

FILE NOTE

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FILE NO:

DATED: 18 January 2005

SUBJECT: Motorman

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PJT conference with Counsel – 18 January 2005 (Time Engaged 10.55 am – 3.45 p.m.)

Persons Present:

Mick Gorrill

Bernard Thorogood

Mark Thorogood

Philip Taylor

Janet Witkowski

And in part – Richard Thomas

Due to other commitments JW and RT did not arrive at the conference until shortly after it had started.

Prior to their arrival a number of issues were discussed and these notes will reflect the time that they arrived.

1. Upon completion our case summary should be given to the legal teams involved on the Exeter and London cases to be placed on their sensitive schedule. They should be given to the Disclosure Officers for the purposes of cross-disclosure. We must consider the interest of justice in respect of both sets of defendants and ascertain whether or not there is any material to be disclosed to them.

2. Roy Pollitt will be the Disclosure Officer in respect of Operation Motorman.
3. BT indicated that the case summary will need to deal with the interviews under caution which took place in respect of those defendants who submitted to interviews.
4. BT indicated that he will receive a copy of the Exeter case summary on a Counsel to Counsel basis and will provide this office with a copy upon receipt.
5. He stated that having spoken to the Counsel involved in the Exeter case they have fewer concerns on disclosure. He stated that Counsel in respect to the London matter was a little more cautious and whilst  was aware of the names involved in our case her case is differently slanted in that her case relates more to a betrayal of trust and misconduct and there are therefore fewer cross-admissibility issues.

At this point Richard Thomas and Janet Witkowski joined the conference.

6. Media
7. BT updated RT as to the position in respect of the other cases. He stated that there are very few links with the Exeter case and he has spoken to Counsel in the London case and she was less forthcoming although she thinks that it is unlikely that there is to be a problem. BT stated we take the view that we will begin our case at the appropriate time for us and that we could not deliberately do anything that may cause problems in other cases, however, bearing in mind that the London case is likely to be underway before we commence proceedings that does reduce the risks. BT stated that the Exeter cases are so distant in terms of time that we could issue our case and that the ripples that would arise from that could be dealt with before

their case commences and that any issues that would arise in the Exeter case could be dealt with without it having to be postponed or adjourned. He stated however that this is slightly more problematic with regard to the London case.

8. The Press Complaints Commission

9. BT stated that he asked Counsel in the London case how the officers in that case had approached the issue of the journalist. London Counsel indicated that the journalists were interviewed and were found to be tricky, well armed and well briefed – effectively “a barrel of monkeys”.

10. RT confirmed that that was his gut instinct and RT confirmed that he felt that if we had seriously thought of prosecuting the media we would face enormous difficulties, for example, they could argue an Article 10 defence plus there would also be political issues that would arise. In addition, the complicated factor in respect of the journalists is the sheer number in that there are over 200 of them and you would need to decide who to go for. RT stated that he did not particularly have a show trial of one journalist standing trial for the crimes committed by all journalists.

11. RT stated that he feels we cannot do nothing to the media but at some point we would hope to write a warning letter indicating that there is some evidence of wrong doing but that we are not prosecuting in this instance and that this can be linked to discussions with the Press Complaints Commission and the Parliamentary Select Committee which was chaired by Gerald Caughman.

12. The PCC do take this issue seriously and they undertook to produce a protocol of data protection issues and this initial draft was quite good. RT stated that contact was renewed just before Christmas 2004,

however, it appears that a number of lawyers feel that the contents of the Code were too simple.

13. RT stated that he takes the view that the journalists know what is going on, and are aware that action is pending.

14. BT advised that the best course of action would be to keep the journalists position under review but that we should not commit ourselves not to prosecute them. BT stated that the best course of action is to not make a decision at present and to keep all options open, bearing in mind material may come to light that may make us change our mind.

15. RT agreed that this was his view and he was happy with that.

16. In addition, it was felt that the delay could then mean PCC regulate their own house and the benefit of motorman convictions could set the standard for the future. The threat of an unlimited fine could be more useful for the papers themselves. RT stated that enforcement action could be taken against the proprietors of the newspapers however this was not a very attractive proposition.

