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Report on Undercover Policing Ethics Workshop
University of Warwick Interdisciplinary Ethics Research Group
and
The College of Policing

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This report outlines responses of an expert group to a fictional undercover policing scenario presented at a workshop held on 8th June 2016. It draws on these responses in order to put forward recommendations for action by the College of Policing and other police bodies with an undercover policing remit. Although the ideas put forward here all arose at the meeting, endorsement of any of them by those at the seminar should not be implied by their presence. Responsibility for the recommendations put forward below is attributable to the authors, Kat Hadjimatheou and Christopher Nathan. The participants in the workshop were: Matthew Bacon, Ross Bellaby, Stefano Bonino, Kat Hadjimatheou, Lucy Hewitt-Winters, Jeff Howard, Sam Lincoln, John Lippitt, Jason Roach, Simon McKay Kevin Macnish, Helen Mills, Christopher Nathan, Jacqueline Purser, Tom Sorell, Jade Stewart, David Tucker, and Carmain Werren.

The workshop made use of a fictional scenario to inform delegates about current police practice and governance so as to enable them to explore fundamental questions about the practice of undercover policing in the UK. Delegates were organized into 3 groups and given print-outs of each stage of the operation as the day progressed. They considered each step in light of what had gone before but without knowledge of what would come next. As we outline below, this process itself highlighted issues that give rise to recommendations about the way such scenarios could be best structured for training and consultation purposes in the future.

In what follows we replicate each stage of the investigation in a text box and then outline responses and recommendations below.
**Introduction**

You are the authorising officer for Westshire Police. You have a number of responsibilities as an assistant chief constable of the force, one of which is the requirement to authorise or refuse authority for undercover operations.

You have attended the College of Policing course on authorising undercover operations and are, therefore, trained for the role in accordance with national policing requirements.

You have received the following briefing from a detective and you are required to:
- Set out your considerations in reaching a decision whether or not to authorise an undercover policing operation.
- Decide whether or not you will authorise undercover policing activity.

You may wish to draw on the Codes of Practice for Undercover.

**Briefing 1**

Joe Edwards is 24 and has been in trouble with police since he was 14. Recently, intelligence has been received from a number of sources, including the local policing team, stating that Joe has started meeting with Mark Anscombe, a 25 year old known for having links with the Ambleside Crime Group.

The Ambleside Crime Group was responsible for a series of armed robberies in the early 2000s and a number of the group received long jail sentences, but they have now been released. Gerry Ambleside, the leader of the group, has been released and there is intelligence that he is meeting up with associates he had before he was imprisoned.

Anscombe was suspected of being a drug runner for many years on behalf of the Ambleside Crime Group. He seems to have stopped that activity but seems to have access to substantial funds but no obvious legal source of income.

A registered police informant has told his police handler that Anscombe has been involved in a series of robberies at jewellery stores outside of London. These robberies have been widely reported in the media, including CCTV recordings of violent attacks against people who have tried to stop them. One man was stabbed and seriously injured in one of these attacks. The informant has told his handler that the robberies are ordered by Gerry Ambleside, but he will not get personally involved for fear of capture and imprisonment.
The informant states that Joe Edwards has been meeting Anscombe with a view to joining one of the robbery gangs. There is no information about when the next robbery may happen. The informant believes that there could be a pause of several weeks because police activity has increased substantially since the man was stabbed at the recent robbery. Ambleside wants to wait for things to calm down, before another robbery can take place.

You are asked to authorise an undercover operation. The operation will involve:
- Developing a relationship with Joe Edwards by joining his football club;
- Developing the relationship into a trusting friendship so that Edwards will divulge information about his criminal activities and/or enable the development of a relationship with Anscombe.

The proposed outcomes of the operation are:
- Information about the criminal activities of Edwards and/or Anscombe;
- Information about specific intended offences to enable disruption and/or arrest.

You are not asked to authorise any illegal activity, such as participation in a robbery or the taking of drugs.

**Other Options**

The investigating team have already attempted surveillance and covert listening tactics. None have been successful and it is felt that they will not be successful in the future because of the awareness of surveillance activity by Edwards and Anscombe.

