

Chief Constables' Council



Undercover Policing Public Inquiry Update.

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1. Introduction/Purpose

- 1.1 The purpose of this paper is to update Chief Constables on the current progress of the Undercover Policing Public Inquiry (UCPI) being conducted by Lord Justice Pitchford and follows the previous briefing paper to Chief Constable's Council dated on 11 April 2016. This paper is for information only and no decisions are required in relation to the content at this stage.

2. BACKGROUND

- 2.1 In July 2015 the Home Secretary requested Lord Justice Sir Christopher Pitchford to undertake a public inquiry to examine all aspects of undercover policing across police forces in England and Wales from 1968 until the present day. It was determined that the inquiry will be formed of three broad modules; establishing what has happened, investigation of systems and processes and the future.
- 2.3 The first hearing was held in October 2015 and to date 202 individuals and organisations have been granted 'Core Participant' status including the NPCC (representing forces outside the MPS), MPS, College of Policing and the ******(S23(1))**.

- 2.4 Following agreement by Chief Constables an NPCC Inquiry co-ordination team has been established with responsibility to ensure transparency and to co-ordinate activity across all Forces. It is developing and maintaining consistent systems and processes to enable Forces to meet the requirements of the Inquiry Team, providing the link between the NPCC (Forces) and the Inquiry, whilst providing Forces with advice and guidance around undercover policing and current legislative requirements. The MPS and ****(S23(1)) have separate legal representation.
- 2.5 Additionally, the NPCC Coordination Team will also lead on work with the Inquiry in managing any alleged miscarriages of justice resulting from the non-disclosure and non-revelation of covert activity that are referred for further investigation.
- 2.6 Each Force has an identified SPOC (ACC or above) supported by their respective legal teams who have been responsible for responding in statement form to the rule 9 requests that have been received to date from the UCPI.

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3. UPDATE

- 3.1 Since the last update paper all Forces outside the MPS have now received a 3rd rule 9 request from the UCPI. This request sought details of any NPOIU undercover operations that took place within a Force area, either conducted by the Force or in which the Force assisted. This request was seeking any NPOIU material separate to that collated and stored by Operation Herne. All Forces have now responded to this request.
- 3.2 The NPOIU, alongside the SDS, continues to be the focus of attention for the UCPI and in particular for many of the interested stakeholders and Core Participants. There is a significant amount of material that has been gathered by the Operation Herne Team that relates to the activities of the NPOIU and whilst this has been categorised into a number of schedules, this material has yet to be examined in any detail and therefore presents a risk to Forces who may be unaware of its existence. Forces have been advised that this material exists and about the possibility that once it has been examined in some further detail that it may impact on their knowledge of UC activity within their force area and therefore their submissions to the UCPI.
- 3.3 Work to examine the NPOIU material is therefore required as matter of urgency to also inform future risk assessments and restriction applications which will be essential to protect current and former UCOs,

operational security and the Service. A number of options have been considered how this work might be resourced alongside options for the IT required for subsequent disclosure and redaction into the UCPI. Following the recent decision by the Home Office that no additional funding will be made available, a paper is being submitted to Council by the MPS to support this work. In addition the NPCC Inquiry Coordination team are currently working with Op Herne, the MPS and the UCPI to draft an agreed disclosure and redaction process to manage how the NPOIU material will be assessed as part of the UCPI. This involves an 18 stage process and is currently with the UCPI Legal Team.

- 3.4 A number of Forces have also received further requests from the UCPI seeking clear assurances that any material potentially relevant to the Inquiry has been preserved and requesting in detail what precautions have been taken to ensure that this is the case.
- 3.5 The position of the UCPI in addressing 'understandable' concerns raised in the media and elsewhere that documents may be destroyed was again highlighted in a speech by Mr Piers Duggart, solicitor to the UCPI, to the National Undercover Policing Conference at Ryton. A copy of the speech is attached and was placed on the UCPI website (Paras 23, 26, 27 & 28 refer) and, whilst being complimentary of the work done to date, the implications for Forces and the Service of failing to retain documentation were clearly laid out. This is a matter that has been brought to the attention of force SPOCs and it remains of paramount importance that there is no deliberate or even inadvertent destruction of documents. The implications of any such destruction would be significant, not only in terms of the ongoing relationship and co-operation with the inquiry team, but also in terms of the broader loss of public confidence.
- 3.6 At a hearing on the 27 April 2016 the Inquiry considered whether it is appropriate to seek undertakings from the Attorney General in relation to whether evidence given to the Inquiry can be put in any future criminal investigations, criminal prosecutions or disciplinary proceedings. In his ruling, Lord Justice Pitchford determined that he intended to seek an undertaking from the Attorney General regarding self-incrimination (criminally) when providing evidence to the Inquiry, the scope of the privilege being that a witness may decline to supply evidence in any form if it would incriminate or tend to incriminate the witness or their spouse or civil partner in the commission of a criminal offence; lead to incrimination or may lead to the discovery of evidence of an incriminating character; it or evidence which is derived from it may be relied upon to decide whether a prosecution should take place.
- 3.7 In relation to disciplinary proceedings however, whilst the Chair initially concluded that there was no need for any undertaking he has decided to defer this matter due to a submission on 12 May by those representing

Mark Kennedy. That submission is in response to the speech post the Hillsborough verdicts by the shadow Home Secretary, Andy Burnham, seeking cross party support for a reform of police discipline and the justice system to permit the institution of misconduct proceedings against retired police officers in which one possible sanction would be loss of pension benefits. It would appear that Kennedy, and probably other former officers, thought that he would be immune from any misconduct proceedings through resigning in 2010 but now has some concerns. The Chair has stated that other officers may want to reconsider their position and he also wants to give Core Participants the opportunity to respond. The Chair has stated that he will issue directions on this in due course.

