

# An inspection of undercover policing in England and Wales

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# Executive summary

## Introduction

### Our commission

- 1 In a letter dated 27 June 2013, the Home Secretary commissioned Her Majesty's Inspectorate of Constabulary (HMIC) to inspect the effectiveness of the arrangements in place in all police forces to carry out, manage and scrutinise undercover operations. Our inspection was to include all regional and national policing units, and the National Crime Agency. This was not an inquiry into the past events that have caused widespread concern about the way the police use undercover tactics; these past events fall to others to examine. Our inspection has examined how well undercover policing is carried out now.
- 2 HMIC is an independent inspectorate which has responsibility under section 54(2), Police Act 1996 to inspect on the "efficiency and effectiveness of every police force maintained for a police area" in England and Wales. It also has statutory responsibility to inspect the National Crime Agency. We were invited to include Her Majesty's Revenue and Customs in our inspection. In order to provide a comprehensive picture, the British Transport Police, the Home Office Immigration Enforcement and the Royal Military Police – all of which may also carry out undercover operations – were included in our inspection.
- 3 This is the first time that HMIC has inspected all law enforcement agencies that have the capability and capacity to deploy undercover officers.

### Terms of reference

- 4 Our terms of reference were as follows.

*"To review the effectiveness of the arrangements in place in all police forces, including all regional and national policing units and the Serious Organised Crime Agency [now the National Crime Agency] to carry out, manage and scrutinise undercover operations by considering:*

- 1 *The way undercover officers operate in practice in order to explore their understanding and compliance with Regulation of Investigatory Powers Act 2000 and the Authorised Professional Practice;*

- 2 *the supervision, day-to-day management, support and tasking of officers deployed undercover by police forces and [the National Crime Agency];*
- 3 *the strategic leadership and direction-setting of those at the highest levels of police forces and [the National Crime Agency] for their officers conducting undercover operations;*
- 4 *the quality, availability and take-up of training for officers undertaking undercover operations and for those at all levels of the planning and authorisation of such operations;*
- 5 *the decision-making processes, guidance and support framework for those at all levels of the planning and authorisation of undercover operations, particularly in making difficult and potentially high-impact decisions;*
- 6 *the adequacy of the police's and [the National Crime Agency's] response to the scrutiny of undercover operations put in place by the Office of the Surveillance Commissioners, including the effectiveness of arrangements for the sharing of best practice and learning of lessons; and*
- 7 *to make any necessary recommendations in relation to these findings when considered alongside current best practice."*

## **Background**

- 5 There have been widespread concerns about undercover policing for a number of years.
- 6 Allegations that undercover officers have had sexual relationships with those who are linked with the target of their investigations, that they have given false evidence in court to maintain their undercover status, and that they have used the details of children who have died as their covert identities have all contributed to a growing unease that the tactic is being wrongly used, badly supervised, and ineffectively controlled.
- 7 In 2012, HMIC responded to these concerns by publicly reporting on the deployment of undercover officers from the Special Demonstration Squad and National Public Order Intelligence Unit for the purpose of gathering intelligence. Both were units in the Metropolitan Police Service. In 2013, HMIC published a progress report in respect of its 2012 recommendations and concluded that: "further inspection work [was] necessary to examine all police undercover work".

- 8 In an immediate response to the conclusions in our 2013 review and as a result of the publicity that we have set out above, on 27 June 2013 the Home Secretary commissioned HMIC to conduct this inspection.
- 9 In such a wide-ranging inspection, we were told about matters concerning undercover policing which did not fall strictly within our terms of reference. These matters concerned: forming intimate relationships; different authorisation levels; and the doctrine of *neither confirm nor deny*. We have devoted chapter 12 to these additional matters so that those reading may take an overview. We hope that all the issues that we have raised will be of benefit to members of the public inquiry which the Home Secretary has indicated will be established in due course.

## **Methodology**

- 10 We conducted fieldwork in all 43 police forces in England and Wales and in those law enforcement agencies which deploy their staff in undercover operations. We gathered data from each of the forces and law enforcement agencies and conducted interviews with their relevant personnel between October 2013 and March 2014.
- 11 We also conducted in-depth interviews with representatives of those groups in the police service and law enforcement agencies, such as the National Undercover Working Group, which are responsible for guiding police forces in how, and in what circumstances, the undercover policing tactic should be used.
- 12 In order to gain a broader perspective, we also spoke with representatives of those agencies which have an interest in undercover policing.

## **Overview**

- 13 In general, undercover police officers (by whom we mean all those who are deployed in undercover activities, irrespective of their police force or law enforcement agency) carry out their roles professionally and with great courage. We found them to be dedicated to their task. We were impressed by their keen awareness of the vital role which they play in protecting our communities, and the legal, practical and ethical environment in which they operate. We applaud their bravery, their professionalism and their skill. The work of the vast majority of individual undercover police officers, whilst unsung, should never go unnoticed.

- 14 Whilst there are improvements to be made, the value of undercover policing as a tactic is essential and the police service and the communities which they serve are fortunate to have a body of such dedicated officers to carry out this type of work.
- 15 Given section 27, Regulation of Investigatory Powers Act 2000 is capable of rendering conduct lawful that would otherwise be criminal, or which might result in a civil action for damages, questions are raised rightly about the extent to which such a power is, and should be, constrained by ethical considerations. The answers to legal and ethical dilemmas are not always compatible; what might be justified in law may seem to some people objectionable from an ethical point of view.
- 16 Those who have the power to undertake some of the most sensitive and most intrusive forms of policing in a democracy; those who have the power to engage in any conduct providing they are properly authorised to do so (that is, the conduct is necessary and proportionate); those who have the power to intrude into the personal and private lives of individuals who are caught in the midst of an investigation but who have themselves not committed any offence; those are the individuals who also bear the responsibility to show that they use their powers correctly – and we include in that, ethically.
- 17 All those who are involved in undercover policing must act both within the law and ethically if they are properly to earn and retain the confidence of those whom they serve.
- 18 In May 2014, the College of Policing published a *Code of Ethics, Principles and Standards of Professional Behaviour for the Policing Profession of England and Wales*. It sets out nine principles which every police officer, including every undercover officer, should adopt. There is a specific reference to the need for every police officer to work honestly and ethically.

## **The context of undercover policing**

- 19 Those engaged in undercover policing must adhere scrupulously to the Regulation of Investigatory Powers Act 2000. It states that those who work undercover and who establish or maintain a personal or other relationship for a covert purpose in order to obtain information about that person or someone else must be authorised to do so.



- 20 The Act and its associated Codes of Practice are designed to ensure compliance with the European Convention on Human Rights, in particular, Article 8 - the right to respect for private and family life. The statutory scheme emphasises the importance of authorisation to ensure that the requirements of necessity and proportionality are met, and to provide a proper system of close scrutiny. It also requires that the risk of collateral intrusion must be considered and steps must be taken to minimise that risk.

## **The practical context**

- 21 There are three types of undercover officer: an advanced undercover officer; a foundation undercover officer; and an undercover online officer.
- 22 We considered it essential to find out the number of undercover officers in England and Wales. We therefore approached all forces and law enforcement agencies and asked for the number of undercover officers under their command. From the data that we received we consider the total number of undercover officers to be 1,229. The number of undercover officers in the 43 police forces alone is less than 1 percent of the total number of full-time equivalent police officers.
- 23 There are two types of undercover unit: a recognised undercover capability unit and an accredited undercover unit.
- 24 We were advised that there are 14 recognised undercover capability units and 25 accredited undercover units in England and Wales. In some forces, these units include an undercover online capability. In others, that capability is provided by officers in a discrete unit.
- 25 The most important feature of an undercover unit is that its staff do not instigate their own operations. An undercover officer is only ever deployed to support an existing intelligence-gathering or evidence-gathering operation following the application of the National Intelligence Model.
- 26 The following table sets out the number of undercover operations which were authorised between 1 October 2009 and 30 September 2013.

	Advanced operations		Foundation operations		Undercover online operations	
	1 Oct 2009 to 30 Sep 2011	1 Oct 2011 to 30 Sep 2013	1 Oct 2009 to 30 Sep 2011	1 Oct 2011 to 30 Sep 2013	1 Oct 2009 to 30 Sep 2011	1 Oct 2011 to 30 Sep 2013
Total	438	407	1,000	1,039	228	354

## The findings from our inspection

### The way undercover officers operate in practice

- 27 Those involved in undercover policing had a thorough understanding of the Regulation of Investigatory Powers Act 2000 and the human rights environment in which they are required to work. With regard to those who directly manage undercover officers, we found, generally, a high level of understanding of their roles and responsibilities.
- 28 However, greater clarity should be brought to the need for authorisation under the Regulation of Investigatory Powers Act 2000 in all instances where legend-building is undertaken. Legend-building is the process whereby undercover officers visit locations and construct a personal history in order to develop or maintain a covert identity where there is not an intention to engage with the subjects of an investigation or operation.

### Recommendation 1

**The National Undercover Working Group should consult the Home Office and the Office of Surveillance Commissioners with a view to establishing a requirement that all legend-building should be subject to the statutory regime set out in Part II of the Regulation of Investigatory Powers Act 2000, and this should be reflected in amendments to the relevant Code of Practice.**

- 29 In addition, the quality of authorities varied greatly. This heightened our concern that so few assistant chief constables have taken advantage of a new authorising officer course. Many authorities which we examined were very detailed, but others were less so, and frequently we found that the contents of one authority had been copied to another. That said, when we spoke to the authorising officers, we were able to obtain sufficient information to justify the authorities.

- 30 Although all those with whom we spoke were aware that an undercover operation had to be necessary and proportionate, as required by section 29(2) (a) and (b), Regulation of Investigatory Powers Act 2000; in practice, the depth of deliberation given over to this consideration was not always reflected in the paperwork which supported the request for authorisation or, indeed, in the commentary supporting the authorisation.
- 31 Weaknesses during the initial authorisation process were perpetuated during subsequent stages. Whenever an authorising officer considers a deployment at review or renewal stage, rather than simply listing achievements, any intelligence opportunities that have not been acted upon should be documented, with the reasons.

## **Recommendation 2**

**At review and renewal stages, authorising officers should ensure that any intelligence opportunities that have not been acted on are documented and taken into consideration when deciding whether the continued deployment of an undercover officer is justified.**

- 32 We found good evidence that collateral intrusion was considered both from the outset and throughout operations. However, a more consistent and systematic approach needs to be taken to this.

## **Recommendation 3**

**Authorising officers should record their findings regarding collateral intrusion under the three categories of inevitable, foreseeable and general intrusion when setting out their decisions to authorise or renew an application for the deployment of an undercover officer, and at every review stage.**

## **The Authorised Professional Practice**

- 33 The *Authorised Professional Practice Covert Undercover Operations* aims to provide those who need to know with a single point of reference for all relevant guidance which may have a bearing on the practical decisions which they have to take in the field of undercover operations.
- 34 The guidance is not comprehensive, and, as a result, not of great use to those responsible for managing undercover deployments or for those who are actually deployed.

## **Recommendation 4**

**The College of Policing and the National Crime Business Area should review the Authorised Professional Practice to ensure that it is comprehensive and appropriately specific.**

- 35 The Authorised Professional Practice should be essential reading for everyone involved in undercover policing. In reality, however, we found there was little knowledge of it.
- 36 Crown Prosecution Service lawyers who deal with cases involving undercover policing with whom we spoke had not seen the Authorised Professional Practice and were not even aware of its existence.

### **Recommendation 5**

**The College of Policing and the National Crime Business Area should agree with representatives of the Crown Prosecution Service the way in which the Authorised Professional Practice can be made available to those members of the Service who need to read it.**

- 37 Because of the perceived confidential nature of the Authorised Professional Practice, the document is marked as 'restricted'. It is not available to members of the public. Those whom we interviewed frequently attributed the lack of access to the document to its 'restricted' security marking, but in reality, we found that even those who had been granted access to it often had not read it.

### **Recommendation 6**

**The College of Policing and the National Crime Business Area should review the security marking of the revised Authorised Professional Practice with a view to making it available generally, or, where circumstances properly require it, to making a redacted version of it available generally. The College and the Business Area should bear in mind that public confidence in the use of undercover policing is more likely to be earned and maintained by adopting a more open and transparent approach.**

## **Supervision and day-to-day management and support**

- 38 There was a high level of intrusive supervision by those officers who were responsible for managing and supervising day-to-day undercover operations.
- 39 We found instances where chief officers personally took an active role in ensuring that the undercover operations in their forces were being undertaken appropriately. There was less engagement by chief officers and some senior investigating officers in other forces – both in terms of their awareness of the day-to-day issues surrounding undercover policing generally, and in terms of their interest in it.

- 40 We found that, often, requests for undercover officers were made on an *ad hoc* basis by staff in one undercover unit contacting colleagues whom they knew in another to find out which officers were available to help.
- 41 At the start of an operation, undercover officers are shown the authority which permits their deployment and are instructed on its operational objectives. They are also instructed on what actions and activities they may and may not undertake; this is iterated and reiterated throughout the operation. They are also briefed about their obligations under the European Convention on Human Rights.
- 42 Some forces adopt the practice of keeping senior investigating officers, or operational heads, away from the undercover officers who are deployed. Yet in others, the senior investigating officer personally briefs and tasks the undercover officers.

### **Recommendation 7**

**The National Undercover Working Group should clarify the precise role of the operational head (more commonly referred to as the senior investigating officer) with regard to the briefing of undercover officers and set out clear guidance regarding which officer (however he or she may be described) is responsible for what.**

- 43 We consider random drug testing to be an important safeguard in any deployment of undercover officers where the taking of drugs is likely to be part of the investigation. We were concerned to be told by many undercover officers that they had not once been subjected to a random drugs test, despite the fact that the officers themselves saw such testing as an important protection for them.

### **Recommendation 8**

**Chief constables and the heads of law enforcement agencies should implement random drug testing of undercover officers.**

- 44 Undercover officers spoke of being closely monitored, and foundation officers in particular are in regular and frequent contact by telephone and via text messages with their cover officers. However, in one force, cover officers do not maintain daily contact with foundation officers. This is a cause for concern.
- 45 The expenditure of undercover officers is closely monitored and appropriate and swift action is taken when any irregularity is uncovered.
- 46 Generally, debriefings were taking place and did address the relevant issues.

- 47 An undercover officer's welfare is usually a primary concern. However, we have concerns about two welfare-related matters: the number of continuous hours that undercover officers work in one force and the inconsistent nature of psychological support in undercover policing across England and Wales.

#### **Recommendation 9**

**The College of Policing should issue a policy that requires the creation of a standing group of psychologists and psychiatrists with experience of providing psychological assessments for individuals operating in high-risk or safety-critical roles or environments.**

#### **Recommendation 10**

**Chief constables, the heads of law enforcement agencies, the National Crime Business Area and the College of Policing should establish and implement consistent national psychological support for all undercover officers.**

### **Strategic leadership and direction**

- 48 The structure that is meant to underpin the provision of strategic leadership and direction is robust, but the effective provision and achievement of what is required within those structures is an entirely different matter.
- 49 Chief constables are responsible for the 'direction and control' of the 43 police forces in England and Wales. The College of Policing is the professional body for policing and the College's Professional Committee oversees national policy and practice for policing. Essentially, this means that the College sets the standards to which chief constables should ensure their forces adhere. The Chief Constables' Council is the senior operational decision-making body for national policing.
- 50 There are 12 national policing business areas that provide the direction and development of policing policy and practice in specific areas. The Crime Business Area has responsibility for the development of undercover policing policy and practice, and this is delegated to the Organised Crime Portfolio. Supporting the work of the Organised Crime Portfolio are 14 themed-based working groups, one of which is the National Undercover Working Group.
- 51 The National Undercover Working Group works with the College of Policing to set national standards in the area of undercover policing. It helps chief constables to provide strategic leadership and direction in this sensitive area of police work.

- 52 Overall, we found that the Working Group is not working effectively, and that it has not done so for some time. Those to whom we spoke had little confidence in the Working Group's ability to provide policy and guidance that should then be adopted across all forces. There was also a perception that the Working Group did not have sufficient support from chief officers to give it the influence that it needed to make sure that forces complied with the national standards in a consistent way. Too often, it relied too heavily on the views of its influential and experienced members to make decisions, rather than taking a more objective approach based on sound evidence and good analysis.
- 53 Whilst our observations are made in terms of the National Undercover Working Group, we consider those in the groupings above bear some responsibility for the shortcomings that we have identified, and for failing to oversee the work of the Working Group effectively.
- 54 This state of affairs has run its course. Whilst a properly constituted group with appropriate focus, drive, determination, leadership and courage would undoubtedly be of substantial benefit to the undercover policing community, what is currently in place is not.
- 55 Recent work by the College of Policing in support of the National Undercover Working Group is encouraging, but we believe that root and branch reform of the way the Working Group operates is needed.

### **Recommendation 11**

**The chief constable with lead responsibility for Organised Crime Portfolio should take immediate steps: to reconstitute the National Undercover Working Group with people who represent all the interests relevant to effective undercover policing; to set clear and published terms of reference and objectives; and to hold the Working Group to account for the effective achievement of those objectives.**

- 56 We accept that there are two halves to effective strategic leadership and direction: a National Undercover Working Group that develops national standards, provides guidance, and facilitates the exchange of good practice; and chief constables and heads of other law enforcement agencies who are prepared to enforce the compliance by their staff with these standards.

### **National training arrangements**

- 57 All training should be licensed by the College of Policing.

- 58 We consider that a formal system of accreditation and licensing should be created. In order to ensure the integrity of such a system, the College of Policing should appoint its own registrar to oversee the process. The registrar should have the power to revoke any licence or accreditation where the course, the individual or the undercover unit no longer maintains the required standard.

#### **Recommendation 12**

**The College of Policing, with oversight from the National Crime Business Area, should appoint a registrar to have responsibility, nationally, on its behalf, for the accreditation of all undercover policing units and the licensing of trained officers. The registrar should have the power to grant and rescind any licence or accreditation. The registrar should be a member of the College of Policing staff.**

- 59 All units which have been authorised to undertake undercover policing should be referred to as 'accredited'. There should be separate levels of accreditation in order to differentiate between the various aspects of undercover policing which a unit would be allowed to perform.

#### **Recommendation 13**

**The College of Policing and the National Crime Business Area should stop using the terms 'accredited undercover unit' and 'recognised undercover capability unit' and should, in future, establish a single system of levels of accredited units, the level determining what types of undercover policing the officers in that unit may undertake.**

#### **Recommendation 14**

**Chief constables and heads of law enforcement agencies should ensure that undercover policing is only undertaken by officers in an accredited unit.**

- 60 The accreditation process should involve a close examination of systems, processes and infrastructure to ensure compliance with national standards. It should also take into account the most recent inspection by the Office of Surveillance Commissioners.

#### **Recommendation 15**

**The College of Policing and the National Crime Business Area should establish a robust accreditation process which pays due regard to systems, processes, infrastructure issues and the findings of the Office of Surveillance Commissioners to ensure compliance with national standards.**



- 61 Accreditation should be for a specified and certain period of time, with continuing accreditation being determined by inspection. Those units which have failed to achieve or maintain the high standard required should not be accredited.

#### **Recommendation 16**

**The College of Policing and the National Crime Business Area should ensure that the accreditation of units is subject to inspection, and that there is a robust process for the rescinding of accreditation in cases where standards are not maintained during the currency of the accreditation period.**

- 62 The Authorised Professional Practice requires forces to adopt standard operating procedures. Some forces devised local standard operating procedures many years ago; some devised them a matter of days before our inspection visit; and some have not devised them at all.

#### **Recommendation 17**

**Chief constables should establish and promulgate standard operating procedures to be adopted by all forces and other law enforcement agencies in accordance with the Authorised Professional Practice.**

#### **A collaborative approach**

- 63 Regionalisation provided a resource for smaller police forces to deploy the tactic of undercover policing in circumstances where, if they had been required to deploy alone, they may not have been able to do so – either practically or financially. Combining resources enables a more consistent use of the tactic across those forces that collaborate at a regional level. Regional units should encompass all areas of undercover policing.

#### **Recommendation 18**

**The National Undercover Working Group, with oversight from the chief constable with responsibility for the National Crime Business Area, should establish a blueprint for the regionalisation of undercover policing resources for forces which wish to bring their resources together in this way. Its overarching aim should be to ensure that those investigations that would benefit most from deploying undercover police officers are appropriately resourced, no matter which force in the region hosts the investigation.**

- 64 A comprehensive results analysis should be conducted at the conclusion of every undercover operation

## **Recommendation 19**

**The National Undercover Working Group should devise a standard results analysis check-sheet and require the appropriate managers to complete it after each undercover deployment is concluded. Issues that may have national implications or relevance should be brought to the attention of the National Undercover Working Group.**

### **Intelligence-only deployments**

- 65 An intelligence-only operation is supposedly designed to gather information without leading to any prosecution. We do not consider that any deployment of an undercover police officer can be classified as intelligence only. Whenever a police officer is deployed in an undercover capacity, he or she may gather information or evidence of criminality in respect of which action should be taken.

## **Recommendation 20**

**The College of Policing should issue guidance to all those who are able to deploy undercover officers concerning any deployment for intelligence-only purposes, to reinforce the fact that every officer deployed in every circumstance may be required to give evidence in court about their conduct or use, and about the evidence that they obtained during their deployment.**

### **Relations with the Crown Prosecution Service**

- 66 A memorandum of understanding was developed between the Crown Prosecution Service, the police and other law enforcement agencies concerning cases involving the deployment of undercover officers.
- 67 We found broad compliance with the memorandum of understanding. Those with whom we spoke agreed that the involvement of an experienced Crown Prosecution Service lawyer is of great mutual benefit.
- 68 The best examples of consultation took place prior to any covert activity.

## **Recommendation 21**

**The National Undercover Working Group should work with representatives of the Crown Prosecution Service to review the memorandum of understanding between them and other law enforcement agencies to require consultation prior to the grant of any authority to deploy undercover police officers.**

## Selection, recruitment and training

- 69 The use and extent of undercover policing is entirely dependent on sufficient police officers of the right calibre wanting to undertake this type of police work. However, some managers simply refused to release qualified police officers for undercover operations because of the disruption their absence might cause.
- 70 The perceived lack of support was a recurring theme among those whom we interviewed: undercover police officers spoke of receiving adverse or negative comments; of being alienated; and of experiencing prejudice in their career choices.
- 71 In 2010, the Training and Development sub-group of the National Undercover Working Group recommended that the following elements should be adopted when selecting potential candidates for undercover training:
- an open day to attract potential recruits and provide information;
  - a written application;
  - a short-listing process;
  - an interview and attendance at a selection centre;
  - security vetting; and
  - psychological testing and assessment.
- 72 We found most of these elements formed part of a force's selection process and, as a result, a consistent approach is being adopted to identify those police officers who might have the requisite skills to become undercover officers.
- 73 We understand that these selection criteria have been superseded by the recommendations arising from the National Policing Improvement Agency's review which was concluded in 2012. We have been told by the College of Policing that it has now started a comprehensive programme of work around selection, recruitment and training to implement those recommendations.
- 74 There was one area where there is an unacceptable degree of inconsistency between forces in their adoption of this element of the process: psychological testing and assessment.

## **Recommendation 22**

**The College of Policing should ensure that psychological assessment is an element in the selection process for those who seek to become undercover officers. It should be undertaken before attending the Foundation Undercover Training and Assessment Course.**

- 75 Because of the way in which undercover police officers are deployed between forces and because of the extremely sensitive nature of the work in which they are engaged, it is essential that the level and content of training which they receive is consistent.
- 76 A number of foundation training courses have been delivered which have not been licensed by the College of Policing. A practice appears to have arisen whereby forces have considered the training programme of a licensed training centre, adapted it to their perception of local needs, and then provided it to their officers.

## **Recommendation 23**

**The College of Policing should conduct a further full audit of all forces to establish the extent of any unlicensed training that has been given.**

## **Recommendation 24**

**The College of Policing should ensure that all unlicensed foundation courses are ended immediately.**

## **Recommendation 25**

**Chief constables and the heads of law enforcement agencies should ensure that any undercover officer who has received training on an unlicensed training course is not deployed until his or her competency has been assessed.**

- 77 There are only three centres that provide the National Undercover Training and Assessment Course, which is the gateway through which aspiring advanced undercover police officers have to pass before they may be deployed. They are the Metropolitan Police Service, Greater Manchester Police and the National Crime Agency.
- 78 None of the three providers is licensed by the College of Policing to conduct the National Undercover Training and Assessment Course. All three are working with the National Undercover Working Group to address future training requirements and to secure the appropriate accreditation.

## **Recommendation 26**

**The College of Policing should devise a single National Undercover Training and Assessment Course as a matter of urgency.**

## **Recommendation 27**

**The College of Policing should suspend immediately the provision of any advanced training course that is being provided by an unlicensed provider.**

- 79 We were told of a lack of coherence between the advanced and the foundation courses. The two courses should dovetail so that any officer who wishes to progress to the advanced level builds on the training which he or she has received at the foundation level.
- 80 A review of this area was conducted in July 2012 by the National Policing Improvement Agency, a forerunner of the College of Policing. The National Policing Improvement Agency found undercover work to be “characterised by a lack of consistency across different forces and units.” The review was thorough and made 55 recommendations, designed to bring consistency and improvement to the selection and training procedures and to the regime required to support officers who engage in undercover work.
- 81 Although the National Policing Improvement Agency’s review was concluded in July 2012, we were told that its recommendations were not adopted by the National Undercover Working Group until June 2013.

## **Recommendation 28**

**The College of Policing and the National Crime Business Area should ensure that the programme of work to implement recommendations set out in the *Review of the Selection, Training and Support of Undercover Officers* produced in 2012 is completed.**

## **Tenure**

- 82 There is a balance to be struck between training and developing undercover officers to a point whereby they are highly proficient in the policing tactic and can be used to best effect, and ensuring that they do not remain in undercover policing so long that they are not able to return to more traditional policing duties.
- 83 A maximum tenure period of between five and seven years for advanced undercover officers is appropriate. A maximum tenure period of three years for foundation undercover officers is appropriate.

## Recommendation 29

**The College of Policing should establish and promulgate a comprehensive policy regarding maximum lengths of tenure for foundation and advanced undercover officers. We consider that a period of three years tenure for a foundation undercover officer and a period between five and seven years tenure for an advanced undercover officer is appropriate.**

- 84 Consequences flow from these conclusions: officers should be told at the start of their tenure the date of their return to other duties; a reintegration strategy, personally tailored to the needs of each officer, should be fashioned and implemented; and appropriate support should be provided by line managers to help each officer on his or her return to other duties.

## Recommendation 30

**Chief constables and the heads of law enforcement agencies should enforce a consistent and fair reintegration strategy to enable undercover officers to return to other policing or agency duties.**

- 85 The setting of maximum tenures for foundation and advanced undercover officers should not preclude, in any way, the ability of senior managers to bring an officer's period as an undercover officer to an end earlier if he or she is found not to have performed appropriately in that role.
- 86 We found only four instances where undercover officers had been removed from undercover operations because of misbehaviour; in one other instance, we found that an officer had been removed because of poor performance.

## Index of undercover officers

- 87 We have grave concerns about the accuracy of the information contained on the national undercover index. The Metropolitan Police Service is entirely dependent on information provided by forces to ensure that the index is kept up to date.
- 88 The national undercover index contains details of only 46.2 percent of the total number of undercover officers which the forces and agencies consider to be designated as such. In no way can the national undercover index be termed 'comprehensive'.
- 89 One of the reasons for the discrepancy in numbers between forces and the national undercover index may be the extent to which experienced undercover officers have been granted so-called '*grandfather rights*' by their forces.

### **Recommendation 31**

**The College of Policing, in conjunction with the National Crime Business Area, should devise and publish criteria which set out the circumstances when ‘*grandfather rights*’ may appropriately be granted to operationally-experienced undercover officers.**

### **Recommendation 32**

**Chief constables and the heads of law enforcement agencies should order an audit to be undertaken of the number of undercover officers that they have in their force or agency as a matter of urgency, so that they classify correctly those officers as active, reserve or dormant and can provide that information to those in the Metropolitan Police Service who maintain the national undercover index.**

- 90 There are already plans in place to create a national undercover database. This is intended to provide a secure, searchable and comprehensive database of undercover officers.

### **Recommendation 33**

**The managers of the national undercover database should ensure that online undercover officers are included in the database.**

### **Recommendation 34**

**The managers of the national undercover database and the national undercover index should ensure that previous records of deployment kept on the national undercover index are transferred onto the national undercover database.**

### **Training for authorising officers**

- 91 Since 1 January 2014, all foundation and advanced deployments have needed to be authorised by an officer of at least assistant chief constable rank or equivalent. Not all chief officers who now authorise undercover officers have been trained in, or have experience of, undercover policing themselves.
- 92 This situation is totally unacceptable given the general level of knowledge in chief officers in this area of work and the risks associated with it.

### **Recommendation 35**

**Chief constables and heads of law enforcement agencies should direct that an assistant chief constable or equivalent should not be able to act as an authorising officer until he or she has attended and passed the authorising officers' course. In future, attendance at such a course should be regarded as a mandatory requirement prior to any assistant chief constable being appointed.**

### **Training for others involved in undercover policing**

- 93 There is insufficient national training currently available for senior investigating officers who are expected to operate in this difficult area of police work. Even amongst senior investigators who were very experienced in serious crime investigation, there was little knowledge or experience of undercover policing.

### **Recommendation 36**

**The College of Policing should establish a bespoke undercover training course for senior investigating officers. It should include a mentoring programme for those inexperienced in deploying undercover officers in their investigations.**

- 94 A cover officers' course has been introduced – but only as recently as July 2013. As a result, many of those working as cover officers have yet to attend it.

### **Recommendation 37**

**Those who seek to become cover officers should attend and pass an appropriate course licensed by the College of Policing.**

- 95 There is a national training course for operational security advisors, although several forces have cut out this role in order to make financial savings.

### **Recommendation 38**

**Chief constables and heads of law enforcement agencies should ensure that their force or agency has, or has access to, an operational security advisor who has passed the relevant course.**

- 96 All training courses should be licensed to so that those who rely on officers to have passed such training courses can be assured that they have been properly trained to an approved standard.



- 97 All those who have passed the relevant training course should themselves be accredited. They will have worked hard to pass the course and they are entitled to be recognised as having done so.

#### **Recommendation 39**

**The College of Policing should license all approved training courses and accredit all those who pass such courses.**

- 98 We did not find evidence of bespoke training about the legal framework for undercover policing in the Regulation of Investigatory Powers Act 2000.

#### **Recommendation 40**

**The College of Policing should establish a specific training module which instructs upon, and tests knowledge of and competence in the regime of undercover policing in the Regulation of Investigatory Powers Act 2000.**

### **Recording the decision-making process**

- 99 The Authorised Professional Practice advises that an undercover officer should make handwritten statements and that it is his or her responsibility to check that those statements are accurate before signing them.
- 100 The process of making statements was mixed. We also found unjustifiable variations in the ways in which contact between undercover officers and their cover officers was recorded.

#### **Recommendation 41**

**All undercover police officers and their managers should ensure that appropriate and consistent records of all deployments are written and retained. These should address both operational and welfare issues.**

- 101 In forces where the authorising process works well, we would expect to find evidence of a dialogue between the officer seeking authority to deploy an undercover officer and the authorising officer. Any conscientious authorising officer is likely to have questions that he or she wishes to have answered before authorising the deployment.
- 102 However, questions arise about how this dialogue is recorded and stored for future reference if a force does not retain any initial paperwork in respect of applications for authority to deploy which are not immediately granted. Greater clarity is required to distinguish between applications which are refused and those which are returned for further explanation.

#### **Recommendation 42**

**The National Undercover Working Group should establish and circulate detailed guidance on retaining records connected to a request for the authorisation to deploy an undercover officer. The records should include those applications which are refused and those which are subsequently amended and resubmitted for approval.**

#### **Recommendation 43**

**Chief constables and the heads of law enforcement agencies should ensure compliance with all guidance on the records connected to a request for the authorisation to deploy an undercover officer.**

- 103 The College of Policing has adopted the National Decision Model. There is a section dedicated to the recording of decision-making, followed immediately by a section on reviewing decision-making.

#### **Recommendation 44**

**Chief constables and heads of law enforcement agencies should require all those engaged in undercover policing to adopt and comply with the requirements of the National Decision Model.**

#### **An internal review of decisions during operations**

- 104 Our findings about poor record-keeping and our earlier reporting of the unjustifiable variations in the quality of authorisations leads us to conclude that there needs to be an internal review at crucial stages during the deployment phase to ensure that the regime is being followed rigorously and correctly. The objective of the internal review would be critically to evaluate the conduct of an operation to ensure that, amongst other things, any missed opportunity to progress the investigation is identified.

#### **Recommendation 45**

**Chief constables and the heads of law enforcement agencies should introduce an internal review process for undercover operations involving an independent senior investigating officer to ensure integrity, objectivity and compliance with the law.**

### **The Office of Surveillance Commissioners**

- 105 We found that the relationship between the Office of Surveillance Commissioners and forces is good. The Office of Surveillance Commissioners helpfully raises issues in its force reports for action at a local level.

- 106 During an inspection by the Office of Surveillance Commissioners, the usual practice is for the relevant force to take any necessary documentation to a designated room for its inspectors to examine. We know of instances where the Office of Surveillance Commissioners' inspectors have been allocated rooms in a different building and sometimes even in a town or city different from the location of the undercover unit.

#### **Recommendation 46**

**The National Undercover Working Group should establish and promulgate clear guidance setting out the circumstances in which inspectors from the Office of Surveillance Commissioners should be able to visit covert premises.**

### **Undercover online policing**

- 107 There is not a nationally agreed definition of an undercover online officer.
- 108 Some might suggest that, because of the absence of physical contact with the target, the undercover online officer is somehow a lesser form of undercover officer. Undercover online officers play an essential role in helping to identify and gather evidence against those who use the internet as their gateway to commit offences.
- 109 The Authorised Professional Practice does not make any reference to undercover online policing. We were surprised to find that the College of Policing and the Working Group failed to refer to undercover online policing in its Authorised Professional Practice.

#### **Recommendation 47**

**The College of Policing, in conjunction with the National Crime Business Area, should establish and publish discrete guidance about all aspects of the undercover online policing requirement, starting with a definition of what an undercover online police officer is and should do.**

- 110 Just like their counterparts who engage in undercover policing generally, undercover online officers need to know the relevant law and the boundaries of the authority under which they are deployed. They are also often confronted by the need to make critical decisions and immediate interventions.
- 111 The foundation training course should focus on the skills in which all undercover officers should be proficient; thereafter, the course should develop different modules which focus on practical examples that are better tailored for those who are to be deployed online or in the field.

## Recommendation 48

**The College of Policing should review the content of the Foundation Undercover Training and Assessment Course with a view to identifying the generic skills in which all undercover officers need to be trained, and to devising appropriate modules thereafter to allow officers to develop any specialist skills that are required for undercover online and field deployment.**

- 112 We were concerned to learn that some forces had not undertaken online investigations for a number of years. Based on force returns, it would seem that 25 forces have a dedicated undercover online capability; 13 further forces have such a capability based on regional collaboration; and five forces do not currently have dedicated or regional capability. We were told that some of these five forces are currently considering how to create their online capability.
- 113 However, there remain some forces which have taken the decision not to develop a dedicated or regional undercover online capability. When asked to explain their decisions, their senior managers stated that they would 'buy in' the tactic if ever the need arose.
- 114 We do not accept this approach. We do not understand how any force, no matter its size, can be unaware or insufficiently sensitive to the very severe dangers associated with improper use of the internet. We observe in passing that those forces seem not to appreciate the importance of the Strategic Policing Requirement where the threat from cyber crime is made explicit. Undercover online policing is a tactic that must be employed to help to meet those challenges.

## Recommendation 49

**Chief constables and the heads of law enforcement agencies should review their force or agency's approach to the use of undercover online policing and in every case ensure compliance with the Strategic Policing Requirement.**

## Conclusions

- 115 Undercover officers were consistent in voicing their concerns about the ways in which some forces required them to work differently from other forces and from what they understood from their training to be the nationally agreed operating procedures.

- 116 Chief constables should work together immediately to adopt one set of standard operating procedures and to apply them rigorously and consistently in their forces. Their task would be made easier if they were to commit to undercover policing becoming a regional capability for all forces to use rather than one provided separately by each force.
- 117 The generally poor level of knowledge and lack of expertise of senior leaders combine to form a powerful barrier against the continuous improvement of the tactic and, most importantly, its openness to scrutiny and challenge.
- 118 This is unacceptable, especially in light of today's widely-held understanding of just how important sound oversight of this essential yet intrusive police tactic is. The extent of violent, serious and organised crime and the damage which such crime does to the fabric of our society justify the use of undercover policing as a tactic, provided it is correctly authorised, properly overseen and ethically used.

# 1. Introduction

## Our commission

- 1.1 In a letter dated 27 June 2013, the Home Secretary commissioned Her Majesty's Inspectorate of Constabulary (HMIC) to inspect the effectiveness of the arrangements in place in all police forces to carry out, manage and scrutinise undercover operations. Our inspection was to include all regional and national policing units, and the National Crime Agency.<sup>1</sup> The terms of reference are set out in annex A. This was not an inquiry into the past events that have caused widespread concern about the way the police use undercover tactics; these past events fall to others to examine. Our inspection has examined how well undercover policing is carried out now.
- 1.2 HMIC is an independent inspectorate which has responsibility under section 54(2), Police Act 1996 to inspect on the "efficiency and effectiveness of every police force maintained for a police area" in England and Wales. It also has statutory responsibility to inspect the National Crime Agency.<sup>2</sup> We were invited to include Her Majesty's Revenue and Customs in our inspection.<sup>3</sup>
- 1.3 In order to provide a comprehensive picture, the British Transport Police,<sup>4</sup> the Home Office Immigration Enforcement<sup>5</sup> and the Royal Military Police<sup>6</sup> – all of which may also carry out undercover operations – were included in our inspection.

<sup>1</sup> The National Crime Agency replaced the Serious Organised Crime Agency in October 2013.

