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UNCORRECTED TRANSCRIPT OF ORAL EVIDENCE

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oral EVIDENCE

TAKEN BEFORE THE

HOME AFFAIRS Committee

Undercover Policing

Tuesday 5 February 2013

Harriet Wistrich, Jules Carey, and Marian Ellingworth

PAUL LEWIS

PATRICIA GALLAN qpm

Evidence heard in Public Questions 48 - 167

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Oral Evidence

Taken before the Home Affairs Committee

on Tuesday 5 February 2013

Members present:

Keith Vaz (Chair)

Mr James Clappison

Michael Ellis

Lorraine Fullbrook

Bridget Phillipson

Mark Reckless

Chris Ruane

Mr David Winnick

Examination of Witnesses

Witnesses: **Harriet Wistrich**, Birnberg Peirce & Partners, **Jules Carey**, Tuckers Solicitors, and **Marian Ellingworth**, Tuckers Solicitors, gave evidence.

Q48 Chair: Could I refer all those present to the Register of Members' Interests, where the interests of members of this Committee are noted? The Committee sat in private to take evidence from witnesses, and before us we have solicitors representing some of those clients who gave evidence and some others who are not here but have given written evidence.

I want to start with one issue that has been in the public domain, which is the use in the past by police officers of identities of children who have died. Have any of you had any contact with any of the families or individuals involved in the misuse of identity of those who are deceased?

Jules Carey: Yes.

Q49 Chair: Mr Carey, what is your involvement in this?

Jules Carey: I am instructed by one family who have a son who was born and died in 1973. We believe that a police officer used the name Rod Richardson, which is the name of the child, and was deployed as an undercover police officer in about 2000 to 2003 using that name and infiltrating various political groups.

Q50 Chair: I was very concerned when I read about this. What are the feelings of your clients about the use of the identity of their child by undercover officers?

Jules Carey: I am also very familiar with the issues of the women sitting behind me, and I have heard their testimony today. My client is upset about the circumstances in which her child died in 1973 and she is upset about the fact that the child's identity has been used as it has. She wants to understand why and she wants to know the truth about that, and she would like an explanation as quickly as possible from the police. But I have to say I am also representing a number of women, some of whose testimony you have heard today, and I do find that their concerns and the way the operation seems to still be being carried on, causing the destruction of people's lives as it is-well, it is not an equivalent.

Q51 Chair: Sure. We understand that, but have your clients been contacted by the police, or have they

contacted the police to find out more information?

Jules Carey: I have submitted a written complaint on behalf of the family to the police.

Q52 Chair: Is this the complaint that has triggered the investigation by-

Jules Carey: I believe so.

Q53 Chair: We will have Patricia Gallan in later, and we will ask about that. Thank you for that.

Can I move on now to the general point about this whole issue and the articles that have been in the public domain? Ms Wistrich, do you think that there is a justification for the police to use undercover tactics where they are seeking to uncover criminality?

Harriet Wistrich: The case we are bringing is about the police using sex and intimate long-term sexual relationships, as we have heard, and I do not believe there is a justification for that. I think it is completely outside the scope. Whether or not the undercover tactics are justified or a useful police tool is a matter that anyone can debate, but that is not what we are here for. What we are here for is the overwhelming damage that has been caused. The point I want to make, to follow up from my clients in the legal proceedings we are bringing who have given testimony to you in private just now, is that all of them have been very, very seriously psychologically harmed. We have psychiatric evidence of very serious harm that was caused as a result of what the police did to them. This is a form of utter degrading treatment. It is something that the police were aware of. Even in some of the cases when the men disappeared from their lives and they saw these women searching for them in a most awful way, the police were aware of the torture they were going through and they kept hidden their identities.

Q54 Chair: Yes, indeed. But you have seen the judgment of Mr Justice Tugendhat.

Harriet Wistrich: I have indeed, yes.

Chair: I quote from it, "Everyone in public life would have assumed, whether rightly or wrongly, that the intelligence services and the police did from time to time deploy officers in this way". I think he made reference to James Bond.

Harriet Wistrich: Yes.

Chair: As lawyers involved in this issue, what did you feel about that judgment?

Harriet Wistrich: I would like to ask you, as parliamentarians, what you think about what he said. Our argument in court was we do not believe that those people who were debating RIPA-and I do not know how many of you were in Parliament at that point-when you were discussing what controls can we put on what police can do and what-

Q55 Chair: Do you feel, and do Mr Carey and Ms Ellingworth feel, that there are not enough controls? Is that the basis of what you are telling the Committee today?

Harriet Wistrich: What we are saying is that RIPA is there to regulate undercover investigations, and there is a whole framework within that in which certain things are permitted and certain things are not. Our argument was that sexual relationships cannot have been contemplated by you, the legislators, when you were imposing these regulations on this police activity.

Q56 Chair: Thank you. That is very helpful. Ms Ellingworth, do you think that RIPA is defective? It is kind of Ms Wistrich to put questions to us, but she is actually our witness today. We will give our views right at the end when we publish our report. Ms Ellingworth, do you think that the law needs to be changed?

Marian Ellingworth: That is a very large question. RIPA is a long and complicated statute.

Q57 Chair: No, in respect of what Ms Wistrich has said. Your clients' cases are about sexual activity. It is not generally about undercover agents, is it? It is about the way this was used. That is your case?

Marian Ellingworth: Yes.

Chair: So, do you think that that should be precluded specifically by the legislation?

Marian Ellingworth: I do. I think that the way that sexual activity was used in the case of my clients could not and should not have been sanctioned.

Chair: Mr Carey?

Jules Carey: I do not have a huge problem with RIPA. You referred to the judgment. Can I have two minutes to explain how-

Chair: You can have a minute.

Jules Carey: A minute is good. What we found ourselves facing was the police saying that the conduct of the officers was authorised under section 26(8) of RIPA. They felt that the words "personal" and "other relationships" were sufficiently broad to justify the sexual relations that these officers were entering into. We argued that that is not the case; RIPA cannot do that. We argued that for three reasons. The first reason was, if you look at the framework of RIPA and if you look at the hierarchy of intrusion, the top of the hierarchy of intrusion relates to intercept evidence. About the fourth down on the hierarchy of intrusion you have what are called CHISs, which are for our purposes police spies. In terms of the hierarchy, the most extreme forms of intrusion require a warrant to be issued by the Secretary of State to permit that conduct to take place.

Q58 Chair: And this did not happen?

Jules Carey: For undercover police officers you do not need anything like that. You only need the authority of a superintendent. So what we are saying is the people-

Q59 Chair: Do you think there should be that authorisation?

Jules Carey: For personal or other relations, no. For sexual, intimate-if you just let me finish my minute, I will hit the other point, so you will see why I think that is completely out of order. Firstly, we are saying that the structure of RIPA does not in any way envisage sexual relations at all. In fact, there have been two codes of practice that help to explain RIPA and in neither of those was there any reference to sexual relations at all, and that includes the 2010 version. Another argument we raised was the fact there is not anywhere- It is the principle of legality: basically, you cannot override fundamental rights, like your bodily integrity, unless it is by specific words. Now "personal" and "other relations" are not specific words, and for that reason we are saying that they are far too general to enable a police officer to rely on RIPA. One final thing-

Chair: It is a very long minute.

Jules Carey: Yes, I am sorry. I am using Transport for London time. We are of the view that it is simply not possible to authorise a breach of fundamental rights insofar as you cannot legislate to kill people and you cannot legislate to torture people. You fundamentally cannot legislate to breach a fundamental right such as your bodily integrity. It is just simply not possible to legislate for that sort of thing. Does RIPA need to be changed? It cannot be changed to permit a breach of a fundamental right.

Q60 Lorraine Fullbrook: To follow on from the Chairman's questions, I would like to ask each of you what, in your view, is the absolute legal limit on the degree of intrusion that could lawfully be authorised in the course of an undercover police investigation?

Harriet Wistrich: I think you have to completely stop before you get to a sexual relationship. Whether

there are forms of relationships that may be justified that stop short of a sexual relationship-but to enter into an intimate sexual relationship, to get to know people's families and to deceive in that way is out of bounds, in my opinion.

Q61 Lorraine Fullbrook: Everything else up to that you would accept is lawfully authorised?