- 3.8 On 3 May 2016 the Chair further delivered his ruling in relation to applications for restriction orders under section 19 of the Inquiries Act 2005. He determined that should any Force or officers seek to make any application for a restriction order then it should be done on an individual basis. The starting point for all applications will be that no restriction order will be made in the public interest of openness unless it is necessary to protect individuals from harm (this includes risk of death or injury and risk to private or family life) or protect effective policing.
- 3.9 Applications will need to be supported by evidence as to who or what is at risk of harm, how a restriction order would avoid or reduce those risks, what alternative methods could be used to reduce the risk and why the public interest would benefit from, or not be adversely affected by, nondisclosure.
- 3.10 Within the last week the UCPI have released the process they expect forces to follow when applying for restriction orders and the template documentation to be used to provide both open and closed evidence to support why particular information should be redacted. The UCPI have suggested that they expect forces to work in collaboration in completing these generic documents which will then need to be tailored to individual force restriction applications. This is a significant piece of work, particularly as a deadline of the 8th July 2016 has been set by the UCPI for any restriction applications that maybe required from forces who have submitted closed rule 9 statements into the Inquiry.
- 3.11 The coordination of this piece of work is the current priority of the NPCC Inquiry Coordination Team who are working alongside the UCPI, MPS and ****S23(1) and the relevant legal teams in producing these generic documents to support Forces in any restriction application they may wish to make. It is a particular concern that Forces do not complete this work in isolation in an attempt to meet the current deadlines set by the UCPI without considering the wider impact that may have on other Forces and the Service, particularly as some forces have already decided to instruct

independent counsel to support them in this approach. A multiplicity of Counsel working with Forces and the NPCC and in dialogue with the public inquiry team runs the risk of a fractured and uncoordinated policing response.

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4. NEXT STEPS

- 4.1 The UCPI are currently in the process of starting to visit Forces in order to gain understanding of the information provided in the rule 9 statements submitted to date, what documentation / material exists and where / how it is stored. The UCPI Legal Team have provided an agenda covering what they intend to discuss whilst visiting a Force and this was circulated to all Force SPOCs. It is anticipated that following visits to forces, the UCPI will start to issue further rule 9 requests to individual Forces requesting the disclosure of particular material into the Inquiry for further consideration as per the disclosure and redaction/restriction protocols as mentioned above.
- 4.2 The latest Preliminary Hearings of the UCPI took place on 22 June 2016 when the Chair heard arguments as to whether the state has a duty to disclose to the parents of a deceased child that the child's identity was used for police purposes and if there is a public interest test to be applied, what does it comprise and how is it to be measured. The Chair will again make his written ruling in due course.
- 4.3 Submissions on behalf of the NPCC agree with Counsel to the Inquiry in that unless disclosed as part of the Inquiry there is no legal obligation on the state to disclose. However, the use of deceased children's identities is within the TOR of the UCPI and it is expected that they will call evidence about it, including from officers who have used the practice. The UCPI will consider whether to disclose in the context it has determined on restriction orders where the starting presumption is openness unless there is demonstrable harm (officer or operational). The process will be subject to any application for restriction orders which will include application to restrict the evidence of identities of UCOs and there will be no assumption that the family of the deceased child would favour disclosure unless they have approached the UCPI and made that clear.
- 4.4 If the UCPI on undertaking the balancing exercise decide to disclose the cover name, then prior to any disclosure the police should seek to locate and notify the family – the UCPI feel that the police are best placed to

trace any such family and can offer the necessary apology should they consider it appropriate. The experience of the MPS to date has shown that this is some considerable task and if parents can be traced they will be very elderly. Any question of informing families who have believed incorrectly that their DCI had been used should be deferred until the consequences of disclosure can be identified– in this regard the UCPI accepts there is a NCND issue if they start telling some but latterly don't tell others.

4.5 All the hearings that have taken place to date are preliminary. Having initially stated that evidential hearings would start later this year, that has now been delayed and they are not expected to commence until well into 2017 although no date has been provided.

4.6 The Inquiry is not expected to deal with any potential miscarriages of justice that are discovered during the course of their proceedings. Any such case will be forwarded to a Home Office Panel, who will decide on the appropriate referral – which may include referral to the NPCC Inquiry Coordination Team, the host Force, an independent Force, the IPCC or the Criminal Case Review Commission as appropriate. There remains the potential for this to be a significant issue for forces and the CPS has already advised on such a miscarriage which is nearly 40 years old and involved the non-disclosure of the involvement of an undercover officer.

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*****S31(1)(a)(b).

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*****S31(1)(a)(b).

5. DECISIONS REQUIRED

5.1 No decisions are required in relation to this paper. Colleagues with any particular comments or concerns are encouraged to speak at any time to Andy Ward at the NPCC co-ordination team.

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