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SERIOUS ORGANISED CRIME AGENCY



Review of Undercover Deployment in Support of Her Majesty's Inspectorate of Constabulary's Independent Review of the National Domestic Extremism Unit.

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**2. EXECUTIVE SUMMARY**

- 2.0.1 This report concerns a review of the deployment and management of police constable Mark KENNEDY as an undercover officer by the National Public Order Intelligence Unit (NPOIU) between July 2003 and January 2010 under operations PENGUIN and PEGASUS.
- 2.0.2 The following Terms of Reference as agreed by the Association of Chief Police Officers (ACPO), Nottinghamshire Police and the Metropolitan Police Service (MPS) were issued to the Serious Organised Crime Agency (SOCA):
- to identify whether the actions of KENNEDY were consistent with those authorised for his deployment and if found to be inconsistent to report upon the nature and seriousness of any breach;
  - to establish if the management and records relating to his overall deployment against environmental extremism and in particular this investigation were in accordance with the relevant codes and legislation and that appropriate records were made by the appropriate authorising authorities.
- 2.0.3 The review has not considered any case specific issues of compliance with the Criminal Procedure and Investigations Act 1996 (CPIA).
- 2.0.4 The review makes findings directly against the terms of reference and also on further aspects of the deployment and management of KENNEDY.

**2.1 Summary of Findings against the Terms of Reference**

- 2.1.1 KENNEDY's actions are found to be broadly consistent with those authorised for his deployment in that he met the majority of the operational objectives set and exploited intelligence gathering opportunities in furtherance of those objectives.
- 2.1.2 There are occasions where KENNEDY, whilst still acting within the terms of his authorised use, conduct and participation status, acted outside of the parameters set by his line managers where he made operational decisions in direct contradiction with instructions.
- 2.1.3 Any engagement by KENNEDY in sexual relationships with women was entirely inconsistent with both his authorisation and line management instructions. There is no evidence that the NPOIU were aware of any inappropriate relationships.
- 2.1.4 This review has identified two instances where KENNEDY was deployed where there was no authorisation for his use and conduct under the Regulation of Investigatory Powers Act 2000 (RIPA) in place. In 2005 there was a three day period due to poor administrative processes. In 2008 there was a five day period when responsibility for the authorisation moved from the MPS to Nottinghamshire Police.
- 2.1.5 In each case where KENNEDY was deployed overseas the NPOIU had an authorisation under RIPA for his use and conduct in place [REDACTED]

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- [REDACTED]
- 2.1.6 Full records were kept of all authorisations in accordance with RIPA. The material relating to KENNEDY's intelligence gathering activities, whilst comprehensive, was not maintained to the standard which would be expected within an evidential, criminal justice arena.

## 2.2 Further Findings

- 2.2.1 This review inevitably highlights the vulnerabilities in systems, processes and practices and concentrates on areas of risk. The successes of Operation PENGUIN/PEGASUS should also be acknowledged.
- 2.2.2 KENNEDY successfully infiltrated a close community of activists over a sustained period enabling him to consistently report accurate, timely intelligence on the plans and capabilities of individuals and groups engaged in criminality linked to protest. This intelligence allowed the police to provide a proactive and proportionate response to prevent crime and public disorder and to ensure the safety of the public and those engaged in legitimate, peaceful protest.
- 2.2.3 The review has not identified any catastrophic failure on the part of KENNEDY or the NPOIU. It has identified a number of issues regarding the direction, control and actions of KENNEDY and a combination of factors that culminated in the relationship between KENNEDY and the police service breaking down by the time he resigned in March 2010.
- 2.2.4 These can be broadly grouped into two areas:
- welfare and psychological support;
  - management and supervision.

### **Welfare and Psychological Support**

- 2.2.5 Both the legislation and ACPO guidance mandate arrangements for ensuring the security and welfare of a person acting as a source. The cover officer for KENNEDY dealt adequately with his day to day safety and security and provided good levels of logistical support.
- 2.2.6 The longer term aspects of his well-being and personal development were less well provided for. Little consideration was given to an exit strategy to allow for short term extraction during the deployment or to allow for his withdrawal [REDACTED] KENNEDY was routinely deployed for long periods of time without rest days. [REDACTED]
- KENNEDY did not take periods of absence on a regular basis**
- 2.2.7 Whilst the need for a post deployment plan was acknowledged, it was addressed at a superficial level whilst he was operationally deployed. Training courses to support KENNEDY's long term development as a police officer and to enable reintegration beyond his role in the NPOIU were identified but not progressed due to a lack of commitment to this on the part of both KENNEDY and the NPOIU, although the NPOIU did place more emphasis on

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his skills development and reintegration into mainstream policing in the latter part of his deployment.

- 2.2.8 KENNEDY developed close relationships with subjects of Operation PENGUIN/PEGASUS and other activists and protestors. He was deployed for a protracted period and his secondment to the NPOIU was extended beyond the usual five year period. There was an over-reliance upon KENNEDY's scheduled meetings with a psychologist as a control measure to mitigate the risks to his psychological wellbeing.

### Management and Supervision

- 2.2.9 There was a lack of strategic direction and senior management oversight for Operation PENGUIN/PEGASUS. From 2003 to late 2006 the MPS SO12 Command was responsible for the NPOIU. Domestic Extremism was not considered a priority or core business of the command and received little senior management input. The National Coordinator for Domestic Extremism (NCDE) took responsibility for the NPOIU in late 2006. The first evidence of the NCDE providing any strategic direction, in the form of a review, was not until August 2008. The overall strategy for Operation PENGUIN/PEGASUS was, therefore, defined by the NPOIU itself and to a certain extent by KENNEDY through the intelligence that he generated.
- 2.2.10 The review has identified a quantity of records made by the cover officer and operational heads in relation to KENNEDY's deployment and their decision making. However, there was a lack of challenge in both the operational direction and line management of KENNEDY at key times.
- 2.2.11 This was exacerbated by the lack of adequate checks and balances to monitor, evaluate and manage KENNEDY's deployment. The measures in place, such as monitoring intelligence reporting on his activities whilst deployed, proved ineffective. The focus on intelligence resulted in an expectation that the deployment would not be subject to scrutiny within a criminal justice arena. There were only limited attempts made to corroborate his actions to act as a management control or to develop any investigative strategy or opportunities.
- 2.2.12 The breadth of the objectives and the lack of specific outcomes made an objective assessment of success extremely difficult. Throughout the whole deployment only three reviews were conducted that considered Operation PENGUIN/PEGASUS outside of the authorisation process. These reviews identified many of the issues raised in this review; however, the implementation of recommendations made was not subject of a comprehensive, robust process.

### 2.3 Proportionality of Operation PENGUIN/PEGASUS

- 2.3.1 There is a distinction to be made between proportionality as defined within RIPA and the wider public interpretation of what is proportionate when considering the use of intrusive law enforcement tactics.
- 2.3.2 There is no question that some activists and protestors do engage in serious crime including violence and serious disorder. Such criminality linked to protest can have serious impact upon the rights of others including the

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general public, business, wider United Kingdom interests and indeed those engaged in legitimate, peaceful protest.

- 2.3.3 The ideological motivation of most activists and the close knit community within which they operate means that for any infiltration to be successful there must be high levels of trust and a perception of shared values. This type of infiltration inevitably results in significant amounts of intrusion into the privacy of subjects, far beyond their criminal activities, and collateral intrusion into the privacy of others not subject of the deployment.
- 2.3.4 The risks of such high levels of intrusion were not articulated neither does it appear that they were considered in the context of the whole operation over its duration, a period of over six years. The measures in place at an operational level to monitor and control the extent of intrusion into the privacy of individuals were inadequate.
- 2.3.5 The credibility which KENNEDY attained within this community over a period of time allowed him to provide extremely valuable, actionable intelligence which may not otherwise have been available to law enforcement. This intelligence significantly contributed to the understanding of the threat from domestic extremism.
- 2.3.6 There appears to have been little emphasis placed upon the evaluation of policing outcomes in terms of prevention, detection, disruption or prosecution. This lack of any real measure of the success or otherwise of the operation makes proportionality in its widest sense difficult to justify to the public.

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**Participation in Criminal Activity**

- 4.1.21 Neither Part II of RIPA, the Code, nor the Manual are intended to affect the practices and procedures surrounding the participation in criminality of undercover officers.
- 4.1.22 The Manual addresses participation and states that undercover officers may, in the context of a specifically authorised operation, infiltrate a criminal conspiracy and be party to the commission of criminal offences, only within the limits recognised by case law and specified by the authorising officer. The Manual also contains guidance drawn from a Home Office Circular dealing with participation and states that no member of a public authority or source should counsel, incite or procure the commission of a crime. Also that where a source gives information about the intention of others to commit a crime in which they intend they shall play a part, their participation should be allowed to continue only where: they do not actively engage in planning and committing the crime; they are intended to play only a minor role; and their participation is essential to enable the police to frustrate the principal criminals and arrest them.
- 4.1.23 The Authority form also has a section relating to participation in criminal activity where the authorising officer can grant authorisation to participate in crime within certain parameters in line with the Home Office guidance and in addition that (amongst other things) the operation falls within the definition of an investigation into serious crime.
- 4.1.24 The Manual defines serious crime in accordance with s81 of RIPA as a crime that satisfies the tests of either; being an offence for which a person of age twenty-one with no previous convictions could reasonably be expected to be sentenced to three or more years imprisonment or; that involves the use of violence, results in substantial financial gain or is conducted by a large number of persons in pursuit of a common purpose.

