

# Undercover tactics in public order and extremism

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# Acronyms

Acronym	Term
ACPO	Association of Chief Police Officers
ACSO	Assistant Commissioner Specialist Operations
ARNI	Animal Rights National Index
CHIS	Covert Human Intelligence Source
CPIA	Criminal Procedure and Investigations Act 1996
CT	Counter Terrorism Command
CTC	Counter Terrorism Command (MPS SO15)
CTIU	Counter Terrorist Intelligence Unit (Regional Police)
CTU	Counter Terrorist Unit (Investigative arm to above)
DAC	Deputy Assistant Commissioner
DC	Detective Constable
DCI	Detective Chief Inspector
DCS	Detective Chief Superintendent
DE	Domestic Extremism
DI	Detective Inspector
DPA	Data Protection Act 1998
DS	Detective Sergeant
ECHR	European Convention on Human Rights
FIBs	Force Intelligence Bureaus
FPU	UK Football Policing Unit
G8	Group of Eight
GCHQ	Government Communications Headquarters
HLS	Huntingdon Life Sciences

<b>Acronym</b>	<b>Term</b>
HMIC	Her Majesty's Inspectorate of Constabulary
HRA	Human Rights Act
ICO	Information Commissioner's Office
IPCC	Independent Police Complaints Commission
MOPI	Management of Police Information 2005
MOU	Memoranda of Understanding
MPS	Metropolitan Police Service
MPSB	Metropolitan Police Special Branch
NCDE	National Coordinator for Domestic Extremism
NCIS	National Criminal Intelligence Service
NDET	National Domestic Extremism Team
NETCU	National Extremism Tactical Coordination Unit
NPOIU	National Public Order Intelligence Unit
NIM	National Intelligence Model
NPIA	National Police Improvement Agency
NUWG	National Undercover Working Group
OSC	Office of Surveillance Commissioner
POPS	Public Order Policing Section
R&D	Research and Development
RIPA	Regulation of Investigatory Powers Act 2000
RIP(S)A	Regulation of Investigatory Powers (Scotland) Act 2000
SB	Special Branch
SIO	Senior Investigating Officer
SNC	Senior National Coordinator
SO12	Metropolitan Police Special Branch
SO15	Metropolitan Police Counter Terrorism Command
SOCA	Serious Organised Crime Agency
SOP	Standard Operating Procedure
SOU	Specialist Operations Unit

<b>Acronym</b>	<b>Term</b>
SSMU	Strategic Source Management Unit
TAM	Terrorism & Allied Matters (ACPO Business Area)
TCG	Tasking and Coordination Group
UCO	Undercover Officer.

# Executive Summary

This report deals with the circumstances surrounding the use of Mark Kennedy, an undercover police officer, in dealing with criminality associated with protest. It also considers the future purpose of the police unit responsible for coordinating work of this nature.

HMIC's review of the broad use of undercover officers has revealed a strong, clearly applied set of controls when undercover police are deployed to tackle organised crime. In contrast, whilst the authorisation for Mark Kennedy accorded with legal requirements, overall the controls in respect of his deployment were weaker.

It is fair to say that since 2009 the system of controls applied by the National Domestic Extremism Unit (NDEU) has been strengthened to a degree. But a combination of the breadth of "domestic extremism", the brigading of extremism and public order intelligence development, and the variable capabilities and oversight applied to this work point to structural weaknesses over a number of years working in this sensitive territory.

Much good work has been done by the units comprising the NDEU. However, if those who use extreme methods to pursue their causes pose sufficient risk to justify the consideration of intrusive policing tactics, then the right organisational arrangements, capabilities, controls and governance to oversee such intrusion must exist.

This review suggests that the brigading of national public order intelligence and extremism be reconsidered. While there is some overlap between these areas, both are demanding in their own right – and both need to be tackled well. HMIC also suggests that a clear practical framework of guidelines for the use of intrusive police tactics against extremists is agreed. An illustration of such an approach is provided. Finally, we indicate where strengthening of capabilities controls and governance of NDEU within the Counter Terrorism Network could exist.

## **A note on the use of Mark Kennedy's real name**

It is normal practice for the police to neither confirm nor deny the true identity of undercover officers. This is to protect both the individual, and the effectiveness of the tactic. However, the case of Mark Kennedy is one of exceptional circumstances, including his own revelations; the media interest in him and the naming of him by the Court of Appeal on 19<sup>th</sup> July 2011. Because of this, HMIC considers that it is in the public interest on this occasion to refer to his true identity and properly address the issues.

# Recommendations

## **Recommendation 1**

Authorising Officers should commission an independent review by an Operational Security officer (OpSy)<sup>1</sup> of undercover operations that extend beyond one year's duration. Senior Investigating Officers (SIOs) should personally present the case for continuation to the Authorising Officer.

## **Recommendation 2**

Specific training and accreditation should be provided for Authorising Officers to improve the oversight and management of undercover operations.

## **Recommendation 3**

Risks to the operational strategy and welfare of undercover officers should be considered by appropriately trained police supervisors, nominated CPS lawyers and police-employed psychologists collectively.

## **Recommendation 4**

In the absence of a tighter definition, ACPO should use the definition of extremism agreed across Government, together with a practical framework that ensures proportionality of intrusive operations.<sup>2</sup>

## **Recommendation 5**

Subject to reconsideration of the public order component, extremism operations should continue to be managed within the existing regional Counter Terrorism Unit (CTU) structure, and operational oversight and the governance arrangements applied to the NDEU should match those existing within the CT Network.

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<sup>1</sup> The primary role of the operational security officer (OpSy) is to quality assure issues of legality, integrity, ethical conduct and standards of covert operations, while contributing to the overall effectiveness of such operations. For example, an OpSy can independently and objectively review the relationship between cover officers, support staff and undercover operatives.

<sup>2</sup> An illustration of such a framework is provided on pp. 54–55 below.



### **Action by other agency**

HMIC supports the Chief Surveillance Commissioner's proposal that, to provide additional assurance, OSC inspections will include a stocktake review of all undercover operations in a force that last longer than one year.

# 1. Introduction

- 1.1 The police have to balance duties, rights and responsibilities in order to deal effectively with campaigns and protest, particularly when these involve criminality. The right to protest is acknowledged in law: but it is not unconditional.<sup>3</sup> The key point is that the public right to peaceful protest does not provide a defence for protesters who commit serious crime or disorder to pursue their objectives. The police need to use tactics to prevent and detect those who engage in criminal acts which endanger the public or unduly disrupt people's lives or businesses.
- 1.2 The police response to campaigns and public protest that generate violence and disruption (particularly those focussed on animal rights, some environmental issues and extreme political activists) has included the creation of the National Public Order Intelligence Unit (NPOIU), now subsumed with other units under the title of the National Domestic Extremism Unit (NDEU).
- 1.3 The NPOIU has used a variety of intelligence gathering techniques to build knowledge about groups, campaigns and individuals, including the use of undercover police officers. Such intrusive tactics can only be authorised by senior police officers.
- 1.4 Mark Kennedy was deployed undercover by the NPOIU for a total of nearly seven years. During that time he was tasked to gather intelligence on campaigns about a variety of issues, mainly linked to environmental concerns. He worked on operations throughout the United Kingdom and on deployments to 11 other countries.
- 1.5 In April 2009, 114 people were arrested in Sneinton, Nottinghamshire in a police operation to disrupt the unlawful occupation of Ratcliffe-on-Soar power station, which could have brought power generation to a halt. Twenty-six people were subsequently charged. In October 2010, an article appeared on an internet site exposing Mark Kennedy to be an undercover officer who used an alias of Mark Stone and who had provided intelligence in advance of the arrests.

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<sup>3</sup> Articles 9, 10 & 11 (freedom of religion, expression and assembly respectively) taken together provide a right of protest. Article 11, however, is a qualified right, which means that the police may impose lawful restrictions on the exercise of the right to freedom of assembly provided such restrictions are prescribed by law, pursue one or more legitimate aims and are necessary in a democratic society (i.e. fulfil a pressing social need and are proportionate. See HMIC (2009) *Adapting to Protest*.

- 1.6 In December 2010, 20 defendants were found guilty of conspiring to disrupt the power generation at Ratcliffe-on-Soar. However, in January 2011, the Crown Prosecution Service dropped charges against a further six people. Defence lawyers claimed that the reason for this was their request to the prosecution counsel to disclose details of an undercover officer's role. This led to significant media coverage, fuelled by Mark Kennedy telling his story to a national newspaper.
- 1.7 On 11 January 2011, Nottinghamshire Police referred to the Independent Police Complaints Commission (IPCC) a matter related to the collapse of the trial.
- 1.8 On 18 January 2011, the Chief Constable of Nottinghamshire, the Commissioner of Police of the Metropolis and the President of the Association of Chief Police Officers (ACPO) invited the Serious Organised Crime Agency (SOCA) to review the operational deployment of Mark Kennedy.
- 1.9 The same day Her Majesty's Inspector of Constabulary, Mr Bernard Hogan-Howe, announced that:
- “In light of recent events, and taking into account the other reviews being undertaken about undercover operations in Nottinghamshire, H.M. Inspectorate of Constabulary (HMIC) will carry out a review of the operational accountability of undercover work conducted by the National Public Order Intelligence Unit (NPOIU), and how intelligence activity is authorised in accordance with law, including consideration of the proportionality of covert tactics.”
- 1.10 On 20 July 2011, the Court of Appeal quashed the convictions of the 20 defendants who had been found guilty, “because of the failure of the Crown to make proper disclosure of material relating to the role and activities of the undercover police officer Mark Kennedy as well as materials which had the potential to provide support for the defence case or to undermine the case for the prosecution.” The judgement ruled that “the material that the Crown failed to disclose was pertinent to a potential submission of abuse of process by way of entrapment”.
- 1.11 The Terms of Reference for the HMIC Review are as follows:
- To review how intelligence that supports the policing of protest involving criminal activity is prioritised, gathered, assessed and managed by the NPOIU, National Domestic Extremism Team (NDET) and National Extremist Tactical Coordination Unit (NETCU) by considering:
1. the existing remit of these units and whether they are appropriate for the future;
  2. the effectiveness of operational oversight and governance arrangements for these units;
  3. the adequacy and resilience of structures, funding, staffing and resourcing of these units and the future requirements;

4. how intelligence activity associated with these units is authorised in accordance with the law including:
  - a. consideration of how the 'proportionality' of covert tactics is determined, in particular the use of undercover officers for collecting intelligence;
  - b. the process by which covert methods to collect intelligence are tasked and coordinated;
  - c. the process by which covert intelligence is translated into operational activity and, where appropriate, tested through a judicial process; and
  - d. the training, experience and accreditation of all staff involved in the process.
5. how covert intelligence gathering associated with these units is managed, including the use of undercover police officers;
6. whether existing legislation, and the guidance provided by ACPO, is sufficient to maintain public confidence in managing intelligence about protest activity.

1.12 HMIC methodology included a five-stage approach to the inspection as follows:

- Stage 1: Consultation and document review;
- Stage 2: Scoping, assessment and evaluation;
- Stage 3: Benchmarking;
- Stage 4: User perceptions; and
- Stage 5: Future concept consultation.

1.13 The report is based on the views and comments obtained from a variety of stakeholders throughout England, Wales, Northern Ireland and Scotland, including [REDACTED] ACPO, the Home Office, Police Forces, the Metropolitan Police Service (MPS), HM Revenue and Customs, the National Police Improvement Agency (NPIA), and [REDACTED] as well as representatives of overseas law enforcement agencies based in the UK.

1.14 Views have also been taken from the Office of Surveillance Commissioners, the ACPO National Undercover Working Group, business and industry, as well as from a broad range of interested parties such as protest groups and advocates of civil liberties. The views have been supported by the completion of a HMIC questionnaire by all police forces, a review of documents and observations by HMIC staff.

1.15 The inspection has been subject to independent oversight in the form of an External Reference Group. This group comprised representatives from Parliament, the Home Office, the Judiciary, Liberty, academia, SOCA and the London Assembly.

- 1.16 HMIC would like to acknowledge the detailed work of SOCA which was commissioned to review the activity of Mark Kennedy as well as the management of his deployment. SOCA and HMIC have worked in parallel and the findings of SOCA go to underpin the findings of HMIC. The SOCA report is attached at Annex A.
- 1.17 This report consists of five chapters. Chapters 2 to 4 detail the findings and conclusions arising from the review.

## 2. Undercover Officers

- 2.1 The use of undercover officers (UCOs) by law enforcement has a long history, originating in Sur  t   in Paris in the seventeenth century<sup>4</sup> – and in the UK it predates the formation of the police service.<sup>5</sup> It is also a tactic that has historically been used to monitor groups that could well fall within the current scope of ‘domestic extremism’ – from the Home Office’s infiltration of the Gordon Riots in 1780, to the Special (Irish) Branch’s use of large scale undercover operations against violent anarchists in the 1880s.<sup>6</sup>
- 2.2 The undercover tactic remains a key tool in the police service’s arsenal and it is used regularly by police forces and law enforcement agencies to successfully tackle serious and organised crime. It is not a tactic that the police often discuss publicly for two reasons. First its success rests in part on as few people as possible knowing the finer points of how an undercover officer works, and second on even fewer people knowing the identity of those officers for safety reasons. However it is a tactic that has led to countless arrests and convictions of significant criminals, the recovery of cash, drugs and firearms, and the disruption of crime groups.

### Definitions of Undercover Officer

- 2.3 An undercover police officer is, for the purposes of UK law, an informant or Covert Human Intelligence Source (CHIS). This is a statutory term used in the Regulation of Investigatory Powers Act 2000 (RIPA) and defined in section 26(8):-

“For the purposes of this Part a person is a covert human intelligence source if-

- (a) he establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within paragraph (b) or (c);
- (b) he covertly uses such a relationship to obtain information or to provide access to any information to another person; or

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<sup>4</sup> Kruisbergen, E.W., de Jong, D and Kleemans, E R. *Undercover Policing Assumptions and Empirical Evidence* in British Journal of Criminology 2001: 51 p. 395

<sup>5</sup> Fijnaut, C. J. C. F. and Marx, G. T. (1995a), ‘The Normalization of Undercover Policing in the West: Historical and Contemporary Perspectives’, in C. J. C. F. Fijnaut and G. T. Marx, eds, *Undercover: Police Surveillance in Comparative Perspective*. The Hague: Kluwer.

<sup>6</sup> *Ibid.*

(c) he covertly discloses information obtained by the use of such a relationship, or as a consequence of the existence of such a relationship.”

