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Rt Hon Keith Vaz MP
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Dear Keith,

18 JUN 2013

GOVERNMENT RESPONSE TO THE HOME AFFAIRS SELECT COMMITTEE REPORT "UNDERCOVER POLICING: INTERIM REPORT"

I am writing to provide the Government's formal response to the Home Affairs Select Committee's report of 1 March on Undercover Policing. I am due to appear before the Committee today to give evidence to the Committee's inquiry into leadership and standards in the police and would expect to answer then any questions the Committee may have on this issue. I am sorry for the delay in responding.

I am grateful for the Committee's acknowledgement in paragraph 9 of the Report that "Undercover police operations are a vital element of the fight against terrorism and serious, organised crime." The Government agrees strongly with that position.

The Home Secretary and I were profoundly concerned and disappointed at the allegations made against officers of the former Special Demonstration Squad of the Metropolitan Police. We recognise the particular distress these allegations will have caused to those individuals who have lost children. As the Home Secretary announced in Parliament on 11 February, the Metropolitan Police Commissioner, Sir Bernard Hogan-Howe, and the Chair of the Independent Police Complaints Commission, Dame Anne Owers, appointed Chief Constable Mick Creedon of Derbyshire Police to take over the leadership of Operation Herne. Sir Bernard and Dame Anne considered, and the Home Secretary and I agreed, that it is appropriate for a senior figure from outside the Metropolitan Police to take over the leadership of this investigation in order to ensure that this key investigation is independent of the police force at its centre.

In order to give further reassurance to the public that undercover police officers are being deployed and supervised appropriately, the Home Secretary has recently received from Her Majesty's Chief Inspector of Constabulary his report of their review of the implementation of HMIC's 2012 Recommendations following the Kennedy case. We hope to be in a position to publish HMIC's report shortly, once we have considered whether the report contains any sensitive information that needs to be redacted.
Inevitably, undercover police officers work in extraordinary circumstances, but this does not absolve them from the responsibility to adhere to the highest standards of professional behaviour in the course of their duties. We will therefore be examining the concerns raised about undercover policing alongside our wider programme of work to improve policing integrity, as announced by the Home Secretary on 12th February.

In accordance with normal practice, I have set out below the Committee's recommendations and the Government's response to each one in turn.

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)

Whilst civil cases involving these issues remain before the courts and the Investigatory Powers Tribunal and a criminal investigation into these allegations is ongoing, it would be inappropriate for the Government to comment on the detail of this recommendation. However, the Government rejects the committee's assertion that RIPA fails to safeguard human rights. As was made clear during the passage through Parliament of the Regulation of Investigatory Powers Act 2000, the Act provides a clear basis for investigatory powers to be used lawfully and in accordance with human rights. In particular, authorising officers must be satisfied that the use of an undercover officer is necessary and proportionate; RIPA also requires that undercover officers are properly managed and supervised. It is clearly important that these tests are applied correctly and the requirements are adhered to on a case by case basis; the statutory Codes of Practice provide public authorities with additional guidance. The Government does not consider, therefore, that the cases which have recently come to light necessarily demonstrate that a fundamental review of the legislative framework is necessary.

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 issues around the management of the National Public Order Intelligence Unit (NPOIU) by ACPO were raised in last year's report by Her Majesty's Inspectorate of Constabulary, following which the management of the NPOIU moved from ACPO to the Metropolitan Police Service, where it was absorbed into the National Domestic Extremism and Disorder Intelligence Unit. As such, its work is subject to scrutiny by the Mayor's Office for Policing and Crime and the London Assembly's Police and Crime Committee in the same way as the rest of the MPS.

The Government has made clear consistently that ACPO as a private company should have no role in operational policing, although its members, as senior police officers with extensive experience of operational issues, clearly have a key role to play. The Government established the College of Policing precisely to address the issues of standard setting and accountability to which the Committee refer; that is also why the work of the former ACPO Business Areas has been moved into the College. The College produces Approved Professional Practice (APP) in a range of operational areas, including undercover policing, which must receive the endorsement of the College's Professional Committee before being adopted by the police.

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)

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)

In her evidence to the Committee on 5 February, Deputy Assistant Commissioner Gallan made clear that this practice has ceased and that it could not be authorised under RIPA, as the degree of intrusion into the lives of the innocent and vulnerable families of deceased children could not be justified. DAC Gallan is uniquely placed to make such a statement, having served recently as both the head of Operation Herne and as Chair of the National Undercover Working Group. The Government agrees with DAC Gallan's position that such practices could not be authorised under RIPA.

The IPCC is independent of the police, the Government and Parliament. They have come to the conclusion that the most appropriate mode of investigation under the current arrangements is for a police investigation, led by Chief Constable Creedon, under their supervision. It would not be appropriate for Ministers or Parliament to interfere in the IPCC's decision-making processes.

It is right that Operation Herne be concluded as swiftly as possible, and that one of the key tasks of the investigation is to ascertain the truth of the recent allegations and, if they are made out, to inform sensitively the families of those deceased children. It is equally important that the investigation be conducted thoroughly so that criminal or disciplinary proceedings can be brought against any individuals found to be culpable. Chief Constable Creedon is an experienced leader of complex investigations and has in place an experienced team to conduct and manage the investigation.

While lines of accountability do seem to have been less than clear in the past, the Government does not accept that is still the case; with the election of Police and Crime Commissioners and the move of the NPOIU from ACPO into the Metropolitan Police, the lines of accountability are now far clearer than they were at the time of the alleged misconduct. I understand you have been in correspondence with Chief Constable Creedon about the progress of his investigation and I hope he has been able to reassure you on this point.

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)

While the Government recognises that this recommendation is in keeping with the intention set out in the Home Secretary's statement of 12th February, the detailed implementation of the new ways of working is yet to be completed. Current investigations continue under the existing arrangements.

The Government would also ask the Committee to liaise closely with the IPCC in respect of its proposal to ask for and publish regular status updates on Operation Herne. That investigation is now under the direction and control of Chief Constable Mick Creedon rather than the Metropolitan Police Commissioner and continues to be supervised by the IPCC, who are the body responsible in law for overseeing the operation of the police complaints system. The IPCC must be allowed to discharge its functions independently, and the results of the investigation may well be put before the criminal courts in due course. The Government urges the Committee strongly not to request or publish any information that might prejudice any subsequent criminal or disciplinary proceedings.

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)

As set out in response to recommendation 2 above, the Government considers that the Regulation of Investigatory Powers Act 2000 already provides the basis for investigatory powers to be used lawfully and in accordance with human rights. Nonetheless, the Government takes these matters very seriously and keep them constantly under review. The Government is already implementing HMIC's 2012 recommendations on the authorisation of long term police undercover officers under RIPA and the Home Secretary has commissioned HMIC to look at the way the police have implemented the 2012 HMIC recommendations.

While the Government does not accept at this stage the committee's suggestion that RIPA requires fundamental review, we will of course take careful note of any evidence in this area that is identified, whether by HMIC, in the litigation currently underway, or as part of Operation Herne.

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)

As set out above, the Home Secretary and I were as astonished and disappointed as the Committee to learn of these allegations. The Government has made clear in response to recommendations 4-6 above that this practice could not be authorised today, as the collateral intrusion into the lives of the families of the deceased children could not be justified under RIPA. On behalf of the police as a whole, DAC Gallan was also categorical in her answers to you on this point.

I hope that this Government response provides the Committee with an appropriate level of reassurance on the way undercover police officers are deployed and managed today. I look forward to discussing undercover policing with the Committee tomorrow.

Yours,

Rt Hon Damian Green MP