has to address NCND (which, as it spells out later, has no legal basis).

"**NCND has to be addressed first**, because if the Inquiry were to adopt the approach advocated by the [police and Home Office submissions] the consequence, ... whilst paying lip service to a balancing of public interests, ... would in fact, as the [police] accept, result in an almost entirely secret Inquiry:"

para 3

"Such secrecy would render the Inquiry unable to function, because without openness the Inquiry cannot be thorough or effective. **Unless it is thorough and effective it cannot fulfil its terms of reference and allay public concern.**"

para 5

Part 1: Why the Inquiry must be open [and not mirror NCND]

Context of the inquiry is not serious and organised crime, but political freedom and democratic process

"**It is important to be clear about the context of this Inquiry.** It is not an inquiry into the use of undercover policing in the context of serious and organised crime, although

much of the police submissions and evidence erroneously adopt that focus. The context is **covert policing of individuals and groups, not based on suspicion of criminality, but because of their political views and/or involvement in justice campaigns.** This context goes to **the heart of our democracy and the free exercise by its citizens of their fundamental civil and political rights."**

para 9

The submission sets out reasons for the **"serious public concern"**, which led to the establishment of the Inquiry. These are listed completely later in this document (see reference to para 59).

"If the Inquiry hears much of the evidence from the police in secret, **it has no effective means of testing that evidence:** it will be entirely dependent on self-disclosure by the police in secret. **This is in the context of the mass destruction of, and serious and sustained failures to disclose, relevant material** on the part of the MPS uncovered by the Ellison review and in the miscarriages of justice cases."

p14

"It cannot sensibly be suggested in light of this history that an inquiry that is dependent on self-disclosure by the police in secret could be thorough ... **It is fanciful to expect that officers will unilaterally volunteer all misconduct in the process of giving evidence in secret.** "

p15

The claim that the Inquiry could be thorough and effective with just its conclusions made public is

"wholly misconceived. [...] The Inquiry will simply not be able to draw valid conclusions without hearing evidence from those affected by undercover policing. And those affected cannot give meaningful (or indeed, in the cases of the many who do not know that they were spied upon, any) evidence if they **remain in the dark about what in fact took place.**"

p17

Suggestions that officers would be at risk of harm without NCND are "insulting and wholly unjustified"; restriction orders must be a measure of last resort

"The NPSCPs wish to put it on record that they **do not accept that any officers are likely to be at risk of harm from disclosure of their identities** as a result of their infiltration of the political, environmental and social justice movements in which the NPSCPs were involved. Certainly in respect of the UCOs who have been publicly named to date, none has come to any harm or demonstrated any perceived need to hide. Further, the NPSCPs are **deeply concerned that some of the SCPs appear to suggest that officers will face risk of harm from the NPSCPs themselves** or other members of the groups of which they were members. They find this **hugely insulting and wholly unjustified.**"

para 20

The submission points out that the duty of care to officers lies with the police themselves, and that more identities are likely to become public due to activists' own research. It further points out that both these facts exist with or without the Inquiry.

“if, which is not accepted (save in exceptional circumstances), there is a need for protective measures in respect of an officer ... measures are likely to need to be put in place by the Commissioner in any event.”

para 23

i.e. if there were ever to be an exceptional circumstance where an officer is in need of protection of their identity, the police would need to take steps unrelated to the Inquiry in order to provide that protection. As regards to the Inquiry, the police could still argue for a specific restriction order for a specific circumstance, and even then,

"only if the Chairman is satisfied that such measures would be inadequate should a restriction order be granted."

para 25

NCND should itself be subject to the Inquiry's questioning

“NCND is first and foremost a stance adopted by the security and intelligence services whose officials are deployed in intelligence gathering operations. It is **neither a rule of law nor a legal principle.**”

para 27

It would have to be adopted consistently, as the police themselves say. Those making this submission

"do not accept that NCND is consistently or genuinely applied by the MPS. This is borne out by the experience of some NPSCPs in their past dealings ... and is supported by submissions on behalf of Peter Francis [former undercover, turned whistleblower]. ... The NPSCPs contend that NCND has rather been seized on by the MPS as a means through which, under the cloak of law enforcement, **misconduct by undercover officers has, at worst, been encouraged and, at least, been allowed to go unchecked,** resulting in a lack of accountability in either event."

para 29

“In light of this, the NPSCPs contend that the misuse of **NCND should itself be a matter to be examined by the Inquiry** and it is likely that the Chairman will need to make recommendations in relation to it at the conclusion of the Inquiry.”

para 30

Part 2: How the Inquiry should approach NCND-related protections i.e. why NCND is not necessary