- 2.4 The lack of delineation between UCO and CHIS in RIPA is not ideal as there are clear differences between how these tactics have to be managed. The Regulation of Investigatory Powers (Source Records) Regulations 2000 defines an undercover officer as a “source who holds an office, rank or position with a relevant investigating authority.”<sup>7</sup> Undercover police officers are therefore servants of the crown and different considerations apply to them from those which apply to CHIS.
- 2.5 Clearly also, different management techniques are required for undercover police officers from those which may apply to other types of CHIS. To this end, HM Revenue & Customs (HMRC) and the Association of Chief Police Officers (ACPO) National Undercover Working Group (NUWG) have written operating procedures that set out the necessary control measures by which managers assure themselves and the courts that the UCO has conducted themselves correctly (see below). These operating procedures also provide a definition of undercover officers:

“Undercover Officer is a specifically trained law enforcement officer working under direction in an authorised operation or investigation in which the officer’s identity is concealed from third parties. The officer may be concealing his or her identity or otherwise acting covertly be deployed

- (a) in the interests of National security
- (b) for the purpose of preventing and detecting crime or of preventing disorder
- (c) in the interests of the economic well-being of the UK
- (d) in the interests of public safety
- (e) for the purpose of protecting public health
- (f) for the purpose of assessing or collating any tax, duty, levy or other imposition, contribution or charge payable to a government department; or
- (g) for any other purpose prescribed in an order made by the Secretary of State”<sup>8</sup>

Within the police service there are also other non-uniformed officers that perform a covert role, but are not defined as undercover officers. Plain clothes CID and surveillance officers have been used to monitor activity covertly at public protests, similar to the role police spotters have at football matches. These officers neither take on another identity, nor undertake any of the functions of a test purchase or decoy officer.

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<sup>7</sup> Regulation of Investigatory Powers (Source Records) Regulations (2000). No. 2725.

<sup>8</sup> *ibid.* p. 8 Unpublished

## Legal Basis for Undercover Tactics

- 2.6 The deployment of undercover officers is a legitimate policing tactic, as described in the Judgment of the European Court of Human Rights in *Teixeira de Castro v. Portugal* (1998) 28 E.H.R.R. 101. However, it is one of the most intrusive tactics available to the police and involves a high level of risk to the officers involved. It should therefore be used only when appropriate and in accordance with law.
- 2.7 In detail, there are several sources of law affecting the use of undercover officers:
- The Regulation of Investigatory Powers Act 2000, Part II, and the Code of Practice dated August 2010 issued by the Home Office under section 71 of the Act “Covert Human Intelligence Sources” (“the Code”).
  - The European Convention on Human Rights, Articles 2, 6 and 8. These are relevant because Article 6 concerns the right to a fair trial of any person prosecuted after an investigation involving undercover officers; Article 8 concerns the right to respect for private or family life of any person, whether prosecuted or not, and whether a person under investigation or not; Article 2 concerns the right to life of the undercover officers and of other persons who may be exposed to risk if available and useful methods of investigation are not deployed.
  - The Police and Criminal Evidence Act 1984 section 78. This provides the power to exclude prosecution evidence if its admission would have such an adverse effect upon the fairness of the proceedings that it ought to be excluded. The court is empowered to consider all of the circumstances including the circumstances in which the relevant evidence was obtained.
  - The jurisdiction of the criminal courts at common law to stay proceedings as an abuse of the process of the court if the defendant cannot receive a fair trial or if it would undermine the criminal justice system to try him because of some misconduct by the police connected with the prosecution. This is a key power.
  - The criminal law, which may criminalise activities of police officers, committed in their undercover roles. The police discipline code also applies to varieties of misconduct short of crime.



## Guidance and control

- 2.8 As mentioned above, the main source of operational guidance on the use of the undercover tactic is the ACPO and HMRC operating procedures. These procedures set out mandatory control measures for all UK law enforcement bodies that deploy UCOs.<sup>9</sup> The procedures were written in June 2003 and require updating in order to reflect changes in the past eight years and to provide clearer guidance in relation to specific issues. HMIC is aware that the NUWG – a group established in the 1990s, chaired by an Assistant Chief Constable and comprising the Heads of Units accredited to run UCOs– is currently working on producing updated guidance. This needs to be published urgently.
- 2.9 There are two other sources of guidance for the tactic, namely:
- The Code of Practice published under section 71 of RIPA is an authoritative source of guidance, being admissible in civil and criminal proceedings.
  - Office of Surveillance Commissioners' Procedures and Guidance document, 2010, which is designed to indicate the way in which the Commissioners are minded to construe particular statutory provisions. This is circulated to those who may have to exercise powers granted by RIPA, including local authorities and other agencies and the circulation is therefore likely to be quite wide.
- 2.10 The use of undercover officers by the police is one of the most intrusive police tactics and is regulated by law in the Regulation of Investigatory Powers Act (RIPA) 2000. In practice the tactic is directed against serious crime, because in 2003 ACPO restricted the deployment of such officers to serious crime (and then only on the authorisation of an officer of at least Assistant Chief Constable rank).
- 2.11 This procedure prescribes the system by which undercover officers are controlled so that the risks associated with the tactic can be minimised. The key themes of control are listed below together with some of the apparent risks these are designed to counter:
- (a) **Selection & training**, preventing inappropriate candidates being appointed, harm to the public and the police, and exposure of the tactic.
  - (b) **Authorisation, review and oversight**, preventing ethical and legal mistakes, breaches of human rights, and wasted cost.
  - (c) **Operational supervision**, preventing inappropriate conduct by the officer, targeting of the wrong people, and harm to the public and the police.
  - (d) **Psychological reviews**, preventing problems going unseen, management being unaware of the welfare of officers, and the prospect of the officer taking control.

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<sup>9</sup> See ACPO and HMCE (2003) *National Standards in Covert Investigation – Operating Procedures for the Deployment of Undercover Officers* p. 2 Unpublished

- (e) **International rules**, preventing ethical and legal mistakes, harm to the public and the police, and reputational damage to the UK.
  - (f) **Exit strategies**, preventing the inappropriate end to an operation, enabling the safe removal of an officer, and minimising the prospect of the officer taking control.
- 2.12 HMIC benchmarked the use of these controls with practice found in police forces, [REDACTED] HM Revenue & Customs (HMRC) [REDACTED] [REDACTED] Levels of compliance and robust control were generally found to be consistent. HMIC accepts that undercover work is a high-risk tactic, and the fact that an associated risk exists that from time to time undercover officers might work outside their remit. No absolute guarantees can be made: only assurance given, through tight controls.
- 2.13 HMIC has examined all the undercover operations conducted by NPOIU since its creation in 1999. The number is small, particularly in comparison with organised crime type operations. NPOIU use of undercover officers also differs from most other law enforcement deployments in respect of the duration of deployment and its evidential focus. Most undercover deployments against organised crime are for short periods of time, sufficient either for a transaction (such as a drug deal) to take place or for a serious crime to be planned to the point of completion, so providing evidence of criminal conspiracy. This might take up to a number of months.
- 2.14 The average life of the small number of NPOIU undercover operations since 1999 is significantly longer, and their main objective that of gathering intelligence. Many NPOIU deployments lasted not months but years.
- 2.15 There appear to be three main reasons for this disparity. Firstly, the groups involved are structured and operate differently to many organised crime groups. Generally, no commodity is traded; therefore the crime against which intelligence needs to be drawn can be more difficult to define. Also, those involved are pursuing a cause: some in lawful ways, some at the fringes of the law and some on occasions, outside the law. Consequently, intelligence development on groups and trends is necessary prior to gaining clarity about criminal intentions or actions.
- 2.16 Secondly, as planning of criminal activity allegedly takes place in a 'closed atmosphere', and as access to that is restricted and based on trust, it takes time to place undercover officers in a position where they will become privy to significant intelligence. Finally, in criminal infiltration, tactics are available for undercover officers to portray their criminal credentials and gain acceptance in a much shorter timeframe than it may take an activist to demonstrate their commitment and gain credibility. Arguably, there is greater risk of harm to an undercover officer in an organised crime group than in a group of activists, and the degree of harm the group is likely to cause in terms of crime might not be so quickly identified where issues of protest are the focus.

- 2.17 That said, the dangers and challenges of undercover work should not be underestimated and the courage of officers so deployed must be acknowledged.
- 2.18 The other main difference between UCO deployments against organised crime and against domestic extremism is the focus on intelligence gathering rather than evidence building. UCOs deployed against organised crime are usually used to gather evidence that can be used in a prosecution. As such, significant emphasis is placed on corroboration to ensure admissibility of evidence in accordance with *R v Bryce*. In contrast, NPOIU UCOs are primarily used as intelligence-gathering assets – in line with the Unit’s role as an intelligence, rather than enforcement entity. The ACPO Operating Procedures explicitly permits the deployment of UCOs for intelligence purposes. No NPOIU UCO has given evidence in court and the output of the operations fill intelligence gaps and provides intelligence that police forces can use to disrupt criminality, rather than directly leading to prosecutions.

### **NDEU / NPOIU application of the ‘control measures’**

- 2.19 The use of undercover officers as part of law enforcement has a long history. Applied correctly it is a lawful and ethical tactic, as well as being a productive, and at times vital, means of obtaining much-needed intelligence and evidence. However, its use needs to be necessary and proportionate, and the police need to exert strong control over both the use and conduct of the officer. Whilst HMIC found the use of Mark Kennedy accorded with the requirements of RIPA, controls to corroborate his activities were not strengthened until the latter days of his deployment. In short: the deployment went on for too long, and controls, combined with challenging reviews, were not delivered by the management of the NPOIU for the majority of his authorisation.
- 2.20 The rest of this section looks at how the systems designed to control the use of undercover officers were applied by NPOIU generally and specifically in the case of Mark Kennedy. HMIC invited him to take part in this review but he declined. We have written to him outlining our findings.<sup>10</sup>
- 2.21 Over the last 10 years, extreme methods used by some parties against individuals and commercial interests, workers, researchers, company executives and shareholders – with the potential knock-on effect on the economy – has led to a strong and understandable desire for good intelligence. This helps explain the development both of the different units that now make up NDEU, and of the tactics (including intrusive tactics) used across borders by the NPOIU component. In short the extremist methods have taken on an increasingly serious form and the response needed to be strengthened and capable.
- 2.22 The NPOIU was one of the ■ UK law enforcement units accredited to deploy undercover officers. The NDEU continue to use UCOs although the use of this

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<sup>10</sup> Arrangements to invite MK to comment on this review in hand (with QCs guidance) as of 19/09/2011.

tactic has, understandably, diminished as a consequence of the Mark Kennedy compromise. The Specialist Operations Unit (SOU) manages the NDEU's UCO functions and is managed by a DI, with cover officers and UCOs reporting to him. The DI then falls under line management command of the NDEU Detective Chief Inspector (DCI) Covert.

- 2.23 NPOIU was assessed by the NUWG in February 2009 and the NUWG stated that the unit met with the required standard for accreditation. All NPOIU Undercover Unit staff are vetted to 'Security Cleared' (SC) level as per guidance from NUWG.
- 2.24 There are national standards regarding the vetting of staff and the on-going review of that vetting. The role of UCO is generically classed as a high-risk area for corruption and integrity issues. However, HMIC found no evidence that other systems of vetting have been put in place for UCOs, especially for those on long-term deployments. Whilst day-to-day supervision was present this is no substitute for formal vetting review that addresses the specific risks of UCO work.

### **UCO Selection**

- 2.25 It is clearly essential that only people with the correct skill sets and aptitude are selected as UCOs, and robust selection procedures are therefore imperative. HMIC found that the three ways to become selected for NPOIU UCO work are:
1. When vacancies arise within NPOIU, recruitment is completed nationally via an advertisement to all UC Units
  2. Applicants can apply via a recognised form drawn up by SCD11. Officers can only be approved by ACC ranks from their Home Force. Following an interview, successful applicants are psychologically assessed. This application can be done prior to receiving NUTAC training, [REDACTED]  
[REDACTED]  
[REDACTED]
  3. National Undercover Training & Assessment Course (NUTAC) trainers identify officers who they believe have the aptitude for DE and highlight them to NPOIU.
- 2.27 HMIC has found that the selection process for undercover work appears robust in that it failed Mark Kennedy twice. The process identified areas of development in Kennedy which stopped his appointment and included his lack of operational experience and his ability to manage stressful situations. These he subsequently corrected over 18 months before he was finally accepted for training. Kennedy failed his initial psychological test prior to selection for undercover work. The psychologist who carried out this assessment stated that it would be possible to manipulate the system in order to pass on a second attempt. However, in the case of Kennedy they were satisfied that he had responded appropriately to the feedback, was open and receptive and was set clear development objectives against which he had to provide evidence.

## UCO Training

- 2.28 NPOIU complies with the ACPO Operating Procedures requirement that “all officers deployed as undercover officers or as cover officers will be trained to the standards required, and on courses approved by the National Undercover Working Group<sup>11</sup>. All UCOs who have worked for NPOIU within the last 10 years have attended the national recognised training course (NUTAC) and have therefore been accredited as Level 1 undercover officers. All NPOIU Cover Officers have either completed a nationally approved Undercover Officer training programme (i.e. NUTAC) or observed one, as there was no bespoke training for cover officers until June 2011. In 2009 NUWG assessed the unit for accreditation and declared all UCOs as having undergone approved training.
- 2.29 UCO training comprises inputs regarding legislation, the ‘craft’ of undercover activity and the bounds of conduct. Regarding the latter, training specifically covers the behaviour that would not be expected of a UCO, [REDACTED] and it prepares officers for situations where they are invited to behave in this way. The consequences of such behaviour are made clear, the identification and refusal of such invitations is coached and [REDACTED]  
[REDACTED]  
[REDACTED]

## Authorisation, Renewals and Reviews

- 2.30 In common with all covert tactics, UCO deployments have to be authorised in advance. In the case of UCOs, the ACPO Operating Procedures outline that the authorising officer has to be an ACC or equivalent rank.<sup>12</sup> This is a higher rank than required by RIPA, which allows a Superintendent to authorise CHIS. This shows that the Operating Procedures reflect a view that RIPA is too permissive in relation to the deployment of UCOs. This is no doubt a consequence of the fact noted above that the Act treats all forms of CHIS the same.
- 2.31 In addition to granting authorisation for the use of the UCO and outlining the parameters of the conduct of the deployment, Authorising Officers are also required to specify the frequency of reviews, consider update reviews no more than three months after the date of authorisation and at subsequent three monthly intervals and cancel the authorisation if they believe that the UCO’s use and conduct no longer satisfy the set criteria<sup>13</sup>. The Operating Procedures also advise that the authorising officer undertake the reviews<sup>14</sup>.

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<sup>11</sup> *ibid.* p. 9 Unpublished

<sup>12</sup> *ibid.* p. 9 Unpublished

<sup>13</sup> *ibid.* pp.29-30 Unpublished

<sup>14</sup> *ibid.* p.30 Unpublished

- 2.32 The examination of NPOIU's UCO operations reveal that all UCO operations were authorised. However, in a number of operations there were slippages that resulted in short periods of unauthorised activity occurring between an authorisation ending and a renewal being completed. These lapses only lasted a few days and HMIC has seen no evidence of the UCOs being specifically tasked during these periods. The lapses, do, however, reflect a lack of a sufficiently robust authorisation procedure for the Unit's UCO deployments. These issues were highlighted in the Review commissioned by the Head of Unit in 2006, but recommendations to address these were not implemented.
- 2.33 Regarding Mark Kennedy, no single authorising officer appeared to have been fully aware of either the overall intelligence picture in relation to domestic extremism, or the other intelligence opportunities available to negate the need for an undercover officer. Additionally, it was not evident that the authorising officers were cognisant of the extent and nature of the intrusion that occurred, nor that the type and level of intrusion was completely articulated to them.
- 2.34 There were two instances during Mark Kennedy's deployment where the authorisation for his use and conduct under RIPA had lapsed. In 2005, there was a three-day period due to poor administrative processes. In 2008 there was a five-day period while responsibility for the authorisation moved from Metropolitan Police Service (MPS) to Nottinghamshire Police.
- 2.35 We believe from the work we have completed that the authorisation of all deployments of undercover officers by NPOIU were on the whole lawful and proportionate. However records that we have sampled could have been more detailed in relation to necessity and collateral intrusion for all NPOIU deployments, particularly in comparison with the practice found in organised crime operations across the country.

