

THE UNDERCOVER POLICING OF POLITICAL PROTEST

by **Helen Mills**

For decades hundreds of police officers carried out secret operations against a wide range of political and trade union activists. They assumed fake identities and built relationships with campaigners to infiltrate social justice movements, and then reported back to senior officers.

Once these operations came to light, the government acceded to a judge-led investigation it named the ‘Undercover Policing Inquiry’. The title itself is misleading. It is not an inquiry into undercover policing in the round but, as the title of this briefing suggests, one focused on the secret policing of political protest movements.

Many would not challenge the necessity of undercover policing for those tackling trafficking human beings, or child sexual abuse rings. Few would think necessary the secret policing of someone writing a leaflet opposing the McDonald’s burger chain.

The confusion of undercover policing in general, with secret policing of political campaigning in particular, serves only to strengthen the impression that those under observation may be a threat to the country. It serves to legitimise the very operations which are supposed to be under investigation by the inquiry. This briefing, which foregrounds the voices of those subject to secret political policing, left me with a profoundly uncomfortable feeling about the nature of the country I grew up in and the contemporary democracy we all inhabit. Four decades of secret policing took place without anyone in a position of power or authority taking the view that there was something seriously wrong. The practice continues to this day.

Are we seeing the tips of two icebergs? First, the sheer size and scope of the undercover operations that have taken place, and the time it will take for the full story to emerge. Second, of a resistance by the police bureaucracy, including proven file shredding, to the transparency required for the inquiry to fulfil its purpose.

Those who argue there is a genuine rationale for such operations may begin to wonder whether it will prove possible to hold such activities to account. For others, this will demonstrate that the secret policing of political campaigners fundamentally compromises the democracy we share and as such should not take place at all.

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Background and purpose

In 2015 and 2016, the Centre for Crime and Justice Studies co-organised two conferences with The Monitoring Group on the undercover policing of political protest groups and social movements. The events brought together over 200 people, many of whom had been the subject of undercover operations.

The conferences aimed to share experiences, learn from others and discuss what was known about undercover operations so far and their implications. This was intended to be principally amongst those who had been the subject of undercover policing operations and their supporters, several of whom had recently formed campaign groups regarding this issue, as well as with a wider audience questioning the use of these practices.

The events took place alongside the start, and early days, of the undercover policing public inquiry. How to make the most of this public inquiry to get answers was an important subject of discussion amongst the participants. While hopeful about the opportunity this public inquiry would bring to getting answers, there was a concern that it could constrain public debate about undercover policing whilst awaiting its conclusions. This briefing attempts to address this concern. Its aims are twofold:

- To share the voices of those directly affected by undercover police operations.
- To keep the pressing concerns raised about the undercover policing of political protest groups and social movements in the wider public domain.

To compile the briefing, 12 discussions were held with over 20 people who have been impacted by undercover police operations of political groups and protest movements. Individuals were asked about their experiences of seeking accountability for undercover operations, and their views about the scope for future change. This includes individuals from the trade union movement, antifascist groups, police monitoring groups, organisations challenging racism, environmental and climate change campaigners, the

animal rights movement, and anti-war activists. All except one had been granted core participant status in the public inquiry, meaning they had been recognised as having a direct or significant role or interest in undercover policing. This briefing is principally informed by what was heard in these encounters, and the quotes featured are from these meetings unless otherwise stated. The briefing's structure reflects three key accountability phases: institutional responses to allegations and questions about undercover practice; how this issue has progressed at the public inquiry; and finally, interviewees' views about future options for accountability.

Whilst this briefing reflects discussions with a range of people, the views and experiences described here are not intended to be necessarily representative of all those affected by the undercover policing of political protest groups, nor does this briefing claim to be speaking for all those who are non-state core participants in the public inquiry.

There is much about undercover policing and the concerns it raises that has not been possible to include here. For readers seeking more detailed information, the campaign groups Police Spies Out of Lives, Campaign Opposing Police Surveillance, and the Undercover Research Group all share repositories of resources and ongoing commentary regarding the key issues affecting those who have been spied upon. Videos of the two previously mentioned events which feature over 30 speakers on the undercover policing of political groups, are available on the Centre for Crime and Justice Studies website. Unravelling 'the truth' about undercover policing is far from completed. Rob Evans writing for The Guardian and using #spycops on Twitter are two good sources for keeping up to date with developments, whatever they may be, after this briefing is published.