Harriet Wistrich: No, I would not necessarily. I think it would depend entirely on the circumstances.

Q62 Lorraine **Fullbrook**: That is my question. In your view, what is the absolutely legal limit for a degree of intrusion that is legally authorised in an undercover police investigation?

Harriet Wistrich: I think you have to look at the circumstances of the operation, but there are certain things where one can absolutely draw the line and say, "This is never permitted."

Q63 Lorraine Fullbrook: You think it depends on a case-by-case basis?

Harriet Wistrich: It would certainly depend on what the circumstances were of the investigation.

Q64 Lorraine Fullbrook: Your legal limit would be intrusion on a person?

Harriet Wistrich: Certainly, yes; a bodily intrusion.

Q65 Lorraine Fullbrook: Up to and everything is okay?

Harriet Wistrich: No, not necessarily.

Lorraine Fullbrook: That is the question.

Harriet Wistrich: It would depend on the circumstances of the operation.

Q66 Chair: I think what Ms Fullbrook is looking for is a list of what is acceptable and what is not acceptable, and that you have not clarified. Most people can say it depends on the circumstances.

Harriet Wistrich: Is anything acceptable in terms of this kind of political activity at all? No, not necessarily at all.

Chair: That is the argument.

Harriet Wistrich: Is it acceptable in terms of a child trafficking ring? Possibly there are circumstances in which it might be justified, but one would have to-

Q67 Lorraine **Fullbrook**: That was my question-what are your legal limits for a lawfully authorised degree of intrusion-and you can't answer. Mr Carey?

Jules Carey: I do not know if this helps, but in February the HMIC published a report that said that undercover officers should only be used in relation to serious crime because of the level of intrusion that they pose. That is in any circumstances. The HMIC is also very clear that, given this country's commitment to human rights, they should not be deployed unless it is necessary and proportionate in a democratic society. I think what you do is you take whatever the circumstances are, you determine whether or not it is a serious crime that is being investigated, not a political grouping, and then you look at that and you work out whether or not the deployment in these circumstances is necessary. Can that information be found by other methods, and is it proportionate in a democratic society? I think that is what you look at.

Chair: Thank you, that is very helpful.

Q68 Michael Ellis: The general public understand, don't they, that this sort of thing happens? As Mr

Justice Tugendhat was saying, this would not surprise the general public. They understand that it happens. In fact, it could be argued that, at least anecdotally, it probably happens more often to men, and one hears about historical records going back to Mata Hari. What are you saying exactly about impropriety on behalf of undercover officers? Would it be something that you would want to tie the hands of our undercover police officers on in the lawful detection of crime? This is not about politics. You have alluded to political protests. You may think that if the rationale of an offender is in order to protest at something that they perceive to be politically reprehensible it justifies a criminal act or a conspiracy towards a criminal act, but isn't it the duty of the police to get past that and to stop criminal offences from occurring, and sometimes they will have to go undercover to do it?

Harriet Wistrich: In what circumstances is it justified for the police to kill somebody or to assault them?

Michael Ellis: When it is reasonable.

Harriet Wistrich: In self-defence there may be a justification. To prevent a crime there is a legal defence. Those are the circumstances that one looks at what would otherwise be unlawful acts that might become lawful, but to suggest that you can say, "Okay, we want to infiltrate this group. You go and sleep with that person. Make the rest of the group think that you are one of them. Satisfy your sexual needs while you are going to be under cover for a period of time. That is okay because we are doing important work. We are gathering intelligence on this political activity," is massively beyond the bounds of a civilised society.

Q69 Michael Ellis: But deceptions take place, do they not, in all human relationships? People are dishonest with each other in all human relationships.

Harriet Wistrich: With the state backing you up, with the state providing you with the resources in order to go and take advantage of people and cause real psychological damage, amounting to utterly degrading treatment and a breach of fundamental rights-is that something that takes place all the time? Is that something that the state backs up? Is that something that our society justifies?

Chair: Thank you, that is very helpful. We will come back to Mr Ellis at the end.

Q70 Bridget Phillipson: Just a follow-on from Mr Ellis' point: do you know in these cases whether the police officers were directed or encouraged to engage in relationships, or was that something they did of their own volition? My apologies if you have answered this already. I did have to leave the committee room.

Marian Ellingworth: We know so little. In the case of my clients, it is neither confirmed nor denied that the undercover officer is an undercover officer, let alone what directions he had. That is, of course, one of the things that is so very difficult for our clients.

Harriet Wistrich: I did submit some evidence that was a series of quotations taken from a number of different sources-different police officers and Members of Parliament and Ministers-about in what circumstances this could be justified. Certainly the ACPO lead's first response to the Mark Kennedy thing was, "This is absolutely never justified." We have yet to hear of a circumstance in which somebody is saying, "It is justified," but there is a real serious lack of clarity in terms of guidelines of the law and of policy around what is the law. Are there any legal limits to this? That is very much why we have come to you, because-

Chair: Indeed. Actually, we have asked you to come to us, rather than you have come to us.

Q71 Bridget Phillipson: As far as you are aware, are female officers engaged in this kind of behaviour in the same way with male targets, if I can use that word? The cases we are discussing would appear to involve male undercover officers having relationships with women. Is this a particular concern?

Jules Carey: I think we are aware of one female officer who has been deployed who had perhaps-in fact I think your next witness will probably be able to provide more information about that. None of us are

instructed by males.

Harriet Wistrich: I think there are always exceptions, but what we are seeing-and this is a point my clients have made in the earlier session-is that this does amount to a form of institutionalised sexism. What you have is a very male, macho, canteen culture of police officers who go into these situations. We do not know whether they say, "Look, you have to sleep with these targets." Maybe they don't. Maybe they say, "It is all a nod, nod, wink, wink. You know you can get away with it. You know this is a good opportunity," but the impact is massively upon women and it is committed massively by men.

Q72 Mr Winnick: Would it not be somewhat simplistic or naïve to believe that the police, having planted agents into these organisations-whatever the rights and wrongs of that-were not aware that sexual relationships were taking place or were bound to take place if indeed the agent was to stay, as we have been told, over a long period of time? Therefore, what I am asking you is should we not accept that the police were perfectly aware that sexual relationships were taking place?

Harriet Wistrich: I believe they were, whether it was officially recognised or whether it was a "nod, nod, wink, wink", but from the testimony of my clients and the level- We know, for example, that there were other undercovers in the same movement who would have known that this relationship was going on. I can't see how it could not have been known.

Jules Carey: There is a striking similarity in terms of how many of these relationships started as well as how many of them ended. I think to many of our clients it would appear that these relationships were entered into by design and not simply as a result of a police officer being a long time undercover. Certainly if it was by design, it would be inevitable, you would think, that the senior police officers were aware of it.

If I could build in my answer to a point that you raised earlier, Mr Winnick, and perhaps also Mr Ellis, both of you asked about circumstances in which it was necessary for the police. Mr Ellis was saying that perhaps all of us expect police officers to be acting undercover the whole time. As the judge referred to James Bond in the judgment, I think perhaps the public would expect undercover police officers to be acting all the time if we were faced with Dr Nos everywhere, but we are not. We live in a democratic society, and I think most people would not expect police officers to be going around behaving like this most of the time. Are there circumstances in which the police can go out and do things, whether it is killing somebody, maiming somebody, raping somebody-yes, there may be. I cannot say now what those circumstances would be, but the police would have a defence, and the defence would be necessity or section 3 of the Criminal Law Act 1967.

Q73 Mr Winnick: I want to take you on to another point that the Chair raised, the taking by undercover police of the names of dead children. First of all, presumably that would be authorised at a somewhat more senior level than the undercover agents. Would that not be the case?

Harriet Wistrich: I do not know if you heard the *Today* programme when there was a discussion around that very issue after this was exposed.

Chair: We did not hear it, and they are not witnesses today. Could we know your views?

Harriet Wistrich: Would it be authorised by somebody?

Chair: Yes.

Harriet Wistrich: I presume it would have been, but there are other methods. I think that is the point. There are other methods about-

Chair: Does anyone else know whether it was authorised? No?

