

# **OPERATION KENOVA**

## **European Convention on Human Rights**

## **Fundamental Freedoms Compliance**

**OIOC Chief Constable Jon Boutcher**

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## **ECHR Fundamental Freedoms Compliance – Operation Kenova**

- **Background and Context**

Chief Constable Jon Boutcher, (Bedfordshire Police) will lead an independent investigation into the activities of a former 'state agent' codenamed 'Stakeknife'. These activities involve alleged criminal offences including, kidnap, torture and multiple murder. Additionally the investigation will examine whether there is evidence of criminal offences having been committed by members of any paramilitary organisation, the British Army, the British Security Services or other government personnel in handling the agent.

The investigation is being undertaken following a series of referrals to the Chief Constable of the Police Service of Northern Ireland (PSNI) by the Director of Public Prosecutions (D.O.P.P.) Northern Ireland (N.I.) under Section 35 (5) Justice (Northern Ireland) Act 2002. The investigation will be undertaken under the auspice of 'Operation Kenova'.

The overriding priority of the investigation is to discover the circumstances of how and why people died and to establish the truth regarding those offences covered within the published terms of reference.

C.C. Boutcher has stated that the investigation will have victims and their families at its centre, and that the inquiry '*will be a thorough search for the truth*'. The investigation will be fully compliant with the European Convention for Human Rights (ECHR). In particular Operation Kenova will be conducted in compliance with Article 2 of the convention, as an independent, effective, timely, transparent and fully accountable investigation.

- **Overarching Aims**

The overarching purpose of this strategy is to provide a framework that will support CC Boutcher in achieving an ECHR compliant investigation.

The purpose of this document is to provide the enquiry team with a consistent and coherent approach to E.C.H.R. compliance related issues, when making strategic and investigative decisions relating to Operation Kenova. It lays out in detail what action and procedures will be introduced to ensure compliance with the E.C.H.R. and in particular Article 2, by considering the potential impact and consequences throughout the decision making process. These considerations will be reflected within the policy logs of the Officer in overall charge (O.I.O.C.) C.C. Jon Boutcher and/or the Senior Investigating Officer (SIO) Commander Keith Surtees, as this investigation progresses.

In addition the contents of this document will be subject of formal, periodic review by the senior leadership team in conjunction with other policies and procedures. This will ensure the contents remain current and all relevant issues are identified as the enquiry progresses and the document is updated accordingly.

This policy document has been completed following legal advice and guidance from Counsel, Emily Dummett.

Further oversight on this policy document will be sought from the Independent Steering Group (ISG) and the Governance Board.

### **Legal Compliance & Associated Considerations**

The McKERR group of cases (Appendix 1) relate directly to the adequacy of investigations into deaths during 'the Troubles', where the courts identified violations of the procedural obligations under article 2 ECHR to conduct effective investigations. Significant issues included defects in police investigations; a lack of independence of investigating officers; lack of public scrutiny and information exchange with families where decisions had been made not to prosecute. Clearly these findings are directly relevant to Operation Kenova and therefore it is incumbent upon the leadership of the investigation to consider the findings and take necessary action to ensure compliance. This will be reflected in policy decisions across all aspects of the investigation including the overarching terms of reference the staff recruitment policies and all operational policy decisions.

The PSNI Historical Enquiries Team (HET) was established in September 2005 to conduct reviews into all of the unsolved murders committed during 'the Troubles'. Between November 2012 and May 2013 a comprehensive inspection was undertaken by Her Majesty's Inspectorate of Constabulary (HMIC). This concluded that the approach to reviewing deaths during 'the Troubles' was inconsistent, had serious shortcomings and risked undermining the confidence of the families of those who died during this period in its effectiveness and impartiality. A follow up inspection of the HET was conducted by HMIC between September 2014 and February 2015 and recommendations made. The Historical Enquiry Team was closed formally by PSNI in 2015. A comprehensive review of the recommendations made in both of these inspections have been applied to Operation Kenova where transferrable (See Appendix 2).

