
CLOSING STATEMENT:

LORD PETER HAIN, JONATHAN ROSENHEAD, ERNEST RODKER

1. Tranche 1 has heard evidence of shocking, unjustified and unjustifiable surveillance of anti-apartheid campaigners by undercover officers in the Special Demonstration Squad. Lord Peter Hain, Professor Jonathan Rosenhead and Mr Ernest Rodker invite the Inquiry to reach robust findings in line with these conclusions.
2. In their initial opening statement for Tranche 1, these Core Participants raised the following concerns over the targeting of political and social justice campaigns and the participation of UCOs in protests and miscarriages of justice:
 - i) The unjustified and politicised nature of undercover policing
 - ii) The lack of any effective system of checks and balances
 - iii) The lack of any proper oversight
 - iv) Racial bias/racism within undercover policing; and
 - v) A culture of contempt and abuse towards rights of those targeted including gross disregard for breaches of fundamental human rights.
3. All of these issues have been exposed in Tranche 1 of this inquiry.

TARGETING OF THE ANTI-APARTHEID CAMPAIGN

4. Lord Peter Hain, Professor Jonathan Rosenhead and Mr Ernest Rodker (collectively “The CPs”) have consistently raised two broad concerns over the targeting of anti-apartheid campaigns by the Special Demonstration Squad (SDS)¹. First, there was no legitimate policing reason to target these campaigns

¹ Some of the surveillance was carried out when the unit was known as the “Special Operations Unit” prior to its renaming as the “Special Demonstration Squad” in 1972. For convenience the name “SDS” will be used to refer to the unit through this period.

using UCOs. Second, the targeting of these campaigns was influenced by political concerns.

Justification

5. There was no proper justification for targeting the Anti-Apartheid Movement (AAM), Stop the Seventy Tour (STST) and other organisations campaigning against apartheid South Africa using undercover officers. The AAM was an entirely conventional campaigning organisation which give rise to no particular concerns over public order or subversion. Whilst the STST openly used non-violent direct action to further its campaign, this did not justify the use of UCOs to infiltrate the organisation.
6. It is important to correct the record relating to purported justifications for targeting the anti-apartheid campaign. 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.
7. 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. This was confirmed in oral evidence.
8. 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.”
9. 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 part². Any debate

² See witness statements of Peter Hain, Ernest Rodker, Jonathan Rosenhead and Christabel Gurney.

recorded in SDS records³ over the use of ‘violence’ was effectively confined to the extent to which damage to property would be condoned. Violence against persons was never part of their aims.

10. Much has been made by those in the SDS that HN135/Mike Ferguson occupied a close position to the leadership of the STST referred to as “Peter Hain’s right-hand-man”. Lord Hain continues to deny that HN135/Mike Ferguson occupied any role that could be described that way. Whatever his precise role was, he did attend STST planning meetings where few others were present. It is therefore telling that his reports about the STST’s plans and methods do not at any point indicate or suggest that STST supported the use of violence on demonstrations⁴.
11. The CPs repeat their refutation of 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”. This is untrue. The allegation was made for the first time 50 years after the events and is unsupported by the contemporaneous documents. For the reasons set out in the CPs Opening Statement for T1P2⁵ the Inquiry is invited to reject this part of his evidence in the face of clear evidence to the contrary.
12. As Lord Hain stated in his oral evidence to the Inquiry, the STST was entirely open about its aims and methods. It was public knowledge that the STST sought to disrupt sporting events by attempting to enter the pitch. Against this background, there was nothing which required a policing response based on SDS officers seeking to infiltrate the STST. Any public order concerns that arose could have been dealt with using conventional policing methods and did not justify the activities of the SDS in relation to the STST.

³ e.g. UCPI000008660

⁴ See again UCPI000008656 a meeting on 05.12.69 where 6 persons were present and plans for demonstrations at Twickenham on 20.12.69 were discussed.

⁵ See in particular, paragraph [49].

Disproportionate reporting

13. The Inquiry has seen evidence of very widespread recording of personal and private information about the CPs which went well beyond any conceivable public order concerns. 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 hospital⁶. 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' home⁷. Again it was copied to the Security Service. This information is not unusual but in many ways typical of what was collected.
14. Beyond their involvement in the anti-apartheid struggle, there are numerous reports relating to the CPs attending public meetings of a conventional political nature that should have been free from state surveillance.
 - i) 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. The names of three elected Wandsworth councillors who were seen to buy copies of 'Red Weekly' are noted. The information was sent to the Security Services.
 - ii) 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'"*⁸. Peter Hain attended the conference in his role as a

⁶ 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). 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).

