

OPENING STATEMENT FOR TRANCHE ONE

ON BEHALF OF THE NATIONAL POLICE CHIEFS' COUNCIL

(1) Introduction

1. The National Police Chiefs' Council ("NPCC") is a coordination body which, in April 2015, assumed the role previously performed by the Association of Chief Police Officers ("ACPO").¹ The NPCC's primary purpose is to facilitate collaboration between the Chief Constables of operationally independent police forces across England and Wales.
2. The NPCC does not act for any individual officer or former officers in this Inquiry, whether officers from the National Public Order Intelligence Unit (NPOIU) or the Special Demonstration Squad (SDS). Instead, the NPCC has a generic interest in each Tranche, including Tranche One, which derives at least in large part from the following factors :
 - a) The NPCC's ongoing role through the National Undercover Working Group ["NUWG"] in formulating policy and practice relating to undercover policing operations. The NPCC coordinates the operational response, across the Police Service, to some of the country's most serious threats including terrorism, organised crime and national emergencies.
 - b) The fact that the NPCC has custody of the extremely voluminous documentation generated by the NPOIU (by virtue of being the successor to ACPO) and is, therefore, heavily involved in the disclosure

¹ ACPO ceased to perform a coordination role on 31 March 2015 but was not formally dissolved until the following year. The NPCC was formed on 1 April 2015.

and associated redaction exercise relating to former NPOIU officers. This exercise continues but to date has involved several million documents being collated and uploaded to Relativity and liaison to make documents available to the Inquiry;

- c) The NPCC facilitated the involvement of risk assessors, whose reports have informed anonymity decisions taken by the Chair in respect of former NPOIU officers.
3. The NPCC is particularly concerned to preserve the utility of undercover policing, and its associated tactics and techniques, as a vital tool in the fight against criminality in all its forms.
 4. The NPCC recognises that there have been significant and at times high profile failings in undercover policing which have the capacity to damage public confidence and trust in the police service.
 5. However, these fail to be considered in the context of significant learning and improvement, particularly in recent decades since the introduction of legislation and various reviews and inspections leading to – and including – this Inquiry. Those failings also need to be put into a proper context which obviously includes the significant contribution that has been made over many years where the use of undercover officers has contributed to the prevention or detection of serious criminality.
 6. This brief opening statement does not seek to anticipate or assume evidence which will, in due course, be heard by the Inquiry. Rather, it is intended to offer “signposting” to those areas in which the NPCC may have a legitimate interest, as the notional guardian of the tactic of undercover policing and custodian of material pertaining to the NPOIU.

(2) Background to the NPCC and NPOIU

7. The predecessor to the NPCC, ACPO, was formed in 1948. ACPO ceased to perform a coordination role on the 31 March 2015, following the recommendation of an independent review², and was disbanded in 2016.
8. As a limited company, ACPO received funding from the Home Office as well as the 44 police forces in England, Wales and Northern Ireland. ACPO had oversight of national policing operations and cross-border policing initiatives. It could designate appropriately qualified senior investigating officers to undertake major investigations and, accordingly, had responsibility for certain national policing units, including the National Public Order Intelligence Unit (“NPOIU”) from approximately 2006³ until the NPOIU ceased to exist as an independent unit in 2011. The NPCC does not have this function but acts as custodian of the material relating to that period of time.
9. The NPOIU, which was established in 1999 and succeeded the Animal Rights National Index (ARNI), collected and managed intelligence relating to domestic extremism and carried out undercover operations. Unlike the SDS, which recruited directly from the Metropolitan Police Service Special Branch (where those officers typically returned after finishing their SDS deployments), undercover officers were seconded to the NPOIU from forces across the country, including but not limited to the Metropolitan Police Service. Many had experience of major criminal investigations, and usually returned to their “home” forces and to further undercover deployments, including against serious organised crime and terrorism.
10. Accordingly, compared to former SDS officers, NPOIU officers are more likely to:

² The review of General Sir Nick Parker in 2013 concluded that, although there was a need for Chief Constables to have a national forum, the constitution of ACPO, and specifically its limited company status, was not appropriate for a public sector organisation.

³ The NPOIU, which came into existence in 1999, was previously governed by the MPS.

