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From: Peter Edmundson  
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Tel: 020 7035 0897

20 July 2009

cc

Lord West (see *file*). It looks  
David Normington  
Stephen Rimmer  
Yasmin Diamond  
Simon Wren  
Tyson Hepple  
Stephen Kershaw  
Lucan Herber

*HS/ You are invited to agree a  
the low key WMS or helming  
file. Robert  
20/7*

SPADS

*✓ AS  
20/7*

David Hanson )  
Home Secretary ) simultaneously

**POLICE ACTION IN RELATION TO ALLEGATIONS OF PHONE TAPPING  
BY JOURNALISTS**

**Issue**

You (Home Secretary) asked for an update and further advice regarding the handling of this case.

**Timing**

2. Urgent. You asked for further advice by today and if you agree that a WMS should be made to update the House before Recess, the title will need to be laid before close of business today.

**Summary**

3. We now have the benefit of the DPP's statement following the CPS review, and of the MPS's responses to detailed questions from both Keith Vaz and to the Culture, Media and Sports Select Committee. The statement by the Director of Public Prosecutions explained that he was satisfied that the CPS was properly involved in providing advice both before and after the charging of Clive Goodman and Glen Mulcaire and that the Metropolitan Police provided CPS with all the relevant information and evidence upon which charges were based; and that the prosecution approach in charging and prosecuting was proper and appropriate. He concluded that it would not be appropriate to re-open the cases against Goodman or Mulcaire, or to revisit the decisions taken in the course of investigating and prosecuting them. The MPS responses to HASC and the Culture, Media and Sports Select Committee suggests, in a way that the MPS was unable to articulate fully

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when the story broke on 9 July, that the police investigation was proportionate.

Recommendation

4. That HMIC should not be asked to review the police investigation and, if you agree, a Written Ministerial Statement as drafted (Annex E) should be made.

Consideration

5. You (Home Secretary) previously requested advice regarding this case which was provided in a submission from Stephen Rimmer on 14<sup>th</sup> July (Annex A). Since then, Keir Starmer QC, Director of Public Prosecutions has issued a detailed statement (Annex B) in which he has stated that he is satisfied that in relation to the cases of Goodman and Mulcaire, the CPS was properly involved in providing advice both before and after charge and that the Metropolitan Police provided CPS with all the relevant information and evidence upon which charges were based. Keir Starmer made clear that the purpose of making his statement was ***'not because I had any reason to consider that there was anything inappropriate in the prosecutions that were undertaken, but to satisfy myself and assure the public that the appropriate actions were taken in relation to that material'***.

6. The statement from Keir Starmer makes clear that in addition to finding evidence that supported the conspiracy between Mulcaire and Goodman regarding the Royal Household allegations, the Metropolitan Police also uncovered further evidence of interception. In August 2006 the CPS reviewing lawyer, the police and leading counsel met to decide the most appropriate prosecution approach.

7. From a prosecution point of view what was important was that any case brought to court properly reflected the overall criminal conduct of Goodman and Mulcaire. It was the collective view of the prosecution team that to select five or six potential victims would allow the prosecution properly to present the case to the court and in the event of convictions, ensure that the court had adequate sentencing powers. To that end there was a focus on the potential victims where the evidence was strongest, where there was integrity in the data, corroboration was available and where any charges would be representative of the potential pool of victims. The willingness of the victims to give evidence was also taken into account. It was the view of the CPS that any other approach would have made the case unmanageable and potentially much more difficult to prove. This is an approach that is adopted routinely in cases where there is a large number of potential offences.

8. The DPP's statement does contain the not unreasonable caveat that he is not in a position to say whether the police had any information on other victims or suspects that was not passed to the CPS. The issue of whether the

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police investigation was unduly limited or was otherwise too narrow in presenting evidence to the CPS to consider and in particular whether other journalists should have been charged is answered by John Yates' answer to point 5 in Keith Vaz's letter.

9. The Metropolitan Police has written to both the Home Affairs Select Committee (in response to a request for further information from Keith Vaz) and separately in providing written evidence to the Culture, Media and Sports Committee (Annexes C&D respectively). In his letter to the Rt hon Keith Vaz, Assistant Commissioner John Yates acknowledges that there has been much speculation about potential criminal involvement of other journalists in this case. He states that whilst other journalists' names appeared in material seized by Police, there was insufficient evidence to support any criminal conspiracy on their part.

