

**Ratcliffe-on-Soar Power Station
(Operation Aeroscope) Disclosure
Nottinghamshire Police**

Independent Investigation

Final Report

IPCC Reference: 2011/000464

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Introduction

1. On 11 January 2011, Nottinghamshire Police referred to the IPCC a matter related to the collapse of a pending criminal trial at Nottingham Crown Court. The trial related to six people who were part of a wider group of 114 people who had allegedly conspired to disable a major power station at Racliffe-on-Soar in Nottingham.
2. It is alleged that the criminal proceedings had to be halted by the Crown Prosecution Service (CPS) due to a failure by Nottinghamshire Police to fully comply with their pre-trial disclosure obligations, with particular regard to sensitive material which was the product of an undercover officer (UCO); PC Mark Kennedy alias Mark Stone.

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Terms of reference

3. The terms of reference for the investigation were to investigate:
 - a) If there was a failure to disclose relevant material to the CPS by Nottinghamshire Police prior to the trial of the six alleged offenders.
 - b) If there was a failure to disclose at a) above, whether it had a bearing on the collapse of the criminal proceedings against the six alleged offenders.
 - c) If there was a failing to disclose at a) above, resulting in the collapse of the proceedings at b) above, whether this was as a result of misconduct by any police officer or police staff member employed by Nottinghamshire Police.
 - d) If there was misconduct at c) above, the nature of that misconduct, those involved in it and the gravity of their behaviour.
4. To identify whether any subject of the investigation may have committed a criminal offence and if appropriate make early contact with the relevant prosecuting body.
5. To identify whether any subject of the investigation may have breached their

standards of professional behaviour. If such a breach may have occurred, to determine whether that breach amounts to misconduct or gross misconduct and whether there is a case to answer.

6. To consider and report on whether there is organisational learning for the appropriate authority, including:
 - Whether any change in policy or practice would help to prevent a recurrence of the event, incident or conduct investigated.
 - Whether the incident highlights any good practice that should be disseminated.

Subjects of the investigation

7. The actions of the following officers and staff were considered during the investigation:
 - Assistant Chief Constable (ACC) Ian Ackerley
 - Detective Superintendent (Det Supt) Adrian Pearson
 - Detective Inspector (DI) Andrew Roberts
 - Detective Constable (DC) Nigel Malik
 - Mr Manjeet Matharu Civilian Investigator
 - DC Mark Zajac
8. All of the above officers and employees of the Nottinghamshire Police have made written witness statements.
9. The investigation has not been declared subject to special requirements as no misconduct has been identified. No individual has been served with a notice of investigation.
10. Detective Chief Superintendent (Det Ch Supt) Neil James (now retired from Nottinghamshire Police) was spoken to by the IPCC and provided a report. The report is based on memory only as notes held by Nottinghamshire Police were not available to him.
11. The DCI from the National Public Order Intelligence Unit (NPOIU), now known

as the National Domestic Extremist Unit (NDEU), provided a report on his involvement with the UCO and the product provided. This DCI has now retired and will be referred to as the NPOIU DCI throughout.

12. Mr Ian Cunningham, the lead CPS Lawyer in this matter, was subject of a review by Sir Christopher Rose on behalf of the Director of Public Prosecutions (DPP). The findings of this review have since been made public.

Chronological summary of events

13. It must be noted that there a number of conflicting accounts surrounding what documentation was handled, by whom and when. The summaries below detail the evidence as provided by each individual.
- S1 14. ACC Ackerley stated that on 5 November 2008 he held a meeting with a DI from NPOIU (name redacted) and others in Nottinghamshire and was asked to consider an application for the use, conduct and participation in criminal activity of a UCO. The Operation was known as Pegasus and related to the infiltration of various domestic extremist groups. ACC Ackerley stated he held the appropriate rank within the police service to authorise such activity and the application was duly authorised.
- D3 15. On 23 March 2009, the NPOIU DCI was informed that a UCO, PC Mark Kennedy, had been approached by an activist to take part in '*direct action*' at Ratcliffe-on-Soar power station in Nottingham. The police investigation into this matter became known as Operation Aeroscope.
16. On 24 March 2009, the NPOIU DCI made an assessment of the UCO and felt that he should continue in his role, subject to the approval of the Authorising Officer, ACC Ackerley.
17. The NPOIU DCI stated that on 6 April 2009, ACC Ackerley authorised the deployment of the UCO and the use of an audio recording device under Operation Aeroscope.
18. ACC Ackerley stated that it was 7 April 2009 when he authorised Operation Aeroscope and that this operation specifically related to planned criminality at

the Ratcliffe-on-Soar power station in Nottinghamshire.

