



Inspecting policing
in the public interest

A review of progress made against the recommendations in HMIC's 2012 report on the national police units which provide intelligence on criminality associated with protest

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Contents

Contents	2
1. Introduction	3
2. Context	4
Undercover operations.....	4
The NPOIU and the NDEU	5
3. Findings	8
Recommendation 1	8
Recommendation 2	12
Recommendation 3	13
Recommendations 4 (a) and (b)	13
Recommendation 4 (c).....	14
Recommendation 4 (d).....	15
Recommendation 4 (e).....	16
Recommendation 4 (f).....	17
Recommendation 4 (g).....	18
4. Conclusion	19
Key recommendations not implemented.....	19
5. Scoping for the future	21
Annex A Methodology	22
Annex B HMIC 2012 report recommendations	23
Annex C Definitions of extremism and domestic extremism	25
Annex D Law and guidance on undercover policing	26
Legal basis for undercover tactics.....	26
Guidance and control.....	27
Annex E Glossary of terms and acronyms	29

1. Introduction

- 1.1. In 2010, information about the activities of Mark Kennedy, a police officer working undercover for the National Public Order Intelligence Unit (NPOIU), led to the collapse of the trial of six people accused of planning to shut down a large power station in Ratcliffe-on-Soar, Nottinghamshire. This resulted in Her Majesty's Inspectorate of Constabulary (HMIC) announcing its intention to review the systems used by the NPOIU to authorise and control the development of intelligence. The final report of this review was published in January 2012.¹
- 1.2. Fourteen months later, and by letter dated 20 March 2013, the Home Secretary commissioned HMIC:

...to conduct an inspection of the effectiveness of the arrangements in place in police forces to manage and scrutinise the deployment of undercover officers by considering the response to the recommendations of [HMIC's 2012 report], including the National Domestic Extremism Unit's handling of undercover work.
- 1.3. This report sets out the findings from the 2013 inspection, which has examined the response of the Association of Chief Police Officers (ACPO), the Metropolitan Police Service (MPS), and the Office of Surveillance Commissioners (OSC) to the recommendations made in the 2012 HMIC review.
- 1.4. It also suggests a future review of the management of undercover work by UK law enforcement agencies and police forces.

Methodology

- 1.5. In order to assess progress made against the recommendations of the HMIC 2012 report, HMIC interviewed stakeholders (including operational managers, Home Office officials and ACPO officers); and conducted a review of relevant policy documents, guidance, reports, and meeting minutes. Full details of the methodology can be found at Annex A.

¹ *A Review of National Police Units which Provide Intelligence on Criminality Associated with Protest*, Her Majesty's Inspectorate of Constabulary, January 2012. Hereafter referred to as the HMIC 2012 report.

2. Context

- 2.1. The HMIC 2012 report focussed on a specific type of undercover operation: long-term, intelligence gathering deployments against domestic extremists or protest groups, conducted by the NPOIU.
- 2.2. Some serious criminality has been associated with public protest. The right to protest is acknowledged and protected in law: but it is not unconditional. In particular, the right to peaceful protest does not provide a defence for protesters who commit serious crime or disorder in pursuit of their objectives. Police face the challenge of identifying those individuals who are intent on causing crime and disruption, while simultaneously protecting the rights of those who wish to protest peacefully. Key to being able to differentiate between the two is reliable intelligence.
- 2.3. Intelligence helps those responsible for protecting communities from serious crime and disruption to make better decisions, by improving their knowledge about the level and type of threat the public might face. One tactic available to the police as they work to obtain reliable intelligence is the deployment of undercover officers.

Undercover operations

- 2.4. Undercover officers are law enforcement officers who have assumed a false identity to become a covert human intelligence source (CHIS). The Regulation of Investigatory Powers Act 2000 (RIPA) defines a CHIS as follows:

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*
- (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

- 2.5 This is a broad definition, which encompasses:

- **those involved in covert internet investigations** – specially trained and accredited law enforcement officers who covertly gather intelligence and evidence online and through other computer-based technologies;
- **informants** – members of the public who are registered by a police force or agency covertly to provide information on criminals and their activity; and
- **those deployed undercover** – police officers (or other law enforcement agency staff) who are trained and accredited to assume a false identity, in order to purport to be someone that they are not and gather intelligence and evidence against criminals and their activities.

² Regulation of Investigatory Powers Act 2000, section 26(8).

- 2.6 There are two types of undercover police officer: those trained to an advanced level, and those trained to foundation level. Advanced-level undercover officers are normally used to infiltrate organised crime groups. These operations tend to last for a period of months, in order to allow officers to develop contacts and build up plausible stories around their assumed identities.
- 2.7 Foundation level undercover officers typically engage in short-term deployments, and hence less risky operations. For example, they may be deployed to purchase drugs from a suspected drug dealer; if successful, this is then used as evidence as part of a prosecution. These deployments may last for a period of days or weeks.
- 2.8 The police must be able to use tactics that allow them to prevent and detect those who engage in criminal acts. There is a long history of successfully using undercover officers as part of law enforcement. Applied correctly, it is a proportionate, lawful and ethical tactic, which provides a way of obtaining intelligence and evidence.
- 2.9 However, the deployment of undercover officers is inherently risky. It can result in the intrusion into the lives not just of criminals, but of their innocent associates, and of other members of the public (this is known as collateral intrusion). To help control these risks, police deploying undercover officers are obliged to follow a system of control that arises from the combined application of various statutes, case law and guidance.³
- 2.10 In applying these controls, police are required to consider, in the first instance, whether it is **necessary** to use an undercover officer, or if the intelligence or evidence can instead be secured through some other means, which are less intrusive or involve less risk. If it is necessary, the police must then determine whether the deployment is **proportionate**: that is, if the seriousness of the crime justifies the level of intrusion into people's lives. They are also required to assess and manage the risk of collateral intrusion, and any potential threats to the safety of the officers deployed.

