

# THE INDEPENDENT INQUIRY RELATING TO AFGHANISTAN

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## FURTHER OPEN SUBMISSIONS OF THE ROYAL MILITARY POLICE IN RESPONSE TO THE SUBMISSIONS OF THE BBC

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### Introduction

1. The Royal Military Police (“RMP”) has reflected on the submissions made on behalf of the BBC on 5 July 2023. This note sets out the RMP’s written response.

### Investigations

2. The RMP submits that the *Contempt of Court Act 1981* (“the 1981 Act”) does not provide an appropriate framework for the analysis of the appropriate terms of the restriction order sought. Neither the test in s.2 of that Act (that there is a ‘substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced’) nor the concept of ‘active’ proceedings in s.2 and Sch 1 of that Act are apt for a situation where the RMP or DSCC are engaged in criminal investigations, as opposed to one in which criminal proceedings have actually been instituted. The changes sought will act to prevent the restriction order having the effect it should properly have.
3. When information is sought about an ongoing criminal investigation, it is unexceptional for public interest immunity to be applied on a broader basis than the protections provided under the 1981 Act, including before proceedings are ‘active’. It is not limited to cases where there is a substantial risk of seriously impeding or prejudicing the investigation. The nature of the balancing exercise (which the RMP accepts will need to be kept under review) means the extent of the risk must be considered when deciding whether restrictions are justified.
4. Ordinarily, a police force conducting a criminal investigation would have a reasonable expectation that the fact and details of that investigation would remain confidential, with the disclosure of any information being at the investigator’s discretion. That provides assurance that suspects will not be aware of the fact or details of the investigation and therefore avoids the risk of suspects taking steps to hinder or frustrate the investigation.
5. But in this case, the Inquiry rightly has the ability to request, and *in extremis* compel, the RMP/DSCC to provide information about its ongoing investigations. The RMP is committed to working with the Inquiry to enable the provision of such information to take place without prejudicing either the work of the Inquiry, or the efficient and effective

conduct of those investigations. Onward disclosure of that information by the Inquiry, to the public or to CPs, would undermine the ability of the RMP/DSCC to conduct proper investigations. It would put the RMP/DSCC in a substantially less advantageous position than in any other criminal investigation if onward disclosure was permitted save where the test in s.2 of the 1981 Act applied to active proceedings. The RMP submits that the test of whether the information ‘would be prejudicial to any ongoing criminal investigation’ is both necessary and sufficiently clear to protect the integrity of those investigations into offences of the most serious nature.

6. The RMP is committed to working with the Inquiry on applying this principle to individual documents and categories of document.

### **Covert investigative tactics**

7. The BBC submitted that the ‘decision-making process’ by which decisions were made to adopt (or not) or abandon covert tactics should be heard in OPEN. That is wholly consistent with both the RMP’s summary of its application, and the RMP’s oral submissions. Indeed, in RMP’s oral application, the following was stated:

“... we can ... confirm that in the course of Operation Northmoor, a covert investigative strategy was pursued, but there was subsequently a decision to adopt a different approach.”

8. The RMP does not take issue with the general proposition that facts about the use of police tactics in the investigations relevant to this Inquiry which are already in the public domain should not be subject to a restriction order.

### **Interpretation**

9. The RMP is content for ¶14 of its draft restriction order to be deleted and for ‘indirect’ to have its ordinary meaning. The RMP submits that ‘indirect disclosure’ encompasses the potential for mosaic identification, which ¶14 was intended to address.

### **Attendance**

10. Paul Greaney K.C. will not be present at the hearing on 6<sup>th</sup> July 2023. This is due to a longstanding family commitment. He intends no discourtesy to the Chair (who is aware of the nature of the commitment) or to any Core Participant, or media organisation. John Goss will deal with the oral response.

**5 July 2023**

**PAUL GREANEY KC**

**JOHN GOSS**