19. ACC Ackerley stated that his role was to review and test the application and intelligence and to ensure there was a base upon which to act. With regard to Operation Aeroscope, ACC Ackerley also had the responsibility of Gold Commander.
20. ACC Ackerley stated that he had no responsibility for the dissemination of the intelligence and that under the document 'Local Handling Procedures between Nottinghamshire Police and the Crown Prosecution Service' (CPS) it was NPOIU, and in particular the NPOIU DCI, who had responsibility for disclosing the sensitive material produced by the UCO. This document also states that '*This applies on those occasions where a firewall has been placed between an operation and intelligence function necessitating the need for separate deputy disclosure officers*'.
21. The NPOIU DCI stated that during the weekend of 10-13 April 2009, the UCO carried out a deployment at Iona School in Nottingham, related to Operation Aeroscope.
- D5 22. Det Chief Supt James stated he was contacted by ACC Ackerley on 12 April 2009 and was asked to identify a suitable Senior Investigating Officer (SIO) for Operation Aeroscope. He was informed of the complex operation the ACC was commanding which he previously had no knowledge of. He stated he appointed Det Supt Pearson as the SIO as other experienced SIOs were not available and was aware that whilst Det Supt Pearson was new to the force, he had significant experience in major crime management.
- D6 23. ACC Ackerley stated that Det Supt Pearson was appointed to be the SIO on Operation Aeroscope on 12 April as he was the on call SIO and he was asked to lead the investigation that day due to the developing intelligence. He said there was a conscious decision to move from a reactive public order response to a pro-active response to investigate those attending the muster point for conspiracy.
- S2 24. Prior to the appointment of Det Supt Pearson, the SIO had been Acting DCI

Severn and he handed over the investigation to Det Supt Pearson.

25. Det Supt Pearson stated that on the evening of 12 April 2009 he was contacted at home and informed that he was to be the SIO for Operation Aeroscope. He did not know the details of the operation or that there had been any arrests until he was briefed on the morning of 13 April 2009. He was told the operation was intelligence led and that 114 persons had been arrested at Iona School in Nottingham for conspiracy to commit aggravated trespass.
26. Det Supt Pearson stated he began both a policy file, and a sensitive policy file albeit the first entry of the sensitive policy file was not recorded until two weeks later.
27. Later in the day on 13 April 2009, Det Supt Pearson stated he spoke with Mr Cunningham from the CPS on the telephone. They had not previously met but he was informed that Mr Cunningham had been involved in the pre-incident planning of the operation. At this time Det Supt Pearson did not know a UCO had been involved.
28. Det Supt Pearson stated resources and staffing levels were a problem throughout the operation, in particular, allocating the role of Disclosure Officer.
29. DI Roberts stated on 14 April 2009 he was appointed as the Deputy SIO with responsibility for the daily management of the investigation and supervision of staff. He said on 16 April 2009 he and Det Supt Pearson met with the NPOIU DCI and his colleague. They were told that a UCO had been involved and was one of the 114 people arrested. During the meeting he was told that intelligence could be supplied by the UCO but this could not be used as evidence.
30. Det Chief Supt James stated that on 20 April 2009, after a briefing from Det Supt Pearson, it became apparent that a Covert Human Intelligence Source (CHIS) was believed to be involved. Det Chief Supt James directed Det Supt Pearson to arrange a meeting involving the CPS Complex Case Unit and senior officers from the NPOIU to ensure that Det Chief Supt James, the SIO and Mr Cunningham were fully briefed on the use and conduct of the CHIS. Det Chief Supt James stated that following this meeting some weeks later, he

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was satisfied that all parties were in no doubt as to the participating involvement of the informant, and that the management of the CHIS and subsequent legal and disclosure issues could be managed appropriately.

- S4 31. DC Malik stated that on 22 April 2009, he was appointed as the Intelligence Officer on Operation Aeroscope and one of his duties, amongst others, was the gathering and dissemination of intelligence. He stated within the first two weeks of his secondment to the operation, Det Supt Pearson informed him of the involvement of a UCO.
- S5 32. Mr Matharu, a Support Investigator and trained Disclosure and Exhibits Officer, was seconded onto Operation Aeroscope as the Disclosure Officer on 23 April 2009. He stated that at this time he was not informed of the operational planning which led to the arrests, and was not informed that the information had been provided by a UCO. Mr Matharu stated he was aware his role as Disclosure Officer was to *'ensure all material obtained in the course of this investigation was revealed to the Crown Prosecution Service by means of disclosure schedules as governed by the CPIA Act 1990 in particular, Section 23(1) Codes of Practice as renewed by the Criminal Justice Act 2003'*.
33. The NPOIU DCI stated that on 27 April 2009 he met with Mr Nick Paul the CPS National Co-ordinator for Domestic Extremism, along with the NPOIU DI to discuss the case. He recalled that he mentioned a transcript of an audio recording was being prepared.
- D2 34. ACC Ackerley referred in his statement to a document signed by the NPOIU DCI on 28 April 2009, which alludes to the fact that the CPS National Co-ordinator for Domestic Extremism had been consulted regarding the UCO and that the SIO, Det Supt Pearson, had been notified in general terms about the UCO's involvement.
- D8 35. ACC Ackerley also referred to a document marked *'IMA 4 Operation Pegasus/Aeroscope'*. This is a document containing a matrix prepared by ACC Ackerley that demonstrated the oversight he had and the liaison between him, Mr Cunningham, Mr Paul, the NPOIU DCI, Det Supt Pearson and DI Roberts.
36. The NPOIU DCI stated that on 6 May 2009 he met ACC Ackerley and also met

with DI Roberts at Nottingham HQ to discuss the inquiry. He did not elaborate on the detail of these meetings.

