From Rt Hon. Harriet Harman MP, Chair

The Rt Hon. Ben Wallace MP
Minister of State for Security and Economic Crime
Home Office
2 Marsham Street
London, SW1A 4DF

3 October 2018

Dear Ben,

Re. “Child spies” – Use of juveniles as Covert Human Intelligence Sources (CHIS)

Thank you for your letter of 7 September, in which you responded to issues that I had raised regarding the use of juveniles as Covert Human Intelligence Sources (CHIS). Your letter provided useful information, but I am writing again about issues that the Committee will wish to understand more fully.

Compliance with obligations under the UN Convention on the Rights of the Child

The National Strategy for the Policing of Children and Young People refers to the UNCRC (and the Children’s Act 2004). The UNCRC requires that for public bodies “the best interests of the child shall be a primary consideration”. Given the risks posed by some criminal environments, we wish to be sure that the system properly takes account of, and safeguards, the psychological and physical wellbeing of the children involved.

(i) Dangerous nature of assignments

You explained that “[t]he type of criminality against which an adult or juvenile CHIS can be deployed has never been subject to any restriction”. Whilst this might be one reading of the situation, it is at odds with what many observers understood, that children would only be used to investigate minor crimes. There are concerns that “scope creep” has occurred without the opportunity for public debate and without advice from the wider health and social care community.

- At the time the regime was first introduced in 2000, what was the understanding in the Home Office about the types of crimes for which children would be used as CHIS?
- In the scrutiny of the 2018 Order it appeared that the range of crimes investigated using juvenile CHIS has expanded over the years. Is this the case, and, if so, was advice sought from health and social care experts and the Children’s Commissioners as to the appropriateness of such an expansion?
(ii) Numbers of children used as CHIS

You explained that there is no requirement for a public body to retain data for more than five years after the authorisation. We therefore reluctantly conclude that it will be impossible to build up a complete picture of the historical scale of the use of juvenile CHIS.

- Please explain why there was no requirement to retain data about juvenile CHIS authorisations for more than five years after the authorisations ended.

You also explained that data about authorisations for assignments is “not recorded centrally and therefore readily retrievable”, but you relayed the view of operational partners that the number of authorisations is “low”. You have, however, provided to us and other interested parties with some basic figures and some anecdotes from operational partners that give a partial insight into the scale of the matter.

- We would be grateful either for assurances that you have now sought all relevant data from your operational partners or that you will now do so.
- Please provide any further data that is now available (insofar as it does not pose a risk to former or current CHIS), and any further anecdotal evidence, including, if available: the longest duration of assignment that you or your officials are aware of; and any examples of a child having been used repeatedly for different authorisations.

We are pleased that the Investigatory Powers Commissioner will henceforth be gathering data as part of his role in monitoring the CHIS regime. We believe that this should include: the numbers of juvenile CHIS used each year, broken down by the type of crime and the public body, and that it should include information about the duration of assignments.

- Please set out the specific data types that will be gathered by the Investigatory Powers Commissioner, and the deadline for the first publication of the data.

(iii) Duration and review periods

You discussed two distinct processes for juvenile CHIS authorisations: review, which must be done monthly; and renewal, which extends the duration beyond the four-month limit. You said that “[a]n authorisation may be renewed more than once”. It would take only two renewals to extend the deployment of a CHIS to one year.

- Please confirm whether there is any upper limit on the number of renewals and the duration of a juvenile CHIS assignment, and whether such limits existed prior to the 2018 Order when authorisations lasted for only one month (and could be renewed).

(iv) Consultation process

We remain concerned that no-one from outside of the law enforcement community appears to have been proactively consulted about the changes to the regime brought in by the 2018 Order. You note that the CHIS code of practice has been improved since its inception in 2002, and that the changes made in 2014 and 2018 were subject to public consultation. Whilst this is welcome, it appears that external experts in child welfare did not know the nature of assignments, and hence the weight of the matter. Moreover, it is not clear that there will be such consultation on the content of internal guidance.

- Please outline how future consultations on CHIS will engage with external experts in child welfare, and what input they will have into internal guidance.
Welfare of children used as CHIS

Our paramount concern is with the human rights of children used as CHIS. This raises a number of issues: how children are recruited as CHIS, for example whether cooperation as an intelligence source is presented as an alternative to arrest; what advice is available to them; and what is done to monitor their welfare during assignments.

- Please explain how options are presented to children, and whether they can receive independent advice beyond that of their appropriate adult (where applicable).
- Please provide us with more detail about: how a child’s best interests are assessed; how a decision is made to proceed with an authorisation; and how the child’s interests and wellbeing are monitored during the authorisation. (It could be useful to provide copies of the paperwork used by public bodies, with examples of entries.)

In addition, we do not know how the child’s welfare is monitored after an authorisation has ended. We consider that such monitoring is particularly important when a child has been involved in investigating serious crimes. Nor do we know for how long such monitoring continues, nor whether long-term monitoring can be impinged upon by the ability of public bodies to discard records five years after an authorisation.

- Please explain how children’s welfare is monitored after an authorisation has ended; and also how decisions are made about the duration of this monitoring, with examples of these durations (e.g. for children of different ages who have been involved in investigating crimes of different severities.)

You explained that “the police have the ability to draw on the expertise of those with specific training and experience in fields such as mental health and social care to inform these assessments where necessary”. You cited an example in which local authority social services were consulted and it was decided to not use the child as a CHIS. However, the Association of Directors of Children’s Services Ltd has told us that it believes that its members are largely unaware of the processes and the individual operations.

- Please tell us: whether the experts used by the police are independent and external to the police; the estimated proportion of cases that draw on such expertise; and whether other public bodies have similar arrangements to draw on experts.

We are pleased that the IPC will henceforth ensure consistency across the public bodies that use juvenile CHIS. You referred to the publicly-available code of practice as well as to “internal guidance that the police follow in deploying juvenile CHIS”.

- As part of its monitoring role, is the IPC allowed to see the “internal guidance” to determine whether it is appropriate and is being followed, and will the IPC be able to (with appropriate safeguards to protect children’s identities) refer to the internal guidance when reporting publicly on the juvenile CHIS regime?

Finally, you referred to academic research into the use of juvenile CHIS. We note one of its conclusions, that further research is required into the juvenile CHIS regime, and we support this view. The research seems to be the only piece of its kind, and was only possible due to privileged and carefully-managed access to information and people. Further research to test the findings and to expand the understanding of the regime will require a wider range of researchers to have access to data and individuals.

- By what means will other researchers be able to access information and individuals for research purposes (with appropriate safeguards to protect former and current CHIS)?
I would be grateful for a response by 17th October.

I have copied this letter to Rt. Hon Lord Trefgarne, Chair of the SLSC; Lord Paddick; Lord Justice Fulford, Investigatory Powers Commissioner; Anne Longfield OBE, Children’s Commissioner for England; Koulla Yiasouma, NI Commissioner for Children and Young People; Bruce Adamson, Children and Young People’s Commissioner for Scotland; and Sally Holland, Children’s Commissioner for Wales.

Yours sincerely

Harriet

Rt Hon. Harriet Harman MP, Chair