

# THE UNDERCOVER POLICING INQUIRY

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## OPENING STATEMENT OF THE METROPOLITAN POLICE SERVICE

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### Introduction

1. This is the opening statement of the Commissioner of the Metropolitan Police Service ('MPS').
2. The statement will, of necessity, touch on matters that are relevant to the whole scope of the Inquiry as it progresses over the next few years. However, the Inquiry is only now starting the first of its hearings and most of the evidence that it requires to fulfil its terms of reference – in the form of witness statements and documents – has not yet been obtained, circulated to the core participants, or published.
3. The MPS will therefore not seek to pre-empt or predict what that evidence will, in due course, 'show'. Instead, it will take an active part in the Inquiry's hearings and, when they have concluded, it will make a more comprehensive closing statement, alongside the other core participants, addressing the principal themes that have arisen during the Inquiry's work.
4. The statement addresses the following topics:
  - a. The MPS's approach to the Inquiry
  - b. What went wrong?
  - c. What has changed?
  - d. The continuing value of undercover policing
  - e. The Special Demonstration Squad<sup>1</sup> 1968 and 1972 (Tranche 1 Phase 1)
  - f. Concluding remarks

### The MPS's approach to the Inquiry

5. The MPS welcomed the establishment of this Inquiry and fully supports its ongoing investigation of undercover policing in the period from 1968 to the

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<sup>1</sup> Or, as it was known in this early period (1968-1972), the 'Demo Squad' and then the Special Operations Squad (SOS).

present day. In March 2014, former Deputy Commissioner Craig Mackey stated that the Inquiry would have the “absolute commitment” of the MPS. That assurance is repeated now. The MPS will assist the Inquiry in every way it can.

6. The MPS recognises that there is real and justifiable public concern about certain aspects of undercover policing. It has acknowledged and will continue to acknowledge where things went wrong in the conduct of undercover officers, units and operations – as will be explored in detail by this Inquiry.
7. The MPS intends to learn, not to justify; and to improve, not to avoid change. It will continue, wherever appropriate, to recognise errors of the past. It knows that progress and learning demand this.
8. The MPS strongly believes that undercover policing is a vital way, and sometimes the only way, of combating crime and protecting the safety and security of the general public in the UK, as it is in other democratic countries. However, for undercover policing to serve its legitimate function in society, and to abide by the principle of policing by consent,<sup>2</sup> it must be conducted within clear legal and ethical boundaries.
9. The MPS will work with the Inquiry to identify where conduct has fallen outside those boundaries and to ensure that appropriate action is taken to prevent such conduct recurring in the future. As set out at paragraphs 39 to 60 below, very substantial changes to the management and regulation of undercover policing have already been implemented, both in legislation and within the MPS, with a view to ensuring that the events of the past are not repeated.
10. The Inquiry has been preparing for its hearings for five years. Throughout that period, the MPS has devoted very substantial effort, time, and resources to assisting the Inquiry. This has remained the case despite events in London in 2017 and the MPS’s additional responsibilities this year arising from the coronavirus pandemic. As at the date of this statement:
  - a. The MPS has so far spent more than £30 million responding to the work of the Inquiry.
  - b. It has been invited to consider whether or not to make anonymity applications for nearly 200 people – in a number of cases applications were not made.

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<sup>2</sup> <https://www.gov.uk/government/publications/policing-by-consent/definition-of-policing-by-consent>

- c. It has disclosed more than 80,000 documents and electronic exhibits to the Inquiry, totalling more than 600,000 pages.
  - d. It has responded to more than 230 requests and follow-up requests under Rule 9 of the Inquiry Rules 2006.
  - e. It has provided more than 100 witness statements (both under the Rule 9 process and voluntarily or within applications).
  - f. It has assisted in the review and redaction of more than 3,700 documents, totalling more than 40,000 pages.
11. From the outset the MPS has been committed, from the Commissioner down, to openness and transparency with the Inquiry. It will continue to provide whatever documentation or information it can, whenever requested by the Inquiry. It will continue to volunteer relevant material it discovers.
12. Most of the MPS's Inquiry work has been devoted to helping the Inquiry to place material into the public domain. For safety reasons, and to avoid other forms of harm, it has been necessary to ask the Inquiry to protect the names of a number of undercover officers and some of the material that will be published by the Inquiry. Restrictions have been sought by the MPS (and others) and granted by the Inquiry only where necessary or required by law. This has been difficult, important work, and getting it right has demanded time, care and expertise on the part of both the MPS and the Inquiry.
13. With the publication of the first tranche of evidence, the work of undercover police officers has been opened up as never before, demonstrating the commitment the MPS has to facilitating the Inquiry's investigations and being as transparent as possible.

### **What went wrong?**

14. At the outset of this Inquiry it is necessary to acknowledge the real concern about way in which undercover policing has been conducted in the past. The MPS fully appreciates that the Inquiry will be properly and directly informed by testimony of the experiences of those affected by undercover policing operations. The MPS is acutely aware of their continuing distress. It will continue to listen and to learn from their accounts.
15. There are a number of specific concerns that led to this Inquiry being established, including those addressed in the reports produced by Mark Ellison QC and former Chief Constable Mick Creedon, concerning the SDS in particular. The MPS acknowledges the seriousness of these allegations and will deal with them, and

any other concerns, in detail as they arise within the Inquiry's individual evidential tranches.

16. As has been recognised, throughout the SDS's existence from 1968 to 2008, it operated separately from mainstream undercover policing in the MPS. It was a small unit with an intelligence-gathering, rather than an evidence-gathering, remit. As a result of this, its work was not scrutinised and tested externally, in particular by the courts; and its practices did not become more professionalised in the same way as the MPS's undercover work in crime and counter-terrorism.
17. For the purposes of this statement, the following six matters are considered briefly here, as it is important that the Inquiry and the public understand the MPS's position in respect of them:
  - a. Sexual relationships
  - b. The use of the identities of deceased children
  - c. Participation in criminality and the criminal justice system
  - d. Deployment and management
  - e. Collateral intrusion
  - f. Support for undercover police officers

#### *Sexual relationships*

18. Some undercover officers, in their false identities, engaged in sexual relationships with the subjects of the operations, or other people with whom they had contact during their work. Put plainly: those relationships were wrong. They should not have happened; and they have caused, and continue to cause, immense hurt and suffering.
19. On 20 November 2015, Assistant Commissioner Martin Hewitt made a public apology to a number of women who had been in such relationships with undercover officers. He stated:

"Thanks in large part to the courage and tenacity of these women in bringing these matters to light it has become apparent that some officers, acting undercover whilst seeking to infiltrate protest groups, entered into long-term intimate sexual relationships with women which were abusive, deceitful, manipulative and wrong.

I acknowledge that these relationships were a violation of the women's human rights, an abuse of police power and caused significant trauma. I unreservedly apologise on behalf of the Metropolitan Police Service. I am aware that money alone cannot compensate the loss of time, their hurt or the feelings of abuse caused by these relationships.