37. DI Roberts stated he believed on 6 May 2009 he was at Nottinghamshire Police HQ with Det Supt Pearson and DC Malik when they met two officers from the NPOIU and were provided with a typed transcript which was prepared from a recording made by the UCO during a briefing the UCO had delivered prior to the arrests. DI Roberts stated he read this product but did not handle it any further. It was decided that DC Malik would retain this sensitive document.
38. DC Malik stated that on 6 May 2009 he attended a meeting with officers from the NPOIU which he believed included the NPOIU DCI and DI Roberts. During this meeting, DC Malik was handed three items; two DVDs and one document. He stated these items were intelligence reports and telephone numbers relating to the environmental protests and protestors. He further stated that the material was viewed by himself, the SIO and the Deputy SIO and was considered sensitive so was placed in a secure cabinet.
39. Det Supt Pearson stated that it was on 7 May 2009 when he and DI Roberts attended a meeting with the NPOIU DCI at Nottinghamshire Police HQ and were informed a UCO had been deployed within the operation, and had been the sole source of intelligence. During the meeting he was shown a debrief document, which he further described as a draft statement consisting of approximately five to six pages from the UCO; and was told that a recording device had been used.
40. Det Supt Pearson stated he was told that the UCO was the only source of intelligence and the NPOIU DCI stated that the UCO would not be entering the evidential chain, meaning that he would not give evidence against other suspects. He was told that the UCO was amongst the suspects who had been interviewed and bailed and he felt he should have been informed of these matters much earlier.
41. The NPOIU DCI stated that on 11 May 2009 he met DI Roberts in London and handed to him a draft transcript of the audio recording made by the UCO.
42. DC Zajac stated that he joined the inquiry as File Officer on 12 May 2009 and

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he soon understood that whatever information led to the arrests would not be made known to the investigation team and would not be used as evidence. He understood that any prosecution would rely entirely on evidence gathered by the investigation team.

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43. Det Supt Pearson stated that on 15 May 2009 he had a meeting with Det Ch Supt James, DI Roberts and Mr Cunningham. Det Supt Pearson gave Mr Cunningham a copy of the draft statement of the UCO which he read. Det Supt Pearson stated he then became aware that Mr Cunningham was already aware of the UCO. Det Supt Pearson did not remember Mr Cunningham making any particular comment about the draft statement which stated that a recording device had been used. Det Supt Pearson made a note of this meeting in his sensitive policy document at 6pm the same day and stated that whilst he did not write down that Mr Cunningham read the statement, he was 100% sure that he did.
44. DI Roberts stated on 15 May 2009 he attended a meeting at Nottinghamshire Police HQ with both Det Supt Pearson and Mr Cunningham and it was during this meeting that they discussed the UCO at length. He further stated that during this meeting Mr Cunningham was supplied with the transcript document made from the audio recording device worn by the UCO. DI Roberts states that Mr Cunningham read the transcript and stated that he felt it was "*nothing more than a safety briefing*". DI Roberts describes the transcript as a 46 page document marked '130409/MARK'.
45. DI Roberts stated that he believed Mr Cunningham thought there was nothing in the document that would jeopardise the case.
46. Det Supt Pearson also stated that after 15 May 2009, and certainly before the end of May, he attended another meeting at Nottinghamshire Police HQ with DI Roberts and Mr Cunningham. He is 100% sure that at this meeting he gave Mr Cunningham a document containing over 40 pages which was a draft transcript from the audio recording which Mr Cunningham read. Det Supt Pearson stated after Mr Cunningham read it he stated that it was merely a safety briefing, and that "*safety briefing*" were Mr Cunningham's exact words.

