

Operation

# Herne

Report 1 · Use of covert identities

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## Executive Summary

### History

The **Special Demonstration Squad (SDS)** was an undercover unit formed by the Metropolitan Police's Special Branch. It operated between 1968 and 2008, during which time it infiltrated and reported on groups concerned in violent protest.

### Operation Herne

**Operation Herne (formerly Soisson)** was formed in October 2011 in response to allegations made by the **Guardian** newspaper about alleged misconduct and criminality engaged in by members of the SDS. Similar matters had been previously aired as early as 2002 in a BBC documentary.

### Operation Riverwood

On 4th February 2013 the Metropolitan Police received a public complaint from the family of Rod Richardson, a young boy who had died in the 1970s. It is alleged that an undercover officer working for the **National Public Order Intelligence Unit (NPOIU)** had used this child's details as his covert identity. This matter was referred to the **IPCC**. The matter was returned to the force and is currently subject of a 'local investigation'.

### National Public Order Intelligence Unit

The NPOIU was formed within the MPS in 1999 to gather and coordinate intelligence. In 2006 the governance responsibility for NPOIU was moved to the Association of Chief Police Officers, after a decision was taken that the forces where the majority of activity was taking place should be responsible for authorising future deployments. In January 2011 the NPOIU was subsumed within other units under the National Domestic Extremism Units within the MPS.

In January 1995 large numbers of police from London, Kent and Hampshire were drafted to the West Sussex harbour of Shoreham in response to protests surrounding the export of live animals to Europe. **The Animal Liberation Front (ALF)** and another animal extremist group named '**Justice Department**' had a strong base in the community there. This led to a number of protests and in October 1995 there was a further demonstration in Brightlingsea, Essex. This resulted in a record number of police being deployed to prevent widespread public disorder. Ad-hoc protest groups emerged and the need for first hand high quality intelligence was evident. This led to undercover

operatives being required to infiltrate these animal extremist organisations.

#### The purpose of the NPOIU was:

- 1 To provide the police service with the ability to develop a national threat assessment and profile for domestic extremism.
- 2 Support the police service to reduce crime and disorder from domestic extremism.
- 3 Support a proportionate police response to protest activity.
- 4 Help the police service manage concerns of communities and businesses to minimise conflict and disorder.

Control of the NPOIU moved to ACPO in 2006 under the direction of the ACPO National Co-ordinator for Domestic Extremism, **Assistant Chief Constable Anton Setchell**. He was replaced by **Detective Chief Superintendent Adrian Tudway** in 2010. The NPOIU worked with the **National Extremism Tactical Co-ordination Unit (NETCU)** and the **National Domestic Extremism Team (NDET)**.

The NPOIU now exists as part of the **National Domestic Extremism Unit (NDEU)** under the Metropolitan Police Service Specialist Operations and is run by **Detective Chief Superintendent Chris Greaney**.

## Deceased identities

On 5th February 2013 the **Home Affairs Select Committee (HASC)** questioned **Deputy Assistant Commissioner Gallan** about the alleged practice that SDS officers had used the details of dead children, as part of a cover identity for undercover police officers. At the time DAC Gallan was based in the MPS Directorate of Professional Standards and was in overall command of Operation Herne. Her appearance before the HASC led to considerable media coverage and some negative commentary. As a result of the media coverage, Operation Herne has now received enquiries from fourteen (14) families regarding seventeen (17) children.

## Operation Herne review

One hundred and forty-seven (147) named individuals are believed to have served as police officers within the SDS at all ranks from Chief Superintendent down. This covers the forty (40) years that the unit was in existence and not all the police officers were deployed in undercover roles.

At this stage one hundred and six (106) covert identities have been identified as having been used by the SDS between 1968 and 2008.

Forty-two (42) of these identities are either confirmed or highly likely to have used the details of a deceased child.

Forty-five (45) of these identities have been established as fictitious. Work continues to identify the provenance of the remaining identities.

## **Neither Confirm Nor Deny (NCND)**

The policy of 'neither confirming nor denying' the use of or identity of an undercover police officer is a long established one used by UK policing. It is essential so as to provide for the necessary operational security and to ensure undercover officers are clear that their identity will never be disclosed by the organisation that asked them to carry out the covert activity. The duty of care owed to such officers is an absolute one and applies during their deployments, throughout their service and continues when they are retired.

