

MEMORANDUM OF UNDERSTANDING

CONCERNING

OPERATION STOVEWOOD

1 The Participants

1.1 This Memorandum of Understanding ('MoU') is between the following Participants:

Director General of the National Crime Agency (the 'Director General'); and

Chief Constable of South Yorkshire Police (the 'Chief Constable').

2 Introduction

2.1 The Chief Constable of South Yorkshire Police has made a request, under section 5(3) of the Crime and Courts Act 2013, for the Director General of the National Crime Agency to conduct an investigation into matters relating to the Independent Inquiry into Child Sexual Exploitation in Rotherham 1997-2013 (the Jay Report). The National Crime Agency ('NCA') investigation will be known as Operation Stovewood.

2.2 The Terms of Reference of the investigation, as set out in the letter from the Director General to the Chief Constable dated 10 December 2014, are set out in Annex A to this MoU ('the Terms of Reference').

2.3 This MoU sets out the arrangements which will apply to Operation Stovewood.

3 Legal Framework

3.1 The NCA is a non-ministerial department and has been established as a Crown body pursuant to Part 1 of the Crime and Courts Act 2013 ('the Act'). The NCA is under the direction and control of the Director General.

3.2 Operation Stovewood will be conducted in accordance with the Act and other relevant enactments. This includes the duty placed on the NCA to have regard to the need to safeguard and promote the welfare of children.

4 Arrangements

- 4.1 The Director General, as the NCA Accounting Officer, will be accountable for ensuring the proper financial management of Operation Stovewood and its effective corporate governance in accordance with the provisions in the Act and the NCA Framework Document.
- 4.2 Operation Stovewood will be under the direction and control of the Director General. The Director General will delegate the day-to-day conduct of Operation Stovewood to a senior NCA officer who has been designated the Senior NCA Officer in Overall Command of the independent investigation (the 'OIOC').
- 4.3 The Chief Constable will provide the OIOC with suitable premises and equipment from which to undertake Operation Stovewood.
- 4.4 The Chief Constable will ensure any information held by the South Yorkshire Police Force, at the date of the request made by the Chief Constable under section 5(3) of the Act, which may be relevant to the Terms of Reference is retained (subject to all applicable common law, statutory provisions or relevant Court Orders) and made available to the OIOC for inspection.
- 4.5 The OIOC will be responsible for (in particular):
- a. assembling a team of investigators and support staff with the appropriate skills, experience and abilities to carry out Operation Stovewood;
 - b. ensuring Operation Stovewood is victim focused;
 - c. members of Operation Stovewood team working together with relevant public services to ensure the best outcome for the victims and having regard to any community impact issues;
 - d. keeping the Chief Constable informed of the progress of Op Stovewood through monthly update meetings;

- e. ensuring any issues¹ identified during Operation Stovewood which involve misconduct² by a member of South Yorkshire Police are referred to the Deputy Chief Constable, South Yorkshire Police who will be responsible for deciding whether or not to refer the matter to the IPCC;
 - f. ensuring any other matters falling outside the scope of the Terms of Reference are referred in a timely manner to South Yorkshire Police to investigate; and
 - g. ensuring, as appropriate, that effective communication and engagement takes place between NCA Corporate Affairs and the South Yorkshire Police's Corporate Communications department.
- 4.6 If the OIOC requires additional resources to undertake Operation Stovewood, the OIOC may make a request to the Chief Constable for assistance. A request for additional resources may include a request for equipment, constables and police staff. If such a request for assistance is made, the Chief Constable will provide such additional resources as the OIOC reasonably requires.
- 4.7 Where an individual is provided to assist the OIOC as part of Operation Stovewood, the individual will be under the direction and control of the Director General.
- 4.8 The Chief Constable will provide the OIOC with a single point of contact (SPOC) to facilitate access by members of Operation Stovewood to South Yorkshire Police systems, records and services which may be relevant to the investigation.
- 4.9 If there is a requirement for skilled staff to resource the Major Incident Room, the Director General may consider whether it is appropriate to request a chief officer of a UK police force or a UK law enforcement agency to provide voluntary assistance to Operation Stovewood as provided for in paragraph 9, 17 and 18, Schedule 3 to the Act. A request for assistance may include equipment, constables and members of staff of a UK law enforcement agency.

