

IN THE UNDERCOVER POLICING INQUIRY

T1P3 OPENING STATEMENT ON BEHALF OF: LORD PETER HAIN AND PROFESSOR JONATHAN ROSENHEAD

INTRODUCTION

1. Almost exactly 50 years ago today, on 12 May 1972, a protest took place at the Star and Garter Hotel, Richmond during which activists sought to delay the departure of the British Lions rugby team on their tour to apartheid South Africa. Amongst the demonstrators who were arrested was an undercover police officer working in the SDS: HN298/‘Mike Scott’. In the subsequent criminal trial, HN298 went on to deceive the defence, prosecution and court as to the nature of his role. 14 activists, including HN298/‘Mike Scott’ were convicted. What is striking is that this was done with the full knowledge and encouragement of the management within the SDS.
2. The Core Participants, Lord Peter Hain and Professor Jonathan Rosenhead (collectively ‘the CPs’), welcome the Chair’s referral of the Star and Garter demonstration to the Panel considering miscarriages of justice arising from the evidence considered by the Inquiry over concerns that the prosecution “constituted an affront to justice”. They endorse the Chair’s comment that:

“The prosecutor and the court were deliberately misled about his [HN298’s] identity and role in the events which it was considering”¹
3. In many regards, the approach taken by the SDS to the Star and Garter prosecution is the first instance of wilful abuse of the criminal justice system by

¹https://www.ucpi.org.uk/wp-content/uploads/2021/06/20210622-miscarriages_of_justice_panel_referral.pdf (at [11]).

those engaged in undercover policing. That became a repeated pattern in the years that followed.

4. In order to assess the true extent of the failings of the SDS in relation to the involvement of UCOs in criminal prosecutions it is imperative to examine the role of managers within the SDS. What emerges is: (i) a lack of proper policies and guidance, (ii) a lack of concern for the integrity of the criminal justice system and (iii) an overriding need to preserve the total secrecy of the SDS and prevent reputational damage to the police.
5. These themes are also echoed in other areas of concern to the CPs, including the targeting of political groups, indiscriminate collection of information and UCOs taking on active roles within target groups.
6. These concerns have already been articulated in previous opening statements by the CPs in relation to the actions of undercover officers themselves. The Inquiry is now asked to examine these issues insofar as they relate to SDS managers.

STAR AND GARTER PROSECUTION

7. 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*

The case was defended in part on the basis that the demonstration did not block a public highway and those charged were therefore factually innocent. The contemporaneous documents state that the defendants were concerned that uniformed police officers would lie over the location of arrests. 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 prior authorisation

The actions of HN298/'Mike Scott' in participating in a demonstration which lead to his arrest and prosecution were not sanctioned in advance by his superiors. Not even the risk of arrest was considered in advance.

iii) Lack of disclosure

At no point was the existence of a UCO amongst those arrested disclosed to the defendants, arresting officers, prosecution or the court. The court was therefore misled on a fundamental issue rendering the prosecution tainted.

iv) Breach of legal privilege

During the preparation for trial, HN298/'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.

8. The above matters are sufficient to render the convictions of activists at the Star and Garter Demonstration unsafe. The CPs hope that the Miscarriage of Justice Panel will act swiftly to allow steps to be taken to quash the convictions. However, the CPs ask the Inquiry to examine the role of SDS Management in the decisions that lead to the Star and Garter prosecutions.

Involvement of SDS Management

9. Even a cursory examination of the evidence shows that the matters referred to above were done with the full knowledge, and even encouragement, of the SDS management.
- i) A Metropolitan Police Special Branch Report dated 15.05.72² states that Sergeant D Smith (HN103) was present at the first court appearance on 15.05.72 for those arrested at the Star and Garter Demo when each pleaded not guilty and trial dates were set. It can be inferred from this that

² MPS-0526782/13-14

the SDS management were informed of HN298's arrest in the days between his release from custody and attendance at court.