<sup>2</sup> Section 11, Crime and Courts Act 2013.

<sup>3</sup> Regulation 3(3), The Revenue and Customs (Inspections) Regulations 2005 made under the Commissioners for Revenue and Customs Act 2005 specifically empowers HMIC to carry out inspections of Her Majesty's Revenue and Customs and enables the Chancellor of the Exchequer to commission an inspection by HMIC. On this occasion, we were simply invited to do so.

<sup>4</sup> HMIC has a statutory duty to inspect the British Transport Police under section 63, Railways and Transport Safety Act 2003.

<sup>5</sup> HMIC inspects Home Office Immigration Enforcement by invitation and its Director General indicated that he was content for the unit to be included in our inspection in a letter dated 13 December 2013.

<sup>6</sup> HMIC inspects the Royal Military Police by invitation and HMIC received an e-mail dated 8 October 2013 confirming that the Royal Military Police was pleased to participate in our inspection.

- 1.4 This is the first time that HMIC has inspected all law enforcement agencies that have the capability and capacity to deploy undercover officers. However, we wish to make it clear that this is a thematic inspection, rather than an inspection of individual forces or law enforcement agencies which use this tactic. Nonetheless, we provided specific feedback on performance to senior managers in each force and law enforcement agency that we visited.
- 1.5 Throughout this report, we refer to undercover officer or undercover police officers, but we intend the terms to cover all those who are deployed in undercover activities, irrespective of their police force or law enforcement agency.

## Background

- 1.6 There have been widespread concerns about undercover policing for a number of years. We have set out in annex B a summary of those concerns and the response to them to date.
- 1.7 Allegations that undercover officers have had sexual relationships with those who are linked with the target of their investigations, that they have given false evidence in court to maintain their undercover status and that they have used the details of children who have died as their covert identities have all contributed to a growing unease that the tactic is being wrongly used, badly supervised, and ineffectively controlled.
- 1.8 In 2012, HMIC responded to these concerns by publicly reporting on the deployment of undercover officers from the Special Demonstration Squad and National Public Order Intelligence Unit for the purpose of gathering intelligence.<sup>7</sup> Both were units in the Metropolitan Police Service. In 2013, HMIC published a progress report in respect of its 2012 recommendations and concluded that: “further inspection work [was] necessary to examine all police undercover work”.<sup>8</sup>

<sup>7</sup> *A review of national police units which provide intelligence on criminality associated with protest*, HMIC, February 2012: [www.justiceinspectorates.gov.uk/hmic/media/review-of-national-police-units-which-provide-intelligence-on-criminality-associated-with-protest-20120202.pdf](http://www.justiceinspectorates.gov.uk/hmic/media/review-of-national-police-units-which-provide-intelligence-on-criminality-associated-with-protest-20120202.pdf)

<sup>8</sup> *A review of progress made against the recommendations in HMIC's 2012 report on the national police units which provide intelligence on criminality associated with protest*, HMIC, June 2013, paragraph 5.2: [www.justiceinspectorates.gov.uk/hmic/media/national-police-units-which-provide-intelligence-on-criminality-associated-with-protest-progress-review.pdf](http://www.justiceinspectorates.gov.uk/hmic/media/national-police-units-which-provide-intelligence-on-criminality-associated-with-protest-progress-review.pdf)

- 1.9 In July 2012, the Home Secretary commissioned Mark Ellison QC to conduct a review<sup>9</sup> examining allegations of corruption surrounding the investigation into the murder of Stephen Lawrence and whether the Metropolitan Police Service had evidence of corruption that it did not disclose to the public inquiry into Stephen's death.<sup>10</sup> In addition, the Commissioner of the Metropolitan Police Service instigated an inquiry into the allegations which had been made in the media regarding the conduct of undercover officers. The inquiry is known as Operation Herne.
- 1.10 In an immediate response to the conclusions in our 2013 review and as a result of the publicity that we have set out above, on 27 June 2013 the Home Secretary commissioned HMIC to conduct this inspection.
- 1.11 As a result of Mr Ellison's findings, the interim conclusions of Operation Herne (reinforced by a further report as part of that operation which was published in July 2014)<sup>11</sup> and the need to allow ongoing enquiries to continue, the Home Secretary announced, on 6 March 2014, in Parliament that a public inquiry, led by a judge, would be set up to investigate undercover policing and the operation of the Special Demonstration Squad.<sup>12</sup>

## Methodology

- 1.12 We conducted fieldwork in all 43 police forces in England and Wales and in those law enforcement agencies which deploy their staff in undercover operations. We gathered data from each of the forces and law enforcement agencies and conducted interviews with their relevant personnel between October 2013 and March 2014.

<sup>9</sup> *Hansard*, House of Commons, 11 July 2012, col 31 WS: [www.gov.uk/government/speeches/theresa-may-stephen-lawrence-qc-led-review](http://www.gov.uk/government/speeches/theresa-may-stephen-lawrence-qc-led-review). Mr Ellison set out his Terms of Reference in volume 1, chapter 2, page 3 of his report: *The Stephen Lawrence Independent Review, Possible corruption and the role of undercover policing in the Stephen Lawrence case*, Mark Ellison QC, 6 March 2014, HC 1038-1.

<sup>10</sup> *The Stephen Lawrence Inquiry*, by Sir William MacPherson of Cluny, February 1999, Cmnd 4262-I.

<sup>11</sup> See annex B, paragraph 14 et seq.

<sup>12</sup> *Hansard*, House of Commons, 6 March 2014, col 1064.



- 1.13 We also conducted in-depth interviews with representatives of those groups in the police service and law enforcement agencies, such as the National Undercover Working Group,<sup>13</sup> which are responsible for guiding police forces in how, and in what circumstances, the undercover policing tactic should be used.
- 1.14 In order to gain a broader perspective, we also spoke with representatives of those agencies which have an interest in undercover policing, such as the Crown Prosecution Service and the Office of Surveillance Commissioners, and with those who have direct contact with undercover police officers, including 12 psychologists who provide support to police personnel engaged in undercover policing.
- 1.15 And we spoke with the chair of the International Working Group on Police Undercover Activities.<sup>14</sup> The Working Group provides a forum for its constituent members to discuss and develop safe and effective law enforcement undercover techniques for use against serious and organised crime, and to encourage international cooperation.
- 1.16 We are very grateful to those who gave of their time freely and willingly to help us to understand the full range of issues that arise when considering undercover policing.
- 1.17 We are especially grateful to the critical readers and the members of an External Reference Group which we established to provide us with comments, support and advice during our inspection.

## **The structure of this report**

- 1.18 In the chapters that follow, we set out the value of undercover policing as a tactic, some of the circumstances in which undercover policing is undertaken, the context in which undercover policing is adopted as a tactic in terms of the law, policy and external oversight, and the way in which the police service and law enforcement agencies in practice carry out undercover policing to support investigations.

<sup>13</sup> The National Undercover Working Group is a multi-agency group which works with the College of Policing to set national standards in the area of undercover policing: see paragraph 7.12 et seq.

<sup>14</sup> The Group comprises 25 countries: Australia; Austria; Belgium; Canada; the Czech Republic; Denmark; Finland; France; Germany; Hungary; Italy; Lithuania; The Netherlands; New Zealand; Norway; Poland; Portugal; South Africa; Slovenia; Spain; Sweden; Switzerland; the United Kingdom; and the United States of America.

- 1.19 Following that backdrop, we set out our findings, analysis, conclusions and recommendations based on our terms of reference. There is a separate chapter concerning undercover online policing. A summary of our overarching conclusions and a separate list of our recommendations are set out in chapters 13 and 14. We have also prepared a glossary which explains the role of many of the groups associated with undercover policing. This is in annex C.
- 1.20 Where appropriate, we have illustrated the issues under discussion by way of case studies. They have been appropriately anonymised.
- 1.21 In such a wide-ranging inspection, we were told about matters concerning undercover policing which did not fall strictly within our terms of reference. These matters concerned: forming intimate relationships; different authorisation levels; and the doctrine of *neither confirm nor deny*. We have devoted a chapter to these additional matters so that those reading may take an overview. We hope that all the issues that we have set out in this report will be of benefit to members of the public inquiry which the Home Secretary has indicated will be established in due course.<sup>15</sup>
- 1.22 In this report, we have been given permission to quote from a number of documents which are classified as 'restricted'. This means that they are not available to members of the public because they contain information that might be of help to those who are intent on committing crime about how the police and law enforcement agencies might try to identify them and to secure evidence against them.

<sup>15</sup> *Hansard*, House of Commons, 6 March 2014, col 1064. The Home Secretary pointed out that Operation Herne is a criminal investigation and, as such, needed to run its course before the judge-led public inquiry may be established. The Home Secretary stated that Operation Herne is likely to conclude by about March 2015: cols 1063 and 1064.

- 1.23 We support fully the proposition that the police service and law enforcement agencies should be as open as possible about their activities. However, we also accept that, on occasion, there is a legitimate need to keep certain aspects of policing confidential. In order to inform the readers of this report as fully as possible, we have indicated in the text and in the footnotes where certain facts and commentary may be found, even though the document from which they are sourced is not available to the public.<sup>16</sup>
- 1.24 We accept that this may cause some frustration but we consider this to be a fair balance between the demands of the public and the needs of the police service and law enforcement agencies.
- 1.25 We have prepared the following annexes:
- annex A: terms of reference;
  - annex B: background;
  - annex C: glossary;
  - annex D: the legal context;
  - annex E: relevant Articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms;and
  - annex F: levels of undercover online investigations.

## **A critical point to remember**

- 1.26 At this stage, an overarching observation is appropriate. It is always likely to be the case that the reports of inspections focus on what was found to have gone less well. Whilst we have highlighted instances of good practice so that police officers in all forces might benefit from the experience of their colleagues, we are mindful that we have also identified specific areas where improvements are required.

<sup>16</sup> We have been mindful of the statutory provision which enables the Home Secretary to exclude from publication any part of a report where such publication would be against the interests of national security or which might jeopardise the safety of any person: section 55(2), Police Act 1996.

- 1.27 We do not want that to detract, however, from one simple conclusion that we have reached: in general, undercover police officers carry out their roles professionally and with great courage. We found them to be dedicated to their task and keen to play their role in protecting our communities.
- 1.28 We applaud their bravery, their professionalism and their skill. The work of the vast majority of individual undercover police officers, whilst unsung, should never go unnoticed.
- 1.29 Whilst there are improvements to be made, undercover policing as a tactic is essential and the police service and the communities which they serve are fortunate to have a body of such dedicated officers to carry out this type of work.
- 1.30 The criticisms in this report should be read in that context.

## 2. The value of undercover policing

- 2.1 The police service plays a vital role in the protection of every member of our society. Police officers and staff are essential in ensuring that our laws are upheld, and they are in the front line when we seek to find those who break our laws in order to hold them to account. Trust underpins the relationship between police officers and communities. Every police officer is responsible for behaving with integrity, honesty and in accordance with the law.
- 2.2 When the police service acts at its best, it is matchless.
- 2.3 We demand much of those who serve in our police forces. We should have at the forefront of our minds that, generally, policing in today's society can be, and often is, dangerous. In the five years from 2009 to 2013, 38 police officers from forces in England and Wales died in the line of duty.<sup>17</sup>
- 2.4 To enable them to discharge their obligations fully, we, as a society, give the police often sweeping powers to act: the powers to arrest, detain, search and interview are essential if the police service is to do its job effectively; but these powers are also intrusions into the lives and liberty of members of society. There is therefore a balance to be struck between the rights of the individual and the powers that the police service necessarily needs to ensure that the law is appropriately upheld and defended.
- 2.5 Against this backdrop, we need to recognise that crime itself – both in terms of how it is committed and by whom – has become more sophisticated. Advances in society since the first 'bobbies' went on the beat have meant that the police service itself has had to adapt.

<sup>17</sup> [www.policememorial.org.uk](http://www.policememorial.org.uk)

- 2.6 Modern technology means that groups of criminals may now conspire together without ever meeting one another to commit a crime in a country in which none of them resides against an individual or an institution to which they do not have any obvious link. And within that hierarchy of criminal consortia, those at the top are often the hardest for the police to identify and secure evidence against in order to bring them to justice for their crimes.
- 2.7 All this makes the police officer's task much more difficult.
- 2.8 Society has expectations, even against this backdrop: it rightly demands that the police are able to develop new and more sophisticated ways of detecting crime and catching criminals, including those who may direct criminal enterprises without physically committing the crime itself.
- 2.9 As criminals have become adept at exploiting the new environment, so must the police. The police service as a whole has sometimes to adopt tactics which fly in the face of the traditional image of the 'bobby' in order to infiltrate and expose criminal behaviour, often of the most serious and dangerous kind.
- 2.10 One of the tactics at the police service's disposal is undercover policing.
- 2.11 Under the current legal arrangements, Parliament and the courts have recognised the legitimacy of, the acceptability of, and the necessity for, undercover policing. But we accept that, on face value, it contradicts those values which society is entitled to expect of individual police officers. Society demands police officers to be truthful; to act with integrity; and to uphold the law rather than to break it. These are all the characteristics that appear to be at risk when a police officer engages in undercover policing.
- 2.12 The checks and balances that exist in the framework within which undercover policing operates are designed to weigh those competing interests and identify a proportionate and permissible way forward which recognises that, on occasion, the police service has to enable its officers to behave in a covert way in order to achieve a greater good.

## Examples of undercover deployment

- 2.13 At a local level, undercover officers have been successfully deployed to engage with those who possess, supply or use commodities, for example, drugs, obscene or indecent material or stolen goods, where to do so is a criminal offence. These officers were formerly known as *test purchase officers*.<sup>18</sup>
- 2.14 On occasion, an undercover officer may be used as a decoy officer, where he or she seeks to become the intended victim of crime for the purposes of securing the arrest of the offender.
- 2.15 Increasingly, because of the technological advances made regarding access to and use of the internet, undercover officers are deployed in the recovery of stolen property advertised in an online market place. The deep web is another area where undercover officers can be deployed effectively to identify those who wish to exchange indecent images of children or target children for sexual abuse.<sup>19</sup>
- 2.16 Undercover officers may also be deployed to gather evidence about individuals who are suspected of involvement in serious offences, for example, murder.
- 2.17 At a regional and international level, a long-term undercover infiltration deployment can be used to target serious and organised gangs which are involved in importing large quantities of controlled drugs and firearms into the United Kingdom, or those who are involved in money laundering or human trafficking.
- 2.18 Undercover officers also play a crucial role in frustrating the plans of those who seek to commit serious crimes, for example acts of terrorism.
- 2.19 Whilst the equation may be unpalatable for some, the harsh reality of policing in today's society is that many hardened criminals and gangs of criminals would not be detected and apprehended without the police adopting undercover policing tactics. And if those tactics were not permitted, offenders would continue to break the law with relative impunity, and more and more law-abiding members of our society would become their victims.

<sup>18</sup> A test purchase officer is one who buys an illegal commodity from another person to establish the latter's role in criminal activity.

<sup>19</sup> We explain the deep web more fully in footnote 170 in chapter 11.

- 2.20 Bluntly put, if society wants the police to identify and apprehend some of its most dangerous criminals, it has to allow individual police officers to ‘get their hands dirty’.
- 2.21 It is a balance; it is a trade-off: when properly managed, supervised and overseen, undercover policing is a legitimate tactic in today’s society. We note that the House of Commons Home Affairs Select Committee stated, in its 2013 interim report, that undercover policing operations: “are a vital element of the fight against terrorism and serious, organised crime”<sup>20</sup> and that the government, in its responses, stated that it: “agreed strongly with that position”.<sup>21</sup>
- 2.22 But when the balance is inappropriately assessed, when there is inadequate management and supervision of those entrusted with this dangerous and delicate work, and when poor judgments are reached about the appropriateness of deploying undercover officers and for what purpose, the results are damaging to the police service as a whole, and to the strength of the bond between it and the society that it serves.

## Ethical considerations

- 2.23 Given section 27, Regulation of Investigatory Powers Act 2000 is capable of rendering conduct lawful that would otherwise be criminal, or which might result in a civil action for damages, questions are raised rightly about the extent to which such a power is and should be constrained by ethical considerations. By this, we mean an overriding duty to do what is right, as distinct from doing what is technically legal.
- 2.24 The answers to legal and ethical dilemmas are not always compatible; what may be justified in law may seem to some people objectionable from an ethical point of view. From a policing perspective, it can be all too easy to concentrate on developing a sound legal case against a potential criminal without paying appropriate regard to the damage to others that might be caused along the way. As one senior Crown Prosecution Service lawyer remarked:

*“[p]roportionality is at risk if a force has such a strong belief about someone’s guilt that most techniques are felt valid.”*

<sup>20</sup> *Undercover policing: interim report*, Home Affairs Select Committee – thirteenth report, 1 March 2013, paragraph 9: <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/837/83702.htm>

<sup>21</sup> *Government response to the Home Affairs Select Committee report “Undercover policing: interim report”*, 18 June 2013, paragraph 2: <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/451/45104.htm>



- 2.25 The National Code of Conduct for Undercover Officers is contained in the Manual of Standards devised by the Association of Chief Police Officers.<sup>22</sup> It sets out 17 statements covering the professional and personal standards expected of an undercover officer. The code emphasises that the position of an undercover officer is a voluntary one and that, during his or her time in the role and beyond, an undercover officer is bound by the Official Secrets Act. When deployed, the code states that an undercover officer must operate within the law, and abide by the rules and discipline regulations governing the conduct of law enforcement agencies in general. This means that if the officer intentionally acts outside the scope of the authorisation under which he or she is deployed, he or she will face the consequences of his or her actions.
- 2.26 In addition, in July 2014, the College of Policing published a Code of Ethics. This is a code of practice for the principles and standards of professional behaviour for the policing profession of England and Wales.<sup>23</sup> It sets out nine principles which every police officer, including those who work undercover, should adopt. There is a specific reference to the need for every police officer to work honestly and ethically.<sup>24</sup>
- 2.27 Prior to any deployment and throughout the course of any operation, the undercover officer is personally responsible for ensuring that: he or she fully understands the scope of the authorisation; he or she makes regular contact with his or her line manager; he or she does not embark on a course of action that unnecessarily risks his or her physical health or well-being; and he or she informs the head of unit of any factors which may affect his or her credibility as a witness.

<sup>22</sup> *Manual of Standards*, Association of Chief Police Officers, 2003 [Restricted].

<sup>23</sup> The Code was presented to Parliament pursuant to section 39(A)(5), Police Act 1996. The Code may be read and downloaded at: [www.college.police.uk/en/docs/Code\\_of\\_Ethics.pdf](http://www.college.police.uk/en/docs/Code_of_Ethics.pdf)

<sup>24</sup> See paragraph 2.1.1 of the Code.

- 2.28 To ensure that undercover policing is conducted in an ethical as well as a legal way, we consider that independent advisory groups, comprising non-police but suitably vetted individuals, could provide an objective and independent view of undercover deployments. This would help to prevent an insular approach and to allay public concern about the use of undercover policing. Their terms of reference should concentrate on ethical issues rather than legal ones.
- 2.29 We appreciate that some in the undercover world might oppose such a proposal. Indeed, we even encountered opposition to our own inspection: for example, we were denied initial access to covert premises housing an undercover unit and, in so doing, we were told that chief officers were not allowed access to the same premises. We took the matter up with a chief officer lead who immediately ensured that we were able to visit the site.
- 2.30 Although not a matter of ethics, we see parallels: this is the very attitude which condemns the police service as a whole. Those who have the power to undertake some of the most sensitive and most intrusive forms of policing in a democracy; those who have the power to engage in any conduct providing they are properly authorised to do so (because the conduct is necessary and proportionate); those who have the power to intrude into the personal and private lives of individuals who are caught in the midst of an investigation but who have themselves not committed any offence; those are the individuals who also bear the responsibility to show that they use their powers correctly - and we include in that, ethically.
- 2.31 All those who are involved in undercover policing must act both within the law and ethically if they are properly to earn and retain the confidence of those whom they serve.

### 3. The context of undercover policing

#### The legal position

- 3.1 If the police service is to earn and maintain the public's confidence, it is essential that its officers act within the law - at all times.
- 3.2 By its very nature, undercover policing requires police officers to be involved in covert activities where they are likely to have to lie, employ deception, behave in a surreptitious manner, and generally act in ways that they have been trained to identify in others as signals of criminality.
- 3.3 It is essential, therefore, that a legal framework is in place which sets out the circumstances when police officers may act in this way, how they are supervised while they do so, and who permits such policing activity in the first place.
- 3.4 We have set out in annex D the detailed arrangements that Parliament has put in place to regulate undercover policing. In essence, those engaged in the tactic must adhere scrupulously to the Regulation of Investigatory Powers Act 2000.<sup>25</sup>
- 3.5 The Act sets out the legal framework within which undercover policing may take place. It and its associated Codes of Practice are designed to ensure compliance with the European Convention on Human Rights, in particular, Article 8 - the right to respect for private and family life.<sup>26</sup> The statutory scheme emphasises the importance of authorisation to ensure that the requirements of necessity and proportionality are met, and to provide a proper system of close scrutiny.

<sup>25</sup> The Act has been supplemented by a number of Codes of Practice and Orders which set out in more detail how the regime under the Act should be maintained in practice. See, for example, the *Covert Human Intelligence Sources Code of Practice*, issued pursuant to section 71, Regulation of Investigatory Powers Act 2000, TSO, London 2010. The Codes are regularly updated. For example, at the time of the drafting of this report, the Minister of State for the Home Department is considering the results of a public consultation exercise which was undertaken in response to a proposal to update the Code of Practice and to make a number of amendments in order to provide greater clarity for those authorising and using covert techniques: see <https://www.gov.uk/government/speeches/covert-surveillance-and-covert-human-intelligence-source-codes-of-practice-consultation>

<sup>26</sup> The Human Rights Act 1998 gave effect in the United Kingdom to the *Convention for the Protection of Human Rights and Fundamental Freedoms*. This is more commonly referred to as the European Convention on Human Rights which is how we refer to it in this report: [www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

- 3.6 In this report, we refer to undercover police officers. All undercover officers are also covert human intelligence sources.
- 3.7 The concept of a covert human intelligence source was introduced by Part II of the Regulation of Investigatory Powers Act 2000. This Part covers the use of three covert investigatory powers: intrusive surveillance, directed surveillance and the conduct and use of covert human intelligence sources.
- 3.8 A covert human intelligence source is a person who:
- (a) establishes or maintains a personal or other relationship; and
  - (b) does so for a covert purpose, which means that the relationship is conducted so that one of the parties to the relationship is unaware of the purpose; and
  - (c) has the covert purpose of facilitating either:
    - the covert use of the relationship to obtain information, or to provide access to any information to another person; or
    - the covert disclosure of information obtained by the use of the relationship, or as a consequence of the existence of the relationship.<sup>27</sup>
- 3.9 The conduct and use of a covert human intelligence source must be authorised.

<sup>27</sup> See section 26(8) and (9), Regulation of Investigatory Powers Act 2000 for the exact language used to define a covert human intelligence source.

3.10 Whether or not authorisation is obtained, a further question may arise about the use at a criminal trial of evidence obtained by undercover officers. Here, the critical issue – both at common law and under Article 6, European Convention on Human Rights which sets out a person’s right to a fair trial – is the fairness of the criminal trial process.<sup>28</sup> The criminal court has power either to stay proceedings on the grounds of entrapment to prevent an abuse of executive power or to exclude evidence, for example, evidence given by an *agent provocateur*,<sup>29</sup> using its discretion to safeguard the fairness of the trial.

## The authorisation process

3.11 As far as the police service is concerned, up until 2013, authorisation for the use of all covert human intelligence sources, including undercover officers, was given by an officer of the rank of superintendent or above,<sup>30</sup> or by an officer of inspector level in urgent cases.<sup>31</sup> However, the law has been amended so that, from 1 January 2014, authorisation for undercover officers has to be given by an assistant chief constable or by a commander in the Metropolitan Police Service or the City of London Police, or his or her equivalent in other law enforcement agencies.<sup>32</sup>

3.12 Where an undercover officer is intended to be or is deployed for more than 12 months, authorisation can only be given by a chief constable, the commissioner of the Metropolitan Police Service or the City of London Police,<sup>33</sup> or his or her equivalent in law enforcement agencies. The prior approval of one of the Ordinary Surveillance Commissioners, who are all current or former senior judges, is also required.<sup>34</sup>

<sup>28</sup> *R v Looseley* [2002] 1 Cr.App.R. 29 (HL).

<sup>29</sup> An *agent provocateur* is defined as: “a person who entices another to commit an express breach of the law which he would not otherwise have committed and then proceeds to inform against him in respect of such an offence”: *Report of the Royal Commission on Police Powers and Procedure*, Cmnd 3297, 1929, London, HMSO. The courts have defined an agent provocateur as: “a person who promotes or instigates the commission of the offence charged”: see *R v Lawrence and Nash*, unreported (1993).

<sup>30</sup> The Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) Order 2000/2417, Article 2, Schedule, Part I.

<sup>31</sup> *Ibid.*

<sup>32</sup> Regulation of Investigatory Powers (Covert Human Intelligence Sources: Relevant Sources) Order 2013/2788, Part 3, Article 16.

<sup>33</sup> We have set out in the text the titles of those individuals who head police forces in England and Wales. Hereafter, we use the term *chief constables* to encompass all heads of police forces in England and Wales.

<sup>34</sup> Regulation of Investigatory Powers (Covert Human Intelligence Sources: Relevant Sources) Order 2013/2788, Part 2. Special rules also apply where the information concerned is legally privileged: Regulation of Investigatory Powers (Covert Human Intelligence Sources: Matters Subject to Legal Privilege) Order 2010/123.

- 3.13 If an authorisation is granted, it covers the conduct of the undercover officer and the use of the undercover officer,<sup>35</sup> as well as any incidental actions taken for the purposes of the investigation or operation.<sup>36</sup> All authorised conduct is lawful for all purposes.<sup>37</sup> This means that an authorisation is capable of rendering conduct lawful that would otherwise be criminal, or which might result in a civil action for damages.
- 3.14 Parliament has given the police service a very powerful weapon in its fight against crime – the ability of police officers to act covertly without legal redress provided that their actions are authorised correctly.
- 3.15 The grounds for authorisation, therefore, are extremely important and must be complied with scrupulously by the relevant officers. The detail is again set out in chapter 5 and annex D but, in essence, the authorising officer must be satisfied that the deployment of an undercover officer is necessary to prevent or detect crime, or is in the interests of national security, and that it is proportionate to the desired outcome. This involves a balancing exercise looking at the level of anticipated intrusion compared, for example, with the harm that it seeks to prevent.

## The policy context

- 3.16 Even before the introduction of the Regulation of Investigatory Powers Act 2000, and certainly reflecting it thereafter, the National Policing Improvement Agency, in consultation with chief officers and the Home Office, devised policy guidance for the police service on undercover policing.<sup>38</sup>

<sup>35</sup> The expression “the conduct or the use of” is found in section 29(2), Regulation of Investigatory Powers Act 2000. “Conduct” refers to the behaviour of the undercover officer while being deployed and “the use of” refers to the circumstances in which the undercover officer is authorised to be deployed. Through this report, we refer to “conduct or use”.

<sup>36</sup> Section 29(4), Regulation of Investigatory Powers Act 2000.

<sup>37</sup> Section 27(1), Regulation of Investigatory Powers Act 2000.

<sup>38</sup> For example, Home Office circular 97/1969 *Informants who take part in crime*; Home Office circular 35/1986 *Consolidated circular to the police on crime and kindred matters*; [Association of Chief Police Officers] and [Her Majesty’s Revenue and Customs] *guidance on undercover operations, practice of covert law enforcement techniques* (1999) [Restricted], and: [Association of Chief Police Officers] *Manual of standards for the deployment of undercover officers* (2003) [Restricted].

- 3.17 The National Policing Improvement Agency has since been replaced by the College of Policing.<sup>39</sup>
- 3.18 In June 2012, the previous guidance was replaced by guidance entitled: *Authorised Professional Practice Covert Undercover Operations*.<sup>40</sup> Its aim is to provide those who need to know with a single point of reference for all relevant guidance which may have a bearing on the practical decisions which they have to take in the field of undercover operations. However, because of the perceived confidential nature of the guidance, the document was marked as 'restricted'.<sup>41</sup> It is not available to members of the public. We comment further on the Authorised Professional Practice in chapter 5.

## The external supervisory context

- 3.19 At all times an undercover officer is deployed, his or her conduct and behaviour remain subject to the same internal discipline codes and regulations that cover all police officers,<sup>42</sup> and the Code of Ethics to which we refer in paragraph 2.26.
- 3.20 This means that any undercover officer who acts outside his or her authorisation without justification or who falls below the expected standards of behaviour risks being made the subject of discipline and misconduct proceedings.
- 3.21 In addition, there are a number of independent organisations that have, within their remit of responsibilities, a duty to ensure that undercover policing is carried out fairly, efficiently and effectively, and within the statutory framework laid down by the Regulation of Investigatory Powers Act 2000. We set out below the principal agencies that have such a role to play.

<sup>39</sup> The Home Secretary announced the creation of the College in December 2011. The College has a remit to set standards for the police service on training, development, skills and qualifications across all ranks and police staff.

<sup>40</sup> The College of Policing has stated that Authorised Professional Practice is now the national source of professional guidance on policing in England and Wales. The Authorised Professional Practice concerning undercover policing was prepared by the National Undercover Working Group – see chapter 5.

<sup>41</sup> We have been advised that this security marking was approved by the Chief Constables' Council, a body of chief constables established to agree policy statements: see paragraph 7.9 et seq.

<sup>42</sup> The Police (Conduct) Regulations 2012 made under sections 50, 51 and 84, Police Act 1996. The Regulations came into force on 22 November 2012.

## The Office of Surveillance Commissioners

- 3.22 The Office of Surveillance Commissioners is responsible for overseeing the use of covert surveillance by designated public authorities based in the United Kingdom.<sup>43</sup> It is independent from the government of the day and all other public authorities. Its primary function is to provide effective and efficient oversight so that the conduct of covert activities, including undercover policing involving a covert human intelligence source,<sup>44</sup> is in accordance with the Regulation of Investigatory Powers Act 2000 and Codes issued under that Act.
- 3.23 The Office of Surveillance Commissioners inspects the use of, and compliance with, the 2000 Act by the police and law enforcement agencies on an annual basis.<sup>45</sup>

## The Independent Police Complaints Commission

- 3.24 The Independent Police Complaints Commission investigates the most serious matters, including allegations of misconduct, death and cases of serious injury caused by the police or other agencies. It also deals with appeals against the way in which police record, resolve or investigate complaints against themselves.<sup>46</sup> This includes any relevant allegation made against an undercover officer.

## The Investigatory Powers Tribunal

- 3.25 The Tribunal investigates certain complaints that have been made by an individual concerning alleged interference with his or her property or communications providing that the complaint relates to the use of the Regulation of Investigatory Powers Act 2000.<sup>47</sup> This can be relevant when a covert human intelligence source is the subject of the complaint.

<sup>43</sup> The position of Chief Surveillance Commissioner was created by section 91, Police Act 1997 and the functions and staffing of the Office of Surveillance Commissioners are set out in sections 62 and 63, Regulation of Investigatory Powers Act 2000.

<sup>44</sup> Section 26(8), Regulation of Investigatory Powers Act 2000.

<sup>45</sup> The way in which the Office of Surveillance Commissioners functions is set out in: *Procedures and guidance – oversight arrangements for covert surveillance and property interference conducted by public authorities*, issued by the Chief Surveillance Commissioner, December 2011 [Restricted].

<sup>46</sup> The Commission was created by section 9, Police Reform Act 2002.

<sup>47</sup> The Tribunal was created by section 65, Regulation of Investigatory Powers Act 2000.



## 4. The practical context

### Types of undercover officer

- 4.1 There are three types of undercover officer: a foundation undercover officer; an advanced undercover officer; and an undercover online officer.
- 4.2 A foundation undercover officer is one who has passed the College of Policing's Foundation Undercover Training and Assessment Course (which is the entry point for all undercover officers) and is able to be deployed in specific operations. These deployments may include buying drugs on the street from a suspected drug dealer, or collecting drugs left at a designated venue,<sup>48</sup> or engaging in low-level contact with an individual or a criminal gang.<sup>49</sup> A foundation, as distinct from an advanced, undercover officer does not need the ability to withstand detailed interrogation over a sustained period of time by those who are the targets of his or her deployment.
- 4.3 An advanced undercover officer is one who has passed both the Foundation Undercover Training and Assessment Course and the National Undercover Training and Assessment Course.<sup>50</sup> Such officers are able to undertake more complex investigations and engage in longer-term infiltration of higher-tier criminals in a leading role, with the ability to withstand detailed interrogation. They will become involved in legend-building.<sup>51</sup>

<sup>48</sup> A foundation undercover officer may also be deployed to assist in the recovery of stolen property in an online market place on the internet.

<sup>49</sup> This includes local deployments in or around the undercover officer's own force, making casual and sometimes one-off relationships; it does not normally include physically residing for extended periods within a community without the written authority of an assistant chief constable.

<sup>50</sup> This is the position for aspiring advanced undercover officers today. We are aware that there are some existing advanced undercover officers who qualified before the advent of the Foundation Undercover Training and Assessment Course who are still deployed.

<sup>51</sup> Legend-building is the process whereby undercover officers visit locations and construct a personal history in order to develop or maintain a covert identity where there is not an intention to engage with the subjects of an investigation or operation.

- 4.4 Officers intending to put themselves forward for the National Undercover Training and Assessment Course must undergo psychometric tests to ensure that their personality traits fall within nationally approved parameters. They must also be regarded as suitable following an interview with a national assessment panel.<sup>52</sup>
- 4.5 There is no nationally agreed definition of an undercover online officer,<sup>53</sup> but such an officer should have successfully completed the Foundation Undercover Training and Assessment Course which trains him or her to undertake complex covert investigations and infiltration through the use of the internet. Such officers require a different set of skills from that of a conventional undercover officer as they are not often deployed to meet the subject of the investigation. Building on the definition used by one force, we consider the following to be an appropriate description:

*“[a]n undercover online officer is an appropriately trained law enforcement officer, who establishes or maintains a relationship through the internet, in order to obtain covertly information, intelligence or evidence against an individual, group of individuals or organisation.”*

## **The number of undercover officers**

- 4.6 An undercover officer is classified as active, reserve, or dormant. An undercover officer is ‘active’ if he or she has attended a continuous professional development event and been deployed as an undercover officer in the preceding 12 months. If an undercover officer does not meet the criteria for ‘active’ status, but has been deployed undercover in the preceding 24 months, he or she is placed in the ‘reserve’ status category. Any other undercover officer is classified as ‘dormant’.
- 4.7 We considered it essential to find out the number of undercover officers in England and Wales. We therefore approached all forces and law enforcement agencies and asked for the number of undercover officers under their command. However, it has become clear in analysing the data that we received that a number of forces and law enforcement

<sup>52</sup> The national assessment panel consists of two senior officers with responsibility for an accredited undercover unit and an experienced undercover covert operations manager appointed by the chair of the National Undercover Working Group.

<sup>53</sup> The force in question describes an undercover online police officer as: “an appropriately trained law enforcement officer, covertly deployed on an authorised investigation who via the internet, seeks to obtain information, intelligence or evidence against an individual, group of individuals or organisation”.

agencies double-counted officers who were both online undercover officers and either foundation or advanced undercover officers. It has not proved possible to separate these categories of officers with any degree of certainty from the figures provided. As such, our best estimate of the number of individual officers, including those classified as active, reserve and dormant, who may be deployed in any undercover capacity, is 1,229.<sup>54</sup>

- 4.8 The number of undercover officers in the 43 police forces alone is less than 1 percent of the total number of full-time equivalent police officers.

## **The type and number of undercover units**

- 4.9 Each chief constable and head of the law enforcement agencies which we inspected has discretion to decide whether to establish an undercover unit in his or her force or law enforcement agency and, if so, the type of unit to create and the number of undercover officers to staff it.
- 4.10 A police force's undercover unit is accountable to the chief constable who in turn reports on the efficiency and effectiveness of his or her force to his or her police and crime commissioner.<sup>55</sup>
- 4.11 There are two types of undercover unit: a recognised undercover capability unit and an accredited undercover unit. The former may only undertake undercover work which is carried out by foundation undercover officers.<sup>56</sup> The latter has the capability to use the full range of undercover techniques.<sup>57</sup>

<sup>54</sup> This figure includes the active advanced, foundation, and undercover online officers, and those who are in the reserve and dormant categories.

<sup>55</sup> Section 1(6), Police Reform and Social Responsibility Act 2011. The Mayor of London is responsible for the Police and Crime Plan covering the Metropolitan Police Service. The City of London Police has published a Policing Plan for the City of London which identifies its priorities as set in conjunction with its Police Committee: section 3.

<sup>56</sup> See paragraph 4.1 et seq. for the distinctions between the types of undercover officer.

<sup>57</sup> *Authorised Professional Practice Undercover Operations, Accredited Undercover Unit*, June 2012 [Restricted].

- 4.12 We were advised that there are 14 recognised undercover capability units and 25 accredited undercover units in England and Wales.<sup>58</sup> In some forces, these units include an undercover online capability. In others, that capability is provided by officers in a discrete unit.

## The management structure of undercover units

- 4.13 An undercover unit has a management team that is led by an undercover covert operations manager or head of unit who should be an officer of at least the rank of inspector or equivalent. The manager and his management team, including a cover officer,<sup>59</sup> support the head of profession<sup>60</sup> in setting the strategic direction and development of the undercover requirement. They manage the deployment of the undercover officer and should provide advice to an operational head or senior investigating officer regarding all aspects of undercover policing.
- 4.14 The cover officer has day-to-day responsibility for managing undercover officers<sup>61</sup> and addresses their security and welfare needs. He or she also acts as the link between the senior investigating officer and the undercover covert operations manager. Covert finance<sup>62</sup> and general finance, as well as human resources, are supplied by an administration team, invariably but not exclusively assigned to work in the unit.
- 4.15 Only police forces and law enforcement agencies with accredited undercover unit status may manage an operation involving the deployment of an advanced undercover officer.