¹ This does not include any issues which may be relevant to the IPCC Led investigation into the conduct of ten South Yorkshire police officers in relation to their handling of reported CSE in Rotherham.

² For the purpose of this MoU, "misconduct" means misconduct which may involve a criminal offence or indicate the person has behaved in such a way to justify the bringing of disciplinary proceedings.

- 4.10 Police officers attached to Operation Stovewood will be under the direction and control of the Director General and the tasking and management of them will be the responsibility of the OIOC.
- 4.11 The OIOC will ensure that any person assigned to work on Operation Stovewood is aware of the provisions in Part 1 of the Act, the arrangements set out in the NCA Framework Document, and any other relevant NCA guidance and policy. This will include, in particular, policies which set out the procedures to follow when liaising with the Home Office and other government departments and any policies regarding child protection and safeguarding children.

5 Information Sharing

- 5.1 The Chief Constable will disclose to the OIOC any information held by South Yorkshire Police which may be relevant to the Terms of Reference. The Chief Constable will provide copies of any documents requested by the OIOC.
- 5.2 The Chief Constable recognises the duty placed on the Chief Constable by paragraph 3 of Schedule 3 to the Crime and Courts Act 2013 to keep the Director General informed of any information held by the police which appears to the Chief Constable to be relevant to the exercise by the NCA of the NCA's crime-reduction function and criminal intelligence function.
- 5.3 The OIOC will ensure the Chief Constable is informed of any information obtained by the NCA in carrying out Operation Stovewood that appears relevant to the exercise of functions by the Chief Constable or any member of South Yorkshire Police.
- 5.4 The OIOC will disclose to the Chief Constable any information that the OIOC considers necessary for South Yorkshire Police to respond to any risks to the public, as set out in the Terms of Reference.
- 5.5 The information handling arrangements which will apply to Operation Stovewood are set out in Annex B to this MoU.

6 Transparency

- 6.1 The Participants understand the need for Operation Stovewood to be transparent and to publish information relating to the progress of Operation Stovewood. The Participants will endeavour to ensure there is transparency for the victims of child sexual exploitation in so far as providing, where appropriate, information on the progress of the investigation.
- 6.2 As the NCA is not a public authority for the purposes of the Freedom of Information Act 2000 ("FOIA"), a person will not be able to make a request under FOIA for the disclosure of information relating to Op Stovewood (or any other information obtained in connection with NCA functions). However, information may be disclosed pursuant to the duty placed on the Director General by section 6 of the Act to publish information about the exercise of NCA functions.
- 6.3 The NCA will publish information about Operation Stovewood in accordance with arrangements set out in Annex C to this MoU.

7 Financial Arrangements

- 7.1 Operation Stovewood will take place on a full cost recovery basis. The NCA will not charge a handling fee or seek to secure any financial benefit from these arrangements. The NCA will put in place appropriate reporting mechanisms to ensure that the Chief Constable has full sight of the costs of the investigation.
- 7.2 The Director General will be responsible for the day-to-day costs of accommodating the investigation team in NCA premises where it has the housing capacity. The Director General will seek to recover any additional costs reasonably incurred by the OIOC, including, for example, rent (for new premises), IT costs and counsel's fees.
- 7.3 The Chief Constable will arrange for the fundholding body for the South Yorkshire Police ("the PCC") to pay the Director General an appropriate amount in connection with any reasonable costs incurred by the NCA in connection with Operation Stovewood. The Chief Constable will further fund any reasonable additional costs associated with Operation Stovewood.