### **History of the Authorisation Process for NPOIU UC Operations**

- 2.36 This process involved NPOIU assessing the threat and risk of criminality, consideration of how intelligence can be gathered and identification of a force to lead any operation or investigation. If undercover was considered to be a necessary and proportionate tactic, senior officers from NPOIU would brief a Chief Officer and a Senior Investigating Officer (SIO) in the relevant force and suggest such a deployment. The application under RIPA for such deployment and its authorisation took place within that police force. NPOIU, whilst assisting in the drafting of paperwork, did not apply for or authorise undercover officers. Monthly reviews were completed by the Authorising Officer, leading to some changes in circumstances where proportionality can no longer be argued, and consequently authorities were cancelled.
- 2.37 The use of authorising officers from various forces for the same UCO operation militates against their ability to be fully aware of the history of the operation and



other intelligence opportunities that have been considered or employed. There are a number of examples evident from NPOIU's paperwork where relevant information was not presented to new authorising officers. [REDACTED]

[REDACTED] The system also led to the authorising officer not being given the overall intelligence picture in relation to domestic extremism.

- 2.38 The Authorisation process during ACPO (TAM)'s stewardship of the NPOIU also meant that whilst the UCO deployment was in relation to a specific force-based event, given the global DE networks, preparation for the event would often require the UCO to travel widely throughout the UK as well as overseas. In these situations there is a risk that the Authorising Officer will not have the direct control of the operation, which would be the case if the deployment occurred entirely within their force area. It places added importance on the head of the NPOIU undercover unit, which should keep the Authorising Officer and SIO informed. Although the ACPO Operating Procedures permit this solution, there is a question as to whether this fully addresses the risks.
- 2.39 Recent authorities of NPOIU UCO deployments include evidence of intrusive management by Authorising Officers and of their seeking more justification prior to authorising. Applications and reviews contain intelligence updates, operational issues arising in the preceding period and justification for individual subjects to be added or reviewed.
- 2.40 Presently, the host force is responsible for all RIPA authorities, renewals and cancellations, as well as for supplying investigative and support staff. It is NDEU's responsibility to sanitise intelligence gathered by the UCO and disseminate this to the force to act on within their operation.
- 2.41 The ACPO compromise that resulted in authorisation for NPOIU UCO deployments falling to Chief Officers in other forces has, given the Unit's national remit and international reach, brought with it considerable risk in terms of responsibility being at 'arms length' from the operation.
- 2.42 UCO deployments are now managed far more professionally and thoroughly than when RIPA was new legislation in 2000. Practice has increased understanding of RIPA, and guidance from the OSC has assisted Chief Officers when considering applications for UCOs. However, there is no mandatory training for Authorising Officers of DE or other UCO deployments and if some Chief Officers are not regularly presented with applications then skills levels are unlikely to increase.

### **Necessity and Proportionality - NPOIU UC Operations**

- 2.43 It is for Chief Officers to satisfy themselves fully that a UCO deployment is both necessary and proportionate. Once they have given authorisation the deployment is lawful, ergo all NPOIU's UCO operations are legal.

- 2.44 In all the cases reviewed, NPOIU records lack detail in relation to necessity and proportionality. Although many people interviewed as part of the inspection stated that domestic extremists' suspicious nature makes the use of alternative covert tactics against individuals, [REDACTED] either physically difficult to deploy (owing to checks by them), or unproductive (because of a reliance on private face-to face meetings), there is insufficient documentation in UCO papers that demonstrate that the NPOIU considered alternative tactics to gather the intelligence prior to UCO deployment.
- 2.45 In only one case (which is recent) was there any reference to the NPOIU threat assessment matrix, and there was no evidence of the links between the NPOIU TTCG process and the operations. Prior to 2008, there was little evidence of NCDE scrutiny of UCO deployments.
- 2.46 In recent cases there is comment from the applicant and AO making a distinction between the right to lawful protest and those engaged in criminal acts.
- 2.47 Unsurprisingly, Authorising Officers' considerations and intrusive comments have improved over time, giving a clear insight to their rationale for authorisation.

### **Collateral Intrusion**

- 2.48 The Authorising Officer<sup>15</sup> 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. These fall into three main categories and include inevitable intrusion (such as into the privacy of intimate associates of the subject), foreseeable intrusion (such as known associates), and general intrusion (such as other members of the public who come into contact with the subject).
- 2.49 The potential for collateral intrusion is greater for NPOIU's UCO operations than for most organised crime operations. Extremists are not open about their planning, preferring to use peaceful protestors as a cover for their activity, some of which will inevitably have contact with the UCO. The extended duration of the Unit's UCO deployments also naturally increases the size of this population. Moreover, the targeting of groups and campaigns as well as individuals makes an assessment of collateral intrusion extremely difficult. This is compounded by the fact that some of the groups targeted are loose broad coalitions that include individuals who have no intention to conduct unlawful activity, as well as domestic extremists.

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<sup>15</sup> Undercover operations are authorised by Chief Officers as one tactic to deal with serious crime. An application must be made to them that describes the need or necessity for its use; its use is proportionate to the crime; and the consideration of any inadvertent but anticipated intrusion, by its use, into the private lives of other people.



- 2.50 Given these factors, and the implications that such intrusion into law-abiding protestors and other individuals have on public confidence, it is essential that NPOIU and authorising officers are robust in mitigating collateral intrusion. Although HMIC found no evidence that UCOs were routinely recording information they were privy to, where the subject is not connected to the intelligence requirement, the review of NPOIU's files reveal shortcomings in the processes employed by the Unit to mitigate this collateral intrusion – especially in deployments undertaken before 2008. The inherent risk of collateral intrusion into individuals engaged in lawful activity was recognised in management plans that accompanied authorisations. These plans relied on the UCO adhering to their training and the Unit's strategy, both of which prohibit reporting upon collateral activity. Beyond this, there is little evidence of any active consideration or management of collateral intrusion from an operational context.
- 2.51 A number of authorisation documents relating to deployments where the UCO had a large circle of acquaintances and close relationships who were not targets of the operation, assert that there was no collateral intrusion. This is unsatisfactory. In order for an authorising officer to be satisfied that collateral intrusion is being managed in accordance with an identified plan there must be sufficient information in any documentation associated to the authorisation process to identify if any collateral information has been obtained and to explicitly record the activity taken to manage this.
- 2.52 HMIC recognises that the Unit's procedures have improved in recent years, however, far greater consideration of collateral intrusion and clear plans for mitigation are still required.

### **Operational Strategy**

- 2.53 The operational objectives and strategy have to form part of the application form submitted for authorisation for the use of the UCO tactic.<sup>16</sup>
- 2.54 Since 2009, applications, policy and decision logs articulate clear operational objectives for the UCO. This was not always evident in earlier operations when a broader approach appeared sufficient.
- 2.55 In all recent NPOIU UCO operations (post 2009), the operational objectives were articulated within the RIPA application or the Policy/Miscellaneous file entries. The detail varies, from broad 'infiltrate' to specifics such as persons or premises. There was evidence of operational objectives being reviewed and amended, as well as use and conduct authorities being altered to reflect changes in circumstances.

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<sup>16</sup> *ibid.* p. 26 Unpublished

## Participation in Criminal Activity

- 2.56 The law does allow for an undercover officer to participate in criminal activity but this must be authorised and the limits of the authorised conduct made clear. In addition, specific restrictions must be placed on the behaviour of the undercover officer such that:
- they must not actively engage in planning and committing the crime;
  - they are intended to play only a minor role; and
  - their participation is essential to enable the police to frustrate the crime and to make arrests.
- 2.57 An agent provocateur is someone employed by the state, acting undercover, who incites others to commit a crime. Home Office guidance is explicit: ‘no member of a public authority or source (informant) should counsel, incite or procure the commission of a crime.’<sup>17</sup> This is slightly different from the term ‘entrapment’ which means that the offence alleged was committed only because of the incitement of the undercover officer. This involves the officer committing an unlawful act.
- 2.58 Case law exists to guide the police and the courts in what amounts to such an act. The test to be applied is whether the police merely provided the defendant with an unexpected opportunity to commit a crime which he was already predisposed to commit or whether they have truly created a crime which would otherwise not have occurred.
- 2.59 The ACPO Operating Procedures is also unequivocal in prohibiting agent provocateur tactics, citing Home Office Circular 97/69, thus
- “no member of a public authority or source should counsel, incite or procure the commission of a crime [and that UCOs must] on no account act as [such], whether by suggesting to others that they should commit offences or encouraging them to do so, and that if they are found to have done so they will themselves be liable for prosecution.”<sup>18</sup>
- 2.60 NPOIU’s applications for UCO participation in crime were not always granted. Where they were, they were generally limited to involvement in minor crime such as criminal damage or criminal trespass.
- 2.61 The review revealed no evidence of NPOIU UCOs acting as agent provocateur or engaging in un-authorised criminal activity. However, NPOIU has a heightened risk of allegations of agent provocateur, due to its limited use of tactics to corroborate UCO’s accounts of their activity and through the long term deployments of UCOs.
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<sup>17</sup> Home Office Circular 97/69.

<sup>18</sup> *ibid.* p. 27 Unpublished

[REDACTED]

2.62 [REDACTED]

- 2.63 The judgement highlighted some of the boundaries set by Mark Kennedy’s handler within which he was expected to operate. Reassuringly these do not include requests for him to exceed the law, his remit or to act as agent provocateur.
- 2.64 HMIC found that the Authorising Officer had set specific parameters for Mark Kennedy’s deployment, which included outlining how far he was authorised to partake in criminal activities.
- 2.65 However, the Court of Appeal ruled that “Kennedy was involved in activities which went much further than the authorisation he was given”. Examples of this included attending an activist briefing, checking an area for police activity and agreeing to act as a member of a team of climbers. The judgement continues that this “appeared to show him as an enthusiastic supporter of the proposed occupation of the power station and, arguably, an agent provocateur”.
- 2.66 In an earlier judgement, Lord Hoffman stated that undercover officers could hardly remain concealed unless they showed some enthusiasm for the enterprise. However, in this case (and because of the failure by the prosecution to disclose information), the defence “were not in a position to advance submissions based on potential entrapment by a participating informer, or to address these issues”.
- 2.67 Mark Kennedy has not been found to have entrapped others; but clearly there is a danger that undercover officers in situ for long periods may be conferred with greater responsibilities by those among whom they are deployed, as the group’s trust in them grows. This could signal a shift towards a more leading role which may or may not amount to them acting as agent provocateurs. In addition, the chief

officer authorisations, the regular reviews and the routine checks of undercover officers' continuing deployment should provide some assurance (albeit no guarantee) of behaviour in the field. Risks and signals associated with undercover officers need clear identification and comprehensive control, with some 'triangulation' or corroboration of the undercover officer's actions and the accuracy of the information they pass to their controllers.

## **Oversight**

- 2.68 In most undercover organised crime operations, the question of lawfulness of the deployments rests first with the Authorising Officers, and then with the courts. The Crown Prosecution Service (CPS) was briefed on the NPOIU undercover deployments where intelligence from undercover officers led to arrests. But because the product of NPOIU undercover operations, beyond Mark Kennedy, was intelligence as opposed to evidence, the judiciary has not had the opportunity to test the Authorising Officers' decision-making in respect of these deployments.
- 2.69 This lack of opportunity for judicial oversight does nothing to strengthen public confidence, and whilst the Office of Surveillance Commissioners (OSC) does inspect force authorities, the depth and frequency of sampling that they can reasonably give cannot substitute for independent judicial examination of all the evidence. In any case, as mentioned earlier, there are limitations on the authorisation process as a sole means of assurance unless corroboration is sought and found.

## **Operational Supervision**

- 2.70 The ACPO Operating Procedures suggest that the Operational Head will be responsible for the direction and general oversight of the use of the undercover officer. These duties include de-briefing, briefing, reading 'instructions to undercover officers', responsibility for safety and security of UCO, supervising all correspondence and submitting all relevant documents to CPS. HMIC found that there was an operational head in all NPOIU UCO deployments and they discharged their duties well in the majority of cases examined.
- 2.71 The review found that since 2009, the parameters of the NPOIU UCO deployments and the intelligence sought has been documented in the policy book, the miscellaneous file, the RIPA authorisation or the officer's pocket book. Prior to 2009, consistent evidence of such compliance is less evident.
- 2.72 Furthermore, NPOIU's post-2009 UCO operations each have a policy file and or decision log that, in the main, reflect expected references to roles and responsibilities, risk management and planning agreements with force SIOs. These do not always provide a policy that shapes the investigation, but are instead a record of NPOIU decisions. Since 2009, clear documentation has been produced that details the operations' command structure, including Cover Officer (CO),

Operational Head (generally DI NPOIU), SIO (either DCI NPOIU or nominated force SIO) and Authorising Officer (AO). Prior to 2009, such documentation was not always present.

- 2.73 As they are expected to, NPOIU's UCOs take tactical advantage of situations presented to them during their deployments to maximise their intelligence gathering opportunities. This might not always have been planned, but it was the subject of later debriefs, fed back to the SIO. HMIC saw no evidence that NPOIU's UCOs were crossing the line into self-tasking or 'running' the operation. It appears that the strict parameters and taskings issued by the SIO/Operational Heads were instrumental in ensuring this.
- 2.74 Benchmarking with other undercover units reveals innovative approaches to operational planning, including regular meetings comprising the UCO, Cover Officer, Psychologist and a legal advisor. This method brings a team approach that can consider elements of the operation from a practical, legal, and psychological perspective.
- 2.75 Whilst NPOIU had some senior and experienced officers HMIC found there were insufficient checks and balances to evaluate and manage Mark Kennedy's deployment. The measures in place, such as monitoring intelligence reporting on the activities of Mark Kennedy whilst deployed, proved ineffective. Later, stricter supervision did though identify problems and firm management action led to the withdrawal of Mark Kennedy from his deployment.
- 2.76 Mark Kennedy claims that he had at least two sexual relationships with female protestors, but neither did he make these claims to, nor were they identified by, the unit during the course of his deployment. Whilst undercover officers may be carefully selected and well trained, there is always a risk that such relationships may develop. Officers remain human beings with all the temptations and choices this involves – hence the need for robust controls, including (where possible) the corroboration of reports.
- 2.77 There were indications that Mark Kennedy was becoming resistant to management intervention. He seems to have believed that he was best placed to make decisions about how his deployment and the operation should progress. His managers reported that on two occasions he defied instructions and worked outside the parameters set by his line manager, although the activities still came within the terms of his authorised use. On the first occasion, he continued to work contrary to the instructions of the Authorising Officer pending a review to be carried out as a result of his arrest. On the second, he accompanied a protester on a deployment abroad.
- 2.78 Mark Kennedy could be in the field for long periods: on one occasion for around six weeks without a break or return to his family. A far stronger grip and a considerably better plan could have helped Mark Kennedy to be more effectively managed.