This settlement [of the women's legal claims] follows a mediation process in which I heard directly from the women concerned.

I wish to make a number of matters absolutely clear. Most importantly, relationships like these should never have happened. They were wrong and were a gross violation of personal dignity and integrity.

Let me add these points. Firstly, none of the women with whom the undercover officers had a relationship brought it on themselves. They were deceived pure and simple. I want to make it clear that the Metropolitan Police does not suggest that any of these women could be in any way criticized for the way in which these relationships developed.

Second, at the mediation process the women spoke of the way in which their privacy had been violated by these relationships. I entirely agree that it was a gross violation and also accept that it may well have reflected attitudes towards women that should have no part in the culture of the Metropolitan Police.

Third, it is apparent that some officers may have preyed on the women's good nature and had manipulated their emotions to a gratuitous extent. This was distressing to hear about and must have been very hard to bear.

Fourth, I recognise that these relationships, the subsequent trauma and the secrecy around them left these women at risk of further abuse and deception by these officers after the deployment had ended.

Fifth, I recognise that these legal proceedings have been painful, distressing and intrusive and added to the damage and distress. Let me make clear that whether or not genuine feelings were involved on the part of any officers is entirely irrelevant and does not make the conduct acceptable.

One of the concerns which the women strongly expressed was that they wished to ensure that such relationships would not happen in future. They referred to the risks that children could be conceived through and into such relationships and I understand that.

These matters are already the subject of several investigations including a criminal and misconduct enquiry called Operation Herne; undercover policing is also now subject to a judge-led Public Inquiry which commenced on 28<sup>th</sup> July 2015. Even before those bodies report, I can state that sexual relationships between undercover police officers and members of the public should not happen. The forming of a sexual relationship by an undercover officer would never be authorized in advance nor indeed used as a tactic of a deployment. If an officer did have a sexual relationship despite this (for example if it was a matter of life or death) then he would be required to report this in

order that the circumstances could be investigated for potential criminality and/or misconduct. I can say as a very senior officer of the Metropolitan Police Service that I and the Metropolitan Police are committed to ensuring that this policy is followed by every officer who is deployed in an undercover role.

Finally, the Metropolitan Police recognises that these cases demonstrate that there have been failures of supervision and management. The more we have learned from what the Claimants themselves have told us, from the Operation Herne investigation and from the recent HM Inspectorate of Constabulary report the more we accept that appropriate oversight was lacking. Supervising officers must also take responsibility. By any standards the level of oversight did not offer protection to the women concerned against abuse. It is of particular concern that abuses were not prevented by the introduction of more stringent supervisory arrangements made by and pursuant to the Regulation of Investigatory Powers Act 2000. The Metropolitan Police recognizes that this should never happen again and the necessary steps must be taken to ensure that it does not.

Undercover policing is a lawful and important tactic but it must never be abused. In light of this settlement, it is hoped that the Claimants will now feel able to move on with their lives. The Metropolitan Police believes that they can now do so with their heads held high. The women have conducted themselves throughout this process with integrity and absolute dignity.”

20. This statement remains an accurate expression of the MPS’s position. The MPS will work with the Inquiry to understand how those relationships happened. It will listen to the accounts of those affected. Some of them have already spoken publicly, and directly to the MPS during mediation; others have not yet had an opportunity to do so. The MPS will seek to assure the Inquiry, and the public, that the necessary steps have been taken to ensure that such relationships do not happen again (see paragraphs 46 to 48 below). If current practices and procedures for undercover deployments need further improvement, those improvements will be made.

#### *Deceased child identities*

21. Undercover officers in the SDS started to use the identities of deceased children in the early 1970s to support their covert identities. They ceased to do so by 1994/5 with the advent of computerisation of the births and deaths records; although there are examples of use by undercover officers of these identities after this time, particularly in the early years of the National Public Order Intelligence Unit (‘NPOIU’). In July 2013, the then Commissioner of the MPS, now Lord Hogan-Howe, acknowledged the distress that this practice will have caused families, and apologised for the shock and offence it has caused. As was made clear then and now, it is not a practice in use today.

22. The Inquiry will explore the development and duration of the use of deceased child identities, most particularly during Tranche 1 (Phase 2) and Tranche 2 of its hearings. Evidence will be given as to why the practice was considered necessary, at the time, to support the work of undercover officers. Notwithstanding this, the MPS wishes to acknowledge plainly that while this practice was in use insufficient consideration was given to the impact that it might have on the families of the children concerned. The MPS appreciates that it was capable of causing distress to those families, and the MPS apologises for that. As the Inquiry is aware, personal apologies have been given to those family members who have been traced and who have indicated that they wish to have contact from the MPS. The Inquiry will also hear first-hand from some affected families.

*Participation in criminality and the criminal justice system*

23. The Inquiry will consider the issues of whether and in what circumstances:

- a. Undercover officers participated in criminality and if so whether that participation was appropriately authorised within the regulatory and legal structure in operation at the time;
- b. There was non-disclosure to the court of the identities of undercover officers appearing before the court in their cover identities;
- c. There was non-disclosure to the CPS of the identities of undercover officers appearing in court, or involved in or connected to a prosecution or potential prosecution; and
- d. Finally, the Inquiry will decide whether to refer cases in which undercover officers were involved to the miscarriages of justice panel (**‘the Panel’**).<sup>3</sup>

24. It has long been recognised by the criminal courts that undercover officers may need to participate in crimes during the course of their work.<sup>4</sup> The MPS acknowledges that undercover officers have engaged on occasion in criminality, both in deployments designed to gather evidence and those designed to gather intelligence. In the SDS, officers may have engaged in criminality to maintain their cover by joining in with what the target group was doing. The Inquiry will investigate in these cases whether such criminal acts were properly authorised,

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<sup>3</sup> The Inquiry’s Terms of Reference provide: ‘The inquiry will refer to a panel, consisting of senior members of the Crown Prosecution Service and the police, the facts of any case in respect of which it concludes that a miscarriage of justice may have occurred as a result of an undercover police operation or its non-disclosure. The panel will consider whether further action is required, including but not limited to, referral of the case to the Criminal Cases Review Commission.’

<sup>4</sup> See, for example, *Mullins* (1848) 3 Cox CC 526, and *R v Bickley* (1909) 2 Cr App R 53.

taking into account the legal and regulatory requirements of the time.<sup>5</sup> The MPS anticipates that there will be occasions when the SDS management did not get it right, although some of the undercover officers themselves may have believed they were acting within the bounds of an implied or express authorisation.