⁷ UCPI0000008551 and UCPI0000008240.

⁸ UCPI0000014020

delegate from the Putney Labour Party Branch. He took his two sons to the creche there⁹.

15. There is simply no legitimate reason for the SDS to collect this data.
16. 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 attendance at 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.”¹⁰

17. Where SDS managers did seek to provide direction on tasking, many SDS managers state that decisions 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”¹¹.
18. The picture presented is of SDS officers adopting an unfiltered approach to the recording of private information. SDS managers taking a reactive approach to what was recorded feeling “obliged to go along” with decisions that UCOs make for themselves for fear of “making waves”. Where SDS managers do seek to influence the tasking of UCOs this is subject to inappropriate influence from the Security Service.
19. In any event, no proper justification has been provided for the type of personal information which was collected by the SDS on the CPs. The means of collecting such information often involved entering their family homes by deception. It served no legitimate policing purpose and there was no legal foundation for

⁹ Lord Hain witness statement 03.03.20, paragraphs 254-258.

¹⁰ Transcript of evidence T1P2, HN298, 04.05.21 page 59.

¹¹ MPS-0747446 paragraph 72

collecting the information. The Inquiry is invited to find that it should not have been recorded.

Political influence

20. Documents disclosed in Module 2 from Cabinet Office records demonstrate that concerns that were raised at the highest political levels over the AAM and STST campaigns. It appears that SDS reports were provided to meet these openly political influences.
21. There were a number of secret committees formed at the highest levels which focussed on subversion. These included the Official Committee on Subversion at Home (SH)¹². Many of those who sat on the committees were aware of the SDS¹³. The committees also sought to promote the gathering of intelligence on groups with which they were concerned. The Committee on Subversion at Home paid a keen interest in the AAM and STST.
 - i) Minutes of the SH Committee meeting on 11.03.70 contain a detailed report on the planned STST demonstrations¹⁴. It ends with the statement that: "...The Security Service would keep in close touch with the Home Office in order to advise on the deployment of police resources at demonstrations".
 - ii) SH Meeting notes for 10.03.70 state: "Sir Burke Trend may like to ask the Home Office and the Security Service for an up-to-date report on the cricket tour prospects and the development of measures to contain demonstrations."¹⁵ It is accompanied by a "Brief for Tuesday, 10 March 1970" titled "Stop the Seventy Tour Committee" which gives details of the STST national conference held on 07.03.70. This conference was attended

¹² Other relevant committees included the Committee of Ministers, chaired by the Prime Minister, and the Interdepartmental Group under the Chairmanship of Mr James Waddell to Study Subversion in Public Life ("SPL").

¹³ See CTI Opening M2b-c at [45].

¹⁴ UCPI0000035226/2

¹⁵ UCPI0000035275

by Mike Ferguson in his role as an SDS officer and his report was provided to the Security Service. It seems likely that information from the report was passed on to the SH Committee.

22. There is debate in the Cabinet Office records over the appropriate definition of “subversion”. In meetings chaired by Sir Burke Trend in 1971 the following wide definitions are proposed:

"Subversive people and organisations were considered to be those who did not believe in evolutionary parliamentary government but preferred to work towards a revolutionary situation and a revolutionary moment at which the traditional rulers would be unable to govern and the governed would be in a position to overthrow them"¹⁶

"...subversion should be defined as the attempt to overthrow constitutional government by non-parliamentary means"¹⁷

23. These definitions are clearly not limited to those who use unlawful means of achieving their aims or to those which actually or potentially posed any sort of threat to the British state.
24. What does not appear to have been considered is *why* the SH Committee was taking such a keen interest in the STST and anti-apartheid protests? These were campaigns which were focussed on ending apartheid in South Africa. They did not have any intention to overthrow the British state. Even on the wide definitions above, the STST could not be considered to be subversive. Similarly, if either of the definitions of Lord Denning or Lord Harris were adopted. The STST and AAM do not fall within the remit of the SH Committee. There is hence no legitimate reason why the SDS should have been involved in providing reports on the STST to the SH Committee.
25. If a request for targeting fell outside the policing remit of Special Branch, the fact that the request originated with the SH Committee (either directly or via the Security Service) did not provide the SDS with any lawful basis to comply with the request:
- i) As the following letter from F4 Division dated 30.01.85 states:

¹⁶ UCPI0000035278

¹⁷ UCPI0000035250

“We do not therefore want it to appear that either the Home Secretary or central government is too deeply involved in judgements which are essentially for the chief constable to take in view of his responsibilities for the preservation of the Queen’s Peace....a chief officer may decline to provide assistance to the Security Service if what is requested is not considered to come within his responsibilities for law and order and the preservation of the Queen’s Peace”¹⁸

ii) As HMCIC stated in 17.12.84:

“a Chief Constable can, and occasionally does, decline a task which the Security Service wish his Special Branch to carry out. Put in another way, everything a Special Branch officer does is within his duties and functions as a constable and under the direction of the Chief Constable as envisaged by the latter’s tortious liability. Any Security Service involvement does not affect this basic constitutional principle.”¹⁹

26. It is clear that, as well as the Home Office and the Security Service, the Foreign and Commonwealth Office was represented on the SH Committee. Given the Committee’s interest in the anti-apartheid movement, this raises questions over the extent to which the Government’s interests abroad influenced the focus of the SH Committee and in consequence the provision of information from both the Security Service and Metropolitan Police Special Branch and ultimately the SDS. These issues tie in with concerns raised by the CPs throughout the Inquiry.

27. Documents from the Cabinet Office now show the influence of Cold War anxiety about communism informing the motivation of the security services. The records show a pervasive concern with communism which spread into other areas of alleged subversion. There were a myriad of different committees, all of which emphasised a policy of secrecy, as the minutes for the first meeting of the Official Group supporting the Ministerial Committee on Subversion state: “The existence of these groups, both Ministerial and Official, should in no circumstances be allowed to become known”.²⁰ The trend in expanding coverage of these groups is summarised in a report relating to the Information Research Department dated 06.06.74:

“Over the years the unit has evolved an expertise... It has carefully adhered to its terms of reference, viewing subversive threat in their context and seeking to counter them by disseminating factual material to carefully selected recipients. After it became apparent that non-Communist extremist and subversive movements (eg the Trotskyist and neo-fascists) also merited attention, the extension of the section’s work was authorised when

¹⁸ UCPI0000035086/1

¹⁹ UCPI0000035088

²⁰ UCPI0000035279/2

the mandate of the parent Cabinet Committee was broadened in 1969 to embrace all domestic subversive activities. The section now also watches such activities are those represented by student protests, Black Power, terrorism and Irish extremism..." (UCPI0000035242/14)

28. Lord Hain has repeatedly emphasised in his evidence that the British state's response to the AAM must be viewed through the perspective of the cold war.

As he stated in his oral evidence to the Inquiry:

"The Cold War prism through which the anti-apartheid struggle was seen was a very big part of the context in which we worked, but it was the South African apartheid state that presented itself as a bulwark against communism in its own language, And it suited its purposes that Washington and London and Berlin and Paris and Rome saw it as part of a contest between the Soviet Union and the democratic West, saw it as being on the side of the democratic West, when in fact it wasn't a democratic regime, the very opposite... it went against all the principles of democracy, including not having a democracy because the majority were not allowed to participate or vote and were denied the most elementary human rights."²¹

29. Lord Hain has provided the Inquiry with a special branch report dated 4.6.70 titled 'the final of a series of reports regarding the Stop the 1970 Tour Committee and other organisations opposed to the South African Cricket Tour'²². The report refers to "discrete enquiries into Hain's background" and makes a number of false claims including that his mother was "one of the leading members of the SA CP [South African Communist Party]" that his father was "active in the SA CP" and that Lord Hain himself was "closely associated with the SA CP".

30. As Lord Hain stated in his witness statement, it is clear that this information must have been provided by the South African security services. 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. This document, when viewed alongside the interests of the committees referred to in the Cabinet Office records illustrates the clear liaison and influence between the UK Security Service and counterparts in SA, the product of which fed into Special Branch records.