**Standard Operating Procedures**

- 4.1.25 The NPOIU did not have internal policy documents or standard operating procedures relating to the use, conduct or management of undercover deployments during the period under review. The MPS undercover unit SCD11(10), formerly SO10, had and still retain practice documents covering undercover activity that if called upon they would rely on to give guidance to their own officers and other undercover units including the NPOIU.
- 4.1.26 The NPOIU now have standard operating procedures since February 2009 covering the management and deployment of undercover officers.

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## 7. AUTHORISED UNDERCOVER DEPLOYMENT

7.1 Operation PENGUIN

- 7.1.1 KENNEDY's deployment under Operation PENGUIN commenced in July 2003. This deployment focused upon the SUMAC Centre<sup>3</sup> in Nottingham and a combination of animal rights and environmental groups who utilised these facilities. This deployment was undertaken at the request of the consortium of forces within the East Midlands region with the investigation lead being identified as Nottinghamshire Police Special Branch.
- 7.1.2 At the initial application stage, a detailed intelligence case was submitted that clearly articulated the extremist nature of the identified groups and the associated criminality. Within the intelligence case there was a clear indication that this deployment was being considered on a geographic basis as well as targeting extremist elements of specific groups. Nottinghamshire, and in particular the SUMAC centre, was perceived at the time as the coordination point for animal rights and environmental activism in the region. No individuals were named as specific subjects of Operation PENGUIN.
- 7.1.3 This authorisation was managed by Nottinghamshire Police until its formal cancellation in February 2004. It has not been possible to confirm why the authorisation process was moved from Nottinghamshire Police to the MPS. For the duration of Operation PENGUIN KENNEDY was granted participation status for minor crime in order to avoid any compromise of the operation and to maintain personal safety. No instances of KENNEDY participating in crime were reported to the authorising officer during Operation PENGUIN.
- 7.1.4 Throughout the history of authorisation, review and renewal for Operation PENGUIN detailed intelligence updates were provided to the authorising officer within the body of the applications. KENNEDY predominantly provided intelligence associated to the environmental arena, specifically on planned protest which on occasion resulted in significant public disorder, criminal damage and other criminality. The intelligence provided by KENNEDY allowed for the deployment of appropriate police resources and response.

7.2 Operation PEGASUS

- 7.2.1 Following the cancellation of the Nottinghamshire Police authorisation the deployment of KENNEDY was recorded under a new overarching operational name, PEGASUS. All matters associated with the deployment of KENNEDY were now managed by the NPOIU. This included the authorisation process, undercover officer management, and associated operational activity.
- 7.2.2 Whilst there are a number of associated operations that were nominally led by officers from host forces throughout the duration of Operation PENGUIN/PEGASUS in reality the responsibility for the direction and general oversight of the operation and the role of operational head was performed by a number of different officers from within the NPOIU.
- 7.2.3 The deployment of KENNEDY under Operation PEGASUS consisted of five separate authorisation periods. His deployment was also subject of separate

<sup>3</sup> The SUMAC Centre identifies itself as a 'resource centre' and a meeting place for campaigning and groups. It has been established in an old Victorian house since the 1980's.

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RIPA authorisations for bespoke international activity as well as deployment at specific events which may well have been recognised under a different operational name.

- 7.2.4 The first use and conduct authorisation for deployment of KENNEDY on Operation PEGASUS was granted in February 2004 by the MPS. On this occasion the authorisation specified named individuals as subjects of the operation as well as identifying a number of extremist groups within the intelligence case. The deployment remained focused on the SUMAC centre in Nottingham but for the first time mentioned an anti-G8 group.
- 7.2.5 Examination of the authorisation documentation provides little information in terms of intelligence gain or operational development during this period.
- [REDACTED]
- 7.2.6 During this period two different MPS commanders acted as authorising officers. One of these authorising officers stated that all authorisations and reviews were undertaken following a personal briefing from the relevant detective chief inspector on the NPOIU, with papers being delivered beforehand. A detective constable would provide an update for the cancellations. This authorising officer was satisfied that the detective chief inspector had a thorough knowledge of the operation and of the undercover officer.
- 7.2.7 The other authorising officer stated that they would normally get a presentation from a detective chief inspector/detective inspector or on some occasions from a field officer. NPOIU activity was often in support of other force areas but in relation to Operation PEGASUS they could not recall being briefed by anyone apart from NPOIU staff.
- 7.2.8 If such briefings contained additional information to that recorded in the application this information is not recorded as part of the authorisation documentation.
- 7.2.9 [REDACTED]
- 7.2.10 All law enforcement agencies in the United Kingdom seeking authorisation under RIPA utilise standard documentation. This not only covers the provision of information in support of the application but the actual authorisation page signed by the authorising officer. Examination of this first authorisation bundle under Operation PEGASUS identifies the lack of consistency in the review, update and renewal process and a failure to use the standardised authorisation page for use and conduct on an undercover deployment.
- 7.2.11 This first authorisation period would have expired at midnight on the 11 February 2005. It is evident that the authorisation was not formally renewed until the 15 February 2005 KENNEDY was deployed on the 12 and 13

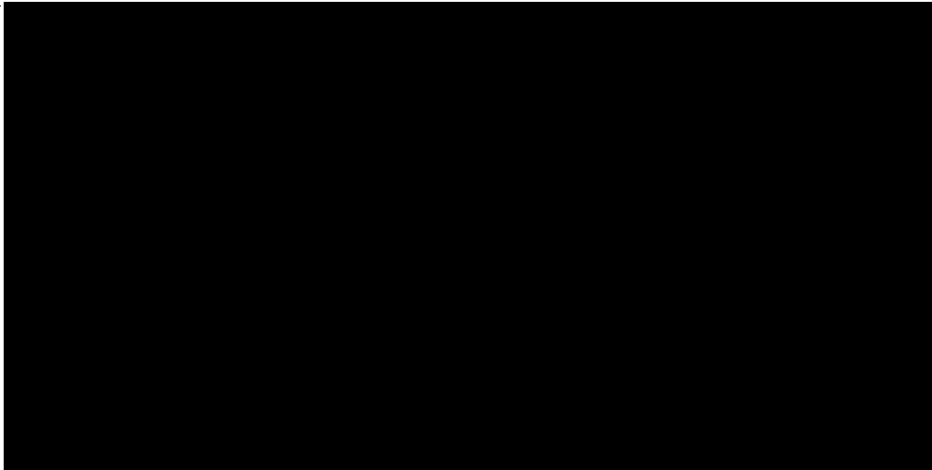


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February [REDACTED] As a consequence the period from the 12 February 2005 until renewal on the 15 February 2005 should be considered as a period of unauthorised deployment. It appears that this authorisation lapsed due to a lack of rigour within the management of the authorisation process.

- 7.2.12 This authorisation was eventually cancelled in June 2005. The cancellation followed a review of the authorisation by a newly appointed operational head. Within the cancellation note they identified that *'the previous review and renewal forms were not completed correctly as pages had been omitted'*.
- 7.2.13 Neither the authorising officer nor the operational head could recall the exact circumstances that necessitated cancellation and reauthorisation. This period of unauthorised activity does not appear to have been identified by the NPOIU at the time. The OSC cannot identify any record of this irregularity being reported to them.
- 7.2.14 Details of this period of unauthorised activity have been provided to the NPOIU and to the OSC by the review team.
- 7.2.15 The next period of authorisation commenced in June 2005. On this application there were five named subjects and a number of anarchist and extremist groups identified within the intelligence case. The geographic focus of this deployment was two separate locations, the SUMAC centre in Nottingham and the Cornerstone Co-operative in Leeds. Operation PEGASUS remained an NPOIU led investigation and the forthcoming G8 summit at Gleneagles in Scotland was identified as a key event in terms of intelligence requirements.
- 7.2.16 Throughout this authorisation period each review and renewal identified an updated intelligence picture and the general objectives for KENNEDY. It is clear that his attendance at the G8 summit at Gleneagles provided him with links into a number of European activist groups.

