

IN THE PUBLIC INQUIRY INTO UNDERCOVER POLICING

CHAired BY SIR JOHN MITTING

OPENING STATEMENT ON BEHALF OF AZHAR KHAN

A CORE PARTICIPANT ALLOCATED BY THE FORMER CHAIRMAN OF THE UCPI

SIR CHRISTOPHER PITCHFORD TO CATEGORY I-MISCARRIAGES OF JUSTICE

1. Azhar Khan was a Solicitor-Advocate with 13 years PQE. In 2005 he set up a criminal defence practice by the name of City Law Solicitors Ltd, of which he was the sole director until 2010. The mainstay of his work was legal aid criminal defence work.
2. AK's achievements in qualifying and setting up in practice are very significant as was the work done by him and his firm. In establishing himself in practice he was one of a tiny percentage of BAME males to have done so. Moreover, he set up CLS in an area of high levels of deprivation and crime serving important local needs. He not only practised as a legal aid lawyer but also

worked tirelessly for local charities. In running CLS AK ensured the firm not only gave opportunities to members of the BAME community but also encouraged female members of that community to join and progress in the legal profession.

3. In 2007 the Metropolitan Police conceived an entirely new type of undercover covert “sting” operation. Its target was AK. The operation’s name was (variously) Castration/Castrum. It culminated in his arrest for the offence of conspiracy to pervert the course of justice in December 2009.
4. This was a new and unique operation- the first of its kind- where there was not merely covert surveillance of or eavesdropping on a solicitor in the course of his practice but a detailed plan for UCO’s to pose as criminals and potential clients for AK/CLS for certain objectives. In its planning and execution, it consisted of a number of phases and features.
5. Firstly staged ‘arrests’ were to take place of UCO’s acting as criminals, in fact drug-dealers or money launderers. They would be arrested by other officers pretending to be carrying regular deployment duties.

6. After these so-called arrests the 'suspect'-the UCO-was taken to a police station and 'processed' by the custody officers. This would involve booking the suspects in, reading them their rights, carrying out searches and ordering their detention for interview. In due course they would be 'interviewed'.
7. On arrival at the police station the 'suspect' directly or indirectly requested that AK from City Law Solicitors attend to represent him. In each case AK did so, was provided with pre-interview disclosure/custody sheet and attended the suspect during the recorded interviews.
8. Of course every aspect of this part of the operation was a charade designed, as was later admitted by the OIC of the Operation, to deceive AK that he was being asked to represent suspects accused of serious crime as part of his professional obligations.
9. This elaborate and sophisticated operation which extended over a period of 18 months involved the following individuals, agencies and methods;
 - a) The three undercover police officers
 - b) At least 6 other officers who actually made the staged arrests.

- c) Further meetings with AK all initiated by 'Raj' (one of the UCO's) when proposals to launder money were made to AK including an occasion when he was offered £50,000 'to get into a different business'. AK refused it.
- d) The Custody officers and Custody Managers at the police stations who oversaw the 'detention' and 'processing' of these 'suspects'
- e) The officer in charge of this operation DI Marion Ryan who conducted briefings/debriefings
- f) Senior officers who reviewed to operation at intervals
- g) Other police officers who conducted briefings, collected and stored exhibits such as covert tape and police station video recordings.
- h) The provision of large bags of tablets alleged to be drugs and a quantity of money to be shown to AK and carried by the undercover officers.
- i) The fake procedure at each police station where the 'suspects' were taken of their detention, intimate search, delaying of a phone call, the calling of a solicitor and the recorded interviews.
- j) Supposed searches of premises said to be occupied by one of the suspects authorised by an Inspector. The reported result was unsurprisingly negative.

k) The release of the suspects 'on bail' pending 'further enquiries'.

Another pretence.

l) The making of covert recordings of conversations between the suspects/clients and AK after their release on bail.¹

m) The drafting and signing of s9 witness statements by the arresting officers as to the arrests for offences of money-laundering or supplying controlled drugs. These on their face were obviously false documents.

n) The forensic examination of the so-called drugs which found they were not a controlled substance. Again an exercise using a forensic expert-in-itself pointless except as another part of the charade.