²¹ Transcript 30.04.21 p8

²² UCPI0000034089. See First Witness Statement of Lord Hain 03.03.20 at paragraph [333] onward

31. The Anti Apartheid Movement in the UK was, of course, part of a worldwide campaign and sprang from the anti-apartheid movement in SA, including the ANC. Christabel Gurney OBE has provided the Inquiry with details of how the movement was targeted in UK including; a series of break-ins in the 1960s; the theft of membership records from the AAM's office in the early 1970s and an arson attack on the AAM office in the 1980s. These incidents should be viewed alongside the bombing of the ANC's London Office in 1982²³. The South African angle of some of these matters were explored in the report of the Truth and Reconciliation Committee in South Africa²⁴. The Cabinet Office records show a continuing interest in actions taken opposing the apartheid regime in South Africa²⁵. In this context, the potential for influence on SDS targeting via the interests of the committees on subversion cannot be ignored.
32. The Cabinet Office records also provide a historical link with state surveillance before the SDS era. There are similarities in the SDS targets from 1968 with groups that were of interest to the Security Services from the 1950s onwards. Anti-militarism and peace campaigns from the 1950s and 60s were of interest to the predecessors of the committees on subversion. There is reference to the Committee of 100 being a target for in the Security Service paper on 'Subversion in the United Kingdom - Autumn 1967' and note from the Secretary of the Official Committee on Communism (Home)²⁶. Ernest Rodker was active in the Committee of 100. It is notable that in documents relating to Ernest Rodker's prosecution at the Star and Garter Demonstration in 1972²⁷ he is described by MD Rodger as follows: "this man [Rodker] has been a thorn in in the flesh for several years now, having had no fewer than 14 court appearances prior to 1963

²³ See First Witness Statement of Christabel Gurney, OBE dated 02.03.21 at paragraphs [112] to [146].

²⁴ First Witness Statement of Christabel Gurney at [117] onwards, in particular [124] to [126].

²⁵ See for example UCPI0000035274 a Briefing note for Sir Burke Trend on an upcoming meeting of the Official Committee on Subversion at Home dated 26.11.70 "Sir Burke Trend may like to ask Mr. Waddell whether the Home Office see and major risks arising over the next few months from political demonstrations, e.g. against the sale of arms to South Africa.". See also UCPI0000035227/5.

²⁶ See UCPI0000035236/10. See also UCPI0000035238 for reference to the Bertrand Russell Peace Foundation.

²⁷ See below for further discussion

for offences involving public disorder”²⁸. The continuity of interest from the committees on subversion and their predecessors suggests the explanation of why he was targeted in the SDS era and why he appears to have attracted so much attention, including reports on his involvement in conventional campaigning groups and the collection of personal and private information about him²⁹.

33. The SH Committee records also show a keen interest in student demonstrations. The London School of Economics is specifically mentioned in a Security Service memorandum on 'The Current Situation Amongst British Students' dated 05.03.70 provided to the SH Committee:

“Firms and individuals with investments in South Africa have been under attack for a long time. It will be recalled that this was the issue that first started the troubles in the London School of Economics and the issue has had new life breathed into it by the Springboks tour and the forthcoming tour of the South African cricket team this summer.”³⁰

34. Professor Rosenhead was an academic at the LSE at the time. The particular interest of the SH Committee in student demonstrations therefore provides a motivation for his targeting by the SDS over and above his involvement in the STST. It is notable that several SDS reports concern meetings held at Professor Rosenhead’s office in the LSE³¹. Again, this suggests an influence from the committees on subversion on SDS targeting.
35. It is also clear that even when the formal targets of the SDS had moved on from the anti-apartheid campaign and the STST, the AAM remained of interest to the Security Service. The SDS were aware of this interest and appear to have been collecting information on the Anti-Apartheid Movement, sometimes on behalf

²⁸ MPS-05267892

²⁹ As set out above.

³⁰ UCPI0000035228/2

³¹ See UCPI0000008607 and MPS-0736368 and First Witness Statement of Professor Rosenhead at paragraph [53].

of the Security Service, well into the 1980s³². The political interest shown in the Cabinet Office records adds a further dimension to this influence.

36. The influence of the committees on subversion on SDS targeting is also evident in groups other than the anti-apartheid movement. For example, the Worker's Revolutionary Party (and its predecessor the Socialist Labour League) are referenced throughout the Cabinet Office records. Repeated reference is made to connections between the WRP and the entertainment industry. Documents record:

"..WRP ..has attracted to it a small number of talented writers, directors and producers whose abilities are exploited in its interest...in television drama members ...of the WRP produce work containing elements of Trotskyist propaganda. At the same time, the WRP has a wide range of contacts in the Media through whom Trotskyist influence may be brought to bear in the reporting of news and current affairs..".³³

37. The same documents also refer to the exclusion of subversives from higher ranks of the civil service. The concerns and methods of the committees on subversion are mirrored in the concerns of Roy Battersby a film director and WRP member who was blacklisted by the BBC as outlined in his evidence to the Inquiry³⁴.
38. The WRP was well recognised by the SDS as not using violence and not a threat to public order.³⁵ It was clearly not a subversive organisation standing general