The submission breaks down the “component interests that the NCND stance seeks to protect”

para 38

and concludes:

"If those primary interests can be protected by other means that are less destructive of the Inquiry's ability to function, then such other means should be adopted."

para 39

It draws attention to the Met's own departures from NCND, including in relation to Jim Boyling (a reference to the Met's announcement of his disciplinary action) and

“the True Spies documentary. No evidence has been adduced as to **any adverse effect on the confidence of the CHIS** [Covert Human Intelligent Sources – includes undercover officers] **community, on recruitment, or co-operation from foreign agencies** in the light of those disclosures [by the Met themselves].”

para 44 a

It points out that courts will disclose identities if the balance of the public interest is in favour, and so

“neither past nor future CHIS **should ever be given an expectation of secrecy forever** come what may.”

para 44 b

It adds that the police submissions

“**fail to take account of the very exceptional circumstances** of this Inquiry, arising out the very significant level of public concern.”

para 44 c

The submission goes on to set out in detail how the Chair himself can make decisions about disclosure of specific evidence and gives examples of what could happen in the exceptional circumstances of a specific identity having to be kept secret.

Finally, the Chair is

“invited to give a preliminary ruling indicating that ... [the inquiry] will not mirror NCND by imposing restriction orders in respect of all UCOs whose identities have not yet been officially confirmed; On the contrary ... [that it will] **approach each application for a restriction order by weighing only those public interests** for and against disclosure **that affect the particular case in question.**”

para 55

The submission goes on to set out the very public interests that might be considered.

Part 3: The legal principles applicable to individual restriction order applications, including relevant public interest factors calling for and against openness

“They will apply in varying combinations depending upon the circumstances of the particular case.”

para 57

The submission draws out times when a level of secrecy would be appropriate, including to protect the police’s victims from suffering further invasions of privacy. In other places the submission addresses the public interest arguments put forward by the police.

The public interest in the Chairman being able to pursue his terms of reference as widely and deeply as he considers necessary.

Fulfilling the terms of reference is of “the utmost importance”, therefore

“the Chair is permitted to specify only such restrictions as he considers to be conducive to the inquiry fulfilling its terms of reference, or in the public interest.”

para 58

“The Inquiry **was established because of the serious public concern** arising from evidence that officers from these two units had engaged in long term spying on individuals involved in political and social justice campaigns. **It is not simply that there is evidence of abuse. It is a matter of established fact**, clear from the various official investigations and the police’s own admissions, that officers operating undercover in the SDS and NPOIU have:-

- a. Engaged in **wholly unjustified interference with the democratic freedoms of civil society** by spying on political and social justice campaigns **with no apparent legitimate purpose with respect to the investigation and prevention of crime and/or disproportionately;**
- b. **Subjected serving Labour M.Ps to surveillance with no legitimate purpose**, fundamentally undermining the democratic process contrary to the spirit if not the letter of the Wilson doctrine;
- c. **Infiltrated the Stephen Lawrence campaign and other social justice campaigns against police racial discrimination;**
- d. **Deceived the Stephen Lawrence Inquiry about their activities;**
- e. Gathered **intelligence on legal and political campaigns concerning police accountability and deaths in police custody/at the hands of police officers;**
- f. **Gathered information on people’s political activities in order to create illegal employment blacklists;**
- g. **Engaged in long term intimate sexual relationships with women while undercover including fathering children;**
- h. Failed to disclose their undercover role in the course of prosecutions thereby **misleading the courts and causing serious miscarriages of justice;**
- i. **Used the identities of dead babies as cover names.**

para 59

“These ‘appalling’¹ practices **obviously affect the population as a whole**. They fundamentally erode trust in the ability of the police to use this highly intrusive covert technique within the strict confines of the law.... If there is to be any prospect of its future use commanding public confidence and legitimacy, **the public must be put in a position where it can have the necessary confidence** that it will operate in a way that is **strictly justified, proportionate and free from abuse.** “

para 60

The public interest in the Inquiry obtaining all relevant evidence

"There is no reason to believe that the full extent of any abuse has now been identified... The only means by which to be confident of uncovering further evidence is if the **names of the officers who operated undercover are disclosed. Only then can those affected ... recognise that they were victims of abuse and come forward** with their evidence. Anything less will inevitably compromise the ability of the inquiry to conduct a deep and thorough investigation and so fulfil its terms of reference."

para 63

¹ The word used by the Home Secretary in announcing the Inquiry.