Q74 Mr Winnick: Apart from all the other factors that we have been discussing, would you consider that

is a particularly despicable act, to take the names of children-if the allegations in *The Guardian* are accurate-of a child who died at four or a child of eight in a car accident and the rest, obviously without the parents knowing, and using those names for undercover agents? As I say, would you consider that particularly despicable?

Jules Carey: Mr Winnick, I would say that every aspect of this policing operation, as it has so far been exposed, seems to be utterly depraved. It is hard to start quantifying what aspect is more depraved than the other.

Q75 Mr Winnick: Is that the view of the other two-depraved or despicable, whichever word you wish to use?

Harriet Wistrich: It is utterly despicable. They had other options if they needed to do it. I think it is really important that we look at the lost identities of children and we look at the lost lives of the women and the long-term psychological harm, and don't forget that.

Chair: We have had that evidence; thank you very much.

Q76 Mr **Winnick:** It that your view as well, Ms Ellingworth?

Marian Ellingworth: Yes.

Q77 Chris Ruane: How effective is the Investigatory Powers Tribunal in providing redress for people who might have been subject to unlawful or intrusive surveillance? The police say that they will neither confirm nor deny the involvement of undercover officers with some of your clients' lives. How can the police be held to account for these actions against that background?

Harriet Wistrich: I am very pleased you asked that question, because that is obviously what we are aiming to do in assisting the clients. So far we have met with a complete barrage of obstacles that have been put in place by the police. One thing that one of the witnesses talked about earlier was when we met with the police from Operation Herne, which is investigating the SDS. They say they want to investigate what these officers were doing and they asked our clients to provide statements, but before they did they said, "We cannot confirm or deny whether the man that you are providing a statement about was an undercover police officer, and we cannot give you the terms of reference of our investigation, but we want you to tell us everything about your relationship with this person who may or may not have been an undercover police officer." That was an incredibly distressing thing to be told when you had come along prepared to assist with an inquiry into policing. I know you have recently produced a report about the IPCC. The IPCC are supposed to be supervising that investigation. I have written to them and said, "What is going on?"

Chair: Sorry, which investigation?

Harriet Wistrich: Operation Herne, which is an investigation into the SDS.

Q78 **Chair:** Is this being done by the IPCC?

Harriet Wistrich: It is being investigated by the Department of Professional Standards, but it is supposed to be-

Chair: Yes. My understanding was it was being done by the Met.

Harriet Wistrich: The Met. Yes, that is correct, but it is supposed to be supervised by the IPCC. I have written to the commissioner in charge of that supervision. As yet, she has not come back to me. That is several weeks ago.

Chair: We will put it to her.

Q79 Chris Ruane: I asked the question before: what are the top questions that need to be answered?

Harriet Wistrich: The top questions?

Chris Ruane: In this whole episode, what are the key questions that need to be answered?

Harriet Wistrich: Why were the police involved in these people's lives, and what is the justification for it? What information did they gather, and how can we stop this from happening again? How can we stop this ever happening again?

Q80 Chris **Ruane:** Your colleagues?

Marian Ellingworth: I know my clients, when they decided to embark on instructing us, said they wanted to make sure what happened to them would not happen to anyone else. They wanted some kind of apology for what has been caused to them, the deception, the distress and so on, but also very much that this would not happen again.

Jules Carey: I think the principal question I would ask is: have they ever read the *Principles of Policing* from 1828? It would be well worth pulling it out and looking at the nine principles of policing.

Chair: Don't read them all out, please.

Jules Carey: I will read out one: "To recognise always that the power of the police to fulfil their functions and duties is dependent on public approval of their existence, actions and behaviour and on their ability to secure and maintain public respect". I think by the way they have implemented these operations and the way they have designed these operations they have fundamentally lost public respect, and they need to ask themselves how they are going to get it back.

Q81 Mark Reckless: Do any of you think an argument can be made that, because of this deception as to the identity of the undercover police officers, there was not consent in law for the sexual activity from the victim?

Chair: If we can have a quick answer, I can bring in Mr Clappison as well.

Mr Clappison: My question was the same: is there an element of deception? It does not sound a million miles from things that people are prosecuted for.

Harriet Wistrich: Yes, I think that is a very good point. Another person I have written to is the Crown Prosecution Service and the DPP.

Q82 Chair: Have you got a reply from them?

Harriet Wistrich: No.

Chair: Maybe you could send the Committee these letters. We would be very interested.

Q83 Mark Reckless: What would be your view in cases where-I suppose it is possible-that a child results from one of these relationships?

Jules Carey: I am representing a client who has had a child from one of these relationships, and I would like to know what the answer is. It was asked at the town hall. I think Jenny Jones asked Mopsy-

Chair: Jenny Jones and Mopsy being who?

Jules Carey: Green Member of the London Assembly. I think she asked whether or not the Mayor's Policing and Crime Commissioner would assume responsibility for any child born of these operations or whether or not the police force itself would have a particular responsibility for the child, and whether or

not the force would support the officer who fathered the child.

Q84 Mr Clappison: How would this affect the legal view of the action that led to the child coming into being?

Jules Carey: How would the consequences of the relationship affect the legality? I think that is putting the cart before the horse. Either the relationship is lawful or it is unlawful, and the consequence of it is going to be-

Mr Clappison: I am asking you.

Jules Carey: I would say that is the case; either the relationship is lawful or unlawful.

Q85 Mark Reckless: It is clear that when Alison was a victim to these cases, that preceded the period in which there were operations in this area. Could I ask, though, with respect to Lisa, this period 2006-2010 when ACPO was running those operations: do you attach any significance to that, or do you think there are implications for Government you would like to cite for us?

Harriet Wistrich: It is unclear in terms of, for example, bringing a claim against ACPO. Are they accountable, and in what way can they be held to account? I think that is a question that we are working on.

Jules Carey: ACPO were set up as a limited company, as you said, and their remit was to provide support to the officers of various forces, but at some stage, it seems, from 2006 they assumed directly the role of policing rather than providing support. I would very much like to see the memorandum and articles of that company to find out whether or not there is any conceivable way that it can be lawful. It must surely be ultra vires for that company to have engaged in the activities it did.

Mark Reckless: It is not a public body, so I am not sure that-

Marian Ellingworth: One issue about ACPO was that when we lodged a complaint on behalf of our clients with the Investigatory Powers Tribunal it said it had no jurisdiction over them.

Chair: I am afraid time is up, because we do have to move on to our next witness, but we are most grateful. Please, would you thank your clients who gave evidence to us? We would be very keen to receive copies of your letters, Ms Wistrich, as we will follow them up. Thank you very much.

Examination of Witness

Witness: **Paul Lewis**, *The Guardian*, gave evidence.

Q86 Chair: Mr Lewis, thank you for giving evidence to this Committee on this very important subject, and I commend you for all the work that you have done in *The Guardian* in uncovering a lot of this information. It has provided us with very useful material in which to look at this issue, so thank you.

Could I ask you about the revelations of yesterday and today in *The Guardian* concerning the identities of dead children being used by undercover agents before we go on to other aspects? When did you discover that this was happening, and how did you discover it?

Paul Lewis: My colleague Rob Evans, who works on these stories with me, and I have been working on a book about undercover policing and protest and in the process of our research we came across this, initially as a suggestion, as a tip. In recent months we have been doing more investigation and finding more sources-crucially, police officers who themselves did this and could explain to us how they did it and how they searched through the births and deaths certificate records in search of a suitable match. We eventually came to a position where we had satisfied ourselves that we had reached the threshold of evidence required to publish.

One important thing on this issue is that it is easy to misrepresent this as purely the adoption of a name. These police officers, as far as we can tell, were not simply adopting the names of children. They were resurrecting their identities and living as people who had died with the date of birth and the place of birth. They were even doing research into the families, into the family background, into the surroundings that that child would have been brought up in, so that they could adopt that person's identity.

Q87 Chair: We have heard evidence today in private about the consequences of identities being used in this way by one of the witnesses who gave evidence to us. You have given us the figure of 80 dead children. Where does this figure come from? Is that the total figure, or could it be higher?

Paul Lewis: That is one question I would like to hear from the Metropolitan Police on, because we cannot be exactly sure. That is an estimate based upon a document that we have seen that gives a number of the SDS officers between 1968 and the mid-1990s. That number said there is more than 80. Very possibly not all of the SDS officers were using this technique, and if that were the case, it could be fewer than 80. Also it is possible that this practice continued beyond the mid-1990s, in which case it would be more.

