

IN THE UNDERCOVER POLICING INQUIRY

OPENING STATEMENT ON BEHALF OF:
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INTRODUCTION

1. From the 1960s onwards, the international movement against the Apartheid regime in South Africa was one of the world's largest social movements. Abhorrence at the racist and murderous regime was shared by people around the globe. They formed campaigns in support of those in South Africa who were struggling for change and people in Britain played a central role in campaigning for, and eventually achieving, that change. It is an historic embarrassment, and should be a matter of deep regret, that the SDS chose to target those anti-apartheid campaigners for surveillance through the use of undercover officers ('UCOs'). What many in the world realised, but the SDS failed to appreciate, was that the true threat to democracy came from the Apartheid regime rather than those fighting against it.

2. This opening statement will address three topics:
 - i) The politicised nature of undercover policing;
 - ii) Miscarriages of justice arising from the activities of the SDS in criminal proceedings; and,
 - iii) Procedural matters relating to T1P2.

THE POLITICISED NATURE OF POLICING

3. The campaigning groups took many forms. The large Anti-Apartheid Movement ('AAM') was formed in 1959¹ and, at its height, had broad-based support from hundreds of thousands of people in Britain. It was not affiliated to any political party. Other groups campaigned on specific issues:
 - i) Sporting boycotts were one of the means by which campaigners sought to bring about change in South Africa. The Stop the Seventy Tour ('STST') was a movement which successfully saw the cancellation of the 1970 cricket tour from South Africa to the UK. It also protested against the 1969/70 tour by the Springbok rugby team. It used tactics of Non-Violent Direct Action ('NVDA') including running onto the pitch to disrupt matches.
 - ii) The Dambusters Mobilising Committee ('DMC') was a broad-based coalition of groups which shared a common aim: to explain to the British public how the Cabora Bassa project broke UN sanctions against the illegal regime in Rhodesia and bolstered both apartheid in South African and Portuguese colonial rule in Mozambique. The DMC campaigned to ensure British companies played no part in the project. The DMC coordinated efforts of the coalition. It did not subscribe to any particular political doctrine nor was it affiliated to any political party.
4. All these groups were spied on by UCOs.
5. The annual reports of the SDS show that those campaigning on anti-apartheid matters were targets of SDS surveillance right from its inception. The AAM was identified as a target for surveillance in the first annual report of the Special Operations Squad² in 1969³. The AAM and other related groups then featured in all following annual reports going into the 1970s.

¹ The Boycott Movement was formed in 1959, it changed its name to the 'Anti-Apartheid Movement' the following year.

² The unit was later renamed the Special Demonstration Squad in 1972, for convenience the name SDS will be used to refer to the unit through this period.

³ MPS-0728973/7 at [15]

6. The STST was also an early target. The Annual Report for 1970 confirmed that:
“The SOS had one officer privy to the militants most closely guarded plans and four others on the periphery.” It follows that 5 out of a total of 13 total staff for the SDS (both operational and not) were involved in targeting the STST. Coverage of the STST and its successor campaigns continued well into the mid-1970s.⁴
7. In contrast, far-right groups do not appear to have been targeted in the same way. This appears to have been a deliberate decision rather than the result of any difficulty obtaining infiltration. As the Annual report for 1972 states:
“... right wing extremist groups, who in recent times have not posed much of a threat to public order, are not covered by the SDS, but there are no technical reasons why they could not be, should the position deteriorate”
8. That assessment can only have been reached by SDS officers taking a misguided and partisan political perspective: violence and intimidation by right-wing groups in response to those legitimately campaigning against apartheid, was perceived as a problem caused by the campaigners and not by those using violence against them. Similarly, violence, intimidation and racial hatred espoused by right-wing groups in reaction to those campaigning against racism was perceived as a problem to be resolved by targeting left-wing campaigners acting lawfully, and not right-wing groups reacting to them unlawfully. This was a discredited but well recognised perspective at the time, having been espoused by the Conservative MP, Enoch Powell in the notorious ‘Rivers of Blood’ speech in 1968, just a few years earlier: the threat to disorder in Britain was attributed to those on the political left espousing racial equality and promoting greater racial integration, and the violent, racist response to them those on the political right was seen as regrettable, but understandable and inevitable.
9. The first infiltration of the National Front by a UCO took place in 1975. However, this was not at the instigation of the SDS themselves but rather the result of an

⁴ See UCPI0000030896 a Note entitled 'Organisations currently penetrated by SDS' signed by CI Kneale dated 30.08.74 includes Stop All Racist Tours.

UCO infiltrating the Workers Revolutionary Party ('WRP'), and the WRP, without realising he was a UCO, encouraging the officer to find out information about the National Front⁵. The officer was withdrawn from the field shortly afterwards. What the incident shows is that there was no difficulty in ensuring coverage of far-right groups by the SDS had they wanted to, but there was a deliberate decision not to target such groups.

10. In 1976, there was a re-evaluation of the role of the SDS. It found that the level of violence on demonstrations had decreased since the inception of the SDS in 1968. However, the number of demonstrations had increased. The need for coverage by the SDS was purportedly justified on the following basis:

*"Firstly, the degree of involvement and manipulation exercised by the 'ultra-left' in all protest organisations, particularly in ad-hoc committees formed to arrange major demonstrations. Secondly, the number of splinter-groups continually being formed, invariably consisting of militant elements."*⁶

11. Whilst the nominal target of infiltration was the 'ultra-left', UCOs continued to use the 'oblique approach': targeting groups which did not present a threat to public order or of subversion as a means to move on to groups perceived to be more extreme⁷. This ensured that large numbers of broadly left-wing organisations were infiltrated throughout the 1970s even when such groups had nothing to do with disorder or subversion. The 'oblique approach' resulted in a fundamental failure to assess the proportionality of an engagement properly: it provided a purported justification for undercover surveillance on any group of the political left.

⁵ The officer reported on the formation of a small group of hard line fascists within the National Front who intended to move even further to the right, information the SDS appears to have been previously unaware of.