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- 7.2.18 In February 2006 an authorising officer cancelled KENNEDY's participation status as recommended in the review. The use and conduct for KENNEDY remained extant. Following this an application was submitted for reauthorisation of participating status for KENNEDY in relation to a specific deployment [REDACTED]. The authorising officer refused the application for participation on the following grounds:
- They were not satisfied that the risk plan was robust or effective;
  - They considered it a blanket application which they would not authorise;
  - There was not an articulated arrest strategy;
  - They did not feel it was proportionate and felt that the activity could be frustrated by other means.
- 7.2.19 During this period the authorising officer introduced a quality assurance process which saw an officer with specialist knowledge of the undercover arena applying a critical challenge function to help inform the authorising officer's decision making and judgements in relation to applications emanating from the NPOIU.
- 7.2.20 Subsequently the authorisation was subject of review for continued use and conduct and authorised for continued deployment without participation. An intelligence case was presented in relation to three new campaign groups who were specifically identified within the authorisation and referred to as forming part of the environmental climate change banner.
- 7.2.21 This authorisation was subject of ongoing review, without participating status until its renewal in May 2006. During this period authorisation documentation contained a regular update of the intelligence picture and outlined the tasking given to KENNEDY in relation to the identified groups. There were regular updates in relation to the international extremist arena and a number of international deployments as a consequence.
- 7.2.22 In late May 2006 at the renewal application a request was made to re-authorise participating status. This request was in support of intelligence indicating that the climate change campaign was to hold a climate camp between 26 August and 4 September 2006 at an unknown location in the North of England. Participating status allowed KENNEDY to partake in reconnaissance activity with other activists to identify the target of activity as well as committing minor offences of damage and trespass in the build up to the camp. This was authorised by a different authorising officer who did not articulate the rationale for this change of approach. At the same stage additional anarchist and extremist groups were added to the intelligence case.
- 7.2.23 In interview this authorising officer stated that they supported the request as the undercover officer needed to have as much flexibility as possible in order to respond to requests that would assist in identifying the location of the

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train and in July and August 2008 KENNEDY provided significant intelligence in relation to the climate camp near to Kingsnorth Power Station in Kent.

7.2.37 From June 2008 there is a record within the authorisation documentation of an internal review of activity was being undertaken by the NPOIU. West Yorkshire Police raised concerns that the operation only had tenuous links to the West Yorkshire area and that this operation would benefit from closer liaison between the operational head and authorising officer.

7.2.38 There had been concerns for some time from authorising officers within West Yorkshire over their ability to control the strategic direction of the operation.

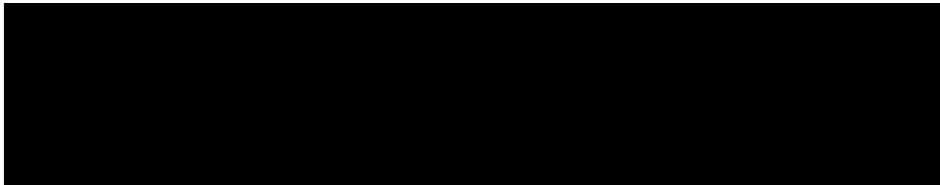


7.2.39 West Yorkshire Police undertook reviews on a three monthly basis. This was a locally adopted system which did not comply with the recommendations of the Manual.

7.2.40 Eventually after some significant engagement between West Yorkshire Police and the MPS the authorisation was cancelled in October 2008 and the authorisation transferred to the MPS.

7.2.41 An authorisation was granted by the MPS in October 2008. The authorisation was limited to social contact with nominated individuals and group members but with a caveat not to attend demonstrations or actions until further authorised to do so. This caveat was put in place to allow discussions to be undertaken between the NPOIU and the MPS authorisation bureau as to who would take lead responsibility for the ongoing authorisation process for Operation PEGASUS.

7.2.42



7.2.43 This authorisation remained in place until it was cancelled on 31 October 2008. The MPS made a decision that they were not willing to continue the authorisation on Operation PEGASUS and it would need to be managed by a different force area.

7.2.44 The operational head was aware at the time that no authorisation was in existence but was willing to manage this risk as they believed KENNEDY was climbing in another part of the country and could put off any significant phone contact until a new authorisation from Nottinghamshire Police, who had agreed to authorise Operation PEGASUS, was obtained.

7.2.45 In fact KENNEDY remained deployed at a residential address in Nottingham  
 The only measure of



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control appears to be an instruction from his cover officer to *'keep a low profile until next Wednesday'*.

7.2.46 The period from cancellation on 31 October 2008 until authorisation by Nottinghamshire Police on 5 November 2008 should therefore be considered as a period of unauthorised deployment.

7.2.47 This situation was avoidable but was created by the authorising officer within the MPS cancelling without an alternative authorisation in place and a poorly considered assessment of risks in terms of the potential for an unauthorised deployment.

7.2.48 Again this period of unauthorised activity does not appear to have been identified or recognised as such at the time. The OSC cannot identify any record of this irregularity being reported to them.

7.2.49

7.2.50 Nottinghamshire Police authorised the continued deployment of KENNEDY in early November 2008. The focus of the operation was extremist activity centred on the town of Nottingham with two identified subjects and a number of campaign groups. The application was accompanied by a detailed intelligence case identifying the role of the individuals and groups as well as the perceived threat they posed.

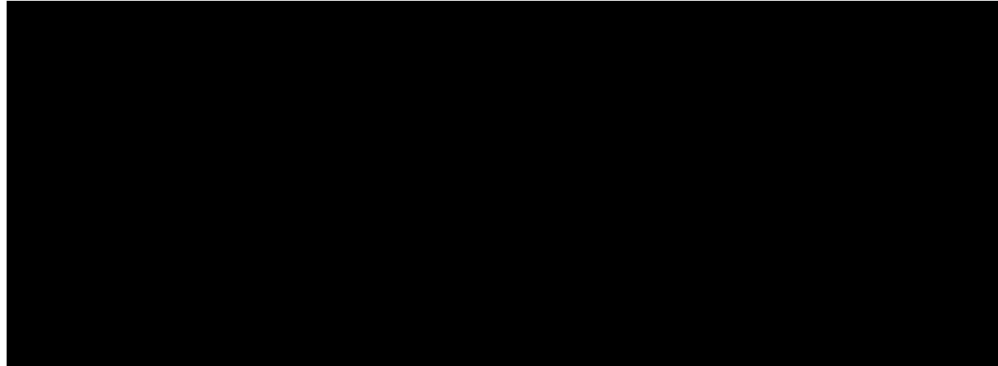
7.2.51

The operational objectives related to the Climate Change and ANTIFA protests

7.2.52 This authorisation included authorisation to participate in minor criminality which was identified as follows:

- trespass on land;
- disturbance to the peace and tranquillity of the owners and employees of companies, their suppliers, visitors to their sites and passing members of the public;
- obstruction of the highway;
- minor criminal damage.

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- 7.2.61 The next review was in May 2009. This provided a detailed update on the events at Ratcliffe-on-Soar Power Station and another short term and long term strategy for the deployment. This now included an operational exit strategy for KENNEDY.
- 7.2.62 A number of reviews and a renewal were undertaken until the authorisation was eventually cancelled in January 2010. During this time there was a gradual reduction in both the intelligence produced and identified subjects whilst KENNEDY was extracted from the deployment.
- 7.2.63 The authorisation for Operation PEGASUS was subject of review on two separate occasions during the course of visits by OSC inspectors to Nottinghamshire Police. On each occasion extremely positive comments were made in relation to the standard of the applications and the clear direction provided by the authorising officer.
- 7.2.64 To comply with the requirements of s4.13 of the Code the authorising officer may only grant authorisations on RIPA applications from a member of their own force, service or squad.
- 7.2.65 Nottinghamshire Police used a named officer from their force to act as the applicant for the authorisation. West Yorkshire Police identified the applicant as a West Yorkshire officer [REDACTED]
- 7.2.66 During the period of the authorisation by the MPS the applications were submitted by an officer within the NPOIU [REDACTED]
- 7.2.67 As the NPOIU was at this time considered as part of the MPS any individuals seconded to the NPOIU were considered to be members of the MPS. Therefore it would appear that this authorisation was in accordance with the codes of practice. However, the formal arrangements and the terms of the secondment into the NPOIU at this time have not been supplied.

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7.3 International Deployments

7.3.1 Between September 2003 and October 2009, KENNEDY deployed or visited international jurisdictions

7.3.2 [REDACTED]

7.3.3 In each case where KENNEDY was deployed overseas the NPOIU had a RIPA authorisation for his use and conduct in place

[REDACTED]

7.3.4

7.3.5

7.3.6

[REDACTED]

7.3.7 [REDACTED] there was one occasion where KENNEDY travelled together with a female outside of the operational parameters set by NPOIU management. [REDACTED] Other than this his actions were consistent with those authorised for his deployment.

7.3.8

[REDACTED]

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7.3.22

[REDACTED] During KENNEDY's deployment [REDACTED] overseas [REDACTED] in April 2009 he acted outside of the parameters set by NPOIU management by travelling to [REDACTED] overseas with a female who was not a subject or authorised within the operation. Upon arrival, KENNEDY was spoken with by NPOIU management and was instructed to return to the United Kingdom with the female, taking no part within the demonstration. There were no issues regarding the extent of the [REDACTED] authorisation.