## **SIO**

- 2.79 In addition to the operational head fulfilling some of the SIO roles in NPOIU UC operations, the SIO role was provided by the 'host' force at DCI or Detective Superintendent rank. These officers provided the investigation strategy setting direction and objectives. However, there is evidence of operations being run in the past for a period of time without this post in place.
- 2.80 There was evidence that the NPOIU struggled at times with getting an SIO assigned to an operation. The difficulties arose when the crimes being committed fell outside the 'host' Force area and were committed nationally.
- 2.81 Force SIOs involved in NPOIU operations do not meet regularly (if at all) with the UCO. This is not the case in other Units that HMIC benchmarked NPOIU against, where it is part of the SIO's remit to direct and brief UCOs regularly.
- 2.82 Going forward, NDEU UCO operations require an SIO to formulate clear strategies and actively consider potential for pursuing conspiracy investigations.

## **Role of Cover Officer**

- 2.83 The ACPO operating Procedures state that a Cover Officer must be allocated to every UCO deployment. NPOIU Standard Operating Procedures state that Cover Officers will be responsible for the welfare, advice and counselling of UCOs, as well as for offering support to operations, including tactical advice. HMIC has found evidence of this in all cases.
- 2.84 HMIC has found a mix of practice, with some UCOs maintaining the same Cover Officer, whilst others have worked with different ones. NPOIU recognised that having just one Cover Officer with one UCO for a five-year period is not as 'healthy' as having two or more, and this practice has now stopped.
- 2.85 The relationship between UCO and Cover Officer is of paramount importance. The Cover Officer must know the UCO on a personal level in order to detect any changes or negative influences that their deployment may be causing. Unless this relationship is personal this behaviour or character change may be missed; however it was also recognised that if a UCO exceeded their authorisation then it would not necessarily be identified. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] HMIC found this was largely adhered to by NPOIU, but there is clear evidence that the record keeping of meetings and contact by Cover Officers with UCOs varies greatly. Some recorded everything by hand, some on computer and others record nothing.



- 2.86 Cover Officers have a supervisory role insomuch as they are charged with looking after the security and welfare of the UCO. However, in a number of UCO units, such officers are often the same rank as the UCO with whom they work. Whilst the UCO is at risk whilst deployed, the Cover Officer is expected to manage that risk in conjunction with others, whilst also forming a view on the intelligence given by the UCO, their integrity and their welfare. HMIC is of a view that the role of Cover Officer should be carried out by an experienced supervisor so effective day-to-day management of the UCO can be assured.
- 2.87 The *Manual of Standards for Covert Human Intelligence Sources* mandates that a CHIS Controller "...adopts an intrusive style of supervision for source management."<sup>19</sup> Such intrusive management is seen as essential for the effective management of CHIS, given the risks inherent in using this tactic. Although there is an identical legal basis for UCOs, the ACPO Operating Procedures does not charge either the Cover Officer or any other mandated roles with a similar intrusive management role. This needs to be resolved.
- 2.88 Regarding Mark Kennedy, day-to-day supervision and support was provided by a dedicated sergeant who worked closely with the officer for the entire period of his deployment. This supervisor was responsible for the undercover officer's welfare, as well as for providing advice about his deployment and reviewing the intelligence produced. A close relationship had built up over nearly seven years and the degree of challenge and intrusiveness into the activity of Mark Kennedy proved insufficient.

### **Outlining conduct and use and parameters of UC activity**

- 2.89 The NPOIU Operational Head, utilising the Cover Officers, ensures that the SIO's objectives are read out and fully understood by the UCO. The UCO then signs up to these objectives. Although the review has identified that there has not been a consistent adherence to these requirements, compliance has improved over time.
- 2.90 Before a UCO is deployed, the ACPO Operating Procedures also states that the operational head must also read 'the instructions to undercover officers', which reminds the Officer about agent provocateur, and that the officer must sign these. UCOs are also mandated to sign up to and comply with the conditions of '*The National Code of Conduct for Undercover Officers*', which lists a set of rules that the UCO should abide by.

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<sup>19</sup> National Police Improvement Agency (2010) *Manual of Standards for Covert Human Intelligence Sources Second Edition* p.80.

- 2.91 The Police Code of Practice set out in The Police (Conduct) Regulations 2004 states that “Any conduct which brings or is likely to bring discredit to the police service may be the subject of sanction.”<sup>20</sup> Although these Codes do not specifically cite sexual relationships with targets, or misusing drugs as disciplinary issues, it could be argued that they would qualify as conduct likely to discredit the police.
- 2.92 To ensure UCOs were aware of what was expected of them, they would be involved in briefings with the NPOIU management, receive specific tasking and be overseen on a daily basis by Cover Officers. [REDACTED]  
[REDACTED]  
[REDACTED] Finally, the Cover Officer’s relationship needed to be close enough so that changes in habits (movements/spending) or the abuse of substances could be detected through changes in behaviour. However, a balance needs to be struck to ensure the Cover Officer remains independent and able to report fully and accurately to managers.
- 2.93 [REDACTED]  
[REDACTED]  
[REDACTED]
- 2.94 Regarding tasking and debriefing, Mark Kennedy seems to have been productive in providing intelligence, supporting the justification of proportionality and necessity. He also submitted large amounts of relevant and beneficial material that allowed the police to prepare appropriately and efficiently for planned public disorder and protest involving criminal activity. This intelligence often allowed the police to deploy far fewer officers to respond to events or less intrusive forms of policing than they may have otherwise planned. However, this focus on intelligence resulted in the presumption that the deployment would not be subject to scrutiny before the courts. In addition, little was done by the NPOIU to corroborate Mark Kennedy’s actions or the intelligence he provided, or to develop any investigative strategy for a criminal conspiracy.

### **Health, welfare and psychological checks**

- 2.95 Psychological checks form an essential element of the welfare structures in place to support undercover operations. However, there is currently no clear pan law-enforcement standard for the provision of psychological support for undercover officers. The NUWG’s Psychologist Working Group recommended that UCOs should visit psychologists in accordance with the following schedule:
- UCO not deployed – 1 session per year
  - UCO part time deployed – 2 sessions per year

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<sup>20</sup> *The Police (Conduct) Regulations 2004*. SI 2004/645, London: HMSO.



- UCO full time deployed – 4 sessions per year

However, this has not been ratified by the NUWG. The NUWG's non-documented guidance is that undercover officers should attend a meeting with a psychologist every six months, or every three to six months if they are deployed on an intense deployment. HMIC feels that clearer guidance should be produced in relation to this issue and suggests that NUWG consider including this in the new version of the ACPO Operating Procedures.

- 2.96 NPOIU has developed a local policy that requires its UCOs to see a psychologist every three months.<sup>21</sup> The inspection has revealed that this is not always adhered to. There are occurrences when only one visit has taken place during a year whilst on long-term deployment, which points to insufficiently robust management in this regard.
- 2.97 The inspection has also revealed that psychologist-client confidentiality inhibits the ability of UCO managers across all UC units to fully comply with their duty of care and risk assessment responsibilities. Psychologists will only disclose the findings of their meetings with UCOs to managers where they assess the UCO's mental state raises the risk that they, or someone else could come to serious harm. If a UCO informs the psychologist of any other issue, [REDACTED] this will not be passed on to any supervisor unless the serious harm parameter applies. Although, psychologists request that the UCO speaks to their line manager if they divulge such information, there is no process to compel them to do so. If the psychologist recognises that the UCO is [REDACTED]  
[REDACTED]  
[REDACTED]
- 2.98 In addition to the problems caused by the patient-client confidentiality, concerns have also been raised about the lack of briefings provided to the psychologists. As stated above, cover officers have a primary role in ensuring the welfare of the UCOs and are in frequent contact with them. However, under the current system there is no mechanism by which the cover officers have to brief the psychologists about any incidents that may have affected the UCO's outlook.
- 2.99 In a benchmarked agency, officers waive their patient-client privilege as a condition of their recruitment as a UCO and the operational psychologist provides the management team with a written account of their meetings. If the UCO divulges any personal non-work related issues to the operational psychologist, they are referred to a private psychologist, for which the psychologist-client confidentiality applies. NUWG is examining the issue of psychological support for UCO. HMIC supports the introduction of a similar system for NDEU and other UC operations.

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<sup>21</sup> NPOIU (2009) *Specialist Operations Unit Standard Operating Procedures*, p. 22. Unpublished

2.100 Throughout the duration of his deployments, the psychologists who saw Mark Kennedy did not raise any concerns to NPOIU management or his supervisor. There appears to have been an over-reliance upon Mark Kennedy's scheduled meetings with a psychologist as a sufficient control measure to mitigate the risks to his psychological well-being.

### **International Deployments – Legal Framework**

2.101 The international deployment of police officers is affected by a raft of provisions, and there are additional materials relating to terrorism in particular. The co-operation which facilitates international deployment is referred to, in conceptual terms, as 'Mutual Legal Assistance', or MLA. This document addresses the deployment of UK police officers as undercover officers, and does not deal with the deployment of foreign undercover officers in the UK. On that subject, the Home Office has issued a document '*Mutual Assistance Guidelines, 9<sup>th</sup> Edition*' which is intended for the use of Foreign States who seek the assistance of the United Kingdom in intelligence and evidence gathering within this jurisdiction. As to investigations by the UK authorities in the jurisdiction of other states, the Criminal Justice (International Co-operation) Act 1990 and the Criminal Justice (International Co-operation) Act 2003 are the key statutory provisions. There are also specific instruments relating to terrorism.

2.102 This complex system of law may be reduced to a single principle: the foreign state is generally required to provide assistance but the legality of what is done will be regulated not by the law of the United Kingdom but of the requested state, see Article 10 of the Hague Convention. In an individual case the foreign state may or may not provide assistance. If it does, the nature of that assistance and the way in which it is regulated will vary according to the domestic law of that foreign state. This report does not seek to provide a summary of the domestic legal position in varying foreign states. General statements are of limited value. However, one proposition may perhaps be advanced: where the authorisation is validly granted in respect of police activity in UK domestic law under RIPA it is likely that the area of investigation will be the subject of a treaty or UN Resolution. The international obligations in respect of drug smuggling, terrorism, bribery, and other forms of transnational crime are such that they are likely to catch all activity that might validly result in a proportionate deployment of an undercover police officer abroad.

### **International Deployments – NPOIU's UCOs**

2.103 A large proportion of NPOIU UCOs have deployed overseas, [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

2.104 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

2.105 Deployments to Scotland where there is a significant amount of activity likely to take place in that jurisdiction require a separate Regulation of Investigatory Powers (Scotland) Act (RIP(S)A) authorisation. Although this occurred in significant deployments such as G8 Gleneagles, it was not routinely complied with. There needs to be greater adherence to this. This, in part could be facilitated by amending the current authorisation forms to include a RIP(S)A consideration.

2.106 Mark Kennedy was used in or visited 12 international jurisdictions on over 40 occasions, including 14 visits to Scotland. The controls adopted for his international deployments appear robust, with agreed processes between host nations and the UK, as well as an existing international liaison officer network to broker and facilitate requests. In each case where Mark Kennedy was deployed overseas the NPOIU had an authorisation in place under RIPA for his use and conduct, and also obtained host nation authorisation for the deployment.

### Exit plans

2.107 Careful planning and management is required to facilitate the smooth extraction of a UCO from their deployment and their subsequent re-integration into core policing. The means by which the extraction will be achieved is detailed in 'Exit Plans' or 'Exit Strategies'.

2.108 [REDACTED]  
[REDACTED] In NPOIU, exit plans have historically only been drawn up towards the end of the secondment of the UCO to the unit. This is because the UCO has invariably been used on one long-term deployment and needs to return to force.

2.109 HMIC found that each case is dealt with individually, liaising on occasions with Chief Officers, Human Resources Departments and the individual officer. It is identified that consideration is given to the officer's previous deployments and future potential exposure in other policing roles. However, the review of NPOIU's UCO files revealed that [REDACTED] plans lacked written detail. It is clear that [REDACTED] plans have now become more difficult to manage since the media coverage of the undercover work within DE but it is accepted that great effort is expended by NDEU to reintegrate UCOs back into new roles within their forces.

2.110 In terms of leaving the group that the UCO infiltrated, HMIC found that great care has been taken to devise reasonable and believable reasons that appear to take the UCO away from the group. This is invariably done over a period of time, as natural contact is maintained to demonstrate the gradual closure of a relationship. However, the exit is a significant period in the career of an NDEU UCO, as it involves a return to a previous life, a family and a new job. HMIC has found that this has not always been a smooth transition, but on the whole exits appear to have been successful. To improve the process, early consultation and joint planning should be enhanced so the UCO is fully aware of the timescales and what they are returning to.

2.111 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

2.112 With regards to an exit strategy for Mark Kennedy, the long-term aspects of the officer's welfare and personal development were not well provided for. Little consideration was given to an exit strategy to allow either for short-term extraction during the deployment or for his withdrawal and potential replacement.

2.113 Training courses to support Mark Kennedy's long-term development as a police officer and to enable reintegration beyond his role in NPOIU were identified. These were not progressed until the latter part of his service between 2009 and 2010. This was due both to a lack of commitment to this on the part of both Mark Kennedy and the NPOIU.

### **Intelligence and Evidential Material**

2.114 Largely, the intelligence submitted by NPOIU UCOs during the course of their deployments could be described as

- housekeeping updates (for example detailing new telephone numbers, email addresses, associates and planned meetings)
- tactical intelligence about specific plans for criminal/public disorder, or
- strategic intelligence about long-term aspirations, plans and structures of subjects/organisations.

2.115 There were only a few examples in the operational material reviewed of a defined outcome which could be ascribed to specific intelligence submitted by the UCO. These did include arrests, and on occasions pre-emptive intelligence allowed police to deploy to prevent disruption by activists. There were also examples where intelligence supplied enabled an appropriate policing response.

- 2.116 The NPOIU paperwork completed since 2009 demonstrates a clear understanding of the operational objectives and more use of technical equipment to corroborate intelligence/evidence. However, there is no common standard for UCO in how they record their notes during deployment. Notes are not always recorded to an evidential standard, and corroboration of intelligence/evidence by any means is inconsistent and undertaken infrequently. Historically, there have been numerous examples of notes being made weeks and months after the referred date. Even in the post-2009 deployments, there have been delays of up to 12 days. Although some of these may be due to operational necessity, the paucity of detail in the subsequent notes does not often explain this. These delays could lead to allegations that the UCO was acting as agent provocateur, participating in unauthorised criminal activity, behaving inappropriately or simply in contravention of the authorisation in place.
- 2.117 Guidance within the ACPO Operating Procedures and NPOIU SOP regarding Cover Officers' responsibility to record contact with UCOs is lacking in detail. There is no consistent approach by officers – some make and keep notes, others do not make notes at all – and it has been commonplace for a Cover Officer and UCO to work together for years.