⁶ MPS-0730745

⁷ MPS-0728970

12. While the purported reasoning for the use of UCOs was to prevent violent disorder, from a very early stage the use of UCOs was subject to significant mission creep: groups were targeted by the SDS in order to gather intelligence for the Security Services. The contemporaneous records show that UCOs viewed much of their activity as related to obtaining information for the Security Service. As UCO HN 301/'Bobb Stubbs' active between 1971 and 1976 said in his witness statement:

*"I am not sure why my reporting was copied to the Security Service. Thinking about it, I think we gathered quite a lot of intelligence on behalf of the Security Service and could be described as 'their executive arm'."*⁸

13. Although, in theory, there was a formal demarcation of roles between groups which presented a threat to the state and those who presented a public order issue, in practice, this strict division was not properly respected. Since the oblique approach could provide a purported justification for placing a UCO in an organisation that did not present a public order threat, it enabled the SDS to place UCOs in organisations on behalf of the Security Service even when this fell outside the strict role of the SDS in dealing with public order matters⁹. For example, in 1979 DCI Mike Ferguson, then a senior SDS officer, stated in response to a Security Service request for coverage of the Workers Revolutionary Party that:

"although the WRP was not considered to be a law and order problem, nevertheless he was ready to put a source into the WRP if this would legitimately act as a stepping stone for penetration of an SDS target'.

14. This relationship between the SDS and the Security Service was not always welcomed at a senior level. In 1974, a meeting between Deputy Assistant Commissioner Gilbert and the Security Service is recorded as follows:

⁸ MPS-0742600 at paragraph 88.

⁹ See UCPI0000028835

“At this point Gilbert said he thought that before we went further he ought to let us know “the facts of life about inter-service collaboration”. As far as MPSB were concerned it was almost wholly one way co-operation. They did a tremendous amount of work on our behalf but got very little feedback in return!

He said that for the most part work done for us has little of no relevance to SB’s proper charter and as far as he was concerned it tied up staff, of which he was chronically short anyway, in totally unproductive activity.”¹⁰

15. Nonetheless a close relationship between the organisations persisted. Numerous meetings took place between senior officers in the SDS and their counterparts in the Security Service, often followed by drinks. There were clearly close relationships developed between SDS and Security Service officers through deliberately informal social events.
16. It is notable therefore, that even when the formal targets of the SDS had moved on from the anti-apartheid campaign, the AAM remained of interest to the Security Service. The SDS appear to be aware of this interest and this explains how in 1982, the Security Service record the following after a meeting between senior officers:

“In answer to HN68 query in serial [redacted], I confirmed that we would like publications produced by the Anti-Apartheid Movement”¹¹

17. It is therefore clear that the SDS were collecting information on the Anti-Apartheid Movement, sometimes on behalf of the Security Service, throughout the period of T1P2 and well into the 1980s¹².

¹⁰ UCPI0000030051

¹¹ UCPI0000028795

¹² UCPI00000016192 is a report by HN106/‘Barry Tompkins’ on a social event held by the AAM on 24.01.81

Supporters of apartheid

18. The pro-active approach of the police and Security Service in placing the AAM and related groups under surveillance should be contrasted with their poor response when the same campaigners were attacked by those supporting apartheid.
19. The South African Bureau of State Security ('BOSS') targeted groups campaigning against apartheid both inside and outside South Africa. They were active in London in the 1970s and 1980s and targets included the ANC and the AAM.
20. In 1970, South African journalist Keith Wallace who had threatened to expose apartheid security service operations in the UK was murdered in London.
21. In 1972, a letter bomb was sent to Peter Hain's home address where he lived with his parents and siblings. Only good fortune prevented the device from detonating when the parcel was opened by his 14-year-old sister. The police were called to the scene and later confirmed that the bomb was powerful enough to blow up the whole house. However, the police advised Peter Hain not to publicise the incident. Nobody was ever arrested in connection with the matter and it is not clear to what extent, if at all, it was ever investigated.
22. In 1978, the headquarters of the Anti-Nazi League suffered an arson attack.
23. On Sunday 14 March 1982, a 10lb bomb exploded at the rear of the ANC offices in Penton Street, London. The bomb went off at 9am, and injured an ANC research official, Vemet Mbatha, who was present in the building. The back of the building was destroyed, and windows over 100 yards away were broken, including the windows of a local school. The matter was reported to the police, but no-one was ever charged. Later a former member of BOSS, Craig Williamson, admitted responsibility for the attack at the Truth and Reconciliation Committee hearings in South Africa following the fall of apartheid¹³.

¹³ AAM Archives Committee submission to the South African Truth and Reconciliation Commission on South Africa's illegal and covert activities in the United Kingdom, p. 13

24. On 17 July 1985, there was a well-planned arson attack on the AAM office in London. At about 5.00 am an inflammable liquid was poured through the letter box and then set alight. The entrance was gutted. In all probability, the premises would have been completely destroyed by fire if it had not been for a passer-by who called the fire brigade. Extensive work was nonetheless required to repair the premises. Two men were seen speeding away from the offices in a dark blue car. Forensic experts who examined the fire stated that inflammable liquid used was of a type only available to military sources and was not on sale to the public. However, again nobody was ever arrested in relation to the matter.
25. In light of this background, this Inquiry might have expected to see reports and SDS activity relating to surveillance and investigation of those involved in those violent attacks and those aligned with them through support of the apartheid regime. This is not the case. The picture the documents disclosed by the UCPI reveal of an obsession by the SDS and Security Service with collecting information on left-wing groups, but a corresponding lack of interest in the activities of the supporters of apartheid who had carried out acts of serious violence, including planting explosives.

