

SOCA: the Serious and Organised Crime Agency

Ben Bowling and James Ross assess Britain's new intelligence-led crime agency.

Serious organised crime is one of the most pressing concerns of the late modern age: it impacts on society as a whole and has extremely high economic and social costs. The White Paper *One Step Ahead – a 21st Century Strategy to Defeat Organised Crime*, published in March 2004, guesstimated that the total losses caused by organised crime may amount to £40 billion a year in the UK. Tentative estimates for the total annual costs of certain activities were quoted as follows: the abuse of class A drugs – £13 billion; indirect tax fraud – £7 billion; intellectual property theft (counterfeiting) – £9 billion; and organised immigration crime – at least £3 billion. Even with various qualifications and healthy scepticism about the methods used to calculate these figures, they point to considerable economic harm. The social repercussions of organised crime are correspondingly great: higher taxes and costs are passed on to consumers whilst individual end users suffer, whether as drug addicts or vulnerable and exploitable undocumented migrants. More difficult to quantify is the negative impact on communities in terms of anti-social behaviour related to organised crime and the broader sense of insecurity that it engenders. There is also the potential for overlap with terrorist organisations.

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That a single agency dedicated to combating serious organised crime was not established many years ago is surprising, perhaps, but is tied up with long-standing public anxiety about the creation of a national police force and uneasiness about the use of 'police spies' to prevent criminal behaviour. Until now, a number of different bodies have been responsible for different aspects of serious organised crime. The National Criminal Intelligence Service (NCIS) began life as the National Drugs Intelligence Unit in the Home Office and became a discrete entity in 1992 tasked with gathering, storing and disseminating criminal intelligence among law enforcement agencies. The National Crime Squad (NCS) was set up in 1998 following recommendations made by the 1995 Home Affairs Committee report on organised crime. The Home Office has had responsibility for dealing with organised 'immigration crime', and HM Customs & Excise for investigation and intelligence in tackling serious drug trafficking and the recovery of related criminal assets.

This approach is to be abandoned with the creation of a single national Serious Organised Crime Agency (SOCA), a development that has been widely welcomed and hailed as the UK equivalent of the FBI. Its functions, set out in the *Serious Organised Crime and Police Act 2005*, are to prevent, detect, reduce and mitigate the harmful consequences of serious organised crime. If investigations involve serious or complex

fraud, SOCA may continue to function only if the Serious Fraud Office agrees or declines to act and similarly, SOCA must consult HM Revenue and Customs before pursuing any function in relation to revenue fraud. The agency is charged with gathering information in the pursuit of organised crime groups. This intelligence may be disseminated to any police force or law enforcement agency within the UK, and there is a general duty on the part of the police to pass on information likely to be useful to SOCA. The Agency will clearly be 'intelligence-led', not only as a model of practice, but in the sense that it is also actually led by officers from security and secret intelligence agencies. While the Director General Bill Hughes has a policing background – he was previously head of the National Crime Squad – key posts go to David Bolt (former MI5), and Paul Evans (formerly MI6), while Sir Stephen Lander (former director-general of MI5) is heading the board overseeing the creation of the Agency.

Various debates relating to what precise roles and powers SOCA officers will have, how independent they will be, and how cooperation (rather than competition) with other law enforcement agencies will be ensured have arisen at different stages in its formation. The first issue is the dispute as to what

roles and powers SOCA officers should have. Such an issue is bound to arise in situations where a new Agency is formed from a number of different organisations staffed by people with substantially differing roles and powers. The solution formulated in the Act is for the Director General of SOCA, or his delegate, to give officers special powers when appropriate. In this way, SOCA officers may from time to time be given the powers of a police constable, customs officer or immigration officer. This apparent compromise did little to satisfy the concerns of the Police Federation, which initially advised its members not to join SOCA for fear of losing their status as police constables.

