

UNDERCOVER POLICING INQUIRY

TRANCHE 1 CLOSING STATEMENT ON BEHALF OF THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

INTRODUCTION

1. This closing statement is made by the Secretary of State for the Home Department (the “Home Secretary”) as one of the Inquiry’s core participants, representing the interests of the Home Office at this Inquiry.¹
2. Undercover policing plays a vital role in tackling serious crime and keeping the public safe. The Home Secretary recognises the significant concerns about the way in which undercover policing has operated in the past, and it is for that reason that the Inquiry was established in 2015.
3. The Home Secretary is engaging fully with the Inquiry to enable it to get to the truth of those events and ensure that lessons are learned for the future. The Department has undertaken an extensive, large-scale voluntary disclosure exercise, as well as responding to the Inquiry’s specific requests for information.
4. At the outset of the Inquiry’s evidential hearings in October 2020, the then Home Secretary provided a detailed opening statement which addressed the genesis of the Inquiry, the role of the Home Secretary and Home Office, the constitutional and regulatory framework relating to the Home Office and policing generally – and undercover policing specifically – since 1968, and the relationship between the Home Office and the Special Demonstration Squad (“SDS”).²
5. The regulatory framework relevant to undercover policing has developed considerably since the Tranche 1 period and the Home Secretary reiterates the points set out at paragraphs 25 to 27 of her predecessor’s October 2020 opening statement. For ease of reference the paragraphs are set out in full below:

¹ The Home Office in addition has a role as sponsoring department of this Inquiry. That sponsorship function has been segregated from the core participant function since the start of the Inquiry in 2015, as noted in the Chairman’s Opening Remarks of 28 July 2015, paragraph 25 <https://www.ucpi.org.uk/wp-content/uploads/2015/07/OpeningRemarks.pdf>

² <https://www.ucpi.org.uk/publications/opening-statement-home-office/>

25. *Prior to the enactment of the Regulation of Investigatory Powers Act 2000 ('RIPA') in October 2000, the use of undercover agents was not governed by statute but was underpinned by non-statutory guidance and codes of practice and subject to rules established by case-law and other statements of principle. These included: (a) Home Office Circular 97/1969 entitled 'Informants who take part in crime';³ and (b) the ACPO 'Terms of Reference for a Special Branch' dated 8 April 1970. These were replaced, in December 1984, with the Home Office Guidelines on the Work of a Special Branch, which were updated in November 1994.*

26. *Arrangements for undercover deployments are very different today from those prior to 2000. The introduction of the Human Rights Act 1998, RIPA, and the Investigatory Powers Act 2016 have fundamentally changed the legal context in which covert policing takes place.*

27. *The present position⁴ is that all undercover deployments must be authorised as both necessary and proportionate to the issue being investigated.⁵ Since January 2014, all police deployments of undercover officers must be authorised by an Assistant Chief Constable and notified to the Investigatory Powers Commissioner (formerly the Office of Surveillance Commissioners). In addition, Chief Constables must authorise deployments which last longer than 12 months and seek prior approval for such deployments from the Investigatory Powers Commissioner. The level of authority for emergency (very short term) authorisations has been raised from Inspector to Superintendent (or equivalent).⁶*

6. More recently, the Covert Human Intelligence Sources (Criminal Conduct) Act 2021 has introduced amendments to the Regulation of Investigatory Powers Act 2000, providing a statutory regime for the authorisation of criminal conduct by covert human intelligence sources (such as undercover police officers), for specified purposes, where necessary and proportionate, and subject to robust safeguards.

³ [MPS-0727104]

⁴ Parliament is currently considering new legislation to provide a common legal framework and set of safeguards for the authorisation of participation in criminality by undercover officers. [N.B. this legislation has since been introduced via the Covert Human Intelligence Sources (Criminal Conduct) Act 2021]

⁵ Regulation of Investigatory Powers Act 2000, s.29(2).

⁶ Regulation of Investigatory Powers Act 2000, S.30; The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010; Regulation of Investigatory Powers (Covert Human Intelligence Sources: Relevant Sources) Order 2013/2788.

7. The Covert Human Intelligence Source Draft Revised Code of Practice was laid before Parliament in October 2022 and is demonstrative of the fact that the regulatory framework continues to develop.

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8. The Inquiry has so far largely focused on the SDS officers and managers and those affected by deployments between 1968 and 1982.
9. The Home Secretary has followed the evidence of the Inquiry with great care and has noted a number of issues regarding the Home Office's role for further investigation, and she will endeavour to assist with those points as the Inquiry progresses.
10. Module 2(c) of Tranche 1 is the first of the Inquiry's modules in respect of which the Inquiry has sought witness statements from former Home Office officials. Witness statements from five individuals were sought pursuant to Rule 9 of the Inquiry Rules 2006 and four⁷ of those individuals duly provided lengthy statements addressing the detailed list of questions posed to them by the Inquiry. In each case the individual in question was asked for, and provided, evidence relating to their own personal involvement in, and recollection of, the matters identified by the Inquiry. They did not speak on behalf of the Home Office now, and nor were they asked to do so.
11. Inevitably, given the period under investigation all four individuals are long retired but did their best to be as helpful as possible, assisted in some respects by the contemporaneous documentation to their involvement in events that took place over 40 years ago. As the Inquiry is aware, all of the Home Office witnesses sought to provide the Inquiry with the fullest possible assistance and it is apparent from the detailed summaries of the evidence produced by Counsel to the Inquiry that they have been able to shed some valuable light on the relevant events. We note the decision of the Chair to conduct this part of the Inquiry as a paper-based exercise without witnesses being called to give oral evidence, but if there is any further evidence, or other assistance, the Chair requires in order to conclude this phase of his investigation, the Home Office is of course ready to provide it.

⁷ One individual was excused from giving evidence by the Inquiry on health grounds.

12. The detailed and forensic analysis of Counsel to the Inquiry, as set out in their Opening Statement, has been considered with care by the Home Office. We do not propose to provide a commentary upon it here. It will be for the Chair to reach his own conclusions on the basis of the contemporaneous material and, to the extent that they assist in interpreting that material, the recollections of the available witnesses. We would observe simply that the conclusions of Counsel to the Inquiry as to the lack of knowledge on the part of the Home Office of the inappropriate activities of certain SDS officers, as summarised at paragraphs 87 and 88, accord with our analysis of the evidence and we would endorse them.

CONCLUSION

13. The Home Secretary reiterates her cooperation to the Inquiry and welcomes efforts by the Chair and his team to conclude the Inquiry within a reasonable time. She acknowledges the breadth and depth of evidence heard and work undertaken so far and awaits with keen interest the findings of the Inquiry in respect of Tranche 1.

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10 February 2023