- ii) A memo dated 16.05.72 from HN294 to Commander 'Operations'³ sets out the facts of the arrest and charge. A minute sheet dated 17.05.73⁴ records that matters were communicated by Commander Matthew Rodger to Deputy Assistant Commissioner Ferguson Smith within a week of events. In a reply the next day, Ferguson Smith confirms that the Assistant Commissioner has been verbally informed of the matter. The issue was therefore communicated to high levels of Special Branch within days.
- iii) The senior management were strongly supportive of the actions of HN298. On the 17.05.72 Minute Sheet, far from criticising the lack of prior authorisation, Commander Rodger states that HN298 acted with "refreshing initiative". His recommendation is that "rather than have DC HN298 withdraw from this field ... we should take advantage of the situation to keep abreast of [the activists spied on] intentions". Similarly, the Deputy Assistant Commissioner states:

"we have discussed the problems posed by DC HN298's arrest which I regard merely as one of the hazards associated with the valuable type of work he is doing. There is absolutely no criticism of the officer."

- iv) The potential court proceedings were considered by SDS management at an early stage. The memo dated 16.05.72 from HN294 to Commander 'Operations'⁵ states:

"The decision on which I should be obliged for your guidance is whether DC HN298 should continue his attempt to learn more of them. To do this he will probably have to apply, as they are doing, for legal aid and attend meetings with all those arrested to discuss tactics etc. Whilst I am reasonably confident that DC HN298 could, with assistance, carry this off, there is, of course the potential of embarrassment to police if his true identity should ever be disclosed" (emphasis added)⁶

³ MPS-0526782/7-8

⁴ MPS-0526782.

⁵ MPS-0526782/7-8

⁶ Similarly the 17.05.72 minute sheet states: "I [Commander Rodger] have discussed the question of eventual court proceedings with both DI HN294 and DS Smith, and at the moment they are waiting to see what RODKER and company decide to do... it is anticipated that RODKER will convene a meeting in

No concerns were raised over issues of legal privilege or any other impropriety of UCOs participating in meetings at which legal 'tactics' were discussed.

- v) It is also clear from the above, that the SDS Management contemplated providing 'assistance' to HN298 in participating in court proceedings under his false identity. The only concern that is raised is "embarrassment to the police".
10. The documents demonstrate that the management, at all levels within the SDS and the higher ranks of Special Branch, were not only aware of, but approved of, the proposed plan for HN298 to participate in criminal proceedings without disclosing his true identity. There is no evidence of any concern over misleading the court, breaching legal privilege or for any other consequence beyond reputational damage to the police.

Later prosecutions

11. The Star and Garter prosecution appears to have set the template for the policy of total secrecy around the involvement of UCOs in the criminal justice process. The policy against disclosure and the lack of concern for legal privilege also appears to have been embedded in the Tradecraft Manual.
12. Similar concerns about a lack of disclosure to defence and prosecution can be seen in the prosecution of HN 13 – 'Desmond/Barry Loader' in 1977. HN13/'Barry Loader' infiltrated the Communist Party of England (Marxist-Leninist) and was arrested on a number of occasions at counter-demonstrations against the far-right.
- i) Arrest on 17.09.77:
HN13 was arrested during a confrontation outside a police station on a demonstration from Ilford to Barking. SDS documents describe the incident as:

the very near future to discuss what their tactics should be". Spying on defence meetings was therefore communicated to the Deputy Assistant Commissioner.

“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.”⁷

He faced trial alongside 7 others for public order offences. Charges against HN13/‘Barry Loader’ were dismissed but others were convicted.

ii) Arrest on 15.04.78:

Three days after the above 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 convicted⁸.

13. On both occasions, no disclosure was made to the defence or prosecution that a UCO was involved in the case in any way. A “court official” appears to have been told that HN13 was “an informant” whom the police wished to “safeguard from a prison sentence”⁹. However, seeking a reduction of sentence for an informant on the basis of assistance given to police -assistance which the Court may thought did not relate to the matter directly before it- is very different from disclosing to the Court that a defendant currently facing trial alongside others is in fact an undercover police officer. It goes no way towards remedying the integrity of the trial process.

14. Again, the fact that a UCO was facing criminal proceedings was communicated to very senior managers within Special Branch.

i) Commander Watts met with HN13 personally within 5 days of his arrest on 15.04.78¹⁰.

ii) The arrest of HN13 on 15.04.78 was communicated to Deputy Assistant Commissioner Robert Bryan on 19.04.78 who in turn informed Assistant

⁷ MPS-0526784, p12

⁸ UCPI0000011356.

⁹ MPS-0526784/7 and 10

¹⁰ MPS-0526784/2

Commissioner 'C' on 20.04.78 who then informed the Commissioner of the Metropolitan Police¹¹.

iii) To ensure secrecy, DAC Bryan informed the ACC that he kept the relevant paperwork in his personal safe¹².