Quite apart from the insecurity that those transferring to SOCA might feel with regard to retaining their former status, there is potential for the abuse of such wide-ranging powers. It should be pointed out, in fairness, that the Act requires that staff be given "adequate training" and the Secretary of State should issue detailed Codes of Practice to ensure that powers are only given out in a sensible and considered fashion. Indeed, tentative plans have already been discussed for a SOCA academy for officer training and development, which has been compared to the Virginia-based FBI academy, Quantico. The development of research and training in the issues arising from transnational policing may also fall within the ambit of the new National Police Improvement Agency. Nonetheless, the Act could have



been more specific in describing the circumstances under which special powers will be given to and taken away from SOCA agents. The wording of the Act can be construed to suggest that special powers will be granted on an ad hoc basis. This is surely the wrong message to send out; the Act should have made clear that officers will only be given special constabulary powers, for example, if they have undertaken the same training as a 'real' police constable. Presumably, the Agency will comprise of divisions of agents with permanent special powers, some specialising in intelligence work, others in carrying out enforcement operations at the culmination of an investigation. This seems like the most efficient way of organising such an agency. Unfortunately, such an approach is not apparent from the wording of the Act.

There is a more general point about the creation of an Agency with such wide-ranging powers. The British police service has, for many years, looked enviously at the nature and extent of the powers available to Customs officers. The range of powers to search and seize documents and financial records, hitherto restricted to quite specific situations, will now be available more generally to SOCA agents. The combination of administrative and criminal law powers together with the melding of law enforcement practices (such as controlled delivery, covert surveillance, undercover operations and infiltration techniques) from these hitherto very different agencies creates a new Agency with unprecedented powers for surveillance, intrusion and coercion. This raises a wide range of questions about its independence, regulation, transparency and accountability.

General operational control of SOCA is in the hands of the Director General and the fact that he may decide which particular operations to mount and how they are to be conducted means that SOCA will have a degree of operational independence not dissimilar to that of a Chief Constable. Nonetheless, the Home Secretary may well command a considerable degree of

control over the day-to-day running and general management of SOCA. By issuing Codes of Practice, the Secretary of State will influence how the agents carry out their work. Such Codes must be laid before Parliament but given that the Act itself was granted only four days debate at the Standing Committee stage, it is unlikely that this will allow for effective scrutiny. Furthermore, the Secretary of State has the power to determine the strategic priorities – reportedly based on newspaper 'column inches' devoted to organised crime issues – towards which SOCA must direct its annual plans. More importantly, the Secretary

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of State will determine the allocation of funding to SOCA: the timing and amount of funds available are matters entirely for his discretion. In practical terms, this would appear to suggest that there will be considerable pressure upon the managing team of SOCA to 'toe the line' set by the Secretary of State.

The police in this country have always enjoyed wide operational independence. The basis for the doctrine of 'constabulary independence' and accountability 'to the law alone' is to prevent direct political control and reduce the risk that the police could be used as a direct tool of an oppressive government. Such an abuse of power would be possible because SOCA agents may be granted very wide-ranging special powers on an *ad hoc* basis under Home Office central direction. Police officers have traditionally sworn allegiance to the Crown but it would appear that SOCA agents will not undergo any comparable ceremony.

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concern lies in the ability of police accountability to ensure that police officers act appropriately when carrying out their day to day duties and that effective measures are able to ensure that they are called to account when they don't. Holding the police to account retrospectively remains fraught with difficulties, not least because of the historic failure of internal police disciplinary mechanisms to effectively demonstrate to the complainant that something has been done.

This has been compounded by the lack of independence between the recipient of the complaint and the investigator of it when it involved the Police Complaints Authority (PCA). Indeed, ever since the introduction of the PCA as part of PACE 1984, commentators and critics alike have queued up to question the objectives, operation and effectiveness of a body whose purpose was to investigate complaints against the police but which did so without independence from them.