- a) Have been deployed against serious organised criminals and/or terrorist organisations, either before or since their deployments with the NPOIU;
 - b) Have completed their service within the last 10 to 20 years i.e. closer in time to the present day;
 - c) Still be serving undercover officers, including against serious organised crime and/or terrorist groups.
11. These factors tend to increase the risks attached to disclosure of information relating to these officers and their deployments, both to the individuals involved and to the preservation of the tactic generally.
12. To date, the NPCC has:
- a) Made an enormous amount of disclosure available to the Inquiry;
 - b) Acted as a liaison between the Inquiry and 42 of the 43 police forces,⁴ to facilitate the provision of material pursuant to rule 9 requests;
 - c) Arranged independent risk assessments for NPOIU officers seeking anonymity;
 - d) Created and funded a co-ordination team to facilitate (a)-(c) above; and
 - e) Procured (at significant public cost) the technology required for the substantial physical and electronic disclosure exercise now underway.
13. The NPCC stands ready to continue to assist the Inquiry to fulfil its terms of reference, identify mistakes and areas of good practice, and promulgate learning to improve the Police Service in the future.
14. Upon the dissolution of ACPO, the NPCC assumed the role of operational coordination. Responsibility for standards, policy and guidance transferred to the College of Policing, where it remains.
15. Currently, the NPCC has the following functions, which are underpinned by a collaboration agreement between the 43 police forces in England and Wales:

⁴ Excluding the MPS, which is separately represented.

- a) Coordination of national operations including defining, monitoring and testing force contributions to the Government’s “strategic policing requirement”⁵, and working with the National Crime Agency where appropriate;
 - b) Command of counter-terrorism operations and delivery of counter-terrorist policing through the national network;
 - c) Coordination of the police response to national emergencies, including the mobilisation of resources across force borders and internationally;
 - d) Implementation of national standards and policy as set by the College of Policing and HM Government;
 - e) Working with the College of Policing to develop joint national approaches in areas such as criminal justice, value for money, human resources, information management, performance management and technology.
16. Each of the 43 forces in England and Wales is represented in the NPCC through the Chief Constables’ Council, which is the primary decision-making body of the NPCC. Funding is provided by the signatories to the collaboration agreement. The NPCC is not a legal entity, it is a collective of independent chief officers.
17. The work of the NPCC is carried out within 12 committees, each led by a Chief Constable, which work closely with the College of Policing to assist with the development of professional practice. The committees focus on areas such as crime operations, finance, and criminal justice. Representatives from non-police organisations are involved in the committees’ work to ensure a range of perspectives are considered. The “crime operations” committee has a number of portfolios which are delivered through working groups, including the National Undercover Working Group (“NUWG”).

⁵ The requirement setting out the Secretary of State’s views from time to time as to the national threats and the appropriate national policing capabilities to counter those threats, pursuant to s77 of the Police Reform and Social Responsibility Act 2011.

18. The NUWG is one of a number of groups that reports to the Serious and Organised Crime portfolio, which is a sub group of the crime operation coordination committee (COCC). The NUWG consists of representatives of law enforcement agencies from across the United Kingdom that operate undercover units. The group meets regularly and has been the forum by which the police service has managed the implementation of the 2014 HIMC report into Undercover Policing. The NUWG devised an action plan which addresses the 49 recommendations and has put in place systems to address these recommendations. The NUWG has a number of subgroups that manage core areas of business, each headed by a senior police officer.
19. Sara Thornton [Chief Constable] was the Chair of the NPCC from 1 April 2015 until 1 April 2019 when the current Chair, Martin Hewitt [Chief Constable], took up his position.

(3) Overview of undercover policing and practice

20. Undercover policing is a valuable tool in the armoury of law enforcement. Although its governance has changed over time, it is a tactic which is still used with good effect to prevent and detect crime. Notwithstanding the focus of the Inquiry on the SDS and NPOIU, undercover officers continue to be deployed to counter threats from, for example, organised crime groups, drug and human traffickers, firearms and homicide incidents, paedophilia, and terrorist atrocities.⁶
21. The following are just some examples (where press reports refer to the use of undercover) where through the use of the tactic there has been the prevention or detection of significant criminality :
- a) West Midlands : The arrest of over 100 suspected paedophiles for targeting children online, resulting in prosecutions, convictions and jail

⁶ As outlined in the fourth witness statement of Chief Constable Alan Pughsley dated 14 February 2018.

terms exceeding 100 years. The operation revealed a significant increase in suspicious activity during lockdown resulting in multiple arrests and the consequent safeguarding of dozens of children⁷.