Introduction

A police officer assumes a cover identity. They create a backstory. Then, over the course of perhaps several years, they 'live' for five or six days a week as an activist. Based on the relationships they make, they report back the information they learn to their supervisor. This technique has been employed by the police in England and Wales for several decades. There have been units dedicated to this task since 1968, the first of which was called the Special Demonstration Squad (SDS). This unit was established in response to the Vietnam War protests of the time. In the years that followed, the targets of the SDS and its various subsequent incarnations shifted. Whilst its exact purpose remains a matter of dispute, official explanations for its

existence revolve around protecting national security and managing the threat of subversion, political violence and public disorder. It is also a practice which has, until relatively recently, taken place without the public's knowledge, let alone scrutiny.

The undercover policing scandal as we know it today started with the exposure of Mark Kennedy as an undercover police officer in early 2011. Over the next few years other police officers' cover names were exposed, largely driven by the work of political activists who had suspicions about them. Estimates suggest at least 460 groups have been spied upon and that there were around 150 officers in the SDS. These estimates do not include political groups subject to police infiltration by police units outside the SDS. Some recent estimates of the number of groups that have been targeted by undercover operations more than doubled these figures. Twenty three police cover names are now in the public domain. A series of revelations about the work of the units has accompanied these exposés including:

- A pattern of intimate, long-term relationships whilst working undercover (including police officers engaging in sexual relationships and, in at least two cases, fathering a child).
- Officers concealing their 'real' identity in the course of criminal prosecutions, including from the judge and/or withholding information that could aid defendants' cases.
- Recording information on at least 18 justice campaigns, formed in the wake of controversial deaths in custody, racist murders, or allegations of police misconduct. This includes the allegations of spying on the friends and family of Stephen Lawrence and their legal representatives as part of a 'smear campaign' by the police.
- Collecting information on elected members of parliament.
- Undercover officers engaging in criminal activity. This includes an undercover officer allegedly planting a firebomb in a department store as part of a campaign against the fur trade in the 1980s.
- Police officers sharing information about trade union activists with private companies with a view to the information being used to discriminate in the recruitment or treatment of workers (blacklisting).

Undercover policing became a matter of considerable public concern and political interest, reflected not least of all by, the then Home Secretary, Theresa May's announcement in spring 2014 of the current judge-led public inquiry.

To date over 180 people have been granted a role in the public inquiry because of their involvement in political movements and social justice campaigns (the so-called 'non-state core participants'). This number is expected to grow during the course of the inquiry. These individuals have been able to provide evidence that they have been spied upon, and want to participate in a process to hold the police to account over these practices. The range of organisations the non-state core participants have been active in indicates something of the wide remit of these operations: it includes family justice campaigns, civil liberty organisations, anti-fascist groups, police monitoring groups, animal rights organisations, racial equality campaigns, trade unionists, and the climate change movement.

The extent to which this list is representative of all the political groups targeted and infiltrated by undercover policing remains to be seen. That it includes those whose 'threat' appears to be principally to the police's reputation (such as appears to be the case regarding deaths in custody campaigns), those seeking change through solely democratic means, those who set their protest sights on corporate profits or sought to challenge government policy; make for a serious case to answer for the police, not only about what happened but also about in whose interests these missions were taking place.

Official answers:

Institutional responses to allegations

That was the official answer or the only answer we were given.

At first [the police] said 'oh that's being looked into'. Some of them said 'well I'll have to ask my commanding officer'. Others said 'oh, it's allegation, there's an inquiry so we're not giving any statements'. And that's one example of how difficult it is [...] non-cooperation by the police is the biggest problem.

[The police] gave us the standard 'we can neither confirm nor deny' the information that you've asked for. We then asked for an internal review and they completely ignored it. They didn't even respond to that at all which is why we went for the Information Tribunal.

It's very difficult to see whether there's any scrutiny about what the police present [...] You're just taking the police at face value and having to believe what they say.

Those who know they have been spied on do not have answers to the most basic of questions about the undercover operations they were subject to. They typically wanted to know: When they were spied upon, who was the spy, were they an explicit target of an operation or someone who became of interest to the police through their wider networks and contact with others who were targeted (so-called collateral intrusion), and what information about them is held by police?

Answering these questions was of course a matter of personal significance for the interviewees. Getting responses was also part of a more collective effort by those subject to undercover policing to clarify the rationale for the deployment of a highly invasive technique about which there has been little public debate. Their experience of asking questions about the surveillance they were subject to, detailed below, shows that progress is a protracted and frustrating business.

Most had found out they had been affected by undercover operations due to three sources: police whistle-blowers, research by the activist community themselves (including the Undercover Research Group's work to establish the existence and cover names of undercover officers placed in political movements), and through the work of investigative journalists.

This knowledge gave rise to concerns and as has been outlined, in some cases, serious allegations. In the course asking questions about undercover police operations, a number of avenues to getting more information had been explored by those interviewed, including asking for a copy of their police record (a subject access request under the Data Protection Act 1998). Under an exemption from disclosure for the purpose of safeguarding national security, access to police records was either denied or the personal files received were so heavily censored they were rendered useless. Those who had seen their police file were left with more questions than answers:

We found your name on a piece of paper and we've redacted everything else but here's a piece of paper with your name on [...] I think most people would rather have answers and be able to get on with their lives.

