Dear Harriet,

Use of juveniles as Covert Human Intelligence Sources (CHIS)

Thank you for your further letter of 3 October in which you set out a number of further questions to assist the Committee’s understanding of the issues. Many of these questions raise issues which are properly an operational matter for the police and which the Home Office is therefore not placed to respond to. While I will seek to provide as much detail as possible I have also invited Assistant Chief Constable Alan Barr, the National Police Chief’s Council lead on these matters, to provide you with more information on the operational matters you raise. I would also be happy to facilitate a briefing with ACC Barr and his colleagues if you would find that helpful.

Dangerous nature of assignments

You asked how the range and types of crime for which children would be used as CHIS has changed since the regime the first introduced in 2000.

Public authorities are only able to authorise use of CHIS where it is necessary for one of the grounds listed at section 28(3) of the Regulation of Investigatory Powers Act 2000, which includes authorising CHIS where necessary “for the purpose of preventing or detecting crime or of preventing disorder”. RIPA does not restrict the authorisation of CHIS to the investigation of specific crimes, which reflects the fact evidence which is only possible to obtain by use of CHIS may be of critical importance in a variety of investigations. As a result, the decision on whether to authorise and deploy a juvenile as CHIS is an operational matter and public authorities do so very rarely and only where necessary and proportionate and when they are satisfied that the welfare of the child is being protected.
So while the changes we have made to the length of an authorisation involving a juvenile CHIS are in part a response to shifts in crime methodology and type since this legislation was introduced 18 years ago, it is important to be clear that these changes do not enable or facilitate a step change in the range of cases in which Juvenile CHIS can be deployed. They simply enhance the safeguards to ensure that juvenile CHIS can continue to be adequately protected in the rare circumstances where they are used.

**Numbers of children used as CHIS.**

You also asked why there is no requirement to retain data about juvenile CHIS authorisations for more than five years after the authorisation ended.

At the core of data protection legislation is the principle that personal data should not be retained for longer than is necessary. The CHIS code of practice requires records to be retained for a period of at least 5 years. This period ensures that data is available for a range of important purposes, including oversight by the Investigatory Powers Commissioner and in the event that a complaint is made to the Investigatory Powers Tribunal.

The code of practice sets out that in retaining such records public authorities must take into account consideration of the duty of care to the CHIS, the likelihood of future criminal or civil proceedings relating to information supplied by the CHIS and specific rules relating to data retention, review and deletion under the Data Protection Act 2018 and, where applicable, the code of practice on the Management of Police Information. Accordingly, where the police consider there is a need to retain this information for longer – for example in cases where there might be continued engagement with the CHIS long after the deployment, then the record may be retained.

On the question of the collection of statistical information by the Home Office and Investigatory Powers Commissioner, the Regulation of Investigatory Powers Act 2000 made specific provision for the oversight of investigatory powers and this oversight regime has recently been enhanced by the creation of the Investigatory Powers Commissioner under the Investigatory Powers Act 2016. In light of the fact that there is an established oversight mechanism, we do not think it would be appropriate for the Home Office to seek to duplicate that function by collecting and publishing statistical information on the use of Juvenile CHIS, particularly in circumstances where the Commissioner has explicitly set out his intention to collect statistics and produce a report on this issue. He has recently advised that preliminary information that he has already gathered shows that out of 28 returns (covering a total of 43 forces) for the period January 2015 to October 2018, there have been 14 juveniles authorised as CHIS. The vast majority were aged 17 at the time of their authorisation and no juvenile has been aged below 15. The Home Office does not hold further statistical or anecdotal information beyond that previously provided.

As the Investigatory Powers Commissioner is independent of Government, it would not be right for the Government to seek to dictate or influence what material he
collects and ultimately publishes, although I understand that the information the Commissioner is currently collecting and considering publishing will address those areas in which you have sought further detail. I am reassured by the Commissioner’s letter and by the comments made by the previous Chief Surveillance Commissioner which both confirmed that the use of Juveniles as CHIS was already subject to detailed scrutiny on inspections. I am equally reassured that none of the previous oversight reports have raised any concerns about the use of juvenile CHIS. The Commissioner has also recently confirmed that if any of his inspectors has material concerns about an authorisation, these will be raised, discussed and set out in the inspection report. He notes that there have been no concerns of relevance during the period from 2015; and he says that it appears, therefore, that the safeguards have been effective, with the result that no case has been brought to his attention in which a juvenile CHIS has been inappropriately used, to their detriment. I look forward to the forthcoming report on this issue, which I am sure will be extremely valuable.

