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Failings over Mark Kennedy undercover officer case

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A prosecutor is facing disciplinary action after a report criticised the handling of two climate protest trials involving an undercover officer.

Twenty protesters were cleared at the Court of Appeal earlier this year after the role of Mark Kennedy was revealed.

A report cleared the Crown Prosecution Service of deliberately withholding information about the officer but said the trials were wrong.

Mr Kennedy spent seven years underground, infiltrating green groups.

In December 2010, 20 protesters, part of the movement Mr Kennedy had infiltrated, were convicted over an alleged plot to shut down the massive coal-powered Ratcliffe-on-Soar power station near Nottingham.

But a second trial of six more protesters collapsed after it emerged that the officer wanted to use his secret recordings to help the defence.

Kennedy had permission to break the law as part of his cover - but the collapse of the Ratcliffe case led to allegations of entrapment and triggered inquiries into the affair and the role of undercover police officers.

[In his report for the CPS into whether prosecutors had suppressed evidence](#), Sir Christopher Rose said Mr Kennedy's activities and his secret recording were "never effectively distributed between all relevantly interested police officers or to the CPS", even though they undermined the prosecution.

The former judge said that if the CPS reviewing lawyer, Ian Cunningham, had fully understood Kennedy's role, nobody would have gone on trial.

But he said Mr Cunningham, had "relied too heavily" on what police told him about the undercover officer, who was managed by the National Public Order Intelligence Unit.

"[Mr Cunningham's] statutory responsibility to keep disclosure under review meant that he should have continued asking... questions," said the report.

"All those involved in [managing] the case were well aware, or should have been if relevant guidance had been consulted, of what they needed to do."

The former judge criticised several senior police officers.

He said a note of a meeting between senior officer three days after the 2009 arrests described Mr Cunningham as "danger - environmentally friendly."

Furthermore, leading officers in both Nottinghamshire and the National Public Order Intelligence Unit did not initially reveal Mark

Kennedy's existence to the detective managing the case.

The report said: "I accept that the [senior NPOIU officer] was entitled to do all he properly could to protect his asset. But at the disclosure stage, he was not entitled to withhold from the Senior Investigating Officer, the deputy SIO or Mr Cunningham material... they needed to know."

But he added: "Nothing I have seen or heard suggests that, at any stage of this prosecution, there was deliberate - still less dishonest - withholding of information which the holder believed was disclosable".

Ben Stewart, one of the 20 protesters whose convictions was quashed, denounced the report as "the whitest of whitewashes".

Director of Public Prosecutions Keir Starmer confirmed Mr Cunningham now faced disciplinary proceedings.

"What happened in this case cannot be allowed to happen again," said Mr Starmer. "It has to be seen as a watershed in the way cases involving undercover officers are dealt with.

"I take very seriously the findings of individual failings on the part of the CPS, including failures properly to comply with disclosure obligations, failure to ask questions of the police and failure to oversee the case effectively."

Mr Starmer said he had written to the Association of Chief Police Officers saying that in future cases police must disclose everything about undercover officers as soon as prosecutions are being considered.

The IPCC is still investigating Nottinghamshire Police's actions in the case. A separate report by the inspectorate of constabulary has been delayed until the New Year.

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