The NPOIU and the NDEU

- 2.11. The NPOIU was created in 1999 and funded by the Home Office. Its aim was to reduce criminality and disorder from domestic extremism and to support forces in the way they dealt with strategic public order issues, including by gathering intelligence through the deployment of undercover officers. The 2012 HMIC report commented that the system of control applied to undercover deployments by the NPOIU was less robust than that being used by other organisations overseeing undercover operations.⁴
- 2.12 The 2012 report also emphasised another major difference between the undercover deployments managed by the NPOIU, and most undercover organised crime operations. In the latter class of cases, the lawfulness of the deployments is considered first by the officer who decides whether to authorise the deployment (the authorising officer, or AO), and then by the courts, when the evidence gathered through the undercover deployment is considered as part of the prosecution. However, because the aim of NPOIU undercover operations was focused on intelligence as opposed to

³ A summary of the law and guidance on undercover policing (taken from the HMIC 2012 report) is at Annex D.

⁴ *A Review of National Police Units which Provide Intelligence on Criminality Associated with Protest*, Her Majesty's Inspectorate of Constabulary, January 2012. Page 7.

evidence gathering, the judiciary did not regularly have the opportunity to test the AO's decision, rationale and justification for the deployment.

- 2.13. This lack of exposure to due process in a criminal trial did nothing to strengthen public confidence in the NPOIU. Whilst the Office of Surveillance Commissioners (OSC) also inspects force authorisations, it cannot achieve the high level of scrutiny that is achieved through the independent judicial examination of all the evidence in the course of criminal proceedings.
- 2.14. In January 2011, as a result of a decision at the ACPO Chief Constables Council, the NPOIU merged with the National Domestic Extremism Team (NDET) and the National Extremism Tactical Coordination Unit (NETCU) to form the NDEU. The Chief Constables Council's intention was that the NDEU would continue to conduct undercover operations associated with gathering intelligence on domestic extremism and public order. However, this plan changed as a result of the findings of HMIC's 2012 inspection.

Changes to the NDEU's structure and remit since the HMIC 2012 report

- 2.15. The NDEU restructured in January 2012, and now operates under the umbrella of the MPS Counter Terrorism Command (which is known as SO15). NDEU has also recently been renamed, and is now called the National Domestic Extremism and Disorder Intelligence Unit (NDEDIU):⁵ however, to avoid confusion we will continue to refer to the unit as the NDEU in this report.
- 2.16. The NDEU's remit changed at the same time as its restructure and no longer carries out any undercover operations. All deployments of undercover officers which target the activity of domestic extremists are coordinated either by the SO15 Special Project Team (SPT), or by one of the regional SPTs,⁶ and, where possible, material obtained is to an evidential standard.
- 2.17. SPTs are nationally accredited by the National Undercover Working Group (NUWG),⁷ and governed by a nationally agreed set of standard operating procedures (SOPs). These procedures have been formulated in line with the Authorised Professional Practice (APP), which provides guidance for covert undercover operations.⁸ The SPT is responsible for the welfare of undercover operatives, for agreeing specific tactics and for the provision of operational tactical advice. This arrangement brings domestic extremism in line with the more robust procedures for deployment of undercover officers which we found in the counter terrorism network.

⁵ The decision for the new unit to be called the NDEDIU was agreed at Chief Constables Council on 18 October 2012. A letter was sent to chief constables informing them of the change in name on 1 May 2013.

⁶ The SPTs are in the North West, North East and West Midlands Counter Terrorism Units, and the Counter Terrorism Command in London.

⁷ A working group within ACPO Crime Business Area, focussing on undercover deployments.

⁸ *Approved Professional Practice: Undercover Covert Operations*, College of Policing, 2012. Restricted. Compact Disc.

2.18. As a result of these changes to the NDEU's remit and structure, some of the recommendations of the HMIC 2012 review are no longer specifically applicable to the unit. They are, however, still relevant to the way in which high-risk undercover deployments are managed by SPTs within the counter terrorist network.⁹ HMIC has therefore reviewed how undercover operations are managed by the SPTs.

⁹ The counter terrorist network consists of five counter terrorist units and four counter terrorist intelligence units in England and Wales.

3. Findings

- 3.1. In this inspection, HMIC examined how the police and other agencies responded to each of its recommendations in the 2012 report (which are shown as boxed text in the pages that follow). Our findings against each recommendation are set out below.

Recommendation 1

- 3.2. Implementation of the first two parts of this recommendation requires a change in legislation, which HMIC realised would take some time to effect. The third part of the recommendation therefore sets out an interim solution.

The arrangements for authorising those police undercover operations that present the most significant risks of intrusion within domestic extremism and public order policing should be improved as follows:

(a) ACPO should give serious consideration to establishing a system of prior approval for pre-planned, long-term intelligence development operations subject to the agreement of the OSC.

(b) The level of authorisation for long-term deployments of undercover police officers should be aligned with other highly intrusive tactics such as Property Interference, as defined by s93 Police Act 1997 (subject to the legal requirements and the agreement of the OSC).

In the interim:

(c) Either a collaborative agreement should be entered into between police forces and the MPS, which allows one authorising officer within NDEU to own undercover operations from start to finish, or these operations should be managed in police forces by authorising officers who are:

- a. Properly trained and accredited. In particular this training should cover the concepts of necessity, intrusion, proportionality, disclosure and risk management.*
- b. Fully briefed with all the relevant information.*

In making these changes, consideration will need to be given to ensuring the police have some flexibility to deploy covert resources at short notice where operationally necessary, and to minimising potential impacts on Covert Human Intelligence Source (CHIS) work and police collaboration with partners.

Recommendation 1 (a)

(a) ACPO should give serious consideration to establishing a system of prior approval for pre-planned, long-term intelligence development operations subject to the agreement of the OSC.