25. It should also be acknowledged that some SDS undercover officers were arrested in their cover identities. Some attended court in their cover identities, and some of those were convicted. The Inquiry will of course look at what disclosure took place to the court and how this was handled by the officer and their managers at the time it occurred. The MPS does emphasise, though, that for those responsible for the undercover operatives, particularly in intelligence-gathering operations, it could be a formidable task to authorise involvement in criminal conduct, manage arrests (and prosecutions) in a way that ensured justice was done, prevent the exposure of officers to physical risks, and maintain important undercover operations. The solutions that were followed will often have been believed to be the best available at the time.
26. In addition, some undercover officers interacted with people who were arrested and prosecuted, leaving open the question of whether in a given case the officer would have been viewed by the arrested person as having encouraged or participated in criminal activity. The Inquiry's Terms of Reference make clear that its investigations 'will include a review of the extent of the duty to make, during a criminal prosecution, disclosure of an undercover police operation and the scope for miscarriage of justice in the absence of proper disclosure.'
27. Every case is different and it will not assist to take detailed examples here. The MPS welcomes the scrutiny of this Inquiry and will continue to co-operate fully with it and, in the event of a referral, with the Panel and, wherever necessary, the Criminal Cases Review Commission and the Crown Prosecution Service. So far as the MPS is aware, no cases have yet been referred to the Panel by the Inquiry.

#### *Deployment and management*

28. The MPS will continue to acknowledge where things went wrong in the conduct of officers during undercover deployments. This should not simply be seen as the fault of individual officers – although in some instances it may have been. The MPS

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<sup>5</sup> These include the judicial guidance provided in key cases such as *R v Birtles* [1969] 1 WLR 1047, *R v Mealey and Sheridan* (1974) 60 Cr App R 59, *R v Sang* [1980] AC 402, *R v Loosely* [2001] UKHL 53, 1 WLR 2060, and *R v Bryce* [1992] 4 All ER 567; the Attorney General's *Guidelines on Disclosure* (1982) 74 Cr App R 302, and its subsequent iterations; and major statutes such as the Police and Criminal Evidence Act 1984 ('PACE') and the Criminal Procedure and Investigations Act 1996 ('CPIA').



accepts that in some cases and for some periods, poor practices in the SDS show that it has not always ensured that adequate governance and oversight of undercover policing have been in place.

29. As the Inquiry progresses it will consider the important questions of whether specific undercover operations were justified, whether they were properly authorised, whether they were properly managed, and whether officers were adequately trained and supported.
30. However, whilst the MPS will say that the SDS did conduct valuable work, questions over whether specific deployments and actions – including the targeting of groups active in pursuing social, political, justice and environmental causes, and issues of so-called ‘blacklisting’ – occurred or were justified will depend on the facts in each case. Therefore, these matters will be addressed in the appropriate tranche hearing.
31. In Tranche 3, the Inquiry will examine important questions surrounding whether the Stephen Lawrence family campaign for justice and Duwayne Brooks OBE were the subject of covert operations or targeting by the SDS. As the MPS stated publicly in 2014, it has not seen any evidence that this was the case. The MPS appreciates the length of time that the family of Stephen Lawrence and Mr Brooks have waited to have these issues openly examined.
32. The MPS remains committed to a full and frank investigation of these matters. It acknowledges and respects the huge importance and validity of campaigns for justice and institutional change. The determined work of Baroness Lawrence of Clarendon OBE, Dr Neville Lawrence OBE and Mr Brooks OBE has led to essential, widespread and lasting change, not merely in the MPS but also in the wider police service in the UK. The MPS remains sincerely grateful to them.

#### *Collateral intrusion*

33. Since the enactment of the Regulation of Investigatory Powers Act 2000 (**‘RIPA’**), officers authorising undercover deployments have been required to take into account the risk of interference with the private and family life of people who are not the intended subjects of the activity of an officer who is defined as a covert human intelligence source (**‘CHIS’**). This is known as ‘collateral intrusion’.<sup>6</sup> Measures should be taken to avoid or minimise collateral intrusion wherever practicable.

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<sup>6</sup> See the definition in §3.9 of the *Covert Human Intelligence Sources Revised Code of Practice* (August 2018) issued by the Home Office.

34. In the years before RIPA, when authorisation was not required, the MPS did not approach the risk of collateral intrusion, or its avoidance and minimisation, as it currently would. The MPS also accepts that in some cases after RIPA, these matters were still not properly considered, avoided and minimised. There has, however, been a process of learning and improved appreciation of these issues, including through guidance from the courts in the years following RIPA.
35. In the case of the SDS, undercover officers would come into contact with many people while seeking intelligence on the activities and intentions of particular groups. Sometimes that contact led the undercover officer to obtain information on the activities of individuals who were not, in the modern understanding, the subjects of their deployment. This information was subsequently recorded and may have been further disseminated.
36. The gathering and retention of this type of information may on occasions have amounted to collateral intrusion, as it is now understood, when viewed against the purpose and scope of a deployment. However, in the early years of the SDS, this would not have been appreciated by the undercover officer and his/her managers. The Inquiry will no doubt wish to explore this with the relevant witnesses. The MPS urges that consideration of this issue be carried out by reference to the relevant contemporaneous standards.

#### *Support for undercover officers*

37. Whatever may be said of the justification for individual operations, it is important to recognise that the overwhelming majority of the MPS's undercover officers undertook, and continue to undertake, their duties with dedication, professionalism and bravery. They did so as volunteers, notwithstanding that their efforts exposed them and their families to risks and stresses far greater than those faced by most other police officers and their families. Undercover officers are human beings who work in highly pressured circumstances, often alone, where a wrong move can endanger their deployment, their safety, the safety of their colleagues, and sometimes their lives. The stress can be constant and all pervasive and may last and have consequences long after the deployment has come to an end.
38. The MPS has not always understood or appreciated the particular pressures on the officers who do this type of work, or how best to support them. One reason for this is that the type of support that is now recognised as important was simply not part of policing, or wider societal culture, in some of the periods that the Inquiry is investigating. The appreciation of the need for specialist undercover policing

training, support, mentoring and welfare has developed over the years. The MPS acknowledges that although there were some positive developments, the SDS's secrecy and isolation within Special Branch kept it from learning apace with the wider organisation. As set out below, awareness of these issues has grown immensely as policing practice, in the MPS and nationwide, has modernised and professionalised.