15. At all stages, the only concern appears to have been for the wellbeing of HN13 and to maintain secrecy over the SDS operations. There is no mention of any concern over the rights of co-defendants -who appear to be facing charges arising from incidents involving excessive force from uniformed officers- or for the integrity of the criminal justice system.

16. Such findings were mirrored in the *Review of Possible Miscarriages of Justice* carried out by Mark Ellison QC and Allison Morgan in 2015¹³.

“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.”

17. 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.

18. Given the manner in which the Star and Garter and HN13's prosecutions were dealt with, it is clear that SDS Management -at all levels- were swiftly made aware of UCOs facing criminal charges. They actively promoted and supported the policy of total secrecy without any regard for the impact beyond the SDS itself. It is in this context that the CPs ask that the actions of SDS Management in T1P3 are examined.

¹¹ MPS-0526784/3 and 5

¹² MPS-0526784/5

¹³ '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').

TASKING AND SUPERVISION OF UCOS

19. Many of the concerns underlying the approach of the SDS to UCOS involvement in criminal prosecutions -the lack of proper policies and training, the lack of sufficient oversight by SDS Managers and a lack of concern for the rights of those spied on by UCOS- are echoed in other areas. In particular, these features had an adverse impact on the selection of targets for UCOS and their actions in taking on active roles within target groups.
20. The annual reports of the SDS show that those campaigning on anti-apartheid matters were targets of SDS surveillance right from its inception. The Anti-Apartheid Movement ('AAM') itself was identified as a target for surveillance in the first annual report of the Special Operations Squad¹⁴ in 1969¹⁵. The AAM and other related groups then featured in all following annual reports going into the 1970s. At least some of the UCOS are explicit that they were directed to target the AAM. As the witness statement of HN339/'Stewart Goodman' confirms, he was tasked by HN294 and Phil Saunders throughout his deployment¹⁶:

"I was initially directed towards the AAM... I think my involvement with AAM was preparation for later becoming part of a more militant group; effectively it was my training ground and allowed me to gain legitimacy and an activism background and then move on to another group"¹⁷
21. Anti-apartheid sporting boycotts, such as the Stop the Seventy Tour ('STST'), were also targeted. Regarding the STST, 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.

¹⁴ 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.

¹⁵ MPS-0728973/7 at [15]

¹⁶ MPS-0736910, Witness statement of HN339, paras 36.

¹⁷ MPS-0736910, Witness statement of HN339, paras 27-28.

Coverage of the STST and its successor campaigns continued well into the mid-1970s.¹⁸

22. It is also notable 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 Secret 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”¹⁹

23. 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 T1P3 and well into the 1980s²⁰.
24. Many SDS managers state that decisions on tasking came from outside the SDS: either from C-Squad in Special Branch or, directly or indirectly, from the Security Services. As former SDS manager Geoff Craft states: “The Branch was the legs of the Security Service”²¹. It is clear that such interests went well beyond any sort of public order issues. This raises very significant concerns over the politicised nature of the work done by the SDS.
25. The influence of tasking from those outside the SDS also appears to have an impact on the nature of the information collected. For example, in relation to Ernest Rodker, reports were filed, and sent to the Security Services, containing personal information irrelevant to any public order concerns such as the fact that he and his wife had a child, the fact that he had been unwell and was in hospital²². Similarly, UCOs reported the presence of Peter Hain’s younger sisters,

¹⁸ See UCPI0000030896 a Note entitled 'Organisations currently penetrated by SDS' signed by CI Kneale dated 30.08.74 includes Stop All Racist Tours.

¹⁹ UCPI0000028795

²⁰ UCPI00000016192 is a report by HN106/'Barry Tompkins' on a social event held by the AAM on 24.01.81

²¹ MPS-0747446 paragraph 72

²² 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” (UCPI0000012246).

both still children at the time, at meetings of the Young Liberals at his parents' home²³. Again it was copied to the Security Service.