- b) Counter Terrorism : The thwarting of potential terrorist attacks in London, including an attack on the London Pride Festival, open top buses and Madame Tussauds⁸.
- c) Northumbria : The successful investigation and prosecution of a sexual predator who exploited vulnerable young schoolgirls with drugs and alcohol to sexually abuse them⁹.
- d) South Wales : Operation Blue Thames, a large scale drugs investigation in Swansea against serious organized crime groups which resulted in 46 people being jailed for a total of over 180 years¹⁰.

22. All criminality, especially serious crime, causes hardship and injustice across communities who rightly expect to be protected by the police.

23. As the modern world has become increasingly sophisticated, so have criminals. Much of the value of the tactic lies in its secret or hidden nature – which is why so often the successes against major criminal activity go unnoticed and unreported. Although relatively few in number¹¹, undercover officers place themselves at risk of exposure and retaliation whenever they are deployed. Their actions may, inevitably, have an impact on the groups and communities they infiltrate. Their service may also take a toll on their own personal and family lives.

⁷ <https://www.birminghammail.co.uk/news/midlands-news/more-100-suspected-paedos-out-18912049>

⁸ <https://www.bbc.co.uk/news/uk-51405537>

⁹ <https://www.chroniclelive.co.uk/news/north-east-news/arrogant-arkan-hosen-jailed-21-11359102>

¹⁰ <https://www.walesonline.co.uk/news/wales-news/how-undercover-police-immersed-themselves-14919241>

¹¹ Approximately 1,200 out of a total of over 120,000 serving officers as at March 2020)

24. In recognition of the tension between the value of the tactic and its potential collateral effects, guidance has been derived from case law, reviews and inspections, and policies developed by policing and non-policing bodies.
25. A broad timeline of key events is as follows. This is far from being comprehensive and is intended to provide an overview only.

Home Office Circular 97/1969 (1969) – “Informants who participate in Crime”

R v McEvelly & Lee (1973) – This case, involving an undercover operative providing evidence in a case of stolen goods, generated the principle of “Laid on” (i.e. the expectation that the criminal offence be “laid on” before the involvement of the UCO). The guidance from this case was later (1990) included in UCO training and the instructions for UCOs before deployments.

Undercover Officers involved in Major Crime Investigations (1989) – Guidance document ratified by ACPO. UCOs primarily to gather evidence for presentation in court proceedings; consistent UCO notebooks containing detailed instructions; not misleading any Court; management of UCO operations at DCI level; authorisation of activity at ACC/Commander level.

NUWG first meeting (1990) – Developing national standards and training, and implementing the content of “UCOs involved in Major Crime Investigations”. The group initially consisted of the Regional Crime Squads of England & Wales, plus the Metropolitan Police.

R v Bryce (1992) – Established the need to provide independent corroboration of UCO interactions with subjects. The use of recording equipment became common practice in deployments in subsequent years.

R v Christou & Wright (1992) – Gave guidance on the boundaries of UCO activity in ‘Sting Style’ shop front operations.

Criminal Procedure and Investigations Act (“CPIA”) 1996 – This had an impact on all crime UCO deployments since it introduced a framework for managing material to be shared with criminal defendants.

Human Rights Act 1998 – Acknowledging the interference the tactic may cause and requiring its use to be in accordance with the law and proportionate to the legitimate aims.

Code of Practice published by ACPO and HM Customs and Excise (1999) – along with a public statement on standards in covert law enforcement techniques. The public document contained sections on: the use of informants; the conduct of human and technical surveillance operations; the

conduct of undercover operations; the interception of communications and accessing communications data; and the dissemination of intelligence between agencies with law enforcement responsibilities.

Regulation of Investigatory Powers Act (“RIPA”) 2000 – This changed the authorisation process for UCOs. Individual UCOs had to be authorised cf. the UCO operation as had been the case previously, and there was now a requirement to consider the intrusion against the subjects of the investigation and avoid intrusions against their associates unless involved in the offence under investigation. All UCO authorities were henceforth subject to annual inspections by the Office of Surveillance Commissioners (“OSC”). The structure of documents and authorities changed to consider Necessity, Proportionality, Collateral Intrusion and Risk Assessment/Management.

R v Loosely (2001) – Provided further guidance on the legitimate boundaries of UCO activity, which was subsequently incorporated into national training and instructions provided to UCOs at the commencement of operations.¹²

CHIS Code of Practice (2002) – Contained guidance on considerations and measures relevant to collateral intrusion and privacy (e.g. paragraphs 2.6 to 2.9: *“Measures should be taken, wherever practicable, to avoid unnecessary intrusion into the lives of those not directly connected with the operation”*).