The investigation team fully recognises the significance of the findings and recommendations from these agreements and inspections and will, where appropriate, implement the issues identified into working practices. This will contribute to delivering a thorough, transparent, victim focused investigation that will be fully compliant with the wider principles of ECHR and in particular meet our investigative obligations under Article 2

### **The College of Policing and Authorised Policing Practice – On Compliance with E.C.H.R.**

The College of Policing (CoP) Authorised Policing Practice (APP) is the official source of professional practice on policing. Police officers and staff are expected to have regard to APP in discharging their responsibilities. There may be circumstances when it is perfectly legitimate to deviate from this, provided there is a clear and documented rationale for doing so.

From a Human Rights perspective Operation Kenova will take due regard to the College of Policing A.P.P. Investigations<sup>1</sup> which defines Police responsibilities as follows;

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<sup>1</sup> College of Policing Authorised Professional Practice Investigations 13 November 2014

*'The Human Rights Act (HRA) principally affects investigations by placing a number of obligations on the police service which must be met in order to support the lawful interference with the rights of an individual. This varies on a case-by-case basis and depends on individual circumstances and the presence of a sufficient legal basis being present.'*

The police must be able to show that their activities:

- Are in accordance with the law.
- Are necessary in a democratic society in pursuit of one or more legitimate aims specified in the Article.
- Are proportionate to the aim pursued.

These principles can be expanded into the following, which should underpin all investigations:

- That there were reasonable grounds to suspect some knowledge or involvement relevant to the criminal offending or disturbance of the peace.
- That the proper procedures have been followed, recorded and all actions were authorised.
- That the nature of the interference is proportional in its seriousness to the matter being investigated.
- All the options were considered and all the relevant factors recorded.
- That the methods used were proportionate and necessary for the purpose of the enquiry.

Considering the scale, sensitivity and complexity of this investigation, it is important to consider and detail the wider aspects of the investigation and the impact it will have on **all** Articles of the E.C.H.R. This will ensure a consistent and robust approach as well as clear rational in decision making. Essentially, it will ensure that investigative approaches being considered reflect E.C.H.R. obligations to demonstrate a transparent, fair and thorough enquiry.

### **Article 1- Respecting the Rights**

This Article binds signatory parties to secure the rights under the other Articles of the Convention "within their jurisdiction". For the purposes of Operation Kenova this is therefore restricted to issues associated with the United Kingdom.

### **Article 2 – The Right to Life**

It is recognised that there are positive obligations under Article 2 that will be relevant to conduct of this investigation. These are addressed in two sections below:

- Article 2: Investigations into Deaths.
- Article 2: Informants and the Neither Confirm Nor Deny (NCND) policy.

### **Article 2: Investigations into Deaths**

Article 2 requires the State to initiate an effective public investigation by an independent official body into any death occurring in circumstances in which it appears that one or other of the substantive obligations has been, or may be, violated, and it appears that agents of the state are, or may be, in some way implicated."

Furthermore the E.C.H.R. specifically states that Article 2 compliant investigations should;



- Be brought by the state on its own initiative (i.e relatives of the victim should not have to push for the inquiry).
- Be independent and effective.
- Be reasonably prompt.
- Be open to public scrutiny and involve the victim's next of kin.

It is recognised that this investigation must meet the obligations set out under Article 2 of the European Convention of Human Rights (ECHR) and in order to achieve this, the following objectives must be met:

### **3.1. Independence & Effectiveness.**

The terms of reference for Operation Kenova (appendix 3) are explicit on this point 'This external investigation team will be gathered from across UK law enforcement services. It will not include personnel who are serving in or have previously served in the Royal Ulster Constabulary (RUC), Police Service of Northern Ireland (PSNI), Ministry of Defence (MOD) or Security Services (BSS)'.

These restrictions apply to current or former members of the Ulster Defence Regiment (UDR), the Adult Army Reserve (previously known as the Territorial Force, Territorial Army (TA) and the Territorial and Army Volunteer Reserve (TAVR) whether or not they have served in Northern Ireland.