Disproportionate collection of information

26. A striking feature of many of the intelligence reports produced by the SDS in this period is quite how disproportionate the level of surveillance was and how much mundane and trivial personal information was collected. Many of the UCOs state that there was effectively no filtering of the information they would collect. Any information of any kind about persons known to be of interest to MPSB was recorded.
27. In 1971 the Director General of the Security Service wrote:

“The tendency over the sixty years of the Security Service's existence has been to keep the Service within narrow limits and at once to insulate it

<https://www.aamarchives.org/archive/trc-evidence/south-africas-illegal-and-covert-activities-in-the-uk/viewdocument.html>

from involvement in politics while bringing it increasingly under formal controls. Both tendencies have been healthy. Because the work of the Security Service has to remain secret, there is a special obligation to see that it is kept within strict limits erring, if at all, on the side of caution”¹⁴

28. That statement of principle applies with equal force to the work of the SDS. The documents show that both organisations failed to adhere to these principles over the coming decade.

29. In relation to Ernest Rodker alone, we see that the following information was recorded:

i) On 11.03.76 an intelligence report is filed consisting solely of the following:

“A son, [name redacted] was born to Ernest and [name redacted] Rodker on [date redacted] February 1976”¹⁵

ii) On 23.07.76 an intelligence report consists solely of the following:

“Ernest RODKER, after suffering a heart attack at home, is now in St James Hospital, SW12”¹⁶

30. Both these reports were copied to the Security Service. Similarly, UCOs reported the presence of Peter Hain’s younger sisters, both still children at the time, at meetings of the Young Liberals at his parents’ home¹⁷. Again it was copied to the Security Service.

31. How and why this personal information was deemed relevant to collect and to then pass on seems difficult to justify. This information is not unusual but typical of what was collected. Other UCOs also reported on the children of activists. For example, HN304/‘Graham Coates’ filed a report on an anarchist and his wife,

¹⁴ Sir Martin Furnival Jones quoted in UCPI0000034308 at para 12.

¹⁵ UCPI0000012246

¹⁶ UCPI0000010719

¹⁷ UCPI0000008551 and UCPI0000008240.

noting a subscription to 'Anarchy' magazine alongside a comment that: "*the couple have a mongol child*"¹⁸. This information was signed off by a Chief Inspector and Chief Superintendent and the intelligence report sent to the Security Service.

32. It barely needs to be stated that state agencies secretly gathering information about children is terrifying for any parent to learn. It should only be collected when there is a pressing need to do so and when that need is properly set out and recorded. None of that has occurred here.
33. There are numerous reports relating to public meetings of a conventional political nature that should have been free from state surveillance. On 14.01.75 an intelligence report is made of a public meeting held by the Battersea Redevelopment Group attended 150 people including Ernest Rodker. The meeting was part of a local campaign relating to redevelopment of a funfair and was attended by residents and local politicians. On a more sinister note, the names of three elected Wandsworth councillors who were seen to buy copies of 'Red Weekly' are noted. Again, the information is sent to the Security Services.
34. Similarly disproportionate and indiscriminate collecting of information by the SDS is seen in reports on Peter Hain. For example, an SDS intelligence report dated 11.06.80 lists the names of persons: "*identified as being present at 9am on 31.05.80 outside the Conference Centre, Wembley, Middlesex, where the Labour Party was holding a 'Special Conference'*"¹⁹. Peter Hain attended the conference in his role as a delegate from the Putney Labour Party Branch. He took his two sons to the creche there²⁰. There is no legitimate reason for the SDS to collect this data. As Lord Hain asks in his witness statement: did they ever go to the Conservative or Liberal party conferences?

¹⁸ UCPI0000011086 - Dated 14.10.77. HN304 accepts writing the report at paragraph 98 of his witness statement. The report also makes a reference to the fact that the anarchist has a younger brother and that his wife is always known by a different name/nickname.

¹⁹ UCPI0000014020

²⁰ Lord Hain witness statement 03.03.20, paragraphs 254-258.

35. These core participants also have concerns about the sharing of information collected by the SDS and the anti-apartheid campaign with agencies supporting apartheid. These are set out in detail in the statements of Christabel Gurney and Peter Hain. There is some evidence to support this in the Inquiry's bundle. It is clear that the South African security service was keen to obtain information about the anti-apartheid campaign. HN106/'Barry Tompkins', who infiltrated the Revolutionary Marxist Tendency²¹, believes that he came into contact with someone working for 'a foreign security agency' who provided funding for a group he had set up in his role as a UCO and "*was particularly interested to know about any views expressed on apartheid*"²². This information was all reported back to the SDS. These core participants would like to know if the foreign security agency referred to by HN106 was acting for the South African apartheid state²³.
36. A Security Service note²⁴ states that the leader of the Revolutionary Marxist Tendency was a South African and that the organisation was of interest to the Security Service. Reference is made to a liaison file. Whilst it is noted that Witness Z states on behalf of the Security Service that he has found no evidence to suggest that SDS intelligence was shared outside the Security Service²⁵, these core participants remain concerned that the product of SDS reporting may have been shared with the South African security service and other agencies supporting apartheid.

Role of Mike Ferguson in STST

37. There are real grounds for concern over the actions of HN135/Mike Ferguson in the STST campaign. The first concern, relates to the decision to target the STST

²¹ Witness statement of HN106/'Barry Tompkins' at paragraph 74

²² Witness statement of HN106/'Barry Tompkins' at paragraph 128

²³ UCPI0000028816 dated 01.08.80 appears to relate to this same incident.

²⁴ UCPI0000028816 dated 01.08.80.

²⁵ Security Service Corporate Witness Statement at paragraph 85.

campaign which, on any reasonable view, was not subversive or extremist in any way.

38. The second concern relates to the role HN135/Mike Ferguson had within the STST and how this was viewed within the SDS. A number of former SDS members praised HN135/Mike Ferguson for taking on an active role in the group. Wilf Knight, the handler for HN135/Mike Ferguson, described his actions in the STST as follows:

“Mike worked his way into the organisation by his... enthusiasm, his dedication, his skill, his intelligence, worked his way up to being Peter Hain’s number two. I don’t think that Peter Hain ever, ever realised that he had a police officer as his number two”

39. HN336/‘Dick Epps’ understood that: *“Mike Ferguson, effectively became Peter Hain’s right hand man”*.

40. Peter Hain denies ever having had a ‘right hand man’ in the STST and HN336/‘Dick Epps’ conceded in evidence in T1P1 that HN135/Mike Ferguson may not have had a formal title as Peter Hain’s ‘number two’. However, he repeated the assertion that HN135/Mike Ferguson was very close to Peter Hain. Contemporaneous documents do show that HN135/Mike Ferguson was present at meetings where plans for demonstrations were made that were attended by relatively few persons²⁶.

