

Notes from yesterday.  
Phil Williams initial draft overleaf.  
SKU needs some further details adding.

Notes from CMS Select Committee pre meet - 25th August

JY requested that PW and NS draft a one page opening statement, to include:

- Confusion with ICO investigation to be explained
- Why we didn't pursue anyone else
- Analogy with another type of offence (credit card fraud suggested) to explain the way in which the offence is dealt with in layman's terms
- Blagging - CB is seeking clarity on this. What is the level of criminality and who is responsible for any investigation.
- Explanation of levels of criminality
- Why is it so difficult to prove
- Mention of phone companies having to commission software to deal with this type of offence
- In terms of this particular type of offence, what has changed since?

Also to be prepared - further A4 document with lines covering potential questions and answers - PW NS & LI

- Corrupt officers (Rebekah Wade lines) - LI to provide stats on current and previous corruption jobs
- Why didn't we investigate both Coulson and Thurlbeck or others
- Is it happening elsewhere
- How many officers worked on the enquiry
- How much did it cost
- Why did counter terrorism officers investigate this operation
- Who would investigate now
- Summary of how the initial 600 scaled down to the final 8
- Prosecution strategy - salient points
- Victim strategy - salient points

**Haydon Dean - SOHQ**

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**From:** Williams Philip N - SCD11  
**Sent:** 25 August 2009 20:49  
**To:** Saleh Naz - DLS; Haydon Dean - SOHQ; Inett Lucy - DPA  
**Subject:** Going crazy now, but first very rough draft!!

**Attachments:** CMS Draft Opening.doc



CMS Draft  
Opening.doc (85 KB)

Dear all

Here is my first very first rough draft at what I hope JY is looking for ...and the damned alarms have just gone off!!!!

The first bit is my attempt at a 1 page draft opening for JY - it just goes over the 1 page!!

The rest is possible questions and answers - I have gone long to start with - true to form!!!!

Some bits in red I am asking for you to provide info, but please I would be grateful for any feedback in terms of correction of facts, points of law, not what JY would want etc.

Suppose I better leave NSY now as the alarm is still going and this might all go up in flames!!!

I will continue tomorrow and await your collective wisdom.

Many thanks

Philip

## Draft Opening

**Point to clarify** - There has been a variety of articles in the media and potentially as a consequence a level of undue anxiety created around what are in fact three entirely separate issues both in time and context. They are the Information Committee led investigation into a private investigator (Stephen Whittamore) as part of Operation Motorman between April 2001 and 2003, the investigation into the intercept activity of Clive Goodman and Glen Mulcaire in 2005/06 and the civil case brought by Gordon Taylor against News of the World commencing in October 2007.

**Our Matter** - A full report has already been submitted to CMS Committee - copy attached - outlining our role in the Goodman/Mulcaire case. Unless the committee wish that report to read out by way of opening I will summarise what I believe are the salient issues.

**Investigation strategy** - was based upon the following criteria: -

- **To prosecute for the most substantive offence** - based upon CPS advice this was S1 RIPA 2000. This simplest/clearest to present in court and had the greatest sentencing powers
- **Technical evidence** - to secure the confidence and support of victims the case would need to be proved by technical data and not potentially embarrassing revelation around conversations.
- **Case Law** - rarely used legislation and the whole issue of public interest versus privacy usually hotly contested therefore success dependant on clear, unambiguous case. Covert investigation to maximise chance of success.

### Technical challenge

Police has the full cooperation and worked in partnership with the then 5 main airtime providers. Challenging in the extreme to prove this offence is an understatement. Each company uses varying types of engineering software to manage their systems. Not designed to be used in court - integrity variable. Companies hold data for varying periods, at best 12 months. One company actually wrote new software to help us.

**Suspects** - In 2006 Police, CPS and Senior Counsel considered whether or not there was evidence against anyone else and in the light or recent concern have revisited that decision. Supported by Senior Counsel the collective belief is that when set against both the investigation and prosecution strategy there was and remains insufficient grounds to arrest and /or interview anyone else.

**Victims** - Key aspect was that any case brought should properly reflect the overall criminal conduct of Goodman and Mulcaire. It was agreed that the total of 8 potential victims would allow the court adequate sentencing powers in the event of a conviction.

**What has been achieved** - As alluded to above, the arena of public interest versus individual privacy is controversial. This investigation and prosecution has brought about absolute clarity when it comes to one aspect of that arena. If you are looking to listen to

peoples voicemails without their permission it is wrong, what's more it is a criminal offence. We now have best practise on how to prove it and you are highly likely to go to prison.

In terms of wider public protection this case has served to highlight the vulnerabilities and through our collaborative approach with mobile phone industries they have introduced a range a measures to prevent it happening again.

## Possible Q & As

### 1. 'Tapping and Blagging' - potential offences

**'Tapping'** - S1 RIPA 2000 - To intentionally and without lawful authority within the UK, intercept a communication in the course of its transmission.

Requires DPP Consent and carries a penalty of 2 years imprisonment and or fine.

Key requirement is for the interception to be intercepted before the intended recipient first receives it.