<sup>58</sup> Figures obtained from analysis of the data collected by HMIC supplied by law enforcement agencies at the start of the inspection.

<sup>59</sup> The cover officer's role is explained in paragraph 6.28.

<sup>60</sup> The head of profession is the head of crime for a police force or equivalent who has overall responsibility for special operations, including undercover policing.

<sup>61</sup> Section 29(4A)(a) and 29(5)(a), Regulation of Investigatory Powers Act 2000.

<sup>62</sup> The finance that undercover officers may require during their deployment is one aspect of what is known as 'backstopping', which enables an infrastructure to be created and maintained around the undercover officer to help to avoid detection.

- 4.16 The most important feature of an undercover unit is that its staff do not instigate their own operations. An undercover officer should only ever be deployed to support an existing intelligence-gathering or evidence-gathering operation, the procedures in relation to which are set out in the National Intelligence Model.<sup>63</sup>
- 4.17 The separation of the undercover unit from the team that is responsible for the investigation in which the unit's members may be deployed enables an important series of checks and balances to be put in place and is seen by the police and law enforcement agencies as good practice. We agree. The undercover officers are kept away from the day-to-day running of the investigation. The separation, in line management terms, of the officer from the investigation tries to ensure that the senior investigating officer does not overstep the mark in what he or she demands of the undercover officer.

## **The deployment of undercover officers**

- 4.18 Undercover units are an expensive part of policing. Some smaller police forces have limited undercover capability; some have none at all; and some do not possess the covert infrastructure to house an advanced undercover unit.
- 4.19 Forces that have only a recognised undercover capability unit may use another force's accredited undercover unit and its resources.

<sup>63</sup> The National Intelligence Model is a business model to ensure that policing is provided in a targeted manner through the development of information and intelligence. It facilitates the prioritisation of police activity. See: *Guidance on the National Intelligence Model, 2005*, produced by the National Centre for Policing Excellence on behalf of the Association of Chief Police Officers. The National Centre for Policing Excellence was a forerunner to the College of Policing. A code of practice relating to the operation of the model was issued in January 2005 by the Home Secretary under sections 39 and 39A, Police Act 1996, sections 28 and 73, Police Act 1997, and sections 28A and 73A, Police Act 1997.

4.20 A system of importing and exporting undercover officers exists.<sup>64</sup> When this occurs, the scrutiny around the undercover officer effectively increases as he or she has two cover officers: one from the host force to act as the link between the undercover officer and the senior investigating officer, and to comply with the requirements of the Regulation of Investigatory Powers Act 2000; and the other from the donor force to ensure that the security and welfare needs of the undercover officer are addressed. The two cover officers should be in regular contact to ensure continuity and consistency of approach towards the needs and requirements of the undercover officer.

## The volume of undercover work

4.21 The following table sets out the number of undercover operations which were authorised between 1 October 2009 and 30 September 2013.

	Advanced operations		Foundation operations		Undercover online operations	
	1 Oct 2009 to 30 Sep 2011	1 Oct 2011 to 30 Sep 2013	1 Oct 2009 to 30 Sep 2011	1 Oct 2011 to 30 Sep 2013	1 Oct 2009 to 30 Sep 2011	1 Oct 2011 to 30 Sep 2013
Total	438	407	1000	1039	228	354

4.22 We set out our findings in the chapters that follow.

<sup>64</sup> A force or law enforcement agency, known as the 'host' force, will make a request within the undercover community for an undercover officer fitting the required profile who will be provided by another force or agency, known as the 'donor' force.

## 5. The way undercover officers operate in practice

- 5.1 Our first term of reference was to consider the way undercover officers operate in practice in order to explore their understanding and compliance with the Regulation of Investigatory Powers Act 2000 and the Authorised Professional Practice.
- 5.2 We summarise in chapter 3 and set out in annex D the legal framework and policy guidance within which undercover policing operations are required to be conducted. It is, of course, axiomatic to state that all undercover policing deployments must be lawful and that they should comply with internal policies, codes of practice, and guidelines. Because of the importance of the authorisation process, we have set the legal requirements out again, this time in more detail in paragraphs 5.8 - 20, so that they remain in the forefront of people's minds when they come to read our findings with regard to the extent and level of compliance which we found during the course of our inspection.
- 5.3 During our fieldwork, we considered specifically the quality of decisions taken by all those involved in the deployment of undercover officers: the undercover officers themselves; their cover officers; and their undercover covert operations managers.
- 5.4 We interviewed more than 200 undercover officers and examined in detail in excess of 100 case files. We specifically sought the views of Crown Prosecution Service lawyers.
- 5.5 We found that, in general, undercover officers carried out their roles professionally, courageously and with integrity. We were impressed by their keen awareness of the vital role which they play in protecting our communities, and the legal, practical and ethical environment in which they operate. This view was supported by the heads of complex case units in the Crown Prosecution Service.

- 5.6 We found good evidence that those involved in undercover policing had a thorough understanding of the Regulation of Investigatory Powers Act 2000 and the human rights environment in which they are required to work. This extended to the specific acts in which they engaged and the relationships which they formed. With regard to those who directly manage undercover officers, we found, generally, a high level of understanding of their roles and responsibilities.<sup>65</sup>
- 5.7 Whilst that is the position with regard to undercover officers themselves, during our fieldwork, we identified some cause for concern regarding the seeking of authorisations to deploy and the authorisation process itself. We set out our findings in the paragraphs that follow.

## The authorisation process

- 5.8 As we have stated in paragraph 5.2, we repeat here the legal requirements in detail with regard to the authorisation process to help the reader better to understand the context of our findings. The legal framework hinges on those who carry out undercover policing being authorised to do so in accordance with the Regulation of Investigatory Powers Act 2000.<sup>66</sup>
- 5.9 Up until 2013, authorisation for the use of all covert human intelligence sources, including undercover officers, was given by an officer of the rank of superintendent or above,<sup>67</sup> or by an inspector in urgent cases.<sup>68</sup> However, in 2013, the law was amended so that, from 1 January 2014, authorisation for undercover officers has to be given by an assistant chief constable or by a commander in the Metropolitan Police Service or the City of London Police or his or her equivalent in other law enforcement agencies.<sup>69</sup>

<sup>65</sup> There is one important caveat that we need to add: our inspection process cannot cater for any instance where undercover policing was used as a tactic but in which the appropriate authority was not sought. In the absence of a review of every investigation conducted by a force over a given period of time to see if such an instance existed, there is no obvious way in which the case where the undercover tactic was deployed without authorisation may be isolated. We accept the limitation in our methodology that our approach necessarily involved.

<sup>66</sup> Sections 27-32, Regulation of Investigatory Powers Act 2000.

<sup>67</sup> Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) Order 2000/2417, Article 2, Schedule, Part I.

<sup>68</sup> *Ibid.*

<sup>69</sup> Regulation of Investigatory Powers (Covert Human Intelligence Sources: Relevant Sources) Order 2013/2788, Part 3, Article 16.



- 5.10 Where a covert human intelligence source is intended to be deployed for more than 12 months, authorisation can only be given by a chief constable or by the commissioner of the Metropolitan Police Service or the City of London Police or his or her equivalent in other law enforcement agencies. In addition, the prior approval of one of the Ordinary Surveillance Commissioners, who are all current or former senior judges, is required.<sup>70</sup>
- 5.11 An authorisation is for the conduct and use of the covert human intelligence source. An authorisation must specify or describe the activities involved in that conduct or use. If an authorisation is granted, it covers the conduct and use of the undercover officer, and any incidental actions taken for the purposes of the investigation or operation.<sup>71</sup> The grant of an authorisation has important legal consequences: conduct in accordance with an authorisation is lawful for all purposes.<sup>72</sup> This means that an authorisation is capable of rendering conduct lawful that would otherwise be criminal, or which might result in a civil action for damages.
- 5.12 It is clear, therefore, that Parliament has given the police service a very powerful weapon in its fight against crime: the ability of police officers to act covertly without legal redress provided that their actions are authorised correctly.
- 5.13 The grounds for authorisation, therefore, are extremely important and must be scrupulously complied with by the relevant officers. There are a number of considerations which the authorising officer must take into account.
- 5.14 First, he or she must be satisfied that the authorisation is necessary for one or more of the specified purposes which are listed in the Regulation of Investigatory Powers Act 2000, such as the prevention or detection of crime or the interests of national security.<sup>73</sup>

<sup>70</sup> *Op cit*, Part 2. Special rules also apply where the information concerned is legally privileged: Regulation of Investigatory Powers (Covert Human Intelligence Sources: Matters Subject to Legal Privilege) Order 2010/ 123.

<sup>71</sup> Section 29(4), Regulation of Investigatory Powers Act 2000.

<sup>72</sup> Section 27(1), Regulation of Investigatory Powers Act 2000.

<sup>73</sup> Section 29(2)(a), Regulation of Investigatory Powers Act 2000.

5.15 Secondly, he or she must be satisfied that the authorised conduct or use is proportionate to the desired outcome.<sup>74</sup> This involves a balancing exercise looking at the nature of the conduct compared, for example, with the harm that it seeks to prevent. In general, it would not be proportionate to deploy an undercover officer in order to prevent or detect a minor crime.

5.16 In practice, this requires the authorising officer to consider:

- the operational objectives and plan for the deployment;
- the balance between the size and scope of the proposed activity and the gravity and extent of the perceived criminal offence;
- an explanation for how and why the methods to be used will cause the least possible intrusion on the subject and others;
- whether the activity is an appropriate use of the legislation and a reasonable way, having considered all reasonable alternatives, of obtaining the necessary result; and
- evidence, as far as reasonably practicable, of what other methods have been considered and why they are not being used.

5.17 Thirdly, he or she must be satisfied that there are certain logistical arrangements in place. There must be:

- a police officer with day-to-day responsibility for dealing with the undercover officer, and for the undercover officer's security and welfare;<sup>75</sup>
- a separate police officer who has general oversight of the use of the undercover officer;<sup>76</sup> and

<sup>74</sup> Sections 29(2)(b), Regulation of Investigatory Powers Act 2000.

<sup>75</sup> Section 29(4A)(a), Regulation of Investigatory Powers Act 2000. This person is in practice known as the cover officer.

<sup>76</sup> Section 29(4A)(a), Regulation of Investigatory Powers Act 2000. This person is known as the undercover covert operations manager.

- a police officer with responsibility for maintaining a detailed record of the use made of the undercover officer, with those records only being disclosed where necessary.<sup>77</sup>
- 5.18 The records must contain important details, including: the tasking given to the undercover officer; any communications between the undercover officer and his or her force; and the information obtained.<sup>78</sup>
- 5.19 The authorising or renewing officer has an important additional function, that is, to cancel the authorisation if he or she is satisfied that the conditions for granting it are no longer met.<sup>79</sup> This requires the authorising or renewing officer to keep the authorisation under constant review.
- 5.20 According to the relevant Code of Practice, reviews should be carried out as frequently as considered necessary and practicable, for the purpose of determining whether the use of the covert human intelligence source remains necessary and proportionate, and whether the authorisation remains justified.<sup>80</sup>

## **When authorisation should be sought**

- 5.21 We found some confusion about the stage at which an undercover officer is actually deployed for the purposes of the Regulation of Investigatory Powers Act 2000. This is a particular problem in legend-building.<sup>81</sup>
- 5.22 The confusion around legend-building is understandable because there appears to be conflicting advice issued by the National Undercover Working Group and the College of Policing on the one hand, and the Office of Surveillance Commissioners on the other.

<sup>77</sup> Section 29(2)(c), Regulation of Investigatory Powers Act 2000.

<sup>78</sup> Regulation of Investigatory Powers (Source Records) Regulations 2000/ 2725.

<sup>79</sup> Section 45, Regulation of Investigatory Powers Act 2000.

<sup>80</sup> *Covert Human Intelligence Sources Code of Practice*, issued pursuant to section 71, Regulation of Investigatory Powers Act 2000, paragraphs 5.16-17.

<sup>81</sup> See annex D, paragraph 41 et seq.

5.23 The Authorised Professional Practice states that:

*“all legend-building activity must be authorised under the Regulation of Investigatory Powers Act 2000...Authorisation for legend-building sits at the same level as full authorisations...This is a requirement”.*

5.24 That view is not supported by the Office of Surveillance Commissioners which states that:

*“[i]f the relationship is for a covert purpose, and the activity relates to a current operation, an authorisation should be obtained. Where the legend is being prepared for possible later use an authorisation may not be necessary”.*<sup>82</sup>

5.25 We consulted a barrister well versed in this area of the law. He advised us that relationships formed during the legend-building stage have as much capacity to interfere with Article 8 rights (the right to respect for private and family life) as those formed during operational deployment. Consequently, it would be inconsistent with one of the fundamental purposes of the Regulation of Investigatory Powers Act 2000 if it were not a requirement to authorise such relationships where they are necessary and proportionate in the interests of law enforcement.

5.26 Regardless of any legal obligation, we consider that any deployment for legend-building should be subject to the same degree of scrutiny as any other stage in the deployment of an undercover officer.

5.27 During the early phase of legend-building, an undercover officer lacks the focus that comes with operational deployment, because there is not, at that stage, a specific target with whom the legend-building officer has a relationship. However, in order to maintain his or her legend, the undercover officer has to keep his or her false persona up-to-date throughout the lifetime of his or her deployment. This will include occasions both before and after actual undercover deployments.

<sup>82</sup> *Procedures and guidance*, Office of Surveillance Commissioners. December 2011 [Restricted].

- 5.28 During the legend-building process and while it is being maintained, it is clear that the officer may form a relationship with others in order to construct the false edifice of the officer's background story. These relationships may constitute collateral intrusion<sup>83</sup> as there is a strong likelihood that, in some instances, the officer obtains private information from law-abiding members of the public.
- 5.29 In the light of the legal analysis that we have set out earlier in this chapter, chapter 3 and annex D, we consider that greater clarity should be brought to the need for authorisation under the Regulation of Investigatory Powers Act 2000 in all instances where legend-building is undertaken. There needs to be consultation between the National Undercover Working Group, the Home Office and the Office of Surveillance Commissioners.

### **Recommendation 1**

**The National Undercover Working Group should consult the Home Office and the Office of Surveillance Commissioners with a view to establishing a requirement that all legend-building should be subject to the statutory regime set out in Part II of the Regulation of Investigatory Powers Act 2000, and this should be reflected in amendments to the relevant Code of Practice.**

- 5.30 During our inspection, we found that some forces and agencies followed the Authorised Professional Practice policy and authorised the conduct or use of an undercover officer for legend-building just as they would for a full operational deployment. Others did not consider such authorisation to be necessary.
- 5.31 One force has introduced a policy which permits a detective inspector to authorise deployment for legend-building. We set out below the approach adopted by that force.

<sup>83</sup> See paragraph 5.65 et seq.

When legend-building is considered appropriate, an application form is prepared and submitted to the detective inspector with responsibility for advanced undercover officers, who may authorise relevant activity for a period of 12 months, subject to monthly reviews.

The application form is comprehensive and consists of nine sections which include: details of the legend plan; the geographical area; the likelihood of collateral intrusion and ways in which it will be minimised; the likelihood of obtaining confidential information; and a risk assessment, taking into account moral and ethical considerations.

The undercover officer does not start his or her work until he or she is told that authority has been granted for legend-building activities and that he or she is authorised to visit and frequent geographical areas and venues for the purpose of establishing, maintaining, or developing a false identity.

The undercover officer is reminded of Articles 6 and 8 of the European Convention on Human Rights and is instructed that he or she does not have any authority to participate in crime while engaged in legend-building activities. The undercover officer is required to sign indicating that he or she is aware of the limits of the authorisation.

The undercover officer is also issued with a legend-building notebook for recording details of those individuals with whom he or she interacts and where, and expenditure. The notebook is presented to the detective inspector on a monthly basis.

- 5.32 We found this to be a well-managed and transparent policy. But it is only one of several approaches that exist in the forces in England and Wales. Given the sensitivity of this area of police work, there should be, in our opinion, greater levels of uniformity across forces and law enforcement agencies.

## Levels of authorisation

- 5.33 As we have previously stated in paragraph 5.9, from 1 January 2014, any undercover authorisation must be granted by an officer of at least the rank of assistant chief constable, commander or their equivalent.<sup>84</sup> Before that date, an officer of the rank of superintendent was able to authorise undercover deployments.<sup>85</sup>
- 5.34 In 2003, the Association of Chief Police Officers had issued a policy that, notwithstanding the then statutory position, any deployment of an advanced undercover officer should only be authorised by an assistant chief constable.
- 5.35 We understand that the Office of Surveillance Commissioners informed each force of the 2014 statutory change. In addition, the secretary of the National Undercover Working Group wrote to all undercover units and the chair of the Working Group wrote to all chief constables to advise them of the new requirement.
- 5.36 Despite this, all the staff whom we interviewed in one force, which we visited in late February 2014, were unaware that the law had changed. Fortunately, a deployment had not been authorised since 1 January 2014.
- 5.37 Our inspection spanned the introduction of the new statutory requirement. The cases which we considered tended to have been authorised prior to 1 January 2014, and, as a result, the authorising officers were a mix of superintendents and assistant chief constables.
- 5.38 We only found one force where the authorisation levels set by the Association of Chief Police Officers had not been adhered to by the force. Until as recently as three months before our inspection, all that force's deployments, at both foundation and advanced level, had been authorised at superintendent level, contrary to the internal policy requirement which the Association had introduced in 2003. By the time of our visit in November 2013, the position had changed and operations involving advanced undercover officers were being authorised by an assistant chief constable.

<sup>84</sup> Regulation of Investigatory Powers (Covert Human Intelligence Sources: Relevant Sources) Order 2013/2788, Part 3, Article 16.

<sup>85</sup> Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) Order 2000/2417, Article 2, Schedule, Part I.

- 5.39 In practice, we found that forces and law enforcement agencies concentrate their undercover deployments as a response to serious crime. The assistant chief constable or equivalent in law enforcement agencies who authorises undercover operations tends to be responsible generally for the conduct of all criminal investigations, including any undercover operations.
- 5.40 One force has clearly given this matter some thought and has decided that a different assistant chief constable, who is not responsible for the conduct of criminal investigations, should authorise undercover deployments in order to introduce greater independent scrutiny. We applaud the care and consideration which went into that decision, but we recognise that it may not be possible for smaller forces to adopt the same approach.

## **The quality of authorisations**

- 5.41 An undercover operation should only be mounted if there are sound reasons for doing so, underpinned by a strong intelligence case. The police are not entitled to use such an intrusive police tactic in the hope that some useful intelligence or evidence might emerge as a result – the so-called ‘fishing expedition’.
- 5.42 To seek to prevent such applications being put forward, the procedure to obtain an authorisation is comprehensive and involves setting out in detail what should be achieved by the undercover deployment and how.
- 5.43 The application must show why an undercover deployment is considered necessary and why the tactic is proportionate.<sup>86</sup> It must also demonstrate that the risk of collateral intrusion has been considered and specify what steps will be taken to minimise that risk.
- 5.44 Having considered the application, the authorising officer must record his or her findings and decision. During our inspection, we examined documents completed by both assistant chief constables and superintendents acting as authorising officers.

<sup>86</sup> See paragraph 3.15.



- 5.45 The quality of authorities varied greatly, which heightened our concern that so few assistant chief constables have taken advantage of a new authorising officers' course.<sup>87</sup> Many authorities which we examined were very detailed, but others were less so, and frequently we found that the contents of one authority had been copied to another.
- 5.46 The best authorities listed the other policing methods that had either been tried and had failed or had been considered but which were thought to be unlikely to succeed, in compliance with the need for the authorising officer to assess whether other methods of investigation could achieve the same aim.<sup>88</sup>
- 5.47 Although all those with whom we spoke were aware that an undercover operation had to be necessary and proportionate, we found that, in practice, the depth of deliberation given to this consideration was not always reflected in the paperwork which supported the request for authorisation or, indeed, in the commentary supporting the authorisation. That said, when we spoke to the authorising officers, they were able orally to provide us with sufficient information to justify the authorities. This suggests that the problem lies in authorising officers either not having the skills and knowledge necessary to make a clear and comprehensive record of the authority - or not having sufficient time to complete the records.
- 5.48 In one force, officers sought to provide support for their application to deploy undercover officers by stating:
- “such criminality has a huge impact on the social and economic fabric of [the force] and the wider... region. A successful outcome to this operation would greatly enhance the reputation and credibility of the [force].”*
- 5.49 In our view, reputational issues which might affect the force concerned are not relevant to the granting of an authority under the Regulation of Investigatory Powers Act 2000, and on their own are insufficient to justify the authorising of such a highly intrusive policing tactic. In this instance, however, there were other grounds which justified the granting of the authority.

<sup>87</sup> See paragraph 8.105 et seq.

<sup>88</sup> See paragraph 5.16.

- 5.50 Nevertheless, in granting the authority, the assistant chief constable should have provided written evidence, as far as reasonably practicable, about other methods that had been considered and why they had not been implemented. This was not recorded. Neither was there any explanation about how the deployed officers would seek to minimise the degree of collateral intrusion that the deployment would cause.
- 5.51 We note, in passing, that the phrases used in the application that we have quoted above were repeated in another application for authorisation to deploy undercover officers in an entirely separate investigation in the same force. This suggests to us that insufficient care is being taken to consider each investigation on its merits. It is highly unlikely that two investigations will be so similar that the language of the application can simply be transferred, one to the other. It demonstrates a lack of specific thought and a reliance on general platitudes of good intent that should not have any place in applications to deploy such a sensitive police tactic.
- 5.52 This was not the only instance of such behaviour. In one force, generic phrases had clearly been copied from a previous authority onto another which was for an undercover online operation involving the sexual exploitation of children. Unfortunately, too much material was carried over from the previous authority, which related to a completely unconnected operation looking at gun crime, and, as a result, the new authority inadvertently granted permission for the online investigator to purchase firearms.
- 5.53 This illustrates the quality of the consideration given by the authorising officer as well as the officer making the application.
- 5.54 We were pleased to find, in contrast to this example, many others which showed that there was a meticulous and well-documented procedure in forces.

In one case we examined, the senior investigating officer documented the proposed objectives in the application to authorise the deployment of undercover officers.

The application listed a number of other policing methods that had been tried and demonstrated that necessity, proportionality and ways to minimise collateral intrusion had been carefully considered, with due regard to the European Convention on Human Rights.

It also set clear timescales for each stage of the proposed operation.

The assistant chief constable considered the application and authorised the deployment of the undercover officers. He also authorised, in detail, their participation in crime and showed that he had fully considered the potential consequences of an undercover officer sharing drugs with another person.

We found that a media strategy was considered from the outset of this operation with a service level agreement between the force's press office and its covert operations unit to ensure that the tactic was protected.

The authority was later noted and signed by both the undercover officers and a Crown Prosecution Service lawyer.

- 5.55 In interview, the assistant chief constable responsible for granting this and other authorities that we examined told us: “[t]here is not a word, a punctuation mark or digit in those authorities that is not mine.”
- 5.56 The assistant chief constable concerned had taken the trouble to improve his knowledge and awareness of undercover policing while awaiting the College of Policing’s course for authorising officers.<sup>89</sup>

<sup>89</sup> See paragraph 8.110 et seq.

## The review and renewal of authorisations

- 5.57 Every undercover deployment has to be reviewed and renewed by the authorising officer at regular intervals.<sup>90</sup> The considerations that apply to the grant of an authority at the outset of an undercover deployment apply equally at these stages. The same rigour should be applied to the review and renewal stages as the initial application process. Indeed, it is arguable that a more rigorous analysis should be undertaken at these later stages for two reasons: first, because the intrusion by the review stage will have been going on for some time and, in all likelihood, a greater degree of intrusion will be occurring than at the outset; and, secondly, the authorising officer will be able to take into account any benefits that the undercover deployment will have already obtained in the first period of authorisation. In other words, the authorising officer who is considering the review or renewal will be able to consider whether the deployment has started to meet its objectives.
- 5.58 We found that weaknesses during the initial authorisation process were perpetuated during the review and renewal stages.
- 5.59 In the case referred to in paragraph 5.48,<sup>91</sup> the authorising officer's comments were again weak at the time of review. The assistant chief constable documented the decision that the operation should continue but did not detail how that decision had been reached. The review did not adequately cover proportionality, necessity and which alternative methods of investigation had been considered.
- 5.60 In addition, in that instance, it is clear to us that the assistant chief constable relied on information that he had been given orally about how the criminality of the target had had an impact on a neighbouring force. Whilst that fact was used to justify the deployment of undercover officers, there was no documentary evidence of it in the application.
- 5.61 We consider the absence of such evidence would cause substantial difficulty for the assistant chief constable if the decisions that were taken were ever challenged, as there would not be a documentary audit trail of the decision-making process – often a critical difficulty for those who have to justify their decisions in the High Court.

<sup>90</sup> See paragraph 5.20.

<sup>91</sup> See paragraph 5.48.

- 5.62 Whenever a force starts an undercover operation, it must ensure that it is in a position to act on the intelligence which the undercover officer obtains and sends back to the force, or at least to be able to justify why it has not done so. If a force does not act on the information from the undercover officer, there must be a question about the necessity of the deployment. There may be good reason why a force does not act on a piece of intelligence, for instance, to protect the deployment and its greater operational objectives, but a repeated inability to respond through a lack of resources (which was an explanation given to us by one force) cannot be justified.
- 5.63 Whenever an authorising officer considers a deployment at review or renewal stage, rather than simply listing achievements, any intelligence opportunities that have not been acted upon should be documented, and with the reasons. If inactivity cannot be justified, the validity of the whole operation is called into question.
- 5.64 During our fieldwork, we found one example where a force did not act on a significant proportion of the intelligence obtained by the undercover officers: see paragraph 7.90.

## Recommendation 2

**At review and renewal stages, authorising officers should ensure that any intelligence opportunities that have not been acted on are documented and taken into consideration when deciding whether the continued deployment of an undercover officer is justified.**

## Collateral intrusion

- 5.65 Collateral intrusion is the term given to “the risk of interference with the private and family life of persons who are not the intended subjects of the covert human intelligence source activity”.<sup>92</sup>
- 5.66 Undercover officers are very often likely to form such relationships and obtain information during the course of their deployment, and these are material considerations for those who authorise the use of undercover officers.

<sup>92</sup> *Covert Human Intelligence Sources Code of Practice*, issued pursuant to section 71, Regulation of Investigatory Powers Act 2000, Home Office, 2010, paragraph 3.8.

5.67 We found good evidence that collateral intrusion was considered both from the outset and throughout operations. However, we consider that a more consistent and systematic approach needs to be taken in its regard.

5.68 In its 2012 review, HMIC said the following:

*“[t]he authorising officer of an undercover deployment must take into account the risk of intrusion into the privacy of persons other than those directly implicated in the operation or investigation. Such ‘collateral intrusion’ must be reasonable and justified in the specific circumstances, and the mitigation of all forms of collateral intrusion should be planned for and considered.*

*“There are three main categories:*

- 1 inevitable intrusion (such as into the privacy of intimate associates of the subject);*
- 2 foreseeable intrusion (such as into the privacy of known associates); and*
- 3 general intrusion (such as into the privacy of other members of the public who come into contact with the subject).”<sup>93</sup>*

5.69 This continues to provide a sound basis for addressing the issue of collateral intrusion.

### **Recommendation 3**

**Authorising officers should record their findings regarding collateral intrusion under the three categories of inevitable, foreseeable and general intrusion when setting out their decisions to authorise or renew an application for the deployment of an undercover officer, and at every review stage.**

<sup>93</sup> A review of national police units which provide intelligence on criminality associated with protest, HMIC, January 2012, page 21.

## Authorised Professional Practice

- 5.70 We set out in chapter 7 the way in which the College of Policing and the National Undercover Working Group<sup>94</sup> have sought to provide the police service with policy guidance in the area of undercover policing through the Authorised Professional Practice. The guidance is not comprehensive, and, as a result, not of great use to those responsible for managing undercover deployments or for those who are actually deployed.
- 5.71 However, no matter its weaknesses and omissions, the fact remains that the police service does have guidance of a sort to which to refer.
- 5.72 As a result, the Authorised Professional Practice should be essential reading for everyone involved in undercover policing. In reality, however, we found there was little knowledge of it, even amongst those who worked in units where their colleagues had been involved in drafting it. The undercover covert operations manager in one regional unit, for example, had played a significant part in producing the Authorised Professional Practice, but we found that its content was not well known by the chief officer, the detective superintendent, senior investigating officers or the undercover officers themselves in that force.
- 5.73 This picture was broadly replicated throughout England and Wales. Frequently, we found that relevant individuals had been denied access to the Authorised Professional Practice and that, on occasion, entire units had not seen it. Staff in one force, for example, claimed that their aligned parent unit from another force only let them see it one week prior to our visit.
- 5.74 We were particularly concerned that those Crown Prosecution Service lawyers who deal with cases involving undercover policing with whom we spoke had not seen the document and were not even aware of its existence. Indeed, we understand that the Crown Prosecution Service is drafting its own covert guidance manual in order to assist its prosecutors without having read the relevant part of the Authorised Professional Practice. Furthermore, we found that psychologists with responsibility for an undercover officer's welfare had little, if any, knowledge of the Authorised Professional Practice.

<sup>94</sup> See paragraph 7.20 et seq.

- 5.75 It seems absurd to us that the principal prosecuting authority which is responsible for cases involving police undercover officers has not had sight of the document that purports to guide those officers in their activities, behaviours and conduct. Whilst we recognise and accept the need for appropriate levels of confidentiality in an area of policing that is so sensitive, those responsible for setting such levels of confidentiality need to reflect upon the benefits which disclosing the relevant guidance to partner agencies would bring. We consider that the Authorised Professional Practice should be shared with relevant lawyers in the Crown Prosecution Service.
- 5.76 During our inspection, those whom we interviewed frequently attributed the lack of access to the document to its 'restricted' security marking, but, in reality, we found that even those who had been granted access to it often had not read it.
- 5.77 We are pleased to record that there were some notable exceptions: undercover officers in one force who are new to the role are required to read the Authorised Professional Practice and sign to confirm that they have done so; and those in relevant roles in another force demonstrated a clear understanding of the Authorised Professional Practice, and the undercover covert operations manager there provided evidence of briefing staff on it and inviting comment.
- 5.78 Regardless of how widely the document has been circulated and read, however, its quality and usefulness are in some doubt, as it was criticised frequently during our inspection. A recurring theme was that it lacks detail, with frequent comments stating that it was: "too light" and "too generic". We support these observations.

#### **Recommendation 4**

**The College of Policing and the National Crime Business Area should review the Authorised Professional Practice to ensure that it is comprehensive and appropriately specific.**

#### **Recommendation 5**

**The College of Policing and the National Crime Business Area should agree with representatives of the Crown Prosecution Service the way in which the Authorised Professional Practice can be made available to those members of the Service who need to read it.**



## **Recommendation 6**

**The College of Policing and the National Crime Business Area should review the security marking of the revised Authorised Professional Practice with a view to making it available generally, or, where circumstances properly require it, to making a redacted version of it available generally. The College and the Business Area should bear in mind that public confidence in the use of undercover policing is more likely to be earned and maintained by adopting a more open and transparent approach.**

## 6. Supervision and day-to-day management and support

- 6.1 Our second term of reference was to consider the supervision, day-to-day management, support and tasking of officers deployed undercover by police forces and [the National Crime Agency].<sup>95</sup>
- 6.2 We focused on the level and quality of direct managerial supervision and oversight of undercover operations, and on the level and quality of support provided to undercover officers in terms of their welfare needs.

### The supervision and oversight of operations

- 6.3 During our fieldwork, we were pleased to find that there was a high level of intrusive supervision by those officers who were responsible for managing and supervising day-to-day undercover operations. Intrusive supervision is the term generally used to describe the extent to which those who are more experienced, or who are of a higher rank, oversee and manage the activities of those under their command.
- 6.4 We found instances where chief officers personally took an active role in ensuring that the undercover operations in their forces were being undertaken appropriately. For example, in one force, chief officers required updates over and above the authorisation process under the Regulation of Investigatory Powers Act 2000.<sup>96</sup> This included a monthly briefing for the chief constable. There was clearly a culture of intrusive management and supervision at all organisational and operational levels, and we found that those connected with undercover operations were fully aware of their roles and responsibilities and committed to providing the best possible service.
- 6.5 However, there was less engagement by chief officers and some senior investigating officers in other forces – both in terms of their awareness of the day-to-day issues surrounding undercover policing generally, and in terms of their interest in it.<sup>97</sup>

<sup>95</sup> Our original terms of reference referred to the Serious Organised Crime Agency but this was replaced by the National Crime Agency during the course of our inspection.

<sup>96</sup> See paragraph 5.8 et seq.

<sup>97</sup> See paragraph 7.89 and paragraph 5.45.

## Selecting the most appropriate undercover officers

- 6.6 On a practical level, the starting point in any undercover operation is the identification of appropriately trained officers to be deployed. We were concerned to find an absence of consistency in how forces addressed this.
- 6.7 As a national policing tactic which requires the deployment of advanced undercover officers, usually from outside the force which is conducting the investigation, we expected to find a coherent approach to the way in which forces sought the assistance of officers from other forces. We also expected to find detailed criteria by which senior officers assess such requests and judge them against any local needs so that a balanced decision might be taken about loaning officers. This would avoid any suggestion of perceived local needs overriding the greater need of the requesting force.
- 6.8 We found that, often, requests for undercover officers were made on an *ad hoc* basis by staff in one undercover unit contacting colleagues whom they knew in another to find out which officers were available to help.
- 6.9 Over time, such arrangements become the order of the day and we are concerned that they are too narrow. They can result in the same officers being loaned between forces without reference to the wider pool of undercover officers. In turn, this may lessen the necessary degree of detachment between those in charge of the investigation and the undercover officers and those who manage them. It is easy then to foresee a time when too familiar a relationship is allowed to develop.
- 6.10 A foundation undercover officer's working day falls broadly into three stages: briefing and preparation; operational deployment; and debriefing and administration, such as making records and dealing with any evidence.
- 6.11 The working day of an advanced undercover officer generally follows the same pattern, although he or she may not necessarily take part in a daily briefing and debriefing process.

## Briefing the undercover officer

- 6.12 The Authorised Professional Practice states:

*“[p]rior to deployment...the cover officer and operational head must ensure that all designated undercover officers compile a record of evidence, receive instructions and a briefing on the deployment and the authorised conduct.”*

6.13 We found that undercover officers are shown the authority which permits their deployment and are instructed on its operational objectives. Crucially, they are also instructed on which actions and activities they may and may not undertake, which is iterated and reiterated throughout the operation. We found that they are also briefed about their obligations under the European Convention on Human Rights.<sup>98</sup>

6.14 However, we found that there was inconsistency about who should conduct the briefing of undercover officers. The Authorised Professional Practice refers to the senior investigating officer as the “operational head” and defines that individual as:

*“an officer of at least inspector rank (or equivalent) who has day-to-day responsibility for the investigation using undercover officers”.*

6.15 That responsibility includes: “setting clear, unambiguous objectives for the investigation”.

6.16 Whether that definition extends to briefing undercover officers is debatable.

6.17 The Authorised Professional Practice states that it is the responsibility of the operational head to brief undercover officers prior to deployments. However, it also states that:

*“[s]terile corridors (or firewalls) safeguard against compromise, help provide effective protection for all intelligence and/or evidence, and assist in preserving the integrity of the investigation and prosecution.”*

6.18 It goes on to state that a sterile corridor must be maintained between the undercover officer and the operational team.

<sup>98</sup> See paragraph 3.10.

- 6.19 The operational head is, by definition, the leader of the operational team and the guidance can be taken, therefore, as meaning that the operational head should not be involved in briefing undercover officers. The situation is made worse by terminology. The Authorised Professional Practice uses the term “operational head”. However, this role is more commonly referred to as that of the ‘senior investigating officer’.
- 6.20 As a result of the current guidance, some forces adopt the practice of keeping senior investigating officers, or operational heads, away from the undercover officers who are deployed. Yet, in others, the senior investigating officer personally briefs and tasks the undercover officers.
- 6.21 The position is further exacerbated by the level of the experience of the senior investigating officer.
- 6.22 We comment elsewhere that, on occasion, there is little knowledge and experience of undercover policing among those who act as senior investigating officers.<sup>99</sup> One described his experience of managing an undercover operation as “being led by the hand”. We set out in chapter 9 an example of what can go wrong when a senior investigating officer does not have full managerial oversight of an undercover operation.
- 6.23 In addition, the advent of regional undercover units has further separated senior investigating officers from undercover officers. Senior investigating officers in one force, who deploy undercover officers from a regional unit, told us that whilst, in the past, they considered that they ‘owned’ an operation, now they were merely told that one was to be conducted. They felt as if they had become simply the overseer of an operation knowing little about it and that, in effect, the operation was managed by staff in the undercover unit.
- 6.24 We fully endorse the principle that the senior investigating officer should not be a member of the undercover unit but must have overall responsibility for the investigation in which the covert unit deploys the undercover tactic on his or her behalf. But the absence of a consistent national approach and clear definitions about who should do what, and where the responsibilities of one officer starts and ends, has enabled inconsistency to flourish at force level.

<sup>99</sup> See paragraph 8.114 et seq.

- 6.25 The process is undermined further as we found that the role of the senior investigating officer and the covert operations manager were combined, on occasion, in one person. In one force, that individual also performed the role of cover officer at times. This contravenes the guidance set out in the Authorised Professional Practice.
- 6.26 Further, according to the Authorised Professional Practice, the undercover covert operations manager should be an officer of at least the rank of inspector or equivalent. On one occasion, we found that a detective sergeant undertook the role and that, during an operation, he and the cover officer were both managed by the senior investigating officer. This clearly breaches the requirement for the head of the investigation not to be involved in the management of the undercover officers.
- 6.27 We found different practices in other forces and examples of senior investigating officers who were independent of the covert function but who nevertheless exercised a significant amount of control from the start of an operation. This showed itself in a number of ways, including: briefing the undercover officers at the outset and explaining the operational aims; meeting the officers throughout the operation; and setting daily tasks to meet tight operational objectives. This is only appropriate where the cover officer is also present to safeguard the interests of the undercover officer.