41. Whilst his actions appear to have impressed his SDS colleagues, the need to take on an active role in STST was questioned by HN 336/‘Dick Epps’ himself who said:

“Mike Ferguson was in a league of his own when it came to undercover work. He was single minded in pursuit of his work and seemed to be very successful at integrating himself into the groups he reported on. I am not

²⁶ UCPI0000008656 a meeting on 05.12.69 where 6 persons were present and plans for demonstrations at Twickenham on 20.12.69 were discussed.

sure how he why he ended up in the position that he did. I did not see that as necessary for the job we were required to do.”

42. These actions of HN135/Mike Ferguson breached the guidance set out by Conrad Dixon in his 1968 paper ‘Penetration of Extremist Groups’ which states:
- “A firm line must be drawn between activity as a follower and a leader, and members of the squad should be told in no uncertain terms that they must not take office in a group, chair meetings, draft leaflets, speak in public or initiate activity”²⁷*
43. If Mike Ferguson took on any sort of decision-making role within STST then that was a distortion of the political process. STST was a political campaigning organisation. Decisions relating to its actions were for genuine campaigners to make. It is wrong in principle for UCOs to take on such roles and subvert the aims and objectives of political groups.
44. The third concern is that the inappropriate and disproportionate actions of HN135/Mike Ferguson were not an isolated example of inappropriate surveillance and were consistent with other activity by SDS. Other UCOs were impressed by the actions of HN135/Mike Ferguson. Rather than being sanctioned for what he did, HN135/Mike Ferguson went on to hold senior positions with the SDS. He was responsible for recruiting officers to the SDS and overseeing junior UCOs whilst in the field. Numerous UCOs refer to the experience of HN135/Mike Ferguson and the guidance he was able to give them²⁸. The role which HN135/Mike Ferguson conducted within the STST takes on a greater significance given his later role within the SDS. In this regard it is notable that HN298/‘Mike Scott’ took on a role as membership secretary of the Young Liberals when he infiltrated that organisation in order to gather information about Peter Hain’s activities after the STST campaign²⁹.

²⁷ MPS-0724119/6

²⁸ See, for example, the Witness Statement of HN126/‘Paul Gray’ who describes Mike Ferguson in his role in the SDS office as: “absolutely brilliant, very experienced”.

²⁹ UCPI00000008240.

Inaccurate justification for targeting the STST and AAM

45. It is important to correct the record relating to purported justifications for targeting the AAM, STST and other organisations campaigning against Apartheid. Former UCOs have claimed that these groups were involved in violence and disorder and that this justified the actions of the SDS towards them. These claims are false.
46. From the outset the STST and AAM were non-violent campaigning organisations. Violence was never part of their aims or methods. Lord Hain, Professor Rosenhead, Ernest Rodker and Christabel Gurney have all made statements confirming that this is the case.
47. Their position is supported by contemporaneous documentation about the aims and methods of the AAM, summed up by HN298 in his witness statement as follows:

“There was nothing clandestine or revolutionary about the AAM, they were a group of people who didn't think the situation in South Africa was fair. They wanted to make apartheid a high profile issue so that people would say it was outrageous, in the hope that things would change. It was not subversive so far as I was aware. I do not think they employed or approved of the use of violence.”

48. The STST did engage in Non-Violent Direct Action. However, this went no further than minor damage to property and the disruption of events such as rugby matches. This was implicitly understood by those who took part³⁰. If HN135/Mike Ferguson occupied such a close position to the leadership of the STST then it is telling that his reports about their plans and methods do not at

³⁰ See witness statements of Peter Hain, Ernest Rodker, Jonathan Rosenhead and Christabel Gurney. Any debate recorded in SDS records (e.g. UCPI000008660) over the use of 'violence' was effectively confined to the extent to which damage to property would be condoned.

any point indicate or suggest that STST supported the use of violence on demonstrations³¹.

49. The claim by HN336/'Dick Epps' in oral evidence to the inquiry that he attended an STST demonstration at Twickenham at which instructions were given to 'attack the police' is untrue. The three core participants who were involved in the STST and attended demonstrations at rugby grounds, Lord Hain, Jonathan Rosenhead and Ernest Rodker and the witness, Christabel Gurney, all deny that any such instructions were given. In that context, it is significant that HN336/'Dick Epps' confirmed in oral evidence, he made no written record of any such instruction either at the time or at any point prior to his evidence to the Inquiry. If such an instruction had been given it seems inconceivable that it would not have been recorded in SDS documents. There is no other support for the claim that instructions were given on STST demonstrations to attack police officers. The claim by HN336/'Dick Epps' that the violence he witnessed at Twickenham led him to disengage from the STST does not match the contemporaneous records.³² This Inquiry should reject his evidence and prefer the clear evidence to the contrary from these non-state core participants and witness. In contrast, it is clearly recorded that violence was shown by uniformed police officers towards demonstrators at the grounds³³. If a UCO had any concerns over confrontation it is far more likely to have been as a result of violence from the police and other rugby supporters than from STST demonstrators. An unsupported claim that the STST gave instructions to use violence against the police made for the first time 50 years after the events, should be seen for what it is. It is nothing more than an UCO engaging in wishful misremembering - seeking to create a justification that did not exist at the time

³¹ See again UCPI0000008656 a meeting on 05.12.69 where 6 persons were present and plans for demonstrations at Twickenham on 20.12.69 were discussed.

³² The demonstrations at Twickenham for the England v South Africa took place in December 1969, yet SDS documents show that HN336/ 'Dick Epps' continued to infiltrate new STST groups on 17.04.70 (MPS-0736268).

