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John Finnie MSP
Convenor
Justice sub-committee on Policing
The Scottish Parliament
EH99 1SP

7th February 2018

Dear John,

I am pleased to enclose a copy of HMICS's report, 'A Strategic Review of Undercover Policing in Scotland'.

I directed Her Majesty's Inspectorate of Constabulary in Scotland (HMICS) to undertake this review on 22 September 2016. I asked that the review should: provide an independent review of the operation, procedures and safeguards in place by Police Scotland with a view to providing assurance to Ministers, the Parliament and the public; and examine the extent and scale of undercover policing in Scotland from 2000, including the undercover policing operations carried out in Scotland by the Special Demonstration Squad and the National Public Order Intelligence Unit.

HMICS has made 19 recommendations, all of which are for Police Scotland to take forward. Police Scotland has undertaken to implement all 19 of the recommendations.

The report puts undercover policing in the context of the *Policing 2026* strategy, assesses capacity, reports the scale of undercover policing in Scotland as being at a low level, identifies scope for improvements, and records that procedures for authorisation have been tightened up.

Despite the evidence that the Special Demonstration Squad (SDS) and the National Public Order Intelligence Unit (NPOIU) had been active in Scotland, you will be aware that the terms of reference for the Undercover Policing Inquiry did not and do not extend to Scotland.

I wrote on a number of occasions to both Theresa May and Amber Rudd stating that I was disappointed that the terms of reference of the Undercover Policing Inquiry would not be extended to allow it to consider the evidence of these two English and Welsh units' activity north of the border. In her letter of January 2016, Theresa May wrote that the Inquiry is '...interested in the whole story and are bound to encourage those coming forward to provide

a complete picture when submitting their evidence.’. Despite that response, neither Mrs May nor her successor saw fit to extend the terms of reference in order to allow that ‘whole story’ to be considered.

The HMICS report confirms that undercover officers from the SDS and the NPOIU, were active in Scotland. This activity, however, was not, as the Scottish Government understands it, standalone and not self-contained within Scotland. Nor did it have any particularly Scottish focus. There was nothing that set it aside as something distinctive from the units’ activities which are being considered by the Undercover Policing Inquiry.

The report makes clear that, outwith G8, Scottish police forces were unsighted on SDS and NPOIU operations in Scotland. I welcome the HMICS recommendation that Police Scotland should, in partnership with the relevant UK bodies, establish a formal process for the reciprocal notification of cross-border undercover operations.

The Scottish and UK Governments are currently subject to a judicial review related to the Undercover Policing Inquiry. It challenges the UK Government on its decision not to extend the Undercover Policing Inquiry to cover Scotland, and it challenges the Scottish Government because it has not held a 2005 Act inquiry with similar terms of reference in Scotland.

We have seen no evidence of the sorts of behaviours by Scottish police forces that led to the establishment of the Undercover Policing Inquiry.

I have considered carefully whether to exercise the power under the Inquiries Act 2005 to establish a separate Scottish Inquiry under that Act. In all the circumstances I am not satisfied that establishing a separate inquiry is necessary or is in the public interest.

There is some legitimate public concern around undercover policing activity in Scotland and I have had regard to those concerns in reaching a decision on this matter. On balance, however, I consider that establishing a Scottish inquiry under the 2005 Act into undercover policing is not justified. A number of factors have led me to that view including the lack of evidence of any systemic failings within undercover policing in Scotland. In light of the limited scale of the activities of SDS and NPOIU police officers in Scotland, I believe setting up a further inquiry would not be a proportionate response.

I believe such an inquiry would inevitably create a measure of duplication with the Undercover Policing Inquiry by involving many of the same core participants, law enforcement officers and has the potential to overlap in its conclusions and remedies.

It could, because of the scale and duration of the Undercover Policing Inquiry, be subject to potential delay in obtaining Metropolitan Police Service participation and documentation, and would not represent value for money for Scottish tax-payers.

