



House of Commons
Home Affairs Committee

Undercover Policing: Interim Report

Thirteenth Report of Session 2012–13

*Report, together with formal minutes, oral and
written evidence*

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Home Affairs Committee

The Home Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Home Office and its associated public bodies.

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Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk.

Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/homeaffairscom.

Committee staff

The current staff of the Committee are Tom Healey (Clerk), Richard Benwell (Second Clerk), Ruth Davis (Committee Specialist), Eleanor Scarnell (Committee Specialist), Andy Boyd (Senior Committee Assistant), Michelle Garratty (Committee Assistant), Iwona Hankin (Committee Support Officer) and Alex Paterson (Select Committee Media Officer).

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Introduction

1. At the beginning of 2011, the Crown Prosecution Service halted criminal proceedings against six people who had been due to stand trial at Nottingham Crown Court on charges related to a conspiracy to sabotage a coal-fired power station at Ratcliffe-on-Soar. The CPS was concerned that Nottinghamshire Police had failed to comply with their pre-trial disclosure obligations. The convictions of another 20 activists who had been involved in the same protest were quashed by the Court of Appeal in July of that year.¹ The material which had not been disclosed related principally to the work of an undercover police officer, Mark Kennedy, of the National Public Order Intelligence Unit.² It was PC Kennedy, who had spent seven years living undercover among various environmental and other activist groups, who had alerted police to the proposed action against the power station.³ The Court of Appeal found that PC Kennedy “was involved in activities which went much further than the authorisation he was given”, which “appeared to show him as ... arguably, an agent provocateur”.⁴

2. In the days following the collapse of the Nottingham case, it became clear that activists had themselves identified PC Kennedy as an undercover officer in October 2010.⁵ It subsequently emerged that PC Kennedy had had at least one long-term, intimate sexual relationship with a woman involved with one of the groups he had infiltrated. Throughout this relationship, his partner knew him by his adopted persona of “Mark Stone”; this was not just a false name, but a completely fabricated persona (or “legend”) invented by Mr Kennedy, with a false back-story, identity and cover occupation.

3. In the following months, further allegations of undercover police officers either acting beyond their authorisation, or taking action which was authorised but should not have been, appeared in the media. It was alleged that several officers had long-term, intimate relationships with members of the groups they had infiltrated. One officer was said to have fathered a child in such a relationship before disappearing. It was reported that an undercover officer had planted a bomb on behalf of an animal rights group and that another had been prosecuted under his assumed persona, had given evidence on oath, and had participated in confidential lawyer-client discussions with his co-defendants.

4. These claims related to the work of three police units, dating back to at least the 1980s:

- a) The National Public Order Intelligence Unit (NPOIU), formed by the Metropolitan Police Service in 1999 to address campaigns and public protest which generate violence and disruption.

¹ *R v. Barkshire & ors* [2011] EWCA Crim 1885

² *Ratcliffe-on-Soar Power Station (Operation Aerospace) Disclosure*, Final Report of an Independent Investigation by the Independent Police Complaints Commission, IPCC Reference: 2011/000464 (April 2012).

³ Qq 230 & 257.

⁴ *A review of national police units which provide intelligence on criminality associated with protest*, HM Inspectorate of Constabulary (2012) [Hereafter, “the HMIC Report”]

⁵ *AKJ and others vs. Commissioner of Police for the Metropolis and others* [2013] EWHC 32 (QB), paragraph 24. [Hereafter, “the High Court judgement”]

- b) The National Extremism Tactical Co-ordination Unit, which was established by the Chief Constable of Cambridgeshire in 2004.
- c) The Special Demonstration Squad (SDS), formed by the Metropolitan Police in 1968 to focus on anti-nuclear and anti-Vietnam-war protest, as well as Irish terrorism. The Squad was disbanded in 2008.

In 2006, these units were placed under the control of Association of Chief Police Officers' newly-appointed National Coordinator for Domestic Extremism (under the umbrella title of "National Domestic Extremism Unit"), before being transferred to the Metropolitan Police in 2010, in response to concerns from HM Inspectorate of Constabulary and ACPO itself about weak governance and oversight.

5. In October 2011 and January 2012, five women who had had intimate, sexual relationships with undercover police officers, and one man whose partner had had such a relationship, brought claims in the High Court against the Association of Chief Police Officers, the Metropolitan Police and South Wales Police. The claims were made under the Human Rights Act and under common law. In January 2013, Mr Justice Tugendhat ruled that the claims under the Human Rights Act fell within the jurisdiction of the Investigatory Powers Tribunal (IPT), but that the claims for damages at common law did not. Proceedings in the High Court were stayed pending the determination of proceedings in the IPT.⁶

6. We make no comment on the lawfulness or otherwise of the actions of the officers in these cases, but the terrible impact on the lives of those women who had relationships with undercover officers is beyond doubt. The committee invited the women involved to give evidence and they requested that they give evidence in private. Exceptionally, the committee agreed to do so. One witness told us that

I have, for the last 13 years, questioned my own judgment and it has impacted seriously on my ability to trust, and that has impacted on my current relationship and other subsequent relationships. It has also distorted my perceptions of love and my perceptions of sex, and it has had a massive impact on my political activity.⁷

Another witness described her feelings on discovering that her former partner was a police officer:

It felt like the ground had shifted beneath me and my sense of what was reality and what wasn't was completely turned on its head.⁸

7. The officers themselves were not unaffected by these relationships. As one witness told us:

It is my feeling that there was psychological damage caused on both sides and that there was very little regard shown for anybody's psychological welfare in this

⁶ High Court judgement, paragraphs 183, 196 and 225–227

⁷ Q 1

⁸ Q 15

situation, apart from the person making the operational decisions who was distant enough from it.⁹

8. These cases raise troubling questions about public policy and the legal framework within which undercover police operations are authorised, which we believe require urgent action by the Government. We are therefore producing this short, interim report to highlight our concerns, although we propose to return to the subject in due course.

The legal framework governing undercover policing

9. Undercover police operations are a vital element of the fight against terrorism and serious, organised crime. Many undercover operations are of very short duration, such as the test purchase of controlled drugs, or of alcohol by a minor. Others may last for months or, as in the cases we are considering here, several years. There are three essential problems which will always attend undercover operations—

- a) They place a number of very high risks on the officers who carry them out. This includes the risk of physical injury and violence, but also the risk to their psychological well-being posed by spending long periods living as a different person, cut off from their support network of family and friends.
- b) They involve a high degree of intrusion into the lives not only of criminals, but of innocent members of the public. This is particularly true of operations which are intended to gather information on political extremists. As Mark Kennedy explained to us, it was first necessary for him to infiltrate groups which were primarily concerned with peaceful protest in order to gain access to groups which were of more interest to the police.¹⁰
- c) We have some doubt whether infiltrating groups who are only involved in peaceful protest in order to see whether other groups might have different intentions is a satisfactory way for the police to proceed, certainly when done on a speculative basis. Issues of civil liberties, and the right to peaceful protest, cannot and should not be seen as relatively minor matters which can be set aside lightly.

In order to deal with these issues, there is a system of control around the use of undercover police officers. HM Inspectorate of Constabulary has observed that, where undercover operations are intended to gather evidence which will be used to bring prosecutions, accountability to the court provides a strong incentive for officers to ensure that procedures are followed correctly, and that the use of the undercover tactic is both necessary and proportionate. However, where an undercover operation is intended primarily to gather intelligence, perhaps with a view to preventing serious crime or disorder before it takes place, this incentive is not present.¹¹

⁹ Q 29

¹⁰ Qq 230 & 291

¹¹ *A review of national police units which provide intelligence on criminality associated with protest*, HM Inspectorate of Constabulary (2012).

10. Undercover operations carried out by police forces and others are governed primarily by the Regulation of Investigatory Powers Act 2000 (RIPA). The Home Office Code of Practice on Covert Human Intelligence Sources (CHIS) made under the Act provides detailed rules about a range of subjects related to the use of undercover officers.¹² An undercover operation must be necessary and proportionate to the intelligence dividend that it seeks to achieve and it must be fully compliant with the European Convention on Human Rights. Measures should be taken, wherever practicable, to minimise interference with the private and family life of those who are not the subject of the investigation (known as “collateral intrusion”). The Code of Practice specified procedures for authorising undercover operations, managing undercover officers in the field, and record-keeping, among other things. As well as RIPA, undercover operations will be governed by a range of other legislation such as the Human Rights Act 1998, the Police and Criminal Evidence Act 1984 and the Prosecution of Offenders Act 1985. Undercover officers are not above the law, and may themselves be held criminally liable for offences committed.¹³

11. Despite this strong framework of statutory regulation, supplemented by guidance from ACPO, the Surveillance Commissioners and others, there is an alarming degree of inconsistency in the views of Ministers and senior police officers about the limits of what may and may not be lawfully authorised. The HMIC Report concluded that Mark Kennedy had not behaved in accordance with the National Code of Conduct for Undercover Officers when he entered into a relationship while undercover.¹⁴ The Metropolitan Police Commissioner has told the London Assembly that no authority is ever granted for an undercover officer to engage in a sexual relationship whilst deployed on an authorised police operation, although when we asked him about it, he said that, while it would never be authorised, it “could almost be inevitable” that it would happen in some cases.¹⁵ This comment is bound to be seen as indicating that the police knew that such intimate relationships would quite likely occur. Jon Murphy, Chief Constable of Merseyside and ACPO lead on crime, has described it as “morally wrong ... never acceptable under any circumstances”, but Nick Herbert MP, then Minister for Policing, told the House in June 2012 that he was not persuaded that it would be appropriate to issue explicit guidance forbidding undercover officers from entering into relationships, as it would provide a ready-made test for the targeted criminal group to find out whether an undercover officer was deployed among them.¹⁶

12. We understand, but are not necessarily convinced by, the Minister’s argument about a ready-made test. There are clearly legal and moral limits to what actions an undercover officer may engage in. It would be absurd and abhorrent to suggest that an officer could commit murder or rape, for example, in order to insinuate himself into a criminal gang. As one of our witnesses put it:

¹² Home Office (2010)

¹³ For a more detailed description of the law and guidance on undercover policing, see the HMIC Report, Annex C.

¹⁴ Op. cit., p. 16

¹⁵ Ev 36–38.

¹⁶ 13 June 2012, cols. 96–104WH

would you task an officer with raping a child to infiltrate a paedophile ring ... would you task an officer with raping a woman to infiltrate a human trafficking ring? Maybe they do, but it doesn't seem right to me.¹⁷

Any limitation on an undercover officer's actions potentially provides a "ready-made test" of the kind the Minister is worried about, but it is clear that such restrictions on the actions of state agents are an essential element of a free society governed by the rule of law. These matters do again demonstrate that undercover police activity should only be used if there is serious concern that there is a genuine threat to public safety, or activities aimed at undermining Parliamentary democracy.

13. Nor is it relevant whether such actions were officially sanctioned or not. When a police force places an officer into an undercover operation, he must be regarded as acting at all times in his capacity as a police officer. There is no distinction to be made between what he does in pursuance of his operational objectives, actions which might be merely incidental to his objectives, and actions which are unrelated to his objectives. It is conceivable that an undercover officer might enter into a relationship without his superiors knowing but Mark Kennedy explained to us why this was highly unlikely to happen: his managers had access to all his communications, he carried a tracking device so they always knew his whereabouts, and he was in regular contact with other undercover officers and informants who would have reported on his activities.¹⁸ He said it was "beyond belief" that his superiors did not know.¹⁹

14. Forces must have the flexibility to set the parameters of undercover operations in a way that is appropriate to each individual case, balancing risks and benefits as necessary. However, there are some lines that police officers must not cross. Ministers and senior officers have said that officers would not be authorised to engage in sexual relationships while undercover, but could not rule out the possibility of such relationships occurring anyway. We do not believe that officers should enter into intimate, physical sexual relationships while using their false identities undercover without clear, prior authorisation, which should only be given in the most exceptional circumstances. In particular, it is unacceptable that a child should be brought into the world as a result of such a relationship and this must never be allowed to happen again. We recommend that future guidance on undercover operations should make this clear beyond doubt.

15. While these cases are all about officers entering into long-term, intimate sexual relationships while undercover, they raise more general issues about the framework for authorising and managing undercover operations. **We make no comments on the merits of the High Court case, but it demonstrates that there is an unsatisfactory degree of ambiguity surrounding these cases. In matters which concern the right of the state to intrude so extensively and intimately into the lives of citizens, we believe that the current legal framework is ambiguous to such an extent that it fails adequately to safeguard the fundamental rights of the individuals affected. We believe that there is a**

¹⁷ Q 39

¹⁸ Qq 194ff

¹⁹ Q 271

compelling case for a fundamental review of the legislative framework governing undercover policing, including the Regulation of Investigatory Powers Act 2000, in the light of the lessons learned from these cases. This will require great care and will take some time. We recommend that the Government commit to the publication of a Green Paper on the regulation of investigatory powers before the end of this Parliament, with a view to publishing draft legislation in the Session after the next general election.

Responsibility for undercover policing

16. In order to ensure that the operational parameters and practical execution of undercover actions remain within acceptable limits there will need to be clear authority and oversight for undercover officers, as well as a renewed legal framework.

17. Oversight for surveillance under the Regulation of Investigatory Powers Act 2000 is provided by the Office of Surveillance Commissioners, but HMIC found that this oversight was weak in the case of the NPOIU because there was no expectation that evidence would need to stand up in court.²⁰ HMIC found differences in the training, tactics, review and integration of different units, rather than a unified set of standards to govern all undercover operations.²¹

18. NPOIU undercover operations were managed by the Metropolitan Police until 2006, when responsibility was transferred to the force where the majority of activity was taking place in each deployment. However, we note that an ACPO-rank officer is appointed by each force to oversee adherence to the ACPO National Code of Conduct for Undercover Officers. In the Metropolitan Police, the lead officer for undercover policing is Commander Richard Martin, who took over responsibility from DAC Gallan in December 2012.²² In the new landscape of policing, standards for undercover operations for all police forces are meant to be set by the College of Policing. However, Alex Marshall, Chief Executive of the College of Policing, told us that in practice the ACPO business area could report to the College's Professional Committee, which would be responsible for the appropriate standards.²³

19. Standards in undercover operations are jeopardised by lack of clear lines of responsibility between ACPO, the NPOIU and the different forces and units involved. Discrepancies in training, tactics and review between different undercover units further muddy the waters and risk ambiguity in what is acceptable conduct for officers working undercover. In the new landscape of policing, standards in undercover policing will transfer to the College of Policing. While it is right that the College should draw on the expertise of chief officers, its overall responsibility must be unequivocal and it must create a coherent set of operational instructions that will apply equally to all units conducting undercover operations, against which officers and forces can be held to

²⁰ HMIC Report, p 7

²¹ Ibid., p 38

²² Q 157 [DAC Gallan]

²³ Uncorrected transcript of oral evidence taken before the Home Affairs Committee on 12 February 2013, HC (2012-13) 617-iii, Q 187

account. We do not think it is acceptable for ACPO, a private company, to play any continuing role in this.

The use of dead infants' identities

20. A further, serious aspect of undercover police behaviour which has recently come to light is the appropriation of the identities of dead infants to create legends for undercover officers. This does not just involve borrowing the individual's name, but their date and place of birth and parents' identities, and creating a plausible back-story in which the legend grows up and goes to school in the area where the child would have lived.²⁴ We have been assured that this practice has now ceased, but it is not clear when this happened. Mr Kennedy told us that the practice was not used in the NPOIU when he joined the Unit in 2001 but Paul Lewis of *The Guardian* suggested that it may have been used by the SDS as recently as 2003.²⁵

21. Quite aside from any questions of decency and taste, this is a practice which could potentially have put bereaved families at risk. One of our witnesses told us that, after her partner went missing—she did not realise at this stage that he was a police officer—she found the birth record of the child whose identity he had been using and went to the parents' address in an attempt to find out more about him.²⁶ The parents were not there, and in any event her intentions were not malevolent. But it is easy to see how officers infiltrating serious, organised criminal and terrorist gangs using the identities of real people could pose a significant risk to the living relatives of those people.

22. The practice of “resurrecting” dead children as cover identities for undercover police officers was not only ghoulish and disrespectful, it could potentially have placed bereaved families in real danger of retaliation. The families who have been affected by this deserve an explanation and a full and unambiguous apology from the forces concerned. We would also welcome a clear statement from the Home Secretary that this practice will never be followed in future.

Operation Herne

23. Following the impressive work of *The Guardian* in revealing these practices, on 5 February 2013 we called DAC Gallan to give oral evidence to explain how the Metropolitan Police would deal with the situation. We were concerned to note initial confusion within the Metropolitan Police as to who holds responsibility for this issue.

24. The Metropolitan Police is conducting a review and investigation of the use of undercover officers by the former MPS Special Demonstration Squad. This review is known as Operation Herne. The Operation was launched in October 2011 and has so far cost £1.25m, including the cost of 20 officers plus 11 staff working on the operation. However, no disciplinary proceedings or arrests have yet been made. When we put it to DAC Gallan that this was a large public expenditure with little to show in terms of results,

²⁴ Q 86 [Paul Lewis].

²⁵ Qq 88 [Paul Lewis] and 278–279 [Mark Kennedy]

²⁶ Qq 9–14

she said that the number of files being reviewed was immense and in various formats, from written documents to computer files.²⁷ We heard similar explanations in the early stages of the police inquiries into phone hacking, which were overcome by the crucial intervention of DAC Sue Akers. Similar decisive leadership will be needed to deal with this investigation.

25. The Independent Police Complaints Commission opted for a “supervised investigation” mode of inquiry, which means that its involvement is limited to setting the terms of reference and receiving the investigation report when it is complete. Control of the review has, for the majority of the investigation, been in the hands of the Metropolitan Police itself, but two days after our oral evidence session on 5 February Commissioner Sir Bernard Hogan-Howe confirmed that the leadership of Operation Herne would be transferred from DAC Gallan to Chief Constable Mick Creedon (of Derbyshire Police), because he believed that public confidence would best be preserved by appointing an independent chief constable. We note that senior leaders were aware of these issues for several months before the change in leadership. It is important that in future objectivity is ensured from the outset and not only when an operation comes under scrutiny.

26. For the sake of families whose dead infants’ identities may have been used as legends, it is imperative that Operation Herne is expedited with all possible haste. It is shocking that the practice of using deceased infants’ names was apparently a surprise to senior officers and it is vital that the investigation establish quickly how high up the chain of command this practice was sanctioned. Once the identity of the senior responsible leaders has been established, the matter should be referred directly to the IPCC, which should then investigate the matter itself, rather than sign off on a “supervised” inquiry.

27. DAC Gallan told us that she first knew of the use of dead children’s identities in September 2012, but the parents of that dead child have still not been informed. We cannot understand what is taking so long. Families need to hear the truth and they must receive an apology. Once families have been identified they should be notified immediately. We would expect the investigation to be concluded by the end of 2013 at the latest. Although we welcome the transfer of responsibility for the Operation to a leader from outside the Metropolitan Police, we are concerned that the appointment of a serving chief constable may not be conducive to a swift conclusion. We have written to Chief Constable Creedon for clarity about how much of his time he will be able to commit to this important work. Responsibility for this matter has already passed from the MPS to local forces, from DAC Gallan to chief constable Creedon and, we trust, from ACPO to the College. Without a clear line of accountability, the risks of malpractice are multiplied. We will return to the question of leadership of internal inquiries and undercover policing standards in our work on leadership and standards in the police.

28. We reiterate that in this kind of serious standards case the IPCC ought to run an independent investigation. This would be in keeping with the Home Secretary’s statement to the House on 12 February 2013 that the IPCC would investigate all serious

²⁷ Q 170

and sensitive allegations, in line with our recommendations. Funds for such an investigation should be provided by the professional standards department of the Metropolitan Police. In lieu of that independence, we will be asking to be updated on the progress of Operation Herne every three months. This must include the number and nature of files still to review, costs, staffing, disciplinary proceedings, arrests made, and each time a family is identified and informed. We will publish this information on our website.

Conclusion

29. The action brought by AKJ and others is likely to run for some time, whether in the High Court or in the Investigatory Powers Tribunal, or both. Mr Kennedy told us that he was bringing an action against the Metropolitan Police Service for failure in its duty of care towards him as a serving officer. Operation Herne is investigating the activities of the Special Demonstration Squad, which could possibly lead to future prosecutions. **It might not be possible to conduct a proper review of the current legislation until the current legal position has been clarified by the courts, which is why we have suggested a long timescale for new legislation to be prepared. However, it is important that the Home Office start preparatory work now in order to ensure that there is no further, unnecessary delay.**

30. **It cannot be sufficiently emphasised that using the identities of dead children was not only abhorrent, but reflects badly on the police. It must never occur again.**

Conclusions and recommendations

The legal framework governing undercover policing

1. Forces must have the flexibility to set the parameters of undercover operations in a way that is appropriate to each individual case, balancing risks and benefits as necessary. However, there are some lines that police officers must not cross. Ministers and senior officers have said that officers would not be authorised to engage in sexual relationships while undercover, but could not rule out the possibility of such relationships occurring anyway. We do not believe that officers should enter into intimate, physical sexual relationships while using their false identities undercover without clear, prior authorisation, which should only be given in the most exceptional circumstances. In particular, it is unacceptable that a child should be brought into the world as a result of such a relationship and this must never be allowed to happen again. We recommend that future guidance on undercover operations should make this clear beyond doubt. (Paragraph 14)
2. We make no comments on the merits of the High Court case, but it demonstrates that there is an unsatisfactory degree of ambiguity surrounding these cases. In matters which concern the right of the state to intrude so extensively and intimately into the lives of citizens, we believe that the current legal framework is ambiguous to such an extent that it fails adequately to safeguard the fundamental rights of the individuals affected. We believe that there is a compelling case for a fundamental review of the legislative framework governing undercover policing, including the Regulation of Investigatory Powers Act 2000, in the light of the lessons learned from these cases. This will require great care and will take some time. We recommend that the Government commit to the publication of a Green Paper on the regulation of investigatory powers before the end of this Parliament, with a view to publishing draft legislation in the Session after the next general election. (Paragraph 15)
3. Standards in undercover operations are jeopardised by lack of clear lines of responsibility between ACPO, the NPOIU and the different forces and units involved. Discrepancies in training, tactics and review between different undercover units further muddy the waters and risk ambiguity in what is acceptable conduct for officers working undercover. In the new landscape of policing, standards in undercover policing will transfer to the College of Policing. While it is right that the College should draw on the expertise of chief officers, its overall responsibility must be unequivocal and it must create a coherent set of operational instructions that will apply equally to all units conducting undercover operations, against which officers and forces can be held to account. We do not think it is acceptable for ACPO, a private company, to play any continuing role in this. (Paragraph 19)

The use of dead infants' identities

4. The practice of “resurrecting” dead children as cover identities for undercover police officers was not only ghoulish and disrespectful, it could potentially have placed bereaved families in real danger of retaliation. The families who have been affected by this deserve an explanation and a full and unambiguous apology from the forces

concerned. We would also welcome a clear statement from the Home Secretary that this practice will never be followed in future. (Paragraph 22)

Operation Herne

5. For the sake of families whose dead infants' identities may have been used as legends, it is imperative that Operation Herne is expedited with all possible haste. It is shocking that the practice of using deceased infants' names was apparently a surprise to senior officers and it is vital that the investigation establish quickly how high up the chain of command this practice was sanctioned. Once the identity of the senior responsible leaders has been established, the matter should be referred directly to the IPCC, which should then investigate the matter itself, rather than sign off on a "supervised" inquiry. (Paragraph 26)
6. DAC Gallan told us that she first knew of the use of dead children's identities in September 2012, but the parents of that dead child have still not been informed. We cannot understand what is taking so long. Families need to hear the truth and they must receive an apology. Once families have been identified they should be notified immediately. We would expect the investigation to be concluded by the end of 2013 at the latest. Although we welcome the transfer of responsibility for the Operation to a leader from outside the Metropolitan Police, we are concerned that the appointment of a serving chief constable may not be conducive to a swift conclusion. We have written to Chief Constable Creedon for clarity about how much of his time he will be able to commit to this important work. Responsibility for this matter has already passed from the MPS to local forces, from DAC Gallan to chief constable Creedon and, we trust, from ACPO to the College. Without a clear line of accountability, the risks of malpractice are multiplied. We will return to the question of leadership of internal inquiries and undercover policing standards in our work on leadership and standards in the police. (Paragraph 27)
7. We reiterate that in this kind of serious standards case the IPCC ought to run an independent investigation. This would be in keeping with the Home Secretary's statement to the House on 12 February 2013 that the IPCC would investigate all serious and sensitive allegations, in line with our recommendations. Funds for such an investigation should be provided by the professional standards department of the Metropolitan Police. In lieu of that independence, we will be asking to be updated on the progress of Operation Herne every three months. This must include the number and nature of files still to review, costs, staffing, disciplinary proceedings, arrests made, and each time a family is identified and informed. We will publish this information on our website. (Paragraph 28)

Conclusion

8. It might not be possible to conduct a proper review of the current legislation until the current legal position has been clarified by the courts, which is why we have suggested a long timescale for new legislation to be prepared. However, it is important that the Home Office start preparatory work now in order to ensure that there is no further, unnecessary delay. (Paragraph 29)

9. It cannot be sufficiently emphasised that using the identities of dead children was not only abhorrent, but reflects badly on the police. It must never occur again. (Paragraph 30)

Formal Minutes

Tuesday 26 February 2013

Members present:

Keith Vaz, in the Chair

James Clappison
Michael Ellis
Steve McCabe
Bridget Phillipson

Mark Reckless
Chris Ruane
Mr Davis Winnick

Draft Report (*Undercover Policing: Interim Report*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 30 read and agreed to.