- 3.3. **HMIC found that the Home Office’s Pursue Policy and Strategy Unit has given serious consideration to the establishment of a system of prior approval for pre-planned, long-term intelligence development operations; but agreement with the OSC as to which operations this system should apply to has not been achieved. This recommendation has therefore not been implemented.**
- 3.4. This recommendation is a result of HMIC’s 2012 finding that the NPOIU deployments of undercover operations did not have sufficient levels of authorisation and oversight.
- 3.5. Although the HMIC 2012 report proposed that ACPO should take responsibility for implementation of this recommendation, it sat more appropriately with the RIPA team¹⁰ in the Home Office’s Pursue Policy and Strategy Unit (PPSU). Therefore, the PPSU has taken the lead on this recommendation.
- 3.6. The PPSU has drafted a proposal for the creation of a new system for the authorisation of undercover officers. We learned that they intend to advise ministers that prior approval requires a change in legislation, which could be implemented through a new statutory instrument to amend the Regulation of Investigatory Powers Act 2000.
- 3.7. However, implementation of the recommendation has not been progressed, as there is currently no agreement between the PPSU and the OSC about which kinds of undercover operations should require prior approval. These discussions are continuing; agreement is needed before advice on creating a statutory instrument can be put to ministers.

Recommendation 1 (b)

(b) The level of authorisation for long-term deployments of undercover police officers should be aligned with other highly intrusive tactics such as Property Interference, as defined by s93 Police Act 1997 (subject to the legal requirements and the agreement of the OSC).

- 3.8. **This recommendation has not been implemented. We found that the level of authorisation required for long-term deployments of undercover police officers has not been changed to align it with that in place for other highly intrusive tactics.**
- 3.9. RIPA 2000 section 29 requires undercover deployments to be authorised by someone of at least police superintendent rank, although since 2003 ACPO guidance (and most recently, the 2012 APP) has stated that undercover operations need to be authorised by an ACC.¹¹ This, however, is still not as senior an authorisation as is required either for the interception of telephone conversations (which must be authorised by the Home Secretary), or the planting of listening devices in residential premises or private vehicles (which requires the authority of a Chief Constable, with the prior approval of

¹⁰ This is the Home Office team dealing with changes in the Regulation of Investigatory Powers Act 2000.

¹¹ This guidance states that superintendents are still able to be AOs for the deployment of CHISs who are members of the public.

an OSC commissioner), or for interference with property (which can only be authorised by a Chief Constable).

- 3.10. To bring the level of authorisation required for undercover deployments into line with these other intrusive tactics, the PPSU intends to introduce the requirement that undercover operations lasting for more than one year have to be authorised by a chief constable. However, it is our view that the risk of disproportionate intrusion does not only come from the length of time an undercover officer is deployed. Therefore, where there is a high degree of intrusion, and when this is apparent from the outset, we believe that deployments for shorter periods should also be authorised by a chief constable. The implementation of this recommendation has been delayed, as it requires new legislation. Work on this continues, and new provisions to implement this recommendation will be included in the statutory instrument referred to in paragraph 3.6 above.

Recommendation 1 (c)

- 3.11. The following interim recommendation was made to minimise the risk of disproportionate intrusion from domestic extremism undercover operations while the changes to the legislation required by recommendations 1a and 1b were being progressed.

In the interim:

(c) Either a collaborative agreement should be entered into between police forces and the MPS which allows one authorising officer within NDEU to own undercover operations from start to finish, or these operations should be managed in police forces by authorising officers that are:

- a. Properly trained and accredited. In particular, this training should cover the concepts of necessity, intrusion, proportionality, disclosure and risk management.*
- b. Fully briefed with all the relevant information.*

- 3.12 **This recommendation has been implemented only in part. Each force has an assistant chief constable (ACC) as its authorising officer (AO),¹² but none of them are yet trained and accredited. There is, however, a process to ensure AOs are fully briefed with all relevant information.**
- 3.13 In 2012, we found that no single AO appeared to have been fully aware either of the complete intelligence picture in relation to Mark Kennedy, or of the NPOIU's activities overall. In addition, it was not clear whether the NPOIU was properly explaining to AOs the type and level of intrusion in their deployments. This made it difficult for them to make an accurate assessment of whether deployments were proportionate.
- 3.14 In this inspection, HMIC found that each force has an ACC AO, who is responsible for authorising undercover operations in his or her area. The exception is if the deployment

¹² As the rank structure for senior officers is different in the MPS, in London the AO will be at least of commander rank (which is equivalent to ACC).

should more appropriately be dealt with at a regional level (for instance, where the suspects operate across force boundaries). In these cases, the ACC AO in the SPT authorises deployments. This means that there is no need for the collaborative agreement mentioned in the recommendation.

- 3.15 At the time of inspection, an AO training course had been developed for ACPO officers by the College of Policing and the National Undercover Working Group (NUWG), and piloted. The intention was that this will be finalised and made available over the next 12 months; but until then, there is still no formal training provision for ACPO authorising officers.¹³
- 3.16 In the interim, ACC AOs rely upon trained and accredited superintendent AOs for tactical and legislative advice. They also often have acquired knowledge of RIPA authorities¹⁴ and covert tactics through experience gained in more junior ranks before becoming chief officers; but not all those who go on to be chief officers necessarily have such experience.
- 3.17 ACC AOs require training and accreditation to enable them to authorise undercover operations legally and ethically. They also need a clear understanding of the surveillance techniques and capabilities they are authorising. HMIC therefore considers that the ACPO AO course should be mandatory for all ACCs who authorise undercover operations of any type (i.e. those relating to domestic extremism, as well as organised crime, counter terrorism and so on). This would strengthen the controls in place in all undercover operations.
- 3.18 In terms of AOs being fully briefed, there is now a process whereby relevant information is provided to them by the senior investigating officer (SIO) and the superintendent AOs in the SPT and the host force.¹⁵
- 3.19 The Rose Inquiry¹⁶ into disclosure in the Ratcliffe-on-Soar power station case referred specifically to shortcomings in the briefings the NPOIU provided to chief officers and the Crown Prosecution Service (CPS). The SPTs now have both a close working relationship and a memorandum of understanding with the CPS, in order to ensure proper briefing and disclosure in undercover operations.
- 3.20 We found that the current arrangements for briefing ACC AOs and involving the SPTs satisfy the requirements of the recommendation.

