

IN THE UNDERCOVER POLICING INQUIRY

WRITTEN OPENING STATEMENT SERVED ON BEHALF OF THE NATIONAL CRIME AGENCY

Introductory

1. The National Crime Agency (the NCA) is grateful for the opportunity to make a short opening statement to the Inquiry.
2. We propose to make a few brief submissions focusing on two matters:
 - a. First, an outline of the status and work of the NCA, and the history of its predecessor organisations
 - b. Second, the scope of the NCA's interest in this Inquiry – its lack of any direct interest in the Inquiry's historical investigations into the conduct of the SDS and the NPOIU, and its significant interest in the Inquiry's consideration of present and future undercover policing in this country.

The status and work of the NCA and that of its predecessor organisations

3. The NCA was established under Part 1 of the Crime and Courts Act 2013. It has the status of a non-ministerial department, headed by a Director General.
4. The NCA operates both across the United Kingdom and internationally. It currently employs over 4000 staff.
5. In the broadest of terms, the role of the NCA is to lead the UK's fight to cut serious and organised crime. In performing this function the NCA works closely with local police forces, other national bodies and also international partners. Undercover operations are a key part of the NCA's work.

6. The NCA is only the most recent of a series of national organisations that have been created to fulfil this type of strategic function.
 - a. The National Crime Squad ('NCS') came into being in 1998 by virtue of Part Two of the Police Act 1997. The NCS replaced what had previously been six Regional Crime Squads, which had existed since the 1960s. As with those Regional Crime Squads, police officers were seconded to work with the NCS from their parent police forces, to whom the officers remained accountable in terms of their conduct. The NCS contained dedicated undercover units that were geographically spread across the country.
 - b. Her Majesty's Revenue and Customs (HMRC), prior to 2005 Her Majesty's Customs & Excise, also maintained a substantial national and international investigative capability. HMRC also had a dedicated undercover unit whose officers possessed different skillsets to those in the NCS undercover units.
 - c. In April 2006 the Serious Organised Crime Agency ('SOCA') was established under the Serious Organised Crime and Police Act 2005. The creation of SOCA was a merger between the NCS, the National Criminal Intelligence Service, parts of HMRC – including the dedicated undercover unit, and parts of the Immigration Service. Undercover operations were an important part of the work of SOCA, as they had been in the work of the NCS and HMRC. Undercover officers working for SOCA were directly employed by SOCA itself and there was an internal system of discipline.
 - d. As I have already said, the NCA was established in 2013, replacing SOCA. As with SOCA, NCA officers are directly employed by the Agency and are subject to internal discipline.
7. The scope of the work undertaken by the NCA is very much wider than its early predecessors. In 1964, the RCSs were formed to combat the growth of organised crime in fields such as racketeering, kidnap, the supply of drugs

within the UK, armed robbery, firearms and murder. At the same time Her Majesty's Customs & Excise were combatting international drugs and weapons trafficking, enforcing UK import and export prohibitions and investigating complex fiscal frauds. Over 50 years later, the NCA still combats organised crime in those areas, but it also works in many other fields – e.g. cyber-crime, human trafficking, economic crime and child exploitation. Much of its work involves liaison with foreign law enforcement agencies, and it is in fact the UK point of contact for such agencies, including Interpol and Europol.

8. Undercover operations are a key part of the NCA's work across all its strategic objectives. In order to preserve the security of the NCA's undercover officers I am unable to give any detail in public as to the exact size and composition of the NCA's undercover unit. What I can say is that the NCA's undercover unit is widely accepted as one of the United Kingdom's most significant undercover units, in terms of size, capabilities and effectiveness. The NCA's undercover unit is instrumental in the fight against serious and organised crime. The latest estimate available of the social and economic cost of serious and organised crime to the UK is approximately £37 billion, likely to be a significant underestimate. The NCA's undercover unit is key in combating the threat of serious and organised crime, with NCA undercover officers being deployed and achieving successful results across multiple serious crime types and organised crime groups. Furthermore, the NCA's undercover unit is recognised internationally as an exemplar of undercover law enforcement both from an operational activity and people management perspective and is regularly asked to provide advice, training and mentoring to other international law enforcement agencies. As such the NCA are key stakeholders within the international undercover working groups which shape undercover policy, practices and procedure.
9. The NCA has substantial written policies that govern the conduct of all aspects of specialist undercover deployments. These NCA policies cover both operational activity; infiltrations and meetings with criminals, and also any legend building undertaken by an undercover officer - where there is no intention to acquire intelligence or evidence or engage with the subjects of an

investigation. As with the equivalent SOCA policies, the purpose of these policies is to establish national procedures to enable the NCA to manage its undercover deployments in accordance with the law, within prescribed national standards and in compliance with statutory codes of practice. These NCA policies makes it clear that the NCA conducts all undercover deployments in accordance with the College of Policing's Authorised Professional Practice for Undercover Policing and with significant intrusive management oversight at NCA Grade 2 (Superintendent) and NCA Deputy Director (Assistant Chief Constable) level.

10. In 2019 the Investigatory Powers Commissioner's Office (IPCO) carried out an inspection of the NCA's compliance with the legislative provisions governing the management of covert human intelligence sources, which includes undercover officers. It found that the NCA makes full use of this covert activity and seeks to do so in a professional and compliant manner.