Resolved, That the Report be the Thirteenth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report (in addition to that ordered to be reported for publishing on 5 February 2013).

[Adjourned till Tuesday 19 March at 2.30 p.m.]

Witnesses

Tuesday 5 February 2013

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Eighth Report	Forced marriage	HC 880
Ninth Report	The work of the UK Border Agency (November 2010–March 2011)	HC 929
Tenth Report	Implications for the Justice and Home Affairs area of the accession of Turkey to the European Union	HC 789
Eleventh Report	Student Visas – follow up	HC 1445
Twelfth Report	Home Office – Work of the Permanent Secretary	HC 928
Thirteenth Report	Unauthorised tapping into or hacking of mobile communications	HC 907
Fourteenth Report	New Landscape of Policing	HC 939
Fifteenth Report	The work of the UK Border Agency (April–July 2011)	HC 1497

Sixteenth Report	Policing large scale disorder	HC 1456
Seventeenth Report	UK Border Controls	HC 1647
Eighteenth Report	Rules governing enforced removals from the UK	HC 563
Nineteenth Report	Roots of violent radicalisation	HC 1446
Twentieth Report	Extradition	HC 644
Twenty-first Report	Work of the UK Border Agency (August-Dec 2011)	HC 1722

Oral evidence

Taken before the Home Affairs Committee

on Tuesday 5 February 2013

Members present:

Keith Vaz (Chair)

Mr James Clappison
Michael Ellis
Lorraine Fullbrook
Bridget Phillipson

Mark Reckless
Chris Ruane
Mr David Winnick

Examination of Witnesses

Witnesses: Clare, Alison, and Lisa, gave evidence.

Q1 Chair: Perhaps I can start with a question to you, Clare, in respect of what you have been through? How much of a shock was it to find out that the person that you were in a relationship with was in fact an undercover police officer?

Clare: A massive shock. I had no idea. Sorry, we have talked beforehand and we have bits to say, and Alison was going to go first.

Chair: Yes, we are going to ask all of your questions.

Clare: Okay.

Chair: You are not the only one. We are going to come to each one of you and ask each one of you, but I started with you first.

Alison: Can I come in for a moment to explain? Because it is such a difficult subject for us, and because it is putting our personal life in the public and the political domain, which is very difficult, the way we have approached it—and we appreciate very much that you have allowed this Committee to be held in private in this way—is we had hoped that perhaps we could run through a couple of points that we had each prepared, and there may be questions after that. I do not know if that is appropriate.

Chair: We did not know you were going to do this, but how long? We are not keen on long statements.

Alison: No, it is short. It is not a statement. It is really just a series of points that I would like to cover for myself and then—

Chair: That is absolutely fine. We did not realise. Nobody had told us you were going to do this.

Alison: We weren't sure ourselves until earlier this morning.

Chair: Alison, would you like to make your points?

Alison: Thank you. As I just explained, the nature of the experience is particularly unusual in that it is deeply personal to all of us and yet, as I say, it is in both the public and the political domain. Falling in love with the enemy is, as we have heard recently in a court hearing—I appreciate it is my story but when it becomes your real-life story it is a very difficult one to tell new friends, who often do not believe you, let alone to talk about it in the media or in a room like this. It has had a huge impact on my life, and I am going to talk about my own situation to start with; stick to just my own situation. It has had an enormous impact.

As I think you have had from the description, I was involved in a group in the 1990s. I joined in about 1993; Mark Cassidy, as then was, joined the group in about 1994, and I started a relationship with him in about May 1995. From May 1995 until his disappearance in spring 2000, we lived together as what I would describe as man and wife. We weren't married, clearly, but we shared the same flat. He was completely integrated into my life for five years and then one day he disappeared.

The experience has left me with many, many unanswered questions, and one of those that comes back is: how much of the relationship was real? Some of the consequences of that have meant that I have, for the last 13 years, questioned my own judgment and it has impacted seriously on my ability to trust, and that has impacted on my current relationship and other subsequent relationships. It has also distorted my perceptions of love and my perceptions of sex, and it has had a massive impact on my political activity. After it happened and I started to suspect—it is only recently that I have had concrete evidence, but I suspected within about a month of his disappearance, and after about 18 months of different searches I came to believe it, but I have never had it confirmed—that had an impact on my political activity, and I withdrew from political activity.

Q2 Chair: Your political activity was in the Colin Roach Centre. Is that right?

Alison: I was a member of the Colin Roach Centre, which is a non-aligned political group, and I was involved in anti-racist activities.

Chair: We know the history of Colin Roach, so we know what you would be doing.

Alison: One of the chief points for me is that the betrayal and the humiliation that I have experienced is beyond any normal experience. This is not about just a lying boyfriend or a boyfriend who has cheated on you. It is not even about a boyfriend who is having another relationship with somebody else. It is about a fictional character who was created by the state and funded by taxpayers' money. I believe I provided for Mark Cassidy—who I now believe to be called Mark Jenner and is still operating in the police—an excellent cover story. The level to which he was integrated into my family meant that people trusted

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me, people knew that I was who I said I was, and people believed, therefore, that he must be who he said he was because he was so welcomed into my family, so much part of it. He had official documentation. We travelled around many countries out of England, out of the UK, and he was a professionally trained liar. Again, this wasn't somebody who was just good at telling lies and covering his back; he had professional training allowing him to perpetrate the deceit on me.

During the five years that we spent all our time together, or almost all our time together, my mother remarried. He is in my mother's wedding photograph, because that is her wedding photograph, and I have to see him and my current partner has to see him in that. My grandma became ill and my nephew and nieces grew, and all of these things are recorded on video. A very, very close friend of mine died, and he saw me through that bereavement. We went to Vietnam on holiday; we travelled to Israel; we went to Crete and Holland. We spent summer holidays together and Christmas and New Year; not every Christmas.

I met him when I was 29, and he disappeared about three months before I was 35. It was the time when I wanted to have children, and for the last 18 months of our relationship he went to relationship counselling with me about the fact that I wanted children and he did not. We had a domestic lifestyle—

Chair: Alison, I am going to have to stop you, simply because this has been scheduled for half an hour, and we have other witnesses.

Alison: I know.

Chair: What would have been really helpful is if you could have submitted this in writing so we could have read it. What you have said so far is very helpful. If you could get to the discovery point, because we obviously want to hear from Lisa and Clare as well.

Alison: The discovery point is not, I don't think, the key point, in that I discovered he made an error with a credit card about a year and a half into our relationship, which he told me was in another name. It was in the name Jenner, and I asked him what it was and he told me he bought it off a man in a pub and he had never used it. He asked me to promise to never tell anyone, which is what I did. I never told anyone until after he disappeared, and then when I suspected and I remembered the name, since then it has been confirmed. I would add, just about damage—

Chair: Yes, please.

Alison:—I have had recurring dreams. I do not have them any more, but I did for several years. I knew he was operating for the state. I did not know where, and my recurring dream was that I saw him and I would ask him, "Are you MI5 or Special Branch? MI5 or Special Branch?" and I would wake up before he answered. I was stuck. I had no grieving process. It was like someone was lost at sea. I had no answers. You have that if you are betrayed and you are bereft anyway by a partner, but the added dimension was the paranoia. There were episodes that I do not have time to tell you about, which to this day I do not know whether that was my judgment and my mind off the rails—whether I imagined being followed and I imagined the things that happened—or whether I was being followed. Linked into that paranoia is that I do

not know what is recorded on me. The police are taking a "neither confirm nor deny" position, so not only are they not giving further information, but they are not confirming or denying that Mark Jenner is a police officer or ever was a police officer.

Chair: This is very helpful, and if you would come to the—

Alison: Can I just say one last sentence?

Chair: Yes. Thank you.

Alison: I recently submitted a DPA request and was told the Commissioner has no information on me that he is required to supply. Finally, I would just make the point about the institutionalised sexism, and the fact that these were married officers and the exploitative relationships were either allowed or authorised by those in command.

Q3 Chair: This is extremely helpful, and I am sorry to cut you short. It is just that we are keen to ask you a number of questions, and of course some of this has been in the public domain. What we would like you to do is if you could put down your statements in writing, we will then all read them very carefully before we publish our report.

Alison: Our thoughts?

Q4 Chair: Of course. That would be very helpful if you could do that.

I want to ask some quick questions and colleagues are going to come in and ask some quick questions as well. All colleagues will be able to participate. In terms of the length of your relationship, how long was it before you discovered that this was an undercover police officer?

Alison: Before I discovered?

Chair: Yes.

Alison: He disappeared in May—

Chair: How many years were you in a relationship?

Alison: Five years.

Q5 Chair: Lisa?

Lisa: Six years.

Q6 Chair: Six years. Clare?

Clare: Two years.

Q7 Chair: So it was quite some time before you actually realised?

Alison: I did not realise when I was with him. It was only after he had gone.

Q8 Chair: After he had gone.

Clare: It was long after he had gone that I realised.

Q9 Chair: We have had some interesting evidence from somebody who was also in a relationship, and the other claimants behind you also have stories to tell. I know we have not asked the other claimants to give evidence today, but if you could do the same thing and put it in writing—if you need any assistance in looking at format, we have a format for you that somebody else has written a statement—we would be very keen to hear from all of you. Please do not believe this is the end of the matter because you have come before us for half an hour.

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Can I ask, because this is in the public domain, in respect of your relationship with these police officers, did any of you discover that they had used somebody else's identity, in particular the identity of a dead child, which they subsequently used?

Clare: I did. My partner, I had been with him for two years. I had known for three years before that.

Q10 Chair: Is this John Barker?

Clare: It is John Barker. He disappeared and I spent ages searching for him. The story has just been in the paper. My mind has gone blank now with dates, but I think it was about two years after he disappeared that I found the death certificate for the identity that he had been using.

Q11 Chair: This was a child who had died of leukaemia aged eight, I understand.

Clare: Yes.

Q12 Chair: Is it right that you went to visit this child's house?

Clare: I did, yes.

Q13 Chair: And did you see the parents?

Clare: No. They don't live there any more.

Q14 Chair: Presumably you were thinking that this was where John Barker lived?

Clare: He had told me that his parents were dead when we were in a relationship, so I wasn't expecting to see the parents, but I thought that if I went there—Basically, he had been a missing person for however long and I was desperate to find him. I was really concerned about his welfare. Nothing made sense of what had happened, and so I went there desperate, thinking I have to follow every clue that I have, and I thought maybe some other members of the family may still live there or somebody might know where he was.

Q15 Chair: Yes. Lisa, in terms of accountability—obviously you were all involved in different activities, environmental activities, anti-fascism and social justice; those are the organisations that you were from—looking back at what has happened to you, were you surprised that you were targeted in this way? Do you accept that in certain circumstances the police have to go under cover in order to find out about crime?

Lisa: I was absolutely shocked and devastated. You imagine that somebody may be in public meetings that environmental groups have. You imagine there might be somebody listening in there. You could even imagine that your phone might be tapped or that somebody might look at your emails, but to know that there was somebody in your bed for six years, that somebody was involved in your family life to such a degree, that was an absolute shock. Well, "shock" is an understatement. It felt like the ground had shifted beneath me and my sense of what was reality and what wasn't was completely turned on its head.

Q16 Chair: But do you accept that in certain circumstances undercover agents are necessary for the

police to uncover serious crime? Forget about your organisations; would you accept the principle that—

Lisa: I can't.

Chair: You don't?

Lisa: To be honest, I can't comment on what the police might do in all kinds of—I can't comment on their general operational decisions—

Chair: Of course. That is fine.

Lisa:—but in terms of my life, and what I was doing, it is inconceivable. When you realise that something that unbelievable was true, it left me unable to decide what was likely and what wasn't, for example, and was I going to be bumped off for finding out this secret?

Chair: We have further questions that we are going to ask you.

Q17 Lorraine Fullbrook: Alison, you lived as husband and wife for five years, as you said, the last 18 months of which you had been in marriage counselling because of a child issue. Many women come home from work and find that they have had problems in their marriage or their relationship and the man or woman has just gone. At that stage did you think that he had gone because of the problems you had been having in your relationship? He just disappeared one day. He had left you. Is that what you thought?

Alison: The Christmas before something happened. He got called away. We were supposed to be spending Christmas 1999, around the Millennium, together, and he got called away on Christmas Eve up north. I said I would go with him, and he said, "No, no, I've got to do it myself," and he was very odd. When he came back he was a very different man, and I don't know what happened. There are a lot of things we know, and there are a lot of things we still do not know.

Q18 Lorraine Fullbrook: But at the time he left you, you thought he had just left the relationship and—

Alison: My stepfather went to his grave believing that Mark was a bigamist and nothing else. So my family believe that, and for probably about a month I believed that, yes.

Q19 Lorraine Fullbrook: But you believed he had just left you. He had left the relationship.

Alison: He left a letter. He left a note, and the note said, "We want different things. I can't cope. We want different things. When I said I loved you I meant it, but I can't do it."

Q20 Lorraine Fullbrook: How long after that did you suspect that there was something strange about the relationship?

Alison: I do not know exactly, but I would say within the month I received a phone call from another political activist who phoned on the home phone to speak to him. I said, "He's left me," and he said, "Where is he?" I said, "I don't know. I've got no trace for him," and he said, "I think we should probably have a chat." After that chat, when I met with him he said, "We just need to run through a few—" He asked me lots of questions about bank accounts and lots of details, and after that he said, "We need to run through

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to check he wasn't a spy," and I came out of that meeting thinking, "You think he might have been," and then I thought—

Q21 Lorraine Fullbrook: Did you believe at that point that he was or wasn't?

Alison: No. At that point I came away and I thought, "Okay, if he was, it would make sense of why I have never met his family. That would make sense. That would make sense." Then, about a year in, I paid a private investigator and that was when I got it confirmed that he was living under a false identity. But for about a year when you go back to saying— Somebody asked, "Is it okay to sanction any undercover policing?" I think the point about this was that when I suspected it impacted on some of my very close relationships with people because they thought I was going mad. They said, "It would never happen. They would not put someone in your life for five years."

Q22 Lorraine Fullbrook: When you got the phone call from this friend, they obviously suspected that there was something strange about this. Did they tell you what they suspected?

Alison: It was someone who was not in a group that I was in, so it wasn't someone who was a friend. It was another political activist who Mark was involved with.¹

Q23 Mr Winnick: None of us would like to go through the experience that the three of you have gone through. I certainly would not, and I would have the same strong feelings that you have, but to be the devil's advocate, which I will be for a moment for reasons I am sure you will understand, the police would argue that there are occasions, not only with terrorism but in other groups, where there is the possibility—and perhaps more than the possibility—of violence, and that in those circumstances they have a right to protect the public by putting in an undercover agent. Would you accept that, or would you—

Clare: I do not think there is any justification for having sex and intimate relationships with people.

Q24 Mr Winnick: I am coming to that in a moment. Before we come to the sexual aspect—and there is no reason why you should say yes—do you accept there are certain circumstances, terrorism obviously, where violence could be inflicted and the police may well be wrong and exaggerating? I would not put it beyond that.

Lisa: We were not involved in terrorist groups. There was no justification for somebody—

Mr Winnick: As far as you are concerned, yes.

Lisa:—coming to my father's funeral with me. There was no justification for putting an undercover cop into my family's life.

Q25 Mr Winnick: Would it be right to say that as far as your three groups are concerned there was no

possibility of violence at any stage? Would that be right?

Clare: Can I just say that one of the things that I found very, very distressing about what has happened since this has come to light and come out on the public arena is the number of people who are trying to justify it by making comments about, "Oh we have to prevent terrorism", or things like that? There was an interesting interview with Peter Bleksley, who was an undercover policeman, on Radio 5 a couple of months ago. He said that he had slept with a target in his investigations. He mentioned on the radio that she was a very attractive woman, and the radio presenter said, "Would you have slept with this person if it had been a man?" and he said, "No, I'm not gay." I think that answers the question. This is not about a need to do it. It is about a desire to do it. They have the power and they think they can get away with it. That is what it is about. It is deeply distressing, and I do not think it should be allowed in any circumstances. It is so intrusive into people's lives, and, as my friends have said, it turns your life upside down. Everything that you thought you knew suddenly becomes unreal; everything changes. You do not know who you can trust any more. It destroys everything.

Q26 Mr Winnick: I can understand that. I would not want to be a victim, and you have been victims, and I certainly would not be and I doubt if any of my colleagues would be. This is a question that you may or may not agree with. In your cases, as you have said, there did not seem to be any justification for what the police did in sending agents into the organisations, but if they did send agents into the organisations, is it your view that in those circumstances the police involved should not engage in any sort of personal relationships? Would that be the position?

Alison: One of the things that have been very interesting for us as a group of women is that we have been thrown together over the last couple of years. We have different backgrounds, different ages, and we come from different political backgrounds. We are not a political party who have a party line on things, so we can't speak as one whole for everything, but I think where we come together and what we have all agreed on is the use of sex and intimacy as a tactic of undercover policing. That is where we all agree. Whether they should infiltrate this group or that group is—

Mr Winnick: But you draw the line on sexual relationships. I understand.

Alison: One of my points was that I felt we knew we had—

Chair: Thank you. That is very helpful.

Q27 Mark Reckless: You have put particular stress on the pain that was caused to you and the impact it had on your life that this was, I think you said, directed by the state. What do you say to the perspective that the people directing this, such as it was directed, appear to have been within ACPO, which is actually drawn up as a limited company, a private company, and not subject to the usual police controls and police authority.

¹ Note by witness: The answer to this question is actually "no" they didn't say what they suspected.

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Clare: Our partners were in the SDS rather than ACPO.

Lisa: ACPO only got control relatively recently. This has been happening for years and years and years under Metropolitan Police control.

Q28 Mark Reckless: My understanding was that when this story broke, in terms of Mark Kennedy as he was then called, in the press, at and up to that point this undercover policing had been directed by the unit of which you just gave the initials, which was controlled and commanded operationally by ACPO. ACPO is a private company, and many of us have argued against it having operational control. At least as I recall, it was the exposure of some of this activity that led to the activity being taken away from ACPO and put in the Metropolitan Police. Am I wrong in that recollection?

Alison: I personally don't feel in any way that I can comment on various organisations in the police, except to know where they had an impact on my life.

Lisa: I believe that ACPO had control over the NPOIU for a couple of years—by no means the entire time that this undercover practice has been in operation. I would like to add to what Alison said about having this controlled by the state. How it feels to me is it is not having found out that your partner was lying about who they are; it is finding out that your most personal relationship was being controlled by the state without your knowledge. There are a group of people whose names I will never know, who I will never meet, who had control over what time we spent together, who ultimately decided when my relationship was going to finish, who would have made the decisions about whether or not Alison could have children in her personal relationship. All of these kinds of decisions were being made behind the scenes by a team of people who had intimate knowledge of myself and my life, and I had no idea of their existence.

Q29 Mark Reckless: I have just been passed a note that ACPO had control of these operations from 2006 to 2010. It is more when the news broke than when these incidents happened, so I correct that. The state should ultimately be accountable to the people through Parliament. Why we are pursuing this case and having a private session, which we very, very rarely do, is because of the impact it has had on you and our concern that the state or the state's actions here were not properly overseen by the process of parliamentary governance that we should have in our democracy.

The final point I would like to ask about—I do not know which of you would prefer to comment on this—is clearly this has impacted you hugely in terms of your personal relationships, not just with the undercover person but how you then relate to other people. Do you think at all that, even to a lesser degree, it may have had any of that impact on the police officers who were involved with you, or do you believe they have been coldly dispassionate and been able to separate that out entirely, such that they are personally not affected in the way you so very clearly are?

Lisa: I think it is very difficult. When you find out that somebody was a professional liar, it is very difficult to decide what they may or may not have felt in reality. It is my feeling that there was psychological damage caused on both sides and that there was very little regard shown for anybody's psychological welfare in this situation, apart from the person making the operational decisions who was distant enough from it.

Alison: I would add that I wonder how much psychological damage there would have been for those officers had they not been found out, and their families.

Q30 Chair: We have your former partner coming in, Mark Kennedy. You know that he is taking legal proceedings against the Met, and he claims that he is also a victim and that he has been traumatised by what is happening. Do you have any sympathy with that? You have just said that you felt that they had been traumatised as well by this.