### **Performance Management**

- 2.118 Historically, NPOIU has lacked a performance management ethos and consequently there has been a lack of performance management applied to the Unit's UCO operations to accurately measure the outputs and outcomes the operations afforded. The lack of clearly defined operational strategies and pre-determined key deliverables for the operations, in concert with a lack of the systematic recording of outputs and outcomes make it difficult to objectively assess the value of the operations. In fact, until 2009 the Unit lacked any form of operational outcome assessment to determine operational success. Without this, there was no determination of the impact it was having upon prevention, disruption, detection or prosecution. This has improved since 2009 with the introduction of a quarterly review process, although there is room for further improvement. This said, the customers of NPOIU UCO intelligence interviewed as part of the inspection were fulsome in their praise of the quality of the intelligence feed and the value it engendered.

### **Key findings**

- 2.119 HMIC believes that all other cases examined accorded with the requirements of RIPA. However, the controls in respect of Mark Kennedy's deployment across time were weaker than those applied in serious and organised crime operations.

- 2.120 Overall control of undercover operations by NPOIU was not as strong as it should have been. HMIC found examples of insufficient case management, inadequate application of control mechanisms (eg insufficient corroboration of intelligence) and insufficient high-level operational oversight.
- 2.121 While noting that there can be no absolute guarantees, great emphasis must be placed on the need to provide assurance through firm use of the system of controls, which in Mark Kennedy's case was lacking. Systems of control for undercover officers are strong where organised crime is concerned; they were not strong enough in NPOIU deployments, given the sensitivity of the issues. HMIC has made interim recommendations to strengthen these areas, but work of this nature and the role of NDEU also require careful consideration.
- 2.122 Some have argued that in principle this intrusive tactic should not be left to police to regulate, and the ACPO President suggested that a solution "must take the form of some independent pre-authority that is already a common feature in other areas of policing in this country"<sup>22</sup>. This is an argument of principle, and a question of judgement. Our review did not find widespread abuse of the protection of privacy: but this does not detract from a wider and proper debate on intrusion. Any authorising process, whether conducted from inside or outside policing, will only be as good as the strength of the assessment of proportionality, the control of the intervention and the value of the product.
- 2.123 The Office of the Surveillance Commissioner (OSC) is responsible for scrutinising authorisations for covert surveillance by public authorities and for providing prior approval for authorisations in specific cases. HMIC considers that there is value in NDEU informing OSC of all authorised undercover operations so that the OSC can inspect these when visiting police forces.<sup>23</sup>
- 2.124 HMIC does not believe it is wise to set an arbitrary time limit for deployments of undercover officers, but recommends that any operation in excess of one year must be subject to more stringent testing than is presently applied. In such cases, the Authorising Officer should commission an independent review of the operation by an Operational Security Officer (OpSy)<sup>24</sup>, and the Senior Investigating Officer (SIO) should make a personal presentation to the Authorising Officer which justifies the continuation of the undercover operation.

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<sup>22</sup> Sir Hugh Orde, ACPO President (7 February 2011). Speech to seminar, "Undercover Policing and Public Trust."

<sup>23</sup> Currently OSC dip samples authorities from all the RIPA applications that the force has made over the preceding year. This may include a sample of undercover work but does not necessarily include all of them, and will not ensure that all domestic extremism deployments are included.

<sup>24</sup> The primary role of the operational security officer (OpSy) is to quality assure issues of legality, integrity, ethical conduct and standards of covert operations, while contributing to the overall effectiveness of such operations. For example, an OpSy can independently and objectively review the relationship between cover officers, support staff and undercover operatives.



- 2.125 HMIC supports the Chief Surveillance Commissioner's proposal that, to provide additional assurance, OSC inspections will include a stocktake review of all undercover operations in a force that last longer than one year.
- 2.126 To further enable Authorising Officers to improve the oversight and management of undercover officers, HMIC recommends specific training and accreditation for them, particularly in relation to the concepts of proportionality, necessity, collateral intrusion and risk management.<sup>25</sup>
- 2.127 The strategy which initially authorises the undercover officer must also include details of an exit strategy for them. That exit strategy must explain how the undercover officer will be extracted from the operation so that sufficient opportunity remains for the deployment of either another officer or some other covert tactic.
- 2.128 The professionalism of the management of undercover officers could also benefit from the creation of a collective approach to the review of cases comprising a properly trained police supervisor, CPS lawyer and police-employed psychologist. This would only go to strengthen the decision-making process in relation to the risks both to the operational strategy and to the welfare of the officers.

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<sup>25</sup> There is formal training for senior staff covering some of these issues on decision-making (Critical Incident training) and debriefing. There is no formal training provision for Authorising Officers. Since 2009 an input to the Senior Command Course by the MPS has raised awareness on some of the key issues. Knowledge of RIPA authorities and covert tactics is usually based on experience gained in more junior ranks before becoming a chief officer; however this opportunity is not necessarily open to all prospective chief officers.



# 3. The Units

## History

“Peaceful protest has a long history in the United Kingdom and is a cornerstone of democracy”<sup>26</sup>

- 3.1 The rights to peaceful assembly and to freedom of expression are enshrined in the European Convention on Human Rights (ECHR) (Articles 10 and 11). These rights are not absolute however, because protest invariably involves groups of people with competing interests, including protestors, the individuals and organisations that they protest against, the police, journalists and bystanders. However, in the case of *Ezelin v France* (1991) the court held that:

“The freedom to take part in a peaceful assembly...is of such importance that it cannot be restricted in any way, so long as the person concerned does not commit any reprehensible act.”<sup>27</sup>

- 3.2 The overwhelming majority of protest in the UK is peaceful and law-abiding. However, Britain also has a long history of radical protest– from the Great Reform Act protests in the 1830s to the Suffragettes – where campaigners have embraced criminal and violent acts to forward their cause. During the last 40 years, Britain has suffered from ideologically motivated illegality, with radical activists from a range of new and resurgent single-issue causes and extremists from the far ends of the political spectrum undertaking direct action.
- 3.3 Given the concerns that the Mark Kennedy case has raised around protracted intrusive police intelligence deployments against forms of protest, and the challenges of exercising control on sensitive national and international deployments, it is useful to reflect on the history and purpose of the units involved.

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<sup>26</sup> House of Commons and House Of Lords (2009) Great Britain Parliament Joint Committee on Human Rights. *Demonstrating respect for rights? A human rights approach to policing protest. Volume 1*. London: HMSO. (HL paper; 47-1; HC 320-1)

<sup>27</sup> ECHR (1999) Judgment on the merits delivered by a Chamber *Ezelin v. France*, no. 21/1990/212/274.

- 3.4 Three national policing units existed to support police forces in dealing both with protest, and with crime and disorder arising from such protests: National Public Order Intelligence Unit (NPOIU), National Domestic Extremism Team (NDET) and National Extremism Tactical Coordination Unit (NETCU). These were created at different times, by different authorities and for different reasons: NPOIU gathered and coordinated intelligence; NDET coordinated and supported investigations; and NETCU provided advice to the police and to the industries and victims affected. In 2010, in response to HMIC's Counter Terrorism Value for Money Inspection, ACPO and the MPS commenced a project to merge these units into a combined National Domestic Extremism Unit (NDEU).
- 3.5 The focus for the work of the precursor units and for the NDEU today concerns protest associated with the following themes: extreme methods used in environmental protest; animal rights and violent political extremism. Other activity is also considered where emerging threats are identified, and where significant events create a unique opportunity for activists (such as the 2012 London Olympic Games).
- 3.6 Over the last 10 years, environmental activists who have engaged in criminality have been convicted of a range of offences, associated with protests against genetically modified crops, the burning of coal, the expansion of aviation and other campaigns. Notable incidents have included the hijacking of a coal train in 2009 and conspiracies to disrupt power supplies.
- 3.7 By 2004, animal rights extremist tactics had largely moved away from serious violent criminality (such as planting improvised explosive devices), towards offences such as intimidation and harassment<sup>28 29</sup>. However, whilst the severity of individual acts had declined, the frequency of criminality had increased, and in 2004 peaked with an average of 40–50 company directors and scientists a month receiving home visits during which cars and property were vandalised. Many incidents of threatening letters, hoax letter bombs and “regular demonstrations and public disorder”<sup>30</sup> were also occurring.
- 3.8 In addition to this risk of disorder, elements of the extreme right-wing, such as Combat 18, have actively pursued violent tactics. Moreover, the nail bombing campaign by David Copeland in 1999 and conviction in 2010 of an extreme right-wing individual who had assembled a large arms cache of firearms<sup>31</sup> highlight the threat that can be posed by right wing extremists who are prepared to resort to serious violence.

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<sup>28</sup> Note of NCS meeting. 02 July 2004. Unpublished.

<sup>29</sup> Latterly, further incidents of serious criminality occurred, with individuals convicted in 2007 for arson, attempted arson, possessing explosives with the intent of carrying out further explosions and in 2009 for conspiracy to commit arson.

<sup>30</sup> Setchell, A. (2007) [communication – letter] 14 January 2007 Unpublished.

<sup>31</sup> Referenced in Secretary of State for the Home Department (2011) *PREVENT Strategy* (Cm 8092, 2011).

- 3.9 NDEU retains the functions of its precursor units, in particular its role regarding intelligence collection, investigation support and raising awareness of the issues more broadly. HMIC recognises the continuing need for a function that can fulfil those responsibilities across a range of criminality as illustrated above.
- 3.10 Whilst extremism has needed attention, the policing of ‘Defence League’ events across the country has also involved the coordination of intelligence by NDEU, as has the period of serious disorder in England between the 6 and 10 August 2011. This has occurred because the NPOIU is currently subsumed in the NDEU, and whilst extremist activity and public disorder can overlap, the majority of protest activity and public events do not involve ‘extremism’. HMIC considers that badging and conflating extremism, protest, and public order may be confusing externally and unhelpful operationally.
- 3.11 Within the broader context of threat and risk, and balanced against terrorism as well as organised crime, these issues demand our attention. The importance of the work and its relative standing amongst other threats has arguably been underplayed for some time. This aspect of police business has suffered from being an uncomfortable adjunct to other mainstream activity. Defining the work or having clear ‘rules of engagement’ helps to signal its significance.

## **The Nature of Domestic Extremism**

- 3.12 The term “domestic extremism” was coined at some point shortly after 2001, but is not legally defined. It is not unique in this regard, as there are many colloquial terms in policing (such as domestic abuse and organised crime) that assist with identifying the nature of the work, but have no legal definitions. However, in this case, the variety of interpretations brings with it the risk of profound consequences. The loose but severe description of the units’ remit has blurred the boundaries of their operations and, over the years, encouraged a potential for ‘mission creep’. It has made the units susceptible to inclusion of issues or the continuance of operations that may be of limited value.
- 3.13 ACPO use the following definition:

“Domestic extremism and extremists are the terms used for activity, individuals or campaign groups that carry out criminal acts of direct action in furtherance of what is typically a single issue campaign. They usually seek to prevent something from happening or to change legislation or domestic policy, but attempt to do so outside of the normal democratic process.”<sup>32</sup>

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<sup>32</sup> ACPO (2006).

- 3.14 This could include issues that many people would support (for example, the environment and animal welfare) because protest can involve people with many different motives. However, the definition, as it presently stands, allows a very wide range of protest activity to be in scope, and over the years the work of the units that make up NDEU has extended into the consideration of mainstream campaigns. The key issues are therefore that the ACPO definition fails to recognise that not all extremism includes the intent to commit an offence, and that any criminality of any order in support of a given cause is not in itself sufficient to warrant the title “extremist”.
- 3.15 ACPO’s definition of domestic extremism has similarities to the legal definition of terrorism, as defined in the Terrorism Act 2000 (as amended), and to the meaning of extremism quoted in the revised Government Prevent Strategy. The latter appears below, but it is worth noting that this definition is not necessarily criminal or for the police:
- “Extremism is defined as the vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs. We also include in our definition of extremism calls for the death of members of our armed forces, whether in this country or overseas.”<sup>33</sup>
- 3.16 Neither definition is sufficient on its own to set clear boundaries on police action or to provide focus on extremist methods used to pursue causes. The *PREVENT Strategy* suggests that extremism cannot be looked at solely through a criminal justice prism but rather needs a ‘whole-Government’ approach, as demonstrated by the lead department being that for Community & Local Government.

## **Remit, structure, governance and funding**

- 3.17 Three national policing units existed to support police forces in dealing with protest, and with crime and disorder arising from such protests. NPOIU, NDET and NETCU were created at different times, by different authorities and for different reasons. In 2010, in response to the HMIC Counter Terrorism Value for Money Inspection, ACPO and the MPS commenced a project to merge these units into a combined National Domestic Extremism Unit (NDEU). The decision to undertake this project was taken prior to the revelations of Mark Kennedy. The merger process is, at time of writing, ongoing. The following paragraphs detail the history, remit, governance, funding and structure of these units and outline recommendations for how this area of policing should be arranged in the future.

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<sup>33</sup> Secretary of State for the Home Department (2011) *PREVENT Strategy* (Cm 8092, 2011).

## **NPOIU – Remit and structure**

3.18 The NPOIU was an intelligence unit established in 1999 in an agreement between the Home Office and the MPS. Its primary function was to act as a national co-ordination centre for domestic extremism intelligence, the gathering, analysis and dissemination of intelligence and intelligence products and the commission of assets to fill intelligence gaps. It had no mandate to launch investigations and this was never part of its remit.

3.19 The terms of reference for the NPOIU were:

“to gather, assess, analyse, develop and disseminate intelligence and information relating to criminal activities or a substantial threat to public order which arise from political extremism or protest activity”.

To achieve this, and to satisfy the 1998 ACPO requirement for intelligence on public order, the NPOIU extended its remit to include broad groups as well as individuals. The aim was to identify criminal activity, and this was largely achieved by monitoring protests.

3.20 NPOIU has continued to take on activity that falls out with its remit, often against the wishes of its senior management. In the past two years NPOIU and the other DE units have been passed responsibility for Defence League and austerity protests (which senior managers were vocal in outlining were not DE). The Unit was also one of a number of agencies recently tasked with supporting the UKBA in conducting accreditation checks for the Olympic Games. NDEU is now responsible for conducting 498,000 such checks, a role that appears, at best, tangential to its *raison d'être*.

3.21 These problems are seemingly the consequence of a trinity of factors, namely the lack of clarity over its remit resulting from the amorphous definition of DE, the lack of consistently robust governance bodies to assist unit management in resisting calls for it to take on new activity and, in many instances, simply the police services' lack of any alternative unit with the capability of take on such work. It is imperative that, going forward, these issues are addressed and the NDEU ceases to act as a repository for issues that no one else has the capacity, or desire, to tackle.