It is well acknowledged that the provision of effective channels for complaints about abuse and dissatisfaction have been lacking for years. This is a point articulated well by Nick Hardwick and Graham Smith in their contributions to this issue. However, the extent to which the recently established Independent Police Complaints Authority (IPCC), (introduced as a consequence of the Police Reform Act 2002), will succeed where the PCA did not remains an open question. Thus, although Nick Hardwick describes the IPCC as "having gained the grudging acceptance of its severest, potential critics", it is important not to forget, as Smith reminds us, that much of what the IPCC represents is symbolic rather than radically different from its predecessor, and its future effectiveness is precariously balanced between the continuing difficulty of securing and satisfying complainant trust while also retaining police confidence.

An important consideration here, as Smith notes, is that the IPCC must be understood as a development from, rather than a transformation of, a previous system, and that as a result, much remains as it was under the old system. Whilst it is more than just a case of 'old wine' in new bottles, the IPCC remains steeply embedded within the traditional principles of the complaints system in England and Wales.

This issue also considers aspects of police organisational culture. Drawing from the recent and important Home Office report on the impact of the Stephen Lawrence Inquiry, Dean Blackburn assesses the extent to which recent developments, including the fight of the Gay Police Association to overcome the traditional highly homophobic police culture, have proved successful. Finally and perhaps appropriately given the close attention directed to urban crime challenges to contemporary policing, Rob Mawby provides an interesting overview of the nature and extent of rural crime and the police response to it.

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The independence of both the management and individual agents is not guaranteed by any means. Based on the chequered history of 'regional crime squads' – the building blocks of SOCA's forerunner, the National Crime Squad – it is clear that agencies dealing with organised crime groups face the challenges of corruption and political influence. Robust measures protecting SOCA from outside influences would have been desirable. The Agency will have the oversight of a board of 'non executive directors' appointed by the Home Secretary, but it is far from clear what this role will entail in practice. Linked to these concerns about the independence of SOCA are issues related to accountability and complaint handling. Although provision is made in the Act for independent inspection and scrutiny by Her Majesty's Inspectorate of Constabulary and the Independent Police Complaints Commission (IPCC), public confidence in the ability of such organisations to provide an effective check is low, particularly after the debacle surrounding the IPCC's exclusion from the scene of the fatal shooting of Jean Charles de Menezes – on the grounds of operational necessity – in July 2005.

It is going to be quite a challenge for SOCA to demonstrate its effectiveness in its new national and transnational role. It is far from clear how it can be demonstrated that serious crime has been reduced and that its harm has been mitigated. Even more challenging is to demonstrate that local community safety has been enhanced. Our hunch is that, in practice, it will matter little whether or not SOCA can show that it is effectively reducing crime; it will soon be as impossible to imagine a country without a national capacity to police the transnational trade in drugs, the smuggling of people and the laundering of dirty money as it is to imagine a country without a blue uniformed police service prior to the establishment of the 'new police' by Sir Robert Peel in 1829.

The creation of SOCA, taken together with the government's police reform agenda, marks one of the most radical transformations of British policing in 180 years. The strategy being pushed hard from the Home Office – with minimal consultation within the police service and still less with the public at large – creates a national policing structure with radically enhanced capacity to respond to organised crime, terrorism and public disorder. The creation of a *de facto* national police force, controlled centrally from the Home Office with twelve regional Chiefs, will see an end to the 'tripartite' structure of democratic accountability of British policing and radical transformation of the answerability of the police to the public. The 5,000 strong Serious and Organised Crime Agency sitting at the apex of this policing structure will have national scope and a transnational reach. Blurring the boundaries between police, customs, immigration enforcement, secret service and intelligence organisations, its hybrid 'agents' will undertake their new policing role with unprecedented intrusive and coercive powers. This is certainly the antithesis of the Peelian model of uniformed, visible and locally accountable police, but exactly how it will function, how its performance will be assessed and how its transparency, accountability and integrity can be assured remain open questions.

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