47. Det Supt Pearson stated that he personally knew that Mr Cunningham was fully aware of the UCO deployment as he had read both the draft statement and the draft transcript in his presence. This had given Det Supt Pearson confidence that Mr Cunningham was fully sighted on the covert product. He also stated that Mr Cunningham had been involved with Gold meetings prior to the Operation itself.
48. On an unconfirmed date, potentially 2 June 2009, DC Malik stated he attended a meeting with the NPOIU DCI, DI Roberts and the NPOIU DI. During this meeting a document entitled 'Document – Record of audio monitoring (Draft) ref 130409 / Mark' was handed to DI Roberts. DC Malik stated that this document was a typed record of an audio recording made by the UCO during preparations for a planned aggravated trespass at Ratcliffe-on-Soar power station. DC Malik understood the document to be incomplete as there were parts that were missing. DC Malik stated he viewed the material with the SIO and Deputy SIO and it was deemed sensitive and placed in a secure cabinet. The material was placed under the direction and control of the SIO and the Deputy SIO.
49. DI Roberts stated that on 16 June 2009 he attended a briefing at the CPS in Nottingham which was hosted by Mr Cunningham. Other members of the investigation team and officers from NPOIU were present. During the meeting, he states a number of issues were discussed, including the UCO and sensitive material relating to him. DI Roberts states that he commented that it would be beneficial for the Disclosure Officer to compile a collection of all documents, sensitive or otherwise, relating to the UCO which could be looked at in isolation by the CPS so that guidance could be given as to how they would be shown on the relevant disclosure forms. This was agreed. DI Roberts concluded his statement by saying that he was unsure if the Disclosure Officer, Mr Matharu, was present at this meeting but stated that they had discussed the disclosure tactic for the UCO on a number of occasions.
50. DC Zajac stated that he attended his first meeting with the CPS on 16 June 2009 which involved Mr Cunningham, Det Supt Pearson and Det Ch Supt James amongst others. DC Zajac stated it was during this meeting he was told

that a UCO was involved. He also stated that he became aware as the case progressed, that Mr Matharu was in possession of sensitive material relating to the UCO that was not widely available to the wider team. He did not know the content of the material nor did he view it.

51. DI Roberts states that on a date unknown Mr Matharu had a meeting with Mr Cunningham to discuss the disclosure of items relating to the UCO. DI Roberts was informed that all the sensitive items had been discussed and that direction had been given by Mr Cunningham as to how he wished the items to be presented on a disclosure form.
52. On 17 June 2009 there was an exchange of emails between Mr Paul and Mr Cunningham in which they discussed the participating informant and the potentially sensitive evidence. Mr Paul writes '*the participating informant may become important if the defence switch tack and choose to run a non political defence.*' Mr Cunningham replies and states that there are potentially sensitive disclosure issues and says that he has a meeting next Tuesday (23 June 2009) to carry out the initial evidence sift.
53. On 10 September 2009, the NPOIU DCI saw ACC Ackerley at Nottinghamshire Police HQ, and he also met with Det Supt Pearson and handed him a copy of the unsigned draft statement from the UCO.
54. The NPOIU DCI stated that on 15 September 2009, he attended a meeting at Nottingham CPS where Mr Cunningham, Mr Paul and DI Roberts were present. At this meeting Mr Cunningham was asked by the NPOIU DCI if he wished to retain the UCO statement and transcript. The NPOIU DCI stated that Mr Cunningham declined as he did not feel he had adequate secure storage at his premises. The NPOIU DCI retained the documents and stored them in his office in London.
55. On 17 September 2009 Det Supt Pearson made an entry in his sensitive policy file regarding the UCO. Entry 11 records '*Objective review of the evidence by CPS. In essence Stone UCO was acting lawfully, within the scope of his authorised activity.*'
56. Mr Matharu stated that he believed it was September or October 2009 that he

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was told by DI Roberts about the role of the UCO and that a product, namely sensitive documents, had been received by DC Malik from the NPOIU. Mr Matharu said these included a document marked '*Ratcliffe-on-Soar (D576)*' a DVD marked '*B21 Ratcliffe (D575)*' and another DVD marked '*Telephone work Ratcliffe (D574)*'. Mr Matharu stated that he understood all of this material had been viewed by DC Malik and he would have discussed and/or shown the material to the SIO and Deputy SIO, who would have shown them to Mr Cunningham.

57. Mr Matharu stated that on 12 October 2009, DC Malik left the investigation and gave him the material relating to the UCO as described above. He stated DI Roberts also handed him a transcript obtained from the NPOIU. Mr Matharu assumed that this document would have been discussed by the SIO, Deputy SIO, DC Malik and Mr Cunningham. Mr Matharu had not been made aware of any product from a UCO previously and had no experience with the UCO or any related products. Mr Matharu further stated that the transcript document was not correctly disclosed to him; it had no document number on it, and he assumed that it was a transcript from D575 (a DVD). He had spoken with DI Roberts regarding the disclosure and they agreed he would have a meeting with the CPS.
58. Mr Matharu stated on 10 November 2009 he attended a meeting at the CPS offices in Nottingham with officers from the investigation. After the meeting he met Mr Cunningham in a separate office to discuss the UCO and the product relating to him and Mr Cunningham advised him that he was aware of the UCO and his involvement, including the product from the NPOIU.
59. Mr Matharu stated he informed Mr Cunningham that the product was contained in documents D574, D575, D576 and contained a transcript. Mr Matharu stated that Mr Cunningham said he was aware of this and he was asked by Mr Cunningham to disclose the product on an MG6D. Mr Matharu stated he had not necessarily read the transcript himself and had at some point been told by the SIO or Deputy SIO that Mr Cunningham had read it. Mr Matharu stated he completed the MG6D schedules as per Mr Cunningham's advice and for D574 he allocated codes 16, 4 and 7 and for D575 and D576, codes 16, 4 and 8. Mr

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Matharu stated he has since been made aware that he should also have selected code 6 which relates specifically to the use of informants; and the disclosure schedules should also have detailed the transcript as this was not separately entered.