The public interest in securing public confidence in the outcome of this Inquiry

"As Mark Kennedy's long term abusive conduct demonstrates, the introduction of a supposedly robust regime under the Regulation of Investigatory Powers Act 2000, has not provided the protections that are required to ensure that undercover policing is conducted lawfully. **Public confidence can only be restored** (and that of the Secretary of State) before the whole technique falls once again under a blanket of secrecy, **if the public can be confident that the Inquiry has been fully able to identify the nature, extent and causes of past abuse.... Of equal importance is that the public and the victims are not left feeling that there has been a cover up.** The legitimacy of future undercover policing and this Inquiry turns, therefore, on setting the highest possible premium on openness.

para 66

The public interest in victims of abuse being able to participate in the Inquiry (including the right to the truth)

The Inquiry Rules state that victims have a right to participate in the process. Restriction orders in favour of police secrecy will remove this right, and they then become only witnesses to the process.

"Each group of victims has suffered **a grave infringement of their democratic human rights and/or freedoms.** They each have a resulting pressing interest in uncovering the truth about what has happened to them"

para 68

"The **right to the truth** is emerging as **a key interest underpinning the state's duty to investigate serious human rights abuses**"

para 69

"**Some of the victims have already written to the Inquiry indicating that they do not intend to participate if the Inquiry proceeds in secret.** Indeed, they would be unable meaningfully to do so in the absence of disclosure. **NPSCPs cannot be expected to give evidence about often the most personal and sensitive aspects of their private lives in a vacuum.** "

para 70

"The indication that NPSCPs will not participate without disclosure is not stated as a threat. Rather it **reflects the desperate need of the victims who have suffered incalculable harm to uncover the truth.** They have ceaselessly sought to do so and their efforts have been constantly frustrated by the MPS. The Inquiry provides the only opportunity for the MPS to account to them for the abuse their officers perpetrated under the cover of secrecy and deception. "

para 72

The public interest in public access and freedom of expression

"Section 18 of the Inquiries Act 2005 enacts the **principle of open justice** so that the **public are free to receive and impart information emanating from the inquiry.**"

para 73

"Given the **huge public importance** of the matters which the Inquiry is addressing, great value attaches to freedom to impart and receive information in relation to it. "

para 75

The public interest in political and community participation

"Concern and suspicion about unjustified police infiltration has a chilling effect on **political and community participation**...in relation to those who have participated in family justice campaigns, it has **the effect of inhibiting their access to inquests and other legal processes for fear that it will expose them to covert surveillance and targeting.**"

para 76

The public interest in rectifying miscarriages of justice

"It is well established that **ensuring that a miscarriage of justice does not occur will override the public interest in non-disclosure of an informant**"

para 77

"It is an express function of this Inquiry to identify any potential miscarriages of justice arising as a result of an undercover policing operation or its non-disclosure...**the criminal courts are looking to this Inquiry to identify other potential miscarriages of justice and to fulfil the requirements of open justice.** "

para 79

"It is equally plain that **this cannot be a process that is solely dependent on self-disclosure by the police.** ... it would be impossible for the Inquiry to process [all the available material] without input from the potential victims. ... It is therefore essential for the victims to be able to come forward ... However, **in order for victims to know to come forward, the cover names of the officers involved must be made public.**"

para 80

The public interest in protecting victims against further abuse

This sections sets out protection to be given to victims of the police:

"**Some of the abuses perpetrated by the undercover officers took place within the most intimate sphere of the victims' private lives.** The MPS has itself acknowledged ... the enormity of the harm that was caused. Some NSPCs do not want to expose themselves to further intrusion but wish to protect their privacy by maintaining anonymity. [...] **There is an obvious public interest in the Inquiry not compounding the intense harm already done to victims** by unnecessarily exposing them to the public gaze."

para 81

It also draws attention to the fact that the police hold

"a considerable amount of **information ... pertaining to the private lives of NPSCPs and other members of the public.** The overwhelming majority of such material will be of no relevance to ... this Inquiry **save in the respect that its collection and retention constitutes a grave invasion of privacy.** It is submitted that where private information is disclosed to the Inquiry it should be treated as sensitive personal data and ... **should not form any part of the Inquiry process.** The Chairman is requested to put in place a mechanism whereby the individual concerned will be informed of the Inquiry's receipt of such material ... in order that the individual concerned may make representations and, if necessary, apply for a restriction order."

para 82

The public interest in not revealing tactics and methods deployed in the course of undercover policing

This section deals with the police’s argument that protection of tactics and methods is in the public interest.