Please note that this is an interim report specifically about the use of the identities of deceased children and infants. It does not seek to cover either all of the activities of the SDS nor has it been able to completely provide all the answers regarding the use of covert identities. The report clearly explains the use of the tactic and is submitted early given the need to deal with the public concerns and is provided in agreement with the Home Office who sought to have this matter concluded before the parliamentary summer recess.

# The History of the Special Demonstration Squad

- 1.1 The Special Demonstration Squad (SDS), initially known as the Special Operations Squad (SOS), was created in 1968 by the Metropolitan Police's Special Branch in response to the Anti Vietnam War demonstrations that took place in Grosvenor Square, London on 18th March. At that time demonstrators were targeting the United States Embassy, and it was feared that lives would be lost during the increasingly violent clashes. The unit was created with direct support and funding from the Home Office.
- 1.2 Between March to October 1968, a small number of Special Branch officers were deployed to infiltrate the groups of demonstrators to provide intelligence about those organising the public disorder. These officers were successful in infiltrating the anti-war movement and were able to pass key intelligence to assist with the policing of the demonstrations. At the time, the Special Branch's activity was acknowledged as invaluable in keeping the Home Secretary of the day 'well informed'.

## Funding & Authorisation

- 1.3 Initially, the SDS was funded and authorised by the **Deputy Under Secretary of State**. At its inception the Deputy Under Secretary of State was **Sir James Waddell** and the enquiry team has a quantity of signed correspondence and other documentation from him (and his successors) relating to the squad.
- 1.4 At the end of 1968, as a result of political developments abroad and the SDS's apparent early successes it was decided that the unit should continue. Subsequently, over the intervening years the SDS expanded its remit beyond reporting upon left wing extremism to include the far right, Irish terrorist groups and any groups that were intent on committing serious public disorder.

## The Squad is renamed

- 1.5 Between November 1972 and January 1973 the SOS was renamed the '**Special Demonstration Squad**' (SDS) to reflect its evolving remit. The unit's name was then changed again around 1997 to the '**Special Duties Section**', and it remained so until it was closed in 2008.

## Home Office

- 1.6 At the insistence of the Home Office, the squad was to be maintained with the strictest secrecy, so as not to compromise the Government or its sensitive operations. It appears that significant dedicated funding was provided by the Home Office to the Metropolitan Police Service (MPS) on the grounds of paying for operational security. This issue of secrecy is a prevailing theme, and was used to justify many deployment decisions. Until the later years of the SDS's existence, very few people outside of the MPS Special Branch knew of it.
- 1.7 Over a period of time it was established that long term covert deployments would provide the best intelligence yields. Initial deployments of officers were for several years. However Operation Herne has established that there was no formal selection or training processes, little legal guidance to operatives and the SDS often had to break new ground. Practices evolved over time, as a result of officers reporting on their activities and personal initiatives and then sharing these with their colleagues. Officers were selected directly and on personal recommendation, almost always from within the MPS Special Branch.

## 2

## Operation Herne (Formerly Operation Soisson)

- 2.1 In October 2011 **DAC Mark Simmons (at the time the Director, Directorate of Professional Standards)** instructed that a full review of the SDS was necessary, following allegations made by the Guardian newspaper over the preceding months about the conduct of officers from the unit. These claims included allegations that a former SDS officer (**N14**) had a relationship with a woman whilst he had worked undercover and that he had gone on to father children with her. It was also further claimed that SDS officers had given evidence in their covert names without the court's knowledge and that this was grounds to support a miscarriage of justice.
- 2.2 Initially the review consisted of a scoping exercise and the need to gather knowledge of the SDS - still known only to a very few within the MPS. Following this work and the launch of the enquiry, the review team was provided with six thousand (6,000) paper records and a large number of computer exhibits in the form of hard drives and floppy discs. Interrogation of these exhibits has been complicated by the encryption and levels of security, but to date this work has revealed approximately fifty thousand (50,000) separate documents. This resource has continued to expand as further relevant material has been recovered (i.e. from the MPS General Registry). All documents have been scan-read, and are in the process of being placed onto secure HOLMES and indexed

- 2.3 During the initial review of material, Operation Herne identified the SDS practice of using all or part of the genuine details of deceased children to construct their covert identities. One document in particular, the 'SDS Trade Craft Manual', described the method of constructing a false identity. The methodology was justified in the Manual as the only viable means to provide a robust backstopped covert legend that would stand scrutiny. However the document's provenance is questionable, and it was written in such a way that suggested that the practice had fallen out of use by the mid-1990s.

