

Operation Aeroscope – a re-examination

How the 2009 Ratcliffe-on-Soar arrests of 114 environmental protestors sheds new light on police targeting of protest groups, and how that leads to miscarriages of justice; plus insight into how much senior police knew about undercover deployments.



UNDERCOVER

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Introduction

On Easter weekend 2009, Nottinghamshire Police raided a school in Sneinton, arresting 114 people. They were activists discussing whether to go ahead with an ambitious plan – to shut down the coal-fired power station at Ratcliffe-on-Soar power as a protest against climate change. The police operation was called Aeroscope, and among those arrested was one ‘Mark Stone’.

The arrests were not pivotal in the uncovering of Stone’s real identity as undercover police officer Mark John Kennedy in October 2010. However, that discovery led some of those arrested and facing trial in January 2011 to seek full disclosure of his role – leading to the dramatic collapse of their trial when prosecution abruptly dropped the case the day the trial due to start.

This was the moment that the issue of spycops - the political infiltration of protest groups - became a national scandal. It was the hard tug on the string that unravelled the entire saga. In the months and years that followed, more undercovers were exposed and with them numerous wrong-doing, ultimately leading to the Undercover Policing Inquiry.

The immediate fallout from the collapse of the trial led to several official reports into what went wrong. Less well-known is a set of documents disclosed in that trial which related to Mark Kennedy’s role in the planning of the protest. The disclosure is remarkable in itself, a rare insight into day-to-day intelligence gathering by the likes of Kennedy and how it was used. The picture grows considerably when all the material is put side by side.

Re-examining the material

This report is a full re-examination of the official reports in the light of that disclosure, and provides profiles of the officers involved. In the process, it illuminates key questions that have bothered many of those targeted. In particular, who knew what when about Kennedy’s deployment and how the unit that ran him, the National Public Order Intelligence Unit (NPOIU), interacted with mainstream policing. It also allows one to begin to see how NPOIU control of information led to miscarriages of justice. The answers we find here, we strongly believe, will be similar for other undercovers from the same unit, such as Lynn Watson and Marco Jacobs.

The analysis raises other awkward questions. It was clear the original investigative reports did not give a full account. People occupying key positions were not questioned and their roles downplayed, especially for the top echelons of the Crown Prosecution Service (CPS) and Nottinghamshire Police. It is quite clear the full story was deliberately not told in those official reports, especially regarding how much policy decisions at top levels to keep the role of an undercover officer secret set the stage for the cover-up and miscarriages of justice that followed.

Systemic problems

The re-analysis opens the way for wider issues to be considered. Was what happened in Nottinghamshire in 2009 a one-off, or is there a systemic problem, indicating that miscarriages of justice were likely taking place where other undercovers were deployed. In 2004, the Government established cross-agency forums targeting protestors, leading to the formation of ‘domestic extremism’ units within the police and CPS.

For this reason, we believe the methods and approaches that played out in Operation Aeroscope were the norm not the exception, something the Undercover Policing Inquiry will need to address, including putting the CPS under the spotlight.

Timeline of events

Key Dates

2008

October: climate change campaigners start considering a large scale protest at a coal-fired power station. National Public Order Intelligence Unit undercover, Mark Kennedy, posing as Nottingham-based environmentalist 'Mark Stone', is approached to be involved.

5 November: Kennedy authorised by Assistant Chief Constable Ian Ackerley of Nottinghamshire Police to gather intelligence on these plans.

Nov 2008: climate protestors begin planning action against power station. Kennedy authorised to participate

2009

10 January: Kennedy takes part in the activists' reconnaissance of the Ratcliffe-on-Soar power station. The following day, activists choose it as their target. Kennedy immediately informs the NPOIU.

23 March: first known evidence that NPOIU informs Nottinghamshire Special Branch of specific details of action, including dates the protestors have settled on for it. The NPOIU seek further authorisation from Nottinghamshire Assistant Chief Constable Ian Ackerley for Kennedy's activities in relation to the protest.

25 March: a high level 'Gold' meeting is held by Nottinghamshire Police.

7 April: Nottinghamshire Special Branch submit a review supporting Kennedy's ongoing involvement. A second 'Gold' level meeting takes place the same day. Ackerley authorises Kennedy's role, and formally establishes Operation Aeroscope as Nottinghamshire Police's investigation of and response to the planned protest.

Ackerley gives all responsibility for managing intelligence coming from Kennedy to NPOIU. Nick Paul, the Domestic Extremism Co-ordinator for the Crown Prosecution Service, had by then 'an overview of the case', if he was not already aware of Kennedy as an undercover himself due to previous cases.¹

10 April: campaigners assemble at Sneinton to plan their protest.

12 April: Ackerley changes Aeroscope from a 'reactive public order response' to a pro-active mass arrest and major investigation.

13 April: early morning arrests of 114 campaigners, including Kennedy in major operation involving 200 officers from several forces.

13 April: a new investigation team is appointed to Aeroscope due to its changed nature.

March 2009: Nottinghamshire Police start planning in earnest.

7 April: Kennedy authorised for second time to participate in action.

13 April: 114 people, including Kennedy, arrested in police swoop.

¹ Nick Paul had been involved in the June 2009 prosecution of the Drax 29, environmental protestors who had occupied a coal train in June 2008, and for which Mark Kennedy had hired a minibus to drive the campaigners to the action.

16 April: Aeroscope investigators first learn from the NPOIU that an undercover police officer was source of the intelligence leading to the arrests.

7 May: seemingly a meeting on this day is when the NPOIU finally reveal Mark Stone's real identity as undercover officer Mark Kennedy revealed to the Aeroscope investigators.

May - June: Nottingham prosecutor Ian Cunningham brought on board and informed about Mark Kennedy. Cunningham discusses this with Nick Paul, who was already aware of the situation.

July: 47 protestors selected to answer bail and re-interviewed, with all charges against the other 67 dropped. Of these 47, 27 are re-bailed including Mark Kennedy. Nick Paul apparently rejects a 'tactical suggestion' from the NPOIU that Kennedy is not charged. In a subsequent email the NPOIU talk about needing to find a way of intervening to prevent Kennedy being formally charged.

18/20 September: Kennedy informed his undercover deployment is over. It is appears that around this time that charges against him relating to the Ratcliffe action are dropped.

25 September: first of the Ratcliffe protestors formally charged.

1 October: NPOIU sister unit, National Extremism Tactical Coordination Unit issues press release saying 26 of the protestors have now been charged.

October: by the end of month, Kennedy vanishes from Nottingham, supposedly having had a breakdown over the arrests and police investigation and leaving for the United States.

2010

January / February: Kennedy reappears in the activist scene. Bethan David takes over from Nick Paul as Domestic Extremism Co-ordinator for Crown Prosecution Service.

March: Kennedy leaves police and goes to work for private intelligence firm Global Open, though continues to use his 'Mark Stone' identity.

July: Kennedy's passport in his real name and other material discovered that casts doubt on who he is. An investigation by activists close to him takes place. Over the next few months, evidence of his police role is discovered.

20/21 October: Kennedy confronted in Nottingham and admits he had been an undercover. He promises to help those he'd targeted, including the Ratcliffe defendants. He is exposed on the Indymedia alternative news site, but the story does not gain much traction outside activist circles.

Late November / Early December: first Ratcliffe trial. Twenty who said their planned protest had been justified, and hence known as the 'Justifiers', are found guilty.

July 2009: 47 answer bail; 27 of these are re-bailed including Kennedy

September 2009: charges against Kennedy dropped; his undercover deployment is ended

Early 2010: Kennedy returns to activist scene, maintaining his identity

October 2010: Kennedy unmasked as a police officer

Nov/Dec: 'Justifiers' trial takes place

2011

January: the second Ratcliffe trial, that of the ‘Deniers’, who said they had not been part of any conspiracy at the point of arrest, begins. They request disclosure on Kennedy’s infiltration, leading to the prosecution drop their case on 10 January - though the prosecution deny this was the reason. This effectively confirms Kennedy had been an undercover; this along with the collapse of the trial gains huge media attention. Various internal reports commissioned into what had gone wrong. Nottinghamshire Police refer the matter to the Independent Police Complaints Commission (IPCC).

18 April: Keir Starmer, then Director of Public Prosecutions, writes to the 20 convicted ‘Justifiers’ inviting them to appeal their convictions.

July: ‘Justifiers’ appeal succeeds and their convictions overturned. Crown Prosecution Service commission Sir Christopher Rose to investigate what went wrong on their side, absorbing a number of other investigations.

December: Rose report released

**January 2011:
‘Deniers’ trial
collapses with huge
media attention on
role of Kennedy**

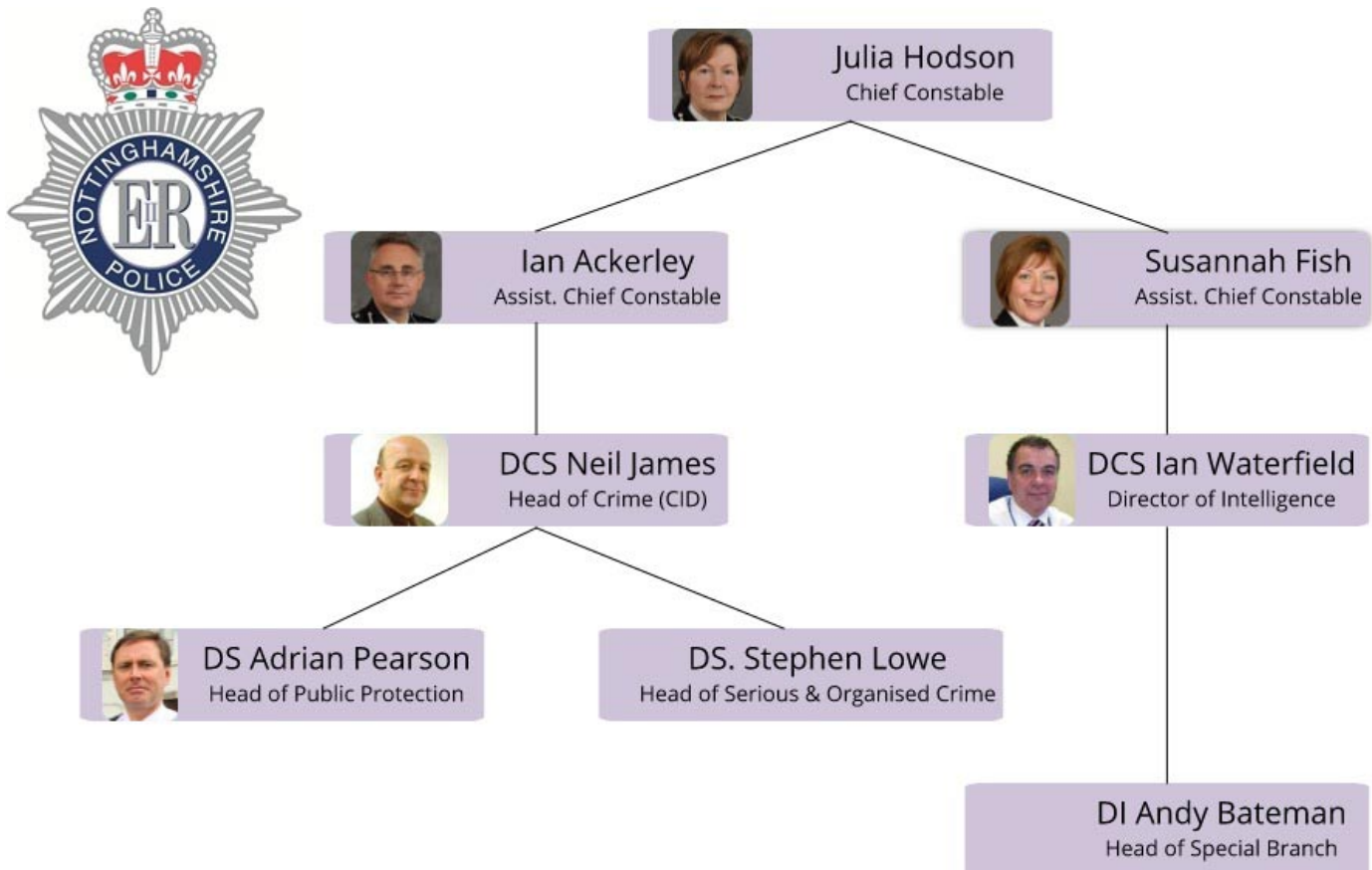
2012

March: IPCC report released

Summaries and analysis

Summary 1:

Who knew what in Nottinghamshire Police



Nottinghamshire Police - senior officers 2009 - 2010

Much of the horror of the spycops scandal comes from the impact of the actions of the undercover police on people who were out to change the world for the better. Whether it was deceiving women into relationships they'd have otherwise rejected, fathering children, the emotional trauma they caused, the theft of dead children's of identities, the destruction of people's careers through blacklisting, or the undermining of family justice campaigns, the litany is disturbing.

There is no doubt that the undercovers have much to answer for – they were there on the front line. However, they did not act in a vacuum. Each undercover in the unit was under orders from their managers. The managers monitored the lives of those they officers very closely, and not a few of those managers had been previously been undercovers themselves.

Once the original shock at individual actions wears off, the natural question to ask is, who authorised this, or even who turned a blind eye to it all? Given the natural secrecy of the units involved this is a difficult question to answer without talking to the officers concerned directly or seeing the paper trail. We hope much of this will be central to the evidence phase of the Undercover Policing Inquiry.

However, in the meantime we can start making inferences of exactly who should be being asked the questions.

The Ratcliffe disclosure material is very useful in this respect. Our re-analysis of the official reports in connection with the disclosure allows us to flesh out the picture considerably.

Authorisation of undercovers

Up until the introduction of the Regulation of Investigatory Powers Act (RIPA) in 2000, authorisation of an undercover operation could be done by an officer of superintendent rank. In the Metropolitan Police Special Branch, that would have been the Controller of Operations. However, various material indicates authorisation usually went much higher, to the level of the Assistant Commissioner for Specialist Operations (ACSO), the third highest position in the Metropolitan Police.

We suspect, that for the most part, this was a rubber-stamping exercise, where the ACSO accepted positive reports passed up the line of command. Though, it was then-ACSO David Veness, who in 1998 initiated the formation of the National Public Intelligence Order Unit, taking the Special Demonstration Squad model² and rolling it out nationally. However, while it is clear that the likes of Veness had more than a passing knowledge of undercover policing units and their activities, it is not possible to say the same of his predecessor as Assistant Commissioners.

However, when Veness and the Metropolitan Police Special Branch helped found the National Public Order Intelligence Unit in 1999, with undercover police to be deployed nationally against political protestors, it faced two additional complications around authorisation. Firstly, the undercovers it deployed worked for a national unit nominally headquartered in London, but they were deployed into different regional police areas which all had distinct operational powers independent of any national body – powers normally guarded quite jealously within the police.

The introduction of RIPA also meant that more senior level of officers had to sign off undercover work of the kind the NPOIU undertook. In the Metropolitan Police, it was a minimum of Commander rank; for all other police forces, it would be someone of Assistant Chief Constable rank, normally the officer who had oversight of the local special branch units. This can be seen in practice in the Aeroscope / Mark Kennedy disclosure.

From 2004, the NPOIU came under the authority of the National Domestic Extremism Co-ordinator, a position of Assistant Chief Constable rank, then held by Anton Setchell. For this, Setchell was seconded from Thames Valley Police to the Association of Chief Police Officer's Terrorism and Allied Matters Committee (ACPO TAM). In theory the National Co-ordinator had sufficient rank to sign-off Mark Kennedy's deployment, but ACPO TAM was a technically a private enterprise as opposed to formal police unit, for all that it operated on the latter lines.

On the other hand, Mark Kennedy, being Mark Stone, was little different than being a private citizen living in Nottingham. It was only when he became directly involved in an activity that he needed authorisation. Thus, when in October 2008 his then-friends indicate to him they are planning an operation, he tells his handlers in the NPOIU, who then brief Nottinghamshire Police, where Kennedy was living as Stone, and seek further authorisation.

2. Established in 1968, the Special Demonstration Squad was a secretive unit within Metropolitan Police Special Branch which placed undercover officers within political protest groups

Role of Ian Ackerley and Nottinghamshire Special Branch

It is Assistant Chief Constable Ian Ackerley of Nottinghamshire Police who, on 5 November 2008, authorises Kennedy to carry out the undercover work in relation to the planned power station protest – even though it was not certain the protest would take place in Nottinghamshire at that point.

Ackerley was not in the chain of command for Nottinghamshire Special Branch; that role went to his colleague ACC Susannah Fish. However, she was absent on a secondment to the Home Office and her position temporarily occupied by an officer from Lincolnshire police. Thus at that moment in time, Ackerley was the best placed officer of rank to provide authorisation for what ultimately developed into Operation Aeroscope. However, it would be very surprising if Susannah Fish had not been involved in authorizing previous activities by Kennedy.

The role of Ackerley is central to matters. He not only gives the initial 2008 authorisation, but he is also the one who calls the ‘Gold level’ meetings of March and April 2009 as the intelligence picture builds up due to Kennedy’s work. And it is Ackerley who sets the policy about how that intelligence is to be distributed to the investigating officers for Aeroscope – particularly the need to protect Kennedy’s identity. Curiously, there is lack of thorough investigation of this policy setting and the role of Ackerley is glossed over in the office reports of what went wrong.

The first gold meeting was attended only by Ackerley, Chief Superintendent John Busuttil and two unnamed detective constables. Busuttil was the Nottingham police officer who was in charge of territorial policing for ‘D Division’ – the area which included Ratcliffe-on-Soar power station. Many of the officers involved in the pre-arrest phase and the actual arrest operation were at that time immediately serving under him. The meeting of 7 April was attended by Ackerley, Busuttil and Supt. Paul Anderson who served as Deputy Divisional Commander under Busuttil. Also in attendance were Chief Inspector Ian Barrowcliffe, head of operations and planning for Nottinghamshire Police, and Detective Chief Superintendent Ian Waterfield, the force’s Director of Intelligence. Waterfield ‘had responsibility and oversight of all RIPA authorisations, CHIS and covert policing operations.’³ he was also line manager for Nottinghamshire Special Branch.

It is not known precisely what was discussed was at the Gold level meetings for Aeroscope. However, it is known that ‘protection of the source’ of the intelligence was one of the topics.⁴ It is probably not a coincidence that the second such meeting known of, that of 7 April, is also the date a report is submitted by Nottinghamshire Special Branch setting out the case for the continuing authorisation of Kennedy’s role. The report itself is anodyne, giving the semblance of due diligence while going through the motions.

Of more interest is that it was authored by a local Special Branch employee, one G. Newton, and endorsed by NPOIU, including ACC Anton Setchell. Nottinghamshire Special Branch was a smallish affair, led by an officer of Detective Inspector rank – at the time Andy Bateman. Between Bateman and Ackerley are three layers of management, including Waterfield, though as discussed later, he had direct access to Busuttil whom he regularly briefed on intelligence received from the Kennedy via the NPOIU.

Bateman does not appear in the official reviews and on the face of them it appears that, though he was being briefed by the NPOIU and on occasion passed on some of Kennedy’s intelligence reports, he has little role to play. It is the NPOIU who held the power.

For instance, Ackerley decides that it is the NPOIU who should be the conduit of information relating to Kennedy’s role after the arrests taken place. And from what we can tell, once the arrests occur on 13 April 2009,

3. Ian Waterfield, Profile, LinkedIn.com, 2017 [linkedin.com/in/ian-waterfield-3a719825](https://www.linkedin.com/in/ian-waterfield-3a719825)

4. *Ratcliffe-on-Soar Power Station (Operation Aeroscope) Disclosure: Final Report*, Independent Police Complaints Commission, March 2012.

ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final%20Operation%20Aeroscope%20report%20March%202012.pdf

Bateman makes no further appearance in any of the documents. Indeed, if it was not for the disclosure there would be no trace of him at all.

None of this exculpate Bateman, who having charge of political policing in Nottinghamshire would have monitored the environmental groups long active in the city. In one sense, being closer to the ground, Bateman was in a better position to learn about Kennedy's activities as he posed as an activist and interacted with the different political scenes in Nottingham. The disclosure is clear that there were those within Nottingham Special Branch, including Bateman, who knew who Kennedy really was.

Busuttil and officers under him were central to Aeroscope prior to and leading up to the arrest of the campaigners on 13 April. Several of them subsequently commented on it in the press, justifying the , saying they were 'intelligence-led' and had 'struck early to protect the critical national infrastructure'.⁵ However, they do not appear to have played much in the role in the subsequent investigation, which passed over to new officers. How much they knew of the specifics of Kennedy's undercover identify and role is not clear.

Post-arrest investigation

On the day of the arrests in April 2009, Ackerley effectively changes the nature of the operation and replaces the investigating team. Some of these are officers new to Nottinghamshire Police and are who unaware of Kennedy's role – indeed, at first it is deliberately kept from them, supposedly to protect the integrity of the investigation.

Nevertheless, they cannot quite avoid the information, though the reports indicate it is only released to them gradually. The Senior Investigation Officer for Operation Aeroscope is Det. Supt. Adrian Pearson, a recent arrival at Nottinghamshire Police; he was only appointed to lead the Aeroscope investigations the day after the arrests. When he gets indication that the intelligence that led to the raid and arrests in the first place was due to an undercover having been deployed, he raises the matter with an immediate superior, Det. Ch. Supt. Neil James. James is apparently ignorant of the activities of the undercover, but according to the official reports recognises the importance of the fact; it is he who says their needs to be a meeting with local prosecutors to discuss it.