3.22 Certain ACPO business areas make reasonable requirements for intelligence on protest events such as the 2010 Student Protests and the 2011 Trades Union Congress March, so they can police them with safety in mind. However, these do not appear to fall into the definition of DE, and whilst it is accepted that a small element may seek to commit serious crime, the focus of a unit that is associated with the monitoring of DE does appear disproportionate, unless a clear remit to manage all aspects of public order intelligence is adopted.

3.23 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

3.24 [REDACTED]  
[REDACTED] MPS officers are posted to the NDEU and officers from other forces are on two to five-year secondments. This blend of employees from across the UK helps to maintain a nationwide service rather than one that is more London-centric. It is imperative that this is maintained.

- 3.25 In terms of functional structure, the NDEU intelligence element is now formed as follows:
- Thematic intelligence desks consisting of analysts, researchers and police officers that receive, analyse, add value and disseminate intelligence focussed on XLW; XRW; Animal Rights Extremism; Environmental; Defence Leagues and Emerging Themes;
  - Confidential Unit that firewalls intelligence from covert sources from the desks and tasks covert assets;
  - Strategic Source Unit, that tasks and funds Covert Human Intelligence Sources (CHIS) who report intelligence to the NPOIU;
  - Special Operations Unit – the NPOIU’s Undercover unit;
  - Uniformed Public Order Policing section that provides the uniformed ‘spotter’ role and operational support; and
  - Temporary intelligence cell that manages Olympic issues.<sup>34</sup>

### **NETCU – Remit and Structure**

3.26 NETCU was established in 2004 by the Chief Constable of Cambridgeshire Constabulary and Chair of ACPO (TAM), Ben Gunn. This was in response to pressure on Government from pharmaceutical and research companies, particularly at the time Huntingdon Life Sciences (HLS), concerned about the effect that animal rights extremism was having on their ability to do business in the UK. Its original remit was, in summary, “to provide tactical advice and guidance to police forces dealing with extremism and to act as a liaison point for industry”. NETCU was

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<sup>34</sup> As detailed in Paragraph 3.20 above.



funded for activity broader than just animal rights extremism. As with NPOIU and NDET, NETCU, rightly, did not directly pass intelligence to industry. Instead, it provided a liaison role comprising crime prevention, target hardening and other information sanitised from a range of sources. This remit is widely known throughout the police service and industry, with those spoken to as part of this inspection appreciating NETCU's outward-facing role and being complimentary about the products it issues.

- 3.27 However, NETCU's activities suffered from the lack of a clear, agreed definition of what constitutes 'domestic extremism'. As such, there was regular dissemination of open source information relating to non-domestic extremism issues. Interviewees have said that this was however, a welcome product, as few intelligence units around the country had the time to research that which NETCU did. HMIC has also received positive feedback from customers of other NETCU products within both the Police Service and industry who have largely been very positive about the service they have received. It is encouraging that the project merging the three units into the NDEU and co-locating to London under the MPS has explicitly stated that industry liaison will be part of the new Unit's remit. HMIC supports this commitment.
- 3.28 In the early stages of NETCU's existence, its location largely governed its staffing mixture. Cambridgeshire Constabulary provided significant logistical support to the unit as it was staffed with Cambridgeshire officers. However, in 2010, the then Chief Constable wrote to the head of NETCU recommending that the link to Cambridgeshire should be broken with effect from 1<sup>st</sup> April 2010 as its activity was more nationwide than centred on that county.
- 3.29 The decision to co-locate the units in London affected NETCU more than the others, as its staff would have had to move a great distance. The opportunity was therefore taken to reduce the establishment of NETCU in preparation for the move. Between April 2010 and January 2011, it reduced in size by over 50%, as staff who left were not replaced.
- 3.30 The National Extremism Tactical Co-ordination Unit (NETCU) has effectively ceased to exist as of 2011. At the time of the report, NETCU's remit has been absorbed into the new NDEU structure as its Prevention arm.

### **NDET – Remit and Structure**

- 3.31 NDET was the operational arm of the NCDE, staffed by detectives. It was established by the NCDE in 2005, to take on the national role to link seemingly unconnected animal rights criminal investigations across force boundaries. Prior to its formation, when similar crimes occurred in different force areas, there was no co-ordinating body to ensure that the respective Senior Investigating Officers (SIOs) for each event were made aware of potentially highly relevant linked offences.



- 3.32 NCDE felt that a team was needed to action the intelligence generated by NPOIU, which often was not taken forward. However, NDET's creation has also been presented as a way for NCDE to lift the perceived veil of secrecy that the SB-dominated NPOIU wanted to work under, and to access intelligence so that the aims of NCDE could be met. Overlap with the work of NPOIU occurred, historically, in part due to poor working relationships between unit managers and consequent inter-unit rivalry and hostility. HMIC is assured that the merger of the domestic extremism units will address the level of duplication of effort that still exists across the units.
- 3.33 Significant and serious criminal offences were prevented, detected and prosecuted as a result of the Team's work, for example criminality associated with Stop Huntingdon Animal Cruelty (SHAC).
- 3.34 The operational arm of NDEU now focuses on three themes: development, coordination and support. It develops information files around specific threats identified by NDEU intelligence so that an investigation can commence. It ensures that all offences in DE related linked crime series are identified and evidential opportunities are not missed. Finally, it provides on-going support to the police throughout an investigation and judicial process.
- 3.35 In addition to the primary locus for the operational arm of NDEU, it also:
- undertakes a lifetime offender management role - managing offenders whilst they are in custody and after release in partnership with the Prison Service;
  - reassures the public and business community; and
  - builds effective relationships with government, universities and industry.
- 3.36 NDET drew upon a large proportion of staff (up to 60% in some years) from forces other than the MPS. This gave the unit a national feel and, although located in London, ensured that local knowledge and contacts were utilised.

### **NPOIU, NETCU and NDET – Governance**

- 3.37 The history of the three domestic extremism units has been marred by a litany of convoluted and confused governance arrangements that failed to provide, consistently, adequate support and challenge to the units.
- 3.38 From its inception until 2006, the operational control of NPOIU rested with the then MPSB Detective Superintendent, and a Steering Group was charged with providing oversight of the Unit. It would be fair to say that neither fully fulfilled the requirements laid upon them. Day-to-day operational decisions rested with the head of the NPOIU leaving authorities for certain covert intelligence gathering techniques with the Commander SO12; however, the extent of operational oversight appears limited, leaving the head of unit to define their own priorities and respective course

of action. The semi-autonomous limbo of the NPOIU and the problems it raised was recognised by the MPS senior officer in June 2002. He encapsulated this by stating:

“the unit does not regard itself as part of MPSB but sees itself as a reluctant bedfellow in an arranged marriage ... MPSB senior management who on the whole regard the NPOIU as a separate and administratively troublesome diversion also sustains this semi-autonomous situation and mindset.”<sup>35</sup>

- 3.39 Former NPOIU managers and staff have been critical of the lack of support from MPSB management and distant supervision. Of particular concern to the former head of NPOIU was the lack of operational support, particularly around significant events such as the planning of a policing response to the anticipated protest at the G8 Conference in Gleneagles in 2005 either by MPSB or by the Steering Group.
- 3.40 The challenges facing the NPOIU Head of Unit during this time are evidenced by the response to a Review of the Unit they initiated in 2006. This review made a series of recommendations around the authorisation process of undercover officers. HMIC supports these recommendations as they mirror many of the findings of this review. However, MPS management refused to provide the resources required to implement the Review’s recommendations. Interestingly, a later internal review commissioned by the NCDE in 2008 made similar recommendations and was similarly not implemented.
- 3.41 To oversee the development of the NPOIU a Steering Group was formed in 1999 on behalf of ACPO TAM comprising Chief Police Officers, ACPO Business Area Representatives, Home Office officials, members of the Security Service, and senior managers from MPS and NPOIU.
- 3.42 The MPS and Steering Group’s governance of the NPOIU continued until 2006. During this period, there was regular debate, flux and at times confusion about the governance arrangements for and the legal status of the NPOIU.
- 3.43 Whilst the concept of a Steering Group made up of key stakeholders from across Great Britain is seen to have key advantages, especially in ensuring the views of regional police forces are represented, in reality the Steering Group did not fully fulfil its remit of:
- responsibility for oversight of NPOIU work;
  - consideration of policy and strategy; and
  - to set and review performance and spending, and to develop the information-gathering role of the Unit.

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<sup>35</sup> D Supt MPSB (June 2002) *Managing the Growth Bid*, Unpublished

- 3.44 The minutes of the meetings from 2000 until 2007 (when it last met) focus almost entirely on the challenges of sorting out budgets, securing staff and finding accommodation. These challenges appear to have been too great and the NCDE stopped convening Steering Group meetings in 2007, leaving many of these issues unresolved.
- 3.45 In other areas, the Group also failed to fulfil its remit. The minutes do not provide clear evidence of the Steering Group actively driving the operational activity of the unit, nor any debate around the review of covert policing deployments. From 2004, the remit of the Steering Group expanded to act as the NPOIU 'Strategic Group', setting the Control Strategy and the priorities for gathering intelligence. This was based on developing intelligence documents created by the NPOIU, however the Group appears to have taken is one of agreement rather than challenge. The scrutiny of subsequent operations does not appear to have been undertaken, nor any holding to account of performance.
- 3.46 Whilst NPOIU was supported by the MPS in terms of procurement, HR and finance services, this appears insufficient, leaving the head of unit to find suitable accommodation for staff, to source a national uniform for Public Order Policing Section (POPS) officers and to negotiate terms and conditions with forces seconding staff to the NPOIU. This was a failure of MPS oversight and persisted during latter governance arrangements.
- 3.47 In 2004, ACPO TAM appointed the first NCDE who was responsible for delivering the policing element of the Government's strategy to reduce animal rights extremism activity – specifically the crime and disorder associated with the build of a primate research facility at Oxford University.
- 3.48 The NCDE was held to account at a monthly ministerial meeting chaired by the then Home Secretary Charles Clarke, and by an officials' meeting chaired by the Permanent Secretary, but also at a separate regular meeting chaired by the Attorney General. The governance arrangements at this time appear the most robust in NPOIU's history, albeit in terms of 'ends' rather than 'means'.
- 3.49 Whilst the NCDE had the national lead on animal rights extremism, he did not have line management of the NPOIU, which remained in MPS until 2006 (although NCDE did sit on the NPOIU Steering Group). In the intervening period there is evidence of confusion over the role of NCDE apropos NPOIU; this period is also characterised by the poor working relationships between NPOIU senior management and the NCDE.

- 3.50 The poor relationships and confusion over the governance arrangements resulted in the transfer of all units to ACPO (TAM). This came at a time when ACSO Hayman became Chair of ACPO (TAM) and had proposed to move the MPS CT Command to ACPO (TAM) to allow for greater national connectivity. From the paperwork available to HMIC, it does not appear that the Steering Group was involved in making this critical decision. However, ACSO and CTC were retained in the MPS, leaving NPOIU isolated within ACPO(TAM).
- 3.51 The NPOIU Steering Group retained its role but now with NCDE as its chair. However, this group met less frequently after its mandate to set strategic direction was removed and was taken over by ACPO TAM. The Steering Group last met in December 2007 after the NCDE concluded that after eight years they had failed to solve the problems around staffing, funding and associated issues. After 2007, there is little evidence of any governance by the Home Office, or by any group other than the ACPO TAM business area.
- 3.52 ACPO TAM's governance of NPOIU activity appears to centre on reporting by NCDE through a range of meetings, including a weekly Chief Officers Group (TAMCOG), quarterly TAM Advisory Groups and other meetings for TAM finance, strategy and workforce. However, none provided operational challenge.
- 3.53 The HMIC report 'Adapting to Protest' following G20 raised concerns about ACPO, a private limited company, having an operational police unit under its control, and recommendations were made. Consequently, reviews were conducted to determine the best solution for the units concerned, leading to the ACPO proposal for a 'lead force' to take over responsibility for the NDEU. However, with the apparent lack of operational control undertaken by ACPO in relation to the NPOIU, there appears little evidence that ACPO abused this position.
- 3.54 In 2011, the NDEU was transferred to the MPS and is currently overseen by Commander SO15 (Metropolitan Police Counter Terrorism Command). Current governance arrangements for the NDEU comprise weekly reporting by the new NCDE, appointed in October 2010, into Commander SO15 and up to Deputy Assistant Commissioner (DAC) SO, who is also the Senior National Coordinator (SNC) for CT and DE. A Metropolitan Police Authority sub-committee is providing additional scrutiny with DAC SNC meeting weekly with the sub-committee chair. Given the weak governance afforded to NPOIU in the past, both from the MPS and ACPO, it is imperative that the new structures provide appropriate rigour.
- 3.55 NETCU also appears to have lacked adequate governance, even though it continued to sit within Cambridgeshire Constabulary for logistical purposes until 2010. The geographical detachment from the other units should not have been an insurmountable obstacle to more direct oversight; however, while the accountability for NETCU rested with NCDE and ACPO TAM, there is little evidence of intrusive supervision around budgets, performance or outcomes.

3.56 NDET also suffered from a lack of adequate governance in terms of budgets and performance, although outcomes (supported investigations) were reported back through ACPO TAM as an indicator of success. However, whilst the local forces managing the investigation had operational oversight, there is little evidence of ACPO TAM providing additional direction or challenge. That said, there is a balance that ACPO needed to strike so it did not infringe the operational independence of Chief Constables, particularly as ACPO had limited authority owing to its private limited status.

## Funding

[REDACTED]

3.57 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

3.58 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

3.59 [REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]



3.60 In terms of financial governance, the NPOIU Steering Group had oversight of spend and was responsible for strategic financial planning. However, the complexity of the funding streams combined with the unique nature of the Units' business and changes to funding rules (such as pension liabilities) proved a significant challenge, and the Steering Group was criticised in 2007 by the National Coordinator for Domestic Extremism (NCDE) for failing to properly oversee the finances of the Unit. Other examples where oversight appeared weak include under-spends that were allowed to be rolled forward into subsequent years' budgets with no interference from the Home Office, a failure to claim VAT back from spends, and a reliance on MPS procurement processes for accommodation, vehicles and equipment that was not suited to an independent national unit.

3.61 In 2005 and in 2009 the MPA conducted audits of the finances of the NPOIU and found that the funding arrangements were not formalised or consistent, and that adequate controls were not in place. Recommendations were made following both audits and action plans were created to rectify the deficiencies; however whilst budget management improved, concerns still existed regarding the inadequacy of the governance arrangements, income and spending control and inconsistent financial reporting.

3.62 [REDACTED]

3.63 [REDACTED]

[REDACTED]

3.64 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

3.65 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

3.66 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

3.67 Given its role in providing support to industry, proposals for industry to contribute to the funding of the team have periodically been made. One way in which this could potentially have been achieved would have been through selling certain services (such as seminars and conferences) as income generation events. These proposals were not pursued, as the NCDE considered that the services should remain free to industry.



