Spycops Victims Walk Out of Public Inquiry

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victims and their lawyers walked out.

Victims of Britain's political secret police have reached breaking point with the new Chair of the Inquiry, Sir John Mitting. He holds more secret hearings than public, he grants anonymity to spycops – sometimes in excess of what they ask for – without letting victims test the evidence. The shocking Inquiry hearing in February,left us with no other real option.

We emphasise that we are not abandoning the inquiry – we passionately want to participate, but it must be thorough and credible. With Sir John Mitting in sole charge, the inquiry cannot fulfil its purpose.

It must be something of a psychological challenge for a barrister and their legal team to walk out on a hearing when their professional role is based on arguing in court. But counsel for the victims, Phillippa Kaufmann QC, well understands the frustrations of her clients and the dead end that Mitting is steering the Inquiry into.

Here is the full text of Phillippa Kaufmann's extraordinary speech to the hearing:

Sir, what I'm about to say to you now does not actually relate to the individual anonymity applications under consideration today. As you know, I represent about 200 individuals. We can't be precise about exactly how many because some of the core participants are groups and it is anyone's guess how many individuals are represented as individuals within a particular group.

Over the last few months, we have expressed to you increasing concerns over the manner in which the anonymity application process is being conducted and has been conducted to date. We have now reached a point where our concerns, we think, can no longer be ignored and have come to a head.

The focus of my clients' now very grave concerns are disclosure and, to be frank, yourself.

Disclosure, if I can deal with that first. We have from the outset been at great, great pains to ensure that the anonymity application process is as open as possible in order, firstly, that due regard is had to the need for openness and the way in which public confidence can be served through that. But also, to ensure that disclosure is made in a way that will enable decisions to be taken on a properly informed basis, by which I mean that decisions are taken which, to the greatest extent possible, allow testing of the police officers' contentions as to why anonymity orders are required.

Your response to us has consistently been that our argument is circular, and that you cannot provide more information. As with disclosure, so too with your reasons. These are scant and largely uninformative.

You have never indicated once that you have taken into account the compelling public interest factors favouring openness as against anonymity. You have never explained why you have discounted those factors in favour of the interests favouring anonymity.

And we agree entirely with the observations made on behalf of Mr Francis [whistleblower Special Demonstration Squad officer Peter Francis] in the submissions that are currently before you for this hearing, and in particular paragraphs 4 to 6 of those submissions. I am going to read them in full because they so precisely echo my client's feelings.

They say this:

"4. The opaque nature of the Chairman's reasoning has attained a new height in his 'minded to' note

“5. A considered decision not to publish any open reasons at all, in the context of an officer in relation to whom the current risk of physical harm is assessed as ‘low’ with any increase by revelation of real or cover name assessed as ‘very low’, signals a disregard for those, like Peter Francis, who have shown a real respect for the Inquiry’s processes by not revealing information that they hold and in relation to which the Chairman has no power to restrict.

“6. Peter Francis has been prepared to engage with this judicial process (which he was instrumental in bringing about) in the belief that this process would fairly balance the public interest in openness with other factors at play. Failing to give any reasons for restricting both a real and cover name of a former undercover officer, who was a manager at a crucial period of time in Special Demonstration Squad history, and where there is no disclosed risk, significantly undermines the trust and belief in the Inquiry process that Peter Francis has shown to date, compounding his perception that there is a lack of mutual respect.”

Our argument has consistently been that the anonymity applications form an absolutely critical part of the process. If you don’t get this right now, then so much of what has gone wrong with undercover policing operations, the operations of the Special Demonstration Squad and of the National Public Order Intelligence Unit, will forever remain secret and that is precisely the problem that the Ellison inquiry ran into. And it arose exactly for the reason that the police officers’ accounts could not be contested against the evidence of those people that the officers have been spying on.

My clients greatly fear that you are walking into the same dead end. In short, we have got precisely nowhere in relation to our attempts to ensure that we can meaningfully participate. It is now abundantly clear, particularly in light of the latest disclosure and ‘minded-to’ indications, those with which this hearing is concerned, that we simply cannot participate in this hearing in a meaningful way. You have our written submissions.

