

### **Updated Terms of Reference for Operation Herne.**

The original Terms of Reference for Operation Herne were agreed by Chief Constable Creedon and Deputy Commissioner Mackey on the 21st June 2013. The Terms of Reference now require amendment due to significant developments in relation to the NPOIU.

Originally Operation Herne undertook investigation of a specific allegation into an officer from the NPOIU. During this enquiry it became apparent that other aspects of the NPOIU work required a greater understanding.

Further to this Operation Herne played a pivotal role in examining possible miscarriages of justice with Mark Ellison QC. This work has involved both the NPOIU and the SDS and also necessitated the need for a change in Operation Herne's Terms of Reference.

The multi-agency work on miscarriages was coordinated by Mr Ellison QC who requested that Operation Herne examined files relating to the SDS and NPOIU so as to establish if there were possible miscarriages of justice resulting from undercover policing activity that was not fully revealed or disclosed. The request from Mr Ellison was supported by a letter from the Home Secretary to Chief Constable Creedon, the independent lead for Operation Herne, coupled with a commitment to supportive funding from the Home Office. Whilst extensive research was carried out and over 80 potential cases were identified, the scale of the task has meant that the work is not completed.

In March 2015 Mr Ellison QC reported to the Home Secretary and the Attorney General. Within the report he commented upon the lack of revelation to the prosecution and described the difficulties involved in establishing the facts, largely through the unavailability of police, court and prosecution records and the challenge of linking covert intelligence reporting to arrests and convictions. Mr Ellison QC made recommendations that further work in relation to possible miscarriages was conducted by the recently announced public Inquiry led by LJ Pitchford. This matter has been referred to the Home Secretary for clarification.

Operation Herne has secured a vast amount of documentation relating to the NPOIU, a national unit that worked across the United Kingdom and into Europe for over a decade. This documentation has been entered onto the ALTIA system to enable searching functions to be completed for that specific task. It will be necessary to review the documentation to identify any elements that require further investigation or reporting to the appropriate authority.

It will also be vital to enable a clear understanding of the role of the NPOIU undercover work which operated in similar manner to the SDS. This will greatly assist in understanding the full picture of undercover policing at this time and assist the forthcoming public inquiry; the Terms of Reference for the public inquiry specifically mention the SDS and NPOIU although they also embrace undercover policing in England and Wales.

Mr Creedon has therefore agreed to undertake a review of the NPOIU using the Operation Herne team to provide an objective independent review of the unit.

Operation Herne will therefore examine the creation and strategic direction, oversight and tasking of the NPOIU and how the unit operated throughout its existence. It is understood that the unit was created in 1999 and operated until it was closed in 2011. This work will seek to discover:

- The initial establishment, the rationale and terms of reference for the NPOIU.
- The role of the Home Office in relation to the NPOIU
- The role of the Metropolitan Police Service in relation to the NPOIU
- The funding for the NPOIU
- How the NPOIU was deployed and tasked.
- The management, oversight and accountability mechanism for the NPOIU.
- The legal, regulatory and ethical frameworks within which the NPOIU operated.
- The organisations, groups and subjects the NPOIU were targeting and/or reporting on
- The reporting mechanism – both in terms of intelligence and evidential reporting
- High profile operations the NPOIU were involved in
- The selection, recruitment, training and support provided to NPOIU officers.
- The role of the NPOIU in relation to other state agencies.
- The work will not report on anything that would involve breaching the Official Secrets Act or compromising national security.

This review will be conducted to an objective review standard, not a pure evidential standard. This distinction is necessary to allow a full review and cooperation of all involved to inform the process of understanding the work of the NPOIU. Chief Constable Creedon has already written to all Chief Constables in England and Wales concerning the NPOIU. Given the national remit of the unit and the fact that the officers on the unit came from many forces, he has committed to bringing to their attention

any issues in relation to operations or behaviours in their force area, or any matters that they might need to consider in terms of misconduct or gross misconduct in their role as the 'Appropriate Authority'

Operation Herne will then compile a report to encompass all of the above aspects and provide a better understanding of the undercover work undertaken by the NPOIU. The report will be for the National Police Chiefs Council, the Undercover Policing Inquiry team and the Home Office.

Furthermore Operation Herne has been identified as the stated route of access for the Undercover Policing Inquiry to obtain material relevant to the SDS. This urgently required support will be provided but it will place a significantly increased demand upon current resources. This element of the work will be dealt with via a detailed protocol between Herne, the Inquiry and the MPS.