- 7.4 The Director General will provide regular reporting to the Chief Constable on the cost of Operation Stovewood in a format to be decided upon between the Participants.
- 7.5 Where the Director General considers it appropriate, the Chief Constable will be consulted prior to any key financial decisions relating to Operation Stovewood.
- 7.6 The Participants recognise that the PCC will be required to make funding decisions in relation to Operation Stovewood and accordingly the Chief Constable will provide the PCC with a copy of all reports on the costs of Operation Stovewood submitted to him by the Director General and will consult with the PCC prior to any key financial decisions relating to operation Stovewood.

8 Legal matters

- 8.1 The NCA Legal Department will be available to provide legal advice, as required by the OIOC. Any legal advice relating to the prosecution of offences arising out of the investigation will be obtained from the Crown Prosecution Service.
- 8.2 The Chief Constable will ensure that NCA Legal are informed at the earliest possible opportunity of any claim, or potential claim, brought in relation to Operation Stovewood.
- 8.3 NCA Legal³ will consult with the South Yorkshire Police Force solicitor about any claims issued against the Director General or the NCA in connection with Operation Stovewood.
- 8.4 The Chief Constable will indemnify the Director General in respect of claims⁴ arising in connection with Operation Stovewood, except where the NCA is liable for the unlawful conduct⁵ of an NCA officer⁶ and/or an NCA contractor⁷.

³ NCA Legal may be represented by The Treasury Solicitor.

⁴ For the purpose of the indemnity, 'claims' in this paragraph means any liabilities, costs, expenses and/or damages arising out of or in connection with Operation Stovewood;

⁵ See: paragraph 2 (liability of NCA for unlawful acts), Schedule 4 to the Crime and Courts Act 2013. For the avoidance of doubt, 'unlawful conduct' includes criminal or tortious acts, omissions or any act which breaches a statutory or common law duty conferred on the NCA officer.

⁶ 'NCA officer(s)' means (a) the Director General, (b) NCA officers appointed under paragraph 9 of Schedule 1 to the Act; persons who have been seconded to the NCA to serve as NCA officers under paragraph 13 of Schedule 1 to the Act, and NCA specials.

- 8.5 If the Director General becomes aware of a liability which the Director General believes may be covered by the indemnity set out in paragraph 8.4 above, the Director General or the OIOC will, as soon as reasonably practicable provide the Chief Constable with written notice of the claim (the 'Claim').
- 8.6 The Director General will not make any admission of liability, agreement or compromise on behalf of the NCA in relation to the Claim except with the prior written consent of the Chief Constable.
- 8.7 The Director General will ensure the Chief Constable and any professional advisers representing the Chief Constable in respect of the Claim are provided with reasonable access to documents which may be relevant to the claim. The Director General will further ensure the OIOC, NCA officers and NCA contractors will be made available to the Chief Constable and his professional advisers if required to provide any witness statements in connection with the Claim.

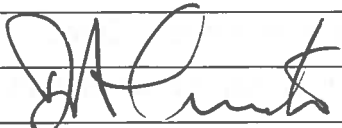
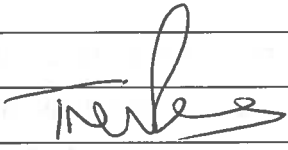
9 Review and Termination

- 9.1 This MoU will come into effect on the date of signature and will continue in operation until terminated by any of the Participant on three months written notice.
- 9.2 Amendments to this MoU may be decided upon by the Participants in writing.
- 9.3 As set out in the Terms of Reference, following Phase 1 of Operation Stovewood, the OIOC will conduct a review of the progress of the investigation. Amendments to this MoU may then be approved between the Participants.

Signed:

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| Chief Constable of South Yorkshire Police | The Senior NCA Officer in Overall Command, |
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⁷ NCA contractor means any person assigned to Operation Stovewood, who is not a NCA officer but who carries out duties on behalf of the OIOC for the purpose of Operation Stovewood.

