

**Undercover Police Inquiry  
6 November 2020**

**Opening Statement**

**by**

**Lord Hendy QC**

**on behalf of**

**Fire Brigades Union and Unite the Union**

*(Note to document handler: the only page to be shared during the course of the submission is UCPI0000007920-14/UCPI0000007920-CEF-14. If it can be shown when we get to page 17 I would be grateful)*

**I**

Sir, I am instructed by the core participants, the Fire Brigades Union and Unite the Union. I am also asked to mention other trade unions which are not core participants, though some applied and were refused that status. These other unions are: the Communication Workers Union (CWU), the GMB union, the National Education Union (NEU), the National Union of Journalists (NUJ), the National Union of Rail, Maritime and Transport Workers (RMT), and the Public and Commercial Services Union (PCS). Some of these unions may apply for core participant status in due course and other unions, not represented today, may join them. It will depend on the nature and extent of evidence emerging of infiltration and surveillance of those unions by undercover police officers. It will also depend on resources since, as the Inquiry will appreciate, unemployment has risen by a million already since lockdown and union membership levels and hence union subscription income is consequently imperilled.

**II**

The first point my clients wish me to emphasise to the Inquiry is that trade unions are lawful organisations which play a vital role in any democratic society. Of course, even lawful organisations may commit crimes. But undercover infiltration or surveillance of a lawful organisation will require a full and proper justification by reference to a reasonable anticipation of criminal activity. My clients believe that they were subject to undercover police surveillance and infiltration and they do not believe that there will be shown any such justification.

They also wish to know what happened to the information gathered by covert police operations. There is evidence that some of it may have been supplied to third parties for the purpose of blacklisting active trade unionists from work – as Mr Smith of the Blacklist Support Group will develop. I shall mention this later.

In addition to the concern already articulated (that there has been unjustified spying on trade union activities which are not merely lawful but also fulfil an essential democratic function), the NUJ has an additional concern. It considers that undercover policing has sought clandestinely to glean from journalists information as to their sources for published material – a serious incursion into another fundamental aspect of democracy and equally unjustifiable. The NUJ has written to the Inquiry separately about this.

Though it may appear to be an uncontroversial, my clients wish me to explain how, through industrial and political efforts the law was changed so that trade unions and their fundamental functions ceased to be deemed criminal and became lawful. It is relevant to the question of any justification for covert surveillance of trade unions.

### III

Trade unions in a recognisable form have been in existence in this country for the best part of 300 years. The description by Sydney and Beatrice Webb in 1894 of a trade union as ‘*a continuous association of wage earners for the purpose of maintaining or improving the condition of their working lives*’ remains accurate. This function is primarily achieved by union representatives (lay or fulltime) representing workers in bargaining with employers with a view to achieving collective agreements setting terms and conditions of employment. Whether agreement is reached, and the content of such agreement if it is reached, depends not just on the exchange of persuasive argument but on the relative strength of the bargaining position of each side. From the union side that leverage sometimes derives from an insufficient supply of labour but more usually derives from the threat (and sometimes the use) of industrial action.

Unions have also sought to achieve ‘*the purpose of maintaining or improving the condition of ... working lives*’ by promoting legislation to that end (and opposing

legislation which does not). This has inevitably led to the funding and promoting of political parties.

Questions of the lawfulness of trade unions have therefore turned on the lawfulness of:

- The existence of trade unions;
- the process of collective bargaining;
- the organisation and conduct of industrial action, including picketing; and
- the political activities of trade unions in promoting legislation and supporting political parties.

In the past these issues have involved the criminal law to a very great extent.

The very existence of trade unions was a criminal offence under the Combination Acts of 1799 and 1800. Though repealed in 1824, the formation of trade unions could be criminal on other grounds (such as the taking of an oath) as the famous case of the Tolpuddle Martyrs in 1834 showed. The Trade Union Act 1871 legitimated trade unions as lawful in both civil and criminal law but only by exempting trade unions from the civil law of restraint of trade which would otherwise have rendered them unlawful. That exemption is still a necessary protection against competition law and is found in s.11 Trade Union and Labour Relations (Consolidation) Act 1992.

So, trade unions are organisations which have had Parliamentary legitimacy for the last 149 years. Today they are defined in s.1 of the 1992 Act by reference to their principal function of '*regulating relations between workers ... and employers*'. The Act provides mechanisms for the listing of trade unions by the Certification Officer (s.2) and their certification as independent from employers (ss.5-8). All the unions I represent today are both listed the Certification Officer and certified by her as independent.

Collective bargaining was regarded by the law as a restraint of trade and the enforcement of collectively agreed wage rates was accordingly a criminal conspiracy as cases such as *R v Journeymen Tailors of Cambridge* (1721) 88 ER 9 show. During the 19<sup>th</sup> century, however, collective bargaining and collective agreements ceased to be

regarded as criminal or indeed unlawful. By the end of the century Parliament accepted the reality of collective bargaining (e.g. Fair Wages Resolution 1896) and by the end of the First World War the promotion of collective bargaining had become the policy of all governments up to 1980 (Trade Boards Act 1909, Whitley Councils from 1917) . Chapter 1 of Part VI of the 1992 Act is devoted to collective bargaining.