There are considerable concerns amongst the investigating team that the injury to the stabbed man was a very significant rise in violence when compared to previous offences and that this indicates an escalation of violence that the gangs are prepared to use.

1. **Is Joe a legitimate target of undercover operations?**

   (a) **Targeting individuals only associated with or peripheral to crime**

   Participants considered it permissible to target for U/C operations of those who are only peripherally involved or associated with criminal activity, where this may have a demonstrably useful intelligence outcome. But they felt it was preferable to target those who are more directly implicated in crime. If police could target Anscombe, his close criminal associates, or those singled out as suspicious by reliable evidence, this would be preferable to targeting Joe.
Recommendation 1. Guidance in training and policy documents that the proportionality of an undercover deployment should take into account the extent to which the target is already involved with the criminal activity at the centre of the target group (or would be involved with it in the absence of undercover police activity).

2. **Concerns about the impact on Joe**

(a) **Vulnerability of Joe to further criminalization**

The wording of the scenario implies that his previous history of criminality makes him ‘fair game’ for intrusive activity. But participants expressed concerns that this indicated the potential vulnerability of Joe to becoming criminalized as a result of the operation if contact with the U/C risks encouraging him to strengthen associations with the criminal group.

(b) **Loss of opportunity to prevent Joe becoming involved in serious crime**

Even if the U/C officer were not to directly encourage Joe into to further criminal activity to the extent of entrapment, serious ethical concerns remained about the conflict between the role of police as intelligence-gatherers and as immediate crime-preventers. It was felt that the authorization process should include consideration of potential missed opportunities to prevent Joe becoming involved in crime, for example, by talking to him directly or by recruiting him as a CHIS rather than making him a target of an investigation.

(c) **Risk to Joe of harm from the criminal group if he is identified as source of police intelligence**

The description of the criminal group suggests it is sophisticated and would have methods for identifying leaks and weak links. The conduct of the U/C and exit strategy will have a direct effect on the risk to Joe in this respect.

**Recommendation 2:** Applications for U/C authorization should include clear guidance to the U/C as to the kind of relationship they should cultivate and the conduct of that relationship including, e.g. avoiding conduct that falls short of entrapment but might encourage criminality and the potential to deflect vulnerable people from a life of crime.
3. **Necessity of undercover in light of alternatives**

Concerns were expressed about whether other less potentially harmful options had been considered, including investigative leads from previous robberies.

4. **Concerns about the scope of the operation**

While the operation was felt to be quite well targeted and not likely to be open-ended, there was general agreement that the objectives should be more clearly articulated.

**Recommendation 3:** Applications for U/C authorization should include clear indications of when an operation will come to end or at least which considerations will determine that and a clear exit strategy in order to minimize the risks mentioned above.

**Conclusions**

There was a general consensus amongst the group not to grant authority, in light of the concerns mentioned above.

**Briefing 2**

You authorised the undercover operation. Anscombe and two others were stopped on the way to committing a robbery and were arrested in possession of knives, balaclavas, etc. They await trial and have indicated that they will plead guilty. Joe Edwards was not involved and is not in custody. Your undercover officer is now exiting from the Ambleside Group. Further activity will be taken by the force Organised Crime Group to make sure that this group is no longer able to operate.

Your undercover officer informs you that Joe Edwards has become romantically involved with Sally Hodges. Sally and Joe share a common interest in animal rights causes. The undercover officer is concerned because, when he has been with them, they talk about ‘taking direct action’ against Marlbrook Industries, a company that engages in live animal experimentation.

Joe has no history of involvement in such causes, but Sally has a conviction for causing damage to a fence at the premises of Marlbrook Industries during a demonstration there two years ago. At the time, it was established that Sally was a member of Prevent Animal Cruelty (PAC). This was a protest organisation that was not well organised and had gone quiet since the arrests.
two years ago. Whilst the leaders of PAC had supported peaceful protest and civil disobedience, PAC events had regularly spilled over into minor criminal activity. The PAC leaders had stopped running the group and this had caused it to become dormant.

Sally has been talking to Joe about getting PAC up and running again, but with a greater focus on direct action, including attacking Marlbrook Industry premises and its employees, particularly senior people.