17. RT stated that is only reservation is whether or not we prejudice ourselves by the delay in relation to the journalists and the press. BT took the view that we looked at the journalists very early on but practical issues arose namely public interests but otherwise there is no issue.

18. Disclosure

RT stated that disclosure is a significant issue in this and than when we undertake the exercise of disclosure in relation to the public cases we would need to look for papers which demonstrate and then satisfy the tests set down for disclosure.

19. The option for a conspiracy to defraud count was considered, however, this is not our remit and therefore it is possible that the police will be forced to look at this issue in the future. The question is whether or not a person's right to have their personal data processed correctly is a right prejudiced by misuse. The answer is obviously yes, and the question answers itself. In view of this the custodial sentence available for conspiracy to defraud could focus the minds of many journalists.
20. If we get a conviction RT stated that the Government could be sympathetic to changing the law to increase the sentence for Section 55 offences. BT agreed with this in that he feels that the problem here is the judge could say what is the point of the case, and RT and BT agreed that, if possible, we could try to engage the judge on the issue of the limited sentencing options available in matters such as this.
21. RT also stated that the Private Security Industry Act of 2001 creates a licensing regime for people in the security industry. This includes night club door staff as well as private detectives, and the real focus of this would be that those with criminal convictions would not be able to obtain a licence and therefore these people would be disqualified from business.
22. RT stated that he feels that this activity goes on relentlessly and that we have only scratched the surface of the trafficking of data. He stated that other parties that are involved to a significant extent are solicitors and insurance companies.
23. RT stated that he would like good publicity from this to effectively scare people.
24. RT stated that he wanted to publicise what the price of information is, so that the public as a whole would be horrified at how little it costs to obtain their data, for example, £40 for a vehicle license check which

provides their registration and address details.

25. If SW is imprisoned elsewhere would we still wish to proceed? BT stated that we may face judicial pressure to drop the case against Whittamore. We could dig our heels in or apply for our charges to lie on the file. The public interest of prosecuting diminishes if he is imprisoned elsewhere and we rely on evidence against others in relation to the remaining defendants. RT stated that he was undecided as to whether or not we would then in that instance continue against Whittamore. The issue in this case is not to get somebody fined but to use the case as a way of condemning the practice and to then show that there had been punishment in respect of other matters.

26. BT stated that he feels that we should proceed with Steven Whittamore and just lie them on the file. BT stated that this would not make us look weak to the press. JW agreed with BT on this point.

27. RT stated that he wants the issue of the buying and selling of information to be brought into the open, however, bearing in mind the involvement of the media in this case it is questionable to the extent that the media will seek to publicise their own misdemeanours, however, in relation to this issue it should be noted that the BBC appears to be keen.

28. BT stated that he feels it inappropriate that our case should be commenced until the London case is over however, we now have a trial date in respect of the London matter and that with an April trial for the London matter and an anticipation that there will be a trial for the Exeter matter it would not be impracticable to commence immediately after the conclusion of the London matter.

29. Time Scales

30. BT took the view that if we lay the Information in the Spring the London case is unlikely to be concluded until June and our case would more likely to be in the Autumn or potentially even further away than that.

31. RT stated that he feels it is frustrating and that we will be seen as ineffective even though we are constrained from speaking out because of the fair trial issues and the trials proceeding elsewhere.

32. BT stated that he feels that a good well drafted and comprehensive case summary could bring about early guilty pleas and that we could look to drafting such a comprehensive document.

33. BT stated that he feels we can talk in general terms about the case. The case is part of a major problem of the trade and trafficking of personal information which is inspired by the media. This case is part of a major industry which can affect us all.

34. RT asked whether or not this can be done when we lay the information. BT stated that it could be released in general terms.

35. In view of this it would therefore be practical for any press releases to go to BT for approval before they are released to the press.

36. BT agreed that this is akin to the Health & Safety Executive awaiting the interest in respect of a death before they prosecute and that this can take up to three years in HSE cases. RT stated that he felt reassured by this.

37. BT stated that a diluted version of the case summary could be released to the press in due course although this would need to be heavily anonymised. (RT left the conference at 11.55 a.m.)