## Operation Riverwood

- 2.4 On 4th February 2013, the Guardian (**Paul Lewis**) published an article about an alleged under cover officer (UCO) who it was claimed had used the identity of a baby that had died. It was alleged that the UCO had worked for the National Public Order Intelligence Unit (NPOIU) between 1999 and 2003 using the name of Rod Richardson. Over the following days a detailed account including photographs appeared in the paper.
- 2.5 The NPOIU was merged with National Extremism Tactical Coordination Unit (NETCU) and National Domestic Extremism Team (NDET) to form the National Domestic Extremism Unit (NDEU) in 2010. It is currently managed by SO15 within the MPS. Paul Lewis's article made further allegations of sexual relationships between different SDS officers and those they were sent to infiltrate.
- 2.6 On the same day the Directorate of Professional standards received correspondence from **Tuckers Solicitors** representing a woman named **Ms S**. The letter alleged that the Metropolitan Police had used the identity of her deceased son, Rod Richardson. The letter lodged an official complaint to the MPS on behalf of Ms S. This matter was referred to the **Independent Police Complaints Commission (IPCC)** on the 28th February 2013. Initially the IPCC determined that the mode of investigation would be 'supervised'. However the complaint has now been returned to force to deal as a 'local investigation.'
- 2.7 The findings and recommendations of the investigation have been reported to the IPCC.

## Home Affairs Select Committee

- 2.8 On the 5th February 2013 DAC Patricia Gallan appeared before the Home Affairs Select Committee (HASC). The use of deceased children's identities was a key theme in the questions from members of the HASC. During the hearing, DAC Gallan confirmed that the practice had indeed taken place and when questioned by the Committee she declined to apologise as the enquiry was ongoing. HASC has made a number of requests, for the Metropolitan Police to fully investigate the issue of the use of children's identities, to apologise for the use of the tactic and for Operation Herne to complete its enquiries as soon as possible.

## Previous publicity

- 2.9 Significantly, the alleged practice by the SDS of using deceased children's identities has been reported publicly before. In 2002 a BBC 2 documentary called 'True Spies' raised this very issue and this in turn subsequently generated further media interest in this process. In a later online article, 'Subverting the subversives', the BBC asked rhetorically, 'How would you handle taking the identity of a dead child to work under cover?' Despite wide publicity, at the time, the MPS did not receive any complaints.
- 2.10 The issue of the use of the identities of deceased children and infants by undercover police officers has since been subject to considerable media coverage and a number of questions in Parliament. In addition, a number of Members of Parliament have written to Operation Herne on behalf of their constituents about the same issue.
- 2.11 On the 9th February 2013, due to increasing media and parliamentary interest, the **Commissioner of the Metropolitan Police, Sir Bernard Hogan-Howe** decided to appoint an independent lead for Operation Herne to bring greater objectivity and transparency, and to further reassure the public of his determination to seek the truth about the allegations about the SDS. He approached the **Chief Constable of Derbyshire Mr Mick Creedon QPM**, as an independent senior officer from an external force to lead Operation Herne.
- 2.12 On the 11th February the **Home Secretary (Rt Hon Theresa May MP)** endorsed this decision and publicly announced that, the Chief Constable of Derbyshire had been appointed to lead the investigation.

'Given the seriousness of the latest allegations, the Metropolitan Police Commissioner Sir Bernard Hogan-Howe and the Chairman of the Independent Police Complaints Commission have agreed that it would be appropriate for a senior figure from outside the Metropolitan Police to take over the leadership of the investigation.'

## Public Enquiries

- 2.13 As a result of the media reporting surrounding the questions raised at HASC on the 5th February 2013, Operation Herne opened a Casualty Bureau response in case of a large number of public contacts. To date fourteen (14) enquiries from the families of seventeen (17) separate children have been received. The enquiries were from concerned members of the public who want to know whether the SDS had used their deceased relative's identities.
- 2.14 In addition, a Freedom of Information Act (FOIA) request has been received from **Duncan Hames MP** about the alleged practice of using children's identities by members of the SDS.
- 2.15 All of the enquiring members of the public have been personally visited by a family liaison officer from Operation Herne, and a letter acknowledging their enquiries has been hand delivered on behalf of Chief Constable Mick Creedon.

