



KRW LAW - LLP

45 Castle Street
Belfast
BT1 1GH

Tel: 028 9024 1888

Fax: 028 9024 4804

Email: office@kevinrwinters.com

www.kevinrwinters.com

10 June 2016

Our Ref: MIS/L1102/DM

URGENT - BY EMAIL & FIRST CLASS POST

Rt Hon Theresa May
The Home Secretary
2 Marsham Street
London
SW1P 4DF

PRE-ACTION LETTER

Dear Madam,

Re: RE: Our Client - Jason Kirkpatrick & Others

We refer to the above named and herein wish to raise the following issues:

1. The details of the matter being challenged

The proposed Applicant is intending to challenge the decision by the Home Secretary over her failure to extend the terms of Reference of the Undercover Policing Inquiry ("UCPI") (which is also commonly known as the Pitchford Inquiry) to include the jurisdiction of Northern Ireland. The current failure by the Home Secretary ("The First Proposed Respondent") to extend the terms of reference of same are unlawful in that they are irrational and/or disproportionate and/or in breach of our client's Article 8, 9, 10 and 11 rights pursuant to the European Convention on Human Rights ("ECHR").

Furthermore, in the alternative, failure of the Secretary of State for Northern Ireland's ("the Second Proposed Respondent") to commission an investigation of similar structure in this jurisdiction (in the absence of the Pitchford Inquiry) is

irrational and/or disproportionate and/or in breach of our client's Article 8, 9, 10 and 11 ECHR rights.

2. The issue

As you know the proposed applicant previously corresponded directly with your office in relation to the ongoing Pitchford Inquiry into the activities of undercover police officers.

The Inquiry, which was set up in March 2016, will investigate undercover policing units including the Special Demonstration Squad ("SDS") and the National Public Order Intelligence Unit including the extent to which they targeted individuals and groups such as political and social justice campaigns. Mark Kennedy, an undercover officer whose identity is now in the public domain, has featured prominently in the allegations to which the inquiry will seek to investigate.

The proposed applicant was subject to such surveillance activities. Last year Mr Kirkpatrick made direct representations to the Pitchford Inquiry and was formally granted core participant status,¹ as a political activist who was subject to the undercover police activities. The inquiry's terms of reference include the following tasks:

1. investigate the role and the contribution made by undercover policing towards the prevention and detection of crime;
2. examine the motivation for, and the scope of, undercover police operations in practice and their effect upon individuals in particular and the public in general;
3. ascertain the state of awareness of undercover police operations of Her Majesty's Government;
4. identify and assess the adequacy of the:
 - (a) justification,
 - (b) authorisation, operational governance and oversight of undercover policing;
 - (c) selection, training, management and care of undercover police officers;
5. identify and assess the adequacy of the statutory, policy and judicial regulation of undercover policing.

1

A copy of the ruling can be found on the Inquiry webpage at:-
<https://www.ucpi.org.uk/rulings/>

The Pitchford Inquiry does not presently cover the jurisdiction of Northern Ireland. However, it has now come to light that the undercover officer, Mark Kennedy has operated in Northern Ireland. Such activities have never been the subject of any investigation.

In particular, Mark Kennedy organised travel to Belfast with the proposed applicant in 2005 and carried out a number of events with him whilst in Belfast. On one occasion, Mr Kennedy participated in an event with our client in the Menagerie bar on University Street, Belfast, to which a picture was taken and recently used by the BBC in their news piece entitled 'Undercover Officer Mark Kennedy 'monitored NI Groups'.²

In addition, Mr Kennedy jointly participated in and attended a further event of an anti-globalisation event in the City Church in Belfast City Centre. At the time, we now know that Mr Kennedy was operating in his role as an NPOIU and/or SDS undercover officer, a unit which ordinarily do not operate in this jurisdiction. We understand that our client was not the only activist whose activities were monitored by Mark Kennedy in this jurisdiction. There are at least two other activists who have already been granted Core Participant status, but they have not yet been able to provide statements about their time in Northern Ireland.

Put simply, there can be no question but that our client has raised allegations of the utmost seriousness. It is unclear what statutory powers were used to permit Mr Kennedy to operate in this jurisdiction, which official granted Mr Kennedy power to operate in this jurisdiction, and on what basis any such power was granted. There is a high public interest in these issues being urgently clarified. It would be a question of the utmost public concern if an undercover officer were effectively permitted to operate without justification, authorisation, or oversight in Northern Ireland. In addition, there are grave concerns that the operations of Mr Kennedy violated our client's rights, as set out in Article 8, 9, 10 and 11 of the European Convention on Human Rights ("ECHR").

On any view, there is a clear need for an investigation to be urgently commissioned into the activities of Mark Kennedy in this jurisdiction.