This meeting took place on 7 May and included another Nottinghamshire officer, Det. Supt. Stephen Lowe. It is the only time Lowe appears in the official accounts, but it is worth noting he had been a predecessor to Bateman, having been head of Nottinghamshire Special Branch when another NPOIU undercover Rod Richardson was undercover in the city (2000-2003) and when Mark Kennedy was first deployed. It would be surprising if Lowe did not recognised the situation for what it was much more than is described in the reports. There is also the unexplained matter of why Lowe was invited to the meeting in the first place given he is seemingly not otherwise involved in Operation Aeroscope.

Within the official reports, mentions of Ackerley effectively end following the arrests. Instead, in both the Rose and IPCC reports the focus is on the role of the Aeroscope investigation team who pick up responsibility for matters after 13 April.

Thus, in the IPCC report into the affair, Pearson and his team come in for criticism for not considering the role of Kennedy as an undercover sufficiently. No such criticism is directed at Ackerley, even though it is clear he knew from the very beginning and actually set the policy on how information relating to Kennedy was distributed. As the 'Gold Commander', that was precisely his oversight role. It is very hard to understand how he was effectively ignored by the IPCC when all authority actually ends at his door and he signed off all the

5. *Activists plotted to 'starve' Ratcliffe power station*, BBC News Online, 10 October 2011. bbc.co.uk/news/uk-england-nottinghamshire-15217870

authorisations as well.

Insight from disclosure

The disclosure confirm that for the NPOIU undercovers, the authorising officer was not just Anton Setchell but the Assistant Chief Constable for each police area where the undercover was to be part of protests and actions that might involve some breaking of the law. This would usually be the one overseeing special operations. The local head of Special Branch was also kept in on the loop. What we pick up from our examination of Aeroscope material is that in this, they had had little actual power – that seems to have remained with the NPOIU but would have some knowledge of affairs.

The Kennedy related disclosure also puts ACC Anton Setchell in the frame as actively supporting the deployments. He was not so high above the ground that he did not know what was under his command. Much of this has been suspected for some time by campaigners; what the Aeroscope documents do is provide strong backing evidence for this and a reason in the spycop scandal to focus attention on key people in regional police forces where they were deployed – heads of Special Branch, any Directors of Intelligence, and those at Assistant Chief Constable level.

Open questions

What is missing is how much the detailed knowledge of the deployment was being passed on. Particularly, how much did local Special Branch know of the tactics used by the undercovers to create and maintain their legends? What of the numerous relationships Kennedy had? Or was all this strictly kept in-house? These questions are still unanswered as these documents do not detail the history of Kennedy in Nottingham or specify what was said in briefings from the NPOIU.

It is known from a contemporary of Kennedy, Simon Wellings, an undercover in London who accidentally sat on his phone and so recorded a debriefing session, there was considerable interest in the personal lives of those he was targeting.⁶ We also know that Special Branch are keen on running informers and grasses within local political scenes. On a personal level, we know of at least one person approached in the Nottingham environmental scene to be an informer and there are multiple other examples such as in Glasgow⁷ and Cambridge⁸ show this practice was used by Special Branch to target environmentalists.

This leads to another question: did Nottinghamshire Special Branch run its own informers in the scene around Kennedy and thus learn of his activities through those reports? It is speculation at the moment, but it is hard to see that they would not have found out or been able to make the connection. The NPOIU certainly knew. Kennedy had been deployed along with undercovers Lynn Watson and Marco Jacobs, who were certainly aware of his relationships as they would have witnessed them and discussed them with activists.⁹

6. Undercover Research Group, *Simon Wellings (alias)*, Powerbase.info, 2018.

powerbase.info/index.php/Simon_Wellings_(alias)

7. Paul Lewis, *Police caught on tape trying to recruit Plane Stupid protester as spy*, The Guardian, 24 April 2009
theguardian.com/uk/2009/apr/24/strathclyde-police-plane-stupid-recruit-spy

8. Rob Evans & Matthew Taylor, *Cambridgeshire police tried to turn political activists into informers*, The Guardian, 17 March 2014
theguardian.com/uk-news/2014/mar/17/cambridgeshire-police-political-activists-informants

9. Author: various conversations with individuals who knew Mark Kennedy, Lynn Watson and Marco Jacobs. All three NPOIU undercovers were active in scenes that overlapped considerably and on occasion targeted the same groups.

RESTRICTED (when complete)**MG11W****Witness Statement****Page 1 of 5**

CJ Act 1967, s.9; MC Act 1980, ss.5A(3) (a) and 5B; Criminal Procedure Rules 2005, Rule 27.1

URN:

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Statement of: **MARK**Age if under 18 (if over insert "over 18"): **Over 18**Occupation: **POLICE OFFICER**

This statement (consisting of6..... Pages(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it, anything which I know to be false, or do not believe to be true.

Signature: MarkDate: **23/09/2009**

Tick if witness evidence is visually recorded:

☐

(Supply witness details on last page)

I am a serving UK law enforcement officer, for the purpose of making this statement I wish to be known as Mark.

On Friday 9th January 2009 in the evening I was approached by [redacted] who I have known of for about six years. I spoke to [redacted] at [redacted] in Nottingham. I am aware that [redacted] is involved in compiling research for Green Peace. This research is in relation to installations and companies. It is [redacted] himself who has told me this. [redacted] refers to Green Peace as the "Firm". [redacted] asked me if I could drive a car for an action the following day and if possible hire a suitable vehicle for the purpose of carrying five people. I explained that I had other commitments but would be able to drive a car for the first part of the day.

Later that evening at about 10pm at [redacted] explained the action to be an external reconnaissance of a venue close to Nottingham. I agreed to use my vehicle as hiring a car at short notice was problematic. We arranged to meet at the Ned's housing coop, 7 Albany Road, Nottingham the following morning at 7am.

At 7am I met with [redacted] at 7 Albany Road, he was in company with a younger male that I now know to be [redacted] and recognise from attending Climate Camps. With him were two young females, both white in their twenties. We drove to the village of Ratcliffe on Sour where [redacted] and the two girls got out. They had with them a video camera and an expensive looking stills camera with a large telephoto lens. I drove with [redacted] to the local services by the East Midland airport round-about where we assessed the potential for parking vehicles prior to an action. We then drove to the area known as Trent Lock and on foot carried out a reconnaissance of the area at the back of Ratcliffe on Sour power station. We looked at a footbridge next to a railway bridge that passes over the River Trent giving tree screened access to the rear fence of the power station.

We then returned to the village where we had left [redacted] and the two girls. They were waiting for us to collect them outside of a village hall. They freely spoke of the morning they had had scouting around the outside of Ratcliffe on sour power station. They spoke of being stopped by security guards who had said that they were observed on CCTV. They told me that they had explained to the guards that they were photographic students from university. They felt that they had not compromised the reconnaissance and had actually gained some intelligence as to where the CCTV cameras were and as to how the guards communicate with their controller and how they have to wait for decisions to be made by someone further up the chain of command

Signature: MarkSignature Witnessed by: **N/A**

Summary 2:

The NPOIU in mainstream policing and miscarriages of justice

The previous analysis on who knew what sets the stage for two further parts: how the NPOIU fed into mainstream policing, and how that structure facilitated miscarriages of justice.

The NPOIU in mainstream policing

Though the material obtained through the disclosure and the official reports do not go into sufficient depth to be precise on matters, there is enough detail that some useful inferences can be drawn.

A notable but otherwise unremarked point is, how quickly and high up police ranks intelligence from Mark Kennedy went when it first emerged that activists were starting to plan a power station protest in October 2008. By the end of that month, the National Public Order Intelligence Unit (NPOIU) had brought Nottinghamshire Police on to the extent that Assistant Chief Constable Ian Ackerley was ready to sign an authorisation.

Mark Kennedy had been deployed in Nottingham for five years by this stage. So given there were doubtlessly previous operations where he would have required authorisation, it is likely he was known of by Ackerley, who had moved from Staffordshire to Nottinghamshire Police as an Assistant Chief Constable in September 2006.

It is also probable that there were already well established links between Kennedy's unit, the NPOIU, and local Special Branch whose heads included Stephen Lowe and Andy Bateman. These links would have gone back to the time of Kennedy's predecessor, another NPOIU undercover under the name 'Rod Richardson', who was deployed in Nottingham from 2000 to 2003.

The evidence provided by the authorisation of April 2009 also indicates there was a well-established procedure in place. It shows the Nottinghamshire Special Branch were accustomed to dealing with this sort of work, and thus the implication is they were being generally kept in the loop.

The extent to how Kennedy's intelligence passed up the police hierarchy is harder to determine. Central to this are the 'Gold' level meetings of 23 March and 7 April. It can be inferred it was at this top level that intelligence relating to the undercover work was discussed and policy set. Minutes of those meetings are as yet unavailable, so all that can be said is they were attended by Ackerley.

If the NPOIU were present it would demonstrate that their input into decision making was at the highest levels and thus in a position to shape policy. That the brief for the re-authorisation of Kennedy by Ackerley on 7 April was supported by a statement from the National Domestic Extremism Co-ordinator, Anton Setchell, indicating he was also kept aware of the situation.

This is substantiated by the distribution lists provided in the NPOIU intelligence forms which presented Kennedy's intelligence. They include 'ACPO Gold', presumably Setchell, but also for Nottinghamshire Police there are references to the Head of Special Branch (as 'HSB'), Andy Bateman, and the otherwise unidentified 'Silver Cmdr Notts', who would have been Ackerley's deputy in overseeing Operation Aeroscope. It is thought, but not confirmed, that Silver was Det. Ch. Supt. Ian Waterfield, who was Director of Intelligence for Nottinghamshire and who had responsibility for RIPA authorisations of the kind that Mark Kennedy would have required.

In the emergency services, the Gold – Silver – Bronze command structure is used to give a clear line of

command for an operation. Gold sets strategy, while Silver oversees tactics. Bronze's role is operational, i.e. carrying out the actual work on the ground under guidance from Gold and Silver.

One intelligence report, that of 13 April, noted that on 11 April activists planned a reconnaissance of Ratcliffe-on-Soar power station. It states that Kennedy's handler in the NPOIU, Det. Insp. David Hutcheson, had verbally briefed Bateman to pass the intelligence onto the Silver Commander. Another report notes that the NPOIU had also directly briefed Chief Superintendent John Busuttil, divisional commander for the area that covered Ratcliffe-on-Soar. It is thought, but not confirmed, that part of his responsibility was for the actual arrest operation.

Thus, the pre-arrest operation seems to be a small group of Nottinghamshire officers overseeing sensitive material, working closely with senior NPOIU managers who provide direct briefings.

This changes in the post-arrest phase, when officers involved in the day to day work of Aeroscope are replaced almost completely as it moves to become a major investigation. Initially, these new officers are kept ignorant of Kennedy's role, a deliberate policy decision which must have originated with the Gold Commander, Ian Ackerley. It is only gradually that Kennedy's central participation emerges, and only after that dissemination of information relating to it. At either Ackerley's explicit decision or acquiescence, the dissemination is made the responsibility of an otherwise unnamed 'NPOIU DCI'.

We believe this is Det. Ch. Insp. Nightingale of the NPOIU, who headed up the 'Confidential Intelligence Unit', the subdivision of the NPOIU which actually ran the undercovers such as Kennedy. Immediately below him is Kennedy's cover officer, Det. Insp. David Hutcheson. Both men are named in the distribution lists for the Kennedy intelligence reports.

In the investigation stage, it is the NPOIU DCI who briefs the senior investigating officers relating to Kennedy and oversees passing on information to the Aeroscope investigating team. As such, the team are only following the policy decision of Ackerley in this. The IPCC castigates the investigation team for not being firmer on the role of the undercover while being strangely silent on the Assistant Chief Constable's pre-eminent role.

Nevertheless, what emerges is a seemingly standard practice where, throughout investigations, the NPOIU are effectively in control of the intelligence coming out from their undercovers.

Miscarriages of Justice

It is now well established that for Special Branch units such as the NPOIU or Special Demonstration Squad, protection of undercover identities took high priority, something evidenced in the discussions around 'protecting the source' as appears in the Aeroscope related reports. Anecdotal evidence also indicates that police preferred to let cases collapse or go uninvestigated rather than allow undercovers give evidence in court.¹⁰

It is not hard to see how this sets up a situation which encourages suppression of evidence. This can be observed in practice when seemingly iron-clad cases suddenly and inexplicably collapsed. On the other hand, evidence could be in favour of or even exonerate defendants. In which case suppression of it amounts to a miscarriage of justice.

10. Michael Levi, *Covert Policing and the Investigation of 'Organized Fraud': The English Experience in international Context*, in C. J. C. F. Fijnaut & Gary Trade Marx (ed), *Undercover: Police Surveillance in Comparative Perspective*, Martinus Nijhoff Publishers, 1995.
books.google.co.uk/books?id=TcUKI8A6QW0C

A more recent example directly applying to the Special Demonstration Squad was the role of undercover Christine Green in an animal rights raid on a Hampshire fur farm in 1998, which led to Metropolitan Police apologising to Hampshire Police for not disclosing her presence. Rob Evans, *Ex-police spy berates Met for revealing her role in mink release*, The Guardian, 23 February 2018
theguardian.com/uk-news/2018/feb/23/ex-police-spy-christine-green-berates-met-for-revealing-role-in-mink-release

It is the latter that appears to have happened in the case of Operation Aeroscope. Taking at face value that the senior investigating officers were kept mostly in the dark about Kennedy's identity, it is not hard to see how his alter ego, 'Mark Stone', would have been of particular interest to the police carrying out the investigation into the arrested campaigners. This is supported in part by Kennedy's own admission in an interview that to the average Nottingham police officer he was only ever 'Mark Stone', a thorn in their side.¹¹ To maintain his cover from the Aeroscope team in general (as opposed to the few in on the secret) he could not be seen to get special treatment, so it is likely he was interviewed and re-interviewed to keep his cover intact.

Nevertheless, he is clearly a key person in the planning of the action, carrying out reconnaissance and as participants have told us, actively encouraging it to go ahead following the spotting of police cars at the power station, which potentially casts him as an agent provocateur. One of those at the meetings in the school the night of the arrests told us they recalled him saying during the discussions as to whether to go ahead, "We can do it, we can be there all week."

Early on, attention is given to the possibility Kennedy might be arrested. A risk assessment relating to Kennedy's involvement in the demonstration noted the possibility, saying if this happened, he would decline a solicitor and that his NPOIU controller David Hutcheson 'will be regularly informed of the situation of UCO 133 [Kennedy] and in the event of their arrest will be immediately informed in order to liaise with Nottinghamshire Senior management and the Criminal Prosecution Service.'¹²

The role of *agent provocateur* is also seemingly recognised when in July 2009 Nick Paul of the CPS refused to accede to requests for charges against him to be dropped. (This is supported in Kennedy's own account, when he speaks of waiting weeks to be told charges would be dropped). That Nick Paul thought there was sufficient evidence to have him charged with conspiracy is telling insofar as it points to Kennedy's leading role in the planning for the action as being uncovered by the investigating officers. Something that Kennedy's handlers must also have been aware of.

Rose, in his report, gives the following remarkable paragraph:

24. On 23 July 2009 an email from the DCI NPOIU to Nick Paul refers to having seen the Deputy SIO and the intelligence officer that day and said "the SIO or Deputy have not given the local CPS any details of the asset but they are aware there is an asset involved". (Earlier in July 2009 Nick Paul had rejected the DCI NPOIU's "tactical suggestion" that the UCO be removed from the charging pool). He went on "if the asset remains in the charging pool we will need to interject in some way to prevent charging". This email is important because, as indicated in paragraph 22 above, it is inconsistent with the Deputy SIO's recollection, because it illustrates the DCI NPOIU's determination, throughout, to keep Kennedy "out of the frame" and because it shows, to put it no higher, a lack of urgency in supplying details of the UCO to the local CPS.

However, in mid-September, charges are finally dropped, demonstrating that the NPOIU had sufficient pull to make such an 'interjection'. We address this more in the next section, but highlight here the line: '*DCI NPOIU's determination, throughout, to keep Kennedy "out of the frame" and because it shows, to put it no higher, a lack of urgency in supplying details of the UCO to the local CPS.*' This more than anything is telling of the NPOIU approach – secrecy above all, even at the cost of a massive miscarriage of justice.

11. Simon Hattenstone, *Mark Kennedy: Confessions of an undercover cop*, The Guardian, 26 March 2011

theguardian.com/environment/2011/mar/26/mark-kennedy-undercover-cop-environmental-activist

12. Intelligence reports relating to 2009 planned protest at Ratcliffe-on-Soar power station, National Public Order Intelligence Unit, 2009. Available on SpecialBranchFiles.uk. See page 4.

documentcloud.org/documents/4429055-4-NPOIU-Aeroscope-Disclosure-Review-and.html

13. *A review of national police units which provide intelligence on criminality associated with protest*, HM Inspectorate of Constabulary, 2012. This report was followed up by several more from HMIC focusing on undercover policing in general.

justiceinspectorates.gov.uk/hmicfrs/media/review-of-national-police-units-which-provide-intelligence-on-criminality-associated-with-protest-20120202.pdf

The timing is also curious as it comes at almost the exact time that he is told his deployment is being ended. At this point he has been deployed over six years, longer than average four to five years, and other sources point to his deployment being increasingly problematic from the police's side.¹³ Nevertheless, one has to wonder if there was a connection between the two: was the price of charges being dropped that he was finally removed from the field having crossed over the line too far?

Returning to the process of how the NPOIU controlled information, it is now straightforward to see how they were able to undermine the full disclosure necessary to understand Kennedy's particular role. The extent to which it was maintained as secret seems to have prevented a proper evaluation, and a policy set by Ackerley would have placed pressure to keep it secret.

With its own vested interests, the NPOIU could not be relied upon to point out if and when Kennedy's may have crossed the line. If the NPOIU were forthcoming and open, then the Aeroscope investigators would have been complicit in the cover-up of Kennedy's role. However, based on our reading the Sir Christopher Rose and IPCC reports, particularly around the importance of the five and a half page 'health and safety briefing' from Kennedy (the document labelled '130409Mark'), we are favouring the former. If anything, more fault can be placed at the IPCC for not properly interrogating the role of the NPOIU.

That there was a miscarriage of justice in this case was recognised by the then Director of Public Prosecutions, Keir Starmer, when he invited those who had been convicted to appeal their case. They successfully did this in July 2010 on the basis of the non-disclosure of Kennedy's role.

In conclusion, and admitting this based on indirect readings, the picture that emerges is of a process controlled by the NPOIU and very senior management at Nottinghamshire Police. It is a combination of two parts – policy decisions at Assistant Chief Constable level to protect such sources, and the NPOIU's use of this to suppress or downplay certain material from their undercovers. In such a set-up, suppression of relevant material becomes possible, leading to miscarriages of justice.

Summary 3:

The Crown Prosecution Service and the role of Nick Paul

In 2004, animal rights campaigning, particularly around anti-vivisection, had reached a crescendo, with multinational pharmaceutical companies threatening to pull billions in research from the UK.

It is known that then-prime minister, Tony Blair, met with industry representatives that year. This led to the government producing a green paper on tackling animal rights. As part of the strategy, the Home Office set up the 'National Forum' to formulate a multi-agency approach.¹⁴

Co-ordinator for domestic extremism

Several initiatives were established, the best known being the appointing of a National Domestic Extremism Co-ordinator by the Association of Chief Police Officers, placed under the governance of its Terrorism and Allied Matters Committee (ACPO TAM). The first national co-ordinator was Anton Setchell from Thames Valley Police, appointed at the senior officer rank of Assistant Chief Constable. He then created the National Domestic Extremism Unit which absorbed among other units, the National Public Order Intelligence Unit in 2006.¹⁵

Less well known is a similar initiative in the Crown Prosecution Service. It too created a Domestic Extremism Co-ordinator position within its Specialist Crime Division / Complex Case Unit. In 2008 this was barrister Nick Paul. That year, Paul had led the prosecution of 29 climate change activists who had successfully targeted a train delivering coal to Drax power station. One of those involved in that action had been Mark Kennedy – he attended planning meetings and hired a van to drive a number of the activists to the protest. They were found guilty in July 2009. Those convictions were overturned in January 2014.¹⁶

As Domestic Extremism Co-ordinator, Nick Paul would have worked closely with Setchell's unit.

Nick Paul in the Ratcliffe case

Nick Paul seems to have been brought into the Ratcliffe case early on. According to the IPCC report, on the 6

14. In 2004, in response to concerns raised by multinational pharmaceutical companies targeted by animal rights protestors, a Cabinet Ministerial Committee on Animal Rights Activists was established. This Committee led to the creation of the 'National Forum' which brought together various agencies to tackle protest movements, and it was in this period that both police and Crown Prosecution Service established national domestic extremist coordinator roles. In 2005, Caroline Flint, then a Parliamentary Under Secretary at the Home Office, told Parliament:

We must raise awareness of the effect on victims of animal rights activity through the national forum, which involves the Attorney-General, the Minister responsible for such matters in the Department of Trade and Industry, Ministers from the Department for Constitutional Affairs, officials, police and others doing relevant work, and myself. We meet regularly to oversee current activity and what the police are doing and to build better awareness. The Crown Prosecution Service has developed guidance on taking witness impact statements in animal rights extremist cases to maximise the prospects of obtaining appropriate disposals and orders such as ASBOs. The Court Service is educating magistrates and the courts about the methods and tactics of animal rights extremists, using guidance and best practice material so that the judiciary is aware of the aggravating nature of the activity when they consider relevant case.

publications.parliament.uk/pa/cm200405/cmstand/d/st050120/pm/50120s03.htm

Farewell to NETCU, Corporate Watch, 19 January 2011.

network23.org/freebeagles/miscactivism/farewell-to-netcu-article/

Protecting People From Animal Rights Extremists, Home Office (press release), 30 July 2004.

wired-gov.net/wg/wg-news-1.nsf/54e6de9e0c383719802572b9005141ed/b4274acced93d591802572ab004b9e05?OpenDocument

15. For a detailed history of the domestic extremism units as currently understood see Undercover Research Group, *National Domestic Extremism Unit: organisational history*, Powerbase.info, 2018.

powerbase.info/index.php/National_Domestic_Extremism_Unit:_organisational_history

16. Rob Evans, *Drax protesters' convictions quashed over withheld evidence of police spy*, The Guardian, 21 January 2018 theguardian.com/uk-news/2014/jan/21/drax-protesters-convictions-quashed-police-spy-mark-kennedy

April 2009, Det. Ch. Insp. Rob Severn, then senior investigating officer for Operation Aeroscope, contacted Ian Cunningham of the Crown Prosecution Service's Complex Case Unit office Nottingham office to inform him about the operation. Severn tells Cunningham that it is an intelligence-led operation and that Nick Paul already had an overview of the situation. Paul confirms Cunningham is to be the lawyer on the ground. This is exactly a week before the arrests – ironically meaning prosecutors knew of the action before some of the activists even became involved.