The threat of a strike in breach of contract (as most are) was regarded as a crime (conspiracy): *R v Bunn* (1872) 12 Cox CC 316. And so was picketing: *R v Hibbert* (1875) 113 Cox CC 82. Only by the Conspiracy and Protection of Property Act 1875 did they cease to be criminal offences.

However, the organisation of industrial action remained a civil wrong (*Taff Vale Rly co v Amalgamated Society of Railway Servants* [1901] AC 426) until the Trades Disputes Act 1906. Since then trade unions have been free to organise and threaten industrial action ‘*in contemplation or furtherance of a trade dispute*’, the ‘golden formula’ of the 1906 Act (replicated now in s.244 of the 1992 Act). By 1942 Lord Wright was able to say in *Crofter Handwoven Harris Tweed Co v Veitch* [1942] AC 435:

‘Where the rights of labour are concerned, the rights of the employer are conditioned on the rights of the men to give or withhold their services. The right of workmen to strike is an essential element of collective bargaining.’

As is well known, the organisation of industrial action has been subject to various statutory interventions since 1906, some diminishing civil liability some expanding it. The latest set of restrictions were contained in the Trade Union Act 2016.

The right to strike is now well established, the balance being held in the light of the UK’s international obligations. Elias LJ encapsulated the principles in the leading case of *London and Birmingham Rly (t/a London Midland) v ASLEF, Serco Ltd (t/a Serco Dcoklands) v RMT* [2011] ICR 848:

8. Although the common law recognises no right to strike, there are various international instruments that do: see for example article 6 of the Council of Europe’s Social Charter and International Labour Organisation Conventions 98 and 151. Furthermore, the European Convention on Human Rights and Fundamental Freedoms has in a number of cases confirmed that the right to strike is conferred as an element of the right to freedom of association conferred

by article 11(1) of the Convention which in turn is given effect by the Human Rights Act 1998. The right is not unlimited and may be justifiably restricted under article 11(2). ....

9. There is one respect, however, in which I think that the recognition of a right to strike does have a bearing on the issues before us. ... counsel for the employers, submitted that, since the unions were seeking to take advantage of an immunity, the legislation should be construed strictly against them. There is undoubtedly some authority to support that submission: see for example *Express Newspapers Ltd v McShane* [1979] ICR 210 , 218, per Lord Denning MR. But I do not think that it is a sustainable argument today. The common law's focus on the protection of property and contractual rights is necessarily antithetical to any form of industrial action since the purpose of the action is to interfere with the employer's rights. The statutory immunities are simply the form which the law in this country takes to carve out the ability for unions to take lawful strike action. It is for Parliament to determine how the conflicting interests of employers and unions should be reconciled in the field of industrial relations. But if one starts from the premise that the legislation should be strictly construed against those seeking the benefit of the immunities, the effect is the same as it would be if there were a presumption that Parliament intends that the interests of the employers should hold sway unless the legislation clearly dictates otherwise. I do not think this is now a legitimate approach, if it ever was. ...

Political interventions by trade unions were initially confined to promoting legislation to legitimise unions and on matters of health and safety at work, then expanded to supporting Liberal Party MPs and, subsequently, founding their own political party, the Labour Party, and funding it, its MPs and candidates. Such political activities were found to be unlawful in civil law (though not criminal) by the famous case of *Osborne v Amalgamated Society of Railway Servants* [1910] A.C. 87. Legal regulation was substituted for unlawfulness by the Trade Union Act 1913, the provisions of which are largely reproduced in Chapter VI of the 1992 Act, mostly unchanged (though the Trade Union Act 2016 has altered the scheme in some particulars).

What this review of domestic law shows is that there can be no legitimacy or justification for the infiltration or surveillance of trade unions by virtue of their mere existence or in their execution of their usual functions. Parliament has taken these matters out of the criminal law, and thus placed them outside the proper sphere of operations of the police. Instead Parliament has chosen to regulate these matters by means of the civil law enforced by employers, members and the state regulator, the Certification Officer.

Of course, trade unions, their officers and their members are human beings and thus capable of crimes, even while acting in their trade union capacities. Fraudulent claims for expenses, breaking the speed limit, parking on double yellow lines, obstructing the highway, obstructing the police in the execution of their duty are offences that do occur from time to time. Occasionally, people get carried away and threaten violence when they should not. No doubt there is other conduct committed by trade unionists in the carrying out trade union activities which would currently be regarded as a crime.

Since the removal of the criminal law in the 1870s, no-one can seriously suggest that *trade unions* in the UK have carried out *any* criminal activity and certainly none which could in any way justify undercover police surveillance or infiltration of trade unions. My clients would share with Mr Peter Francis the view that while: <sup>1</sup>

undercover policing can be a legitimate policing tool... essential to effectively combat serious, organised crime and proscribed terrorist organisations, ... there is a level of serious criminality that must be reached before the state is justified in using the tactics of undercover officers.

#### IV

Elias LJ referred to the international dimension. The legitimacy of trade unions and their right to participate in political democracy, to bargain collectively, to organise and support their members in exercising their right to strike and to picket, is recognised and protected by a raft of international treaties ratified by the UK. There is no need to review them in any detail but their longevity and extent is worth mentioning.

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<sup>1</sup> Opening Statement of David Lock QC on behalf of Mr Francis at [44].