³³ See Peter Hain's book 'Don't Play With Apartheid' (London, 1971) pp 133, 136, 146, 151 and 154 and <https://www.bbc.co.uk/news/uk-wales-50422755>

for surveillance that was clearly disproportionate and inappropriate. It should be rejected by this Inquiry in the face of clear evidence to the contrary.

THE STAR AND GARTER DEMONSTRATION

50. The arrest and prosecution of UCO HN298/‘Mike Scott’ at the Star and Garter demonstration is an early and powerful example of the erosion of standards of fairness in the criminal trial process caused by the SDS policy of total secrecy in not disclosing the role of UCOs arrested at demonstrations to anyone. In many regards it is the first instance of wilful abuse of the criminal justice system by those engaged in undercover policing, that became a repeated pattern in the years that followed.

Home Office guidance

51. In 1969, the Home Office published guidance on entrapment contained in ‘*Home Office Circular no 97/1969: Informants who take part in crime*’. This stated:

- (a) *No member of a police force, and no police informant, should counsel, incite or procure the commission of a crime.*
- (b) *Where an informant gives the police information about the intention of others to commit a crime in which they intend that he shall play a part, his participation should be allowed to continue only where:-*
 - (i) *he does not actively engage in planning and committing the crime;*
 - (ii) *he is intended to play only a minor role; and*
 - (iii) *his participation is essential to enable the police to frustrate the principal criminals and to arrest them (albeit for lesser offences such as attempt or conspiracy to commit the crime, or carrying offensive weapons) before injury is done to any person or serious damage to property.*

The informant should always be instructed that he must on no account act as agent provocateur, whether by suggesting to others that they should commit offences or encouraging them to do so, and that if he is found to have done so he will himself be liable for prosecution.

- (c) *The police must never commit themselves to a course which, whether to protect an informant or otherwise, will constrain them to mislead a court in any subsequent proceedings. This must always be regarded as a prime consideration when deciding whether, and in what manner, an informant may be used and how far, it at all, he is to be allowed to take part in an offence. If his use in the way envisaged will, or is likely to, result in its being impossible to protect him without subsequently misleading the court, that must be regarded as a decisive reason for his not being so used or not being protected.*

...

- (g) *Where an informant has been used who has taken part in the commission of a crime for which others have been arrested, the prosecuting solicitor, counsel and (where he is concerned) the Director of Public Prosecutions should be informed of the fact and of the part that the informant took in the commission of the offence, although, subject to (c) above, not necessarily his identity.*

52. This guidance was issued with a direction from the Home Secretary to all Chief Police Officers to ensure ‘*means of commending them to anyone who may be concerned in your force*’³⁴.
53. The SDS did not consider itself bound by this to the same degree as other police officers. The UCOs active in Tranche 1 were largely unaware of the Home Office

³⁴ Home Office Circular no 97/1969 paragraph 4.

Guidance. The later SDS 'Tradecraft Manual' summarised the contents of the Home Office Guidance as:

"Stated simply, you cannot take part in crime unless you had no part in planning an incident and take a minor part in the crime itself. At no time can you instigate, counsel or procure others to commit a crime."

54. But, the Tradecraft Manual went on to say:

"The above sentiments are laudable but the boundary between right and wrong in the SDS arena is never as clear cut as the provisions in conf[idential] memo 4 would have us believe."

55. There is no explanation, or justification presented as to why the SDS believed the guidance from the Home Office would not strictly apply to undercover officers. It is a clear illustration of the SDS proceeding on the basis that it could ignore legal guidance and existing policing principles. The key safeguard in the Tradecraft Manual to prevent UCOs from acting unlawfully appeared to be no more than UCOs informing their superiors of a likelihood they would be breaking the law before such action was taken:

"If at any time your organisation invites you to break the law, you must be prepared to take whatever advice comes from your supervisors and your colleagues. If you take part in criminal acts without the office being made aware of such a likelihood, you risk leaving the squad earlier than you expected."

56. Critically the Tradecraft Manual did not accompany the advice to inform senior officers, with any obligation on the SDS to disclose unlawful activity by police officers to prosecutors, in the way that was set out in Home Office guidance. The need to protect the integrity of the criminal justice process, or even to respect legal privilege of co-defendants appears to have been wholly disregarded. What guidance there is suggests the opposite: UCOs should not

disclose their status to arresting officers³⁵ and asking activists to recommend them a solicitor is “good fieldcraft”³⁶.

57. The Tradecraft Manual also presents an insight into the way other uniformed police officers treated campaigners. It tellingly refers to the risk of activists, and therefore undercover officers posing as activists, facing prosecution for offences that they had not committed. As the Tradecraft Manual states:

“The chance of being ‘fitted up’ by unscrupulous officers is a real, if rare, event”.

58. The prosecution of innocent activists, the ambivalence to the requirements of Home Officer Circular 97/1969 and the corresponding issues relating to disclosure and legal privilege are all present in the earliest example of a UCO facing criminal charges: the arrest and prosecution of UCO HN298/‘Mike Scott’ at the Star and Garter Demonstration.

Events at the Star And Garter

59. On 12 May 1972, there was a demonstration at the Star and Garter Hotel, Richmond where anti-apartheid activists sought to block the car park containing the coach due to take the British Lions rugby team to the airport for a tour of apartheid South Africa. 20 activists took part in the demonstration including: Ernest Rodker, Professor Jonathan Rosenhead and Christabel Gurney. Unknown to them, a UCO, HN298/‘Mike Scott’, also took part.
60. Uniformed police attended the demonstration and 14 activists, including HN298/‘Mike Scott’ were arrested, charged, prosecuted and convicted of obstructing the highway and obstruction of a police officer. HN298/‘Mike Scott’ faced trial alongside other activists. He was convicted under his false name.