10. DI Ryan the OIC concedes that the staged arrests and procedures at the police stations were designed to deceive AK and to exploit him in the conduct of his professional practice in order to try and find evidence of criminal conduct by him.

¹ These conversations provided the basis of the failed case of conspiracy to pervert the course of justice brought against AK.

11. An important element of the operation was that 'Raj' sought in 2008-9 as a principal of an OCG to build a client relationship with AK. He did this by making frequent-indeed persistent telephone contact and seeking meetings with him. During those contacts Raj again and again tried to tempt or lure AK into agreeing to take part in crime, including the incident when £50,000 was unsuccessfully offered as bribe.

12. The objective behind Operation Castrum was NOT to investigate a crime or crimes which AK was suspected of committing or having committed. He was thought, on the basis of 'intelligence' (of which we have no details), to be 'corrupt'. So it was decided to 'integrity test' his conduct as a criminal defence solicitor by using the UCO's to suggest the commission of crimes to AK and then (as DI Ryan puts it) to see how he would react.

13. If no evidence of any offence on the part of AK was gleaned , there was a secondary and stated objective - to report any professional misconduct on his part. But to whom? Not it to the appropriate body, viz the Solicitors' Regulatory Authority but to the Legal Services Commission, the agency responsible for the granting/funding legal representation orders to those charged with criminal offences. CLS as thriving legal aid practice was highly

dependent on the LSC. The clear aim-as we shall see- was to put him and his practice City Law Solicitors out of business.

14. These objectives are contained in documents disclosed in the course of the criminal proceedings following this Operation. These included the Objectives² as drafted by the first OIC DI Williams, the Operational Plan and the tactic documents drafted by DI Ryan. One of them, confirmed by DI Ryan in her evidence, was indeed ***“to put City Law Solicitors Ltd out of business”***.

15. The known ‘integrity testing’-as we have seen- involved undercover police officers posing as potential or actual clients of the firm. Whether that is the full extent of it we do not know. It is not known whether that was the extent of the operation and/or whether there is material (and if so what) of further surveillance which has not been disclosed and was not disclosed in the criminal proceedings.

16. AK is firmly of the view- and have evidence to substantiate it-that he and at least one of his employees at CLS were subject to other undercover surveillance including telephone tapping during this .

² In Decision Book One

17. However we say it is plain from the way this operation was conceived and executed that this so-called 'testing' amounted to no more and no less than attempts by the UCO's to induce or trap AK into saying or suggesting something which would amount to a perversion or an attempt by him to pervert the course of justice. In short to trap AK into committing a crime. This much is clear from the very many transcripts of the conversations between AK and the UCO's-particularly 'Raj' in the context of the successive staged arrests and contrived meetings and conversations.

18. And these attempts were persistent extending for a period of 18 months. Indeed one of the most legally and morally objectionable feature of the operation was that these attempts were so persistent in the face of AK's repeated failure agree to the suggestions of crime -or as the judge in AK's prosecution- later put it 'his failure to bite' on the offers made to him.

19. We say that this conduct was aimed at unlawful entrapment of the clearest kind and was highly objectionable on this and other grounds;

- It was operationally unjustified because there were no proper grounds for a criminal investigation.

- It was legally indefensible under UK and ECHR law in view of the methods contemplated and deployed.
- It was also unethical and an egregious invasion of AK's rights as a citizen and a legal professional.
- It raises important issues about the use and abuse of the state's resources in carrying out such operations.
- There are grave concerns that AK as an Asian lawyer was singled out in a way which would not have occurred had he been a solicitor who was white British. Why were the UCO's either black or Asian? Was it thought AK would more readily agree to commit a crime if proposed by a member of the BAME community? What does that indicate about the assumptions on which this operation was based?

20. In addition to the foregoing, we have no knowledge- because there has been no disclosure-of the reasons for and the process of any applications for authorisations under RIPA 2000. What took place clearly amounted to directed and/or intrusive surveillance requiring not only applications for authorisation but also compliance with the rules as to the grant, duration and renewal of any authorisation. We have only had a minimal amount of disclosure as to the authorisations granted.

