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Lawyers condemn police spies who 'deceive' justice system

Undercover officer Jim Boyling, who kept assumed name while on trial, 'shows up weakness of investigatory powers act'



📷 Police spies who deceive the justice system perpetrate a 'corruption of the legal process', lawyers argue. Photograph: Felix Clay

Owen Bowcott, *legal affairs correspondent*

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Lawyers have condemned what appears to be deception of the courts by undercover police and have called for fundamental reforms of the legislation governing covert operations.

The revelation that a constable who infiltrated protest groups gave false evidence in court under oath triggered demands for a review of the Regulation of Investigatory Powers Act (Ripa).

The Met detective constable, whose real name is Jim Boyling, infiltrated the direct action group Reclaim the Streets.

He was charged with other activists for public order offences, and in 1997 gave evidence under oath in court using the name Jim Sutton - keeping the identity he had assumed for his undercover work.

Boyling was acquitted along with other protesters, but one activist, John Jordan, was convicted of assaulting a police officer.

Roger Smith, of the civil rights group Justice, said of the police infiltration: "This has major implications for Ripa. The mechanisms for supervision of what's going on have broken down and need to be reinforced.

"There has not been a proper degree of supervision involving breaching people's privacy, and we need to dust off Ripa and fundamentally beef it up.

"Clearly [the police were] out of control. It's a considerable embarrassment. [It raises the question of whether] the officer will face potential proceedings for perjury. He swore on oath he was someone else."

Mike Schwarz, a solicitor with the law firm Bindmans, which represented Jim Boyling, Jordan and other activists, said the infiltration cases represented "institutionalised police corruption of the legal process".

The extraordinary sequence of events suggested flagrant breaches of legal norms at several levels, he suggested.

He added: "Should a police officer be allowed to instruct a solicitor on a false premise? It's not right surely for them to get access to discussions involving other defendants. Was that information fed back to his minders or the Crown Prosecution Service who were prosecuting the case?"

"The case also raises the question of a serving police officer giving false evidence at trial in front of a court. What about the disclosure regime? The case involving another undercover officer, Mark Kennedy, showed that evidence did not make its way to the defence."

Schwarz has now written to the Criminal Cases Review Commission asking for Jordan's conviction in 1997, for which the latter got a conditional discharge, to be reviewed and overturned.

In a letter about the case to the director of public prosecutions, Schwarz said: "The known evidence suggests prosecutorial misconduct in this case ... in terms of proceeding with a prosecution in circumstances where the undercover officer played a major role in initiating conduct that was then prosecuted."

Gordon Nardell QC, who is leading the Bar Council's working party on the operation of Ripa, said: "At the moment the law allows the police to target legally privileged communications between lawyer and client.

"The Bar Council thinks that is fundamentally wrong and creates a risk of miscarriages of justice. People accused of crime must be able to speak freely with their lawyer in the knowledge that what they say is kept from the ears of the investigating authorities.

"We hope to persuade the House of Lords to make amendments to the protection of freedoms bill to ban the police from covertly gaining access to privileged lawyer-client communications.

"We don't know all the facts of this latest case, but what we do know indicates how serious are the problems that flow when you put a covert source in a situation where they have access to legally privileged information.

"If a police officer has deliberately deceived the court, that would be a serious offence. Ripa says that authorised covert activity is 'lawful for all purposes'. But there must be limits to that. I don't think parliament ever intended that Ripa would apply to this sort of operation. This case demonstrates that something has gone seriously wrong."

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