The founding of the International Labour Organisation in 1919 (as part of the Versailles peace agreement) recognised the fundamental right of trade unions to exist and to act as such for the protection of the interests of their members. It did more by recognising the fundamental importance of trade unions in democratic societies and to the maintenance of peace.

Almost immediately after the German surrender in the Second World War the victorious allies signed the ILO's Declaration of Philadelphia at its conference in May 1944. This began by stating:

The Conference reaffirms the fundamental principles on which the Organization is based and, in particular, that:

- (a) labour is not a commodity;
- (b) freedom of expression and of association are essential to sustained progress;
- (c) poverty anywhere constitutes a danger to prosperity everywhere;
- (d) the war against want requires to be carried on with unrelenting vigour within each nation, and by continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare.

Trade unions were thereby recognised as not merely legitimate but a necessary pillar of democracy.

The United Nations Declaration of Human Rights of 1948 contained the rights of freedom of assembly and association (Article 20).

In 1949 the ILO adopted its most fundamental Convention, No.87 which requires Member States to guarantee the existence, autonomy and activities of trade unions. Of particular relevance to this Inquiry is Article 3 of the Convention which states:

1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

In 1950 the ILO adopted an almost equally important Convention, No.98, which guarantees the right to bargain collectively.

The European Convention on Human Rights of 1950 contains the rights to assembly and association in its Article 11 but adds to the right of freedom of association the right of everyone 'to join trade unions for the protection of his interests.'

That latter phrase is the basis of the judgment of the Grand Chamber of the European Court of Human Rights that the right to bargain collectively is 'an essential element' of Article 11 (*Demir and Baykara v Turkey* (2009) 48 EHRR 54). The Court has also, in many cases, recognised the right to strike derived from that phrase (e.g. *Danilenkov v Russia* (2014) 58 EHRR 19; *Tymoshenko v Ukraine* 48408/12, 2 January 2015; *RMT v UK* (2015) 60 EHRR 10). It has also recognised the right to picket effectively, even if that obstructs the highway (*Patyi v Hungary* 5529/05, 7 January 2009; *Kuznetsov v Russia* 10877/04, 23 January 2009).

Of course, these rights are not unlimited but restrictions on them, whether imposed by domestic law or by acts perpetrated or permitted by the State on a particular occasion, must conform to Article 11(2) which requires that the restriction be:

necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

The standard of necessity in a democratic society is a high one.

There are many other treaties which have long been ratified by the UK and which protect trade union rights: the European Social Charter 1961, the International Covenant on Civil and Political Rights 1966, and the International Covenant on Economic, Social and Cultural Rights 1966, the Charter of Fundamental Rights of the European Union 2000.

## V

The purpose of this exposition of the law on trade unions is to make clear that trade unions are lawful and respectable organisations which pursue activities recognised and protected by both domestic and international law. They have emerged from the long night during which they and their essential activities were classed as criminal, through the grey dawn of civil unlawfulness, into a daylight in which the law regards trade unions and their functions as entirely legitimate - though subject to restrictions.

Trade unions serve an essential function in a democracy by representing the interests of working people not only at work but in many of the institutions of society. They act as a balance to the growing power of multi-national corporations. The need for trade unions has been highlighted by the consequences of COVID-19 with tens of thousands of workers turning to them for advice and representation.

Against this background, the burden of justifying undercover police intrusion is correspondingly heightened.

Nevertheless, it must be said that there are those who, today and over many years, though grudgingly accepting the legitimate existence of trade unions (to advise and represent individual members and so on), do not consider as legitimate the essential trade union function of harnessing the collective power of labour to press for improvements to terms and conditions. This school of thought considers that such activity constitutes a distortion of the labour market which should operate free of any such countervailing force. My clients speculate that such an attitude may have played a part in initiating and maintaining covert surveillance of trade unions.

## VI

I turn to the role of unions in this Inquiry. My clients wish me to express their deep dismay at the fact that it is only now, five years after its establishment, that the Inquiry is taking evidence. Other core participants have made submissions about this and I will not repeat them.

More disconcerting is the paucity of documents of relevance to my clients which have so far been disclosed – and that only recently. The disclosure consists of two Special Branch reports on a couple of meetings organised by the International Socialist party

and six annual reports of the Special Demonstration Squad (SDS). Neither provide any evidence of any focus on undercover penetration of any union save in one particular respect to which I will come.

However, it is known that there has been undercover police surveillance of unions. It is understood that the National Public Order Intelligence Unit included in its remit the monitoring the activities of trade unionists. The Met Police Special Branch (other forces also had Special Branches) established an 'Industrial Intelligence Unit'. According to the Report by Chief Constable Mick Creedon in relation to Operation Herne and Operation Reuben (which I shall refer to as the Creedon Report) the Industrial Intelligence Unit was :<sup>2</sup>

Formed in 1970 to monitor growing industrial unrest, officers from the Industrial Unit used various methods to report on the whole range of working life from teaching to the docks. This included collating reports from other units (from uniform officers to the SDS), attending conferences and protests personally and also developing well-placed confidential contacts from within the different sectors. There is no knowledge or record of the Industrial Unit using undercover officers.

