

FILE NOTE

FILE NO: Motorman
DATED: 1 September 2004
SUBJECT: CONFERENCE WITH COUNSEL - MOTORMAN

Time engaged – 10 a.m. to 12.40 p.m.

In attendance – Bernard Thorogood, Mark Thorogood, Alec Owens, Roy Pollitt, Mick Gorrill and Philip Taylor.

1. AO confirmed that Lyle has not been disciplined yet. It is believed that a hearing will be in the next fortnight. This disciplinary action is not dependant upon a decision being made by the ICO as to whether or not to prosecute.

2. Paul Marshall is the corrupt police civilian involved in this matter. He has pleaded guilty to the conspiracy in relation to the misconduct in a public office, although the theft allegations still are proceeding against him.

AO explained to BT how Marshall was the CAD operator who passed information to King who was the retired police officer, who then passed information to Boyle who was the private detective and which information then ended up in the hands of Whittamore.

Bernard Thorogood then reviewed the indictment in the Operation Glade matter as had been provided by the Crown Prosecution Service. BT stated that he felt that the conspiracy element to that case was very clever. However, this struck him as being very similar to the charges that we would prefer which is a complicating factor.

BT stated that historically he was reluctant to include Whittamore and Dewes. The particulars and passing of information is the same as he had in mind for the conspiracy. Therefore if Whittamore and Dewes are acquitted in respect of Operation Glade and Operation Reproof they would then have an argument of autrefois acquit.

Again, similarly, if they were convicted they would run the same argument. In addition they would then question why they were in the dock and the costs in those instance would exceed the public benefit.

3. However, if we start to run the case it should be noted that something could cause the police cases to fail, for example, something in relation to PII. Because we do not know what will happen in the police cases BT felt that it was appropriate that we review matters as things proceed.

BT also noted that if Whittamore pleads guilty in the police case this plea may be acceptable in our case and could be adduced in evidence.

4. RP noted that Whittamore's solicitor was of the view that Whittamore should not say anything which could prejudice the police prosecution.

BT stated that his greatest concern was the similarity of the case brought by the police and that which we propose to bring.

MG also noted that this could have serious implications for the future in respect of other cases where there is a joint investigation.

4. BT stated that he is happy to launch a prosecution against everybody and then review the position. The good thing about doing that is that they will all be named on the indictment and will feature in the papers.

5. There was now a discussion in relation to the issue of who featured in the Devon case. He is a retired chief inspector, and it was noted

that Dewes is the only character featuring in our case from the Devon case, and that Whittamore used Dewes for the vehicle checks.

6. In respect of venue, BT stated that he liked the idea of taking the case out of London and into either Surrey or Sussex, for example – Croydon, Lewes or Guilford. However, if the case is launched on the basis of Whittamore's location the case would be heard in Southampton.

7. BT stated that he considers that one case fits all defendants. He stated that if there was a conspiracy to obtain and then disclose then there would be three conspiracies on the indictment. However, he stated it was possible just to do this on the basis of obtaining because it is clear that if there is an obtaining then there will also be a subsequent disclosure.

He stated that if there is one case only this makes disclosure more manageable as opposed to running a number of smaller trials.

8. BT also referred to paragraph 20 on his December advice. He agreed that the papers need to be prepared before the first appearance in the Magistrates' Court because of the implications of bringing a conspiracy allegation are that the matter will subsequently travel to the Crown Court very quickly. After the case is sent to the Crown Court by the Magistrates matters move at quite a rapid pace.

9. BT then stated that in respect of the paperwork he would like consecutive exhibit numbers on all of the papers and that a consolidated exhibit bundle needs to be ready for the Judge by the time of the first hearing in the Crown Court.

10. BT stated that in respect of drafting the information indictment he will need the dates of the offences. It was noted that because this spans the Data Protection Act 1984 and the Data Protection Act 1998 the commencement date of the Data Protection Act 1998 will be used as the starting point of this conspiracy.

However BT stated that he does need the bundle to be in a position to draft the indictment.

Bernard also stated that the case summary would follow on from the bundle and that he would then prepare an opening note which would build on the case summary. AO stated that he would like people who give evidence to be those who would be the best witnesses.

11. In respect of formalities, BT stated that he would like Richard Thomas to provide his consent to the preferment of a conspiracy charge. PT and MT confirmed that this can be done, notwithstanding that PT and MT both have the requisite authority to commence proceedings.

BT stated in addition that he would like the telephone number for the CPS Counsel being used in the Devon & Cornwall Case and also the Operation Glade case. He stated that he would like to talk to them on a Counsel to Counsel basis.