¹³ There has, for the last three years, been training for senior officers on the Strategic Command Course – but this is primarily aimed at raising awareness of covert policing methods, and does not fulfil the training requirements for AOs.

¹⁴ See Annex D for a summary of the legal framework (taken from the HMIC 2012 report).

¹⁵ *Submission to Coordinator National Functions Counter Terrorism, National Coordination of CT/DE Special Project Teams, April 2013.*

¹⁶ *Inquiry into Disclosure at Ratcliffe-on-Soar Power Station Protest*, Sir Christopher Rose, December 2011. Available from www.cps.gov.uk.

Recommendation 2

In the absence of a tighter definition, ACPO and the Home Office should agree a definition of domestic extremism that reflects the severity of crimes that might warrant this title, and that includes serious disruption to the life of the community arising from criminal activity. This definition should give sufficient clarity to inform judgments relating to the appropriate use of covert techniques, while continuing to enable intelligence development work by police even where there is no imminent prospect of a prosecution. This should be included in the updated ACPO 2003 guidance.

- 3.21. **There has been no agreement between ACPO and the Home Office on a definition of domestic extremism that reflects the severity of crimes that might warrant this title. This recommendation has therefore not been implemented.**
- 3.22. At the time of HMIC's 2012 inspection, the ACPO definition of domestic extremism was as follows.
- 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.¹⁷*
- 3.23. This definition has the potential to incorporate a very wide range of protest activity, and so HMIC considered that it provided insufficient guidance to authorising officers on the appropriate application of RIPA. It could, for example, lead to protestors and protest groups with no criminal intent being considered domestic extremists by the police.
- 3.24. In this inspection, we found that attempts to develop a new definition failed at meetings of the Home Office Domestic Extremism and Strategic Public Order Oversight Board in both May and August 2012. When no alternative definition could be agreed, the Oversight Board decided that the existing ACPO definition (as at paragraph 3.22) should continue to be used.
- 3.25. The Oversight Board recognised that this definition does not give AOs the clarity they need to inform their judgments relating to the appropriate use of covert techniques. To assist the NDEU and police forces in making operational decisions, the Oversight Board asked the NDEU to develop a further working definition of domestic extremism (which was published in the *NDEU Business Case 2013/14*, and is available at Annex C).¹⁸ By adding yet another definition, this has only served to further complicate the situation, rather than to bring clarity. We cannot see any justification for the failure to agree a suitable definition, and would urge a renewed effort to achieve this.

¹⁷ *A Review of National Police Units which Provide Intelligence on Criminality Associated with Protest*, Her Majesty's Inspectorate of Constabulary, January 2012. Page 11.

¹⁸ Oversight Group on Domestic Extremism and Strategic Public Order, minutes of meeting, August 2012, paragraph 6.

Recommendation 3

The positioning of both public order intelligence and domestic extremism intelligence within the NDEU needs to be reconsidered. There will need to be an incremental transfer to any newly created hub for public order intelligence.

- 3.26 **HMIC found that the MPS has fully considered the positioning of the public order and domestic extremism intelligence functions, and made satisfactory changes. This recommendation has therefore been implemented. HMIC is satisfied that the new arrangements adequately separate the public order function from domestic extremism.**
- 3.27 HMIC expressed concern in the 2012 report that locating both public order and domestic extremism functions in the same unit could mean that low-level criminality associated with protest was treated as extremism. Although a new hub for public order intelligence has not been created, HMIC is satisfied that the new arrangements adequately separate public order from domestic extremism.
- 3.28 The NDEU has been restructured into the following two distinct units, following agreement of a plan¹⁹ presented to Chief Constables Council in May 2012:²⁰
- a) **Protest and Disorder Intelligence Unit.** This unit collates and provides strategic analysis relating to protest and disorder across the UK; and
 - b) **Domestic Extremism Intelligence Unit.** This unit provides strategic analysis of domestic extremism intelligence within the UK and overseas.
- 3.29 Although the two intelligence functions are physically separate, they share an intelligence database, the National Special Branch Intelligence System (NSBIS). This is necessary to allow intelligence to be shared effectively.

Recommendations 4 (a) and (b)

In recognition that undercover operations aimed at developing intelligence around serious criminality associated with domestic extremism and public order are inherently more risky, additional controls should be implemented as follows:

*(a) MPS and ACPO leads should adopt a practical framework for reviewing the value of proposed operations or their continuation;
and*

(b) Authorising officers should conduct a thorough review of all undercover operations that last longer than six months. This review will be in addition to an independent review by the Surveillance Commissioners.

¹⁹ NDEU Business Development Plan for the Establishment of a National Domestic Extremism and Disorder Intelligence Unit, October 2012. Page 50.

²⁰ Chief Constables Council, minutes of meeting, May 2012.

- 3.30 **We found that a framework for reviewing the value of proposed undercover operations has recently been developed and agreed.²¹ Domestic extremism undercover operations are also reviewed every month. This recommendation has therefore been implemented.**
- 3.31 All applications for authorities to deploy undercover officers are examined by the ACPO Coordinator National Functions Counter Terrorism before they are considered by the ACC AOs in the forces concerned.
- 3.32 We found that ACC AOs are placing greater focus on the review and renewal process as a result of the HMIC 2012 report. The Codes of Practice require ACC AOs to stipulate the frequency of formal reviews.²² We interviewed AOs from forces and SPTs and are satisfied that operations are normally reviewed on a monthly basis (although they may be less frequent if the AO deems this to be appropriate). If an increased risk or threat is identified, an urgent review is carried out. The OSC inspectors also review a sample of undercover authorities on their annual visits to forces.