According to the IPCC report, Cunningham was present at subsequent Gold level and 'pre-incident' planning meetings prior to the arrests according to police statements. Cunningham denies this and states he is not actually briefed by Severn until 12 & 13 April. He also said he did not attend his first Gold level meeting until 27 April. Earlier that day he was briefed in a meeting with senior Aeroscope investigation officers that an undercover had been involved, and was shown the document setting out Kennedy's tasking. Christopher Rose in his report noted there was 'a lack of urgency' in supplying local CPS (namely Cunningham) with specific details about Kennedy, though Cunningham was aware there was an undercover involved.

From Christopher Rose's report, the meeting of the 27 April is when Nick Paul is supposedly first informed of Kennedy's presence and arrest by a Detective Chief Inspector from the NPOIU (the 'NPOIU DCI' mentioned previously), though not of the details of his involvement. The use of a Public Interest Immunity application was raised, and in an email to police the same day, Cunningham noted 'we will always be vulnerable on disclosure especially matters covert'.

Paul's role continued to be an active one. In July 2009, Rose tells us that Paul opposed charges against Kennedy being dropped. The key paragraph is (once again):

24. On 23 July 2009 an email from the DCI NPOIU to Nick Paul refers to having seen the Deputy SIO and the intelligence officer that day and said "the SIO or Deputy have not given the local CPS any details of the asset but they are aware there is an asset involved". (Earlier in July 2009 Nick Paul had rejected the DCI NPOIU's "tactical suggestion" that the UCO be removed from the charging pool). He went on "if the asset remains in the charging pool we will need to interject in some way to prevent charging". This email is important because, as indicated in paragraph 22 above, it is inconsistent with the Deputy SIO's recollection, because it illustrates the DCI NPOIU's determination, throughout, to keep Kennedy "out of the frame" and because it shows, to put it no higher, a lack of urgency in supplying details of the UCO to the local CPS.

There is a deeper set of implications here. One that Paul was very much in the loop at this point and was calling the shots. The second, that he thought the evidence against Kennedy was strong enough that he should be charged – a good year before the trial takes place. The NPOIU were clearly positioned enough to be able to successfully interject and have Kennedy removed, but conversely, it means that questions over Kennedy's role as potential agent provocateur were known in place and at the highest levels very early on in the investigation. Paul was replaced in January 2010 as co-ordinator for domestic extremism by Bethan David.

Nevertheless, Rose – whose brief was to investigate failure in the CPS following the collapse of the Ratcliffe trial – inexplicably does not explore Paul's role at all, focusing almost exclusively on Ian Cunningham. From what we can tell he does not appear to have actually interviewed Paul.

This is all the more surprising given Rose makes the pertinent point, that while various people mention briefings, without notes of what the briefings actually said then little of substance can be drawn as to what was actually briefed about. This is the position we are left with here, as was Rose.

To this picture can be added a Doughty Street press release of 2011, which stated:

[Nick Paul] was also responsible for advising the Police in respect of covert investigations in respect of domestic extremism cases and developed a close working knowledge of RIPA.

Nevertheless, stepping back to look at the larger picture, we have someone deeply involved in overseeing the prosecution of campaigners, not least where Mark Kennedy played a role in the actions they were being charged over.

So, though we are not in a position to provide more specific conclusions, there is sufficient concern that the role of the Crown Prosecution Service in the miscarriage of justice is being down-played. This concerns could be addressed in part by the minutes of the Aeroscope Gold level meetings or communications between CPS senior staff such as Nick Paul with relevant police managers, whether NPOIU or local ranking Ian Ackerley.

As a final aside, after leaving the CPS, Nick Paul returned to Doughty Street Chambers in November 2011, which he had been a co-founder of, with among other Keir Starmer. Starmer, when he stepped down as DPP also returned to Doughty Street. In another irony, it had been barristers from Doughty Street who had defended the Ratcliffe cases.

Gallery I



Ratcliffe-on-Soar power station, Nottinghamshire.



Arrest of Mark 'Stone' Kennedy (right) at the Iona School, 13 April 2009



Police outside Iona School, night of 13 April 2009
Photo: Rizwaan Sabir.



Mike Schwarz (right), of Bindmans, giving his statement following the collapse of the 'deniers' trial, 10 January 2011



Police raid on premises in Nottingham 13 April 2009, around the corner from Mark Kennedy's undercover residence.
Photo: Alan "Tash" Lodge.



Cover of Nottingham Post following collapse of the 'deniers' trial (via Alan Lodge).

Analysis of source materials

Operation Pegasus and the intelligence route

Mark Kennedy's infiltration of environmental circles as 'Mark Stone' began in 2003 and lasted six years, known as Operation Pegasus.¹⁷ Though he was active across the UK, for most of that period he was based in Nottingham where he lived in an area many environmentalists had moved to.

Kennedy, a Metropolitan Police officer, had been seconded to the National Public Order Intelligence Unit (NPOIU), which ran undercovers in protest movements across the UK. Initially the NPOIU was an independent unit overseen by the Association of Chief Police Officers' Terrorism and Allied Matters Committee (ACPO TAM), affiliated to Special Branch. In 2006, the NPOIU was merged into the National Domestic Extremism Unit (NDEU), led by Assistant Chief Constable Anton Setchell, the National Co-ordinator for Domestic Extremism.¹⁸

Under the Regulation of Investigatory Powers Act 2000, authorisation of an undercover deployment was required to be done at Assistant Chief Constable level, and Setchell was of the appropriate rank.¹⁹ However, as ACPO was a private company to which police were seconded, further authorisation appears to have also been required for specific deployments from relevant police of appropriate rank – in this case an Assistant Chief Constable for Nottinghamshire.

On 5 November 2008, ACC Ian Ackerley of Nottinghamshire met with an unnamed Detective Chief Inspector from the NPOIU (referred to in documentation as the 'NPOIU DCI') to discuss Kennedy's deployment against 'domestic extremist' groups.²⁰ At this meeting an application for Kennedy's participation in minor criminal activity as an undercover officer was discussed and Ackerley, an appropriate ranked officer for Nottinghamshire Police, authorised the application.²¹

Sir Christopher Rose in his report described the NPOIU DCI as the head of the Confidential Intelligence Unit – the sub-unit within the NPOIU that oversaw the undercover police officers. He also notes that the cancellation of Kennedy's authorisation took place on 10 February 2010, and that throughout this period Ackerley was the authorising officer for Kennedy's deployment under Operation Pegasus.²²

Rose explicitly stated that:²³

... the route for intelligence gathered by Kennedy was via NPOIU to Nottingham [Special Branch] and then to ACC Ackerley.

17. *Ratcliffe-on-Soar Power Station (Operation Aeroscope) Disclosure: Final Report*, Independent Police Complaints Commission, March 2012. [ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final Operation Aeroscope report March 2012.pdf](http://ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final%20Operation%20Aeroscope%20report%20March%202012.pdf)

18. For details and references see Undercover Research Group, *National Domestic Extremism Unit*, Powerbase.info, 2017. undercovers.wearshades.co.uk/index.php?title=National_Domestic_Extremism_Unit

19. *Authorised Professional Practice: Undercover Policing: Authorisation*, College of Policing, 19 August 2015. app.college.police.uk/app-content/covert-policing/undercover-policing/#authorisation

20. Domestic Extremism is a term without formal legal definition, but commonly used by UK police to describe the 'activity of groups or individuals who commit or plan serious criminal activity motivated by a political or ideological viewpoint' For more information on the terms see Undercover Research Groups, *Domestic Extremism*, powerbase.info, 2015.

powerbase.info/index.php/Domestic_Extremism

21. *Ratcliffe-on-Soar Power Station (Operation Aeroscope) Disclosure: Final Report*, Independent Police Complaints Commission, March 2012. [ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final Operation Aeroscope report March 2012.pdf](http://ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final%20Operation%20Aeroscope%20report%20March%202012.pdf)

22. Sir Christopher Rose, *Ratcliffe-on-Soar Power Station Protest: Inquiry into Disclosure*, Crown Prosecution Service, December 2011. cps.gov.uk/news/assets/uploads/files/rose_report_on_ratcliffe_-_on_-_Soar_case.pdf

23. Sir Christopher Rose, *Ratcliffe-on-Soar Power Station Protest: Inquiry into Disclosure*, Crown Prosecution Service, December 2011. cps.gov.uk/news/assets/uploads/files/rose_report_on_ratcliffe_-_on_-_Soar_case.pdf

Nottinghamshire Police structure

For the period in question, Nottingham Police's senior officers comprised of the Chief Constable, the Deputy Chief Constable, the Assistant Chief Constable (Crime) and the Assistant Chief Constable (Operational Support). Initially the ACC (Crime) had responsibility for territorial policing as well, but at some point this was transferred to ACC (Operational Support) which was renamed ACC (Territorial). Thus, by the time of Operation Aeroscope (2009/2010) Nottinghamshire had returned to the classic division between uniformed policing and detectives (CID). As such, ACC (Territorial) would include public order among their responsibilities, while ACC (Crime) would include intelligence gathering.

Immediately under each Assistant Chief Constable is a set of Chief Superintendents. For ACC (Territorial), these included the divisional commanders for the different policing areas. During the period concerned Ratcliffe-on-Soar was in the South Notts Division, also known as 'D' Division, then under Chief Superintendent John Busuttil.²⁴

Under ACC (Crime) were several directorates headed by Detective Chief Superintendents (DCS) with two of particular importance for Aeroscope: the Directorate of Crime, headed by DCS Neil James, and the Directorate of Intelligence under by DCS Ian Waterfield – both men had held these positions since 2006. Within the Directorate of Intelligence sat Nottinghamshire Special Branch, headed by Detective Inspector Andy Bateman.

Operation Aeroscope - pre arrest phase



From 2003, the Assistant Chief Constable (Crime) was Susannah Fish. However, in 2009 she was seconded to the Home Office, and her place was taken up on a temporary basis by Peter Davies from Lincolnshire Police. In September 2006, Ian Ackerley took over from Peter Ditchett as Assistant Chief Constable (Operational Support / Territorial). Fish's secondment meant that Ackerley was effectively the senior officer of ACC rank at the time of Operation Aeroscope.

It is unknown the extent to which the true identity of 'Mark Stone' was known to Nottinghamshire Police. However, given the stated route of intelligence flow, and the duration for which he was based in Nottingham it is likely that Nottinghamshire Special Branch were aware of 'Mark Stone's real identity as an undercover, and that other operations in Nottinghamshire had also previously been authorised. Even if they were not aware of

24. Nottinghamshire Police reorganized territorial policing divisions in April 2011.

his exact identity, the evidence from the Ratcliffe disclosure demonstrates a working knowledge of an NPIOU undercover based in Nottingham's strong environmentalist milieu.

Given the chain of command was:

Nottingham Special Branch → Directorate of Intelligence → ACC (Crime)

it is probable that ACC Susannah Fish and Det. Ch. Supt. Ian Waterfield were also aware there was an NPIOU undercover among the environmentalists in the city and again, very likely his actual cover identity.

Opened 6
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Confidential
Revised 1st July 2003

NATIONAL INTELLIGENCE REPORT (Form A)

ORGANISATION and OFFICER	NPIOU		DATE/TIME OF REPORT	23/03/2009 1810 Hours	
INTEL SOURCE or INTEL REF N^o (I.S.R.)			REPORT U.R.N.		
SOURCE EVALUATION	A Always Reliable	B Mostly Reliable	C Sometimes Reliable	D Unreliable	E Untested Source
INTELLIGENCE EVALUATION	1 Known to be true without reservation	2 Known personally to the source but not to the officer	3 Not known personally to the source, but corroborated	4 Cannot be judged	5 Suspected to be false
HANDLING CODE To be completed at time of entry into an intelligence system and reviewed on dissemination	PERMISSIONS		RESTRICTIONS		
	1 May be disseminated to other law enforcement and prosecuting agencies, including law enforcement within the EEA, and EU compatible (No Code or Conditions)	2 May be disseminated to UK non prosecuting parties (Code 3.7 conditions apply)	3 May be disseminated to non EEA law enforcement agencies (Code 4.7 and/or conditions apply, specify below)	4 Only disseminate within originating agency/force. Specify internal recipient(s)	5 <u>Disseminated Intelligence</u> Receiving agency to observe conditions as specified below
REPORT					
SUBJECT	Anti Coal activists target Ratcliffe on Saur power station 13/04/2009				
FLAGGED? ??? : Where Flagged ???					EVALUATION
OPERATION NAME/NUMBER	PEGASUS	NIM Level 2		C	I H
<p>Previous intelligence states that activists including [redacted] are planning an action against Ratcliffe on Saur power station Nottingham.</p> <p>Intelligence states that anti coal activists including [redacted] 2 activists from London, [redacted] and [redacted] are all involved in the planning of different actions within one big action against Ratcliffe on Saur power station.</p> <p>The direct action will take place on Easter Monday 13/04/2009. Activists have chosen this date as they believe that being a public holiday more activists will be able to support the action, policing levels will be at a minimum, security guard coverage will be at a minimum and the authorities will be off guard after no action is taken at the power station during Fossil fuels day on 01/04/2009.</p>					B25 B25
PUBLIC INTEREST IMMUNITY SHOULD BE SOUGHT: YES					
<p>DISSEMINATION TO DCI Nightingale, DI Hutcheson, HSB Nottingham Special Branch, Iinfo fro ACPO Gold, DCI Robbins and DI Hedley NDET. (Is the handling code correct? If there are conditions on the receiving agency's use of the material, assign the relevant code.)</p> <p>RISK ASSESSMENT FORM C COMPLETED? NO Record location of Form C (When Completed)</p> <p>Handling Codes 2, 3 or 5? Conditions apply YES Discussed with originator and documented below</p> <p>DETAILED HANDLING CONDITIONS NO FURTHER DISSEMINATION WITHOUT PERMISSION OF THE ORIGINATOR</p>					

Confidential

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Operation Aeroscope

Planning and authorisation

In October 2008, environmental campaigners began considering the possibility of carrying out a large scale protest at a coal-fired power station. At the time the target was undecided, though the principal candidates were Kingsnorth in Kent and Ratcliffe-on-Soar in Nottinghamshire. Though plans were at a very early stage, before the end of the month undercover officer Mark Kennedy, embedded among the environmentalists, had provided two debriefs to his handlers at the NPOIU.

As a result, on 5 November 2008 authorisation for Kennedy to gather further intelligence on these plans is granted by Assistant Chief Constable Ian Ackerley of Nottinghamshire Police.²⁵

On 10 January 2009, Kennedy took part in a reconnaissance of the Ratcliffe-on-Soar power station, and the following day, the activists chose it as their target. Internal intelligence reports under the heading of Operation Pegasus note that the NPOIU were aware of the choice of target on the 12 January.²⁶

Initially, the intelligence is seemingly kept within the NPOIU, being disseminated in the first instance to Det. Insp. David Hutcheson,²⁷ who is Kennedy's controller.²⁸

One NPOIU intelligence document is of particular significance. Dated 23 March 2009, and again marked Operation Pegasus, it gave the dates of the planned action, and noted there had been previous intelligence on the issue. This report is marked for wider distribution: to DCI Nightingale & DI David Hutcheson (both NPOIU), DCI Andy Robbins & DI Hedley of the National Domestic Extremism Team, the Head of Nottingham Special Branch, and 'ACPO Gold' (likely ACC Anton Setchell). Noted in the report is that the Head of Nottingham Special Branch, DI Andy Bateman, was given a verbal briefing the same day.

However, the IPCC report gives a different impression: that it is only in March 2009 that Kennedy informs his handlers that he had been invited to take part. The NPOIU DCI (presumably Nightingale, though that is unconfirmed) then decided that Kennedy should participate – and his request is granted the necessary formal authorisation by Ackerley.²⁹ Seemingly (according to Rose), this particular NPOIU DCI only met Kennedy for the first time on 9 March 2009, though will oversee Kennedy's deployment for the subsequent period.³⁰ It is not clear why the IPCC report is seemingly at odds with the picture presented by the disclosure – which has more weight as contemporaneous material. It certainly highlights the failings of the IPCC report overall, and in the above aspect seems to have actually misled.

One possible interpretation is that it is only in this month that Nottinghamshire Police, including their Special Branch, are formally told of the activists' plans, though they clearly knew informally earlier that something was

25. Rob Evans & Paul Lewis, *Police knew about plans for Ratcliffe-on-Soar break-in before most activists*, The Guardian, 7 June 2011. theguardian.com/environment/2011/jun/07/mark-kennedy-ratcliffe-on-soar

26. Intelligence reports relating to 2009 planned protest at Ratcliffe-on-Soar power station, National Public Order Intelligence Unit, 2009. Available on SpecialBranchFiles.uk. See pages 9 and 10.

documentcloud.org/documents/4429044-3-NPOIU-Aeroscope-Disclosure-Intelligence-Reports.html

27. Intelligence reports relating to 2009 planned protest at Ratcliffe-on-Soar power station, National Public Order Intelligence Unit, 2009. Available on SpecialBranchFiles.uk. See pages 10 and 11.

documentcloud.org/documents/4429044-3-NPOIU-Aeroscope-Disclosure-Intelligence-Reports.html

28. 'Jaipur' & 'Karachi', *The 'Mosaic Effect' and the potential risk to officers (redacted)*, Metropolitan Police Service (Assistant Commissioner's Public Inquiry Team), 1 Dec 2015, p. 32.

ucpi.org.uk/wp-content/uploads/2017/08/Mosaic-report-open-version.pdf

29. *Ratcliffe-on-Soar Power Station (Operation Aeroscope) Disclosure: Final Report*, Independent Police Complaints Commission, March 2012.

[ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final Operation Aeroscope report March 2012.pdf](http://ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final%20Operation%20Aeroscope%20report%20March%202012.pdf)

30. Sir Christopher Rose, *Ratcliffe-on-Soar Power Station Protest: Inquiry into Disclosure*, Crown Prosecution Service, December 2011.

cps.gov.uk/news/assets/uploads/files/rose_report_on_ratcliffe_-_on_-_Soar_case.pdf

afoot. Another option is that the IPCC either were never provided the NPOIU intelligence material, or did not ask for it. Or perhaps they did get it and ignored it. This material was disclosed in one of the subsequent court cases and at the very least the existence of sensitive disclosure being kept by Aeroscope's intelligence officers was known of and openly referred to in the reports, it is highly improbable that, at the very minimum, the IPCC investigators were not aware of its existence.

The 'Gold' level meetings

The dissemination of Kennedy's intelligence triggers two high-level 'Gold' command meetings in Nottinghamshire in spring 2009.

The first of these is held on 25 March, two days after the Head of Nottinghamshire Special Branch is told. It is a small meeting, attended only by ACC Ackerley, Chief Superintendent John Busuttil and two as yet unnamed detective constables.³¹ Busuttil was an officer in the territorial side of Nottinghamshire Police, being the commanding officer heading up 'D' Division, the area to the south of the county which included Ratcliffe-on-Soar power station.

The Gold-Silver-Bronze command structure is a hierarchical technique used by police forces and emergency services for managing situations independent of the absolute rank of the officers involved.³² It sets out a clear set of principles and responsibilities: Gold holds the strategic overview, Silver works at the tactical level while and Bronze has the operational lead.³³

The period of 6 / 7 April is a particularly significant one in the run up to the arrests. It is at this moment in time that Aeroscope is formally established, with Ackerley as Gold Commander,³⁴ while Busuttil is Silver.³⁵ Though, it is clear from the reports that Nottinghamshire police had begun planning and work prior to this formal establishment.

On 7 April, Nottinghamshire Special Branch submit a review of Kennedy's role in Operation Pegasus. Authored by one G. Newton, it is provided on behalf of the Head of Special Branch for Nottinghamshire, Det. Insp. Andy Bateman. The purpose of the review is:

SIO [Senior Investigation Officer] Inspector David Hutcheson [Kennedy's 'controller' within the NPOIU] will be regularly informed of the situation of UCO 133 and in the event of their arrest will be immediately informed in order to liaise with the Nottingham Senior management and the Criminal Prosecution Service.

It also noted that for Kennedy to continue collecting 'pre-emptive intelligence' he may have to commit minor criminal offences. It was recognised there was a risk of arrest for him, but he was prepared for this and would decline a solicitor if it happened. In relation to this it stated:

...in order to notify the Authorising Officer of recent developments and intelligence obtained by UCO 133 [Mark Kennedy] relating to planned direct action to be taken by activists on the site of Ratcliffe on Soar power station and the participation of UCO 133 during that planned direct action.