³⁵ Tradecraft Manual 5.8.3

³⁶ Tradecraft Manual 5.8.4

Concerns over prosecution

61. The core participants have a number of concerns over the actions of HN298/'Mike Scott' at the Star and Garter Demonstration.

i) Factual innocence of defendants:

62. The case was defended in part on the basis that the demonstration blocked the car park and not the road. They were therefore factually innocent of the charge. The contemporaneous documents support the fact that at least most of the demonstrators were arrested in the car park. The defendants were concerned that police officers would lie and say that they were arrested on the road.

63. There is nothing in the contemporaneous documents to suggest that HN298/'Mike Scott' disputed this defence. He was therefore aware that the charge was proceeding on a false basis. HN298/'Mike Scott' could have taken steps to correct the prosecution or to give evidence for the defence telling the court, as a police officer, where the arrests took place. He did not.

ii) Lack of authorisation

64. The actions of 'Mike Scott' in participating in the demonstration were not sanctioned in advance by his superiors. It is suggested that his involvement in the demonstration arose quickly and he did not appear to anticipate being arrested (which supports the defence case on the location of the arrests). However, even a likelihood of arrest should have been notified in advance and could have been quickly done by telephone.

iii) Lack of disclosure

65. When senior officers learned of HN298/'Mike Scott's' arrest and charge they endorsed the plan to proceed through the trial process. At no point was the existence of a UCO disclosed to the defendants, arresting officers, prosecution or, it seems, the court.

66. The failure to disclose this information renders the prosecution tainted. The errors are strikingly similar to the fundamental flaws of police non-disclosure and the prosecution opposing a defence on an erroneous basis, that occurred in

prosecutions more than 30 years later, and were subsequently quashed by the Court of Appeal for those reasons.³⁷ The decision to withhold information from those prosecuting the case for the Crown and the court determining guilt was made by senior officers in the SDS alone. The only concerns they expressed were for the need for operational secrecy and to prevent reputational damage³⁸. No consideration was given to the rights of those facing criminal charges and the need for a fair trial.

iv) Breach of legal privilege

67. During the preparation for trial, 'Mike Scott' became aware of confidential and privileged discussions between the defendants and their lawyers. This was included in reports sent to the SDS. Such information should not have been obtained or passed on by the police. Indeed, the Inquiry has redacted sections of the documents produced by HN298 and related comments by the relevant core participants on the basis that the legal privilege of other defendants in the case *still* persists over the information recorded by HN298. Again, there was no consideration about the need to respect legal privilege raised by either HN298/'Mike Scott' or the senior SDS officers who dealt with the matter.

Later prosecutions

68. Had the manner of the prosecution of the Star and Garter defendants been a one-off, then it might be viewed as primarily of historical interest alone. However, it appears to have set a pattern for the way in which arrests of UCOs were handled by the SDS in later years.
69. As was shown above, the policy against disclosure and lack of concern for legal privilege appears to have been embedded in the Tradecraft Manual.
70. Similar concerns about a lack of disclosure to defence and prosecution are raised in the later prosecution of HN 13 – 'Desmond/Barry Loader' in 1977. HN13/'Barry Loader' infiltrated the Communist Party of England (Marxist-

³⁷ *R v Barkshire* [2011] EWCA Crim 1885; *R v Bard* [2014] EWCA Crim 463

³⁸ MPS-0526782

Leninist) and was arrested on a number of occasions at counter-demonstrations against the far-right. On one occasion he was arrested during a confrontation outside a police station on a demonstration from Ilford to Barking. SDS documents describe the incident as:

“HN13 who had been marching with his ‘comrades’ ‘was knocked to the ground, whilst trying to shield two young children and was somewhat battered by police prior to his arrest for Insulting Behaviour under the Public Order Act.”³⁹

71. He faced trial alongside 7 others for public order offences. Charges against HN13/‘Barry Loader’ were dismissed but others were convicted.
72. Three days after the trial finished, HN13/‘Barry Loader’ was again arrested on a demonstration, this time at Loughborough School during the Brixton by-election. On this occasion HN13/‘Barry Loader’ was found guilty of threatening behaviour under Section 5 of the Public Order Act 1936. He was issued with a fine and bound over. Three co-defendants were also convicted⁴⁰.
73. On both occasions, no disclosure was made to the defence or prosecution that a UCO was involved in the case in any way. Disclosure was made to a ‘court official’ who appears to have ensured that the first charge was dismissed and the second charge received a lesser penalty. The name and role of the court official has been redacted so it is unclear if this is a judge or lay magistrate or other court staff. Either way there are significant concerns over the integrity of the court process.
74. Concerns over disclosure by the SDS in criminal trials are not limited to the 1970s. It should not be forgotten that one of the reasons the actions of the SDS and NPOIU came to light arose from the wrongful convictions of environmental activists at the Ratcliffe demonstration in 2009 (set out above), causing the then Lord Chief Justice to comment that: *“Something went seriously wrong with the*

³⁹ MPS-0526784, p12

⁴⁰ UCPI0000011356.

trial... the appellants were convicted following a trial in which elementary principles which underpin the fairness of our trial process were ignored.”⁴¹

75. Such findings were mirrored in the *Review of Possible Miscarriages of Justice* carried out by Mark Ellison QC and Allison Morgan in 2015⁴².

We have seen nothing to indicate that during the era of 1968 to 1989, when the Home Office funded the SDS and received brief annual summaries of its work, that the potential impact that the policy of total secrecy might have on criminal prosecutions of activists was ever considered.

76. The Review acknowledged that there was a paucity of documents in individual cases which could determine conclusively how issues relating to the involvement of UCOs in criminal proceedings was handled:⁴³

“What has also become clear is that there are a large number of convictions where the lack of surviving records precludes a detailed analysis of the nature of the deployments such as to identify if there was, or was not, any relevant activity or observation by the undercover officer that might meet the disclosure threshold.