Applicants will not be barred from appointments to Operation Kenova in circumstances where they may have undertaken attachments to these units but have not been directly employed by them. These decisions will be taken on merit with due consideration given to the role undertaken and whether any conflict perceived or real could arise.

There is a mandatory requirement for all staff engaged on Operation Kenova to sign a 'statement of truth' confirming no previous employment in the specified organisations.

All personnel must have or be willing to undergo Developed Vetting (DV) as part of the recruitment process and will be required to confirm their postings, positions and appointments as part of a formal recusal process to determine their suitability.

Staff are required to disclose any other declarable associations/memberships or business interests. Declarable Associations will have the same meaning as in the Metropolitan Police's Declarable Association Standard Operating Procedure now attached as Appendix 4.

Written guidance will be issued to all personnel advising them of the consequences of failing to declare conflicts of interest.

- **Operation Kenova Staff based within PSNI Northern Ireland.**

To insure further that operational independence, two members of staff from Operation Kenova will be based permanently within PSNI, C3/C4 branch as well as the Legacy Investigation Branch. These staff will be DV vetted and will be trained to use all PSNI I.T. systems including the most sensitive databases. This policy will negate reliance upon PSNI staff to search and retrieve documentation relevant to the investigation.

- **Legal Advice**

Legal advice required by Operation Kenova will be commissioned independently by the investigation team as required by the OIOC.

## **OVERSIGHT:**

### **Independent Steering Group.**

To further reinforce the element of independence for this investigation an 'Independent Steering Group' has been formed with both local and international membership. A terms of reference (TOR) for how this independent panel will operate has been agreed and is now circulated on the Op Kenova website, [www.opkenova.com](http://www.opkenova.com). In addition the members of the group will have photographs and biographies published on the Op Kenova website. The purpose of the Independent Steering Group is twofold; firstly to ensure the investigation team have exploited all

possible evidential opportunities with each member bringing extensive personal experience of difficult investigations. Secondly the group by their makeup and experience will provide reassurance to victims, their families and the wider community that the investigation is being conducted with absolute rigour.

### **Victims Focus Group.**

A second oversight group the 'Victims Focus Group', is also established. The terms of reference (TOR) for this group is currently placed on the Op Kenova website. Included in this work is a clear process for victims and families to raise concerns and grievances with either the independent victim's panel or the Operation Kenova leadership team up to formal complaint level. Where appropriate any interventions undertaken by the panel will be made public via the website.

### **Governance Board.**

A further oversight group, the Kenova Governance Board, has been established. This group will examine the business functions and broad investigative progress of the Operation Kenova investigations. The Board will not examine the investigations per se that is the role of the ISG. However the Board will be responsible for ensuring the ISG is properly allowed to function. The Board has six non-executive members each with considerable experience of Northern Ireland and Troubles related issues. This Board will scrutinise the overall performance and timeliness of Operation Kenova. It will ensure that any 'Findings Reports' have been through proper factual accuracy checking and legal due diligence to provide confidence in the content of those final reports to families and stakeholders. The terms of reference of the Governance Board will be placed on the Kenova website.

Whilst there is no regulatory requirement for these groups, it is intended that the groups will hold the senior team to account and will be intrusive on issues including independence, efficacy and promptness of the investigation and, specifically in the case of the victim's group, adherence to victim involvement and communications.

The decisions on governance and oversight policy have taken account of HMIC recommendation 4 and 10 of the 2013 and 2015 inspections on the P.S.N.I. Historical Enquiries Team.

The Chief Constable of the Police Service of Northern Ireland will be regularly updated as to the progress of the investigation but will not seek to direct or control, or in any way interfere with the investigation. These updates will not detail tactical activity but will provide a strategic overview of the progress of the investigation.

The Chief Constable of the Police Service of Northern Ireland remains accountable to the Northern Ireland Policing Board (NIPB) for the conduct of Op Kenova. If required, Chief Constable Boutcher will accompany senior members of the Police Service of Northern Ireland to brief the Northern Ireland Policing Board.