Q88 Chair: One of the cases that has been looked at is a case of 2003.

Paul Lewis: That is correct. The complaint, as I understand Mr Carey mentioned, was received by Metropolitan Police on Thursday, but that is a case they have been investigating for 10 days now. They will certainly know about that case and know some details about that case.

Q89 Chair: It seems like a pretty gruesome practice, to be involved in taking the identity of children who have been involved in car crashes or died of leukaemia. For those of us who have had children who died it must be a heartless and cruel thing not to be informed of whether they are one of those parents.

Paul Lewis: I think that is right. A crucial question here will be: was this restricted to the Special Demonstration Squad, or was it wider? If it was wider, if it was used by other Government agencies or other police agencies, we could be here talking about many more than 80, but the families-

Q90 Chair: Do you think it might be wider? Could it be other agencies, for example the Border Agency or HMIC, or is it just the Metropolitan Police?

Paul Lewis: I think that would be a fascinating question to delve into deeper. I do not know the answer to that, but I am sure Pat Gallan, when she gives evidence later, will do. In terms of the families and the impacts on the families, I have spoken to two families and one of them in fact today.

Q91 Chair: Did you break the news to them, or did they already know?

Paul Lewis: It was a combination of both; different for different families. One brother of a child who died very young was, of course, distraught and upset by what had happened. I thought it was interesting that he said to me that he thought there was a real obligation on the Metropolitan Police now to inform all other families who this has happened to. He said they deserve to know and they deserve an apology. There is one particular reason he gave for that, and that was the risk that the Metropolitan Police had placed these families in. We know that activists could become suspicious of people who are infiltrating them and search for them, and we have heard of one case of that. They will obtain the birth certificate and go to the house where that child was brought up. In the case of an environmental activist or an anti-capitalist activist, I do not think there is a particular danger there, but these police officers were also infiltrating far-right groups, sometimes violent groups. He really did think that was reckless. If that is the case, if undercover police officers posing as serious, dangerous criminals were using the identities of real people who had died and placing those families at risk, then that is something the Met would have to investigate.

Q92 Chair: It sounds pretty shocking, but have the Metropolitan Police asked you for any of this information, and would you give them the information that you have in order to help them identify who these families are? You have already spoken to two of them?

Paul Lewis: Yes. We have an obligation to our sources, and we will have to stick to that and protect those sources. I am very confident that the Metropolitan Police will know about all of these cases. The Herne Review, as they have called it, has been going on now for over a year. We know very little about that review.

Q93 Chair: Do you know who is in the lead of the Herne operation?

Paul Lewis: No. They are not particularly transparent about that review and what it involves. We do know, to quote one senior officer, that there are millions and millions of pages. I have been told by one reliable source that there is a list of undercover police officers, and presumably from that they can work out who used these children's identities and contact those families as soon as they can, if that is something that they choose to do.

Q94 Chair: Turning more widely to the issue that you uncovered with your articles last year. We have heard evidence, as I said, from some of the victims. This practice of undercover agents, you must accept that in some circumstances the police are justified in using undercover agents in order to prosecute cases about serious crime. I know Mr Justice Tugendhat mentioned James Bond, but in fact there are circumstances where this is justified, is it not?

Paul Lewis: It depends what the "this" is. I agree: it has to be the case that undercover policing operations are justified and justifiable. I think the key question in the legislation, as well as the moral one for us all to consider, is proportionality. To what extent is the level of intrusion justified by the severity of the threat? There are some operations run within the protest sphere that you could make a claim on, and particularly around some elements, as I mentioned before, of the far right. There have been some cases of animal rights protests that have been more on the more violent end, but in large part, from what we can tell from the cases we know, these are generally non-violent, peaceful protestors.

Chair: *Guardian* readers?

Paul Lewis: I presume some of them will be. Funnily enough, you mentioned the *Daily Mail* will know for sure that one is; in one case, absolutely. The key part is proportionality, and I do not think I or anyone else would make a claim that undercover policing operations per se were never justified.

Q95 Chair: But you regard this as a very serious matter that needs to be investigated?

Paul Lewis: As a reporter and as a journalist we tend to shy away from those declarations, but certainly we would not be investigating it and putting the resources into this story that we are if we did not think it was very serious.

Q96 Michael Ellis: We have heard quite a lot, certainly from the lawyers, about human rights. Do you accept that the general public have a human right to be protected from crime and undercover police are needed and that we, as legislators and those on the judiciary, have to allow a lawful exercise of discretion on the part of chief police officers, some of whom are paid extremely well, to make decisions about what they think is proportionate and reasonable about undercover officers? We cannot, as parliamentarians, sit and say, "Well, you can deploy undercover police officers if you think a protest group are going to cause £1 million worth of damage but not if they are only going to cause £999,000 worth of damage." We have to allow people to use the exercise of their discretion if we are paying them to be in senior positions, and we have to think about the human rights of individuals to be protected from crime, don't we?

Paul Lewis: Yes, I agree with absolutely all of what Mr Ellis just said there. If I can say respectfully, I would beg to differ on your reading of the public mood, from what I heard you say before, that the public would not be surprised that undercover police officers were behaving in that way. It has caused a huge controversy. The very fact of the existence of 16 separate inquiries into various aspects of these undercover policing operations would be a firm indication of the public sentiment on this issue.

Q97 Michael Ellis: I was quoting a High Court judge and what he said. He said that the public would not

be surprised and he, of course, looked into this matter in great detail, as an experienced and extremely senior judge of 30 years' standing or whatever it might be. This is not a court; we are assessing evidence from a number of different sources, but he has concluded, has he not, in his judgment that this is something the general public might expect has occurred and does occur and has occurred historically?

Paul Lewis: No, my reading of his judgment was not the view of the general public. My view of his judgment was a reading of the legislation when it was passed by Members of this House. As I understand it, he was saying that when MPs authorise personal or other relationships they would have presumed that to include sexual relationships too.

Q98 Michael Ellis: Judges have to interpret the law as they see fit. Is there any suggestion in the evidence that you have come across, or any of the sources that you have spoken to, about the absence of consent from any of these parties?

Paul Lewis: Could you elaborate on that question; in what way?

Michael Ellis: The absence of consent in terms of sexual conduct between the parties. Have you heard any account of an absence of consent? I appreciate that it has been suggested there is a deception in the actual identity of parties involved-let's take that as read-but have you heard any suggestion of an absence of consent?

Paul Lewis: Only in as much as the people-and we believe them to be men and women, in answer to the other question earlier-who have had sexual relationships with undercover police officers, believing them to be someone else, may argue that they did not have the necessary information to make informed consent on that decision. That is not a view I take, but it is certainly a view that I have heard made.

Q99 Lorraine Fullbrook: Mr Lewis, do you think that it is now or has been commonplace for undercover officers to have formed sexual relationships with the people that they are investigating?

Paul Lewis: I think that is a really interesting question. The response from police-I write about these issues-tends to be a kind of "bad apple" excuse; something went awry, and this should not ordinarily happen. But when you look down at the detail of these cases, we have identified nine undercover police officers. Of the nine, we understand eight have had sexual relationships with people they were spying on and in the most part these were long-term intimate relationships rather than just fleeting sexual relationships.

Q100 Lorraine Fullbrook: Were they all male, or were they male and female?

Paul Lewis: One of them was a woman police officer. I do not know how this would extend beyond the realm of policing of protest. One undercover police officer who served in one of these units has told me that when he was deployed he was in a team of 10 and, within that team of 10, nine of his colleagues were having sexual relationships with people they were spying on. That would indicate that it is routine, possibly systematic, and certainly that it was known by senior officers.

Q101 Lorraine Fullbrook: You do not think there is any chance that senior officers did not know about the sexual relationships?

Paul Lewis: I think that is very unlikely, and I say that with caution.

Q102 Lorraine **Fullbrook:** Do you have any evidence to that effect?

Paul Lewis: It is difficult. The same officer told me that one of the things that he was told was that he should use contraception, and this was by a senior officer. You are only going to use contraception, of course, if you are planning to engage in some form of sexual relationship. Of course, as was mentioned by witnesses beforehand, these undercover operations often overlapped. One undercover police officer would certainly have seen another undercover police officer with a partner or with a long-term girlfriend,

sometimes lasting years. If this was not condoned, then you would imagine that the second undercover police officer would report that misbehaviour.