26. 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.
27. The opinion of undercover officers towards their managers in relation to collecting personal information may be seen in the oral evidence of HN298. Referring to the views of "the office, admin and people in charge" towards his attending a meeting in the front room of Peter Hain's family home HN298 said:

"I think probably this kind of thing, they're actually too frightened of these things. They happen and they're confronted with them, and they don't really want to make waves. And this is how these things work.... They don't want you to make waves, but -- when they're confronted with it... they're in essence obliged to go along with it."²⁴

28. The picture presented is of SDS managers that are unable to exercise proper control over UCOs. SDS management take a reactive approach and are "obliged to go along" with decisions that UCOs make for themselves for fear of "making waves".
29. The role of managers in overseeing the intrusive and disproportionate nature of infiltration by UCOs is therefore critical to the Inquiry.
30. A final concern that the CPs wish to raise relates to UCOs taking on active roles within the groups targeted. The guidance set out by Conrad Dixon in his 1968 paper 'Penetration of Extremist Groups' 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"*²⁵

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" (UCPI0000010719).

²³ UCPI0000008551 and UCPI0000008240.

²⁴ Transcript of evidence T1P2, HN298, 04.05.21 page 59.

²⁵ MPS-0724119/6

31. UCOs taking on any sort of decision-making role within target groups was a distortion of the political process. These were political campaigning organisations and decisions relating to their 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.
32. The undercover officer HN135/Mike Ferguson, now deceased, was understood by SDS officers to have taken on a role within the STST campaign that placed him very close to Peter Hain. He has variously been described as: "Peter Hain's number two"²⁶ and "Peter Hain's right hand man"²⁷. Peter Hain did not in fact ever have a 'right hand man' in the STST campaign. However, what is clear is that contemporaneous documents show that HN135/Mike Ferguson was present at STST meetings where plans were made for demonstrations which were attended by relatively few persons which suggest he took an active role in the campaign²⁸. Similar concerns arise in relation to HN298/'Mike Scott' who 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.
33. The inappropriate and disproportionate actions of HN135/Mike Ferguson were not an isolated example of inappropriate surveillance and were consistent with other activity by the SDS. Other UCOs were impressed by the actions of HN135/Mike Ferguson and he went on to hold senior positions with the SDS.
34. HN244/Angus Mackintosh set out the approach taken when Mike Ferguson was Chief inspector within the SDS in the late 1970s. He confirms that whilst UCOs would inform the SDS management about their progress within an organisation, no specific authority would be needed to take up a position within a group. Although managers could in principle direct a UCO to refuse a position if it was

²⁶ Comment by Wilf Knight in True Spies documentary.

²⁷ MPS-0739316, Witness Statement of HN336/'Dick Epps', 10.05.19, para 71.

²⁸ UCPI0000008656 a meeting on 05.12.69 where 6 persons were present and plans for demonstrations at Twickenham on 20.12.69 were discussed.

²⁹ UCPI00000008240.

undesirable, he cannot recall this ever being done and much was left to the discretion of the individual UCO. It is notable that several UCOs during this period took on positions of responsibility within their target groups³⁰.

35. The inquiry is asked to closely examine the level of guidance and direction given to UCOs in relation to taking on active roles within groups and the attitude of SDS managers to this.

Conclusion

36. Many of these concerns expressed above over the indiscriminate recording and retention of information by UCOs were reflected in a paper prepared by the Home Office on Special Branches dated 08.10.80³¹. The Home Office Paper notes that some of the information that has historically been collected: “may not easily be justified”³². It goes on to state that because officers were collecting information on behalf of others, there was a danger that “there will be a premium on recording information rather than not doing so”³³.
37. The Home Office Paper recognised that issues relating to disproportionate data collection were directly connected to the need for a clearly defined role for policing in politically sensitive areas, but that this did not alleviate the need for independent review of what data was collected and retained.

“the nature of information stored by Special Branches is in many respects secondary to the question what Special Branches are there to do. The more clearly the proper extent of their interest in subversion is defined, for example, the more easy it should be for officers to judge what they should record and what not. But there may also be a case for taking more positive steps, perhaps through HM Inspectorate, to ensure that forces’ procedures for judging what to record and for weeding out or disposing of irrelevant information are satisfactory” (at[25])

38. The Home Office Paper noted that: “the importance of effective supervision and training are arguably greater in Special Branch than in other areas of police

³⁰ See HN297/‘Richard Clark’ and the Troops Out Movement.

³¹ UCPI0000004437

³² Paragraph 24.

³³ Paragraph 24.

work”³⁴. The Core Participants endorse these observations and invite the Inquiry to conclude that the supervision and training provided to UCOs in the period under review was wholly inadequate.

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25.04.22

³⁴ Paragraph 33.