## **Recommendation 7**

**The National Undercover Working Group should clarify the precise role of the operational head (more commonly referred to as the senior investigating officer) with regard to the briefing of undercover officers and set out clear guidance regarding which officer (however he or she may be described) is responsible for what.**

## **Cover officers during deployment**

- 6.28 During a deployment, cover officers have a responsibility under the Regulation of Investigatory Powers Act 2000 for managing undercover officers and for their security and welfare.<sup>100</sup> We found that undercover officers were generally very complimentary about the support that they receive from their cover officers.

<sup>100</sup> Section 29 (4A)(a), Regulation of Investigatory Powers Act 2000.

- 6.29 Undercover officers spoke of being closely monitored, and foundation undercover officers in particular told us of regular and frequent contact by telephone and via text messages with their cover officers. We found, however, that in a specialised unit in one force, cover officers do not maintain daily contact with foundation undercover officers. This is a cause for concern.
- 6.30 The Authorised Professional Practice does not specify a rank for cover officers and many with whom we spoke did not feel it was necessary as the role was more about expertise than rank. Indeed, undercover officers felt that it was more important to work with a cover officer who was experienced in the tactic. We found advanced undercover officers who performed the role of cover officer in respect of foundation and advanced operations in between their deployments, and they considered that they benefited from the occasional change of perspective.<sup>101</sup>
- 6.31 In some forces and units, all cover officers are sergeants to ensure that there is a degree of authority. Provided that they have the necessary expertise to be of practical use to the undercover officer, we consider that ensuring cover officers are of a managerial rank is good practice.
- 6.32 Some forces have introduced on-call rotas for cover officers, supervising out-of-hours situations. The chief officers in those forces considered this to be good practice as it ensured that some aspects of the undercover deployment were considered by an officer of equal experience but who was not the usual cover officer. We agree.
- 6.33 Another force regularly changed cover officers without notice to prevent any inappropriate relationships developing and any weakening of appropriate management command chains. Again, we consider this to be good practice.

<sup>101</sup> We recognise the benefits that may flow from such a cross-fertilisation of roles but care must be taken to ensure that an undercover officer does not lose his or her cover officer because the latter is suddenly deployed on undercover duties, thereby leading to a vacuum in appropriate support for the first deployed officer.

## Monitoring the activities of undercover officers on deployment

- 6.34 To maintain his or her pretence, an undercover officer must behave in a way that does not attract unwanted attention. This means that the officer must conduct his or her daily life as any other person might: buying a newspaper; going for a drink; or shopping. Many daily activities come at a price which the undercover officer must pay. In fact, depending on the deployment, the undercover officer may be required to pay for illegal commodities, such as drugs.
- 6.35 We found that the expenditure of undercover officers is closely monitored and appropriate and swift action is taken when any irregularity is uncovered.
- 6.36 We also found that many forces adopt an active approach at a corporate level to the financial aspects of undercover policing. In one force, for example, a management accountant checks the covert unit's accounts every three months and carries out a detailed audit twice a year. That force is not alone in doing so.
- 6.37 In another force, all undercover operations are supported by bespoke costing plans which allow the force to plan ahead. The director of resources has personal responsibility for approving the budget for every operation to ensure that public money is spent properly.
- 6.38 Undercover officers, by the very nature of their work, often come face-to-face with challenges that they would not have to deal with in their usual duties as police officers. One of the more frequent of these relates to the taking of drugs. Some forces undertake random drug testing of undercover officers in order to identify any undercover officer who may have exceeded his or her authority and taken drugs in order to ingratiate him or herself still further into a related criminal enterprise. We were concerned, however, to be told by many undercover officers that they had not once been subjected to a random drugs test, despite the fact that the officers themselves saw such testing as an important protection for them.
- 6.39 We consider random drug testing to be an important safeguard in any deployment of undercover officers where the taking of drugs is likely to be part of the investigation.



## Recommendation 8

**Chief constables and the heads of law enforcement agencies should implement random drug testing of undercover officers.**

### Debriefing undercover officers

- 6.40 Debriefing undercover officers about their experiences is essential. It helps those who manage and supervise them both to understand any difficulties which the officer may have faced and to identify any good practice (or, as importantly, any situations that need a specific and considered policing approach) so that it may be shared within the force, the undercover community and beyond.
- 6.41 Foundation and advanced undercover officers should be debriefed formally post-deployment. We were pleased to find that, generally, debriefings were taking place and that they did address the relevant issues.
- 6.42 However, we do have some concerns about the inconsistencies which we found regarding the officer who conducts the debriefing exercise: in some instances, it was undertaken by the senior investigating officer alone; in some, by the cover officer alone; in yet others, by a combination of the two.
- 6.43 A full debriefing should cover all aspects of the undercover officer's deployment. This will necessarily straddle both the investigation and issues affecting the undercover officer as an individual. Accordingly, we see merit in the senior investigating officer and the cover officer conducting the debriefing together. This should prevent any misunderstandings or any undue influence being placed on the undercover officer. And it should lead to a comprehensive account of what occurred, together with an indication of any issues that need to be tackled, either in terms of the operation or in terms of the undercover officer personally.<sup>102</sup>

<sup>102</sup> We accept that debriefing conducted solely by one or other of the senior investigating officer and the cover officer may give rise to the potential either for undue pressure to be applied on the undercover officer (for example, from the senior investigating officer to continue with an aspect of the deployment with which the undercover officer may be uncomfortable, or from the cover officer, who may not fully appreciate the investigative demands).

- 6.44 Due to the nature of their work, advanced undercover officers are less likely to be debriefed on a daily basis, although regular contact is maintained between the officer and his or her cover officer during the course of the former's deployment. There is also appropriate debriefing at the end of a specific targeted deployment.

## **Caring for the welfare of undercover officers**

- 6.45 Those who are deployed undercover often undertake their role in the most demanding of circumstances: they are usually alone; they often inhabit the murky world of dangerous criminals committing serious crime; and they are often subject to ever-changing circumstances, the wrong reaction to which might endanger their deployment and, indeed, their lives. The need constantly to be on their guard requires a mind-set sometimes for 24 hours a day, 7 days a week, and for months at a time, that not everyone is equipped to maintain.
- 6.46 As a result, there are obligations on those who manage forces when they deploy undercover police officers: the welfare of such officers is vital. Appropriate procedures must be in place to support such officers throughout their period of deployment and thereafter, so that the danger of any long-lasting deleterious effects may be kept to a minimum.
- 6.47 We were pleased to find during our fieldwork that an undercover officer's welfare is usually a primary concern. For example, many forces maintain regular contact with an officer who is deployed elsewhere and provide cover officer support to supplement that of the host force. One senior officer told us that he would visit the host force to examine the authority and check that everything was in order before allowing an undercover officer to be deployed there.
- 6.48 Generally, the awareness of the need for, and the appropriate level of, welfare support across all forces and law enforcement agencies which we visited was encouraging.
- 6.49 However, we have concerns about two welfare-related matters: the number of continuous hours that undercover officers work in one force, and the inconsistent nature of psychological support in undercover policing across England and Wales.

## **A long-hours culture**

- 6.50 By its very nature, undercover policing is very rarely capable of being contained within traditional office hours: maintaining a pretence often requires officers to be at the bidding of their criminal masters who

themselves do not conform to the ordinary rhythms of a day job. But, when all is said and done, those police officers who are deployed in such circumstances are doing a job. They have their own lives to lead with their families and friends away from the undercover policing world in which they choose to operate for the benefit of society as a whole.

- 6.51 It is therefore incumbent on those who manage and supervise undercover officers on deployment to pay close attention to the number of hours which an undercover officer works to ensure that he or she is not unduly fatigued or that the specific operation is not having an adverse effect on the health and welfare of the individual.<sup>103</sup>
- 6.52 We were pleased to note that, generally, managers in forces recognised the long-hours issue and sought to organise undercover deployments with the shift pattern of the particular officers in mind.
- 6.53 However, we have concerns regarding one force. There, foundation and advanced undercover officers told us that, as a matter of policy, all their deployments (apart from those managed by the dedicated undercover unit) were carried out on overtime. They said that they each had a day job and that, after completing a full eight-hour tour of duty, they had been deployed onto an undercover operation. Their managers confirmed that this was so.
- 6.54 During the course of discussions in groups, officers told us that they often had to change their duty times to facilitate a pre-arranged undercover deployment and, indeed, one officer said that, on occasion, deployment was undertaken “on the way home”.
- 6.55 This practice was compounded by a complete absence of tasking, co-ordination and prioritisation within the undercover unit which meant that it accepted any request for an undercover operation and then serviced it with officers working overtime.
- 6.56 This cannot be allowed to continue. Apart from the obvious risk to individuals from working such long hours, there is a very real risk to members of the public. Policing is, in itself, a stressful occupation and to expect an officer to operate in the high-pressure environment of an undercover deployment after completing a full tour of duty is absurd.

<sup>103</sup> We are aware that the Office of Surveillance Commissioners has expressed similar concerns in its 2014 annual inspection report of a force. This is a restricted document.

- 6.57 Forces have a duty of care to their officers which must not be disregarded.

## **Psychological support**

- 6.58 It has been shown over the years that psychological assessments are very important in identifying the emotional resilience, behaviour, attitude, professionalism, honesty and integrity of police officers. This is particularly the case in assessing and supporting undercover officers.
- 6.59 Police forces and law enforcement agencies have a duty of care to their staff to ensure that they undertake roles for which they are best suited, or where they can be most effective, while managing the risks to which they are exposed.
- 6.60 Any deviation from the expected high standards, any breaches of confidentiality, any adverse litigation can have serious and long-lasting consequences for the police service in terms of maintaining and enhancing the public's confidence and trust, both at an individual and organisational level.
- 6.61 The Authorised Professional Practice states that every undercover unit "must have a formalised psychological support network in place" and that foundation undercover officers "must attend an appropriate assessment on an annual basis". It does not define "an appropriate assessment".
- 6.62 With regard to advanced undercover officers, the Authorised Professional Practice states that: "[e]ach advanced undercover officer must attend a psychological support assessment following qualification, at least every six months."
- 6.63 We consider that this distinction devalues the foundation undercover officer and the work that he or she does.
- 6.64 Undercover policing can be highly stressful whatever guise it takes and a foundation undercover officer can be subjected to the same pressures as his or her advanced counterpart.
- 6.65 We found a worrying inconsistency around the level of psychological support provided in forces and law enforcement agencies in England and Wales.

- 6.66 In the case of foundation undercover officers, in some forces, the only support readily available tended to take the form of counselling and meetings with staff from the force's occupational health unit. In others, accredited psychologists were employed.
- 6.67 In the case of advanced undercover officers, forces employed psychologists who specialised in different fields and, indeed, some did not have any relevant psychological qualifications. For example, one force used a trained and registered mental health nurse, while another, used an occupational counsellor.
- 6.68 In its review of undercover policing which was produced in July 2012,<sup>104</sup> the National Policing Improvement Agency examined the psychological support available to undercover officers and concluded that:

*“[t]he appropriate qualification for a provider of psychological assessment services is a Chartered Clinical or Chartered Clinical Forensic Psychologist or a Psychiatrist with experience of providing psychological assessments for individuals operating in high risk and/or safety critical roles or environments.*

*“Appropriate proof of qualifications and experience should be sought, as well as assurances that the provider has an appropriate level of professional indemnity insurance. The provider should also be registered with an appropriate professional body, such as the Health Professions Council (for Psychologists) or the General Medical Council (for Psychiatrists).”<sup>105</sup>*

- 6.69 The National Policing Improvement Agency's review also recommended that:

*“[a] psychological assessment provider should conduct an assessment of each [advanced undercover officer] on a six monthly basis and at the beginning and end of long term deployments, if these do not coincide with regular six monthly assessments.”<sup>106</sup>*

<sup>104</sup> *Review of the Selection, Training and Support of Undercover Officers*, National Policing Improvement Agency, July 2012 [Restricted].

<sup>105</sup> *Op cit*, recommendation 46.

<sup>106</sup> *Op cit*, recommendation 43.

- 6.70 We agree.
- 6.71 The National Undercover Working Group which commissioned the review has yet to implement many of the recommendations.<sup>107</sup>
- 6.72 However, we do not agree with the National Policing Improvement Agency's further conclusion that a psychological assessment of foundation undercover officers should not be conducted on a regular basis in view of: "...the low frequency of problems in the [undercover foundation] group and the closeness of their supervision".<sup>108</sup>
- 6.73 We consider that foundation undercover officers are just as vulnerable as advanced undercover officers, although we recognise that they may not be deployed as regularly, in which case it may not be necessary routinely to require them to undergo six monthly assessments.
- 6.74 This matter needs further consideration by the College of Policing to ensure that both foundation and advanced undercover officers receive an appropriate level of support.
- 6.75 As undercover policing is a national tactic, we consider that psychological assessment must be consistent. In order to facilitate this, the College of Policing should issue a policy that requires the creation of a standing group of suitably qualified and vetted psychologists to provide all the appropriate support that is required to all undercover police officers.
- 6.76 Chief constables and the heads of law enforcement agencies should ensure that any material to which a psychologist has access and any that is generated during an assessment of an individual is held securely. We had some concerns in this regard during our inspection. In one instance, we found that a psychologist carried with him in his vehicle a bag with details of the undercover officer he was assisting, together with papers which disclosed that officer's true identity. That officer would have been placed in great jeopardy if that material had been lost, stolen or inadvertently left in a public place.

<sup>107</sup> See paragraph 8.19.

<sup>108</sup> *Review of the Selection, Training and Support of Undercover Officers*, National Policing Improvement Agency, July 2012 [Restricted], recommendation 43.

6.77 There should also be a formal agreement between all involved that, whilst there will be a degree of confidentiality between an undercover officer and a psychologist, the latter will report on the officer's fitness to be deployed and any relevant concerns that he or she may have regarding the officer's welfare. The psychologist should also report on any disclosures that may amount to criminal conduct so that the force may consider whether such conduct was authorised.

6.78 In order to avoid potential difficulties with regard to the level of disclosure which we consider a psychologist should be required to make, each undercover officer should give his or her consent to the process as a condition of being granted his or her undercover officer's licence.<sup>109</sup>

### **Recommendation 9**

**The College of Policing should issue a policy that requires the creation of a standing group of psychologists and psychiatrists with experience of providing psychological assessments for individuals operating in high-risk or safety-critical roles or environments.**

### **Recommendation 10**

**Chief constables, the heads of law enforcement agencies, the National Crime Business Area and the College of Policing should establish the need for and implement consistent national psychological support for all undercover officers.**

<sup>109</sup> See paragraph 8.133 et seq. and recommendation 39.

## 7. Strategic leadership and direction

- 7.1 Our third term of reference was to consider the strategic leadership and direction-setting of those at the highest levels of police forces and the [National Crime Agency]<sup>110</sup> for their officers conducting undercover operations.
- 7.2 We cannot stress more strongly that, for the public to have confidence in this important tactic and for officers to continue to want to volunteer to do it, there must be effective, clear and recognised strategic leadership and direction across all forces and law enforcement agencies. When the police service and law enforcement agencies are able to use such an intrusive tactic,<sup>111</sup> the need for it to be properly overseen at a strategic as well as an operational level is the first step in ensuring consistency of approach, effective scrutiny of delivery and appropriate levels of accountability.
- 7.3 Failure to give that strategic leadership and direction results in a weakness of command in an area of policing where the public is rightly entitled to expect the highest of standards.
- 7.4 We found the structure that is designed to underpin the provision of strategic leadership and direction to be robust. The leaders of the police service have recognised the need for a national approach and a comprehensive training programme. That programme should provide, in theory, the necessary overview and direction to ensure a cohesive, well-organised and accountable policing tactic, capable of operating appropriately within the framework of the law, accepted policy and practice, and in an ethical fashion.
- 7.5 If that is the theory and the potential for the structures that have been put in place to achieve it, we found the effective provision and achievement of what is required within those structures to be an entirely different matter.

<sup>110</sup> Our original terms of reference referred to the Serious Organised Crime Agency but this was replaced by the National Crime Agency during the course of our inspection.

<sup>111</sup> Section 27, Regulation of Investigatory Powers Act 2000.



## Current structural arrangements

- 7.6 Chief constables are responsible for the ‘direction and control’ of the 43 police forces in England and Wales and must carry out their duties: “in such a way as is reasonable to assist the relevant police and crime commissioner to exercise the commissioner’s functions”.<sup>112</sup>
- 7.7 Police and crime commissioners must: “secure the maintenance of the police force for their areas and ensure that their police forces are efficient and effective”.<sup>113</sup> They must hold chief constables to account for their functions and for the performance of the staff within their forces.
- 7.8 The College of Policing is the professional body for policing. Its core areas of responsibility include: “supporting police forces and other organisations to work together to protect the public and prevent crime”.<sup>114</sup> The College’s Professional Committee now oversees national policy and practice for policing. Its terms of reference are to: “identify gaps, threats or opportunities across policing where capability may need to be built (including the need to review or develop national standards, policy or practice)”.<sup>115</sup> Working with chief constables, the College of Policing creates national standards for professional practice which are produced as Authorised Professional Practice.
- 7.9 The Chief Constables’ Council comprises chief constables of police forces in the United Kingdom and the heads of law enforcement agencies. It is responsible for coordinating operational policing needs and leading the implementation of national standards set by the College of Policing or the government.
- 7.10 There are 12 national policing business areas that provide the direction and development of policing policy and practice in specific areas. The chief constables who lead these business areas are members of both the College’s Professional Committee and the Chief Constables’ Council. Within each business area, there are a number of portfolios and working groups led by chief police officers who act as national policing leads for specific issues. The Crime Business Area has responsibility for the development of undercover policing policy and practice, and this is

<sup>112</sup> Section 2, Police Reform and Social Responsibility Act 2011.

<sup>113</sup> Section 1, Police Reform and Social Responsibility Act 2011.

<sup>114</sup> *Our Strategic Intent*, College of Policing, September 2013, paragraph 1.1.

<sup>115</sup> *Professional Committee Terms of Reference*, College of Policing, 11 July 2013, paragraph 1.2.

delegated to the Organised Crime Portfolio. The role of national policing business areas is subject to change in the light of the independent review of the Association of Chief Police Officers.<sup>116</sup>

- 7.11 Supporting the work of the Organised Crime Portfolio are 14 themed-based working groups, one of which is the National Undercover Working Group.
- 7.12 The National Undercover Working Group is a multi-agency group which works with the College of Policing to set national standards in the area of undercover policing. It also helps chief constables to provide strategic leadership and direction in this sensitive area of police work. The Working Group is led by a chief officer and comprises trained and experienced officers and related specialists, who provide advice and their expertise to ensure that its guidance is relevant and accurate.
- 7.13 The members of the Working Group meet every six months. A police officer or equivalent from every area or region of law enforcement in the United Kingdom with an undercover capability sits on the Working Group. Organisations that have a direct interest in its work, such as the College of Policing, are also represented.
- 7.14 The group is further divided into and supported by seven sub-groups,<sup>117</sup> each led by a senior police officer or equivalent and helped by practitioners with a specific knowledge of that area of undercover policing. The sub-groups meet independently of the National Undercover Working Group to provide a co-ordinated national forum on matters regarding their specific area of expertise.
- 7.15 As can be seen from the hierarchical governance structure, there are many levels through which draft policy may need to pass before it is adopted at a national level. We do not intend to comment on the extent to which such a process stultifies the adoption of a dynamic approach to undercover policing, but we are clear that every level needs to add value to the process if the overall approach is to be acceptable.

<sup>116</sup> *Independent review of the Association of Chief Police Officers*, General Sir Nick Parker KCB, CBE, 14 November 2013.

<sup>117</sup> The seven sub-groups consider: training; legal issues and standards; the role of the cover officer and welfare issues; the role of the undercover covert manager; legend-building for undercover officers; undercover online policing; and the use of technical equipment.

- 7.16 All those who serve at each level in the decision-making process are busy individuals with other responsibilities. Therefore, it is essential that when groups are established and meetings convened there is a sense of purpose, urgency and willingness to get things done.
- 7.17 We consider that the responsibility to ensure that matters of concern are attended to expeditiously falls both upon the chair of the relevant group and those above that group.
- 7.18 Whilst our observations are made in terms of the National Undercover Working Group, we consider those in the groupings above bear some responsibility for the shortcomings that we have identified below, and for failing to oversee the work of the Working Group effectively.

## **The National Undercover Working Group**

- 7.19 The principal aim of the National Undercover Working Group is to raise standards and to improve the way in which the police and law enforcement agencies use the tactic of undercover policing. The group should address issues concerning: the deployment of undercover officers; the psychological support that officers receive; the accreditation and registration of undercover units; the identification, development and promotion of best practice; and the development and production of policies and procedures.
- 7.20 Working in partnership with the College of Policing, the National Undercover Working Group should be at the forefront of developments concerning national training and accepted practice.
- 7.21 The National Undercover Working Group should also co-ordinate all matters of an international nature in the world of undercover policing, primarily by liaising with the International Working Group on Undercover Police Activities.<sup>118</sup>
- 7.22 At the beginning of this inspection, we asked the chair of the National Undercover Working Group for documents setting out the way in which the group works and what it is trying to achieve. We expect any such group to have immediately to hand documents which set out its terms of reference, its strategic assessment of the issues, its performance priorities, and its statement of values.

<sup>118</sup> We set out the role of the International Working Group in more detail in paragraph 1.15.

- 7.23 We also expect such a group to have an annual work plan and clearly identified arrangements to disseminate national policy decisions, guidance, emerging issues, best practice and other matters through group members and regional fora.
- 7.24 We were not provided with any evidence that such documents and procedures existed.
- 7.25 An example of the difficulty which the absence of such documents and procedures for circulating them causes involves the distribution of the Authorised Professional Practice. It became clear to us during our fieldwork that this guidance had not been seen by some undercover officers or by some staff working in undercover units.<sup>119</sup>
- 7.26 We are pleased to note that the College of Policing, with the National Undercover Working Group, has started a comprehensive programme of work to address these issues which should help to underpin strategic and operational undercover policing activities.
- 7.27 During our fieldwork, we asked for the views of those who conduct, manage or oversee undercover policing operations on a day-to-day basis regarding the National Undercover Working Group.
- 7.28 Overall, their general feeling was that the Working Group is not working effectively, and that it has not done so for some time. Those to whom we spoke had little confidence in the Working Group's ability to provide policy and guidance that should then be adopted across all forces. There was also a perception that the Working Group did not have sufficient support from chief officers to enable it to have the influence that it needed in order to make sure that forces complied with the national standards in a consistent way. Too often, it relied too heavily on the views of its influential and experienced members to make decisions, rather than taking a more objective approach based on sound evidence and good analysis.
- 7.29 This served to reinforce our view that the Working Group lacked an overarching strategy to create a universally-accepted framework of national standards that is applicable and relevant to all forces.

<sup>119</sup> See paragraph 5.70 et seq.

- 7.30 There were also concerns expressed to us about the failure of the Working Group to communicate effectively with the undercover community – the community for which it was established to provide leadership and direction.
- 7.31 In order to form our view of the effectiveness of the Working Group, we sought to balance what we had been told during our visits to forces and law enforcement agencies with the views of some of its members.
- 7.32 We found them to be a very committed, though frustrated, group of individuals whose concerns tended to replicate those which we heard elsewhere during our inspection. They told us that all was not right with the way the National Undercover Working Group was functioning, but we found that some of its members felt there was a certain reticence about making changes until the findings of all the current reviews, inspections and inquiries concerning undercover policing had been published.
- 7.33 Members of the Working Group with whom we spoke also expressed their view that cultural barriers needed to be broken down if there were to be any improvement. A view that “the undercover community has been nailed shut for years” accorded with our own conclusion that there is a reluctance in some quarters to embrace change or to accept challenge or criticism.
- 7.34 One member said that the culture surrounding undercover policing was a “massive problem” and felt that the Working Group should be a more diverse panel of internal and external strategic thinkers and practitioners – introducing fresh ideas and independent thought. That view was supported by another who said that he worked with a sub-group which comprised individuals all of whom had similar profiles and had worked using the same long-established methods, thereby denying the opportunity for fresh ideas to be introduced by those whose backgrounds might be different, and who might have a different perspective to offer.
- 7.35 Whilst some expressed the view that the recent involvement of the College of Policing had helped to address issues surrounding the training of undercover officers, generally, the view was expressed to us that there was a “lack of grip” with “little clarity about who was actually responsible for anything”.

- 7.36 The National Undercover Working Group has a number of sub-groups, though it is evident that some have not convened for some time and effectively have fallen into disuse. That said, we were told of a general feeling that there are too many sub-groups and that the number needs to be reduced. There was also an uncertainty about the purpose and objectives of the sub-groups.
- 7.37 One member of the Working Group told us that the whole process was fragmented and that he was unable to cite an example of anything being signed off as completed. In one sub-group, we found that a list of previous actions had been circulated to members but without any later note explaining what had happened in respect of those actions. Our examination of that sub-group's minutes confirmed this. As a result, it was unclear whether anything had been produced other than a list of what was to be done.
- 7.38 Again, we were told of a general feeling that sub-groups reported issues to the National Undercover Working Group which then requested other sub-groups to consider the matters raised and take action. Those other sub-groups issued progress reports but everything kept getting passed around without any substantive outcome.
- 7.39 We were told, by way of example, of an issue that was highlighted during a sub-group meeting that gave rise to a concern that forces may be deploying foundation undercover officers in situations that should have been dealt with by advanced undercover officers. The findings of the sub-group were raised with the National Undercover Working Group, which did not address the concerns.
- 7.40 We highlight elsewhere the failure of the National Undercover Working Group to address adequately the comprehensive review undertaken by the National Policing Improvement Agency of the selection, training and support of undercover officers.<sup>120</sup>
- 7.41 Before we settled on our opinion of the effectiveness of the National Undercover Working Group, we were allowed to attend one of its meetings. Over 30 individuals attended the meeting.

<sup>120</sup> *Review of the Selection, Training and Support of Undercover Officers*, National Policing Improvement Agency, July 2012 [Restricted]. See paragraph 8.12.

- 7.42 We found that the meeting lacked structure and rigour. We noted that, on occasion, vague assurances about progress were provided by members of the Working Group which were left unchallenged. Updates provided lacked sufficient detail to be useful. There was no clarity about the purpose of the meeting.
- 7.43 Set against these concerns, we accept that those who seek to progress the work of the National Undercover Working Group are often frustrated by the response that they receive from the chief officers of forces. There was a feeling reported back to us that the Working Group lacked teeth and that, although it may set standards, forces were able to refuse to comply, whether for a sound reason or not.
- 7.44 Throughout our inspection, we noted that the world of undercover policing operated in stovepipes: we saw little evidence of the sharing of good practice between forces and law enforcement agencies. In our experience, the sharing of good practice is often encouraged at a strategic level but rarely delivered locally. Forces and law enforcement agencies waste valuable time and resources ploughing the same furrow as their colleagues, making the same mistakes, and failing to take advantage of techniques that others have learned. The sharing of good practice is a hallmark of a mature organisation that recognises that its constituent elements always have something to share and something to learn. The police service and law enforcement agencies are no different.
- 7.45 This is clearly within the ambit of an effective and properly functioning National Undercover Working Group. It should be encouraging forces and law enforcement agencies to identify what works well, and what works less well, and to submit their experiences to the Working Group. It should quality assure the commentaries from forces and law enforcement agencies and circulate those that are examples of good practice to others.
- 7.46 We found little evidence that the National Undercover Working Group operated in this way.
- 7.47 That said, we are firmly convinced that chief constables could do more to recognise and accept that, as undercover policing is a national tactic, a national rather than a local approach needs to be taken to ensure that a level of consistency is achieved in the deployment of such officers - an approach which we have found is lacking.
- 7.48 And so we come to our conclusions about the National Undercover Working Group.

- 7.49 We found that the leadership of undercover policing at a national level lacks clarity of purpose. This materially inhibits the way that the National Undercover Working Group goes about contributing to the setting of national standards and being a conduit for sharing good practice. The absence of scrutiny and challenge by either the Organised Crime Portfolio or the National Crime Business Area increases the risk of new ideas being missed and poor practice not being identified.
- 7.50 This state of affairs has run its course. Whilst a properly constituted National Undercover Working Group, with appropriate focus, drive, determination, leadership and courage would be a substantial benefit to the undercover policing community, what is currently in place is not.
- 7.51 Recent work by the College of Policing in support of the National Undercover Working Group is encouraging, but we believe that root and branch reform of the way the Working Group operates is needed.

### **Recommendation 11**

**The chief constable with lead responsibility for the Organised Crime Portfolio should take immediate steps: to reconstitute the National Undercover Working Group with people who represent all the interests relevant to effective undercover policing; to set clear and published terms of reference and objectives; and to hold the Working Group to account for the effective achievement of those objectives.**

- 7.52 We accept that there are two halves to effective strategic leadership and direction: a National Undercover Working Group that develops national standards, provides guidance, and facilitates the exchange of good practice; and chief constables and heads of law enforcement agencies who are prepared to enforce the compliance by their staff with these standards.
- 7.53 We expect to see the highest levels of compliance in relation to the standards and guidance set by the College of Policing. We cannot foresee any reason for exceptions to this. Undercover policing is an area in which the public is entitled to demand that all forces and law enforcement agencies use the same methods and adopt the same standards, not least because the police officers who are protecting them in their deployments are expected generally to be able to work in any force in the country. In order for them to be able to do so, national standards, fully and consistently adopted and applied at a local level, are the way forward.



## The accreditation of undercover policing units

- 7.54 One of the principal aims of the newly-constituted National Undercover Working Group should be to consider the way in which undercover policing is provided at a force and agency level and by whom.
- 7.55 At present, the Authorised Professional Practice states that each undercover unit must undergo an initial accreditation procedure to ensure that it is fit for purpose. Currently, this involves an assessment and inspection process carried out by a team appointed by the National Undercover Working Group. Each unit must undergo formal re-inspection every four years.
- 7.56 As far as we are aware, the National Undercover Working Group visited all forces which sought accreditation, although there does not appear to have been any formal record of accreditation, such as a certificate, being provided, if the force was successful in its bid. As far as we have been made aware, none of the recognised undercover capability units was inspected or accredited by the National Undercover Working Group.
- 7.57 As we have reported,<sup>121</sup> undercover policing is provided by accredited and recognised units. Whilst the responsibility for an undercover unit remains with the chief constable for that particular force or equivalent, in the undercover community, a ‘parent and child’ relationship exists between an accredited unit and a recognised unit. As the Authorised Professional Practice states:
- “[f]orces or agencies that have a recognised undercover capability unit must be operationally aligned to an accredited undercover unit in their region or through other approved collaborative arrangements.”*
- 7.58 We have concerns about the ‘parent and child’ relationship between accredited and recognised units as we were told by some that the parent units were not as supportive of the recognised units as we would expect them to be. We also found confusion in some regions about who was aligned with whom, and discrepancies between forces and the National Undercover Working Group about the position.

<sup>121</sup> See paragraph 4.11 et seq.

- 7.59 In one instance, a force, that had limited online undercover capability and no other undercover capability, was unsure whether its recognised status was official or whether the National Undercover Working Group was aware that it was aligned to an accredited parent force.
- 7.60 By the end of our inspection, we found confusion around the number of forces that provided training;<sup>122</sup> the number of undercover officers in England and Wales;<sup>123</sup> and which forces deployed undercover officers and who was aligned to whom.
- 7.61 This should not continue.
- 7.62 We consider that the answer lies in the creation of a formal system of accreditation and licensing under a registrar appointed by the College of Policing. Elsewhere in this report, we recommend that all training should be licensed by the College of Policing.<sup>124</sup> We make a similar recommendation with regard to those units which may deploy undercover police officers.

## **Recommendation 12**

**The College of Policing, with oversight from the National Crime Business Area, should appoint a registrar to have responsibility, nationally, on its behalf, for the accreditation of all undercover policing units and the licensing of trained officers. The registrar should have the power to grant and rescind any licence or accreditation. The registrar should be a member of the College of Policing staff.**

## **Recognised or accredited?**

- 7.63 The terms ‘recognised’ and ‘accredited’ create unnecessary confusion, both for those within the undercover policing community and for those outside who try to understand how the police service structures itself to deploy the tactic.
- 7.64 We consider that all units which are authorised to undertake undercover policing should be referred to as ‘accredited’.

<sup>122</sup> See paragraph 8.46.

<sup>123</sup> See paragraph 8.86 et seq.

<sup>124</sup> See paragraph 8.133, recommendation 39.

- 7.65 There should be separate levels of accreditation, however, in order to differentiate between the various aspects of undercover policing which members of a unit would be allowed to perform. One unit could be accredited to deploy officers at foundation and advanced levels and online, while another may only be accredited to deploy undercover officers to work at foundation level.
- 7.66 The accreditation process should be a rigorous one. We were told by one experienced assistant chief constable that the current system is “very bland” and that the process which his unit went through to receive accreditation in 2012 was akin simply to an inspection of the building to ensure that it was fit for purpose, rather than an assessment of the personnel who were to undertake undercover policing and the processes and procedures which they were to follow.
- 7.67 The accreditation process should involve a detailed examination of systems, processes and infrastructure to ensure compliance with national standards. It should also take into account the most recent inspection by the Office of Surveillance Commissioners, as there would not be any point in allowing a unit to deploy officers when the Surveillance Commissioners had concerns about the legality of those deployments.
- 7.68 Accreditation should be for a specified period of time, with continuing accreditation being determined by inspection. Those units which have failed to achieve or maintain the high standard required should not be accredited.

### **Recommendation 13**

**The College of Policing and the National Crime Business Area should stop using the terms ‘accredited undercover unit’ and ‘recognised undercover capability unit’ and should, in future, establish a single system of levels of accredited units, the level determining what types of undercover policing the officers in that unit may undertake.**

### **Recommendation 14**

**Chief constables and heads of law enforcement agencies should ensure that undercover policing is only undertaken by officers in an accredited unit.**

## **Recommendation 15**

**The College of Policing and the National Crime Business Area should establish a robust accreditation process which pays due regard to systems, processes, infrastructure issues and the findings of the Office of Surveillance Commissioners to ensure compliance with national standards.**

## **Recommendation 16**

**The College of Policing and the National Crime Business Area should ensure that the accreditation of units is subject to inspection, and that there is a robust process for the rescinding of accreditation in cases where standards are not maintained during the currency of the accreditation period.**

## **Consistent operating procedures**

- 7.69 The Authorised Professional Practice requires forces and law enforcement agencies to adopt standard operating procedures. As we set out in chapter 5, the lack of awareness of the Authorised Professional Practice has led to a disquieting number of inconsistent practices being introduced at force level. This tended to show itself most clearly around so-called 'standard operating procedures'.
- 7.70 Some forces devised local standard operating procedures many years ago; some devised them a matter of days before our inspection visit; and some have not devised them at all.
- 7.71 Standard operating procedures should provide what their name suggests: they should underpin the covert strategy<sup>125</sup> and should cover such matters as operational security and operational guidance, including advice to undercover officers on: drinking and driving; drug taking;<sup>126</sup> intimate relationships;<sup>127</sup> being arrested while deployed; involvement in a traffic accident; processing intelligence; and dealing with exhibits and evidence.

<sup>125</sup> We found that very few forces and agencies had a covert strategy: they should do.

<sup>126</sup> See paragraph 6.38.

<sup>127</sup> See paragraph 12.3 et seq.

- 7.72 Because we regard the deployment of undercover police officers as a national tactic, and as most officers are deployed outside their home force, the need for cross-force consistency is obvious. An undercover officer from force A operating in force B will not be deployed most effectively if he or she has to learn a different set of operating procedures in order to comply with force B's approach. Indeed, investigations might be prejudiced by such an officer inadvertently acting outside the standard operating procedures of the force where he or she is deployed.
- 7.73 This is exactly the area of work in which the National Undercover Working Group should have engaged when it was first established. Its failure to do so then was bad; its continuing failure to do so now is worse. It is essential that chief constables work together immediately to adopt one set of standard operating procedures that they apply in their forces rigorously and consistently.

### **Recommendation 17**

**Chief constables should establish and promulgate standard operating procedures to be adopted by all forces and other law enforcement agencies in accordance with the Authorised Professional Practice.**

### **Force leads**

- 7.74 We set out in chapter 5 our concerns about the lack of knowledge of some chief officers who have a vital role to play in authorising undercover deployments. Aside from the obvious dangers that this poses to the quality of authorisations and the risk that it weakens the integrity of the tactic overall, it undermines any strategic leadership and direction at a local level.
- 7.75 We make our view clear later in this report about the need for mandatory training.<sup>128</sup> As one assistant chief constable remarked, the knowledge of chief officers on this subject needs to improve so that scrutiny can be tighter. The officer considered that there was a lack of national direction and that minimum standards of training should be introduced, just as with other aspects of policing, such as firearms and public order. The absence of training led to an over-reliance on briefings and interpretation by others who may have a more partial interest in the matter.

<sup>128</sup> See generally chapter 8.

- 7.76 An experienced head of an undercover unit, who was also a member of the National Undercover Working Group, was concerned that senior managers did not appreciate how to balance opportunity with risk, while another member of the Working Group commented that senior officers who understood the minutiae were “few and far between” on the ground.
- 7.77 We found that knowledge of undercover policing in chief officers varied from force to force and, in those forces where that knowledge was absent, there was a lack of leadership and direction.
- 7.78 A second assistant chief constable simply stated: “if you are making decisions, you need to know the tactic” – a short but effective summary that we endorse.

## **A collaborative approach**

- 7.79 We have already touched upon the need for chief constables consistently to adhere to the national standards relating to undercover policing at force level.<sup>129</sup> We consider this to be all the more urgent when issues of regionalisation are considered.
- 7.80 We were surprised and concerned that in some areas we were told that there were not any current deployments. There may be various reasons for this but, in reality, we found that some forces simply do not have the appetite for deploying undercover police officers. Part of the reason for this appears to be the relative expense of deployment for smaller forces. We consider that this issue could be addressed through greater regional collaboration.
- 7.81 We found considerable inconsistency around forces’ approach to collaboration. Some have forged ahead; others are in advanced discussions; and some do not appear to consider that it is relevant to them.
- 7.82 We visited all ten regional units currently in existence, including the Special Projects Teams.<sup>130</sup> We found that regionalisation provided a resource for smaller police forces to deploy the tactic of undercover policing in circumstances where, if they had been required to deploy

<sup>129</sup> See paragraph 7.52 et seq.

