

The Telegraph

CPS lawyer Ian Cunningham faces dismissal over failing in Mark Kennedy undercover case

A senior crown prosecutor, Ian Cunningham, is facing dismissal after a report into the activities of the undercover police officer Mark Kennedy identified failings by the lawyer.



Mark Kennedy at the Ratcliffe-on-Soar power station, April 2009

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11:05AM GMT 06 Dec 2011

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The report, by the former Court of Appeal judge Sir Christopher Rose, criticises Mr Cunningham for failing to ask questions about Mr Kennedy's involvement in a plot by environmental activists to shut a power station.

The report also criticises the police, suggesting that officers did not disclose material about Mr

Kennedy's activities to Mr Cunningham

Mr Cunningham was the Crown Prosecution Service (CPS) lawyer involved in prosecuting environmental activists who were plotting to try and shut a power plant at Ratcliffe-on-Soar in Nottinghamshire in 2009.

Twenty activists were convicted at trial. But a trial of six others collapsed after it emerged that the prosecution had failed to disclose material relating to Mr Kennedy's involvement with the group.

It later emerged that Mr Kennedy, a former Scotland Yard officer, spent years posing as an activist known as Mark Stone.

[Pc Mark Kennedy: double life of undercover policeman in climate group](#)

[Greens 'infiltrated by 15 undercover police'](#)

Following this the 20 activists had their convictions quashed amid allegations that the CPS had withheld material relating to Mr Kennedy's involvement with the protesters from the defence at the first trial.

Sir Christopher's report has rejected that suggestion, saying that Mr Cunningham had not withheld the information, rather that he was not aware of it.

It concluded that Mr Cunningham had failed by not probing Nottinghamshire Police, Mr Kennedy's handling force, for sufficient information about Mr Kennedy ahead of the first trial.

Director of Public Prosecutions Keir Starmer QC said he took the findings "very seriously indeed" as he ordered disciplinary proceedings against Mr Cunningham.

Mr Cunningham, the CPS lawyer leading the case, "relied too heavily on what he was told by police in relation to the undercover officer and failed to probe what material there was in relation to the undercover officer's activities", Sir Christopher said.

Although there were individual failings, "at no stage of the prosecution was there a deliberate, still less dishonest, withholding of information", the report said.

The report says that Mr Cunningham failed to establish the existence of certain documents relating to what Mr Kennedy was authorised to do while undercover. It adds that Mr Cunningham did not even know Mr Kennedy's name.

It says: "Because the [code of practice] puts the responsibility for disclosure on the prosecutor, Mr Cunningham, as the prosecutor and reviewing lawyer, must bear the primary responsibility for non-disclosure to the defence."

The report also questions the role of the police. It reveals that officers were suspicious of Mr

Cunningham from the start of the investigation. A note of one police meeting reads: "Ian Cunningham - danger environmentally friendly.

Sir Christopher writes: "There is no material of any kind before me to suggest that Mr Cunningham is or was inappropriately 'environmentally friendly'.

"I do not know for how long or in the minds of which police officers that perception of Mr Cunningham persisted. But it was an unfortunate starting point to a relationship which required, if the interests of justice were to be served, complete mutual trust between the police and the CPS."

The cases against the protesters collapsed after the discovery in January 2011 of notebooks and a tape recording made by Mr Kennedy shortly before the group was due to attempt to shut down the power station.

The tape showed that many of the protesters were not aware of the plan to try and close the power station and were persuaded to take part in it. It meant that there was a question over whether Mr Kennedy had overstepped his role and become an agent provocateur.

The report reveals that Mr Cunningham was never made aware of these items.

It details a meeting in which Mr Cunningham assures a fellow CPS solicitor that Mr Kennedy was not an agent provocateur. The report adds that Mr Cunningham gave colleagues the impression that Mr Kennedy was "on the periphery of what was happening" and adds: "Mr Cunningham was not contradicted by any of the police officers present."

The report concludes: "Several of the police officers involved...had not acted as they should in relation to disclosure and collectively had not alerted Mr Cunningham...to the variety of sensitive material which existed.

"Secondly Mr Cunningham had failed, virtually throughout, to ask pertinent questions of the police in relation to that material."

Following the publication of the report Mr Starmer said that he had written to Sir Hugh Orde, the president of the Association of Chief Police Officers (Acpo), asking that in future cases involving undercover officers, all material must be shared as soon as a prosecution is launched.

An independent investigation is underway into claims that the police misled the CPS.

A spokesman for the Independent Police Complaints Commission (IPCC) said that it would report "in the next few weeks". He added: "The IPCC's independent investigation into whether Nottinghamshire Police met their obligations for disclosure in the case of the six environmental protesters is near conclusion.

"Our investigation has taken account of statements from officers involved, material from the police including the results of a review following the trial collapse, and information provided by the CPS."

Nottinghamshire Chief Constable Julia Hodson acknowledged errors in disclosure of material to the

CPS. She said: "Locally steps have already been taken to ensure that such procedural errors do not reoccur.

"Nottinghamshire officers have fully responded to any questions posed by Sir Christopher's team and have openly and transparently engaged with all enquiries into the policing of the environmental protests at Ratcliffe on Soar."

There are currently two other investigations pending into the issue of undercover officers. The Serious Organised Crime Agency and Her Majesty's Inspectorate of Constabulary are due to report.

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