³² UCPI00000016192 is a report by HN106/'Barry Tompkins' on a social event held by the AAM on 24.01.81

³³ Cover letter enclosing Security Service report on 'the Threat of Subversion to the UK – April 1976' 24.5.76 (UCPI0000035247). See also Letter from James Waddell to Sir John Hunt dated 14.04.75 attaching Security Service report 'The Security Significance of the Ultra Left in the UK in 1974' (UCPI0000035309) which states: "Somewhat surprisingly, in view of its austere political image, the WRP has made a determined effort to exploit to the full the talents at its disposal in the entertainment media in order to put over generally unfocused propaganda or win support for specific policies. [Redacted gist: a number of television and film producers] are known to be willing to place their talents at the WRP's disposal...."

³⁴ See First Witness Statement of Roy Battersby dated 11.02.22

³⁵ MPS-0741115/3, Special Branch Annual Report 1973 (p11): '*The declared aim of the new organisation was to become a broad-based revolutionary party with mass appeal which would be clearly recognised as a viable alternative to the Labour Party. ...there is no reason to suppose that these moves will lead to any sudden upsurge of militancy likely to present a public order problem*'; Special Branch Annual Report 1981 (p9): '*The [WRP] remains a well-organised and affluent Trotskyist organisation with the largest paper membership of a group of its kind in the [UK]. ...The Party organised only two minor demonstrations in 1981 and is not considered to be a threat to public order*'.

election candidates. However, it was nevertheless targeted by the SDS despite misgivings by some managers.

- i) HN298/'Mike Scott' attended the WRP education centre, White Meadows, in 1975 contrary to the wishes of DAC Gilbert and HN3030 'Peter Collins'.³⁶ The purported explanation for HN298/'Mike Scott's attendance at White Meadows contrary to his authorisation is that there was not time to communicate the withdrawal of authorisation to him before he attended on the basis that he was invited to attend at short notice. This explanation was criticised by Elizabeth Leicester in her oral evidence who explained that WRP members invited to attend White Meadows would regularly decline to attend at short notice due to work, family or personal commitments without attracting undue attention³⁷. It is regrettable that, due to her late addition as a witness and lack of core participant status, this point could not be put to HN298 when he gave evidence.
- ii) The White Meadows conference centre was also subject to a police raid. A Home Office Paper written in 1980 describes this as: "Raid on the Workers' Revolutionary Party Training Centre on the advice of the Security Service, but much against the advice of the Metropolitan Police Special Branch (1975). The raid was covered by the Observer newspaper who had been tipped off prior to the raid occurring and printed a report critical of the WRP³⁸. There are clear parallels with the references to the use of adverse media coverage against purported subversive organisations recommended by the committees on subversion.
- iii) In 1979, DCI Mike Ferguson, then a senior SDS officer, stated in response to a Security Service request for coverage of the Workers Revolutionary

³⁶ See MPS-0741115

³⁷ Transcript of evidence 13.05.21 at p29 lines [3]-[18]

³⁸ The circumstances of the raid and report are covered in the First Witness Statement of Roy Battersby dated 11.02.22 at paragraph 86 onwards.

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*”.³⁹

39. It is therefore clear that the SDS was involved in targeting the WRP at the behest of the Security Service for reasons unrelated to any proper policing purpose. The continued interest in the WRP by the committees on subversion further confirms the political influence on SDS targeting.
40. What the reports from the Cabinet Office Records show is the level of political interest in many of the groups targeted by the SDS. Particularly in circumstances where the SDS was ultimately dependent on the Home Office for funding, this gives rise to very real concerns over political influence on SDS targeting.

Conclusion on Targeting:

41. The CPs repeat what was said in their opening statement for T1P2. 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.

³⁹ UCPI0000028835/1, para (b)

CASES OF MISCARRIAGE OF JUSTICE

Star and Garter prosecution

42. On 17th January 2023, more than 50 years after they were first convicted, the Crown Court at Kingston-Upon-Thames upheld the appeals brought by Professor Jonathan Rosenhead, Christabel Gurney and Ernest Rodker for offences arising out of the demonstration at the Star and Garter Hotel in 1972. These appeals followed the Inquiry's referral of the matter to the panel considering cases of miscarriage of justice who then made an onward referral to the Criminal Cases Review Commission who in turn referred the case to the Crown Court.