- **Independent Review**

Operation Kenova will be subject to periodic independent reviews overseen by the Homicide Working Group and the National Police Chiefs Council. These reviews will examine all aspects of the investigation, the priorities as well as the policies their interpretation and adoption. It will also examine the financial aspects of the operation. It will report directly to C.C. Jon Boutcher with detailed findings and comment. A summary report will be shared with C.C. PSNI, the ISG and Governance Board.

The investigation team will have access to the information held by the Office of the Police Ombudsman that relates to the Op Kenova criminal investigation through a Memorandum of Understanding between Chief Constable Boutcher and the Police Ombudsman.

Appropriate resources with the relevant skills, abilities and operational experience will form the team which will conduct a detailed investigation. A skills matrix will be developed to support this element of work complimented by a supporting document detailing specific role requirements and associated responsibilities.

- **Staff Induction**

A comprehensive induction process will be delivered to all staff providing detailed information on background events and

previously associated reviews leading to the establishment of Operation Kenova. In addition the induction will cover systems and processes utilised and adherence to policies, regulations and professional standards. Appendix 5 refers to Staff Induction Agenda.

All staff will be personally issued with a handbook which will include codes of behaviour, College of Policing Code of Ethics and other key policies and procedures.

The Home Office Large Enquiry System (HOLMES) and Major Incident Room Standardised Administrative Procedures (MIRSAP)<sup>2</sup> will be utilised and MIRSAP principles applied. These systems provide a range of functions for the effective management of information including the tasking and coordination of investigative activity.

The Kenova Executive Group (KEG) will be established and meet monthly. This meeting will be chaired by C.C. Boucher and will provide regular and thorough examination of investigative progress, management of demand and suitable resource deployment. It offers the forum for the senior personnel to be held to account for their specific area of business.

All personnel will have accompanying role descriptions to provide clarity of function and responsibility.

Systems, processes and policies will be standardised to ensure a consistent and corporate approach to all activity.

The enquiry team will comply at all times with legislative requirements.

Whilst not legally binding, the investigation team will refer to and where appropriate adopt the advice contained within current College of Policing Authorised Professional Practice and associated Manuals of Guidance and Practice Advice.

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<sup>2</sup> National Policing Improvement Agency Major Incident Room Standardised Administrative Procedures 2005

Trained and accredited personnel will be recruited to lead on suspect and witness management arrangements.

The advice contained within 'Achieving Best Evidence'<sup>3</sup> will be adopted in supporting vulnerable and intimidated witnesses suitable for Special Measures and Significant Witnesses as part of a wider witness management strategy.

Plans will be prepared in relation to cases considered suitable under Sections 71-75 Serious Organised Crime and Police Act 2005 (Assisting Offenders) and/or suitability for formal witness management (protection) arrangements.

### **3.2 Promptness**

Operation Kenova has limited resources and a very clear but wide terms of reference. The team formation, the policies, the use of various IT systems and the governance systems are all designed to ensure that Operation Kenova will deliver an effective and prompt investigation within the parameters of the TOR.

The very clear terms of reference (TOR) set out for Operation Kenova cut across allegations of illegal activity by former members of the IRA and officials from within the 'Crown Forces' as well as other government employees. Any decisions to prioritise one part of the TOR against another will inevitably result in fierce criticism and possible Judicial Review. Additionally many of the persons of interest in this investigation are in 'the mature part of their lives' and may be at risk of dying or serious ill health before they are brought to justice or are able to provide witness evidence/testimony.

The OIOC will produce a detailed inclusion policy detailing the criteria to be fulfilled before murder, attempted murder and associated criminal cases are accepted for full investigation by Operation Kenova.

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<sup>3</sup> Ministry of Justice 'Achieving Best Evidence in Criminal Proceedings'

Priority decisions will be made by the OIOC based on clear rationale and subject to discussion and agreement with the KEG. These decisions will be documented by the OIOC in his decision log. All of this will be subject to the governance procedures outlined above.

