



Joint Report of
Orgreave Truth and Justice Campaign
Blacklisting Support Group
Police Spies Out of Lives
Justice4Grenfell
Shrewsbury 24 Campaign
Hillsborough Justice Campaign

Covert Human Intelligence Sources (Criminal Conduct) Bill
House of Lords
Second Reading Briefing
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Introduction

1. This Report is prepared by a coalition of Justice Campaigns. We are dedicated to fighting for accountability and justice for those wronged in actions that took place over decades, from the 1970s to the present day. We are not aligned to any political party.
2. The Orgreave Truth and Justice Campaign seeks an inquiry into the policing and political interference in the events of at the Orgreave Coking Plant on 18th June 1984 during the Miners' Strike.¹ The Blacklisting Support Group is a justice campaign and support network for activists involved in the UK construction industry blacklisting scandal and blacklisted by multi-national building contractors and big business.² Police Spies Out of Lives is a campaigning group working to end sexual and psychological abuse of campaigners and others by undercover police officers. They support women affected and campaign to expose the immoral and unjust practice of undercover relationships, and the institutional prejudices which have led to the abuse.³ Justice4Grenfell is a community led organisation, set up a few days after the Grenfell Fire Disaster. They focus on the long term goal of obtaining justice for the bereaved families, survivors, evacuated residents and the wider local community, collaborating with representative organisations.⁴ The Shrewsbury 24 Campaign was set up by several of the convicted Shrewsbury pickets with local trade union activists. They seek to overturn the unjust prosecution of 24 building workers who were charged following the first ever national building workers strike in 1972.⁵ The Hillsborough Justice Campaign includes bereaved and survivors of the Hillsborough Disaster as well as supporters of the continued fight for justice. The campaign continues the demand for justice for those who died at Hillsborough and those survivors who continue to suffer.⁶
3. The Covert Human Intelligence Sources (Criminal Conduct) Bill (the "Bill"), which is currently being rushed through parliament at an unusual speed, could enshrine in law the criminality that our campaign organisations are fighting against. Our campaigns have been born out of injustices already inflicted upon us with serious violations and human rights abuses. Many of our campaigners have suffered years of trauma and loss and now we find that this Bill could authorise and legitimise further future abuse against us and others.
4. This briefing addresses our joint concerns with the Bill. Whilst we accept the need for better transparency and regulation of the use of covert operatives we have serious concerns that the Bill creates much greater powers than currently exist, specifically:-
 - a. the provisions granting immunity from criminal prosecution of covert agents;
 - b. the lack of guarantee for victims of Criminal Conduct Authorisation ("CCAs")⁷ offences to claim compensation;
 - c. the authorisation of agent provocateurs in the infiltration of legitimate justice campaigns such as ours, political organisations and trade unions and their lawful activities and;

¹ <https://otjc.org.uk>

² <https://www.facebook.com/groups/blacklistSG>

³ <https://policespiesoutoflives.org.uk>

⁴ <https://justice4grenfell.org>

⁵ <https://www.shrewsbury24campaign.org.uk>

⁶ <http://www.contrast.org/hillsborough/whoweare.shtm>

⁷ See the Bill's new s29B(2) which creates "Criminal Conduct Authorisations"

- d. the inadequate reliance on the Human Rights Act 1998 as protection for individuals.
5. Although we understand that the new legislation should not affect historic cases of the actions of covert operatives, we have strong concerns that the Bill creates wider and unnecessary powers for covert interference and infiltration of legitimate justice campaigns in the future, including our own.
6. We ask that our recommendations are given serious consideration and necessary support is given to amendments to the Bill that take our views into account.

Criminal Conduct Authorisations

Immunity from Prosecution

7. We recommend that the provisions granting immunity from prosecution be deleted. The current Security Services' Guidelines (the "Guidelines")⁸ which came into force in 2011 have been interpreted to provide an implied power for MI5 agents to be authorised to commit criminal acts but does not provide covert operatives immunity from prosecution. We believe that by granting immunity the Bill will allow criminal conduct that is unnecessary, unreasonable and unaccountable.
8. There are many examples of covert operations and we include below some from our organisations.
 - a. In the Cabinet Papers released relating to the 1984/85 Miners' Strike, there are many references to the Prime Minister complaining of the insufficient numbers of miners arrested and the courts' sentencing of those convicted needing to be more severe. The inclusion of the National Union of Mineworkers (NUM) as a "core participant" to the Undercover Police Public Inquiry is as a result of concerns of covert MI5 operations and Security Services working alongside police to monitor individual and trade union activity in meetings, on the picket line and infiltration of the NUM headquarters.
 - b. Blacklisting campaigners recently highlighted an example where an undercover Special Demonstration Squad officer was sent to spy on trade union activists and incited them to fire bomb a charity shop in North London. The officers justification for this was that the shop was run by a leader of an Italian Fascist party who had fled Italy after being wanted by the Italian police in connection with the terrorist bombing of Bologna railway station in 1980 that killed 85 innocent people. Blacklisting campaigners are rightly accusing this officer of being an agent provocateur.
 - c. Many male undercover officers have used intimate and sexual relationships with female campaigners as a tactic to infiltrate campaigning groups and organisations over a period of nearly fifty years. By forming these relationships the undercover officers have violated the human rights of these women, abused police power and caused major trauma and the lost opportunity to live a normal life.