<sup>130</sup> A Special Project Team is based within a regional counter terrorism unit. It supports counter terrorism and domestic extremism activity.

alone, they may not have been able to do so – either practically or financially. Combining resources enables a more consistent use of the tactic across those forces that collaborate at a regional level. We consider that regional units should encompass all areas of undercover policing, that is: advanced; foundation; and online.

- 7.83 However, regionalisation does not come without some difficult areas to resolve.
- 7.84 For example, there are different schools of thought about the authorisation process in a collaborative arrangement. Some favour the chief officer lead with responsibility for the regional unit being the authorising officer; others prefer authorisation by a chief officer from the force where the deployment is actually to take place.
- 7.85 We see strength in the authorising officer not being either: greater independence might be achieved by requiring the authorising officer to be a chief officer from another force within the regional framework which does not have any policing interest in the deployment in question. This degree of separation should allow the public to have greater confidence in the authorisation process.
- 7.86 We are hopeful that, given a willingness to reach an agreement, chief officers will respond positively to such an arrangement.
- 7.87 Safeguards would also need to be put in place to ensure that smaller forces within a regional structure would still be able to lay claim to the deployment of undercover officers; dangerous criminals and prevalent drug dealers can as easily be located in smaller forces as in larger ones.
- 7.88 This leads us to the view that a robust tasking process needs to be established and supported by all in the region. It should be based on agreed criteria that in turn are based on an independent analysis of why undercover policing is required in any particular instance. A panel of officers, drawn from the forces in the region, should then determine which investigations merit the use of undercover officers and adjudicate when competing interests arise at any one time. In chapter 11, we highlight what can occur when a regional unit is under-deployed: that should never happen and it is an indictment of the forces in that region that they were not able to reap the benefits of regionalisation in a productive way.

## **Recommendation 18**

**The National Undercover Working Group, with oversight from the chief constable with responsibility for the National Crime Business Area, should establish a blueprint for the regionalisation of undercover policing resources for forces which wish to bring their resources together in this way. Its overarching aim should be to ensure that those investigations that would benefit most from deploying undercover police officers are appropriately resourced, no matter which force in the region hosts the investigation.**

## **Local management of undercover policing**

- 7.89 We are firmly of the view that it is better not to deploy an undercover officer in an investigation, than to do so badly in an investigation which lacks focus and direction. Whilst we found mismanagement to that degree rare, when it occurs it is a matter of great concern.
- 7.90 One operation we examined was not focused upon any specific type of criminality but was effectively a ‘fishing expedition’ for gathering intelligence, without any named targets, and again, the reputation of the force was cited as a reason for deployment. It is fortunate that it was suspended following intervention by others and later cancelled by the force concerned.
- 7.91 The Office of Surveillance Commissioners later considered the case and thought the parameters were extremely wide and questioned the proportionality of such an operation.
- 7.92 Whilst it was claimed that the operation resulted in a large quantity of intelligence, the force was unable to act upon all of it. This weakens whatever strength the application had in the first place. It cannot be right to authorise such a deployment and then not act on what is uncovered.
- 7.93 This provides an example of the absence of robust leadership by a chief officer whose failure to consider the matter sufficiently carefully and deeply allowed those who were passionate about the benefits of their inquiry to persuade the authorising officer to permit an inappropriate deployment.

## **Analysing the results of deployment**

- 7.94 The authorising officer did conduct some sort of results analysis in the case we have cited above – an action that we often found lacking.



- 7.95 A fully-costed assessment of the outcome of an operation is a valuable analytical tool. Not only does it highlight best practice to inform future decision-making, but it also identifies weaknesses and pitfalls which should be avoided in subsequent operations.
- 7.96 We consider that a comprehensive results analysis should be conducted at the conclusion of every undercover operation, and any relevant issues should be brought to the attention of the National Undercover Working Group. The analysis should include: any good or bad practice identified from the operation; more generally, any good or bad practice identified by the Office of Surveillance Commissioners; any development and training needs; legal issues; budgetary issues; any new crime trends identified; technical issues; and welfare matters.

### **Recommendation 19**

**The National Undercover Working Group should devise a standard results analysis check-sheet and require the appropriate managers to complete it after each undercover deployment is concluded. Issues that may have national implications or relevance should be brought to the attention of the National Undercover Working Group.**

### **Intelligence-only deployments**

- 7.97 The case also raises a wider issue: the deployment of undercover officers for what are termed intelligence-only operations.
- 7.98 An intelligence-only operation is supposedly designed to gather information without leading to any prosecution. In this case, the purpose was to gather intelligence not only about ongoing criminal activity but also about 'unforeseeable events' with the aim of providing 'early warning of critical events that may occur'.
- 7.99 An operation of this nature is fraught with danger as it lacks focus, and the risk of collateral intrusion is substantial. It is not subjected to the usual external checks and balances that would apply to an evidential operation. We raise this issue because it is clear from our inspection that the designation of an undercover deployment for intelligence-only purposes has led some officers to regard the authorising, deployment and supervisory regimes as somehow less worthy of rigorous enforcement.
- 7.100 There cannot be any derogation from full compliance with the statutory regime laid down in the Regulation of Investigatory Powers Act 2000 based on a mistaken belief that an intelligence-only deployment permits

some relaxation of the rules. It is a misconception to consider that such an operation would never be subject to the scrutiny that allied criminal proceedings would bring to bear on the rationale for the deployment and its subsequent management and supervision.<sup>131</sup>

- 7.101 It seems to us that, whenever a police officer is deployed in an undercover capacity, he or she may gather information or evidence of criminality in respect of which action should be taken. That officer's role may then have evidential significance. He or she may be called to give evidence or otherwise be deployed to gather more specific information about that alleged criminality. Accordingly, we do not support the contention that a deployment can be assessed at the outset to be for intelligence-only purposes. It follows that every deployment must be undertaken, supervised and assessed as though it might lead to that officer giving evidence in criminal proceedings.
- 7.102 Undercover police officers are first and foremost police officers and they and law enforcement officers should always bear in mind that their deployment may lead to a prosecution and trial.
- 7.103 Every stage of the process should be underpinned by that assumption, and any inclination towards laxity of approach which may be present in an intelligence-only deployment should be dispelled as a result.

## **Recommendation 20**

**The College of Policing should issue guidance to all those who are able to deploy undercover officers concerning any deployment for intelligence-only purposes, to reinforce the fact that every officer deployed in every circumstance may be required to give evidence in court about their conduct or use, and about the evidence that they obtained during their deployment.**

<sup>131</sup> We make this point, mindful of HMIC's findings in its report: *A review of national police units which provide intelligence on criminality associated with protest*, HMIC, January 2012. On page 7, we stated the following: "[t]he Office of Surveillance Commissioners provides a measure of oversight of compliance by monitoring the use of powers granted by Parliament. However, for most undercover deployments the most intense scrutiny occurs when the evidence they have collected is presented at court. Accountability to the court therefore provides an incentive for police to implement the system of control rigorously: but in HMIC's view, this incentive did not exist for the [National Public Order Intelligence Unit]. This is because [the unit's] undercover officers were deployed to develop intelligence for the purpose of preventing crime and disorder or directing subsequent criminal investigations, rather than gathering material for the purpose of criminal prosecutions."

## Relations with the Crown Prosecution Service

- 7.104 Following a review of the activities of Mark Kennedy,<sup>132</sup> a memorandum of understanding was developed between the Crown Prosecution Service, the police, the Serious Organised Crime Agency (now the National Crime Agency) and Her Majesty's Revenue and Customs concerning cases involving the deployment of undercover officers.<sup>133</sup> The memorandum, which is a restricted document and not available to the public, seeks to ensure consistent and thorough handling of cases involving undercover officers where there may be a criminal prosecution.
- 7.105 The memorandum encourages: early contact between the police, law enforcement agencies and the Crown Prosecution Service; better communication; and improved liaison in a framework of trust and openness to ensure robust evidence collection.
- 7.106 The memorandum notes that those general principles particularly apply in cases involving undercover officers: "where it is essential that there is early, full, frank and regular liaison between officers who are leading and playing significant roles in the investigation, and prosecutors who are responsible for the conduct of prosecutions that flow from such investigations".
- 7.107 Throughout this inspection, we found broad compliance with the memorandum of understanding amongst the police and law enforcement agencies, with few exceptions. The early contact with the agency responsible for prosecuting offences where undercover officers have been deployed has led to a far stronger and more united approach to this challenging work.
- 7.108 We consider that the timing of such consultation is a crucial element. In seeking to provide guidance, the memorandum states:

<sup>132</sup> *Ratcliffe-on-Soar Power Station Protest. Inquiry into Disclosure*, Sir Christopher Rose, December 2011: see annex B.

<sup>133</sup> *Closer working on prosecution cases involving undercover police officers as agreement is signed between investigators and prosecutors*, Crown Prosecution Service, July 2012 [Restricted].

*“[w]hilst the appropriate time for the officer in charge of the case to consult with the reviewing lawyer will vary according to the circumstances of each case, as a general rule consultation should take place as soon as authorisation is given to deploy an undercover officer in any circumstances where there is the potential for a prosecution.”*

- 7.109 Those with whom we spoke agreed that the involvement of an experienced Crown Prosecution Service lawyer is of great mutual benefit.
- 7.110 In our view, the best examples of consultation took place prior to any covert activity. We consider that the most effective time for liaison is before authorisation is applied for, in order to introduce independent oversight from the very start.
- 7.111 We are sufficiently firm in our view that we consider that it should be a mandatory stage in the authorisation process and recommend that the signatories to the memorandum discuss its proposed implementation as soon as possible.

#### **Recommendation 21**

**The National Undercover Working Group should work with representatives of the Crown Prosecution Service to review the memorandum of understanding between them and other law enforcement agencies to require consultation prior to the grant of any authority to deploy undercover police officers.**

## 8. Selection, recruitment and training

- 8.1 Our fourth term of reference was to consider the quality, availability and take-up of training for officers undertaking undercover operations and for those at all levels of the planning and authorisation of such operations.
- 8.2 The College of Policing, supported by the National Undercover Working Group, is responsible for the training of undercover officers, cover officers, covert operations managers, senior investigating officers and chief officers who are responsible in many instances for authorising undercover operations. The College issues specific licences for undercover training to be delivered by experienced practitioners who hold an appropriate training qualification. The training of an undercover officer must be delivered to national standards as laid down by the College of Policing.
- 8.3 Initial undercover officer selection, recruitment and training may be carried out at a local or regional level, on condition that those who provide the training have previously obtained a training licence from the College of Policing. However, structured selection and recruitment criteria and procedures should be employed throughout the whole process.<sup>134</sup>
- 8.4 In 2005-06, the National Undercover Working Group identified gaps in the provision of training. It also concluded that the description which was then in use of 'test purchase officer' was inappropriate as the role of such officers was broader than just purchasing drugs from suppliers on the street. For example, it extended to recovering stolen property and to undercover working on the internet. As a result, two categories of covert officer were established; foundation level and advanced level.
- 8.5 This was a significant change from the previous regime for identifying the status of undercover officers. It marked the start of a move towards a process whereby the single entry point to becoming an undercover officer was to be through the Foundation Undercover Training and Assessment Course.

<sup>134</sup> See paragraph 8.33.

- 8.6 This course is designed to equip all undercover officers with the basic skills and behaviours that they need to perform their role as undercover officers successfully.
- 8.7 The course is not only intended for undercover officers who are to be deployed in purchasing drugs on the street or recovering stolen property. It is also designed for officers who will seldom be deployed in meeting a target, such as undercover online officers.
- 8.8 A chart showing the training and development path to become an undercover officer is set out in annex F.
- 8.9 The report containing this chart showing the training and development path explained how foundation training for undercover officers was going to be taken forward.<sup>135</sup> Once an undercover officer had successfully attended a generic undercover training course, he or she was expected to complete a module which was specific to the line of undercover work which the officer was likely to encounter. These modules were to provide bespoke training to meet the individual needs of the undercover officer.
- 8.10 We have found that few of the modules have been developed as planned.
- 8.11 This is unacceptable.
- 8.12 A review was conducted into this area by the National Policing Improvement Agency in July 2012.<sup>136</sup> This is a restricted document and is not available to the public. However, we have approached the College of Policing, which is now the owner of National Policing Improvement Agency's review, and we have been granted permission to cite it and quote from it to the extent that we have in this report.
- 8.13 The 2012 review was thorough. It examined in depth the selection and training procedures for foundation and advanced undercover officers and it identified the competencies that were expected of those who sought to become undercover officers.

<sup>135</sup> *A final report from the National Undercover Working Group Training and Development sub-group*, O'Leary K., 2010 [Restricted].

<sup>136</sup> *Review of the Selection, Training and Support of Undercover Officers*, National Policing Improvement Agency, July 2012 [Restricted].

- 8.14 The National Policing Improvement Agency found undercover work to be “characterised by a lack of consistency across different forces and units”.<sup>137</sup> It made 55 recommendations, designed to bring consistency and improvement to the selection and training procedures and to the regime required to support officers who engage in undercover work.
- 8.15 The review set a benchmark in the area of the selection, recruitment and training of undercover officers. It has the benefit of both being sufficiently current to remain relevant to today’s undercover policing requirements, and being produced sufficiently long ago that it is reasonable to expect the College of Policing, the National Undercover Working Group, forces and law enforcement agencies to have acted on its recommendations. Accordingly, we expected to find evidence during our fieldwork visits that the recommendations had already been implemented.
- 8.16 We have borne in mind HMIC’s 2012 review<sup>138</sup> of national units which provide intelligence on criminality associated with protest, and its later review of progress made in respect of the recommendations contained in the 2012 report which was published in June 2013.<sup>139</sup> In those reports, HMIC concluded that the selection process for undercover work appeared to be robust. However, HMIC’s view was based upon its examination of the training process and the extent to which officers did not successfully complete it.
- 8.17 Care should be taken in respect of interpreting this finding. The terms of reference of the 2012 review limited HMIC’s consideration to those advanced undercover officers who were deployed by the National Public Order Intelligence Unit to gather intelligence in order to reduce criminality and disorder arising from domestic extremism, and to support forces managing strategic public order issues. It therefore did not consider the selection and training of foundation undercover officers generally or advanced undercover officers who did not work in that unit.
- 8.18 The benefit of our 2013-2014 inspection is that its remit covered all aspects of undercover policing and so its breadth of consideration is far wider than that permissible in 2012.

<sup>137</sup> *Op cit*, paragraph 3.1, page 10.

<sup>138</sup> *A review of national police units which provide intelligence on criminality associated with protest*, HMIC, January 2012.

<sup>139</sup> *A review of progress made against the recommendations in HMIC’s 2012 report on the national police units which provide intelligence on criminality associated with protest*, HMIC, June 2013.

- 8.19 Although the National Policing Improvement Agency's review was concluded in July 2012, we were told that its recommendations were not adopted by the National Undercover Working Group until June 2013 and many have yet to be implemented.
- 8.20 We consider that the National Undercover Working Group has not demonstrated the leadership and commitment that it should have done in accepting ownership of the National Policing Improvement Agency's recommendations.
- 8.21 This is not acceptable.
- 8.22 We set out in the remainder of this chapter our findings regarding the selection, recruitment and training processes and procedures with regard to undercover policing. We have not set out here our views concerning the selection, recruitment and training of online undercover staff. We consider all aspects of that type of undercover police work in chapter 11.

## **Attracting interest**

- 8.23 The use and extent of undercover policing is entirely dependent on sufficient officers of the right calibre wanting to undertake this type of police work. Seeking to become an undercover police officer is a voluntary process, and so it should be.
- 8.24 The first requirement, therefore, is for sufficient police officers of the right calibre to apply to become undercover officers.
- 8.25 We were concerned by much that we learned during our fieldwork regarding the number seeking to become undercover officers.
- 8.26 We were told that potential candidates are being deterred because they have come to regard time operating as an undercover police officer as 'career-threatening'. An undercover covert operations manager<sup>140</sup> in one force told us that, in response to his four most recent advertisements for candidates for the Foundation Undercover Training and Assessment Course, he received 108, 72, 53, and then 1 applicant, respectively.
- 8.27 There may be several explanations for this decline. Undoubtedly, the recent poor publicity and controversy have played a part.

<sup>140</sup> See paragraph 4.13.



- 8.28 We consider that part of the difficulty arises because undercover officers, especially foundation undercover officers, are not assigned to an undercover unit on a full-time basis; they tend to be called upon to act as and when required. As a result, their line managers necessarily have to accommodate their absence. This may involve the re-rostering of duties of colleagues, causing short-term additional burdens to be shouldered by those left behind. This can lead to a perceived lack of support from line managers.
- 8.29 In the most extreme instances, we found that some managers simply refused to release qualified police officers for undercover operations because of the disruption their absence might cause.
- 8.30 The perceived lack of support was a recurring theme among those whom we interviewed: undercover police officers spoke of receiving adverse or negative comments; of being alienated; and of experiencing prejudice because of their career choices. They considered that, if an undercover officer applied for a posting, for example, as a traffic officer, he or she was likely to be rejected because of his or her absence on undercover duties. One undercover officer claimed to have been made to undertake extra tours of night duty to compensate for those missed while working on undercover deployments.
- 8.31 Although anecdotal, such reports concern us. If the police service regards undercover policing to be an important tactic in its efforts to tackle serious crime, it cannot be right that the operational demands of one part of a force obstruct the force's ability to engage in undercover policing. This can be either through an outright refusal to allow a qualified officer to undertake the role for which he or she has been trained, or by making the professional life of that officer so uncomfortable that the officer thinks twice about seeking to be deployed undercover in the first place. The role of any manager must be to encourage, support and accommodate those officers who wish to undertake such sensitive work. It is the interests of the police service as a whole which should weigh in the minds of managers, not local short-term difficulties caused by officers performing their duty for someone else.

## **The selection process**

- 8.32 Notwithstanding the number of applicants to become undercover police officers, rigorous standards still need to be enforced thereafter in the selection process to identify those who are considered, objectively, to be appropriate candidates to take further forward into the training programmes.

- 8.33 In its report in 2010, the Training and Development sub-group of the National Undercover Working Group<sup>141</sup> recommended that the following elements should be adopted when selecting potential candidates for undercover training:
- (a) an open day to attract potential recruits and provide information;
  - (b) a written application;
  - (c) a short-listing process;
  - (d) an interview and attendance at a selection centre;
  - (e) security vetting; and
  - (f) psychological testing and assessment.
- 8.34 We found most of these elements formed part of a force's selection process and, as a result, a consistent approach is being adopted to identify those police officers who might have the requisite skills to become undercover officers.
- 8.35 We understand that these selection criteria have been superseded by the recommendations arising from the National Policing Improvement Agency's review which was concluded in 2012. We have been told by the College of Policing that it has now started a comprehensive programme of work around selection, recruitment and training to implement those recommendations.
- 8.36 There was one area where we were concerned to find an unacceptable degree of inconsistency between forces in their adoption of this element of the process: psychological testing and assessment.

<sup>141</sup> *Final report of the National Undercover Working Group Training and Development sub-group*, K O'Leary, 2010 [Restricted].

- 8.37 We regard this element as crucial in helping to identify those police officers whose personal characteristics are suitable for this sensitive type of police work. Advanced undercover officers are often placed in extremely dangerous situations. They are almost always alone without the possibility of immediate support from their colleagues. They rely almost entirely on their own skills, speed of thought and wits to cope with any situation that unfolds, and the consequences of not being able to cope with such pressure can be extremely serious. It is therefore essential that those who undertake such work have the personal characteristics that enable them to cope with the pressures that are inherent in being an undercover officer.
- 8.38 Psychological testing and assessment are essential in the selection process.
- 8.39 In some forces, we found that candidates for the Foundation Undercover Training and Assessment Course underwent psychometric testing and assessment; in others, there was no such requirement.
- 8.40 We asked why this element of the selection procedure was not being adopted. Often, we were told that it was for financial reasons, despite the fact that we consider the adoption of psychometric evaluation to be cost-effective in the longer term by identifying both those candidates who demonstrate an aptitude for undercover work and, perhaps more importantly, those who do not.
- 8.41 Conversely, we found that those police officers who sought to become advanced undercover officers were, without exception, subject to psychometric assessment.
- 8.42 We note that the National Policing Improvement Agency concluded in its 2012 review that the most appropriate time for the assessment of personal characteristics was during the selection process for the Foundation Undercover Training and Assessment Course. This was because the requirements of those undertaking foundation and advanced work are largely similar and because undercover officers should progress to the advanced level through that course.
- 8.43 We agree.

## **Recommendation 22**

**The College of Policing should ensure that psychological assessment is an element in the selection process for those who seek to become undercover officers. It should be undertaken before attending the Foundation Undercover Training and Assessment Course.**

## Licensed training – foundation courses

- 8.44 Because of the way in which undercover police officers are deployed between forces, and because of the extremely sensitive nature of the work in which they are engaged, it is essential that the level and content of training which they receive is consistent. To that end, the College of Policing has made it clear that candidates must attend approved training courses, provided by those who are licensed by the College to run them.
- 8.45 We agree the importance of these requirements. They are the means by which chief officers and senior investigating officers of one force may have confidence in the quality of an undercover police officer assigned to them from another force.<sup>142</sup>
- 8.46 We were extremely concerned, therefore, to learn that the College of Policing had conducted an initial audit which had identified that a number of foundation training courses had been provided which had not been licensed. A practice appeared to have arisen whereby forces had considered the training programme of a licensed training centre, had adapted it to their perception of local needs and had then provided it to their officers.
- 8.47 Whilst we recognise that local needs may fashion, to some extent, the way in which undercover police officers might be deployed, we are entirely unpersuaded by any argument which perpetuates the myth that the basic skills and training requirements of undercover police officers are somehow different on a force-by-force basis. We consider this to be a confusion between skills and deployment. And it undermines the strength of the national approach to undercover policing which relies on officers being moved from their home force to a second force where their skills are needed. Undercover officers who have been schooled locally to meet local concerns and priorities may not possess the generic skills that any requesting force is entitled to expect.
- 8.48 A national and licensed training model should bring a level of consistency that appears to be lacking at the moment. Greater consistency will ensure minimum standards of competency and allow those who deploy undercover police officers to have confidence in the quality of officer that they are given.

<sup>142</sup> See paragraph 4.20.

- 8.49 We can also foresee difficulties in respect of any challenge to evidence that might be given by an undercover officer if his or her training is questioned and it is found that he or she has not attended a licensed training course.
- 8.50 Since the end of our fieldwork, we have been in discussions with the College of Policing to ascertain the most up-to-date position with regard to licensed foundation training courses. We are now advised that the College of Policing is in the process of assessing 15 centres which have expressed an interest in being licensed to provide the Foundation Undercover Training and Assessment Course in England and Wales.

### **Recommendation 23**

**The College of Policing should conduct a further full audit of all forces to establish the extent of any unlicensed training that has been given.**

### **Recommendation 24**

**The College of Policing should ensure that all unlicensed foundation courses are ended immediately.**

### **Recommendation 25**

**Chief constables and the heads of law enforcement agencies should ensure that any undercover officer who has received training on an unlicensed training course is not deployed until his or her competency has been assessed.**

## **Licensed training – advanced courses**

- 8.51 Even though that was the position with regard to foundation training courses, we expected to find stricter adherence to the requirement for all National Undercover Training and Assessment Courses to be licensed, given the greater depth of training that is required to prepare advanced undercover officers to undertake such highly sensitive and often dangerous policing. Our expectations were not met.
- 8.52 There are only three centres that provide the National Undercover Training and Assessment Course, which is the gateway through which aspiring advanced undercover police officers have to pass before they may be deployed. They are the Metropolitan Police Service; Greater Manchester Police; and the National Crime Agency.
- 8.53 Prior to the announcement of the creation of the College of Policing in December 2011, the National Undercover Working Group approved the courses delivered by these two police forces and the predecessor of the

National Crime Agency, the Serious Organised Crime Agency. The courses were individually designed by each provider and each provider was responsible for its own quality assurance and evaluation programme.

- 8.54 Over time, concerns were raised about the consistency between the various courses. A number of reports were commissioned by the National Policing Improvement Agency, culminating in its July 2012 review.<sup>143</sup> There, the Agency stated that it found the courses delivered by the Metropolitan Police Service and Greater Manchester Police differed in both content and delivery. It concluded that it was:

*“difficult to demonstrate that attendees on the different courses receive equivalent training that allows them to be fully interoperable, because the courses are not underpinned by the same agreed national training standards”.*<sup>144</sup>

- 8.55 The Agency went on to quote those who assisted in its review. They criticised the training provision for advanced undercover officers as: “not providing trained [advanced undercover officers] that fit the needs of all [accredited undercover units] across the country”.<sup>145</sup>

- 8.56 Those conclusions were reached in July 2012.

- 8.57 As part of our fieldwork, we attended the National Undercover Working Group meeting in September 2013. At that meeting, the chair of the National Undercover Working Group admitted, with some regret, that the group had not progressed the recommendations in the Agency’s report. As a result, we have concluded that the recommendations set out in the 2012 review have not been implemented by the police service as a whole, and action has not been taken to address the findings that we have set out in the preceding paragraphs.

- 8.58 To understand the position more clearly, we observed parts of the advanced undercover courses run by Greater Manchester Police and the Metropolitan Police Service. We are able to confirm that the training varies from one centre to the other. We did not observe the National Crime Agency training course.

<sup>143</sup> *Review of the Selection, Training and Support of Undercover Officers*, National Policing Improvement Agency, July 2012 [Restricted].

<sup>144</sup> *Op cit*, paragraph 7.2, page 44.

<sup>145</sup> *Ibid*.

- 8.59 We have been told that action is now being taken to address the lack of consistency between the three courses run by the Metropolitan Police Service, Greater Manchester Police and the National Crime Agency.
- 8.60 It may be that such remedial action now will bring the three courses into alignment, each with the other. What is beyond doubt is the failure of all those involved – the National Policing Improvement Agency, the National Undercover Working Group and, latterly, the College of Policing (which now has responsibility) – to take the required action to remedy the position in a timely fashion. As the position now stands, none of the three providers is licensed by the College of Policing to conduct the National Undercover Training and Assessment Course. We have been told that all three are working with the National Undercover Working Group to address future training requirements and to secure the appropriate accreditation from the College of Policing.

#### **Recommendation 26**

**The College of Policing should devise a single National Undercover Training and Assessment Course as a matter of urgency.**

#### **Recommendation 27**

**The College of Policing should suspend immediately the provision of any advanced training course that is being provided by an unlicensed provider.**

#### **Recommendation 28**

**The College of Policing and the National Crime Business Area should ensure that the programme of work to implement recommendations set out in the *Review of the Selection, Training and Support of Undercover Officers* produced in 2012 is completed.**

- 8.61 Because the National Undercover Working Group approved the advanced courses run by the Metropolitan Police Service, Greater Manchester Police and the National Crime Agency before the creation of the College of Policing and its licensing procedures, we are not minded to make a recommendation at this stage about the continued deployment of undercover officers who have successfully passed one of those courses.
- 8.62 However, the College of Policing will need to ensure that it compares the content of those courses with the National Undercover Training and Assessment Course that we recommend it should devise. The College must then take a reasoned view about whether those who have passed the current providers' courses should be required to pass its National

Undercover Training and Assessment Course and secure fresh accreditation because of any deficiencies that are identified in the providers' courses.

- 8.63 Given the conclusion reached in July 2012 that the two courses which we observed were “not underpinned by the same agreed national training standards”, we consider it highly likely that some form of additional training for those already deployed will be necessary to ensure that all advanced undercover officers are trained to the same standard.

## **The relationship between foundation and advanced level training**

- 8.64 There are other advantages in bringing the responsibility for the content of the Foundation and National Undercover Training and Assessment Courses together under the College of Policing.
- 8.65 During the course of our inspection, we were told of a lack of coherence between the two courses. In our view, the two courses should dovetail so that any officer who wishes to progress to the advanced level builds on the training which he or she has received at the foundation level.
- 8.66 Concerns were expressed to us about the lack of clarity, for example, whether training around commodity purchasing (for example, drugs from a street dealer) should be the hallmark of a foundation course. Others complained to us that the advanced course did not consider issues of ideology in sufficient depth, given that advanced undercover officers might be deployed to infiltrate groups where their criminality is driven by ideological convictions. Another concern was around the way in which one of the advanced courses was conducted. The training sessions were held deliberately at times such that those attending the course were deprived of adequate hours of sleep. This was seen as a test in its own right. Several who had been subjected to this experience found it to be wholly incompatible with the necessary environment required for learning.
- 8.67 Such concerns are worrying. But they also demonstrate that the foundation and advanced level courses may need to be redrawn generally to focus on acquiring skills that are capable of being used in different scenarios that undercover officers at the two levels might encounter.



- 8.68 The 2010 report of the sub-group of the National Undercover Working Group<sup>146</sup> identified a similar concern and recommended that the two courses should focus on a range of skills rather than on specific deployment scenarios.
- 8.69 We agree with that approach. The College of Policing should consider its two training courses together and regard the advanced course as a continuation of the foundation course. Applying the skills to real-life situations is, of course, essential so that officers at both levels may put their newly-acquired skills into practice, but the emphasis should be on developing a comprehensive skills base rather than on equipping officers to deal with a specific scenario in which they may find themselves.

## Tenure

- 8.70 There is a balance to be struck between training and developing undercover officers to a point whereby they are highly proficient in the policing tactic and can be used to best effect, and ensuring that they do not remain in undercover policing so long that they are not able to return to more traditional policing duties.
- 8.71 The National Policing Improvement Agency also recognised that a balance needs to be struck. Its research suggested that a tenure period of between five and seven years might be appropriate<sup>147</sup> but recommended only that the length of tenure should be “discussed and agreed by the [National Undercover Working Group]”.<sup>148</sup>
- 8.72 At the time of the writing of this report, the National Undercover Working Group has not agreed or published a recommended maximum length of tenure.
- 8.73 In our fieldwork, we found evidence that some forces impose a maximum length of tenure on their undercover officers. For example, in some forces, a foundation undercover officer is seconded to a dedicated unit for a period of three years before he or she is reintegrated into core policing in a phased manner, unless the officer seeks to become an advanced undercover officer. Where this is the case, there is a seamless

<sup>146</sup> *Final report of the National Undercover Working Group Training and Development sub-group*, K O’Leary, 2010 [Restricted].

<sup>147</sup> *Review of the Selection, Training and Support of Undercover Officers*, National Policing Improvement Agency, July 2012 [Restricted] paragraph 8.2, page 55.

<sup>148</sup> *Op cit*, recommendation 39.

transfer from foundation undercover officer to advanced undercover officer upon successfully completing the National Undercover Training and Assessment Course.

- 8.74 However, more often we found that such a policy did not exist in forces.
- 8.75 We have studied carefully the research of the National Policing Improvement Agency and concur with the view that a maximum tenure period of between five and seven years for advanced undercover officers is appropriate. We have also concluded that a maximum tenure period of three years for foundation undercover officers is appropriate.
- 8.76 If our other recommendations are accepted regarding the progression of foundation undercover officers to advanced undercover officers, an officer would serve no longer than ten years overall in the role. We regard this as quite sufficient for officers to be engaged in this type of police work.
- 8.77 Consequences flow from these conclusions: officers should be told at the start of their tenure the date of their return to other duties; a reintegration strategy, personally tailored to the needs of each officer, should be fashioned and implemented; appropriate support should be provided by line managers to help each officer on his or her return to other duties; and senior managers should be mindful to prevent any singling out of a returning officer who is given a disproportionate amount of more onerous duties which could be seen as some form of punishment for having been removed from ordinary duties in the first instance.<sup>149</sup> The National Undercover Working Group should consider how best to apply maximum tenure periods to those existing undercover officers who have already exceeded the maximum term that we are recommending.

## **Recommendation 29**

**The College of Policing should establish and promulgate a comprehensive policy regarding maximum lengths of tenure for foundation and advanced undercover officers. We consider that a period of three years tenure for a foundation undercover officer and a period between five and seven years tenure for an advanced undercover officer is appropriate.**

<sup>149</sup> See paragraph 8.30.

## **Recommendation 30**

**Chief constables and the heads of law enforcement agencies should enforce a consistent and fair reintegration strategy to enable undercover officers to return to other policing or agency duties.**

### **Terminating tenure early**

- 8.78 The setting of maximum tenures for foundation and advanced undercover officers should not, in any way, preclude the ability of senior managers to bring an officer's period as an undercover officer to an end earlier if he or she is found not to have performed satisfactorily in that role.
- 8.79 Of course, it is to be hoped that officers who are unlikely to make the grade as undercover police officers are identified in the recruitment and training processes and returned to other police duties at that stage. But there are likely to be instances when officers are deployed as undercover officers but are then found not to perform to the high standards which are rightly demanded of them in that role.
- 8.80 During our fieldwork, we found only four instances where undercover officers had been removed from undercover operations because of misbehaviour; in one other instance, we found that an officer had been removed because of poor performance. Each instance of misbehaviour involved undercover officers who had been imported to the force concerned from another force or agency.
- 8.81 One case related to the behaviour of two officers after drinking excessively; another concerned expense claims; a third involved the misuse of a police vehicle; and a fourth to alleged misconduct by an officer whilst off duty, which was not connected to his undercover deployment. The cases, nevertheless, demonstrate good levels of supervision and management and a readiness in the forces concerned to take appropriate action when necessary.

### **National undercover index**

- 8.82 When officers pass the nationally recognised course, they are registered as undercover officers and allocated a unique reference number that is used to conceal their true identity. Their personal details are held on the national undercover index which is maintained by the Metropolitan Police Service.

- 8.83 We spoke with staff who manage the national undercover index. They confirmed that they had not received notification about all the officers in the cases referred to above. We have grave concerns about the accuracy of the information contained on the index. The Metropolitan Police Service is entirely dependent on information provided by forces to ensure that the index is kept up-to-date.
- 8.84 Our concerns are based on the following: in our data collection phase from forces and agencies, we were told that the total number of undercover officers classified as active, reserve and dormant was 1,229.<sup>150</sup>
- 8.85 Once that data was collated, we approached the manager of the national undercover index and asked how many undercover officers appear in it. The figure supplied was 568.
- 8.86 The discrepancy between 1,229 and 568 is 661. The national undercover index contains details of only 46.2 percent of the total number of undercover officers whom the forces and agencies consider to be designated as such. In no way, therefore, can the national undercover index be termed 'comprehensive'.
- 8.87 Since our fieldwork, we have made further enquiries of those who manage the national undercover index and we have not been satisfied with the accuracy of the replies that we have received. Despite a number of requests, we have not been provided with any assurance that those who manage the index know the precise number of officers whose details are on the index; nor have we been provided with any assurance that the records are up-to-date or accurate.
- 8.88 We consider that one of the reasons for the discrepancy in numbers between forces and the national undercover database may be the extent to which experienced undercover officers have been granted so-called '*grandfather rights*' by their forces following guidance from the National Undercover Working Group which specifically uses this term. Such rights allowed officers who had been deployed as undercover online officers for a certain period of time to continue in their work, providing that those who managed them vouched for their operational competency, regardless of whether they have passed any required training course.

<sup>150</sup> See paragraph 4.7 et seq.

- 8.89 The granting of such rights has been undertaken at force level, following guidance from the National Undercover Working Group. However, that advice was general in nature and did not set out any objective criteria in order to ensure a consistent approach would be adopted across forces.<sup>151</sup> As a result of our fieldwork, we have established that forces in England and Wales have adopted different approaches.
- 8.90 This is not acceptable.
- 8.91 Individual units were authorised to identify those individuals to whom they wished to grant '*grandfather rights*'. These decisions do not appear to have required consideration of the operational experience of the individual concerned. At the time of our inspection, those managing the national undercover index in the Metropolitan Police Service asked forces to identify those individuals who had been granted '*grandfather rights*'. The gathering of this information was still incomplete at the time of the inspection.

### **Recommendation 31**

**The College of Policing, in conjunction with the National Crime Business Area, should devise and publish criteria which set out the circumstances when '*grandfather rights*' may appropriately be granted to operationally-experienced undercover officers.**

- 8.92 Given the sensitive nature of undercover policing and the need for the highest level of awareness and scrutiny, it is entirely unacceptable that there is such a degree of discrepancy between the actual number and the index's number of undercover police officers. It renders the database unsuitable to the task for which it was created.
- 8.93 The public has a right to expect that, in today's technological age when information can be passed between forces at the press of a button, the police service is able to maintain an accurate and up-to-date index of the number of undercover police officers in England and Wales. The fact that it cannot do so is unacceptable.

<sup>151</sup> The advice focused on the undercover officer's access to covert equipment and appropriate legends. Managers of units were not asked to consider the operational experience or skill levels of the individuals. Nor was there any requirement to consider any limitations that should be in place when deploying a particular officer.

## Recommendation 32

**Chief constables and the heads of law enforcement agencies should order an audit to be undertaken of the number of undercover officers that they have in their force or agency as a matter of urgency, so that they classify correctly those officers as active, reserve or dormant and can provide that information to those in the Metropolitan Police Service who maintain the national undercover index.**

- 8.94 We understand that there are already plans in place to create a national undercover database. This is intended to provide a secure, searchable and comprehensive database of undercover officers.
- 8.95 We have been told that all foundation undercover and advanced undercover officers will be on the database.
- 8.96 This appears to be a step forward in ensuring that a comprehensive database of all undercover officers is maintained. Once established, we hope that the database will relieve the understandable frustration that currently propels officers to find their own way of identifying those who may be able to assist in their enquiries.<sup>152</sup> We expect it to be used by all those seeking to deploy undercover officers from another force and to bring an end to the approach of ‘tapping on the shoulder’ of a known colleague in a neighbouring force, or in the undercover community.
- 8.97 However, we have three concerns.
- 8.98 First, we understand that there are no current proposals to update the national undercover index, ensure its accuracy, and then use it as the basis for the new national undercover database.
- 8.99 As things currently stand, we consider that it would be highly dangerous to import the contents of that index, as to do so would suggest that it is accurate and reliable: it is not. However, if our recommendation 32 is acted upon immediately, we can have some confidence that the refreshed national undercover index will be accurate. Once that position has been reached, it seems entirely sensible to adopt the national undercover index as a robust and reliable starting point for the new database.

