

Fine line between undercover observer and agent provocateur

The use of undercover officers like Mark Kennedy against eco-protesters is clearly controversial



PC Kennedy in his undercover role as Mark Stone.

Vikram Dodd, crime correspondent

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Every day, undercover police officers are at work infiltrating organised crime gangs and even terrorist groups.

Within the police service their use is credited with helping to bring the IRA to the negotiating table, ultimately signing a peace agreement, after the terrorists realised they had been heavily infiltrated. But their use against eco-protesters is clearly more controversial.

The activities of [Mark Kennedy](#), who was known by activists in the groups he infiltrated as Mark Stone, would have been covered by the Regulation of Investigatory Powers Act 2000 (RIPA).

Bob Quick, who as an assistant commissioner was the former head of special operations at the Metropolitan police, said undercover officers were treated in law as surveillance officers. A decision to deploy an undercover officer would be taken and authorised by a senior officer.

Under section 28(3) of RIPA this can be done for reasons including "the purpose of preventing or detecting crime or of preventing disorder", "the interests of the economic well-being of the United Kingdom", "the interests of public safety", or "for any purpose ... which is specified for the purposes of this subsection by an order made by the secretary of state".

The reasons must be stated in writing and Quick said of the Kennedy case: "They must have thought they had grounds people in the group may break the law."

A senior officer can authorise an undercover officer to participate in criminal acts. Quick said: "If they are not involved in the planning, or did not instigate or initiate an offence, if their role is of a peripheral nature, they can be granted participating status."

The reason is to detect or prevent a more serious crime, and also to allow an undercover asset to gain the trust of the criminals they are trying to infiltrate. But it is fraught with issues to do with proportionality and requires proper management by senior officers.

The line between peripheral player and agent provocateur is one police need to keep the right side of, as English law offers someone accused of a crime a defence if they can show an officer acted as an agent provocateur, meaning they initiated or instigated the crime.

Louise Christian, a leading defence solicitor, said: "The officer could be prosecuted but the chances of that are pretty slim."

A more likely sanction would be a civil action for damages by those whom charges were brought against and maybe even those affected by the crime.

The police also face questions about the cost of Kennedy's deployment, estimated at up to £250,000 a year. In 2009-10 the Met spent £1,861,501 on covert operations, though no more detailed breakdown is publicly available.

Jenny Jones, a member of the Metropolitan police authority, attacked the decision to deploy Kennedy: "They are not planning to assassinate the prime minister or blow up a tube train.

"In the latest case they simply wanted to halt production at a power plant for a day to get some media coverage and help save the planet.

"With money so tight, the police have to pick their targets carefully, and picking on a bunch of non-violent environmental protesters seems like a clear waste of money."

Recently the Met's undercover assets have been placed into one unit, rather than each section running its own.

Undercover officers are subjected to psychological tests to ensure they can cope with the extreme demands and danger involved, and also so they do not "turn native".

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