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John Whittingdale OBE MP
Chairman
Culture, Media and Sport Committee
House of Commons
7 Millbank
London SW1P 3JA

30 July 2009

Dear Mr Whittingdale,

CULTURE, MEDIA AND SPORT COMMITTEE INQUIRY INTO PRESS STANDARDS, PRIVACY AND LIBEL

I refer to your letter dated 9 July 2009 and your request for the Crown Prosecution Service to submit written evidence to the Committee on the inquiry into the prosecution of Clive Goodman.

On 16 July 2009 I announced the results of my examination of the material that was supplied to the Crown Prosecution Service by the police in this case, and I sent you a copy of my detailed announcement.

I was conscious that despite my announcement there were still some concerns. These arose principally because of the nature of the two documents submitted by the Guardian newspaper to your Committee on 14 July. Additionally, since making my statement I have received further representations from the Guardian newspaper and Chris Huhne MP inviting me to consider additional prosecutions based principally on those two documents. It has been urged upon me that these documents provide strong evidence that other journalists above and beyond those already convicted must have been involved in criminal activity.

Although beyond the remit of my original examination, in accordance with my continuing desire to be assured that the appropriate actions were taken in the case and to ensure that the public can be satisfied with the actions taken by the prosecution team I have, since my announcement, met with leading counsel and senior police officers from the Metropolitan police to discuss the significance of the two documents. I thought it would be helpful if I set out in some detail what conclusions I have reached.

The documents

The first document handed to the Select Committee was an email from a member of staff at the News of the World reporter to Mulcaire. In the email, the member of staff says: "Hello, this is the transcript for Neville." The e-mail contained a typed-up transcript of thirty five messages to and from the telephone of Gordon Taylor, chief executive of the Professional Footballers' Association.

Following the issuing of my statement on 16 July, I ascertained that the email was not in the possession of the CPS and so did not form part of the examination that I carried out. However I also ascertained, although not in the physical possession of the CPS, the e-mail was within the unused material held by the Metropolitan Police (that is the material not used to prove the case against Goodman and Mulcaire). As in every case, all the unused material was seen by prosecution Counsel at the time of the prosecution to determine whether or not it was capable of assisting the defence case or undermining the case for the prosecution in respect of Goodman and Mulcaire.

The second document handed to the Select Committee was a contract dated 4 February 2005 between the News of the World and Mulcaire - who was using an alias, Paul Williams.

A copy of the contract was in the possession of the CPS and was used in evidence as part of the prosecution case against Clive Goodman and Glen Mulcaire.

The charges

Goodman and Mulcaire pleaded guilty to conspiracy to intercept communications, contrary to section 1 (1) of the Criminal Law Act 1977, and Mulcaire alone pleaded guilty to five substantive offences of unlawful interception of communications, contrary to section 1 (1) of the Regulation of Investigatory Powers Act 2000.

The law

To prove the criminal offence of interception the prosecution must prove that the actual message was intercepted prior to it being accessed by the intended recipient.

The investigation

The searches and seizure of material all took place on the 8 August 2006. A number of premises relating to both Goodman and Mulcaire were searched. Hundreds of handwritten sheets showed research into many people in the public eye. There was also a quantity of electronic media recovered including recordings of some apparent voicemail conversations. It was reasonable to expect that some of the material, although classed as personal data, was in the legitimate possession of the defendants, due to their respective jobs. It is not necessarily correct to assume that their possession of all this material was for the purposes of interception alone and it is not known what their intentions were or how they intended to use it.

Conclusions on the material

The e-mail dated 29 June 2005 was found as a paper copy at Mulcaire's home address on 8th August 2006. This document was then at least 14 months old and the prosecution case was focused on activity against potential victims in 2006. There is nothing on the document to suggest when the alleged conversations in the document may have occurred, (save that they must have occurred on or before 29 June 2005).

The existence of transcripts alone does not prove that the messages transcribed were intercepted prior to their being accessed by the intended recipient (an essential element of the offence). Further technical evidence would be needed before such an assertion could properly be made. However, such technical evidence was not available in 2006 nor is it available now.

In addition, there was and is no clear evidence concerning the identity of 'Neville' and there was and is no evidence to suggest that 'Neville' had seen the document, and even if he had, that in itself would not have constituted an offence of unlawful interception. Therefore there was no evidence to link him to a conspiracy to intercept communications.

Mulcaire's computers were seized and examined. Nothing in relation to Neville or Neville Thurlbeck was indicated.

I invited leading counsel to advise me on the issue of inviting the police to re-open the investigation. He has advised that although he cannot now recall whether the e-mail was the subject of specific advice at the time, based on his knowledge of the case in 2006 and the investigation and prosecution strategy it appears to him unlikely that he would have advised the Crown Prosecution Service that further investigations should be undertaken in relation to the email of 29 June 2005, and that it appeared to him unlikely that he would have formed the view that the police had sufficient grounds to arrest and/or interview either the sender of the email or Neville Thurlbeck. He has also advised me that based on his current knowledge and understanding of the case, his advice would not be any different today.

In light of these findings, I confirm that it would not be appropriate for me to re-open the cases against Goodman or Mulcaire, nor to revisit the decisions taken in the course of investigating and prosecuting them. Nor would it be appropriate for me to invite the police to re-open the investigation into this case.

Yours



KEIR STARMER QC