Responsibility for the actions of English and Welsh police units sits with the UK Government, London’s Deputy Mayor for Policing and Crime, and the relevant Chief Officers. The Scottish Government’s position remains that the clearest and most effective way of addressing concerns about what may have happened in Scotland as a result of actions of English and Welsh police officers is for the terms of reference of the Undercover Policing Inquiry to be extended to allow it to look at the activity of English and Welsh police operations which took place across Great Britain. Accordingly, I have written again to the Home Secretary to ask her to reconsider those terms of reference and have provided her with a copy of HMICS’s strategic review.

Any recommendations that arise from the Undercover Policing Inquiry will be considered carefully and, where appropriate and necessary, will be implemented in Scotland.

I am clear, on the basis of the evidence that we have, that such behaviours by police officers in English and Welsh units is properly a matter for the Home Secretary and that the most effective way for the Undercover Policing Inquiry to see the 'whole story or complete picture' that the current Prime Minister referred to previously is for that Inquiry to be allowed to consider all the relevant evidence. A copy of that letter is attached for the Sub-committee's interest.

Best wishes



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Rt Hon Amber Rudd MP
Home Secretary
Home Office
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7 February 2018

Dear Amber,

As you will be aware, in September 2016 I directed Her Majesty's Inspectorate of Constabulary in Scotland (HMICS) to undertake a strategic review of undercover policing in Scotland. The report was laid in the Scottish Parliament this morning at 10.00 am and I have enclosed a copy of that report for your interest.

My decision to direct HMICS in this matter followed a series of letters between myself and your predecessor in which I asked the then Home Secretary to consider amending the terms of reference of the Undercover Policing Inquiry (UCPI) to allow it to consider English and Welsh undercover policing activity in Scotland. This request was refused.

The HMICS report makes a number of recommendations, all of which are for Police Scotland to take forward. Police Scotland has committed to implementing each of the recommendations.

The report notes that the use of undercover policing in Scotland by Scottish police forces has not been widespread. Indeed, HMICS offers the view that the tactic may be underutilised in Scotland. That, of course, is an operational matter for Police Scotland.

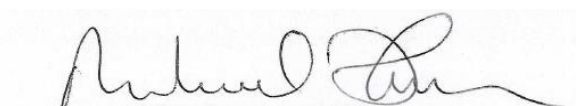
The report also touches on activity in Scotland of the Special Demonstration Squad (SDS) and the National Public Order Intelligence Unit (NPOIU). Paragraphs 163 to 178 of HMICS's report provide information about these units' activity in Scotland. Paragraph 177 records that the authorisations in respect of the SDS and NPOIU in support of the G8 policing operation were for 'the purpose of preventing and detecting crime or of preventing disorder' and were made under the Regulation of Investigatory Powers Act (RIPA) 2000, in addition to being authorised by Tayside Police under the Regulation of Investigatory Powers (Scotland) Act 2000. In terms of authorisations made for these units, RIPA would have been the appropriate legislation, but only so long as not all of the activity took place in Scotland. It appears, therefore, that the authorised activity by these units in Scotland was part of a wider operation covering activity elsewhere. Any activity which took place in England and Wales will be a matter for consideration by the UCPI but it seems wholly illogical for the UCPI to be

presented with only partial information in relation to operations which spanned Great Britain but contained a Scottish element.

HMICS's report provides reassurance to the public and to the Scottish Parliament around the extent and scale of the use of undercover policing carried out by Scottish forces since 2000. The Scottish Government's position remains that the clearest and most effective way of addressing concerns about how other units operated in Scotland is for the terms of reference of the UCPI to be amended to allow it to look at the activity of English and Welsh police operations which took place across Great Britain and included Scotland. I would ask you to reconsider the previous decision not to extend UCPI's terms of reference.

I am copying this letter to the Convenor of the Scottish Parliament's Justice Sub-committee on Policing.

I look forward to hearing from you.



MICHAEL MATHESON