

IN THE MATTER OF THE UNDERCOVER POLICING INQUIRY

PROPOSED AMENDMENTS TO THE DRAFT LIST OF ISSUES FOR SDS MODULE 2(A) ON BEHALF OF THE NON-POLICE, NON-STATE CORE PARTICIPANTS

INTRODUCTION

1. The NPSCPs note the Inquiry's acknowledgment that the draft list of issues for the SDS module 2(a):
 - a. is necessarily drafted at a general level of detail;
 - b. that it is likely that the evidence received from witnesses in Module 1 will raise issues which cannot be anticipated now, but that will need to be addressed with Module 2(a) witnesses;
 - c. that nothing in the list of issues will constrain the Inquiry from investigating further issues that may emerge from the documentary record and witness testimony (insofar as those issues fall within the terms of reference); and
 - d. the issues list may be amended as the Inquiry's investigation proceeds.
2. These submissions are therefore premised on the understanding that there will be further opportunities to raise more specific issues relevant to module 2(a), not least when disclosure has been made.
3. By way of over-arching observation, this draft list of issues is, as with previous lists of issues, divided by category according to the perceived nature of the groups targeted – e.g. “reporting – justice campaigns”; “reporting – the Stephen Lawrence campaign and Duwayne Brooks OBE”; “reporting – elected politicians, political organisations and political activists.” The NPSCPs have previously, in their submissions in response to the list of issues for the SDS Module 1, objected to this approach. A number of NPSCPs do

not accept the categorisation adopted by the Inquiry and it is submitted the majority of the central issues the Inquiry will need to investigate apply to *all* of those spied upon, irrespective of the category to which they have been assigned by the Inquiry. In addition to the concerns raised in their previous submissions, the NPSCPs are concerned that by sub-dividing the lists of issues by reference to the perceived nature of the groups reported on, the Inquiry's investigations will be coloured by implicit assumptions about the justification, or otherwise, for targeting those groups. It is vital that the Inquiry should approach its investigation of the treatment of all groups and individuals with an open mind and subject the justification for, and detail of, what was done to them with equal rigour. The NPSCPs reiterate their submission that the same central issues should be investigated in respect of all SDS deployments.

SPECIFIC SUBMISSIONS

4. Re issue 6: “What was the legal and regulatory framework within which undercover policing was conducted when it was established?”

Submission: this should not be limited to the legal and regulatory framework at the time of establishment of the SDS. The Inquiry will need to consider how the framework changed over time. Specifically, on its “officer-by-officer” approach, the Inquiry will need to ensure that it is clear about the legal and regulatory framework that was applicable at the time of each officer's actions (their actions might extend over a greater period of time than their deployment. For example, where officers continued to use their undercover legend even though their deployment had officially ended).

Further, the investigation of these issues should be iterative, in that the Inquiry will need to consider whether, and if so how, the legal and regulatory framework was reviewed and developed in light of the activities of SDS officers over time. Was there recognition within the SDS and/or elsewhere that tighter regulation was required? Was there any system in place for reviewing past conduct and learning lessons for future regulation? See further the NPSCPs' draft over-arching issues F and G from their submissions in response to the SDS Module 1 issues consultation.

5. Submissions re “Selection and Recruitment”: this should include both the selection criteria by which undercover officers and managers were recruited, but also the extent to

which and the ways in which individuals were identified and encouraged to apply, including the role played by current and former SDS officers in identifying potential new recruits, and why the individuals identified were selected.

6. The issues identified at 2A-H and 3A-C of the NPSCPs' submissions in response to the SDS Module 1 consultation should be encompassed within this section.
7. Submissions re "Training and Guidance": the references to "instruction", "guidance", "policies" and "procedures" in this section should include informal as well as formal instruction, guidance, policies and procedures. A further issue should be included specifically addressing whether any procedures were in place for reviewing the need for training, guidance and instruction and for learning lessons from past practice; and what level of review took place?
8. After issue 41 add:
 - a. Who were the authors of the Tradecraft Manual?
 - b. How were they selected for this role?
 - c. Who assessed their expertise and suitability?
 - d. What instruction, if any, was given by senior managers as to the content of the manual?
 - e. Was the manual reviewed by managers prior to it being made available to officers, or at any stage?
 - f. What, if any guidance was given to officers as to the status of the Tradecraft Manual – e.g. was it said to be advisory, authoritative etc?
9. Submissions re "Targeting and initial authorisation":

Re issue 51: "Who was responsible for selecting the groups or individuals to be targeted?". This should include, but not be limited to, investigation of the role played by:

- a. former and current SDS officers, who had previously reported on a group, in the decision whether to deploy further officers against the group; and
- b. requests from any other individual, body or agency outside of the SDS, including, but not limited to, other parts of the MPS, other police forces, the security services, Government departments, politicians and other outside bodies, agencies and/or

private companies for information about and/or monitoring of particular individuals or groups.