[REDACTED]

3.68

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

3.69

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

- 3.70 [REDACTED]
- 3.71 [REDACTED]

## Outcomes

- 3.72 The first NCDE is credited with some key achievements, such as bringing together a more effective policing response to Animal Rights Extremism, and the convictions relating to HLS. He brought together the DE functions and filled the void when SOCA was created, as no one was dealing with animal rights extremism. He got a rip of the HLS issues ( for example, through leading to a reduction of Animal Rights Extremism incidents from over 100 per week to 18 following arrests in April 2007 and 'Home visits' fell from nearly 50 in March 2004 to none in April 2007). However, despite these achievements, the period of NCDE leadership and line management of NPOIU, like its predecessor governance arrangements, has not been able to provide sufficiently robust, detailed accountability for and of the Unit.
- 3.73 Since then, the focus has broadened and intelligence collection has concentrated on building knowledge on groups associated with domestic extremism. The intelligence gathered has been used to inform a policing response to particular events. This is necessary to facilitate safe and lawful protests, but also to allow police to ensure an appropriate response is made. Without such intelligence, the police must plan for all eventualities to ensure public safety and consequently more officers are often deployed.
- 3.74 HMIC has seen no evidence that NPOIU-generated intelligence exaggerated the threat posed by groups or individuals to support a disproportionate police response. On the contrary, there is evidence of NPOIU assets informing the Unit that protest or demonstrations would be smaller scale than previously envisaged, enabling police forces to deploy a smaller, more appropriate, less expensive tactical deployment.
- 3.75 Other outcomes can be more difficult to evidence as NPOIU did not keep a record of the actions taken by forces. Whilst this is unhelpful, it is not surprising, as intelligence will be disseminated for consideration of use, rather than with any requirement that it should be used. It is for the police commander to consider all

available intelligence, and other factors, when making decisions. This means that some intelligence will not be actioned because other factors are in play, or a risk is too high, or it will influence some future event. In addition, intelligence other than that provided by the unit will be available to the police commander making it particularly difficult to have a line of sight from each item of intelligence to a specific policing action. There are exceptions and these are usually the large-scale police actions that prevent mass trespass, or that lead to weapons hides.

- 3.76 However, there are no Performance Management Indicator targets or Key Performance Indicators set in any strategies, business plans or control strategies, making an effective empirical assessment of outcomes difficult.

## **The Future**

- 3.77 There has been a range of problem issues that have generated pragmatic responses. Some of these have been successful, but the standing of the work has shifted over time as has the priority attached to it. Presently, the work of NDEU amounts to an amalgam of public order/crime and extremism intelligence development work. The work of units developing intelligence on sensitive issues must be carefully focused. The essence of intelligence is 'fore knowledge' – fore knowledge of threats and sources. The further 'upstream' intelligence gathering goes the more intrusive the methods required, and this brings major challenges for the police.
- 3.78 Because of the Mark Kennedy issue and the current brigading of the work, HMIC have sought to establish consensus on focus, and in this report we touch on where future work should be housed.
- 3.79 Within the timescales available, HMIC discussed the potential remit of the NDEU with practitioners, policy makers and others. It is acknowledged that the current ACPO definition is too widely drawn but, during workshops, it has proved difficult to secure consensus on a more precise mission for police purposes. Considering the nature of the work, this is understandable. Precise definitions can also be counter-productive as the nature of extremist activity morphs in the way it operates and draws in others.
- 3.80 An alternative approach is to recognise the broad definition of PREVENT as a starting point and have guidelines or 'rules of engagement' designed to enable criminal extremism to be addressed in a proportionate way. We have therefore looked at critical ingredients or principles that could anchor requests for the unit to develop intelligence, and so ensure their operation within appropriate boundaries. Again, this has been discussed with practitioners, who, it emerged, use a variety of reference points for this, including consideration of seriousness of harm caused.

- 3.81 There are some similarities in the considerations practitioners employ to explore proposed taskings for NDEU, but there are no commonly acknowledged ‘rules of engagement’. Whilst there is consideration of groups and trends over time, some intelligence development of this nature will fall outside the remit of the police.
- 3.82 Ultimately, the focus needs to be on those individuals using extreme methods. Practitioners are agreed that crime, or the real prospect of criminality, should be their starting point.
- 3.83 To illustrate what is possible in guiding decision-making in this sensitive area of work, HMIC thinks one way is to blend practical principles (referred to by the practitioners) with a set of ethical principles for intelligence. Decision-making must be grounded in the legal requirements of the Human Rights Act and RIPA, but people need practical points of reference when dealing with complex and sensitive issues such as the need to deal with criminal extremism balanced by a respect for civil liberties. An outline of the proposal is set out below.
- 3.84 **First, there must be sufficient cause for police action.** Police should only become involved if there are reasonable grounds for suspecting that the activity in question is likely to lead to serious criminal acts or to disruption to the public being planned or committed. Professional judgments about this need to be framed in reference points such as ‘criminal intent’, ‘motivation’, ‘impact on the community’, and ‘the type of activity anticipated’ – but they also need to be tempered against equally important judgements about freedom of speech and rights to protest. Actions intended to undermine parliamentary democracy, where criminality is not clear, should remain the remit of the other agencies.
- 3.85 **Second, there must be integrity of motive.** The police must make their own independent operational judgement of sufficient cause and not be swayed by public opinion or other domestic or international pressure. It is a police decision, case by case, whether investigations are best carried out by the relevant local force or nationally.
- 3.86 **Third, there must be proportionality.** The degree of intrusion must be proportionate to the harm to the public that the actions are intended to forestall. The more serious the potential criminality the more intrusion into the rights of the individuals would be justified.
- 3.87 **Fourth, there must be proper authority.** This must be via a clear chain of command from senior police officers, including appropriate legal approvals and warranty, with full oversight of activity and proper records of operational activity. (We suggest some additional considerations on authorities granted below.)

- 3.88 **Fifth, there must be a reasonable prospect of success.** Even if there is sufficient cause and the methods used are proportionate, there needs to be a comprehensive assessment of risk to the police, their sources and to the public (particularly in terms of collateral intrusion).
- 3.89 **Sixth, there needs to be necessity.** Can the purpose be achieved through non-intrusive means, or can it be resolved by other non-law enforcement agencies?<sup>38</sup>
- 3.90 In the absence of a tight description, ACPO should use the PREVENT definition of extremism as a starting point. They, and the Home Office, should consider establishing a framework for the proportionality of work on criminal extremism by NDEU and others. So, too, should chief police officers as the recipients of the operations that the NDEU engages in.
- 3.91 This approach is helpful in setting boundaries but will not necessarily deal with all the intelligence, all the vulnerabilities to the public or the medium-term threats. It may also not provide sufficient information on trends to meet the needs of policy advisers and politicians. Those responsible for policing will need to consider this carefully.
- 3.92 In addition, since the NPOIU is housed within the NDEU, the coordination of intelligence on strategic public order falls to them. This can be a substantial stretching task. Many events deserve consideration in their own right, such as previous fuel protests, floods, the Royal Wedding and the events of 6-10 August 2011. Inclusion of the coordination of protest and public order intelligence as part of the remit of the NDEU needs to be reconsidered. HMIC proposes that we review this key function in the upcoming report on the disorder experienced in England in 2011.

### **Governance – the Future**

- 3.93 The NPOIU started with the Metropolitan Police in 1999 then moved to ACPO in 2006. NETCU was established by the Chief Constable of Cambridgeshire in 2004, and NDET was created a year later by the newly appointed National Coordinator for Domestic Extremism (NCDE). Both NETCU and NDET moved with NPOIU to ACPO in 2006 under the command of the NCDE.
- 3.94 Wherever the units have been located they appear to have operated in isolation from the host organisation, and to have lacked effective governance. Consequently, the units took responsibility for operations when no other organisation was prepared to take the lead, and they remained primarily an intelligence-gathering body with no investigative responsibility – even though their targets have a national effect.

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<sup>38</sup> Adapted with the assistance of Sir David Omand. See (2010) *Securing the State*, p.325. Hurst & Co.

- 3.95 Within the last nine months the units have returned to the MPS, where they are now called the National Domestic Extremism Unit (NDEU).
- 3.96 Initial governance arrangements included a Steering Group established in 1999, comprising chief officers, Home Office representatives and other stakeholders, to try to address some of the issues described above; this ceased to meet in 2007. In 2004 the NCDE was appointed, but this post has been vacant since 2010, and is yet to be filled by another Chief Officer.
- 3.97 Following reviews within ACPO TAM<sup>39</sup> and HMIC's *Counter Terrorism Value for Money Review*, it was recognised that there was a need to redistribute aspects of ACPO TAM's work into more appropriate lead force arrangements (in a similar way to those which helped to establish the national counter terrorism network). The primary concern was that operational units should be under the governance of a lead force and that ACPO, a private limited company set up for the purpose of providing a strategic view on policing matters, should not be running operational units. Additionally, it was considered that the lead force principles enhance effectiveness and efficiency through a single legal/contracting entity capable of recruiting, employing and administering staff, without excessive accommodation, travel and central service allowances.
- 3.98 The ACPO TAM Board thus agreed that the funding streams of the units should be merged to create a single national function under the lead force principles, with the MPS invited to provide that lead.
- 3.99 Historically, certain features have been inherent in lead force arrangements, one being that all staff were employed by the lead force. However, the ACPO TAM Board considered that there should continue to be an opportunity for police officers from around the UK to be seconded to the National Domestic Extremism Unit, to ensure that the unit maintains a level of national representation. The level of secondees should reflect the operational requirement or necessity.

3.100

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<sup>39</sup> The Association of Chief Police Officers (Terrorism and Allied Matters) (ACPO TAM) is the business area of ACPO which deals with terrorism, extremism and associated issues.

[REDACTED]

- 3.101 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- 3.102 Despite these developments, the current NDEU mix of responsibilities and remit does not easily fit within any existing policing structure, nor is it fully in line with the remit of any pre-existing agency. This has been a recurring structural problem throughout the existence of the precursor units, and this is characterised by the poor case management and control described earlier in this report. Notwithstanding this difficulty, it is essential that a long-term home be found for the NDEU where robust governance, leadership and support can be provided. There may be other options in the future but for now a lead force connected to the counter terrorism (CT) work offers the best prospect.
- 3.103 The lead force arrangements that currently exist within the MPS concerning counter terrorism could meet the requirements outlined above, subject to reconsideration of the public order intelligence component. [REDACTED]  
[REDACTED]  
[REDACTED]
- An operational steering group comprising a range of interests and agencies could strengthen the consideration of taskings, priorities, trends and the standing of the standing of this work in comparison with other risks within the wider context of risk and Contest. External governance could be provided, using existing arrangements similar to those employed by the CT network.



## 4. The Use of Intelligence

- 4.1 The primary role of the NPOIU was, and going forward for the NDEU is, to provide a national intelligence coordination service for domestic extremism for the UK Police Service. This chapter examines the legal basis for law enforcement intelligence generation and development and then, in turn, outlines the Unit's processes for tasking, coordination and prioritisation; intelligence gathering; intelligence development and analysis and intelligence dissemination and makes recommendations for service improvement.

### Authorities and Proportionality

- 4.2 The Police Service is committed to ensuring that its practices and processes are delivered in line with the principles of the Data Protection Act 1998 (DPA) and is bound by all the governing legislation – including the ECHR and the Human Rights Act 1998 (HRA) – which safeguard public confidence and trust. The NDEU is required to work to both the DPA and the HRA. These principles include:
- **Necessity** – data is only collected where there is a demonstrable need for, and value from, collection.
  - **Legality** – compliance with relevant privacy legislation.
  - **Proportionality** – the application of a sliding scale so that sensitive data and surveillance techniques are used only for serious purposes, to protect individuals and communities.
- 4.3 Without the development and effective use of information and communications technology, there would be greater risks of:
- Criminals moving across boundaries with impunity
  - Harm to members of the public
  - Gaps developing between local, cross-border and national policing with the resultant operational impact
- 4.4 The Regulation of Investigatory Powers Act 2000 (RIPA) aims to ensure that intrusive policing powers are used lawfully and in a way that is compatible with ECHR. RIPA regulates the interception of communications, the carrying out of covert surveillance and the use of Covert Human Intelligence Sources (CHIS) such as informants and undercover police officers.

- 4.5 RIPA strictly limits the public organisations that can lawfully use covert techniques, the purposes for and conditions in which they can be used and how the material obtained must be handled. It is underpinned by principles of necessity and proportionality. The possibility of accidentally intruding upon the privacy of people other than the target must be considered. Covert surveillance is considered excessive and not proportionate if the information that is sought could reasonably be obtained by less intrusive means.

## **Prioritisation Process**

### **History**

- 4.6 The nascent NDEU has a developed tasking, coordination and prioritisation process. This has not been the case, however, throughout the NPOIU's existence. During the Unit's early years, there was a lack of policies and procedures outlining what intelligence the Unit should gather.
- 4.7 In November 2005, under the auspices of the Steering Group, a team created the NPOIU Matrix. This scored all 36 groups that featured in the NPOIU's intelligence requirements against a set of eight questions to determine their relative threat in relation to:<sup>40</sup>
- Risk of personal harm;
  - Economic impact;
  - Social impact;
  - Public disorder;
  - Capability;
  - Impact on Police;
  - Government/organisational impact; and
  - Media impact.
- 4.8 A NIM problem profile was produced for each group, which was then assessed and added to the Matrix. Groups were scored as low threat, substantial threat and significant threat. Any group, theme or individual scoring maximum points in relation to personal harm, economic impact or social impact was flagged, in order to aid management of these significant risks irrespective of overall scoring for group.<sup>41</sup> The categories of groups (including extreme left wing, extreme right wing, environmental) were then weighted (using an average of the component groups' averages)<sup>42</sup> to give them a relative weighting.

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<sup>40</sup> NPOIU (2006) *NPOIU Strategic Report: January 2006 – March 2006*. Unpublished

<sup>41</sup> NPOIU (2006) *NPOIU Steering Group Minutes April 2006*. Unpublished

<sup>42</sup> *ibid.* Unpublished.

## Present

- 4.9 As of June 2011, the NDEU has the following tasking, coordination and prioritisation processes. The current annual Strategic Assessment which outlines the threat from the different domestic extremist groups and individuals and Control Strategy, which outlines the Unit's priorities for preventative and enforcement action as well as intelligence gathering to tackle these threats. The Control Strategy priorities are routinely checked against the NPOIU Matrix, which is itself updated quarterly to take account of the waxing and waning of particular threats.
- 4.10 Oversight and direction of the Unit's activities against the Control Strategy takes place at fortnightly TCG meetings, chaired by the Head of Unit. These meetings pay particular attention to current and emerging threats as well as operational policing responses and investigations. The TCG is the main decision making forum for the allocation of resources to manage existing business demands and bids for new activity. The unit also has a mechanism to authorise new urgent, significant activity that arises between TCG meetings. HMIC considers NDEU's tasking process to be currently fit for purpose.