7.3.23 No evidence has been identified that suggests that media reporting concerning KENNEDY allegedly undertaking sexual relations with a female from or whilst deployed in Germany are true. No other issues regarding use and conduct or the parameters of KENNEDY'S authorisation have been identified or raised.

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## 9. AUTHORISING OFFICER CONSIDERATIONS

- 9.0.1 This review has considered all of the RIPA documentation relating to the authorisation of KENNEDY's deployment. Responsibility for the authorisation was taken in turn by Nottinghamshire Police, the MPS, West Yorkshire Police, the MPS and finally Nottinghamshire Police again.
- 9.0.2 Responsibility for the NPOIU itself changed during the lifetime of the operation. The national and international nature of the deployment made the identification of an appropriate authority (police force) difficult.
- 9.0.3 This lack of continuity contributed to the lack of strategic direction and oversight applied to the operation.
- 9.0.4 The authorising officer, in considering an application for the deployment of an undercover officer under RIPA must take into account necessity and proportionality of the proposed activity and consider any collateral intrusion.
- 9.0.5 Each authorising officer considered these questions of necessity and proportionality based upon the information contained within individual applications for the use and conduct of KENNEDY. The ability to make appropriate decisions was reliant upon this written information and personal briefings provided by NPOIU staff.

9.1 Necessity

- 9.1.1 In relation to Operation PENGUIN the only documentary material available to examine was the original use and conduct authorisations. This application was made for the purposes of prevention and detection of crime, preventing disorder and in the interest of public safety. The intelligence case identified the role of certain individuals and groups in relation to domestic extremism, the threat posed by them and their particular focus within the Nottingham area. Such an application would have been consistent with the recognised role and responsibility of Special Branch who were leading the investigation at this particular time.
- 9.1.2 It was argued within the application that alternative methods to obtain intelligence on their capabilities and intentions had been tried but due, primarily, to the insular nature of the identified groups it was not possible. The alternative methods considered were not identified.
- 9.1.3 When responsibility for authorisation moved to the MPS in February 2004 the NPOIU became directly responsible for the investigative lead. The purpose of the operation, now named PEGASUS, was for the prevention and detection of crime and preventing disorder. The intelligence case was primarily the same as it was for Operation PENGUIN. The NPOIU taking lead responsibility was consistent with their national role in relation to the gathering and collation of intelligence in relation to domestic extremism and single issue campaigning.
- 9.1.4 It was argued within these applications that although specific other methods could be exploited they failed to provide the consistency, quality and timeliness of intelligence that would be provided by an undercover operative.



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- 9.1.5 In late 2006 responsibility for domestic extremism moved from the MPS to ACPO. This move created a lack of clarity in terms of responsibility and oversight for NPOIU activity. No single authorising officer had oversight of NPOIU applications and as a consequence each application was considered in isolation.
- 9.1.6 The purpose of the operation when authorised by West Yorkshire Police in January 2007 was for the prevention, detection of crime and for the prevention of disorder, in the interest of public safety and in the interest of the economic well being of the United Kingdom.
- 9.1.7 It was argued that a number of other techniques [REDACTED] would remain subject of review. It was considered these could not achieve the level, quality and reliability of intelligence which was available from this undercover deployment.
- 9.1.8 The MPS authorisation granted in October 2008 was for the purpose of maintaining the use and conduct of KENNEDY whilst decisions were made as to which organisation would be managing the authorisation process in the future.
- 9.1.9 When the authorisation process moved to Nottinghamshire Police in November 2008 the purpose of the operation was identified as preventing and detecting crime or preventing disorder, in the interest of the economic well-being of the United Kingdom and in the interest of public safety.
- 9.1.10 Necessity was articulated on the basis that the groups involved were experienced, disciplined and innovative. They were extremely well versed in police tactics, both overt and covert. To this end it was considered highly likely that conventional surveillance techniques were likely to fail to succeed with regards to the long term objectives of the operation. The same argument was put forward that other techniques involving [REDACTED] would remain subject of review but it was perceived that these could not achieve the level, quality and reliability of the intelligence available from this undercover deployment.
- 9.1.11 It has been identified that KENNEDY provided a significant quantity of intelligence that allowed for policing intervention on a national and international basis. Whilst this was identified within the application process there is no evidence that individual authorising officers were aware of alternative sources of intelligence, including a number of other undercover officers who were deployed by the NPOIU.
- 9.1.12 In considering necessity no single authorising officer was fully aware of either the overall intelligence picture in relation to domestic extremism, the full range of intelligence sources available or other intelligence opportunities that may have been available to negate the requirement for additional intrusive covert activity.

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Recommendation 3: As far as possible RIPA authorisations in relation to domestic extremism should be undertaken within a single command structure. Authorising officers should have a full understanding of the national intelligence picture, threat areas and current national priorities in order to assess the necessity of the operation.

### 9.2 Proportionality

- 9.2.1 Guidance places an onus on the authorising officers to consider not only the operational need but also the intrusiveness of the source against all of those who might be affected and the measures taken to avoid collateral intrusion. In granting participation authorisation the authorising officer would also have to satisfy themselves that the investigation was in relation to serious crime.
- 9.2.2 The intelligence provided by the NPOIU in support of the applications focused heavily on the seriousness of the criminal activity that the identified individuals and groups were involved in. Predominantly this can be categorised as damage and attacks on infrastructure in Europe, public disorder at major demonstrations and activity at key sites in the United Kingdom designed to cause disruption and damage.
- 9.2.3 There is no question that some activists and protesters do engage in serious crime including violence and serious disorder. Such criminality linked to protest can have a significant impact on the rights of others including the general public, business, wider United Kingdom interests and indeed those engaged in legitimate, peaceful protest.
- 9.2.4 The credibility which KENNEDY attained within this community over a period of time allowed him to provide extremely valuable, actionable intelligence which may not otherwise have been available to law enforcement. There is ample evidence that this allowed police forces to effectively manage potentially significant instances of public disorder and damage.
- 9.2.5 It is questionable, considering all of the attendant circumstances, that the deployment of KENNEDY over a period of six years remained a proportionate tactic.
- 9.2.6 In considering proportionality it is not evident that the authorising officer was made fully aware of the extent and nature of intrusion that occurred during the course of the operation. The type and level of intrusion does not appear to have been routinely or completely articulated to the authorising officer.
- 9.2.7 The authorising officer was only ever asked to consider the question of proportionality in relation to the deployment of an undercover officer within a narrow context; that of infiltration of named groups, subjects and associates identified within individual authorisation documents.
- 9.2.8 The ideological motivation of most activists, and the close knit community within which they operate, means that for any infiltration to be successful there must be high levels of trust and a perception of shared values. This type of infiltration inevitably results in significant amounts of intrusion into the

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privacy of others not subject of the deployment. This was evident within Operation PENGUIN/PEGASUS.

### 9.3 Collateral Intrusion

- 9.3.1 Extremist elements of protest can mask their activity by associating closely with legitimate campaigners. Whilst the authorities for KENNEDY requested use and conduct against specific individuals and groups there is also a recorded focus on the SUMAC centre in Nottingham as well as, on occasion, the Cornerstone Co-operative in Leeds. Both are resource centres utilised by campaigners and activists that openly advertise in the media and on the internet. No intelligence has been seen to indicate that use of these centres were the sole preserve of domestic extremists.
- 9.3.2 The deployment of KENNEDY in such circumstances, especially on a long term basis, would inevitably lead to significant instances of collateral intrusion with individuals involved in legitimate activity. This risk was recognised within the authorisations with an accompanying management plan based upon the undercover officer's training and a strategy not to report upon activity considered to be collateral intrusion.
- 9.3.3 Despite this recognition there is little evidence that collateral intrusion was actively considered or managed. KENNEDY fully integrated himself within the local activist arena. He established a large circle of acquaintances and established close personal relationships outside of those individuals named as subjects of the infiltration. Apart from the publicised personal relationships that KENNEDY eventually became involved in, he associated with a number of individuals throughout his deployment and co-habited with activists on an ad-hoc and more permanent basis at various times.
- 9.3.4 Whilst such peripheral association may have been operationally necessary at the start of the infiltration it is debatable that this would have remained an ongoing requirement for the six years that KENNEDY was deployed. The reasoning has not been captured within the relevant authorities. A number of authorisation documents assert that there was no collateral intrusion in the relevant reporting period notwithstanding the existence of such relationships.
- 9.3.5 Within all of the RIPA authorisation documents for Operation PENGUIN/PEGASUS both groups, campaigns and individuals were identified as being subject of the deployment. The targeting of groups and campaigns as well as individuals makes assessment of collateral intrusion extremely difficult. Some of the groups identified are loose coalitions of people with some degree of shared values who may come together on occasion for a common purpose with no formal criteria for membership. This may include individuals with no intention to engage in anything other than lawful protest.
- 9.3.6 KENNEDY produced over 1,200 pieces of intelligence against approximately 500 individuals during the course of these deployments<sup>5</sup>. Although the majority of this reporting was against individuals identified within the

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<sup>5</sup> It is very difficult to accurately quantify the intelligence yield of KENNEDY's deployments. Intelligence may be reported on nicknames, first names, surnames and full names meaning that intelligence on the same person may be attributed to a number of people. In addition various pieces of intelligence may be merged into an overarching intelligence product. These figures should be considered as indicative rather than absolute.