Q103 Bridget Phillipson: We have discussed whether the public would be surprised or not by this kind of activity. What shocked me was not that this kind of activity could happen perhaps as a one-off or on a few occasions but the length of the relationships involved and the degrees of the deception that that then entailed. What would you say to that?

Paul Lewis: Yes. The Committee has heard first-hand from women that this has happened to, so I do not think I am in any better position to explain that. The only thing I would say is, having met sufficient numbers of people who have had these long-term relationships, it can be frustrating sometimes as a journalist to find appropriate words to explain and convey the pain. The only way I can do it is to say that many people in this room will have themselves long-term relationships, either currently or in the past-people that they loved, people they had children with-and if they were to discover that that person did not exist or was somehow an agent of the state, you can begin to imagine how they would feel, and I think that is comparable to how some of these women feel.

Q104 Mr Clappison: Have you investigated cases where children have resulted from these relationships?

Paul Lewis: Yes, we do know of cases.

Q105 Mr **Clappison**: Can you tell us how many?

Paul Lewis: Sure. As far as we can tell, we believe it to be at least four. It is slightly complicated because two of the children were born in a relationship where an activist later married an undercover police officer, although the circumstances of their relationship are very complicated and complex. In the other two we believe it to be the case, and in one we know it to be the case, that the police officer was a long-term partner of the woman and then vanished from her life and, of course, vanished from the life of her child as well.

Q106 Mr Clappison: Do you think it is hard to contemplate that Parliament would have had this in mind when it was passing the legislation?

Paul Lewis: Yes. I do not want to fall into the trap of asking members questions, because it should be the other way round, but I find it hard to believe that parliamentarians would have thought that "personal or other" would be the same as "sexual relationships". I would have thought that if MPs had wanted to authorise sexual relationships under the legislation, they would have used the words "sexual relationships" rather than "personal or other". Certainly I would be very surprised if members of any democracy would want to authorise police officers to have children under cover.

Q107 Mr Winnick: Would you use the phrase "sexuality by deception" to describe what has happened, what the witnesses have given evidence about and what you have written about?

Paul Lewis: Yes. As I said before, I am slightly reluctant sometimes to adopt phrases because I report them rather than state them, but certainly there is an element of deception in all of these sexual relationships.

Q108 Mr Winnick: Of course, some of the witnesses affected, here or on other occasions, would say more than an element, to say the least. Mr Lewis, as you say, your job is to put questions to the authorities rather than us putting questions to you. Be that as it may, since you are a witness, insofar as undercover agents are used-and you have explained to the Chair in your view why it would be justified in certain circumstances, and I tend to agree with that-would you say that it is possible to do that without sexuality and without the agents being involved at some stage?

Paul Lewis: I think the fact that some of these undercover police officers did not have sexual relationships with the people they were spying on proves certainly that it is possible. These operations are very

sophisticated. A lot of money, time and resources goes into them and, as I understand it, as they are executed in other countries, other democracies tend not to use sex as a tool. All of that would point in the direction of this not being absolutely necessary, in fact even at all necessary, for those undercover police officers.

Q109 Mr Winnick: I have the organisation down here as the National Domestic Extremism Unit. It was transferred to the Metropolitan Police in 2010, I understand. That particular extremist organisation-it properly was, as the name it was given, National Domestic Extremism Unit-would you say it was a sort of rogue operation without proper control and discipline?

Paul Lewis: I would agree there are really important questions about control. It was mentioned that for some time these operations were run by the Association of Chief Police Officers, which at the time was a limited company. Its predecessor, the Special Demonstration Squad, kind of existed like a unit within a unit. It was hidden away in Special Branch. Even some senior officers were unaware of its existence. I think when that happens and you do not have the level of accountability that you do for other areas of policing, then it is more likely for things to go awry.

Q110 Mr Winnick: Can I finally ask you this question, Mr Lewis: how do you think the police can clean up this matter and restore confidence that the work that it is doing in this particular field can be carried out in a way that would meet public approval? Certainly, taking the names of dead children will hardly bring any public support.

Paul Lewis: Openness and transparency. We have been working on this story for two years. We have had very little help. In fact, when we asked the Metropolitan Police for one single sit-down interview we were told, "No." It gives you an indication of what we are up against. We are heavily reliant upon sources who have the courage to come forward and talk to us. One thing is the issue of sexual relationships has been bubbling away for two years, now we have the adoption of dead children's identities, and I think at some stage the Metropolitan Police will need to think about the best strategy just to garner trust if anything else but to also bear in mind the victims involved, the women and the children.

Q111 Chair: What if you think that strategy is not the right strategy?

Paul Lewis: I think openness tends to be a good strategy because, speaking as a journalist who has worked on this story for two years now, every time you scratch a bit you discover there is another layer, but the truth tends to come out eventually.

Q112 Mark Reckless: By its very nature, undercover policing is not intended to come to public light. Is it possible that what we are seeing is only the tip of the iceberg?

Paul Lewis: It is possible, but it is difficult to say. I think one of the most interesting questions when I am sitting in the public gallery listening to the evidence from Patricia Gallan will be whether the use of these identities was restricted just to the Special Demonstration Squad and whether the use of sexual activities was restricted just to police officer infiltrating protest groups, or whether in fact this was wider. If it was wider, then the phrase "tip of the iceberg" may be one that we are using six or 10 months down the line.

Q113 Chris Ruane: How effective is the Investigatory Powers Tribunal in providing a check on the misuse of powers under RIPA?

Paul Lewis: Probably a question better directed, and I think you did in fact direct it, to the previous three witnesses. As I understand it, one of the issues with the tribunal, as conveyed by the complainants, is that there is no right of appeal, there is no automatic hearing, and the complainants do not get to see the evidence. For those reasons and for what I just said about transparency before, I would say there are certainly questions. You would have to think that, just as these issues are being raised in open Parliament, an open court, the High Court, would be an appropriate forum if we are to discover exactly what has been going on, who authorised it and why.

Chair: Thank you. Mr Lewis, please do feel free to send us any information that you have on this and, again, thank you very much for coming today and for the work that you are doing. We are most grateful.

Examination of Witness

Witness: **Patricia Gallan QPM**, Deputy Assistant Commissioner, Metropolitan Police, gave evidence.

Q114 Chair: DAC Gallan, first of all can I congratulate you most warmly on your position? I think this is the first time that you are appearing before the Home Affairs Select Committee. We are delighted to have you here. Thank you very much for coming at very short notice and for the co-operation that the Commissioner and the Met has shown with this Committee. We are most grateful. I know I only rang you on Monday morning, but I felt it was appropriate to have you here.

Your evidence is to be taken in two parts. We are going to have an open session dealing with process and other issues that are in the public domain. Following that, we will have a private session with you before we have another witness.

Could I start by saying I was pretty shocked to learn of the fact that the identities of dead children were used by undercover agents in order to secure for themselves identities to conduct the various relationships that they had been involved in. Were you equally shocked to hear this, or did you know that this was going on?

Patricia Gallan: It might be helpful to you if I outline my position and what I have been doing because I think it will help the Committee and yourself. My capacity as a senior officer is-

Q115 Chair: We will come on to that in a minute. I am asking you whether you were surprised. We will come on to what you are doing, I promise you, because we are very keen to know who is doing what in the Metropolitan Police, but were you shocked to hear this, or did you know that this was happening?

Patricia Gallan: There are two aspects to this. We are investigating something that has been going on since 1968, and that is the Special Demonstration Squad.

Chair: No, I know about that.

Patricia Gallan: The reason why I am explaining it to you, if you could just bear with me, is I think it is important to put it in context, because within that I will explain what I did know and when and what we have been doing about it. I think, without explaining that aspect and all the details, it would be unfortunate because that was not-

Chair: All right, so long as we get an answer to the question.

Patricia Gallan: I promise I will give you an answer to the question. It is my task as the senior officer in charge that I am overseeing Operation Herne, which is about the Met examining past practices. I have to make sure there is a proper investigation. I also have to keep an open mind, and my team will go wherever the evidence takes us. I think it is also fair to say at some point it will fall upon this generation of police leaders to account for the activities of our predecessors, but for the moment we must focus on getting to the truth.