The absence of evidence uncovered by Ch. Constable Creedon is not conclusive that Special Branch did not use undercover officers in relation to trade unions. The fact that it utilised reports from, amongst others, SDS confirms that it did use information from undercover police officers. It is also to be queried whether the 'well-placed confidential contacts' were made aware that they were supplying information to Special Branch officers. If not, those officers were working undercover.

Some, like Jack Winder, Director of Intelligence and Research at the Economic League (which I will mention later), was obviously well aware of the nature of his 'regular' meetings with a Detective Sergeant of the Industrial Intelligence Unit in 'pubs local to New Scotland Yard'.<sup>3</sup> But these contacts apparently included union representatives<sup>4</sup> most of whom, it might be thought, would be reluctant to provide information if they

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<sup>2</sup> *Creedon*, [6.11].

<sup>3</sup> *Creedon*, [12.16]. Winder also met a few times a year with a Detective Constable in pubs *Creedon*, [12.18].

<sup>4</sup> *Creedon*, [11.7.5].

had realised they were speaking to Special Branch officers. Later, Ch Const Creedon explains that ‘sources’ were referred to as ‘contacts’.<sup>5</sup>

My clients conclude that, put shortly, Special Branch’s Industrial Intelligence Unit was, amongst other activities, spying on trade unions.

The MPS Special Branch was amalgamated with the Anti Terrorist Unit in 2006 to form the MPS Counter Terrorism Command. The Creedon Report says that the ‘modern equivalent’ of the Industrial Intelligence Unit is Operation Fairway and the National Domestic Extremism and Disorder Intelligence Unit’s Industrial Liaison Unit. Whether this falls under the Counter Terrorism Command is not clear. The Inquiry may be assured that trade unions, already deeply unhappy that they have been under police surveillance, will be horrified to learn that the surveillance of them falls under Domestic Extremism and Disorder. Their reaction if the responsibility turns out to be that of MPS Counter Terrorism Command may be imagined.

Peter Francis, an undercover police officer who served in the SDS from 1993-1997, has said that he carried out covert surveillance of members of the National Union of Teachers (now the NEU), the CWU, the FBU and UNISON. Another undercover officer, Mark Jenner (‘Cassidy’) posed as a joiner to become a member of UCATT in 1996-1998. Senior union officers, many now retired or dead (such as Ken Cameron, former General Secretary of the FBU) believed that they were spied upon by undercover police officers. Some of the women Core Participants who were subject to relationships with undercover police were active trade unionists. For example, we understand that Helen Steel was a UNISON safety rep and sat on a UNISON national committee. Donna McLean was a TGWU shop steward working in the homelessness sector. ‘Alison’ was a NUT representative in Islington.

I must mention The Consulting Association (TCA). It was a secret cartel, in the form of a limited company, set up by a consortium of multi-national construction companies to maintain a blacklist of active trade unionists (with a few environmental

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<sup>5</sup> *Creedon*, [11.1.12] and see the description at [12.21] by a Detective Sergeant (who focussed on transport and education) in the Industrial Unit: ‘a large part of their work was done by forging close links with significant people within their specific areas who would be referred to as ‘contacts’”.

campaigners) in the construction industry with the objective of barring them from work on the sites of some 44 construction companies which paid it an annual subscription and a fee for each name checked against the blacklist. Established in 1993, it took over this work from the secret employers' cartel called the Economic League which had a broader and more political brief, was founded in 1919, and collapsed in ignominy after media exposure and a parliamentary inquiry. The TCA list included no less than 3,213 names, though a few were duplicates. (The Economic League had some 33,000 names in its files). The full extent of TCA's activities was publicly revealed by virtue of a raid by the Office of the Information Commissioner in 2009.

The ICO Senior Investigator has suggested that some of the information found on TCA files can only have come from the police:<sup>6</sup>

The information was so specific and it contained in effect operational information that would not have formed anything other than a police record.

The Creedon Report, the focus of which was the SDS,<sup>7</sup> did not find evidence to substantiate that and proposed that such information may have come from other sources. He did, however, find that:<sup>8</sup>

Police, including Special Branches and the Security Services supplied information to the Blacklist funded by the country's major construction firms, The Consulting Association and/or other agencies...

It does not need to be stressed that virtually the only information of interest or use to the TCA was information about active trade unionists with a view to preventing them gaining employment.

This is born out by a specific telling incident recorded in the Creedon Report.<sup>9</sup> An individual sought work with a television company making educational videos. The company also did work for the construction industry and so contacted the Economic League to vet the application. Creedon continues:<sup>10</sup>

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<sup>6</sup> *The Observer*, 3 March 2012.

<sup>7</sup> *Creedon*, [4.7].

<sup>8</sup> *Creedon*, [4.2] and [13.1.1]-[13.1.8].

<sup>9</sup> *Creedon*, [11.1.7]-[11.1.10]; [12.5].

<sup>10</sup> *Creedon*, [11.1.8].

The EL representative identified X as a left wing sympathiser and therefore decided to contact MPSB's Industrial Unit, due to the perceived risk of X's involvement in education.

Creedon reports that the Special Branch Industrial Intelligence officer (who was assigned to the engineering industry<sup>11</sup>) then made 'enquiries', presumably by checking the Unit's database and:<sup>12</sup>

returned to the EL asking for any further information, stressing the matter's importance due to the possible link to terrorism. This was recorded as a fact by the EL representative and passed on to the prospective employer.