I've done that a couple of times [asked for the information the police hold on them] and the first time I got a lot more information than I did the second time. But the second time included information that I know they should have had on file (the first time) of other times when I've been arrested at protests and so on. So it's things like, I know that they haven't sent me the full file. It's very difficult to respond to that.

I've done subject access requests to the Metropolitan Police using the template that was in The Guardian and I've got a letter back saying that they do not have need to provide me with anything. There's nothing they hold on me that they're legally obliged to provide.

Some interviewees had been in contact with bodies currently charged with governing and investigating potential police misconduct. The Independent Police Complaints Commission (IPCC) and the Information Commissioner's Office were both mentioned. But their contact with these organisations brought no real answers to their questions.

'Neither Confirm Nor Deny' was the routine police response to their queries. That the police were prepared to go to considerable lengths to maintain this response became clear once the activists presented evidence produced by their own research to the police. It included dropping a prosecution case rather than reveal the presence of an undercover officer:

It was very much brick walls all the way, even when we knew for a fact that an undercover cop had been in the room and recording stuff, and we knew for a fact that the police or the prosecution or both must have known that that existed. In response they dropped the [prosecution] case [regarding conspiracy to commit aggravated trespass as part of a protest at a coal power station], go silent, find a scapegoat and that was that.

Even when an alleged former undercover officer was confronted by their former partner with whom they had formed a relationship whilst undercover and the former officer admitted their surveillance role, the police have not confirmed this.

Inquiries and investigations

In the years prior to the public inquiry opening in 2015, over 15 separate investigations were launched in response to allegations about undercover policing. These include inquiries, reviews and reports by the Independent

Police Complaints Commission, Her Majesty's Inspectorate of Constabulary, and the House of Commons Home Affairs Committee as well as Home Office sponsored reviews with appointed chairs (regarding allegations of spying on the Lawrence family, a review of possible unsafe criminal convictions, and links between the Home Office and an undercover unit), and an independent inquiry commissioned by the Director of Public Prosecutions. There have also been numerous internal police-led inquiries, the largest of which, Operation Herne, was established in 2011 to assess various aspects of criminal investigation in relation to the allegations.

In the course of these investigations some allegations have been proven. Several emerged as still unknown despite specific inquiries to assess them (the Taylor review into the links between the Home Office and an undercover unit, and the Ellison review into the allegations regarding spying on the Lawrence family, both cite the lack of information made available to them impacted their ability to reach findings). A number of allegations have yet to be explicitly made part of an investigation process.

Given the number of investigations, and the amount that has been written in the course of producing their associated reports, it is striking how much remains unknown about the undercover operations themselves. There is scant information available which enables those who have been spied upon, and the public more widely, to better understand and assess this aspect of policing.

The inquiries that took place were considered limited for several reasons. One factor was the investigations' narrow scope. Most of the reviews dealt with specific allegations rather than the practice of undercover operations in the political movements overall. Who conducted the reviews was another perceived shortcoming. Many reviews have been led by the police or associated bodies. However, it was the limited transparency produced through this process that was considered the most important problem for those interviewed. The majority of inquiries were conducted in private, with only a final report available in the public domain. Unsurprisingly, those affected by undercover operations were typically critical about the recommendations for future practice that were made in the course of the reviews, when the practice itself is still largely shrouded in secrecy:

The police say that they've reduced this tactic or, you know, have changed the rules on it, we've had all these internal enquiries saying 'oh we've learned our lesson.' But we don't know and we won't know until there is genuine visibility, and transparency.

What those interviewed knew had largely emerged in spite of police governance structures, rather than because of them, and as the result of the considerable effort of civil society groups, journalists and activists. Hence those who know they have been the subject of an undercover police operation suggest they may well be ‘the tip of the iceberg’:

Well, originally, the whole thing was about one or two bad apples [...] that was how the story was spun. And it's only because of, you know, we are the people who've exposed what's going on, not the police. The police haven't given us anything other than the fact[s] that we've exposed.

It's all just come a bit at a time by the work of activists themselves doing the research. So, you know, if we're actually given information – there's masses to come out.

In addition, numerous legal actions against the police have been pursued since 2011, some of which are ongoing. This includes civil cases brought by several of those deceived into longterm relationships with undercover officers. Out of court settlements in these cases have been reached. The details of these settlements are confidential bar the apology the claimants received from the police.