## 3

## How the SDS constructed identities

- 3.1 In his statement, the former **SDS Chief Inspector N69** who served between 1986 and 1987 stated that,
- '...new recruits were instructed on how to go about obtaining false birth certificates. They would obtain details of a deceased person of a similar age from Somerset House and then use those details to go about creating their legend.'
- 3.2 This is supported by the SDS Tradecraft Manual (an organic document of initiatives, operational learning, guidelines and suggestions from established UCOs to assist other UCOs in their deployments) which states that the identities of deceased children (generally aged between 8 and 14 years) were routinely used by the SDS prior to 1995 to obtain passports, driving licences and other documents. 'By tradition, the aspiring SDS officer's first major task.... was to spend hours and hours at St Catherine's House leafing through death registers in search of a name he could call his own....' The manual stated that this practice was 'unsafe', but there were no alternatives.
- (The author of this statement is unknown. The Tradecraft Manual was compiled over a number of years)
- 3.3 A manual entry dated June 1995 provides the first evidence of the cessation of this practice when it comments that, '...names are no longer obtained from the Death Register at St Catherine's House.'

- 3.4 As the SDS became more established it appears that officers could spend considerable amounts of time researching a suitable subject to assume an identity. According to N2 (a former SDS UCO and later cover officer) efforts would be made to research the existence of close family members. Names that were too unusual or too common would be discounted, as too would cases where the deceased had died in unusual or memorable circumstances. In preference, children were chosen that would have died between four (4) and eight (8) years of age and would be of broadly the same age as the UCO. Given the fact that the unit was established in 1968, and the youngest officers at that time would probably have been in their mid twenties, it is the case that some of the identities used could relate to children born as early as 1940.
- 3.5 In a video interview provided to the Guardian by the former SDS Officer N43, he described how it was common practice to weave ones own memories into that of the child he had based his covert identity upon. N43 stated that he was unhappy about using a child's details and he felt that he was stamping on their memory. N43's legend was also typical of the backstopping created by the SDS officers at the time.
- 3.6 Significantly, N43 has claimed that he had no choice, either he used the identity or he would have had to have left the unit. It is absolutely clear that the use of identities of deceased children was an established practice that new officers were 'taught'. It was what was expected of them, and was the means by which they could establish a cover identity before they were deployed. Whatever their views are now about this practice, this was not done by the officers in any underhand or salacious manner - it was what they were told to do.

## 4

### Why were deceased identities used by the SDS?

- 4.1 As outlined in the SDS Tradecraft Manual, the practice of using a genuine deceased identity was developed to create a plausible covert identity that was capable of frustrating enquiries by activists and one that could be used to generate a birth certificate thereby giving access to a range of necessary documentation in support of the covert identity.

- 4.2 To date Operation Herne has not discovered who directly introduced the tactic to the SDS - it is simply not yet known who instigated the technique in the SDS.

In 1943, members of the Security Services devised a complex sting called Operation Mincemeat. This Operation involved using the body of a drowned vagrant and false identification papers to make the Nazis believe a false information feed, ahead of the allied D Day Landings. The operation was made into a book by Ewen Montague, a play and a famous film based on these true events called '[The Man Who Never Was](#)' (1956).

- 4.3 Operation Herne has internal SDS documentation apparently written in 1996, called, 'Operational Security v Department of Social Security Records'. This document explains that even though the practice had been phased out it was still the, '[... traditional method of finding a false identity \(using a genuine birth certificate\).](#)'
- 4.4 Clearly the practice was well documented and it is apparent that the SDS was aware that the activists they were trying to infiltrate were also aware of this technique. According to the retired N2 he found himself in a situation where he had penetrated an organisation and was then asked by the group to help trace a mole among them.
- 4.5 In 1971 the author **Frederick Forsyth** published his book, 'Day of the Jackal'. This popularised the technique of how to create a false identity by researching a person that had died in childhood who had a similar date of birth and then basing a credible legend around that subject.
- 4.6 In the case of SDS officers the subject chosen had to have had an 'existence' to show up in case of basic research, by suspicious activists. A genuine identity of a deceased person was needed, as there was no viable means of inserting a fictitious entry into the records of births held by **General Records Office** (Formerly located at Somerset House in London). Moreover, if an activist was able to obtain the details of an under cover officer's birth details it would have been extremely straight forward to attend Somerset House and search the book binders to prove or disprove that the details were apparently genuine.
- 4.7 Before the transition to computer based records, although a birth certificate was never intended to be an identification document they were regularly used to apply for other documents, such as driving licences or passports. In the absence of any other documentary proof, birth certificates were used as effective identification. Indeed before modern developments they might be the only proxy identity document that most members of the public would possess.