Joe has stated that he doesn’t want to be involved in violence, but his love for Sally keeps him involved with her.

Separately, Sally has been seen at other protest events with a well-known group of violent activists, The Brigade. Some of these activists have been imprisoned for arson of universities and laboratories where live animal research takes place. They have also been connected by intelligence to assaults on staff from these premises, but there has been insufficient evidence to support prosecution.

You are asked to authorise the introduction of another undercover officer to target Joe. The intelligence assessment is that Sally would be too difficult to target directly because of her association with The Brigade and their suspicions about anyone new being introduced. The objectives of the proposed operation would be:

1. Develop a relationship with Joe that could become a trusting friendship;
2. Use the friendship to get information and intelligence about the activities of Sally and The Brigade;
3. Gather evidence to support a prosecution.

What are your considerations?

Will you authorise the operation?

1. Are Sally and Joe legitimate targets?

There was general concern about the legitimacy of targeting Sally given that she is only tenuously associated with the Brigade, demonstrates intentions to engage in what might be no more than minor vandalism, and currently has neither means nor capacity to commit a more serious offence. Joe himself was also considered an illegitimate target, given his express
intention to refrain from crime and lack of association with the Brigade. How far from the actual target is it legitimate to target others?

2. Proportionality

(a) Nature of offenses anticipated and preventive/other benefits gained
It was felt that the proportionality of UC activity is difficult to assess in advance without being clear about what criminal offences are anticipated and what the aim of the operation is. In this case, both are insufficiently well specified.

(b) Length of deployment
The nature of this second deployment means it could become long-term, which has implications both for the harms inflicted on innocent targets like Joe as well as the collateral harms. This has knock-on effects for proportionality assessments. Again, it is important to specify in advance a clear exit strategy and timeline.

(c) Added costs and risks of deploying a new UCO
There was confusion as to why a new UCO should be introduced, rather than capitalizing on the intimacy already created by the first and extending his/her remit.

Conclusions

There was overwhelming consensus not to authorise.

Recommendation 4. Aims and objectives of the operation should be clearly and explicitly articulated in the application for the authorization and decision to authorise.

Recommendation 5. Guidance on targets should reflect the view that, while it permissible for police to focus their efforts on people associated with organised criminal groups in this manner, this must be done in a way that is sensitive to:

(i) the seriousness of the crime at the centre of the group,
(ii) the degree of connectedness of the target to that crime,
(iii) the potential loss of opportunities to prevent criminality,
(iv) the extent to which the target would be expected to become involved in criminal activities in the absence of any contact with undercover police, and
(v) the extent of harmful manipulation, exploitation and intrusion to be imposed on the target and those who suffer these as collateral harms.

Briefing 3(a)

The operation has been running for some time when you are made aware of information suggesting the undercover operative is leading activity of The Brigade. Joe has informed the first undercover officer that a new member of The Brigade, whom you are briefed is almost certainly the newly deployed undercover officer, is encouraging other members to take direct action against Marlbrook. In particular this person has bought a van and has stolen a number of registration numbers. He has also proposed a number of dates on which it would be most suitable to carry out actions to cause damage at Marlbrook premises – e.g. days on which the local football team are playing at home and police resources will be most stretched.

What actions will you take?

How will you deal with the information that the new undercover officer reveals as a result of his activities?

Briefing 3(b)

Your undercover officer is in place and information is flowing well, but not enough to support arrest or other preventive action.

So far, your undercover officer has been meeting Joe and Sally in social settings, generally at the pub or in restaurants.

Sally has been talking about an urgent wish to escalate activity. She is appalled by the treatment of animals by Marlbrook and seems committed to taking direct action as soon as she can, but doesn’t have the know-how or resources.

Sally has suggested that she and Joe go on holiday. Her family has an apartment in Spain. Joe is keen to go. In one discussion about arrangements Sally mentions that she will meet an activist whilst they are away. This activist, John Frost, is known for involvement in a violent attack on a
Marlbrook employee that left the victim paralysed from the waist down. Whilst there was not enough evidence to charge Frost, he nevertheless left the UK and has been living in Spain for six months. Sally is convinced that he is ready to return to the UK and she wants to team up with him to take direct action against Marlbrook.