In consequence, unsurprisingly, the individual was refused employment on the ground that he had been 'blackened by the security people.' This sad tale only came to light because the person concerned was related to a retired Chief Superintendent who took the matter up in consequence of which: '[a] thorough investigation was conducted and the issue corrected.'

The easy way an employee of the Economic League was able to contact a Special Branch officer in the Industrial Intelligence Unit and then get him to check an individual on Special Branch files is, frankly, extraordinary.<sup>13</sup> The fact that the Special Branch officer then gave Economic League, a private enterprise body unconnected with the police, confidential and highly defamatory information which was, presumably secret, is yet more staggering.

It is reasonable to conclude a systematic pattern of collusion here. It is to be wondered how many job applicants who do not have a relative who is a retired Chief Superintendent have lost employment by reason of information secretly held on them and supplied to prospective employers by the police.

Two further points are to be noted. The first is that the Special Branch officer asked the Economic League staff member for 'any further information'. Creedon does not

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<sup>11</sup> Creedon, [12.5].

<sup>12</sup> Creedon, [11.1.9].

<sup>13</sup> And see Creedon, [12.12]: one witness had regular contact with EL and TCA over years and even had an address book of SB contacts.

record whether he received any but clearly information about individuals passed both ways.

Secondly, the information in the SB file in this case may not have been obtained by undercover policing and so might be suggested to fall outside the Inquiry's remit. My clients would, however, submit that the secret supply of information held in secret police files by a police officer to a potential employer without that fact being revealed to the individual to whom it related is plainly an act of undercover policing which the Inquiry should investigate. The fact that the information was defamatory and incorrect only fortifies the need for investigation. The fact that it did not relate to trade union activity is purely fortuitous.

The vignette provided by the incident is informative. It is, apparently not a unique example of the exchange of information, though the redactions in the Creedon Report make it impossible to glean much from the other instances cited, including the application for a job on the Jubilee Line found in SDS files and the regional director of the Economic League who talked of police collusion and the exchange of information.<sup>14</sup>

It is obvious that the police must have appreciated that the effect of passing information about workers to either the Economic League or the TCA would be to enable employers to discriminate against active trade union members by refusing them employment.

This is a deeply disturbing allegation which, no doubt, the Inquiry will wish to probe in accordance with question 115 of the list of questions in the 'Module One Special Demonstration Squad Issues List'. Disclosure of the files will be a pre-requisite.

In his Opening, David Barr QC, Counsel to the Inquiry, noted (in App 1, [41.12]) that undercover officer HN336 provided some peripheral evidence on blacklisting.

[HN336] states that he was aware of the existence of the Economic League whilst serving in Special Branch and understood that the retiring Chief Superintendent of C Squad joined the Economic League. However, he also

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<sup>14</sup> *Creedon*, [11.1.18]-[11.1.21] (and see [11.6.6]); [11.2.8]; [11.3.8].

states that no relationship existed between the SDS and the Economic League. As someone who later worked on Special Branch's industrial desk, he may be able to assist the Inquiry as to whether it might have received intelligence from the SDS and how it was disseminated.

My clients would like to know a lot more about Special Branch's industrial desk in due course.

The passing of information between the police and the blacklists should not be thought to be of historic interest only. Though outside the temporal ambit of this phase of the Inquiry, it is apposite to mention here that on 6 November 2008, shortly before work began on the Olympic park, a DCI Gordon Mills of the National Extremism Tactical Co-ordination Unit met with personnel from the construction industry, including the Consulting Association. This was investigated by Ch. Constable Creedon who found that the information passed consisted of 'open source information, designed to highlight the problems linked to protest movements and how NETCU could assist'.<sup>15</sup> Unite, however, is not satisfied and points out that within months the TCA blacklist was deployed by construction employers to vet workers before engagement on work on the Olympic park. Trade unionists were, in consequence, refused work there. It wonders whether personal information on trade unionists in the construction industry could have been passed, if not at the meeting but as a consequence of it.

The Creedon Report notes that, from 2007, 'officially sanctioned Information Sharing Agreements (ISAs) were reached with various outside organisations to share personal information'.<sup>16</sup> The Creedon Report does not disclose whether an ISA existed with the TCA. In due course the Inquiry will, no doubt, investigate the propriety of these ISAs.

The blacklist in the construction industry is not a matter of hearsay myth. It should be noted that the manager of the TCA pleaded guilty to breaching the Data Protection Act by maintaining the blacklist and was fined the maximum (at that time) £5,000. Fourteen participating construction companies were served with enforcement notices.

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<sup>15</sup> *Creedon*, [11.6.10], [12.7].

<sup>16</sup> *Creedon*, [11.1.17].

Furthermore, civil claims were brought in the High Court for conspiracy and other torts by 771 blacklisted workers against an array of construction companies. On Wednesday, May 11, 2016, shortly before trial, settlement was reached between the claimants and Balfour Beatty, Carillion, Costain, Kier, Laing, Sir Robert McAlpine Limited, Skanska UK, Vinci, Taylor Woodrow, and various individual directors. The settlement involved an apology in court by their counsel who said this:

The Defendants are here today to offer, through me, their sincere and unreserved apologies to the Claimants for any damage caused. The Defendants apologise as providers of any information and for the loss of employment suffered as a result of communication of information during the operation of the Consulting Association. They also apologise for the anxiety and hurt to feelings caused as a result.”