60. Mr Matharu recalled that he spoke to Mr Cunningham on 17 December 2009 and informed him that the schedules he submitted on that date included the product by the UCO in the form of D574, D575 and D576.
61. Mr Matharu stated that Mr Cunningham wrote on the schedules '*very fully described*' and '*fully described*'. These comments were on the MG6D that contained D574, D575 and D576. He further stated that neither Mr Cunningham nor any other person from the CPS asked to view the material, including the UCO product.
62. The NPOIU DCI confirmed that he did not complete an MG6D and neither did anyone else from his office. He did not believe he was responsible for the preparation of the case or for disclosure.
63. As the case progressed, of the 114 persons arrested, a total of 26 persons were charged with aggravated trespass and conspiracy to commit criminal damage and the case continued to proceed to court.
- D7 64. Det Supt Pearson stated that in October 2010 he became aware that the UCO had revealed his status to the media and he immediately informed his superiors and Mr Cunningham.
65. Ms Gerry, Counsel for the CPS, stated that on 13 October 2010 she attended the CPS Complex Crime Unit offices in Nottingham where she was first informed of the existence of a UCO by Det Supt Pearson. Mr Cunningham and DC Zajac were also present at the conference and she was shown a single page document which she was told was a '*debrief document*'. She cannot remember what exactly the document looked like but it confirmed that a UCO was present at the school. During the course of the IPCC investigation Ms Gerry was shown a copy of the statement made by the UCO to clarify if this was the document she saw on 13 October 2010. Ms Gerry stated she did not believe she saw this on 13 October 2010, but believed she saw it for the first
- S10

time on 10 January 2011.

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66. Det Supt Pearson stated on 13 October 2010 he met Mr Cunningham, DC Zajac and Ms Gerry at the offices of CPS in Nottingham. He briefed Ms Gerry on the existence and role of the UCO and that the UCO's identity was in the public domain. He stated that he showed her the statement from the UCO and he saw Ms Gerry read it. Upon reading the statement Det Supt Pearson stated that Ms Gerry did not make any particular comment about it.
 67. DC Zajac stated he attended a meeting on 13 October 2010 with Det Supt Pearson, Mr Cunningham, Ms Gerry and possibly DI Roberts. During this meeting Ms Gerry was told that a UCO was involved and Det Supt Pearson showed her the contents of an envelope in his possession. DC Zajac understood this material to relate to the UCO but he did not see what the material was.
 68. DC Zajac stated that on 21 October 2010 he became aware that the UCO had revealed his status and this had appeared in the media. Ms Gerry stated on 22 October 2010 Mr Cunningham informed her that the UCO's status had been revealed.
 69. The NPOIU DCI stated that on 9 November 2010 he met with Mr Cunningham and Det Supt Pearson and fully briefed them on the known facts and assessments regarding the compromise of the UCO. He offered to brief Ms Gerry regarding this, however Mr Cunningham declined stating it was not necessary.
 70. DI Roberts stated that on 9 November 2010, he attended a meeting at the CPS with Det Supt Pearson, the NPOIU DCI and Mr Cunningham to discuss the UCO and the fact he had been revealed as a police officer. DI Roberts recalled that Mr Cunningham stated that, in his opinion, this would not affect the prosecution case.
 71. The NPOIU DCI stated that he was satisfied that Det Supt Pearson and Mr Cunningham were fully sighted on the presence of the UCO and that the UCO had provided a statement and produced a transcript. The NPOIU DCI stated

that he did not believe that Mr Cunningham read the transcript in his presence.

72. The first trial of the 20 defendants known as the justifiers began on 22 November 2010. Ms Gerry conducted the prosecution and all 20 were convicted. The second trial of the six defendants, known as the deniers, was due to start in early January 2011, again to be prosecuted by Ms Gerry.
73. Det Supt Pearson stated that on 5 January 2011, DC Zajac bought a file box of sensitive material for Ms Gerry to read. He stated this was to be reviewed by Ms Gerry as the UCO was being considered as a witness for the defence. Prior to seeing Ms Gerry, Det Supt Pearson stated that he looked in the box and amongst other documents the draft statement and draft transcript were inside. He stated he was happy that the CPS had known about the documents for over 18 months, although he had not shown Ms Gerry the transcript before. He stated that after Ms Gerry read the transcript, she was concerned and decided this was a reason to discontinue the second trial of the six deniers.
74. Ms Gerry stated that on 5 January 2011 she saw and read the transcript from the audio device for the first time, and this led her to believe that it supported the defence of the six deniers. This was because the deniers were claiming that they had not made a final decision as to whether or not to participate in any proposed action at Ratcliffe-on-Soar power station. Ms Gerry also stated that it was not until after this date that she learnt of the depth of involvement of the UCO.
75. It was on 5 January that Ms Gerry, having seen the transcript document, believed it to support the defence of the six deniers and so telephoned Mr Cunningham. They agreed to offer no evidence for the trial of the six deniers.

