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Rt Hon Harriet Harman QC MP Chair,
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“Child spies” – Use of juveniles as Covert Human Intelligence Sources (CHIS)

Dear Harriet,

Thank you for your letter of 16 August, in which you sought responses to specific queries on the use of juveniles as covert human intelligence sources. These had arisen in light of the recent House of Lords Secondary Legislation Scrutiny Committee report and Grand Committee debate on revisions that have been made to the juvenile covert human intelligence source (CHIS) regime. I hope that this response will prove useful in your committee’s consideration of this important issue.

As you note, the use of juvenile CHIS is governed by the Regulation of Investigatory Powers (Juveniles) Order 2000 (the 2000 Order). When this Order was introduced in 2000, it provided an enhanced set of safeguards applicable when seeking to authorise the use of juveniles as CHIS. This included the requirement that authorisations for juvenile CHIS last for only one month (compared to the 12 months for adult CHIS set out in RIPA), the need to conduct enhanced risk assessments, a requirement for an appropriate adult to be present at all meetings between a source under the age of 16 and the public authority tasking them, and a prohibition on a source under 16 being tasked in relation to a parent or person with parental responsibility. In addition to the enhanced safeguards provided for in the 2000 Order, annex A of the code of practice requires an enhanced authorisation level to that for an adult CHIS. For example in the case of the police, authorisation must be given by an Assistant Chief Constable or Commander, compared with a superintendent for adult CHIS. These enhanced safeguards exist alongside those underpinning the adult CHIS regime, which include the requirement that an authorising officer must be satisfied that the use and conduct of any CHIS is both necessary and proportionate to what is sought to be achieved.

The first CHIS code of practice was published in 2002, and has since that point contained guidance on the use of juvenile CHIS and an annex outlining the enhanced authorisation level for such authorisations. All revisions of the CHIS code of practice since 2002 have made reference to the authorisation of juvenile CHIS. The most recent revisions of the code of practice and those made in 2014 were subject to formal public consultation, with no concerns raised about either the use of juveniles as CHIS or the safeguards that apply. These codes were also subject to explicit approval by Parliament.

There have been dramatic changes in crime methodology and type since this legislation was introduced under the last Labour Government 18 years ago, such as cyber-driven crime, which stretches across all crime types, including modern slavery, firearms and county lines, and includes juveniles as victims and perpetrators. It is vital that law enforcement and the intelligence agencies have the investigative tools they need to fulfil their statutory obligations, and therefore the development of new methods to combat these threats, whilst ensuring they comply with the requirements of the law, is crucial. The limited changes we have made to the safeguards which apply when seeking to authorise juvenile CHIS by amending the 2000 Order with the Regulation of Investigatory Powers (Juveniles)(Amendment) Order 2018, is one such response.

In your letter, you highlight Article 3 of the UN Convention on the Rights of the Child, and ask that we demonstrate that the CHIS regime meets this obligation. The welfare of a CHIS is a paramount consideration in any deployment, and the guidance in the revised Covert Human Intelligence Sources code of practice, which was approved alongside this Order and came into force on 15 August 2018, makes this clear.

In the case of a young person being deployed as CHIS, this is even more important. The 2000 Order introduced the requirement that an enhanced risk assessment accompany any decision to use a juvenile CHIS. That enhanced risk assessment should be updated to reflect developments during the course of the deployment, as well as after the deployment if contact is maintained, and takes into account the physical and psychological welfare of that young person. The police will also have regard to their broader safeguarding responsibilities when making these decisions. Indeed, the National Strategy for the Policing of Children and Young People, endorsed and published by the National Police Chiefs Council in 2015, says:

“It is crucial that in all encounters with the police those below the age of 18 should be treated as children first. All officers must have regard to their safety, welfare and well-being as required under s10 and s11 of the Children Act 2004 and the United Nations Convention on the Rights of the Child.”