<sup>152</sup> See paragraph 6.6 et seq.

8.100 Secondly, we understand that there are no current plans to include details of online undercover officers, even though they now receive a unique reference number in the same way that foundation and advanced undercover officers do. We regard this as a serious flaw in the current proposals and it perpetuates the myth that online undercover officers operate in a less important area of undercover policing. We develop our thinking about this general point at paragraph 11.19.

8.101 With regard to the proposed national undercover database, we cannot envisage any reason why it should not be comprehensive from the start.

### **Recommendation 33**

**The managers of the national undercover database should ensure that online undercover officers are included in the database.**

8.102 Thirdly, we understand that there are no current plans or resources available to transfer the details of previous deployments of undercover officers which are maintained on the national undercover index to the new national undercover database. We regard this as a weakness as it will mean that the experience of many undercover officers will not be available on the new database, and that additional searches will be required of the national undercover index which, at that stage, will be historic.

8.103 Such details should be transferred from one index to the other.

### **Recommendation 34**

**The managers of the national undercover database and the national undercover index should ensure that previous records of deployment kept on the national undercover index are transferred onto the national undercover database.**

## **Training for authorising officers**

8.104 We have set out in chapter 3 and annex D the vital role which authorising officers play in overseeing, scrutinising, and maintaining the integrity of the deployment of undercover officers under the regime set out in the Regulation of Investigatory Powers Act 2000.

- 8.105 Since 1 January 2014, all foundation and advanced deployments have needed to be authorised by an officer of at least assistant chief constable rank or equivalent.<sup>153</sup> We regard it as essential that authorising officers receive training about undercover policing and the critical role that they play in upholding and enforcing the statutory regime.
- 8.106 However, in the course of our fieldwork, we found that not all chief officers who now authorise undercover officers have been trained in, or have experience of, undercover policing themselves.
- 8.107 One assistant chief constable commented that the only formal training for undercover policing that she had received was a one-day seminar during the strategic command course and that it had consisted of little more than a recounting of “war stories”.<sup>154</sup>
- 8.108 HMIC raised concerns about the lack of chief officer knowledge of the authorisation process in its 2012 report into undercover policing.<sup>155</sup> As a result, the College of Policing started to devise an authorising officers’ course for chief officers.
- 8.109 We reinforced our concerns in our June 2013 review of progress report:

*“Whilst there is an [Association of Chief Police Officers’ Authorising Officer] training course due to be delivered in the next 12 months, [assistant chief constable authorising officers] are currently making critical decisions without appropriate training, and often with only limited experience of covert policing. The delay in ensuring [assistant chief constable authorising officers] are properly trained and accredited is unacceptable. The training course for [Association of Chief Police Officers’ Authorising Officers] should be mandatory for all [assistant chief constables] who are responsible for authorising any type of undercover deployment.”<sup>156</sup>*

<sup>153</sup> See paragraphs 3.11 and 5.9.

<sup>154</sup> The strategic command course is a prerequisite for officers and staff seeking to attain the rank of chief police officer in the United Kingdom. It is open to international delegates and those from other law enforcement agencies aspiring to the most senior positions in their home countries. It is also open to a small number of non-police delegates working at an executive level in other public sector bodies.

<sup>155</sup> *A review of national police units which provide intelligence on criminality associated with protest*, HMIC, January 2012.

<sup>156</sup> *A review of progress made against the recommendations in HMIC’s 2012 report on the national police units which provide intelligence on criminality associated with protest*, HMIC, June 2013, paragraph 4,6, page 19.



- 8.110 In November 2013, the College of Policing circulated details of nine course dates to all forces. Those courses were to take place at the Police College in January, February and March 2014.
- 8.111 The first two courses, scheduled for January 2014, had only one assistant chief constable delegate for each. They both had to be cancelled as it was not a viable option to proceed. The first of the scheduled courses actually to take place was at the end of January and was attended by ten delegates, although eight were already at the Police College for a strategic command course. They were, in effect, a captive audience of those aspiring to be assistant chief constables. The reality, therefore, was that only two current assistant chief constables from the United Kingdom had by then attended a course.
- 8.112 The next course was scheduled for February 2014, but from an initial total of eight delegates, the number dwindled to three, which meant that yet again the course had to be cancelled.
- 8.113 This situation is unacceptable given the general level of knowledge in chief officers in this area of work and the risks associated with it.

### **Recommendation 35**

**Chief constables and heads of law enforcement agencies should direct that an assistant chief constable or equivalent should not be able to act as an authorising officer until he or she has attended and passed the authorising officers' course. In future, attendance at such a course should be regarded as a mandatory requirement prior to any assistant chief constable being appointed.**

### **Training for senior investigating officers**

- 8.114 There is insufficient national training currently available for senior investigating officers who are expected to operate in this difficult area of police work. We found that, even amongst senior investigators who were very experienced in serious crime investigation, there was little knowledge or experience of undercover policing.
- 8.115 Some senior investigating officers told us that they tried to address this deficiency by observing courses for undercover officers. Senior investigating officers from one force also spoke of attending a bespoke undercover training course organised in their force for senior investigating officers.
- 8.116 Such training is, however, a rarity and some senior investigators told us that they had to rely on staff from their undercover unit to advise and

guide them during their first operation in which they deployed undercover officers.

8.117 Whilst we recognise that this is a practical solution, it is not right. The very rationale for separating the management of the investigation from the management of undercover officers is to avoid merging the two parts of a police enquiry so that a measure of independence may be maintained between the senior investigating officer and the undercover officer.

8.118 A better option would be to introduce a mentoring scheme involving senior investigating officers who are experienced in deploying undercover police officers in their investigations who may guide their less experienced colleagues.

### **Recommendation 36**

**The College of Policing should establish a bespoke undercover training course for senior investigating officers. It should include a mentoring programme for those inexperienced in deploying undercover officers in their investigations.**

## **Training for undercover covert operations managers and cover officers**

8.119 We were pleased to find that a number of undercover covert operations managers had attended a covert law enforcement managers' course, or intended to do so.

8.120 The course is designed for those officers who perform the role of undercover covert operations manager or senior investigating officer engaged in the management of covert operations and the deployment of covert officers and techniques. The course is provided by the College of Policing and provides participants with the knowledge and skills to ensure that covert resources are deployed effectively and managed in accordance with current legislation and good practice.

8.121 We also note that a cover officers' course has been introduced – but only as recently as July 2013. As a result, many of those working as cover officers have yet to attend it. In the past, there was a general expectation that cover officers had themselves previously been trained as undercover officers, or that they had attended a course for officers as observers.

- 8.122 We do not consider relying on that expectation to be satisfactory or adequate. It is important that cover officer training is licensed and consistent.
- 8.123 Some cover officers told us that they had recently attended a bespoke course in another force but that the training had not been accredited. The cover officer has a statutory obligation for the day-to-day responsibility for managing undercover officers and their security and welfare.<sup>157</sup> It is therefore essential that those performing the role receive appropriate training from those approved to provide it.

### **Recommendation 37**

**Those who seek to become cover officers should attend and pass an appropriate course licensed by the College of Policing.**

- 8.124 In the case of existing cover officers who have built up experience in their role, we consider that they should be subject to assessment to ensure that they would meet the standards required of new cover officers who will be subject to that licensed training programme.

### **Training for operational security advisors**

- 8.125 An operational security advisor quality assures issues of legality, integrity, ethical conduct and standards of covert operations, while contributing to the overall effectiveness of such operations.
- 8.126 It is a vital role and we found that those forces and law enforcement agencies which we regarded as undertaking their responsibilities well in respect of undercover policing maintained active operational security advisor involvement.
- 8.127 We are pleased to note that there is a national training course for operational security advisors, though we are concerned to record that several forces and law enforcement agencies have dispensed with the role in order to make financial savings.
- 8.128 The National Crime Agency has 14 operational security advisors who are based throughout England and Wales.

<sup>157</sup> Section 29(4A)(a), Regulation of Investigatory Powers Act 2000.

8.129 We consider the role to be so important that all forces and law enforcement agencies ought to ensure that they have or have access to a successfully trained operational security advisor. Having discussed the issue with the chair of the National Counter Corruption Advisory Group, we support his view that operational security advisors should sit outside the undercover managerial and supervisory structure.

### **Recommendation 38**

**Chief constables and the heads of law enforcement agencies should ensure that his or her force or agency has, or has access to, an operational security advisor who has passed the relevant course.**

8.130 We are conscious that we have made a significant number of recommendations about the need for standardised training for those who are engaged in any part of the undercover policing process. But we go further.

8.131 We consider that all training courses should be licensed to enable those who deploy undercover officers to be assured that they have been properly trained to an approved standard.

8.132 In addition, we consider that all those who have passed the relevant training course should themselves be accredited. They will have worked hard to pass the course and they are entitled to be recognised as having done so.

8.133 By licensing the courses and by accrediting those who pass them, we consider that a recognisable network of those who are involved to any extent in undercover policing will be created - a network in which those who need to rely on the professionalism of those in undercover policing may have the confidence to do so.

### **Recommendation 39**

**The College of Policing should license all approved training courses and accredit all those who pass such courses.**

8.134 In order to ensure the integrity of such a system, the College of Policing should appoint its own registrar to oversee the process. The registrar should have the power to revoke any licence or accreditation where the course or the individual no longer maintains the required standard. We have referred to this aspect in recommendation 12.

## **Continuous professional development**

- 8.135 Those who pass the appropriate training courses to become foundation undercover officers, advanced undercover officers, authorising officers, senior investigating officers, covert operations managers, cover officers or operational security advisors have only started on their journeys as important players in an essential policing tactic. The requirements on undercover officers and those who manage or assist them concerning the law, practice and procedure are continually evolving. The development and use of undercover online staff demonstrate how important it is for the police continually to consider how best to combat crime and secure sufficient admissible evidence against those who commit it to lead to successful criminal proceedings.
- 8.136 And so there is an ongoing responsibility on all those engaged in undercover policing to maintain their skills through continuous professional development.

- 8.137 We were concerned to note the inconsistency of approach in this regard across the forces and law enforcement agencies. In some forces and law enforcement agencies, officers are left to their own devices, while others have a structured process whereby those who are engaged in undercover policing receive information about recent changes to the law, policy or practice on an annual, bi-annual or sometimes even monthly basis.
- 8.138 The National Crime Agency meets the continuous professional development needs of its staff through workshops, additional training for maintaining specific legends and a mentoring process.
- 8.139 We noted two instances of specific good practice in this area: first, some forces took the opportunity during development meetings to remind undercover officers that they remain, first and foremost, police officers; secondly, a head of a regional unit produced a newsletter covering broader aspects of undercover policing which was welcomed by staff.
- 8.140 However, we were particularly concerned about the absence of specific training on the Regulation of Investigatory Powers Act 2000. The Act is the keystone of undercover policing. It sets out the framework within which this covert police tactic may lawfully be undertaken and provides a further framework of protection for all those who are engaged in this work.
- 8.141 Generally speaking, we found that most officers acquired knowledge of the provisions of the Act in one of two ways: either through their attendance on other training courses where mention of the Regulation of Investigatory Powers Act 2000 was incidental to the specific aims of those courses; or through practical experience while on undercover operations – in other words, through learning on the job.
- 8.142 We found some instances where forces arranged joint training with members of the Crown Prosecution Service but these were the exception, rather than the rule. Such joint training was well received and we encourage senior managers in forces to discuss with their Chief Crown Prosecutors how such training can be funded and provided to the mutual benefit of both.
- 8.143 We did not find evidence of bespoke training about the legal framework for undercover policing in the Regulation of Investigatory Powers Act 2000.

#### **Recommendation 40**

**The College of Policing should establish a specific training module which instructs upon, and tests knowledge of and competence in the regime of undercover policing in the Regulation of Investigatory Powers Act 2000.**

## 9. Recording the decision-making process

- 9.1 Our fifth term of reference was to consider the decision-making processes, guidance and support framework for those at all levels of the planning and authorisation of undercover operations, particularly in making difficult and potentially high-impact decisions.
- 9.2 We set out in chapters 5 and 6 our view that the quality of decisions concerning the deployment of undercover officers and the quality of the decisions that those undercover officers take while on deployment are generally good. In this chapter, we consider the way in which those engaged in the process maintain records so that their actions can be quality-assured and scrutinised later. In such a sensitive area of policing, it is essential that proper records are made and retained so that others may follow the decision-making process and understand what factors led officers to make certain decisions. Only in this way may those who oversee the process be able to fulfil their role effectively.
- 9.3 The records should cover matters relating to the officer's deployment and to any issues concerning the undercover officer.

### Keeping records on a practical level

- 9.4 The Authorised Professional Practice advises that an undercover officer should make handwritten statements and that it is his or her responsibility to check that those statements are accurate before signing them.
- 9.5 We found the practice of making statements was mixed.
- 9.6 We also found unjustified variations in the ways in which contact between undercover officers and their cover officers was recorded. In one force, at the start of each foundation operation, the cover officer opens an electronic log to record all contact between him or her and the undercover officer. We examined this process and found both the contact between the two and any record of that contact to be wholly inadequate because there was too little information recorded and the length of time between contacts was too great.



- 9.7 In one operation, an undercover officer was deployed on nine separate occasions, yet there was no record on the log to indicate that there had been any contact between him and the cover officer, either before or after the deployment. We asked the cover officer about the absence of any record of any contact between the two, and the implication that the cover officer had not considered the deployment either from an operational or welfare point of view. It was suggested to us that, in fact, contact had been made with the undercover officer, but that nothing was recorded because there was nothing of any value worth noting.
- 9.8 We found this rationale simply unacceptable. In undercover policing – as in many other areas of police work – the fact that something does not happen may be as important as when something does. Recording that fact is as essential.
- 9.9 We note that, in this case, the lack of recorded contact was of significant concern to the Office of Surveillance Commissioners during its most recent inspection.

#### **Recommendation 41**

**All undercover police officers and all managers of undercover police officers should ensure that appropriate and consistent records of their deployments are written and retained. These should address both operational and welfare issues.**

#### **Retaining evidence of the decision-making process**

- 9.10 In forces where the authorising process works well, we would expect to find evidence of a dialogue between the officer seeking authority to deploy an undercover officer and the authorising officer. Any conscientious authorising officer is likely to have questions that he or she wishes to have answered before authorising the deployment.
- 9.11 We found evidence that, where this did occur, the authorising officer would often annotate the application with questions that required answers. We found examples where the initial application for deployment had been declined by the assistant chief constable but the original application bearing his or her comments had been retained.
- 9.12 We examined an application that had been returned in this way and, whilst it was not marked 'refused', the assistant chief constable had not signed it but had made notes and observations on it. A subsequent application, which addressed the issues that had been raised, was approved.

- 9.13 This practice is good for the purposes of disclosure under the Criminal Procedure and Investigations Act 1996, and it demonstrates how carefully the application was considered.
- 9.14 However, questions arise about how this dialogue is preserved in forces that do not retain any initial paperwork in respect of applications for authority to deploy which are not immediately granted. Greater clarity is required to distinguish between applications which are refused and those which are returned for further explanation.

#### **Recommendation 42**

**The National Undercover Working Group should establish and circulate detailed guidance on retaining records connected to a request for the authorisation to deploy an undercover officer. The records should include those applications which are refused and those which are subsequently amended and resubmitted for approval.**

#### **Recommendation 43**

**Chief constables and the heads of law enforcement agencies should ensure compliance with all guidance on the records connected to a request for the authorisation to deploy an undercover officer.**

### **Keeping records at a strategic level**

- 9.15 Current practice requires a senior investigating officer to maintain a policy file, commonly referred to as a policy book or log, as a record of the strategic operational decisions which are taken and the rationale that lies behind them.
- 9.16 We were concerned to find that, in many instances, such a file was not completed. All senior investigating officers engaged in undercover operations, irrespective of their previous involvement, should be fully aware of the need to maintain a policy file from the start of, and throughout, an operation. We noted that this appeared to be a particular problem when a senior investigating officer was inexperienced in the tactic. Further, we found that, in one force that was used to deploying undercover officers, a policy file had not been opened until two weeks after the start of an operation.

- 9.17 In one investigation, the senior investigating officer maintained a policy file concerning the deployment of an undercover officer. When we examined the policy file, we found that there was a gap of six months between two consecutive entries in that file. During that time, the undercover officer had been deployed on several occasions, each of which should have been recorded properly in the policy file.
- 9.18 Had anything untoward occurred during those deployments, we find it difficult to understand how the senior investigating officer would have explained why the officer had been deployed on that occasion. He would also have been unable to produce any documentary record that might counter any argument later put forward that something inappropriate had happened during those deployments.
- 9.19 A failure to follow requirements and maintain the policy file simply provides those who wish to challenge the conduct or use of an undercover police officer with a perfect opportunity to raise doubt in the minds of those who oversee the process – or even a judge presiding at a criminal trial – that the police have something to hide. Those who wish to challenge deployments should not be provided with assistance in this way by the police officers themselves.
- 9.20 A policy file must also relate to a specific operation rather than be an amalgamation of several unconnected operations. However, we found instances where senior investigating officers kept records of a number of different undercover operations in generic rather than individual policy files.
- 9.21 Even where a senior investigating officer maintained a policy file, we found, on several occasions, that those files regularly did not amount to anything more than a chronology of events; they were certainly not the repository of a comprehensive record of critical decisions.
- 9.22 In addition, some senior investigating officers do not routinely keep policy files in cases where a foundation undercover officer is deployed. In lieu of the policy file in one force, the undercover covert operations managers made entries in a ‘rough book’, and these entries again amounted only to a chronology of events.
- 9.23 It is a matter of substantial concern when a senior investigating officer fails to discharge his or her obligations.
- 9.24 Whilst it is important for us to highlight that we found instances where individual managers fell far short in their duties, we want to emphasise as well that we found some fine examples of what should be done.

- 9.25 In one force, for example, senior investigating officers are issued with policy and decision logs for when they are off-duty but on call. Those logs are specific to particular operations and are used to record decisions in out-of-hours situations. When a senior investigating officer returns to duty, those decisions are entered onto an electronic log, while the actual written version is later submitted to ensure compliance with the Criminal Procedure and Investigations Act 1996.<sup>158</sup>
- 9.26 We are mindful that the College of Policing has adopted the National Decision Model and that it is readily available on its website.<sup>159</sup> In comprehensive guidance, the College sets out how decisions should be taken to ensure consistency of approach. The Model starts with the clear and unequivocal statement that it:

*“is suitable for all decisions. It can be applied to spontaneous incidents or planned operations by an individual or team of people, and to both operational and non-operational situations.*

*“Decision makers can use it to structure a rationale of what they did during an incident and why.*

*“Managers and others can use it to review decisions and actions taken.”<sup>160</sup>*

- 9.27 There is a section dedicated to the recording of decision-making, followed immediately by a section on reviewing decision-making. We cannot do any better than adopt the opening sentence of that former section:

*“[d]ecision makers are accountable for their decisions and must be prepared to provide a rationale for what they did and why.”<sup>161</sup>*

<sup>158</sup> This Act sets out the rules governing the disclosure of evidence and information by the prosecution to the defence in criminal proceedings.

<sup>159</sup> *National Decision Model*, Authorised Professional Practice, College of Policing, October 2013: [www.app.college.police.uk/app-content/national-decision-model/the-national-decision-model/#application](http://www.app.college.police.uk/app-content/national-decision-model/the-national-decision-model/#application)

<sup>160</sup> *Op cit*, Application.

<sup>161</sup> *Op cit*, Recording decision making.

## Recommendation 44

**Chief constables and heads of law enforcement agencies should require all those engaged in undercover policing to adopt and comply with the requirements of the National Decision Model.**

### **An internal review of decisions during operations**

- 9.28 The present regime governing the deployment of undercover police officers attempts to strike a balance between a perceived operational requirement and the need for an independent assessment of that requirement.
- 9.29 Further, in day-to-day handling of an undercover police officer, the separation between investigative command and personnel management provides a measure of independence and detachment which helps to ensure that the undercover officer is, and continues to be, deployed only when circumstances demand.
- 9.30 The Office of Surveillance Commissioners provides an additional layer of scrutiny.
- 9.31 Our findings about poor record-keeping and our earlier reporting of the unjustifiable variations in the quality of authorisations causes us to conclude that there needs to be an internal review at crucial stages during the deployment phase to ensure that the regime is being followed rigorously and correctly.
- 9.32 Such an approach would mirror the internal review process adopted in homicide cases.<sup>162</sup> It would not need to be introduced necessarily at an early stage, but at timely and appropriate intervals throughout the operation.
- 9.33 The importance of an independent senior investigating officer carrying out an internal review of any investigation is recognised across the police service.

<sup>162</sup> In a homicide investigation, reviews are carried out after 24 hours. If the offence remains undetected, a review is conducted after seven days, and the case is reviewed again after 28 days by a senior investigating officer who is not connected with the investigation. Thereafter, as a minimum, all undetected homicides are reviewed at least every two years.

- 9.34 The objective of the internal review would be to evaluate critically the conduct of an operation to ensure: that it conforms with nationally-approved standards; that it is thorough; that it is being conducted with integrity and objectivity; that it is in accordance with the law; that any missed opportunity to progress the investigation is identified; and that any good practice has been highlighted.
- 9.35 We recognise that it is essential that such an internal review should be carried out in a spirit of co-operation between the independent senior investigating officer and the officer leading the undercover operation. The review should always be regarded as of help by those leading the investigation, rather than as a threat.

#### **Recommendation 45**

**Chief constables and the heads of law enforcement agencies should introduce an internal review process for undercover operations involving an independent senior investigating officer to ensure integrity, objectivity and compliance with the law.**

## 10. The Office of Surveillance Commissioners

- 10.1 Our sixth term of reference was to consider the adequacy of the police and the [National Crime Agency's]<sup>163</sup> response to the scrutiny of undercover operations put in place by the Office of Surveillance Commissioners, including the effectiveness of arrangements for the sharing of best practice and learning of lessons.
- 10.2 The Office of Surveillance Commissioners is responsible for overseeing the use of covert surveillance by designated public authorities based in the United Kingdom and inspects the police's use of, and compliance with, the Regulation of Investigatory Powers Act 2000 on an annual basis.<sup>164</sup>
- 10.3 We found that the relationship between the Office of Surveillance Commissioners and forces and law enforcement agencies is good. The Office of Surveillance Commissioners helpfully raises issues in its force reports for action at a local level. For example, in one force, it expressed concern about the day-to-day responsibilities provided by the cover officer in relation to the management of undercover officers and compliance with the Regulation of Investigatory Powers Act 2000.
- 10.4 In one force, the Office of Surveillance Commissioners raised an issue around the risk of compromise of an undercover officer and how this was documented on the relevant risk assessment form.<sup>165</sup> The mitigation of the risk was stated to be that, if the organised crime group discovered the deployment of an undercover officer in their midst, its members would, more than likely, leave the undercover officer alone because he was a police officer. This was despite the fact that one of the gang that the undercover officer was infiltrating had intelligence links to firearms. Together with the Office of Surveillance Commissioners, we found this assessment to be extremely worrying.

<sup>163</sup> Our original terms of reference referred to the Serious Organised Crime Agency but this was replaced by the National Crime Agency during the course of our inspection.

<sup>164</sup> See paragraph 3.22 et seq.

<sup>165</sup> A risk assessment and the formulation of a risk management plan are required in respect of each undercover officer in each operation, and they are an integral part of the authorisation process.

- 10.5 The majority of forces respond positively to the findings of their annual inspections and implement any changes that are required through action plans. However, the Office of Surveillance Commissioners has advised us that, on occasion, it has had experience of forces being reluctant to act on its recommendations. Indeed, the Office of Surveillance Commissioners went on to say that, in its subsequent inspections, it found that action had not been taken to address issues that it had raised previously.
- 10.6 We consider this to be unacceptable. Forces should respond positively to the Office of Surveillance Commissioners' recommendations, and, if our recommendations concerning the licensing of undercover units are accepted, we expect the findings of the Office of Surveillance Commissioners to be taken into account in the accreditation process.

## **Visits to forces by the Office of Surveillance Commissioners**

- 10.7 During an inspection by the Office of Surveillance Commissioners, the usual practice is for the relevant force to take any necessary documentation to a designated room for its inspectors to examine.
- 10.8 That is acceptable if the room where the inspectors consider the documents is in the same building which houses the undercover unit. However, we know of instances where the Office of Surveillance Commissioners' inspectors have been allocated rooms in a different building and sometimes even in a town or city different from the location of the undercover unit. This causes difficulties. On occasion, the original set of documentation provided by the force was found to be incomplete; the inspectors quite properly requested the further documents but because of the distances involved between the covert premises and the location where the inspectors were considering the documentation and the timescales allocated for each inspection, the additional material was not transported in time.
- 10.9 It is clear to us that if the Office of Surveillance Commissioners is to conduct a thorough and comprehensive inspection, its inspectors must be allowed unfettered access to the documentation which they require. Logistical difficulties that thwart this must be removed.



#### **Recommendation 46**

**The National Undercover Working Group should establish and promulgate clear guidance setting out the circumstances in which inspectors from the Office of Surveillance Commissioners should be able to visit covert premises.**

## 11. Undercover online policing

- 11.1 In this chapter, we deal specifically with the issue of deploying undercover officers online. Our inspection found that this area of undercover policing has been neglected. Issues relating to the deployment of undercover online officers encompassed all our terms of reference. We have set out our findings, therefore, in one chapter.
- 11.2 There can be few individuals whose lives have not been affected in some way by the development of the internet. In 2013, the Office for National Statistics stated that: “36 million adults (73%) in Great Britain accessed the Internet every day, 20 million more than in 2006, when directly comparable records began.”<sup>166</sup>
- 11.3 The world wide web is not restricted to adults. The independent regulator and competition authority for the United Kingdom communications industries publishes an annual report about media use and attitudes.<sup>167</sup> In October 2013, it reported that 91 percent of children live in a household with access to the internet,<sup>168</sup> and that, in 2013, children aged 5-7 years are spending, on average, 6.7 hours each week online; children aged 8-11 years, 9.2 hours; and children aged 12-15 years, 17 hours.<sup>169</sup>
- 11.4 This immediacy of connection with virtually anywhere in the world lies at the heart of the internet phenomenon. But at the centre of what makes the internet such a powerful tool for good lies its potential to be used for ill.

<sup>166</sup> *Internet Access – Households and Individuals 2013*, Office for National Statistics, August 2013.

<sup>167</sup> *Children and Parents: Media Use and Attitudes Report*, Ofcom, October 2013.

<sup>168</sup> *Op cit*, page 22, figure 2.

<sup>169</sup> *Op cit*, page 55, figure 31.

- 11.5 The potential misuse of the internet by organised crime groups and individuals is clear and includes: the importation of controlled drugs, firearms and ammunition; money laundering; online fraud; identity theft; the disposal of stolen property; sexual grooming of children and vulnerable adults; the making and distribution of indecent images; and anti-social offences, such as harassment. The internet can also be used to commit crimes driven by human trafficking; ideology, such as terrorism; and racial or religious hatred.
- 11.6 The internet provides what many may think is an element of safety. Now, the criminal may stay at home, protected by a false identity or using the deep web<sup>170</sup> where it is more difficult to trace where he or she is, and negotiate the sale of drugs, guns, ammunition, sexual images of children or even children themselves, without the need even physically to be in the same country. This makes the job of the police and other law enforcement agencies even more difficult.
- 11.7 The need to combat internet-based crime was recognised by the Home Office in 2010 when it published its Cyber Crime Strategy.<sup>171</sup> There, it stated its intention to “create a hostile environment for cyber criminals”.<sup>172</sup> Amongst its planned interventions was an undertaking to “provide an effective law enforcement and criminal justice response, through specialist units, and ensure that intelligence is shared where appropriate”.<sup>173</sup>
- 11.8 This commitment was reinforced in the Strategic Policing Requirement of July 2012 where one of the five national threats was identified as:

*“[a] large-scale cyber incident, which the National Security Risk Assessment identified as a Tier One risk (together with the risk of a hostile attack upon cyber space by other states). The crime threat at the national level may be a major incident, such as a criminal attack on a financial institution to gather*

<sup>170</sup> The deep web is a pre-existing section of the world wide web that is not part of the surface web and which cannot be accessed through well-known search engines. Research earlier in the 21<sup>st</sup> century suggested that, even then, there were over 900 billion pages of information on the deep web. The deep web may be accessed in a way that means that neither the person surfing the deep web nor the websites that he or she might visit are able to be traced back to identifiable users because the means of access provides anonymity for each party by concealing their internet service provider addresses.

<sup>171</sup> *Cyber Crime Strategy*, Cmnd 7842, Home Office, March 2010: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/228826/7842.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228826/7842.pdf)

<sup>172</sup> *Op cit*, page 17.

<sup>173</sup> *Ibid*.

*data or money, or it may be an aggregated threat, where many people or businesses across the UK are targeted. It includes the response to a failure of technology on which communities depend and which may also be considered a civil emergency.*<sup>174</sup>

11.9 Although our inspection was solely concerned with the deployment of undercover officers, it should be noted that the recent HMIC inspection into the arrangements relating to the Strategic Policing Requirement<sup>175</sup> stated that:

*“[w]e found in interviews with senior police leaders that their decisions about the number of staff required to investigate cybercrime were based on the volume and nature of crimes reported to their forces rather than the associated threat, risk and harm.”*<sup>176</sup>

11.10 The report further identified that:

*“police forces are not yet able to effectively identify or understand the threat, risk and harm posed by cybercrime”.*<sup>177</sup>

11.11 This statement strongly reflects the findings of our inspection in respect of online operations. Certain sections of the police service and the National Undercover Working Group have been slow to recognise the need to develop skills and capabilities that will enable law enforcement agencies to operate effectively in the 21<sup>st</sup> century. Whilst some forces have recognised the level of threat and risk presented by the internet and have responded appropriately by investing in both training and equipment, others have not.

<sup>174</sup> *The Strategic Policing Requirement*, Home Office, July 2012, page 8: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/117445/strategic-policing-requirement.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/117445/strategic-policing-requirement.pdf)

<sup>175</sup> *The Strategic Policing Requirement - An inspection of the arrangements that police forces have in place to meet the Strategic Policing Requirement*, HMIC, April 2014: <http://www.justiceinspectorates.gov.uk/hmic/wp-content/uploads/2014/04/an-inspection-of-the-arrangements-that-police-forces-have-in-place-to-meet-the-strategic-policing-requirement.pdf>

<sup>176</sup> *Op cit*, paragraph 5.72, page 62.

<sup>177</sup> *Op cit*, paragraph 6.64, page 80.

## The police response

11.12 Because the internet is available to all, the police service has a number of ways of obtaining information from it. Open source research is the most basic form of law enforcement activity. It simply involves an officer or a member of police staff trawling the internet for information about a particular topic or suspect. It does not require that person to adopt a false persona and it does not require him or her to form a relationship with a third party which would need to be authorised under the Regulation of Investigatory Powers Act 2000.

## Defining an undercover online officer

11.13 However, in addition to these information-gathering techniques, there are occasions when it is appropriate for a police officer to use the internet to obtain evidence or information about another person or a potentially unlawful activity while pretending to be someone else.

11.14 As we have pointed out in paragraph 4.5, there is not a nationally agreed definition of an undercover online officer. As we stated there, we have adopted the following description:

*“[a]n undercover online officer is an appropriately trained law enforcement officer, who establishes or maintains a relationship through the internet, in order to obtain covertly information, intelligence or evidence against an individual, group of individuals or organisation.”*

## Defining the role

11.15 We found that forces were adopting different ways of using undercover online officers and of bringing them together to function as a unit.

11.16 Current common practice is for undercover online officers to adopt a false identity to interact or maintain a relationship with those suspected of using the internet for criminal purposes.

- 11.17 Authorisation is required for an undercover online officer to form a relationship with an individual online, as the officer is classified as a covert human intelligence source under the Regulation of Investigatory Powers Act 2000.<sup>178</sup>
- 11.18 Although many aspects of the practical day-to-day work of an undercover online officer are identical to foundation and advanced undercover officers, there is usually one significant difference: undercover online officers rarely, if ever, meet the targets of their operations in person. There are advantages from which undercover online officers benefit as a result: unlike their counterparts who meet their targets and who are constrained by their own physical appearance to a large extent, undercover online officers are not so restricted. An undercover online officer is able to present a persona entirely at odds with his or her true identity: the officer can pretend to be female when he is male, and *vice versa*; he or she can pretend to be a child; he or she can adopt the physical characteristics which are known to attract the target with whom he or she is building a relationship, without possessing any single attribute which he or she claims as his or her own. This provides substantial scope for any undercover officer to take on the role of an undercover online officer.
- 11.19 Some might suggest that, because of the absence of physical contact with the target, the undercover online officer is somehow a lesser form of undercover officer. Undercover online officers play an essential role in helping to identify and gather evidence against those who use the internet as their gateway to commit offences. These offences are often serious and sometimes require the undercover online officer to become aware of extremely harrowing examples of criminal behaviour, such as online child sexual exploitation. Officers who deal with such types of behaviour play a vital role in detecting and preventing crime of the most insidious nature and are to be valued as much as those who are placed at risk of direct physical harm. We regard the two disciplines within undercover policing to be of equal merit: so should all those who engage in, or who are connected with, or who have an interest in, undercover police work.

<sup>178</sup> See annex D, paragraph 7.

- 11.20 Undercover online officers can maintain simultaneous engagements with criminals across a variety of crime categories. For example, one undercover online officer can deal, at any one time, with individuals engaged in a range of criminality from the sexual exploitation of children to the commission of acts of terrorism. This flexibility is impossible to replicate by the traditional deployment of undercover officers.
- 11.21 The better performing police forces and law enforcement agencies were found to deploy undercover online officers with several online identities, often on a worldwide basis, across the full spectrum of criminality. Others restricted the use of undercover online officers to claiming back stolen property from online market sites.

## **Guidance about undercover online policing**

- 11.22 The Authorised Professional Practice does not make any reference to undercover online policing. We were surprised to find that the College of Policing and the Working Group failed to refer to undercover online policing in its Authorised Professional Practice.
- 11.23 As a result, forces and law enforcement agencies have developed local strategies and approaches. This leads to inconsistencies of approach. When offending online is so clearly a national and international phenomenon, we consider it to be absurd that the police service's response is determined at an individual force level because of the lack of a national approach.
- 11.24 This lack of national guidance has a further, more insidious effect: it lends succour to those who regard undercover online policing as somehow second best. We develop this theme in paragraph 11.19.
- 11.25 The current position is, quite simply, unacceptable.

### **Recommendation 47**

**The College of Policing, in conjunction with the National Crime Business Area, should establish and publish discrete guidance about all aspects of the undercover online policing requirement, starting with a definition of what an undercover online police officer is and should do.**

## The selection and training of undercover online police officers

- 11.26 Just like their counterparts who engage in undercover policing generally, undercover online officers need to know the relevant law and the boundaries of the authorities under which they are deployed. They are also often confronted by the need to make critical decisions and immediate interventions.
- 11.27 However, the arenas in which the two types of undercover police officer are deployed are different and, as a result, each requires a different set of developed skills and competencies.
- 11.28 We have found that, within the traditional undercover community, there has been a reluctance to embrace the opportunities presented by new technologies. As a result, the current selection and training process relies heavily on a skill set which may have been appropriate in the 20<sup>th</sup> century, but which is increasingly outdated.
- 11.29 The undercover online tactic can be traced back to 1999 when the West Midlands Police Paedophile and Pornography Unit was the first police unit to use the internet to engage with and successfully prosecute an offender.
- 11.30 The absence of any screen capture software, or indeed technical knowledge at that time, resulted in the unit using a video camera to record the details of the online conversation for future court proceedings. This clearly illustrated the need for law enforcement agencies to develop technical capabilities and to provide appropriate training in order to deal with internet-enabled criminality.
- 11.31 Training was initially developed in the form of forensic and network courses, but it was not until 2005 that the National Policing Improvement Agency launched a National Covert Internet Investigators course.<sup>179</sup> Although this dealt with the technical aspects of evidence recovery, it did not specifically address the legal knowledge and practical skills required to be an effective undercover online officer.

<sup>179</sup> In 2013, the course was considered no longer fit for purpose and was withdrawn by the College of Policing. As a consequence, the training provision for undercover online police officers was, as of March 2014, under review by the College.



11.32 The focus on the technical aspects of online investigation has had the unforeseen consequence of dissuading the wider undercover police community from recognising the potential benefits of having an online presence. An experienced advanced undercover officer who also worked as an undercover online officer told us that:

*“[t]he undercover world were just not interested; they did not understand it and just thought it was something that techies did.”*

11.33 In 2010, West Midlands Police, which had continued to develop their online capability, recognised the gap in the provision of training. The force developed its own training, known as the Pilgrim course.

11.34 The Pilgrim course was designed specifically to improve the legal knowledge and undercover policing skills of those staff who operated online. Whilst attendees can and do fail the course, it is developmental in nature. It comprises a three-month distance-learning package which incorporates a two-week residential module. It is recognised by the National Undercover Working Group as an approved workshop. However, unlike other workshops, it has academic accreditation, through Wolverhampton University, which quality assures the standards of the course.

11.35 One stipulation of the Pilgrim course is that attendees must have passed a Foundation Undercover Training Assessment Course. Until its recent withdrawal, the requirement was replicated for those attending the covert internet investigators course. It was reinforced in 2013 when the National Undercover Working Group stated that undercover online officers should be qualified as foundation undercover officers or advanced undercover officers.

11.36 This requirement has had an adverse affect on the recruitment of undercover online officers.

11.37 The Foundation Undercover Training and Assessment Course was designed to test the attendees’ competence in undercover policing. Some with whom we spoke stated that the course was based around the skills required to buy commodities, such as firearms or drugs. As such, it was not tailored towards those who wished to pursue a role as an undercover online officer.