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| 14/4/15. | 9/2/13 |
| David Crompton QPM | Trevor Pearce |

Annex A

Operation Stovewood: Terms of Reference

Scope of Investigation

Subject to any additional matters that may be identified during phase one of the investigation and the need to follow up evidence without fear or favour, the investigation will include the following:

- i. The criminal investigation of non-familial⁸ child sexual exploitation ("CSE")⁹ in Rotherham between 1997 and 2013. This will focus on the investigation of outstanding offenders with the aim of bringing them to justice subject to other interventions for offences which remain undetected. Fundamental to this will be to understand the nature and extent of CSE committed against victims as outlined in the Independent Inquiry into Child Inquiry into CSE in Rotherham 1997-2013 (the "Jay Report"). The investigation may also include matters/allegations falling within the time and geographic span of the Jay report which have come to light via the Home Affairs Select Committee, in either public or private session, or previous investigations but which have not resulted in an appropriate investigation, prosecution or effective disruption.
- ii. The independent review and subsequent oversight of ongoing criminal investigations commenced in the last 12 months by South Yorkshire Police into non-familial CSE in Rotherham between 1997 and 2013. This will include consideration as to the linking of investigations and their ongoing leadership/management.
- iii. The establishment, with the relevant Inspector¹⁰ of procedures to enable the effective exchange of information, and where appropriate, the identification,

⁸ That is a offences not occurring within a family relationship as defined by section 27, Sexual Offences Act 2003.

⁹ As described in 'Keeping children safe in education (Statutory Guidance for schools and colleges)', Department for Education, April 2014 (page 10).

¹⁰ Appointed by the Secretary of State pursuant to section 10 of the Local Government Act 1999 to carry out an inspection of compliance of Rotherham Metropolitan Borough Council in relation to the council's exercise of functions on governance, children and young people, and the taxi and private hire licensing.

and referral for scoping of potential criminal allegations against councillors and officials of Rotherham Metropolitan Borough Council that fall within the parameters of the Jay Report.

iv. The establishment of procedures to ensure the effective exchange of information, coordination and deconfliction of activity with the IPCC in respect of their independent investigations into: a) the conduct of South Yorkshire Police officers in relation to their handling of reported CSE in Rotherham during the relevant period; and b) the actions of the former Police and Crime Commissioner for South Yorkshire in respect of matters identified within the Jay Report.

Investigation Phases

During "Phase 1" of the investigation, the designated Senior NCA officer¹¹, Trevor Pearce (OIOC) will:

- i. establish the necessary staffing, logistics and infrastructure to enable the investigation 'set up';
- ii. oversee the identification and examination of relevant material held by South Yorkshire Police and other bodies in order to scope the nature, scale, and requirements of the investigation;
- iii. identify previously investigated cases that may, on review, present opportunities for early intervention;
- iv. oversee the review of any current investigations being carried out by South Yorkshire Police into non-familial CSE in Rotherham between 1997 and 2013;
- v. as necessary, commence immediate criminal investigations to mitigate any risk imposed to the public, or to prevent the loss of the investigative opportunity; and

¹¹ Section 5(8) of the Crime and Courts Act 2013.

- vi. produce a report setting out any suggested amendments to these terms of reference, and the future requirements, direction, leadership and investigative strategy needed to carry out the investigation.

It is anticipated that Phase 1 will be concluded by spring, 2015.

Following Phase 1, the OIOC will review the progress of the investigation and consider whether the details of the investigation, as set out in this letter, should be amended. Phase 2, the criminal investigation, will then commence as soon as an appropriately resourced investigation team, based upon the identified requirements is available. An indication of the timescale for Phase 2 will then be communicated.

Care of Victims and Others

The OIOC will ensure that there is an effective victim management strategy in place at all times and will work with South Yorkshire Police and other bodies, through a Strategic Coordinating Group, to ensure that all appropriate steps are taken to respond to the needs of victims.

