

Undercover Policing Relationships

Contemporary Issues in Criminal Justice

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Introduction

Undercover policing is a key component of intelligence lead law enforcement, enabling officers to infiltrate groups and gather otherwise inaccessible information. While such practices pursue legitimate aims including the prevention of crime and protection of public order, they raise a significant ethical and legal concerns when extended into intimate relationships based on deception

This paper will critically evaluate where undercover policing relationships can be justified under human rights law. Focusing on operations conducted between 1968 and 2010, particularly by units such as the Special Demonstration Squad (SDS) and National Public Order Intelligence Unit (NPOIU), it argues that these practices were neither necessary nor proportionate. Drawing on case laws, academic literature, and findings from the undercover policing inquiry, the paper contends that violations of Articles 8 and 3 of the European Convention on Human Rights (ECHR) constituted a systemic abuse of power and undermined police legitimacy.

Context of Undercover Policing

Undercover policing is intended to obtain intelligence that cannot be accessed through overt methods. It is commonly justified as a necessary tool in tackling serious crime and maintaining public order (College of Policing, 2021). However, evidence presented by the undercover policing inquiry demonstrates that operations extended into political and activist groups, raising concerns about proportionality and scope (Undercover Policing Inquiry, 2019 ; Loader, 2006)

Between 1968 and 2010, undercover officers adopted false identities and infiltrated various movements. In several instances, officers formed long-term sexual relationships with women who were unaware of their true identity (Lewis and Evans, 2014 ; Sanders, 2008)

These relationships were not incidental but often emotionally significant and sustained over a long period. In some cases, these relationships involved deep emotional commitment and long-

term deception, resulting in serious psychological harm once the officers' identities were revealed (Buksh, 2025 ; Tolley, 2024)

Critically, while deception is inherent in undercover work, its extension into intimate relationships represents a qualitatively different intrusion (Loftus, 2009). As Loftus (2009) argues, such practice reflects a "moral drift" within policing culture, where unethical behavior becomes normalized in the absence of effective oversight. This shifts undercover policing from legitimate intelligence gathering to personal exploitation, thereby engaging fundamental human rights protection.

Article 8 ECHR

Article 8 of the European Convention on human rights protects the right to private and family life, including personal autonomy and the ability to form meaningful relationships. Any state interference must be lawful, pursued by a legitimate aim, and satisfy the requirement of necessity and proportionality (Fenwick, Phillipson and Williams, 2020).

In McCombe (2009), the court confirmed that covert police activities can interfere with Article 8, even when conducted in public context. This principle is particularly significant in cases involving intimate relationships which lie at the core of private life and personal autonomy (Harris et al., 2023).

Similarly, the European Court of human rights emphasized that individuals must retain control over their personal identity and personal information. In the context of undercover policing deception regarding identity directly undermines the principle by removing individuals' ability to exercise informed personal choice (Fenwick, Phillipson and Williams, 2020)

The central issue in these cases is consent. As (Tolley, 2024) argues, consent obtained through deception, particularly regarding identity cannot be considered valid because the individual is deprived of the information necessary to make an autonomous decision. Individuals involved in these relationships were therefore denied genuine consent representing a significant interference with personal autonomy (Sanders, 2008).

Critically, the police justification also fails the necessity test. There is no clear evidence that forming sexual relationships was required to maintain cover or obtain intelligence particularly where less intrusive investigative methods were available (College of Policing, 2021)

Furthermore, the proportionality requirement is not satisfied. As established in *Bank Mellat v HM Treasury* (2013), proportionality requires balancing the importance of the objective against

the service of the interference with individuals' rights. In this context the emotional and psychological harm inflicted on victims outweighs any potential intelligence benefits, meaning the interference cannot be justified under Article 8 (Ashworth and Zedner, 2014).

Police Justification

Police forces have argued that forming relationships was necessary to maintain undercover identities and ensure operational effectiveness. Whilst crime prevention constitutes a legitimate aim, this justification fails under legal and theoretical scrutiny (Sanders, 2008).

