

# Mark Kennedy case: independent inquiry ordered over CPS claims

CPS stands accused of misleading courts over the collapse of a trial against six environmental activists



📷 Mark Kennedy worked as an undercover policeman posted among environmental activists and says vital evidence against them was withheld at their trial Photograph: Philippe Ebeling for the Guardian

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**Paul Lewis and Rob Evans**

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A senior judge is to conduct an independent inquiry into evidence that prosecutors suppressed secret surveillance tapes recorded by the undercover police officer **Mark Kennedy**, the Guardian can reveal.

The director of public prosecutions, Keir Starmer QC, has requested an independent investigation into claims, as disclosed on Tuesday, that **the CPS misled courts over the collapse of a trial against six activists accused of conspiring to break into Ratcliffe-on-Soar power station.**

Starmer said in a statement: "In light of growing concerns about the non-disclosure of material relating to the activities of an undercover police officer in the Ratcliffe-on-Soar power station cases, I have decided that I will set up an independent inquiry, conducted by a senior legal figure, to work in tandem with the Independent **Police** Complaints Commission inquiry into the matter which began in January 2011."

The IPCC has been looking at allegations that vital evidence was withheld from lawyers representing the activists.

Starmer added: "The two inquiries will have full access to all the available evidence, whether held by the police or the CPS, and will share information. They will also share their provisional findings before final reports are drawn up."

When the trial was abandoned in January, the CPS told the court that "previously unavailable information" had come to light just two days earlier that undermined its case against the activists.

However, the Guardian detailed how the supposedly new information - the Kennedy tapes - had been in the CPS's possession for more than a year.

Prosecutors appear to have taken part in a number of high-level meetings with police about Kennedy's potentially explosive surveillance tapes, but withheld them from defence lawyers.

In what could be a major miscarriage of justice, the withholding of the tapes may also have led to the wrongful conviction of 20 other activists who were convicted of planning to break into the same power station in December. Their case is now before the court of appeal.

Starmer had already authorised two internal inquiries into accusations that prosecutors suppressed secret surveillance tapes, which was being dealt with as a "disciplinary" matter, but was under growing pressure to refer the matter to an independent body.

Both his predecessor as DPP, Ken Macdonald, and Vera Baird, the former solicitor general, called on Wednesday for an independent figure to investigate the controversy.

Starmer's decision is understood to have followed a number of high-level discussions which have included the attorney general, Dominic Grieve, and senior police officials.

Senior CPS officials are also concerned that there may also have been serious failings by police.

The six activists whose trial collapsed are known as the "deniers" because they told investigators they had never agreed to [take part in the occupation of the Nottinghamshire power station](#) in 2009.

Kennedy, who developed growing sympathies for the activists after living among them for seven years, later revealed he secretly recorded conversations that heavily supported their case.

"The truth of the matter is that the tapes clearly show that the six defendants who were due to go on trial had not joined any conspiracy," Kennedy said.

But his surveillance tapes were never disclosed to the defence lawyers - despite formal requests.

On Wednesday, Macdonald and Baird both told BBC Newsnight that the controversy was extremely serious and warranted a full and independent inquiry.

The former DPP said an inquiry conducted by an independent figure was "much more likely to get at the truth".

He also expressed concern over the case of the 20 activists who were convicted at the end of last year after conceding they planned to break into Ratcliffe-on-Soar power station.

During the trial they argued their actions were defensible to avert climate change. The prosecution told the jury that the 20 campaigners, known as the "justifiers", were in fact seeking publicity and did not genuinely believe their occupation of the Nottinghamshire plant would prevent large-scale carbon emissions.

In April, Starmer said that the 20 convictions might be unsafe in light of the failure to disclose Kennedy's evidence, and formally urged the activists to challenge the verdicts at the court of appeal.

Macdonald said: "We are looking here at a position in which a number of people who might have otherwise have been acquitted, might have been convicted, through the absence of this material," Macdonald said. "When it is that serious, I think you need an inquiry that is going to command public confidence."

He added: "If the prosecution don't disclose their evidence fairly and appropriately, defendants don't get fair trials. We saw in the 70s and 80s the effects of non-disclosure - terrible miscarriages of justice ... That is the gravity of this situation and that is why I feel the inquiry needs to be independent."

Baird described the situation as "very, very, grave". "You have maybe a bunch of people who should never have been prosecuted - at all - have been convicted ... It is profoundly wrong that this occurred, and we need to find the culprits."

She added it was wrong for the CPS to "investigate themselves". "It is the need for the public to be satisfied that this is being thoroughly investigated by somebody who has no axe to grind. The CPS blamed the police originally, the police are now blaming the CPS. We need somebody remote from both of them to get to the bottom of this."

In his statement, Starmer also said the two inquiries working in tandem "will provide independent scrutiny of the actions of both the police and the CPS in relation to the disclosure issues arising from the Ratcliffe-on-Soar power station cases. It is an arrangement supported by the IPCC and the Chief Constable of Nottinghamshire. Until the two inquiries report, it is important that no conclusions are drawn about any individuals involved in this matter."

The latest inquiry announced by Starmer will be the eighth formal investigation to be launched in response to the Guardian's ongoing

investigation into Kennedy and three other undercover police officers.

In addition to Kennedy, it has emerged that police officers known as Lynn Watson, Mark Jacobs and Jim Boyling were given new identities to live for several years among activists.

Kennedy, Jacobs and Boyling are all accused of having long-term sexual relations with activists; Boyling even married an activist he met while living undercover.

Inquiries are under way by Her Majesty's Inspectorate of Constabulary, the Independent Police Complaints Commission and the Serious Organised Crime Agency. Police forces have also opened internal disciplinary investigations.

However, activists argue that only a full public inquiry can address the breadth of concerns about the operation run by the National Public Order Intelligence Unit.

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