Human rights claims are also in the process of being heard by the Investigatory Powers Tribunal regarding Articles 3, 8, 10, 11 and 14. This will be an important test of whether practices are violations of human rights. But whatever judgement is reached through these proceedings, there is little confidence that the outcome will bring greater visibility regarding the operations themselves. Any hearings in this case will be held in secret. Complainants and their legal representatives may not be present. These lengthy legal processes have been described by Police Spies Out of Lives as providing ‘nothing in the way of disclosure on any case brought so far.’

Unknown and unknowable?

Any attempts at greater transparency have been hampered by counterbalancing police arguments that the success of undercover policing is premised on its ability to remain secretive. This includes it being a closed world to those subject to its operations and to the public more widely. The defence of this blanket approach is that it is necessary to protect covert methods, the safety of undercover officers (during deployment and once retired), and any ongoing investigations. To operate undercover policing the public have been asked to

accept the proposition that the work of these units is such that even to confirm the identity of an undercover officer when the officer himself has confirmed their identity beyond doubt, as well as in the face of overwhelming evidence and serious allegations about the legitimacy of these operations and conduct, would not be in the public interest.

Operation Herne began its 2014 report situating the ‘scandal’ of undercover policing in the context of a technique which has made important contributions to public safety:

Operation Herne has identified many brave and innovative operations that were undertaken and some hugely courageous and good covert operatives who provided a valuable service in keeping the communities of London and further afield, safe over many years. In considering this report and the work of the undercover officers it is important that this fact is recognised.

This ‘fact’ cannot be tested as part of the report because the evidence for it must be secret. The legitimacy of these arguments, in failing to respond to serious allegations about undercover policing, are therefore impossible to independently assess. To date it relies on trust in the police not to abuse mechanisms which provide an almost impenetrable shield regarding a controversial practice about which there has been little public debate. As such it leaves the police open to questions about whether their attempts to maintain almost total secrecy are really only about serving the public interest:

Neither Confirm Nor Deny [...] this has been invented. It's got nothing to do with protecting the national interest or national security; it's there to stop the dirty secrets of the police being exposed.

If you can use law enforcement or you can use national security as your reason for exempting yourself from stuff then you will. Because if you accept the point I was making before that this isn't just about some isolated incident, it's a deliberate pattern of behaviour about an exercise in self-defence by the police to maintain their reputation.

There's no sense of any real independence. But yet you're expected to go to [the police]. So all it simply does is delay the process further.

As a result, Operation Herne, a key inquiry not least of all in resource and access terms, has produced disputed and mistrusted knowledge rather than meet interviewees' criteria for a full and frank account. There is much those spoken to did not know or could only suspect about why they had been the subject of undercover police operations. But they did know it required an explanation beyond that of the police preventing and detecting criminal activity, let alone preventing the serious violence and threats to the state that have been a feature of the official police explanations:

It wasn't crime the [police] were detecting; they were spying on us because of our political views. There's a big, long list of us. And that's the thing about exposing the cover names and the organisations because you get the breadth of it.

If you think that there are people who are genuinely planning a crime, an act of terrorism, whatever it might be, then you investigate them as criminals. You don't investigate their political beliefs simply for their political beliefs. Right it's their actions not what they think. And that just seems so obvious that it almost feels like it shouldn't need saying. Why do you need a political police force?

The picture that has emerged, of the low threshold with which undercover policing was deployed, challenges the idea that these practices are 'defendable' on the basis of their seriousness in terms of violence prevention. However as the following account points out, threats to the state once invoked, provide a powerful rationale which has the potential to warp all other considerations:

In order to spy on these apparent domestic extremists,¹ the [police] are prepared to commit absolute human rights abuse and literally just seeing [women activists] as disposable. The institutional sexism [criticism of the police] is right, but it's not just the women. They view all of British citizenship as disposable. 'We're allowed to do anything we like because the ends justify the means' is effectively it. The ends is that we are protecting British values and British democracy and in order to do that if we have to break every single British value and British human rights, well, that's what we have to do.

The protracted nature of this attempt to get 'the truth' from the police is not without precedent. It took 27 years for a jury to reach an unlawful death conclusion regarding the Hillsborough disaster; the learning from which

has led to legislation proposed in 2017 to address the issues that families and justice campaigns faced regarding a culture of denial and defensiveness from public bodies (Hillsborough Law or Public Authorities Accountability Bill). Its proponents have stated:

Instead of acting in the public interest by telling the truth, public authorities have tended to act according to narrow organisational and individual motives by trying to cover up faults and deny responsibility.

Should the bill be enacted, it intends to empower:

Victims to secure disclosure of crucial information and prevent public authorities from lying to them or hiding the truth by making that an imprisonable offence. It empowers decent police officers and public servants to stand up to seniors trying to make them stick to a misleading corporate line, and it makes it an offence for such a line to be peddled to the media.