Having ascertained in more general terms how undercover activity at the time of the convictions was managed, as well as how the individual officers generally behaved, it may become necessary in those cases to focus more on the impact that the policy of total secrecy had in preventing the proper level of scrutiny taking place at the time of trial. The inevitable context being that the nature of the undercover deployments was such that on occasions they must have generated material which was disclosable in

⁴¹ *R v Barkshire* [2011] EWCA CA 1885 at [1]

⁴² ‘Review of Possible Miscarriages of Justice: Impact of Undisclosed Undercover Police Activity on the Safety of Convictions’, Report to the Attorney General (HC291, July 2015) by Mark Ellison QC & Alison Morgan (‘the Ellison Review’).

⁴³ Ellison Review p49.

criminal proceedings but which was not revealed by the SDS to the responsible investigators and prosecutors.

Given that the CPS has indicated that the wider activities of the Squad do not, of themselves, provide criteria for consideration by a court, and that the CCRC may not yet be in a position to whether they would merit referral either, it appears that the Public Inquiry may provide the best opportunity for a public examination of the issues they raise.”

77. The events at the Star and Garter provide the first instance of the issues that are raised in subsequent prosecutions and considered in the Ellison Review. The policy of ‘total secrecy’ shown in the Star and Garter demo and picked up as policy by the SDS had the capacity to erode faith in the criminal justice system. It should, as indicated by the Ellison Review, be a central concern of this Inquiry.

Conclusion

78. The importance of the Star and Garter lies in the way it set a precedent for future prosecutions involving UCOs in the SDS. It is not suggested that the convictions these core participants received for relatively minor offences has held them back in their personal or professional lives (though this may not have been so clear at the time proceedings took place).
79. However, the ramifications of the actions of the SDS at the Star and Garter for individuals concerned may not be limited to those directly involved. As has been confirmed by HN298/‘Mike Scott’ himself, he did not base his cover identity on a dead child. He instead chose a living person. No evidence has been shown that the court record from Mortlake Magistrates’ Court was ever corrected to ensure that no conviction was wrongly recorded against the real Mike Scott. Since HN298 chose an identity of a person born at a similar time to him,⁴⁴ and HN 298 is not deceased, it is possible that the real Mike Scott may still be alive as well. The question arises as to whether he, or his family, have been contacted to

⁴⁴ MPS-0746258 at paragraph 20.

ascertain his view on criminal convictions being recorded against his name by undercover police officers.

80. Finally, the disregard shown by HN298/‘Mike Scott’ (and those responsible for directing and supervising him) for the criminal justice process does not appear to have been limited to the Star and Garter demonstration. In 1974, whilst undercover in the Troops Out Movement, HN298/‘Mike Scott’ was made aware that he had been accused by Gerry Lawless of being a police spy. His response was to confront Gerry Lawless alone on the street and punch him in the face so hard he broke a finger. It is unclear how this action falls within the Home Office Guidance relating to the commission of criminal offences⁴⁵.

PROCEDURAL ISSUES

81. Ms Kirsten Heaven on behalf of the Co-ordinating NPSCP group will address procedural issues of a general nature. This opening statement will focus on some discrete matters relating to these core participants.

HN135/Mike Ferguson

82. HN135/Mike Ferguson is understood to be unique among UCOs in this Inquiry in that there is a restriction order over his cover name but not his real name. The result of this is that whilst the general public know that Mike Ferguson was both a UCO and, later, a senior officer within the SDS, Lord Peter Hain is unable to identify the UCO who is described by multiple sources as acting as his ‘right hand man’ in the STST. It is difficult to understand how a Labour Peer, former MP of 24 years, Government Minister for 12 years, former Foreign Office Minister and Secretary of State for Northern Ireland, a person who in his professional life has been privy to material of the highest sensitivity relating to matters of international political importance should be denied the information

⁴⁵ Concerns over the adequacy of supervision of HN298/‘Mike Scott’ are also raised by an incident when he attended a WRP course at an educational centre in Derbyshire when authorisation to attend had been cancelled but the cancellation seemingly not communicated to him (MPS-0741115).

needed to identify the deceased man who spied on him whilst he campaigned against the abhorrent apartheid regime 50 years ago.

83. In light of the concerns raised by the role of HN135/Mike Ferguson set out earlier in this statement, it is important for the Inquiry to get as full a picture as possible of the actions taken by HN135/Mike Ferguson when in the field. It is no longer possible to ask HN135/Mike Ferguson himself. Senior officers in the SDS who oversaw his work are also deceased. Other UCOs in the field would have only a partial awareness of HN135's activities. Contemporaneous documents appear to be limited. Therefore, the best, and only, source of further information about the actions of HN135/Mike Ferguson whilst in the STST are from those he worked alongside, namely the activists. Such information can only be gained if the activists are provided with the means to identify who the UCO was through either provision of a cover name and/or a contemporaneous photograph. This has been denied to them.
84. The basis for the restriction order over the cover name of HN135/Mike Ferguson is hard to understand from the material that is publicly available. It cannot be based on any threat to the physical safety or psychological wellbeing of HN135/Mike Ferguson since he is now deceased. It is understood that the family of HN135/Mike Ferguson have themselves published newspaper articles referring to his role as an undercover police officer. In such circumstances, it is difficult to understand their privacy concerns.
85. The initial decision to make a restriction order regarding the cover name of HN135/Mike Ferguson was made without personal representations by Lord Hain. Requests to review the restriction order made by Lord Hain following receipt of disclosure from the Inquiry have been refused without response.
86. The consequences of a failure to release the cover name of HN135/Mike Ferguson are not limited to the inability of core participants to provide evidence to this Inquiry. Where a UCO is confirmed, but remains unidentified, suspicions are inevitably raised about those involved in the actions. One of those active in the STST tour was Mike Craft, a long-standing anti-apartheid and peace campaigner who was also a dentist. Following the naming of HN135/Mike

Ferguson in the True Spies documentary he contacted Lord Hain expressing frustration that people had wrongly thought he might have been the police spy on the basis that he had the same first name. Mike Craft sadly passed away in 2011 and is unable to participate in this Inquiry. On his behalf these core participants reject any suggestion that he was an undercover officer and are saddened by the suggestion that others thought he might be. As this incident shows, the need to dispel rumours and false accusations is as much a part of getting to the truth as any other.