Lisa: As a human being it is very difficult not to have sympathy for somebody that I cared about deeply, but it is also important to remember that that person that I cared about deeply did not in fact exist. I cared deeply for somebody whose life was intermingled with mine, and that person's life story is a fiction.

Chair: That is very helpful.

Q31 Bridget Phillipson: I am sorry I missed the start of your evidence. I am serving on a Bill Committee at the same time, so apologies for missing the beginning of what you had to say.

I was stunned when I read what had gone on in all of your cases, and I can see why that would lead you to perhaps question all reality. What rationale do you think would be offered—I know Mr Winnick was asking about this, but were you used in order to target others, as opposed to it being about you, or do you feel it was about a means into targeting other people that perhaps were engaged in political activity?

Lisa: These are the answers we want. We are looking for these answers. This is why we are bringing proceedings because we do not have answers for these things.

Q32 Bridget Phillipson: The wider debate is always, as you talked about, about the generalities—"It is important that we have this in order to target terrorists or others"—but in your cases it is hard to understand why you were used in that way.

Clare: I do not see how having sex or intimate relationships would ever prevent anything, to be honest, because either you know something is going to happen, in which case you can investigate it, or you are doing it on a speculation and anybody could end up trapped in your web. The other thing about it is that we are supposed to have a legal system in this country where you are innocent until proven guilty and that you get a fair trial. What happens with police officers going in and having relationships with people is that they act as the judge, the jury and the person who sentences. They can do what they like to you. There is no oversight. You do not get a trial. It is really quite offensive to suggest that someone could

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deserve this just on the basis of what they may or may not be involved with.

Alison: One of the things I said at the beginning was that, certainly in my case, I think I provided a very good cover story. One of the other eight claimants has been told that officers have their needs, and that is where I also mentioned institutionalised sexism. I think there was a strong element where they brought in a stereotype of the left as being promiscuous and, “Don’t worry about these women. They sleep with lots of men anyway and they’ll get over it. They’ll never find out, and they’ll get over it.”

Q33 Bridget Phillipson: Do you have any idea how widespread this might be beyond your particular individual cases?

Lisa: We know that it is a practice that has been going on for a very long time, and so it is not just the actions of one rogue officer or two rogue officers, or three even. There is no way of not interpreting this as a systemic attitude within the police and a deliberate policy. Our case involves the Human Rights Act. We are talking about degrading and inhumane treatment. I think what happened to us has been akin to psychological torture, and you would have to think long and hard before you deliberately authorised such a practice.

Chair: I just say to colleagues that we have the solicitors to Lisa, Alison and Clare on shortly, so anything we do not pick up with you we will pick up with them.

Q34 Chris Ruane: May I say how very brave you are for what you have done so far? To discuss the most personal aspects of your life in the press and in front of politicians is to be commended, and I think the fact that you have given sympathy to the people who victimised you and their families is to be commended too.

It is the state that did this. How do you feel towards the elements of the state and how you have been treated since it came to light by the police, by the security forces, by politicians and by the press? You mentioned, Lisa, one of the questions you want answered. What other questions do you want answered?

Lisa: There is a lot that is unanswered. Some people still need answers as to definitively who the person they were in a relationship was. I am in the position where I do know that to a certain amount. I know something about that. But what I would like to know is: who else was participating in the relationship that I believed it was just me and one other person? Who else was seeing every text message that I ever sent him? Who was listening in to our most intimate phone calls? Who saw our holiday photos? Was there anybody following us when we were on holiday? Who made the decisions about what happened to my life, where I was allowed to go, who I was allowed to see, which I thought was my free will but actually was being manipulated by this person who was being controlled by other people? There are lots of questions that I need answers to.

Q35 Chris Ruane: Do any of your colleagues have anything to say? What questions remain unanswered for you?

Clare: How anyone can contemplate sanctioning this and why it isn’t stopped immediately. It is really outrageous that it can go on in this country. My experience was that I found the marriage certificate of my former partner in his real name—I had not known he had been married—and that said “police constable”. When I talked to friends and family it was like, “You’re just jumping to too many conclusions that he is a police spy. You are being paranoid. That wouldn’t happen in this country.” People find it absolutely outrageous that something like that can happen in this country, and yet some people seem to make excuses for it. Why isn’t anybody saying, “Stop it right now. It should not happen again. It is abuse.”?

Q36 Chair: The picture in *The Guardian* today was your partner?

Clare: My partner, yes.

Chair: Taken at a time you were in a relationship?

Clare: Yes.

Q37 Chris Ruane: Are you getting the help that you need and deserve to conquer what you have been through?

Alison: One of your questions was what our attitude was to the state, the security forces and the press, and I think personally I feel very angry and very frustrated. I can’t quite believe it. To me, in colloquial language, from my point of view we have got the police totally bang to rights, and instead of them putting their hands up and saying, “Yes, we did this. It was years ago”—or not even years ago—“and it was really wrong, and we shouldn’t have done it,” they are saying, “We didn’t do it, and we can’t even confirm or deny that you have got proof of this man being a police officer.” So, it is that frustration, and it is totally obstructive.

Q38 Chair: It would be very helpful, in answer to Mr Ruane’s question, if you have outstanding questions that you think need to be answered, please add that to the statement you are going to prepare for the Committee. It would be extremely helpful to us, and we will then be able to put those questions, because obviously you cannot do it directly. We are very happy to do it.

Lisa: A question we will never get the answer to is: when do we get our lost years back? Who is going to give those six years back to me?

Q39 Mr Clappison: I think mine is perhaps more of a reflection of how you are affected. It is impossible to hear you speak without feeling very sorry for what you have gone through. Also, as a layman looking at it in the round and putting aside any political views, the whole thing sounds surreal and crazy, to be quite honest. Do you think there was anything at all that you were involved in—you may have had views and activities—that justified what took place?

Alison: No.

Lisa: I do not think there can be a justification.

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Alison: We had the argument right at the beginning among ourselves about whether there was ever a case, and the two examples that completely swayed me to believe that there was never a time when it was okay were: would you task an officer with raping a child to infiltrate a paedophile ring, and would you task an officer with raping a woman to infiltrate a human trafficking ring? Maybe they do, but it doesn't seem right to me.

Clare: I agree. I do not think there are any circumstances in which it can be justified. I think the other thing is there has been talk about damage and things like that. There is probably more damage and violence that happens on a regular basis on a Friday night in town centres when people get drunk, but there is not a proposal to infiltrate every pub in the country on the off-chance that you are going to be able to prevent violence and damage. This is about political policing and trying to interfere with what is actually a recognised right to freedom of association and freedom of expression.

Q40 Mr Clappison: To absolutely cover it—and I am not suggesting this is the case, but so we know what we can put to the other witnesses we have—there was no violence that you were involved in or anything like that?

Lisa: The only reason that this has happened to us is because we were members of political groups. The only reason was because I was involved in environmental groups and I was campaigning for social justice. If I had not been involved in those political groups this would not have happened. It is not about any particular individual's activities. It is about—

Chair: I think Mr Clappison wants to know about violence in your groups.

Q41 Mr Clappison: I want to be able to put this to the other witnesses. We have other witnesses coming later on. To me, I think it is all crazy, but—

Clare: The point I mentioned earlier—effectively, if you are accused of a crime, if you are suspected of a crime, there is a process in this country where a charge is laid against you, the evidence is presented and you have a right to make a defence. That is not what this is about. This is about just interfering with people's lives and interfering with political movements.

Chair: Thank you. We have to be very quick, because we can pick up the other questions with the lawyers.

Q42 Lorraine Fullbrook: Very quickly, if I could ask you all, when you were seeking for answers to your own horrendous stories in your investigation, did you ever find female undercover officers?

Chair: A quick yes, no, numbers and so on.

Lisa: I met a female undercover officer who was fully aware that I was in a relationship with Mark because she asked me about it—she was a witness to it—but she herself never entered into any serious relationships. She always had—

Q43 Lorraine Fullbrook: That she told you?

Lisa: Not that I was aware of. She always had a boyfriend that wasn't part of us. She always had a

relationship. In fact, I met somebody once that was her supposed boyfriend who was somebody from a different team.

Chair: Thank you. That is very helpful.

Lisa: She had a cover relationship, so they could have given any of the men cover relationships. The fact that they did not meant that they were authorising them and allowing them to do what they did.

Clare: Not only that, but—

Q44 Chair: Sorry, Clare, what is the answer to the question? Did you meet undercover female officers?

Clare: No, but what I just wanted to say, because this has kept coming up, is that people say if you did not allow officers to have sex, there would be a ready-made test to find out if they were an undercover officer. It is absolutely ludicrous, because in any movement there are some people who have relationships and there are some people who do not. People have all sorts of reasons for refusing to have sex with someone: they don't fancy them, they have a partner already—it is just ludicrous.

Chair: Thank you for clarifying that. Alison, did you come across any? You didn't. Let us move on swiftly to Mark Reckless.

Q45 Mark Reckless: To clarify the response to James Clappison's question, have any of you ever supported the use of violence in a political cause?

Lisa: One of the campaigns I was involved in was against an arms fair, which is against international violence.

Alison: I believe in self-defence against fascist violence.

Chair: Clare?

Clare: I have already answered this question, and I feel that these questions are a bit like a woman walking home in a short skirt or late at night. Does that make it her fault if she gets raped? It is not a relevant question. The eight of us are from a variety of backgrounds and none of us—

Q46 Chair: Sure. Clare, the reason why we ask these questions is that we are going to test other witnesses and whether you regard them as relevant or not it is a question that members wish to ask. It does not criticise you. It does not denigrate you. We are trying to get to the truth of this. That is why we are having these hearings. In my view, it is a legitimate question for Mr Reckless to ask, and you have answered it extremely well, if I may say so.

Clare: Okay. Well, I was involved with London Greenpeace, which campaigned against violence and oppression and was actually trying to create a fair and more just society for everybody.

Q47 Chair: Thank you. Let me say to all of you, and to those claimants at the back, that what you have said today has been extremely helpful to this Committee and we are most grateful. To come before a Committee of this House, even though it is in private, and to be in a position to tell us about your lives is very, very difficult, and we are very grateful. We are going to pursue this matter because the Committee is interested in it and we think the public has a right to

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know. This is the first stage, and what would be extremely helpful is if you put your other issues in writing—your comments in writing to us—and that would help us as we develop further questions that we wish to put to others.

What I am going to ask you to do, because you have asked for this to be in private and obviously you do not want to be identified—before I let in the rest of the public if you want to melt into the background and your solicitors melt into the foreground, we are then in the position to start the next session.

Lisa: I wanted to ask a quick question of you, because it does feel like a huge issue, and just one afternoon on this enormous issue feels to me like it is barely scratching the surface. I was wondering whether there was any idea whether there would be a longer inquiry.

Chair: We will consider what we have heard today, and then we will make that decision and we will let you know. Thank you very much. Thank you for that.

Tuesday 5 February 2013

Members present:

Keith Vaz (Chair)

Mr James Clappison
Michael Ellis
Lorraine Fullbrook
Bridget Phillipson

Mark Reckless
Chris Ruane
Mr David Winnick

Examination of Witnesses

Witnesses: **Harriet Wistrich**, Birnberg Peirce & Partners, **Jules Carey**, Tuckers Solicitors, and **Marian Ellingworth**, Tuckers Solicitors, gave evidence.

Q48 Chair: Could I refer all those present to the Register of Members' Interests, where the interests of members of this Committee are noted? The Committee sat in private to take evidence from witnesses, and before us we have solicitors representing some of those clients who gave evidence and some others who are not here but have given written evidence.

I want to start with one issue that has been in the public domain, which is the use in the past by police officers of identities of children who have died. Have any of you had any contact with any of the families or individuals involved in the misuse of identity of those who are deceased?

Jules Carey: Yes.

Q49 Chair: Mr Carey, what is your involvement in this?

Jules Carey: I am instructed by one family who have a son who was born and died in 1973. We believe that a police officer used the name Rod Richardson, which is the name of the child, and was deployed as an undercover police officer in about 2000 to 2003 using that name and infiltrating various political groups.

Q50 Chair: I was very concerned when I read about this. What are the feelings of your clients about the use of the identity of their child by undercover officers?

Jules Carey: I am also very familiar with the issues of the women sitting behind me, and I have heard their testimony today. My client is upset about the circumstances in which her child died in 1973 and she is upset about the fact that the child's identity has been used as it has. She wants to understand why and she wants to know the truth about that, and she would like an explanation as quickly as possible from the police. But I have to say I am also representing a number of women, some of whose testimony you have heard today, and I do find that their concerns and the way the operation seems to still be being carried on, causing the destruction of people's lives as it is—well, it is not an equivalent.

Q51 Chair: Sure. We understand that, but have your clients been contacted by the police, or have they contacted the police to find out more information?

Jules Carey: I have submitted a written complaint on behalf of the family to the police.

Q52 Chair: Is this the complaint that has triggered the investigation by—

Jules Carey: I believe so.

Q53 Chair: We will have Patricia Gallan in later, and we will ask about that. Thank you for that.

Can I move on now to the general point about this whole issue and the articles that have been in the public domain? Ms Wistrich, do you think that there is a justification for the police to use undercover tactics where they are seeking to uncover criminality?

Harriet Wistrich: The case we are bringing is about the police using sex and intimate long-term sexual relationships, as we have heard, and I do not believe there is a justification for that. I think it is completely outside the scope. Whether or not the undercover tactics are justified or a useful police tool is a matter that anyone can debate, but that is not what we are here for. What we are here for is the overwhelming damage that has been caused. The point I want to make, to follow up from my clients in the legal proceedings we are bringing who have given testimony to you in private just now, is that all of them have been very, very seriously psychologically harmed. We have psychiatric evidence of very serious harm that was caused as a result of what the police did to them. This is a form of utter degrading treatment. It is something that the police were aware of. Even in some of the cases when the men disappeared from their lives and they saw these women searching for them in a most awful way, the police were aware of the torture they were going through and they kept hidden their identities.

Q54 Chair: Yes, indeed. But you have seen the judgment of Mr Justice Tugendhat.

Harriet Wistrich: I have indeed, yes.

Chair: I quote from it, "Everyone in public life would have assumed, whether rightly or wrongly, that the intelligence services and the police did from time to time deploy officers in this way". I think he made reference to James Bond.

Harriet Wistrich: Yes.

Chair: As lawyers involved in this issue, what did you feel about that judgment?

Harriet Wistrich: I would like to ask you, as parliamentarians, what you think about what he said. Our argument in court was we do not believe that those people who were debating RIPA—and I do not know how many of you were in Parliament at that

point—when you were discussing what controls can we put on what police can do and what—

Q55 Chair: Do you feel, and do Mr Carey and Ms Ellingworth feel, that there are not enough controls? Is that the basis of what you are telling the Committee today?

Harriet Wistrich: What we are saying is that RIPA is there to regulate undercover investigations, and there is a whole framework within that in which certain things are permitted and certain things are not. Our argument was that sexual relationships cannot have been contemplated by you, the legislators, when you were imposing these regulations on this police activity.

Q56 Chair: Thank you. That is very helpful. Ms Ellingworth, do you think that RIPA is defective? It is kind of Ms Wistrich to put questions to us, but she is actually our witness today. We will give our views right at the end when we publish our report. Ms Ellingworth, do you think that the law needs to be changed?

Marian Ellingworth: That is a very large question. RIPA is a long and complicated statute.

Q57 Chair: No, in respect of what Ms Wistrich has said. Your clients' cases are about sexual activity. It is not generally about undercover agents, is it? It is about the way this was used. That is your case?

Marian Ellingworth: Yes.

Chair: So, do you think that that should be precluded specifically by the legislation?

Marian Ellingworth: I do. I think that the way that sexual activity was used in the case of my clients could not and should not have been sanctioned.

Chair: Mr Carey?

Jules Carey: I do not have a huge problem with RIPA. You referred to the judgment. Can I have two minutes to explain how—

Chair: You can have a minute.

Jules Carey: A minute is good. What we found ourselves facing was the police saying that the conduct of the officers was authorised under section 26(8) of RIPA. They felt that the words “personal” and “other relationships” were sufficiently broad to justify the sexual relations that these officers were entering into. We argued that that is not the case; RIPA cannot do that. We argued that for three reasons. The first reason was, if you look at the framework of RIPA and if you look at the hierarchy of intrusion, the top of the hierarchy of intrusion relates to intercept evidence. About the fourth down on the hierarchy of intrusion you have what are called CHISs, which are for our purposes police spies. In terms of the hierarchy, the most extreme forms of intrusion require a warrant to be issued by the Secretary of State to permit that conduct to take place.

Q58 Chair: And this did not happen?

Jules Carey: For undercover police officers you do not need anything like that. You only need the authority of a superintendent. So what we are saying is the people—

Q59 Chair: Do you think there should be that authorisation?

Jules Carey: For personal or other relations, no. For sexual, intimate—if you just let me finish my minute, I will hit the other point, so you will see why I think that is completely out of order. Firstly, we are saying that the structure of RIPA does not in any way envisage sexual relations at all. In fact, there have been two codes of practice that help to explain RIPA and in neither of those was there any reference to sexual relations at all, and that includes the 2010 version. Another argument we raised was the fact there is not anywhere—It is the principle of legality: basically, you cannot override fundamental rights, like your bodily integrity, unless it is by specific words. Now “personal” and “other relations” are not specific words, and for that reason we are saying that they are far too general to enable a police officer to rely on RIPA. One final thing—

Chair: It is a very long minute.

Jules Carey: Yes, I am sorry. I am using Transport for London time. We are of the view that it is simply not possible to authorise a breach of fundamental rights insofar as you cannot legislate to kill people and you cannot legislate to torture people. You fundamentally cannot legislate to breach a fundamental right such as your bodily integrity. It is just simply not possible to legislate for that sort of thing. Does RIPA need to be changed? It cannot be changed to permit a breach of a fundamental right.

Q60 Lorraine Fullbrook: To follow on from the Chairman's questions, I would like to ask each of you what, in your view, is the absolute legal limit on the degree of intrusion that could lawfully be authorised in the course of an undercover police investigation?

Harriet Wistrich: I think you have to completely stop before you get to a sexual relationship. Whether there are forms of relationships that may be justified that stop short of a sexual relationship—but to enter into an intimate sexual relationship, to get to know people's families and to deceive in that way is out of bounds, in my opinion.

Q61 Lorraine Fullbrook: Everything else up to that you would accept is lawfully authorised?

Harriet Wistrich: No, I would not necessarily. I think it would depend entirely on the circumstances.

Q62 Lorraine Fullbrook: That is my question. In your view, what is the absolutely legal limit for a degree of intrusion that is legally authorised in an undercover police investigation?

Harriet Wistrich: I think you have to look at the circumstances of the operation, but there are certain things where one can absolutely draw the line and say, “This is never permitted.”

Q63 Lorraine Fullbrook: You think it depends on a case-by-case basis?

Harriet Wistrich: It would certainly depend on what the circumstances were of the investigation.

Q64 Lorraine Fullbrook: Your legal limit would be intrusion on a person?

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Harriet Wistrich: Certainly, yes; a bodily intrusion.

Q65 Lorraine Fullbrook: Up to and everything is okay?

Harriet Wistrich: No, not necessarily.

Lorraine Fullbrook: That is the question.

Harriet Wistrich: It would depend on the circumstances of the operation.

Q66 Chair: I think what Ms Fullbrook is looking for is a list of what is acceptable and what is not acceptable, and that you have not clarified. Most people can say it depends on the circumstances.

Harriet Wistrich: Is anything acceptable in terms of this kind of political activity at all? No, not necessarily at all.

Chair: That is the argument.

Harriet Wistrich: Is it acceptable in terms of a child trafficking ring? Possibly there are circumstances in which it might be justified, but one would have to—

Q67 Lorraine Fullbrook: That was my question—what are your legal limits for a lawfully authorised degree of intrusion—and you can't answer. Mr Carey?

Jules Carey: I do not know if this helps, but in February the HMIC published a report that said that undercover officers should only be used in relation to serious crime because of the level of intrusion that they pose. That is in any circumstances. The HMIC is also very clear that, given this country's commitment to human rights, they should not be deployed unless it is necessary and proportionate in a democratic society. I think what you do is you take whatever the circumstances are, you determine whether or not it is a serious crime that is being investigated, not a political grouping, and then you look at that and you work out whether or not the deployment in these circumstances is necessary. Can that information be found by other methods, and is it proportionate in a democratic society? I think that is what you look at.

Chair: Thank you, that is very helpful.

Q68 Michael Ellis: The general public understand, don't they, that this sort of thing happens? As Mr Justice Tugendhat was saying, this would not surprise the general public. They understand that it happens. In fact, it could be argued that, at least anecdotally, it probably happens more often to men, and one hears about historical records going back to Mata Hari. What are you saying exactly about impropriety on behalf of undercover officers? Would it be something that you would want to tie the hands of our undercover police officers on in the lawful detection of crime? This is not about politics. You have alluded to political protests. You may think that if the rationale of an offender is in order to protest at something that they perceive to be politically reprehensible it justifies a criminal act or a conspiracy towards a criminal act, but isn't it the duty of the police to get past that and to stop criminal offences from occurring, and sometimes they will have to go undercover to do it?

Harriet Wistrich: In what circumstances is it justified for the police to kill somebody or to assault them?

Michael Ellis: When it is reasonable.

Harriet Wistrich: In self-defence there may be a justification. To prevent a crime there is a legal defence. Those are the circumstances that one looks at what would otherwise be unlawful acts that might become lawful, but to suggest that you can say, "Okay, we want to infiltrate this group. You go and sleep with that person. Make the rest of the group think that you are one of them. Satisfy your sexual needs while you are going to be under cover for a period of time. That is okay because we are doing important work. We are gathering intelligence on this political activity," is massively beyond the bounds of a civilised society.

Q69 Michael Ellis: But deceptions take place, do they not, in all human relationships? People are dishonest with each other in all human relationships.

Harriet Wistrich: With the state backing you up, with the state providing you with the resources in order to go and take advantage of people and cause real psychological damage, amounting to utterly degrading treatment and a breach of fundamental rights—is that something that takes place all the time? Is that something that the state backs up? Is that something that our society justifies?

Chair: Thank you, that is very helpful. We will come back to Mr Ellis at the end.

Q70 Bridget Phillipson: Just a follow-on from Mr Ellis' point: do you know in these cases whether the police officers were directed or encouraged to engage in relationships, or was that something they did of their own volition? My apologies if you have answered this already. I did have to leave the committee room.

Marian Ellingworth: We know so little. In the case of my clients, it is neither confirmed nor denied that the undercover officer is an undercover officer, let alone what directions he had. That is, of course, one of the things that is so very difficult for our clients.