31. Response of Nottinghamshire Police to FOIA request, 24 July 2018.

whatdotheyknow.com/request/operation_aeroscope_meetings_200

32. Gold-Silver-Bronze Command Structure, Wikipedia.

en.wikipedia.org/wiki/Gold-silver-bronze_command_structure

33. *Authorised Professional Practice: Command and Control: Command Structures*, College of Policing, 23 October 2013.

app.college.police.uk/app-content/operations/command-and-control/command-structures/

34. *Ratcliffe-on-Soar Power Station (Operation Aeroscope) Disclosure: Final Report*, Independent Police Complaints Commission, March 2012.

[ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final Operation Aeroscope report March 2012.pdf](http://ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final%20Operation%20Aeroscope%20report%20March%202012.pdf)

35. Response of Nottinghamshire Police to FOIA request, 24 July 2018.

whatdotheyknow.com/request/operation_aeroscope_meetings_200

Finally, on the 7 April the second of the Gold level meetings take place. As well as Ackerley and Busuttil, three other senior officers attend:

- **Detective Chief Superintendent Ian Waterfield**, Nottinghamshire Police's Director of Intelligence, and Special Branch line manager.
- **Superintendent Paul Anderson**, Deputy Divisional Commander for D Division.
- **Chief Inspector Ian Barrowcliffe**, Head of Operations and Planning for D Division.

It is perhaps of note, that Anderson had joined D Division only relatively recently,³⁶ having been head of 'Operations North' in Nottingham city,³⁷ the area where Kennedy lived.

The Rose Report notes that at these two meetings no senior investigating officers were present, and 'On each occasion, the first objective of the Gold strategy was "to protect the source".'³⁸

At some point in the pre-arrest phase, Acting Detective Chief Inspector Rob Severn is appointed as the Senior Investigating Officer for the operational side of matters.³⁹ Severn was another officer from D Division, where he was head of Crime Investigation.⁴⁰

On the intelligence side of the operation, responsibility for the dissemination of material from Kennedy remained with the NPOIU, including responsibility for disclosing any sensitive evidence to the Crown Prosecution Service if necessary. This was done according to a 'Local Handling Procedures' document, which set out the protocols which separated operation and intelligence functions, so that different disclosure officers were to be used.⁴¹

Weekend of the arrests

The campaigners gathered at the Iona School in the Nottingham suburb of Sneinton on the weekend of the 10 April 2009. The purpose was to decide whether they would go ahead with the action the following Monday, and to finalise plans if needed. Throughout this time, Kennedy remained heavily involved with planning, including carrying out reconnaissance on behalf of the group. He was among those who argued that the action should proceed despite concerns that police vehicles had been spotted at the power station.⁴²

It is clear from the disclosed intelligence reports, that Nottinghamshire Special Branch were getting live briefings on the night to pass up the chain of command. In particular, an intelligence report, dated 13 April, notes events of the 11 April seemingly in real time:⁴³

Intelligence suggests that activists are concerned at the police presence at Power Stations (11/04/2009)

Intelligence Comment

Passed verbally to Head of Special Branch for the attention of Silver Commander.

36. *Criticism at police charge*, Newark Advertiser, 27 March 2009.

legacy.newarkadvertiser.co.uk/articles/news/Criticism-at-police-charge

37. Police and Constabulary Almanac, 2009, R Hazell & co.

38. Sir Christopher Rose, *Ratcliffe-on-Soar Power Station Protest: Inquiry into Disclosure*, Crown Prosecution Service, December 2011.

cps.gov.uk/news/assets/uploads/files/rose_report_on_ratcliffe_-_on_-_soar_case.pdf

39. *Ratcliffe-on-Soar Power Station (Operation Aeroscope) Disclosure: Final Report*, Independent Police Complaints Commission, March 2012.

ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final Operation Aeroscope report March 2012.pdf

40. Police and Constabulary Almanac, 2009, R Hazell & co.

41. *Ratcliffe-on-Soar Power Station (Operation Aeroscope) Disclosure: Final Report*, Independent Police Complaints Commission, March 2012.

ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final Operation Aeroscope report March 2012.pdf

42. Author: conversations with campaigners who were present that night and knew Mark Kennedy

43. Intelligence reports relating to 2009 planned protest at Ratcliffe-on-Soar power station, National Public Order Intelligence Unit, 2009. Available on SpecialBranchFiles.uk. See page 4.

documentcloud.org/documents/4429044-3-NPOIU-Aeroscope-Disclosure-Intelligence-Reports.html

This refers to an incident where during a reconnaissance a police car had been spotted parked at Ratcliffe-on-Soar by the protestors. This sparked a discussion as to whether their plans had been compromised and should be called off. The discussion was undecided by the time the protestors went to sleep (see elsewhere – one of the basis of the ‘deniers’ case). However, it also triggered a second reconnaissance by Mark Kennedy which found the police car had gone, and Kennedy was among those who subsequently argued the demonstration should go ahead.⁴² The intelligence briefings also mentioned the campaigners having brought to the school where they were meeting equipment such as ‘lock ons’.⁴⁵

On the 12 April, Ackerley turned Aeroscope from a ‘reactive public order response’ to a pro-active mass arrest in order to investigate those attending the protest planning meeting for conspiracy. This changed the nature of Aeroscope into a major investigation.

Thus, the same day Ackerley asked one of his deputies, Det. Ch. Supt. Neil James, who was apparently otherwise unaware of Aeroscope, to identify a suitable Senior Investigating Officer for the changing operation to take over from Rob Severn. James put forward Det. Supt. Adrian Pearson, who had only recently arrived at the police force from Warwickshire.⁴⁶

It is not known whether the plan was always to arrest before the protest took place, or whether it was a change based on some operational matter, or had been prompted by intelligence the police were receiving. That Ackerley sought out new officers to take over any subsequent investigation on the day just before the arrests would have taken place is indicative that the arrests were was a change of plan. Press reports from October 2011 noted:⁴⁷

Nottinghamshire Police said they had “struck early to protect the critical national infrastructure”.

There would also have been a need to ensure enough officers for what was a sizeable operation were in place, requiring prior planning, especially with them being drafted in from a number of other forces. However, these are likely to have been already on standby, as given that 80-100 protestors were anticipated, police would have wanted to ensure that they had sufficient numbers to handle the protest if it did go ahead.

A number of the senior officers involved in the arrest phase can be identified from press reports. These are Superintendents Mike Manley and Paul Anderson – like Severn, both served immediately under Busuttill in D Division. Both subsequently commented on the proportionality of the arrests and saying they were intelligence-led. Anderson had been at the second Gold meeting of 7 April. Also involved is likely to have been Chief Inspector Ian Barrowcliffe, long time head of operations and planning for Nottinghamshire Police. However, as noted below, responsibility for investigation and operational matters passed to other officers once the investigation after the arrests began.

At 5am on 13 April, Easter Monday, 200 police raid the Iona School arresting 114 people, including Mark Kennedy. Officers came from not only Nottinghamshire but Derbyshire, Leicestershire and Staffordshire police forces, as well as British Transport Police.⁴⁸ Derbyshire and Leicestershire, along with Nottinghamshire, are collectively part of the East Midlands police collaboration, in which various local forces share work on Serious Organised Crime, Major Crime, Intelligence, and Counter Terrorism / Special Branch. It is likely that one particular collaboration, the East Midlands Specialist Operations Unit / East Midland Counter Terrorism Unit,

44. Author: conversations with campaigners who were present that night and knew Mark Kennedy.

45. Intelligence reports relating to 2009 planned protest at Ratcliffe-on-Soar power station, National Public Order Intelligence Unit, 2009. Available on SpecialBranchFiles.uk. See page 4.

documentcloud.org/documents/4429044-3-NPOIU-Aeroscope-Disclosure-Intelligence-Reports.html

46. *Ratcliffe-on-Soar Power Station (Operation Aeroscope) Disclosure: Final Report*, Independent Police Complaints Commission, March 2012.

[ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final Operation Aeroscope report March 2012.pdf](http://ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final%20Operation%20Aeroscope%20report%20March%202012.pdf)

47. *Activists plotted to ‘starve’ Ratcliffe power station*, BBC News Online, 10 October 2011.

bbc.co.uk/news/uk-england-nottinghamshire-15217870

48. *Police hold 114 in power protest*, BBC News Online, 13 April 2009.

news.bbc.co.uk/1/hi/england/nottinghamshire/7996394.stm

played a role in facilitating Operation Aeroscope given its regional responsibilities on domestic extremism and the use of officers from across the East Midland forces.

Also on 13 April 2009, a number of reports were drawn up by the NPOIU under the subject: ‘Activists planned attack at Ratcliffe-on-Soar Power Station’. These were based on intelligence provided by Kennedy, and marked for verbal dissemination to ‘Silver Commander Nottingham’ (Busuttil) via the Head of Special Branch (Bateman). As discussed previously, though dated 13 April, they are formal accounts of live information received from Kennedy over the previous two days, and the dissemination of this information. As such they are key documents in the disclosure material.⁴⁹

Post-arrest operation



Following the arrests, Adrian Pearson takes over from Severn on 13 April as Senior Investigating Officer (SIO) for Aeroscope. He is told the arrests were ‘intelligence-led’, though at the time he was unaware of the presence of an undercover officer. On 14 April he appoints DI Andrew Roberts as his Deputy SIO, responsible for daily management of the supervision and staff management.⁵⁰

Pearson and Roberts meet with the NPOIU DCI and others from that unit on 16 April and learn that the source of the intelligence leading to the arrests was an undercover officer.⁵¹ However, the precise identity of Kennedy is deliberately not revealed to the investigating officers, the reason for which Rose quotes as:⁵²

“to ensure investigation by SIO was not clouded, to provide source protection and the involvement of UCO [undercover officer] actions did not get preferential treatment”.

Pearson in turn briefed Detective Chief Superintendent James about there being an undercover police officer involved on the 20th April. It is apparently the first James hears of this. As a result, he directed Pearson set up a meeting between the NPOIU and the CPS Complex Case Unit to ensure they (i.e. James, Pearson and Ian Cunningham of the CPS) are all briefed on the use and conduct of an undercover. James stated that this

49. Intelligence reports relating to 2009 planned protest at Ratcliffe-on-Soar power station, National Public Order Intelligence Unit, 2009. Available on SpecialBranchFiles.uk.

documentcloud.org/documents/4429044-3-NPOIU-Aeroscope-Disclosure-Intelligence-Reports.html

50. *Ratcliffe-on-Soar Power Station (Operation Aeroscope) Disclosure: Final Report*, Independent Police Complaints Commission, March 2012. [ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final Operation Aeroscope report March 2012.pdf](http://ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final%20Operation%20Aeroscope%20report%20March%202012.pdf)

51. *Ratcliffe-on-Soar Power Station (Operation Aeroscope) Disclosure: Final Report*, Independent Police Complaints Commission, March 2012. [ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final Operation Aeroscope report March 2012.pdf](http://ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final%20Operation%20Aeroscope%20report%20March%202012.pdf)

52. Sir Christopher Rose, *Ratcliffe-on-Soar Power Station Protest: Inquiry into Disclosure*, Crown Prosecution Service, December 2011. cps.gov.uk/news/assets/uploads/files/rose_report_on_ratcliffe_-_on_-_Soar_case.pdf

meeting took place several weeks later and he was satisfied all parties were in no doubt as to the ‘participating involvement of the informant’ and the management and subsequent legal/disclosure issues ‘could be managed appropriately’.⁵³

As the investigation developed, a number of officers of junior rank within from Nottinghamshire Police are brought in to fill particular roles. On the 22 April, DC Nigel Malik was appointed Aeroscope’s Intelligence Officer with responsibility for managing sensitive materials, including the gathering and distribution of intelligence. He stated that within two weeks of his appointment, Pearson had informed him there had been an undercover officer involved.⁵⁴ It is not clear if he succeeded someone else in this role.

The following day, 23rd April, Manjeet Matharu, a former police officer but now civilian investigator was seconded to Aeroscope as its Disclosure Officer. He states he was not informed of the role of Mark Kennedy at the time, though he subsequently became aware of it.⁵⁵

Over the next couple of months, two officers from the NPOIU, the unnamed DCI sometimes with an unnamed Detective Inspector (presumably Kennedy’s controller, DI David Hutcheson), meet with Aeroscope officers, particularly Pearson, Roberts and Malik. During this time, transcripts of recordings made by Kennedy at the Iona School are handed over to them, as well as two DVD containing intelligence reports and telephone numbers relating to the protestors.

The dates of and officers present at these meetings are detailed in the IPCC and Rose reports, but it suffices to say that subsequent to the arrests Pearson, Roberts, James, Malik and others were all made aware there was an NPOIU undercover active in Nottingham and his intelligence had led to the operation in the first place.⁵⁶

Pearson recalled one particular meeting with the NPOIU on the 7 May, and stated this was when he effectively becomes fully aware of the role of an undercover as the sole source of the intelligence leading to the operation, and that a recording device had been used. He said the NPOIU DCI stated the UCO [Kennedy] would not be giving evidence. This was the first time he learns that Kennedy was among those arrested and bailed in April, and he said he felt he should have been informed of this much earlier.⁵⁷

Regarding this meeting, Pearson had noted he was given by the NPOIU DCI a five and a half page draft witness statement by Kennedy (also described as a ‘de-briefing document’), which he recognised in an contemporary note as having implications for the investigation but needed to remain secret. The same note named DCS James, and a Det. Supt. Stephen Lowe (Head of Serious and Organised Crime for Nottingham, serving under DCS Neil James) as being aware of the document, and that he had told Roberts, Malik and a Det. Sergeant Hopkin (otherwise unknown but presumed part of the Aeroscope investigation team). Pearson at this point also planned to tell Cunningham, but keep the knowledge secret from the rest of the Aeroscope investigation team.⁵⁸ Thus, it is clear that by this stage Kennedy’s role (if not his precise identity) was known to the senior officers.

Lowe’s involvement is of interest as a previous head of Nottinghamshire Special Branch when Kennedy first deployed there, and he outside of this meeting he does not appear in any of the material. It is suggested, but not confirmed, that his presence was on the basis of previous experience with NPIOU deployments in Nottingham,

53. *Ratcliffe-on-Soar Power Station (Operation Aeroscope) Disclosure: Final Report*, Independent Police Complaints Commission, March 2012. [ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final Operation Aeroscope report March 2012.pdf](http://ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final%20Operation%20Aeroscope%20report%20March%202012.pdf)

54. *Ratcliffe-on-Soar Power Station (Operation Aeroscope) Disclosure: Final Report*, Independent Police Complaints Commission, March 2012. [ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final Operation Aeroscope report March 2012.pdf](http://ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final%20Operation%20Aeroscope%20report%20March%202012.pdf)

55. *Ratcliffe-on-Soar Power Station (Operation Aeroscope) Disclosure: Final Report*, Independent Police Complaints Commission, March 2012. [ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final Operation Aeroscope report March 2012.pdf](http://ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final%20Operation%20Aeroscope%20report%20March%202012.pdf)

56. *Ratcliffe-on-Soar Power Station (Operation Aeroscope) Disclosure: Final Report*, Independent Police Complaints Commission, March 2012. [ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final Operation Aeroscope report March 2012.pdf](http://ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final%20Operation%20Aeroscope%20report%20March%202012.pdf)

57. *Ratcliffe-on-Soar Power Station (Operation Aeroscope) Disclosure: Final Report*, Independent Police Complaints Commission, March 2012. [ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final Operation Aeroscope report March 2012.pdf](http://ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final%20Operation%20Aeroscope%20report%20March%202012.pdf)

58. Sir Christopher Rose, *Ratcliffe-on-Soar Power Station Protest: Inquiry into Disclosure*, Crown Prosecution Service, December 2011. cps.gov.uk/news/assets/uploads/files/rose_report_on_ratcliffe_-_on_-_soar_case.pdf

including Kennedy.

On 12 May: DC Mark Zajac was appointed to Aeroscope as the File Officer and it was made clear to him that the information leading to the arrests would not be made known to the investigation team and not used as evidence.⁵⁹

Over June 2009, further meetings between the NPOIU DCI & DI took place with Roberts and Malik, all of which raised the presence of a undercover officer and the existence of sensitive material relating to them.

At some meetings Matharu and Zajac were also present. One such meeting was a briefing at the CPS in Nottingham on 16 June, led by Cunningham, and included Pearson; Zajac states it is at this meeting that he first learns of Kennedy's presence as an undercover. Matharu however said he did not learn the full extent of Kennedy's role as an undercover until September / October 2009. When Malik left the investigation on 12 October, Zajac took over responsibility for some of the material relating to Kennedy; he also received other related materials from DI Roberts at this time.⁶⁰

Inclusion of the Crown Prosecution Service

On the 6 April 2009, Rob Severn contacted Ian Cunningham of the Crown Prosecution Service's Complex Case Unit Nottingham office to inform him about Aeroscope. Severn tells Cunningham that it is an intelligence-led operation and that Nick Paul, the National Co-ordinator for Domestic Extremism for the CPS's Special Crime Division, already had an overview of the situation. Paul confirms Cunningham is to be the lawyer on the ground.⁶¹

Cunningham is said to have been present at subsequent Gold level and 'pre-incident' planning meetings prior to the arrests according to police statements. However, Cunningham denies this and states he is not actually briefed by Severn until 12 & 13 April. He also says it is only on 27 April that he attends his first Gold group meeting. Earlier that day he was briefed in a meeting with James, Pearson and Roberts that an undercover had been involved, and was shown the document setting out Kennedy's tasking.⁶² Rose noted that there was 'a lack of urgency' in supplying local CPS (namely Cunningham) with specific details about Kennedy, though Cunningham was aware there was an undercover involved.⁶³

The meeting of the 27 April is also when Nick Paul was supposedly first informed of Kennedy's presence and arrest by the NPOIU DCI,⁶⁴ though not of the details of his involvement. The use of a Public Interest Immunity application was raised, and in an email to Pearson the same day, Cunningham also noted 'we will always be vulnerable on disclosure especially matters covert'.⁶⁵

On 15 May, James, Pearson and Roberts meet with Cunningham; at this meeting Pearson gives the CPS lawyer a copy of transcripts of Kennedy's recording, labelled '130409/MARK'. This document can be found in the subsequent disclosure and covers a variety of conversations Mark was part of during the time at the Iona School.

59. *Ratcliffe-on-Soar Power Station (Operation Aeroscope) Disclosure: Final Report*, Independent Police Complaints Commission, March 2012. [ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final Operation Aeroscope report March 2012.pdf](http://ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final%20Operation%20Aeroscope%20report%20March%202012.pdf)

60. *Ratcliffe-on-Soar Power Station (Operation Aeroscope) Disclosure: Final Report*, Independent Police Complaints Commission, March 2012. [ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final Operation Aeroscope report March 2012.pdf](http://ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final%20Operation%20Aeroscope%20report%20March%202012.pdf)

61. *Ratcliffe-on-Soar Power Station (Operation Aeroscope) Disclosure: Final Report*, Independent Police Complaints Commission, March 2012. [ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final Operation Aeroscope report March 2012.pdf](http://ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final%20Operation%20Aeroscope%20report%20March%202012.pdf)

62. *Ratcliffe-on-Soar Power Station (Operation Aeroscope) Disclosure: Final Report*, Independent Police Complaints Commission, March 2012. [ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final Operation Aeroscope report March 2012.pdf](http://ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final%20Operation%20Aeroscope%20report%20March%202012.pdf)

63. Sir Christopher Rose, *Ratcliffe-on-Soar Power Station Protest: Inquiry into Disclosure*, Crown Prosecution Service, December 2011. cps.gov.uk/news/assets/uploads/files/rose_report_on_ratcliffe_-_on_-_Soar_case.pdf

64. *Ratcliffe-on-Soar Power Station (Operation Aeroscope) Disclosure: Final Report*, Independent Police Complaints Commission, March 2012. [ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final Operation Aeroscope report March 2012.pdf](http://ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final%20Operation%20Aeroscope%20report%20March%202012.pdf)

65. Sir Christopher Rose, *Ratcliffe-on-Soar Power Station Protest: Inquiry into Disclosure*, Crown Prosecution Service, December 2011. cps.gov.uk/news/assets/uploads/files/rose_report_on_ratcliffe_-_on_-_Soar_case.pdf

Record of Evidential Audio Monitoring			
Disc exhibit ref:	130409/MARK		Exhibit Number
Start date/time:	12 th April 2009	Number of pages	46
Finish date/time:			
Officer producing	Signature of officer producing exhibit		

At the meeting Kennedy's role was discussed at length, but Cunningham felt that the 46 page transcript amounted to nothing more than a 'health and safety briefing' – something he and others were subsequently criticised for.

Time/Date	Person speaking	Dialogue
T1 0.00.00		Device activated.
0.00.00	Mark	5, 12-04-2009, Mark. I'm an authorised undercover police officer engaged on Operation Pegasus. This weekend, Easter weekend I am together with a group of activists that are planning to disrupt Ratcliffe on Soar power station. Shortly gonna go [inaudible] finalise the [inaudible] and to record briefings that subsequently take place throughout the day. So I shall now switch this device off, the time on the watch is 1006.
0.00.58		Device de-activated.

It was handed over to the Aeroscope team and securely stored on grounds of being highly sensitive.⁶⁶ Given the mostly anodyne nature of the material in the transcript, this sensitivity was likely based more on it revealing the presence of an undercover than its contents.