The necessity test requires that the measure be essential (Sanders, 2008). There is no credible evidence that sexual relationships were required for the measure to be essential. There is no credible evidence that sexual relationships were required for intelligence gathering. Covert policing already operates at the limits of legality, and extending it into intimate relationships represents an unjustified expansion of state intrusion (Sanders, 2008).

From a proportionality perspective, the harm caused clearly outweighs any potential operational benefits. Preventive policing measures must remain strictly limited in order to avoid excessive interference with individual rights (Ashworth and Zedner, 2014).

Critically, the issue of consent further undermines the justification. Deception regarding identity invalidates genuine consent, transforming these into a form of exploitation rather than legitimate investigative activity (Tolley, 2024).

Moreover, this was not isolated misconduct. Evidence from the Undercover Policing Inquiry demonstrates a pattern of behaviour across multiple operations, indicating systemic organisational failure (Undercover Policing Inquiry, 2019). Police misconduct is often rooted in institutional culture rather than individual wrongdoing (Paterson, 2017).

Weak oversight structures can allow unethical practices to become normalised within policing institutions. In the context of undercover policing, the abuse of clear accountability mechanisms enabled officers to exercise excessive discretion (Newburn, 2022).

Therefore, the justification cannot be sustained. These actions represent not operational necessity, but a systemic abuse of power (Sanders, 2008).

Theoretical Analysis

The concept of abuse of power is central to this analysis. Undercover officers operate with the significance of discretion without oversight, creating conditions in which authorities can be misused (Sanders, 2008).

Procedural justice theory 1975 further explains the implication of this conduct. legitimacy in policing depends on fairness transparency and respect in decision making processes (Tyler , 2006) The use of deception in intimate relationship directly violates these principles. Such practice undermines perception of fairness and weakened the legitimacy of police authority (Jackson et al., 2012)

Public trust is essential for effective policing because it encouraged cooperation and voluntary compliance with the law. When police actions is perceived as unjust or exploitative , public confidence within policing is significantly reduced (Jackson et al., 2012)

Loader, (2006) Extends this argument by suggesting that policing must maintain moral authorities in addition to legal authorities. In these cases the action of undercover police officers failed both ethically and legal resulting in a border crisis of legitimacy (Loader, 2006)

Impact and consequences

The impact on victim was severe including psychological trauma emotional harm and a loss of personal autonomy. many individuals experience long term emotional distress after discovering that their relationship was based on a deception of state agents (Lewis and Evans, 2014).

However, the border institution consequences are equally significant. the scandal undermined public confidence in policing and raises serious concern regarding accountability and oversight (Jackson et al., 2012)

trust and legitimacy are essential compound of democratic policing. when misconduct occurs without adequate accountability, public willingness to cooperate with the law enforcement may decline (College of Policing, 2021)

Policy and legal reforms

In response to these revelation, reform such as the undercover policing inquiry and the investigatory powers act 2016 have sought to improve oversight of covert policing operation. Professional guidance we're now explicitly prohibit undercover officers performing sexual relationship whilst deployed (Lewis and Evans, 2014)

however, these reforms require critical evaluation. Whilst they represent procedural progress they're primarily addressed regulatory framework rather than underlying cultural issues within policing intuitions (Newburn, 2022)

without deeper structural reform and stronger independent oversight the risk of further abuse of covert policing powers remain. Effective accountability mechanisms are therefore essential to prevent similar violations of human rights (Sanders, 2008)

Conclusion

the conclusion of undercover policing relationship cannot be justified under the human rights law. They violate Article 8 and three of the European Convention of human rights and fail the legal test of necessity and proportionality (Fenwick, Phillipson and Williams, 2020)

These practices represent a systematic abuse of power rather than legitimacy investigation . The consequences extend beyond individual victims, undermining public trust and the legitimacy of policing intuition (Jackson et al., 2012)

whilst reform have been introduced, continue scrutiny and strong accountability mechanism remains essential. Protecting fundamental rights must remain the central to the regulation of undercover policing powers (Jackson et al., 2012)

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