And they paid damages estimated to be around £75m for the 771 claimants (including legal costs on both sides estimated at £25m), though liability was denied. The Defendants admitted that, apart from any specific allegation recorded in a worker’s file, the mere communication of *any* information included in the database bore the defamatory message that the worker concerned might pose a risk of unjustified disruption on any site on which he was employed. It was this that ensured unemployment in most cases.

Mr Dave Smith will address you more fully about the role of undercover policing and the blacklist. We look forward to the police files, minutes, memos and emails relating to it and all other contacts between the police and the Economic League (and subsequently The Consulting Association), and the identity of the officers from and to whom information was passed.

## VII

My clients have next to no evidence to put before the Inquiry save suspicions. Unions are not top-down organisations and are not organised so as to monitor and preserve information on such matters as undercover police activities in relation to them – even where it was known or suspected. They are thus reliant on those reviewing the documents and those giving evidence to the Inquiry.

Unfortunately, even before the tidal wave of unemployment now breaking as a result of lockdown (and with it the loss of union members), my clients were not in a position to pay for continuous legal representation throughout this Inquiry or to monitor disclosure in order to identify evidence of relevance to them. They will therefore be reliant on the Inquiry team to alert them of matters arising which concern or might concern them.

## VIII

As to the very limited disclosure so far there are some matters on which I should comment.

There is a report dated 28 November 1973 on a conference held by the International Socialist party on 11 November 1973 in Manchester and is headed 'Special Branch'. It bears Inquiry code UCPI0000007920-1/UCPI0000007920-CEF-1. From Mr Barr's Opening it appears that the report was made by HN343, 'John Clinton'.<sup>17</sup> The Appendices to this report are largely redacted but evidently record the names and addresses of those in attendance. At 'Appendix B' (UCPI0000007920-14/UCPI0000007920-CEF-14) under the subtitle 'Organisation' there is a list of acronyms with codes. Those acronyms represent trade unions in existence in 1973. I have forewarned the document handler that I would like to share this document with the Inquiry and those observing.

APEX (the Association of Professional, Executive, Clerical and Computer Staff), is given the reference '400/73/155'. It subsequently became part of what is now the GMB union.

ASTMS (the Association of Scientific, Technical and Managerial Staffs) has the reference 400/73/100. It merged with other unions and ultimately became subsumed into Unite the Union.

AUEW (Amalgamated Union of Engineering Workers) has the reference 400/73/194. It too merged with other unions and ultimately became subsumed into Unite the Union

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<sup>17</sup> David Barr QC, Opening, App 1, [57.6].

TGWU (Transport and General Workers Union) has the reference 400/72/67. This is the third union cited which merged with other unions and ultimately became subsumed into Unite the Union.

CPSA (Civil and Public Services Association) (400/72/111) was a union which after mergers was subsumed into what is now PCS (Public and Commercial Services Union).

NALGO (National and Local Government Officers' Association) 400/55/98 is a union which merged to become what is now UNISON.

NUT (National Union of Teachers) 400/73/107 merged to become what is now the NEU (National Education Union).

It is evident that these codes represent file references. It looks as if '400' is the prefix used for a file on a trade union. The code '400' distinguishes trade unions from newspapers or perhaps political newspapers which appear to be filed under '347'; see the references in Appendix B to the 'Morning Star' at '347/73/24' and the 'Socialist Worker' at '347/70/39'.

The second element of the code, the two digit code, may well be a reference to the year, meaning that all the file references are to 1972 or 1973, with the exceptions of NALGO, 1955, and the Socialist Worker, 1970.

Appendix B also refers to the 'Pentonville 5' stating that there are 'mentions on 400/72/137(29a), 400/72/144, and 346/73/7(2a)'. That language is confirmatory that the numbers relate to files. But we can go a little further.

The Pentonville 5 were five London shop stewards in the London docks (Messrs: Clancy, Merrick, Steer, Turner and Watkins) who were imprisoned in Pentonville prison for contempt of court in July 1972 by the National Industrial Relations Court for refusing to obey a court order to stop picketing a container depot in East London. They were released after a few days on the intervention of the Official Solicitor after the threat of a general strike by the TUC. At that time dockers were members either of the TGWU or the National Amalgamated Stevedores and Dockers (NASD). The latter merged with the TGWU in 1982 which in turn became part of Unite the Union in 2007.

The first two references for the Pentonville 5 seem likely to relate to files on the TGWU. It is not immediately known whether any of the five shop stewards were members of the NASD. If so, it is possible that the reference with the prefix '346' is to a file on that union, though that would not be consistent with the theory that union files had the prefix '400'. Possibly '346' is a reference to a file on another kind of organisation, perhaps a periodical given its proximity to the number '347' which we have surmised represents newspapers or political newspapers.