A 17 June email exchange between Cunningham and Paul discusses

Kennedy's presence and its implications, particularly for those defendants who might run a non-political defence – something that did happen in the second of the related trials, that of the 'deniers'.⁶⁷

By July 2009, the cases of 67 of those arrested were dropped.⁶⁸ The remaining 47 are called back to Nottingham that month to be re-interviewed and of these, 20 also have their cases dropped. The final 27, including Kennedy, are re-bailed.⁶⁷ It is also in July 2009 that Nick Paul apparently rejects a 'tactical suggestion' from the NPOIU DCI that Kennedy is not charged and in a subsequent email the NPOIU DCI talks about having to find some way of intervening to prevent Kennedy being formally charged.⁷⁰

On 25 September 2009, Nottinghamshire Police formally start charging 26 of the protestors;⁷¹ the case against Kennedy having been dropped. The same week, Kennedy told his deployment was being ended and he had three weeks to tie things up.⁷²

Kennedy's account

Video footage from the day of the arrest shows Kennedy being arrested with others. According to his own account, the Nottinghamshire police who interviewed him were unaware of his true identity as an undercover police officer:⁷³

As far as they were concerned, they were interviewing Mark Stone, a thorn in their side for the past seven years – he's a catch, let's make sure we push charges.

66. *Ratcliffe-on-Soar Power Station (Operation Aeroscope) Disclosure: Final Report*, Independent Police Complaints Commission, March 2012. [ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final Operation Aeroscope report March 2012.pdf](http://ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final%20Operation%20Aeroscope%20report%20March%202012.pdf)

67. *Ratcliffe-on-Soar Power Station (Operation Aeroscope) Disclosure: Final Report*, Independent Police Complaints Commission, March 2012. [ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final Operation Aeroscope report March 2012.pdf](http://ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final%20Operation%20Aeroscope%20report%20March%202012.pdf)

68. *Police end probe of 67 protesters*, BBC News Online, 6 July 2009. news.bbc.co.uk/1/hi/england/nottinghamshire/8136660.stm

69. Author: emails of 11 April 2016 & 3 April 2018 from Merrick, environmental activist and friend of Mark Kennedy who was involved in exposing him.

70. Sir Christopher Rose, *Ratcliffe-on-Soar Power Station Protest: Inquiry into Disclosure*, Crown Prosecution Service, December 2011.

cps.gov.uk/news/assets/uploads/files/rose_report_on_ratcliffe_-_on_-_Soar_case.pdf

71. *Man charged over power station protest*, Nottingham Evening Post, 25 September 2009.

72. Caroline Graham, 'I'm the victim of smears': Undercover policeman denies bedding a string of women during his eight years with eco-warriors, Daily Mail, 17 January 2011.

dailymail.co.uk/news/article-1347478/Undercover-policeman-tells-amazing-story-years-eco-warriors-I-fear-life.html

73. Simon Hattenstone, *Mark Kennedy: Confessions of an undercover cop*, The Guardian, 26 March 2011.

theguardian.com/environment/2011/mar/26/mark-kennedy-undercover-cop-environmental-activist

This corresponds, initially at least, with what is revealed in the reports on the Aeroscope investigation. There, as shown in previous sections, the presence of an undercover was protected at the highest levels, even from the senior investigating officers. Only slowly did they learn that an undercover had been involved, then it took further time for it to be understood that the undercover had played a significant role in the group. Even for the investigating team, the undercover's actual identity among those arrested seems to have been a highly protected bit of knowledge, known to only a couple of senior investigators and their superiors.

According to his account, Kennedy was interviewed twice, firstly when the 114 were arrested, and the second time presumably when he was among the 47 selected to answer bail. Neither time had he a solicitor present, as he had been told by his NPOIU handlers he would not need one. However, he claimed he argued that it looked odd that he had not the same firm of solicitors as the other 113 arrested.⁷⁴ It is unclear whether he made a statement at this point to police, or gave a no comment interview. He also claimed his house in Nottingham had been raided, though whether or not this happened is unconfirmed. Later, the impact of the police question and investigation on his well-being would be woven into his exit strategy,⁷⁵ including the raid on his house.⁷⁶

On 6 July 2009, Nottinghamshire Police announce that no action will be taken against 67 of the protestors, leaving 47 including Kennedy, on bail as investigations continue.⁷⁷

The extent to which the NPOIU had influence in the decisions as to who would be re-interviewed and the further selection of those to send to trial is unknown. A number of those finally charged were named in pre-event intelligence reports from Kennedy as being involved in the planning and had appeared in the NPOIU material passed to Nottinghamshire investigating team.⁷⁸

One of those charged noted that the mix of those selected for trial seemed to be a bit of lottery:⁷⁹

Exactly why this particular group of 26 was singled out has never been explained by the prosecutors; there was no obvious common factor to distinguish us from the rest of the 114.

Following the second set of interviews, the number to go forward with being charged was whittled down to 27 – with Kennedy still among them. In July 2009, the NPOIU asked that the charges against Kennedy be dropped, but Nick Paul apparently refused this (see above).⁸⁰ This is noteworthy in itself, as it indicated that Paul had a direct involvement or responsibility in charging decisions. And that he had the power to overrule Special Branch, to leave a prized asset of theirs in the firing line. It also begs the question as to why he thought charges against Mark should proceed, as it indicates there was sufficient evidence to that effect.

Kennedy told the Daily Mail:⁸¹

No further action was taken against most of them, but 27 people, including me, were to be charged with conspiracy offences. I kept being told by my cover officer, “Don’t worry, they are going to drop it,” but they never did. You can’t lie to a lawyer. So I couldn’t have a lawyer. I was a few days from being charged, then the case was dropped.

74. Caroline Graham, *I’m the victim of smears’: Undercover policeman denies bedding a string of women during his eight years with eco-warriors*, Daily Mail, 17 January 2011.

dailymail.co.uk/news/article-1347478/Undercover-policeman-tells-amazing-story-years-eco-warriors-I-fear-life.html

75. Simon Hattenstone, *Mark Kennedy: Confessions of an undercover cop*, The Guardian, 26 March 2011.

theguardian.com/environment/2011/mar/26/mark-kennedy-undercover-cop-environmental-activist

76. Author: conversations with people close to Mark Kennedy in his persona as ‘Mark Stone’ at the time.

77. *No charges for most protestors held near power plant*, Press Association (regional newswire), 6 July 2009.

78. Disclosure in the case against the ‘Deniers’, released ahead of the hearing of 10 January 2011. Now fully made public at SpecialBranchFiles.uk. Some material had appeared previously at Tom Coburg, *The Mark Kennedy police files that CPS hid – part 1: ‘Operation Aeroscope’*, UndercoverInfo (blog), 26 December 2015.

undercoverinfo.wordpress.com/2015/12/26/the-mark-kennedy-police-files-that-cps-hid-part-1-operation-aeroscope/

79. Danny Chivers, *Undercover and over-the-top: The collapse of the Ratcliffe trial*, New Internationalist, 12 January 2011.

newint.org/features/web-exclusive/2011/01/12/undercover-and-over-the-top-collapse-of-ratcliffe-trial/

80. Simon Hattenstone, *Mark Kennedy: Confessions of an undercover cop*, The Guardian, 26 March 2011.

theguardian.com/environment/2011/mar/26/mark-kennedy-undercover-cop-environmental-activist

81. Caroline Graham, *I’m the victim of smears’: Undercover policeman denies bedding a string of women during his eight years with eco-warriors*, Daily Mail, 17 January 2011.

dailymail.co.uk/news/article-1347478/Undercover-policeman-tells-amazing-story-years-eco-warriors-I-fear-life.html

Kennedy stated he had contacted his handlers every day for three months about this and was not until shortly before charges were to be formally made against others that he was informed his own charges were to be dropped. He told press that he had argued that the charges against the other drivers for the action should also be dropped to avoid suspicion, but this was not taken up.⁸² In a newspaper article, Kennedy claimed he was informed only a week before the decision was made public.⁸³

On the weekend of the 18-20th September, was the '69ers' party, a large birthday celebration a number of environmentalists who had been born in the year 1969 – including several who had been among the 114 arrested. Among those celebrating their birthday was Kennedy. It was during this event he received the text saying his deployment was over and he was being called back in.⁸⁴

A week later, on the 25th September the first of those arrested on 13 April for planning the protest at Ratcliffe arrests was formally charged. On 1st October 2009, the NPOIU's sister unit, the National Extremism Tactical Coordination Unit released a statement announcing that 26 people had been formally charged with 'conspiracy to commit aggravated trespass', providing their names and addresses.⁸⁵

During October, Kennedy feigns a breakdown, using the Ratcliffe arrests and police investigation as the reason for his turmoil. By the end of the month he had given up his house in Nottingham, saying he was going to the United States to visit family there. He would subsequently leave the police in March 2010, but by that stage he had returned to the activist scene, still in his police identify of Mark Stone, but now working for the private intelligence firm Global Open. Meanwhile many of the others he had been arrested with remained awaiting trial.

Exposure of Kennedy & trial collapse

Barrister David Herbert was originally chosen to lead the prosecution. However, he was instructed on a different case and in September 2010 passed the brief over to Felicity Gerry.⁸⁶ She would have been known to the CPS's Domestic Extremism unit prior to this, due to her role as prosecuting barrister in two animal rights trials related to a Lincolnshire farm that breed animals for vivisection.^{87 88} Given one of these prosecutions depended on links between those charged and Huntingdon Life Sciences, it is likely that she had contact with officers from the National Domestic Extremism Unit (NDEU) as part of building the prosecution case there.

NDEU, the parent organisation to the National Public Order Intelligence Unit, had conducted the 2007 raids and investigations that had seen many anti-vivisection campaigners from Stop Huntingdon Animal Cruelty imprisoned.⁸⁹ (Indeed, Andy Robbins of NDEU and who lead the animal rights investigations, was among those who was copied into some of the intelligence reports from Kennedy.)⁹⁰

82. Simon Hattenstone, *Mark Kennedy: Confessions of an undercover cop*, The Guardian, 26 March 2011.

theguardian.com/environment/2011/mar/26/mark-kennedy-undercover-cop-environmental-activist

83. Caroline Graham, 'I'm the victim of smears': Undercover policeman denies bedding a string of women during his eight years with eco-warriors, Daily Mail, 17 January 2011.

dailymail.co.uk/news/article-1347478/Undercover-policeman-tells-amazing-story-years-eco-warriors-I-fear-life.html

84. Caroline Graham, 'I'm the victim of smears': Undercover policeman denies bedding a string of women during his eight years with eco-warriors, Daily Mail, 17 January 2011.

dailymail.co.uk/news/article-1347478/Undercover-policeman-tells-amazing-story-years-eco-warriors-I-fear-life.html

85. *26 charged with conspiracy to commit aggravated trespass*, National Extremism Tactical Coordination Unit, 1 October 2009 (archive copy provided by Alan 'Tash' Lodge, digitaljournalist.eu).

86. Sir Christopher Rose, *Ratcliffe-on-Soar Power Station Protest: Inquiry into Disclosure*, Crown Prosecution Service, December 2011.

cps.gov.uk/news/assets/uploads/files/rose_report_on_ratcliffe_-_on_-_soar_case.pdf

87. *Animal rights rabbit farm recce trial begins*, Market Rasen Mail, 28 April 2009.

marketrasenmail.co.uk/news/animal-rights-rabbit-farm-recce-trial-begins-1-1183012

88. *December 16, 2009: Animal rights activist convicted as CPS stretch definition of blackmail*, Corporate Watch, 16 December 2009.

corporatewatch.org/content/december-16-2009-animal-rights-activist-convicted-cps-stretch-definition-blackmail

89. Undercover Research Group, *National Domestic Extremism Unit: activities*, powerbase.info, 2016.

powerbase.info/index.php/National_Domestic_Extremism_Unit:_activities

90. Intelligence reports relating to 2009 planned protest at Ratcliffe-on-Soar power station, National Public Order Intelligence Unit, 2009. Available on SpecialBranchFiles.uk. See report of 23 March 2009 (page 4).

documentcloud.org/documents/4429055-4-NPOIU-Aeroscope-Disclosure-Review-and.html

Pearson informed Gerry that an undercover had been among those arrested at a meeting on 13 October 2010, at the CPS's Complex Crimes Unit in Nottingham; Cunningham and Zajac, and possibly Roberts, were also present.⁹¹

There is a difference among those interviewed as to just how much information Gerry was given regarding the role of Kennedy the planning for the Ratcliffe action. At the meeting of 13 October, Pearson said he had debriefed Gerry about the presence of Mark Kennedy at the Iona School. Parties there who were interviewed said that he gave her a one-page letter on the matter relating to Kennedy. Pearson claimed this was Kennedy's statement, but since he says elsewhere that the statement was 5 1/2 pages this cannot be true. Gerry later also said though her memory was hazy, the statement which turned up in the box of material given to her by Zajac in January 2011 was not the same document. Pearson also said that he told the meeting that Kennedy's identity as a police officer had reached the public, something which was not the case. The Rose report notes that Gerry left the meeting under the impression that disclosure on Kennedy was complete and did not learn otherwise until January 2011.⁹²

On 21 October 2010, activists confront Kennedy and he admits he had been a police officer infiltrating the environmental movement. The following day he is exposed publicly, though at first it only really makes waves in activist circles.⁹³ However, on 22 October, Zajac, Cunningham and Gerry were all made aware of the public identification.⁹⁴

On 9 November 2010, Pearson, Roberts and Cunningham met with the NPOIU DCI to discuss the exposure of Kennedy. Several of those present noted Cunningham had stated that it would not affect the prosecutions' case.⁹⁵

Also that month, a week before the first trial begins, the NPOIU DCI meets Bethan David, who had replaced Nick Paul as Domestic Extremism Co-ordinator for the CPS in January 2010. The NPOIU officer briefed her on a separate and unconnected operation Kennedy was also involved with, but at this meeting gave her five secret briefing notes relating to the Ratcliffe-on-Soar case. In one of the secret briefing notes, dated 19 May 2010, the NPOIU DCI noted his opinion that it was 'essential [Kennedy] had participating status' in the action, and had used a recording device.⁹⁶

The first trial of 20 protestors began on 22 November and ran into December.⁹⁷ The defendants were hoping to emulate the 2008 trial of the 'Kingsnorth 6' who had admitted £30,000 of criminal damage to a coal-fired power station but been acquitted after successfully arguing that they had prevented the greater crime of damage done by burning coal.⁹⁸ As the Ratcliffe 20 admitted but justified their actions, they were known as 'the justifiers', to distinguish them from a separate trial of six 'deniers' who said they had not decided to be part of the action at the time of arrest.

91. *Ratcliffe-on-Soar Power Station (Operation Aeroscope) Disclosure: Final Report*, Independent Police Complaints Commission, March 2012. [ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final Operation Aeroscope report March 2012.pdf](http://ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final%20Operation%20Aeroscope%20report%20March%202012.pdf)

92. Sir Christopher Rose, *Ratcliffe-on-Soar Power Station Protest: Inquiry into Disclosure*, Crown Prosecution Service, December 2011. cps.gov.uk/news/assets/uploads/files/rose_report_on_ratcliffe_-_on_-_Soar_case.pdf

93. *Mark Kennedy/Stone exposed as undercover cop*, Indymedia UK, 24 October 2010. indymedia.org.uk/en/2010/10/466705.html

94. *Ratcliffe-on-Soar Power Station (Operation Aeroscope) Disclosure: Final Report*, Independent Police Complaints Commission, March 2012. [ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final Operation Aeroscope report March 2012.pdf](http://ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final%20Operation%20Aeroscope%20report%20March%202012.pdf)

95. *Ratcliffe-on-Soar Power Station (Operation Aeroscope) Disclosure: Final Report*, Independent Police Complaints Commission, March 2012. [ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final Operation Aeroscope report March 2012.pdf](http://ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final%20Operation%20Aeroscope%20report%20March%202012.pdf)

96. Sir Christopher Rose, *Ratcliffe-on-Soar Power Station Protest: Inquiry into Disclosure*, Crown Prosecution Service, December 2011. cps.gov.uk/news/assets/uploads/files/rose_report_on_ratcliffe_-_on_-_Soar_case.pdf

97. For a contemporary account and set of documents relating to the 'justifier' and 'denier' trials and the Ratcliffe-on-Soar case in general, see Alan 'Tash' Lodge, *Ratcliffe Power Station Trials 1 & Ratcliffe Power Station Trials 1a*, both via issuu.com. issuu.com/alanlodge/docs/ratcliffe_crown_court_case_1_nov10_-_jan11_no_na
issuu.com/alanlodge/docs/ratcliffe_crown_court_case_1a_18jan

98. John Vidal, *Not guilty: the Greenpeace activists who used climate change as a legal defence*, The Guardian, 11 September 2008 <https://www.theguardian.com/environment/2008/sep/11/activists.kingsnorthclimatecamp>

Prosecutor Felicity Gerry, though aware of Kennedy's involvement, chose not to mention it. Instead, she asked the jury, 'was it more fun to plan this action or to vote for Zac Goldsmith? Did the defendants do all this because they didn't have a Glastonbury ticket?'⁹⁹ Gerry suggested to defendants that their resources would have been more effective getting former Girls Aloud singer Cheryl Cole to speak out about climate change.¹⁰⁰

The defendants, charged with conspiracy to commit aggravated trespass, as opposed to the Kingsnorth 6's criminal damage – were found guilty on 14 December 2010.¹⁰¹

The second trial, of the remaining six 'deniers' defendants who were not part of the conspiracy at the time of the arrests, was scheduled to begin on 10 January 2011. They planned to call Mark Kennedy as a witness, ahead of which they asked for disclosure of material relating to him.¹⁰²

Just before the start of the 'deniers' trial, Zajac provided Gerry with a box of sensitive material relating to Kennedy. It is apparently on the basis of its contents that she advises the case should be discontinued, something she confirmed with Cunningham. Zajac was clear that this was material that had been available to the CPS for over 18 months and included nothing new; among it was draft statements from Kennedy and transcripts of his recordings, neither of which had been previously disclosed.¹⁰³

On 7 January the CPS decided to drop the charges. In a statement to the media they said:¹⁰⁴

'Previously unavailable information that significantly undermined the prosecution's case came to light on Wednesday, 5 January 2011. In light of this information, the Crown Prosecution Service reviewed the case and decided there was no longer sufficient evidence for a realistic prospect of conviction.'

The CPS specifically said that the supposedly new information was 'not the existence of an undercover officer'¹⁰⁵ but did not, then or at any time since, say what else it might have been. With the subsequent disclosure, it seems plain that the CPS were saying something they knew to be untrue. This suggests collusion with the police; if it had been an oversight or they had been misled by police, they could have admitted it was Kennedy. That they chose to cover it up indicates they felt themselves part of the police's web of secrecy that created miscarriages of justice.

On 10 January, the defendants arrived at Nottingham Crown Court for trial and were formally told of the discontinuance. The Director of Public Prosecutions, Keir Starmer, was there too; he denied it had anything to do with the collapsing case, telling inquirers that it was a coincidental routine regional visit.

The defendants' solicitor, Mike Schwarz of Bindmans, read out a statement clearly pointing the finger at Kennedy.¹⁰⁶ This led to considerable media interest and wider public attention on the role of Mark Kennedy as an undercover officer targeting environmentalists.¹⁰⁷

Operation Aeroscope was later revealed to have cost Nottinghamshire Police £208,000.¹⁰⁸

99. *Ratcliffe Power Station Trials 1*, Alan Lodge

https://issuu.com/alanlodge/docs/ratcliffe_crown_court_case_1_nov10_-_jan11_no_na

100. James Meikle & Tim Webb, *Ratcliffe activists found guilty of coal station plot*, The Guardian, 14 December 2010

<https://www.theguardian.com/environment/2010/dec/14/ratcliffe-coal-station-activists>

101. *Power station protesters found guilty*, Nottingham Evening Post, 14 December 2010.

nottinghampost.com/power-station-protesters-guilty/story-12202034-detail/story.html

102 & 103. *Ratcliffe-on-Soar Power Station (Operation Aeroscope) Disclosure: Final Report*, Independent Police Complaints Commission, March 2012.

[ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final Operation Aeroscope report March 2012.pdf](http://ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final%20Operation%20Aeroscope%20report%20March%202012.pdf)

104. Quoted in *CPS response to Guardian report on Ratcliffe-on-Soar case*, CPS, 7 June 2011

<http://blog.cps.gov.uk/2011/06/cps-response-to.html>

105. Matt Dickinson, *Inquiry call over climate campaign undercover police officer*, The Independent, 10 January 2011

<https://www.independent.co.uk/news/uk/crime/inquiry-call-over-climate-campaign-undercover-police-officer-2180527.html>

106. *Bindmans comments on collapse of prosecution against 6 environmental campaigners at Nottingham Crown Court today*, Bindmans LLP, 10 January 2011.

bindmans.com/news/bindmans-comments-on-collapse-of-prosecution-against-6-environmental-campaigners-at-nottingham-crown-court-today

107. Rob Evans & Paul Lewis, *Undercover: The True Story of Britain's Secret Police*, Faber & Faber, 2013.

108. Marcus Boocock, *Police spend £1.15m on major operations*, Nottingham Evening Post, 19 July 2010.

nottinghampost.com/police-spend-163-1-15m-major-operations/story-12205754-detail/story.html



Press Information

13 January 2011

Police Authority Welcomes IPCC Investigation and Internal Review

Nottinghamshire Police Authority has welcomed both the IPCC investigation and an Internal Review into the events leading up to the collapse of the trial of six green campaigners after an undercover police officer offered to give evidence on their behalf.

This followed a successful investigation by Nottinghamshire Police, after a total of 114 people were arrested on 13 April 2009 on suspicion of conspiring to disable a major power station and thereby disrupt a critical piece of the national energy infrastructure.