The Inquiry should also investigate how any such requests as in b. above were communicated to the SDS.

Add additional issue: Was there a procedure, whether formal or by convention, to be followed in deciding which groups or individuals would be targeted? And, if so:

- a. was it followed? And
- b. did the procedure differ / were different criteria applied where new targeting was decided mid-deployment rather than upon initial deployment? If so, in what way?

Re issue 56: “Was any aspect of targeting influenced by either conscious or subconscious racism?”. This issue should be expanded, or alternatively further issues should be added, to cover whether any aspect of targeting was influenced by either conscious or subconscious bias on grounds of sex, political and/or socio-economic class and, to the extent that this may be different, whether targets were selected because of their race, sex, politics or class.

Add additional issue: What consideration was given to the potential effect of the targeting on those individuals and groups who were targeted?

10. Submission re “Role of supervisors/managers – general”: the following issues should be added:
 - a. By what means did managers inform / instruct / direct undercover officers as to the type and extent of information they were to obtain?
 - b. To what extent was there (i) formal tasking and (ii) guidance in respect of the type and extent of information UCOs were, and were not, to obtain?
 - c. To what extent was the gathering of personal information about (i) identified targets and (ii) those who were not identified targets, expected and/or condoned by managers?
 - d. For what purpose was sensitive personal data such as information about health, sexuality or relationships recorded? Was this an instruction from management? If sensitive personal data was collected and/or recorded on the initiative of the

- undercover officers, did management take any steps to stop or discourage such collection and/or recording?
- e. What, if any, consideration was given to the rights of those being reported on when assessing what information was to be (i) obtained, (ii) recorded, (iii) retained; (iv) shared; (v) processed?
 - f. What, if any, processes were in place to review the justification for (i) retention, (ii) processing and (iii) dissemination of personal information?
 - g. If any such processes were in place, were they followed?
 - h. What, if any, processes were in place to ensure that only personal information that could lawfully be shared was disseminated?
 - i. What, if any, processes were in place to afford managers/supervisors oversight of, access to, or control over, devices, including, but not limited to, telephones, pagers, computers, faxes, telexes, telegrams, CB radios, email accounts, electronic communication systems, online profiles and similar that were utilised by undercover officers during their deployment?
 - j. Were communications by/with undercover officers recorded? If so, in what circumstances; in what format (e.g. written records, audio recordings); how were these records stored; and who had access to them?
 - k. What was the process for undercover officers claiming expenses associated with their deployment: who agreed their expenses; what records were kept; who had oversight of expenditure, including amount and justification; were their expenses reviewed at any level within (i) the Metropolitan Police Service outside of the Special Demonstration Squad, (ii) the Home Office?
 - l. What role and oversight did managers have in relation to the arrangement of cover stories, including, but not limited to, cover workplaces, accommodation, membership of community organisations that were not themselves targets of the operation?
 - m. What, if any, processes were in place to review the ongoing justification for and proportionality of the deployment as a whole?
 - n. To what extent did managers provide psychological support to the undercover officers they were supervising?
 - o. To what extent did cover officers provide practical cover for undercover officers? In particular, to what extent did cover officers themselves have interaction (i) face

to face; (ii) via telephone, email etc., in a cover identity, with members of the public, whether members of a target group or third parties?

Submission re issue 69: “To whom and for what purpose(s) was [information] disseminated”, add “to what use was it put and what, if any, safeguards were in place to ensure that, once disseminated, its use was limited to the purpose for which it was provided?”

11. Submission re all categories of reporting: in respect of all of the categories of reporting, an issue should be added addressing the stated legal basis for the infiltration and/or gathering of intelligence; and whether there was, in fact, a legal basis for it?
12. Submission re Reporting – the Stephen Lawrence campaign and Duwayne Brooks OBE: add the following issue: “Was consideration given to informing the Macpherson Inquiry of SDS activities in relation to the Stephen Lawrence campaign and/or Movement for Justice or other campaigns that were, or were perceived to be, linked with campaigns arising out of the death of Stephen Lawrence and attack on Duwayne Brooks OBE and/or the Macpherson Inquiry? If so, by whom, and what, if anything, was done about it?”
13. Submission re Reporting – social and environmental activists

Re issue 106: for the avoidance of doubt, this issue should include investigation of whether information on social and environmental activists was disseminated to private sector organisations.