Harriet Wistrich: I did submit some evidence that was a series of quotations taken from a number of different sources—different police officers and Members of Parliament and Ministers—about in what circumstances this could be justified. Certainly the ACPO lead's first response to the Mark Kennedy thing was, "This is absolutely never justified." We have yet to hear of a circumstance in which somebody is saying, "It is justified," but there is a real serious lack of clarity in terms of guidelines of the law and of policy around what is the law. Are there any legal limits to this? That is very much why we have come to you, because—

Chair: Indeed. Actually, we have asked you to come to us, rather than you have come to us.

Q71 Bridget Phillipson: As far as you are aware, are female officers engaged in this kind of behaviour in the same way with male targets, if I can use that word? The cases we are discussing would appear to involve male undercover officers having relationships with women. Is this a particular concern?

Jules Carey: I think we are aware of one female officer who has been deployed who had perhaps—in fact I think your next witness will probably be able to provide more information about that. None of us are instructed by males.

Harriet Wistrich: I think there are always exceptions, but what we are seeing—and this is a point my clients have made in the earlier session—is that this does amount to a form of institutionalised sexism. What you have is a very male, macho, canteen culture of police officers who go into these situations. We do not know whether they say, “Look, you have to sleep with these targets.” Maybe they don’t. Maybe they say, “It is all a nod, nod, wink, wink. You know you can get away with it. You know this is a good opportunity,” but the impact is massively upon women and it is committed massively by men.

Q72 Mr Winnick: Would it not be somewhat simplistic or naïve to believe that the police, having planted agents into these organisations—whatever the rights and wrongs of that—were not aware that sexual relationships were taking place or were bound to take place if indeed the agent was to stay, as we have been told, over a long period of time? Therefore, what I am asking you is should we not accept that the police were perfectly aware that sexual relationships were taking place?

Harriet Wistrich: I believe they were, whether it was officially recognised or whether it was a “nod, nod, wink, wink”, but from the testimony of my clients and the level—We know, for example, that there were other undercovers in the same movement who would have known that this relationship was going on. I can’t see how it could not have been known.

Jules Carey: There is a striking similarity in terms of how many of these relationships started as well as how many of them ended. I think to many of our clients it would appear that these relationships were entered into by design and not simply as a result of a police officer being a long time undercover. Certainly if it was by design, it would be inevitable, you would think, that the senior police officers were aware of it. If I could build in my answer to a point that you raised earlier, Mr Winnick, and perhaps also Mr Ellis, both of you asked about circumstances in which it was necessary for the police. Mr Ellis was saying that perhaps all of us expect police officers to be acting undercover the whole time. As the judge referred to James Bond in the judgment, I think perhaps the public would expect undercover police officers to be acting all the time if we were faced with Dr Nos everywhere, but we are not. We live in a democratic society, and I think most people would not expect police officers to be going around behaving like this most of the time. Are there circumstances in which the police can go out and do things, whether it is killing somebody, maiming somebody, raping somebody—yes, there may be. I cannot say now what those circumstances would be, but the police would have a

defence, and the defence would be necessity or section 3 of the Criminal Law Act 1967.¹

Q73 Mr Winnick: I want to take you on to another point that the Chair raised, the taking by undercover police of the names of dead children. First of all, presumably that would be authorised at a somewhat more senior level than the undercover agents. Would that not be the case?

Harriet Wistrich: I do not know if you heard the *Today* programme when there was a discussion around that very issue after this was exposed.

Chair: We did not hear it, and they are not witnesses today. Could we know your views?

Harriet Wistrich: Would it be authorised by somebody?

Chair: Yes.

Harriet Wistrich: I presume it would have been, but there are other methods. I think that is the point. There are other methods about—

Chair: Does anyone else know whether it was authorised? No?

Q74 Mr Winnick: Apart from all the other factors that we have been discussing, would you consider that is a particularly despicable act, to take the names of children—if the allegations in *The Guardian* are accurate—of a child who died at four or a child of eight in a car accident and the rest, obviously without the parents knowing, and using those names for undercover agents? As I say, would you consider that particularly despicable?

Jules Carey: Mr Winnick, I would say that every aspect of this policing operation, as it has so far been exposed, seems to be utterly depraved. It is hard to start quantifying what aspect is more depraved than the other.

Q75 Mr Winnick: Is that the view of the other two—depraved or despicable, whichever word you wish to use?

Harriet Wistrich: It is utterly despicable. They had other options if they needed to do it. I think it is really important that we look at the lost identities of children and we look at the lost lives of the women and the long-term psychological harm, and don’t forget that.

Chair: We have had that evidence; thank you very much.

¹ Witness note: An argument is often made that officers may have to breach rights in order, for instance, to prevent a bomb being detonated in a public place. The answer in such circumstances is not to expand RIPA or create a new legislative frame work authorising extreme acts by the police and security services. The answer for officers who find themselves having to react in extreme circumstances which may result in the taking of a life or breach of another fundamental right is to justify their action in reliance on the defence of necessity or the statutory equivalent.

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Q76 Mr Winnick: It that your view as well, Ms Ellingworth?

Marian Ellingworth: Yes.

Q77 Chris Ruane: How effective is the Investigatory Powers Tribunal in providing redress for people who might have been subject to unlawful or intrusive surveillance? The police say that they will neither confirm nor deny the involvement of undercover officers with some of your clients' lives. How can the police be held to account for these actions against that background?

Harriet Wistrich: I am very pleased you asked that question, because that is obviously what we are aiming to do in assisting the clients. So far we have met with a complete barrage of obstacles that have been put in place by the police. One thing that one of the witnesses talked about earlier was when we met with the police from Operation Herne, which is investigating the SDS. They say they want to investigate what these officers were doing and they asked our clients to provide statements, but before they did they said, "We cannot confirm or deny whether the man that you are providing a statement about was an undercover police officer, and we cannot give you the terms of reference of our investigation, but we want you to tell us everything about your relationship with this person who may or may not have been an undercover police officer." That was an incredibly distressing thing to be told when you had come along prepared to assist with an inquiry into policing. I know you have recently produced a report about the IPCC. The IPCC are supposed to be supervising that investigation. I have written to them and said, "What is going on?"

Chair: Sorry, which investigation?

Harriet Wistrich: Operation Herne, which is an investigation into the SDS.

Q78 Chair: Is this being done by the IPCC?

Harriet Wistrich: It is being investigated by the Department of Professional Standards, but it is supposed to be—

Chair: Yes. My understanding was it was being done by the Met.

Harriet Wistrich: The Met. Yes, that is correct, but it is supposed to be supervised by the IPCC. I have written to the commissioner in charge of that supervision. As yet, she has not come back to me. That is several weeks ago.

Chair: We will put it to her.

Q79 Chris Ruane: I asked the question before: what are the top questions that need to be answered?

Harriet Wistrich: The top questions?

Chris Ruane: In this whole episode, what are the key questions that need to be answered?

Harriet Wistrich: Why were the police involved in these people's lives, and what is the justification for it? What information did they gather, and how can we stop this from happening again? How can we stop this ever happening again?

Q80 Chris Ruane: Your colleagues?

Marian Ellingworth: I know my clients, when they decided to embark on instructing us, said they wanted to make sure what happened to them would not happen to anyone else. They wanted some kind of apology for what has been caused to them, the deception, the distress and so on, but also very much that this would not happen again.

Jules Carey: I think the principal question I would ask is: have they ever read the *Principles of Policing* from 1829? It would be well worth pulling it out and looking at the nine principles of policing.

Chair: Don't read them all out, please.

Jules Carey: I will read out one: "To recognise always that the power of the police to fulfil their functions and duties is dependent on public approval of their existence, actions and behaviour and on their ability to secure and maintain public respect". I think by the way they have implemented these operations and the way they have designed these operations they have fundamentally lost public respect, and they need to ask themselves how they are going to get it back.

Q81 Mark Reckless: Do any of you think an argument can be made that, because of this deception as to the identity of the undercover police officers, there was not consent in law for the sexual activity from the victim?

Chair: If we can have a quick answer, I can bring in Mr Clappison as well.

Mr Clappison: My question was the same: is there an element of deception? It does not sound a million miles from things that people are prosecuted for.

Harriet Wistrich: Yes, I think that is a very good point. Another person I have written to is the Crown Prosecution Service and the DPP.

Q82 Chair: Have you got a reply from them?

Harriet Wistrich: No.

Chair: Maybe you could send the Committee these letters. We would be very interested.

Q83 Mark Reckless: What would be your view in cases where—I suppose it is possible—that a child results from one of these relationships?

Jules Carey: I am representing a client who has had a child from one of these relationships, and I would like to know what the answer is. It was asked at the town hall. I think Jenny Jones asked MOPAC²—

Chair: Jenny Jones and MOPAC being who?

Jules Carey: Green Member of the London Assembly. I think she asked whether or not the Mayor's Policing and Crime Commissioner would assume responsibility for any child born of these operations or whether or not the police force itself would have a particular responsibility for the child, and whether or not the force would support the officer who fathered the child.

Q84 Mr Clappison: How would this affect the legal view of the action that led to the child coming into being?

Jules Carey: How would the consequences of the relationship affect the legality? I think that is putting the cart before the horse. Either the relationship is

² The Mayor's Office for Policing and Crime

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lawful or it is unlawful, and the consequence of it is going to be—

Mr Clappison: I am asking you.

Jules Carey: I would say that is the case; either the relationship is lawful or unlawful.

Q85 Mark Reckless: It is clear that when Alison was a victim to these cases, that preceded the period in which there were operations in this area. Could I ask, though, with respect to Lisa, this period 2006–2010 when ACPO was running those operations: do you attach any significance to that, or do you think there are implications for Government you would like to cite for us?

Harriet Wistrich: It is unclear in terms of, for example, bringing a claim against ACPO. Are they accountable, and in what way can they be held to account? I think that is a question that we are working on.

Jules Carey: ACPO were set up as a limited company, as you said, and their remit was to provide support to

the officers of various forces, but at some stage, it seems, from 2006 they assumed directly the role of policing rather than providing support. I would very much like to see the memorandum and articles of that company to find out whether or not there is any conceivable way that it can be lawful. It must surely be ultra vires for that company to have engaged in the activities it did.

Mark Reckless: It is not a public body, so I am not sure that—

Marian Ellingworth: One issue about ACPO was that when we lodged a complaint on behalf of our clients with the Investigatory Powers Tribunal it said it had no jurisdiction over them.

Chair: I am afraid time is up, because we do have to move on to our next witness, but we are most grateful. Please, would you thank your clients who gave evidence to us? We would be very keen to receive copies of your letters, Ms Wistrich, as we will follow them up. Thank you very much.

Examination of Witness

Witness: Paul Lewis, The Guardian, gave evidence.

Q86 Chair: Mr Lewis, thank you for giving evidence to this Committee on this very important subject, and I commend you for all the work that you have done in *The Guardian* in uncovering a lot of this information. It has provided us with very useful material in which to look at this issue, so thank you. Could I ask you about the revelations of yesterday and today in *The Guardian* concerning the identities of dead children being used by undercover agents before we go on to other aspects? When did you discover that this was happening, and how did you discover it?

Paul Lewis: My colleague Rob Evans, who works on these stories with me, and I have been working on a book about undercover policing and protest and in the process of our research we came across this, initially as a suggestion, as a tip. In recent months we have been doing more investigation and finding more sources—crucially, police officers who themselves did this and could explain to us how they did it and how they searched through the births and deaths certificate records in search of a suitable match. We eventually came to a position where we had satisfied ourselves that we had reached the threshold of evidence required to publish.

One important thing on this issue is that it is easy to misrepresent this as purely the adoption of a name. These police officers, as far as we can tell, were not simply adopting the names of children. They were resurrecting their identities and living as people who had died with the date of birth and the place of birth. They were even doing research into the families, into the family background, into the surroundings that that child would have been brought up in, so that they could adopt that person's identity.

Q87 Chair: We have heard evidence today in private about the consequences of identities being used in this way by one of the witnesses who gave evidence to us.

You have given us the figure of 80 dead children. Where does this figure come from? Is that the total figure, or could it be higher?

Paul Lewis: That is one question I would like to hear from the Metropolitan Police on, because we cannot be exactly sure. That is an estimate based upon a document that we have seen that gives a number of the SDS officers between 1968 and the mid-1990s. That number said there is more than 80. Very possibly not all of the SDS officers were using this technique, and if that were the case, it could be fewer than 80. Also it is possible that this practice continued beyond the mid-1990s, in which case it would be more.

Q88 Chair: One of the cases that has been looked at is a case of 2003.

Paul Lewis: That is correct. The complaint, as I understand Mr Carey mentioned, was received by Metropolitan Police on Thursday, but that is a case they have been investigating for 10 days now. They will certainly know about that case and know some details about that case.

Q89 Chair: It seems like a pretty gruesome practice, to be involved in taking the identity of children who have been involved in car crashes or died of leukaemia. For those of us who have had children who died it must be a heartless and cruel thing not to be informed of whether they are one of those parents.

Paul Lewis: I think that is right. A crucial question here will be: was this restricted to the Special Demonstration Squad, or was it wider? If it was wider, if it was used by other Government agencies or other police agencies, we could be here talking about many more than 80, but the families—

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Q90 Chair: Do you think it might be wider? Could it be other agencies, for example the Border Agency or HMIC, or is it just the Metropolitan Police?

Paul Lewis: I think that would be a fascinating question to delve into deeper. I do not know the answer to that, but I am sure Pat Gallan, when she gives evidence later, will do. In terms of the families and the impacts on the families, I have spoken to two families and one of them in fact today.

Q91 Chair: Did you break the news to them, or did they already know?

Paul Lewis: It was a combination of both; different for different families. One brother of a child who died very young was, of course, distraught and upset by what had happened. I thought it was interesting that he said to me that he thought there was a real obligation on the Metropolitan Police now to inform all other families who this has happened to. He said they deserve to know and they deserve an apology. There is one particular reason he gave for that, and that was the risk that the Metropolitan Police had placed these families in. We know that activists could become suspicious of people who are infiltrating them and search for them, and we have heard of one case of that. They will obtain the birth certificate and go to the house where that child was brought up. In the case of an environmental activist or an anti-capitalist activist, I do not think there is a particular danger there, but these police officers were also infiltrating far-right groups, sometimes violent groups. He really did think that was reckless. If that is the case, if undercover police officers posing as serious, dangerous criminals were using the identities of real people who had died and placing those families at risk, then that is something the Met would have to investigate.

Q92 Chair: It sounds pretty shocking, but have the Metropolitan Police asked you for any of this information, and would you give them the information that you have in order to help them identify who these families are? You have already spoken to two of them?

Paul Lewis: Yes. We have an obligation to our sources, and we will have to stick to that and protect those sources. I am very confident that the Metropolitan Police will know about all of these cases. The Herne Review, as they have called it, has been going on now for over a year. We know very little about that review.

Q93 Chair: Do you know who is in the lead of the Herne operation?

Paul Lewis: No. They are not particularly transparent about that review and what it involves. We do know, to quote one senior officer, that there are millions and millions of pages. I have been told by one reliable source that there is a list of undercover police officers, and presumably from that they can work out who used these children's identities and contact those families as soon as they can, if that is something that they choose to do.

Q94 Chair: Turning more widely to the issue that you uncovered with your articles last year. We have heard evidence, as I said, from some of the victims. This practice of undercover agents, you must accept that in some circumstances the police are justified in using undercover agents in order to prosecute cases about serious crime. I know Mr Justice Tugendhat mentioned James Bond, but in fact there are circumstances where this is justified, is it not?

Paul Lewis: It depends what the "this" is. I agree: it has to be the case that undercover policing operations are justified and justifiable. I think the key question in the legislation, as well as the moral one for us all to consider, is proportionality. To what extent is the level of intrusion justified by the severity of the threat? There are some operations run within the protest sphere that you could make a claim on, and particularly around some elements, as I mentioned before, of the far right. There have been some cases of animal rights protests that have been more on the more violent end, but in large part, from what we can tell from the cases we know, these are generally non-violent, peaceful protestors.

Chair: *Guardian* readers?

Paul Lewis: I presume some of them will be. Funnily enough, you mentioned the *Daily Mail* will know for sure that one is; in one case, absolutely. The key part is proportionality, and I do not think I or anyone else would make a claim that undercover policing operations per se were never justified.

Q95 Chair: But you regard this as a very serious matter that needs to be investigated?

Paul Lewis: As a reporter and as a journalist we tend to shy away from those declarations, but certainly we would not be investigating it and putting the resources into this story that we are if we did not think it was very serious.

Q96 Michael Ellis: We have heard quite a lot, certainly from the lawyers, about human rights. Do you accept that the general public have a human right to be protected from crime and undercover police are needed and that we, as legislators and those on the judiciary, have to allow a lawful exercise of discretion on the part of chief police officers, some of whom are paid extremely well, to make decisions about what they think is proportionate and reasonable about undercover officers? We cannot, as parliamentarians, sit and say, "Well, you can deploy undercover police officers if you think a protest group are going to cause £1 million worth of damage but not if they are only going to cause £999,000 worth of damage." We have to allow people to use the exercise of their discretion if we are paying them to be in senior positions, and we have to think about the human rights of individuals to be protected from crime, don't we?

Paul Lewis: Yes, I agree with absolutely all of what Mr Ellis just said there. If I can say respectfully, I would beg to differ on your reading of the public mood, from what I heard you say before, that the public would not be surprised that undercover police officers were behaving in that way. It has caused a huge controversy. The very fact of the existence of 16 separate inquiries into various aspects of these

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undercover policing operations would be a firm indication of the public sentiment on this issue.

Q97 Michael Ellis: I was quoting a High Court judge and what he said. He said that the public would not be surprised and he, of course, looked into this matter in great detail, as an experienced and extremely senior judge of 30 years' standing or whatever it might be. This is not a court; we are assessing evidence from a number of different sources, but he has concluded, has he not, in his judgment that this is something the general public might expect has occurred and does occur and has occurred historically?

Paul Lewis: No, my reading of his judgment was not the view of the general public. My view of his judgment was a reading of the legislation when it was passed by Members of this House. As I understand it, he was saying that when MPs authorise personal or other relationships they would have presumed that to include sexual relationships too.

Q98 Michael Ellis: Judges have to interpret the law as they see fit. Is there any suggestion in the evidence that you have come across, or any of the sources that you have spoken to, about the absence of consent from any of these parties?

Paul Lewis: Could you elaborate on that question; in what way?

Michael Ellis: The absence of consent in terms of sexual conduct between the parties. Have you heard any account of an absence of consent? I appreciate that it has been suggested there is a deception in the actual identity of parties involved—let's take that as read—but have you heard any suggestion of an absence of consent?

Paul Lewis: Only in as much as the people—and we believe them to be men and women, in answer to the other question earlier—who have had sexual relationships with undercover police officers, believing them to be someone else, may argue that they did not have the necessary information to make informed consent on that decision. That is not a view I take, but it is certainly a view that I have heard made.

Q99 Lorraine Fullbrook: Mr Lewis, do you think that it is now or has been commonplace for undercover officers to have formed sexual relationships with the people that they are investigating?

Paul Lewis: I think that is a really interesting question. The response from police—I write about these issues—tends to be a kind of “bad apple” excuse; something went awry, and this should not ordinarily happen. But when you look down at the detail of these cases, we have identified nine undercover police officers. Of the nine, we understand eight have had sexual relationships with people they were spying on and in the most part these were long-term intimate relationships rather than just fleeting sexual relationships.

Q100 Lorraine Fullbrook: Were they all male, or were they male and female?

Paul Lewis: One of them was a woman police officer. I do not know how this would extend beyond the

realm of policing of protest. One undercover police officer who served in one of these units has told me that when he was deployed he was in a team of 10 and, within that team of 10, nine of his colleagues were having sexual relationships with people they were spying on. That would indicate that it is routine, possibly systematic, and certainly that it was known by senior officers.

Q101 Lorraine Fullbrook: You do not think there is any chance that senior officers did not know about the sexual relationships?

Paul Lewis: I think that is very unlikely, and I say that with caution.

Q102 Lorraine Fullbrook: Do you have any evidence to that effect?

Paul Lewis: It is difficult. The same officer told me that one of the things that he was told was that he should use contraception, and this was by a senior officer. You are only going to use contraception, of course, if you are planning to engage in some form of sexual relationship. Of course, as was mentioned by witnesses beforehand, these undercover operations often overlapped. One undercover police officer would certainly have seen another undercover police officer with a partner or with a long-term girlfriend, sometimes lasting years. If this was not condoned, then you would imagine that the second undercover police officer would report that misbehaviour.

Q103 Bridget Phillipson: We have discussed whether the public would be surprised or not by this kind of activity. What shocked me was not that this kind of activity could happen perhaps as a one-off or on a few occasions but the length of the relationships involved and the degrees of the deception that that then entailed. What would you say to that?

Paul Lewis: Yes. The Committee has heard first-hand from women that this has happened to, so I do not think I am in any better position to explain that. The only thing I would say is, having met sufficient numbers of people who have had these long-term relationships, it can be frustrating sometimes as a journalist to find appropriate words to explain and convey the pain. The only way I can do it is to say that many people in this room will have themselves long-term relationships, either currently or in the past—people that they loved, people they had children with—and if they were to discover that that person did not exist or was somehow an agent of the state, you can begin to imagine how they would feel, and I think that is comparable to how some of these women feel.

Q104 Mr Clappison: Have you investigated cases where children have resulted from these relationships?

Paul Lewis: Yes, we do know of cases.

Q105 Mr Clappison: Can you tell us how many?

Paul Lewis: Sure. As far as we can tell, we believe it to be at least four. It is slightly complicated because two of the children were born in a relationship where an activist later married an undercover police officer, although the circumstances of their relationship are

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very complicated and complex. In the other two we believe it to be the case, and in one we know it to be the case, that the police officer was a long-term partner of the woman and then vanished from her life and, of course, vanished from the life of her child as well.

Q106 Mr Clappison: Do you think it is hard to contemplate that Parliament would have had this in mind when it was passing the legislation?

Paul Lewis: Yes. I do not want to fall into the trap of asking members questions, because it should be the other way round, but I find it hard to believe that parliamentarians would have thought that “personal or other” would be the same as “sexual relationships”. I would have thought that if MPs had wanted to authorise sexual relationships under the legislation, they would have used the words “sexual relationships” rather than “personal or other”. Certainly I would be very surprised if members of any democracy would want to authorise police officers to have children under cover.

Q107 Mr Winnick: Would you use the phrase “sexuality by deception” to describe what has happened, what the witnesses have given evidence about and what you have written about?

Paul Lewis: Yes. As I said before, I am slightly reluctant sometimes to adopt phrases because I report them rather than state them, but certainly there is an element of deception in all of these sexual relationships.

Q108 Mr Winnick: Of course, some of the witnesses affected, here or on other occasions, would say more than an element, to say the least. Mr Lewis, as you say, your job is to put questions to the authorities rather than you putting questions to you. Be that as it may, since you are a witness, insofar as undercover agents are used—and you have explained to the Chair in your view why it would be justified in certain circumstances, and I tend to agree with that—would you say that it is possible to do that without sexuality and without the agents being involved at some stage?