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intelligence case a number of reports related to individuals who were not identified as subjects and whose role in domestic extremism was unclear. Only 11 individuals, as opposed to members of groups, were identified as subjects of the operation within the authorisations.

- 9.3.7 For an authorising officer to be satisfied that collateral intrusion is being managed there must be sufficient information to identify what material has been obtained, if any is considered to be the result of collateral intrusion and how this has been managed. Whilst a plan was identified within the authorisation process for Operation PENGUIN/PEGASUS it does not appear to have been effectively implemented.
- 9.3.8 The risks of such significant levels of intrusion were not articulated nor does it appear they were considered in the context of the whole operation for its duration. The measures in place at an operational level to monitor and control the extent of intrusion into the privacy of individuals were inadequate.
- 9.3.9 It is however worthy of note that in a subsequent NPOIU deployment, following KENNEDY's withdrawal, [REDACTED] an authorising officer did cancel an authorisation due, in part, to the perceived high levels of collateral intrusion.
- 9.3.10 Until 2009 the NPOIU lacked any form of operational impact or outcome assessment to quantify the success of an operation. There was no evaluation of policing in terms of prevention, detection, disruption or prosecution. This lack of any real measure of success or otherwise of the operation makes proportionality in its widest sense difficult to justify to the public.

Recommendation 4: Collateral intrusion into the privacy of persons other than those directly subject of the authorisation should be identified, recorded and reported to the authorising officer to form part of their consideration of proportionality.

Recommendation 5: Infiltration by a covert intelligence source should, where possible, identify a focus on individual subjects of that infiltration rather than groups in order that intrusion into privacy can be better considered. Where affiliation to a group is relevant this should form part of the intelligence picture.

#### 9.4 Authorisation for Participation in Crime and Agent Provocateur

- 9.4.1 From the outset, the applications for Operation PENGUIN/PEGASUS contained a generic request for authorisation to participate in criminal activity. These lacked detail of the extent to which participation was authorised. Participation was merely described as a minor role to maintain KENNEDY's legend and allow him to respond appropriately to spontaneous situations.
- 9.4.2 The first time that KENNEDY's generic participation authorisation was challenged was in early 2006 following an independent review of the RIPA applications. Participation authorisation at this point was cancelled and re-application was subsequently refused by the authorising officer.

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- 9.4.3 KENNEDY's participation status was reinstated in May 2007. On this occasion the applicant identified a specific forthcoming event where KENNEDY would have to participate in minor criminal activity to meet his identified operational objectives. From this point on participation in crime was considered, and refused or granted with varying conditions and parameters, dependant upon the planned activity.
- 9.4.4 On each occasion where KENNEDY was arrested in the United Kingdom his use and conduct included authorisation for participation in minor crime.
- 9.4.5 Where authorisation was given for KENNEDY to participate in crime the authorisation was in accordance with the relevant guidance contained within the Home Office Circular 97/69 and the deployment concerned serious crime in that it involved the use of violence and was conducted by a large number of persons in pursuit of a common purpose.
- 9.4.6 At certain phases within the authorisation process it appears that applicants, NPOIU managers and authorising officers took the view that there was an expectation that, in order to maintain credibility within his circle of activist associates, KENNEDY would be expected to participate in minor acts of criminality. When interviewed a number of supervisors within the NPOIU felt that this was a necessary pre requisite to this type of undercover deployment.
- 9.4.7 One of the risks of authorising participation in crime is the potential for subsequent allegations that the undercover officer acted as an agent provocateur. Little was done by the NPOIU to corroborate KENNEDY's actions or the intelligence he provided. This lack of corroboration in relation to KENNEDY's activity could leave the deployment vulnerable to allegations of agent provocateur and made identifying potential risks more difficult.
- 9.4.8 The activity of the undercover officer will often be subject of independent corroboration, to meet the requirements of R v BRYCE<sup>6</sup>. Such corroboration provides an incontrovertible record and allows for objective assessment of the officers deployment.
- 9.4.9 Early decisions were made not to use audio equipment on Operation PEGASUS. This was influenced by the nature of the deployment in so much as it was for long term intelligence gathering and the associated resource and cost implications that would arise from the need to manage material generated over such an extended period.
- 9.4.10 There is little evidence that consideration was given to alternative methods of corroboration. The NPOIU were reliant upon [REDACTED] feedback from the Public Order Police Section (POPS) officers deployed during demonstrations.
- 9.4.11 In the case of KENNEDY the NPOIU [REDACTED]

<sup>6</sup> R v BRYCE identified the need for independent corroboration of conversations between undercover officers and subjects of the operation.

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- [REDACTED]
- 9.4.12 There is no intelligence on this record to suggest that KENNEDY acted in a manner that was outside of the terms of his authorisation.
- 9.4.13 However it has been identified that there are two instances where KENNEDY appears to have deployed against direct instruction from his supervisors. In September 2006 KENNEDY was removed from a climate camp following his arrest. Originally he returned to his legend address at Nottingham but was subsequently sent home whilst a review was undertaken into the circumstances of his arrest. KENNEDY was given authorisation to maintain contact with activists by phone or e-mail but could not redeploy until an independent review of the incident had taken place and a decision received from the CPS. Authorisation for redeployment was not given until 19 October 2006.
- 9.4.14 On 9 October 2006 [REDACTED] Mark STONE was stopped with two other known activists near a power station in the North of England. Although the three males refused to give their names the officer knew STONE from his earlier arrest at Drax Power Station. This issue was never identified by the designated officer in the confidential team and as such KENNEDY's cover officer and operational head were unaware of this information.
- 9.4.15 In April 2009 KENNEDY was authorised by Nottinghamshire Police to deploy [REDACTED] overseas to obtain further intelligence regarding extreme left wing activity [REDACTED] KENNEDY travelled overseas [REDACTED] with a female activist whilst having no authorisation from NPOIU management to do so. Upon arrival, KENNEDY was spoken with by NPOIU management and was instructed to return to the United Kingdom with the female, [REDACTED]
- 9.4.16 This incident convinced NPOIU senior management to begin the extraction of KENNEDY from Operation PEGASUS. In a review which took place following this deployment [an officer of supervisory rank] in charge of the unit made a number of recommendations, the primary one being that Operation PEGASUS should be brought to a successful conclusion.
- 9.4.17 A number of individuals involved in the supervision of KENNEDY identified that he was strong willed and at times could be difficult to manage. Predominantly the impression of all those closely associated to KENNEDY was that he felt he knew best. His cover officer identified that he would always 'moan like hell' if he did not like the instructions. His operational head for the majority of his deployment was concerned at one point that KENNEDY and his cover officer may have been keeping information from him. He took this concern seriously enough to speak to the psychologist providing support to KENNEDY to ensure that his concerns were explored and any confirmatory evidence was fed back. In a report dated 7 February 2011 and generated in response to the exposure of KENNEDY the detective chief inspector head stated 'it was noted that KENNEDY would only release operational information when it suited him, or in an effort to make it appear individuals were more extreme and/or more dangerous than they actually were'. When

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asked to clarify the officer stated that this comment was predominantly related to the NATO 60<sup>th</sup> Anniversary incident, his experience and the constant challenge from KENNEDY to his instructions. Despite this all those spoken to stated that he would eventually respond to the instructions given.

- 9.4.18 The issue of self deployment is an obvious concern when considering suggestion of Agent Provocateur. The lack of audio material and limited additional corroboration does not make assessment any easier.
- 9.4.19 KENNEDY used audio recording on [REDACTED] deployment..This was prior to his arrest in April 2009 at Ratcliffe-on-Soar.
- 9.4.20 The transcripts of the audio recording made by KENNEDY indicate that all those present at the briefing at the Iona School were given the choice of roles they wished to undertake in the planned action. There were opportunities to take minor roles, for instance providing food to the activists. There was an initial briefing that had a number of contributors and outlined the objectives of the action and the organisation of groups into colour commands. Each of these was tasked with a specific objective for example to lock on to a particular area. Independent briefings of these groups then took place.
- 9.4.21 From the transcript there is no indication that KENNEDY exceeded the terms of his authorisation.
- 9.4.22 Working within its terms of reference SOCA has not sought to interview any of the individuals with whom KENNEDY associated during his deployment. There are several activist websites that contain information in relation to KENNEDY. There is at least one detailed chronology of KENNEDY's activity and association within the global protest arena. No attempt to provenance the information has been made, however, the history of his deployment appears to be broadly accurate. This material appears to contain no information to suggest that KENNEDY acted as an agent provocateur.
- 9.4.23 Whilst there are concerns that KENNEDY may have acted directly against instructions on two occasions the review can find no evidence that KENNEDY acted as an agent provocateur, or that he engaged in any criminal acts or conspiracy outside of the parameters of his authorisation or existing case law.
- 9.4.24 The lack of corroboration in relation to KENNEDY's activity created an increased risk in terms of allegation of agent provocateur. In the circumstances of PENGUIN/PEGASUS instead of seeking generic participation in crime it would have seemed to be more appropriate to minimise his active involvement as much as possible.

