

Our ref: HW/6549/1

Your ref: L/75949/NP

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Chief Constable Mick Creedon
Constabulary Headquarters
Butterley Hall
Ripley
Derbyshire DE5 3RS

21 August 2013

Dear Chief Constable Creedon,

Re: OPERATION HERNE

Thank you for your letter of 27 June enclosing the terms of reference of Operation Herne and inviting my clients to assist the investigation by providing statements to your investigation. Thank you also for your letter of 12 August responding to our letter to Keith Vaz in his capacity as chair of the Home Affairs Select Committee.

May I start by strongly welcoming your unequivocal statement that undercover officers should not enter into intimate sexual relationships "under any circumstances" and further that this reflects the policy position taken by the three relevant lead officers for the Association of Chief Police Officers. Whilst, however, my clients welcome this statement, it does not reassure them that such abuses will not take place in the future. Firstly, this is because we continue to hear conflicting statements made by others (in policing and in politics) to the effect that there may be justification for such activities in certain, perhaps exceptional, circumstances and secondly, this is because without this position being enshrined in law, there can be no assurance that it reflects anything other than a fleeting response by those currently in police lead positions to what are extremely embarrassing public revelations.

Whilst my clients welcome the commitment, energy and personal integrity you profess that underpins your approach to the Operation Herne investigation, they cannot see it as in any way adequate, whilst it is structurally premised on the secrecy inherent in an NCND "policy".

As you will probably be aware, one of my clients did, early on, provide a statement to an earlier version of your investigation (when it was called, as I understand, Operation Soisson) in relation to the former SDS officer, Jim Boyling. Subsequently, three other

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clients who had relationships with other SDS officers, met with officers from the Metropolitan police DPS with a view to providing statements for the investigation. At their most recent meeting (some months ago), the officers attending made it clear that they were now required to exercise a policy of NCND in relation to the investigation. This effectively meant that they were inviting the women to provide detailed accounts of long term intimate relationships, which would involve opening up about some of their most intimate, personal and private memories, without even being afforded the courtesy of it being confirmed that the men concerned were in fact undercover officers. They were furthermore invited to provide evidence including personal effects, photographs and deeply personal correspondence to the police officers investigating their complaints, again without it being confirmed that such intimate mementos were relevant to the investigation.

The overwhelming and most common form of damage caused to each of my clients as a result of their experience of discovering they were in fraudulent relationships with undercover police officers, has been a fundamental sense of betrayal and undermining of their trust in the police and in relationships in general. If you really consider what they have been subjected to, you may begin to appreciate why trusting in a police investigation is, to say the very least, a big ask.

I expressed this concern in my letter to Keith Vaz to which you respond, and went on to comment on the terms of reference of the investigation which you provided to us. I referred to your indication that any reports that are published, following the investigation, will be "subject to the usual legal safeguards." I indicated that it was unclear what this meant in the context of an on going policy of NCND being operated in respect of the work of undercover officers. In other words if you cannot confirm or deny that an named individual was an undercover officer, how can you begin to publicly provide any comment, following your investigation, on the alleged officer's activities?

In your letter of 12 August, you state that you "totally understand" the concerns raised, but that "there are very sound operational reasons why this policy is maintained, not only by the police but by other agencies that use intrusive undercover tactics". However, firstly I note that there is not actually a consistent approach around NCND and furthermore, I consider there are sound reasons of public accountability why such a policy cannot be maintained, at least in respect of the exceptional circumstances of the complaints made by our clients.

Contrary to what you state, NCND has not been consistently maintained by the police, nor is it, I would suggest, really a policy rather than a common or "normal practice". For example, the HMIC in their report published in February 2012, following revelations about activities of the former undercover officer, Mark Kennedy, stated that exceptionally they would depart from this "normal practice". I also note that in the context of the litigation involving my clients, the first time such a policy was mentioned to us was some six months after correspondence began, in a letter dated 25th June 2012. More significantly perhaps, in relation to Operation Herne, in its earlier manifestation, when initially focused on an investigation into one police officer's transgressions, not only did the police investigating the allegations confirm his identity to the complainant, but they compassionately apologised for his conduct. I enclose a copy of the terms of reference of the Jim Boyling investigation that was provided to us,

which clearly does confirm Boyling as an undercover police officer. So in relation to two undercover police officers, at least, a policy of NCND has not been maintained.

Furthermore, I note that only last week the Met Commissioner Sir Bernard Hogan-Howe was widely quoted in the media as urging "the ex-undercover officer who claims smear tactics were used on the family of murdered Stephen Lawrence to speak to police". It therefore seems utterly ludicrous and inconsistent for the police to claim that you cannot even confirm the other officers who have already publicly confessed to their previous activities, not least Bob Lambert, a former DI in charge of the SDS unit at a critical period in its history, who has personally apologized through the media for his personal involvement in intimate sexual relationships whilst an undercover officer. It strikes us that the adoption of NCND is a tactic to avoid any public acknowledgement or scrutiny of gross human rights abuses carried out by these officers. My clients would certainly not contemplate cooperation with Operation Herne while a policy of NCND is maintained in relation to their complaints.

However, my clients also have wider concerns about Operation Herne.

A High Court judge has acknowledged that the allegations made by my clients, if true, amount to "the gravest interference with their fundamental rights". They reach the threshold, it is submitted, of "inhuman and degrading treatment" and as such amount to a violation by the police of Article 3 of the European Convention on Human Rights. Leaving aside the fact that in this particular case, the complainants' trust in the police has been, by definition, betrayed, the procedural obligations imposed by Article 3 require an independent and effective investigation.

I regret that my clients have no confidence in Operation Herne, the Metropolitan police or, indeed, the police in general. They have no confidence that your investigation can be courageous, transparent, open and thorough in a way that lessons can not only be learned but the public can be confident that such lessons are learned. Their trust in the police has been so thoroughly undermined by their experiences that they believe only a fully independent public investigation or inquiry can begin to address the issues that have emerged from this dark chapter in British policing.

Finally I note your invitation to meet with my clients. At least some of my clients would be willing to meet with you and I have also indicated in correspondence with the Metropolitan police solicitors, that they would also be willing to meet with Bernard Hogan Howe. However, you will appreciate that the context of any such meeting is premised on what is said above.

Yours faithfully,



Harriet Wistrich

BIRNBERG PEIRCE & PARTNERS

Cc: Keith Vaz, Home Affairs Select Committee;
Independent Police Complaints Commission.

Harriet Wistrich

From: Steve.Williams3@met.police.uk
Sent: 15 July 2011 13:18
To: Harriet Wistrich
Cc: Kirstie.E.Masters@met.police.uk
Subject: RE: [REDACTED]

Harriet

Here are the terms of reference

Terms of Reference







1. Investigate the allegations published in the Guardian on 20th January 2010 and in letters sent to Jim Boyling relating to his deployment as an undercover officer.
2. Investigate whether any other officers are involved in these allegations.
3. Review the management and deployment of this officer and other MPS officers identified in this enquiry against both MPS and national guidelines.
4. To consider and report on any criminal or misconduct offences that may have been committed by any police officer or member of MPS staff involved in these allegations.
5. To identify any organisational learning for both the police and other agencies involved in the deployment of undercover officers.

I should have the other transcript with you by next Friday as the week. I will ask that Kirstie email you next week the areas that we would like expanded on with [REDACTED]

Once again thank you and your colleague for all your help and assistance.

Regards

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From: Harriet Wistrich [mailto:H.Wistrich@birnbergpeirce.co.uk]

07/05/2013