Paul Lewis: I think the fact that some of these undercover police officers did not have sexual relationships with the people they were spying on proves certainly that it is possible. These operations are very sophisticated. A lot of money, time and resources goes into them and, as I understand it, as they are executed in other countries, other democracies tend not to use sex as a tool. All of that would point in the direction of this not being absolutely necessary, in fact even at all necessary, for those undercover police officers.

Q109 Mr Winnick: I have the organisation down here as the National Domestic Extremism Unit. It was transferred to the Metropolitan Police in 2010, I understand. That particular extremist organisation—it properly was, as the name it was given, National Domestic Extremism Unit—would you say it was a sort of rogue operation without proper control and discipline?

Paul Lewis: I would agree there are really important questions about control. It was mentioned that for some time these operations were run by the Association of Chief Police Officers, which at the time was a limited company. Its predecessor, the Special Demonstration Squad, kind of existed like a unit within a unit. It was hidden away in Special Branch. Even some senior officers were unaware of its existence. I think when that happens and you do not have the level of accountability that you do for other areas of policing, then it is more likely for things to go awry.

Q110 Mr Winnick: Can I finally ask you this question, Mr Lewis: how do you think the police can clean up this matter and restore confidence that the work that it is doing in this particular field can be carried out in a way that would meet public approval? Certainly, taking the names of dead children will hardly bring any public support.

Paul Lewis: Openness and transparency. We have been working on this story for two years. We have had very little help. In fact, when we asked the Metropolitan Police for one single sit-down interview we were told, “No.” It gives you an indication of what we are up against. We are heavily reliant upon sources who have the courage to come forward and talk to us. One thing is the issue of sexual relationships has been bubbling away for two years, now we have the adoption of dead children’s identities, and I think at some stage the Metropolitan Police will need to think about the best strategy just to garner trust if anything else but to also bear in mind the victims involved, the women and the children.

Q111 Chair: What if you think that strategy is not the right strategy?

Paul Lewis: I think openness tends to be a good strategy because, speaking as a journalist who has worked on this story for two years now, every time you scratch a bit you discover there is another layer, but the truth tends to come out eventually.

Q112 Mark Reckless: By its very nature, undercover policing is not intended to come to public light. Is it possible that what we are seeing is only the tip of the iceberg?

Paul Lewis: It is possible, but it is difficult to say. I think one of the most interesting questions when I am sitting in the public gallery listening to the evidence from Patricia Gallan will be whether the use of these identities was restricted just to the Special Demonstration Squad and whether the use of sexual activities was restricted just to police officer infiltrating protest groups, or whether in fact this was wider. If it was wider, then the phrase “tip of the iceberg” may be one that we are using six or 10 months down the line.

Q113 Chris Ruane: How effective is the Investigatory Powers Tribunal in providing a check on the misuse of powers under RIPA?

Paul Lewis: Probably a question better directed, and I think you did in fact direct it, to the previous three witnesses. As I understand it, one of the issues with

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the tribunal, as conveyed by the complainants, is that there is no right of appeal, there is no automatic hearing, and the complainants do not get to see the evidence. For those reasons and for what I just said about transparency before, I would say there are certainly questions. You would have to think that, just as these issues are being raised in open Parliament, an

open court, the High Court, would be an appropriate forum if we are to discover exactly what has been going on, who authorised it and why.

Chair: Thank you. Mr Lewis, please do feel free to send us any information that you have on this and, again, thank you very much for coming today and for the work that you are doing. We are most grateful.

Examination of Witness

Witness: **Patricia Gallan QPM**, Deputy Assistant Commissioner, Metropolitan Police, gave evidence.

Q114 Chair: DAC Gallan, first of all can I congratulate you most warmly on your position? I think this is the first time that you are appearing before the Home Affairs Select Committee. We are delighted to have you here. Thank you very much for coming at very short notice and for the co-operation that the Commissioner and the Met has shown with this Committee. We are most grateful. I know I only rang you on Monday morning, but I felt it was appropriate to have you here.

Your evidence is to be taken in two parts. We are going to have an open session dealing with process and other issues that are in the public domain. Following that, we will have a private session with you before we have another witness.

Could I start by saying I was pretty shocked to learn of the fact that the identities of dead children were used by undercover agents in order to secure for themselves identities to conduct the various relationships that they had been involved in. Were you equally shocked to hear this, or did you know that this was going on?

Patricia Gallan: It might be helpful to you if I outline my position and what I have been doing because I think it will help the Committee and yourself. My capacity as a senior officer is—

Q115 Chair: We will come on to that in a minute. I am asking you whether you were surprised. We will come on to what you are doing, I promise you, because we are very keen to know who is doing what in the Metropolitan Police, but were you shocked to hear this, or did you know that this was happening?

Patricia Gallan: There are two aspects to this. We are investigating something that has been going on since 1968, and that is the Special Demonstration Squad.

Chair: No, I know about that.

Patricia Gallan: The reason why I am explaining it to you, if you could just bear with me, is I think it is important to put it in context, because within that I will explain what I did know and when and what we have been doing about it. I think, without explaining that aspect and all the details, it would be unfortunate because that was not—

Chair: All right, so long as we get an answer to the question.

Patricia Gallan: I promise I will give you an answer to the question. It is my task as the senior officer in charge that I am overseeing Operation Herne, which is about the Met examining past practices. I have to make sure there is a proper investigation. I also have to keep an open mind, and my team will go wherever

the evidence takes us. I think it is also fair to say at some point it will fall upon this generation of police leaders to account for the activities of our predecessors, but for the moment we must focus on getting to the truth.

I also need to say at the outset that I do not know if the figure that has been quoted about the number of identities of dead children used is accurate. I have seen the evidence of one case, and we very recently received a complaint of a second case and that is now being investigated. I think more evidence will come to light of this practice, but I am not prepared to prejudge the investigation. However, I am very concerned about what I am hearing and I really do appreciate why people will be and may be very upset by what they have heard. It is because we recognise the potential for public concern of this issue and other matters that we called the IPCC at a very early stage to provide independent oversight of what we are doing in this investigation.

Operation Herne, as you will be aware, has been running for some time. Initially it quite properly concentrated on potentially criminal matters, whether there may be any miscarriages of justice or not, and indeed in criminal allegations. One of those allegations, as you will be aware, was made in Parliament by an MP, and that is being investigated. Since the Olympics we have been able to put additional resources into Operation Herne, but I must stress we are looking at the activities of a unit, the Special Demonstration Squad, which was initially funded by the Home Office and set up in 1968 and ran for 40 years. There is not a dusty file sitting somewhere within Scotland Yard that we can pull out that will provide all of the answers. There are more than 50,000 documents, paper and electronic, that we need to sift through. Many people have been long retired and need to be visited, and we need to look at all the records. What I should say is that if anybody has any information or evidence they can give to us, we do want to hear from them.

Q116 Chair: Thank you very much, and I am very grateful for that explanation, but can we go back to what I asked you in the first place. Were you as shocked as I was to hear that the identities of dead children had been used by members of the Metropolitan Police?

Patricia Gallan: As I say, I was very concerned by that, because it is not practice as I know it.

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Q117 Chair: It is not practice now. It has clearly been the practice before. “Very concerned” does not sound as if you are condemning the practice. Do you think it is a good practice or a bad practice? Is it still happening? When did it stop?

Patricia Gallan: If I can answer your last question firstly, it is not still happening. I think it has been, from the evidence I have seen, confined to two units, and that is the SDS and the NPOIU. One of the things and why I explained about the length of the SDS in terms of its existence and also the number of documents is we have to go through them all, and I have to keep an absolutely open mind on what we find.

Q118 Chair: Of course. But in terms of the timescale, you are saying this stopped when? You have been running Operation Herne for a while. You are the lead officer on Herne. Is that right?

Patricia Gallan: That is correct, yes.

Q119 Chair: Are you also the lead officer as far as undercover agents are concerned? This Committee took evidence in 2010 when it was transferred from ACPO to the Met. Was it transferred to you, or did it go to Specialist Operations?

Patricia Gallan: That unit that you are talking about was not transferred to me. It was transferred to SO15.

Q120 Chair: Who is the lead at the Met for that? It is just that when I rang at the weekend to find out who was in charge nobody quite knew.

Patricia Gallan: If it is in charge of investigating, Herne, that is the investigation, that is me.

Chair: No, I understand Herne, but that is about historic problems—

Patricia Gallan: That is right, yes.

Chair:—and not to do with you, because you have been off in Merseyside doing important work. When you have arrived you have been put in charge of Herne. I understand that, but at the moment, for the convenience of the Committee, who is dealing with the issue of operational matters concerning undercover agents at the Metropolitan Police?

Patricia Gallan: Undercover deployments in the Metropolitan Police at the moment are covered by Commander Covert Policing.

Chair: Who is who?

Patricia Gallan: That is Richard Martin.

Q121 Chair: Richard Martin is currently in charge. Answerable to whom? Is it Cressida Dick’s area? Who is the assistant commissioner responsible?

Patricia Gallan: It is Assistant Commission Mark Rowley in terms of undercover officers, but I can assure you that this practice is no longer occurring.

Q122 Chair: But you cannot tell the Committee when it stopped?

Patricia Gallan: The reason why I do not want to put a specific date around either of the two units that were doing it is we are still investigating all the facts. If I give a date, I could be wrong and I think I would then be guilty of misleading you, and I do not want to do that.

Q123 Chair: But you can tell the Committee absolutely today it is not happening at the moment. Identities of dead children are not being used by undercover agents?

Patricia Gallan: It is not sanctioned within the Met, and it is not sanctioned within any other police force in the country, because we made that inquiry on Friday.

Q124 Chair: The parents of the children concerned have had the bereavement of losing a child in terrible circumstances. Do you not think it is right and proper that they should be informed about this?

Patricia Gallan: I think it is important that we find out all of the circumstances around it and find out if it is accurate about what is being said at the moment, because they are allegations. We would not want to cause any more hurt to people involved.

Q125 Chair: Do you think they might not be accurate?

Patricia Gallan: We need to investigate it. Allegations have been made. We are looking into it, so we need to get to the accuracy of it. As well as that, we also need to consider a couple of issues. One is the ethical issue, and also there is a legal issue. It involves also, obviously, the parents of the children. As I said, we are concerned about that, but we also need to think if there have been any operatives and the position in terms of police officers if it was suddenly exposed. There are quite a lot of things we need to consider, and it is ethical and legal.

Q126 Chair: Of course, and we understand that perfectly. We know you are doing a thorough job in this. However, some members of the Committee have heard this before in relation to phone-hacking, when very senior officers of the Met have come and said there is a lot of paper to sift through and there are a lot of people to contact.

Patricia Gallan: I understand that.

Chair: We know where that has all ended.

Patricia Gallan: Yes, I do.

Q127 Chair: If you have information of the names of a parent and a child and you can put names and addresses together, do you not think it is right and proper to, and it would be heartless and cruel not to, inform them as a matter of urgency, rather than wait to the end of your very thorough investigation?

Patricia Gallan: I was not saying, if I might add, that we would wait until the end of the investigation. I just said there were a couple of considerations that need to be thought of along the way, and those are the legal and ethical issues. I need to find out what the situation is and consider it at that point, because if I give you a blanket yes or no, I do not think we have considered all of the facts carefully.

Q128 Chair: But you or the Commissioner have said to Assistant Commissioner Rowley, “Can you just check if we are still doing this?” and someone has said to you, “We have stopped doing this a number of years ago.” Someone has said this?

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Patricia Gallan: There are a couple of things. It has never been practice within most areas of undercover policing to do that. I think that is the first thing I need to state. This practice has been confined, we believe, to two units.

Chair: Both in the Met?

Patricia Gallan: One unit was in the Met. The other unit, as you were aware, was a national unit. Those two units appear to have adopted this practice, but we need to investigate that further. In terms of the aspect of SO10 where undercover officers are utilised from, that has never been the practice. We have done two things. First of all, we have checked that to make absolutely certain. The other thing is, on Friday evening when we had notification of this, we asked every other undercover unit within the country within law enforcement to ensure that that is not a practice that is authorised, and everybody has come back and said that is not a practice that is authorised.

Q129 Chair: Excellent. As far as Herne is concerned, which is the long-term investigation, you were not present when one of the solicitors for one of the complainants gave evidence to this Committee, so I will tell you what she said. Basically, they have written to ask about Herne, and not sufficient answers have been given about Herne. How many officers are currently working on Herne?

Patricia Gallan: At the moment we have 31 staff working in Herne. That is 20 police officers and 11 police staff. If I can add also that we have had correspondence—one of the issues is that we are in the midst of litigation, and we have explained why we can't give some of the answers back that have been asked.

Q130 Chair: We just want to know facts here, not necessarily other things. What is the current cost of Operation Herne?

Patricia Gallan: At the moment the estimated cost to date has been £1.25 million.

Chair: £1.25 million looking at the issue of undercover police?

Patricia Gallan: In terms of the Special Demonstration Squad.

Q131 Chair: Of course. £1.25 million sounds like rather a lot of money to me and rather a lot of officers involved. You mentioned rather a lot of papers that you have to sift through. How many boxes of papers and computer discs do you have to look through?

Patricia Gallan: As I said, there is in excess of 50,000, and if I might explain the—

Chair: Boxes or papers?

Patricia Gallan: That is in terms of exhibits, as in papers. If I might explain also, that comes in various different forms. Many of them have been classified as secret, so we have had to put in a special IT system specifically to manage it. There has been a huge quantity of documentation, because it goes back over 40 years.

Q132 Chair: Will you give us an assurance on the issue of the identity of dead children that when you have completed your investigation, as soon as

practicable you will inform the parents of those who do not know that the identity of their children has been taken?

Patricia Gallan: Could I refer back to my earlier answer, because I think it is important; I need to consider all of the issues.

Chair: Of course.

Patricia Gallan: If I give you a yes or a no answer, I think that would be unfair, but I think it is one of those things that whatever decision is made needs to be subject to scrutiny. It needs to be available for people to question and see the documentation and it will be something that is seriously considered, but it would be wrong of me, without knowing all of the facts at this point, to give you a yes or a no answer.

Q133 Chair: I understand that, but some of us have had children who have died when they were very young or were stillborn. Can you understand the anxiety of those of us who do not know whether the identity of our children has been used?

Patricia Gallan: I absolutely understand that, and that is why I started off by saying that not only myself, but I know also the Commissioner is deeply concerned about this issue and also the impact that it has on people.

Q134 Chair: Would you like to take this opportunity to apologise to those whose children's identities have been used?

Patricia Gallan: The issue being, as I have said, that I have to examine all of the evidence. I have to keep an open mind on it all. I think at the appropriate time that is when statements should be made, but at the moment I would be prejudging what I have found.

Chair: Of course, but, Deputy Assistant Commissioner, since you have deprecated the practice, since you have said the practice has stopped, since you have indicated you are very concerned, would you not like to take the opportunity, for those who may have had the identities of their children being used, to put on record the apology of the Metropolitan Commissioner?

Patricia Gallan: I think I am being clear. I do absolutely appreciate the concern. I do understand the upset and also why people are very distressed about this, but I think until I know all the facts you are asking me to sort of go ahead a bit. I would like to find out all the facts, and at the appropriate stage I think that is the time when we will make our statements regarding it.

Q135 Mark Reckless: Ms Gallan, I understand what you just said about not having the apology yet, not being prepared to give a date, keeping an open mind, except you said earlier in your evidence that this is about the current generation of police leadership accounting for the activities of their predecessors. Doesn't that prejudice it, at least to a degree?

Patricia Gallan: I think what I am saying is I am looking at things from the practices I know of undercover officers as of today and the expectations that I would have. I know that people have concerns, and rightly so, about what has happened. I am keeping an open mind, and I am not rushing to judgment, but

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I know at some point we, as of today, will be called to account about what has happened in the past.

Q136 Mark Reckless: Do you accept that it is possible that some individuals in the current generation of police leadership share at least a degree of responsibility for these actions?

Patricia Gallan: I think the difficulty is that we have 40 years to go through. We need to find out at various levels who supervised, authorised and knew what at what time. I think at that stage, that is the appropriate time for people—and it should not be me; it should be others in terms of the Crown Prosecution Service and such like—to make judgments on that. It would be wrong if I made that judgment at this moment in time and made a statement regarding it.

Q137 Mark Reckless: So would you like to reconsider your statement that it is about the current-generation police leadership accounting for the activities of their predecessors?

Patricia Gallan: I think, as I said, at some point this would have to happen, and I also said that my intention, and that is the intention of the investigation, is to focus on finding out the truth and to go where the evidence will take us.

Q138 Mark Reckless: But at the moment, on the record of this Committee is your statement that it is about the current generation of police leaders accounting for their predecessors, the previous generation's, mistakes. Do you want to leave that on the record, or would you, with hindsight, like to correct that or say that is something for later confirmation?

Patricia Gallan: Maybe if I can see what the transcript says and I can write back. I wouldn't want there to be any unclarity, because it is one of these things that I would like to see my exact words and then I will respond and I will respond as appropriate.

Q139 Chair: We will certainly send it to you. Can I just clarify: is it after the Paul Lewis article in *The Guardian* that you have discovered the use of the identity of dead children, or did you know that it was happening?

Patricia Gallan: I knew of one identity prior to that, and then we had a second complaint in on Friday.

Q140 Chair: How long prior to that?

Patricia Gallan: It was in September that I first became aware, and it was one child at that point.

Chair: September last year?

Patricia Gallan: Yes.

Q141 Chair: Since September until now, have you informed the parents?

Patricia Gallan: No, we have not.

Q142 Chair: Why is that?

Patricia Gallan: That perhaps is something I could discuss in closed session.

Chair: Okay, that is fine.

Q143 Chris Ruane: You are going to reserve judgment on an apology to the parents of the dead children whose identities have been stolen. When we questioned victims of the deception I asked, "What is the biggest thing you want resolving? What is the biggest question you want putting?" and it was a recognition of the damage done to them personally and an apology. Do you think the victims of this deception deserve an apology?

Patricia Gallan: My difficulty is that I have not heard the evidence that you are speaking about. One of the issues, if it is regarding the women, is that that is in the course of litigation at the moment, so sadly I can't comment because it would be inappropriate, as it is before the courts at this moment in time.

Q144 Chris Ruane: If at the end of the process—

Patricia Gallan: I think at the end of the process the Metropolitan Police Service will consider what the appropriate response is at that time. As you are aware, there are live proceedings ongoing.

Q145 Michael Ellis: Deputy Assistant Commissioner Gallan, you have spoken of two units, one of the Metropolitan Police, the other a national unit. What rank of officer would have been in charge of those two units? I am not asking for names; what rank would you expect to be in charge of a unit like that?

Patricia Gallan: I think on a day-to-day basis it would be a superintendent that would be in charge.

Q146 Michael Ellis: Were these rogue units, to your understanding? Do they appear, from your understanding at the moment, to have been operating outside of normal police procedures, including normal police procedures that were in place at the time of their operation?

Patricia Gallan: The issue would be, from what I have seen, that the practices in place at that time wouldn't be following the national guidelines.

Q147 Michael Ellis: So, they were rogue units?

Patricia Gallan: I think we need to get all the evidence, but I am trying to be really clear—

Q148 Michael Ellis: I understand that. I know you do not want to prejudge the situation, and I accept that and it is perfectly reasonable for you to take that position, but whether or not these procedures were permissible at the time they were happening is highly relevant. That is not particular to this operation; it is a general fact. Are you confirming that the taking of the identities of deceased children was not an authorised procedure even at the time that it was happening?

Patricia Gallan: If I can explain the answer in this way, and I am not trying to be evasive, there is a standard by which those procedures take place. These units were following different procedures. I have not yet got to the bottom of why they were doing completely different things. What I do know is there is a methodology, which it would not be appropriate for me to discuss in an open room, about how these procedures—

Q149 Michael Ellis: But you have already said that methodology departed from the accepted practice at the time.

Patricia Gallan: Absolutely, yes.

Q150 Michael Ellis: So, these were unauthorised practices; not only would they have been unauthorised practices today but they were unauthorised practices then. So I suggest to you that these were rogue units, or at least units operating outside of their proper protocols and jurisdictions?

Patricia Gallan: I have to be clear, that is one of the things we are investigating—was it authorised or not—and that is why I am trying to be clear that there is one standard one way, something was happening elsewhere—

Q151 Michael Ellis: I understand the difficulties of your position, but a senior officer cannot authorise something that is outside of the procedures, even at the time, so either they operated outside of then recognised procedures or they did not. They might have done so through laziness, they might have done so through incompetence, or whatever it might have been, but it seems to me that you are confirming that these units operated outside of appropriate procedures as they would have been in existence at that time.

Patricia Gallan: That is what we are investigating.

Q152 Mr Winnick: I was out of the room for a few moments, so if the question has been asked, I will soon be told. Do you think it was in the public interest for *The Guardian* to give details of the names of dead children being used by undercover agents?

Patricia Gallan: I believe in a free press, so I would leave it at that.

Q153 Mr Winnick: A rather ambiguous answer, but I understand your reluctance to give a yes or no. Perhaps you will be a little less reluctant, Ms Gallan, since you are giving evidence to a select committee—and I am sure you take all these matters very seriously, like your colleagues do—do you think the reputation of the Met has been harmed by the revelations regarding both the names of dead children and the position of women who claim that they were deceived into sexuality by undercover agents?

Patricia Gallan: We are very concerned, and part of the reason we are concerned is that the use of undercover officers, when it is used appropriately and proportionately, is a very useful tactic. It safeguards communities and the population at large in terms of terrorism; it takes guns off the street. So I am deeply concerned—and I know the Commissioner is—about anything that undermines the confidence of the public. Absolutely, we see that, and that is why we are investigating it and we have put so many resources into investigating it, because we are concerned.

Q154 Mr Winnick: My question was: do you think the reputation of the Met has been harmed?

Patricia Gallan: I think it is, in terms of people will be concerned, and we need to do everything we can to restore trust around this.

Q155 Mr Winnick: I take that to be a yes. Can I just put this question to you? Recognising the arguments that the police constantly use when these details come up, that it is necessary to use undercover agents—that could be the subject of debate, but we know precisely where the police stand—how far do you believe it is possible for that to occur in the national interest, as the police would put it, or at least in the public interest without the sort of activities we have been hearing about and published about, where the agents concerned have been involved in sexual activity without the women knowing, obviously, their true identity? Do you think that is possible?

Patricia Gallan: There are a couple of things. I don't believe that you can authorise such activities. I know that the law is silent in the matter; I think morally I am absolutely clear that such activities should not be authorised or sanctioned. If something like that does happen, it should be reported immediately and should be dealt with. I have not heard the evidence of the women, but I think one of the issues that I need to come back to is we are in the middle of proceedings and those matters will be considered by a court.