R v Sutherland (2002) – This case affected all covert law enforcement activity where the UCO needed to ensure s/he had sight of the parameters of authority granted for the activity. This was included in re-drafted UCO instructions shared nationally in 2005.

ACPO & HMCE : National Standards in Covert Investigations – Manual of Standards for the Deployment of Undercover Officers – The Manual detailed the roles and responsibilities of the authorizing officer, operational head, cover officer and the UCO, provided templates for authorization and a definition of legend building.

R v H & C (2004) – This case altered the management of Public Interest Immunity in UCO cases. Previously the Judge was provided with all sensitive material gathered by UCOs. Henceforth, the CPS was given more responsibility for managing disclosure, together with the use of independent Counsel to oversee sensitive material.

¹² The wording included the following: *“UCOs should behave in a manner, which is consistent, and commensurate with the role they are performing. They should do no more than offer an unexceptional opportunity to a person, group or organisation to commit crime. In doing this, they may demonstrate a degree of persistence and active behaviour where this is necessary to achieve the objectives of the investigation, provided that they do not coerce, instigate or incite the commission of offences which would not otherwise have been committed”*.

‘Ratcliffe-on-Soar Power Station Protest Inquiry into disclosure’, by Sir Christopher Rose (2011) – This, together with *R v Barkshire (2011)*, resulted in national training to all CPS Special Case Workers and managers about UCO operations, and the following MOU.

National Police Improvement Agency (“NPIA”) Review of Selection, Training and Support of Undercover Operatives (2012) – An internal review which instigated significant change to the support, welfare and management of UCOs. The learning from this review has been integrated into all training since 2014; see the witness statement of Louise Meade dated 20th October 2017. Training and support to UCOs, Cover Officers and Covert Operational Managers now enshrines the recognition that the UCO him/herself has a personal responsibility to highlight any issues of safety, welfare or support.

Memorandum of understanding (“MOU”) (2012) – This was designed to ensure consistent and thorough handling of cases involving UCOs where there may be a criminal prosecution, signed by the CPS, ACPO, the Serious Organised Crime Agency, and HM Revenue and Customs.

HM Inspectorate of Constabulary (“HMIC”) A review of national police units which provide intelligence on criminality associated with protest (2012) – This contained recommendations derived from the Mark Kennedy case and changes to authority levels for ‘long term’ UCO operations.

Regulation of Investigatory Powers (Covert Human Intelligence Sources: Relevant Sources) Order 2013 (SI 2788) – Introduced on 1 January 2014. This resulted in all UCO authorisations being notified within 7 days to the oversight body: initially OSC and now the Investigatory Powers Commissioners Office (“IPCO”). All UCO authorities must be granted by Assistant Chief Constables/MPS-Commander. All long-term authorisations (over 12 months or likely to obtain confidential information) must be authorised by a Chief Constable/MPS-Assistant Commissioner and receive prior approval of a Judicial Commissioner. Prior to a renewal of an authorisation at 12 months, an IPCO inspector attends the Law Enforcement Agency to complete a detailed report of the UCO operation, which is shared with the agency and the Judicial Commissioner when they consider granting prior approval. Continuous learning from IPCO/IPCO inspections including input to training for Cover Officers and Covert Operational Managers. Mandatory national training was introduced for all authorising officers at ACC and Chief Constable levels for UCO deployments, prior to the introduction of SI 2788.

Introduction of “ROCU” (Regional Organised Crime Units) – All units are now managed on a regional basis within the ROCU structure, which provides improved governance of UCO activity. All online UCO activity must be managed by ROCU undercover units.

HMIC, *An inspection of Undercover Policing in England and Wales (2014)* – This concluded that, in general, UCOs “carry out their roles professionally and with great courage. We found them to be dedicated to their task. We were impressed by their keen awareness of the vital role which they play in protecting our communities, and the legal, practical and ethical environment in which they operate. We applaud their bravery, their professionalism and their skill. The work of the vast majority of individual undercover police officers, whilst unsung, should never go unnoticed.” The review produced 49 recommendations, which have been substantially implemented across all UCO activity. These included: (i) Ensuring consistency of all units’ activity; (ii) Undertaking UCO activity to an evidential standard, even if initially undertaken for intelligence objectives; (iii) Licensed training for UCOs, Cover Officers, Covert Operational Managers, and Authorising Officers before granting authorities; and (iv) Updating all procedure documents.

Code of Ethics (2014) – This applied common standards of professional behaviour to all police officers, including UCOs.

UCO Code of Conduct (Published 2015) – Providing improved structure and transparency for the principles and standards governing UCO activity.