### **What has changed?**

39. Over the 50-year period that the Inquiry is examining, policing culture has developed and changed, and would now be unrecognisable to officers working in 1968. Since 1987 the MPS's crime covert operations unit has been a leader in the professionalisation of undercover policing, both in its own work and in interaction with national bodies. As the Inquiry will hear from other state core participants in their opening statements, and in due course from witnesses in later tranches, the ways in which undercover policing is now conducted and managed – to national standards set by the College of Policing and implemented by the National Police Chiefs' Council ('NPCC')<sup>7</sup> – is vastly different from what it was. So too are the laws and policies that govern and regulate that work.
40. Since 2000, RIPA has governed the authorisation and conduct of deployments of CHIS, which include police officers deployed undercover. In 2002, the Home Office issued its first Code of Practice for CHIS, which was intended to provide guidance on the applicable procedures under RIPA to public authorities with responsibility for authorising CHIS, including law enforcement agencies such as the MPS. The Code of Practice has been revised on a number of occasions, the most recent version of which was issued in August 2018. It contains sections on the authorisation of undercover deployments, the management of undercover officers in the field, record keeping and oversight.
41. Additional guidance for police forces in England and Wales is contained within the Authorised Professional Practice ('APP') on Undercover Policing issued by the College of Policing. The APP draws together the professional standards expected of police officers engaged in covert activity (as well as their supervisors and authorising officers). It provides that undercover officers are bound by the Code of Ethics for Policing and remain subject to the police service's misconduct regime throughout their deployment. In addition, it refers to the National Code of Conduct for Undercover Officers, which sets out twenty professional and personal

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<sup>7</sup> The NPCC assumed the role formerly held by the Association of Chief Police Officers ('ACPO'). One of the predecessor bodies to the College of Policing was the National Policing Improvement Agency ('NPIA'), which was dissolved in 2013.

standards that all undercover officers must adhere to. The APP requires all undercover officers to sign the Code of Conduct on an annual basis in order to be considered capable of deployment.

42. The APP was first published in 2012.<sup>8</sup> Its latest iteration was developed by the College of Policing in conjunction with the National Undercover Working Group ('NUWG'), and was published in October 2020.<sup>9</sup> The revisions to the APP chart the evolution of knowledge, experience and best practice, and are a means by which recommendations from oversight bodies are implemented. Undercover units within police forces will be subject to a review of their accreditation by the College of Policing every three years. Poor performance of a unit in relation to its arrangements for authorisation, governance and tactical management may result in accreditation being withdrawn.
43. All undercover operatives are trained to national standards. The College of Policing is responsible for the delivery of undercover training courses through the use of qualified subject matter experts. Specific training paths are available to take account of the domain in which the undercover officer will operate (whether in person or online) as well as the level of experience and expertise (foundation or advanced).
44. Independent oversight of the authorisation and conduct of undercover deployments is provided by the following independent national bodies:
  - a. Her Majesty's Inspectorate of Constabulary, Fire and Rescue Services ('HMICFRS') has responsibility for assessing and reporting on the effectiveness and efficiency of all police forces. Its predecessor, Her Majesty's Inspectorate of Constabulary ('HMIC'), carried out a full inspection of undercover policing in 2013, at the request of the Home Secretary<sup>10</sup> The recommendations from that report, as well as the lessons learned from practice over the years, informed the contents of the APP.

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<sup>8</sup> The APP replaced the *National Standards in Covert Investigations – Manual of standards for the Deployment of Undercover Officers*, published in 2003 by ACPO and Her Majesty's Customs and Excise ('HMCE'). The Manual incorporated the National Code of Conduct for Undercover Officers and supplemented the Code of Practice issued by ACPO and HMCE in 1999.

<sup>9</sup> <https://www.app.college.police.uk/wp-content/uploads/2020/10/APP-UC-Public-facing-October-2020.pdf>; replacing the 2016 version.

<sup>10</sup> *An Inspection of Undercover policing in England and Wales* (13 October 2014). <https://www.justiceinspectors.gov.uk/hmicfrs/publications/an-inspection-of-undercover-policing-in-england-and-wales/>. In February 2012, HMIC had also published *A review of national police units which provide intelligence on criminality associated with protests*.

- b. The Investigatory Powers Commissioner's Office ('IPCO') provides independent oversight of the use and authorisation of undercover operations. It was established in 2017 by the Investigatory Powers Act 2016.<sup>11</sup> The IPCO exercises its oversight function through on-site inspections of public authorities, interviews with authorising officers, examination of paperwork and the provision of advice on compliance with the law.
- c. The Investigatory Powers Tribunal ('IPT') was established by RIPA in October 2000. It is the judicial body with responsibility for determining claims and complaints by anyone who considers themselves subject to unlawful actions by a public authority using covert techniques, such as undercover policing.

45. Without seeking to pre-empt the evidence that the Inquiry will hear, the following paragraphs summarise some of the principal changes that have occurred in the specific areas identified above. Changes made since 2012 ensure that undercover policing is conducted professionally, and regulated effectively, to transparent, ethical standards.

#### *Sexual relationships*

46. All police officers are subject to a clear prohibition on improper sexual relationships in the Standards of Professional Behaviour, 'Authority, Respect and Courtesy', in the Police (Conduct) Regulations 2020. This is expanded upon in the College of Policing's Code of Ethics, which states that all police officers must:<sup>12</sup>

- not engage in sexual conduct or inappropriate behaviour while on duty
- not establish or pursue an improper sexual or emotional relationship with a person with whom you come into contact in the course of your work who may be vulnerable to an abuse of trust or power.

47. Both the National Code of Conduct for Undercover Officers and the CHIS Code of Practice require all undercover officers deployed by the MPS (and other law enforcement agencies) to comply with and uphold the principles and standards of

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<https://www.justiceinspectorates.gov.uk/hmicfrs/media/review-of-national-police-units-which-provide-intelligence-on-criminality-associated-with-protest-20120202.pdf>

<sup>11</sup> The IPCO succeeded the Office of Surveillance Commissioners, the Interception of Communications Commissioner's Office, and the Intelligence Services Commissioner.

<sup>12</sup> *Code of Ethics – A Code of Practice for the Principles and Standards of Professional Behaviour for the Policing Profession of England and Wales* (July 2014), section 2.1.

professional behaviour set out in Standards of Professional Behaviour and the Code of Ethics.<sup>13</sup> The recently revised APP issued by the College of Policing in October 2020 states that:<sup>14</sup>

It is never acceptable for an undercover officer to have an intimate sexual relationship with those they are deployed to infiltrate and target or encounter during their deployment. Having an intimate sexual relationship must not be used as a tactic by a UCO.

If a UCO engages in an intimate sexual relationship (for example, they perceive an immediate threat to themselves and/or others if they were not to do so) this activity will be restricted to the minimum conduct necessary to mitigate the threat. UCOs must record and report this to the cover officer and COM-UC [covert operations manager] immediately.

48. The APP goes on to prescribe the steps that must be taken in response to an officer engaging in an intimate sexual relationship, including investigating and reporting on the circumstances, and consideration by the authorising officer ('AO') of whether the operation should continue and whether a referral should be made to oversight and governance bodies. The APP also states that:

Conduct may be authorised for **communications** of a sexual nature to take place (for example, online) where the AO believes it is necessary and proportionate to achieve specific operational objectives, having taken into account any risk of collateral intrusion. Collateral intrusion is the risk of interference with the private or family life of persons who are not the intended subjects of the UCO activity. The parameters of the authorised conduct must be precisely documented by the AO, and must be subject to frequent and robust reviews.