## Intelligence Gathering

- 4.11 As NDEU is the sole national body for the collation and analysis of Domestic Extremism intelligence, it receives intelligence from forces, Counter Terrorism Units (CTUs), Counter Terrorism Intelligence Units (CTIUs) and SBs on the full range of protest activity, including peaceful protest. The NDEU also submits bespoke intelligence requirements to law enforcement partners on particular groups and planned events of interest. There are memoranda of understanding (MOUs) in place between the NDEU and individual forces to structure the procedures by which intelligence is shared between the agencies. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- 4.12 The NDEU also gathers intelligence from open source and from industry. In respect of the latter, a close relationship was built up over a number of years between the NDEU and industry, to raise awareness of threats and risk so that damage and injury could be prevented. A number of police officers have retired from the Units and [REDACTED]  
[REDACTED] Whilst this is perhaps no different from any other retired officer finding similar employment, HMIC acknowledges concerns by NDEU about attempts by retired officers to contact and work with NDEU. This has placed unwarranted pressure upon the units and has on occasion led to potential conflict of interests. Given this, HMIC welcomes NDEU's policy that it will have no contact with private security companies that operate in the same type of business and use similar tactics as NDEU.

## Intelligence Development

- 4.13 In addition to processing intelligence, the desks also have an analytical role, developing intelligence, producing NIM products both for the Unit and commissioned by partner agencies, updating the Matrix and identifying new threats and intelligence gaps. Staff expressed concerns that they do not currently have access to the full range of databases they require for their intelligence development role.
- 4.14 One of NDEU's desks other main roles is to determine which individuals are classified as 'nominals' and then developing the intelligence picture on these persons of interest. The Unit does not have a formalised process by which individuals can be escalated to nominal status. This is a subjective decision based on the available intelligence regarding the part the person plays within protest activity. Additionally, there is currently not a universally used nominal's matrix to prioritise activity against the most harmful. Previous attempts by NPOIU to develop a nominal's matrix involved the desks highlighting the key nominal's in their respective area. These were then discussed in the round and ranked to form a national nominal's matrix. This system was flawed inasmuch as the nominal's highlighted were the most prominent individuals for their respective issues, but not necessarily those who posed the greatest threat of committing criminality or violence across the range of DE issues.
- 4.15 This system meant that enforcement and disruption action would not necessarily be applied to the individuals that posed the greatest threat. A new nominal matrix was developed and, pending sign off from TCG, this will be rolled out. It is anticipated that under the new system the main nominal's will be extreme right wing / Defence League as they pose the greatest threat – and that some other desks' nominal's will probably not feature high up on the Matrix.
- 4.16 Development of a nominal's matrix provides more justification for the Unit's work. It allows for a more auditable process on the selection of targets based upon the threat of criminality or serious disorder that they pose. It also allows for more tailored targeted responses to be developed by the Police Service to tackle those individuals who pose the greatest threat.
- 4.17 In addition to the intelligence development undertaken by the six desks, NDEU and MPS SO15 are currently positively engaging and designing a fusion cell for Olympics-related DE Intelligence. The two units have different sources and networks and need to have a holistic picture of DE intelligence from across the country. The Fusion Cell, which it is anticipated will be operational in an embryonic level from summer 2011, will co-locate a small number of staff from both units who will feed intelligence directly to the Olympics Intelligence Cell.<sup>43</sup>

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<sup>43</sup> See above, Paragraph 3.25

Operational intelligence and time critical intelligence will be fed down NDEU and SO15's usual channels.

## Covert Intelligence

- 4.18 When the NDEU desks identify intelligence gaps, taskings are often created for intelligence to be gathered through covert tactics. In such instances, the taskings are forwarded to the NDEU Confidential Unit. The Confidential Unit manages all the sensitive intelligence gathered through covert tactics and from partners and sanitises it, for internal and external dissemination. It commissions the use of covert tactics – under the authority of the TCG and uses the *NPIA Good Practice for Confidential Units* document as its guidance.
- 4.19 In 2009 NCDE invited the NUWG to conduct an audit of compliance of the covert policing element of NDEU, and NUWG consequently accredited the unit for its adherence to national standards. There is confidence that the current NDEU 'sanitisation' process is effective. The inspection did not uncover any evidence of these processes resulting in any breaches of the NPIA Good Practice.
- 4.20 On receipt of a tasking, the Confidential Unit assesses which of three main covert tactics would fill the intelligence gap, based on proportionality and necessity: CHIS, interception of communications and the use of undercover officers.

## Covert Human Intelligence Sources

- 4.21 From the inception of NPOIU, the use of CHIS has been an important intelligence-gathering tactic. Even before the revelations of Mark Kennedy reduced the taskability of NDEU's UCO assets, the vast majority of taskings passed to the Confidential Unit were resolved through CHIS deployments.
- 4.22 A majority of staff from the NDEU covert sections interviewed by HMIC suggested that CHIS use has proved to be a very useful intelligence tactic for the Unit. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- 4.23 Every six months there is a full CHIS review, during which NDEU management and the SSMU staff examine the level of CHIS coverage in each DE sphere, the key intelligence gaps and the main taskings. Each CHIS is also subject to individual review focussed on its cost over the preceding six months and the quality and quantity of intelligence it produced.

4.24 In addition to these formalised six-monthly reviews, the Strategic Source Management Unit collates and analyses management information on a range of numeric indicators, including the breadth of CHIS coverage, taskings and intelligence generation, as well as on CHIS finance. Oversight of these metrics is provided by the quarterly performance review process.

4.25 Accepting the sensitivities of operating in a protest environment, the use of CHIS against crime is a well-tested covert tactic available to operational commanders.

[REDACTED]

[REDACTED]

4.26 [REDACTED]

4.27 [REDACTED]

4.28 [REDACTED]

4.29 [REDACTED]

### **Undercover Officers**

4.30 The third tactical option open to the NDEU Confidential Unit is to seek intelligence from the Unit's UCOs to fill intelligence gaps. Chapter 2 of this report focuses in detail at the NDEU's use of this important tactic.

## Public Order Policing Section (POPS)

- 4.31 The Public Order Policing Section (POPS) is a team of uniformed officers, formed to provide a link between overt policing of protests by police forces and the NDEU. Throughout the inspection, there has been broad praise by stakeholders for the POPS team and the role it undertakes as part of force operations. The section is tasked to gather intelligence at protests and take images of people involved either by the force where the protest is located or by the NDEU. The images are stored on a database and are used to brief forces about individuals that might attend future events so that an appropriate police response can be planned.

## Database storage and weeding

- 4.32 The DPA mandates that authorities register their databases with the ICO. There is a lack of clarity over who the Data Controller is for intelligence generated by a force and passed to NDEU (who store and manage it). In the absence of resolution of this matter, the NDEU lacks regular inspection in this important regard.
- 4.33 MOPI informs and guides police forces on how they handle data and the associated Codes of Practice define purposes for such handling, such as 'preserving order' and 'preventing the commission of offences'. MOPI guidance explains the timeframes and criteria for reviewing, retaining or disposing of information. The key principles are regular reviews, no excessive data held on an individual, and disposal once the 'policing purpose' has passed. MOPI suggests all information will be held for a minimum of six years.
- 4.34 During the early part of the 2000s, there were attempts to introduce a weeding policy for NPOIU's databases. This resulted in the development of a process by which a nominal would be removed from the database if there was no new intelligence on them for six months. However, this never formed a definitive policy and, in practice, by 2006 weeding was not this robust.

- 4.35 [REDACTED]



4.37

[REDACTED]

4.38 HMIC examined the database used by POPS to store images and found that it currently contains images of 1,546 people. As there are many hundreds of protest events nationally every year, some attracting tens or hundreds of thousands of people, this is a relatively small number. The database is continually reviewed and weeded and since June 2005, a total of 2,063 images have been deleted.

4.39 In 2009, following the case of *Wood v Commissioner of Police for the Metropolis* (where Mr Justice McCombe ruled that by taking and retaining photographs of a protester, the MPS did not infringe his rights under the ECHR<sup>44</sup>), the NPOIU adopted MOPI principles of 'Policing Purpose' and 'Grouping' to each new image to justify its retention. In 2010, the NPOIU then began a process of 'back record conversion' by applying the MOPI principles to each existing image to justify its retention. This process is overseen by the Head of Unit. To date over 600 images/subject entries on the database have been updated to include PNC intelligence and MOPI considerations. Continued effort needs to be expended to complete the back record conversion of the outstanding images.

4.40 HMIC is concerned that intelligence regarding peaceful protesters is being monitored, however to facilitate horizon scanning and the identification of new threats and risks, there need to be robust processes around how this intelligence is handled. However, there is no set process for making a person a nominal and it is possible for a person to become one without having committed a criminal offence, or be involved in criminality.

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<sup>44</sup> *Wood v Commissioner of Police for the Metropolis* (2008) EWHC 1105 (Admin)

## **Intelligence Dissemination**

- 4.41 Intelligence disseminated by NDEU to forces is primarily used either to inform the recipient's NIM products, or to support specific operations. Currently, such intelligence is forwarded via secure email to CTUs and force SBs. Often the intelligence received by NDEU from force SBs is over-classified by a restrictive 'handling code', which precludes further dissemination beyond the named recipient, (in this case NDEU). Although the Confidential Unit look to 'open up' some of the intelligence received in order to forward it to a wider audience, there have been incidents of important intelligence not reaching its intended customers within forces (such as public order units) owing either to this issue or SBs reluctance to share such intelligence with units outside the SB secure environment. Historically, the handling code also prevented NPOIU (the named recipient) from directly sharing such intelligence even with NDET, but this should now be resolved with the merger of the units. In addition, HMIC has found that although the implementation of the CTUs has greatly improved the intelligence dissemination and action process, the relative prioritisation of CT and DE still causes problems.

## **Disclosure of Unused Material**

- 4.42 All NDEU staff have recently received bespoke CPIA disclosure training. All of the NDEU's CPIA disclosure requests are dealt with centrally within the Confidential Unit. This ensures a corporate response, that any response is measurable and assurance that the Unit's legal obligations are met in a timely manner. NDEU appoints a CPIA trained and accredited officer to ensure that all information, intelligence and evidence held by the units is properly considered for disclosure. The National CPS Coordinator for DE also has a role in advising on this work.
- 4.43 Prior to 2008 requests for disclosure were mainly made by Disclosure Officers independent of the NPOIU who had been tasked to collate their own Unit's material for revelation to the CPS. These external requests were usually facilitated by the relevant NPOIU Desk Officers who were involved in the development of the original intelligence.
- 4.44 This ad hoc arrangement was adequate for simple cases that had generated a limited number of intelligence reports and problem profiles. However, it did not accommodate more complex cases and had unnecessarily stretched desk resources.
- 4.45 Under the previous regime there was potential for duplication, as the firewall prevented the desk officers from having oversight of relevant unsanitised material. This meant that Desk Officers had to approach staff working within the covert part of the Units to search for restricted material on their behalf and to perform an ancillary role.

- 4.46 The Confidential Unit manages all disclosure requirements as this team has oversight of all intelligence within the NPOIU, since it operates behind the firewall. Equally, the Confidential Unit is staffed by officers with a depth of practical experience in disclosure and the management of Public Interest Immunity issues.
- 4.47 NPOIU's Confidential Unit, Desk Officers and intelligence officers assess intelligence from the relevant SB / CTU to promptly identify operations that will result in a charge. It is desirable that all disclosure concerns will be shared with the CU at an early stage to facilitate the management of all Confidential Unit commitments. The Desk Officers with their respective Desk Sergeant play an important role in keeping the Confidential Unit apprised of developments.

## 5. Conclusions

- 5.1 In this review HMIC acknowledges both the value of intelligence in the prevention and detection of crime and disorder, and the role of the undercover officer as a means to gather evidence and intelligence. We pay tribute to these officers' courage, professionalism and commitment in this high risk area of policing.
- 5.2 Decision makers engaged in managing such deployments may be faced with difficult and complex situations and their conclusions will continue to be anchored in the fundamental principles of proportionality and necessity.
- 5.3 The case of Mark Kennedy has brought the use of undercover officers and the role played by NPOIU, into the public spotlight. This has naturally led to concerns about how public protests are policed, the use of intrusive tactics and how Mark Kennedy was managed.
- 5.4 HMIC has found that the systems to control the use of undercover officers by police are generally strong, but that their application in the case of Mark Kennedy was flawed. Other undercover operations sampled within NPOIU were found to have higher levels of control than those which existed for the management of Mark Kennedy; but these still fell short of the standards demonstrated by other undercover units.
- 5.5 Such important issues require immediate action. HMIC has made recommendations that aim to strengthen the oversight of undercover operations, including training for Authorising Officers, formally presented reviews, external oversight by the OSC, and closer working between the functions that supervise undercover operations.
- 5.6 An enduring lack of clarity around the remit of the NDEU, coupled with an historic lack of grip around its governance, has had a significant detrimental effect on the running of the unit and on the level of confidence the public now has in the handling of intelligence related to protests by the police. HMIC recommends that:
  - the positioning of public order intelligence within the NDEU be reconsidered;
  - clearer guidelines for decision-making regarding intrusive tactics in cases of extremism be adopted;
  - national extremism intelligence arrangements have a dedicated ACPO lead; and
  - there should be oversight by key stakeholders, including external governance of operations through existing CT networks.

- 5.7 Regarding protest, HMIC has previously reported on overt policing tactics (*Adapting to Protest, Nurturing the British Model of Policing* and *Policing Public Order*) and we view this report as complementary to that work. In addition, the coordination of strategic public order intelligence will again be considered in HMIC's report on the public disorder of August 2011 (due for publication in Autumn 2011).
- 5.8 A report by SOCA (available at Annex A) provides more detail on the activity of Mark Kennedy and his particular deployment, and a more substantial report for the Home Secretary with restricted material has been prepared by HMIC.
- 5.9 HMIC would like to place on record our sincere appreciation to all the police forces, national and international agencies, and to Liberty and private individuals who have contributed greatly to this report and who provided valuable information, advice and assistance throughout the review.

# Annex A

To assess interpretation and implementation of the control measures (ACPO Operating Procedure 2003) HMIC undertook three benchmarking exercises.

1. We worked with and examined the practice of the [REDACTED], and we compared and contrasted their practice with NDEU. This showed the depth of detailed measures to control undercover assets in both crime and CT against a weaker grip by NDEU.
2. We worked with National Undercover Working Group, the Office of Surveillance Commission and Authorising Officers and we sought their perspectives on interpretation and implementation taking account, in particular the independent advice given to us by a QC. This showed the breadth of consideration of necessity, proportionality and collateral intrusion in crime operations compared with DE operations.
3. We used police force Undercover Operational Managers to critique all the NPOIU undercover operations and to critically review them to the standard they would apply in their own forces. This showed in a case by case way, the strengths and weakness of individual deployments in terms of control, justification, supervisions and outcomes. (details appear in the report)

In addition, we have sought to compare NDEU's use of undercover with all police forces by means of a questionnaire but this proved a less successful method compared with the personal meetings held above.

Finally, we did compare undercover practice with [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

The prosecutor is involved at every stage. There is no client confidentiality with their psychologists meaning whatever is disclosed can be fed back to managers.