43. The CPs welcome the Chair's referral of the Star and Garter demonstration to the Panel 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"⁴⁰

44. Referrals from the CCRC to the Crown Court operate as a rehearing. Given the age of the case, it was clearly impossible for the CPS to prosecute the appeal and the appeals were allowed without the Crown Court being required to make any factual findings. However, when allowing the appeals, HHJ Lodder KC stated in open court that:

"It is important to recognise that in the judgment of the CCRC there were substantial grounds for finding an abuse of process. We don't resile from that in any way whatsoever."

45. It is regrettable, that none of the others convicted at the Star and Garter demonstration appear to have been contacted by either the Inquiry or the CCRC. These remaining convictions appear to be unsafe just like those that have already been quashed. Moreover, the CPs are unaware of any attempt to correct the record of conviction from Mortlake Magistrates' Court to replace the false

⁴⁰https://www.ucpi.org.uk/wp-content/uploads/2021/06/20210622-miscarriages_of_justice_panel_referral.pdf (at [11]).

name given by HN298 (which is known to refer to another person who is still living) with HN298's real details.

46. It is submitted that, as well as referring the convictions of Rodker, Rosenhead and Gurney to the panel, it is important for the Inquiry to consider the following matters when assessing the issue of miscarriages of justice within the Inquiry's terms of reference⁴¹:

i) *Factual location of protest*

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 the arrests. HN298/'Mike Scott' could have taken steps to correct the prosecution or to give evidence for the defence telling the court where the arrests took place. Clearly, if he revealed that he was a serving police officer his evidence on this point would have carried significant weight. He did not provide this evidence in support of the defendants.

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. Notwithstanding the pace at which matters developed, it is submitted that HN298/'Mike Scott' should not have been permitted to participate in the demonstration without some form of authorisation: whether in specific or general terms. The system of authorisation, at both a particular and general level, was entirely ineffective or non-existent.

⁴¹ Clearly there is limit to level of detail at which findings can be made 50 years after the events concerned. The factual position endorsed by the CPs is set out here to enable consideration of what matters are relevant by the Inquiry.

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. There could therefore be no consideration be those responsible for ensuring the fairness of the proceedings as to what information should have been provided to the defence or, in the absence of disclosure, whether it was possible for the defendants to have a fair trial.

iv) Misleading the court

In giving evidence under a false name and in the guise of an activist, HN298/'Mike Scott' positively misled the court. He presented a false picture of his role in the events. The court was therefore misled on a fundamental issue rendering the prosecution tainted.

v) 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.

47. The CPs also ask the Inquiry to make findings concerning the role of SDS Management in the decisions that lead to the Star and Garter prosecutions. 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 15.05.72⁴² 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

⁴² 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'⁴³ sets out the facts of the arrest and charge. A minute sheet dated 17.05.73⁴⁴ 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'⁴⁵ 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

⁴³ MPS-0526782/7-8

⁴⁴ MPS-0526782.

⁴⁵ MPS-0526782/7-8

embarrassment to police if his true identity should ever be disclosed” (emphasis added)⁴⁶

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”.

- 48. The CPs submit that the management, at all levels within the SDS and the higher ranks of Special Branch, were aware of and approved, the plan for HN298 to participate in criminal proceedings without disclosing his true identity. It is further submitted that no concerns were held by SDS managers over misleading the court, breaching legal privilege or for any other consequence beyond reputational damage to the police. The Inquiry is respectfully invited to make relevant findings in line with these submissions.

Later prosecutions

- 49. As submitted in opening statements for the earlier phases of Tranche 1, 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.
- 50. 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-

⁴⁶ 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 the very near future to discuss what their tactics should be”. Spying on defence meetings was therefore communicated to the Deputy Assistant Commissioner.

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:

“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.”⁴⁷

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 convicted⁴⁸.

51. On both occasions, the documents show that 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”⁴⁹. 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.

⁴⁷ MPS-0526784, p12

⁴⁸ UCPI0000011356.

⁴⁹ MPS-0526784/7 and 10

52. It is against these documents that the oral evidence of HN34/Geoff Craft must be assessed. HN34/Geoff Craft signed off two reports relating to the prosecution of HN13 at Barkingside Magistrates' Court⁵⁰. Later documents post-date his time at the SDS.

53. In his written Rule 9 statement dated 07.12.20, HN34/Geoff Craft denies any recollection of the prosecution of HN13. He states: "I have no recollection of this at all... I do not remember going to court for [HN13]"⁵¹. However, in his oral evidence the following is recorded:

Q: Did you speak to the magistrates' clerk?