I also need to say at the outset that I do not know if the figure that has been quoted about the number of identities of dead children used is accurate. I have seen the evidence of one case, and we very recently received a complaint of a second case and that is now being investigated. I think more evidence will come to light of this practice, but I am not prepared to prejudge the investigation. However, I am very concerned about what I am hearing and I really do appreciate why people will be and may be very upset by what they have heard. It is because we recognise the potential for public concern of this issue and other matters that we called the IPCC at a very early stage to provide independent oversight of what we are doing in this investigation.

Operation Herne, as you will be aware, has been running for some time. Initially it quite properly concentrated on potentially criminal matters, whether there may be any miscarriages of justice or not, and indeed in criminal allegations. One of those allegations, as you will be aware, was made in Parliament by an MP, and that is being investigated. Since the Olympics we have been able to put additional resources into Operation Herne, but I must stress we are looking at the activities of a unit, the Special Demonstration Squad, which was initially funded by the Home Office and set up in 1968 and ran for 40 years. There is not a dusty file sitting somewhere within Scotland Yard that we can pull out that will provide all of the answers. There are more than 50,000 documents, paper and electronic, that we need to sift through. Many people have been long retired and need to be visited, and we need to look at all the records. What I should say is that if anybody has any information or evidence they can give to us, we do want to hear from them.

Q116 Chair: Thank you very much, and I am very grateful for that explanation, but can we go back to what I asked you in the first place. Were you as shocked as I was to hear that the identities of dead children had been used by members of the Metropolitan Police?

Patricia Gallan: As I say, I was very concerned by that, because it is not practice as I know it.

Q117 Chair: It is not practice now. It has clearly been the practice before. "Very concerned" does not sound as if you are condemning the practice. Do you think it is a good practice or a bad practice? Is it still happening? When did it stop?

Patricia Gallan: If I can answer your last question firstly, it is not still happening. I think it has been, from the evidence I have seen, confined to two units, and that is the SDS and the NPOIU. One of the things and why I explained about the length of the SDS in terms of its existence and also the number of documents is we have to go through them all, and I have to keep an absolutely open mind on what we find.

Q118 Chair: Of course. But in terms of the timescale, you are saying this stopped when? You have been running Operation Herne for a while. You are the lead officer on Herne. Is that right?

Patricia Gallan: That is correct, yes.

Q119 Chair: Are you also the lead officer as far as undercover agents are concerned? This Committee took evidence in 2010 when it was transferred from ACPO to the Met. Was it transferred to you, or did it go to Specialist Operations?

Patricia Gallan: That unit that you are talking about was not transferred to me. It was transferred to SO15.

Q120 Chair: Who is the lead at the Met for that? It is just that when I rang at the weekend to find out who was in charge nobody quite knew.

Patricia Gallan: If it is in charge of investigating, Herne, that is the investigation, that is me.

Chair: No, I understand Herne, but that is about historic problems-

Patricia Gallan: That is right, yes.

Chair: -and not to do with you, because you have been off in Merseyside doing important work. When you have arrived you have been put in charge of Herne. I understand that, but at the moment, for the convenience of the Committee, who is dealing with the issue of operational matters concerning undercover agents at the Metropolitan Police?

Patricia Gallan: Undercover deployments in the Metropolitan Police at the moment are covered by Commander Covert Policing.

Chair: Who is who?

Patricia Gallan: That is Richard Martin.

Q121 Chair: Richard Martin is currently in charge. Answerable to whom? Is it Cressida Dick's area? Who is the assistant commissioner responsible?

Patricia Gallan: It is Assistant Commission Mark Rowley in terms of undercover officers, but I can assure you that this practice is no longer occurring.

Q122 Chair: But you cannot tell the Committee when it stopped?

Patricia Gallan: The reason why I do not want to put a specific date around either of the two units that were doing it is we are still investigating all the facts. If I give a date, I could be wrong and I think I would then be guilty of misleading you, and I do not want to do that.

Q123 **Chair:** But you can tell the Committee absolutely today it is not happening at the moment. Identities of dead children are not being used by undercover agents?

Patricia Gallan: It is not sanctioned within the Met, and it is not sanctioned within any other police force in the country, because we made that inquiry on Friday.

Q124 Chair: The parents of the children concerned have had the bereavement of losing a child in terrible circumstances. Do you not think it is right and proper that they should be informed about this?

Patricia Gallan: I think it is important that we find out all of the circumstances around it and find out if it is accurate about what is being said at the moment, because they are allegations. We would not want to cause any more hurt to people involved.

Q125 Chair: Do you think they might not be accurate?

Patricia Gallan: We need to investigate it. Allegations have been made. We are looking into it, so we need to get to the accuracy of it. As well as that, we also need to consider a couple of issues. One is the ethical issue, and also there is a legal issue. It involves also, obviously, the parents of the children. As I said, we are concerned about that, but we also need to think if there have been any operatives and the position in terms of police officers if it was suddenly exposed. There are quite a lot of things we need to consider, and it is ethical and legal.

Q126 Chair: Of course, and we understand that perfectly. We know you are doing a thorough job in this. However, some members of the Committee have heard this before in relation to phone-hacking, when very senior officers of the Met have come and said there is a lot of paper to sift through and there are a lot of people to contact.

Patricia Gallan: I understand that.

Chair: We know where that has all ended.

Patricia Gallan: Yes, I do.

Q127 Chair: If you have information of the names of a parent and a child and you can put names and addresses together, do you not think it is right and proper to, and it would be heartless and cruel not to, inform them as a matter of urgency, rather than wait to the end of your very thorough investigation?

Patricia Gallan: I was not saying, if I might add, that we would wait until the end of the investigation. I just said there were a couple of considerations that need to be thought of along the way, and those are the legal and ethical issues. I need to find out what the situation is and consider it at that point, because if I give you a blanket yes or no, I do not think we have considered all of the facts carefully.

Q128 Chair: But you or the Commissioner have said to Assistant Commissioner Rowley, "Can you just

check if we are still doing this?" and someone has said to you, "We have stopped doing this a number of years ago." Someone has said this?

Patricia Gallan: There are a couple of things. It has never been practice within most areas of undercover policing to do that. I think that is the first thing I need to state. This practice has been confined, we believe, to two units.

Chair: Both in the Met?

Patricia Gallan: One unit was in the Met. The other unit, as you were aware, was a national unit. Those two units appear to have adopted this practice, but we need to investigate that further. In terms of the aspect of SO10 where undercover officers are utilised from, that has never been the practice. We have done two things. First of all, we have checked that to make absolutely certain. The other thing is, on Friday evening when we had notification of this, we asked every other undercover unit within the country within law enforcement to ensure that that is not a practice that is authorised, and everybody has come back and said that is not a practice that is authorised.

Q129 **Chair:** Excellent. As far as Herne is concerned, which is the long-term investigation, you were not present when one of the solicitors for one of the complainants gave evidence to this Committee, so I will tell you what she said. Basically, they have written to ask about Herne, and not sufficient answers have been given about Herne. How many officers are currently working on Herne?

Patricia Gallan: At the moment we have 31 staff working in Herne. That is 20 police officers and 11 police staff. If I can add also that we have had correspondence-one of the issues is that we are in the midst of litigation, and we have explained why we can't give some of the answers back that have been asked.

Q130 **Chair:** We just want to know facts here, not necessarily other things. What is the current cost of Operation Herne?

Patricia Gallan: At the moment the estimated cost to date has been £1.25 million.

Chair: £1.25 million looking at the issue of undercover police?

Patricia Gallan: In terms of the Special Demonstration Squad.

Q131 **Chair:** Of course. £1.25 million sounds like rather a lot of money to me and rather a lot of officers involved. You mentioned rather a lot of papers that you have to sift through. How many boxes of papers and computer discs do you have to look through?

Patricia Gallan: As I said, there is in excess of 50,000, and if I might explain the-

Chair: Boxes or papers?

Patricia Gallan: That is in terms of exhibits, as in papers. If I might explain also, that comes in various different forms. Many of them have been classified as secret, so we have had to put in a special IT system specifically to manage it. There has been a huge quantity of documentation, because it goes back over 40 years.