The enquiry will adopt the National Decision Model which provides policing with a simple, logical and evidence based approach for decision making in complex investigations and suitable for all decision whether spontaneous or planned. Appendix 6 refers.

Investigative progress will be subject of continual rigour including senior leadership forums and fortnightly tasking and coordination process.

### **3.3 Transparency & Accountability**

See paragraph on Oversight above.

The terms of reference for Operation Kenova are publicly accessible on the Operation Kenova website; [www.opkenova.co.uk](http://www.opkenova.co.uk) This website is administered by the Communications Team at Bedfordshire Police HQ and is updated regularly with items such as the advert for recruitment of staff, the membership and terms of reference of the ISG and VFG, the public comments made to the press by CC Boutcher and many other items. Additionally the website details how to make a formal complaint against Operation Kenova staff, and how to contact the inquiry to provide information.

Engagement with victims and their families is a primary consideration. Trained and experienced Family Liaison Officers will be deployed and supported through a current and robust Family Liaison Strategy.

External services for victims and survivors of the troubles/conflict will be offered by the Victims Survivors Service<sup>4</sup>.

To further assist the enquiry the advice of the Victims Focus Group will be sought with regard to the support and information that can be provided to the victims and their families.

Mechanisms now exist to report any allegations of criminal or misconduct offences by the police officers or police staff within the Op Kenova investigation team to the relevant investigative body and agreed protocols now exist with the IPCC and the Police Ombudsman for Northern Ireland.

Protocols have been agreed with the Criminal Case Review Commission (CCRC) regarding how Operation Kenova will deal with instances where it is evident or suspected that criminal convictions exist that may be unsafe. These protocols extend to the PPSNI and the PSNI and the process is shown at Appendix 7.

A communication and media strategy will be managed and maintained by the senior leadership team. The strategy will be updated as new issues emerge. Relevant matters suitable for circulation in the public domain will be made available via the Operation Kenova website.

The identification and engagement of strategic partners and stakeholders is likely to evolve as the enquiry progresses. Formal reporting mechanisms will be adopted where necessary. See the Communications Policy for the list of strategic partners and stakeholders.

Due to the likelihood that this will lead to a large number of requests for releases of information including Freedom of Information requests a publication strategy will be developed to

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<sup>4</sup> The Victim Support Service delivers funding and support to victims and survivors of the Conflict/Troubles, on behalf of The Executive Office identified in the Victims and Survivors (Northern Ireland) Order 2006.



provide consistency, transparency and ensure adequate protection of sensitive material.

The Code of Ethics defines policing principles and standards of professional behaviour. All personnel seconded to the enquiry will be briefed to reinforce these values and issued with a personal copy of the code.

The National Decision Making Model (NDM) is suitable and will be utilised for the purposes of Operation Kenova. The model binds the components of the NDM to the Code of Ethics.

### **Article 2: Informants and the Neither Confirm Nor Deny (NCND) Policy**

Operation Kenova recognises that the policy of neither confirm nor deny, and any decision to depart from it, will invariably engage rights under Article 2, including positive legal obligations to take all reasonable steps to protect any individual whose life is at risk (and other rights, including under Articles 3, 5 and 8). Those rights belong not only to the individual informant under consideration, but also to other informants, as a whole, whenever there is a prospect of a departure from the policy. There may also be issues of national security.

Equally, if there is evidence that an informant/agent has committed serious criminal offences, including homicide, the Article 2 (and other) rights of the victims of those offences and their families will also be engaged (see Investigations into Deaths, above). The Article 6 rights of any intended/defendant may also be engaged, where, for example, anonymity cannot be maintained, consistent with a fair trial.

Any fact-specific decision to depart from the NCND policy will be taken only where it has been determined to be proportionate and necessary, and only after thorough consideration of:

- a. The risk to the informant/agent's (and their family's) life (including a detailed and up to date assessment of that risk);

- b. The risk that a departure from the policy would endanger the lives of informants/agents (and their family) on other occasions;
- c. The views of all relevant agencies and organisations, including but not limited to national security and the effect on law enforcement agencies' ability to gather intelligence;
- d. The rights of victims of serious crime, including homicide, (and their families); and
- e. The rights of suspects/defendants to a fair trial, and any order of the court/s.