Mr Cunningham

76. Mr Cunningham provided his own statement, dated 10 February 2011 and was also interviewed by Sir Christopher Rose on behalf of the Director of Public Prosecutions on 27 October 2011. In his statement he stated the following:
77. On 6 April 2009 he was contacted by DCI Severn and told that there was a police operation to counter a threat to close down a power station in the region.

He understood that the police were acting on intelligence and was informed that Mr Paul already had an overview of the case. He contacted Mr Paul and they confirmed that Mr Cunningham would be the allocated lawyer for Nottinghamshire Police to contact.

78. He was contacted again by DCI Severn on 12 April and on 13 April received a briefing.
- S14 79. Mr Cunningham stated that on 27 April he attended the first Gold Group meeting, and prior to this had a meeting with Det Ch Supt James, DI Roberts and Det Supt Pearson. He was told that a UCO had been deployed and he was shown a single piece of paper which outlined the UCO's tasking and his report. He was subsequently shown the authorisation which was in order.
80. He stated that Det Ch Supt James explained the UCO had provided a health and safety briefing to the other suspects and they discussed whether this was sufficient for him to be described as an agent provocateur; but decided it did not because the UCO was addressing people that had already decided to be involved. He says they agreed that the possibility existed that the use of a UCO could mean that there may not be any prosecution.
81. Mr Cunningham stated this was the only material that he was shown about the UCO, and this was the same material that was subsequently shown to Ms Gerry.
82. Mr Cunningham stated that on 15 May 2009 he met Det Supt Pearson, Det Ch Supt James and DI Roberts and they discussed the investigation and the use of the UCO. They agreed to have a further meeting with Mr Paul and others who were sighted on the case to discuss what the implications were regarding the use of the UCO. This meeting took place on 16 June 2009. Mr Cunningham says following this meeting he sent an exchange of emails to Mr Paul.
83. Mr Cunningham stated another meeting occurred on 2 June 2009 involving Det Supt Pearson and DI Roberts and they discussed how they would handle the material that the investigation was producing. Mr Cunningham made no mention of any specific material.

84. Mr Matharu provided Mr Cunningham with schedules in the normal way and stated the issue of the UCO was not within Mr Matharu's remit, and Mr Matharu would not have been aware of the full details. Mr Cunningham stated he did not discuss the UCO with Mr Matharu in any specific way beyond general conversation whilst the schedules were being dealt with.
85. Mr Cunningham was aware the UCO had made a statement but he had been told it would not be disclosable because of the amount of sensitive detail it contained. Mr Cunningham said the sensitive detail related to the deployment and lines of communication but was unable to recall who told him this and said it would not have been the disclosure officer. He stated he did not ask to see a copy of the statement because he believed he knew all that he needed to know and felt that security matters should be treated as such.
86. Mr Cunningham stated in or after September 2010, Ms Gerry was appointed as Counsel and briefed on the case. He stated she was given the information about the UCO and was shown the same disclosure sheet Mr Cunningham had seen at the first meeting in April 2009.
87. He stated in October 2010 he was informed that the UCO's status had been revealed. Mr Cunningham informed Ms Gerry and Mr Cunningham held a meeting with Det Supt Pearson, DI Roberts and the NPOIU DCI and their assessment was that there was nothing that the UCO could say that would effect any of the trials.
88. Mr Cunningham stated on 5 January 2011 he received a telephone call from Ms Gerry to say she had come into possession of material that included recordings made by the UCO which undermined the prosecution. They agreed that as a result they would have to abandon the prosecution.
89. Mr Cunningham stated he saw the statements and the transcript during the week of 24 January 2011 and was sure he did not see them before, because they contained a level of detail that he was unaware of which had an impact on the court cases.
90. During Mr Cunningham's meeting with Sir Christopher Rose in October 2011 he confirmed the details as set out in his statement. He stated he had not dealt

with a case involving a product from a UCO before and was not familiar with UCO authorisations. He stated in this case he had seen a single piece of paper signed by ACC Ackerley to the effect that the UCO was authorised to be deployed in Nottinghamshire. During the meeting Mr Cunningham was shown a full copy of one of the authorisation's which authorised participation in criminal activity including aggravated trespass and Mr Cunningham stated he had not seen any document which said the UCO was authorised to trespass land, but accepted that he did not pay the authority that much attention.