Recommendation 4 (c)

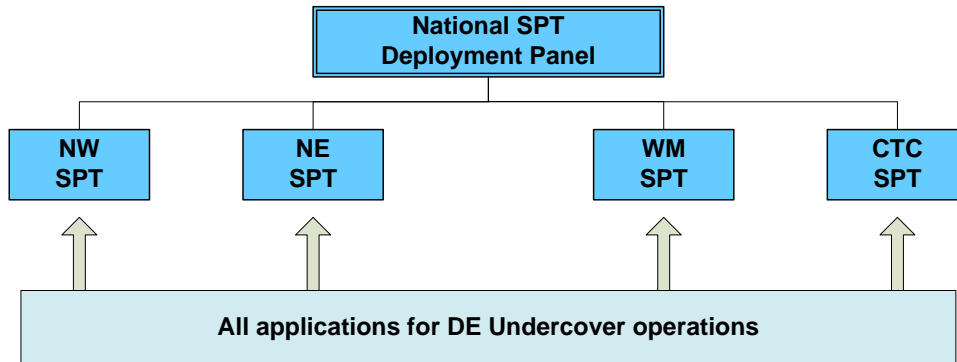
(c) Subject to reconsideration of the public order component (see Recommendation 3), domestic extremism operations should continue to be managed within the existing regional Counter Terrorism Unit structure, and there should be oversight by an operational steering group representing a range of interests and agencies. External governance could be provided using arrangements similar to those employed by the counter terrorism network.

- 3.33 **We found that all domestic extremism undercover operations are now managed by the four SPTs within the regional counter terrorism network.**
- 3.34 **The National SPT Oversight Panel will act as the operational steering group. Because it will only be attended by SPT and ACPO Counter Terrorism Coordination Centre (ACTCC) staff, it does not represent the range of interests and agencies recommended in the HMIC 2012 report; but we are content that the panel represents an appropriate level of oversight and scrutiny. We therefore consider the recommendation to have been implemented.**
- 3.35 National oversight of all domestic extremism applications and deployments will be provided by the National SPT Deployment Panel.

²¹ *Submission to Coordinator National Functions Counter Terrorism, National Coordination of CT/DE Special Project Teams, April 2013.*

²² *Covert Human Intelligence Sources. Codes of Practice. Pursuant to section 71 RIPA 2000, Home Office, 2012. Page 18, paragraph 3.13.*

Special Project Teams



- 3.36 The National SPT Deployment Oversight Panel will be “responsible for maintaining an appropriate threshold for the use of such a sensitive and high risk covert asset”.²³ At the time of inspection, the first meeting of this group was planned for 5 June 2013.
- 3.37 The HMIC 2012 report recommended that “there should be oversight by an operational steering group representing a range of interests and agencies”. Whilst the panel has police attendees (the heads of the CTUs and ACTCC), it is not representative of the range of interests and agencies recommended by HMIC. However, HMIC considers that the expertise and experience of the members of the panel are sufficient to provide an appropriate level of scrutiny to undercover operations.

Recommendation 4 (d)

(d) The rationale for recording public order intelligence material on NDEU’s database should be sufficient to provide assurance that its continued retention is necessary and justified, given the level of intrusion into people’s privacy.

- 3.38 **There is a rationale in place for recording public order intelligence material on the NDEU database, and it is sufficient to provide assurance that continued retention of information is necessary and justified. However, some records still need to be reviewed against the new criteria. We therefore consider that the recommendation has been partially implemented.**
- 3.39 In 2012, we found that the rationale for recording material (such as descriptions of events) was not sufficient to provide assurance that its continued retention was necessary or justified, given the associated level of intrusion into people’s privacy. It was clear that the NDEU database potentially contained intelligence that either should never have been recorded in the first place, or that had been properly input, but should now be deleted.

²³ Submission to Coordinator National Functions Counter Terrorism, National Coordination of CT/DE Special Project Teams, April 2013.

3.40 A new NDEU policy on the use of the database was introduced and brought into effect in April 2012, and stipulates a more suitable rationale for recording public order intelligence. With this agreed, NDEU then started a full review of the database, in order to check that the retention of each piece of intelligence it contained was necessary, proportionate and justified (with all new intelligence checked against the same criteria). HMIC conducted an audit of records created since the policy was implemented in April 2012. This found that there was compliance with the policy, and that the retention of this new intelligence is necessary and justified.²⁴

Recommendation 4 (e)

(e) Exit plans should be an addendum to the risk assessment and should be reviewed by the authorising officer, and they should be considered by appropriately trained police cover officers²⁵ and police-employed psychologists collectively, alongside risks to the operational strategy and welfare of undercover officers.

3.41 **We found exit plans are now an addendum to risk assessments, and reviewed by the ACC AO and cover officer. However, we found no evidence of the involvement of psychologists in considering exit plans, nor of any intention to involve them in the future. The recommendation is therefore only partially implemented.**

3.42 Psychological reviews should not be the only way of mitigating the risks to the psychological health of an officer. Supervisors should also design exit plans (with input from psychologists) which, for example, consider the duration of deployments and the intensity of the work.

3.43 In the Mark Kennedy case, the long-term aspects of his welfare and personal development were not well provided for; there was little consideration of an exit strategy to allow either for short-term extraction during the deployment, or for his final withdrawal and potential replacement. Authorising officers appeared not to have considered such a strategy until the end of his deployment.

3.44 We found that since the HMIC 2012 report, exit plans for domestic extremism undercover operations have been considered as part of the risk assessment by AOs, and reviewed at monthly meetings. Appropriately trained cover officers are also consulted and involved in this review of exit plans, as well as in discussions around the operational strategy and welfare considerations.

3.45 We also found that the ACPO Coordinator National Functions Counter Terrorism ensures that the risk assessments include exit plans as part of his scrutiny of new applications.