The enquiry team will adhere to national 'threat to life' policy, to provide clear and standardised procedural guidelines to ensure a robust and proportionate response is provided to mitigate and/or resolve incidents where a risk to life is received.

Operation Kenova recognises the statutory obligations set out in the Freedom of Information Act. In order to meet these responsibilities the enquiry team will comply with the College of Policing Authorised Professional Practice for Information Management. It is accepted there are potential situations where issues of confirmation or denial could be harmful. Under the circumstances, consistent decision making and the appropriate application of 'neither confirm nor deny' principles and FOI exemptions will be applied as documented in APP.

Strict document handling protocols exist, (see document handling policy) to safeguard those intelligence documents where information from registered police informants is recorded. In addition intelligence documents marked at Secret and below will be held on the 'Intelligence Account' of CT Holmes until such time as the item is turned into an evidential document.

The I.T. systems (I.C. Desk for Top Secret documents, National Secure Network and CT Holmes for Secret documents) and movement and storage of sensitive documents utilised by Operation Kenova along with the document handling policy offer the best mitigation possible to prevent mistaken disclosure or loss

of documents that could reveal the true identity of a registered informant alive or dead.

Comprehensive Operational Security Policy adapted and appointment of dedicated OPSY. Appendix 8 refers.

#### 4. **Article 3 – Freedom from Torture and Inhuman and Degrading Treatment & Punishment**

The Police and Criminal Evidence Act 1984 (PACE) provides the powers the police need to investigate crime and sets out to strike the right balance between the powers of the police and the rights and freedoms of the public.

The investigation team will at all times be compliant with Codes of Practice A – G or if appropriate Revised Code of Practice H (2013) under Section 41 of and Schedule 8 to Terrorism Act 2000.

It is acknowledged that the powers and procedures in these codes must be used fairly, responsibly, with respect for the people to whom they apply and without unlawful discrimination.

During arrest planning phases and subsequent periods of detention the investigation team will refer to College of Policing APP Detention and Custody guidance to ensure current practices are being considered and/or observed.

It is recognised that the Equality Act 2010 makes it unlawful for police officers to discriminate against, harass or victimise any person on the grounds of the 'protected characteristics' of age, disability, gender reassignment, race, religion or belief, sex and sexual orientation, marriage and civil partnership, pregnancy and maternity when using their powers. The applicable laws in Northern Ireland (where the Equality Act 2010 does, with minor exceptions, not apply), and Operation Kenova's approach where there is difference in the level of protection, are addressed under §15 below.

It has been made clear to all interested parties by CC Boutcher that the Op. Kenova investigative approach is to treat all persons with care and consideration.

## **5. Article 4 - Prohibition of slavery and forced labour**

Considering the scope and terms of reference of the investigation it would appear that Article 4 of ECHR at this time has no relevance however this will remain under review.

## **Article 5 – Liberty and Security of the Person**

It is fully recognised that exercising a power of arrest represents an obvious and significant interference with the Right to Liberty and Security under Article 5 of the ECHR.

Article 5(1) allows for the lawful arrest and detention of a person which has been effected for the purpose of bringing him or her before a competent legal authority (the courts) for a number of reasons.

The investigation will ensure compliance with Code of Practice G of PACE, recognising that any power of arrest must be used fairly, responsibly, with respect for people suspected of committing offences and without unlawful discrimination.

The investigation team will ensure that the use of the power are fully justified and those considering exercising these powers should consider if the necessary objectives can be met by other, less intrusive means.

Where required, the investigation will exercise the powers in a non-discriminatory and proportionate manner which is compatible with the Right to Liberty under Article 5.

All of the above issues will be considered during any planning for arrest(s) and detention.

## **7. Article 6 – Right to a Fair & Public Hearing**

Legal advice required by the investigation team will be commissioned independently by the Op Kenova investigation team under the direction of Chief Constable Boutcher.