“The MPS submit that this public interest extends to all methods or tactics save those that are illegitimate and are not and never will be used.”

para 83

The submission points out that the police’s wording allows them a loophole: if they think that a tactic, e.g. sexual relations, might become legal and therefore be deployed in the future, then they will exclude it from being examined by this inquiry. So the submission closes this loophole:

“The NPSCPs submit that there is **no public interest in protecting a method that at the time of its deployment was illegitimate** irrespective of whether it might lawfully be deployed in the future.”

para 83

[Editors’ note: Imagining that the police might one day attempt to make undercover relationships legal in no way endorses that move. If such a move were attempted we would vigorously contest it. There is no justification for undercover relationships.]

The submission goes on to argue that the weight of public interest lies in scrutiny:

“The fact that a technique was examined as an illegitimate method at this Inquiry would likely lead the public to conclude that whatever else undercover operatives are doing they are not using that particular technique.”

para 83

and states that

“where **methods or techniques have already been publicly disclosed** ... there can be no justification for granting a restriction order in respect of these. The information is already public “

para 85

Legal principles: Section 19(4) [of the Inquiries Act]

The submission outlines two public interests that the police and Home Office

“rely as weighing in favour of a restriction order, namely the public interest in avoiding or reducing a risk of harm to undercover police officers, and the public interest in maintaining promises of confidentiality given by the MPS to the undercover officers “

para 86

As well as underlining the previous points (that the likelihood of harm is being exaggerated by the police, and that the police themselves have a responsibility for protect against the risk of harm), the submission points out that

“**Consideration must also ... be given to the harm caused to the victims of undercover policing** by the continued denial of the truth “

para 89

As for the promise of confidentiality, it notes that the Inquiry’s legal counsel so far

“requires the MPS to provide evidence of what assurances were given to each officer and in what circumstances”

para 90

The submission argues that

“insofar as any assurance was unqualified it was improperly given. The MPS well knew or ought to have known that there might be circumstances in which they themselves might consider it necessary to disclose. Moreover, they knew or ought to have known that circumstances might arise where disclosure was beyond their control because the decision would vest in a different body such as a court.

para 90

“Finally, the Inquiry should consider whether the anonymity which that promise has conferred has been abused by the officer who is still seeking to hide under it. A duty of confidence is a creature of equity and those seeking to benefit from its obligations should have clean hands “

para 90

Legal principles: Human Rights Act (HRA), Articles 2 and 3 ECHR

‘Article 2’ of the European Convention on Human Rights is the right to life. Article 3 is the prohibition against cruel, inhuman and degrading treatment or punishment.

“The steps that it is reasonable to take to protect life necessarily vary according to the circumstances.”

para 93

Care must be taken not to undermine every other factor:

“The greater [a] countervailing interest the more reasonable it may become to find alternative ways to [protect life] even if those alternatives are more costly.”

para 93

The submission underlines the point that the responsibility for the safety of officers lies with the police.

“This approach is necessary in order for the Inquiry to function, and also, in some cases, to give effect to the victims’ rights to effective participation under Article 3, given the extent of harm they have suffered as a result of illegitimate undercover policing and continue to suffer by virtue of the ongoing denial of disclosure.”

para 93

The submission turns to the police’s submission that the Inquiry

“should adopt the same degree of deference ... as the courts show to the intelligence service’s assessment of threats to national security. [...] the NPSCPs submit that no such deference is justified. In none of the cases... have the courts stated that deference must be given to the assessment of the police.”

para 94

“Finally, on risk of harm, in relation to all those officers who have already had their identities disclosed, whether officially or not, the extent of whatever risk they face from disclosure has already materialised. ... The imposition of a restriction order seeking to protect their identity will serve no purpose.

para 96

Legal principles: Articles 8 and 10 ECHR

There is merit in invoking Article 8 (Right to a private and family life, without undue interference from the state) and 10 (Right to Freedom of Expression) in evaluating competing public interests:

“because where the interests they seek to protect are at stake, their structure, as qualified rights, provides a useful framework for ensuring that all relevant factors are put into the balance and appropriately weighted.”

para 98

The submission goes on to deal with the possible invocation of Article 8 by undercover officers, as the Met suggested in their submission. It lists factors to be balanced against this, including a) the Inquiry fulfilling its terms of reference, b) securing public confidence in the Inquiry, c) the rights of non-state Core Participants to participate in the Inquiry, and

- d. “The rights of the victims, in accordance with Articles 3, 8 and 10, to receive information and to know the truth.
- e. The rights of the victims to participate in political and social justice activities without unlawful interference;
- f. The rights of the press and public, in accordance with Article 10, to receive and impart information and know the truth.