In December 2010, 20 protestors were convicted at Nottingham Crown Court for their part in the protest.

Speaking today the Authority's Chair, Cllr Jon Collins, said: "We appreciate that the sheer scale and size of the protest meant that people were working in very difficult circumstances and a great many people showed their professionalism and commitment in terms of both the policing of the event and the subsequent investigation.

"When policing major public order events, such as this protest, it is necessary that the police use all the resources available to them to maintain public safety. "The Authority welcomes both the IPCC Investigation into the circumstances leading up to the collapse of the trial and the internal review that is to be carried out looking at the use of undercover officers in this particular case.

"We will await the findings from the review and the IPCC's report following which the Authority will monitor the implementation of the recommendations.

"We are therefore naturally disappointed at the current situation. There is a huge amount of good work being carried out by Nottinghamshire Police and it would be frustrating if this one event were to overshadow that."

Ends

Media Enquiries: Sallie Blair, 01283 821012

Aftermath

With the collapse of the ‘deniers’ case in January 2011, a media storm followed. The NPOIU was stripped of operational powers the same month.¹⁰⁹ The defendants’ lawyers, Bindmans, told the CPS that the convictions of 20 ‘justifiers’ were now unsafe as evidence from Kennedy had been withheld from the court. The Director of Public Prosecutions, Keir Starmer, commissioned Clare Montgomery, QC to investigate.¹¹⁰ On the basis of her report, he invited the ‘justifiers’ to appeal.^{111 112 113}

On 20 July 2011 those convictions were overturned in the Appeals Court on grounds of ‘non-disclosure to the defence of sensitive material in the prosecution’s possession relating to the role and activities of Mark Kennedy’.¹¹⁴ Lord Chief Justice Lord Judge said Kennedy had been ‘arguably an agent provocateur,’ and: ¹¹⁵

‘the appellants were convicted following a trial in which elementary principles which underpin the fairness of our trial processes were ignored’.

A number of reports were initiated to see where the fault lay. These included several by the Crown Prosecution Service and one by the Independent Police Complaints Commission (at the request of Nottinghamshire Police themselves). Much of this focused on the interaction between the CPS and the police. A review of these is provided in the appendix. The HM Inspectorate of Constabulary began their first ever thematic review of undercover policing,¹¹⁶ initiating many changes in the way undercover policing was used and conducted.

It noted a Home Office circular of 1969 in relation to what is now known as covert human intelligence sources:

The police must never commit themselves to a course which, whether to protect an informant or otherwise, will constrain them to mislead a court in subsequent proceedings. This must always be regarded as a prime consideration when deciding whether, and in what manner, an informant may be used and how far, if at all, he is allowed to take part in an offence. If his use in the way envisaged will, or is likely to result in its being impossible to protect him without subsequently misleading the court, that must be regarded as a decisive reason for his not being so used or not being protected.

However, in relation to Aeroscope specifically, the report of Sir Christopher Rose for the CPS placed much blame on Ian Cunningham saying (para 45):¹¹⁷

[he] must bear the primary responsibility for non-disclosure to the defence..... [he] relied too heavily on what he was told by the police in relation to the undercover officer and failed to probe what material there was in relation to the undercover officer’s activities

109. Alan Travis, Paul Lewis & Martin Wainwright, *Clean-up of covert policing ordered after Mark Kennedy revelations*, The Guardian, 18 January 2011. theguardian.com/uk/2011/jan/18/covert-policing-cleanup-acpo

110. *Ratcliffe-on-Soar campaigners’ cases reviewed by CPS*, BBC News Online, 28 January 2011. bbc.co.uk/news/uk-england-nottinghamshire-12304612

111. Dominic Casciani, *Top prosecutor tells power station protesters to appeal*, BBC News Online, 18 April 2011. bbc.co.uk/news/uk-13117333

112. Paul Lewis & Rob Evans, *DPP urges convicted power station protesters to appeal*, The Guardian, 18 April 2011. theguardian.com/uk/2011/apr/18/dpp-protesters

113. *DPP invites Defence to appeal convictions of Ratcliffe on Soar protestors*, Crown Prosecution Service, 18 April 2011. cps.gov.uk/news/latest_news/dpp_urges_defence_to_appeal_convictions_of_ratcliffe_on_soar_protestors/

114. Sir Christopher Rose, *Ratcliffe-on-Soar Power Station Protest: Inquiry into Disclosure*, Crown Prosecution Service, December 2011. cps.gov.uk/news/assets/uploads/files/rose_report_on_ratcliffe_-_on_-_Soar_case.pdf

115. *Judges criticise Ratcliffe prosecution non-disclosure*, BBC News, 20 July 2011 <https://www.bbc.co.uk/news/uk-14215186>

116. *A review of national police units which provide intelligence on criminality associated with protest*, HM Inspectorate of Constabulary, 2012. This report was followed up by several more from HMIC focusing on undercover policing in general.

justiceinspectorates.gov.uk/hmicfrs/media/review-of-national-police-units-which-provide-intelligence-on-criminality-associated-with-protest-20120202.pdf

117. Dominic Howell, *Police under fire over collapse of eco-protest trial*, Nottingham Evening Post, 7 December 2011. nottinghampost.com/police-collapse-eco-protest-trial/story-14068565-detail/story.html

Overall, Rose failed to blame anyone in particular, but pointed to a series of failures (para. 42):

The principal reasons for that failure were that those police officers with knowledge of the detail of the authorisation of Kennedy's involvement were anxious to limit the dissemination of that knowledge in order to protect the source and those (in particular the senior investigating officer [Pearson] and Mr Cunningham) who should have received the information failed to ask pertinent questions in order to obtain it.

He also wrote (para. 53 (5)):

The failures were not systemic and not due to any want of printed guidance. All involved were well aware, or should have been if relevant guidances had been consulted, of what they needed to do to comply with the [Criminal Procedure and Investigations Act] obligations.

Defence lawyer Mike Schwarz attacked the conclusion as a whitewash, saying Rose clearly wanted to:¹¹⁸

'hide behind the most benevolent interpretation of a completely myopic examination of one tiny issue. It's a failure of the authorities to address the wider picture, an almost pathological refusal to accept that there are systemic failures here.'

We now know that there were many other similar cases over a long period of time; it was the very definition of systemic.

A year before the Ratcliffe action, Mark Kennedy had been in a similar role, driving activists who stopped a train of coal heading to Drax power station in North Yorkshire. This resulted in 29 wrongful convictions that have subsequently been overturned.¹¹⁹ The CPS' Domestic Extremism Coordinator, Nick Paul, would have had oversight of that case too.

In October 2011, six weeks before the Rose report was published, it was revealed that undercover officer Jim Boyling had been arrested and prosecuted whilst infiltrating Reclaim The Streets in 1996. As a defendant, he had been privy to the defence's communications with an opportunity to contribute to the formulation of the defence case. It was the most blatant breach of lawyer-client confidentiality imaginable. Boyling was acquitted but two activists, John Jordan and Michael Gracia, were convicted (these have now been quashed in due to Boyling's involvement).^{120 121}

Lord Ken Macdonald, the former Director of Public Prosecutions, declared:¹²²

'You don't send police officers into court to lie about who they are, about their identity, about what their role is in a series of offences. You don't send them into solicitors' offices pretending to be defendants and being party to confidential legal conferences. They've crossed a line and it's a serious, serious issue.'

It tests credulity to believe that the CPS did not know this at the time of the Rose report's publication in December 2011. But then-Director of Public Prosecutions, Keir Starmer, held firmly to Rose's conclusion that

118. *Prosecutor facing action over undercover policeman*, Channel 4 News, 6 December 2011

<https://www.channel4.com/news/prosecutor-facing-action-over-ratcliffe-protests>

119. *Drax protesters' undercover police case convictions quashed*, BBC News, 21 January 2014

<https://www.bbc.co.uk/news/uk-england-25829169>

120. *Courts quash conviction from 1997 as a result of involvement of undercover police*, Bindman's, 25 September 2014

<https://www.bindmans.com/news/courts-quash-conviction-from-1997-as-a-result-of-involvement-of-undercover-police>

121. Rob Evans, *Activist's conviction to be quashed after undercover officer testified at trial*, The Guardian, 23 June 2015

<https://www.theguardian.com/uk-news/2015/jun/23/activist-conviction-quashed-undercover-police-officer>

122. *Q&A: Undercover police officer*, BBC News, 20 October 2011

<https://www.bbc.co.uk/news/uk-15385434>

Ratcliffe was anomalous and there was no systemic issue.

Channel 4 News asked Starmer, ‘you see no requirement to mount a wider inquiry to check that there haven’t been other miscarriages of justice?’ to which he replied, ‘I think it would be a better use of our time and resources to look when an issue is raised rather than look back at everything when Sir Christopher Rose has said there’s no systemic problem.’¹²³

Later the same day Starmer appeared on Newsnight. Presenter Jeremy Paxman’s opening question was, ‘Are you absolutely certain there are no other cases in which people have been convicted on the basis of the evidence of undisclosed undercover police officers?’¹²⁴

Starmer gave a hesitant and evasive response, so Paxman repeated the question. Facing yet more diversions, Paxman asked the same verbatim question for a third time. This excruciating viewing takes up the first minute and a half of the interview and still Starmer does not deliver a straight answer.

Since then, many more arrests and convictions of undercover officers have come to light, as well as further instances of them being party to the defendants’ case – including officer Jim Boyling providing a witness statement for the 1996 trial of hunt saboteurs for the defence led by barrister Keir Starmer.¹²⁵

In March 2012, three months after the Rose report was released, the Independent Police Complaints Commission published their report into the policing of Operation Aeroscope. The IPCC did not deviate from Rose’s conclusions, stating it was a collective failure by a number of parties, and individual actions did not amount to misconduct.¹²⁶

123. *Prosecutor facing action over undercover policeman*, Channel 4 News, 6 December 2011

<https://www.channel4.com/news/prosecutor-facing-action-over-ratcliffe-protests>

124. *Keir Starmer: No systemic failure at CPS*, Newsnight, BBC, 6 December 2011

<http://news.bbc.co.uk/1/hi/programmes/newsnight/9657088.stm>

125. Rob Evans & Paul Lewis, *Undercover policeman’s identity ‘kept secret’ as he prepared to appear in court*, The Guardian, 7 December 2011

<https://www.theguardian.com/uk/2011/dec/07/undercover-policeman-identity-protected-authorities>

126. *Ratcliffe-on-Soar Power Station (Operation Aeroscope) Disclosure: Final Report*, Independent Police Complaints Commission, March 2012. [ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final Operation Aeroscope report March 2012.pdf](http://ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final%20Operation%20Aeroscope%20report%20March%202012.pdf)

Appendices

Reviews & Reports

A number of other reports emerged out of the collapse of the Ratcliffe-on-Soar case, widening to take in undercover policing as a whole. Most have not been published. Those relating to Operation Aeroscope are:¹²⁷

Crown Prosecution Service's reviews

- 1. Review of Clare Montgomery, QC**, April 2011, unpublished. Commissioned by the Director of Public Prosecutions, Keir Starmer, to look into the convictions of the first Ratcliffe trial.
- 2. Unpublished internal review**, completed 21 March 2011.¹²⁸ Christopher Rose's report also made reference to a review carried out by Rene Barclay, a Principal Crown Advocate in the CPS's Special Crime Division. Otherwise unknown, it is probable this is a reference to the internal review finished on 21 March 2011.
- 3. Review of Chris Enzor**. On 23 March 2011, the CPS received a letter (dated 17 March) from Chris Eyre, Deputy Chief Constable of Nottinghamshire Police, stating that the CPS had seen the material relating to the collapse of the second Ratcliffe trial earlier than had been made out in the press at the time. The CPS then commission a second review, under Deputy Chief Crown Prosecutor Chris Enzor in April 2011. In May 2011 the assembled material from this is sent to the IPCC, at which time the Enzor review was ongoing. However, the it appears to have been overtaken by the appointment of Christopher Rose (in July 2011) to investigate and subsumed into that report.¹²⁹
- 4. Rose Report**, titled: Ratcliffe-on-Soar Power Station Protest: Inquiry into Disclosure.¹³⁰ Retired judge Sir Christopher Rose was appointed by the CPS to look into failings around disclosure in the Ratcliffe-on-Soar case in July 2011.¹³¹ His report was published in December 2011.

Police reviews

- 1. Serious Organised Crime Agency**. This review was ordered in the immediate aftermath of the collapse of the second trial. It focused on the conduct of Mark Kennedy and his superiors. Due to be released alongside the HM Inspectorate of Constabulary 2011 review of undercover tactics, according to Rose it was instead incorporated as Annex A to that report.¹³²
- 2. Jack Russell Review**. Commissioned by Nottinghamshire Police following allegations that they had concealed evidence from defendants in the Ratcliffe cases. At the time, Russell was Head of the East Midlands Regional Review Unit. The review is unpublished but referenced in the report by Christopher Rose. Parts were leaked to the Guardian in June 2011.¹³³

127. Rob Evans, *How many more inquiries will there be into the undercover infiltration?*, The Guardian, 2 November 2011.

theguardian.com/uk/undercover-with-paul-lewis-and-rob-evans/2011/nov/02/undercover-police-officers-inquiries

128. *CPS response to Guardian report on Ratcliffe-on-Soar case*, Crown Prosecution Service, 7 June 2011.

blog.cps.gov.uk/2011/06/cps-response-to.html

129. *CPS response to Guardian report on Ratcliffe-on-Soar case*, Crown Prosecution Service, 7 June 2011.

blog.cps.gov.uk/2011/06/cps-response-to.html

130. Sir Christopher Rose, *Ratcliffe-on-Soar Power Station Protest: Inquiry into Disclosure*, Crown Prosecution Service, December 2011.

cps.gov.uk/news/assets/uploads/files/rose_report_on_ratcliffe_-_on_-_soar_case.pdf

131. Rob Evans & Paul Lewis, *CPS in crisis as allegations of suppressed evidence wreck trials*, The Guardian, 18 July 2011.

theguardian.com/environment/2011/jul/18/cps-mark-kennedy-trial

132. *CPS response to Guardian report on Ratcliffe-on-Soar case*, Crown Prosecution Service, 7 June 2011.

blog.cps.gov.uk/2011/06/cps-response-to.html

133. Rob Evans & Paul Lewis, *Police knew about plans for Ratcliffe-on-Soar break-in before most activists*, The Guardian, 7 June 2011.

theguardian.com/environment/2011/jun/07/mark-kennedy-ratcliffe-on-soar

3. Independent Police Complaints Commission, titled: Ratcliffe-on-Soar Power Station (Operation Aeroscope) Disclosure: Final Report. Published March 2012. The lead investigator for the IPCC was Gareth Tobin, and the case supervisor Gemma Jackson.¹³⁴

Notes on the Rose Report

Terms of Reference

Christopher Rose was asked to determine whether the CPS's approach to charging in the 'deniers' case was right given knowledge of an undercover police officer being present, and whether CPS properly complied with disclosure, and followed relevant policy / guidance.¹³⁵

People approached & methodology

Rose drew on previous reports such as those by Jack Russell and Rene Barclay, and a draft of the HMIC Review of Undercover police in relation to public order, and the Serious Organised Crime Agency report. The IPCC also provided him with material gathered during their investigation including statements from several Nottinghamshire Police and NPOIU officers. He had also access to various CPS communications and some of the sensitive undisclosed material at the heart of the matter. Chris Enzor also provided considerable help in obtaining material and liaising with different organisations on behalf of Rose.

It appears that the only people directly spoke to were Bethan David and Ian Cunningham. It is a point of criticism of Rose's report that he did not question Nick Paul.¹³⁶

Conclusions

Christopher Rose wrote:

53. Drawing all the strands together, I reach the following specific conclusions:

(1) The UCO's authorisations and the transcript of his audio recording, in particular, were never effectively distributed between all relevantly interested police officers or to the CPS, so charging decisions were not made on an informed basis and it was inevitable that proper disclosure could not be made to the defence.

(2) There could and should have been a meeting, probably by the end of June 2009 and certainly before charging decisions were made in September, between Mr Cunningham, the SIO, the Deputy SIO, the DCI NPOIU, the disclosure officer and the authorising officer at which the sensitive material, particularly the UCO's authorisations and the content of his audio recording could have been made clearly known to all present and their significance discussed.

(3) If there had been such a meeting it is highly unlikely that anyone would have thought it in the public interest for charges to be brought, bearing in mind the DCI NPOIU's determination that the UCO should not give evidence and his identity should be protected and the likelihood that a [public interest immunity (PII)] application to a judge to protect the UCO's identity and involvement would fail.

134. Ratcliffe-on-Soar Power Station (Operation Aeroscope) Disclosure: Final Report, Independent Police Complaints Commission, March 2012. [ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final Operation Aeroscope report March 2012.pdf](http://ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final%20Operation%20Aeroscope%20report%20March%202012.pdf)

135. CPS response to Guardian report on Ratcliffe-on-Soar case, Crown Prosecution Service, 7 June 2011. blog.cps.gov.uk/2011/06/cps-response-to.html

136. Ellie Mae O'Hagan, Undercover police aren't above the law, The Guardian, 13 June 2012. theguardian.com/commentisfree/2012/jun/13/undercover-police-not-above-law

(4) Proper disclosure was not made to the defence and no PII application to a judge was made or considered because of failures, over many months and at more than one level, by the police and the CPS.

(5) The failures were individual, not systemic and not due to any want of printed guidance. All involved were well aware, or should have been if relevant guidance had been consulted, of what they needed to do to comply with the CPIA obligation.

(6) There was no significant failure by prosecuting counsel.

54. It follows that the answers to the questions posed by my terms of reference can be summarised as follows:

(a) The CPS approach to charging was not right because, knowing of the existence of a UCO, they did not see, or ask to see, as they should have done, all the relevant sensitive material.

(b) There was no failure by prosecuting counsel to comply with their disclosure duties in view of their instructions from the CPS, but the CPS failed properly to comply with their disclosure duties partly because they failed to ask questions of the police, partly because the police failed to tell the prosecutor the extent of the UCO's participating authorisations and partly because the Case Management Review Panels' oversight of the prosecutor was not as effective as it could or should have been.

(c) The CPS arrangements for handling the known existence of a UCO were adequate but not properly followed.

(d) Relevant guidance and policy in relation to the known UCO were not followed.

Notes on the IPCC report

The lead investigator for the IPCC was Gareth Tobin, working under Case Supervisor Gemma Jackson.¹³⁷

Terms of Reference

The terms of reference only applied to failures within Nottinghamshire Police as to whether there had been a failure to properly disclose material, and if so did this amount to misconduct, criminal offence or a breach of professional behaviour, and what organisational learning their might be.

There was no detailed examination of the role of the NPOIU in matters.

Officers approached & investigated

The report says that the actions of Nottinghamshire police officers and staff Ackerley, Pearson, Roberts, Malik, Matharu and Zajac were investigated. All gave written witness statements; none were served with a notice of investigation. James had retired from Nottinghamshire Police by that point, but did provide a report, based on memory only. The NPOIU DCI also provided 'a report on his involvement with the UCO and the product provided'. As he had subsequently retired, his name was left unpublished.

It is to be noted that the Russell Review for the Regional Review Unit noted that Jack Russell had interviewed

¹³⁷. *Ratcliffe-on-Soar Power Station (Operation Aeroscope) Disclosure: Final Report*, Independent Police Complaints Commission, March 2012. [ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final Operation Aeroscope report March 2012.pdf](https://www.ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final%20Operation%20Aeroscope%20report%20March%202012.pdf)

seven officers, (1 x ACC, 2 x Det. Supt., 2 x Det. Insp., 1 x Disclosure Officer, 1 x Intelligence Officer).¹³⁸

Five of these can be provisionally identified as Ackerley, Pearson, Roberts, Malik and Zajac, and these interviews are likely to have formed part of the material considered by the IPCC.

Conclusions

The report focuses to some degree whether Ian Cunningham was adequately briefed and accepts that he was. It points out minor failures in process within Nottinghamshire police and did not find any case for misconduct.

Much of this is based on whether the Aeroscope officers fully understood the implication of Kennedy having a recording device. Given there was a transcript made available and what was released, and the stated intention of protecting the source by both Ackerley and the NPOIU DCI, the conclusions read as deficient and fail to ask pertinent questions on the flow of strategy and information. Particularly as read in context with the contents of the disclosed transcript there is little of actual substance in the latter. Notably missing being Kennedy's role in promoting and encouraging the action, particularly in arguing for it to go ahead after police vehicles were spotted at the power station.