21. How was this operation claimed to be necessary for any the statutory objects³ or proportionate? How long was it granted for? Was it renewed? Again, for how long? And why? Was there compliance with the Codes of Practice?
22. Apart from the legal and ethical objections to the operation as conceived and authorised, there were in practice instances where instructions to a UCO were plainly exceeded and attempts to entrap AK went further even than authorised.
23. Moreover, there was a deeply troubling instance when it appears the operation itself was corrupted and misled by the provision of false information by the police team handling the UCO's to the OIC and her superiors. Critically this was fed to her after she had decided to cancel the operation.
24. Because by September 2009 the operation had produced no evidence of any wrongdoing by AK, so the OIC decided to conclude the operation and to

³ S28(3) a-g including the prevention and detection of crime

institute an 'exit' strategy so as not to arouse AK's suspicions. However, she was then provided with a report containing information which claimed that AK had insisted on meeting a UCO to agree an illegal course of conduct. This was completely untrue. But it had the consequence that the information was relayed to DI Ryan's superiors who authorised the continuance of operation with further attempts being made to engage with AK in a criminal conspiracy.

25. Worse still the authority then granted for Raj to continue his contact with AK by adopting a 'passive' role was plainly exceeded in practice. DI Ryan in fact tasked another UCO 'Del' to actively engage AK by yet again suggesting he take part in an illicit money laundering scheme.

26. However- and as the judge found-at no stage did AK agree to commit any offence.

27. On the 8th December 2009 there was an extensive search at AK's family home and the CLS offices. He was then arrested for conspiracy to pervert the course of justice.

28. He was interviewed for and charged with that offence.
29. A draft indictment at Kingston Crown Court alleged a conspiracy to pervert the course of justice by offering a false provenance in respect of a sum £20,000 knowing or suspecting it to be the proceeds of criminal conduct. It was alleged by the Crown that AK had suggested a false provenance in respect of the monies produced by the UCO who had been arrested for that offence and had been acting as a Client requiring legal representation.
30. Applications for dismissal and a stay of proceedings were commenced on 30th June 2010 at Kingston Crown Court. The two applications were on the grounds firstly, that there was no case to answer and secondly there had been an abuse of process.
31. The application for dismissal was granted by the judge. On the Crown indicating they would not appeal against that terminatory ruling Judge Dodgson did not rule upon the application to stay for abuse of process.
32. We say it is quite clear, however, that if invited to rule, the learned judge would have held the proceedings to be an abuse. Extracts from his ruling

graphically demonstrate the persistence and determination with which the MPS and those responsible for conceiving, organising and sanctioning this operation sought to persuade, incite, encourage indeed trick AK to commit criminal offences. The judge said;

'...by the start of the conspiracy on 4th September, Mr. Khan's integrity had been tested on a number of occasions, with no results, as far as the police were concerned. However, on the 4th September a scenario was constructed. By now the undercover officer, Raj, had been known to Mr. Khan for nearly a year. In that year the invitation⁴ that I have spoken of had been offered to him. Raj was far more active in pursuing the relationship than Mr. Khan.....'

The judge then cited two passages where Raj was again attempting to persuade AK to agree to a money laundering scheme;

'...The subject is first seen at page 289 of the transcript, where Raj asks, "What about if I say I can get the guy to come down, and if he can come down and say, 'Look, the money is mine.'" The response from the

⁴ In the tape recorded conversations between AK and the UCO's

defendant was, "I don't want to get involved with that, I'll be honest with you, I don't want to get involved in that."

Undaunted, Raj returned to the topic at page 292, when he said, "I need to get hold of that guy then so he can say, 'This is my money.'"

The response from Khan was, "Do me a favour, sleep on it", and that is how matters were left.

..... Suffice it to say that by the 7th September, 2009 the police had decided that such was the paucity of the evidence that had been accumulated that they were minded to cease the operation. However as a result of misinformation regarding Mr Khan's persistence, the operation continued to run, and Raj persisted in trying to make contact with Mr. Khan, making phone calls on the 9th September, the 14th September, the 22nd September and the 25th September, and finally a meeting was arranged, which took place on the 25th September.....'

33. So the upshot was AK had not agreed to the suggestions of crime made to him and as already mentioned a decision was made to cancel the operation.