Q132 **Chair:** Will you give us an assurance on the issue of the identity of dead children that when you have completed your investigation, as soon as practicable you will inform the parents of those who do not know that the identity of their children has been taken?

Patricia Gallan: Could I refer back to my earlier answer, because I think it is important; I need to consider all of the issues.

Chair: Of course.

Patricia Gallan: If I give you a yes or a no answer, I think that would be unfair, but I think it is one of those things that whatever decision is made needs to be subject to scrutiny. It needs to be available for people to question and see the documentation and it will be something that is seriously considered, but it would be wrong of me, without knowing all of the facts at this point, to give you a yes or a no answer.

Q133 Chair: I understand that, but some of us have had children who have died when they were very young or were stillborn. Can you understand the anxiety of those of us who do not know whether the identity of our children has been used?

Patricia Gallan: I absolutely understand that, and that is why I started off by saying that not only myself, but I know also the Commissioner is deeply concerned about this issue and also the impact that it has on people.

Q134 Chair: Would you like to take this opportunity to apologise to those whose children's identities have been used?

Patricia Gallan: The issue being, as I have said, that I have to examine all of the evidence. I have to keep an open mind on it all. I think at the appropriate time that is when statements should be made, but at the moment I would be prejudging what I have found.

Chair: Of course, but, Deputy Assistant Commissioner, since you have deprecated the practice, since you have said the practice has stopped, since you have indicated you are very concerned, would you not like to take the opportunity, for those who may have had the identities of their children being used, to put on record the apology of the Metropolitan Commissioner?

Patricia Gallan: I think I am being clear. I do absolutely appreciate the concern. I do understand the upset and also why people are very distressed about this, but I think until I know all the facts you are asking me to sort of go ahead a bit. I would like to find out all the facts, and at the appropriate stage I think that is the time when we will make our statements regarding it.

Q135 Mark Reckless: Ms Gallan, I understand what you just said about not having the apology yet, not being prepared to give a date, keeping an open mind, except you said earlier in your evidence that this is about the current generation of police leadership accounting for the activities of their predecessors. Doesn't that prejudice it, at least to a degree?

Patricia Gallan: I think what I am saying is I am looking at things from the practices I know of undercover officers as of today and the expectations that I would have. I know that people have concerns, and rightly so, about what has happened. I am keeping an open mind, and I am not rushing to judgment, but I know at some point we, as of today, will be called to account about what has happened in the past.

Q136 Mark Reckless: Do you accept that it is possible that some individuals in the current generation of police leadership share at least a degree of responsibility for these actions?

Patricia Gallan: I think the difficulty is that we have 40 years to go through. We need to find out at various levels who supervised, authorised and knew what at what time. I think at that stage, that is the appropriate time for people-and it should not be me; it should be others in terms of the Crown Prosecution Service and such like-to make judgments on that. It would be wrong if I made that judgment at this moment in time and made a statement regarding it.

Q137 Mark Reckless: So would you like to reconsider your statement that it is about the current-generation police leadership accounting for the activities of their predecessors?

Patricia Gallan: I think, as I said, at some point this would have to happen, and I also said that my intention, and that is the intention of the investigation, is to focus on finding out the truth and to go where the evidence will take us.

Q138 Mark Reckless: But at the moment, on the record of this Committee is your statement that it is about the current generation of police leaders accounting for their predecessors, the previous generation's, mistakes. Do you want to leave that on the record, or would you, with hindsight, like to correct that or say that is something for later confirmation?

Patricia Gallan: Maybe if I can see what the transcript says and I can write back. I wouldn't want there to be any unclarity, because it is one of these things that I would like to see my exact words and then I will respond and I will respond as appropriate.

Q139 Chair: We will certainly send it to you. Can I just clarify: is it after the Paul Lewis article in *The Guardian* that you have discovered the use of the identity of dead children, or did you know that it was happening?

Patricia Gallan: I knew of one identity prior to that, and then we had a second complaint in on Friday.

Q140 Chair: How long prior to that?

Patricia Gallan: It was in September that I first became aware, and it was one child at that point.

Chair: September last year?

Patricia Gallan: Yes.

Q141 Chair: Since September until now, have you informed the parents?

Patricia Gallan: No, we have not.

Q142 Chair: Why is that?

Patricia Gallan: That perhaps is something I could discuss in closed session.

Chair: Okay, that is fine.

Q143 Chris Ruane: You are going to reserve judgment on an apology to the parents of the dead children whose identities have been stolen. When we questioned victims of the deception I asked, "What is the biggest thing you want resolving? What is the biggest question you want putting?" and it was a recognition of the damage done to them personally and an apology. Do you think the victims of this deception deserve an apology?

Patricia Gallan: My difficulty is that I have not heard the evidence that you are speaking about. One of the issues, if it is regarding the women, is that that is in the course of litigation at the moment, so sadly I can't comment because it would be inappropriate, as it is before the courts at this moment in time.

Q144 Chris Ruane: If at the end of the process-

Patricia Gallan: I think at the end of the process the Metropolitan Police Service will consider what the appropriate response is at that time. As you are aware, there are live proceedings ongoing.

Q145 Michael Ellis: Deputy Assistant Commissioner Gallan, you have spoken of two units, one of the Metropolitan Police, the other a national unit. What rank of officer would have been in charge of those two units? I am not asking for names; what rank would you expect to be in charge of a unit like that?

Patricia Gallan: I think on a day-to-day basis it would be a superintendent that would be in charge.

Q146 Michael Ellis: Were these rogue units, to your understanding? Do they appear, from your understanding at the moment, to have been operating outside of normal police procedures, including normal police procedures that were in place at the time of their operation?

Patricia Gallan: The issue would be, from what I have seen, that the practices in place at that time wouldn't be following the national guidelines.

Q147 Michael Ellis: So, they were rogue units?

Patricia Gallan: I think we need to get all the evidence, but I am trying to be really clear-

Q148 Michael Ellis: I understand that. I know you do not want to prejudge the situation, and I accept that and it is perfectly reasonable for you to take that position, but whether or not these procedures were permissible at the time they were happening is highly relevant. That is not particular to this operation; it is a general fact. Are you confirming that the taking of the identities of deceased children was not an authorised procedure even at the time that it was happening?

Patricia Gallan: If I can explain the answer in this way, and I am not trying to be evasive, there is a standard by which those procedures take place. These units were following different procedures. I have not yet got to the bottom of why they were doing completely different things. What I do know is there is a methodology, which it would not be appropriate for me to discuss in an open room, about how these procedures-

Q149 Michael Ellis: But you have already said that methodology departed from the accepted practice at the time.

Patricia Gallan: Absolutely, yes.

Q150 Michael Ellis: So, these were unauthorised practices; not only would they have been unauthorised practices today but they were unauthorised practices then. So I suggest to you that these were rogue units, or at least units operating outside of their proper protocols and jurisdictions?

Patricia Gallan: I have to be clear, that is one of the things we are investigating-was it authorised or not-and that is why I am trying to be clear that there is one standard one way, something was happening elsewhere-

Q151 Michael Ellis: I understand the difficulties of your position, but a senior officer cannot authorise something that is outside of the procedures, even at the time, so either they operated outside of then recognised procedures or they did not. They might have done so through laziness, they might have done so through incompetence, or whatever it might have been, but it seems to me that you are confirming that these units operated outside of appropriate procedures as they would have been in existence at that time.

Patricia Gallan: That is what we are investigating.

Q152 Mr Winnick: I was out of the room for a few moments, so if the question has been asked, I will soon be told. Do you think it was in the public interest for *The Guardian* to give details of the names of dead children being used by undercover agents?

Patricia Gallan: I believe in a free press, so I would leave it at that.

Q153 Mr Winnick: A rather ambiguous answer, but I understand your reluctance to give a yes or no. Perhaps you will be a little less reluctant, Ms Gallan, since you are giving evidence to a select committee-and I am sure you take all these matters very seriously, like your colleagues do-do you think the reputation of the Met has been harmed by the revelations regarding both the names of dead children and the position of women who claim that they were deceived into sexuality by undercover agents?