Recommendation 6: Authorising participation status for an undercover officer should not be considered as an automatic requirement. Where authorisation is given the authority should be explicit as to why it is necessary and the specific criminality in which the undercover officer is allowed to participate.

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## 10. DIRECTION AND CONTROL OF OPERATION PENGUIN/PEGASUS

10.1 Strategic Direction

- 10.1.1 In 2003 the NPOIU developed specific strategic intelligence requirements to meet the stated aims of the unit. This provided a level of structured focus allowing activity to be prioritised. Prior to this there was a lack of any policies and procedures outlining what intelligence the unit should gather. This tasking and prioritisation regime only began to develop a level of sophistication with the introduction of a threat matrix between late 2005 and early 2006. The matrix was designed to highlight those groups and issues presenting the greatest threat from a public order perspective.
- 10.1.2 The deployment of undercover officers had for a long time been a favoured tactic in support of the strategic intelligence requirements of the NPOIU. It was identified by senior management as being effective and reliable and was the principal covert intelligence gathering capability available from within their own resources.
- 10.1.3 The initial deployment of KENNEDY under Operation PENGUIN was at the behest of the East Midlands consortium of forces with responsibility of operational head being given to a detective inspector within Nottinghamshire Special Branch. The deployment was in support of an existing intelligence requirement in relation to a resource centre used by domestic extremists in the Nottingham area. The deployment was intended to be on a long term basis and was to allow the provision of intelligence to deal with the threat of public order offences and criminal damage.
- 10.1.4 The intelligence generated by KENNEDY was channelled through the NPOIU Confidential Unit, prior to sanitisation and dissemination to Nottinghamshire Police. This allowed the NPOIU to enhance its knowledge of the threat on a regional basis whilst giving Nottinghamshire Police the ability to share intelligence with law enforcement partners charged with the responsibility to manage proposed demonstrations and associated criminality.
- 10.1.5 It appears that Nottinghamshire Police were essentially passive recipients of the intelligence from KENNEDY. There is little evidence to indicate any active involvement from either the authorising officer or operational head to influence the direction of the deployment.
- 10.1.6 When authorisation moved from Nottinghamshire Police to the MPS in 2004 the only discernable change was that the NPOIU became directly responsible for all aspects of the operation. A deployment manager was specifically identified for this purpose. The deployment remained an intelligence gathering operation but there was a record within the decision log that an objective was to provide evidence in judicial proceedings.
- 10.1.7 Although identified as an objective, the first time that any active decision was made to seek investigative support was in May 2006 when a potential conspiracy to commit grievous bodily harm was identified. This related to intelligence that a named subject of Operation PEGASUS intended to organise an attack on a right wing extremist. To this point no specific evidence gathering activity had been undertaken by KENNEDY and the



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predominant purpose was still identified as the provision of high grade strategic intelligence in relation to non-legitimate protest activity.

- 10.1.8 Until late 2006 the NPOIU sat within MPS Special Branch. This period was the only time during KENNEDY's deployment that the opportunity existed for an authorising officer within a single command to understand and co-ordinate deployment on a national basis.
- 10.1.9 At the end of 2006 responsibility for the NPOIU moved to the NCDE. This again potentially presented the opportunity for authorisation coupled with co-ordination but, following legal advice, the decision was taken that authorising responsibility should be undertaken by individual chief constables in a host force.
- 10.1.10 This created a number of significant issues for authorising officers. Firstly, the geographic spread of domestic extremism activity both nationally and internationally meant that individual chief constables could be authorising activity which had little local focus in their force area and over which they had little control. Secondly, this remained NPOIU led activity and whilst provided with a specific intelligence case the authorising officer would not be fully sighted on the national domestic extremism picture especially the existence of other intelligence gathering opportunities. Thirdly the operational head within the NPOIU would be managing several undercover officers deployed around the country. As such he would need to spend significant amounts of time travelling the country updating individual authorising officers.
- 10.1.11 Throughout the history of authorisation for PENGUIN/PEGASUS there are a number of identified interventions by individual authorising officers. Whilst significant in terms of providing oversight, the majority of these were more aligned to the requirements of the authorisation process such as enhancing risk assessments for the undercover officer, or managing the requirements of participating status rather than providing strategic direction. The one major intervention which did influence the strategy of the deployment, certainly in the short term, was that following the arrest of KENNEDY at Drax Power Station (For further details on this see section 11.1).
- 10.1.12 The NPOIU worked exclusively with special branch offices across the country who acted as a sterile corridor between the NPOIU and any agency in receipt of their intelligence. The majority of the material provided by KENNEDY related to specific incidents of forthcoming public disorder. As such, the individual tasked with delivering the policing response would be unaware of the existence of an undercover officer and would be predominantly interested in the quality, volume and content of intelligence in relation to a specific single event. The overall strategy for Operation PENGUIN/PEGASUS was therefore defined by the NPOIU and to a certain extent by KENNEDY through the intelligence that he generated.
- 10.1.13 There were only two identified occasions when attempts were made to engage with an investigation team in the United Kingdom. The first, as previously identified was in May 2006, where the NPOIU failed to secure investigative resources from a host force. The second was in 2008 when MPS SO15 CTC were asked by the NCDE to review intelligence generated by KENNEDY in relation to a conspiracy to construct explosive devices for

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- 10.1.14 Whilst this engagement was being undertaken the French authorities arrested one of the subjects following a number of attacks on the French rail network. [REDACTED]
- [REDACTED] The senior investigating officer for Operation [REDACTED] did influence the strategy in relation to KENNEDY by restricting his deployment internationally due to the perceived personal threat from international extremist groups.
- 10.1.15 In 2005 NDET were formed within the NCDE command. NDET were identified as the operational arm within the command and, among other responsibilities, had the role of developing intelligence generated by the NPOIU to allow host forces to undertake active investigations against domestic extremism.
- 10.1.16 There is no evidence that an effective working relationship was established between the NPOIU and NDET. There was significant mistrust between senior managers in both departments which inhibited engagement. This situation only altered in 2008 following a change in senior management at the NPOIU. At this point the NCDE asked for a review to be undertaken of all undercover deployments within the NPOIU including Operation PEGASUS.
- 10.1.17 As a consequence of this review a number of recommendations were made specifically in relation to the strategic direction of KENNEDY's deployment. This can be seen in the subsequent authorisation documentation which contains clearly identified short term and long term strategies as well as a number of short term objectives. NDET for the first time are identified as having a role in setting the strategy and direction for the operation.
- 10.1.18 KENNEDY deployed internationally on a number of occasions during Operation PENGUIN/PEGASUS. In the initial stages of the operation KENNEDY was deployed four times to the Republic of Ireland in the build up to the G8 summit in Gleneagles. These deployments were identified as being for the purpose of continuing to enhance KENNEDY's legend and [REDACTED]
- 10.1.19 These Irish deployments and his attendance at the G8 summit led to contact with a number of international extremists. Examination of his deployment history shows that after Gleneagles KENNEDY began to visit a number of countries. [REDACTED]
- [REDACTED] His deployments nearly always contained the justification of enhancing his legend. [REDACTED] the links to domestic extremism in the United Kingdom became less clear.

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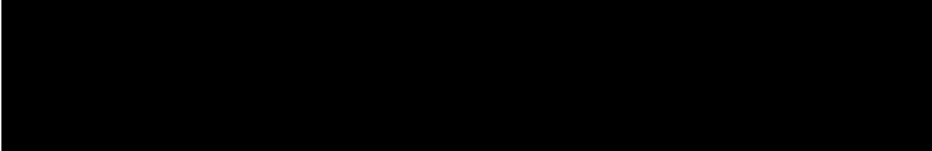


- 10.1.20 Until mid 2006 the detective superintendent in charge of the NPOIU would only authorise international deployments if they were provided with clear evidence of the impact that the event would have on the United Kingdom or that activists from the United Kingdom would be attending.
- 10.1.21 Following the appointment of a new head of the unit in 2006 the criteria adopted by the NPOIU for international activity became less clear. [REDACTED]
- 10.1.22 A number of these international deployments benefited from separate RIPA applications and clear identification of what was intended as an outcome from the deployment.
- 10.1.23 Until the latter stages of the deployment there was no clearly defined strategy identifying the desired operational outcomes from Operation PENGUIN/PEGASUS.
- 10.1.24 Engagement in the international arena is symptomatic of this. Although these deployments clearly assisted international partners and were on an individual deployment basis accompanied by defined objectives, it is difficult to identify how a number of them assisted in meeting the requirements of the NPOIU in terms of domestic extremism in the United Kingdom.
- 10.1.25 One of the consistently stated objectives of Operation PENGUIN/PEGASUS was the continued development of KENNEDY's undercover legend. Whilst this was always stated in the context of the intelligence opportunities that would arise, the continuing deployment was an end in itself and therefore a measure of success.
- 10.1.26 The breadth of the objectives and lack of specific outcomes made an objective assessment of success extremely difficult.
- 10.1.27 There was a lack of strategic co-ordination in the authorisation process for undercover officers deployed against domestic extremism. This activity would have benefited from authorisation within a single command.