34. There are a number of striking and we say deeply troubling aspects of the operation as described by the judge;

- a) The continued and persistent nature of the attempts to incite AK to commit criminal offences
- b) The apparent lack of any legitimate basis or justification for these attempts-given the lack of any evidence to justify them.
- c) Clearly the misinformation about AK is of very great concern. The information was contradicted by the transcript of the relevant conversation. It is difficult to see how it could have happened by error. If deliberate, then the operation's integrity even on its own terms is significantly affected. How likely is it that this an error in the light of the care and the attention to detail with which the operation was planned and executed?
- d) Why did this operation persist with repeated acts of serving officers as 'agents provocateurs' in relation to the conduct of a practising solicitor? AK was not being investigated on the basis that he was suspected of committing criminal offences-this was not a criminal investigation. In such investigations agents provocateurs are deployed from time to time as a form of evidence gathering-with consequences as to admissibility of that

evidence obtained. This was however wholly different in concept and execution.

35. We submit that AK was indeed a victim of a miscarriage of justice and he should never have been prosecuted. It must be therefore the key objective of this Inquiry into AK's case to examine the full extent of this undercover operation directed at AK as well as the reasons and justifications for it. There are moreover particular features which call for scrutiny by the Inquiry;

- a) How was the Operation conceived?
- b) Why was AK targeted? What was the so called 'intelligence'?
- c) Was it because he was Asian? Was it a factor?
- d) Who was involved and responsible? Which departments?
- e) We know that counsel was engaged at an early stage of the operation. What was her role? It appears despite legal advice an illicit and disproportionate operation was put into effect.
- f) We repeat our earlier questions as to how and why this operation was authorised and for so long under the provisions of RIPA?
- g) Who was involved and responsible? Which departments?

- h) Who had oversight/final responsibility for Operation Castrum/Castration?
- i) Was there any involvement with the National Public Order Intelligence Unit?
- j) Were periodic reviews of the operation up to Commander level adequate?
- k) What previous and other UC operations were looked at?
- l) The actual execution of the operation and the methods used. Was authority exceeded? Things went badly wrong towards end of the operation. But why did it continue for so long when it was producing no evidence of crime?
- m) Another vital area for examination by this Inquiry is the extent and the manner in which other processes and agencies in the criminal justice system were used or involved in this extensive and continuing operation. It involved, as we know, serving police officers posing as criminals using and being 'processed' through the criminal justice system. They were introduced to AK through client contact or the Duty Call Centre. On AK attending the police stations he unwittingly took part in a bogus process in involving the Custody and other officers at those police stations. The suspect was booked in, searched and conferred

with AK before being interviewed. The recording facilities at police stations were used to film the fake suspects being processed and AK carrying out his professional duties including his 'legally privileged' conversations with these clients.

n) Was the involvement of serving officers, police stations and other parts of the criminal justice system in this long running pretence justified on any grounds?

o) Was it a proper use of public money and resources ?

p) As already stated a declared intention was to gather any evidence of professional misconduct and to refer such evidence to the Legal Services Commission-not we emphasise the solicitors' disciplinary body-but the agency which administers the granting and payment of criminal legal aid. Plainly an adverse report to the LSC could have very damaging, indeed fatal consequences to a criminal legal aid practice. The questions that arise in this regard are;

- What were the MPS doing seeking to investigate professional misconduct and report the same? Is it a legitimate function for the police to seek to gather evidence of professional misconduct?

This was not a case where investigating suspected criminal

conduct, but of the 'integrity testing'. Is this proper? Is it was it proportionate?

- Is it remotely justifiable for the police to seek to commercially undermine a professional legal practice?
- Was this operation in any circumstances proper? Was it proportionate?

q) The scale of the operation was extensive and long running. The same questions arise

r) Lastly but by no means least as DI Ryan acknowledged this operation could have (and did) significant consequences for AK as a legal professional. What consideration was given to the ethical justifications for disrupting and infiltrating a solicitor's practice with the consequences for him and his firm and their clients? Or it should be added for him, his family and his career. It has had a profound effect on him and his family who have waited 11 long years for answers to the burning questions as to why was he targeted and prosecuted for a crime he did not commit despite the State's determination to lure him into doing so.

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