

## **Terms of Reference for Operation Herne**

The Metropolitan Police Service has received a series of enquiries, allegations and complaints made in relation to the use of Undercover and Covert policing tactics dating back several decades. These allegations are specifically in relation to the 'Special Demonstration Squad' (SDS) and latterly the National Public Order Intelligence Unit (NPOIU) and emanate from a series of sources and individuals including:

- People who claim to have been subject to SDS deployments and as a result have suffered some form of personal injury or distress
- People who claim their convictions are unsafe as a result of the abuse of the tactics against them
- People who claim the use of the tactics has negatively affected their ability to gain employment
- Investigative journalists
- Members of Parliament

As a result of this activity the MPS is now dealing with a number of civil claims, media enquiries, numerous Freedom of Information requests, and senior officers have been questioned by the Home Affairs Select Committee. It is understood that there are also threatened actions being made against the MPS from officers both serving and retired who have previously served on the SDS. Chief Constable Mick Creedon from Derbyshire has been asked to take the lead role in Operation Herne on behalf of the Commissioner.

The Independent Police Complaints Commission (IPCC) was first made aware of this review in November 2011. A number of matters have been referred to the IPCC each has agreed terms of reference and are supervised investigations (mode of investigation). These terms of reference and the mode of investigation will form part of the initial review conducted by the Chief Constable.

As the investigation has progressed so has the external interest and scrutiny, in particular some media outlets, some Members of Parliament and the Home Affairs Select Committee. Mindful of the many complaints and allegations and the high degree of public and political interest, the MPS Commissioner is clear of the need for an objective and transparent enquiry. Chief Constable Mick Creedon from Derbyshire has been asked

to take the lead role in managing this work on behalf of the Commissioner.

There are two parts to this work that need to be run concurrently. It is not possible to contextualise or understand some of the current allegations concerning the activity of the SDS without understanding the history of the unit, its formation, its management and leadership, how the unit operated and what it did. Without clarity on these issues any investigation is necessarily limited and potentially subject to challenge.

The MPS and the Operation Herne incident room currently faces the challenge of understanding the historical context and operating environment of the SDS whilst also dealing with the growing number of direct allegations and complaints that have been made. In addition there is urgency in this work given the need to maintain public confidence in the use of undercover and covert policing tactics and the broader context of public and political confidence in policing. This urgency is also necessary given the emerging civil claims being dealt with by the MPS

The enquiry will have two distinct elements that will run in parallel – one considering the historical and operating context of the SDS and the other investigating the specific complaints and allegations. These are very different strands of investigative activity and ideally it would be best to fully understand the history and the operating context before seeking to carry out any direct investigations resulting from deployments. To do anything other than this risks viewing the SDS and the complaints/allegations in isolation and bringing a number of logistical, legal, presentational and evidential difficulties. It is recognised this approach is problematic given the current high levels of interest, the civil claims, and the need to treat everyone fairly – including the officers who have served on the unit. To seek to accommodate the twin demands of Operation Herne dedicated staff will be allocated to each element and the work coordinated by a single management and Incident Room.

### **Strand 1**

The first strand will examine the creation of the SDS and how the unit operated throughout its existence. It is understood that the unit was created in 1968 and operated until it was closed sometime between 2006 and 2008. This work will seek to discover:

- The initial establishment, the rationale and terms of reference for the SDS.
- The role of the Home Office in relation to the SDS

- The role of the Metropolitan Police Service in relation to the SDS
- The funding for the SDS
- How the SDS was deployed and tasked.
- The management, oversight and accountability mechanism for the SDS.
- The legal, regulatory and ethical frameworks within which SDS operated.
- The organisations, groups and subjects the SDS were targeting and/or reporting on
- The reporting mechanism – both in terms of intelligence and evidential reporting
- High profile operations SDS were involved in
- The selection, recruitment, training, tradecraft guidance and support provided to SDS officers.
- The role of SDS in relation to other state agencies.
- The work will not report on anything that would involve breaching the Official Secrets Act or compromising national security.

Given the timescales and the vast amount of material (well over 50,000 documents have been recovered to date), this stage of the review will be conducted to an objective review standard, not a pure evidential standard. This distinction is necessary to allow a full review and cooperation of all involved to inform the process of understanding the work of SDS.

Whilst considerable documentation has been recovered from the MPS, it is not clear what documentation has been recovered from other agencies, including the Home Office.

A detailed enquiry strategy will be documented to describe how this work will be conducted.

## **Strand 2**

This part of the work encompasses a number of distinct investigations and inquiries. Operation Herne is already undertaking several ongoing investigations and there have recently been additional referrals. These investigations are active and are a result of the complaints, allegations and civil claims that have already been described. Some of these investigations are at a stage where there is ongoing liaison with the Crown Prosecution Service.

There is a distinct risk that given the 40 year timescales, the breadth of activity of the SDS and the current level of interest, there will be more

complaints made. The current Op Herne Incident Room and Investigation team are at risk of reactively responding to and investigating numerous individual events without ever gaining a comprehensive understanding of the full context. The MPS Commissioner has been clear that in asking Chief Constable Creedon to lead this enquiry he is seeking to have a full and comprehensive understanding of the SDS and its operations over the 40 years.

The enquiry will need to review and consider these existing investigations being considered by Operation Herne so that a clear decision can be made as to how they should be progressed. Initially the enquiry will review in full and then report in detail on the interim position in relation to each specific current investigation. This review will include:

- the nature of the allegations or complaints,
- the behaviour under investigation
- the details of the officer(s) subject to the investigation
- the current status of the officer(s)
- the dates of the deployments
- whether the alleged behaviour is potentially criminal behaviour or would be a matter for consideration under the conduct regulations
- what enquiries and evidence has been gathered to date
- what further enquiries or evidence gathering needs to take place to conclude the investigation
- any specific legal advice gained to date

Once this review work is concluded the enquiry will report to the MPS Commissioner with a view to making decisions about the future detailed investigations that can realistically be carried out to an evidential standard. The involvement of the IPCC and referral criteria will be adhered to in accordance with the requirements of the Police Reform Act.