Authorised Professional Practice (“APP”) on Undercover Policing (2016) – Providing a single source of guidance on practice and procedure. The updated version has been published by the College on 13th October 2020¹³.

Chief Constable Alan Pughsley (who has made a number of statements to assist the Inquiry) became Chair of the NUWG (2016) – The NUWG and all sub-groups now begin with a reminder to all officers and staff of the importance of the Code of Ethics, particularly paragraph 4.1.7.¹⁴ The NUWG and active sub groups ensure greater awareness and consistency, so all units have access to the most up-to-date Standard Operating Procedures. The NUWG has included, as attendees at their quarterly meetings, IPCO, the Home Office and the UCPI Coordination team.

CHIS Code of Practice (2018) – This incorporated the Code of Ethics.¹⁵

¹³ <https://www.app.college.police.uk/wp-content/uploads/2020/10/APP-UC-Public-facing-October-2020.pdf>

¹⁴ “You are not expected to know the Code of Ethics word for word. What is expected is that you apply the intent of the Code to your decisions and ask yourself questions such as: Is my decision in line with the principles and expected behaviours outlined in the Code of Ethics? Will this action or decision reflect well on my professionalism and policing generally? Would I be comfortable explaining this action or decision to my supervisor? Would I be prepared to defend this action or decision in public?”

¹⁵ At paragraph 2.5: “Any police officer deployed as a relevant source in England and Wales will be required to comply with and uphold the principles and standards of professional behaviour set out in the College of Policing Code of Ethics.”

26. From the foregoing, it can be seen that:
- a) There was an absence of specific legislation governing authorisations and deployments prior to RIPA 2000 with the consequence that, in the past, intelligence-only deployments lacked the legal and judicial oversight which now prevails;
 - b) Prior to the HRA 1998, which brought into effect the ECHR, there was limited formal recognition of the effects of the tactic on the rights of others, e.g. through collateral intrusion or invasion of privacy.
27. However, the timeline also demonstrates that there have been reforms and improvements to the tactic both as a consequence, and independently, of external reviews.
28. The systems now in place mean that:
- a) With the regionalisation of UCO units, there are fewer units nationally which encourages greater accountability and consistency of size, structure, capability and standards;
 - b) Most UCO operations are primarily conducted to obtain evidence for prosecutions. This involves closer working with the CPS and independent oversight, through the CPS and Counsel, in the management of disclosure. The requirement for regular meetings between the CPS and UCO units has led to more collaborative working;
 - c) All UC deployments are conducted to an evidential standard, even if intended for intelligence purposes. Units must independently corroborate interactions between UCOs and subjects which encourages greater awareness of UCOs' activities, and any implications for welfare, safety or security, whilst they are deployed;
 - d) Following input from the OSC and now IPCO, there is a structured approval process for legend building by UCOs outside authorised UCO activity (previously raised in the 2012 HMIC review). This has been included in the CHIS Codes of Practice since 2014 and in the subsequent version in 2018;

- e) Since 2000, RIPA inspections by the OSC, later IPCO, and their recommendations, unit by unit, have provided direct feedback about the quality of compliance with legislation. The OSC provided overarching guidance and assisted the NUWG by attending training events and sharing examples of good and bad practice from their inspections;
- f) There is licensed training for Cover Officers, Covert Operational Managers and Authorising Officers, which has standardised and improved the quality of supervision, accountability and oversight of UCO activity;
- g) All UCOs are required to sign the UCO Code of Conduct annually. Tenure and future plans are discussed at annual meetings to ensure re-integration outside the UCO environment is appropriately planned;
- h) There is a formal oversight and approval process pursuant to SI 2788, outlined above;
- i) The APP (2016) clarified that no authorisation would be granted for sexual relationships. This has been reinforced in the most recent APP published in October 2020.

29. Moreover, under the auspices of the NUWG the NPCC have an action plan and ensured that all of the recommendations of the HMIC report have been accepted and are being put into practice.

(4) Conclusion

30. The Police Service strives to prevent crime and disorder, protect the vulnerable, and serve the public. Undercover policing remains an important and highly effective tool for combatting crime. Although its use as a tactic has not been without some controversy, the framework of governance and oversight has been significantly strengthened in recent decades, resulting in a more professional and accountable capability which is clearly in the public interest moving forwards.

31. The NPCC's primary interest in this Inquiry is to preserve the utility of undercover policing. Continued learning and development is welcomed. The NPCC stands ready to assist the Inquiry in the discharge of its terms of reference.

GERARD BOYLE QC

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