As usual, Joe has stayed out of conversations about direct action because he doesn’t want to be involved. He’s concerned that he will be left alone whilst on holiday and suggests that your undercover officer accompanies them, to keep him company.

You are asked to authorise undercover activity to be extended to:
- Include going on holiday with Joe and Sally;
- Operating outside the UK;
- Residing for a week in premises owned by Sally’s family

Will you authorise?
What are your considerations?
Objectives too imprecise – what benefit would there be in being there?

1. **Collateral harms**

Some felt there was very significant potential for collateral intrusion into Sally’s family life. Discussion of the potential impact on Joe of the relationship with the UCO also revealed that exploitation (e.g. using Joe to get to someone else) and manipulation (e.g. getting Joe to get Sally to reveal information) were considered by participants to be as significant a consideration for the authorisation and deployment decisions as ‘intrusion’, but only the latter is currently considered by those authorising undercover operations. It was also suggested that this use of Joe to exploit/manipulate his relationship for a covert purpose makes him a CHIS in his own right, which ought to be the subject of separate authorisation. This introduces additional duty of care and legal responsibilities.

2. **Risk to UCO**

There was a potential for the UCO to figure in holiday photos, which could present risks to their safety in the future
3. **Necessity in light of alternatives**

There were concerns that alternatives, such as engaging with Spanish police to monitor Frost directly or meeting him at UK border, had not been sufficiently considered.

4. **Proportionality/legitimacy**

   (a) **Likelihood of getting useful intelligence**

   There was heated debate about the proportionality of this step in the investigation. Some felt that, despite the fact that Sally does appear to be getting drawn into criminality, the UCO is unlikely to get much information of value, given that Joe (who is innocent) has explicitly asked him to keep him company while Sally and Frost meet.

   (b) **An act of proportionate intrusion in the context of a disproportionate operation?**

   For some, the fact that this request for authorization is submitted in the context of what they consider to be a disproportionate and therefore illegitimate investigation meant it too should be considered illegitimate. However, a minority felt that the connection with Jack Frost presented a significant opportunity for the UCO detect and prevent crime, which presented sufficient grounds for authorization irrespective of the legitimacy of the broader investigation. Discussion raised concerns about pressure on AOs to authorise extensions of existing cases, especially those they had not themselves authorized, perhaps for example because the UC was operating in a difference force area. It might be worth explaining this point. Current law requires different AOs to engage if a UC operates in a different force area (though not necessarily overseas).

**Conclusion** (with strong dissent from two participants), the general consensus was not to authorise.

**Recommendation 5.** CoP should revise guidance to interpret 'collateral intrusion' broadly, to include a range of harms. Harms that undercover officers may cause are not limited to intrusions but also include manipulation and exploitation. It is therefore misleading that the guidance limits consideration of collateral harm to 'intrusion'. The College take the lead -- through training and policy documents -- in making the case that this term should be interpreted broadly to include all relevant harms.
Recommendation 6. CoP to lobby for a change to legislation such that a single AO is engaged for the duration of a UC deployment with an obligation to inform the chief officer of all forces affected.

Recommendation 7. Production of a new scenario with ‘branched’ decision-making for use with other groups (e.g. senior police) and to use as the basis for a case study for public consumption explaining how undercover policing functions. Given the possibility of more than one decision, progressing a scenario of this sort on a single answer did not allow us to explore the consequences of previous decisions. CoP should develop the scenario using branched decision-making. An electronic version could use a gaming approach to allow an overview of the development of an operation. This could also be used for public awareness-raising and engagement purposes. The public debate on the deployment of undercover policing remains polarised in part because of a general failure to confront the tricky kind of operational issues described here. The College's role includes taking a lead in informing public debate in a way that focuses directly on operational issues. An example of a case study developed for these purposes is the GCHQ website 'How to Catch a Terrorist': [https://www.gchq.gov.uk/features/how-does-analyst-catch-terrorist](https://www.gchq.gov.uk/features/how-does-analyst-catch-terrorist). A CoP undercover version could improve significantly on the GCHQ attempt by introducing complexity and raising for consideration specific dilemmas at crucial points in the investigation.