**10.2 Tactical Direction**

- 10.2.1 Outside of Operation [REDACTED] the deployment of KENNEDY was never associated to what could be identified as a specific overarching investigation. Between 2003 and 2008, tactical responsibility sat with an operational head or equivalent within the NPOIU line management chain. This individual did not have responsibility for conducting an investigation with an intended criminal justice outcome or for exploiting any evidential opportunities. There is no evidence within the available documentation that consideration was given to the implementation of an investigative strategy to develop evidence of criminality.
- 10.2.2 KENNEDY was initially deployed to provide [REDACTED]

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- 10.2.3 In the build up to the G8 at Gleneagles in 2005 the deployment manager from the NPOIU took an active decision that KENNEDY should adopt the role of 
- 10.2.4 Within a relatively short space of time KENNEDY was therefore in a position to provide significant intelligence relating to planned activity within both the national and international extremist arena. His logistical role was exploited by operational heads throughout the duration of Operation PENGUIN/PEGASUS with the provision of both strategic and tactical intelligence becoming the main focus of the deployment.
- 10.2.5 The intelligence gained during Operation PENGUIN/PEGASUS primarily identified planned protest activity, and the tactics to be employed to defeat law enforcement activity and the efforts of owners of property to prevent damage and disorder. As well as providing this intelligence KENNEDY was also able, by his attendance at events and demonstrations, to report on activity on the ground and the changing tactics of the activists in response to police activity.
- 10.2.6 As soon as the NPOIU were in receipt of intelligence in relation to a forthcoming event they would liaise with the host force  to outline the available information and to highlight the fact that there would be a continuous intelligence feed available in the build up to and during the identified event.
- 10.2.7 If the approach was made to a police force  the host force would identify a lead officer. It would appear that in all circumstances this was a public order commander, rather than a senior investigating officer to undertake a criminal investigation. Once this lead officer role was identified the host force immediately took responsibility for the delivery of the tactical response.
- 10.2.8 The force would be provided with advice and guidance from different parts of the NDEU. Prior to 2008 this would be the NPOIU and POPS teams. After the 2008 review this started to include NDET who were able to bring experience in relation to the management of prosecutions in this arena.
- 10.2.9 The forces themselves chose to utilise a number of different strategies to deal with the demonstrations and events. As experience in the management of such events increased the response from forces tended to become more proactive. At the Drax Power Station in 2006 police resources were deployed primarily for the purpose of managing different activity undertaken by protesters. In 2008 KENNEDY was reporting on the climate camp and planned action at Kingsnorth Power Station. This intelligence was used to actually dictate where the camp was located and to disrupt planned criminal

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activity in the early stages by the seizure of items and material from within the camp.

- 10.2.10 The lack of any investigative strategy meant that arrest was generally for minor offences such as trespass or criminal damage rather than an overarching conspiracy. At the action at Kingsnorth Power Station, Kent Police also actively sought to avoid mass arrest and subsequent prosecution. If it did prove necessary to arrest anybody these were dealt with by way of caution, reporting for summary offences or civil action.
- 10.2.11 There is little evidence of any significant tasking of KENNEDY by a host force. The intelligence provided by KENNEDY provided the lead officer with all the information required to deliver a policing response. During Operation [REDACTED] there was a continual flow of intelligence as to the proposed activity of the protesters allowing for a decision to be reached to arrest protesters at Iona School prior to any disruption at Ratcliffe-on-Soar.
- 10.2.12 Kent Police described the intelligence picture provided in relation to the action at Kingsnorth Power Station as the best they had ever received.
- 10.2.13 As a consequence of this tactical direction, the deployment became more aligned to the management and control of domestic extremist activity rather than the disruption and dismantling of domestic extremist groups.
- 10.2.14 The intelligence gathered by KENNEDY was considered extremely valuable by recipients within police forces. It allowed for informed planning of a proportionate policing response and for proactive deployment of officers to frustrate criminal protest and allow for legitimate protest activity to safely take place.
- 10.2.15 The lack of any corresponding investigation strategy and the success in generating intelligence in relation to event specific activity led to a position where the NPOIU operational heads relied heavily on the undercover capability to develop the investigation. This also led to an over reliance on KENNEDY as the single source of information. Within the operational decision logs there is no evidence that consideration was given to the use of other covert tactics to fill intelligence gaps or otherwise develop KENNEDY's intelligence.

### 10.3 Operational Control

- 10.3.1 The Manual of standards defines the role and responsibility of an operational head and cover officer.
- 10.3.2 The operational head will be responsible for the direction and general oversight of the use of the undercover officer and includes:
- responsibility for ensuring the undercover officer is appropriately briefed prior to deployment;
  - reading the 'Instructions to Undercover Officers' to the officer and sign a declaration to that effect;
  - ensuring that the undercover officer signs the book in pseudonym to indicate that they understand the instructions that the officer has read over to them;

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- where there is any change in relation to the operation, to ensure that the authorising officer is updated as soon as practicable;
- being responsible for the safety and security of the undercover officer, when deployed, and all correspondence and documentation relating to that operation;
- supervising all operational correspondence and submitting relevant items or documents to the CPS or court;
- arranging appropriate early consultation with the CPS lawyer of appropriate grade to ensure that the use of an undercover officer is not unnecessarily exposed.

10.3.3. A cover officer will be responsible for:

- day to day dealing with the undercover officer on behalf of the concerned authority;
- managing the welfare and security needs of the undercover officer and maintaining close liaison with the operational head;
- being fully conversant with current law, procedures and guidelines that are relevant to undercover operations, including aspects relative to disclosure and revelation;
- remaining fully conversant with the ongoing deployment of the undercover officer and ensure that information supplied by the undercover officer is recorded;
- providing appropriate updates on the undercover officer's welfare, deployment and any other relevant matters to the head of the Undercover Unit concerned and, where appropriate, to the officer in charge of the investigation.

10.3.4 In addition the Murder Investigation Manual defines the role of a senior investigating officer. A senior investigating officer is the lead investigator in cases of homicide, stranger rape, kidnap or other complex investigations.

10.3.5 This requires the senior investigating officer to:

- perform the role of officer in charge of an investigation as described in the Code of Practice under Part II of the Criminal Procedure and Investigations Act 1996;
- develop and implement the investigative strategy;
- develop the information management and decision-making systems for the investigation;
- manage the resources allocated to the investigation;
- be accountable to chief officers for the conduct of the investigation.

10.3.6 The NPOIU deployed undercover officers on long term intelligence gathering operations working to broad operational requirements and objectives set by an operational head from within the undercover unit. A senior investigating officer was not appointed and as such no objectives were set to meet defined outcomes in support of a criminal investigation.

10.3.7 Whilst NPOIU undercover officers were each allocated a dedicated cover officer there was only one operational head within the undercover unit. This individual had responsibility for all of the undercover deployments undertaken by the NPOIU. Their role included providing operational direction, recording relevant decisions, and managing the authorisation process through a

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number of authorising officers across the country. In addition they would have to engage with a host force [REDACTED] in the lead up to specific demonstrations or events.

- 10.3.8 Long term infiltration, whilst placing a strain on the undercover officer, places added burden on the role of the cover officer. In terms of the NPOIU, the lack of a dedicated senior investigating officer coupled with an operational head managing a number of deployments, meant that direct contact between the undercover officer and the operational head was intermittent. The 2005 review of the NPOIU review identified a '*breakdown in communication and trust between senior management and the undercover officers*'. As a consequence of that review [REDACTED] further dedicated officers [REDACTED] were recruited to the unit. Although providing for dedicated line management the demands placed upon the operational head still made one to one regular engagement with the undercover officer impracticable.
- 10.3.9 The NPOIU utilised cover officers who were at least a rank higher than the undercover officer. As a consequence they were also expected to perform the role of first line supervisor. There is evidence that this included personal development and end of year appraisal. From interview it is not clear as to the level of intrusive supervision they were expected to perform.
- 10.3.10 The role of the cover officer within NPOIU operations therefore carried far more responsibility than the role defined in the Manual. Not only were they responsible for providing welfare, safety and logistical support but also responsible for career development, as well as effectively communicating and implementing instruction from the operational head.
- 10.3.11 The relationship between KENNEDY and his cover officer has been subject of comment by senior managers within the NPOIU. The cover officer was described by one operational head as having a soft relationship with KENNEDY. Another operational head felt that KENNEDY and his cover officer may have been keeping information from them. The cover officer identified that their primary role was the welfare of the undercover officer although they also recognised their responsibility to the operational head.
- 10.3.12 The cover officer clearly identified matters that needed to be reported by intelligence log and matters that needed to be referred for a decision or policy entry. Review of these identify that the cover officer recognised a number of the key issues that required a decision from the operational head. The majority of the issues are subsequently reflected in authorisations, decision log or day book entries for Operation PENGUIN/PEGASUS. The notes clearly record questions and tasking from the operational head to KENNEDY plus the responses.
- 10.3.13 There are examples within the notes that may tend to suggest a lack of intrusiveness into his management of KENNEDY or indeed evidence of KENNEDY rather than supervisors driving the agenda in relation to deployment.
- 10.3.14 Between June and July 2007 KENNEDY was on a period of extended leave. On 29 June 2007 he returned to his legend address in Nottingham to collect his mountain bike. Whilst there he met with an activist who indicated that a presentation was taking place at the SUMAC centre that evening.