A: and the magistrate

Q: You spoke to them?

A: yes

Q: And what did you tell them?

A: I briefed the magistrate that this was an undercover officer working under his undercover name, that it was a secret operation, that he would maintain that name. My concern also was that because he was arrested with this -- these other people, who liked to make public displays, the chances were that he -- they might try and kick up in the dock and behave badly, that he would be obliged, to maintain his cover, to join in.

Q: Was that conversation on the same occasion that you spoke to the constable?

A: I don't think so. I think this was when -- the morning he appeared. I seem to remember it was on the morning he appeared.

...my memory is fixed on going to the court and seeing the magistrate, and the clerk of the court was with her. I can't really go beyond that, to be absolutely accurate.

54. It is notable that this evidence was made following Opening statements where submissions were made that the disclosure to 'a court official' as set out in the written reports fell short of what was required to ensure a fair trial.

55. The following points are made in relation to the evidence of HN34/Geoff Craft:

i) Unsupported by contemporaneous documents

The oral evidence of HN34/Geoff Craft that he told a magistrate that HN13 was an undercover officer is entirely unsupported by the

⁵⁰ MPS-0526784/11 (dated 21.09.77) and MPS-0526784/12 (dated 19.09.77).

⁵¹ MPS-0747446/43 at [100] and repeated at [101].

contemporaneous documents which go no further than that a court official was told one of the defendants was an informant.

ii) Chronology

The oral evidence does not match the chronology set out in the written documents. HN34/Geoff Craft stated that he spoke to a court clerk and magistrate on 'the morning of he [HN13] appeared' but that it was a different occasion to when HN34/Geoff Craft spoke to the arresting officer. The documents refer to a first appearance at Barking Magistrates' Court on 21.09.77 at which a trial date was set for 03.01.78 and no further court dates are mentioned. The report confirms that HN34/Geoff Craft spoke to the arresting officer at court on 21.09.77. No mention is made of speaking to the court clerk or magistrate on this occasion. HN34/Geoff Craft confirmed in oral evidence that had he made contact with a court official on that occasion he would have recorded it. HN34/Geoff Craft had left the SDS before the later court dates.

iii) Number of court officials spoken to

The identity of the person spoken to at court is redacted in the written documents. However, the gist provided is "a court official" (singular) and reference is later made using the pronoun "him"⁵². This suggests that only one male individual was spoken to which is inconsistent with HN34/Geoff Craft's oral evidence that a court clerk and a female magistrate were spoken to.

iv) Content of disclosure

The oral evidence does not match the content of the disclosure set out in the documents. None of the documents refer to any court official being told that HN13 was an undercover officer. The documents only refer to the court official being told that 'one of the defendants (name not given)

⁵² See MPS-0526784/10 at [6].

is an informant'⁵³. This differs from the oral evidence in that: (a) it states that HN13 was not singled out from the other defendants; and (b) the defendant is specifically referred to an 'informant' rather than an undercover officer.

v) Motivation for disclosure

The written documents refer primarily to a concern that HN13 might be recognised by the arresting officer as the reason why HN34/Geoff Craft attended court. Later reports refer to anxiety over safeguarding him from a prison sentence. In oral evidence for the first time, HN34/Geoff Craft referred to a concern that the defendants might "kick up in the dock" and HN13 "would be obliged... to join in". No explanation is given why protecting HN13 from sanctions, even from "kicking up" in the dock, was not accomplished by saying that he was "an informant" rather than by making full disclosure of his role as a UCO.

vi) General level of recollection

HN34/Geoff Craft does not generally have a strong recollection of particular details of the prosecution of HN13 or of UCOs being involved in criminal activity. Many of his answers on other points are very vague (as might be expected given the passage of time). It is therefore unusual that he should have a strong recollection of speaking with a magistrate' particularly after initially stating in his Rule 9 statement that he could not recall the incident at all.

56. For the reasons above, the Inquiry is invited to reject the oral evidence of HN34/Geoff Craft that a magistrate was told that HN13 was an undercover officer.

57. In any event, there is no evidence that any magistrate was spoken to in relation to the later prosecution of HN13 which took place at Camberwell

⁵³ It is notable that for the later prosecution of HN13 at Lambeth Magistrates' Court, the report specifically states that the cover name was given to a court official (MPA-0526784/7).