#### *Covert identities*

49. As stated above, the practice of reliance on the identities of real, deceased people no longer occurs. The covert identity of an undercover officer is fictitious and the undercover unit with responsibility for managing the deployment of the officer is responsible for ensuring that they have the capacity to maintain and support their covert identities. Cover identities are essential to preserving the true identity of an

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<sup>13</sup> *Covert Human Intelligence Sources Revised Code of Practice* (August 2018), §2.5; National Code of Conduct for Undercover Operatives (August 2015), available at <https://www.app.college.police.uk/wp-content/uploads/2015/08/Code-of-Conduct-for-UCs-070815.pdf>

<sup>14</sup> *Authorised Professional Practice: Undercover Policing* (October 2020), section 7.5.

undercover officer, maintain that officer's backstory and minimise the risk of compromise and harm to the officer and his/her colleagues.<sup>15</sup>

### *Participation in criminality*

50. At present, there is no statutory scheme regulating the authorisation of, or the limits to, participation in criminality by an undercover officer. Neither RIPA nor the associated Code of Practice cater for such an eventuality. In practice, law enforcement and the intelligence agencies have developed their own procedures in parallel to RIPA to authorise undercover officers deployed as CHIS to participate in crime when appropriate, in line with guidance from the higher courts.<sup>16</sup>

51. At the time that this statement is being drafted, this issue is under active consideration by Parliament during the passage of the Covert Human Intelligence Sources (Criminal Conduct) Bill. It is noted that, if passed as presently drafted, the Bill would amend Part II of RIPA to provide a power for law enforcement agencies (and others) to authorise CHIS to participate in criminal conduct where the conduct is necessary and proportionate to the intelligence dividend that it seeks to achieve, and is compliant with the Human Rights Act 1998. Necessity is determined by reference to one of the statutory purposes: the activity must be in the interests of national security; for the purpose of preventing or detecting crime or of preventing disorder; or in the interests of the economic well-being of the United Kingdom.<sup>17</sup>

52. A draft revised Code of Practice has been published in support of the Bill, which sets out guidance on the content of applications for authorisation and the approach to be adopted on reviews, renewals and cancellations of such authority.<sup>18</sup> During the second reading of the Bill in the House of Commons, the Minister for Security described the need for CHIS to participate in criminality as "an inescapable and essential feature" that is fundamental to this type of work.<sup>19</sup>

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<sup>15</sup> *Authorised Professional Practice: Undercover Policing* (October 2020), section 3.2.

<sup>16</sup> In particular, the leading House of Lords authority of *R v Loosely* [2001] UKHL 53, [2001] 1 WLR 2060; which was followed by the Court of Appeal in, for example, *R v Jones* [2007] EWCA Crim 1118, [2008] QB 460 and *R v Syed* [2018] EWCA Crim 2809, [2019] 1 WLR 2459.

<sup>17</sup> RIPA, section 29B(5).

<sup>18</sup> *Covert Human Intelligence Sources Draft Revised Code of Practice* (September 2020), section 6.

<sup>19</sup> Hansard, 5 October 2020, Vol 681.

### *Deployment and management*

53. Undercover units are required to have appropriate infrastructures in place to enable them to provide robust management and support to undercover deployments. This includes the following roles: a cover officer to look after the security and welfare of the undercover officer, direct the officer's day to day activities and to act as the liaison between the officer and the operational team; a single point of contact responsible for providing backstopping support and maintaining the covert identity of the undercover officer; office and administration support; the covert operations manager for undercover responsible for the day to day running of the undercover unit; the head of the unit; the operational lead to manage the investigation or operation in which the undercover officer is deployed and define the operational objectives; and the authorising officer under RIPA.<sup>20</sup>
54. Since 2014, all authorisations for the use and conduct of undercover operations by a police force are granted at the level of Commander (within the MPS) or the equivalent rank, namely Assistant Chief Constable (other police forces), and must be notified to IPCO within seven days of their grant.<sup>21</sup> For authorisations that continue for a period of twelve months or more, renewals must be authorised at Chief Constable level and subject to the prior approval of a Judicial Commissioner within IPCO.

### *Collateral intrusion*

55. Since RIPA, authorising officers have been under an obligation to take measures, where practicable, to avoid or minimise collateral intrusion. Where such intrusion is unavoidable, the undercover policing activity may still be authorised provided that the collateral intrusion is proportionate to the aims of the deployment. Any collateral intrusion must be kept to the minimum necessary to achieve the objective of the operation. This is reiterated in the most recent revision of the APP on Undercover Policing and in the CHIS Code of Practice.<sup>22</sup>
56. In recent years, there have been significant advances in the understanding of what constitutes collateral intrusion, what is acceptable by way of collateral intrusion, and how it should be managed. The APP for Undercover Policing<sup>23</sup> has adopted HMIC's approach as articulated in their 2012 review of units providing intelligence

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<sup>20</sup> *Authorised Professional Practice: Undercover Policing* (October 2020), section 3.

<sup>21</sup> Regulation of Investigatory Powers (Covert Human Intelligence Sources: Relevant Sources) Order 2013, article 4.

<sup>22</sup> *Covert Human Intelligence Sources Revised Code of Practice* (August 2018), sections 3.9-3.12.

<sup>23</sup> *Authorised Professional Practice: Undercover Policing* (October 2020), section 8.3.



on protests.<sup>24</sup> Consideration should be given to three categories of collateral intrusion: inevitable intrusion (such as into the privacy of intimate associates of the subject of the operation); foreseeable intrusion (such as into the privacy of unknown associates); and general intrusion (such as into the privacy of other members of the public who come into contact with the subject).

57. Deliberate intrusion by undercover officers into the private and family lives of people who are not directly under investigation must be specifically justified and authorised.<sup>25</sup> Additionally, safeguards are in place for handling all private information obtained during an undercover operation. Its dissemination, copying and retention must be limited to the minimum necessary for the authorised purposes of the investigation.<sup>26</sup>

#### *Support for undercover police officers*

58. The MPS now ensures potential undercover officers complete a rigorous selection procedure. This includes psychological profiling to ensure that only those who are suitable for the demands of an undercover role are selected for interview. There is nationally accredited training for undercover operatives – about which the Inquiry has already obtained evidence, in particular from the College of Policing which is responsible for its provision.

59. Undercover officers are subject to ongoing training and advice from experienced officers to ensure proper development of skills and experience. There is comprehensive oversight of deployments, which are developed in a structured way, including planning for their safe conclusion. Finally, there is aftercare for officers, including the aid of trained psychologists to ensure effective return to mainstream policing. These measures are the product of a developing understanding of the psychology of police employment in general and undercover tasking in particular.

60. Prior to the announcement of this Inquiry, in 2013 the MPS introduced Operation Motion to provide ongoing support to undercover officers and former undercover officers in the SDS and NPOIU, and others associated with those units. This

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<sup>24</sup> HMIC, *A review of national police units which provide intelligence on criminality associated with protest* (February 2012), page 21.

<sup>25</sup> *Covert Human Intelligence Sources Revised Code of Practice* (August 2018), section 3.12.

<sup>26</sup> *Covert Human Intelligence Sources Revised Code of Practice* (August 2018), section 8.4.