3.46 However, none of the AOs we spoke to consulted psychologists when developing exit plans. This was because they judged that the combination of the regular psychological

²⁴ HMIC audit of NSBIS database in NDEU, April 2013.

²⁵ Cover officers are responsible for the welfare of undercover officers while they are deployed on operations. They are often ex-undercover officers themselves.

assessments provided by the psychologist, and information from the cover officers, negated the need for the presence of psychologists when considering the exit plans.

- 3.47 Currently, each undercover unit does not have its own police-employed psychologist (as described in the recommendation) to support undercover work, instead using external professionals. We welcome the College of Policing's intention to play a more central role in assisting in this area by providing appropriately qualified staff, and an agreed external cadre of professional psychological assessment providers.

Recommendation 4 (f)

(f) In order for safeguards to operate effectively, consideration should be given to undercover officers waiving their rights to confidentiality, allowing the psychologist to brief managers of any concerns.

- 3.48 **We consider that the confidentiality issue has been appropriately considered and the recommendation has been implemented.**
- 3.49 All undercover officers must undertake regular psychological assessments. These assessments are a welfare provision for the officers, and as such the psychologists conducting them are bound by client confidentiality duties. However, if psychologists suspect the health of an officer is being damaged through his or her work, they have a responsibility to ensure that this is communicated to the officer's employer. In the case of Mark Kennedy, the psychologist did not raise any such concerns.
- 3.50 Following the HMIC 2012 report, the National Policing Improvement Agency (NPIA) was commissioned to review the processes in place for the selection, training and support of undercover officers. The resulting NPIA report²⁶ recommended that the right to confidentiality between undercover police officers and psychologists should remain. However, the report also recommended there should be a clear process to allow each undercover officer's manager²⁷ to highlight areas he or she would like the psychologist to explore. The psychologist should then report findings to the manager, and make comment regarding the undercover officer's fitness to deploy. This would allow the manager to make informed decisions about the officer, and brief the AO.
- 3.51 However, the AOs we spoke to were not aware of the recommendations of the NPIA review. We acknowledge that the NPIA work on the selection, training and support of undercover officers has a number of recommendations, which will take time to implement; but this suggests the content of their review has not been effectively communicated.
- 3.52 RIPA places a legal obligation on AOs to ensure the welfare of their undercover officers.²⁸ In practice, we found AOs expected that any concerns identified during a

²⁶ *Review of Selection, Training and Support of Undercover Officers*, Recommendation 45, NPIA 2012. Restricted

²⁷ Undercover officer's manager in this context refers to the head or deputy of one of the undercover units across England and Wales, which oversee all the operations that use advanced undercover officers.

²⁸ Regulation of Investigatory Powers Act 2000, section 29(4A).

psychological assessment would be reported to them by either the psychologist or the undercover officer. A psychologist interviewed as part of this inspection stated that if he had concerns about the mental health of an undercover officer, he would discuss this with the officer and encourage him to disclose them to his or her line manager. If the officer failed to do this within a reasonable period of time, the psychologist would then make the disclosure.

Recommendation 4 (g)

(g) The 2003 ACPO Guidance needs urgent revision, taking account of the findings of this and other reviews.

- 3.53 **We found that the 2003 ACPO Guidance had been reviewed by the NUWG and the College of Policing. This led to the publication in June 2012 of the Covert Undercover Operations Approved Professional Practice (APP).²⁹ The APP has incorporated the learning from the HMIC 2012 report, and is available to appropriate staff working in accredited undercover units.**
- 3.54 HMIC welcomes the work done by the NUWG and College of Policing to assume a tighter grip of all undercover operations.

²⁹ *Approved Professional Practice. Undercover Covert Operations*, College of Policing. 2012 Restricted. Interactive Compact Disc.

4. Conclusion

- 4.1 The purpose of this inspection was to assess the effectiveness of the arrangements in place in police forces and the NDEU to manage and scrutinise the deployment of undercover officers in domestic extremism and public order cases, by considering the response to the recommendations of HMIC's 2012 report.
- 4.2 We found that some significant work has been done to improve the way in which the police deal with undercover operations. However, we are concerned that there are still several recommendations that have not been implemented.

Key recommendations not implemented

- 4.3 **Prior approval.** The Home Office, ACPO and OSC have not made sufficient progress in establishing a system of prior approval for long-term undercover operations.
- 4.4 **Authority levels.** The law requires the use and conduct of undercover officers to be authorised by someone at least of superintendent level. APP states that undercover operations must be authorised at ACC level; but this is still not aligned to the level of authorisation in place for other intrusive tactics (for which chief constable authorisation is required). Whilst we understand that introducing prior approval and changing authority levels requires a change in legislation, effecting this seems to have stalled because of a lack of agreement about which undercover operations these changes should apply to.
- 4.5 We consider that the APP should be changed to state that chief constables must authorise from the outset undercover operations that are probable either to last longer than 12 months, or to be so intrusive as to be likely to raise public concerns about proportionality. This change would place the authorisation of the most complex and intrusive undercover operations on a par with other comparable activity (such as intrusive surveillance or property interference).
- 4.6 **Training and accreditation.** Whilst there is an ACPO AO training course due to be delivered in the next 12 months, ACC AOs are currently making critical decisions without appropriate training, and often with only limited experience of covert policing. The delay in ensuring ACC AOs are properly trained and accredited is unacceptable. The training course for ACPO AOs should be mandatory for all ACCs who are responsible for authorising any type of undercover deployment.
- 4.7 **The definition of domestic extremism.** The HMIC 2012 report recommended a tighter definition of domestic extremism, in order to reflect the seriousness of the crimes and provide clarity to help the police make informed judgments about when an undercover operation would be an appropriate tactic. No agreed definition has been forthcoming – in fact, the situation is now more confusing, as there is an additional, NDEU definition of domestic extremism. We cannot see any justification for the failure to agree a suitable definition that satisfies the requirements of the recommendation, and would urge a new effort to achieve this.
- 4.8 **Exit plans.** There have been some improvements in relation to the development of exit plans since the HMIC 2012 report. For example, all new applications are assessed by the ACPO National Coordinator, and must include an exit plan attached to the risk

assessment. However, we found that psychologists are not engaged in the development of exit plans. We can see no sound reason why this recommendation has not been implemented.