para 102

“The NPSCPs submit that **it is inconceivable that when these interests are weighed in the balance against an officer’s Article 8 interests, those of the officer will prevail.**”

para 103

In contrast, Article 8 is important for NPSCPs

“who will wish to protect their identities when giving evidence to the tribunal. For example, **some of the women who were deceived into having intimate sexual relationships with undercover officers will seek a restriction order granting them anonymity** in order to protect what is obviously one of the most intimate aspects of a person’s private lives.”

para 104

Conclusion

“In summary, and for all of the reasons set out above, the NPSCPs make the following overarching submissions:

- a. This **Inquiry cannot function without openness**. Any application for a restriction order must be seen as a departure from this and must be fully justified.
- b. If the Inquiry were to hear the police evidence in secret, as the SCPs contend, it would be **unable to fulfil its terms of reference and it would do nothing to allay public concern**.
- c. In view of the history leading to its inception, it would be **farcical for the Inquiry to be entirely dependent on self-disclosure** by the police in secret.

- d. Any fair, thorough and credible assessment of the matters falling within its terms of reference requires the **input of those affected by undercover policing**, but that **cannot be achieved without disclosure**.
- e. This is both in order to **enable victims of undercover policing**, who are not currently aware that this is the case, **to come forward** and also to enable those who have already come forward **to participate in a meaningful way**.
- f. The link between openness and effectiveness in the particular context of this Inquiry is such that **restriction orders can only be a measure of last resort** in the individual case, where they are justified on very careful scrutiny of the evidence and balancing of the competing public interests and other measures that are less destructive of the efficacy of the Inquiry have been rejected.
- g. In making this assessment, **consideration must also be given as to whether a restriction order will in fact offer any genuine protection**, given the prospects of the information becoming public by other means in any event.
- h. Further, in light of the particular context of this Inquiry, an **NCND stance has no role to play**.
- i. There is no rational basis on which to conclude that all disclosures made within the context of this Inquiry will be damaging to the confidence of the wider CHIS community or foreign partner agencies. Indeed **confidence may be enhanced by a thorough and open Inquiry that can ensure that similar failings do not reoccur**.
- j. The powers of the Inquiry to control its own disclosure process and the scope of the public evidence and questioning mean that **it is not necessary or appropriate for the Inquiry to weigh in the balance** in the context of each restriction order application **any interest in the consistent application of an NCND response**.

para 105

“Further submissions will be made as to the weight to be attached to the competing factors at the appropriate time, but it should be made clear that **the NPSCPs will submit that all the names of undercover officers must be disclosed**. save in the rarest of cases, where nothing less than a real and immediate risk to life arises and the Inquiry is satisfied that the MPS will not in any event have to provide protection against such a risk.”

para 106

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

Appendix: Submission headings & paragraph numbers:

Submission in full: <https://www.ucpi.org.uk/wp-content/uploads/2016/03/160311-submissions-on-the-legal-approach-to-restriction-orders-non-state-non-police.pdf>

Introduction and Neither Confirm Nor Deny (NCND)..... para 1-7

Structure of the submission para 8

Part 1: Why this Inquiry must be open para 9-25

Restriction orders must be a measure of last resort *para 19-25*

Part 2: The approach to be adopted by the Inquiry to NCND

2.1 The NCND stance and its component interests para 26-45

NCND is a stance adopted by state agencies involved in intelligence gathering para27-31

The state agencies cannot apply an NCND stance to the Inquiry itself but are inviting the Inquiry to mirror it para32-35

The component elements of NCND para36-41

The effect of disclosures made by the Inquiry on the wider interests of maintaining confidence in the confidentiality of CHIS para42-45

2.2 The alternative to NCND in the context of this Inquiry para 46-55

Part 3: The legal principles applicable to individual restriction order applications

inc. Relevant public interest factors calling for and against openness para 56-104

The public interest in the Chairman being able to pursue his terms of reference as widely and deeply as he considers necessary. para 58-61

The public interest in the Inquiry obtaining all relevant evidence para 62-65

The public interest in securing public confidence in the outcome of this Inquiry para 66

The public interest in victims of abuse being able to participate in the Inquiry para 67-72

The public interest in public access and freedom of expression para 73-75

The public interest in political and community participation para 76

The public interest in rectifying miscarriages of justice para 77-80

The public interest in protecting victims against further abuse para 81-82

The public interest in not revealing tactics and methods deployed in the course of undercover policing [response to police and state submissions] para 83-85

The public interests identified in Section. 19(4) para 86-90

Public interest immunity under s. 19(3)(a). para 91-92

Human Rights Act (HRA), Articles 2 and 3 European Convention on Human Rights (ECHR) para 93-96

Articles 8 and 10 para 97-104

Conclusion para 105-106