The internal guidance that the police follow in deploying juvenile CHIS contains detail on how to safeguard and promote the wellbeing of the juvenile CHIS, including how to assess their maturity and capacity to give informed consent, a requirement to ensure that the handlers are properly trained to deal with young people (they have day to day responsibility for the CHIS, and must raise any issues surrounding matters including the safety and welfare of the CHIS with those responsible for

authorising their deployment), and requirements to consider all aspects of safeguarding the young person. This includes giving particular care to planning for the safety of the young person and maintaining that level of safety throughout the duration of the deployment. Additionally, paragraph 5.33 of the 2018 CHIS code makes clear that the safety and welfare of the CHIS should continue to be taken into account after an authorisation has ended, with risk assessments continuing to be undertaken where necessary and practicable.

(i) Dangerous nature of assignments

You asked whether deployment of juvenile CHIS on investigations into serious crimes, such as terrorism, gang violence, county lines drug offences and child sexual exploitation, was envisaged when the original legislation was introduced. The type of criminality against which an adult or juvenile CHIS can be deployed has never been subject to any restriction; as noted above, and as with any authorisation for the use of such investigative techniques, the key considerations of necessity and proportionality must be met in order for the use of CHIS to be authorised. These decisions are not taken in a vacuum, and all the other considerations outlined in the code of practice, supported by the enhanced risk assessments and the emphasis on the welfare of the CHIS, provide the authorising officer with the detail required to make this assessment. As regards impact assessments the crucial point is that the 2000 order introduced the requirement for enhanced case specific risk assessments to be conducted

It is worth stressing that, while investigators may wish to avoid the use of young people as CHIS, we must recognise that some juveniles are involved in serious crimes, as perpetrators and victims. Consequently, young people may have unique access to information that is important in preventing and prosecuting gang violence and terrorism.

(ii) Numbers of children used as CHIS

As you are aware, there are no national statistics currently available on the number of juvenile CHIS authorisations given, although operational partners say this is low, a fact confirmed by Lord Judge during the Grand Committee debate.

The code of practice requires all public authorities to retain a centrally retrievable record of all its CHIS authorisations, and sets out the information required on that central record: the name, code name, or unique identifying reference of the CHIS, the date the authorisation was granted, renewed or cancelled, and whether the activities were self-authorised. So whilst detailed information would be contained within an individual application within the relevant public authority, it is not recorded centrally and therefore readily retrievable. The code also requires that these records should be retained for at least five years after the end of the authorisations to which they relate.

Independent oversight of investigative powers is provided by the Investigatory Powers Commissioner, Lord Justice Fulford. The Commissioner, like those oversight Commissioners his role has replaced, provides the guarantee of impartial and

independent scrutiny of the use of these tactics, and safeguards the rights of each citizen against unlawful interference.

My officials have been speaking to Lord Justice Fulford about the current oversight regime in this area. During their inspections of public authorities' use of covert and investigative powers, the Commissioner and his inspectors already pay special attention to the safeguards and processes being used by public authorities when authorising the use of juvenile CHIS. Going forward, Lord Justice Fulford will collect statistics on the number of juvenile CHIS in place, and will consider how this information and his oversight in this area can appropriately be included in his annual reports in the future. I am aware that he has also written in response to your letter, again stating that all the information available to him supports the position that the number of juvenile CHIS authorisations is low.

(iii) Rationale for changes to the duration and review periods

You asked for an explanation as to what limits are placed on the overall duration of a juvenile CHIS, both before and after the changes made by the 2018 Order coming into effect. Previously the 2000 Order provided that an authorisation could be given for a maximum of one month. The 2018 Order amended the 2000 Order, so in future such authorisations can (but need not) last for four months. I was pleased to note that you recognise the reasoning behind extending the authorisation period. Detail on the renewal of a CHIS authorisation is contained in the CHIS code of practice, in chapter 5 in the revised code. An authorisation may be renewed more than once, if necessary, provided it continues to meet the criteria for authorisation (paragraph 5.25). That means, therefore, that if the authorising officer believes that the proposed activity continues to be both necessary and proportionate, an authorisation can be renewed.

The 2018 Order requires that a juvenile CHIS authorisation is reviewed at least monthly, and the code stipulates that the reviews, undertaken by the authorising officer, should assess whether it remains necessary and proportionate to use the CHIS, and therefore whether the authorisation remains justified. Of course if it is no longer necessary or proportionate, the authorisation must be cancelled.