11.38 And so the requirement that aspiring officers needed to pass the Foundation Undercover Training and Assessment Course has resulted in potentially skilful undercover online officers not being able to take up the role.

- 11.39 One experienced undercover covert operations manager who supervises a well-established undercover online unit stated: “[t]here is no doubt that, because of the current system we have lost some really good people who would have made excellent undercover online officers.” A second senior officer commented that they selected people on the basis that: “[t]hey would pass the foundation training course rather than the ability to be an undercover online officer.”
- 11.40 This issue is further illustrated by the decision of some units to seek ‘grandfather rights’<sup>180</sup> for their undercover online officers who failed the initial assessment element of the Foundation Undercover Training and Assessment Course. Individuals who were experienced in and performing undercover online policing were assessed with a view to attending the course in order to comply with the National Undercover Working Group’s requirement. In a number of cases, they were unable to demonstrate the skill sets expected of traditional foundation undercover officers and failed the assessments. However, units were reluctant to lose experienced staff and adopted a pragmatic response by retaining the staff in their existing role with a recommendation that they be granted accreditation.
- 11.41 One unit head was able to provide a cogent rationale for this decision based on: the officer’s proven track record; operational ability; and the recognition that the individual would not be deployed physically. We expected such objective criteria to have been included in the National Undercover Working Group’s guidance, to ensure consistency of approach across all forces. It was not.
- 11.42 Based on the figures provided by forces and law enforcement agencies, we assess that 29 percent of undercover online officers in police forces in England and Wales have been granted ‘grandfather rights’. This number rises to 31 percent when the law enforcement agencies are taken into account.
- 11.43 This would help to explain why a number of officers who appear to be classified as covert internet investigators do not appear to have attended and passed the Foundation Undercover Training and Assessment Course.
- 11.44 The evidence that we have collected causes us concern.

<sup>180</sup> See paragraph 8.88 et seq.

- 11.45 We recognise that there are generic skills that all undercover officers need to have and in which they need to be trained. Indeed, in chapter 8 of this report, we specifically consider this point and make a recommendation that the training courses for foundation and advanced undercover officers should be brought better into alignment, one with the other, in order to provide a seamless development of an officer's skills.
- 11.46 We stand by that approach, while recognising that undercover online policing requires training in certain additional skills which those who become foundation and advanced undercover officers with a view to physical deployment may not need. Rather than separate out those officers who wish to work only in an undercover online environment (thereby reinforcing any inappropriate view that such officers are not true undercover officers), the Foundation Undercover Training and Assessment Course should be redesigned to ensure that specific modules are made available for those who seek to be trained in them.
- 11.47 We envisage that the foundation training course should focus on the skills in which all undercover officers should be proficient. Thereafter, the course should develop different modules which focus on practical examples that are better tailored for those who are to be deployed online or in the field.
- 11.48 It follows that we only accept the National Undercover Working Group's requirement for undercover online officers to have passed the Foundation Undercover Training and Assessment Course if the course is reconfigured in the way that we have set out in the preceding paragraphs.

#### **Recommendation 48**

**The College of Policing should review the content of the Foundation Undercover Training and Assessment Course with a view to identifying the generic skills in which all undercover officers need to be trained, and to devising appropriate modules thereafter to allow officers to develop any specialist skills that are required for undercover online and field deployment.**

### **Compliance with the Regulation of Investigatory Powers Act 2000**

- 11.49 As with other forms of undercover police activity, whether an authorisation is required under the Regulation of Investigatory Powers Act 2000 is a question of degree, based on whether there is a relationship between the undercover online officer and the suspect.

11.50 With regard to undercover online policing, there are generally considered to be five levels of investigation or research. We have already mentioned open source research.<sup>181</sup> For the sake of completeness, we set out in annex G the other levels of investigation, any of which may trigger the need for authorisation, depending on the exact nature of the enquiries and the investigation techniques being employed.

11.51 During the course of our inspection, we found that the conduct or use of undercover online officers was authorised in accordance with both the Regulation of Investigatory Powers Act 2000 and the latest guidance provided by the Office of Surveillance Commissioners in all appropriate cases.

## **The policing landscape and capability**

11.52 We were concerned to learn that some forces had not undertaken online investigations for a number of years.<sup>182</sup>

11.53 Based on force returns, it would seem that 25 forces have a dedicated undercover online capability; 13 further forces have such a capability based on regional collaboration; and 5 forces do not currently have dedicated or regional capability. We were told that some of these 5 forces are currently considering how to create their online capability.

11.54 In those organisations that performed well, there was evidence of strong strategic leadership which embraced the tactic and the operational opportunities that it provides. This resulted in an integrated approach with mainstream crime investigation. In poorer performing forces, we found two issues: first, an absence of capability, either by accident or design; and, secondly, organisations failed to use the tactic effectively, restricting its use to occasional, and in some cases historical, deployment for the recovery of stolen property.

11.55 Whilst regionalising undercover capability, particularly in respect of online policing, has its advantages, we have also found cause for concern. For example, by agreement, the constituent forces of a regional covert unit<sup>183</sup> moved most undercover capability, including undercover

<sup>181</sup> See paragraph 11.12.

<sup>182</sup> See paragraph 11.63.

<sup>183</sup> The legal requirements for police collaboration are set out in sections 22A to 23I, Police Act 1996, as amended by the Policing and Crime Act 2009 and the Police Reform and Social Responsibility Act 2011.

online resources, to a regional level. The unit was a pioneer in this area and had very strong and effective structures for deploying advanced and foundation undercover officers in the region.

- 11.56 This was also initially the case with regard to undercover online policing where trained officers deployed the tactic and maintained online legends. However, at the time of our inspection, all the relevant trained officers had been moved into other roles, equipment was unused, and legends had become outdated.
- 11.57 Following interviews with management and staff, we have concluded that the removal of a covert online capability occurred for a combination of reasons. First, there was a lack of understanding within individual forces that the undercover online resources could still be tasked locally as they thought that undercover online officers could only be deployed at a regional level. Secondly, on those occasions when requests from forces were made to deploy undercover online officers, they were rejected as not meeting a regional threshold for deployment. As a consequence, a valuable resource was left underused. The undercover officers were subsequently redeployed, leaving a large swathe of the country without any immediate access to effective online undercover policing.
- 11.58 We highlighted this vulnerability to senior management in the unit concerned who have already taken positive steps to rectify the situation.
- 11.59 We noted that there remain some forces which have taken the decision not to develop a dedicated or regional undercover online capability. When asked to explain their decisions, their senior management stated that they would 'buy in' the tactic if the need ever arose to do so.
- 11.60 We do not accept this approach. We do not understand how any force, no matter its size, can be unaware or insufficiently sensitive to the very severe dangers associated with improper use of the internet. We observe in passing that those forces seem not to appreciate the importance of the Strategic Policing Requirement where the threat from cyber crime is made explicit.<sup>184</sup>
- 11.61 The approach in those forces must change.

<sup>184</sup> See paragraph 11.8.

## Recommendation 49

**Chief constables and the heads of law enforcement agencies should review their force or agency's approach to the use of undercover online policing and in every case ensure compliance with the Strategic Policing Requirement.**

- 11.62 We asked forces and law enforcement agencies to provide us with information about the number of authorities that were granted for undercover online operations that they have conducted since 1 October 2009.
- 11.63 We find it deeply concerning that 11 forces do not appear to have authorised any undercover online activity since 2011 and, in 8 forces, since 2009.
- 11.64 A number of police forces are missing or avoiding the opportunity to deploy an effective and efficient tactic in order to protect their communities from a modern threat.
- 11.65 Emerging technologies will undoubtedly provide a fertile environment for criminality at all levels, especially terrorist groups. They will also provide challenges for policing in the 21<sup>st</sup> century. However, these challenges are not insurmountable, if the police and law enforcement agencies are forward-thinking, technologically audacious and innovative.
- 11.66 We are firmly of the view that undercover online policing is a tactic that must be employed to help to meet those challenges.

## 12. Matters arising outside our terms of reference

- 12.1 In such a thorough and wide-ranging inspection, we have learned of concerns in respect of aspects of undercover policing that are not formally within our terms of reference. We set them out in this chapter.
- 12.2 There are three particular issues: the extent to which undercover officers may form intimate relationships; the differentiation that is now drawn between the granting of authorities in respect of police and non-police covert human intelligence sources; and the difficulties which arise as a result of the police service's policy to *neither confirm nor deny* the presence of an undercover officer.

### Forming intimate relationships

- 12.3 It is clear that the public has been concerned about the reports that undercover officers have had sexual relations with those who are either the target of their investigations or who are closely linked to them, and indeed that undercover officers have fathered children with those connected to their investigations during their time undercover. These cases are subject to separate investigations and are outside the scope of this inspection.
- 12.4 Throughout our inspection, we found that there was a universal understanding by the undercover officers and those managing them with whom we spoke about this matter that it is not acceptable for undercover officers to enter into intimate relationships in the course of their deployment. Although not directly within the scope of this inspection, the fact that undercover officers were keenly aware of the legal, practical and ethical environment in which they operate and that there was intrusive supervision and management of day-to-day undercover operations points to there being safeguards in place which go a long way to prevent intimate relationships being established. Although our inspection cannot provide absolute assurance that all relationships in an undercover deployment are appropriate, the fact that we found good safeguards in place is reassuring.

## Different authorisation levels

- 12.5 Since 1 January 2014, a distinction has been drawn between the level of officer who is required to authorise a covert human intelligence source who is a police officer on the one hand and one who is a civilian informant on the other. Deployment of the former now requires the authorisation of an assistant chief constable; the latter only requires the authorisation of a superintendent.
- 12.6 Some of those who have assisted us by sitting on our External Reference Group have expressed concerns about the distinction.
- 12.7 On the one hand, it can be argued that there is an important distinction between the two types of covert human intelligence source. A police officer adopts a wholly false persona to break into the ring of criminality that the investigation is pursuing, whereas a civilian informant continues to be him or herself and informs the police about what is happening. Further, it can be argued that, generally speaking, a police officer is trained to work undercover, understands the legal position in which he or she works, and is closely supervised as the operation proceeds. A civilian informant may have none of these protections.
- 12.8 Arguments in each direction often lead to contradictory positions. Does one fact mean that a higher degree of authorisation is required (perhaps because the police officer is at greater risk because his or her entire persona is false), or should equal weight be placed on the inexperience and lack of training of a civilian informant who may be more likely to be at risk because of an inadvertent mistake?
- 12.9 With the requirement so recently changed, we do not propose to do anything more than raise the issue. The law relating to undercover deployments of all kinds is kept under frequent review and it may be that in raising the issue here, further thought may be given to the differentiation in levels of authorisation to ensure that all the arguments have been considered.

## The doctrine of neither confirm nor deny

- 12.10 We have set out in chapter 3 the role of the Independent Police Complaints Commission with regard to undercover policing. However, it has been drawn to our attention that the Commission can face difficulties in undertaking thorough and comprehensive investigations because of the policy of the police service and law enforcement agencies which is summarised in the expression: *neither confirm nor deny*. As the phrase



suggests, it is used when asked a direct question whether an undercover officer has been involved in any particular investigation. It is based on the fact that any other approach (assuming truthful answers are given) would potentially lead to the disclosure of the use and identity of an undercover officer which, in turn, might not only compromise the investigation but also place the officer concerned at risk.<sup>185</sup>

12.11 The *neither confirm nor deny* approach is not grounded in legislation, as far as we are aware. However, it has been recognised in case law<sup>186</sup> and is the default position of the police service and law enforcement agencies when responding to the possible use of undercover officers, unless non-disclosure of the fact would risk a miscarriage of justice.<sup>187 188</sup>

12.12 In order to access the police complaints system, a member of the public must first be aware that the person about whom he or she wishes to complain is a police officer. This is an obvious difficulty where an officer is operating undercover and his or her true identity is not discovered.

12.13 If a member of the public makes a complaint against someone whom he or she believes to be an undercover officer, the next difficulty is that, because of the policy of *neither confirm nor deny*, it may not be possible to communicate to the complainant whether his or her complaint or appeal has been upheld.

<sup>185</sup> The argument runs that whilst an honest denial shows that an undercover officer was not used, anything less than a denial (either an affirmation or a refusal to answer) would indicate that such an officer was used. By refusing to answer either way, the obligation to tell the truth is preserved at the same time as any undercover officer remains protected from possible harm.

<sup>186</sup> *In the matter of an application by Freddie Scappaticci for Judicial Review* (2003) NIQB 56; *Secretary of State for the Home Department v CE* [2011] EWHC 3159 (Admin); *R (Litvinenko) v Secretary of State for the Home Department* [2013] EWHC 3135 (Admin).

<sup>187</sup> The principle is also recognised in other areas of the law (such as in responding to freedom of information requests) under the Freedom of Information Act 2000: [www.justice.gov.uk/information-access-rights/foi-guidance-for-practitioners/exemptions-guidance](http://www.justice.gov.uk/information-access-rights/foi-guidance-for-practitioners/exemptions-guidance)

<sup>188</sup> We are aware of the ruling of Mr Justice Bean in the case of *DIL, TEB, Helen Steel and Belinda Harvey v Commissioner of Police of the Metropolis* handed down on 2 July 2014 (after the conclusion of our inspection) in which the Commissioner was ordered at paragraph 48 of His Lordship's judgment, in effect, to confirm or deny the identities of two possible undercover officers who had previously self-disclosed their roles. The facts of the case specifically concerned the claim that the two individuals engaged in sexual relations with those who were connected with their undercover enquiry. The Commissioner complied with that Order. We note that Mr Justice Bean did not make a similar order in respect of other alleged undercover officers who had not self-disclosed. We did not consider the case concerned as we conducted a thematic, rather than a case-specific inspection. However, as a result of the ruling in this case, we consider it appropriate simply to note here that the doctrine of *neither confirm nor deny*, in specific instances, appears to be under active consideration in the courts and may be subject to change. The case concerned is continuing at the time of the publication of our report.

- 12.14 There is a balance to be struck between the right of any member of the public to have his or her complaint fully investigated and the right of the individual officer acting undercover to have the details of his or her deployment kept secret.
- 12.15 The damage to the public's confidence in the police service is obvious if such complaints are seen regularly to be frustrated in this way.
- 12.16 In addition to making a complaint to the Independent Police Complaints Commission, anyone who believes that they have been targeted by a public authority using covert techniques regulated by the Regulation of Investigatory Powers Act 2000 may make an application to the Investigatory Powers Tribunal. This includes the use or conduct of a covert human intelligence source.
- 12.17 If the application is neither frivolous nor vexatious and it falls within its remit, the Tribunal can investigate and obtain sensitive material which would not otherwise be available to an ordinary court.
- 12.18 Although it is not permitted by law to disclose this information to others without the consent of the agency which provided it, it both enables an aggrieved member of the public to have access to justice and the agency to defend itself against the complaint.

## 13. Conclusions

- 13.1 Throughout our inspection, we found that, in general, undercover police officers carry out their roles professionally and with great courage. We found them to be dedicated to their tasks and keen to play their roles in protecting communities.
- 13.2 Evidence for this came from our interviews with more than 200 undercover officers as well as from our interviews with cover officers and heads of units. Our finding was confirmed during our interviews with the Crown Prosecution Service heads of complex case units who have substantial experience prosecuting cases involving undercover officers.
- 13.3 We examined over 100 cases and case studies which reflected the importance of the undercover tactic and the bravery and commitment of those who deliver it. They are often deployed in extremely hostile environments. The evidence revealed that they have a good understanding of, and that they comply with, not only the relevant parts of the Regulation of Investigatory Powers Act 2000, but also the common law. It also showed that they are fully aware of their obligations under the Human Rights Act 1998. It was also clear that undercover officers understand the instructions which they are given relating to their roles in the field and the importance of adhering to them. They are mindful of the scope of the authority which is given for them lawfully to carry out their undercover roles.
- 13.4 We also found that they value and co-operate fully with the supervision provided by their cover officers who, we found, provide professional and intrusive day-to-day supervision across the forces and law enforcement agencies which we inspected.
- 13.5 Whilst there are improvements to be made, we found that undercover policing as a tactic remains essential, and the police service and the communities which they serve are fortunate to have a body of such dedicated officers to carry out this type of work.
- 13.6 However, for the public to have confidence in this important tactic, there must be effective strategic leadership and direction across all forces. The same must also be true for undercover officers. They volunteer for this extraordinarily difficult work and need to trust that their leaders have equipped them properly and have correctly authorised them to carry out the role so that the public may have confidence in them as undercover officers.

- 13.7 One force reported a worrying reduction in the numbers of officers putting themselves forward to be selected as undercover officers which may be an indication that officers are concerned about the way the role is perceived by the public.
- 13.8 Less than 1 percent of the England and Wales establishment of police officers is made up of undercover officers. These officers are usually deployed across the country and are expected to work undercover in force areas other than their own. This makes it important that all forces adopt the same operating procedures.
- 13.9 It was therefore disappointing to find material weaknesses in the leadership and governance of undercover policing across England and Wales which have resulted in unacceptable inconsistencies in areas of critical importance, such as the provision of training and operating procedures that should assist officers to carry out their role, confident that they are acting lawfully, effectively and to the same high standards.
- 13.10 Throughout our inspection, undercover officers were consistent in voicing their concerns about the ways in which forces required them to work differently from other forces and from what they understood from their training to be the nationally agreed operating procedures.
- 13.11 This is clearly unacceptable.
- 13.12 Chief constables should work together immediately to adopt one set of standard operating procedures and to apply them rigorously and consistently in their forces. Their task would be made easier if they were to commit to undercover policing becoming a regional capability for all forces to use rather than one provided separately by each force.
- 13.13 In July 2012, the National Policing Improvement Agency conducted a thorough review of the selection, recruitment and training of undercover officers. It found undercover work to be “characterised by a lack of consistency across different forces and units” and made 55 recommendations designed to bring consistency and improvement to the selection and training procedures.
- 13.14 Although the National Policing Improvement Agency’s review was concluded in July 2012, we were told that its recommendations were not adopted by the National Undercover Working Group until June 2013 and many are yet to be implemented. As a result, we found that there was still a lack of consistency and that some training was still not properly accredited by the College of Policing.

- 13.15 We were also concerned to be told that the College of Policing had to cancel three of the four courses which it had organised for authorising officers because of very low numbers of chief officers signing up to attend.
- 13.16 It did not come as any surprise to us, therefore, to find that the quality of written authorities by assistant chief constables varied greatly, with too many not providing sufficient details to explain the necessity and proportionality of the decision to authorise the deployment of undercover officers. That said, when we spoke to the authorising officers, we were able to obtain sufficient information to justify the authorities.
- 13.17 The way in which the police service seeks to ensure a common level of understanding regarding undercover policing is through its Authorised Professional Practice Covert Undercover Operations guidance. We have concluded that this guidance is inadequate. It needs to be revised urgently. Notwithstanding this failure, the guidance should be readily available to and well known by those engaged in undercover policing. It was of serious concern to us, therefore, that there was little knowledge of it amongst the many officers whom we interviewed.
- 13.18 Our concern grew when we found that Crown Prosecution Service lawyers who deal with cases involving undercover policing had not seen the document. They were not even aware of its existence. We expected to find that such an important document had been shared, at the very least, with the service which has responsibility for deciding whether to prosecute the vast majority of cases in which an undercover officer has been deployed. It had not.
- 13.19 In addition, psychologists with responsibility for undercover officers' welfare had little, if any, knowledge of it.
- 13.20 It appeared to us that the failure to share this important document was linked to what seemed to be a culture of secrecy amongst the undercover community.
- 13.21 We fully understand the need to have appropriate controls on the sharing of sensitive information, but we found that, too often, this was used to justify the closed nature of undercover policing.
- 13.22 Although difficult to substantiate directly, the generally poor level of knowledge and lack of expertise of senior leaders combine to form a powerful barrier against the continuous improvement of the tactic and, most importantly, its openness to scrutiny and challenge.

- 13.23 The failure of the police swiftly to adapt the undercover policing tactic to respond to the online threat is, we believe, a good example of this closed culture at work. It shows an unwillingness to recognise the evolving landscape of undercover policing.
- 13.24 Our findings lead us to conclude that, although some chief constables and senior investigating officers play a full role in the leadership and oversight of undercover policing, many are less engaged, both in terms of their awareness of the day-to-day issues surrounding undercover policing, and in terms of their interest in it.
- 13.25 We were particularly surprised that, after so much scrutiny by bodies such as ourselves of the use of undercover policing, there was a material absence of effective co-ordination in the way undercover policing is carried out across England and Wales. The evident lack of effective and co-ordinated direction by the National Undercover Working Group, which has delegated authority to develop the strategy and policy for undercover policing, is very likely to have been exacerbated by the fact that it could not provide us with essential documents, such as its terms of reference, control strategy and strategic assessments. As well as being unclear about its role, its chair and members were also unclear about how it was being held to account for the work which it was undertaking.
- 13.26 This is unacceptable, especially in the light of today's widely-held understanding of just how important sound oversight of this essential yet intrusive police tactic is. The extent of violent, serious and organised crime and the damage which such crime does to the fabric of our society justify the use of undercover policing as a tactic, provided it is correctly authorised, properly overseen and ethically used.

## 14. Summary of recommendations

- 14.1 We have made 49 recommendations in this report. For ease of reference, we have drawn them together in a single chapter here and organised them by reference to those to whom they are addressed.

### **To chief constables, the heads of law enforcement agencies, the National Crime Business Area and the College of Policing**

#### **Recommendation 10**

Chief constables, the heads of law enforcement agencies, the National Crime Business Area and the College of Policing should establish and implement consistent national psychological support for all undercover officers.

*[paragraph 6.78]*

### **To chief constables and the heads of law enforcement agencies**

#### **Recommendation 8**

Chief constables and the heads of law enforcement agencies should implement random drug testing of undercover officers.

*[paragraph 6.39]*

#### **Recommendation 14**

Chief constables and heads of law enforcement agencies should ensure that undercover policing is only undertaken by officers in an accredited unit.

*[paragraph 7.68]*

#### **Recommendation 17**

Chief constables and heads of law enforcement agencies should establish and promulgate standard operating procedures to be adopted by all forces and other law enforcement agencies in accordance with the Authorised Professional Practice.

*[paragraph 7.73]*

### **Recommendation 25**

Chief constables and the heads of law enforcement agencies should ensure that any undercover officer who has received training on an unlicensed training course is not deployed until his or her competency has been assessed.

*[paragraph 8.50]*

### **Recommendation 30**

Chief constables and the heads of law enforcement agencies should enforce a consistent and fair reintegration strategy to enable undercover officers to return to other policing or agency duties.

*[paragraph 8.77]*

### **Recommendation 32**

Chief constables and the heads of law enforcement agencies should order an audit to be undertaken of the number of undercover officers that they have in their force or agency as a matter of urgency, so that they classify correctly those officers as active, reserve or dormant and can provide that information to those in the Metropolitan Police Service who maintain the national undercover index.

*[paragraph 8.93]*

### **Recommendation 35**

Chief constables and heads of law enforcement agencies should direct that an assistant chief constable or equivalent should not be able to act as an authorising officer until he or she has attended and passed the authorising officers' course. In future, attendance at such a course should be regarded as a mandatory requirement prior to any assistant chief constable being appointed.

*[paragraph 8.113]*

### **Recommendation 38**

Chief constables and the heads of law enforcement agencies should ensure that his or her force or agency has, or has access to, an operational security advisor who has passed the relevant course.

*[paragraph 8.129]*

### **Recommendation 43**

Chief constables and the heads of law enforcement agencies should ensure compliance with all guidance on the records connected to a request for the authorisation to deploy an undercover officer.



*[paragraph 9.14]*

#### **Recommendation 44**

Chief constables and heads of law enforcement agencies should require all those engaged in undercover policing to adopt and comply with the requirements of the National Decision Model.

*[paragraph 9.27]*

#### **Recommendation 45**

Chief constables and the heads of law enforcement agencies should introduce an internal review process for undercover operations involving an independent senior investigating officer to ensure integrity, objectivity and compliance with the law.

*[paragraph 9.35]*

#### **Recommendation 49**

Chief constables and the heads of law enforcement agencies should review their force or agency's approach to the use of undercover online policing and in every case ensure compliance with the Strategic Policing Requirement.

*[paragraph 11.61]*

### **To the chief constable with lead responsibility for Organised Crime Portfolio**

#### **Recommendation 11**

The chief constable with lead responsibility for Organised Crime Portfolio should take immediate steps: to reconstitute the National Undercover Working Group with people who represent all the interests relevant to effective undercover policing; to set clear and published terms of reference and objectives; and to hold the Working Group to account for the effective achievement of those objectives.

*[paragraph 7.51]*

### **To the College of Policing and the National Crime Business Area**

#### **Recommendation 4**

The College of Policing and the National Crime Business Area should review the Authorised Professional Practice to ensure that it is comprehensive and appropriately specific.

*[paragraph 5.78]*

### **Recommendation 5**

The College of Policing and the National Crime Business Area should agree with representatives of the Crown Prosecution Service the way in which the Authorised Professional Practice can be made available to those members of the Service who need to read it.

*[paragraph 5.78]*

### **Recommendation 6**

The College of Policing and the National Crime Business Area should review the security marking of the revised Authorised Professional Practice with a view to making it available generally, or, where circumstances properly require it, to making a redacted version of it available generally. The College and the Business Area should bear in mind that public confidence in the use of undercover policing is more likely to be earned and maintained by adopting a more open and transparent approach.

*[paragraph 5.78]*

### **Recommendation 13**

The College of Policing and the National Crime Business Area should stop using the terms ‘accredited undercover unit’ and ‘recognised undercover capability unit’ and should, in future, establish a single system of levels of accredited units, the level determining what types of undercover policing the officers in that unit may undertake.

*[paragraph 7.68]*

### **Recommendation 15**

The College of Policing and the National Crime Business Area should establish a robust accreditation process which pays due regard to systems, processes, infrastructure issues and the findings of the Office of Surveillance Commissioners to ensure compliance with national standards.

*[paragraph 7.68]*

### **Recommendation 16**

The College of Policing and the National Crime Business Area should ensure that the accreditation of units is subject to inspection, and that there is a robust process for the rescinding of accreditation in cases where standards are not maintained during the currency of the accreditation period.

*[paragraph 7.68]*

### **Recommendation 28**

The College of Policing and the National Crime Business Area should ensure that the programme of work to implement recommendations set out in the *Review of the Selection, Training and Support of Undercover Officers* produced in 2012 is completed.

*[paragraph 8.60]*

## **To the College of Policing**

### **Recommendation 9**

The College of Policing should issue a policy that requires the creation of a standing group of psychologists and psychiatrists with experience of providing psychological assessments for individuals operating in high-risk or safety-critical roles or environments.

*[paragraph 6.78]*

### **Recommendation 12**

The College of Policing, with oversight from the National Crime Business Area, should appoint a registrar to have responsibility, nationally, on its behalf, for the accreditation of all undercover policing units and the licensing of trained operatives. The registrar should have the power to grant and rescind any licence or accreditation. The registrar should be a member of the College of Policing staff.

*[paragraph 7.62]*

### **Recommendation 20**

The College of Policing should issue guidance to all those who are able to deploy undercover officers concerning any deployment for intelligence-only purposes, to reinforce the fact that every officer deployed in every circumstance may be required to give evidence in court about their conduct or use, and about the evidence that they obtained during their deployment.

*[paragraph 7.103]*

### **Recommendation 22**

The College of Policing should ensure that some form of psychological assessment is an element in the selection process for those who seek to become undercover officers. It should be undertaken before attending the Foundation Undercover Training and Assessment Course.

*[paragraph 8.43]*

**Recommendation 23**

The College of Policing should conduct a further full audit of all forces to establish the extent of any unlicensed training that has been given.

*[paragraph 8.50]*

**Recommendation 24**

The College of Policing should ensure that all unlicensed foundation courses are ended immediately.

*[paragraph 8.50]*

**Recommendation 26**

The College of Policing should devise a single National Undercover Training and Assessment Course as a matter of urgency.

*[paragraph 8.60]*

**Recommendation 27**

The College of Policing should suspend immediately the provision of any advanced training course that is being provided by an unlicensed provider.

*[paragraph 8.60]*

**Recommendation 29**

The College of Policing should establish and promulgate a comprehensive policy regarding maximum lengths of tenure for foundation and advanced undercover officers. We consider that a period of three years tenure for a foundation undercover officer and a period between five and seven years tenure for an advanced undercover officer is appropriate.

*[paragraph 8.77]*

**Recommendation 31**

The College of Policing, in conjunction with the National Crime Business Area, should devise and publish criteria which set out the circumstances when '*grandfather rights*' may appropriately be granted to operationally-experienced undercover officers.

*[paragraph 8.91]*

**Recommendation 36**

The College of Policing should establish a bespoke undercover training course for senior investigating officers. It should include a mentoring programme for those inexperienced in deploying undercover officers in their investigations.

*[paragraph 8.118]*

**Recommendation 39**

The College of Policing should license all approved training courses and accredit all those who pass such courses.

*[paragraph 8.133]*

**Recommendation 40**

The College of Policing should establish a specific training module which instructs upon, and tests knowledge of and competence in the regime of undercover policing in the Regulation of Investigatory Powers Act 2000.

*[paragraph 8.143]*

**Recommendation 47**

The College of Policing, in conjunction with the National Crime Business Area, should establish and publish discrete guidance about all aspects of the undercover online policing requirement, starting with a definition of what an undercover online police officer is and should do.

*[paragraph 11.25]*

**Recommendation 48**

The College of Policing should review the content of the Foundation Undercover Training and Assessment Course with a view to identifying the generic skills in which all undercover officers need to be trained, and to devising appropriate modules thereafter to allow officers to develop any specialist skills that are required for undercover online and field deployment.

*[paragraph 11.48]*

# To the National Undercover Working Group

## Recommendation 1

The National Undercover Working Group should consult the Home Office and the Office of Surveillance Commissioners with a view to establishing a requirement that all legend-building should be subject to the statutory regime set out in Part II of the Regulation of Investigatory Powers Act 2000, and this should be reflected in amendments to the relevant Code of Practice.

*[paragraph 5.29]*

## Recommendation 7

The National Undercover Working Group should clarify the precise role of the operational head (more commonly referred to as the senior investigating officer) with regard to the briefing of undercover officers and set out clear guidance regarding which officer (however he or she may be described) is responsible for what.

*[paragraph 6.27]*

## Recommendation 18

The National Undercover Working Group, with oversight from the chief constable with responsibility for the National Crime Business Area, should establish a blueprint for the regionalisation of undercover policing resources for forces which wish to bring their resources together in this way. Its overarching aim should be to ensure that those investigations that would benefit most from deploying undercover police officers are appropriately resourced, no matter which force in the region hosts the investigation.

*[paragraph 7.88]*

## Recommendation 19

The National Undercover Working Group should devise a standard results analysis check-sheet and require the appropriate managers to complete it after each undercover deployment is concluded. Issues that may have national implications or relevance should be brought to the attention of the National Undercover Working Group.

*[paragraph 7.96]*

### **Recommendation 21**

The National Undercover Working Group should work with representatives of the Crown Prosecution Service to review the memorandum of understanding between them and other law enforcement agencies to require consultation prior to the grant of any authority to deploy undercover police officers.

*[paragraph 7.111]*

### **Recommendation 42**

The National Undercover Working Group should establish and circulate detailed guidance on retaining records connected to a request for the authorisation to deploy an undercover officer. The records should include those applications which are refused and those which are subsequently amended and resubmitted for approval.

*[paragraph 9.14]*

### **Recommendation 46**

The National Undercover Working Group should establish and promulgate clear guidance setting out the circumstances in which inspectors from the Office of Surveillance Commissioners should be able to visit covert premises.

*[paragraph 10.9]*

## **To authorising officers**

### **Recommendation 2**

At review and renewal stages, authorising officers should ensure that any intelligence opportunities that have not been acted on are documented and taken into consideration when deciding whether the continued deployment of an undercover officer is justified.

*[paragraph 5.64]*

### **Recommendation 3**

Authorising officers should record their findings regarding collateral intrusion under the three categories of inevitable, foreseeable and general intrusion when setting out their decisions to authorise or renew an application for the deployment of an undercover officer, and at every review stage.

*[paragraph 5.69]*

## **To cover officers**

### **Recommendation 37**

All those who seek to become cover officers should attend and pass an appropriate course licensed by the College of Policing.

*[paragraph 8.123]*

## **To undercover officers and their managers**

### **Recommendation 41**

All undercover police officers and their managers should ensure that appropriate and consistent records of all deployments are written and retained. These should address both operational and welfare issues.

*[paragraph 9.9]*

## **To the managers of the national undercover index and the national undercover database**

### **Recommendation 34**

The managers of the national undercover database and the national undercover index should ensure that previous records of deployment kept on the national undercover index are transferred onto the national undercover database.

*[paragraph 8.103]*

## **To the managers of the national undercover database**

### **Recommendation 33**

The managers of the national undercover database should ensure that online undercover officers are included in the database.

*[paragraph 8.101]*



## Annex A – Terms of reference

To review the effectiveness of the arrangements in place in all police forces, including all regional and national policing units and the Serious Organised Crime Agency [now the National Crime Agency] to carry out, manage and scrutinise undercover operations by considering:

- 1 the way undercover officers operate in practice in order to explore their understanding and compliance with the Regulation of Investigatory Powers Act 2000 and the Authorised Professional Practice;
- 2 the supervision, day-to-day management, support and tasking of officers deployed undercover by police forces and [the National Crime Agency];
- 3 the strategic leadership and direction-setting of those at the highest levels of police forces and [the National Crime Agency] for their officers conducting undercover operations;
- 4 the quality, availability and take-up of training for officers undertaking undercover operations and for those at all levels of the planning and authorisation of such operations;
- 5 the decision-making processes, guidance and support framework for those at all levels of the planning and authorisation of undercover operations, particularly in making difficult and potentially high-impact decisions;
- 6 the adequacy of the police and [the National Crime Agency's] response to the scrutiny of undercover operations put in place by the Office of the Surveillance Commissioners, including the effectiveness of arrangements for the sharing of best practice and learning of lessons; and
- 7 to make any necessary recommendations in relation to these findings when considered alongside current best practice.

## Annex B – Background

- 1 In 2010, the trial of six people who had been accused of planning to shut down a large power station in Ratcliffe-on-Soar in Nottinghamshire collapsed after the involvement of Mark Kennedy, an undercover police officer working for the National Public Order Intelligence Unit,<sup>189</sup> was revealed.<sup>190</sup>
- 2 In March 2010, *The Guardian* newspaper published the assertions of an individual who claimed that, while he was acting as an undercover officer, he had had sexual relations with two members of his target group.<sup>191</sup> He went on to allege that such behaviour was tacitly accepted within the Special Demonstration Squad as being vital in maintaining the integrity of an undercover role.
- 3 Then, in October 2011, allegations were made in *The Guardian* newspaper<sup>192</sup> about alleged misconduct and criminality by members of the Special Demonstration Squad who had given false evidence in court in order to protect their undercover status.
- 4 In February 2013, the Metropolitan Police Service received a complaint from the family of a young boy who had died in the 1970s. It was alleged that an undercover officer working for the National Public Order Intelligence Unit had used the child's details as his covert identity. This followed allegations of a similar nature reported in *The Guardian* newspaper in March 2010.<sup>193</sup>

<sup>189</sup> The National Public Order Intelligence Unit, established in 1999, had a national remit but was housed in the Metropolitan Police Service. It conducted undercover police deployments into domestic extremist groups as part of the police service's response to campaigns and public protest that generate violence and disruption. The Unit was subsumed into the National Domestic Extremism Unit in 2011.

<sup>190</sup> Mark Kennedy was a police officer in the National Public Order Intelligence Unit who was deployed as an undercover officer between 2003 and 2010. Material in the possession of the police, which should have been disclosed to the Crown Prosecution Service and, thereafter, the defence, was kept from them. The material showed that Mark Kennedy had gone beyond the limits of his authority while acting as an undercover officer.

<sup>191</sup> *Inside the lonely and violent world of the Yard's elite undercover unit*. The Guardian, Thompson, 14 March 2010, [www.theguardian.com](http://www.theguardian.com)

<sup>192</sup> *Police accused of allowing undercover officer to lie in court*, The Guardian, Lewis and Evans, 20 October 2011, [www.theguardian.com](http://www.theguardian.com)

<sup>193</sup> *Inside the lonely and violent world of the Yard's elite undercover unit*. The Guardian, Thompson, 14 March 2010, [www.theguardian.com](http://www.theguardian.com)

- 5 On 1 March 2013, the House of Commons Home Affairs Select Committee published a report on aspects of undercover policing<sup>194</sup> to which the government issued its response on 18 June 2013.<sup>195</sup> The Committee focused on the activities of Mark Kennedy, the use of the identities of dead babies by undercover officers, and the police investigations into these matters.
- 6 In June 2013, a television documentary<sup>196</sup> alleged that undercover officers had been tasked to find information that could be used publicly to discredit the family and friends of Stephen Lawrence and the Stephen Lawrence justice campaign.
- 7 Later that month, a book<sup>197</sup> was published in which an allegation was made that members of the Special Demonstration Squad had been involved in intimate relationships with political activists while deployed as undercover officers.<sup>198</sup>

## The response to date

- 8 The revelations concerning Mark Kennedy and the exposure of additional concerns about the deployment of undercover officers from the Special Demonstration Squad and the National Public Order Intelligence Unit led to widespread and damaging publicity.
- 9 The initial response was a HMIC review of national police units which provide intelligence on criminality associated with protest. Its report was published in 2012.<sup>199</sup> The review's terms of reference were limited to the deployment of undercover officers from the Special Demonstration Squad and National Public Order Intelligence Unit for the purpose of gathering intelligence.

<sup>194</sup> *Undercover policing: interim report*, Home Affairs Select Committee – thirteenth report, 1 March 2013: see: <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/837/83702.htm>.

<sup>195</sup> *Government response to the Home Affairs Select Committee report "Undercover policing: interim report"*, 18 June 2013. See: <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/451/45104.htm>

<sup>196</sup> *The police's dirty secret*, Oliver, Channel 4 Dispatches, June 2013.

