

Message

From: Patrick Bourke [GRO]
on behalf of Patrick Bourke [GRO]
Sent: 26/06/2015 10:22:17
To: Rodric Williams [GRO]; Mark Underwood1 [GRO];
Melanie Corfield [GRO]
Subject: RE: Confidential and legally privileged

Very helpful and clear. Many thanks Rod.

From: Rodric Williams
Sent: 26/06/2015 10:56
To: Mark Underwood1; Melanie Corfield; Patrick Bourke
Subject: FW: Confidential and legally privileged

Just fyi

From: Rodric Williams
Sent: 26 June 2015 02:01
To: Jane MacLeod; Mark R Davies
Subject: RE: Confidential and legally privileged

Mark – I totally agree with Jane’s email, and although we have spoken, I thought it might still be useful to put my thoughts down in writing.

I think you’re right about the angle on Jo Hamilton’s case (the Misra “angle” could be whether proper disclosure of Horizon bugs was made to Prof. McLachlan; I can’t see one on Thomas beyond perceived harshness of prosecuting a postmaster who had served for 40-odd years).

Before answering your two specific questions, I think the best way to respond to any enquiry from the BBC on this issue is to frame it by reference to how charges are pursued, assuming (as we’re told we should) we follow the Code for Crown Prosecutors’ two stage “Full Code Test”. Doing that should show the theory that the BBC (and SS) are trying to develop just doesn’t fit with actual practice and experience. Although we’re not getting into the specifics of any individual case, for our internal understanding I’ll use Jo Hamilton as an example.

Approach to Prosecutions

- **First, Evidential Stage**: each charge must be supported by sufficient evidence for a realistic prospect of conviction.
 - o In a case like Jo Hamilton (1 count of theft, 14 separate counts of false accounting) that means that there is sufficient evidence for each charge *in and of itself*.
 - o Equally, it means you can’t try to “bolster” a weak False Accounting charge (i.e. where there is insufficient evidence for a realistic prospect of conviction) by also bringing a weak Theft charge.
- The evidence can be built up through investigation before the charges are laid.
 - o In Hamilton, the security report was dated 17 May 2006, noting that it is based on the “evidence so far”.
 - o The report also states that “the case papers have been forwarded to the Criminal Law Team for advice on the sufficiency of the evidence as to whether criminal charges are brought” (SS failed to reference this).
 - o Mrs Hamilton was served a summons on 31 October 2006 asking her to appear before the court on 6 December 2006.

- She was ultimately indicted on one count of theft and 14 counts of false accounting on 6 March 2007, the indictment having been settled by a barrister who had seen the evidence.
- In the 10 months between the report and indictment, the files (much of which are privileged) show the legal team challenging the security team about the evidence as the case was built.
- There was clearly sufficient evidence for the 14 false accounting charges as Mrs Hamilton pleaded guilty to them.

(All of which also demonstrates the danger of quoting one part of one document out of its full context, and SS's lack of expertise on matters of criminal law and procedure).

- **Second, Public Interest Stage:** once the Evidential Stage has been satisfied, a prosecutor has to consider whether "a prosecution is required in the public interest". The Code goes on to say "A prosecution will usually take place unless the prosecutor is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour", i.e. the presumption is for prosecuting when the evidence is there.
- A number of factors (which have evolved over time) are considered and kept under review, including the seriousness of the offence, impact on the community and harm to the victims.
 - Those factors can lead to a prosecution being dropped, e.g. it may no longer be in the public interest to prosecute one count of theft when 14 counts of false accounting have been admitted and the harm to the victim has been made good.
 - The decision to drop a prosecution on public interest grounds will be made even though the evidence still supports the prosecution.
 - Ultimately, whether the public interest tends towards or against a prosecution can only be determined on the particular circumstances of each individual case.

Answering Your Questions

1. "Can missing money and evidence of false accounting amount to a theft charge":
 - This will depend on the facts of the specific case, but as a general proposition the answer is "yes".
 - CK has told us that "where an audit discloses a loss in circumstances where there is evidence of false accounting, the fact of the loss together with the false entries will often be regarded as sufficient evidence on which to base a charge of theft".
 - This has also been described to me as "where money has gone missing, going to lengths to cover the tracks (e.g. through an extended period of false accounting) can be evidence that you took it (i.e. theft)."
2. "Given we would not seek to "plea bargain", how might one explain the apparent disparity between the May and June statements?"
 - Your assumption that the case is passed to the legal team is correct.
 - As Jane notes, it's a legal judgment as to whether there is sufficient evidence to make out the relevant offence, for both prosecution (is it sufficient to bring the charge?) and defence (what advice should the defendant be given on plea?).
 - We should avoid using the phrase "plea bargaining" as there is no formal system for it in the criminal justice system in England and Wales.
 - However, prosecution and defence counsel will often discuss the evidential strength and public interest merits of a case in confidential, "robing room" discussions.
 - These discussions can inform how a defendant chooses to plead to a set of charges, and whether the prosecution continues with all charges.