5. Scoping for the future

- 5.1 As a result of the HMIC 2012 report, there is now much tighter governance of domestic extremism undercover policing. But this is only a small part of police undercover activity. Most undercover work is aimed at serious organised crime, major crime or counter terrorism.
- 5.2 We therefore believe that further inspection work is necessary to examine all police undercover work (including foundation undercover deployments). This would help reassure ministers and the public that the tactic is being used in a lawful, proportionate and ethical way.

Annex A Methodology

The methodology used by HMIC for developing the evidence base to support this report is set out below.

1. A document review of legislation and other reports (including minutes of meetings and associated papers) to determine the response to the 2012 HMIC recommendations.
2. Fieldwork, consisting of site visits and interviews during March and April 2013 with representatives from:
 - the Office of the Surveillance Commissioners;
 - forces (two chief constables, MPS deputy assistant commissioner, three assistant chief constables, force authorising officers, and deputies);
 - the CT network (detective chief superintendents and detective superintendents);
 - ACPO (the Coordinator National Counter Terrorist Functions);
 - College of Policing;
 - National Domestic Extremism Unit;
 - Office for Security and Counter Terrorism;
 - National Undercover Working Group;
 - Home Office Public Order Unit; and
 - Regional Organised Crime Units.

Annex B HMIC 2012 report recommendations

Recommendation 1 – Home Office (HO), ACPO and OSC

The arrangements for authorising those police undercover operations that present the most significant risks of intrusion within domestic extremism and public order policing should be improved as follows:

(a) ACPO should give serious consideration to establishing a system of prior approval for pre-planned, long-term intelligence development operations subject to the agreement of the OSC.

(b) The level of authorisation for long-term deployments of undercover police officers should be aligned with other highly intrusive tactics such as Property Interference, as defined by s93 Police Act 1997 (subject to the legal requirements and the agreement of the OSC).

In the interim:

(c) Either a collaborative agreement should be entered into between police forces and the MPS which allows one authorising officer within NDEU to own undercover operations from start to finish, or these operations should be managed in police forces by authorising officers that are:

a. Properly trained and accredited. In particular this training should cover the concepts of necessity, intrusion, proportionality, disclosure and risk management.

b. Fully briefed with all the relevant information.

In making these changes, consideration will need to be given to ensuring the police have some flexibility to deploy covert resources at short notice where operationally necessary, and to minimising potential impacts on Covert Human Intelligence Source (CHIS) work and police collaboration with partners.

Recommendation 2 – ACPO and Home Office

In the absence of a tighter definition, ACPO and the Home Office should agree a definition of domestic extremism that reflects the severity of crimes that might warrant this title, and that includes serious disruption to the life of the community arising from criminal activity. This definition should give sufficient clarity to inform judgements relating to the appropriate use of covert techniques, while continuing to enable intelligence development work by police even where there is no imminent prospect of a prosecution. This should be included in the updated ACPO 2003 guidance

Recommendation 3 – ACPO, MPS and Home Office

The positioning of both public order intelligence and domestic extremism intelligence within the NDEU needs to be reconsidered. There will need to be an incremental transfer to any newly created hub for public order intelligence.

Recommendation 4

In recognition that undercover operations aimed at developing intelligence around serious criminality associated with domestic extremism and public order are inherently more risky, additional controls should be implemented as follows:

- (a) MPS and ACPO leads should adopt a practical framework for reviewing the value of proposed operations or their continuation.*
- (b) Authorising officers should conduct a thorough review of all undercover operations that last longer than six months. This review will be in addition to an independent review by the Surveillance Commissioners.*
- (c) Subject to reconsideration of the public order component (see Recommendation 3), domestic extremism operations should continue to be managed within the existing regional counter terrorism unit structure, and there should be oversight by an operational steering group representing a range of interests and agencies. External governance could be provided using arrangements similar to those employed by the counter terrorism network.*
- (d) The rationale for recording public order intelligence material on NDEU's database should be sufficient to provide assurance that its continued retention is necessary and justified given the level of intrusion into people's privacy.*
- (e) Exit plans should be an addendum to the risk assessment and should be reviewed by the Authorising Officer, and they should be considered by appropriately trained police Cover Officers and police-employed psychologists collectively, alongside risks to the operational strategy and welfare of undercover officers.*
- (f) In order for safeguards to operate effectively consideration should be given to undercover officers waiving their right to confidentiality allowing the psychologist to brief managers of any concerns.*
- (g) The 2003 ACPO Guidance needs urgent revision taking account of the findings of this and other reviews.*

Annex C Definitions of extremism and domestic extremism

1. ACPO 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.

2. PREVENT³⁰ definition of extremism

The definition of extremism used in the Prevent element of the CONTEST Strategy³¹ does not necessarily define extremism as criminal or as something for the police to deal with, but does contain a sense of severity:

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.

3. NDEU definition

The NDEU working definition contained in the *NDEU Business Case 2013/14*:

The activity of individuals or campaign groups that carry out criminal acts in furtherance of a campaign or political goal as opposed to gain. These actions are usually seeking to prevent something from happening or to change legislation or domestic policy, but attempt to do so outside of the normal democratic process.

³⁰ The *PREVENT* Strategy, launched in 2007, seeks to stop people becoming terrorists or supporting terrorism. It is the preventative strand of the Government's counter-terrorism strategy, *CONTEST*.

