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cc Lord West
David Normington
Yasmin Diamond
Simon Wren
Tyson Hepple
Stephen Kershaw
Lucan Herberg
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[Redacted]
SPADS

*HS/ Here is the formal
advise you asked
for on the case
for calling in
HMIC to review
the police handling
of the handling
allegations. It recommends
against, but also that we should await
the outcome of the CPS and IPCC reviews.
I suggest we accept this for the time being,
but will check you will want further
advise
once the result of the CPS
review (and IPCC report) are known.*

David Hanson)
Home Secretary) simultaneously

**POLICE ACTION IN RELATION TO ALLEGATIONS OF PHONE TAPPING
BY JOURNALISTS – POSSIBLE ROLE OF HMIC**

Issue

You (Home Secretary) asked for advice on whether HMIC should be asked to look at the police handling of this case.

Timing

2. Urgent. You asked for advice today.

Summary

3. Although a case can be made for requiring HMIC to carry out a review of the police handling of this case, on balance I consider it would set an unhelpful precedent and create an impression that any time concerns are raised about a specific police investigation, HMIC will investigate; it could lead to accusations that we are being led by the media; and, that following recent exchanges with John Yates, we did not have full confidence in the MPS. I believe that we should await the outcome of the current CPS reviews which is likely to be in the next few days. We should also wait to see whether the IPCC sees issues for it to investigate.

Recommendation

4. That HMIC should not be asked to review the police investigation at this stage. If you agree, we can submit further advice on options in the light of the outcome of the CPS review.

*Richard
15/7
HS- Since writing the above, we've
now received a copy of a
letter Keith Vay on behalf
of the HMIC
has today
sent Paul
Stephan
(attached)
posing a series of questions. I
don't think it immediately
changes the advice on HMIC.
I've
asked officials to find out how
the Met are proposing to handle
the request.*

*Agreed.
AS
15/7*

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Consideration

5. The MPS carried out an investigation in 2006 following concerns raised by the Royal Household about security breaches within telephone networks. The investigation uncovered wider attempts at unlawful interception. In January 2007, Clive Goodman and Glen Mulcaire were imprisoned for offences under section 1 of the Regulation of Investigatory Powers Act 2000. The latest allegations are that there were other journalists involved in similar illegal activity (including offences under the Data Protection Act, which fall to the ICO to consider), and that the original police investigation was not as thorough as it could have been as only one journalist and one private investigator were prosecuted and convicted - and that the review last week by AC Yates was too narrow in looking at only the original police investigation (and was carried out so quickly that the review could not have been thorough even within its own terms).

6. A case can be made for requiring HMIC to carry out a review, and you have the power to require an inspection of any matter. Under Section 54(2B) of the Police Act 1996, you may at any time require the Inspectors of Constabulary to carry out an inspection of a police force; and a requirement under this sub-section may be confined to a particular part of the force in question, to particular matters or to particular activities of that force.

7. The 2008 Policing Green Paper announced significant changes to HMIC's core responsibilities; altering its focus from an inward facing professional inspection body to a public facing organisation focused on championing the public interest, functioning both as an inspector and a regulator. The Inspectorate's lead on investigating the G20 protests indicates the move in this direction and an investigation in these circumstances could likewise be seen as inspecting policing in the public interest.

8. The issue is whether the matters are of sufficient seriousness that they would merit such involvement, measured for example, by Parliamentary and public concern; what we would want it to achieve; and how it would be perceived by Parliament and the public, and by the MPS (and indeed the police service more generally).

9. There is little question that attempts by journalists and others unlawfully to intercept telephone communications and unlawfully obtain personal information, are serious matters, and that it is a matter of legitimate public concern that such matters should be properly investigated. In informal contact with him last week, HMCIC thought that the issues, as they were being reported, related sufficiently to public confidence in the police that HMIC might have a role if Ministers wanted an independent assessment.

