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Undercover police officer unlawfully spied on climate activists, judges rule

Mark Kennedy was arguably an agent provocateur, says appeal verdict quashing Ratcliffe-on-Soar conspiracy convictions



Undercover police officer Mark Kennedy was 'involved in activities that went much further than the authorisation he was given', the appeal court judges ruled

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Three senior judges have ruled that the undercover police officer [Mark Kennedy](#) unlawfully spied on environmentalists and arguably acted as an "agent provocateur".

In a damning ruling explaining why they quashed the convictions of 20 climate change activists, the appeal court judges said they shared the "great deal of justifiable public disquiet" about the case.

The judges, who included the lord chief justice, said "elementary principles" of the fair trial process were ignored when prosecutors did not disclose evidence about Kennedy's work to activists' lawyers.

The court announced on Tuesday that it would quash the convictions of the activists, who were wrongly accused of conspiring to break into Ratcliffe-on-

Soar power station in 2009.

The judgment also made several criticisms of Kennedy, including that his deployment could have been construed as "entrapment". It revealed Kennedy was part of a long-term programme "to infiltrate extreme leftwing groups" in the UK. Other court documents say the spy programme was called Operation Pegasus.

Kennedy, who has expressed remorse for the seven years he lived deep undercover in the environmental movement, responded by saying in a statement issued by his publicist, Max Clifford: "I refute the claim that I acted as an agent provocateur. At no time have I or did I actively encourage a group or person to engage in an activity that they were not already engaged in."

But it will now be for senior police officers to explain why Kennedy, one of a network of police spies planted in protest groups, may have incited protesters to commit criminal acts they were later prosecuted for.

Among those who will be asked questions is Sir Hugh Orde, president of the Association of Chief Police Officers (Acpo), which was responsible for the shadowy unit to which Kennedy was seconded.

The national public order intelligence unit was later transferred to the Metropolitan police, under the command of the assistant commissioner John Yates, who resigned this week.

Orde is being tipped as a replacement Met commissioner. So too is Bernard Hogan-Howe, the top-ranking officer conducting an official inquiry into the Kennedy affair for Her Majesty's Inspectorate of Constabulary.

ACPO said in a statement: "The law is quite clear that undercover officers are absolutely prohibited from inducing people to commit offences they wouldn't otherwise commit. We are hopeful that the reviews into these events will make recommendations that will perhaps bring further robust governance, accountability and intrusive management into undercover policing, while preserving the value of the tactic to keeping communities safe."

All senior officers involved in the controversy will be alarmed at the mounting evidence that Kennedy went "rogue", developing genuine sympathies for the cause advocated by the suspected extremists he had been asked to monitor.

Known as Mark Stone to the activists he was sent to monitor - and UCO 133 to his police handlers - Kennedy put his concerns about his deployment on record.

"The middle class youths who are getting involved with protest linked to climate change are not politicised, they are concerned about the future of the planet not political issues," he wrote in one report to his handler.

Activists might be amused that he saw their cause as apolitical, but his interpretation of their motives would nonetheless have assisted them in court.

So too would the recordings he secretly made of activists when they gathered at a meeting before the planned protest.

A raid of that meeting by Nottinghamshire police ensured the protest at the power station never took place, and 113 people were arrested.

Of those, 26 were charged for conspiring to break into the facility, but Kennedy's evidence, which also included a signed police statement in which he offered a measure of "support for the defence", was withheld from their lawyers.

As a result, the trial of six activists was abandoned in January. The convictions of the other 20 campaigners, found guilty in December, were quashed on Tuesday for the same reason.

The judges made clear that Kennedy's surveillance tapes would have supported the defendants' argument at trial that they intended to avert greater harm from carbon emissions from the power station.

"It is a case which has given rise to a great deal of justifiable public disquiet, which we share. Something went seriously wrong with the trial," the judgment said. "The prosecution's duties in relation to disclosure were not fulfilled. The result was that the appellants were convicted following a trial in which elementary principles which underpin the fairness of our trial procedures were ignored. The jury were ignorant of evidence, helpful to the defence, which was in the possession of the prosecution but which was never revealed. As a result justice miscarried."

The Crown Prosecution Service's alleged failure to disclose Kennedy's evidence is now the subject of an independent inquiry by Sir Christopher Rose, a retired court of appeal judge.

But the judgment raises more questions about the operation to plant Kennedy and other undercover police officers in the protest movement.

The files of undisclosed evidence, the judges said, reveal Kennedy "was involved in activities which went much further than the authorisation he was given, and appeared to show him as an enthusiastic supporter of the proposed occupation of the power station and, arguably, an agent provocateur".

There remain questions over his legal authority to spy on activists. Kennedy was not authorised to take part in the occupation of the power station until 9 April, just three days before the planned protest.

His surveillance of the activists also exceeded his powers, according to the judgment.

"When the protesters started to congregate together just before the proposed occupation it appears that Kennedy went much further than his authorisation.

"That included undertaking reconnaissance, participating in briefings, checking the surrounding area for police activity and agreeing to take part in a team of climbers."

The judges agreed that Kennedy was arguably seen by younger activists as an "eminence grise" - influential decision-maker - in the group.

The judgment added that Kennedy played a "significant role in assisting, advising and supporting ... the very activity for which the appellants were prosecuted".

That finding could prove damaging for senior police responsible for the surveillance operation.

Vera Baird, the former solicitor-general, said: "It was an ill-thought-out campaign to undermine people who turned out to be honest campaigners, not criminals, during which they wasted an enormous amount of money on this man who inevitably went native living with decent people for all those years.

"They were then left with him having let them down and with evidence showing that there was no crime in the first place."

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