Q156 Mr Winnick: You see, Ms Gallan, I just question you on this. People find it very difficult to believe that undercover agents can go into an organisation, not for a month or six months but over a long period of time, and not engage in sexual activity unless they were forbidden to do so by their superiors. So inevitably—and this is the question to you—would we not be right to come to the view that although they were not told necessarily to enter into sexual activity, on the other hand they were not told not to do so?

Patricia Gallan: It might be something that I can explain in the private session, but what I would simply say is that absolutely it would not be recognised. Also, I think I have been quite clear in the statements I have made in the past that I think it is morally wrong.

Q157 Chair: You know that the responsibility for setting standards for undercover agents now moves to Alex Marshall at the College of Policing?

Patricia Gallan: I know that it sits under the College of Policing and the new lead for undercover policing is Richard Martin. I did it up until December of last year.

Q158 Chair: He is giving evidence to us next week. Would you assume that in drafting his new guidelines he would take into consideration all the things that have come across your desk in Operation Hearn? Would you want him to do that?

Patricia Gallan: Absolutely.

Q159 Chair: I will put to you what Bernard Hogan-Howe said to this Committee last November. He said this: "It certainly should not be part of the strategy to do that", in other words engaging in sexual activity. "The fact that it may happen sometimes I think could almost be inevitable, not that I would encourage it, obviously." So there is the Commissioner saying it is inevitable that they are going to be involved in some kind of sexual activity but, of course, he is not

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encouraging it. You are saying something slightly different here. You are now saying, in answer to members of the Committee, that this must not happen any more. Is that what you are saying?

Patricia Gallan: Well, I didn't say it must not happen any more. What I said is it would not be authorised, and I think, if I remember, the Commissioner was answering in a generality because he was aware of the impending civil proceedings. What I can certainly say is it is the MPS's position that there could never be circumstances where it would necessary and proportionate to authorise undercover officers, what we call CHISS, to engage in sexual activity.

Q160 Chair: John Murphy, who speaks on undercover policing for ACPO, said this in 2011: "It is never acceptable for an undercover officer to behave in that way". So we have the Commissioner saying, "It's inevitable, it's going to happen," but he would not encourage it. You have John Murphy saying, "It's never acceptable to behave in this way." Alex Marshall is quoted as saying that you only have undercover agents in serious criminality. Nick Herbert, who was then the Policing Minister, in answer to a debate initiated by Caroline Lucas, the MP for Brighton, said, "To ban such actions would provide a ready-made test for the targeted criminal group to find out whether an undercover officer was deployed among them." So there are a number of different views here. What is your view?

Patricia Gallan: As I have tried to explain, maybe not very successfully, there is a moral issue, and I think I have been quite clear in what I have said about the moral issue.

Q161 Chair: Morally it should not be done; that is your clear view?

Patricia Gallan: Yes, but legally the law is silent on that, and I will explain in private session why perhaps it is Parliament's intention that that is so. I think one of those things is the Metropolitan Police does not authorise that conduct.

Q162 Chair: When it happens, those who indulge in this activity have gone outside their authority, as they did in the two units—you said that to Mr Ellis, is that right—and they will be disciplined?

Patricia Gallan: We were talking about what would be authorised and what would not be. What I am saying is in today's practice, and it is under RIPA, as I know you are aware, under "Use and Conduct", I cannot envisage under any circumstances any Assistant Chief Constable or Commander authorising the use and conduct of that activity as a way to investigate crime.

Q163 Chair: That is very clear and slightly different to what the Commissioner told us last year when he said it is inevitable it is going to happen. What Mr Ellis was looking for, what the Committee was looking for, is some kind of prescription by senior officers to say, "If you are in this undercover situation, do not engage in sexual activity." That does not exist?

Patricia Gallan: In the closed session perhaps I can explain a little bit more, but as I have—

Q164 Chair: But at the moment there are no guidelines saying, "Don't do it."?

Patricia Gallan: As I said, the thing about it is that we are guided by the law, and the law is silent on the matter.

Chair: Sure, we will come to what Parliament has done at the end.

Q165 Mr Clappison: The reports that have been put in the public domain speak of these relationships going on over a period of time and being intimate relationships, stable relationships even, so the superiors of the officers concerned must have known what was going on, mustn't they?

Patricia Gallan: That is one of the lines of inquiry and why we are investigating it to find out who knew exactly what.

Q166 Chair: Can I say, in conclusion in the open session, Deputy Assistant Commissioner, I am disappointed that you have not used the opportunity to send out a message to those parents whose children may have had their identity used that the Met is actually sorry that this has happened. You were very clear in the language you have given to this Committee that you deprecate this practice, it is not happening any more, and it would be outside the authority of those who sanction it to sanction such things. I am disappointed that you have not said this.

Mr Winnick: The Committee is disappointed, Chair, if I may say so.

Chair: Thank you, Mr Winnick.

I am concerned that you have known about one incident since September of last year and, despite the fact that we have spent £1.2 million of taxpayers' money and that you have, what is it, 30 officers working on this case, you still have not got to the bottom of why this dead child's identity was used. The reason why we say this is we have taken evidence in private from one of the victims who followed the trail of the identity of her partner and she turned up at the house of the parents of the dead child. They were not there, of course, thankfully, but imagine the grief they would have suffered if they had answered and she asked about him.

Patricia Gallan: Absolutely. Yes.

Chair: Do you now accept why we are so concerned and disappointed by the fact that you have not taken this opportunity to apologise?

Patricia Gallan: There are two things. I have expressed my deep concern about what has happened. What I have also said is that I am keeping an open mind; I am trying to find out all the facts. So, I need to find out all the facts about the background, and I have also explained that this unit goes went 40 years. I think it would be inappropriate to rush to make statements that may be said in haste. I have not said that I will not say it at some point, but I want to have all of the facts. But I would not want anybody to be under any illusions about how concerned I was when I found out about these facts and also about the impact that this will have on people.

Chair: Which would be very distressing.

Patricia Gallan: Yes, I do not take anything away from that.

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Q167 Chair: Thank you. Finally, do you have a timetable for the conclusion of this? It has been going on for a year now; it has cost £1.2 million. This is a time of severe challenges, as you know, to the Met. We also have Operation Yewtree, we have Operation Alice, we have Elveden and we have all the other operations that deal with historical issues. As far as you are concerned, do you have some kind of a timetable on this?

Patricia Gallan: You have outlined a number of operations, which shows the depth of the investigations that are required, and I think we know

what has happened in the past when we have not done thorough investigations. So, I think it would be wrong of me at this stage to put any timescales around it. Suffice to say that we are in consultation, have been consulting with the CPS, and we are determined to go where the evidence will take us. But I think it would not be appropriate for me to put a timescale around this at this particular moment in time, when I have outlined the number of documents.

Chair: Deputy Assistant Commissioner, thank you very much for giving evidence to us today and for coming at such very short notice. Thank you.

Tuesday 5 February 2013

Members present:

Keith Vaz (Chair)

Mr James Clappison
Michael Ellis
Lorraine Fullbrook
Bridget Phillipson

Mark Reckless
Chris Ruane
Mr David Winnick

Examination of Witness

Witness: **Patricia Gallan QPM**, Deputy Assistant Commissioner, Metropolitan Police, gave evidence.

Q168 Chair: First of all, apologies for keeping you waiting, but the first session overran. What would you like to tell us?

Patricia Gallan: XXXX.

Q169 Chair: That is very helpful, and it is good to hear that. What else would you like to tell us?

Patricia Gallan: XXXX.

Q170 Chair: I know what you said publicly and this Committee tries to be fair in the way in which it deals with things, but, as Mr Winnick said in open session, this is really going to damage the reputation of the Met, and I think it is in everyone's interest that it be cleared up as soon as possible. The expenditure of £1.2 million on Herne is a huge amount of money without a result. I mention phone-hacking because this is exactly what John Yates told us when he came before us a few years ago: "We are looking at the box files, it is taking a long time," it was that kind of money, and, "We just do not want to go down this road again," that's all.

Patricia Gallan: I can totally agree with you, and I appreciate that. The actual number of documents is immense. It is fair to say that it is immense. They are in various formats, from written documents to computer files. They all have to be put in the HOLMES system, XXXX, it is worth saying that we need to go back and speak to all the supervisors, XXXX.

I think the Commissioner is really clear, as is the Deputy Commissioner, that we do not want a superficial investigation; we want to get to the bottom of it, because we appreciate the public concern.

Q171 Chair: Sure; I know especially after Alice, when we did not have that investigation—now we do under you—it is important. My first child was stillborn, and the first thing my wife said to me this morning when we read the newspapers was, "I hope they haven't used her identity." There are many, many parents that—this must be going through their minds, and the plea is: tell them quickly. Obviously you distance yourself from what has happened in the past, quite rightly, but tell them quickly, because this will only build and build and build the distress and the agony. We heard evidence privately of this woman turning up at the house. Can you imagine if the parents had answered the door and she said, "I'm in a relationship with your son," and they said, "Well, our

son died of leukaemia when he was eight."? Just the trauma of this is so awful.

Patricia Gallan: Yes. We do fully appreciate that. If I can say, there is the ethical side that we are immensely aware of and concerned about because we were surprised to hear of the practice, but the second thing that I need to outline is we need to find out for certain. XXXX. As you will be aware, we go on the policy of neither confirming nor denying; that is because we have a duty of care towards that individual police officer, and that is where the balancing comes. XXXX.

Chair: No, I know that. But, please, when you find the information, tell them.

Q172 Mr Clappison: Forgive me for being a bit naive here: when you talk about criminal investigations as a result of this operation, is that into officers themselves or people who have been investigated?

Patricia Gallan: XXXX.

Q173 Mr Clappison: When you say about the sexual relationship, the reports that we have heard are about long sexual relationships, people's lives interlinking with their families and so on. That is something that would not be approved of, would it?

Patricia Gallan: No. But I think the difficulty is I am saying I would not approve of it. It is one of those things that we need to get to the bottom of who knew about it, at what level did it start and stop, because one of the issues is while a unit is run on a day-to-day basis by a superintendent, a chief officer oversees that. So, that is one of the things we need to find out—who knew what.

Q174 Mr Clappison: It must have been someone higher than just the level of the officer concerned, because this was a use of manpower for a long period of time.

Patricia Gallan: Yes, and that is literally what we are trying to find out about who knew what.

Q175 Mr Clappison: Can I put another point to you, which has just struck me as a layman, and it struck me when I first read the reports about this? The groups say that they are environmental groups, political groups and protest groups who may break the law and it may be serious in its own way. Do you think that in those cases it is proportionate to involve this sort of scrutiny and intrusion?

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Patricia Gallan: XXXX we are in the middle of the proceedings, so it would be inappropriate for me to state further than that at this point.

Q176 Lorraine Fullbrook: I would like to ask a question I asked during the phone-hacking scandal that we investigated in this Committee, which was: before spending £1.25 million, did you sample the evidence first to know how many officers you need, how much it was going to cost and how long it was going to take?

Patricia Gallan: If I can start off, the review started in January 2011, and that is when the issues about Mr Kennedy and another officer came to light, so there is a sort of chronology. An initial investigation into one officer began in January 2011 following articles published in the national press. In October 2011 following further press coverage the Directorate of Professional Standards (DPS) began a review into the SDS. In late June 2012 I was appointed as Gold Commander, was briefed and appointed a new experienced Senior Investigating Officer (SIO) to review and investigate. The DPS started doing the review, and that started with four officers at that stage. In July of last year, on seeing the scale of what were some of the allegations of incidents that were coming to light as a result of it, I had conversations with the Deputy Commissioner and others because we knew the scale of the issues and also the length and period of time it was going on. As a result of that we increased it to 20 officers and 11 staff, because we knew that there were allegations that had to be investigated. We also, having referred the earlier ones, fully briefed the IPCC, and we also briefed other stakeholders to say, "This is what the Met is investigating; this is what we have started to uncover." But I would come back to the point—

Q177 Lorraine Fullbrook: Who are other stakeholders?

Patricia Gallan: For instance, the Home Office. We have also briefed MOPAC, the IPCC and CPS. We have been saying, "This is the scale of it." This where I come back to the point that this is an investigation that can cover 40 years. That is the scale and depth of it in terms of we have seen other historical investigations, and this is paperwork that has gone on for that period where we have to get to the bottom of what was actually going on.

Q178 Lorraine Fullbrook: Can I ask about Mark Kennedy? It seems to me, reading the reports about Mark Kennedy from specifically *The Guardian*, that he seemed to have become a rogue undercover officer because he decided he got more succour, if you like, from the activists that he was working with than he had from the police after he was beaten up at the Drax Power Station. What made you decide from somebody being a rogue undercover officer to investigating all undercover operations, because surely all undercover operations don't turn out like Mark Kennedy?

Patricia Gallan: XXXX. The vast majority of undercover officers are in criminal investigations where the evidence of the undercover officer appears in the courtroom, is tested in court before a judge and

a jury and before the defence and the prosecution. That is not what we are investigating.

If I take you back to Kennedy, as a result of the Kennedy case, somebody came forward and mentioned another undercover officer and an activity that he had allegedly been doing. That officer had been a member of the SDS. As a result of that, an investigation started into that particular officer. When that was looked at it was appreciated there were wider issues. As a result of finding that one bit it then widened out, so it was a follow-on. It was not just suddenly, "Let's investigate the SDS." That was not the case. It was as a result of information coming to light.

Chair: Thanks. We have to do this quickly as we do have one more witness, Mr Kennedy in fact—not that I think you mind keeping him waiting, but we did promise he would come in at 4.45pm.

Q179 Mr Winnick: One of the questions inevitably that comes to mind out of all this—and I do not know if colleagues would agree, but what I believe is a very shaky business—is the manner in which organisations have been infiltrated. I speak as one who accepts there are circumstances where it is necessary—extremist political parties, for example. I am not going to start protesting if a revolutionary organisation or a fascist group happens to be infiltrated. It may well be necessary. But is it not very much now a question of proportionality? These people we heard denied—perhaps inevitably they would do so—that they were involved in any form of violence, but is it not necessary now to regulate more carefully how such organisations are infiltrated, if they are to be, in the first place?

Patricia Gallan: I would say I completely agree with you. I am not sure it requires new legislation, because I think the law is quite clear in that we have to be proportionate and necessary. It should absolutely be open to scrutiny, which it is under the Office of Surveillance Commissioners. If this tactic is to continue, which I would want it to do, we have to make sure it is absolutely proportionate, that it is necessary and that we are quite clear about what the objectives are that we are trying to achieve and have to be done to an evidential standard so that we ensure that we have the highest standards in what we are doing.

Mr Winnick: It has not happened before, but there you are.

Q180 Bridget Phillipson: XXXX?

Patricia Gallan: XXXX. Now, as you may be aware, there is very early consultation with the CPS so we make sure that what we are doing is to an evidential standard and could be presented before a court—when appropriate. There are tests all the time, but by the very nature of undercover policing they are dealing on a day-to-day basis with criminals.

Q181 Bridget Phillipson: XXXX.

Patricia Gallan: XXXX.

Q182 Michael Ellis: I just want to say I applaud the work of undercover police officers. I do not think that

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is said often enough, because I recognise the very difficult work they do under extremely challenging circumstances. It is very easy to sit here in the House of Commons and criticise undercover police officers when people have no clue. That is the first point. No, I am not talking about Ms Phillipson; I am just making a general comment. But what I wanted to ask you was as far as the undercover officers are concerned under your authority, do you not feel that they could in fact, still today, be acting outside of proper procedures in the way that they may have been in the 1970s, 1980s, 1990s and 2000s? The very nature of the work that they are doing is such that they are going to be unsupervised a lot of the time.

Patricia Gallan: I think, firstly, they should not be unsupervised a lot of the time, and if they have been, that should not be happening.

Michael Ellis: When they are with the criminals, I mean. No one knows what they are doing.

Patricia Gallan: XXXX. We are quite clear. When they are given "Use and conduct" about what they can do and what they can't do, that is absolutely clear. It is a matter of supervision. There needs to be very close supervision, asking what officers are doing, when they are doing it and what is happening. If things happen that somebody does fall short, then that should be immediately reported to a supervisory officer.

Q183 Michael Ellis: So, you are confident it could not happen today?

Patricia Gallan: I am not saying it could not happen. What I am saying is we are absolutely clear in our position about what is right and wrong, we are clear about "Use and conduct", and if it does happen, it needs to be dealt with immediately.

Q184 Chris Ruane: What I am surprised at is the backgrounds of the women who have been targeted. It was social justice; it was anti-fascist; it was environmental. In the 1980s and 1990s I set up an anti-apartheid group, an Amnesty International group and an environmental group. It worries me that that is the type of milieu that I was operating in. Robert Wright, the American political economist, says that because of the economics in the West now—economic polarisation, inequality; you have political polarisation in the US with the Tea Party and the 1%. We are seeing it in this country. If we do get political polarisation, who decides who are the good guys and who are the bad guys? Who decides to allocate taxpayers' money to monitor some groups and perhaps not other groups? We have had it in the past with blacklisting, where trade unions were seen to be the bogeymen. Whose decision is that?

Patricia Gallan: RIPA is really clear about what we should be investigating.

Q185 Chair: Thank you. We will decide what we want to do further about this. Just remind us of the court cases you now have. Kennedy is suing you for what? He keeps saying he is suing everybody so he can't give public evidence.

Patricia Gallan: I am not sure that I have all of the details. If I can put it in general terms, his litigation

is regarding what he perceives to be a duty of care towards him.

Q186 Chair: Right, so it is civil?

Patricia Gallan: Civil, yes.

Q187 Chair: And the women, the claimants; we saw some of them giving evidence, and they are suing you in the High Court. How many cases do you have with claimants?

Patricia Gallan: XXXX.

Q188 Chair: They did say they wrote to you. Harriet Wistrich, the lawyer, wrote to you, and they never had replies. Shall I make sure that you get her letter?

Patricia Gallan: She has not written to me, to my knowledge.

Chair: You could write to her.

Patricia Gallan: We have been in consultation. I will just check, because we are in consultation with all the lawyers, seeking statements from the women, because we are seeking their assistance with our investigation.

Q189 Chair: Which investigation?

Patricia Gallan: Operation Herne.

Chair: With Herne; I see. So, from the victims they become supporters.

Patricia Gallan: Yes. I understand they will feel from their perspective in a difficult position because they are also suing us at the moment, so it is a difficult situation.

Q190 Bridget Phillipson: I can understand they were quite reluctant to give statements until you were willing to confirm whether the people they were giving their statements about existed or were police officers. That is also what they have said.

Patricia Gallan: I can understand that. Our difficulty is we have a policy of neither confirming nor denying an undercover officer. So anything they can do—and I appreciate the constraints that they have but if they give us statements explaining what has happened it will assist with our investigation, because at the moment we are going on the basis of the files we have. We need to speak to them to understand what they can tell us, which I think will assist with the investigation.

Q191 Mr Clappison: Do you think we will arrive at a point in this where we can just draw a line under this thing and go forward in a way that everybody understands and it has all been fixed? The evidence-taking has been quite a candid one in many ways this afternoon. We have some quite disturbing evidence.

Patricia Gallan: Do you mean in terms of undercover policing?

Mr Clappison: Yes, so we can get this whole thing sorted out and go forward.

Patricia Gallan: I would really like for us to go forward. One of the things that I have said previously is that in terms of criminal investigations, undercover work has been an absolutely essential tool; it has saved lives. One of the bits is we need to distinguish between what is alleged to have happened in these units and the vast majority of undercover policing,

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which I also must emphasise does appear before criminal courts and there is the full scrutiny of the law. I think we need to distinguish about what—

Mr Clappison: It is these sorts of cases that we are concerned about. I don't think we have been hearing from contract killers or Mafioso this afternoon.

Chair: Thank you for your evidence and for coming so swiftly. We are very grateful.

Patricia Gallan: Thank you.

Tuesday 5 February 2013

Members present:

Keith Vaz (Chair)

Mr James Clappison
Michael Ellis
Lorraine Fullbrook
Bridget Phillipson

Mark Reckless
Chris Ruane
Mr David Winnick

Examination of Witness

Witness: **Mark Kennedy**, former undercover police officer, gave evidence.

Q192 Chair: Mr Kennedy, thank you very much for coming. I have to start with an apology. I am sorry to have kept you waiting so long.

Mark Kennedy: It is quite all right.

Chair: I am afraid the other witnesses and the Committee were obviously very interested in this whole subject, as you can imagine.

Mark Kennedy: I understand.

Chair: We are most grateful. I know you were reluctant to come in because of your legal proceedings, but I can assure you this is in private. We will send you a transcript. If there are any issues you want taken out because it interferes with your legal proceedings, please feel free to do so.

Mark Kennedy: Certainly, sir.

Q193 Chair: This is relatively informal, but colleagues will ask you questions. A lot of what we have seen obviously is in the public domain, but I want to start by asking you: when you went into these situations, were you allowed to have sexual relations with these women? Was it expected of you, or is it something that just happens to agents?

Mark Kennedy: No, it was not expected.

Q194 Chair: At the start when you go along and they say, "You are now an undercover agent." and they send you into these situations, do they give you any ground rules? Do they tell you you have to ask permission? You did say to the *Mail on Sunday* on 15 January, "My superiors knew where I was at all times. My BlackBerry was fitted with a tracking device and they sanctioned every move I made. I didn't sneeze without them knowing about it. I feel I've been hung out to dry". It is the *Mail on Sunday*, so I thought I would put that to you. Is that what you said?

Mark Kennedy: That is what I said, yes. My whereabouts was known throughout my deployment.

Q195 Chair: So if you were engaging in sexual activity, would you have told your inspector, your superintendent? Would somebody have known about this?

Mark Kennedy: I did not, no, not personally.

Q196 Chair: You did not engage in sexual activity, or you did not tell them?

Mark Kennedy: I didn't tell them, sir.

Q197 Chair: So how did they find out?

Mark Kennedy: I don't know if they did find out or not, but the circumstances of these operations are such that my whereabouts was known all the time, and I was not the only person deployed in such circumstances. Such operations call upon the deployment of other undercover officers. There are also many informants within the environment that I was working in, and those informants would not have known who Mark Stone was outside of the fact that he was a member of the activist community and probably a member of the activist community that would provide quite a nice pay cheque in relation to who he was talking to and what he was involved in. So where Mark Stone lived, who his girlfriend might have been, what car he drove, was all intelligence that I am sure was coming into various different police departments around the UK.

Q198 Chair: You said they found out, you did not tell them. However—I am sorry to keep quoting the *Mail on Sunday*; I do not want you to think this is the only thing I read—but it said on 24 November, "I worked undercover for eight years. My superiors knew who I was sleeping with but chose to turn a blind eye because I was getting such valuable information. They did nothing to prevent me falling in love". Obviously you would not expect a detective inspector to say to you, "Don't fall in love," but what you are telling us is that you told them that you were sleeping with people?

Mark Kennedy: I did not, no.

Q199 Chair: Why did you say this, then: "They knew I was sleeping with—"

Mark Kennedy: I think there maybe some literary flowering-up there by the article. The circumstances were such that it would have been difficult to believe that they did not know that I was sleeping with somebody, albeit I did not tell them.