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KENNEDY spoke to his cover officer informing him that it would appear strange if he did not attend. His cover officer authorised this attendance. This deployment extended into two days with an activist staying overnight at the legend address. It is unclear and cannot be confirmed through either day book or decision log entries as to whether the operational head was aware of this spontaneous deployment.

- 10.3.15 As identified within chapter 7 there was no RIPA authorisation for conduct and use in existence between the 31 October 2008 and the 5 November 2008. The operational head stated that he was informed by the cover officer that KENNEDY was climbing in Derbyshire so was not considered to be actively deployed. In fact KENNEDY was in Nottingham during some of this period as well as going to the SUMAC centre and had an individual staying with him at his legend address. A comment is recorded in the cover officer notes that states *'Text from Source. All good here, going out in a minute to watch the football. (This complies with senior investigating officers instructions to keep a low profile until next Wednesday)'*.
- 10.3.16 Whatever the engagement between the cover officer and the operational head in relation to these incidents they raise a number of key issues. Firstly that the cover officer should have recognised the threat of an unauthorised deployment and ensured that an appropriate plan was in place. Secondly that the arrangements for KENNEDY were insufficient in terms of ensuring when he was actually deployed and when he was on leave and lastly that KENNEDY could easily manipulate a situation to redeploy into his legend role.
- 10.3.17 KENNEDY displayed strong opinions on how best to develop the operation and exploit intelligence gathering opportunities. He also displayed frustration when management decisions did not support his recommendations. This is commented upon by NPOIU operational heads and is evidenced by the two examples at paragraph 9.4.13-14 where he deployed in circumstances directly contradicting the instructions from the operational head.
- 10.3.18 KENNEDY, as a trained undercover officer, would be expected to make operational decisions on his deployment where, either he was acting within the tactical parameters of his deployment or where it was inappropriate or impractical to seek advice from his cover officer.
- 10.3.19 There are two further examples where KENNEDY decided to undertake activity without prior discussion with the operational head which question his judgement and ability to manage operational situations.
- 10.3.20 On 9 February 2008 KENNEDY contacted his cover officer to identify that he had purchased seven counterfeit DVDs from an identified individual in a public house. He felt he had to purchase them because everyone else was and he needed to stay in role.
- 10.3.21 The cover officer informed the operational head who recorded in the decision log that the conduct and use authorisation did not specifically identify engagement in this type of activity. It was noted as a minor incident that required no further action.



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- 10.3.22 On 21 November 2008 KENNEDY purchased GBP 500 pounds (face value) of forged GBP 20 notes from an identified subject of Operation PEGASUS. This was not a spontaneous purchase and came after KENNEDY expressed an interest in seeing the notes. After the purchase KENNEDY contacted his cover officer to inform him of the action he had taken and that he felt obliged to make the purchase to keep his cover.
- 10.3.23 The cover officer informed the operational head who again recognised in a decision log the lack of specific authorisation for this action. On this occasion KENNEDY was specifically told not to purchase any more currency.
- 10.3.24 Whilst there were clear lines of communication between KENNEDY, the cover officer and the operational head it is difficult to see why on either occasion KENNEDY could not have either declined or deferred the purchase to allow discussion with the operational head over the future course of conduct. KENNEDY had been deployed for five years by this time. The parameters of his deployment clearly related to the provision of intelligence in relation to domestic extremism not other aspects of criminality.
- 10.3.25 There must be clear lines of responsibility for the control and supervision of undercover officers. The specific role of individuals within undercover operations is defined within the manual. Direction and oversight is the responsibility of the operational head. The number of undercover operations managed directly by the NPOIU impacted upon the ability of the operational head to appropriately supervise each individual deployment. The cover officer should not be responsible for the management and direction of an operation.
- 10.3.26 Review of the cover officer notes and decision logs identify a number of occasions when individuals, both male and female, stayed at the legend address of KENNEDY. Some of these were nominated subjects of the operation but the majority were individuals whose identity and interest to the operation is unclear. The available documentation makes limited reference to this in terms of risk assessment and none in terms of collateral intrusion.
- 10.3.27 Authorisation from an operational head was recorded on six occasions. These all relate to individuals planning to stay as a future event. The last time such authority was sought was in March 2007.
- 10.3.28 There are at least another 16 occasions when KENNEDY informed his cover officer that he had individuals residing at his legend address. On each occasion the decision is recorded as a *fait accomplis* rather than as a request for authorisation. KENNEDY, rather than any of his supervisors, appeared to control his living arrangements whilst deployed.
- 10.3.29 From 2008 the attendance of individuals at his legend address becomes more regular with the cover officer being informed on ten separate occasions that KENNEDY had people staying over. There is evidence of the operational head seeking to influence some control over this activity. In December 2008 instructions are passed to KENNEDY that a guest must move out of the house. KENNEDY raises a number of objections which

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10.3.30 From media reporting it would appear evident that KENNEDY engaged in relationships with at least two female activists. When considering the risk associated with long term infiltration, the development of personal relationships must always be considered as a significant threat. This was clearly recognised by at least one operational head who instructed that the cover officer remind KENNEDY in relation to the threat posed by intimate relationships when authorising a female to stay at his address for two weeks.

10.3.31 [REDACTED]

10.3.32 KENNEDY never reported any problems and as a consequence, despite potential warning signs, neither the cover officer nor operational heads identified the risk [REDACTED]

10.3.33 [REDACTED] is one of a number of tactics that could have been utilised to provide a health check on the status of KENNEDYs deployment and to mitigate the threat of developing close personal relationships. [REDACTED]

10.3.34 Despite this there is no evidence that any sexual relationship was identified by the cover officer or the NPOIU nor that this was ever considered or authorised as a tactic as part of the infiltration.



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## APPENDIX B: MEDIA REPORTING

- b.1 There has been extensive reporting in print, broadcast and social media relating to this deployment, Mark KENNEDY and his identification as an undercover officer as well as much wider discussion about the use of covert tactics in policing protest involving criminality and domestic extremism. Some of the reports make comment or allegations against the deployment and KENNEDY himself. The provenance and reliability of these reports cannot be adequately assessed in all cases.
- b.2 The key issues identified within these reports are outlined below. Where possible the review has sought to address the issues and allegations raised where they are relevant to the terms of reference of the review.

**KENNEDY's Relationships with Women**

- b.3 Whilst deployed undercover KENNEDY admits to having had two intimate relationships. There were also claims that KENNEDY used sex to infiltrate activist groups whilst deployed. A women named [redacted] activist came forward and claimed she had had sex with KENNEDY multiple times. No evidence of a sexual relationship between KENNEDY and any female whilst deployed was found in the source material available to the review team.
- b.4 Whilst deployed in Germany, it has been claimed that KENNEDY engaged in a 'tactical love relationship'. Within the material made available to the review team there is no evidence to suggest that KENNEDY was authorised to pursue such a tactic, nor is it evident that such a tactic was ever considered. KENNEDY's regular welfare meetings with psychologists were designed to monitor his relationships with others. (For psychological support please see section 13. In addition the issue of collateral intrusion is covered in section 9.3)
- b.5 When KENNEDY was challenged over these relationships by NPOIU line management, after his deployment had ceased, he denied any inappropriate relationships with any women who were subject to his infiltration. It is now known by KENNEDY's own admission that he had two intimate relationships.

**Claims that KENNEDY acted as an Agent Provocateur**

- b.6 There are a number of claims that allege that KENNEDY acted as an agent provocateur at a number of separate events. It is alleged that KENNEDY was key in planning action at Ratcliffe-on-Soar for 2009. KENNEDY denies this, and is reported to have refused to climb the power plant. It is also claimed that he agreed to participate in a lesser capacity: to drive a lorry. Events surrounding this deployment and the subsequent trial (not continued with) are the subject of a separate report being carried out by the Independent Police Complaints Commission (IPCC).
- b.7 At the G8 summit Gleneagles in 2005 it has been alleged that KENNEDY was involved in planning the protest, the associated eco-camp and recruiting new members. The appropriate RIP(S)A authorisation was in place for KENNEDY's deployment to Gleneagles, and there is no evidence to suggest that KENNEDY recruited new members. The application explicitly states that KENNEDY was aware of the importance of not becoming an agent