12. BT made reference to his earlier concerns about the lack of evidence in respect of Gunning. However, BT was now brought up to speed on the further evidence that now exists against Gunning, and how Gunning is now tied into Dewes.

Part of the problem was proving Gunning is involved in the telephone issues, however it is easier to prove against him being involved in the vehicles. It was noted that our evidence is better in respect of Jones for the telephone issues.

13. AO reiterated his view that [redacted] would be the best starting point for the case. He stated he feels that there is a lot to tie in with the records of the payment to the individuals concerned from the newspapers in respect of her information and that relating to [redacted]

14. BT stated that he feels that the scheduling should aim to prove the magnitude of the offending, however BT did note his concerns that some of the evidence could relate to legitimate searches, however he felt that this would come within the big picture of the schedules to go to the jury.

15. BT stated that he feels that even if Whittamore is not on trial in our case the evidence linking the matter into him would be admissible. He stated that this point may be argued by the lawyers for the other defendants but that BT would expect to win that argument in front of the trial judge.

16. In addition BT stated that he takes the view that we should name in the information as we believe that he is guilty. In addition we would also add in the phrase "and others" to bring in the full aspect of the conspiracy.

17. BT stated that he would like the telephone records to be produced in a digestible form and that he would like this to be linked into the exhibits once they have been consecutively numbered. RP confirmed that this could easily be done.

18. It was hoped that the chain of transactions can be shown for an offence from the first call to the blag being carried out, and then the disclosure taking place with the invoice then going into the post.

19. RP confirmed that in relation to paragraph 19.1 of BT's December Advice a further statement can be obtained from

20. AO confirmed that he can get evidence that Dewes has applied for lawful access to the DVLA computer system upon which such application having been denied. Whilst initially this looked very attractive to BT it was noted that the application was made after the search warrants had been executed.

21. BT stated that he feels that Andrew Lyle is a weaker area of the case and that any evidence to bolster the case against him would be useful.

22. Disclosure Regime

It was noted that RP is to be the Disclosure Officer. BT advised that RP's decisions in respect of disclosure should be minuted in respect of what action had been taken and why any decisions have been made in respect of any piece of evidence and that this should be in the form of a detailed file note.

In respect of all of Whittamore's workbooks BT stated that he would like them to go in an unredacted form.

There was a significant discussion in respect of the nature of the data contained within each page of the workbook and how it was hoped that this would not necessarily fall into the public domain. It was felt that we, at the Information Commissioner's Office, need to do all that we can to ensure the integrity of the information and that at such time as the evidence is served it should be served on the basis that it is used solely for this case. BT stated that we could try and add in a condition that the records containing this information are kept in the solicitor's office and are examined by the defendants solely at the solicitor's office.

MG was candid in his views that active steps should be taken to ensure that those involved in the conspiracy are not restored to their previous position by virtue of receiving back the information (or be it in copy rather than original form). MG referred to the analogy of blanking out of faces on CCTV video.

In relation to the exhibits it was felt that we should initially serve only a redacted page containing the information that was "blagged" with the other information being contained thereon edited in such a form as to still display the gravity of the offence but still also being in a form that will be persuasive to the jury and that we would then make an application to the judge that it stands in evidence in that form. However, if the judge then orders disclosure of all the papers in an unredacted form, then we cannot subsequently be criticised because we are simply acting in accordance with a judicial order.

23. It was felt that the best time to review the disclosure point in relation to the police matters would be after the serving of defence case statements.

24. BT also stated that he took the view that in an ideal world we should have sight of all of the Devon & Cornwall material first and that he feels that the liaison between disclosure officers would be a good idea and RP confirmed that he would be happy to prepare a briefing note for the other police forces at such time as one is required.

25. In addition, BT stated that he would take the view that disclosure should take a wider format and should include anything that might reasonably assist the defence and also anything which could lead to a chain of enquiries ensuing would assist the defence.

26. In respect of the defendants it was felt that the appropriate defendants would be Whittamore, Dewes, Lyle, Gunning, Jones and This would ultimately lead to three defendants standing trial in the dock in the event that the proceedings against Whittamore and Dewes do not proceed as we would not be technically prosecuting other than in his absence.

27. In addition, and of some significant importance, BT stated that he will need information on why no journalists are being prosecuted in respect of these proceedings as he feels that we need to be prepared on this point for such time as the judge raises this question. BT stated that he feels this question is highly likely to be asked by the judge bearing in mind the nature of this case.

PJT/JT