³¹ *CONTEST: The United Kingdom's Strategy for Countering Terrorism*, HM Government, July 2011. Available from www.tsoshop.co.uk

Annex D Law and guidance on undercover policing

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

Undercover police officers are servants of the Crown and different considerations apply to them from those which apply to CHIS.

Clearly also, different management techniques are required for undercover police officers from those which may apply to other types of CHIS. To this end, HMRC and ACPO NUWG developed guidance that set out the necessary control measures by which managers assure themselves and the courts that the undercover officer has conducted him or herself correctly. This guidance also provides a definition of undercover officers:

An **undercover operative** has successfully undertaken nationally-accredited training. They work under direction in authorised operations or investigations in which the operative's identity is concealed from third parties. Their activities fall within the definition of a covert human intelligence source and they are a source who holds an office, rank or position with a law enforcement agency.

Legal Basis for Undercover Tactics

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.

There are several sources of law affecting the use of undercover officers:

The **Police & Criminal Evidence Act 1984** (PACE) created clear legal rules regarding the searching, detention, identification and interviewing of suspects. These involved the keeping of proper records and the creation of robust audit trails from arrest through to prosecution. Should an undercover officer be arrested whilst on deployment they would

be subject to all these rules, meaning managers of undercover officers needed to consider carefully the behaviour and conduct of their officers.

The **Criminal Procedure and Investigations Act 1996** (CPIA) set standards for the conduct of investigations, as well as the handling of material found or generated in the course of an investigation, and its disclosure to the Crown Prosecution Service and the defence. This meant that managers needed to ensure that undercover deployments were to an evidential standard, and that the proper disclosure of material was assured.

The **Regulation of Investigatory Powers Act 2000** (RIPA) was introduced to govern the way police and other public bodies carry out surveillance, investigation, and the interception of communications. Grounds for invoking powers under the Act include national security, the detection of crime, preventing disorder, public safety, protecting public health, and if it is in the interests of the economic well-being of the United Kingdom.

The introduction of RIPA meant that for the first time clear legal rules existed regarding the role and conduct of undercover officers, contained within the provisions for a Covert Human Intelligence Sources. The Act details how such officers must be authorised and deployed, and it specifies who can authorise such operations, and who has oversight.

The Police and Criminal Evidence Act 1984 section 78 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 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 and 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 court should stay proceedings 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.

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

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 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). The Approved Professional Practice Undercover Covert Operations in force from June 2012 also states an assistant chief constable should authorise undercover operations.

Perhaps the most significant guidance can be found in the original Home Office Circular 97/1969 – *Informants who take part in crime*:

The police must never commit themselves to a course which, whether to protect an informant or otherwise, will constrain them to mislead a court in subsequent proceedings. This must always be regarded as a prime consideration when deciding whether, and in what manner, an informant may be used and how far, if at all, he is allowed to take part in an offence. If his use in the way envisaged will, or is likely to result in its being impossible to protect him without subsequently misleading the court, that must be regarded as a decisive reason for his not being so used or not being protected.

Annex E Glossary of terms and acronyms

ACC	Assistant Chief Constable
ACPO	Association of Chief Police Officers
ACTCC	ACPO Counter Terrorism Coordination Centre
AO	Authorising Officer. The police officer responsible for granting an authorisation for an undercover deployment.
APP	Approved Professional Practice
CHIS	Covert Human Intelligence Source
CII	Covert Internet Investigator
CONTEST	UK Government counter-terrorism strategy
CPS	Crown Prosecution Service
CTU	Counter-Terrorism Unit
HMIC	Her Majesty's Inspectorate of Constabulary
HMRC	Her Majesty's Revenue and Customs
Mark Kennedy	Former Metropolitan Police Service officer who conducted undercover operations for the National Public Order Intelligence Service. Revelations about his activities led to the collapse of the trial of six people accused of planning to shut down a large power station in Ratcliffe-on-Soar, Nottinghamshire, in 2010.
MPS	Metropolitan Police Service
NDEU	National Domestic Extremism Unit. A Metropolitan Police Service unit created in 2011, combining the roles of the National Public Order Intelligence Unit, the National Domestic Intelligence Team and the National Extremism Tactical Coordination Unit.
Necessity	RIPA 2000 stipulates that the authorising officer must believe that an authorisation for the use or conduct of a CHIS is necessary in the circumstances of the particular case for one or more of the statutory grounds listed in RIPA 2000, section 29(3).
NPIA	National Policing Improvement Agency
NPOIU	National Public Order Intelligence Unit. A unit that conducted undercover police deployments into domestic extremist groups. Subsumed into NDEU in 2011.
NUWG	National Undercover Working Group. A working group within ACPO Crime Business Area, focussing on undercover deployments.

OSC	Office of the Surveillance Commissioners
OSCT	Office of Security and Counter Terrorism. Home Office unit.
PPSU	Pursue Policy and Strategy Unit. A unit within the Home Office responsible strategy and policy development for the Pursue strand of the UK counter-terrorism strategy
Proportionality	The authorisation for undercover deployments will only be proportionate if it is not excessive in the overall circumstances of the case. Each action authorised should bring an expected benefit to the investigation or operation and should not be disproportionate or arbitrary. The fact that a suspected offence may be serious will not in itself render the use or conduct of a CHIS proportionate. Similarly, an offence may be so minor that any deployment of a CHIS would be disproportionate. No activity should be considered proportionate if the information which is sought could reasonably be obtained by other less intrusive means. See <i>Covert Human Intelligence Sources. Codes of Practice. Pursuant to section 71 RIPA 2000</i> , Home Office, 2012.
RIPA	Regulation of Investigatory Powers Act 2000
SDS	Special Demonstration Squad. An undercover unit in the Metropolitan Police Service which operated between 1968 and 2006.
SIO	Senior Investigating Officer
SOCA	Serious Organised Crime Agency
SO15	Specialist Operations 15. Metropolitan Police Service Counter Terrorism Command.
SPT	Special Project Teams. Teams based within regional counter terrorism units which deal with covert policing tactics.