

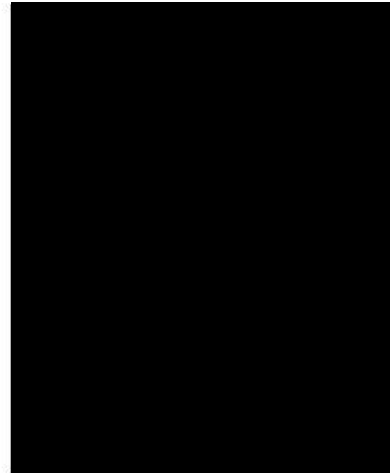


8 April 2019

DESIGNATED LAWYERS (UCPI)

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Solicitor

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Dear Piers

Re: CONSULTATION ON DRAFT MODULE 2(A) ISSUES LIST

1. Introduction

1.1 This letter sets out the DL response to the inquiry's "Draft Issues List for the Special Demonstration Squad Module 2(A)" dated 26 February 2019.

2. General

2.1 Our principal concern is that the language used by the inquiry, first, in describing module 2 and its constituent sub-sections and, secondly, in the drafting of the module 2(a) SDS issues list itself lacks clarity and risks confusion.

2.2 The amended description of module 2 in para.18 of the inquiry's *Strategic Review* is:

Examination of the management and oversight of undercover officers, including their selection, training, supervision, care after the end of an undercover deployment and the legal and regulatory framework within which undercover policing is carried out.

2.3 The above was supplemented by an explanation that module 2 would "involve":

- (a) *managers and administrators from within undercover policing units;*
- (b) *senior managers higher in the chain of command as well as police personnel who handled intelligence provided by undercover police officers;*
- (c) *other government bodies with a connection to undercover policing.*

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2.4 The consultation paper on the draft module 2(a) SDS issues list says it “sets out the issues that the inquiry intends to investigate in relation to the role of managers and administrators from within the [SDS]” including “anyone in a management or administrative position up to and including the officer who commanded the [SDS]” (para.4). Issue 15 also draws a useful distinction between the management, supervision and support of undercover officers.

2.5 So far as concerns the meaning of the terms “management” and “oversight”, the draft module 2(a) SDS issues list differentiates management within the SDS, on the one hand, and oversight of the SDS by external MPS personnel, on the other (issues 187-196 under the sub-heading “Interaction between [SDS] managers and those responsible for overseeing its operation”).

2.6 In our submission, the above language correctly differentiates managers and administrators because not everyone working within the SDS back office can fairly be said to have been a manager or to have had managerial or management responsibilities. In this regard, there were also more junior personnel, including cover officers and support staff, whose status and functions were administrative or subordinate or involved line management in the reporting sense, but not management in the more general sense.

2.7 Our concern is that the draft module 2(a) SDS issues list does not maintain and loses sight of the above distinctions and instead attaches the short-hand label of “manager” to all those falling within module 2 whether or not their roles were managerial, supervisory, supportive or administrative.

2.8 The draft list thus refers almost exclusively to “managers” only (see issues 21, 22, 24, 32, 39-41, 43, 45, 46, 49, 62-67, 70, 72, 88, 96, 104, 111, 113, 114, 119, 123, 124, 132, 136, 139, 148, 155, 161, 163, 164, 167, 169, 171, 173, 180, 188, 189, 195, 198 and 199). By contrast, there is one question about staff who “supported” (rather than “managed” or “supervised”) undercover officers (issue 15), one reference to “back office staff” (issue 173) and one reference to “administrators” which treats them as a species of “manager” (issue 198).

2.9 It is submitted that the net effect of this is to cast doubt on whether the term “managers” is generally intended to include non-managerial “back office staff” and/or “administrators”.

2.10 Furthermore, if this were the intention, it is submitted that it would be wrong for the inquiry to treat or refer to all such personnel as a species of “manager” or to make assumptions or findings of fact about this in advance of its evidential investigation.

2.11 Moreover, the consultation paper and the draft module 2(a) SDS issues list also refer in places to “supervisors” and “supervisors/managers” in a way that casts doubt on the differences between “management” and “supervision” and the meaning to be attributed to references to “managers” which are not accompanied by references to “supervisors” (para.3(a), sub-heading “Role of supervisors/managers - general” and issues 63 and 66-67).

2.12 The above points are not purely semantic. A number of the DLO who worked in the SDS back office and who were not deployed undercover were not and do not consider

themselves to have been part of its management. These individuals will not understand the relevance of the current module 2(a) SDS issues list to their time in the unit or questions directed to them on the basis that they were managers. The current framing and wording of that list are also bound to make them feel that the inquiry has wrongly prejudged the nature of their role and responsibility without hearing from them.

