

Options for Dealing with the potential 'victims' issue

Introduction

This briefing note is intended to suggest potential options as to how we can satisfy the commitment made by ACSO John Yates to ensure that all 'victims' in operation Caryatid had been informed.

The challenge in this operation has always been to form a view as to who is a victim and in the context of this investigation, a victim of what, because if we are going to contact them, what are we telling them?

The original victim strategy recognised that dilemma and therefore an important aspect of that strategy was that as well as dealing on a 'tactical' level as to who and how a 'victim' would be informed it acknowledged that although there was no evidence, the practice uncovered could well be wide spread and therefore the wider strategic 'potential victim duty of care' was to protect to whole of the UK present and future from this level of intrusion. There remains a case for arguing that given the challenges around ever knowing who was a 'victim' of what, we the police service have been absolutely proportionate and diligent in the use of public resources to bring clarity to the murky and costly arena of public intrusion as to what is a crime and punishable by imprisonment. Furthermore we have influenced the service providers to introduce measures that prevent and protect all users thereby doing our duty in terms of justice being visibly seen to be done and preventing further criminality of this nature for the wider good.

The Nick Davies FOIA request, particularly around how many people did Mulcaire and Goodman have mobile phone numbers for and pin numbers is a good question and given the public understanding as to how interception might take place, all of those components are required before an interception would even be possible. That in a sense is stage 1. Stage 2 would be having acquired that information to actually use that information to dial a voicemail and use the pin to access any voicemail.

The original 'victim' strategy set the bar of potentially becoming a victim at *"for those people who we know are victims by virtue of the fact that our suspects called their voicemails (UVNs)."* – in other words stage 2 would have happened.

Any decision as to whether this remains our 'victim' point needs to be considered against the public statement made by ACSO John Yates in the summer of 2009: -

"I therefore need to ensure that we have been diligent, reasonable and sensible, and taken all proper steps to ensure that where we have evidence that people have been the subject of any form of phone tapping, or that there is any suspicion that they might have been, that they have been informed."

The key part of that statement that effects our decision as to whether a 'victim' changes from the stage 2 interpretation to something else is for us to decide what constitutes "*any suspicion that they might have been.*"

From the moment the reply to the Nick Davies letter is sent with the answer 91 individuals fit the person/mobile number/pin criteria we need to be ready to stand by our interpretation of "*any suspicion that they might have been*" to meet any further questions from anyone, particularly if they are along the lines of and '*that they have been informed.*'

Options

DI Mark Maberly has now completed an examination of the 91 (name/mobile/pin) and he has identified 13 people who: -

- Will not have been contacted by us and potentially the service providers and
- from the billing data provided as part of the original investigation, there are calls that are greater than 10 seconds (i.e. enough to enter the voicemail and listen to any message left as per the criteria used for the trial).

Albeit not proved at an evidential level that interception has taken place, if the data is correct then there is a case for saying that for these individuals the possession of their name/mobile/pin has probably gone beyond more than merely preparatory and therefore there is suspicion that some form of 'phone tapping' may have taken place. The following are options for informing them.

Option 1

Police try to contact these people using the mobile numbers listed by Mulcaire and tell them that they fall into this category.

If we did this I would suggest we are quite firm on saying that we are not investigating the case, we are simply carrying out John Yates promise to inform people and if they have any concerns to contact their service provider.

If we cannot contact them, because the phone is now out of use or has moved on to someone else then that would be the end of the process on the basis that we have '*been diligent, reasonable and sensible, and taken all proper steps.*'

Issues to consider: -

- This case is now nearly 4 years old, we are not carrying out an investigation and all the time we are spending public money on something that is not making

anyone any safer. At best we would be handing someone an opportunity to make personal gain through the civil courts which does not assist the wider public good.

- It probably would possible to undertake further enquiries beyond ringing the phone numbers to try to contact those individuals. A view might be that some of the people are well known and it would have been 'easy' to make contact. However, it might not be as easy as it seems, because we could be limited in terms of our full range of research methods as this is not an investigation and that could delay notification in some instances. Equally the more lengths we go to contact individuals, potentially through other people, we risk breaching their anonymity around this case, again for no great gain. Where is the balance of reasonableness?
- For some of the 13 we are not sure who they are/their relevance in terms of known individuals.
- This is something that could be done immediately, before the Nick Davies FOIA letter goes out.

Option 2

We approach the service providers directly and/or through Jack Wraith (who originally coordinated much of the contact/press lines with the service providers) and supply them with details of these last few people and ask them to clarify whether or not they have any concerns and make contact with the customer.

Issues to consider: -

- This would share the responsibility for determining who is a 'victim' with the service providers as it was the weaknesses in their system that has caused all this work for us and in theory if they had any concerns back in 2006 they should have contacted their customers.
- This would take an unknown time and it is important to send out the Nick Davies FOIA this week.

Option 3

We could complete Option 1 immediately and then consider pursuing the remainder through option 2. If the combination of both did not make contact then that would be deemed reasonable and diligent.

Conclusions

- All of the above come with risk in the sense that the material we have seized is only a 'snapshot in time' and there may be others who were potentially 'victims,' - we can only go on what we have seized if we use the Nick Davies logic.
- Following on from above, whichever option we follow, it is worth bearing in mind that we will not have researched all of these individuals in Holmes unless they fall into the category of having specifically written in. In reaching this position we are trying to use the most efficient means of trying to establish whether there is any reason to suspect interception, i.e. what does the telephone data tell us. Each individual could be researched in far more depth, but it would all take time and resources which we do not believe is reasonable in the overall circumstances.
- Whatever our decision we believe we should reply to Nick Davies ASAP - DPA have prepared appropriate lines for if asked questions.
- We should consider briefing the CMS on the reply to Nick Davies as we reply to him.

Philip Williams
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