Operation Herne has significant resource challenges given the need to manage the existing documentation and workload through the incident room whilst still conducting criminal and misconduct investigations, researching miscarriages of justice and detailing the history of the SDS and the full range of groups and organisations infiltrated. In order to complete the additional work around the NPOIU and provide support to the Public Inquiry the resource requirement will be scoped and included in to the current review being carried out by the HMIC on behalf of the MPS and the Home Office. The costs associated with resourcing this work will be reimbursed via the MPS or subject of a Home Office Special Grant application.

.....  
Mick Creedon, Chief Constable, Derbyshire Constabulary

.....  
Martin Hewitt, Assistant Commissioner, Metropolitan Police Service

09.00 12/10/2015

DC 1

[REDACTED] - SCO8

**From:** Andrews Rob J - DSPP DPS  
**Sent:** 12 October 2015 08:47 OTH 12  
**To:** 'Creedon, Mick, 2818'; [REDACTED] 1011' OTH 12  
**Cc:** DPS Mailbox - Op Herne MIR  
**Subject:** Operation Herne - Amended TOR  
**Attachments:** Agreed amended Terms of reference..doc

Mark,

I have spoken to the boss on the phone.

Please can you insert his electronic signature on the amended terms of reference and then he will send it down to Mr Hewitt at the Met for his attention and signature.

Once you have both signatures, electronic is fine, please can you return to me so I can enter it into the Incident room.

Many thanks

Rob.

Rob Andrews | SIO

Operation Herne | Attached to the Directorate of Professionalism.

MetPhone: [REDACTED] | Telephone: [REDACTED] | Mobile: [REDACTED]

Address: [REDACTED]

email: [REDACTED]

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**From:** Creedon, Mick, 2818 [mailto:[REDACTED]]  
**Sent:** 08 October 2015 11:42  
**To:** Hewitt Martin - Professionalism PO OTH 13  
**Cc:** Mackey Craig - CommPO; Craddock Steven; [REDACTED] 4804; [REDACTED] 1011; Masters Kirstie E - Operation Herne; Andrews Rob J - DSPP DPS OTH 12  
**Subject:** Re: Operation Herne - TOR

Thanks Martin

I'll go ahead on this basis

Rob

Can we discuss - this just needs to go in the same format as the original TOR, it needs heading up as an amendment and dating (as of now) and can have Martin Hewitt and me as signatories - electronic will be fine.

Once thats done can you retain in the MIR and copies be sent to the MPS team and my office.

Thanks

12/10/2015

D10203

Mick C

Mick Creedon  
Chief Constable  
Derbyshire Constabulary

Sent from my Ipad

On 8 Oct 2015, at 10:45, [REDACTED]

[REDACTED] wrote:

This doesnt cause me any issues

MH

**Martin Hewitt QPM**

**Assistant Commissioner - Professionalism**

Room [REDACTED] New Scotland Yard, Broadway, London SW1H 0BG

tel: [REDACTED] metphone: [REDACTED] mob: [REDACTED] email: [REDACTED]

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**From:** Creedon, Mick, 2818

**Sent:** 07 October 2015 17:33

**To:** Mackey Craig - CommPO; Hewitt Martin - Professionalism PO

**Cc:** Craddock Steven; [REDACTED] 4804; [REDACTED] 1011; Masters

Kirstie E - Operation Herne OTH 13

OTH12

**Subject:** Operation Herne - TOR

Craig/Martin

Please see the attached. Steve and I have drafted up some additional TOR for Herne. The reality is that since we started the investigation has had to include elements of the NPOIU and the unit was referred to in the first major Herne report (they too used the identities tactic as part of their covert legend).

Since then the work has increased for numerous reasons and we have never amended or changed the agreed TOR to take account of the Ellison miscarriage work which again closely involves the NPOIU. You'll both be aware that the Home Sec's commentary, the Ellison review, much of the negative commentary and media coverage and the Public Inquiry all refer directly to the SDS and NPOIU

Are you content with the below - which will be treated as additional to those already agreed. I'm aware that the NPOIU was a national unit, managed through ACPO TAM and only a part of the MPS at the end and post Kennedy. I don't think it realistic or necessary to go out to all 42 forces over this but I have already written to all CC's about the unit and covering their role as the AA should we uncover any misconduct matters etc

12/10/2015

D10203

If you are happy we'll transfer these to a word document with the same format etc as the original TOR and sign them up.

Mick

Mick Creedon  
Chief Constable  
Derbyshire Constabulary

Sent from my Ipad

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