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91. When asked about the MG6D schedules, particularly regarding entries for D574, D575 and D576 Mr Cunningham accepted that they related to intelligence material and he did not look at any of the material referred to on the MG6D, which he accepted in hindsight he should have done. When asked about one of the MG6D schedules which he had signed off as not being disclosable, he accepted that he had not looked at it and therefore could not say whether it was potentially disclosable.
92. Mr Cunningham stated he had been reassured by Det Ch Supt James that there was no issue regarding the UCO being an agent provocateur and that Mr Cunningham had stated he would not see the statement from the UCO.
93. He believes the phrase *"It's only a health and safety briefing"* came from Det Ch Supt James when Mr Cunningham had asked what the UCO had done. Mr Cunningham denied that he made this comment after he had read the transcript, as he did not recall reading the transcript.
94. Mr Cunningham was asked about Mr Matharu's statement and the meeting on 10 November 2009. Mr Cunningham did not recall being told there was a transcript but was aware of references to a statement, which he had not seen as he believed he did not need to see it. He also confirmed that he had not seen a highly sensitive MG6D schedule and was not aware that there was unscheduled material. He believed that the UCO product was covered by the broad descriptions which had been applied. It was noted that there were no authorisations on the MG6Ds.
95. Mr Cunningham confirmed that he did not seek direct guidance from anyone,

nor did he check the Disclosure Manual regarding the approach to UCO's and stated that he should have challenged the police more. In his final remarks he said that it had been a difficult exercise and in hindsight he realised the errors he had made.

Policies and Procedures

The Disclosure Manual

- D12
96. Chapter 9 provides guidance for dealing with highly sensitive material, including CHIS material. It states that all relevant sensitive unused material should be included on the MG6D and highly sensitive material should also be listed and described on a highly sensitive schedule. It further states that some forces may wish to apply the same procedures to CHIS material as for highly sensitive material and Chief Constables (or the authorising officer for RIPA activity) and Chief Crown Prosecutors should agree local handling procedures for highly sensitive and CHIS material.
 97. The manual says that the material and all schedules, statements of sensitivity and any other documents bearing highly sensitive material will remain at all times under the control of the police. It also states that highly sensitive material may be brought to the prosecutors attention on the appropriate schedule without the details being known to the disclosure officer. This is the responsibility of the investigator but prosecutors should be alert to the possible existence of such material in appropriate cases.

Disclosure of CHIS and Other Highly Sensitive Material Local Handling Procedures between Nottingham Police and the Crown Prosecution Service

D4

98. This document states that any disclosure involving a CHIS, should be regarded as highly sensitive and placed on an MG6D. The officer submitting the highly sensitive MG6D should make contact with the reviewing lawyer to discuss the schedule and the documentation behind it. Where CHIS material attracts a *'confidential'* marking, the MG6D must be stored by the CPS away from the file in a safe. Any documents with a higher protective marking should be allocated to an appropriate lawyer and not be left in the possession of the CPS.
99. Paragraph 7 describes the procedure for disclosure of CHIS material;
100. *'It would usually be the case that the divisional level 2 controller acts as the disclosure officer in the case where CHIS material is being revealed to the CPS. The controller would have responsibility for the preparation of the MG6D and liaising with the CPS. This applies on those occasions where a firewall has been placed between an operation and intelligence function necessitating the need for separate deputy disclosure officers.'* In this case the NPOIU DCI was regarded by ACC Ackerley as the divisional level 2 controller.
101. The document also states that Nottinghamshire Police and the CPS will ensure its contents are fully promulgated to all relevant members of staff and local systems are in place to support the agreement.

D13

Disclosure PII Codes

102. The list of codes numbered one to nineteen used on the MG6D sensitive disclosure forms are printed out from the Home Office Large Major Enquiry System (HOLMES) and sit alongside the MG6Ds to inform the reader of MG6D what they relate to.
103. The relevant codes in this case include:
104. '4 – Material given in confidence'

105. '6 – Material relating to the identity or activities of informants, undercover police officers and others at risk if identified'
106. '8 – Material revealing either directly or indirectly, techniques and investigative methods relied upon by the police'
107. '16' – Material relating to police intelligence information'