Add additional issue after 107: To what extent were there links, whether formal and/or informal, between SDS management and private sector organisations, for example, but not limited to, McDonald’s, the Economic League, Barlow Lyde & Gilbert - McDonald’s solicitors, and the private investigators hired by McDonald’s?

14. Submissions re Management knowledge of and attitudes towards relationships between undercover officers and targets/those upon whom they reported.

Re issue 114: amend to “Were such relationships tolerated, facilitate, encouraged or condoned by managers?” The evidence disclosed to Ms Wilson in her claim in the IPT suggests that her relationship with Mark Kennedy was more than “tolerated”. Similarly, Bob Lambert’s actions towards “Rosa” in connection with her relationship with Jim Boyling are not accurately described as “toleration”.

Add the following additional issues:

What, if any, consideration was given to the risk of children being born as a result of these relationships, and the impact that this would have on any such children and their mother throughout their lives?

What steps, if any, did managers take to reduce the risk of harm to women in intimate relationships with undercover officers caused by the disappearance of the officer at the end of his tour of duty?

What steps, if any, did managers take to address the risk that officers who had entered into intimate personal relationships whilst undercover might remain in contact or get back in contact with the women after the end of their deployment?

What consideration, if any, did managers give to the risk that the intimate knowledge undercover officers had gained whilst in such relationships, might result in those women being vulnerable / at risk of future contact, influence or control by these officers after they had left the Special Demonstration Squad?

What steps, if any, did managers take in relation to women who were searching for their disappeared partners and did they at any time consider or seek to mitigate the psychological harm being caused to those women by that disappearance?

15. Submission re Management knowledge of and attitudes towards participation in, or encouragement of, crime by undercover officers: the references to criminal offences in this section should be read as including *all* criminal offences committed, facilitated or encouraged by officers whilst deployed, i.e. it should not be limited to criminal offences

committed, facilitated or encouraged by officers in the course of their participation in activities on which they were tasked with reporting. For example, it should encompass sexual offences, potential electoral fraud – if, for example, an officer entered him/herself on the electoral role in his/her covert identity and misconduct in public office.

16. Re issue 121: after 121.1 add – Was there a list of authorised offences? Was there a list of offences that UCOs were expressly *not* authorised to commit? If so, how were such lists prepared, and by whom? How were UCOs informed which offences they were /were not authorised to commit?
17. In respect of 127:
 - a. Did any policy, instruction, procedure or guidance concerning an undercover officer being arrested, charged or summonsed in his or her cover identity include guidance in respect of (i) instructing a solicitor; (ii) legal professional privilege where a UCO had access to information about legal advice given to those s/he was reporting on; (ii) appearing in Court; (iii) accepting a caution / entering a plea?
 - b. What, if any, policy, instruction, procedure or guidance existed concerning an undercover officer taking part in any meeting or discussion about possible legal defences or tactics after arrests?
 - c. Did managers seek legal advice in the event of a UCO being arrested in the course of deployment? And, if so, from whom?
 - d. Was there any form of generic legal advice provided to the SDS in respect of the arrest and prosecution of undercover officers in their covert identity?
18. Add additional issue after 127: In cases where intelligence from an SDS undercover officer led to arrests or criminal proceedings:
 - a. what role did the undercover officer play in the events that led to the arrests / criminal proceedings?
 - b. to what extent were decisions made in the police operation shaped by the role or presence of the undercover officer?
19. Add after issue 141: What arrangements, if any, were made to ensure that police investigations outside of the Metropolitan Police Special Branch were aware of the involvement of an SDS officer or officers in activity under investigation? For example, it is now known that Christine Green’s involvement in the Ringwood Fur Farm case was

not notified at the time to Hampshire Police. Was that a one-off, or is it reflective of SDS practice more generally?

20. Add further issue after 141: What role, if any, did SDS managers play in influencing decisions made in connection with police investigations and/or criminal prosecutions related to activity with which an SDS UCO had been connected, either directly or indirectly?
21. Re issue 142: add (g) accepted a caution.
22. Submission re Management knowledge of and attitudes towards undercover officers' involvement in civil proceedings: add the following issues -

What, if any, policy, instruction, procedure or guidance existed concerning an undercover officer taking part in any defence campaign relating to civil cases?

Was information gleaned from undercover officers' participation in civil defence campaigns passed on to any private sector organisations either directly or indirectly (for example, via the Economic League), in particular, but not limited to, those connected to a party in the civil proceedings?