38. BT stated that he did not want to do anything to de-stabilize the other cases and that we have a positive duty to liaise with those teams and

that we cannot start our case until the case summary as well as the unused material disclosure issues have been dealt with.

39. BT stated that he has viewed the evidence and feels it looks pretty good. JW stated that she feels that the problem is that when you scratch the surface of the evidence we struggle to find a true chain of evidence. JW stated that the lists etc with telephone numbers, for example, the criminal documentation in relation to PS28 and 29 causes us problems in that we struggle to show how this evidence which was seized by the police then comes into the hands of SIO Owens.
40. BT stated that he felt that continuity could be dealt with by way of admissions that the items were lawfully seized and that that then negates a number of potential problems in that regard.
41. JW stated that this department has gone through every exhibit and firstly to confirm that we have seen it, secondly to identify what is relevant and also what information relates to which witness and which defendant. She stated that we have pulled together a bundle and have re-numbered some of the exhibits. All statements have been followed through. When the bundles have been done we can then look at the issue of unused material because ultimately we wont know what material will be unused until we know what material is used.
42. JW stated that she felt this was the only way to look at the case, and another concern is that only 8 out of 20 witnesses have responded to our letters giving their availability details.
43. The issue of additional documentation to be showed to the witnesses arose. BT stated that he feels that some issues such as the additional exhibits can be addressed when the witnesses are giving evidence in the witness box.



44. BT states that he feels some people may put their hands up to this offence. JW feels that the case needs to be well put together in order to put them in a position to make such a decision.
45. Mick Gorrill stated that in relation to the disclosure issues with regard to the other cases he feels that a lawyer should do the relevant tests and that a lawyer should accompany Roy Pollitt upon his viewing of the unused material in the other cases.
46. The only link with the Exeter case is Dewes and the basis of the Exeter case is that of accessing of the Police National Computer. However, BT feels that documents do still need to be exchanged for the sake of completeness.
47. JW stated that  was concerned as to how we will deal with their material. When the police seized Dewes' material they seized hard drives etc. and we may not know what is relevant because the police themselves do not know what is relevant.
48. BT stated that if we strive to equip the CPS with the facts of our case we can only take REASONABLE Measures. The only cure is to keep in contact and exchange documents with the CPS and document the action that we take.
49. BT then provided a checklist of issues to be dealt with in respect of disclosure and this is on a separate document.
50. Mark Bryant-Heron who prosecutes the Exeter case is known to BT (they having been pupils together). There is a hearing on the 28th January 2005 at Exeter Crown Court, it is anticipated that the trial date will be in autumn and that Dewes will fight. The expected length of the trial is somewhere in the region of 1 – 3 months.

51. In respect of the Exeter Case we can begin our proceedings whenever we are ready.

52. However, that leaves the way clear for trial with Whittamore and we could simply put Dewes back till next year.

53. The only other option is that of potential harm to the Exeter case and when taking their views we could always seek to sever Dewes off them.

54. JW stated that she was concerned that Dewes will try to defend our case on the basis that Data Research Limited committed the offences. BT stated that he has prosecuted for the BTI and HSE and that there is no need to go against the company and that he feels that conspiracy allegations in this case means that it goes outside the controlling mind.

55. The indictments as drafted as been slightly amended by BT and the drafts handed over. BT stated that the case will be brought under the Criminal Law Act 1977 and now reads "and/or" but we can pin this down later. BT stated that the indictment is merely the vehicle for the prosecution. In respect of the informations these should be modified to show the Criminal Law Act being the relevant statute and as a point of order in respect of it and it will probably be appropriate for the Commissioner, Richard Thomas, to sign the informations at the appropriate time.

56. Confiscation

Confiscation is a further punishment and is extremely draconian in its source. We can ask the court to consider it and we should also look to ascertain whether or not the other cases had considered confiscation proceedings.

57. Bundle Order

58. JW stated that she has tried to consider the order that witnesses would be called when compiling the bundle. BT stated that in relation to the bundles he would like cross-references to the exhibits in the exhibits bundle, to be placed into the margin of the relevant witness statement. This can be handwritten. The witness statements should be placed in a separate bundle with the officer statements at the end.