Necessity, for these purposes, includes being ‘necessary for facilitating the carrying out of any functions of the Judicial Commissioners or the Investigatory Powers Tribunal’, and ‘necessary for the purposes of legal proceedings’.

includes assistance with their welfare needs, including their physical and mental health, which may have been adversely affected by their work and their involvement with the Inquiry.

### **The continuing value of undercover policing**

61. The attention necessarily devoted to exposing past errors and identifying changes must not detract from a proper exploration of the importance of undercover policing in keeping the public safe from harm. A full appreciation of the unique value of undercover work will be an essential component of ensuring that the Inquiry makes workable recommendations at its conclusion. That value was clearly recognised by the then Home Secretary in 2015, when she prefaced her announcement of this Inquiry by stating that “Undercover policing is an essential tactic in the fight against crime”. It has also been publicly acknowledged by Parliament,<sup>27</sup> the Court of Appeal,<sup>28</sup> and by independent national bodies such as HMIC<sup>29</sup> and IPCO.<sup>30</sup>
62. Undercover policing is not a self-contained area. It is a tactic for gathering intelligence and evidence with a view to preventing or prosecuting crime that may be deployed in a very wide range of situations, including terrorism and extremism, child sexual abuse, serious public disorder, drugs dealing, firearms dealing, contract killing, fraud, stolen and counterfeit property, money laundering, prostitution, modern slavery and human trafficking, arts and antiques, and corruption (including the criminal investigation of police misconduct).
63. Much of this criminality could not adequately be tackled by the police without the use of undercover policing. In general terms, deployment of undercover officers allows access to information and to evidence which may not otherwise be obtainable, and can play a protective role in interposing police officers between suspected offenders and members of the public when crimes are carried out.
64. Undercover policing has continued to evolve as criminality has evolved. The accessibility of the internet and growing awareness of the dark web has provided those intent on perpetrating crimes with a veneer of anonymity and the opportunity to seek out and make connections with individuals capable of

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<sup>27</sup> In its *Undercover Policing: Interim Report* (2013), the Home Affairs Select Committee stated that ‘Undercover police operations are a vital element of the fight against terrorism and serious, organised crime.’

<sup>28</sup> See, for example, the comments of Lord Chief Justice Widgery in *R v Mealey and Sheridan* (1974) 60 Cr App R 59, at 61.

<sup>29</sup> HMIC, *An Inspection of Undercover policing in England and Wales* (13 October 2014), §14

<sup>30</sup> IPCO Annual Report 2017, §§5.19 and 11.15.

providing the means to execute their plans. Undercover policing increasingly operates online, with undercover police officers posing as potential victims, facilitators or criminals.

65. In the following paragraphs the MPS sets out a number of specific examples of how properly targeted, authorised and managed undercover police operations have been instrumental in the prevention and detection of crimes. There are many more examples that cannot be shared publicly because they are too sensitive or too recent (the associated prosecutions not yet having taken place). In every case, however, the dedication of the undercover officers involved is to be commended and their contribution to the safety and well-being of the public is not to be underestimated.

#### *Child sexual abuse and exploitation*

66. The internet facilitates child sexual exploitation, with offenders making use of social media and chat rooms to share and distribute indecent images of children, groom victims and make arrangements to abuse children. The scale of online grooming has been recognised by the Independent Inquiry into Child Sexual Abuse as being of 'real and significant concern'.<sup>31</sup> Undercover police officers play a pivotal role in the identification and apprehension of those perpetrating criminal offences by posing as like-minded individuals in order to ascertain the intentions and disrupt the planned activities of paedophiles, or by pretending to be children themselves to attract the attention of those intent on perpetrating such offences without endangering real victims.

67. The work of undercover police officers in this realm has secured the conviction of a number of offenders through the targeting of offenders utilising platforms operated on both the clear net and the dark web. In a particularly horrible example, Steven Privett, Anthony West, Phillip Smisson and Marcello Buonaiuto were each convicted in 2019 for offences of arranging or facilitating the commission of a child sex offence by engaging in explicit sexual conversations with undercover operatives who were posing as fictional mothers, with whom they arranged meetings in order to sexually assault the fictional children.<sup>32</sup>

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<sup>31</sup> <https://www.iicsa.org.uk/publications/investigation/internet/part-d-online-grooming/d2-scale-problem>

<sup>32</sup> *R v Privett* [2020] EWCA Crim 557, [2020] 4 WLR 111.

### *Supply of controlled drugs*

68. The supply of controlled drugs takes place within a network, from those at the bottom end carrying out street deals directly to consumers, the middle-men responsible for the movement of controlled drugs to street dealers, to those at the top orchestrating the importation, cutting and supply of controlled drugs. Many of these networks run across county lines and are geographically spread across different police forces. They exploit children to move the drugs, which are advertised by means of dedicated telephone lines operated by those at the top of the chain.
69. Undercover police officers carry out test purchases to identify those involved in street supply and gather intelligence on the operation of the network which, when combined with conventional policing tactics, can lead to the identification and apprehension of those responsible for the organisation of the network, the disruption of their activities, and the rescue of the children involved. From October 2018 to March 2019, the MPS's Trident Central Gangs Unit carried out an undercover operation targeting the supply and distribution of controlled drugs by the Wood Green Mob, active in the Wood Green area of north London. Between November and December 2018, undercover police officers used the 'Scooby' telephone line operated by the gang to set up 15 purchases of small quantities of heroin and crack cocaine. The activities of the officers secured the convictions of Carson Maynard, Randelle Maynard, Rio'Delmar Maynard and Raynell Attard-Morgan for conspiracy to supply Class A drugs.<sup>33</sup>

### *Contract killing*

70. Between November and December 2015, Nurten Taycur from East London met with a man she believed to be a contract killer on six occasions in order to make arrangements for the execution of her husband, Ercan Akan. She offered to pay £5,000 for the killing and asked that the motivation behind the murder be disguised by daubing the word 'ISIS' across her husband's vehicle in order to create the (false) impression that the act was politically motivated due to her husband's Kurdish heritage. The contract killer purportedly hired was an undercover officer who went on to give evidence for the prosecution at Nurten Taycur's trial. Taycur was subsequently convicted of solicitation to murder in 2016.<sup>34</sup>

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<sup>33</sup> The facts are reported in the appeal judgment of *R v Attard-Morgan* [2020] EWCA Crim 383.

<sup>34</sup> <https://www.standard.co.uk/news/crime/cheating-wife-hired-hitman-to-kill-husband-in-fake-isis-execution-a3247981.html>

71. In November 2016, the activities of an undercover officer successfully prevented David Harris from hiring a contract killer to murder his wife to enable him to live with his mistress.<sup>35</sup>

#### *Supply and distribution of firearms*

72. The illegal supply of firearms is connected to the commission of other serious offences, including human trafficking, gang related criminality, and sexual exploitation. Undercover officers posing as interested sellers or buyers of illegal firearms are able to prevent the acquisition of weapons by those intent on perpetrating further offences and to disrupt their free circulation. A successful sting in October 2017 resulted in the imposition of a six-year sentence of imprisonment for a man who purchased a firearm illegally with the intention of arming the security teams in his brothels. The defendant was referred by his contact to an undercover officer who posed as the supplier and met with him on several occasions to arrange the fictitious purchase.