- 4.8 Much of the work carried out by the SDS was highly sensitive and placed the UCOs at considerable risk. The need to protect their identities was of paramount importance and in the case of the Department of Social Security and the General Records Office, the SDS was highly wary of staff with activist sympathies who might be able to make unauthorised hostile searches. This again led the UCOs to have to create false identities using the details of deceased children.
- 4.9 The use of a genuine identity based upon a deceased child enabled an undercover officer to apply for other genuine identity documents to act as props, to give the officer credibility and to prevent hostile enquiries. It is still unclear how in the early years the SDS officers obtained genuine identity documents for their covert names.

## 5

### When were deceased identities used?

- 5.1 It is unclear when exactly the SDS started to use deceased identities to create their legends. To date Operation Herne has established that the earliest confirmed officer that used a deceased identity as part of his legend was in the field between 1976 and 1981. It appears that the early (post 1968) deployments did not have to be so reliant on the covert identity. The apparent change in policy is still being investigated.
- 5.2 Operation Herne has identified details of thirty-seven (37) police officers who had apparently worked for the SDS in some form by 1971; however due to the lack of detailed records the review has as yet been unable to identify whether they were all UCOs and if so establish any details of their cover names or dates of birth to cross check against General Records Office's birth and death returns.
- 5.3 It is believed that from about 1971, at least some of the officers who were deployed could have used a deceased child's identity as part of their cover. A number of this first tranche of officers are still alive and efforts are in hand to locate and interview them. The issue of whether they used a child's identity will of course be put to them, as will questions around their selection, training and support and who authorised the use of the tactic. As these enquiries are undertaken the figures of the actual numbers of identities used may change.

- 5.4 According to comments within the SDS annual review of 1994 to 1995 and internal memorandum written by N53 in 2002, the SDS practice of using deceased children's records to construct their covert identities was phased out starting in November 1994. The SDS annual review states that N26 was the first officer to have obtained a completely fictitious identity. This was not only good for ethical reasons, but it also reduced the risk of compromise, particularly where an officer might be confronted by 'their' own death certificate.
- 5.5 It is unclear whether the practice within the SDS had completely stopped by 1995, or was one gradually being phased out. There is the potential of an officer assuming an identity based on a deceased child in 1993/94 and maintaining this for several years whilst operationally deployed. If this were the case it would clearly be problematic to stop the tactic whilst the identity was in use. This means that there is the potential that the tactic was still in use until the late 1990's even though the policy had changed.
- 5.6 To date Operation Herne has been unable to find any documentary proof to confirm the end of the use of this tactic. A number of witnesses have yet to be spoken to and they may be able to clarify the position. Where former SDS officers have been asked about the practice they have freely acknowledged it happened for operational reasons and was what they were introduced to when they were recruited to the unit.
- 5.7 This report has already explained that the tactic was based upon the officer creating an identity that fitted broadly with his or her age range. The youngest officers to work in the SDS as an undercover operative were in their early 20's – meaning that the identity used would be that of a child born some twenty or so years earlier. The SDS was created in 1968 and it is known that the tactic was in use by the early 1970's – meaning the deceased children would have been born in the 1940's and early 1950's. With very few exceptions the tactic was effectively ended in the mid-1990's, meaning that any identity would have been based on a child born at the latest in the mid-1970's. Given this timeframe, it is the case that there won't have been a need to use the real identity of a child born at any time in the last almost forty (40) years. Accepting the disquiet over the tactic, the public should be reassured by this and that the tactic has a very historical perspective

## 6

### How many identities are involved?

- 6.1 A core part of this enquiry has been the identification of the personnel that worked for and managed the SDS and this includes those at chief officer level who oversaw the activities of the unit. In carrying out this work, Operation Herne will establish those 'operational' staff: their roles, their recruitment and training, their attachment dates and whether they based their covert legends wholly or partly on a deceased person. As a result, a number of lists have been identified from the material. These lists are however incomplete and at times contradictory. In a number of cases the information would appear to have errors.
- 6.2 In 2002 N53 provided a series of internal memoranda in relation to a joint operation called Operation Wisdom. This operation was led by the **National Criminal Intelligence Service (NCIS)**. It concerned the identification, by the passport service, of approximately 1200 names where a passport had been applied for with a duplicate birth certificate after a death certificate had been issued. In a minute dated 2nd February 2002, N53 explained that he believed that between 1968 and 2002 there had been one hundred and two (102) SDS officers who had been provided with covert identities. N53's documentation stated that the majority of these UCO's would have used a deceased child's identity. This report is however not complete and does not hold the covert identities given to these UCO's.
- 6.3 To date Operation Herne has verified one hundred and six (106) covert names that were used by members of the SDS. Of these one hundred and six (106), forty two (42) have been either confirmed or can be treated as highly likely to have used a genuine deceased child's identity. These numbers should not be treated as absolute and may change as the enquiry continues.
- 6.4 Operation Herne has been able to establish that forty-five (45) of the identities provided in the list of 106 covert identities have been created from totally fictitious details. This assessment is based upon the research of documentary evidence within the Herne material, interviews with former SDS officers and enquiries internally within the Metropolitan Police. The dates of the deployment are also significant, as after 1994 the practice was no longer required as it was deemed unnecessary and potentially too risky in respect of potential compromise.