59. BT stated that he would like the order of the defendants and the witnesses to follow the order of the charges which would then follow the order of the indictment.

60. BT stated that, unusually in this instance, we will make the workbooks exhibit but we will not serve copies of them save for the relevant pages, but they will be marked up as "not copied and available for inspection at the Information Commissioner's Office" but that only extracts will be served. BT stated that his advice was not to copy the entirety of the workbooks. BT then indicated how he feels the exhibits could be scheduled. The bundles at this stage are for AI and trial bundles will be prepared later from the original bundles.

61. Redactions

62. BT stated that he considered that the single pages could be unredacted although the single pages can be released and we can show that they have been selected to reduce the amount of data released to a sensible minimum. BT stated that he would like the jury to see the geographical range of details and the range of information, for example, vehicle registration numbers, address details, telephone numbers, mobile numbers etc.

63. However, discussion then turned to the issue of redactions and it was felt that materials should be redacted in some form because the

meeting considered how the participants of the meeting and perhaps barristers and the judiciary would feel if was their information on the page which was being served.

64. Accordingly, it was felt that some redactions will take place and the legal department can then decide as to whether or not they wish to redact these by way of black lines through the information or sticky labels stating the type of information.

65. BT stated that he would like to make the journalist's telephone numbers an exhibit. This would then make the newspaper connection clear and we could exhibit the telephone list found in Whittamore's premises.

66. Billing Information

This is potentially relevant to Lyle in that it could link him into the audit trail and the vehicle registration, for example, a call at 10.15 with the data being accessed at 10.17 and Lyle calling SW at 11.18 and then an invoice being dated that week. BT stated that he was happy with the highlighting in the telephone evidence although JW did note some concerns and this had been voiced to the investigators that related to the audit trails from the DVLA which does not provide the clarity of data we had hoped for.

BT stated that the telephone evidence could be dealt with generally and that we could produce totals of calls in a given period, for example, we could show that Whittamore called Dewes on a number of occasions. PT stated that his concerns in this regard would be that bearing in mind the numbers of telephone numbers and mobiles used there is no way we could specify the exact number of calls and that the best we could hope for would be a minimum number of calls.

However, if we do wish to show a minimum number of calls the billing would need to be an exhibit in this case, and in that instance it might necessitate the entirety of the billings being exhibited.

67. BT stated that if we do the telephone calls then we would need to ensure that they related to the allegations and they would need to be tied in.

68. BT stated that we cannot edit Taff Jones' interview, and in addition [redacted] statement as drafted needs to stand. Accordingly, BT stated his advice to us is that we must write to British Telecom declining to alter the statement on legal advice and that British Telecom must alter its processes to ensure that they do not remain under attack. BT stated that ultimately this case shows that the systems employed by British Telecom are already compromised and that this case is not going to make them any more susceptible. BT stated therefore that the British Telecom evidence has to stand.

69. BT was shown the CD ROMs from [redacted] BT stated that he would like a copy of this to be sent to him.

70. In relation to Count 1 BT stated that it would be useful if the totals of money and transactions were identifiable and could be created so that we can show the point of conspiracy i.e. the value in monetary terms for the information.

71. We would need to double check the evidence of the data controller. However, an ICO investigator can give evidence that the various companies are registered for the purposes of the Data Protection Act.

72. Journalist's Invoices

These should appear in the individual transactions starting from the bottom up and they prove the issue in individual cases but we should

also do a similar exercise as with the telephone analysis.

73. BT stated that he would like refer to examples in the exhibits other than those instances where a complete evidential chain exists. BT stated that the point of a conspiracy is that much of it will be based on inferences in relation to others. So as well as the perfect 16 lines he would also like to bring in past examples. JW agreed to find more past examples where there are some elements that exist.

74. Police Witnesses

75. BT stated that was not of the utmost importance to ascertain the availability of the police witnesses in relation to the evidence that they might give in respect of the early searches and of continuity as this could possibly be dealt with by way of admission. However, if the issue arises the CPS may have it available and we could request it.