Andy Burnham at the first reading of the Public Authorities Accountability Bill in parliament in March 2017.

Were such a law to exist in the future, would it make a difference to those seeking the truth about undercover policing? This may well depend on whether public interest is determined to be best served by keeping these operations covert or by greater public knowledge.

What has changed?

To date the reforms implemented, in response to the concerns undercover policing has raised, have focused on changes to police practice. Higher ranking police officers now authorise deployments and consideration of necessity and proportionality must be made in all deployments. There is now also a guidance manual and a national training course for undercover policing provided by the College of Policing.

But when police bodies say undercover practices have moved on, and that it is not done as it was in the past anymore, these assurances sound hollow to those who feel they have been given few answers to their questions. The problem with the reforms made to date, for those spoken to, is that they leave undercover policing fundamentally intact and invisible. Indeed institutional responses to date were criticised by some for giving the appearance of reform without addressing any of the real concerns and harms

that have been raised. The following quote from an interviewee describes how inadequately the reforms to date have reassured them given that the most egregious practice, of deceiving people into sexual relationships, is still permitted under exceptional circumstances:

It's just a complete fig leaf that makes no difference. All the hearings are in secret. The prediction for what [the police] will come up with is going to be 'oh look, we should' – I'm not even sure they're going to say 'we shouldn't have sex with targets' because I think they will still have that in there but really we are really tinkering round the edges. ²

Such an approach was criticised for seemingly having more in keeping with seeking to draw a line under the criticism that the police have faced about these methods, rather than an attempt to get to grips with the real accountability questions. The 'official answers' those interviewed feel they have received is important to explaining their priorities. In their quest for truth and openness about their deception, those subject to undercover policing have encountered an almost impenetrable wall of silence from the police.

Watching the public inquiry

We are nowhere near a disclosure, we are nowhere near a public hearing.

Undercover policing is a can of worms. [The] fundamental thing for the inquiry is does this can get opened up? Do all the worms come out?

I am not going to give up on the idea that we won't get any formal information from the [police]. There's no reason for a public inquiry to exist if it can't get the information.

We will learn some things through this inquiry that we didn't know before. But I'm worried that the potential of the inquiry to genuinely shine a light and to get genuine levels of truth and accountability and transparency anywhere near what we need.

The previous section demonstrates the uniquely challenging context for the public inquiry into this matter. It is not an inquiry about a cover-up but an attempt to uncover practices that are in and of themselves secret. The inquiry covers a period of over 40 years, from 1968 to the present day. More

specifically its tasks include investigating the practices of two police units; the Special Demonstration Squad (SDS) and the National Public Order Intelligence Unit (NPIU). Both units deployed covert officers in political protest groups and social movements.

Those calling for a public inquiry included many who were affected by the undercover operations directed by these two units. They want answers; to have a full and frank account about what happened. A judge-led public inquiry presents a significant opportunity in this regard. The inquiry chair has the power to summon witnesses, to demand access to material including police files, which have hitherto been inaccessible, and a stated commitment to public accountability. The inquiry has been tasked with answering remaining questions about: the scope of undercover units, the rationale for their deployments, the hierarchy of decision-making within the police and the units' potential links to the Home Office and central government, as well as the various practices which took place during operations.

In some ways the conditions for setting up this inquiry are typical of most other public inquiries. Concerns about institutional failings, other avenues of redress such as internal investigations appear exhausted and discredited, and a desire to discover the truth. It does however face daunting challenges, most of which can be distilled into a central contention described by the inquiry's legal team; 'the difficulties inherent in conducting a public inquiry into undercover policing.' (Emphasis in the original document). To have legitimacy this inquiry must be, and must be seen to be, open, public and transparent about an issue innately shrouded in secrecy. The inquiry has struggled to process this issue in a way that satisfies demands for both thoroughness and timeliness.

Progress thus far

The public inquiry opened in July 2015. Interviews for this briefing took place when the inquiry was approximately half way through its originally anticipated three-year process. Interviewees had experienced several delays to the inquiry's original timetable. The inquiry has been unable to make its evidence-gathering to date public due to protracted legal argument and lengthy anonymity and restriction processes. In the period between the interviews and writing this briefing further delays have been announced. According to the inquiry's most recent predictions, evidence hearings are unlikely to take place before 2019 – around four years on from the inquiry's establishment.

Those affected by undercover operations were, unsurprisingly, troubled by this lack of progress. The inquiry was not accused of inactivity – far from it. Indeed several interviewees found it took some determination to keep up with the information they received as a participant. The inquiry’s website, which shares publicly available information about its proceedings, attests to this with legal rulings and directions, hearings regarding preliminary matters, and updates on progress regarding key issues such as sharing police information. However, as the information that has come to light through the inquiry process is limited, its capacity for shedding light and holding undercover policing to account was somewhat opaque to those affected by these operations:

Now we’re halfway through and no evidence has yet been heard, no undercover cop names have yet been revealed. It’s still all just arguments about process. The police have just been dragging their feet using every delaying tactic in the book. And there’s now a kind of horrible resigned feeling of ‘oh goodness, it’s actually just going to scratch the surface. You know, it’s not going to really get to the depth of it.’