Green/Lambeth Magistrates' Courts. In relation to this prosecution, all that the written documents state is that "a court official" was told that "the defendant (cover name given) was a valuable informant in the public order field whom we would wish to safeguard from a prison sentence"⁵⁴.

58. In relation to all the prosecutions, it is clear that no disclosure over HN13's role was made to the prosecution. There was hence no means for the prosecution to consider whether there was other material which would have fallen to be disclosed to the defence if they had been aware of the true role of HN13 or to consider the public interest in continuing with the prosecution. This is particularly concerning in relation to prosecutions for charges that appear to arise from incidents involving excessive force from uniformed officers.
59. Stepping back from the details of what was said to the court officials in these cases, what is clear is that the only concerns raised by managers in the SDS are over maintaining the operational secrecy of the SDS and protecting HN13 from a prison sentence. No concerns are raised by anyone in relation to the fairness of court proceedings or the impact on co-defendants who, assuming the SDS managers' fears for HN13 were correct, appeared to be facing a real risk of imprisonment. This focus is shared by HN34/Geoff Craft in his oral evidence, whether or not he disclosed to the court that HN13 was a UCO, he certainly had no concern about the integrity of the trial process.
60. 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 15.04.78⁵⁵.
 - 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

⁵⁴ MPS-0526784/7.

⁵⁵ MPS-0526784/2

Commissioner 'C' on 20.04.78 who then informed the Commissioner of the Metropolitan Police⁵⁶.

iii) To ensure secrecy, DAC Bryan informed the ACC that he kept the relevant paperwork in his personal safe⁵⁷.

61. 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 or for the integrity of the criminal justice system.
62. Such findings were mirrored in the *Review of Possible Miscarriages of Justice* carried out by Mark Ellison QC and Allison Morgan in 2015⁵⁸.

“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.”

63. The picture which emerges from the evidence in Tranche 1 is that SDS Management -at all levels- were swiftly made aware of UCOs facing criminal charges. They then actively promoted and supported the policy of total secrecy without any regard for the impact beyond the SDS itself. The policy of 'total secrecy' had the capacity to erode faith in the criminal justice system. It was a template set down by the prosecutions considered in Tranche 1 and picked up in later decades. It should be a central concern of this Inquiry.
64. Not all the identities of those defendants prosecuted alongside HN13 have been made public⁵⁹. Whilst these convictions were the subject of a report by the CPS for Operation Shay, no referral of the convictions appears to have been made to the CCRC. CTI's opening statement for T1P2 states that the Chair: “will need to consider whether any of the resulting convictions merit a referral to the

⁵⁶ MPS-0526784/3 and 5

⁵⁷ MPS-0526784/5

⁵⁸ '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').

⁵⁹ It is understood that some of the co-defendants are now deceased.

miscarriage of justice panel”⁶⁰. The CPs ask that the convictions are referred for consideration by the panel.

CONCLUSION

65. In conclusion, the CPs return to the questions which they invited the Inquiry to address in their initial opening statement:

- i) What was the purpose of the surveillance on them in the first place?
 - Was the purpose legitimate?
 - Even if one of the purposes put forward was ostensibly legitimate, was there a different illegitimate and true purpose?
 - Was the purpose tainted by political motivations? Was it tainted by racism or other prejudices?
 - Is the purpose that is now being presented no more than an *ex post facto* justification?
 - Was the purpose even clear at the time?

- ii) Was there an appropriate legal and supervisory framework for that surveillance?
 - What was the framework?
 - Is there evidence of that framework at the time?
 - Was the framework followed – what is the evidence to support that?
 - How was that legal and supervisory framework avoided or exploited by officers and their supervisors?
 - Why did the framework not fulfil its purpose to protect the rights of these Core Participants?
 - Would the framework in place today have ensured a different outcome?

- iii) Was the activity carried out pursuant to the surveillance necessary and proportionate?

⁶⁰ CTI Opening T1P2 at [149].

- What was the threat, if any, posed by those placed under surveillance?
 - Was the level of intrusion, or the unlawful activity pursuant to that surveillance justifiable?
66. Following the hearing of evidence in Tranche 1, the CPs submit that the answers to these questions in the Tranche 1 era are clear:
- i) There was no legitimate purpose behind the surveillance of the CPs;
 - ii) The legal and supervisory framework was wholly inadequate if not non-existent; and.
 - iii) The surveillance activity was a grossly disproportionate interference with their private lives and legitimate political campaigning.

Owen Greenhall
Garden Court Chambers
12.02.2023