<sup>197</sup> *Undercover – The True Story of Britain's Secret Police*, Lewis and Evans; Faber and Faber Ltd., June 2013.

<sup>198</sup> For a more detailed examination of the media's reporting of recent allegations involving undercover police officers, see: *Operation Trinity, Report 2 – Allegations of Peter Francis*, Mick Creedon, chief constable, Derbyshire Constabulary, 6 March 2013, chapter 10, page 32 et seq.

<sup>199</sup> *A review of national police units which provide intelligence on criminality associated with protest*, HMIC, January 2012: <http://www.justiceinspectorates.gov.uk/hmic/media/review-of-national-police-units-which-provide-intelligence-on-criminality-associated-with-protest-20120202.pdf>

- 10 Thereafter, in July 2012, the Home Secretary commissioned Mark Ellison QC to conduct a review<sup>200</sup> examining allegations of corruption surrounding the investigation into the murder of Stephen Lawrence and whether the Metropolitan Police Service had evidence of corruption that it did not disclose to the public inquiry into Stephen's death.<sup>201</sup>
- 11 In June 2013, HMIC published its review of progress made in respect of the recommendations contained in its 2012 report.<sup>202</sup> Our conclusion then was that, whilst "some significant work had been done to improve the way in which the police deal with undercover operations",<sup>203</sup> there were several recommendations that had not been implemented.<sup>204</sup>
- 12 In addition, we recognised that the 2012 review focused on the relatively narrow area of undercover policing in the context of domestic extremism and that this was only a small part of police undercover activity. We remarked that most undercover work was aimed at serious organised crime, major crime or counter terrorism.<sup>205</sup> As such, we concluded that: "further inspection work [was] necessary to examine all police undercover work".<sup>206</sup>
- 13 In an immediate response to the conclusions in our 2013 review and as a result of the publicity that we have set out above, the Home Secretary commissioned HMIC to conduct this inspection.

<sup>200</sup> *Hansard*, House of Commons, 11 July 2012, col 31 WS: <https://www.gov.uk/government/speeches/theresa-may-stephen-lawrence-qc-led-review>. Mr Ellison set out his Terms of Reference in chapter 2, page 3, of Volume 1 of his report: *The Stephen Lawrence Independent Review, Possible corruption and the role of undercover policing in the Stephen Lawrence case*, Mark Ellison QC, 6 March 2014, HC 1094.

<sup>201</sup> *The Stephen Lawrence Inquiry*, by Sir William MacPherson of Cluny, February 1999, Cmnd 4262-I.

<sup>202</sup> *A review of progress made against the recommendations in HMIC's 2012 report on the national police units which provide intelligence on criminality associated with protest*, HMIC, June 2013: <http://www.justiceinspectorates.gov.uk/hmic/media/national-police-units-which-provide-intelligence-on-criminality-associated-with-protest-progress-review.pdf>

<sup>203</sup> *Op cit*, paragraph 4.2.

<sup>204</sup> *Ibid*.

<sup>205</sup> *Op cit*, paragraph 5.1.

<sup>206</sup> *Op cit*, paragraph 5.2.

- 14 Mr Ellison’s report was published on 6 March 2014.<sup>207</sup> Two of his conclusions are of direct relevance to our inspection:

*“The reality was that [an undercover officer] was, at the time, [a Metropolitan Police Service] spy in the Lawrence family camp during the course of judicial proceedings in which the family was the primary party in opposition to the MPS.”<sup>208</sup>*

and:

*“The mere presence of an undercover [Metropolitan Police Service] officer in the wider Lawrence family camp in such circumstances is highly questionable in terms of the appearance it creates of the [Metropolitan Police Service] having a spy in the family’s camp.”<sup>209</sup>*

- 15 On the same day, the report commissioned by the Commissioner of the Metropolitan Police Service into allegations made in the media to which we have referred was published.<sup>210</sup> It concluded that allegations that members of the Special Demonstration Squad used the identity of deceased children as part of their undercover personae and that undercover officers engaged in inappropriate sexual relationships were “credible and can be corroborated”.<sup>211</sup>
- 16 As a result of Mr Ellison’s report and findings, and recognising the conclusions of Operation Herne and the need to allow ongoing enquiries to continue, the Home Secretary announced in Parliament that a public inquiry, led by a judge, would be set up to investigate undercover policing and the operation of the Special Demonstration Squad.

<sup>207</sup> *The Stephen Lawrence Independent Review, Possible corruption and the role of undercover policing in the Stephen Lawrence case*, Mark Ellison QC, 6 March 2014, HC 1094.

<sup>208</sup> *Op cit*, page 23.

<sup>209</sup> *Op cit*, page 24.

<sup>210</sup> *Operation Herne, Operation Trinity: Report 2 – allegations of Peter Francis*, Mick Creedon, chief constable, Derbyshire Constabulary, 6 March 2014, chapter 27, page 78.

<sup>211</sup> *Op cit*, paragraph 27.2.

## Annex C – Glossary

accredited undercover unit	an undercover unit which has the capability to deploy a full range of undercover techniques
advanced undercover officer	an officer who has passed both the Foundation Undercover Training and Assessment Course and the National Undercover Training and Assessment Course; such an officer is able to undertake more complex investigations and engage in longer-term infiltration of higher-tier criminals in a leading role, with the ability to withstand detailed interrogation
agent provocateur	<i>a person who entices another to commit an express breach of the law which he would not otherwise have committed and then proceeds to inform against him in respect of such an offence, as defined by the Royal Commission on Police Powers 1929</i>
Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms	the right to a fair trial: see annex E
Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms	the right to respect for private and family life: see annex E

Association of Chief Police Officers	a professional association of police officers of assistant chief constable rank and above, and their police staff equivalents, in England, Wales and Northern Ireland; leads and coordinates operational policing nationally; a company limited by guarantee and a statutory consultee; the presidency is a full-time post under the Police Reform Act 2002
authorising officer	a police officer or equivalent with responsibility for personally authorising the use and conduct of an undercover officer
Authorised Professional Practice	the national source of professional guidance on policing in England and Wales; in relation to undercover policing it is prepared by the National Undercover Working Group
Chief Constables' Council	comprises chief constables of police forces in the United Kingdom and the heads of law enforcement agencies. It is responsible for coordinating operational policing needs and leading the implementation of national standards set by the College of Policing or the government.
Codes of Practice	Codes of Practice and Orders which set out in more detail how the regime under the Regulation of Investigatory Powers Act 2000 should be operated in practice
collateral intrusion	interference with the private or family life of a person who is not the intended subject of a covert human intelligence source's activity
College of Policing	a professional body for policing in England and Wales, established to set standards of professional practice, accredit training providers, promote good practice based on evidence, provide support to police forces and others in connection with the protection of the public and the prevention of crime, and promote ethics, values and standards of integrity in policing. Its power to set standards has been conferred by the Police Act 1996 as amended by the Anti-social Behaviour, Crime and Policing Act 2014

cover officer	a police officer who acts as the conduit between the operational team and the undercover operative unit. The cover officer is responsible for ensuring arrangements exist for the proper oversight and management of the undercover operative and tactics. Under sections 29(4A)(a) and 29(5)(a), Regulation of Investigatory Powers Act 2000, the cover officer has day-to-day responsibility for managing an undercover officer and for his or her security and welfare
covert human intelligence source	is a person who establishes or maintains a personal or other relationship and does so for a covert purpose. This means that the relationship is conducted so that one of the parties to the relationship is unaware of its purpose. The purpose is to facilitate either: the obtaining of information; the provision of access to any information to another person; or the disclosure of information obtained by the use of the relationship, or as a consequence of the existence of the relationship: see Part II Regulation of Investigatory Powers Act 2000
covert operations manager	an officer of at least inspector rank or equivalent who has responsibility for an undercover unit. Sometimes referred to as the UC-Com, he or she supports the head of profession in the strategic direction and development of the undercover discipline; manages the deployment of undercover officers and should ensure the provision of advice to an operational head regarding all aspects of undercover investigations and operations
decoy officer	an undercover officer who attempts to become the intended victim of crime for the purpose of securing the arrest of the offender
deep web	a part of the internet which cannot be accessed by means of common search engines. Research earlier in the 21 <sup>st</sup> century suggested that, even then, it contained more than 900 billion pages of information. The deep web can be accessed in a way that means that neither the visitor nor the



	websites that he or she might access can be traced back to identifiable users
foundation undercover officer	an undercover officer who is trained to act in a limited supporting role without necessarily having specific commodity or criminal knowledge. Those trained to foundation level will be deployed in commodity-specific operations according to the specialist training modules which they have completed; these deployments can include low-level infiltration, but foundation undercover officers do not require the ability to withstand intense scrutiny
grandfather rights	the basis on which undercover online investigators may continue to be deployed without having completed a foundation undercover training and assessment course
Human Rights Act 1998	statute which gives effect in the United Kingdom to the European Convention for the Protection of Human Rights and Fundamental Freedoms. This is more commonly referred to as the European Convention on Human Rights, which is how we refer to it in this report
intelligence-only operations	an operation designed to gather information without leading to any prosecution
International Working Group on Undercover Policing Activities	an international group of policing and law enforcement bodies which provides a forum for its members to discuss and develop safe and effective law enforcement undercover techniques for use against serious and organised crime, and to encourage international cooperation
legend-building	a process whereby undercover officers visit locations to develop or maintain covert identities where there is no intention to engage with the subjects of an investigation or operation
National Intelligence Model	a business model to ensure that policing is provided in a targeted manner through the development of information and intelligence. It facilitates the prioritisation of police activity

National Undercover Working Group	a multi-agency group which works with the College of Policing to set national standards in the area of undercover policing. It helps chief constables and heads of law enforcement agencies to provide strategic leadership and direction in this sensitive area of police work
neither confirm nor deny	long-established policy adopted and used by the police and law enforcement agencies under which they refuse to confirm or deny the use or identity of an undercover officer. It is essential to the security of operations and to ensure that undercover officers can be confident that their identities will never be disclosed
Office of Surveillance Commissioners	a body established by the Police Act 1997 and the Regulation of Investigatory Powers Act 2000 to oversee the conduct of covert surveillance and covert human intelligence sources by public authorities
online undercover officer	an appropriately trained law enforcement officer who establishes or maintains a relationship through the internet in order to obtain covertly information, intelligence or evidence against an individual, group of individuals or organisation
operational head	an officer of at least inspector rank or equivalent who has day-to-day responsibility for the investigation or operation using undercover operatives. He or she is responsible for setting clear objectives for the investigation. He or she consults the covert operations manager or cover officer for tactical advice on undercover operative deployments. He or she is sometimes referred to as the senior investigating officer
operational security advisor	an officer who manages issues of legality, integrity, ethical conduct and standards of covert operations, while contributing to the overall effectiveness of such operations
Professional Committee of	a committee of the College of Policing chaired by its chief executive, which approves and sets

the College of Policing	strategic direction on a range of national policing issues, including the College's work to develop national standards, policy and practice. It identifies gaps, threats and opportunities across policing where capability may need to be built, and approves new areas of work to address these needs
recognised undercover unit	an undercover unit that may only undertake undercover work which is carried out by foundation undercover officers
Regulation of Investigatory Powers Act 2000	statute the principal purpose of which is to ensure that covert investigatory powers are used in compliance with Article 8, European Convention on Human Rights (the right to respect for private and family life). It requires that authorisations are both necessary and proportionate to one of the legitimate aims set out in Article 8(2), European Convention on Human Rights, which permits interference by a public authority with privacy rights
senior investigating officer	see operational head
special projects team	a team based within regional counter-terrorism units which deal with covert policing tactics

## Annex D – The legal context

- 1 Police officers derive their powers from the common law and from statute. As the role of the police has developed, additional powers have been provided by Parliament. These include more intrusive powers, such as powers to search individuals and property and to detain people for questioning.
- 2 Covert surveillance was originally unregulated by statute. A series of decisions of the European Court of Human Rights<sup>212</sup> then led to the placing of certain types of intrusion, including telephone tapping and the official ‘bugging’ of private conversations<sup>213</sup> on a statutory basis.<sup>214</sup> But until 2000, other types of covert surveillance remained unregulated by statute.
- 3 In 1998, Parliament passed the Human Rights Act, turning the rights protected under the European Convention on Human Rights into rights protected in the domestic law of the United Kingdom. The Regulation of Investigatory Powers Act 2000 was introduced<sup>215</sup> principally to ensure that covert investigatory powers were used in compliance with Article 8, European Convention on Human Rights, the right to respect for private and family life. The purpose of the Act was to ensure that authorisations would be both necessary and proportionate to one of the legitimate aims permitted by Article 8(2), European Convention on Human Rights which permits the justification of interference by a public authority with privacy rights.<sup>216</sup>
- 4 The Act has been supplemented by a number of Codes of Practice and Orders which set out in more detail how the regime under the Act should be maintained in practice.<sup>217</sup>

<sup>212</sup> See eg *Malone v United Kingdom* (1984) 7 EHRR 14; *Khan v United Kingdom* (2000) 31 EHRR 1016.

<sup>213</sup> See, respectively, the Interception of Communications Act 1984 and Part III of the Police Act 1997.

<sup>214</sup> The statutory history of the 2000 Act is summarised by the House of Lords in *McE v Prison Service of Northern Ireland* [2009] 1 AC 908: see in particular the opinion of Baroness Hale of Richmond at paragraphs 68-70.

<sup>215</sup> As the Court of Appeal noted in the recent case of *AKJ v Commissioner of Police of the Metropolis* [2014] 1 WLR 285 at paragraph 7.

<sup>216</sup> But compliance with the 2000 Act and the Code will not necessarily mean that there is not a violation either of Article 8 or of Article 6, European Convention on Human Rights: see generally the decision of the House of Lords in *McE v Prison Service of Northern Ireland* [2009] 1 AC 908.

<sup>217</sup> For example, the *Covert Human Intelligence Sources Code of Practice*, pursuant to section 71, Regulation of Investigatory Powers Act 2000, TSO, London, 2010, and the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010/ 521. Maintaining the Code of Practice and

- 5 In this report, we refer to undercover police officers. All undercover officers are also covert human intelligence sources.
- 6 The concept of a covert human intelligence source was introduced by Part II of the Regulation of Investigatory Powers Act 2000 which covers the use of three covert investigatory powers: intrusive surveillance, directed surveillance and the conduct and use of covert human intelligence sources.
- 7 A covert human intelligence source is a person who:
- (a) establishes or maintains a personal or other relationship; and
  - (b) does so for a covert purpose, which means that the relationship is conducted so that one of the parties to the relationship is unaware of the purpose; and
  - (c) has the covert purpose of facilitating either:
    - the covert use of the relationship to obtain information, or to provide access to any information to another person; or
    - the covert disclosure of information obtained by the use of the relationship, or as a consequence of the existence of the relationship.<sup>218</sup>
- 8 The conduct and use of a covert undercover human source must be authorised.
- 9 We recognise that this is a complicated area of the law and policing and so we have created an example of how a covert human intelligence source might be used.
- 10 An undercover officer is deployed to establish a relationship with a suspect in order to obtain information about a contract killing. As part of that relationship, he conducts a meeting during which the suspect discloses that he plans to have another person killed. The undercover officer is wearing a covert recording device, and he is also debriefed after the meeting.

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related Orders is ongoing. For example, at the time of the drafting of this report, the Minister of State for the Home Department is considering the results of a public consultation exercise which was undertaken in response to a proposal to update the Code of Practice and to make a number of amendments in order to provide greater clarity for those authorising and using covert techniques: see <https://www.gov.uk/government/speeches/covert-surveillance-and-covert-human-intelligence-source-sodes-of-practice-consultation>

<sup>218</sup> Section 26(8) and (9), Regulation of Investigatory Powers Act 2000.

- 11 The undercover officer is a covert human intelligence source because he established a relationship with the suspect for a covert purpose, namely, the obtaining of information about the contract killing, and the disclosing of that information to the undercover officer's supervisors.
- 12 The undercover officer's conduct as a covert human intelligence source would include both the meeting with the suspect and the use of a covert recording device. To be lawful, the undercover officer's conduct would need to be authorised under Part II of the Regulation of Investigatory Powers Act 2000.
- 13 Only certain individuals may grant authorisations for the conduct or use of covert human intelligence sources. Those individuals are senior officers or employees of specified public bodies such as police forces, the intelligence and security agencies, the military, government departments, local authorities and regulatory bodies such as the Office of Fair Trading.<sup>219</sup>

## Relationships

- 14 At the heart of the regime governing the need for authorisation of a covert human intelligence source is the establishment or maintenance of a relationship for a covert purpose.
- 15 Relationships for the purpose of the Regulation of Investigatory Powers Act 2000 encompass both sexual and non-sexual relationships.<sup>220</sup> However, a relationship does not have to be a personal relationship.
- 16 Whether a relationship is established or maintained is a matter of degree.

<sup>219</sup> See Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010/ 521, as amended.

<sup>220</sup> *AJA v Commissioner of Police of the Metropolis* [2014] 1 WLR 285.

- 17 The Code of Practice issued under the Regulation of Investigatory Powers Act 2000 recognises, for example, that a one-off test purchase<sup>221</sup> would not necessarily be considered to result in a relationship.<sup>222</sup> Whether or not a relationship exists depends on all the circumstances, including the length of time of the contact between seller and buyer and the nature of any covert activity.<sup>223</sup>
- 18 However, in practice, conducting undercover activity of this nature is far less straightforward and cannot easily be categorised as simply a ‘one-off’ encounter. The suspicious nature of drug dealers means that they often arrange a number of contacts or meetings to minimise their prospects of being caught. Such an extended period of contact would normally require an authorisation to allow the establishing and maintaining of that relationship prior to the purchase of the drugs.

## The authorisation process

- 19 The legal framework hinges on those who carry out undercover policing being authorised to do so in accordance with the Regulation of Investigatory Powers Act 2000.<sup>224</sup>
- 20 Up until 2013, authorisation for the use of all covert human intelligence sources, including undercover officers, was given by an officer of the rank of superintendent or above,<sup>225</sup> or by an inspector level in urgent cases.<sup>226</sup> However, in 2013, the law was amended so that, from 1 January 2014, authorisation for undercover officers has to be given by an assistant chief constable or by a commander in the Metropolitan Police Service or the City of London Police or his or her equivalent in other law enforcement agencies.<sup>227</sup>

<sup>221</sup> Where an undercover officer poses as an ordinary member of the public in order to buy goods from a suspected criminal.

<sup>222</sup> For example, in instances where test purchasing is used to establish whether a shopkeeper is selling alcohol or cigarettes to underage children.

<sup>223</sup> *Covert Human Intelligence Sources Code of Practice*, issued pursuant to section 71, Regulation of Investigatory Powers Act 2000, TSO, London, 2010, paragraph 2.12.

<sup>224</sup> Sections 27-32, Regulation of Investigatory Powers Act 2000.

<sup>225</sup> Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) Order 2000/2417, Article 2, Schedule, Part I.

<sup>226</sup> *Ibid.*

<sup>227</sup> Regulation of Investigatory Powers (Covert Human Intelligence Sources: Relevant Sources) Order 2013/2788, Part 3, Article 16.

- 21 Where a covert human intelligence source is intended to be deployed for more than 12 months, authorisation can only be given by a chief constable or by the commissioner of the Metropolitan Police Service or the City of London Police or his or her equivalent in other law enforcement agencies. In addition, the prior approval of one of the ordinary Surveillance Commissioners, who are all current or former senior judges, is required.<sup>228</sup>
- 22 An authorisation is for the conduct and use of the covert human intelligence source. An authorisation must specify or describe the activities involved in that conduct or use. If an authorisation is granted, it covers the conduct of the undercover officer and the use of the undercover officer, and any incidental actions taken for the purposes of the investigation or operation.<sup>229</sup> The grant of an authorisation has important legal consequences: conduct in accordance with an authorisation shall be lawful for all purposes.<sup>230</sup> This means that an authorisation is capable of rendering conduct lawful that would otherwise be criminal, or result in a civil action for damages.
- 23 It is clear, therefore, that Parliament has given the police service a very powerful weapon in its fight against crime: the ability of police officers to act covertly without legal redress provided that their actions are authorised correctly (i.e. that they are necessary and proportionate).
- 24 The grounds for authorisation, therefore, are extremely important and must be scrupulously complied with by the relevant officers. There are a number of considerations which the authorising officer must take into account.
- 25 First, he or she must be satisfied that the authorisation is necessary for one or more of the specified purposes which are listed in the Regulation of Investigatory Powers Act 2000, such as the prevention or detection of crime or the interests of national security.<sup>231</sup>
- 26 Secondly, he or she must be satisfied that the authorised conduct or use is proportionate to the desired outcome.<sup>232</sup> This involves a balancing exercise looking at the nature of the conduct compared, for example, with the harm that it is sought to prevent. In general, it would not be proportionate to deploy an undercover officer in order to prevent or detect a minor crime.

<sup>228</sup> *Op cit*, Part 2. Special rules also apply where the information concerned is legally privileged: Regulation of Investigatory Powers (Covert Human Intelligence Sources: Matters Subject to Legal Privilege) Order 2010/ 123.

<sup>229</sup> Section 29(4), Regulation of Investigatory Powers Act 2000.

<sup>230</sup> Section 27(1), Regulation of Investigatory Powers Act 2000.

<sup>231</sup> Section 29(2)(a), Regulation of Investigatory Powers Act 2000.

<sup>232</sup> Sections 29(2)(b), Regulation of Investigatory Powers Act 2000.



27 In practice, this requires the authorising officer to consider:

- the operational objectives and plan for the deployment;
- the balance between the size and scope of the proposed activity against the gravity and extent of the perceived criminal offence;
- an explanation for how and why the methods to be adopted will cause the least possible intrusion on the subject and others;
- whether the activity is an appropriate use of the legislation and a reasonable way, having considered all reasonable alternatives, of obtaining the necessary result; and
- evidence, as far as reasonably practicable, of what other methods have been considered and why they are not being implemented.

28 Thirdly, he must be satisfied that there are certain logistical arrangements in place. There must be:

- a police officer with day-to-day responsibility for dealing with the undercover officer, and for the undercover officer's security and welfare;<sup>233</sup>
- a separate police officer who has general oversight for the use of the undercover officer;<sup>234</sup> and
- a police officer with responsibility for maintaining a detailed record of the use made of the undercover officer and that those records will only be disclosed where necessary.<sup>235</sup>

29 The records must contain important details, including: the tasking given to the undercover officer; any communications between the undercover officer and his force; and the information obtained.<sup>236</sup>

<sup>233</sup> Section 29(4A)(a), Regulation of Investigatory Powers Act 2000. This person is in practice known as the cover officer.

<sup>234</sup> Section 29(4A)(a), Regulation of Investigatory Powers Act 2000. This person is known as the undercover covert operations manager.

<sup>235</sup> Section 29(2)(c), Regulation of Investigatory Powers Act 2000.

- 30 The authorising or renewing officer has an important additional function, that is, to cancel the authorisation if he or she is satisfied that the conditions for granting it are no longer met.<sup>237</sup> This requires the authorising or renewing officer to keep the authorisation under constant review.
- 31 According to the relevant Code of Practice, reviews should be carried out as frequently as considered necessary and practicable, for the purpose of determining whether the use of the covert human intelligence source remains necessary and proportionate, and whether the authorisation remains justified.<sup>238</sup>

## Human Rights

- 32 As we have indicated, the Regulation of Investigatory Powers Act 2000 was introduced principally to ensure that the use of covert investigatory powers, including the deployment of undercover police officers, complied with Article 8, European Convention on Human Rights.
- 33 Article 8(1) sets out the right to respect for private and family life. The phrase “private and family life” has been said to be “very broad indeed”,<sup>239</sup> and can extend, at least in some circumstances,<sup>240</sup> to the so-called “zone of interaction” between two individuals.<sup>241</sup>
- 34 The Code of Practice which deals with issues concerning covert human intelligence sources states:

*“Unlike directed surveillance, which relates specifically to private information, authorisations for the use or conduct of a [covert human intelligence sources] do not relate specifically*

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<sup>236</sup> Regulation of Investigatory Powers (Source Records) Regulations 2000/ 2725.

<sup>237</sup> Section 45, Regulation of Investigatory Powers Act 2000.

<sup>238</sup> *Covert Human Intelligence Sources Code of Practice*, issued pursuant to section 71, Regulation of Investigatory Powers Act 2000, paragraphs 5.16-17.

<sup>239</sup> *R(Wood) v Commissioner of Police of Metropolis* [2010] 1 WLR 123, per Laws LJ at paragraph 19.

<sup>240</sup> It depends on the specific facts of the case, although it may be relevant to ask, first, whether the interference with privacy reaches a minimum level of seriousness, and secondly, whether the complainant had a reasonable expectation of privacy in all the circumstances: see the discussion by Laws LJ in *R(Wood) v Commissioner of Police of Metropolis* (as above) at paragraphs 43-44; and *R (Catt) v ACPO* [2013] 1 WLR 3121 (CA) at paragraphs 13-20; [28-31]. In the latter case, it was held that the fact that the public may expect the police to gather and process intelligence relating to violent protest movements did not lead to the conclusion that Article 8, European Convention on Human Rights were not engaged, although it might suggest that an interference was justified.

<sup>241</sup> *R(Wood) v Commissioner of Police of Metropolis* (as above), per Laws LJ (dissenting in the result but concurring on this issue) at paragraphs 19-21, cited with approval in the recent case of *SXH v Crown Prosecution Service* [2014] EWCA Civ 90 at [49].

*to private information, but to the covert manipulation of a relationship to gain any information. [European Convention on Human Rights] case law makes it clear that Article 8 includes the right to establish and develop relationships. Accordingly, any manipulation of a relationship by a public authority (for example, one party having a covert purpose on behalf of a public authority) is likely to engage Article 8, regardless of whether or not the public authority intends to acquire private information.*<sup>242</sup>

- 35 Article 8 is a qualified right which means that interference with the rights protected by Article 8(1) are permitted in the circumstances set out in Article 8(2). Article 8(2) lays down justification requirements, including legal certainty,<sup>243</sup> necessity and proportionality. It is principally through the authorisation provisions of section 29, Regulation of Investigatory Powers Act 2000 that compliance with Article 8 is intended to be achieved. Consequently, it is essential that those seeking or granting authorisation under section 29 should give detailed consideration to the issues of necessity and proportionality,<sup>244</sup> including issues of collateral intrusion.
- 36 It does not follow that an act of undercover policing or covert surveillance which is authorised in accordance with the 2000 Act, can never result in a contravention of the rights set out in the European Convention on Human Rights Convention.<sup>245</sup> In particular, the fact that an act was lawful under the Regulation of Investigatory Powers Act 2000 does not mean that there could not be a breach of Article 6 as a result.<sup>246</sup> Equally, there may be a fair trial for Article 6 purposes even though there has been a breach of the requirements of the Regulation of Investigatory Powers Act 2000 or of Article 8.<sup>247</sup> The critical issue under Article 6 will be the fairness of the trial process.<sup>248</sup>

<sup>242</sup> *Covert Human Intelligence Sources Code of Practice*, issued pursuant to section 71, Regulation of Investigative Powers Act 2000, Home Office, 2010, paragraph 2.10.

<sup>243</sup> "In accordance with the law".

<sup>244</sup> In particular, proper consideration must be given to the question of whether less intrusive means could be used to achieve the desired result.

<sup>245</sup> *McE v Prison Service*, above, per Baroness Hale of Richmond at paragraph 71.

<sup>246</sup> *Ibid.*, per Baroness Hale at paragraph 74.

<sup>247</sup> *R v Khan (Imran)* [2013] EWCA Crim 2230.

<sup>248</sup> *Ibid.* The leading European case is *Teixeira de Castro v Portugal* (1998) 28 EHRR 101.

- 37 Undercover policing may also give rise to other human rights issues, including under Article 2, European Convention on Human Rights, concerning the right to life of undercover officers and of other persons exposed to risk.

## **Undercover online policing**

- 38 Until recently, undercover online policing was seen as a discrete area of work. There are no special rules for undercover online interaction: it is governed by the same statutory regime and the same considerations under the Regulation of Investigatory Powers Act 2000.
- 39 Whether a covert human intelligence source authorisation is required, or some different form of authorisation, such as a Directed Surveillance authorisation, will depend on the particular facts.
- 40 The law requires consideration of what the interaction in substance amounts to, while being careful not to draw superficial conclusions from the use of online jargon such as 'friends'.<sup>249</sup> In deciding whether a 'relationship' was likely to be formed for the purposes of the Regulation of Investigatory Powers Act 2000, it is appropriate to consider: whether the interaction really falls within the individual's private zone or whether it is more like his or her dealings with individuals in public; his or her expectations of privacy; how seriously his or her expectations would be damaged if the true facts were revealed; and the length of time of the interaction.

## **Legend-building**

- 41 In many instances, and especially where an undercover officer is deployed to infiltrate a gang of suspected criminals, it is essential that that officer is able to present a credible story about his or her background: for example, where he or she comes from; his or her family and social ties; his or her place of residence; and any other details which may be relevant to his infiltration. Some of this will be a carefully constructed series of artificial facts; some will be as a consequence of practical steps that an officer may take to ground himself or herself in a local community. The creation of the officer's background prior to any deployment is termed legend-building.

<sup>249</sup> Such a term is commonly used on social networking sites to identify a group of individuals who may or may not actually be known to the owner of the site but who have access to aspects of the owner's site that might be denied to others who are not classified as such.

- 42 It is crucial that the legend-building is comprehensive and robust so that it may stand up to detailed scrutiny by anyone in the gang, for example, who may be suspicious of the undercover officer's account of his background.
- 43 Often, legend-building will involve the undercover officer in interacting with others (who may not be thought to be part of the criminal gang) on a social, personal and business level. The creation of these relationships is referred to as 'collateral intrusion'. For example, an undercover officer may form a close friendship with an individual over a period of time with the intention that his or her newly acquired friend might vouch for the officer's integrity when he is deployed against a suspect.
- 44 Such individuals, arguably, have an even greater right to have their private and family life protected in accordance with Article 8 as they may be entirely innocent of any criminal wrongdoing and therefore have every reasonable expectation that they will not come into contact with undercover police officers.
- 45 There is nothing in the definition of a covert human intelligence source that limits authorisations to relationships with the target of the deployment.<sup>250</sup> Relationships formed during the legend-building stage have as much capacity to interfere with Article 8 rights as those formed during operational deployment, and it would be inconsistent with one of the fundamental purposes of the Regulation of Investigatory Powers Act 2000 if it were not possible to authorise such relationships where they were necessary and proportionate in the interests of law enforcement.
- 46 If a relationship is formed in these circumstances, a covert human intelligence source authorisation is required. This is particularly important where the relationship between the undercover officer and the individual amounts to an interference with that individual's private life; if an authorisation is not in place, that interference will not have been done "in accordance with the law" and will amount to a violation of Article 8.

<sup>250</sup> Section 26, Regulation of Investigatory Powers Act 2000.

# Annex E – Relevant Articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms

## Article 2

### Right to life

- 1 Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
- 2 Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
  - (a) in defence of any person from unlawful violence;
  - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
  - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

## Article 6

### Right to a fair trial

- 1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
- 2 Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
- 3 Everyone charged with a criminal offence has the following minimum rights:
  - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

- (b) to have adequate time and facilities for the preparation of his defence;
- (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

## **Article 8**

### **Right to respect for private and family life**

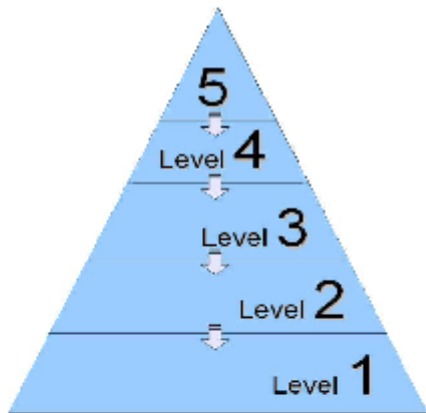
- 1 Everyone has the right to respect for his private and family life, his home and his correspondence.
- 2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

# Annex F – Levels of undercover online investigations

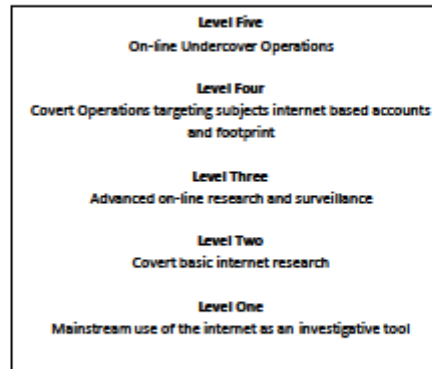
## Authorising Officers Aid Memoir

For Internet Investigations

Internet Investigations cover a wide range of deployment types that are becoming more frequent within main stream Policing methodology. The tactics employed range from research that would be conducted on a daily basis by mainstream officers conducting what is essentially on-line uniform policing, to tactics conducted by under cover officers and those staff that would be part of a Technical Support Unit in the conventional surveillance arena. To assist in clarity around this work five levels have been developed by the National Open Source Intelligence Working Group.



Developed by West Midlands Police



## 5 Levels of Internet Investigation/research

These 5 levels have been approved nationally to define the levels of activity for Open Source Intelligence/research (OSIR) and other tactics employed during Internet Investigations.

The criteria detailed in the following standards should be seen as minimum to carry out operational activity on the Internet. Departments should assess their operational requirements individually and set operational criteria accordingly as long as it does not fall below the minimum standard.

When considering all internet activity the following should be considered by Authorising Officers and listed in any documentation compiled;

- Does the activity afford access to private information
- Is there any aspect of establishing or maintaining a relationship
- Is there a cogent intelligence case
- What arrangements are in place to minimize collateral intrusion

### **Level 1 Overt Open Source Investigation/Research**

- Research across publicly accessible search areas of the Internet such as map viewing, street views, local authority sites, auction sites or any publicly available website which has no requirement to register details to gain access. As the Investigation/research activity is considered overt there is no requirement for any RiPA or Police Act Authority.
- No level of authority but must adhere to force policy regarding use of Computers
- Staff conducting this activity will have received level 1 training
- May be conducted using Police registered computers

### **Level 2 Core Open Source Investigation/Research**

- Intelligence, Investigation/research across publicly accessible search areas of the Internet where the fact of the research is intended to remain unknown to/by the subject.
- Level of Authority - none as standard but active consideration should be given to a Directed Surveillance Authority under RiPA on a case-by-case basis.



- There must be NO activity which would require interaction with another party.
- Staff conducting more in-depth open source investigation or research to assist their investigations.
- Searches across whole of Internet – using tools such as search engines, people search sites, social network sites and voice over Internet protocol (VOIP).
- Passive profiles can be used to log onto Social Networking sites but there must be no interaction – no befriending subjects, poking, writing on walls or joining groups.
- Only non-attributable computers to be used.
- Must be able to evidentially capture.
- Product recovered must be evaluated and submitted into Force/Agency intelligence management system in most cases using a 5x5x5.
- Any false personas created, accounts that are created to allow officers to access certain sites such as social media sites, should be recorded on the Force/Agency false persona record. Any use of such accounts should be recorded including reason for their use. Records should be accountable.

#### Level 3 Covert Advanced Open Source Investigation/Research

- Advanced Open Source Intelligence Investigation/research and Internet based surveillance
- Level of authority - on a case-by-case basis with a higher likelihood of a requirement for an authorisation under RIPA
- Training required – recognised advanced open source training to include relevant legislation and case law
- Passive profiles can be used to log onto Social Networking sites but there can be limited befriending of a subject in order to gain access to a closed profile.
- If a relationship has to be formed by befriending a subject then a Directed Surveillance Authority should be considered. The following are additional points that should be considered;

- Record of the rationale for adding of friends
- Assessment of collateral intrusion (adding friends as a link to subject)
- Constant review of necessity for friend
- Justification of the level of intrusion planned by the activity compared against the crime being investigated.
- Must be able to evidentially capture
- Only non-attributable computers to be used.
- Product recovered must be evaluated and submitted into Force/Agency intelligence management system in most cases using a 5x5x5.

#### Level 4 Covert Internet and Network Investigations

- Level of authority - on a case by case basis with a higher likelihood of a requirement for an authorisation under RIPA and Police Act.
- Use of passive profiles with limited interaction – seek specialist advice. Staff may be required to legend build an account or identity to support future operations
- Only non attributable computers to be used greater consideration to ISP and IP matching
- During Operational deployments staff conducting level four activity may make contact with a subject in order to achieve the deployment goal. This would not constitute the development of a relationship and so shouldn't necessitate a CHIS authority. This need should be reviewed on a case by case basis.
- Support from a disclosure officer should be considered to assist in the protection of tactics through parallel sourcing of material obtained and PII applications
- Must be able to evidentially capture.

#### Level 5 Undercover officer on line, Covert Internet Investigator

- Covert Human Intelligence Source on-line investigations (undercover officer on line).
- More likely to have a CHIS authorisation under RIPA managed by accredited CHIS Authorising Officers
- Training required. – Nationally accredited Foundation Undercover Officer or above with additional Undercover officer on line course. There will be officers within Forces who will have only attended an on-line Under Cover course but are still deemed proficient to conduct such operations. These officers will have limited capabilities in live interactions using technologies such as telephones, VOIP calls etc. Where there is a requirement for such activity operationally advice and guidance should be sought from the local accredited undercover unit who will advise on the individual officers operational capabilities.
- Only non attributable computers to be used.
- Support from a disclosure officer should be considered to assist in the protection of tactics through parallel sourcing of material obtained and PII applications
- Product recovered must be evaluated and submitted into Force/Agency intelligence management system in most cases using a 5x5x5.
- What level of UC training has officer received? If they are a former CII with Grandfather rights there are limits to what they can do; No live interaction – VOIP conversations No meeting of subjects Guidance from Force Covert Operations is advisable

An additional item for consideration in all aspects of Internet investigation is the continued storage of the product obtained. It can be a breach of an individual's Article 8 rights under ECHR to process data that has been stored by a public authority. With this in mind product obtained by way of Internet investigation is advised to be logged into the Force/Agency intelligence management system. This will both prevent continued breaches of privacy by an authority and offer best value by preventing duplication of work.

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