Many were worried about the implications of the length of time taken so far. For one thing, there was a concern that officers who retire or move on from the police in the meantime will escape accountability. Allegations had also emerged about the police’s wilful destruction of information pertinent to the inquiry:

I think it’s amazing how much people still have at least some degree of faith in the process until it’s revealed otherwise. So you kind of suspect [the police are] probably shredding information but until somebody actually tells you that that’s happening, and well maybe they’re not, And then you find out that Jenny Jones³ got her file shredded and you just think, I just didn’t need to know that.

Since the interviews, further cases of police destruction of information have been alleged, and at least two new inquiries by police bodies have opened. Whatever the truth of these allegations, they do little to inspire confidence that a full and frank account of undercover operations will ever emerge:

[The inquiry chair] has issued broad and general directions to every police force in the country saying thou shalt not trash anything that might be relevant to this inquiry. But, you know, I’m sure there’s a lot of juicy stuff which won’t see the light of day.

Releasing the cover names of all undercover police officers in the two units being investigated by the inquiry was cited by many interviewed as a hoped for initial step. This was considered key to adding necessary detail to the hitherto very partial public picture about the size and scale of undercover operations:

Interviewer: What are you hoping for from the inquiry and beyond it?

Well from the inquiry openness; I think the demands for the cover names and groups spied on is simply fundamental.

If we don't know what happened, we don't understand what happened, then everything else falls. Everything else is just trusting. These were organisations that told us everything was fine in the first place. You can't have any movement or a trust without openness and honesty.

[What I'm] hoping for, from the official inquiry is to know who it was that was spying on us first and foremost. So nothing without that initial sort of piece of information it's impossible to kind of begin to unwind all the consequences that may arise from that.

Releasing cover names would, some of those spoken to have suggested, enable more of those who have been spied upon to know they have been a subject of such police operations, and therefore be able to engage in the public inquiry process itself. As one interviewee put it, 'you can't even start the public inquiry unless people know that the inquiry is about them.'

In lieu of this information suspicion grows about what it could reveal. Perhaps undercover police officers remain closer to the non-state core participants in the public inquiry than would be comfortable? If this sounds far-fetched, it should be remembered that undercover officers collected information on Stephen Lawrence's family during the public inquiry into the Metropolitan Police's handling of their son's murder investigation.

These calls for transparency have continued to come up against arguments by the legal representatives for the police that these practices are necessarily secret. One submission by the Metropolitan Police to the inquiry advocated that with the exception of a final public report, the work of the inquiry could otherwise take place behind closed doors. Hence those affected by undercover operations faced the prospect that a public inquiry could have been said to take place with very little light shed on the practices themselves.

The route the inquiry has taken to resolving these matters regarding how much information can sit in the public domain is a lengthy one, given its original three-year timetable. Sir Christopher Pitchford, the then inquiry chair, decided to review requests for anonymity on a case-by-case basis.

Individuals involved with the inquiry can apply for a restriction order to be granted by the inquiry chair, to maintain their anonymity. In the case of former undercover police officers, this can extend to revealing both their real name as well as to any cover name(s).

As a result of a restriction order being granted, the individual would remain anonymous in the inquiry. This would not prevent any individual being called to give evidence, but the evidence they give may be in a closed session rather than in public. In addition, all references to identifiable information in any police files released by the inquiry would be removed (redacted) and/or access to those documents be restricted. Hence the outcome of this restriction and redaction process – particularly for undercover police officers – is a key determinate about how ‘public’ this inquiry is able to be.

In the case of all former, and potentially some still serving, undercover police officers, the process for restriction order applications includes a risk assessment, carried out by the police. Risk of death or serious injury (including psychological), the right to privacy and a family life under European conventions, and threats to ongoing police operations and maintaining national security, have all been cited as potential matters to be weighed up in these assessments.

At the time of the discussions with those affected by undercover operations the police had been granted a time extension to complete these assessments. Since the interviews the new deadline set by that extension of March 2017 had also come and gone. Anonymity applications for the remaining tranches of former undercover officers were then set for between June and September 2017. Delays, which at the time of the interviews were troubling to those with concerns about undercover policing, have since been directly addressed by the then inquiry chair. Should the most recent timetable the inquiry set out not be met, ‘the inquiry’, its then chair said, ‘will have to consider another route’.