The conclusions also effectively ignore the role of the NPOIU, though at paras. 110 & 111 (in the report's own conclusion) it is noted:

138. Steven Morris, *Response to FOIA request of Steve Jones regarding review of the East Midlands Regional Review Unit*, Leicestershire Police, 19 August 2013. Archived via SpecialBranchFiles.uk
documentcloud.org/documents/4428186-4436-13-Jones-FOIA-Response-on-Aeroscope-Questions.html

Who's Who

Nottinghamshire Police

Assistant Chief Constable Ian Ackerley (retired)

Ackerley was ACC (Support) for Nottinghamshire police at the time of Operation Aeroscope, and regularly led that force's response to public order situations. He joined Staffordshire Police in 1978 working in both uniform and CID policing.¹³⁹ From 1998, he played a leading role in policing football, both investigating football hooliganism and as a match commander. In this later role, he oversaw policing of high-tension football matches in 2000 and 2002, including the violent clashes between Staffordshire based Stoke and Cardiff City. At the time, Stoke was one of the top three clubs for hooliganism. As such, Ackerley would have worked with football intelligence units (including at the National Criminal Intelligence Service) and on public order issues.¹⁴⁰

In this time he is appointed Superintendent as head of crime reduction (crime prevention unit) for the enhanced Stoke-on-Trent division (1999). From June/July 2000, he becomes a Chief Superintendent as Commander of the North Staffordshire Division.¹⁴¹ ¹⁴²By August 2005 he was the Temporary Assistant Chief Constable for Staffordshire,¹⁴³ where one of his schemes including sending in undercover police to target landlords who had not applied for new-style alcohol licenses.¹⁴⁴ ¹⁴⁵

In September 2006, he moved to Nottinghamshire Police as Assistant Chief Constable (Operational Support), succeeding Peter Ditchett.¹⁴⁶ In 2007, he becomes ACC (Territorial), having taken over territorial policing from Susannah Fish. At Nottingham he continues to oversee public order issues.¹⁴⁷ These included the protests at Ratcliffe on Soar power station (including Operation Aeroscope and Operation Median, the latter dealing with the 'Great Climate Swoop' protest of October 2009), an English Defence League march and counter-protests, labour disputes at Staythorpe power station (Op. Aestival) and football matches.¹⁴⁸ He was forced to retire at the end of 2011 as the force had brought in a mandatory 30 years service policy, something he and others brought an unsuccessful legal challenge on.¹⁴⁹

Chief Superintendent John Busuttil

"Silver commander" for Operation Aeroscope.¹⁵⁰ He and Ackerley who are the only senior officers at the first 'Gold' meeting of 25 March from which Aeroscope is initiated as a formal operation. He also attends the second one, of 7 April. Busuttil was closely involved in the operations, and is mentioned in NPIOU intelligence reports as "Silver Commander Notts" as receiving briefing from them – Mark Kennedy's controller, DI David Hutcheson of the NPIOU briefed him directly on 12 April, the day before the arrests. At other points,

139. *Police Chief*, Derby Evening Telegraph, 1 September 2006. Also: *New man joins police*, Nottingham Evening Post, 27 June 2006.

140. Phil Jones, *High security operation for Man City fixture*, The Sentinel (Stoke), 26 January 1999. Sarah Chapman, *Massive security for crunch game*, The Sentinel (Stoke), 26 April 2000. Kathie McInnes, *2,500 limit on away fans at play-off semi*, The Sentinel (Stoke), 23 April 2002. Alistair Keely, *Six arrested as police wage war on football violence*, Birmingham Post, 7 August 1998.

141. *Division Revamp brings promotion for policeman*, The Sentinel (Stoke), 23 November 1998. *Police name new men to spearhead crime fight*, The Sentinel (Stoke), 12 March 1999. Phil Jones, *Traffic police fears over redeployment*, The Sentinel (Stoke), 7 June 2000.

142. Rosalind Chimes, *Fast track to police for victims of crime*, The Sentinel (Stoke), 26 July 2000. He took over from Alan Wright who retired in June 2000.

143. Jim Guthrie, *Police fire on Gunman in hospital*, Birmingham Evening Mail, 19 August 2005

144. James Cartledge, *Undercover cops in booze mission*, Birmingham Evening Mail, 4 November 2005

145. Much of the focus of Ackerley's career as a senior officer at Staffordshire police focused around drink-related crime, including binge-drinking, domestic violence and football violence, as well as domestic burglaries. Author: search of local newspaper articles, conducted August 2016.

146. *New man joins police*, Nottingham Evening Post, 27 June 2006. *Move for top-ranking policeman*, The Sentinel (Stoke), 4 August 2006. *Senior officer to step down*, Nottingham Evening Post, 14 December 2011.

147. Guy Woodford, *Government inspectors probe Notts policing pledge*, Nottingham Evening Post, 18 January 2010. Guy Woodford, *Force advertises for new chief officer team*, Nottingham Evening Post, 20 March 2010.

148. Marcus Boocock, *Police spend £1.15m on major operations*, Nottingham Evening Post, 19 July 2010

149. *Senior officer to step down*, Nottingham Evening Post, 14 December 2011. *Forcing Notts Police officers to retire was 'lawful'*, Eastwood Advertiser, 8 July 2015.

150. Response of Nottinghamshire Police to FOIA request, 24 July 2018.

whatdotheyknow.com/request/481272/followups/new/1172068?post_redirect=1

intelligence from the NPOIU / Mark Kennedy being given to the Head of Nottinghamshire Special Branch to pass on to him.¹⁵¹ As Silver Commander he had tactical responsibility for Aeroscope, and as such he who would have actively overseen the operation leading up to the arrests.

At the time Busuttil, was Commander of the South Notts (D) Division, with the Ratcliffe-on-Soar power station within his territorial brief. Under him served a number of officers involved in Aeroscope around the time of the arrests: Supt. Paul Anderson, Supt. Mike Manley, DCI Rob Severn and Ch. Insp. Ian Barrowcliffe. Busuttil would face further protests at Ratcliffe-on-Soar during the October 2009 'Great Climate Swoop' demonstration.¹⁵²

Busuttil career appears to have been in uniform rather than CID. Much of his service was spent in the operational support unit based in Nottingham, which included a period as the firearms commander.¹⁵³ From 2002-2004 he was Chief Inspector, Head of Traffic, before becoming Superintendent, Head of Operations at Worksop (B Division) 2005-2006. after which he transferred to the same position at D Division, in time to be around for when the successful environmental protest, 'Spring Into Action' took place at the power station.¹⁵⁴

He had been promoted to head of D Division in 2008, and retired in late 2010 after 30 years of service.^{155 156}

Detective Chief Superintendent Ian Waterfield

Director of Intelligence for Nottinghamshire Police, having oversight of its Special Branch. Attended the second Gold meeting of 7 April, where the role of an undercover among the environmentalists is discussed.

According to his LinkedIn profile, as Director of Intelligence, he 'had responsibility and oversight of all RIPA authorisations, CHIS and covert policing operations.'¹⁵⁷ As such he would have had oversight of Kennedy's deployment in Nottingham. His role as Director of Crime and Intelligence from December 2009 further meant he was the immediate superior to Det. Supt. Adrian Pearson and had oversight of the Operation Aeroscope investigation.

A career officer with Nottinghamshire Police, he held a number of uniformed and detective posts. From 2003 he was Superintendent of Operations for Mansfield Division. In February 2006, he is appointed Director of Intelligence for the force in February 2006 and remains in this post until July 2014. In December 2009 he absorbs Neil James' post (see below) to become Head of Crime as well. In 2012 his role is further expanded as head of Crime and Justice (with a new Director of Intelligence under him). He is Temporary Assistant Chief Constable covering crime, justice and specialist operation from October 2012 to June 2013. In September 2016 he became Director of Operations for the Gangmaster Licensing Authority.¹⁵⁸

151. Intelligence reports relating to 2009 planned protest at Ratcliffe-on-Soar power station, National Public Order Intelligence Unit, 2009. Available on SpecialBranchFiles.uk.

documentcloud.org/documents/4429044-3-NPOIU-Aeroscope-Disclosure-Intelligence-Reports.html

152 Robert Booth & Bibi van der Zee, *Environment: Protesters arrested after clashes at Ratcliffe power plant*, The Guardian, 18 October 2009.

theguardian.com/environment/2009/oct/18/protesters-arrested-ratcliffe-power-station

153. *Ballet with Princess Di? It was all in a day's work*, Nottingham Evening Post, 30 October 2010.

154. Alan 'Tash' Lodge, *Nottingham Spring into Action :: Ratcliffe-on-Soar Power Station 1*, Indymedia, 11 April 2007.

indymedia.org.uk/en/2007/04/367714.html

155. *Police and Constabulary Almanac*, various years, R Hazell & Co, various years.

156. *Top cop with royal past retires*, Nottingham Evening Post (ThisIsNottingham.com), 30 October 2010.

nottinghampost.com/cop-royal-past-retires/story-12248308-detail/story.html

157. *Police officer recalls Kegworth crash*, Nottingham Evening Post, 3 January 2009. *Ballet with Princess Di? It was all in a day's work*, Nottingham Evening Post, 30 October 2010

158. Ian Waterfield, Profile, LinkedIn.com, 2017.

linkedin.com/in/ian-waterfield-3a719825/

158. *Notts Police get new Head of Crime*, Nottingham Evening Post, 15 December 2009.

nottinghampost.com/notts-police-new-head-crime/story-12249228-detail/story.html

Detective Chief Superintendent Neil James

Appears to have played a small role in Operation Aeroscope in the post-arrest phase (and not prior), where he called for meetings once it became apparent an undercover had been involved. Given his career with Nottinghamshire Police he is likely to have been aware of NPOIU operations in the city.

Previously a Detective Superintendent with West Midlands Police where he investigated major crime. In December 2005 he joined Nottinghamshire Police as Detective Chief Superintendent, briefly as Director of Intelligence, and then from February 2006 to September 2010 as Head of Crime (CID). In 2009 he begins part time work teaching on major crime investigations, with the National Policing Improvements Agency, formally joining them in 2010.¹⁵⁹

Detective Superintendent Adrian Pearson

Senior Investigation Officer for Aeroscope once the arrests taken place, but had not been involved prior, having only just joined Nottinghamshire.

Previously served at Warwickshire police, where he led investigations into serious and violent crime, and served as Crime Manager, based at Leamington for several years. He had only just joined Nottinghamshire Police as a Detective Superintendent heading up the Public Protection Unit when he was appointed Senior Investigation Officer for Operation Aeroscope. He continued as Head of Public Protection Unit (which included Child Protection) for several years and led several high profile investigations, including historical child sex abuse Operation Equinox.¹⁶⁰

Detective Chief Inspector Rob Severn

Senior Investigating Officer (“Bronze”) for Aeroscope in the pre-arrest phase, though did not attend the Gold Level meetings. He was replaced as SIO for Aeroscope by Pearson on 13 April. At the start of 2009 he is listed as Acting Det. Ch. Insp., as Head of Crime Investigation for South Notts “D” Division, the police area in which covered Ratcliffe-on-Soar.¹⁶¹

An officer with Nottinghamshire CID since the early 2000s, he appears in local media at various points as a senior investigating officer for sexual and violent crimes and robberies. He first came to notice as a Detective Sergeant with the City Division Robbery Squad in 2005. In 2011, he was a Detective Inspector with the force’s Public Protection Unit (under Pearson). Later, appointed to full DCI rank, he became Nottinghamshire Police’s lead on burglary by 2015 and in 2017 continued to be involved leading serious crime investigations.¹⁶²

159. *Cash priorities in the war on crime*, Nottingham Evening Post, 23 February 2007.

Neil James, Profile, LinkedIn.com, undated.

linkedin.com/in/neil-james-70311445

No CID vacancy crisis in Notts, says crime chief, Nottingham Evening Post, 12 September 2009.

Shared intelligence helps snare gunman, Forced Times (Notts NARPO News), Issue 1, May 2008.

nottsnarpo.com/download/Force_Times_Issue1.pdf

Notts Police get new Head of Crime, Nottingham Evening Post, 15 December 2009.

nottinghampost.com/notts-police-new-head-crime/story-12249228-detail/story.html

160. Police and Constabulary Almanac, various years, R Hazell & Co, various years. Author: search of contemporary news reports, conducted July 2016. James

Barlow, *Key police officer investigating child sexual abuse in Notts ‘no longer part of inquiry’*, NottsTV.com, 19 November 2016.

nottstv.com/key-police-officer-investigating-child-sexual-abuse-notts-no-longer-part-enquiry/

161. Police and Constabulary Almanac, 2009, R Hazell & Co.

162. *Mugger hunt stepped up*, Nottingham Evening Post, 15 April 2005. Rebecca Sherdley, *Man jailed for sex assaults on elderly*, Nottingham Evening Post, 21

December 2011. Ellie Cullen, *Burglaries cut by half in Nottinghamshire*, Nottingham Evening Post, 15 February 2015.

nottinghampost.com/burglaries-cut-half/story-26035221-detail/story.html

Issac Ashe, *Teenager jailed for manslaughter over stabbing of 21-year-old Aqib Mazhar*, Nottingham Evening Post, 9 May 2017.

nottinghampost.com/teenager-jailed-for-manslaughter-over-stabbing-of-21-year-old-aqib-mazhar/story-30321138-detail/story.html

Detective Inspector Andy Bateman

Head of Nottinghamshire Special Branch at the time of Aeroscope, he is briefed by the NPIOU and is an conduit of intelligence from Mark Kennedy to the operation's commanding officers.

A Nottinghamshire CID officer based at St. Anns, Radford, Sneinton and Beeston stations, investigating serious crime, he first comes to public attention as a Detective Sergeant in 2002.¹⁶³ He is appointed Detective Inspector, Head of Special Branch in 2008 and remains there until early 2011 when he returns to investigating serious and violent crime – appearing as such, still with rank of Detective Inspector, in June 2016.¹⁶⁴

Detective Inspector Andrew Roberts

Deputy Senior Investigation Officer for Aeroscope in the post-arrest phase, having been selected to the post by Pearson. Second in command of the operation, he would have responsibility for its day-to-day running.

Prior to Aeroscope, in 2008 / 2009 Roberts was a CID officer based in Nottingham where he was involved in murder investigations. Following Aeroscope, he appears in various investigations conducted by Nottinghamshire Police's Major Crime Unit over the next couple of years.¹⁶⁵

Detective Superintendent Stephen Lowe

Attends significant meeting in post arrest phase of Aeroscope, to discuss implications of there being an undercover officer among the arrested. As former head of the force's Special Branch, he is likely to have had a strong working knowledge of the NPIOU and its operations among environmentalists in the city.

Lowe was head of Nottinghamshire Special Branch from 1998 to 2004 (as Detective Inspector), during which time he would have overseen the infiltration of NPIOU officers Rod Richardson and Mark Kennedy. In 2004, he is promoted to Detective Chief Inspector when moves on to serious crime investigations.¹⁶⁶ By 2008 he had become Det. Supt., Head of the Serious and Organised Crime Unit, serving under DCS Neil James.¹⁶⁷ In 2012 he was appointed Head of Special Branch for the East Midlands Specialist Operations Unit, which position he held in 2014.¹⁶⁸

G Newton

Author of review of Kennedy's ongoing role infiltrating environmental protestors in April 2009.

The 7 April 2009 Nottinghamshire Special Branch review of Kennedy's role in Operation Pegasus as part of an application made by DI Andy Bateman was authored by a G. Newton, who is named as 'CS Manager' without a rank in the document. This is presumably the same Det. Insp. G. Newton who from 1999 to 2005 had been Head of Crime Intelligence for the force, Crime Intelligence being a sister unit to Special Branch under the Directorate of Intelligence.¹⁶⁹ Given the force's history of hiring retired officers as civilian workers, it is likely

163. Steve McComish, *Phone Girl is Caged*, Daily Mirror, 1 March 2002.

164. Tom Norton, *Police hit streets to investigate death outside Nottinghamshire hospital*, Nottingham Evening Post, 7 June 2016. nottinghampost.com/investigation-man-dead-outside-nottinghamshire/story-29370766-detail/story.html

165. *Man jailed over racist attacks*, Press Association, 18 July 2008. *Police warning over wallplanner scam*, Press Association, 14 February 2008. *Man found guilty over stab death*, BBC News Online, 16 January 2009.

news.bbc.co.uk/1/hi/england/nottinghamshire/7833444.stm

Author: search of local media, conducted July 2017.

166. *Gloves linked killing to shooter*, BBC News Online, 18 July 2005.

news.bbc.co.uk/1/hi/england/nottinghamshire/4693355.stm

167. *Team that smashed Hardy drugs empire*, Nottingham Evening Post, 20 May 2009.

nottinghampost.com/team-smashed-hardy-drugs-empire/story-12225408-detail/story.html

168. Police and Constabulary Almanac, Sweet & Maxwell, various years.

169. Police and Constabulary Almanac, various years, R Hazell & Co, various years.

he was working for the local Special Branch at the time he authored the application. It is thought that ‘CS’ in the description of his role stands for ‘Confidential Source’.

Detective Constable Nigel Malik

Intelligence Officer for Aeroscope with responsibility for security of its material. In place 22 April to 12 October 2009.

First appears as with the ‘West Bridgford intelligence unit’ when he was involved in the recovery of a bike for local MP Alan Simpson.¹⁷⁰ In 2003/2005 he was part of Operation Stealth (headed by then DCI Ian Waterfield), which targeted drugs and guns in Nottingham, and for which he is quoted in a number of articles at the time (given rank of Detective Constable and Detective Sergeant).¹⁷¹ By September 2012, PC 774 Nigel Malik is part of the Hucknall Safer Neighbourhood Teams and was still there in May 2016.¹⁷²

Manjeet Matharu, ‘Civilian Investigator’

Seconded onto Operation Aeroscope as the Disclosure Officer on 23 April 2009.

According to the IPCC report:

[Matharu] 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 [undercover officer]. 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...”

Having become aware of the presence of an undercover in the operation in October / November 2009, Matharu then had various discussions with senior officers and Ian Cunningham of the CPS about disclosure of material relating to the undercover. He also took over some of the role of Nigel Malik when the latter left the operation.

In 2006, DC Manjeet Matharu had been the police liaison officer for the family of murdered taxi driver Ethsham Ul-Haq Ghafoor, having been part of the original murder investigation team 12 years previously.¹⁷³ Retired circa 2009.¹⁷⁴

Detective Constable Mark Zajac

Joined Aeroscope as ‘File Officer’ on 12 May, and learned of an undercover’s role in Aeroscope in a meeting between police and CPS on 6 June, and later a meeting of 13 October 2010 between police, CPS and Felicity Gerry (prosecution barrister) in which the presence of an undercover was again discussed. On 5 January 2011 he brought prosecution barrister Felicity Gerry a box of disclosure material relating to Mark Kennedy, when the ‘deniers’ said they were going to call the ex-undercover as a witness.

Appears in 2004 as serving with Oxclose Lane CID.¹⁷⁵

170. *MP’s stolen bike is back*, Nottingham Evening Post, 5 August 1999.

171. *Pastor’s firearm appeal*, Nottingham Evening Post, 11 August 2003. *More arrests in drug crackdown*, BBC News Online, 22 July 2004. news.bbc.co.uk/1/hi/england/nottinghamshire/3917021.stm

Major blitz on drugs, Nottingham Evening Post, 21 July 2004. *Father jailed for Bond gun*, Nottingham Evening Post, 13 July 2005.

172. Nick Butler, *Safer neighbourhoods*, NG15 (local community advertising newsletter), page 24, Sept/Oct 2012.

issuu.com/ngmagazines/docs/ng15_sep_oct_2012_master

Safer neighbourhoods, NG15 (local community advertising newsletter), page 22, May/June 2016.

issuu.com/ngmagazines/docs/ng15_may_june_2016_master

173. Guy Woodford, *Why? Asks family of murdered taxi driver*, Nottingham Evening Post, 1 April 2006.

174. *New Members*, Notts NARPO News – newsletter of National Association of Retired Police Officers (Nottinghamshire Branch), Issue 107, Spring 2009. [nottsnaipo.com/download/April 2009 Newsletter.pdf](http://nottsnaipo.com/download/April%202009%20Newsletter.pdf)

175. *Man stabbed in bus-stop attack*, Nottingham Evening Post, 23 January 2004

Superintendent Mike Manley

In 2008-2009 Manley was Head of Operations for South Notts Division, under Busuttil.¹⁷⁶ He was involved in arrest phase of Operation Aeroscope, and was cited the next day as saying the operation was intelligence-led and discussing the large amount of material seized as evidence:^{177 178}

Our information was that it wasn't to be a lawful protest. This was to be a criminal act against a power station. Had that taken place, we would have now been policing a major protest at a major power station.

Previously he had been Detective Chief Inspector for Crime Management in D Division 2005-2006. In 2009/2010 he moves to head up Corporate Development & Communications for the force before coming Superintendent for Operations North (Nottingham City) in 2011), then Head of Crime for the reorganised County Division in 2012-2014.¹⁷⁹ In September 2015 he became Chief Superintendent, head of Nottingham City division.¹⁸⁰ remaining there into 2016.

Superintendent Paul Anderson

Attended the Gold level meeting of 7 April 2009.¹⁸¹ At the time, Anderson was the Deputy Divisional Commander for D Division (Head of Operations), having taken up that post in early 2009.¹⁸² He later spoke out in press defending police action saying:¹⁸³

[The arrests had] minimised any risk of injury or harm to the protesters... and stopped any damage being caused and any of the staff at the power station or my officers being injured.

In 2008 he had been head of 'Operations North' in Nottingham city, the area where Kennedy lived. He remains in D Division in 2010-2011. Over the next few years he carries out a variety of roles for Nottinghamshire Police and in 2014 he is Head of Operations for County Division.^{184 185}

Chief Inspector Ian Barrowcliffe

Attended the Gold level meeting of 7 April 2009. Not otherwise mentioned, but probably played a role in the organisation of police resources and deployments relating to the arrests of 13 April.