Chief Constable Boutcher will be responsible for the delivery of the final reports through the Chief Constable for the Police Service of Northern Ireland to the Director of Public Prosecutions. These can include a file with prosecutorial recommendations for the consideration of the Director.

A rigorous approach will be adopted in relation to case management by senior leadership team and other senior investigators.

Trained and experienced personnel will be deployed in case preparation and disclosure roles to ensure due diligence is applied to minimise delays impacting on the judicial process and in order to meet time limits imposed by the courts (plea and case management hearings and custody time limits).

The sensitivity and impact of covert techniques is acknowledged. Senior personnel will provide robust oversight where tactics of this nature are being considered and developed to ensure proportionality, legality, appropriateness and necessity.

As importantly, this focus will extend where issues that impact on a prosecution are evident and applications are sought to protect the use of the techniques through public interest immunity procedures.

The investigation team recognise that the Contempt of Court Act safeguards an individual's right to a fair trial. No member of the enquiry team will discuss likely results of 'live' legal proceedings or issue any other relevant information which may interfere with these rights. Considering the scope and terms of reference of the investigation it would appear that Article 7 of ECHR at this time has no relevance. However this will remain under review.

## **8. Article 7 – Prohibition of Retrospective Criminal law**

Considering the scope and terms of reference of the investigation it would appear that Article 7 of ECHR at this time has no relevance. However this will remain under review.

## **9. Article 8 – Right to Private and Family Life**

The investigation team fully recognises that everyone has the right to respect for a private and family life, home and correspondence. Article 8 is of particular relevance where Operation Kenova identifies subjects perhaps who were murdered were registered informants. This fact may be something that for a successful prosecution the Crown wishes to rely upon that as a fact.

Considering the nature of this investigation, the privacy to those families affected by these personal tragedies is of upmost importance to the enquiry team.

As with issues for consideration under Article 5, the enquiry team will comply with the statutory obligations as set out in the FOI Act 2000. To ensure clarity and a consistent approach is applied and sensitive information is adequately protected a publication strategy will be developed. This will provide a clear understanding of material that is readily available and suitable for release under FOI and which information should be protected.

Chief Constable Boutcher has publicly requested media cooperation and requested that no photographs of those who, it is rumoured, died at the hands of the alleged agent are published. Furthermore, the Chief Constable has asked for care, consideration and respect to the families when reporting on matters associated to the investigation.

Family Liaison is a critical element of the investigation. The liaison with victims' families will be the exclusive responsibility of the Operation Kenova investigation team. The senior leadership team and family liaison personnel will work to minimise intrusion of those affected by the investigation and where required adopt strategies to respond and manage this challenging area according to individual needs.

It is acknowledged considering the background to this investigation that not all families will wish to engage directly with

the investigation team. That right will be respected and where requested engagement will be conducted through legal representatives or nominated intermediaries.

An International and Independent Victims Focus Panel, the Victim Focus Group, has been formed to advise the Operation Kenova enquiry team regarding the support and information to be provided to the families of victims in order that the investigation is conducted in a way that recognises and understands the needs of the victim's families.

Due to the nature of this investigation it is likely that sensitive police techniques will be deployed.

Furthermore it is recognised that this includes the right to be free from unlawful and unreasonable interference associated to this right.

The Regulation of Investigatory Powers Act (RIPA) allows for the lawful interference (Covert Surveillance, Lawful Interference & Interception of Communications) with the right to respect for private and family life, under Article 8 of the European Convention on Human Rights.

Circumstances which would permit the use of covert techniques under RIPA include:

- interests of national security
- preventing or detecting crime or of preventing disorder

Applications for covert activity must justify the use of a technique in writing and the circumstances will demonstrate that such interference is necessary, proportionate and in accordance with a legitimate aim.

All applications will be appropriately authorised and subject to review to ensure compliance with legislation.

Management and deployments of covert tactics will be conducted by trained, experienced and accredited personnel.