- 6.5 Of the remaining SDS identities in use, research continues to establish whether they are also of real people or whether they were invented. Efforts have been frustrated as there is no exhaustive list of all of the SDS's covert identities, and a number of subjects have no dates of birth or even full names. However, in the incidences where an age can be established the majority are again of young children that have died.

## 7

### SDS Management Oversight

- 7.1 A range of officers at different ranks and roles have been interviewed by the investigation team. The information provided corroborates totally the belief that for the majority of the existence of the SDS the use of deceased children's identities was accepted as standard practice. So far forty (40) have been spoken to by Operation Herne.
- 7.2 Former **Commander N85**, (Head of Special Branch between 2000 and 2004 and SDS UCO between 1978 and 1980) states that,
- '...a life of deception needs a true name to withstand scrutiny. I used an accepted practice; however, I did everything I could to avoid using the surname. There was no moralising about the process, I didn't think of it as stealing a child's identity. This was a long term political infiltration which was seen as justified. It was for Queen and country and peace and democracy. It was the way it was done. A registered birth was the strongest foundation; other methods were not available at the time'.
- 7.3 Retired **N85**, who served as the SDS Commander between 1986 and 1988 states that (Special Branch) spent, 'half our lives' at Somerset House building legends - each operative had to devise an identity for themselves. 'I inherited an approved system, ...we had the safety net that this information would never become public knowledge.'
- 7.4 Former **N67** (who served as an SDS field officer between 1981 and 1984) states that when he started at the SDS he was told to create his own identity. Although there was not one specific training manual, there was a reference folder with tried and tested best practice.
- He was aware that this documentation could help him create his legend. He gave his supervisors a list of possible identities that he researched at St Catherine's House.

- 7.5 N67 researched individuals that were born between 1951 and 1952, approximating to his own year of birth. He chose an individual who had died abroad and in turn created a legend blending his own biographical details to make his covert identity more believable.
- 7.6 Although the practice was clearly widely used by the SDS, Operation Herne has identified at least one example where an officer covertly deployed before 1994 did so, without using the details of a deceased child. The retired officer explained in an interview that he had adopted an aunt's surname and that he had successfully used it as part of his cover name.

## 8

### Neither Confirm Nor Deny Policy

- 8.1 The policy of 'neither confirm nor deny' (NCND) is a tactic adopted by police officers responding to questions at court, where there are concerns that an answer to a specific question could compromise the identity of a source or some other covert asset. It appears that the policy, although long accepted as best practice, did not derive from specific legislation. However, it has been incorporated into both Criminal Procedures and Investigatory Powers Act (CPIA) 1996 and the Freedom of Information Act 2000, in regards to the management of sensitive and public interest immunity information.
- 8.2 The concept of NCND has its roots in common law and has been regularly applied since in a number of stated cases. It also has a basis in the Human Rights Act 1998 under Article 2 (Right to life), Article 6 (Right to a fair trial) and Article 8 (Right to Privacy). Essentially a police officer will only identify an informant if required under law. Relevant cases include:
- 8.3 **R v Agar 1990:**  
Case law prevents the defence from questioning to identify the existence of a potential informant.

8.4 *Attorney General v Briant* 1846 (15 M. & W. 169) and *Mark v Beyfus* 1890 (25 QBD 424):

Which both support that an informant's identity should be protected on public interest grounds, to ensure that potential future informers aren't put off from providing assistance to Law enforcement agencies.

In *Agar*, the defendant appealed against conviction on the ground that the judge had erred in ruling that questions could not be put to police witnesses for fear of identifying informants, thereby weakening the defendant's attack on the police: The Court of Appeal held that notwithstanding the special rule of public policy which inhibited the disclosure of the identity of informants, the public interest in ensuring a fair trial for a defendant outweighed the public interest in protecting the identity of a police informer if the disclosure of the informer's identity was necessary to enable the defendant to put forward a tenable case that he had been entrapped by the police and the informer acting in concert.