These most recent deadlines were partially met by the Metropolitan Police. The inquiry team cite ongoing liaison with the Metropolitan Police regarding their completion.

The inquiry chair has considered anonymity in relation to 29 undercover police officers. The chair has yet to rule against any police application for anonymity. In three cases where no applications were made, cover names were released by the public inquiry, with plans to release a further 10 real names, three of whom have died with no known cover names and a remaining seven of whom performed back office functions and had no cover names.

Scrutiny avoidance?

Three different explanations for these delays have been aired at the public inquiry.

Firstly, the police have been accused by some non-state core participants of engaging in deliberate attempts to delay and disrupt the inquiry. Interviewees felt the police continued ‘obstructing at every point’ and that ‘it’s in [police] interests to slow things down, drag things and obfuscate as much as possible.’ From this perspective, the missed deadlines for anonymity application are the most recent steps in a familiar scrutiny avoidance dance with the police. The concern was this strategy could be directly successful, through the judge ruling in favour of anonymity in individual cases, and thus significantly restricting the information that would ever enter the public domain. Or successful in a more underhand manner; by causing the public inquiry – a model renowned for its length – to vastly exceed its original timetable, and publish a report when the ‘profoundly shocking’ concerns Theresa May described when announcing the inquiry risk being a distant memory.

A second explanation has been offered by the police’s legal team: that contacting and assessing more than 100 former undercover officers is a complicated, difficult and expensive process, and as such it has necessarily taken longer than was first predicted.

A third possibility was offered by the then inquiry chair; that the delays owe more to the incompetence and poor planning by the police in carrying out risk assessment, than they do to a deliberate attempt to impede the inquiry’s progress.

These possibilities are not mutually exclusive. Whatever the explanation, the outcome is the same. The inquiry has yet to help progress the concerns of those affected by undercover operations. The time taken so far to ‘get to the bottom’ of undercover operations was the source of anxiety for some of those interviewed. Time is significant in the course of an inquiry covering a period dating back to the late 1960s:

If you've been a political activist most of your life, before you die you would kind of like to know what the hell was going on. And there's that sort of frustration.

Evidence gathering about undercover policing was never likely to be a straightforward matter. For example, the inquiry team have cited the difficulty of determining whether a police report came from an undercover officer, and is relevant to the inquiry, when the origin of the information is not likely to be openly acknowledged in the report itself. Sifting through the sheer amount of material is another challenge. So far, the inquiry has received over a million documents from the Metropolitan Police. The ability to obtain a full picture of operations that have taken place over the past 40 years from the evidence available is uncertain. The inquiry was able to report that:

A feature of what we have seen thus far is that the further back in time one goes the thinner is the documentary record. To date we have very few documents from the early days.

However, for those interviewed, it is unsurprisingly hard to get beyond an explanation of an attempted cover-up when describing the police response to their questions and allegations. Trust in the police is in short supply amongst a group of people who have been deceived, stonewalled, and for whom there is no clear avenue for establishing the most basic of facts about what has happened to them.

What does this mean for the future?

The need for change is reflected by the remit of the current public inquiry, which includes making proposals about future practice. One shape these future reforms may take is proposals to reform the undercover policing of political groups and protest movements. For example:

- Bringing the deployment of undercover police officers in line with other surveillance techniques such as phone tapping, which requires the authorisation of a judge.
- Introducing a parliamentary oversight committee for this area of policing.
- Tightening up the definition about what makes someone a target for this type of police surveillance.
- Publicly acknowledging information about these police operations after a defined period of time.

There was a sense amongst interviewees that reforms such as these are the most likely future terrain. However, while proposals of this nature addressed some of the concerns interviewees had, it was felt they could only go so far.

Practical concerns were raised about the difference this type of reform could have in practice. Given the inherently secretive nature of undercover policing, even if there are more future rules around these practices, how would someone know to complain? If there are to be more rules governing the deployment of undercover police officers in protest groups, do there also need to be more ways for the average citizen to scrutinise these practices if they suspect rules have been broken? The latter seemed an unlikely corresponding future development to those interviewed. For undercover policing to exist at all is to allow this police practice to maintain some secrecy. Therefore those interviewed believed the problems which arise from the covert nature of undercover work would still be maintained. Particularly the additional layer of protectiveness that exists around these practices which provides a potential smokescreen for institutional defensiveness and reputation management.

There was also a shared concern amongst those interviewed that any boundary seemingly put in place by new rules would be malleable in practice.

A technique based on suspicion and collecting intelligence will inevitably cast a wide net; hence for those interviewed there will always be overreach issues. The terminology which has been employed so far to explain the deployment of an undercover officer, such as ‘domestic extremism’ and ‘threats to national security’, was criticised as conveniently ill-defined, providing broad brush justification for surveillance against various troublemakers to the status quo of the day. Their experience has left them suspicious that ‘serious threats to the state’ – including when these are cynically evoked - seem to readily overpower all other rights and institutional frameworks.