**Duration and review periods**

I can confirm that there is no upper limit of the number of renewals that can be made to the authorisation of a juvenile CHIS assignment and no such limit existed prior to the 2018 Order. Accordingly, the change to the period of authorisation does not extend the maximum duration for which a juvenile CHIS can be authorised. However, the use of any CHIS must of course always be necessary and proportionate and an authorisation must be cancelled when that is no longer the case.

**Consultation process**

On engagement with external experts on future consultations regarding authorisation and use of CHIS, I should say that given the recent updates to the code of practice (which was subject to public consultation) there are no plans to further amend the code or to amend the safeguards which are applicable to the authorisation of juvenile CHIS. The government will, of course, continue keep the operation of the regime under review and will have close regard to any recommendations made by the Investigatory Powers Commissioner. Should the government consider further changes to the code of practice are necessary, we will of course conduct another statutory consultation, giving the opportunity for those with interest or expertise to comment. If there was a need to further amend the safeguards around authorisation of juvenile CHIS, I am happy to consider how to ensure that those who may have a specific interest to the proposed changes are to give them the opportunity to contribute.

Similarly public authorities keep their internal guidance on the use of investigatory powers under review to ensure it remains appropriate and up to date. Where that guidance is updated the public authority concerned will be able to draw on expertise as necessary to inform the guidance.
You have asked a number of questions under this heading, including how children are recruited as juvenile CHIS, advice available to them, and how their welfare is monitored. I have set out in detail the policy that requires the welfare of the juvenile CHIS to remain paramount and the safeguards the regime applies. Within that, the circumstances of each individual juvenile CHIS is an operational matter for the police, who I am sure will be able to provide you with further information.

The key point to note here is that each decision to authorise the use of juvenile CHIS will require consideration of the specific case and all cases will be unique to those circumstances. There are a number of ways in which a juvenile could come to act as a CHIS, including the juvenile being arrested and offering to provide information on an ongoing basis, the juvenile being arrested and being asked to provide information on an ongoing basis and even a juvenile proactively approaching the police and offering to provide assistance. In all such cases the police will need to carefully consider the necessity and proportionality of any authorisation and the wellbeing of the juvenile.

Even where a juvenile proactively offers to act as a CHIS and its use may deliver operational benefit, the police may still not authorise such use if they do not consider that the child’s welfare cannot be adequately safeguards.

Where a juvenile is authorised to act as a CHIS their welfare will be monitored throughout that authorisation. In all cases, including those involving juveniles, a CHIS will have a handler and a controller. The CHIS handler is the person that has day to day responsibility for tasking that CHIS and monitoring their security and welfare. How this is done in practice and how frequently will vary depending on the circumstances but it may include face to face meetings at the juvenile’s home or may involve the juvenile meeting the handler in a pre-agreed location. As previously set out all meetings between the public authority and a juvenile under the age of 16 must involve an appropriate adult.

The controller has responsibility for the management and supervision of the handler and the overall wellbeing of the CHIS. It is their responsibility to ensure that the handler is properly discharging their duties to consider the welfare and safety of the CHIS.

Similarly the level and method of contact with a juvenile CHIS after an authorisation has ended will vary depending on the circumstances of the case and the juvenile will be consulted on the ongoing level of engagement.

On the oversight role of the IPC, under section 235 of the Investigatory Powers Act public authorities have a duty to disclose or provide to a Judicial Commissioner all such documents and information as the Commissioner may require for the purposes of the Commissioner’s functions. And public authorities must provide a Judicial Commissioner with such assistance as the Commissioner may require in carrying out any investigation, inspection or audit for the purposes of the Commissioner’s functions. The IPC can include anything he sees fit to include in his annual report to the Prime Ministers on the carrying out of his functions (in addition to certain
information – including statistics – which must be included). Information can be only excluded from publication if, in the opinion of the Prime Minister, publication of that information would be contrary to the public interest; or prejudicial to national security, the prevention and detection of serious crime, the economic well-being of the UK, or the continued discharge of the functions of any public authority whose activities are subject to review by the IPC.

Finally you asked about researchers’ ability to access information and individuals for research purposes. There is of course a great deal of information about the juvenile CHIS regime in the public domain including legislation, codes of practice, debates in Parliament and indeed this correspondence and the forthcoming report by the Investigatory Powers Commissioner will enhance the amount of information in the public domain. However, there are important operational and personal sensitivities, which you acknowledge, which preclude anything other than the privileged and carefully-managed access you mentioned. Should someone decide to conduct further research into this area careful consideration would need to be given to what access the research team would be granted but this would be an operational matter for the relevant public authorities and others that hold the relevant information.

Rt Hon Ben Wallace MP

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