

1. Mr Andrew
2. Mr ~~Whalley~~ W. W. A.

#### SPECIAL BRANCHES

This submission seeks Sir Brian Cubbon's views about the continuation of an examination of the terms of reference for Special Branches which was begun in his predecessor's time.

2. The background is as follows. During 1977 and 1978 there was increasing public interest in the activities of Special Branches arising from a number of incidents involving different Special Branches and fuelled by debates initiated by Robin Cook MP. Concern was expressed about lack of information about Special Branches, the different treatment of Special Branches in Chief Constables' Annual Reports, the accountability of Special Branches and the definition of subversion under which they operate.
3. As a result consideration was given to a number of issues:
  - a) the publication of Special Branch strengths;
  - b) the publication of more information about Special Branches by Chief Constables in annual reports;
  - c) the publication of a document describing the functions of Special Branches;
  - d) special inspections of Special Branches;
  - e) the consolidation of the terms of reference for Special Branches.

#### Special Branch Strengths

4. In the Adjournment Debate on 24 May 1978 the then Home Secretary gave the number of Special Branch officers in the Metropolitan Police (409) and an approximate figure for the total number of officers in forces outside the Met engaged on Special Branch work (850). Following from this chief officers were encouraged through the ACPO CID Committee to mention their Special Branches in Annual Reports and as a result in 1978 22 Annual Reports included references to Special Branches; 11 of these gave the number of Special Branch officers in the force.

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Chief Constables' Annual Reports

5. The references to Special Branches in chief constables' annual reports for 1978 varied a good deal. For example, the Chief Constable of Merseyside included a reference to liaison with the Security Service and armed forces; Greater Manchester (in a page devoted to Special Branch) referred inter alia to the work of the Branch as being "connected with security matters, investigating or assisting in the investigation of 'Offences against the State' and subversion", while under the heading 'Special Branch' the Chief Constable of Essex referred only to naturalisation and port duties, and the Chief Constable of Gloucester only to enquiries about aliens. In an attempt to bring about greater consistency HMIs have recently been asked to advise chief officers that references in reports to the work of Special Branches are best cast in general terms with emphasis on their work in relation to the prevention of terrorism, and aliens and naturalisation enquiries.

Publication of document about Special Branch

6. In October 1978 shortly after the meeting of the ACPO CID Committee referred to above Sir Robert Armstrong suggested that there might be advantage in producing a document about the work of Special Branches which could be published. He had been impressed by the hand-out on Special Branch produced by the Met (Annex ). What he had in mind was an up-dated version of the 'Terms of Reference for a Special Branch' issued by the ACPO CID Committee in 1970 after consultation with the Security Service and Home Office (Annex ).

7. The drafting of a publishable document about Special Branches was <sup>then</sup> put in hand. It was thought that such a document might act as public terms of reference for Special Branches akin to the Maxwell Fyfe directive to the Security Service. The advantages of such a document were seen as:

- a) it would be a convenient point of reference for chief officers, Ministers and others who might want to refer to the work of Special Branches;
  - b) by bringing in to the open in one authoritative document the functions, responsibility and accountability of Special Branches it might remove at least those suspicions which are based on ignorance;
  - c) it might, in addition, and if detailed enough, help counter some of the more mischievous criticisms levelled at Special Branches.
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The disadvantages were equally strong:

- a) such a document might act as a stimulus for more questions and probings about the work of Special Branches;
- b) the text of the document might be open to misinterpretation of a damaging or constricting kind.

8. A first draft was produced and the views of HMCIC and Deputy Assistant Commissioner <sup>B</sup>Ryan, head of MPSB, were then sought. Both were of the view that at present the disadvantages of publication outweighed the advantages: critics of Special Branches would be unlikely to be satisfied by the document which might stimulate more questions than it answered. The draft has accordingly been put aside for the time being. It could provide a useful starting point, however, if at some point in the future it was thought a publishable document should be produced.

