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**INFORMATION COMMISSIONER  
REPORT FORM**

Subject: OPERATION MOTORMAN

Report By: Philip Taylor Date: 30<sup>th</sup> July 2004

Signature: Reference:

Having the opportunity to consider the material that we have in this matter as well as having had the chance to discuss this case with the case officers and very briefly with counsel I consider appropriate that such thoughts as I have developed are assembled in order to progress matters to the next stage.

It is likely that many of these thoughts will need to find their way into the next set of instructions to Counsel to advise. It is hoped that Counsel in this matter, Bernard Thorogood, will attend at our offices in the near future to consider where we are and to advise the team as to the next steps towards bringing this matter to court. It is hoped that this will be by the end of this year.

At present the position relating to the 2 CPS prosecutions is as follows:-

Operation Glade – (The Met Police investigation). This matter is before the court at Blackfriars Crown Court. One defendant (Paul Marshall) has pleaded guilty and the matter is progressing in respect of the other three. He has pleaded guilty to the conspiracy charge levelled against him and still awaits trial in respect of the theft matters. It is presumed that if he gives evidence against the remaining 3 defendants (Boyle, King and Whittamore) as re-assessment of the public interest ground in continuing the prosecution against him for solely the theft matters may result in a change of stance.

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Operation Reproof - (The Devon and Cornwall investigation). This matter has had its first hearing at Exeter Crown Court. This matter has been adjourned until November 2004 for a Plea and Directions hearing on the basis that it will take the defence teams at least three months to get through the paperwork served. The case lawyer at the CPS has indicated that he does not expect the trial to go ahead for somewhere in the region of 2 years. In addition he has indicated that the Unused Material Disclosure schedule runs to some 350 pages. This puts that case on a par with a small SFO prosecution or a mid size Customs and Excise Diversion/Carousel fraud.

In relation to both matters applications have been made for leading and junior counsel. The defence are using an equality of arms argument in this regard as well as the complexity of the cases. Whilst this may not be an issue for the CPS, who have instructed 2 counsel it is for us as it has a direct impact on our costs and will almost end up doubling the fees for Counsel on what will, in any event, prove to be a significant outlay.

Another cost issue will be that of venue. I think the majority of those concerned in this matter, if not all, consider that London is the appropriate venue for this matter to be heard. It is the most convenient for the defendants and fits in with where the crimes were committed. The only drawbacks to London are that neither us nor counsel are based there which has cost and time implications.

This would tend me towards drawing in the matter and keeping it quite narrow. The message can be successfully disseminated by prosecuting the key players and drawing the attention of the media to these. This does not however mean that that prosecution will be small scale, however, it should not be allowed to grow out of control.

I anticipate that scale of Operation Motorman in terms of case papers should be somewhere in the region of 7-8 lever arch files of statements and exhibits. This will however depend on how we structure our case.

There are 2 ways in which we can bring the prosecution. The first is to have a number of smaller cases with no more than 4 defendants in each. The second is to have a larger case with all of the defendants being tried together. I am more attracted to the second option for a number of reasons, although both methods have their attractions and pitfalls.

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The attraction of 2 or 3 smaller cases is that they will be easier to run. There will be less to organise from a case management point of view. Also, juries are better able to understand smaller, more manageable matters. The downsides are that you run the risk of the matters being considered differently by different tribunals and as such there is a risk of anomalous results. In addition the costs of running 2 or 3 smaller trials will be greater than running one larger trial. Further, a jury may have some difficulties in comprehending the case if they perceive that people who ought to be in the dock are missing. Whilst they can be directed to put such issues out of their mind, it is hard to see how they can make such leaps of faith.

Running one large case will be lawyer intensive. For example more issues are likely to arise in relation to Cairns (The current case relating to disclosure which states that Defence Case Statements served by one defendant may need to be disclosed to other defendants if they fall within the scope of secondary disclosure). Disclosure in itself is likely to be a significant undertaking and I will return to this point in due course. However, one large case allows all issues to be aired before the jury and allows them to determine all issues. There will therefore be greater consistency from this approach.

The biggest negative to running the matter as one large case is that of the state of the indictment. Judges do not like overloaded indictments. It is likely that anything over 30-35 counts can be considered to be overloaded. This would mean that if we have 9 people in the dock, then it is likely that no more than 5 or 6 counts would relate to each person (allowing for the overlaps of a disclosing to b).

The alternative to the overloading problem would be to lay a global conspiracy count. This has attractions. It makes the matter indictable only and therefore takes the matter straight to the crown court. This will of course reduce the cost of the pre-crown court proceedings but does mean that a little more "front end loading" of the case will be required in terms of the preparation of bundles etc. The idea of bringing a conspiracy case is very attractive as it would enable the magnitude of the case to be brought out properly. In order to bring out the conspiracy it will be necessary for there to be clear evidence of this. Bernard Thorogood has already advised that there is, in his opinion, sufficient evidence of this to sustain such a charge. The bringing of a conspiracy charge does not affect sentence save for enabling the Judge to bring a greater sentence than he could on a number of substantives. This is because of recent decisions that only allow a sentence to reflect the guilty pleas or verdicts and not the underlying criminality.