South Yorkshire Police remain responsible for the management of issues surrounding vulnerable witnesses, protected persons, or where there are threats to life which arise from the investigation. Other risks and threats to victims, the public, or community will be similarly managed by South Yorkshire Police.

Organisational Learning

The OIOC will share any organisational learning identified during the investigation with the Chief Constable of South Yorkshire Police and other relevant bodies as quickly as reasonably practicable, having regard to any legal or investigative constraints. Such learning may relate to policy, strategy, good practice or procedures.

Further Detail

The detailed statutory, financial, administrative and information management arrangements for operation Stovewood will be set out in the MoU.

There will be monthly update meetings between the OIOC and relevant Chief Officers from South Yorkshire Police.

ANNEX B

INFORMATION HANDLING ARRANGEMENTS

1 Introduction

- 1.1 The purpose of this annex is to set out a framework within which the NCA and South Yorkshire Police can systematically and lawfully exchange information to facilitate Operation Stovewood.

2 Legal Basis

- 2.1 Information sharing between the Participants will take place pursuant to the information gateways provided for in section 7 and paragraphs 3 and 4 of Schedule 3 to the Act and subject to the restrictions in Schedule 7 to the Act.
- 2.2 All data sharing will be undertaken in accordance with the provisions of the Data Protection Act 1998 and other legislation relevant to information sharing. Either Participant may withhold the disclosure of any information, in whole or part, where it considers the disclosure to be disproportionate or unlawful.
- 2.3 The arrangements set out in this MOU governing data sharing will engage section 29 of the Data Protection Act 1998 (Part IV Exemptions: Crime and Taxation). As such the data protection principles set out in that Act will not apply to the extent set out in that section.

3 Handling

- 3.1 The NCA will handle information in accordance with the Information Charter which is available www.nationalcrimeagency.gov.uk. The Information Charter takes due regard of the Information Commissioner's Codes of Practice and the College of Policing's Authorised Professional Practice on Information Management.
- 3.2 The Participants will designate a point of contact for the purposes of managing the data sharing process set out in this MoU and for the handling of any consequential issues arising:

National Crime Agency

Senior Investigating Officer - Steve Baldwin

Email: stovewood@nca.x.gsi.gov.uk

South Yorkshire Police

Gillian Bower-Lissaman

Telephone: 0114 292 1794

Email: Gillian.Bower-Lissaman@southyorks.pnn.police.uk

- 3.3 The Participants will work together jointly to resolve any issues relating to information sharing and to ensure the data is handled appropriately and in accordance with the procedures described within this annexe.

4 Security

- 4.1 All information supplied under this MoU will be transferred and kept securely, in line with HMG guidelines on protectively marked material. The relationship manager will ensure that requests for information are adequately recorded for audit purposes.
- 4.2 The OIOC will take appropriate technical and organisational measures to protect information provided to the NCA in connection with Operation Stovewood from unauthorised access, and from any loss or damage.

5 Storage of information obtained in connection with Operation Stovewood

- 5.1 Operation Stovewood will utilize the Home Office Large Major Enquiry System (HOLMES II). This will be facilitated by South Yorkshire Police's IT infrastructure. Only NCA officers and NCA contractors¹² assigned to Operation Stovewood will have access to the Operation Stovewood documents held on HOLMES II, with the exception of a limited number of South Yorkshire Police officers who will have supervised access to HOLMES II for the purpose of carrying out routine administrative tasks, maintenance and or repair work.
- 5.2 The Chief Constable will allocate appropriately trained and experienced members of staff to maintain any IT hardware and software provided to Operation

Stovewood, facilitate access to the South Yorkshire Police IT infrastructure, and ensure any IT malfunction is promptly repaired.

- 5.3 Both during and after the investigation, files relating to Operation Stovewood held on HOLMES II will be controlled by the NCA.
- 5.4 Information relevant to the investigation will be retained for the duration of Operation Stovewood in a secure exhibit store either at an NCA site or at a Major Incident Room used by the Operation Stovewood Investigation Team.