The page also refers to the 'Shrewsbury 24' (400/73/169(3a, b)(4a). The Shrewsbury 24 refers to 24 building workers, many, but not all of whom were then members of the Union of Construction and Allied Trades and Technicians (UCATT) which merged to become part of Unite the Union in 2017. Some, depending on their trade, were members of other unions such as the AUEW or the TGWU (both of which subsequently merged and became part of Unite the Union). There had been a national building workers strike over the summer of 1972 which concluded with the unions' acceptance of an offer by the employers in September 1972. Five months later 24 building workers were charged under the Conspiracy and Protection of Property Act 1875 for a variety of offences including conspiracy to intimidate, allegedly committed on 6 September 1972 during picketing in that strike. Three workers (Messrs Tomlinson, Warren and McKinsey Jones) were convicted and sent to prison in October 1973 and three more in a subsequent trial at a later date. The convictions were controversial at the time and since. Indeed, the Criminal Cases Review Commission (CCRC) has now, I understand, referred the convictions to the Court of Appeal. It seems likely that the file references given in relation to the Shrewsbury 24 are references either to AUEW or TGWU files. Yet it is surprising that there is no reference to a file on UCATT and that UCATT is not mentioned on that page.

The third set of digits in these union files might be thought to refer to page numbers but this seems unlikely since it would mean that each reference is confined to only one page. It seems more likely that the third set of digits refers to sections of the file dealing with specific unions or parts of unions or perhaps specific events, since, if '400' is the generic number for trade unions, and the next double digit is the year, there would be no number allocating the file to a specific union, section or event.

We would appreciate a guide to the meaning of the codes as soon as it can be provided. The Inquiry may already have that information; presumably the police have it.

My Instructing Solicitors have sought further disclosure in relation to the files, the existence of which have been revealed by this document. On 19 October the Inquiry team responded and included the following statement:

We do not hold Special Branch Registry Files and are not investigating Special Branch interest in Trades Unions – only reporting on them by SDS undercover officers, according to the Inquiry’s terms of reference.

With respect, that response seems to place an unwarranted limit on the task the Inquiry has been appointed to carry out. Its terms of reference begin by stating the Inquiry’s purpose thus:

To inquire into and report on undercover police operations conducted by English and Welsh police forces in England and Wales since 1968 and, in particular, to: ... examine ... the scope of, undercover police operations in practice ...

Under the heading ‘scope’ the terms of references state:

The inquiry’s investigation will include, but not be limited to, whether and to what purpose, extent and effect undercover police operations have targeted political and social justice campaigners. The inquiry’s investigation *will include, but not be limited to, the undercover operations of the Special Demonstration Squad* and the National Public Order Intelligence Unit. (emphasis supplied)

There then follows a definition of the term “undercover police operations” by reference to the phrase ‘covert human intelligence source (CHIS)’ within the meaning of s.26(8) of the Regulation of Investigatory Powers Act 2000.

Thus, the undercover police activity to be investigated by the Inquiry is manifestly not limited to the SDS.

The six annual reports of the SDS (SOS) are for the years 1969, 1970, 1971, 1972, 1973, and 1974. The annual reports take the form of letters. They show the principal target for SOS undercover penetration (at least in that period) were left wing political groups and campaigns. There appears to no reference to surveillance of trade unions despite references to various trade disputes forming the backdrop to the activities of the political groups under surveillance. This is curious given the apparent existence of the Special Branch files referred to in the surveillance of the 1973 International Socialists conference. This might be explained by the fact that the annual reports are of the small SDS section whereas the IS surveillance is apparently 'Special Branch'.

The only entry relevant to covert operations in relation to trade unions would appear to be in the 1974 annual report of the SDS (MPS-0730906/9) dated 4 February 1975<sup>18</sup> states that the 'Shrewsbury Two Defence Committee' had been '*penetrated to a lesser degree*'. I gather from Mr Barr's Opening that this report too was made by HN343, 'John Clinton'<sup>19</sup>. This Committee is likely to have been composed of trade unionists and is almost certainly a successor to the Shrewsbury 24 defence committee referred to earlier, reflecting the fact that two of the original 24 defendants remained in prison.

The assertion of penetration to a lesser degree poses the question as to what conceivable justification there could be for SDS having penetrated it at all. It seems unlikely that anyone in the SDS (or Special Branch) can have seriously thought that such a campaign against convictions was likely to lead to the commission of criminal offences requiring the expenditure of the limited resources of the SOS on undercover penetration of it to any degree. The implication drawn by some of my clients is that the purpose of infiltration was to monitor whether the campaign was having any success in accumulating evidence that the Shrewsbury pickets were charged and convicted on spurious evidence for political purposes, as was and remains the widespread view in trade union circles.

What appears to be clear beyond doubt from the very limited disclosure so far is that the police held files containing material on seven trade unions. It is an inevitable assumption that they held files on other (and perhaps all) trade unions, a point to

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<sup>18</sup> Noted by Mr Barr QC in his Opening at [87]

<sup>19</sup> See his Opening, App 1, [57.8].

which I return. We assume that the absence of reference to other unions on Appendix B is because no attendees at the IS conference to which the report is devoted were known to be members of other unions.

The existence of files does not, of course, prove undercover operations. But it is not an unreasonable inference that the files contained material obtained by covert means. The annual reports so far received (for the years up to 1974) in relation to the SDS do not claim responsibility for covert infiltration of trade unions. We look forward to the Inquiry's investigation of whether there was such activity not recorded in those annual reports.