Finally, we did try to deal with this in our "End of Term" report (in particular para's 59 to 65), and again in your 18.06.15 email to Matt Bardo, so you may want to refer the BBC editor back to those documents.

I hope this helps. Please let me know if you need anything more.

Kind regards, Rod



Rodric Williams
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GRO

rodric.williams@GRO

From: Jane MacLeod
Sent: 25 June 2015 08:40
To: Mark R Davies
Cc: Rodric Williams
Subject: RE: Confidential and legally privileged

Thanks Mark

I don't see why we shouldn't be able to develop a 'pro forma' summary that lays out the process we go through from identification of an 'incident' through to prosecution. I'm sure this material exists somewhere.

As to the specific case in question, yet again we can't comment on specific cases, but we have to emphasise that we are under a legal obligation (and a duty to the Courts) to ensure that as officers of the Court we act appropriately. That means that we can't charge (or even threaten to charge) someone with an offence unless we have the evidence to prove beyond reasonable doubt that the relevant offence was committed. The process of acquiring that evidence can be iterative and cumulative so the fact that there is an email in May, saying we don't have evidence, and a month later we say we do have evidence, is not conclusive of anything. Further as you point out, ultimately it is a legal judgment as to whether there is sufficient evidence to make out the relevant offence.

Jane



Jane MacLeod

General Counsel
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Mobile number: GRO

From: Mark R Davies
Sent: 24 June 2015 20:43
To: Jane MacLeod
Subject: Fwd: Confidential and legally privileged

Hi Jane

Just so you are sighted on this.

I think if I can provide clear guidance on the matters below, without getting into individual cases, it will make a difference with the Panorama editor, with whom a good channel is emerging. I can't be sure but I think he is sceptical about what he is being told by his team.

Mark

Mark Davies
Communications and Corporate Affairs Director
Post Office Ltd

Mobile: **GRO**

Begin forwarded message:

From: Patrick Bourke <[REDACTED]>
Date: 24 June 2015 18:13:36 BST
To: Mark R Davies <[REDACTED]>, Rodric Williams
<[REDACTED]>, Mark Underwood1
<[REDACTED]>, Melanie Corfield <[REDACTED]>
Subject: RE: Confidential and legally privileged

Mark

It's my understanding that you're right on both points. Rod will, I think, need to craft something with CK to confirm.

Good job today.

Patrick

From: Mark R Davies
Sent: 24/06/2015 18:00
To: Patrick Bourke; Rodric Williams; Mark Underwood1; Melanie Corfield
Subject: Confidential and legally privileged

All

Panorama seems to be trying to build a case around the point Matt Bardo raised with Patrick and Angela about whether theft can be proved where there is evidence of missing money and false accounting.

I **think** the idea they may be pushing is that we:

- discover missing money through audit and evidence of false accounting
- tell postmaster this **could** amount to theft (perhaps falsely)
- offer to **only** charge with false accounting in return for guilty pleas

I think they specifically plan to link this with the case highlighted by James Arbuthnot off the evidence of Ian Henderson to the select committee.

I think they will make a connection between a statement they have around there being "no evidence of theft" in May 2006 and another soon afterwards (June) where it is said there is enough evidence of both theft and false accounting.

I guess the implication might be that we unfairly built up threat of theft to force guilty plea.

So probably two questions emerge out of this:

- can missing money and evidence of false accounting amount to a theft charge: to which I think the answer is yes but a legal opinion would be preferable to mine!
- given we would not seek to "plea bargain", how might one explain the apparent disparity between the May and June statements? Again my assumption would be that investigator passes case to legal team, which makes the

informed judgement, based on law.

Can I get a note on these points asap please and a call tomorrow at some point say around 1pm?

Thanks for all your efforts on this.

Mark

Mark Davies
Communications and Corporate Affairs Director
Post Office Ltd

Mobile **GRO**