In *Beyfus*, the judge stated that –

'I do not say it is a rule which can never be departed from; if upon the trial of a prisoner the judge should be of opinion that the disclosure of the name of the informant is necessary or right in order to shew (sic) the prisoner's innocence, then one public policy is in conflict with another public policy, and that which says that an innocent man is not to be condemned when his innocence can be proved is the policy that **must prevail**. But except in that case, this rule of public policy is not a matter of discretion; it is a rule of law, and as such should be applied by the judge at the trial, who should not treat it as a matter of discretion whether he should tell the witness to answer or not.'

8.5 The CPS Disclosure Manual states '...it is a standard response to adopt a neither confirm nor deny (NCND) approach.'

This is reiterated in the NPIA Guidance on the Lawful and Effective Use of Covert Techniques (2008) which states that,

'Neither confirming nor denying **in all cases** ensures that a failure to deny in any particular case does not amount, in effect, to confirmation. Confirming that there was no CHIS in a particular case would not cause immediate harm but could contribute to incremental damage in the longer term.'

The most recent relevant guidance is the Authorised Professional Practice (APP) published by the College of Policing. Within the media guidance section this APP states that:

'There must be a credible media strategy that does not allude to the use of undercover techniques, even when they have been referred to in court or elsewhere in the public domain.'

A media strategy should contain entries to the effect that no information will be passed to the media that might lead to:

- The identification of an undercover officer of covert human intelligence source.
- Revelations of covert tactics/techniques or methods.
- Revelations regarding the existence or details of particular items of technical equipment.
- Disclosure of any other sensitive process or procedure.'

- 8.6 The Regulation of Investigatory Powers Act (RIPA) provides that undercover officers are dealt with by the legislation for covert human intelligence sources (CHIS) and that any authorisation must consider the potential risks against the CHIS. A risk assessment is required with consideration of other safety measures. RIPA creates obligations for the authorising officer to protect all CHISs, and this responsibility will be ongoing, even when a CHIS has ceased acting as an informant.
- 8.7 Although under cover officers may eventually be required to give evidence, in many cases a court will grant them special measures to protect an officer's identity.
- 8.8 Lastly, under common law, as an employer the MPS also has responsibilities for the safety of its staff, and potentially the outing of an officer could expose them to risk. This duty of care remains for officers who have left the service.
- 8.9 Operation Herne is clear that the use of this tactic was sanctioned at the highest level, was deemed as operationally necessary and was one that newly appointed undercover officers were trained in. Despite this it is clear that this tactic has been the cause of recent considerable concern and was not something that officers were always comfortable with. The question has to be addressed as to whether the parents or family members of those deceased children whose identities were used should be contacted and told of what was done. Whilst there is a strong argument that families should be contacted, this needs to be balanced against the long established NCND policy, the ongoing duty of care to the officers, the significant operational security considerations and the potential impact on elderly family members who may have dealt with their bereavement decades earlier.

## Legal Advice regarding potential criminal offences

9.1 Operation Herne has received independent advice through the Crown Prosecution Service (CPS).

The CPS appointed **Mr Simon Ray QC** (6 King's Bench Walk, the Temple EC4) to advise on the practice of using a deceased person's identity to form a covert one.

Mr Ray's advice considered the following offences:

- 1 The Forgery and Counterfeiting Act 1981;
- 2 Deception offences under the Theft Act 1968 and the Theft Act 1978
- 3 The Perjury Act 1911;
- 4 Misconduct in a public office, contrary to common law.
- 5 Offence under the Road Traffic Act 1988.
- 6 Identity Documents Act 2010.

9.2 As the SDS officer's management team were fully aware that documents were applied for in false names, any offences under Sec 15 Theft Act 1978 are unlikely to apply. There would be no offences under the Road Traffic Act as the relevant section has only been triable 'either way' (and therefore not subject to a time-limit to commence proceedings) since January 2004. Before this the offences were summary only and would have had to have been commenced within three years of commission.