Conclusions

108. This investigation was tasked to ascertain if there was a failure to disclose relevant material to the CPS by Nottinghamshire Police prior to the trial of six alleged offenders. The investigation has found that a UCO had been authorised to participate in criminal activity, which included aggravated trespass. During the operation the UCO used an audio recording device and a transcript and statement detailing this was later produced. It is these items that are at the centre of this investigation.
109. In his report, Sir Christopher Rose stated that he had read all of the RIPA authorities and reviews completed by ACC Ackerley. He made no criticism of them and it is noted that Sir Christopher Rose is the Chief Surveillance Commissioner. Whilst the authorities have stood up to the scrutiny of Sir Christopher Rose, ACC Ackerley failed to brief Det Supt Pearson, the SIO, about the UCO and what he had been authorised to do. He relied on the NPOIU to do this, yet Det Supt Pearson was a member of Nottinghamshire Police. Had ACC Ackerley fully prepared and briefed Det Supt Pearson, this may have assisted Det Supt Pearson to have an early understanding of the potential difficulties of the case and in particular the status of the UCO.
110. The dissemination of the sensitive material from the NPOIU through to the police is best described as ad hoc. The officers from the NPOIU should be considered experts in their field of work, which includes UCOs and the material they produce. The transcript should have been fully explained to Nottinghamshire Police with regard to its evidential value, whether it went beyond the UCO use and conduct, or if there were any issues around the UCO potentially having acted as an agent provocateur. There is no evidence that

this conversation took place.

111. The Disclosure Manual explains that in cases involving highly sensitive and CHIS material, the person holding the material, in this case the NPOIU, should prepare a highly sensitive schedule and make contact with the prosecutor. The material must be viewed by a unit head, special case lawyer or a delegated prosecutor. This did not occur in this case.
112. Mr Cunningham stated that from 27 April 2009 he was aware a UCO had been involved with the operation and was shown a single piece of paper which outlined the UCO's tasking and report. He stated it was not until the week commencing 24 January 2011 that he saw the statement and transcript. He accepted that he saw the authorisation document of the UCO and believed it to be in order, but stated he did not recall the section describing the parameters of what the UCO had been authorised to do. If he had inspected all of the authorisation documents in full he would have been aware of what the UCO was authorised to do.
113. Det Supt Pearson accepted that he did not give this investigation his full attention as he had additional SIO roles to deal with. However he was content that he shared the crucial elements of the covert product, namely the UCO statement and the transcript with the CPS.
114. Although there is an inconsistency of the date, Det Supt Pearson and DI Roberts state that between 15 May and 31 May 2009 they met with Mr Cunningham and provided him with the transcript. They both state that he read it and commented that it was a safety briefing.
115. Det Supt Pearson also stated that a meeting occurred on 15 May in which he became aware that Mr Cunningham was already aware of the UCO. Det Supt Pearson does not elaborate on how he became aware of this and he also suggested that it was during this meeting that Mr Cunningham was shown the draft statement. Nobody else recollected the meeting as described by Det Supt Pearson.
116. DI Roberts stated that following a briefing with the CPS on 16 June 2009 it was agreed that it would be beneficial for the Disclosure Officer to compile a

collection of all documents relating to the UCO which could be looked at in isolation by the CPS so further guidance could be given. There is no evidence to suggest this occurred.

117. The NPOIU DCI stated he had a meeting on 15 September 2009 with Mr Cunningham and Mr Paul, during which the transcript and statement were discussed. Mr Cunningham was asked if he wished to retain them, but he declined stating he did not have adequate storage.
118. DI Roberts, Det Supt Pearson, the NPOIU DCI and Mr Matharu all state that they discussed the transcript that had been generated by the UCO with Mr Cunningham at various points throughout the investigation.
119. In addition, the email between Mr Cunningham and Mr Paul gives a clear indication that they were both aware the UCO had been a participating informant, and Mr Cunningham himself accepts that he was aware a statement had been produced but he stated he decided not to read it. Had he done so, this would have explained that the UCO had been authorised to use an audio recording device.
120. Whilst none of the police officers involved with the investigation adequately recorded the details of any meetings, on the balance of probabilities Mr Cunningham had at the very least been told about the products generated by the UCO and had been given opportunities to read them prior to 24 January 2011. However the investigation cannot prove what Mr Cunningham had sight of, nor what his understanding of the implications may have been, before 24 January 2011.
121. The investigation has been unable to identify a one page document referred to by Mr Cunningham and Ms Gerry.
122. Whilst the investigation has shown that the CPS, and particularly Mr Cunningham, appeared to have knowledge of the products generated by the UCO, there was a failing by the police to disclose them separately on the relevant MG6 schedules.
123. Mr Matharu was inadequately skilled in dealing with sensitive information and

intelligence within covert investigations, and made an incorrect assumption about the transcript he was provided with. As a result, he failed to record this appropriately on the MG6D schedule. However, despite this, Mr Cunningham accepted that he signed off a MG6D schedule without having read it.

124. The investigation concludes that the failures highlighted in this investigation were a collective failing by a number of parties and that the police individual actions do not amount to misconduct.
125. The review conducted by Sir Christopher Rose concluded that the disclosure issues discussed throughout this investigation did have a bearing on the collapse of the criminal proceedings against the six alleged offenders.

Gareth Tobin

Lead Investigator, IPCC

March 2012

Gemma Jackson

Case Supervisor, IPCC