Patricia Gallan: We are very concerned, and part of the reason we are concerned is that the use of undercover officers, when it is used appropriately and proportionately, is a very useful tactic. It safeguards communities and the population at large in terms of terrorism; it takes guns off the street. So I am deeply concerned-and I know the Commissioner is-about anything that undermines the confidence of the public. Absolutely, we see that, and that is why we are investigating it and we have put so many resources into

investigating it, because we are concerned.

Q154 Mr Winnick: My question was: do you think the reputation of the Met has been harmed?

Patricia Gallan: I think it is, in terms of people will be concerned, and we need to do everything we can to restore trust around this.

Q155 Mr Winnick: I take that to be a yes. Can I just put this question to you? Recognising the arguments that the police constantly use when these details come up, that it is necessary to use undercover agents—that could be the subject of debate, but we know precisely where the police stand—how far do you believe it is possible for that to occur in the national interest, as the police would put it, or at least in the public interest without the sort of activities we have been hearing about and published about, where the agents concerned have been involved in sexual activity without the women knowing, obviously, their true identity? Do you think that is possible?

Patricia Gallan: There are a couple of things. I don't believe that you can authorise such activities. I know that the law is silent in the matter; I think morally I am absolutely clear that such activities should not be authorised or sanctioned. If something like that does happen, it should be reported immediately and should be dealt with. I have not heard the evidence of the women, but I think one of the issues that I need to come back to is we are in the middle of proceedings and those matters will be considered by a court.

Q156 Mr Winnick: You see, Ms Gallan, I just question you on this. People find it very difficult to believe that undercover agents can go into an organisation, not for a month or six months but over a long period of time, and not engage in sexual activity unless they were forbidden to do so by their superiors. So inevitably—and this is the question to you—would we not be right to come to the view that although they were not told necessarily to enter into sexual activity, on the other hand they were not told not to do so?

Patricia Gallan: It might be something that I can explain in the private session, but what I would simply say is that absolutely it would not be recognised. Also, I think I have been quite clear in the statements I have made in the past that I think it is morally wrong.

Q157 Chair: You know that the responsibility for setting standards for undercover agents now moves to Alex Marshall at the College of Policing?

Patricia Gallan: I know that it sits under the College of Policing and the new lead for undercover policing is Richard Martin. I did it up until December of last year.

Q158 Chair: He is giving evidence to us next week. Would you assume that in drafting his new guidelines he would take into consideration all the things that have come across your desk in Operation Hearn? Would you want him to do that?

Patricia Gallan: Absolutely.

Q159 Chair: I will put to you what Bernard Hogan-Howe said to this Committee last November. He said this: "It certainly should not be part of the strategy to do that", in other words engaging in sexual activity. "The fact that it may happen sometimes I think could almost be inevitable, not that I would encourage it, obviously." So there is the Commissioner saying it is inevitable that they are going to be involved in some kind of sexual activity but, of course, he is not encouraging it. You are saying something slightly different here. You are now saying, in answer to members of the Committee, that this must not happen any more. Is that what you are saying?

Patricia Gallan: Well, I didn't say it must not happen any more. What I said is it would not be authorised, and I think, if I remember, the Commissioner was answering in a generality because he was aware of the impending civil proceedings. What I can certainly say is it is the MPS's position that there could never be circumstances where it would be necessary and proportionate to authorise undercover officers, what we call CHISs, to engage in sexual activity.

Q160 Chair: John Murphy, who speaks on undercover policing for ACPO, said this in 2011: "It is never acceptable for an undercover officer to behave in that way". So we have the Commissioner saying, "It's inevitable, it's going to happen," but he would not encourage it. You have John Murphy saying, "It's never acceptable to behave in this way." Alex Marshall is quoted as saying that you only have undercover agents in serious criminality. Nick Herbert, who was then the Policing Minister, in answer to a debate initiated by Caroline Lucas, the MP for Brighton, said, "To ban such actions would provide a ready-made test for the targeted criminal group to find out whether an undercover officer was deployed among them." So there are a number of different views here. What is your view?

Patricia Gallan: As I have tried to explain, maybe not very successfully, there is a moral issue, and I think I have been quite clear in what I have said about the moral issue.

Q161 Chair: Morally it should not be done; that is your clear view?

Patricia Gallan: Yes, but legally the law is silent on that, and I will explain in private session why perhaps it is Parliament's intention that that is so. I think one of those things is the Metropolitan Police does not authorise that conduct.

Q162 Chair: When it happens, those who indulge in this activity have gone outside their authority, as they did in the two units-you said that to Mr Ellis, is that right-and they will be disciplined?

Patricia Gallan: We were talking about what would be authorised and what would not be. What I am saying is in today's practice, and it is under RIPA, as I know you are aware, under "Use and Conduct", I cannot envisage under any circumstances any Assistant Chief Constable or Commander authorising the use and conduct of that activity as a way to investigate crime.

Q163 Chair: That is very clear and slightly different to what the Commissioner told us last year when he said it is inevitable it is going to happen. What Mr Ellis was looking for, what the Committee was looking for, is some kind of prescription by senior officers to say, "If you are in this undercover situation, do not engage in sexual activity." That does not exist?

Patricia Gallan: In the closed session perhaps I can explain a little bit more, but as I have-

Q164 Chair: But at the moment there are no guidelines saying, "Don't do it."?

Patricia Gallan: As I said, the thing about it is that we are guided by the law, and the law is silent on the matter.

Chair: Sure, we will come to what Parliament has done at the end.

Q165 Mr Clappison: The reports that have been put in the public domain speak of these relationships going on over a period of time and being intimate relationships, stable relationships even, so the superiors of the officers concerned must have known what was going on, mustn't they?

Patricia Gallan: That is one of the lines of inquiry and why we are investigating it to find out who knew exactly what.

Q166 Chair: Can I say, in conclusion in the open session, Deputy Assistant Commissioner, I am disappointed that you have not used the opportunity to send out a message to those parents whose children may have had their identity used that the Met is actually sorry that this has happened. You were very clear in the language you have given to this Committee that you deprecate this practice, it is not happening any more, and it would be outside the authority of those who sanction it to sanction such things. I am disappointed that you have not said this.

Mr Winnick: The Committee is disappointed, Chair, if I may say so.

Chair: Thank you, Mr Winnick.

I am concerned that you have known about one incident since September of last year and, despite the fact that we have spent £1.2 million of taxpayers' money and that you have, what is it, 30 officers working on this case, you still have not got to the bottom of why this dead child's identity was used. The reason why we say this is we have taken evidence in private from one of the victims who followed the trail of the identity of her partner and she turned up at the house of the parents of the dead child. They were not there, of course, thankfully, but imagine the grief they would have suffered if they had answered and she asked about him.

Patricia Gallan: Absolutely. Yes.

Chair: Do you now accept why we are so concerned and disappointed by the fact that you have not taken this opportunity to apologise?

Patricia Gallan: There are two things. I have expressed my deep concern about what has happened. What I have also said is that I am keeping an open mind; I am trying to find out all the facts. So, I need to find out all the facts about the background, and I have also explained that this unit goes went 40 years. I think it would be inappropriate to rush to make statements that may be said in haste. I have not said that I will not say it at some point, but I want to have all of the facts. But I would not want anybody to be under any illusions about how concerned I was when I found out about these facts and also about the impact that this will have on people.

Chair: Which would be very distressing.

Patricia Gallan: Yes, I do not take anything away from that.

Q167 Chair: Thank you. Finally, do you have a timetable for the conclusion of this? It has been going on for a year now; it has cost £1.2 million. This is a time of severe challenges, as you know, to the Met. We also have Operation Yewtree, we have Operation Alice, we have Elveden and we have all the other operations that deal with historical issues. As far as you are concerned, do you have some kind of a timetable on this?

Patricia Gallan: You have outlined a number of operations, which shows the depth of the investigations that are required, and I think we know what has happened in the past when we have not done thorough investigations. So, I think it would be wrong of me at this stage to put any timescales around it. Suffice to say that we are in consultation, have been consulting with the CPS, and we are determined to go where the evidence will take us. But I think it would not be appropriate for me to put a timescale around this at this particular moment in time, when I have outlined the number of documents.

Chair: Deputy Assistant Commissioner, thank you very much for giving evidence to us today and for coming at such very short notice. Thank you.