

Mark Kennedy controversy: activists invited to challenge convictions

DPP invites 29 activists to challenge convictions on grounds that prosecutor may have withheld evidence about undercover policeman



📷 Last year's court of appeal ruling said Mark Kennedy's operation to spy on activists was arguably that of an 'agent provocateur'. Photograph: Philipp Ebeling

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The controversy over the undercover police officer [Mark Kennedy](#) has escalated after the director of public prosecutions announced that a second group of environmental campaigners may have been wrongly convicted over a protest against a coal-fired power station.

Keir Starmer QC said he had invited 29 activists to challenge their convictions at the court of appeal after concluding that a senior prosecutor may have withheld vital evidence about Kennedy from their trial. He also announced a Scotland Yard review all of the police officer's deployments, saying: "What happened in cases involving Mark Kennedy cannot be allowed to happen again."

The campaigners stopped a train carrying about 1,000 tonnes of coal to the Drax power station in North Yorkshire in 2008. Kennedy is understood to have infiltrated the group, assisting them with a reconnaissance mission and later driving some campaigners to a rendezvous. They were convicted in 2009.

However, the Crown Prosecution Service may not have fully disclosed details of his operation to defence lawyers, Starmer said.

Last year the court of appeal quashed the convictions of 20 activists prosecuted for conspiring to break into Ratcliffe-on-Soar power station after it was found details of his secret operation were not disclosed to the defence.

In their ruling, the judges said "elementary principles" of the fair trial process had been ignored and that Kennedy's operation to spy on activists was arguably that of an "agent provocateur".

The trial of a further six activists accused of conspiring to break into the power station had been abandoned months earlier, when details of Kennedy's infiltration were made public. If the new appeals succeed, a total of 55 attempted prosecutions or convictions of political activists will have failed over the Kennedy affair.

Starmer said: "As a result of concerns raised with me about the convictions of 29 individuals for offences committed during a protest near Drax power station in North Yorkshire in 2008, I ordered a review of the case by a senior CPS lawyer with no prior involvement in the case and asked Brian Altman QC, first senior Treasury counsel, to advise on the safety of the convictions.

"Having considered the conclusion of that review carefully, I have decided that the safety of the convictions should be considered by the court of appeal. That is because it appears to me that a senior CPS lawyer, who has since left the organisation, may not have complied fully with disclosure obligations in this case."

He added: "The prosecution cannot lodge an appeal in these circumstances, so I have taken the unusual step of writing to the legal representative of those convicted, inviting them to appeal on the basis of non-disclosure of material relating to the activities of the former undercover officer, Mark Kennedy. The safety of the convictions is a matter that can only be dealt with by the court of appeal."

Starmer said safeguards had been put in place to prevent further wrongful convictions.

"Because I have real concerns about any prosecutions involving Mark Kennedy, in April I asked the Metropolitan Police Service to examine their records relating to Mr Kennedy's deployment to confirm that the Criminal Procedure and Investigations Act 1996, which sets out disclosure obligations, was adhered to.

"The [Met] has agreed to that request and is currently engaged in that exercise. This is a task that can only be carried out by the police because they hold the relevant records, but should any issues arise in cases prosecuted by the CPS, I will ensure those cases are reviewed by a senior CPS lawyer."

"More generally, I have asked Sue Hemming, the head of the CPS special crime and counter-terrorism division, to work with our complex casework unit heads to identify, from our available records, whether there are any further cases involving undercover officers that might need to be examined."

To avoid a repeat of the Kennedy case, Starmer said he negotiated a memorandum of understanding between the Association of Chief Police Officers, the Serious and Organised Crime Agency and Her Majesty's Inspectorate of Constabulary.

The agreement set out "in clear terms the approach to be followed in criminal cases involving undercover officers where it is essential that there is early, frank and regular liaison between investigating officers and prosecutors", he said.

Mandatory training for all senior CPS staff who supervised prosecutions involving undercover officers had also been in place since January.

Bindmans partner Mike Schwarz, who represented the 26 environmentalists, said: "This development is serious and long overdue. I first wrote to the Crown Prosecution Service about this issue almost 16 months ago. It is another case where a miscarriage of justice has come to light through a combination of luck and endeavour by campaigners. One is bound to ask: how many other miscarriages are out there?"

"The police and CPS's response to long-running and serious concerns about undercover police and disclosure failures by the prosecution has been inadequate from the start. This is no time for piecemeal, internal or covert self-reviews by the police and Crown Prosecution Service.

"They should be open with campaigners and with the public. A lot more needs to be done - than is offered - to make amends for compounded past failings and to provide reassurance for the future."

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