Barrowcliffe as Chief Inspector was Head of Demand Management in 2004-2006 and in 2008-2014 (later as Temporary Superintendent) of Operations and Planning.¹⁸⁶ In 2017 he was Head of Policy and Compliance for the East Midlands Operational Support Services.¹⁸⁷

176. Police and Constabulary Almanac, various years, R Hazell & Co, various years.

177. Delia Monk, Protest arrests were justified say police, Nottingham Evening Post, 15 April 2009.

178. Police defend power station raid, BBC News Online, 14 April 2009.

news.bbc.co.uk/1/hi/england/nottinghamshire/7997598.stm

179. Police and Constabulary Almanac, various years, R Hazell & Co, various years.

180. *Top cop's knife warning*, Hucknall Despatch, 8 September 2015.

hucknalldispatch.co.uk/news/top-cop-s-knife-warning-1-7449832

181. Response of Nottinghamshire Police to FOIA request, 24 July 2018.

whatdotheyknow.com/request/operation_aeroscope_meetings_200#incoming-1208851

182. *Criticism at police charge*, Newark Advertiser, 27 March 2009.

legacy.newarkadvertiser.co.uk/articles/news/Criticism-at-police-charge

183. *Activists plotted to 'starve' Ratcliffe power station*, BBC News Online, 10 October 2011.

bbc.co.uk/news/uk-england-nottinghamshire-15217870

184. Police and Constabulary Almanac, various years, R Hazell & co.

185. Author: search of local newspaper articles, conducted August 2018.

186. Police and Constabulary Almanac, various years, R Hazell & Co, various years.

187. Minutes of Joint Audit Risk Assurance Committee, Derbyshire Police and Crime Commissioner, 15 May 2017.

derbyshire-pcc.gov.uk/Document-Library/Meetings/JARAC/2017/2017-06-15-Combined-JARAC-final.pdf

Assistant Chief Constable Susannah Fish

As ACC (Crime) and overseeing the intelligence units, including Special Branch, she is likely to have been aware of Kennedy's role in the city as an NPOIU undercover and been aware of the run up to Operation Aeroscope, albeit she left the force two months after the arrests of 13 April.

Appointed Assistant Chief Constable (HQ Operations, later Crime) in 2003, she oversaw both the Crime and Intelligence Directorates until 2009.¹⁸⁸ In June 2009 she was seconded to the Home Office and to the Metropolitan Police. She returned to Nottinghamshire Police as Assistant Chief Constable in June 2012 and was subsequently appointed Deputy Chief Constable (April 2013) and Temporary Chief Constable (2016-2017). She retired in April 2017.¹⁸⁹

NPOIU & National Domestic Extremism Unit

Assistant Chief Constable Anton Setchell

Likely to be the 'ACPO Gold' for whom one of the Kennedy intelligence reports on Ratcliffe was marked for the attention of.

A Thames Valley Police officer, since 2004 he had been seconded to ACPO's Terrorism and Allied Matters Committee as the National Co-ordinator for Domestic Extremism. In 2006 he acquired oversight of the National Public Order Intelligence Unit.

Detective Chief Inspector Nightingale

Presumed to be the 'NPOIU DCI' referred to through-out the Rose and IPCC reports, and who was criticised by Rose (para. 51) for withholding information from Nottinghamshire Police and the Crown Prosecution Service. He had retired by the time the IPCC report was published in March 2012.

Detective Inspector David Hutcheson

Appears on the distribution list for Kennedy related NPOIU intelligence reports on various occasions. He is likely to be the 'NPOIU DI' referred to on a number of occasions in the Rose's report.

In a Metropolitan Police document, he is noted as being the controller for Kennedy,¹⁹⁰ and is thought to had responsibility for Kennedy for the latter part of his deployment. Currently believed to be serving with Metropolitan Police.¹⁹¹

Detective Chief Inspector Andy Robbins

His name is included in the distribution list for one of the NPOIU intelligence reports relating to the Ratcliffe-on-Soar protests, indicating that the National Domestic Extremism Team had an interest in Aeroscope.

188. *Assistant Chief Constable Crime*, Nottinghamshire Police (website), 2007.

web.archive.org/web/20070723151659/nottinghamshire.police.uk/about/our_people/our_command_team/assistant_chief_constable_crime/

189. Susannah Fish, Profile, LinkedIn.com, 2017.

[linkedin.com/in/susannah-fish-28225132/](https://www.linkedin.com/in/susannah-fish-28225132/)

Our Team: Susannah Fish, Nottinghamshire Police (website), 2016.

nottinghamshire.police.uk/profile/susannah-fish

190. 'Jaipur' & 'Karachi', *The 'Mosaic Effect' and the potential risk to officers (redacted)*, Metropolitan Police Service (Assistant Commissioner's Public Inquiry Team), 1 Dec 2015, p. 32.

ucpi.org.uk/wp-content/uploads/2017/08/Mosaic-report-open-version.pdf

191. *Public masturbators and flashers strike more than once a month in Islington*, Islington Gazette, 25 February 2014.

islingtongazette.co.uk/news/crime-court/public-masturbators-and-flashers-strike-more-than-once-a-month-in-islington-1-3364485

A detective with Kent police he was seconded to NDEU (probably in 2008¹⁹²), where, as a Det. Ch. Insp., he was the Senior Investigating Officer for two years of Operation Achilles, targeting animal rights campaigners.¹⁹³ From February 2009 to January 2013 he was head of the National Domestic Extremism Team,¹⁹⁴ where he continued to oversee ongoing operations and prosecutions of animal rights activists. As head of the NDEU would have been very aware of the activities of NPOIU undercover operations at the time, particularly that of Mark Kennedy.¹⁹⁵

Detective Inspector Hedley (National Domestic Extremism Team)

Name given on the distribution list for some of Kennedy related NPOIU intelligence reports.

<p>PUBLIC INTEREST IMMUNITY SHOULD BE SOUGHT: YES</p> <p>DISSEMINATION TO DCI Nightingale, DI Hutcheson, HSB Nottingham Special Branch, linfo fro ACPO Gold, DCI Robbins and DI Hedley NDET.</p> <p><i>(Is the handling code correct? If there are conditions on the receiving agency's use of the material, assign the relevant code.)</i></p>

Distribution list for the NPOIU / Kennedy intelligence report of 23 March 2009, naming Det. Ch. Insp. Nightingale, Det. Insp. Hutcheson, Det. Ch. Insp. Andy Robbins and Det. Insp. Hedley.

192. *Arrest is made after swoop on local farm*, Kent and Sussex Courier, 11 July 2008.

193. *For extremists who blackmailed animal lab, it was all about the cause*, The Guardian, 23 December 2008.

Sandra Laville, *Animal rights extremists still targeting lab*, The Guardian, 24 December 2008.

theguardian.com/uk/2008/dec/24/huntingdon-life-sciences

194. Andrew Robbins, Profile, LinkedIn.com, 2016.

uk.linkedin.com/in/andrew-robbins-35075366

195. Undercover Research Group, *Andrew Robbins*, Powerbase.info, 2016.

powerbase.info/index.php/Andrew_Robbins

Lawyers

Nick Paul, QC

National Co-ordinator for Domestic Extremism as a Senior Crown Advocate within the Crown Prosecution Service's Special Crime Division until January 2010. He had knowledge of Operation Aeroscope, in its pre-arrest phase, and approved the appointment of Cunningham as the lead for the prosecution. He also initially opposed the dropping of charges against Kennedy, for his role in the planned protests.^{196 197}

As CPS Domestic Extremism Co-ordinator, he also oversaw the 2008 prosecution of the Drax train climate protestors which also involved Mark Kennedy.¹⁹⁸ In this role he would have worked closely with the National Domestic Extremism Unit, including the NPOIU (then a sub-unit within NDEC). At one point he is described thus:¹⁹⁹

He was also responsible for advising the Police in respect of covert investigations in respect of domestic extremism cases and developed a close working knowledge of RIPA.

In November 2011 he re-joined Doughty Street Chambers, which he had helped found in 1990.²⁰⁰ After stepping down as Director of Public Prosecutions in 2013, Keir Starmer also re-joined Doughty Street Chambers.²⁰¹

Bethan David

Took over as National Co-ordinator for Domestic Extremism within the CPS in January 2010, and as such had responsibility for overseeing the prosecutions.

She also had knowledge of Kennedy's role in other court cases.²⁰² With the CPS since 2005, she became Head of Special Crime and Counter Terrorism Division there.²⁰³

Ian Cunningham

A crown advocate in the Nottingham office of the CPS's East Midlands Complex Case Unit. Appointed by Nick Paul to act as the lead prosecutor in the case, he had a number of meetings with police and was aware of Kennedy's role as a police informer, though there is disagreement over the extent to which he was aware of Kennedy's particular role.

Subsequently heavily criticised in the Rose report.^{204 205} Rose noted that he was described in minutes of a police

196. Sir Christopher Rose, *Ratcliffe-on-Soar Power Station Protest: Inquiry into Disclosure*, Crown Prosecution Service, December 2011.

cps.gov.uk/news/assets/uploads/files/rose_report_on_ratcliffe_-_on_-_Soar_case.pdf

197. *Ratcliffe-on-Soar Power Station (Operation Aeroscope) Disclosure: Final Report*, Independent Police Complaints Commission, March 2012.

ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final Operation Aeroscope report March 2012.pdf

198 *Prosecutors and Police Engineering Miscarriages of Justice*, Campaign Opposing Police Surveillance, 6 October 2014.

campaignopposingpolicesurveillance.com/2014/10/06/prosecutors-and-police-engineering-miscarriages-of-justice/

199. *Doughty Street welcomes back founding member Nick Paul*, Doughty Street Chambers, 22 November 2011.

doughtystreet.co.uk/news/article/doughty-street-welcomes-back-founding-member-nick-paul

200. *Doughty Street welcomes back founding member Nick Paul*, Doughty Street Chambers, 22 November 2011.

doughtystreet.co.uk/news/article/doughty-street-welcomes-back-founding-member-nick-paul

201. *Sir Keir Starmer, KCB, QC*, Doughty Street Chambers, 2017.

doughtystreet.co.uk/barristers/profile/sir-keir-starmer-kcb-qc

202. Sir Christopher Rose, *Ratcliffe-on-Soar Power Station Protest: Inquiry into Disclosure*, Crown Prosecution Service, December 2011.

cps.gov.uk/news/assets/uploads/files/rose_report_on_ratcliffe_-_on_-_Soar_case.pdf

203. Bethan David, Profile, LinkedIn.com, 2017.

linkedin.com/in/bethan-david-b64bb991

204. Sir Christopher Rose, *Ratcliffe-on-Soar Power Station Protest: Inquiry into Disclosure*, Crown Prosecution Service, December 2011.

cps.gov.uk/news/assets/uploads/files/rose_report_on_ratcliffe_-_on_-_Soar_case.pdf

205. *Ratcliffe-on-Soar Power Station (Operation Aeroscope) Disclosure: Final Report*, Independent Police Complaints Commission, March 2012.

ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final Operation Aeroscope report March 2012.pdf

Gold meeting on 16 April as ‘danger environmentally friendly. Local CPS reticent’, though no evidence of this was adduced to in any of the reports and Rose noted there was no reason presented to him as to why this perception arose, or its basis.^{206 207}

Lesley Renfrew

Head of the CPS’s East Midlands Complex Case Unit so Cunningham’s immediate boss. Interviewed by Christopher Rose.

Felicity Gerry, QC

Prosecuting counsel for the two Ratcliffe-on-Soar trials. When made aware of the full extent of the Kennedy material it was she who recommended the ‘deniers’ case be discontinued.²⁰⁸

Had previously been involved in prosecuting other high profile cases which had been investigated by the National Domestic Extremism Unit and used undercover / informers to provide intelligence leading to raids and arrests (see above). At the time was with 36 Bedford Chambers, but has since moved to Carmelite Chambers.²⁰⁹

David Herbert, QC

Prosecuting counsel for Aeroscope until September 2010, when he was instructed to another case and handed the brief to Felicity Gerry. Interviewed by Christopher Rose whom he told he was given the impression that Kennedy was ‘on the periphery of what was happening’.²¹⁰

A criminal law specialist at 36 Bedford Chambers where his profile states:²¹¹

David is considered an expert in cases involving covert law enforcement and is adept at dealing with the sensitive issues that arise in such matters.

206. Sir Christopher Rose, *Ratcliffe-on-Soar Power Station Protest: Inquiry into Disclosure*, Crown Prosecution Service, December 2011.

cps.gov.uk/news/assets/uploads/files/rose_report_on_ratcliffe_-_on_-_Soar_case.pdf

207. Sir Christopher Rose, *Ratcliffe-on-Soar Power Station Protest: Inquiry into Disclosure*, Crown Prosecution Service, December 2011.

cps.gov.uk/news/assets/uploads/files/rose_report_on_ratcliffe_-_on_-_Soar_case.pdf

208. *Ratcliffe-on-Soar Power Station (Operation Aeroscope) Disclosure: Final Report*, Independent Police Complaints Commission, March 2012.

ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Final Operation Aeroscope report March 2012.pdf

209. *New Tenant – We are delighted to welcome Felicity Gerry QC (formerly of 36 Bedford Row) to Carmelite Chambers*, Carmelite Chambers, 15 June 2016.

carmelitechambers.co.uk/news-and-events/news/new-tenant-we-are-delighted-to-welcome-felicity-gerry-qc-formerly-of-36-bed

210. Sir Christopher Rose, *Ratcliffe-on-Soar Power Station Protest: Inquiry into Disclosure*, Crown Prosecution Service, December 2011.

cps.gov.uk/news/assets/uploads/files/rose_report_on_ratcliffe_-_on_-_Soar_case.pdf

211. *David Herbert QC*, 36 Group, 2017.

36group.co.uk/members/dhqc

Gallery II



ACC Ian Ackerley
Nottinghamshire Police



ACC Susannah Fish
Nottinghamshire Police



DCS Neil James
Nottinghamshire Police



Supt. Mike Manley
Nottinghamshire Police



D Supt. Adrian Pearson
Nottinghamshire Police



DCS Ian Waterfield
Nottinghamshire Police



ACC Anton Setchell
National Domestic Extremism
Co-ordinator



Sir Christopher Rose
Judge, Surveillance Commissioner



Nick Paul, QC
Crown Prosecution Service

Statements of Mike Schwarz

Mike Schwarz of Bindmans, solicitor for the defendants, made several statements in the immediate aftermath of the collapse of the ‘deniers’ trial in January 2010. The first was on Bindman’s website. The second was read out to press outside Nottingham Crown Court on 10 January. Both are reproduced below.

1. Bindman’s comments on collapse of prosecution against 6 environmental campaigners at Nottingham Crown Court today.²¹²

Statement from Mike Schwarz about Ratcliffe power station protesters

“On Easter Monday 2009, over 400 police officers were involved in a raid at Iona School in Nottingham, which led to 114 arrests. I represented 113 of those arrested.

The 114th we now know was PC Kennedy, an undercover police officer. Six of my clients were due to face a long trial starting today. However, the prosecution told the defence on Friday 7 January 2011, just before the trial was due to begin, and almost 20 months after the investigation began, that ‘previously unavailable material that significantly undermines the prosecution’s case came to light on Wednesday 5 January’.

The discovery of this material came at the time when the prosecution were informed that we planned to pursue disclosure of the evidence relating to PC Kennedy with the judge.

Unsurprisingly, they have declined to confirm whether the new material relates to PC Kennedy.

In my opinion the two are obviously connected. The timing speaks for itself. These events also beg wider, serious questions. Would this evidence have been uncovered had the defence not become aware of it through other avenues? And is it appropriate that access to, and decisions about, disclosure of key evidence should exclusively be in the hands of a prosecution whose primary function is to secure convictions?

Let me be clear about this. My clients were not guilty. They did not agree to join in any plan to occupy the power station. The evidence of PC Kennedy presumably confirmed this. Yet that evidence, had it been kept secret, could have led to a miscarriage of justice. Serious questions must be asked relating to the policing of protest, from the use of undercover officers, to the use of expensive and legally questionable mass pre-emptive arrest of protesters, to the use of stringent and unaccountable pre-charge police bail conditions, to the seemingly arbitrary nature by which the 114 initially arrested were reduced to the final 26 who were eventually charged. The police need to answer some serious questions about their conduct relating to protesters.”

2. Statement from Mike Schwarz, Lawyer to the Defendants (as provided to journalists on 10 January 2010)²¹³

I make this statement (in addition to the two statements on the Bindmans’ website) in response to revelations in today’s media that the police recorded but have withheld from the defence covert recordings of a meeting or meetings of campaigners at which PC Kennedy was present; and also that PC Kennedy had approached Max Clifford with a view to selling his story to the newspapers.

I have a number of concerns and comments.

212. Mike Schwarz, Bindmans comments on collapse of prosecution against 6 environmental campaigners at Nottingham Crown Court today, Bindmans LLP, 10 January 2011.

bindmans.com/news/bindmans-comments-on-collapse-of-prosecution-against-6-environmental-campaigners-at-nottingham-crown-court-today

213. Copy of text provided by Alan ‘Tash’ Lodge, a photojournalist present on the day.
digitaljournalist.eu/

First, there is the process. This is an entirely unsatisfactory way for information about PC Kennedy's undercover operations to come out. The police and Crown generally should have disclosed all this material to the defence and / or the Crown Court judges who dealt with the trials of the acquitted 6 or the convicted 20 before their cases came to trial. Specifically, so far as PC Kennedy's apparent contact with Mr Clifford is concerned, any information from or about PC Kennedy should be disclosure direct and formally to those affected, the defendants in particular. PC Kennedy can, for example, provide the defence and prosecution teams with a statement. Anything short of this would amount to disclosure by tabloid.

Second, there is the content. It reinforces me in my view that the role of PC Kennedy in the planning of the action at Ratcliffe power station is as central to the safety of the convictions of the 20 as it was decisive in causing the collapse of the trial of the 6.

Third, there is the way ahead. I do not think that a referral to the IPCC [Independent Police Complaints Authority], as confirmed by the IPCC yesterday, is sufficient either to get to the bottom of what has happened, or investigate reports of more widespread police failings. The IPCC have, for example, limited themselves to the issue of police disclosure in the Ratcliffe trials.

An inquiry by Her Majesty's Inspectorate of Constabulary, which has also been mentioned in the press, is and will be seen to be an exercise in the police investigating the police. A far wider, more powerful, independent enquiry is required – a judge-led enquiry for which the Macpherson inquiry into the Stephen Lawrence murder provides an off the shelf model, looking as it did at both the specifics of the case and the wider concerns about policing and race.

What has so far emerged of the PC Kennedy episode highlights similar concerns about the police's conduct of the Ratcliffe case. It also raises wider concerns about the use of undercover police, particularly their use against those exercising democratic rights of protest and expression; as well as concerns about the policing of protests generally, the police services' policies and their accountability.

- Mike Schwarz

Solicitor for the acquitted 6 and the convicted 20 Ratcliffe environmental campaigners

Resources

Ratcliffe-on-Soar Power Station (Operation Aeroscope) Disclosure, Independent Police Complaints Commission, 2011. Now archived at DocumentCloud.

documentcloud.org/documents/4428183-Final-Operation-Aeroscope-report-March-20-2012.html

Sir Christopher Rose, *Ratcliffe-on-Soar Power Station Protest: Inquiry into Disclosure*, Crown Prosecution Service, December 2011. Now archived at DocumentCloud.

documentcloud.org/documents/4428182-Rose-Report-on-Ratcliffe-on-Soar-Case.html

Alan ‘Tash’ Lodge, *Ratcliffe Power Station Trials 1 & Ratcliffe Power Station Trials 1a*, both via issuu.com, have contemporary accounts of the Ratcliffe-on-Soar trials

issuu.com/alanlodge/docs/ratcliffe_crown_court_case_1__nov10_-_jan11__no_na

issuu.com/alanlodge/docs/ratcliffe_crown_court_case_1a__18jan__

Tom Coburg, *The Mark Kennedy police files that CPS hid – part 1: ‘Operation Aeroscope’*, UndercoverInfo (blog), 26 December 2015.

undercoverinfo.wordpress.com/2015/12/26/the-mark-kennedy-police-files-that-cps-hid-part-1-operation-aeroscope/

Merrick Badger, *Ratcliffe trial: prosecutors and police conspired*, Bristling Badger (blog), 10 August 2013.

bristlingbadger.blogspot.com/2013/08/ratcliffe-trial-prosecutors-and-police.html

Glossary

ACC	Assistant Chief Constable
ACPO TAM	Association of Chief Police Officers’ Terrorism and Allied Matters committee
CPS	Crown Prosecution Service
NPOIU	National Public Order Intelligence Unit
SDS	Special Demonstration Squad (also known as Special Duties Squad)

Much appreciation goes out to all those who provide help in putting this report together, as well as all those who provided interviews and material and who wish remain anonymous.

Copies of this report can be found at SpecialBranchFiles.uk and UndercoverResearch.net

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Operation Aeroscope was the case that blew the spycops scandal wide open. On 13 April 2009, 114 climate activists were arrested in the midst of planning to shut down Ratcliffe-on-Soar coal fired power station. Among them was one of the key instigators, the person who had dismissed an eleventh-hour suggestion to call off the action; Mark Stone.

Stone was, in fact, undercover police officer Mark Kennedy of the National Public Order Intelligence Unit, then in his sixth year living as an activist. He was unmasked by suspicious comrades a few months later, which caused the dramatic collapse of a second trial of those arrested at Ratcliffe-on-Soar; a first trial had already seen 20 activists convicted.

It was clear that the police and Crown Prosecution Service had withheld Kennedy's evidence from the court and created a miscarriage of justice. The shockwaves caused two official reports to be written: Chief Surveillance Commissioner Sir Christopher Rose examined the Crown Prosecution Service's role, and the Independent Police Complaints Commission looked at the failings of Nottinghamshire Police. Both were essentially whitewashes, with narrow remits that failed to speak to key figures.

Where did the power lie in Operation Aeroscope? Who knew what, and when? How did the different agencies interact? What are the names of those in the hidden command structure?

By meticulously analysing the official reports and laying them alongside eyewitness accounts and secret documents from Mark Kennedy's unit, the Undercover Research Group answer the key questions and present a detailed picture of how Operation Aeroscope – and, from there, Britain's political secret police in general – functioned.