⁸ Guidelines on the use of Agents who participate in Criminality (Official Guidelines) March 2011
<https://privacyinternational.org/sites/default/files/2020-07/DOC%207%20Tab%2012.pdf>

- d. The Undercover Policing Inquiry has revealed that the Shrewsbury 24 were infiltrated by police agents. Successive Governments have relied on s.23 of the Freedom of Information Act 2000, the national security exemption, to refuse to release information about the prosecution of the Shrewsbury pickets. This is part of a general policy to hide the role of undercover agents in infiltrating and interfering in perfectly legitimate organisations such as trade unions, justice and environmental campaigns. It has taken 14 years of painstaking research to uncover documents relating to the trials. They show many other Government documents have been withheld, particularly between the Home Office, other government departments, the police and employers in the construction industry. We are concerned the Bill will strengthen the secrecy and non-accountability of covert operatives.
9. We recommend the Bill is limited to specified criminal conduct but not exemption from prosecution. We specifically recommend it be a criminal offence for covert operatives to conduct intimate, sexual relationships with members of the public using their covert identities.

Victims of CCA-related offences and compensation

10. Victims of crime are currently entitled to claim compensation through the civil courts and from the Criminal Injuries Compensation Authority (the "CICA").
11. We are concerned that in addition to victims of CCA-related offences having no recourse for remedy in the criminal courts the Bill also removes their right to receive compensation in the civil courts and/or through an application to the CICA.
12. We recommend that victims of CCA-related offences should have a guaranteed right to claim compensation.

Use of agent provocateurs in campaigning and trade union activities

13. We accept that statutory powers to facilitate law enforcement against serious criminal conduct, such as terrorism, child sexual exploitation, and serious organised crime, are important and necessary. However we are concerned that the broad application of CCAs that the Bill allows goes far beyond law enforcement purposes and infringes on civil liberties included in the European Convention on Human Rights and international human rights protocols. We are specifically concerned that CCAs could be used to "prevent disorder" or to protect "the economic well-being of the UK", both of which are vague and wide-reaching.⁹
14. We believe and understand that legitimate campaigning gives us the right to peacefully protest and organise in public spaces in the UK and that it is legal and protected under the European Convention of Human Rights subject to certain limitations. It is the duty of the State to refrain from unnecessarily restricting this right and to take measures to protect our peaceful protests and not to covertly infiltrate to incite illegal and violent activities.

⁹ The Bill, Clause 1(5) which inserts a new s29B(5) into the Regulations of Investigatory Powers Act 2000 ("RIPA")

15. The Bill provides for the granting of a CCA on broad grounds of “preventing disorder” and we are concerned that this could be used to specifically target legitimate, peaceful activities and gatherings organised by campaigns such as ours and others, especially campaigns that rightfully and reasonably question the actions of the State. We are concerned that the absence of any limitations a covert operative would be able to incite criminal conduct that without their action would not take place.
16. We also share the concerns of some trade unions that the granting of a CCA on the grounds of protecting the “interests of the economic well-being of the UK” is vague and open to covert operatives encouraging or provoking criminal activity whilst infiltrating lawful trade union activities. Several of the campaigns represented in this briefing fight against injustice that has occurred over the state’s handling and interference in trade union activities including industrial action. This Bill could potentially sabotage legitimate trade union action.
17. We recommend that the Bill explicitly limits the use of CCAs to solely focus on disrupting serious criminal conduct.

Reliance on the Human Rights Act

18. We are concerned that the reliance on the Human Rights Act 1998 (HRA) as limiting the scope of what might be legally authorised is severely over-estimated, in particular the fact that the HRA offers no protection to individuals. In the past the government itself has argued that the State cannot be held responsible under the terms of the European Convention on Human Rights for actions undertaken by individual agents. Despite the Human Rights Act coming into effect in 2000 in the UK, a number of police officers are known to have been actively deployed undercover after that date, conducting sexual relationships with women connected to their target groups. These women were not protected from this abuse despite the Human Rights Act being in place.

Conclusion

19. Our recommendations can be summarised as follows: -
 - a. the provisions granting immunity to covert operatives should be deleted;
 - b. victims of CCA-related offences should have a guarantee that they can claim compensation;
 - c. the use of covert operatives as agent provocateurs should be prohibited, specifically regarding legitimate campaigning and trade union activities;
20. We live in a democratic society and the covert policing that activists are experiencing claims to defend democracy when it seems to do the very opposite. The Bill could mean anyone who gets involved in legitimate campaigns could become victims of state directed crime. It could also deter people from getting involved in legitimate campaign action. Any democratic society worth its name would demand to know why this is happening.

21. We ask that amendments tabled to the Bill that address our concerns and recommendations raised in this briefing are supported.

9th November 2020

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