10. The purpose of an HMIC review would be to offer assurance to Parliament, the public, and Ministers that all matters had been fully and effectively investigated by the police.

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11. Requiring HMIC to carry out such a review would be interpreted differently by different audiences. It might be welcomed by some commentators on its own terms. Some might see it as a reaction to media coverage and the Home Office succumbing to Parliamentary pressure and be presented also as Ministers lacking confidence in the MPS. The MPS itself could be expected to strongly and publicly resent what they would regard as operational interference.

12. The balance between pros and cons seems to me to be along the following lines:

Advantages of asking HMIC to look at the police handling of the allegations

- ◆ It would give Ministers an independent assessment of whether the police had done all that they could in respect of the original investigation and/or the most recent issues raised by the press articles.
- ◆ It would show that Ministers took the matter seriously and counter any claim that they were being complicit in a "cover up" by the police, especially in view of the speed with which the MPS completed their review on 9 July.

Disadvantages

- ◆ We still await the outcome of the CPS review which is the key event in the current case. The CPS are consulting the MPS as part of the review, and are urgently examining the material supplied by the police to satisfy the DPP and assure the public that the appropriate actions were taken in relation to that material.
- ◆ We are also waiting to see whether the IPCC, in discussion with the MPA, sees issues falling within its remit.
- ◆ By inviting HMIC to look into the police handling of this case it would be more difficult to resist calls for such external involvement in other cases of specific operational practice. The difference between G20 in this respect is that that has been drawing out much wider lessons for all forces around policing protests. This on the other hand is a very specific investigation. Apart from the resource implications for HMIC, it may come to be seen as the default option for responding to cases of high profile of public or Parliamentary concern, undermining the role played by police authorities in holding their forces to account.
- ◆ Following John Yates' statement on the case last week, when he effectively ruled out a renewed investigation, inviting HMIC to carry out a review might be portrayed as a way of Ministers seeking to second guess an operational matter.
- ◆ When HMIC carries out an inspection under section 54 of the Police Act they must send a report on the inspection to the Secretary of State, who

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under section 55 must arrange for the report's publication in such manner as appears to him to be appropriate. Redactions can only be made for a part of the report if its publication would be against the interests of national security or might jeopardise the safety of any person. Commissioning an HMIC inspection therefore commits you to publishing the eventual report with little room for manoeuvre.

Scope of a review

13. If HMIC were to carry out a review they could be asked to look at:-

- ◆ The police handling of the original inquiry to determine whether they had pursued all lines of investigation to enable them to pass all relevant and best evidence to the CPS for consideration, (and whether their action in respect of informing people targeted was properly handled).
- ◆ However, the outcome of the CPS review may give us some confirmation on the thoroughness of the original MPS investigation. An HMIC review along these lines would be a large undertaking which HMIC would be unlikely to be able to complete quickly.
- ◆ Whether the MPS examined fully and properly the material which appeared in The Guardian last week, and whether there was a case for them to have actively sought any new evidence (rather than simply review the old evidence in the light of the material which appeared in the Press). This would be a smaller scale review.
- ◆ Or, HMIC could be asked to carry out a review of both the original investigation and the MPS review last week. This would be a considerable undertaking.

Resources

14. Any decision to require HMIC to carry out a review would impact on its programme of other work to a greater or lesser extent depending on the timescale set for the review. But HMIC is already pretty fully stretched in relation to existing priorities, in its current state of undercapacity (with Denis O'Connor and others I am currently interviewing for four new HMIs).

Handling

15. If a decision was taken to require HMIC to carry out a review, we would need to ensure that it was not presented as the Home Office being led by the media, but rather as proportionate action to ensure that the public and Parliament could have confidence that the matters raised had been properly investigated in view of their seriousness. Equally, a decision not to proceed at this stage – in view of Charles Clarke's comments – would need to be

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presented as a clear statement of the Home Office's confidence in the investigative process.

STEPHEN RIMMER

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