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**Briefing 4**

John Frost was identified and stopped as he entered the UK. Items were found in his luggage linking him to the attack on the Marlbrook employee. He has been charged and Sally does not know have anyone to take direct action with.

She has been handed over to local policing to monitor and your undercover officer has exited.

You have now been informed of a complaint alleging that an undercover officer from Westshire Police was involved in a burglary when infiltrating a gang of high class burglars. The allegation goes on to say that the presence of an undercover officer was not disclosed at the trial of three members of the gang who were sentenced to 7 years in prison each. They were caught in the house of a celebrity. They are convinced that someone in the gang was either an informant or an undercover police officer and are trying to discover who gave them away. In fact, the person
they allege was the undercover officer is not a police officer or an informer, but there was an undercover officer infiltrating the gang for another reason.

- What are your considerations on what you respond to the complainant?
- Do you deny that the person complained of is an undercover officer?

You may wish to refer to the NCND document that sets out the law on this issue.

In general, discussion revealed the view that the claim to a blanket policy of 'neither confirming nor denying' the existence and identities of undercover officers is in urgent need of legal clarity, since (a) in many cases this will be a matter for referral to the IPT (b) in some cases (for instance, where there has been an abuse of process and in which the investigation is historical) there will be an obligation of self-disclosure, and (c) a decision neither to confirm nor deny may depend upon the vexatious nature of a particular request, not a general policy of refusing information.

**Conclusion**

There was a broad consensus that in this case the nature of the request for information is vexatious and that disclosure would compromise the safety of any UCO and create a dangerous precedent and that, for these reasons at least, police should not here disclose any information to the defendants about the involvement or otherwise of an UC officer in their case. However, there was also broad consensus that NCND should not be used as a blanket policy by police, because there are situations in which disclosure of identities and/or other aspects of operations is justified.

**Recommendation 8.** Remove the policy of 'neither confirm nor deny' and replace with a policy of consideration of each case on its merits.

**Recommendation 9.** Set out certain particular circumstances in which information will, in principle be provided. A set of theoretical sufficient conditions for disclosure of information would have the positive effect of assuring the public that police are proactively responsive to the ethical considerations at hand.
Briefing 5

Having resolved how to deal with this case, a further allegation is brought to your attention. A former violent offender, Eric Starbrook, who supported Westshire Rovers alleges that an undercover police officer led a gang of supporters in fights against supporters of other clubs during the 1990s. Many supporters were convicted of football related violence offences and some served time in prison as a result.

The allegation has received lots of publicity on social media and supporters of other clubs who were convicted of violent offences in the 1990s now suspect that they were led into illegal activity by undercover police officers.

Some of these supporters are considering making complaints and/or making requests for information under the Freedom of Information Act.

How will you deal with this case?

Specifically, how will you respond to Eric Starbrook?

What are your considerations?

1. Police engagement with allegations and discussion in the media
   Opinion was mixed about whether or not police should engage with the issue on social media. On the one hand, some felt the issue should be left to the investigating tribunal. Others felt it would be damaging to police not to engage publicly.

2. Ethical values of officers
   There was a discussion about how ethical values are discussed and inculcated into officers who are being asked to live a lie. The need for good examples and models to follow was raised.

3. Knowledge basis of AOs.
   There was concern that AOs should know about other relevant operations in order to be able to deploy their own officers appropriately
Conclusion
Police should refer complaint to Investigatory Powers Tribunal.

Recommendation 10. CoP should encourage establishment of mandatory channels of communication between AOs such that an AO knows about all deployments in a particular area so that s/he is able to consider the overall intrusion and the proportionality of the total operation, rather than single strands.

Recommendation 11. Take steps to establish a programme of research supporting best practice in UC. Greater transparency and a more balanced view of the use of UC could be provided if there was a body of research, such as a survey or study with views from UCO’s and AO’s. Currently much of the evidence on practice is provided only through inquiries into what went wrong. As a result, there is scant evidence of good practice, so that the public can see the benefits/successes of UC and police can model their own actions on those positive actions of others.