(iv) Consultation process

The changes made to the 2000 Order were considered with the welfare of the CHIS in mind: adjusting the definition of appropriate adult strengthens the welfare protections for the CHIS, and the increased authorisation period will allow for greater emphasis to be placed on welfare issues at review, which must take place at least monthly.

There is no requirement to consult publicly on changes to the 2000 Order, but you are aware that we did consult broadly within the operational community, and the Investigatory Powers Commissioner's Office was also involved in these discussions. All those who use juvenile CHIS have a duty of care to the CHIS and duties to safeguard children and young people, and this was taken into account as part of the consultation.

(v) Welfare of children used as CHIS

On this issue, you asked how welfare is assessed, and what support the young people are given before, during, and after an authorisation. As I have already set out above the safety and welfare of the young people undertaking this important role has been, and remains, paramount. The enhanced risk assessments which are required before a CHIS is tasked are reviewed and updated throughout the duration of an authorisation, and also updated after an authorisation is cancelled where contact is maintained with the CHIS. As part of this assessment and other wider enhanced risk assessments required for juvenile CHIS, 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.

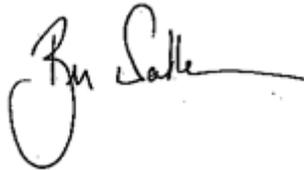
The law recognises that parental responsibility diminishes as the child matures, and there are a number of areas where the law treats over 16s differently from under 16s. For example, at 16, a child can apply for their own passport, or they can join the military. But it should not be taken that the vulnerability of all those under 18 is not taken seriously when considering their deployment as a CHIS. Rather, these assessments are made on a case by case basis by those charged with the day to day dealings with the CHIS, including their safety and welfare, and who are charged with relaying this to the authorising officer, who also has a role in this assessment.

It is important to remember that the code of practice is not the only guidance available to public authorities who deploy CHIS, but it would not be appropriate for some of this guidance to be made available publicly due to the sensitivities around the deployment of CHIS. The Investigatory Powers Commissioner, through his independent scrutiny of the use of these tactics, will be ensuring a consistent adherence to all requirements across all appropriate public authorities, including where the individual circumstances of each case must be taken into account. The previous Commissioners responsible for oversight published reports annually, and in his final oversight report in 2017, the Surveillance Commissioner commented that *“standards of compliance have steadily improved in my view, and addressing it generally, they are high”*.

It may be useful to demonstrate how the safeguards work in practice by providing case studies. For instance, police became aware of a vulnerable young person who was in a position to provide considerable intelligence opportunities in an extremist network. Those opportunities were balanced against the welfare of the young person and their long-term wellbeing, within the statutory obligation of the welfare of the child being paramount. The local authority social services were consulted, and a child protection plan was instigated. But in the end, it was not considered proportionate or appropriate to authorise that young person as a CHIS, despite the intelligence benefits that could have been gained. Compare this with a psychologically robust juvenile gang member, who provided significant information which helped the police investigate murder and prevent a significant number of other crimes.

Academic evidence made available to the Home Office and the police has considered the use of juvenile CHIS¹. The study explicitly considered and reconciled the potential for conflict between the use of juvenile CHIS and the child safeguarding obligations in law, noting in particular the potential for positive life outcomes for young people who engage with policing in this way.

The authorisation of juvenile CHIS can be an important tool, giving investigators vital evidence that they cannot acquire through other means, that can put offenders in prison, and that can be used to protect vulnerable young people – all whilst ensuring that the welfare of the CHIS remains of paramount importance. This is an important issue, and I understand the concerns that have been raised to ensure the interests of the young people involved, but it is important to remember that this is also a power that, for the last 18 years, has been set out clearly in legislation and is subject to enhanced safeguards and an oversight regime which is robust and should command confidence.

A handwritten signature in black ink, appearing to read 'Ben Wallace', with a long horizontal stroke extending to the right.

Rt Hon Ben Wallace MP

Minister of State for Security and Economic Crime

¹ The use of juvenile covert human intelligence sources (CHIS) in England: An exploratory study. Dr Brian Chappell MBE, Senior Lecturer, Institute of Criminal Justice Studies, University of Portsmouth