Q200 Chair: You come from the undercover agent fraternity, so you have presumably met other undercover agents.

Mark Kennedy: I have, yes.

Q201 Chair: Is there a college of undercover agents, or do you just get chosen?

Mark Kennedy: One applies for the position.

Q202 Chair: Of undercover agent?

Mark Kennedy: Of an undercover officer, yes.

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Q203 Chair: Do you know whether other undercover agents who are part of this place of undercover agents would have been involved in similar activities? We have heard evidence today from eight women, some orally, some in writing, and other claimants have come. If you look at the *Guardian* articles—I know you have issues with *The Guardian*—of the nine women uncovered by *The Guardian*, eight had had sexual relations with an undercover police officer. That is quite large; it is almost 90%. It seems to be standard for the job.

Mark Kennedy: And your question?

Q204 Chair: Is it standard for the job? Is it the expectation? We heard from the Commissioner some time ago who said, “It is inevitable it is going to happen. You go into a situation where you are living with people, and there comes a time when you will end up sleeping with them”. He did not say he encouraged it, but he said it was inevitable.

Mark Kennedy: It is not expected, and it is something that you are advised and asked not to take a part in.

Chair: You are asked not to take part in?

Mark Kennedy: Yes, sir.

Q205 Chair: How are you asked, verbally or in guidance or in writing? Do they tell you that?

Mark Kennedy: When you attend the undercover course or various undercover courses that now take place around the UK, part of the training is to say that you are not to engage in sexual activities.

Q206 Chair: Now?

Mark Kennedy: That certainly was when I attended my course in 2001.

Q207 Chair: But you went on and did it?

Mark Kennedy: Circumstances were such that, yes, I did.

Q208 Chair: Finally from me, we obviously heard from your former partner who is, as you know from the public utterances, traumatised.

Mark Kennedy: I understand.

Chair: Do you feel any guilt or responsibility? You also were married with children, and you also had another relationship, another girlfriend, who also has left you now, I understand.

Mark Kennedy: I think that is incorrect, sir.

Q209 Chair: You had a wife and children?

Mark Kennedy: Yes, sir.

Q210 Chair: But you are divorced from your wife?

Mark Kennedy: Yes¹.

Q211 Chair: As a result of this coming out, or generally it was the end of the road?

Mark Kennedy: Generally the circumstances of such deployments are very stressful on relationships.

Q212 Chair: Did she know that you were an undercover agent?

Mark Kennedy: My wife?

Chair: Yes.

Mark Kennedy: Yes.

Q213 Chair: She knew. But it was still stressful for her?

Mark Kennedy: Of course, yes.

Q214 Mr Winnick: Would it be right to say, Mr Mark Kennedy, that since you, as I understand it, were told by your superiors not to engage in such activities, this was a sexual opportunity for you?

Mark Kennedy: I am sorry, sir?

Mr Winnick: To put it bluntly, you saw a sexual opportunity while you were carrying out your activities as an undercover agent.

Mark Kennedy: No, sir.

Q215 Mr Winnick: Would you say that was not the position?

Mark Kennedy: That is not the position, no.

Q216 Mr Winnick: When did your superiors know of such activities?

Mark Kennedy: I don't know that they did. I am saying that the circumstances—

Chair: I am sorry, Mr Kennedy, you just have to speak up. The acoustics are terrible in this room. I am sorry.

Mark Kennedy: I said I do not know that they did. The circumstances of the operation were such that it is unlikely that they did not. I don't know for sure if they did or not.

Q217 Mr Winnick: Could you have carried out your activities for which you volunteered—am I right you volunteered to do this job; you were not more or less conscripted?

Mark Kennedy: No, sir.

Q218 Mr Winnick: Could you have done and undertaken the activities the police expected of you without what could only be described as the sexual exploitation of a woman?

Mark Kennedy: In the circumstances, sir, I think it would have been very difficult in the environment in which I was infiltrating. The promiscuity and non-monogamy was an extremely intense situation.

Q219 Mr Winnick: Did you have a stereotype that this was a left-ish group and the women were more or less bound to be rather promiscuous because of their political views? Did you have that opinion before you infiltrated the group?

Mark Kennedy: No.

Chair: Not all of us might share this opinion. Sorry, could you answer the question?

Mark Kennedy: I said I did not have an expectation, no.

Mr Winnick: You did not?

Mark Kennedy: No.

Q220 Mr Winnick: Arising to some extent from what has been said elsewhere and what the Chair has said, what are your feelings about the woman that you

¹ Witness note: I am legally separated, awaiting final divorce.

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deceived who feels, to say the least, very distraught, feels she has been exploited and feels that she has been used in what can only be described as a “dirty” way? Do you have any feelings, any conscience, about it all?

Mark Kennedy: I loved her.

Q221 Mr Winnick: To what extent?

Mark Kennedy: I loved her more than anybody I have ever loved.

Mr Winnick: Sorry, I did not hear that.

Mark Kennedy: I loved her more than anybody I have ever loved.

Q222 Chair: So, why did you leave her?

Mark Kennedy: With respect, sir, I thought this inquiry was regarding the processes and the elements of the undercover operation in which I was working.

Q223 Chair: It is, but did you leave her because you were ordered to leave her?

Mark Kennedy: No, sir.

Q224 Chair: You left her of your own accord?

Mark Kennedy: Yes.

Q225 Chair: That is what we want to establish. Not the personal—

Mark Kennedy: I left of my own accord.

Chair: You left of your own accord.

Mr Winnick: But if you loved her, as you were just saying, why did you leave her?

Chair: No, I just asked that question, David.

Q226 Mr Clappison: Can I ask another question arising from who knew what about this? I have two lines of questioning at the moment. One of the points that we have heard from the women is that these relationships lasted for a long time, and, besides what has been said already about them, they were personal relationships and people who got to know one another’s families and so on. How long did this relationship last for?

Mark Kennedy: Five years; four-and-a-half years.

Q227 Mr Clappison: You were sharing a flat or a house?

Mark Kennedy: No.

Q228 Mr Clappison: But you were seeing a lot of each other?

Mark Kennedy: Yes.

Q229 Mr Clappison: It must have been a reasonable inference for your superiors to draw that there was also an intimate relationship as well.

Mark Kennedy: I would agree, yes.

Q230 Mr Clappison: The thing that strikes me is the question of proportionality of this, which I think it may come back to in the end when this is looked at again. You have referred to the information that you were getting. Are you able to tell us anything about that? Was it, for example, to do with violent activities?

Mark Kennedy: The circumstances in this particular operation and certainly a lot of the operations that were similar to the operation that I was involved in—looking at different groups of people that were involved in various degrees of protest across the UK, and certainly for myself across Europe and extending into the US as well, a number of people—

You begin in a way where you become interested in a political scene, you get engaged with protests, you get invited in. As my operation, or the operation that I was a part of, went on, my involvement with people who were of more and more interest to various police agencies in the UK and across Europe was heightened. I was being introduced to people who had ideas of trying to disrupt power stations, who had ideas of trying to disrupt the rail network and were quite successful in doing that in France. I was involved with the anti-fascist group who would target people involved in the right wing and would cause quite serious criminal damage, quite serious violent offences. So, there were certainly a lot of people that I was introduced to and was involved with and I was gathering intelligence on who had quite clear designs regarding some serious crimes.

Q231 Mr Clappison: Environmental protests can be serious in their own way when they break the law, but do you think what was happening in your undercover work was proportionate to the information and the threat that they presented to the public of the scale of their criminal activity?

Mark Kennedy: In respect of the intelligence I was gathering regarding those people that were intent upon causing mass disruption throughout Europe affecting the UK, I do, but these people are not doing these things all of the time and in order to maintain credibility and to have a legend, your association with people in general has to be maintained.

Q232 Michael Ellis: You were an undercover officer from 2001. Is that right?

Mark Kennedy: I was a test purchase officer from about 1998.

Q233 Michael Ellis: For drugs?

Mark Kennedy: Yes.

Q234 Michael Ellis: So, you would go and ask someone for drugs, and they would give them to you and then they would be prosecuted for supplying?

Mark Kennedy: Yes.

Q235 Michael Ellis: You also investigated cases like those attempting to disrupt the railway network and, as you say, power stations and the like?

Mark Kennedy: Correct.

Q236 Michael Ellis: Did you have sexual relations with other individuals during the time of your undercover work over that 10-year period?

Mark Kennedy: No.

Q237 Michael Ellis: So, it was just one occasion or, should I say, with one individual?

Mark Kennedy: Two individuals.

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Q238 Michael Ellis: Two individuals during the same operation?

Mark Kennedy: Yes.

Q239 Michael Ellis: You clearly were consenting to that yourself. This was not something you were directed to do.

Mark Kennedy: Correct.

Q240 Michael Ellis: You feel the other party fully gave her consent?

Mark Kennedy: Correct.

Q241 Michael Ellis: You accept there was deception in the relationship in that she did not know your true identity, do you?

Mark Kennedy: No, I disagree with that.

Q242 Michael Ellis: You disagree with the concept that there was deception in the relationship?

Mark Kennedy: Yes.

Q243 Michael Ellis: Can you elaborate? Can you explain why?

Mark Kennedy: Because the person that I was seeing, the person that I was sleeping with, was sleeping with Mark Stone.

Chair: With Mark Stone? That is you.

Q244 Michael Ellis: So you are saying that because she knew you as an individual called Mark Stone there was no deception that she did not know that your other job was a police officer?

Mark Kennedy: In the sense that I was an undercover police officer, I accept your point, but in the world that I was working in then for all intents and purposes I was Mark Stone.

Q245 Michael Ellis: I see. Just one more thing: did you conduct yourself in that way because it aided you in the undercover work you were doing, or did you do it because you wanted to do it? If you wanted to do it, would you have done it with any female of any description or any male, for that matter, of any description? In other words, was there any part of you that did this for your own personal gratification, or was it part of your job?

Mark Kennedy: The circumstances that arose whereby I had a relationship with two different women were circumstances that were outside of my job and were circumstances that related to our friendship and what we had shared together.

Q246 Michael Ellis: If you wanted to get closer to someone who could give you more information about the case that you were working on, and you felt in your best judgment the way of doing that would be to sleep with an individual, would you have done that with anyone?

Mark Kennedy: No. The two people that are involved provided no intelligence at all.

Q247 Michael Ellis: But would you have done it with anyone?

Mark Kennedy: No.

Q248 Lorraine Fullbrook: Sir Denis O'Connor said that you defied your boss's instructions to stop working after the demonstration at the Drax Power Station and that you went back to the activists, where you believe that you received more succour from the activists than you did from the police. One has to ask, as an undercover police officer in a demonstration and you were beaten up as an activist, what did you expect?

Mark Kennedy: Can you explain, please?

Lorraine Fullbrook: You were masquerading as an activist.

Mark Kennedy: Correct.

Lorraine Fullbrook: What did you expect to happen? Did you expect them to leave you alone?

Mark Kennedy: Are you talking about the activists?

Lorraine Fullbrook: No, police.

Mark Kennedy: I don't really understand what your question is.

Q249 Lorraine Fullbrook: You went back to the activists for succour because you believed that the police had beaten you up, and they helped you instead and the police had not looked after you. But if you are undercover, other police officers would not know you are undercover.

Mark Kennedy: That is correct.

Lorraine Fullbrook: So, what would you expect as an undercover police officer to have happened?

Mark Kennedy: The circumstances were—I am going to try to explain this; I am not quite sure what the point is you are trying to make. It was 2006, the incident where a number of people were arrested, myself being one of them. The whole management of that particular event at Drax, in my opinion, was handled extremely badly. The decision for me to go on the march and go to the rear fence of Drax was a last-minute decision. The decision-making process was changing the whole time, and it was making an extremely stressful situation for myself and other undercover officers who were also deployed there. In my opinion, I made a strategic decision that in being released from custody the circumstances of the environment in which I was deployed is very much a caring environment. Everybody looks after each other and takes care of each other. I felt, and I had the discussion with my cover officer, that just to leave there and then, straightaway, without even going back to the camp to collect any belongings, would jeopardise the covertness of the operation.

Q250 Lorraine Fullbrook: So that is why Sir Denis said that you defied your boss's instructions and—

Mark Kennedy: No, I didn't defy my boss's instructions at all. The decision was made through myself in discussion with my cover officer via the telephone and my cover officer would then pass that information back up to the senior officers in charge.

Q251 Lorraine Fullbrook: But you have already said that you had decided at the last minute to go on this demonstration.

Mark Kennedy: I did not decide to go on the demonstration at the last minute. The decision was made for me that they required me to go on the

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demonstration. We had already put in a displacement plan whereby I did not need to go to the fence at Drax.

Q252 Lorraine Fullbrook: So, why did you?

Mark Kennedy: Because I was ordered to.

Q253 Lorraine Fullbrook: Sir Denis goes on to say that you had become resistant to management intervention and, “He seems to have believed that he was best placed to make decisions about his deployment and the operation should progress”.

Mark Kennedy: I disagree with that.

Q254 Lorraine Fullbrook: Do you also disagree that Sir Denis O’Connor found that you also ignored your boss’s instructions when you accompanied a protestor abroad in 2009?

Mark Kennedy: Can you explain? Can you be more specific, please?

Lorraine Fullbrook: Did you accompany a protestor abroad in 2009?

Mark Kennedy: Where are we talking about?

Lorraine Fullbrook: I have no idea.

Mark Kennedy: In 2009, if I was deployed by the police to travel abroad, then that was authorised.

Lorraine Fullbrook: Sir Denis said that you ignored your boss’s instructions again.

Mark Kennedy: I am not quite sure of the incident that you are talking about. If you can’t be more specific then I can’t comment.

Q255 Lorraine Fullbrook: I have given you three incidences of you ignoring your boss’s instructions, and Sir Denis ends by saying that you should have been rejected as unqualified at your first attempt to join the covert unit. Is it not the case that you just were not suited to being an undercover police officer?

Mark Kennedy: I managed to stay under cover for 10 years, and I am sure the records will show the amount of intelligence that I was able to produce for the benefit of the UK police over at least two Governments.

Q256 Lorraine Fullbrook: Even though you ignored your boss’s instructions.

Mark Kennedy: I did not ignore my boss’s instructions.

Chair: Thank you, that is very helpful.

Q257 Chris Ruane: You said before that you had given information on quite serious violent offences. How serious were they? Were they murder, potential murder, GBH, ABH—at what level was that? Do you acknowledge that you have done harm, and have you apologised to the person you have done harm to?

Mark Kennedy: To answer your last question first, yes, I have apologised profusely. In answer to the question in relation to the offences that I was involved in investigating, I was involved in investigating members of Antifa, which were committing acts of GBH. I was involved with investigating a possibility of derailment of trains. I was involved in the intelligence-gathering of the disruption to the G8 in 2005, which would bring great embarrassment to the UK. I was involved in the planning of and the practice

of building incendiary devices with French activists that had connections with ETA. I was involved with the planned disruption of a number of power stations throughout the UK, an oil refinery in Aberdeen.

Q258 Chris Ruane: Two of the incidents you mentioned there involved ETA in Spain and derailment of trains, I think you said in France. Was this a pan-European operation? The worst incident you said in the UK was GBH. Now, GBH is bad, but does it deserve the deployment of monitoring for a five-year period?

Mark Kennedy: It is not a question I can answer. I was deployed in an environment where numerous protests were planned, some on a small scale, some on a much larger scale. Some of them would have affected economic stability for the UK quite possibly if they had been successful. The intelligence that I was providing was assisting the police, I hope, in being able to police those things appropriately. It is not my decision whether these operations run or not. I was deployed in the circumstances.

Q259 Bridget Phillipson: Were you ever directly asked by any of your colleagues, superior officers or otherwise, whether you had had or were having a sexual relationship with any of the women in the group?

Mark Kennedy: Yes.

Q260 Bridget Phillipson: You were asked?

Mark Kennedy: Yes.

Q261 Bridget Phillipson: By whom, and what was your reply?

Mark Kennedy: I was told by another undercover officer who was very close in the environment that I was working in that I should be careful.

Q262 Bridget Phillipson: You said the groups that you were involved with were promiscuous, and presumably you mean the women.

Mark Kennedy: And the men.

Q263 Bridget Phillipson: But it was women that you had relationships with.

Mark Kennedy: Yes.

Q264 Bridget Phillipson: Can you just elaborate a bit on that, about the nature of the group?

Mark Kennedy: In what way?

Bridget Phillipson: You say they are promiscuous, that you had sexual relationships with two women in that period.

Mark Kennedy: I did, yes.

Q265 Bridget Phillipson: Perhaps you would expect that if the groups were so promiscuous—

Mark Kennedy: Yes, but then those women had relationships with other men and women throughout that time as well. Throughout the environment that I was working and living in promiscuity was rife, non-monogamy was positively promoted and practised.

Chair: Sorry, could you repeat that? We did not hear what you said.

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Mark Kennedy: I said that throughout the time I was involved in that environment, when I was working and living with people, the promotion of promiscuity and non-monogamy was very apparent.

Q266 Chair: Non-monogamy?

Mark Kennedy: Non-monogamy; multiple relationships.

Q267 Bridget Phillipson: We have heard from some of the women that they feel that talk around this—they did not talk about you—is an attempt to smear them and to suggest that what happened to them perhaps was not as serious because they were all promiscuous anyway and that is just what goes on in left-wing campaign groups. Do you accept that?

Mark Kennedy: Certainly not by me. It is certainly not something that I am attempting to use, but that is all I can say on that.

Q268 Chair: Let me just clarify the legal proceedings. You asked to sit in private obviously because of your legal proceedings. You are suing the Metropolitan Police?

Mark Kennedy: Yes, sir.

Q269 Chair: You are. For what?

Mark Kennedy: For post-traumatic stress at the time, for a lack of duty of care and for subsequent loss of earnings.

Q270 Chair: In respect of the lack of duty of care—I do not want to go into great detail of this—you think they should have been more caring of you in your role. Is that right?

Mark Kennedy: I do, yes. I certainly do.

Q271 Chair: In respect of the relationships, or in—

Mark Kennedy: In respect of the relationships. I think I covered the fact that I do not know for sure whether they knew, but I think the circumstances are such that it is beyond belief to think that they did not have some idea.

Q272 Chair: You said that they did. That is why you are suing them. Are any of the women suing you?

Mark Kennedy: Not that I am aware of.

Q273 Chair: And you are not suing them?

Mark Kennedy: Not at all.

Q274 Chair: So, it is just a civil case?

Mark Kennedy: Yes, sir.

Q275 Chair: Why is it that you wished to sit in private today?

Mark Kennedy: Because I was advised to do so by my legal team.

Chair: By your lawyers.

Q276 Mr Winnick: There is a reference in our brief about Max Clifford, and we know about Max Clifford and his clients. Is he representing you, Mr Kennedy?

Mark Kennedy: Not really, no. At the time when *The Guardian* started to produce their written articles

about the whole circumstances I didn't know which way you had to turn. It was a very troubling time, and I made a phone call to Mr Clifford to—

Q277 Mr Winnick: If your claims were successful, would there be any financial arrangement with Mr Clifford or not?

Mark Kennedy: No, sir.

Mr Winnick: Not at all?

Mark Kennedy: No.

Q278 Chair: You were not here, you were up the corridor, but the Deputy Assistant Commissioner said that this practice was one that was not condoned. What did she say in public about this practice, because I do not want to repeat things she said in private? Leave that question.

Finally, about the use of the dead children's identities: did you know this was going on?

Mark Kennedy: When I first joined the NPOIU and I was asked to create a legend, I was told that that was a practice that had been used in the past but it was not a practice that is being used now.

Q279 Chair: When was that? Give us the dateline.

Mark Kennedy: I joined the NPOIU in 2001. I can't say before then. I was aware that it had been a practice at some point only because this one officer told me as such. It is certainly something that the NPOIU did not do.

Q280 Chair: Your identity, Mark Stone: did you choose those names, or was it given to you?

Mark Kennedy: I chose those names.

Q281 The Chair: How did you get your legend worked up?

Mark Kennedy: I spent over a year researching schools—

Q282 Chair: Schools that Mark Stone went to? Did Mark Stone exist?

Mark Kennedy: No, he did not.

Q283 Chair: So, he was not somebody else?

Mark Kennedy: No.

Q284 Chair: You just made him up?

Mark Kennedy: I made him up.

Q285 Chair: Where did you find the names from?

Mark Kennedy: Well, my first name is Mark, and if you are going into an undercover situation and you do not answer to the name of Mark, it looks strange.

Chair: Very odd.

Mark Kennedy: And Stone is just an easy name to remember. It is a popular name. It is not difficult to forget in stressful circumstances. I spent about a year researching areas in London that I knew very well so I could sit and talk about it, places that I went to, schools, I joined Friends Reunited—I could talk about anything—

Q286 Chair: Did they give you credit cards and things? Who gave you these?

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Mark Kennedy: When the operation started the NPOIU—and I think the circumstances have now changed, but certainly when I started—had an arrangement with a bank whereby the account was set up and the money that was given to the operation, a certain amount of money was put into that account to give Mark Stone the ability to live.

Q287 Chair: Sure. Did you give the figure of £250,000 for the cost of an undercover agent, or was that just the *Mail on Sunday*?

Mark Kennedy: I think that was the *Mail on Sunday*.

Q288 Chair: What do you think the cost was of putting an agent in?

Mark Kennedy: I am quite sure it was not too far from that.

Q289 Chair: So, quite a lot of money?

Mark Kennedy: When you consider those figures went to pay the wages of the cover officers, the undercover officers, the transport costs, the living costs for the cover officers while they are away, it would soon add up; the overtime involved as well.

Q290 Chair: At the end of the day, do you feel this provided good value for money for the taxpayers? Is this something that we should be investing in?

Mark Kennedy: I think it is very difficult to put a measure on it, and it is very difficult to sit here now, two-and-a-half years later, and tell you exactly all of the intelligence that I passed. What I would like to say is that the intelligence that I passed did involve the potential for some very serious disruption across the UK and across Europe. Whether or not that intelligence was managed correctly and was handled in the appropriate ways, that, I think, is something that needs to be looked at and discussed. I would very much like to assist with that, if I have that opportunity.

Chair: Thank you.

Mark Kennedy: I feel that this inquiry and what has happened will hopefully protect people in the future, both as undercover officers and people that are infiltrated by undercover officers. I think it is a very difficult job. I think the people that are out there—

Q291 Chair: But you think it is a job that has to be done?

Mark Kennedy: I agree, in certain circumstances. I know there is a lot of talk and a lot of debate regarding the proportionality of it. I think it is very difficult to get to a position where you are in a meeting in the woods in France with Greek, Italian and French activists, learning how to make incendiary devices, which they want to use to blow up railway lines, without first—

Q292 Chair: Have you been able to rebuild your life? I know you work now for a company called Global Open. Is that right?

Mark Kennedy: I do not work for that company, no.

Q293 Chair: You have in the past?