The NCA's interest in this Inquiry

11. The catalyst for the establishment of this Inquiry was of course the widespread public concern prompted by the revelation of grave misconduct on the part of undercover officers attached to the Special Demonstration Squad and the National Public Order Intelligence Unit.
12. The NCA's application for core participant status in the Inquiry was not based on any direct interest in the investigation of that misconduct, or the activities of those two units.
13. As already stated, the NCA was not itself established until 2013. The Agency therefore did not exist at the time that the misconduct that this Inquiry will investigate took place.
14. Moreover:
 - a. The focus of the undercover work carried out by the NCA is not and has never been on the infiltration of political, social and environmental

activist groups. The NCA understands that the same is true of the undercover work conducted by the RCS, the NCS and SOCA.

- b. The NCA has never had a policy that involved encouraging undercover officers to use the identities of deceased children when creating their legend identities. Nor is the NCA aware of any such policy being in place within the RCS, the NCS or SOCA.
15. Rather, the NCA's interest in this Inquiry relates to any broader examination that the Inquiry may undertake of historic undercover policing, and, in particular, to Module 3 of the Inquiry in which the Inquiry will consider current undercover policing practices and how undercover policing in this country should be conducted in the future.
16. The NCA is committed to assisting the Inquiry in its work. In the time since the Inquiry was set up, the NCA has responded to rule 9 requests for witness statements, it has provided voluminous disclosure, and it has contributed to the procedural debates relating, amongst other things, to the principles to be applied to restriction orders, the Rehabilitation of Offenders Act, data protection principles and so on.
17. The NCA does not propose to take an active role in the first two modules of the Inquiry's work, since that work will focus on historic conduct of officers of the Special Demonstration Squad and the National Public Order Intelligence Unit, although the NCA does have an interest in evidence to be given during those modules by a small number of officers who have been employed by the NCA or its precursors and who deployed within NPOIU operations.
18. However, we anticipate that we will have much more to say in the later stages of the Inquiry's work, and in particular in Module Three of the Inquiry.

19. The NCA is fully cognisant that things went wrong in the past and that lessons can and must be learned. However the use of undercover officers remains a critical tactic in the UK's fight to cut serious and organised crime.

20. Serious and organised crime affects more UK citizens, more often, than any other national security threat and leads to more deaths in the UK each year than all other national security threats combined. It is the belief of the NCA that the need for undercover officers to combat serious and organised crime has increased as law enforcement faces new challenges from increasingly sophisticated Organised Crime Groups. Serious and organised criminals are becoming more innovative and elusive. We are seeing an increase in factors that hamper the effectiveness of other, more traditional, law enforcement techniques. Advancing technology provides Organised Crime Groups with new and better ways to commit and conceal their crimes. The NCA has observed a significant rise in consensual offences such as people smuggling where there is no "victim" to provide evidence to further the investigation. There has been an explosion in both on-line offending and on-line facilitation of offending and the NCA now face Organised Crime Groups who are more knowledgeable on the tactics and techniques employed by law enforcement. With these factors frustrating law enforcement tactics it is often the case that the sole evidence or intelligence gathering technique available will be an undercover officer in direct contact with the offenders.

21. I am constrained from detailing the many undercover investigations undertaken by the NCA but a recent snapshot of these is that;
 - a. In April 2019 a deployment by a NCA undercover officer to negotiate the purchase of a firearm directly led to the seizure of twenty-nine handguns and the ammunition for these weapons. Due to the overwhelming evidence garnered by undercover officers, the suspect pleaded guilty and received a life sentence, which was reduced due to an early plea.

- b. In September 2019 a NCA undercover officer “bought” a cache of weapons and explosives, which included a military grade assault rifle, a handgun, ammunition and grenades from a serving member of the UK military. The suspect believed the weapons were being sold onto the criminal market for use by a serious criminal group. Further munitions, weapons and plastic explosives were later recovered, post-arrest, by NCA search teams. Again, the weight of evidence garnered by the undercover officer led to the suspect pleading guilty at first opportunity and he was sentenced to 14 and a half years in prison.
 - c. In October 2017 three men were jailed for plotting to move up to 20 Albanian migrants a month, some of whom were likely to be victims of human trafficking, from Europe to the U.K. The conspiracy was infiltrated by a NCA undercover officer, via the means of a protracted infiltration. This led to the safeguarding of the potential victims and the crime group being dismantled. The three offenders received a total of nineteen years imprisonment.
22. Without the NCA undercover deployments it is highly unlikely that these criminals would have been brought to justice and the serious harm they posed to the UK public negated.
23. And today as on any day, NCA undercover officers are at work infiltrating UK and international Organised Crime Groups which traffic drugs and firearms, abuse children, commit acts of appalling violence without hesitation and actively target and harm the vulnerable in our society to pursue their criminal agendas.

Conclusion

24. In conclusion, may I repeat that the NCA is fully committed to assisting the Inquiry in its work. That is a sentiment that is endorsed by Lynne Owens, the Director General of the NCA.

25. As I have said, Sir, the NCA does not anticipate playing an active part in the early stages of your oral hearings. But we wish you, the Inquiry team and all involved well in the important work that you are now commencing.

ANDREW O`CONNOR QC

RICHARD O`BRIEN