9.3 Counsel's advice refers to the case of **R v More** [1987] which was an appeal against conviction for forgery.

After a review of the facts and the legislation Mr Ray has advised that:

- 1 Birth certificates, passports and driving licences obtained to support alias identities of undercover officers are not false instruments for the purposes of the Forgery and Counterfeiting Act 1981.
- 2 The use of an alias / false identity in itself does not amount to a deception offence under the Theft Act 1968 or the Theft Act 1978.
- 3 It is unlikely that section 5 of the Perjury Act 1911 (concerned with false statutory declarations) is engaged. However, to reach a definite conclusion it would be necessary to analyse individual applications for official documents such as passports and driving licences.

- 4 In using the details and birth certificates of deceased persons to create aliases, Mr Ray has concluded that identities for undercover SDS officers, in the circumstances described does not amount to misconduct in a public office.

It is Mr Ray's opinion that in the circumstances described that where applications were made with the knowledge and under the orders of senior officers, for the purposes of law enforcement, '...in my view it is unlikely that the dishonesty necessary to make out an offence...would be present.'

## 11

## Conclusions

- 11.1 Operation Herne has both documentary proof and witness accounts to confirm that the genuine details of deceased children were extensively used by members of the SDS until around 1995 so as to create cover identities and thereby enable the officers to infiltrate a range of violent protest groups.
- 11.2 Over the years the SDS management team were aware of the practice and indeed it was actively promoted to officers recruited to the unit. Many of the SDS managers had worked on the unit as undercover officers themselves before returning later in their careers. Whilst there was no formal training programme for an officer recruited to the unit, it is clear that once recruited, the officer was instructed to establish a covert identity and to do so they routinely made use of the tactic of using the identities of deceased children.
- 11.3 The genuine identities of the deceased children were blended with the officer's own biographical details.
- 11.4 It is apparent that regardless of the significant ethical issues, the practice of using a genuine identity was an imperfect solution of the time to address the need to backstop a cover identity and that the unit had little choice before 1994. It was around this time that other practices were in place to ensure that viable fictional profiles could be created without using deceased children's details.
- 11.5 The genuine identities of deceased people are no longer used to construct covert legends. No accredited police undercover unit carries out this practice.
- 11.6 Operation Herne has to date concentrated the work around the use of identities of deceased children by the MPS SDS unit. It also is known that the NPOIU also used this tactic and that the NPOIU UCOs were initially trained by SDS officers. It is not surprising that the tactic was repeated given the similar mission of the two units and the cross over of staff.

11.7 Operation Herne **has not yet researched** the broader development of covert undercover tactics in policing in England and Wales. Nevertheless as the routine use of undercover tactics in police forces developed in parallel to the SDS, it is highly possible that the establishment of covert identities through the use of details of deceased children was more widely practiced.

It is a fact that UCOs working in the field of serious and organised crime also need to establish secure covert identities, create legends, obtain documentation and if necessary withstand intensive scrutiny by their targets. It would be a mistake to assume that the use of identities of dead children was solely within the SDS and the NPOIU, and the possibility is that the tactic was more widely used.

Operation Herne will consider this aspect. It is not in the terms of reference of this enquiry to consider whether this use of deceased children's identities was more widely used by other agencies involved in covert undercover tactics.

11.8 There is understandable public, political and media concern about the use of the identities of deceased children, irrespective of the context, of the operational rationale, of any perceived necessity and of any legal considerations. It is right that the public is now properly reassured that this tactic no longer takes place. A number of safe guards are in place to ensure that undercover policing is now properly regulated and managed - and these include:

- 1 A clear legislative framework within the Regulation of Investigatory Powers Act 2000
- 2 The College of Policing (COP) 'Authorised Professional Practice' (APP) Oversight
- 3 A national training course for UCOs
- 4 Authority levels for UCO deployments being at Assistant Chief Constable level - although the RIPA legislation places this at superintendent level.
- 5 The need for detailed reviews and renewal of any such authorised deployments, always considering necessity and proportionality.
- 6 Clear 'use and conduct' being stipulated in any such deployments which definitively articulate in any activity that a UCO may engage in.

Protocols are now in place that allow for the creation of identities and documentation without the need to resort upon the tactics that the SDS had to rely upon.

- 11.9 The deployment of properly trained and managed under cover officers to both disrupt and investigate crime is an approved vital policing tactic and has the full support of the courts, the wider public, Parliament and the Home Office. The issue of the historical use of covert identities based on the details of deceased children, however morally repugnant, should not detract from the importance of this tactic and the bravery of officers who have previously and still chose to volunteer to work in this field.
- 11.10 The integrity of the technique and the identity of UCOs must be protected and NCND should be used wherever appropriate.

Operation

# Herne

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