Activity of this nature will be subject of rigorous oversight by senior personnel which will include review and take due regard to College of Policing Authorised Professional Practice in relation to covert techniques.

#### **10. Article 9 – Freedom of Expression (Conscience & Religion)**

Considering the scope and terms of reference of the investigation it would appear that Article 9 of ECHR at this time has no relevance however this will remain under review.

#### **11. Article 10 – Freedom of Expression**

It is acknowledged that an essential aspect of media freedom is that journalists and newspapers can insist their sources remain confidential unless exceptional circumstances apply.

This position is enshrined under Section 10 Contempt of Court Act 1981.

In the event of challenges to non-disclosure of source(s) there will be an assessment by senior personnel based on the 'necessity' test considering the interest of the prevention and detection of crime and/or national security.

Schedule 5 of the Terrorism Act 2000 provides for the production of material relating to terrorism where such production is in the public interest. Similarly, should issues of this nature have been identified, the position will be subject of assessment by the senior leadership team.

Specifically in relation to Terrorism cases, media representatives may commit offences under Section 19 of the Terrorism Act 2000 - Disclosure of Information (relates to offences under Section 15 – 18 TACT 2000).

More generally it is noted that throughout the judicial process, the Contempt of Court Act can also apply various types of possible reporting restrictions, some of which apply automatically while others are at the discretion of the court



## **12. Article 11 – Freedom of Association and Assembly**

Considering the scope and terms of reference of the investigation it would appear that Article 11 of ECHR at this time has no relevance however this will remain under review.

## **13. Article 12 – Right to Marry**

Considering the scope and terms of reference of the investigation it would appear that Article 12 of ECHR at this time has no relevance however this will remain under review.

## **14. Article 13 – Right to an Effective Remedy**

All victims and their families, witnesses, and members of the public engaged as part of the wider investigation and all police personnel shall have the right to an effective remedy before a National authority notwithstanding that the violation has been committed by persons acting in an official capacity. Operation Kenova will not infringe or seek to influence an individual's right to an effective Remedy whether that be through Criminal or Civil litigation.

## **15. Article 14 – Freedom from Discrimination**

Members of the investigation team who fail to adhere to this basic right will be dealt with through existing personnel procedures.

Operation Kenova will comply with legislation contained in the Equality Act 2010 which articulates in statutory terms most of the principles explicit or implicit in Article 14. It is acknowledged that for the police service, there is a duty to consider equality in all decision making processes.

When operating in Northern Ireland (where the Equality Act 2010 does, with minor exceptions, not apply), it is recognised that the relevant legal provisions are contained in a number of statutes and orders, including the Disability Discrimination Act 1995 (as amended and supplemented by regulations and orders 1996-2011), the Equal Pay Act (NI) 1970 (as amended), the Sex Discrimination (NI) Order 1976 (as amended) the Employment Equality (Age) Regulations (NI) 2006 (as amended), Race

Relations (NI) Order 1997 (as amended), the Fair Employment & Treatment (NI) Order 1998 (as amended), the Employment Equality (Sexual Orientation) Regulations (NI) 2003, and the Equality Act (Sexual Orientation) Regulations (NI) 2006 (as amended).

In general terms there is stronger protection under the Equality Act 2010, as acknowledged, for instance, by the Equality Commission for Northern Ireland. Where there is a comparative deficit in the level of protection provided under the equality laws of Northern Ireland, Operation Kenova will ensure compliance consistent with the higher level of protection under the 2010 Act, which is in any event applicable in Great Britain.

## **16. Conclusion**

This investigation will apply the articles of the ECHR set out in this document. The investigation team will treat all parties with courtesy, dignity and respect, and provide the victims and their families with an independent and rigorous investigation into the issues set out in the investigation Terms of Reference.

The document will be reviewed periodically to ensure it remains fit for purpose and is providing a framework for the Op. Kenova investigation team to comply with its responsibility to carry out an effective investigation under the convention. The OIOC should test and evaluate Operations Kenova ECHR compliance periodically.