If the absence of evidence on penetration of trade unions by SDS is evidence that there was no such penetration by SDS then it was most likely carried out by officers other than those in SDS, at least up to 1974. For the situation thereafter it is clear that the SDS was involved in covert surveillance of trade unions since former police officer Peter Francis in a statement made public on 13 March 2015 stated:

I would... like to take this opportunity to unreservedly apologise to all the union members I personally spied upon and reported back on whilst deployed undercover in the SDS. Including those not only engaged in working in the construction industry but also those in the National Union of Students (NUS), National Union of Teachers (NUT), Communication Workers Union (CWU), Unison and the Fire Brigades Union (FBU).

As everything I have previously stated, I am prepared to repeat all of this under oath at the public inquiry and should UCATT or any other union or the blacklisted campaigners wish me to, in any court cases which they might bring against the relevant UK authorities.

We note from the proceedings on Wednesday that he has not yet made a statement to the Inquiry

What is now required is the disclosure of all the files held by the police on all trade unions whether under these or any other references. We assume that the Inquiry team have or will pursue such a request with the police. We should like to know the outcome of that inquiry.

We are reassured by the Mr Barr's Opening where he said that:

The Inquiry will be considering the extent to which SDS officers were tasked to report on industrial unrest and in particular the involvement of trade unions in political activism. (App 1, [39.4])

And that:

The Inquiry will be exploring how and why the SDS reported on trade union related matters and whether it was justified.' (App 1 [48.3])

We note that (apart from the sparse material cited above) he expressed the view (at [15]) that:

On the documents and witness statements obtained for Phase 1 there is no evidence that any trade union was specifically infiltrated by the SDS. Nor is there evidence of direct contact between the SDS and blacklisting organisations.

Beyond what we have summarised in this Opening Statement and the matters mentioned by Mr Smith in his on behalf of the BSG, we have no other evidence of infiltration by the SDS in the period 1968-1973. However, my clients have the gravest doubts as to the accuracy of the proposition stated by Oliver Sanders QC for the 'designated lawyers' officers that:<sup>20</sup>

SDS personnel did not infiltrate or target justice campaigns (including the Lawrences), Members of Parliament or trade unions and were not involved in trade union "blacklisting" ... . Justice campaigns, Members of Parliament and trade unions were only referred to in SDS intelligence reports if and to the extent that they came into contact with those who were being reported on.

In any event neither observation suggests that the Industrial Intelligence Unit of the Special Branch did not conduct undercover policing against trade unions, its very existence suggests the contrary.

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<sup>20</sup> In his Opening at [8.1.1].

Furthermore, there was a close relationship between SDS and MI5 to the extent that most information obtained by the former was provided to the latter, as Mr Sanders QC makes clear.<sup>21</sup> He points out that, amongst other things:<sup>22</sup>

MI5 monitored industrial unrest and mounted interception, eavesdropping and informant operations against the CPGB, Transport and General Workers' Union, National Union of Mineworkers and CND...

My clients would like to know what other unions were so monitored and to this end share with Mr Sanders his view that:<sup>23</sup>

The DL also recognises that what matters most is that the inquiry should receive full evidence about the close relationship and cooperation between MI5 and the SDS

## IX

It is in those circumstances that my clients wait to hear the evidence and to see what further disclosure there will be.

Before I sit down I must mention one other matter of concern to my clients, though it is one which formally lies outside the remit of the Inquiry. A Bill is currently before Parliament, the Covert Human Intelligence Sources (Criminal Conduct) Bill. It has been referred to by several counsel in their Opening statements. Though covert human intelligence is regulated by the Regulation of Investigatory Powers Act 2000, the current Bill will, if enacted, permit the prior authorisation of crimes to be committed by undercover police officers, amongst others. The Bill is widely opposed by trade unions and many others. It seems to them extraordinary that, this Inquiry having been appointed precisely to look into the question of police covert human intelligence sources, the government cannot wait even for the evidence to be taken, let alone for the Inquiry to report its conclusions on the subject. It appears disrespectful of the Inquiry.

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<sup>21</sup> In section 7.2 of his Opening.

<sup>22</sup> Opening at [7.2.1].

<sup>23</sup> Opening at [7.2.12 (4)].

The unions are also concerned that, under the Bill, a justification for the prior authorisation of a crime is if it is deemed necessary ‘in the interests of the economic well-being of the United Kingdom’ (clause 1(5)). The unions foresee that no matter that industrial action will be conducted lawfully, the government will regard it, or industrial action in particular industrial sectors, as detrimental to the economic well-being of the United Kingdom, hence permitting undercover police officers (and others) to commit crimes to prevent, minimise or disrupt legitimate trade union activity.

One justification for the Bill is that it is said that the Bill will regularise what already happens. If that is really so, my clients wish to know what, if any, crimes were carried out by undercover police officers in relation to trade unions and trade unionists and trusts that the Inquiry shares their concerned interest in answering this question.

The unions assume that presently no undercover officer could be instructed by superiors to commit a crime. If the Bill becomes law, such an officer will be refusing to obey a lawful instruction if she or he refuses to commit a crime when instructed to do so by a superior who has obtained authorisation. My clients, highly experienced in disciplinary proceedings, consider such an undesirable situation is a matter of ‘practice’ at which the Inquiry should look within its terms of reference.

**Lord John Hendy QC**  
**Old Square Chambers**  
**04 November 2020**