6 Retention and Disposal of Information

- 6.1 Any information held by the NCA in connection with Operation Stovewood will be retained (and archived at the completion of the investigation) in accordance with section 23 of the Criminal Procedure and Investigation Act 1996, the Disclosure Code of Practice (5.6-5.10) (length of time for which material is to be retained)¹³ and any relevant NCA and the ACPO Guidance¹⁴ relating to retention and disposal of police records.

7 Data Loss

- 7.1 Where a Participant is a recipient of personal data, that Participant will become the data controller upon receipt of that data, in the absence of a specific instruction to undertake data processing on behalf of the person disclosing the information to the Participant. The data controller will be responsible and liable for any subsequent data loss or breach of the data protection principles resulting from processing by them.
- 7.2 In the event that a Participant becomes aware of any data loss or other breach of the data protection principles, the Participant will inform the other as soon as reasonably practicable.

8 Further Use and Onward Disclosure

¹² NCA contractor means any person assigned to Operation Stovewood, who is not a NCA officer but who carries out duties on behalf of the OIOC for the purpose of Operation Stovewood

¹³ Any Operation Stovewood material seized under the provisions of PACE will be subject to the retention provisions of section 22 PACE and PACE Code B.

- 8.1 Neither Participant will make any public statement or press release about the arrangements in the MoU without consulting the other.
- 8.2 The Director General may use any information provided by the Chief Constable in relation to Operation Stovewood for the exercise of any of the NCA's statutory functions in accordance with the Act.
- 8.3 In the event that either Participant receives a request for disclosure under the provisions of the Data Protection Act 1998 in relation to the information supplied, it will contact the other Participant to establish whether any exemptions may apply to the requested information before complying with the request.

¹⁴ ACPO 2013 National Guidance on the minimum standards for the Retention and Disposal of Police Records.

ANNEX C

Transparency Arrangements

1 Introduction

- 1.1 The OIOC is committed to providing the public with as much information as is practically possible about Operation Stovewood through routine publication via the NCA website.
- 1.2 The purpose of this Annex is to set out the classes of information which the NCA may proactively publish and what information the NCA will not publish as part of Operation Stovewood. The arrangements set out in this Annex should be read together with Transparency: The NCA Publication Approach, dated September 2014.¹⁵ The Director General has made these arrangements under section 6 of the Act, having regard to the NCA Framework Document and Information Charter.
- 1.3 Any information published by the NCA as part of Operation Stovewood will be available for download, in standardised formats, without charge. Published information will be available on www.nationalcrimeagency.gov.uk and associate websites. Copyright in the published material remains the property of the Crown. However, the published material is made available under an open licence which enables free re-use, including commercial re-use. It is important that information provided by the NCA is relevant and up to date and as such published information may not be available indefinitely.
- 1.4 Information falling into the following classes will, as appropriate, be proactively published by the Director General:
 - a. general information about the structure of Operation Stovewood and the role of investigators assigned to the operation;
 - b. a summary of the Operation Stovewood Terms of Reference;
 - c. the make up of the Operation Stovewood investigation team;

- d. the priorities and performance of Operation Stovewood;
- e. what the members of Operation Stovewood do and how they do it; and
- f. Operation Stovewood spending.

2 Sensitive Information

- 2.1 The OIOC may edit, redact or decline to publish any information which the OIOC considers to be sensitive. This includes information the publication of which would be likely to prejudice or jeopardise the discharge of NCA functions, including Operation Stovewood; national security; the health and safety of any person; or the commercial interests of the NCA or any person.
- 2.2 The OIOC may also decline to publish information if the OIOC considers that publication of the information would be contrary to any enactment, including the Data Protection Act 1998, the Human Rights Act 1998 and the Regulation of Investigatory Powers Act 2000; a court order; or a legal obligation, including an obligation of confidence; or legal professional privilege.
- 2.3 The OIOC may further decline to publish information which is subject to the restrictions on disclosure contained in Schedule 7 to the Act.