The current failure by the UCPI Inquiry to investigate allegations arising out of activities in Northern Ireland has left our client without any effective investigation into the activities of Mr Kennedy, and other SDS Officers, in this jurisdiction. Unlike in England and Wales

2

<http://www.bbc.co.uk/news/uk-northern-ireland-35156850>

(where there have been separate and parallel investigations into allegations about the actions of Mark Kennedy), there has been no investigation at all into the role played by undercover police officers in monitoring political activists. It would not be rational for UK Government to conclude that there is a need for a judge-led inquiry into these allegations in England and Wales, but for there to be no such inquiry into the same allegations, involving the same activists and the same undercover officers, in Northern Ireland.

The proposed applicant wrote directly to the Secretary of State for Northern Ireland on 22nd January 2016 raising his concerns, and in turn requesting that urgent representations were made to the Home Secretary to extend the terms of the Undercover Policing Inquiry. In the alternative, the proposed applicant asked that the Second Proposed Respondent commission an Inquiry of similar structure and reference (to that of the Pitchford Inquiry) in Northern Ireland pursuant to Section 1 of the Inquiries Act 2005.

On 25th April 2016 correspondence was received from the Minister of Justice for Northern Ireland stating that the correspondence addressed to the Secretary of State had been passed to his office for a response. Therein, the Minister of Justice stated that he was continuing to engage with the relevant policing bodies in England to seek confirmation and further information in respect of the deployment of undercover officers, and that discussions with the Home Office were ongoing.

Given the fact the Inquiry is underway, and when no decision was forthcoming, the applicant corresponded directly with the Home Secretary by way of email dated 11th May 2016, in which the applicant requested that the Home Secretary extend the terms of reference as a matter of urgency. Therein, the applicant reiterated his concerns and asked the Home Secretary to consider the representations in light of her ongoing discussions with the Minister of Justice. The representations were made in request that the current deficit for investigating the allegations (raised and being investigated by Pitchford) be dealt with by the extending of the terms of reference of same as a matter of urgency. The applicant asked that the Home Secretary provide him with a decision within 14 days given the urgency of same, and the fact the hearings were underway. At the time of this pre-action correspondence, no response has been forthcoming.

It is the Applicant's respectful contention that the respective decisions of the First and Second Proposed Respondents are unreasonable and/or disproportionate and/or in breach of our client's rights under the European Convention on Human Rights.

In the present case, our client had been the subject of undercover work conducted by Mr Kennedy in Northern Ireland. Currently, these matters cannot be examined under the Terms of Reference by which Sir Christopher Pitchford chairs the UCPI. Notwithstanding the Terms of Reference, however, Mr Kirkpatrick has been accorded Core Participant status in relation to matters which occurred in England, and there have been separate and parallel investigations into the activities of Mr Kennedy in England. In the circumstances, it would appear illogical to completely exclude a part of the circumstances involving Mr Kennedy and Mr Kirkpatrick on the sole basis that this excluded part occurred in another jurisdiction over which the UK Government still retains residual legal responsibility, devolution notwithstanding (vide the powers of interchangeability conferred on the Secretary of State for Northern Ireland under s. 4(2) of the Northern Ireland Act 1998). As a result of such illogicality, it cannot be within the Secretary of State's power to refuse to empower Sir Christopher to enquire into undercover policing activities in Northern Ireland, in relation to SDS officers, solely because of a difference in jurisdiction, and such refusal must therefore, we respectfully contend, be prima facie unreasonable and/or disproportionate.

3. The details of the action that the respondent is expected to take

The Applicant expects that in accordance with her public law obligations the First Proposed Respondent now urgently takes a decision in respect of the Applicant's previous request. It is further requested that the First Proposed Respondent takes the decision to extend the terms of reference of the Pitchford Inquiry to include the Jurisdiction of Northern Ireland.

In the alternative, the Second Proposed Respondent is invited to commission a parallel investigation, equivalent in terms of reference of the Pitchford Inquiry but with a particular focus on the jurisdiction of Northern Ireland.

4. The details of the legal advisers, if any, dealing with this claim

Mr Darragh Mackin
KRW Law
45 Castle Street
Belfast
BT1 1GH

5. The details of any interested parties

The Minister of Justice for Northern Ireland

6. The details of information sought

The Applicant requests a full copy of all representations made by the Minister of Justice for Northern Ireland to the Home Secretary in respect of the application to extend the terms of reference of the Pitchford Inquiry.

7. Costs

The Applicant reserves all of his rights to draw this correspondence to the attention of the Court when determining any issue of costs.

8. The address for reply and service of court documents

As at number 4, above.

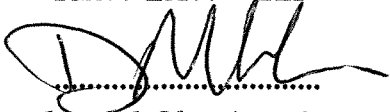
9. Proposed reply date

We would request that you reply within two weeks of the date of this letter.

We consider that this letter complies with the pre-action protocol.

Yours faithfully

KRW LAW - LLP



darragh@kevinrwinters.com

cc. The Secretary of State for Northern Ireland