

Britain: Anti-terror legislation used to pursue whistleblower

By Ben Trent
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Anti-terror legislation has been used to pursue a whistleblower, who revealed details of the relationship between Britain's tax authorities, Her Majesty's Revenue and Customs (HMRC), and top companies accused of tax avoidance.

In March, the House of Commons Public Accounts Committee (PAC), headed by Labour MP Margaret Hodge, revealed further details in the case of HMRC's use of the Regulation of Investigatory Powers Act (RIPA) to track one of its criminal and information law advisory barristers, Osita Mba. This was to find out if he had been the whistleblower concerned in a case involving the investment banking corporation Goldman Sachs.

The RIPA legislation was passed in 2000 by the Blair Labour government, in which Hodge was a junior minister. It allows virtually every governmental body, department and affiliated organisation including HMRC to seek powers of surveillance in the supposed interests of the nation, whether for security, economic or other purposes. It permits the opening of postal correspondence, the review of subscriptions and phone numbers, details of Internet searches, email communication, bugging of buildings and vehicles, pursuing and monitoring of individuals and the use of informers.

The fact that the legislation was passed prior to the 9/11 attacks and the "war on terror" that have been used to justify numerous assaults on civil liberties in the ensuing decade confirms that preparations for authoritarian forms of rule were already well advanced.

It was in 2011 that reports first emerged in the press, based on information provided by Mba, disclosing a secret deal between David Hartnett, then permanent secretary of HMRC and Goldman Sachs, letting the company off £10 million worth of interest payments it

had avoided through a front based in the British Virgin Islands.

Mba also used the Public Interest Disclosure Act (passed in 1998 after a series of financial scandals supposedly to protect whistleblowers) to inform the National Audit Office and two parliamentary committees of the golden handshake between Hartnett and Goldman Sachs.

Latest evidence presented to the PAC by current HMRC chief executive, Lin Homer, shows that the HMRC rode roughshod over the Public Interest Disclosure Act and instead used RIPA legislation to obtain Mba's belongings, details of his emails, Internet search records and phone records including those of his then wife. The legislation was used after initial searches by investigators into Mba's computer hard drive and email traffic had revealed no apparent link to the leak.

Hodge declared cynically that the revelations had shocked her "to the bones", while making a show of demanding an assurance from Homer that the powers wouldn't be used on any more whistleblowers. Homer responded that she could not "offer carte blanche assurances" and that she had "other duties of care to parliament and other individuals".

Homer's cavalier attitude proves that the PAC's role of assuring the public that the government takes abuses of the RIPA legislation seriously is a sham ... as is Hodge's professed shock.

The act has been used extensively since its introduction. In 2012 alone, it was used over three million times and the HMRC used the legislation over 41,000 times in 2009 and 2011 to snoop through phone records, more than all the UK's police forces, except the Metropolitan and Merseyside forces.

In stark contrast to this, out of 956 complaints about

abuse of power between 2000 and 2009, only four were upheld by the Investigatory Powers Tribunal set up under the RIPA legislation to hear complaints about surveillance by public bodies.

Any media criticism of the legislation has been limited to exposures of “petty council bureaucrats” using it to pursue fly-tipping, dog-fouling and illegal fishing.

Little comment has been made on the fact that since the Act was passed in 2000 its powers have been extended (including the requirement for people to decrypt data or provide their encryption key when being investigated) to become part and parcel of the extensive police state measures built up not just in the UK but internationally. The legislation has opened up and formalised the use of the secret service apparatus in order to identify and track its real targets—those who would question the socioeconomic divide in capitalist society.

Osita Mba’s exposure of the Goldman Sachs deal case is not an isolated instance. The telecommunications company Vodafone has been accused of failing to pay an estimated £6 billion in tax to HMRC following the 2000 acquisition of the German company Mannesmann through a Luxembourg subsidiary. Last year, Vodafone avoided paying tax in the UK on a £84 billion windfall from selling its share of the American telecom corporation Verizon by routing its ownership through a holding company based in the Netherlands.

At the time, Hodge complained, “We need assurances that HM Revenue & Customs have crawled over this deal and done its damndest to make sure taxpayers receive the highest amount of this sudden windfall. If there is a flaw in the legislation, Treasury ministers should look at it urgently”.

Again, it was under the Labour government of which she was a member, that Chancellor Gordon Brown introduced the 2002 Finance Act and a “substantial shareholder exemption” (SSE) scheme similar to that already existing in the Netherlands (and which Vodafone had exploited). Under Brown’s SSE scheme any company that sold off a subsidiary did not have to pay capital gains or corporation tax on any profits it made on a deal. So even if Verizon had been owned directly by Vodafone in the UK no tax would have had to be paid.

While excessive levels of wealth are accrued by a tiny elite using legal “loopholes”, secret deals and government legislation, those who seek to reveal the details of such activities like Osita Mba are scrutinised by an ever increasing police-state and secret service apparatus.

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