#### *Counter-terrorism*

73. The ideological convictions of members of terrorist organisations and their secretive means of operations render identification of terrorists and ascertaining their intentions difficult to achieve by conventional policing methods. Terrorists do not necessarily display suspicious behaviour in public, they will not ordinarily discuss their plans readily or openly, preferring instead to confide in like-minded individuals on secret chat channels.

74. Undercover officers posing as confidants who share those convictions are able to establish a rapport with their targets and persuade them to divulge their plans with a view to frustrating their criminal intentions. By intervening in this manner, those intent on perpetrating acts of terrorism are prevented from further and radicalising others, securing the means to carry out their intentions and taking innocent lives.

75. The impact of undercover deployments in this field is starkly illustrated by three recent cases.

76. In November 2017, Naa'imur Zakariyah Rahman collected a padlocked holdall bag containing a puffa jacket modified to act as a suicide vest, a backpack fitted with a pressure cooker improvised explosives device, pepper spray and plastic gloves. Rahman intended to detonate the IED in the backpack at the gates of Downing

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<sup>35</sup> <http://www.colp.uk/david-harris-conspiracy-to-murder/>

Street, killing or injuring the police guards on duty allowing him to bypass the security ordinarily present. Once through, he planned to use pepper spray and a knife to kill anyone remaining in his way and take a police officer hostage to gain entry into Number 10. Inside, Rahman planned to detonate the suicide bomb in his jacket in the presence of the Prime Minister, killing both her and himself. Instead, when Rahman took possession of the articles he was arrested by police officers. Unbeknown to Rahman, he had confided his intentions in undercover officers; and as a result the jacket, pepper spray and IED that he had been supplied with were dummies. In July 2018, Rahman was convicted of engaging in conduct in preparation of terrorist acts, and was later sentenced to life imprisonment with a minimum term of 30 years.<sup>36</sup>

77. In late 2018, Mohiussunnath Chowdhury became the subject of an investigation after he began to post disturbing messages online and acquired a replica gun. Undercover officers were deployed to befriend Chowdhury in order to ascertain his plans and gauge the seriousness of his intent. As a result of the skill of the undercover officers involved, Chowdhury confessed his plans to target central London tourist attractions and the Pride in London event and sought advice on obtaining a real gun. Chowdhury was arrested in July 2019, days before Pride. He was subsequently convicted of preparation of acts of terrorism, dissemination of a terrorist publication (a terrorist propaganda video he had shared with undercover officers), and possession of information useful to terrorism (a guide to carrying out terror attacks saved on his phone). He was sentenced to life imprisonment with a minimum term of 25 years.<sup>37</sup>

78. In September 2019, Safiyya Shaikh met a woman called Azra at Uxbridge London Underground Station and handed her two pink bags which she expected Azra to take away and fill with bombs that Shaikh intended to use to blow up St Paul's Cathedral. Shaikh believed Azra to be the wife of 'H', an Islamic State attack planner located in the United Kingdom with whom she had been chatting to online on an encrypted application. In fact, both 'H' and Azra were undercover police officers. Shaikh was convicted of engaging in conduct in preparation of terrorist acts for which she received a sentence of life imprisonment with a minimum term

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<sup>36</sup> The sentencing remarks of Mr Justice Haddon-Cave, the trial judge in *R v Rahman*, are available at: <https://www.judiciary.uk/wp-content/uploads/2018/09/r-v-rahman-sentencing.doc.pdf>

<sup>37</sup> This case was extensively reported by the media. A statement from Counter Terrorism Policing appears here: <https://www.counterterrorism.police.uk/luton-man-sentenced-following-terrorism-plot-investigation/>

of 14 years. She was further convicted of dissemination of terrorist publications for which she received a concurrent sentence of 8 years' imprisonment.<sup>38</sup>

### *Summary*

79. As these examples show, the work of undercover officers is uniquely significant in preventing terrorist atrocities, saving lives, stopping child sexual abuse, and exposing criminality. Sometimes that work is unique in the sense that undercover deployment may be the *only* means of frustrating the serious crime or terrorism being investigated. The MPS therefore trusts that the Inquiry will recognise, publicly where appropriate, the bravery, dedication and professionalism of undercover officers, including SDS and NPOIU officers, who volunteer to do what is often very dangerous work; and the value and importance of their contribution to policing and to the public. Sometimes, this will include recognition that the work of undercover officers takes place in stressful conditions, where difficult judgments are made in the moment. That dedication is no less evident in the very different world of the late 1960s, when the SDS was created – a period to which we now turn.

### **The Special Demonstration Squad 1968 to 1972**

80. The Inquiry's focus in Phase 1 of Tranche 1 is the operation of the SDS in the years 1968 to 1972. As stated in the introduction to this statement, the MPS does not wish to pre-empt the evidence that the Inquiry will hear. Instead, the following paragraphs make four general points that the Inquiry may wish to bear in mind when questioning witnesses and, ultimately, formulating conclusions based on the totality of the available evidence.

81. **First**, an understanding of the historical context is absolutely essential. The 1960s were a period of immense social, cultural, and political change. Much of this change was positive. In the UK, for example, the contraceptive pill was made available on the NHS in 1961, the death penalty was abolished in 1965, and in 1968 homosexuality was decriminalised and abortion was legalised. But the late 1960s were also a time of political instability and violence. In the UK, 1968 saw the delivery of the racially inflammatory "Rivers of blood" speech by Enoch Powell and the start of the Northern Ireland Troubles. In the United States, Martin Luther King Jr and Senator Robert Kennedy were assassinated. In France, there was

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<sup>38</sup> The sentencing remarks of Mr Justice Sweeney are available here: <https://www.judiciary.uk/wp-content/uploads/2020/07/Sentencing-Remarks-R-v-Shaikh-FINAL-APPROVED.pdf>

widespread civil unrest, with mass protests, general and wildcat strikes, industrial action, rioting and the occupation of universities and factories.

82. The Special Operation Squad (the first official name for the SDS) was created on 30 July 1968, during a tumultuous year and in direct response to the exceptionally violent public disorder that had occurred in Grosvenor Square, London, during the mass demonstration against the Vietnam war on 17 March 1968. As the Inquiry will hear, the work of the SDS subsequently evolved over a period of many years in response to the political and public concerns of the time.

83. Equally important is the professional context. Officers of the SDS were amongst the first police officers to work undercover in a full-time way within a dedicated unit. During the early years of the SDS, there was no national undercover training and no recognised standards of what constituted best practice. Undercover policing was not subject to the legal, regulatory and professional structures, or policies and training that are now in place.<sup>39</sup> That is not to say that officers were not obliged to act with professionalism and integrity and should be criticised for failing to do so. They were and they should. But it is simply to counsel against judging the actions of the past by the standards of the present.