In considering both strands, the enquiry will consider the overall behaviour of staff involved with the SDS – but clearly recognising that whatever actions were carried out have to be considered in the broader context of strand 1. Any actions by staff working on or with the SDS will have to be understood in terms of the leadership, supervision, support, training, legal framework, tasking and reporting mechanisms that were in place at the time. Specifically the enquiry will consider whether either strand has indicated the behaviours currently alleged and including:

1. inappropriate sexual relationships
2. the use of false identities
3. the practice of blacklisting

4. individuals named in parliament as being responsible for serious criminal offences.

The enquiry will also consider any potential miscarriages of justice arising from the outcome of deployments by the SDS.

Throughout the enquiry the approach will be one that is proportionate but also comprehensive. Any potentially criminal behaviour of the SDS and of specific officers will be reported to the Commissioner on an ongoing basis.

### **Coordination activities**

Chief Constable Creedon is leading the work on behalf of the MPS Commissioner and it is essential that there is strong coordination and clear and defined lines of communication. There will be a monthly coordination meeting to review progress; this will either be in person or via telephone conferencing. The Deputy Commissioner and Chief Constable Creedon will agree who attends the meeting.

If during the course of the enquiry any information comes to light which Mr Creedon considers the Commissioner needs to know about he will ensure there is direct and immediate communication. If any information comes to light that might suggest a miscarriage of justice, this will be brought to the attention of the CCRC. Likewise, if any fresh information comes to light suggesting criminal and misconduct behaviour, this will be referred to the IPCC in line with the referral criteria from the Police Reform Act. In either case the MPS Commissioner will be made aware of the fresh information.

### **Investigation Team**

Operation Herne is currently being lead by the MPS Directorate of Professional Standards. The Incident Room is lead by a MPS Senior Investigating Officer and there is a combination of investigative staff and HOLMES Major Incident Room staff. To date the investigation has been managed by Chief Officers from within the MPS DPS. Once the lead responsibility moves to Chief Constable Creedon he will assume the overall leadership of the enquiry. Mr Creedon will determine the SIO and MIR responsibilities and staffing. In the main the staffing will remain as it is now from within the MPS, however he will determine which roles are carried out by staff from Derbyshire and the East Midlands Specialist Crime collaboration resources.

### **Operational Security**

At least initially the MIR will remain within MPS DPS secure accommodation. The incident is being managed on secure CT HOLMES and Mr Creedon will review this as soon as possible. To ensure and enforce operational security, all team members – both current and future – will be subject to formal indoctrination and a signed copy of their individual indoctrination form will be held within the secure HOLMES account.

### **Specific Risk Assessments**

Mr Creedon will ensure that there is a full and transparent risk assessment process in place for any individual considered to be 'at risk'. This will include any staff working on the enquiry, any members of the public, any members of other agencies and any members of the SDS – both those still serving with the MPS and those retired.

### **Funding**

Mr Stephen Rimmer, Director of Policing at the Home Office, has indicated that in taking on this work, there should be no additional costs to either the Derbyshire Constabulary or the East Midlands. Any additional costs will be subject to a specific Home Office grant. All MPS costs will continue to be borne by the MPS. All additional costs incurred (including opportunity costs) by Mr Creedon and his staff from outside the MPS will be recorded and will be covered by a specific grant from the Home Office.

### **Civil Actions**

The response to civil actions will remain the responsibility of the Commissioner and will be handled through DLS and DPS. Given the 2 strands of the enquiry and the likely timescales in concluding either of them, the MPS will obtain specialist legal advice on how these matters should be dealt with

### **Freedom of Information Act**

All FOIA requests relating to Operation Herne will be co-ordinated through the MPS and will only be released once Chief Constable Creedon and the Commissioner have confirmed they are content with response.

**Press**

Press inquiries will be coordinated between Derbyshire and the MPS. If the inquiry relates to the work of Chief Constable Creedon he will retain sign off for anything released.

**Stakeholders**

Stakeholder management will be agreed through the coordination meetings. Mr Creedon will establish an overall strategic coordination group at which a number of key stakeholders will be present. These will include the MPS, the CCRC, the ACPO lead for the UC working group, HMIC and such specific specialist advisors as Mr Creedon determines he needs to support the work he is leading

**Legal Support and Advice**

The MPS Directorate of Legal Services has to date provided the ongoing legal advice in relation to Operation Herne. It is likely that they will be in a position where this can continue. Nevertheless, it is the case that this is a detailed enquiry into several decades of activity of a small department within the Metropolitan Police Service. It is essential that Mr Creedon has access to external independent advice – this is not only to demonstrate transparency and objectivity, but also to ensure there is no conflict of interests.

**Publication**

Any reports produced will be produced on the basis that they will be published, subject to the usual legal safeguards. Any publication will need to take account of any ongoing criminal or conduct investigations.

**Lessons learned**

There remains considerable public, media and political interest in the use of undercover policing tactics. The Police service and other agencies recognise the value of these tactics and recognise the concerns that have resulted from recent high profile scrutiny and publicity. Mr Creedon will ensure that as part of the enquiry there is a continuing 'lessons learned' aspect that reports where necessary and appropriate both during and at the conclusion of the work.

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Mick Creedon, Chief Constable, Derbyshire Constabulary

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Craig Mackay, Deputy Commissioner, Metropolitan Police Service