

Public Interest Law Unit

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Legal Challenge in respect of undercover policing operations in Scotland

The Public Interest Law Unit (a small project of a South London Law Centre) has launched Judicial Review proceedings against both the Home Office and the Scottish Government in respect of the failure to inquire into undercover policing operations in Scotland.

On 14 September 2017, Lord Brailsford of Edinburgh’s Court of Session agreed to grant permission for a full judicial review hearing to take place. The full hearing is to determine whether the UK Government acted unlawfully in refusing to extend the terms of reference of the Inquiry to Scotland, and separately but simultaneously, the decision of the Scottish Government to refuse to set up an Inquiry of its own.

The Undercover Policing Inquiry

In March 2015, Theresa May, then Home Secretary, announced her intention to set up an Inquiry into undercover policing. This announcement followed revelations that police officers, as early as 1968, had spied on political campaigners and had used the names of dead children to create their identities. The officers, part of the ‘National Public Order Intelligence Unit’ (NPOIU) and Metropolitan Police Service’s ‘Special Demonstration Squad’ (SDS), had deceived women into forming long-term intimate relationships and had fathered children, they had befriended grieving families, including the parents of Stephen Lawrence, and had acted as *agents provocateurs*.

The undercover police operations under scrutiny by the Inquiry are limited to those conducted in England and Wales. However, much evidence has come to light demonstrating that the Metropolitan Police’s SDS had in fact operated in Scotland, and possibly without the permission of the Scottish authorities.

During the G8 Summit at Gleneagles in 2005, the Metropolitan Police sent undercover police officers into Scotland to spy on activists, amongst these officers was known undercover officer Mark Kennedy, who had, between 2003 and 2010, infiltrated numerous campaign groups and had formed intimate relationships with women. Undercover officer Carlo Neri targeted a woman known publicly as ‘Andrea’, and had been welcomed into her Scottish family.

Tilly Gifford, environmental justice campaigner and member of *Plane Stupid*, had also been targeted in Scotland, and in 2009, officers had attempted to recruit her as an informant. Referred to as an on-going “business arrangement”, Tilly was asked to betray her friends, beliefs and the communities in Scotland that she had been campaigning to protect. In the course of three meetings, police officers had indicated that they would give Tilly cash payments in exchange for information, and threatened her with prison should she fail to cooperate. Tilly recorded these exchanges and exposed the Police and their tactics in the media. The identities of these officers remain unknown, and it is unclear who had made the decision to target Tilly and on what basis.

As is the case for all activists who may have been spied on in Scotland, the answers to these questions fall outside the Inquiry’s remit which is limited to England and Wales.

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The Scottish Legal Aid Board – A Denial of Access to Justice

The legal challenge has not been without its practical difficulties as the Scottish Legal Aid Board had initially refused to fund the case. They claimed the case did not have merits. The lawyers involved are currently working on a pro bono basis and have raised thousands through *Crowdfunder* to protect Tilly from any adverse costs.

Since the case was granted permission to proceed, in a hearing in September 2017, the Scottish Legal Aid Board's has again refused Tilly legal aid – this appears to be entirely political – particularly in view of the fact that the Scottish courts have determined the case to have sufficient merit, granted permission to proceed to a full judicial review hearing.

The right of access to justice is both fundamental and constitutional, and state bodies must be held to account when abusing their powers. Tilly and other activists who have also been spied on are prevented from participating in an Inquiry into covert operations which have dramatically affected their lives and the lives of their families.

As Tilly has said:

“Through the Pitchford Inquiry, communities in Wales and England who have suffered extreme abuses have the potential to have light shed on these sexual, emotional and physical violations carried out by the state. Yet, as it stands now, people in Scotland have no such recourse to truth or accountability. There are women who know they were targeted for sexual relationships by undercover operatives in Scotland, and we believe that what is already known is merely the tip of the iceberg. We also know that the Police were involved with Blacklisting, affecting the work and livelihood of countless individuals in Scotland ”

As Paul Heron solicitor in the case said:

“Since the case was granted permission to proceed, in a hearing in September 2017, the Scottish Legal Aid Board's has again refused Tilly legal aid – this appears to be entirely political – particularly in view of the fact that the Scottish courts have determined the case to have sufficient merit, granted permission to proceed to a full judicial review hearing.”

The Legal Aid Board's decision, unless reversed or overturned, will therefore have a detrimental impact on the rights of individual litigants and the wider public, who must have faith in state institutions and the checks and balances on state power.

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