84. **Second**, as the Inquiry will hear, there were two interrelated strands to the work of the SDS: (1) gathering intelligence for the purposes of preventing public disorder, and (2) gathering intelligence to assist the Security Service in its task of defending the UK from attempts at espionage and sabotage, and from actions of persons judged to be subversive of the security of the state. This dual role was made express in the terms of reference for Special Branch issued by the Home Office in April 1970, which set out tasks including:<sup>40</sup>

- ‘To provide the Chief Officer with intelligence affecting public order; the Security Service with intelligence affecting national security.’
- ‘In consultation with the Security Service to collect, process and record information about subversive or potentially subversive organisations and individuals.’
- ‘To investigate any subversive background to demonstrations and breaches of public order, and, in consultation with the Security Service, to certain industrial disputes.’

85. The SDS was known to, approved of, and funded by the Home Office in this period; and its reporting was provided to the Security Service. Any assessment of

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<sup>39</sup> The single national guidance in this period was in the form of a Home Office Circular ‘Informants who take part in crime’, 1969/97: MPS-0727104.

<sup>40</sup> UCPI0000004459.



the purpose and value of its work must recognise this and be informed by relevant documentary and witness evidence from both the Home Office and the Security Service.

86. **Third**, when assessing the SDS's work – which the MPS will say included work which was valuable – the Inquiry will wish to bear in mind that in many cases it may be difficult or impossible, decades after the index events, to determine the counter-factual scenario, for example what public disorder would, or might, have occurred if the intelligence had not been gathered; or what value individual intelligence had to the Security Service, who were provided with the vast majority of SDS reporting. This is not least because records of what happened to the intelligence, i.e. how it was reviewed and acted on by its recipients outside of the SDS, such as the Security Service, have not been collated, or are limited in this period. The Inquiry should give weight, however, to the intimations of value that were recorded contemporaneously and which can be seen in the paperwork.

87. As the Inquiry will hear, SDS undercover officers had an intelligence-gathering remit. They increasingly worked on long-term operations and produced large volumes of intelligence. Some of that intelligence may have been recorded and retained unnecessarily, particularly by modern standards of data retention, or may be personal information that constitutes collateral intrusion by later standards. But it may not have been obvious at the time, or be clear in retrospect, which intelligence was valuable and which should not have been sought and kept. Intelligence can have latent value that does not manifest until sometime after it has been gathered. Different groups have varying waves of activity and may only present risks to public order or national security at certain times in their history. Intelligence may be reasonably obtained and retained, for a time, but end up being of little or no operational value if the individuals or groups targeted prove to be harmless. In short, there is a danger in seeking to assess the justification for specific deployments, in hindsight, simply by reference to the results that they may or may not have produced.<sup>41</sup>

88. **Fourth**, it is a trite but critical point that many years have now passed since the index events in this period of the Inquiry's investigations. The undercover officers who are giving evidence are in their 70s and 80s and their memories will inevitably have faded. Many officers – in particular more senior officers – are now dead. Many other potential witnesses who could shed vital light on this era and the work of the SDS are also dead. That includes all of the Home Secretaries from the 1960s and 1970s; and, in all likelihood, many of the senior civil servants at the Home

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<sup>41</sup> See the comments of Lord Sumption JSC in *R (Catt) v Association of Chief Police Officers* [2015] UKSC 9, [2015] AC 1065, at 1089 §31.

Office<sup>42</sup> and intelligence officers in the Security Service who were in post in the late 1960s and early 1970s. In light of this, and the points made at paragraph 85 above, the Inquiry may wish to prioritise obtaining statements from those civil servants and intelligence officers who are still alive and who may not be otherwise be called until Tranche 6 of the hearings in several years' time.<sup>43</sup>

89. The passage of time has also compromised the documentary evidence that is now available, as several of the undercover officers<sup>44</sup> from this period have recognised. The Inquiry has received a very substantial volume of relevant contemporaneous documents. But, as the 2015 Taylor report on the links between the SDS and the Home Office demonstrates,<sup>45</sup> many documents – which could have shed vital light on the issues under consideration – have now been lost or destroyed. In some cases it may be clear what is missing; and it may be that reliable inferences can still be drawn from what remains or what those lost documents might have contained. But that may not always be the case. The Inquiry and its participants may be wholly unaware that significant, relevant, evidence once existed but has now been lost, and erroneous conclusions might be unwittingly and unfairly drawn as a result.
90. These issues are raised not in an attempt to demonstrate that the Inquiry's task is impossible. That is manifestly not the case. Instead, they are made in order to urge the Inquiry to exercise care, caution and fairness when seeking to make adverse findings against any individual or organisation in respect of particular historical actions or events where it can reasonably be said that the available evidence is incomplete and therefore potentially misleading.

### **Concluding remarks**

91. It is hoped that the evidence that the Inquiry hears during the course of its work will disabuse the public of stereotypical views of undercover police officers, the

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<sup>42</sup> For example, Sir James Waddell, former Deputy Under-Secretary at the Home Office 1966-75, who died on 3 January 2004.

<sup>43</sup> For the purposes of his 2015 *Investigation into links between Special Demonstration Squad and Home Office*, Stephen Taylor interviewed seven senior civil servants from the period 1975 to 1989.

<sup>44</sup> See by way of examples, HN326 at §54; potential gaps are noted by HN339 at §34; HN349 at §25 and §72; HN345 at §72.

<sup>45</sup> Mr Taylor begins section 3 of his report, 'Sources of documentary evidence of links between Home Office and SDS', by stating:

This investigation did not identify any retained evidence available in the Department of any correspondence, discussions or meetings on the SDS for the 40-year period from 1968 to 2008. The only records relating to SDS held within the Home Office are very minimal (24 letters covering the whole 40-year period) and were only recovered recently from Operation Herne.

individuals who were the subjects of undercover operations (directly or indirectly), and the interactions between the two.

92. A simplistic narrative of 'us against them' – whether malign spy vs innocent civilian, or benign public servant vs dangerous activist – does not do justice to anyone. It is harmful. It misrepresents the complexity of the actions, intentions and human failings of the individual people involved. It impugns the many with the failings of the few. And more importantly, it obscures two necessary truths. First, that in a large democratic society such as the UK undercover policing remains an invaluable and necessary tool. And second, that all undercover operations carry an intrinsic risk of harm and that every effort should therefore be made to negate that risk by ensuring that proper laws, policies, practices and training are in place and observed.
93. Undercover policing is intrusive. But it is not an inherently malign activity. Nor is political or social activism. Acknowledging this does not diminish either the real harm that improper or inadequate conduct by undercover officers and their managers can cause, as has been acknowledged in this statement, or the real, criminal, dangers that some people present to the safety and security of the state and its citizens.

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