2.13 Furthermore, the apparent suggestion that such individuals were managers is liable to cause them unnecessary anxiety and concern about the implications of the inquiry for them personally. In this regard, it will be remembered that a significant number of these individuals will be giving evidence in their real names and will be the subject of publicity. It would not be fair for such people to be the subject of claims that they were in some way “in charge” of the SDS when they were not and when so much publicity about the inquiry is partisan and misconceived.

2.14 Accordingly, it is submitted that the module 2(a) SDS issues list should more clearly differentiate managers, cover officers and non-managerial administrators and back-office staff as appropriate without labelling or treating them all as different types of “manager” and without introducing occasional references to “supervisors”.

3. Unconscious influences on targeting

3.1 Issue 56 in the draft module 2(a) SDS issues list asks about unconscious racism (as per the module 1 SDS issues list dated 5 July 2018, issue 28), but not unconscious sexism (as per *ibid.*, issue 29).

3.2 Although we anticipate that this is an oversight, we would, for the avoidance of doubt, submit that the inquiry should take the same approach in relation to modules 1 and 2, there being no reason for thinking that unconscious sexism may have been more or less of an issue for those in one module rather than the other.

4. Reporting - general

4.1 The module 1 SDS issues list, issues 71-72 read as follows:

Reporting - general

71. *For what purpose did undercover officers report information gathered by them: intelligence, evidential or other purposes?*

72. *By what means and when did undercover officers report information to their managers?*

4.2 It is submitted that both of the above are just as relevant to the inquiry’s module 2 investigation of the SDS and that they should therefore appear in the module 2(a) SDS issues list. (Issue 72 above appears in the draft module 2(a) SDS issues list at issue 64, but issue 71 above does not.)

5. Welfare

5.1 The module 1 SDS issues list, issues 152-153 read as follows:

152. *What was the impact of their deployments and conduct during them on undercover officers?*

153. *What was the impact of the deployments and of the conduct of undercover officers during them on their families?*

5.2 It is submitted that the above are just as relevant to the inquiry's module 2 investigation of the SDS and that they should therefore appear in the module 2(a) SDS issues list.

6. Interaction with the Security Service

6.1 We welcome the inclusion of issues 199-202 in the draft module 2(a) issues list under the above heading and reiterate that equivalent issues should have been included in the module 1 SDS issues list.

6.2 In this regard, our submissions on the draft module 1 SDS issues list dated 15 March 2018, para.4.3 read as follows:

4.3 So far as concerns proposed issue 22B above, one particular theme to have emerged from the DL's interaction with their clients so far concerns the extent to which SDS undercover officers were acting and obtaining intelligence either at the request or instigation of MI5 or, at least, for the benefit of or provision to MI5 as a key "customer". It is submitted that it is important that the Inquiry investigates this and that it is therefore captured in the list of overarching issues.

6.3 There are no grounds for thinking that the role and involvement of MI5 was only known about or felt at the SDS management level and it would be wrong for the inquiry to assume that this was the case without hearing from those involved at the operational level. Certainly in relation to contact (issue 199), a number of undercover DLO [REDACTED] refer to the role played by "Box" more generally.

6.4 In our submission, the inquiry is unnecessarily diffident about public recognition and exploration of the relationship between MI5 and the SDS in circumstances where its existence is obvious. In this regard, the Intelligence and Security Committee's *Annual Report 2002-2003* (Cm 5837, June 2003) contained an analysis of "the National Intelligence Machinery" which said the following under the heading "Special Branch":

69. There is a very close relationship between the individual SBs and the Security Service; in fact the SBs were described to the Committee as an executive partner of the Security Service. For example, SBs recruit and run agents either alone or in support of and co-operation with the Security Service, supplying the intelligence to the Security Service if it is relevant to its work. Other SB functions are covert observation, following intelligence leads and conducting routine national security related work, all under the relevant legislation including the Regulation of Investigatory Powers Act 2000 and Anti Terrorism Crime and Security Act 2001. The SBs have sight of the relevant intelligence and security Agencies' requirements and work towards them in addition to their normal policing role, which is to safeguard the public. The Director General of the Security Service stated that the SBs continue to be a "major extension" to the Security Service in terms of intelligence collection capability.

6.5

we would again submit that the matters set out in the draft module 2(a) SDS issues list, issues 199-202 should be reflected in the module 1 SDS issues list.

Yours sincerely

Mark Spanton
Team Leader