23. Add issue after 163: What, if any, risk assessments were conducted in respect of the risks facing an SDS UCO as a result of his/her SDS deployment(s): a. at the point of withdrawal from the field; b. at subsequent points in their police career; c. in respect of their post-police career?
24. Add further issue after 163: What processes were in place for evaluating on-going risk to a former SDS UCO post-deployment?
25. Add further issue after 163: What, if any, evaluation was conducted of a. the success of a deployment; b. the intrusiveness of the deployment for those reported on and for "collateral" third parties; c. the proportionality of the deployment; and d. any learning points, including, but not limited to, involvement by the UCO in criminal activity and/or intimate relationships whilst deployed?
26. Submission in respect of issues 164 and 165: these issue should include reference to former undercover officers using communication systems, including, but not limited to

email addresses, telephone numbers and online profiles associated with their undercover activities, after their deployments had ended.

27. Add the following issues after 164:
 - a. Were undercover officers instructed to cease contact with those with whom they had contact whilst deployed once their deployment was over?
 - b. Were officer instructed to destroy, and to cease handling, all documents connected with their deployment once the deployment was over?
 - c. How, if at all, was this monitored?
28. Add issue after 171: What, if any, policies existed in relation to the use of information obtained by officers during their time in the SDS once they had left the unit?
29. Add issue after 183: To what extent were gatherings of a. ex-members of the SDS; and b. ex-members and current members, encouraged by the unit's management? And, if so, for what purpose?
30. Submission in respect of issues 184 and 185: in addressing these issues, the Inquiry should make explicit the criteria by which success or failure in respect of these aims is measured. The NPSCPs suggest that the issues set out at 22A & B of their submissions in response to the SDS Module 1 consultation should be included.
31. Submission re interaction between the Special Demonstration Squad and other police forces, including local Special Branches: the questions set out at 187 – 190 should also be asked in respect of the flow of information between the SDS and other police forces, including local Special Branches.
32. Submission re Dissemination of Intelligence: This section should be expanded to include strategic issues concerning the obtaining of intelligence and issues concerning the *processing* of intelligence. The NPSCPs suggest that it should be retitled: “Strategic Collection, Processing, Retention and Dissemination of Intelligence” and should include the following issues in addition to the two currently listed:
 - a. What, if any, policies were in place during the life-span of the SDS concerning the obtaining, collection, processing, retention and dissemination of intelligence?
 - b. What, if any, were the strategic purposes of the intelligence to be collected by the unit? This should include express and de facto purposes;

- c. Who determined what the strategic purposes of SDS intelligence gathering should be and at what level of seniority?
 - d. How was intelligence that had been generated by the SDS subsequently processed, and for what purposes: for example, was it used as part of advanced information processing techniques to conduct ‘risk analysis’, ‘network analysis’¹, ‘target profile analysis’²?
 - e. Was it processed by electronic means and/or by other means?
 - f. What analytical techniques were used?
 - g. What intelligence “products” were produced?
 - h. What safeguards, if any, were in place to assess the lawfulness and proportionality of such processing?
 - i. What safeguards, in any, were in place to limit the period for which personal data would be retained?
33. Issue 197: this should be amended to read:
 “How, to whom and for what purpose/s was the following disseminated:
 a. intelligence gathered by the Special Demonstration Squad;
 b. intelligence “product” generated and/or informed by data obtained by the Special Demonstration Squad.
 And how was such intelligence and/or intelligence product used?”
 This should include whether intelligence / intelligence product was disseminated to foreign authorities.
34. Add issue after 197: Who made the decision to disseminate particular intelligence?
35. Add new section on the Disbandment of the Special Demonstration Squad, to include the following issues:
 a. Who took the decision to disband the Special Demonstration Squad and why?
 b. Over what period of time was the decision taken?

¹ The National Intelligence Model defines ‘network analysis’ as “the links between people... and the significance of these links, the roles played by individuals and the strengths and weaknesses” of an organisation.

² “Target profile analysis” is a range of analytical techniques to describe the criminal, including their lifestyle, associations, risk, strengths and weaknesses.

- c. What, if any, recognition was there (i) within the Metropolitan Police and (ii) within other bodies that were aware of the existence of the Special Demonstration Squad, of the need to learn lessons from the way in which the SDS had operated?
- d. What, if any, measures were put in place:
 - i. to disseminate learning from the SDS to other undercover policing units; and
 - ii. to prevent bad practice from the SDS being replicated in other undercover policing units?

RUTH BRANDER
DOUGHTY STREET CHAMBERS

12 April 2019