As well as these limitations, there were also concerns reforms of this nature could leave unaddressed fundamental issues interviewees’ experiences had raised.

Firstly, whether the costs of using this technique outweigh the benefits. Thus far interviewees – and the public - have been asked to accept undercover policing in political movements is both beneficial and necessary at face value. It is not possible to independently assess the case for this because the evidence necessary to do so, according to the police, needs to stay secret.

As such there remained questions for those interviewed about what we may learn about the so-called ‘successes,’ of the circumstances where the harms involved were outweighed by the benefits to public safety, which could not have been achieved with any other less intrusive technique. From the information established so far, those subject to surveillance were not convinced about the case for police units dedicated to undercover operations in political groups. That:

- To be policed in this manner because you hold a minority view amounts to political policing and is fundamentally undemocratic.
- To be policed in this manner for public order offences related to direct action and protest does not pass the proportionality threshold for this intrusive method.
- To be policed in this manner because of terrorism or threats to the lives of others seems incompatible with the surveillance method of long term deployment of police officers in political organisations.

Whether this practice should take place at all was a necessary preliminary question those affected by police spying wanted to be addressed prior to any discussion about future accountability and the practices and oversight processes which might best deliver this:

Is our society really safer for using intrusive surveillance on people simply because of their political beliefs? Is it really proportionate when the overwhelming majority of criminality associated with direct action results in minor disruption? If political activism that occasionally involves direct action is the result, as many of us would argue, of the failures of other routes for democratic participation and accountability against inequality and injustice, perhaps it would be better to fix these failures instead of having more databases and an everexpanding surveillance society? Are the injustices that have been revealed by the undercover policing scandal the direct product of the police's role in helping to entrench inequality in society, and should we perhaps look at changing that too?

The second issue reforms may leave unaddressed is who holds the police to account? Those who want answers about undercover policing in political groups can evidence the shortcomings of the current bodies and procedures to providing accountability. This is not a new issue nor one unique to covert police practices; it is a long standing issue for policing in general.

When there are concerns about police and policing, the institutional processes to access information are dependent on the very same body about which there are concerns. This is an immense concentration of power in the hands of the police. It's an arrangement that requires trust from those the police serve that this process is not abused to support police impunity and facilitate cover-ups.

The police's own scrutiny of their practices maintains a closed world susceptible to corruption. However, even if an external oversight body were to be introduced for these operations, this is not straightforward to overcome. Interviewees' experiences had shown them the police do not simply 'open up the books' to outside scrutiny. Amongst a group whose trust in the police has sunk low, the protections that might be provided by new proxy arrangements (you cannot know but someone else can) were also not reassuring:

There's no way that you can actually introduce into these [police] units somebody who could oversee and ensure that they are being accountable. Because the only people they would let in are their own kind, at which point the exercise has been defeated.

I think drawing up rules should be a very public thing, and should be something that's done in a democratic and an accountable way. [...] I imagine the police would argue well look, actually we're talking about very confidential, very secret decisions that we're having to make about where to infiltrate that we can't just let anyone come and be part of. And I can see that being quite a challenging discussion.

Getting the truth is what those interviewed cared about the most. Given the lack of progress regarding truth recovery, future practice and what might be done differently were somewhat loaded terms. They implied moving on. These voices tell us not to accept moving on, potentially prior to getting any actual answers about historic undercover practices. As one interviewee put it:

We want access to information so we are better informed on exactly the extent of spying on us and then we decide exactly what reforms we want to argue for, or whether we look at structural reforms or systematic changes.

Whether the future holds an opening up of these practices based on transparency about the past, or an attempt to move on with few real concessions, remains to be seen.

Notes

- 1 Domestic extremism was the terminology used by the Association of Chief Police to describe the target of undercover operations for some of the period they have operated. It is one of a number of notoriously encompassing terms, criticised amongst others, by HM Inspectorate of Constabulary in a 2012 review.
- 2 Interviewee is referring to the College of Policing guidance on undercover policing, published in 2016. Whilst sex is not permitted as an authorised tactic in undercover operations, the guidance doesn't rule out there may be exceptional circumstances in which sexual relations between undercover officers and their targets may be considered necessary.
- 3 Jenny Jones, now Baroness Jones of Moulsecoomb, was an elected member of the Greater London Assembly for the Green Party from 2000 to 2016. During that time she was a Deputy Mayor of London and a member of the Metropolitan Police Authority. A police whistleblower has alleged police records relating to Jenny Jones and potentially relevant to the undercover inquiry were intentionally destroyed by the police.

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