Your ‘minded-to’ indications in respect of two key officers close off all avenues for getting to the truth, in respect of what they were doing. And those two officers are managers, managers at a key time. HN109 is one of them and you have had the submissions of Mr Francis in relation to that.

There is this as well. We have just learnt in relation to Mark Kennedy, through an IPT [Investigatory Powers Tribunal] application that is underway brought by one of Mark Kennedy’s victims, a woman with whom he had a relationship when he was undercover, that not only is it affirmed that he had a relationship but it is also clear from what is admitted in the pleadings that his managers and his supervisors acquiesced in his having a relationship.

Now we know he had at least three relationships. That is activities on the part of the National Public Order Intelligence Unit, an organisation set up under the legal regulatory framework of Regulation of Investigatory Powers Act that was supposed to make sure that considerations were given to the private rights of individuals whose rights would be interfered with by operation of any undercover operation and that was authorised in those operations, or acquiesced to in those operations. This obviously signifies the importance of managers giving evidence in an open, public manner that is tested as much as possible.

MITTING: What make you think that won’t happen merely because the name of the individual is not made public?

Because precisely what can’t happen, as we have repeatedly said, is in relation to those officers nothing can be discerned about those activities when they themselves were undercover and that is, and remains,

lending this process the legitimacy that it doesn't have and doesn't deserve.

The second major concern that we have relates to the Inquiry panel itself. That falls into two parts. The first concerns the failure to ensure that the Inquiry is heard by exactly that, a panel representing a proper cross-section of society and in particular – and this is absolutely essential for reasons I'm going to come to – including individuals who have a proper informed experiential understanding of discrimination both on grounds of race and sex. Two issues that lie absolutely at the heart of this Inquiry.

I'm sorry to say this, but instead we have the usual white upper middle class elderly gentleman whose life experiences are a million miles away from those who were spied upon. And the very narrow ambit of your experience is not something I'm simply creating out of thin air. It has been exemplified already in the way that you have approached these applications.

I remind you of [officer code-numbered] HN58. Your 'minded-to' note in relation to him, what you said at the hearing in relation to him and what you maintained in your decision thereafter. I remind you that your observation in the 'minded-to' note was that in your view it was very unlikely that HN58 would have had any intimate relations while undercover with those he spied upon because he had been married for many years.

Now you will recall, because it was an extreme reaction, how everybody – or perhaps not everybody but a very, very substantial number of people in this room – responded when you said that. Or when it was tested and you repeated it in the course of the hearing. Your response was, and we would agree with it, that perhaps you are somewhat naive and a little old-fashioned.

Yet what is for us even more alarming perhaps than your original observation is that despite the astonished, disbelieving, uncomprehending and dismayed response of everybody here, you maintained reference to those naive – or reliance upon those naive and old-fashioned views that had originally been set out in your 'minded-to' note. And you did so not just in relation to HN58 but that reasoning showed itself again in relation to other officers.

The core participants – the non-state, non-police core participants – do not want this important Inquiry, something that they so richly deserve to have conducted in an efficacious way, to be presided over by someone who is both naive and old-fashioned and does not understand the world that they or the police inhabit.

And they have no confidence in the prospect of an inquiry being properly probing or understanding the evidence if it is conducted with an inquiry panel or chair as currently constituted.

So, those who have expressed a view therefore ask that you recuse yourself from this Inquiry. Or if you are not prepared to do that, that you ensure that measures are taken to bring about a true panel. That is that you sit together with others who well understand the critical issues that shape and frame this Inquiry.

And I remind you and everybody of the Macpherson inquiry, the Lawrence inquiry, and what a difference it made to the understanding and world view of Mr Justice Macpherson to sit with people who understood because they had experience of the issues that went to the heart of that inquiry.

Now, as matters stand, those clients who have given instructions – and you well know that many do not actively participate – are not prepared to continue to participate in today's hearing. I am instructed, therefore, together with the entire legal team, to withdraw from this hearing while these issues are

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