Mark Kennedy: When I first left the police I was employed by Global Open, and I assisted them in investigating a serious offence.

Q294 Chair: Sorry, the Densus Group; my apologies. Do you work for them now?

Mark Kennedy: I consult for the Densus Group on occasions. I am assisting the Los Angeles Sheriff's Department with some issues that they have, and I have also just been employed as a director of security for a large leisure firm.

Q295 Chair: Mr Kennedy, I know you were reluctant to come in here, but I hope that you have understood that you have really helped the Committee with our inquiry.

Mark Kennedy: I hope so, sir.

Q296 Chair: We are very grateful. If there is anything that you missed out that you want to communicate with us, please inform the clerk.

Mark Kennedy: I will.

Chair: Thank you very much. We are most grateful.

Mark Kennedy: Thank you for your time.

Written evidence

Written evidence submitted by Birnberg Peirce & Partners and Tuckers Solicitors [UP 01]

INCONSISTENT STATEMENTS ON THE POLICY IN RESPECT OF SEXUAL CONDUCT BY UNDERCOVER OFFICERS

Jon Murphy, the ACPO lead [?], commented in respect of sexual relationships, *“It is never acceptable for an undercover officer to behave in that way... It is grossly unprofessional. It is a diversion from what they are there to do. It is morally wrong because people have been put there to do a particular task and people have got trust in them. It is never acceptable under any circumstances ... for them to engage in sex with any subject they come into contact with.”* [reported in Guardian—19 January 2011]

In answer to a written question submitted to the Commissioner by GLA assembly member, Jenny Jones in June 2011

Q126: What guidance is issued to undercover officers about avoiding becoming an agent provocateur, and about the forming of sexual relations?

Answer: ...No authority is ever granted for an undercover officer to engage in a sexual relationship whilst deployed on an authorised police operation.

In response to a Freedom of Information Act request made by Rob Evans of the Guardian newspaper to Metropolitan police

Under the act, I would like to know:

- (1) when was the first time that a directive or guidance was issued by the National Public Order Intelligence Unit to its staff making it clear that undercover police officers employed by the unit were prohibited from having sexual relations with the targets they were carrying on surveillance on;*
- (2) how many directives or guidance have been issued since then, and on what date was each of these directives or guidance issued.*

Under the act, I would also like to request :

- (1) complete copies of each of directives or guidance;*
- (2) complete copies of any policy or discussion papers held by the National Public Order Intelligence Unit which discusses this subject since January 1 2011.*

Response [16 November 2011]

“All Police Officers when joining the Metropolitan Police Service are provided with a copy of the Police Conduct and Discipline code and must adhere to the code at all times. There is no other information held that is relevant to your request.”

From Her Majesty’s Inspectorate of Constabulary HMIC report [February 2012]

“The sample of NPOIU records examined by HMIC should have contained much more detail on how the risks of intrusion were assessed and managed. For example, Mark Kennedy, by his own admission, had intimate relationships with a number of people while undercover, and in doing so encroached very significantly into their lives. NPOIU documentation did not provide assurance that such risks of intrusion were being systematically considered and well managed across the organisation”.

HMIC found that Mark Kennedy operated outside the Code of Conduct for Undercover Officers (see p.16).

Nick Herbert, Minister for policing, in adjournment debate with Caroline Lucas:

“The RIPA statutory guidance does not explicitly cover the matter of sexual relationships, but it does make it clear that close management and control should be exercised by the undercover officer’s management team. That will be a relevant factor. The absence of such management gave rise to concern in the Kennedy case.”

“I am not persuaded that it would be appropriate to issue specific statutory guidance under RIPA about sexual relationships. What matters is that there is a general structure and system of proper oversight and control, rather than specific directions on behaviour that may or may not be permitted. Moreover, to ban such actions would provide a ready-made test for the targeted criminal group to find out whether an undercover officer was deployed among them. Specifically forbidding the action would put the issue in the public domain and such groups would know that it could be tested.” [13 June 2012]

Written question from Caroline Lucas MP to Damian Green, (current) Minister for policing: *“To ask the Secretary of State for the Home Department whether her Department has issued any guidance to chief constables on the circumstances in which authorisation should be given to an undercover police officer to (a) start and (b) continue a sexual relationship with someone who is the target of undercover surveillance; whether any such guidance includes making provision for appropriate supervisory arrangements to ensure that officers do not start or continue relationships without authorisation; and if she will make a statement.* [121107]

Damian Green: “No. The Regulation of Investigatory Powers Act 2000 and its associated statutory code of practice make it clear that deployment of undercover police officers as covert human intelligence sources is required to be necessary and proportionate and to be closely monitored and managed by the force concerned.

The personal conduct of any police officer is a matter for the force concerned”

13 SEPTEMBER 2012 : COLUMN 360W

At the Police and Crime Committee meeting on 27 September 2012, Deputy Commissioner, Craig Mackay answered questions on this area:

JJ: ...would a serving police officer be given authorisation to start a sexual relationship with an activist while using a false identity

DC: not ordinarily, no

JJ: What do you mean “not ordinarily”

DC: Well you can't write a rule for every particular scenario. They give a preauthorization for deployment but a pre authorisation for deployment would cover conduct and code it would not get down into the level of detail of saying you can or can't [pause]

JJ; So would that officer have to report back to his supervisor on that relationship if there was pre-authorisation.

DC: Yes if there was a relationship they'd have to report back.

...I did say absolutely that pre-authorisation, we do not do pre-authorisation about relationships

JJ: You said not ordinarily

DC: if people are..eh..involved or become involved in a relationship it has to come back to the supervisor straight away.

LD: that begs the question, what happens what the supervisor does. What advice does the supervisor give in those circumstances to the officer—one to protect the employee as well as the other party involved who may well be a suspect but more likely might not be a suspect because the relationship is there so what advice is the supervisor meant to have given to the operative

DC: It's not covered in detail in the guidance I will write to you with the advice. I am not a supervising officer so...

.... Our expectation is they will not engage in long term relationships and get involved in the sort of things that you're describing and are well documented in terms of those sorts of things but if you're saying to me is there a scenario where it could never happen effectively we end up with, I'll make it up, that undercover officers are all subjected to a sexual test, um, it's very very hard to sit and write those rules sitting here. If you said that “I'm a member of a group and I decide to test whether X or Y is an undercover officer by em some sort of sexual test”, that's an incredibly difficult thing to sit and write at the centre. Let me be clear—those long term relationships that you're describing are not where undercover officers should be.

JJ: No I know they shouldn't be there. It's really what the Met... Are you saying now it could not happen?

DC: Providing the supervisor works..it couldn't happen. But that absolutely relies on individual supervision. That's why we've put all the work in...

JJ: But we've established that supervision is a little bit dodgy haven't we. Generally.

DC: No, em,

JJ: It can be.

DC: It can be. But undercover officers and the work and the focus that's gone on on the back of both the HMIC report and the work we've done has brought a load of those things into much more line around how it's managed, how it works and the individual role of that supervisor. Because for an undercover officer, the supervisor is the crucial link....

JJ: I just feel that what I would like to hear from you is a blanket assurance that permission, preauthorization for a sexual relationship with an activist is never given. I really would like some sort of, because I just can't see that the HMIC would think very much of that scenario either

DCL That's why I'm saying to you I can't see that scenario happening now. I cannot see that scenario happening now. But what I can't do to you is give you a written guarantee for that so let me come back to you on that in the new code and if it's as specific as that then I'll let you know.

FILE ON FOUR PROGRAMME BROADCAST ON 2 OCTOBER 2012

Question: What is the Met's position on relationships undercover?

DEPUTY ASSISTANT COMMISSIONER PATRICIA GALLAN: Well, I think first of all there is the law and then there is also what is morally right. The law is silent on the matter. If you ask me about what morally is right, then I think it is one of those things that we cannot legislate for every single circumstance. If a circumstance happens where that happens with an officer, I would expect them to

immediately report that to a supervisor. Each case needs to be looked at on its merits, but it is something I would question severely about why it has happened.

DAMIAN GREEN, LETTER TO CAROLINE LUCAS, NOVEMBER 2012

“The Government shares the view expressed by a number of senior police officers that it is not appropriate for officers to enter into sexual relationships with members of the public they come into contact with in the course of their duties and that this is not authorised activity.”

HOUSE OF COMMONS DEBATE, 26 NOVEMBER 2012

Damian Green: The requirements for supervising and managing the deployment of undercover officers are set out in the Regulation of Investigatory Powers Act 2000 and its related statutory code of practice. In addition, the Association of Chief Police Officers produces its own guidance on managing undercover deployments. Senior police officers have made clear in recent months that it is not acceptable for the police to engage in sexual activity with members of the public, and that this is not authorised conduct.

HOME AFFAIRS SELECT COMMITTEE, 28 NOVEMBER 2012

Q354 Mr Winnick: If an undercover agent engages in sexual activity in the group to which he or she has been sent to do police work, would that be considered appropriate?

Bernard Hogan-Howe: It certainly should not be part of the strategy to do that. The fact that it may sometimes happen, I think, could almost be inevitable. Not that I would encourage it, obviously, but when you are deploying an officer to live a lifestyle and they are going to get close to a target or a group of targets, it is not impossible to imagine that human relationships develop in that way. We put various things in place to make sure that, if it is going to happen or there is a likelihood of it happening, we spot it early and get the UC out before it happens, but it is not impossible given human relationships.

Birnberg Peirce & Partners and Tuckers Solicitors

January 2013

**Written evidence submitted by Tuckers Solicitors
on behalf of their client “Charlotte” [UP 02]**

1. I Charlotte (real name withheld) write this statement for the Home Affairs Select Committee sitting on 5 February 2013 and looking into the issue of Undercover Policing. I would have liked to have come to the committee and give evidence in person. I mean no disrespect by not attending. I simply wouldn't be able to cope with it at this time. My life fell apart on 14 June 2012 when I learned the truth about my ex-partner Bob Lambert (aka Bob Robinson) and the father of my child. My mental health has suffered and I am now under a consultant Psychiatrist at The Priory Hospital and am required to attend there every Tuesday for 12 weeks for a full day's treatment.

2. The 14 June 2012 was an ordinary Thursday. I came home from work at about 4pm, as I don't work Fridays, Thursdays are the start of my weekend. I made a pot of coffee and because the weather was good, I took the paper (Daily Mail) and the coffee out to the garden. As I flicked through the paper I saw the picture of Bob Robinson in the 80s—it was “my” Bob, my son's dad. I had not had news of him for approximately 24 years and there was his face staring back at me from the paper.

3. I went into shock, I felt like I couldn't breathe and I started shaking. I did not even read the story which appeared with the picture. I went inside and phoned my parents. My dad got the paper from their nearest shop and my mum got out the photos out of Bob and our son, at the birth and when he was a toddler. They confirmed to me, that by comparing photos, it was definitely Bob.

4. The article was about Caroline Lucas naming Bob Lambert in Parliament as the third bomber of Debenhams and an undercover police officer. So I phoned the House of Commons that evening and asked for Caroline Lucas. A researcher answered the phone and I told them that I was the mother of Bob Lambert's son. I was given the details of a solicitor representing other woman who police officers had had relationships with. I didn't sleep all that night. My head was full of memories and questions. I was examining every memory again looking for clues that I should have seen that would have revealed his identity. I needed to know if I was just a part of Bob's cover story, and if our son, who he'd abandoned was also just a part of his cover story.

5. The next morning I got the number for St Andrews where the article said Bob worked. I called the university and asked for Bob Lambert, I was put through to a woman in his office. She was understandably cagey but I burst into tears and told her that I was the mother of his son. She could hear that I was in a state and said to me she would call Bob, tell him I'd phoned and she would call me back if there was any message. She said whatever happened she would come back to me. Ten minutes later the phone rang and it was Bob. This was the first time I had heard his voice for 24 years but I recognised it. It was very emotional. I remember asking him “why me”, he also sounded emotional. He could not answer my questions, I had many. I wanted to know if the force chose me or if he did, I also wanted to know if he had chosen to abandon me and our son

or if he was under orders to do so. In the end his answers did not help, they threw up more questions and they counted for nothing as I could no longer believe a word he said.

6. When I was a teenager in the early 1980s I got involved in animal rights and began attending meetings and protests. In about 1984, when I was 22 years old, I was living alone and met a man who called himself “Bob Robinson”. He told me that he worked as a gardener in north London. He got involved in animal rights and made himself a useful member of the group by ferrying us around in his van.

7. I feel that “Bob Robinson” targeted me. He was always around, wherever I turned he was there trying to make himself useful, trying to get my attention. I think he was about 12 years older than me. It now seems that he worked to build a relationship with me, which developed into an intimate friendship and which became sexual. I believed at the time that he shared my beliefs and principles. In fact, he would tease me for not being committed enough. I was a vegetarian but he encouraged me to become a vegan and he got me to become more involved in “direct action” and London Greenpeace. My relationship with Bob was my first serious relationship.

8. Although Bob had a bedsit, he would stay with me. We set up home together. He would sometimes go off for a short while saying he had to visit his dad with dementia in Cumbria and sometimes he went off saying that he had a gardening job. Most the time while we were together he lived with me.

9. Around Christmas 1984 I became pregnant. Bob seemed excited by the news and he was caring and supportive throughout the pregnancy. Bob was there by my side through the 14 hours of labour in the autumn of 1985 when our son was born. He seemed to be besotted with the baby. He was a great dad and I had no reason to believe that our son was not his first. I didn’t realise then that he was already married with two other children.

10. Our relationship broke down in/around 1987. With the benefit of hindsight I can now see how he orchestrated breakdown of our relationship. It was very hard time for me. He continued to visit our son after he moved out and we continued an intimate relationship until one day when he said he had to “go on the run” to Spain, owing to him being involved in the firebombing at the Debenhams store in Harrow. He promised he would never abandon his son and said that as soon as it was safe I could bring our baby to Spain to see him.

11. He abandoned me to support our son alone and to explain to him the disappearance of his father. I felt guilty. At that time I blamed myself a lot for the break up and for the fact that my son had lost his father. I tried to track Bob down countless times over the years but those efforts were doomed to failure as I did not even know his real name. Then out of the blue I saw the article in the newspaper on 14th June 2012.

12. Since seeing the article my life has been devastated, I describe 14 June as the day of the earthquake and a big hole opened up. All my security, everything I took for granted fell down the hole. All subsequent revelations are like the “aftershocks” I feel so confused and hurt by what has happened. I don’t understand what I am supposed to have done that I was chosen by the state to be treated like this. I was no threat to national security and what was my child—collateral damage?

13. Six months on from that traumatic revelation in the newspaper and I’m a long way off from coping with it. What I can now say with confidence is that there can be no excuses for what he did, for the betrayal, the manipulation and the lies. There is no middle ground, no half-truth that makes sense of his actions. This has been the hardest part to accept; not to make excuses for my friend and lover, not to let him still have a small piece of my heart. I loved him so much, but now have to accept that he never existed, he was a phantom but the damage is real.

Statement of Charlotte. (not her real name).

Written evidence submitted by Andrej Hunko, Member of the German Bundestag [UP 03]

INFORMATION ON SEXUAL RELATIONSHIPS BY BRITISH UNDERCOVER INVESTIGATORS IN GERMANY/INFORMATION FOR THE INDIVIDUALS AFFECTED

I follow the issue of British undercover policing since December 2011, when Mark Kennedy was disclosed by UK activists. I therefore made several parliamentary initiatives to receive answers from the German government about the deployment of British undercover police in Germany. I was very interested in the international structures, where British undercover operations are discussed and evaluated. Please see the report from Matthias Monroy “The exchange of Anglo-German undercover police highlights controversial police operations” on Statewatch (<http://www.statewatch.org/analyses/no-146-undercover-exchange-protests.pdf>).

The German Home Affairs Committee was able to see a blank contract where this kind of exchange is normally based on. We are not allowed to distribute the document. But it is explained that it is forbidden for undercover police to commit crimes.

Nevertheless, Mark Kennedy was accused and found guilty of an arson attack in Berlin. But he was giving evidence in court under his false name to escape legal proceeding under his real name.

We are also still trying to know more about the usage of sexual relationships by undercover agents and the legal situation of this procedure.

Many of my efforts to clarify the collaboration were answered, that the German government cannot provide information. It should be requested in the United Kingdom.

Last week I sent a letter to the German and British Home Affairs Ministers, Mr. Hans-Peter Friedrich and Ms. Theresa May. I explained how I follow the court case against the Met regarding sexual relationships with activists. In interviews which Mark Kennedy gave to the British media we read that his police superiors were at all times informed of where he was spending the night (which I assume would apply to all other officers working under cover). Mark Kennedy openly admits that the accusations against him are true.

Mark Kennedy and “Marco Jacobs” were also deployed on several occasions in Germany, including around the time of the G8 summit in Heiligendamm in 2007 and the 2009 NATO summit in Strasbourg. After their identities became known I asked the Federal Government about their activities several times (see, for example, Bundestag Printed Paper 17/4333 of 22 December 2010).

I also asked if undercover investigators in Germany had sexual relationships with persons they were investigating or with their contacts. In January 2011 the head of the Bundeskriminalamt (Federal Criminal Police Office), Jörg Ziercke, told the Bundestag’s Committee on Internal Affairs that that would be “absolutely unacceptable”.

However, the Federal Ministry of the Interior told me that the Federal Government does not really have any information on this because no one involved has made a complaint. In a reply to my oral question the Federal Government merely points to the general rights of any German party to have the “actions” of undercover investigators “referred to the courts” (Minutes of plenary proceedings 17/83).

But in my view both the German and British authorities have an obligation here. After all, it is possible that persons involved may not yet have learned the true identity of the police officers Mark Kennedy or “Marco Jacobs” and may still think of the two men as good friends or partners. It is also conceivable that individuals investigated by the British police officers have not yet heard about the inquiries and court proceedings in the UK.

In its answer to my recent parliamentary initiative the Federal Ministry of the Interior wrote on 18 January 2013 that “entering into relationships of that kind as part of an investigation” is not permitted (Written Question 1/166). It is not allowed in any area of the Federal Government’s responsibility, including all German authorities. The Ministry emphasises that this also applies to foreign police agents operating in Germany.

The Federal Ministry of the Interior and the Bundeskriminalamt as the international point of contact responsible for exchanges of undercover investigators must, therefore, obtain clarification from the British authorities as to whether Mark Kennedy or “Marco Jacobs” also used personal and sexual relationships in Germany in order to obtain information. And the same applies to any of their fellow-officers.

So if any British police officers have acted in this way, persons affected by their actions and living in Germany must be apprised of this illegal activity and told that they have the option of bringing criminal proceedings in Germany and a civil action in the United Kingdom.

I asked that all exchange of personal data between Germany and the UK to inform people that were spied upon by Mark Kennedy and “Marco Jacobs” should only be used for the purpose of providing these persons concerned with information about the covert investigations conducted, to ensure that they have appropriate legal protection.

I would also like to draw your attention to the fact that Mark Kennedy told the British press about a modified wristwatch which he routinely used to record conversations in a room and later analysed with his superiors. According to what the Federal Ministry of the Interior told me, it is not known whether he did this in Germany too.

As you might know, spying operations like this require a warrant. So it may be that there has been yet another breach of the law here. I would thus ask you to take action on this too and liaise as appropriate with the German *Land* (federal state) police forces for which Mark Kennedy worked.

To my knowledge, the *Länder* in question are Mecklenburg-Western Pomerania and Baden-Württemberg, which have concluded agreements on the matter with the British police. But there is also the *Land* Berlin, where Mark Kennedy spent time “buttressing his cover story”, according to the Federal Ministry of the Interior.

However, we still do not know who he was working for there. In order that action may also be taken against any breaches of the law by British police officers in the capital of Germany, I asked Ms. May to say who was responsible for ordering their deployment in Berlin and which German authorities received reports about it.

I am extremely critical of the growing internationalisation of police work. This case shows that due legal process, above all, is rendered difficult or even totally impossible by the need for cross-border cooperation.

So I view this as a judicial precedent and I call on the British Government and the Federal Government to work energetically for its resolution. Maybe you can help on this.

Andrej Hunko

February 2013

Written evidence submitted by Patricia Gallan QPM, Deputy Assistant Commissioner, Metropolitan Police [UP 04]

UNDERCOVER POLICE OFFICERS

Letter from Patricia Gallan QPM, Deputy Assistant Commissioner, Metropolitan Police, to the Chair of the Committee, 14 February 2013

Thank you for your letter dated 7 February requesting further information in respect of undercover police officers and Operation Herne.

I believe that most of the points you raise were covered in my evidence provided in public and private sessions on 5 February 2013.

As to the future progress of Operation Herne, you will be aware of the announcement by the Home Secretary on 11 February 2013 that the investigation is to be conducted from now under the direction of Michael Creedon the Chief Constable of Derbyshire. Consequently, I am sure you will appreciate that it is now appropriate that you refer to him as regards the future of the investigation.

*Patricia Gallan QPM, Deputy Assistant Commissioner, Metropolitan Police
February 2013*

Letter from the Chair of the Committee, to Patricia Gallan QPM, Deputy Assistant Commissioner, Metropolitan Police, 7 February 2013

I am writing to you further to the evidence you gave the Committee on Tuesday 5 February on the subject of undercover policing which we are looking at as part of our inquiry into leadership and standards in the police.

I would be most grateful if you were able to answer the following questions to assist us with our inquiry:

- What is the timetable of Operation Herne?
- What is the breakdown of the £1.25 million costs for the Operation?
- As a result of Operation Herne, has anyone been charged with an offence or are any officers facing disciplinary action? If not, do you expect any future action?
- Have you encountered any evidence that suggests the practice of using dead children's identities was more widespread than in the NPIOU and the SDS, including in other agencies such as the UKBA or HMRC?
- How widespread was the practice of undercover officers engaging in sexual relationships? You will know that the Guardian alleges that eight out of the nine undercover officers it has identified did so.
- Are there any undercover officers currently employed by the Met who you have found to have engaged in sexual relationships as part of their undercover work?
- If an officer is found to have engaged in a sexual relationship as part of their undercover work, what disciplinary procedures will they face?
- Why was the decision taken for Operation Herne to be supervised by the IPCC, rather than independently investigated?
- Have you made a decision as to how and when you will inform the families of those children whose identities were used by undercover officers?
- How many separate investigations into allegations relating to undercover police officers has the Met and/or the IPCC taken?
- What are the terms of reference of Operation Herne?
- Are you investigating the conduct of undercover officers in other forces and/or agencies?
- How many forces are undercover officers operating in?
- How many undercover officers are operating under the remit of the Met Police?
- If you will confirm that operational command of the undercover officers is remaining with the Met, while the new College of Policing will set standards?
- Who set standards for undercover policing prior to 4 February 2013?

The Committee is very grateful to you for your cooperation with our inquiry and it would be so helpful if you were able to reply by midday, Thursday 14 February in order to inform our inquiries.

Rt Hon Keith Vaz MP,

Chair of the Committee

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