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The use of a conspiracy allegation is more elegant than laying 30 or so informations against Whittamore and 10 or so against all the others. The use of a conspiracy is also good from a presentational perspective as it allows 10 or so transactions to be gone through in complete detail with the others being scheduled at the same time.

The use of conspiracy does enable a sentence to be passed down which is at the higher end of the spectrum rather than the lower end, which might, on face of it seem appropriate in the instances of where there are only 3 or 4 minor substantives.

I note that there has been some talk already of who should be prosecuted and who ought not to be. I take the view that any gaps in the dock enable those who are being prosecuted to try to blame those who are absent. This is not something that I would want to risk. However I am alert to the comments that have been made already that there is little to be gained in prosecuting someone who is, for example, already up on a conspiracy to corrupt a public official allegation as that could result in them receiving a custodial sentence whereas our punishments are monetary only.

Disclosure is, as I have previously mentioned, a major point in this case. It is also something that I think needs to be considered at an early stage. This will affect both exhibits and unused material. Each page of Whittamore's workbook reveals an immense amount of data about people, both ordinary member of the public and those with "celebrity" status. I ponder whether or not there would need to be heavy redaction of the details on each page that are not relevant to the subject matter of the charge in order to preserve the data of the other people who appear on each page. This may need to be the subject of a judicial order, although probably not PII.

I also note that at one point there was a suggestion by Alec Owen that this matter was suitable for turning into a conspiracy to defraud which would then be prosecuted by the CPS on the basis that in respect of the DVLA checks the government have been defrauded out of thousands of pounds by virtue of the fact that each legitimate check would have generated £2.50 to the DVLA. I assume that the CPS do not wish to proceed with the matter on this basis. This is however something that may be relevant for future investigations of a similar nature.

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Having dealt with some of the general issues relating to this case there are now some specific matters that need to be addressed and it should be noted that these are in no particular order of importance:-

- 1 The issue of [ ] needs to be addressed. This has been considered to be a side issue to the case as a whole. It is possible that it can form part of the case proper, although there are some issues to be looked at first. The Home Office do not move quickly. There is sufficient for her matters to be brought in as they stand. The purpose of the further investigation is to completely close down the matter by ascertaining the identity of the person behind the campaign against her.
- 2 Gunning's further recent criminality would need to be reflected in the case. This could take place by way of a number of substantive counts against him over and over the conspiracy allegation.
- 3 I have concerns over the admissibility of Taff Jones' interview where on the 8<sup>th</sup> page he states that he would like to take legal advice but the interview is not halted at that point. Any admissions made after that point may not be admissible.
- 4 There is reference in the papers to someone called [ ] Who is he? What part does he play? Has he been traced?
- 5 I note that great store is set on how the blaggers try and get people's friends and family numbers. The significance of this was not immediately apparent to me and until it was explained I was a little unwise as to the use that could be made of them. In view of this it would be helpful if a statement could be drafted to reflect the value of friends and family numbers to the blaggers.
- 6 Page 15 of Gunning's interview refers to "JOC" in the margin. I assume that this is his legal representative, but this is different from the name given at the start of the interview.
- 7 It is interesting to note Gunning's faith in the postal system by paying for the vehicle checks by sending cash in an envelope.
- 8 Thought will need to be given to the disposal of those who are not being prosecuted, namely the journalists and newspaper editors. At present it is expected that there will be strongly worded letters annexing the revised annex to the PCC code of practice and indicating that future similar behaviour will result in prosecution.

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**Further Action**

There remain a number of things which need to be done in this matter. Again these are in no order of priority:-

- i) A conference with counsel needs to be arranged and held. For practical reasons this ought to be in Wilmslow. Counsel will be able to advise on:-
  - a. what further steps he considers are necessary to bring the matter to court
  - b. what charges are to be preferred
  - c. who should be the subject of prosecution
  - d. venue
  - e. issues relating to disclosure (as mentioned above).
- ii) The statements, exhibits and interviews under caution need to be collated into as near a working bundle as possible in order that we gain familiarity with using it in the format that it will be going before the court.
- iii) Thought will need to be given to what form of schedules will need to be prepared to demonstrate the events that have taken place. This may also require further forensic involvement.
- iv) Thought needs to be given to the Unused Material. Schedules of non-sensitive unused material will need to be prepared. A sensitive schedule will also need to be prepared. Thought will also have to be given to any PII applications that may be necessary.
- v) Any suspects not yet interviewed will need to be interviewed.
- vi) The CPS will need to be kept apprised of what we are doing to ensure that their actions are not prejudiced by ours.

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It is anticipated that the conference with Bernard Thorogood will take place in the first part of September. Subject to the amount of work subsequently required it is hoped that we will be in a position to lay informations by the start of November with the first court hearings taking place before Christmas. After the preliminary hearing we will then be subject to vagaries of the court listing system and the availability of counsel etc.

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