*no agreement  
has been reached  
by Ministers  
to be H/C*

Inspection of Special Branches

9. It is of course part of the duty of the Inspectorate of Constabulary to ensure that there is adequate supervision and control over the work of Special Branch officers in forces in England and Wales, outside the Met and that they are operating efficiently and appropriately. To that end HMCIC proposed that there should be a systematic, planned inspection of all headquarters, Special Branch units and selected ports units. However, on further consideration it was thought that some chief officers might resist such an approach. It was accordingly decided that HMIs would be asked to pay particular attention to Special Branches and ports units during their current inspections using guidance notes drawn up with the help of DAC Bryan. The resultant reports on Special Branches and ports units are being monitored.

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### Terms of Reference

10. When it was first suggested that we should take a look at the Special Branch terms of reference it was in the context of public disquiet about Special Branches and Ministerial concern. That concern coincided too with the surfacing of some anxieties felt in Special Branches and by Chief Constable about the work of Special Branches. Specifically these anxieties were about:

- a. whether there was Ministerial approval and authority for the work done by Special Branches on behalf of the Security Service;
- b. the nature of the work done on behalf of the Security Service and its potential for creating difficulties in ordinary police work and damaging relations between the police and the public;
- c. the weight to put on Security Service requests for Special Branches to undertake particular tasks.

The immediate need, particularly in order to meet the point at (a) above, seemed to be a consolidation of the terms of reference issued in 1970 with later circulars issued by the Security Service. The opportunity could be taken also to make obvious updatings to the terms of reference eg to cover Special Branch work in connection with the Prevention of Terrorism (Temporary Provisions) Acts.

11. This consolidation has now been done but it has proved to be more of a shoreing up than a pulling together and the result is a poor thing. It is clear that no consolidation based on the 1970 terms of reference can be satisfactory. This is because those terms of reference begged a number of important questions which would have to be examined if consolidated terms of reference were to be issued, whether under the imprimatur of ACPO or the Home Office. These questions are:

- a. how can the work of police officers (which all members of Special Branches are) in investigating subversion, as currently defined, be justified given that the definition covers some activities which are not, as such, unlawful? The current working definition of subversion is: "activities threatening the safety or well being of the State and intended to undermine or overthrow Parliamentary democracy by political, industrial or violent means".<sup>7</sup>;
  - b. how valuable is the work which Special Branches do on behalf of the Security Service and what would be the implications of dropping or curtailing it?
  - c. should Special Branches be involved at all in such areas as carrying
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out enquiries relating to immigration control?

- d. who should have effective control over individual Special Branches and decide on the extent of their activities; the chief officer of the force concerned or the Security Service?

12. These are all questions of major importance which need careful examination before answers can even be sketched out. Time and effort would be needed for such an examination. We now therefore need to decide whether to proceed further or whether to let the current terms of reference and Security Service circulars stand as they are.

13. The arguments for continuing the examination further are first the simple one that <sup>I</sup>times have changed since the present terms of reference were issued and it seems <sup>I</sup>only prudent to look at them again to see if they are still sensible. Second, there is no point in Special Branches doing sensitive work likely to attract public criticism if examination would show that such work was not really necessary or not necessary to such an extent. Third, new terms of reference issued after such an examination would, it is to be hoped, dispel most of the anxieties felt by Special Branches and chief officers about accountability and control and reassure ~~them~~ about Ministerial approval and support for their work.

14. Against these arguments stand the Security Service who have pointed out that the original proposal to consolidate the 1970 terms of reference was made at a time of Ministerial questioning of the role of Special Branches, and that part of its purpose was seen as reassurance to Ministers vulnerable to critics of Special Branches. The Security Service rightly say that the position is now different. Present Ministers are not so vulnerable and do not appear to share their predecessors' disquiet about the work of the Special Branches. There is also the Pandora's Box argument ie that if we once undertake a radical re-examination of the basis of Special Branches work we may well destroy the confidence built up between chief officers, Special Branches and the Security Service, not to speak of the relationship which the Home Office has with each of them. Finally, there is a question of resources. At present F4 has not the capacity to undertake such a major exercise: either more staff (? a Principal) would be needed (admittedly only for a limited period) or some current work in F4 would have to be diverted elsewhere.

15. I should be grateful to know Sir Brian Cubbon's views.

(DAVID HEATON)

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