87. In such circumstances, the core participants are left only to express their dissatisfaction over the approach taken by the Inquiry to the need to obtain relevant evidence. Whilst the actions of HN135/Mike Ferguson in the STST campaign may appear to be limited to events 50 years ago, in fact an opportunity appears to have been lost to get to the truth of what happened and understand the genesis of the more concerning actions of the SDS in later years

Failure to engage with potential core participants

88. The final area to be addressed in this opening statement is the Inquiry's failure to engage with potential core participants from relevant groups.
89. Christabel Gurney was a defendant at the Star and Garter demonstration and played a key role in the AAM. She has a responsibility to that organisation to speak on behalf of those in that organisation, in some cases persons who were attacked and killed by the apartheid regime, about whom intelligence was gathered by the SDS. However, Christabel Gurney has been refused core participant status in this inquiry and only gives evidence as a witness. Her engagement with the inquiry process is therefore limited. Had she been granted core participant status, then she would have been able to put questions to officers who gave evidence relating to the Dambusters Mobilising Committee in T1P1⁴⁶. The denial of core participant status means the voice of the AAM is closed down.

⁴⁶ HN336/'Dick Epps' gave live evidence and HN339/'Stewart Goodman' had evidence summarised.

90. Other persons who were active in campaigns spied on during the period of T1P2 have similarly been refused core participant status. Notwithstanding an indication from the Inquiry that evidence from those in the Trotskyite groups in the 1970s was an area where coverage was limited, several of those who have come forward to assist the Inquiry have been refused core participant status, nor has access been given to the documents held by the Inquiry.
91. There are a number of former members of the Workers Revolutionary Party in the 1970s who fall into this category: Clare Cowan, Simon Pirani and Elizabeth Leicester (formally Battersby), who speak on behalf of many others. The reporting on the WRP was extensive ⁴⁷. The unauthorised attendance of HN298/‘Mike Scott’ at the WRP’s White Meadows education centre has already been noted, as has the placement of UCOs in the WRP by Mike Ferguson on behalf of the Security Service when this did not meet the threshold for infiltration by the SDS. Finally, the infiltration of a far-right group by a UCO acting on the request of the WRP is another notable incident. In light of these matters, the Inquiry would benefit from evidence from members of this group.
92. Similarly, John Lockwood, was a member of the SWP and named in Inquiry evidence. He was elected to the steering committee of ALCARAF⁴⁸, was prominent at the Lewisham demonstration on 13th August 1977⁴⁹ and was involved in many other significant campaigns. Events in Lewisham in 1977 were a key period in the campaign against anti-racism, in public order and policing. It now appears that they were a landmark for the Special Branch and the SDS and so should be central to this phase of the Inquiry. Special Branch records show that the 18 Special Branch officers on duty on the day of the Lewisham

⁴⁷ Notably the White Meadows education centre (the College of Marxist Education) which was the focal point of the WRP during this period. The police raid on it was a seminal moment in the history of its relationship with the police and the State. The raid coincided with an article in the Observer which, in turn, led to high profile legal proceedings. The WRP activists who have come forward include some who were central in running the College as well as present and affected during the raid. Evidence relating to these events include – statement of HN298/‘Mike Scott’ from paragraph 187, MPS-0741130, UCPI0000009257, also MPS-0741114, MPS-9741115, UCPI0000009257, UCPI0000009265, UCPI0000012240.

⁴⁸ The All Lewisham Campaign Against Racism and Fascism.

⁴⁹ See UCPI0000017686, MPS-0733367.

demonstration were debriefed by a Superintendent who reported, among other things, that: *“there is a case for the systematic arrest of the active organisers at an early stage, and perhaps for meeting violence with violence, or the expectation of it”*⁵⁰ .

93. Other activists who have come forward to the Inquiry include a person active in the Anarchy Collective which, in the 1970s, produced ‘Anarchy’ magazine. Reports show that small and private meetings about the publication of the magazine took place at her house, where her young children lived, and were attended by at least one UCO. Notwithstanding that she is clearly identifiable in the hearing bundle, the Inquiry appears to have taken no steps to contact her in advance, to tell her of its interest in her and the evidence it has on her and before putting it into the public domain. A request to the Inquiry to grant her access to the bundle, so that she might comment on the Inquiry’s proposals to name her and make an informed decision whether and if so how she might wish to engage with the Inquiry and its evidence has not, to date, been addressed.
94. All these persons have been made known to the Inquiry but not afforded means to participate. The denial of core participant status and non-disclosure of unredacted documents means that these persons cannot assist the Inquiry on evidential matters. These potential core participants could identify lines of questioning for witnesses. Importantly they give a live alternative voice to respond to police records of these events. Moreover, such persons will not be aware when their name is mentioned in redacted portions of documents made publicly available. If the Inquiry wishes to ensure that seminal events in this country’s history of protest and policing, and the role of UCOs in them, are being considered from perspectives other than that of the police then it should encourage participation from these persons rather than reject it.

⁵⁰ Post event SB report, dated 23rd August 1977 was an ‘analysis of the material obtained [which] attempts to define the tactics of demonstrators and to examine the effectiveness of police action to neutralise them’, MPS-0733369.

CONCLUSION

95. The targeting of groups campaigning against the South African apartheid regime appears hard to justify, because it is hard to justify. This is not simply a present day perspective. It was unacceptable conduct even judged by the standards of that time. These were political campaigns on issues of worldwide significance. They deserved to remain free from the influence of undercover police officers. The decision to target Lord Hain, Professor Rosenhead, Christabel Gurney OBE and Ernest Rodker for surveillance as they campaigned against apartheid and to approach what they were doing as a threat to public order, democracy and British society was a political choice – and involved the SDS taking a political approach to its work. In doing so the SDS made a serious and grave error in the way it treated the anti-apartheid movement. This Inquiry should confirm that error as a matter of historical record if there is ever to be confidence in a surveillance system that went badly awry and to ensure similar errors do not occur in the future.

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