10. The Independent Police Complaints Commission (IPCC) have received a complaint from Chris Huhne and in accordance with the provisions in the Police Reform Act 2002, governing the police complaints system, have passed the complaint to the Metropolitan Police to respond to. Should the Metropolitan Police decide that the complaint relates to the direction and control of the force and therefore a matter to be dealt with outside the police complaints system, the complainant will have a right of appeal to the IPCC for the Commission to determine whether the complaint should be recorded and dealt with as a complaint against the conduct of a person serving with the police.

11. In view of the outcome of the review by the Director of Public Prosecutions, including his detailed statement made with a view to assuring the public that appropriate action was taken in this case and the more detailed explanation to the two Select Committees from John Yates, we believe the developments support the original advice to you that we should not ask HMIC to become involved.

12. In terms of updating Parliament, you could provide a further Written Ministerial Statement (a suggested draft at Annex E), although this would require the title to be laid in Parliament by close of business today in order that the statement can be made before Recess.

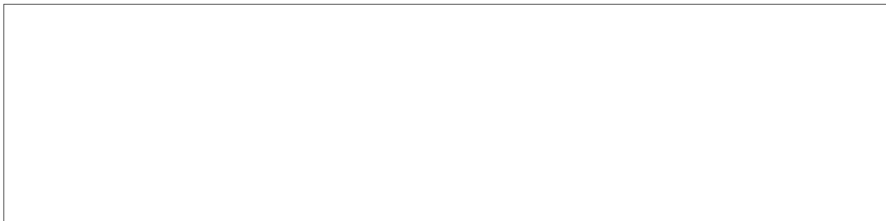
Resources

13. As set out in the earlier advice to you, 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. HMIC is already pretty fully stretched in relation to existing priorities, in its current state of under-capacity.

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Handling

14. In view of the CPS review and subsequent detailed statement by the DPP, any decision to conduct a further review would be seen as potential political interference in operational policing decisions and implied lack of confidence in, or criticism of, the DPP/CPS.



PETER EDMUNDSON

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Annex A

From: Stephen Rimmer  
Director General  
Crime and Policing Group  
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Tel: 020 7035 1439

14 July 2009

cc Lord West  
David Normington  
Yasmin Diamond  
Simon Wren  
Tyson Hepple  
Stephen Kershaw  
Lucan Herberg  
Peter Edmundson  
Victoria Latham  
SPADS

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.

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**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.

**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

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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.

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

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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 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 under-capacity (with Denis O'Connor and others I am currently interviewing for four new HMIs).



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

STEPHEN RIMMER

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Annex B

DPP's findings in relation to 'phone hacking'

A statement by Keir Starmer QC, Director of Public Prosecutions

On 9 July 2009 I issued a statement indicating that I had asked for an urgent examination of the material that was supplied to the Crown Prosecution Service (CPS) by the police in this case.

I made this statement not because I had any reason to consider that there was anything inappropriate in the prosecutions that were undertaken, but to satisfy myself and assure the public that the appropriate actions were taken in relation to that material.

That examination has now been completed by the Special Crime Division of CPS Headquarters (SCD).

**Background**

Following a complaint by the Royal Household, the Metropolitan Police Service first contacted the CPS on 20 April 2006 seeking guidance about the alleged interception of mobile telephone voicemail messages. The potential victims were members of the Royal Household.

During April and May 2006 there followed a series of case conferences and exchanges between the CPS reviewing lawyer dealing with the case and the police in relation to these alleged interceptions. Advice was given about the nature of evidence to be obtained so that the police could make policy decisions about who ought to be treated as victims. Advice was also given about how to identify the individual(s) responsible for these alleged interceptions.

During June and July 2006 there were further discussions and conferences between the reviewing lawyer, the police and leading counsel instructed by the CPS. On 8 August 2006 the reviewing lawyer made a charging decision in respect of Clive Goodman and Glen Mulcaire. They were arrested the same day.

On 9 August 2006 Goodman and Mulcaire were charged with conspiracy to intercept communications, contrary to section 1 (1) of the Criminal Law Act 1977, and eight substantive offences of unlawful interception of communications, contrary to section 1 (1) of the Regulation of Investigatory Powers Act 2000. The charges related to

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