Question for Naz - If I leave a message for you and someone else listens to it, who is the victim, you or you and me?

**'Blagging'** - The Information Commissioners (IC) in their report 'What Price Privacy?' cite S55 data protection Act 1998 as the offence to cover someone who pretending to be someone they are not thereby deceives someone into giving them information.

S55(1) - A person must not knowingly or recklessly, without the consent of the data controller - obtain or disclose personal data or the information contained in personal data, or procure the disclosure to another person of the information contained in personal data. N.B. The victim is the data controller NOT the person to whom it relates!

IC and /or DPP can prosecute - penalty is a fine up to £5000

#### ***Other potential offence***

The Computer Misuse Act 1990 - S1 Unauthorised access to computer material. A person causes a computer to perform a function within intent to secure access to a program or data held therein.

Penalty - 6 months imprisonment and/or fine

#### **COMMENT**

As supported by CPS and lead counsel - S1 RIPA is not only the easiest to present in court and for a jury to grasp, but by far carries the greatest penalty and thereby in terms of **'justice being seen to be done'** (key tenant of Policing Pledge) is what we based our investigative strategy around.

### 2. Victims

#### **i) How were *potential* victims identified?**

A spread sheet was compiled using a number of sources of data: -

- The sheets recovered from the offices and home address of predominantly Mulcaire with the details of potential people of interest in various stages of completion.

- The examination of computer material recovered from Mulcaire on which he had 'computerised' his rough notes above.
- Media data, recordings.
- Telephone data records of the possible 'victims, - albeit O2 as part of their own data protection policy would not supply victim data until they had contacted victims direct and only then would pass details to police with prior approval, an example is Max Clifford.

In relation to Mulcaire it is clear from these documents that he had been engaged in a sustained (years) period of research work in various levels of completion. In many there is simply the name of a celebrity or well known figure in others there is more detail with names addresses, dates of birth, telephone numbers, DDN's, passwords, PIN numbers and scribbles of private information. On some there are names which probably relate to journalists and cash sums. (As yet unconfirmed)

It should be noted that no evidence existed to suggest that those possible journalists detailed on these sheets had knowledge of the illegal methods undertaken to supply these stories, however, it should be pointed out that in one of the recordings recovered from Mulcaire it is clear Mulcaire is giving instruction to an unknown person (possibly a journalist) on the telephone, on how to access the messages of Gordon Taylor. (As yet unconfirmed as to who this person is)

In relation to Goodman's his home and office in NOTW were searched under the authority of a search warrant and some material seized and subsequently used in the prosecution. NOTW immediately engaged their lawyers to prevent a fuller search taking place and thereafter Andrew Falk, MPS Legal Services, with support from the NTFIU and Counsel considered the merits of obtaining production orders to secure additional material that we believed might exist to show the relationship between Mulcaire and NOTW. Some material was provided, but it centered on Goodman, e.g. finance/expenses claims that in turn may have gone to pay Mulcaire etc. Despite further requests for cooperation around understanding how their internal phone system operated this was not forthcoming and therefore beyond what we had seized/been served with there was no evidence of anything wider.

## **ii) How many potential victims?**

N.B. in relation to any figures quoted what must be born in mind that the figures were part of an evolving picture right up to the trial and beyond. This was due to the fact that the material seized had to be searched and the various phone companies had varying abilities and challenges to overcome in terms of what their systems would reveal, starting with whether or not they held and/or had retained the data in the first place. Results carried significantly from being completely unable to provide any answers to having to write new software to provide some answers - e.g. orange in relation to Gordon Taylor. We do not know the true extent of how many potential victims there were.

In terms of a 'best estimate' out of what data we were able to retrieve and amalgamate the size of *potential pool of people* (when I refer to people that means we had at least a name) that *Mulcaire* predominantly *and* potentially *Goodman*, *had an interest it could be in the region of 600* individuals. Again it must be emphasised that this is a tentative figure and the data is variable in its detail and it is simply not known why it was retained or how it was used.

As commented on by the DPP *'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.'* (DPP)

**iii) How were actual potential victims identified from this pool?**

A Case Conference in August 2006 agreed that, *'from a prosecution point of view what was important was that any case brought to court properly reflected the overall criminal conduct of Goodman and Mulcaire. It was the collective view of the prosecution team that to select 5 or 6 potential victims (in addition to the 3 Royal Household ones) would allow the prosecution properly to present the case to the court and in the event of convictions, ensure that the court had adequate sentencing powers.'* (DPP)

Out of this pool of 600 plus persons of interest there were in the region of 70 - 80 who the phone companies could indicate may have had their voicemails called - the frequency of this varied significantly and by no means was this sufficient to prove the criminal offence of interception or indeed the circumstances/purpose of the call. The data alone does not even show whether or not messages existed only that the voicemail had been called.

In addition to our 3 Royal Household victims the following criteria was applied to further refine the 70 -80 pool: -

- Frequency and duration of calls
- Strength/integrity of available data - which varied between the airtime providers involved
- Availability of any other corroborating evidence
- That the overall number of victims was a representative sample of the mobile phone (airtime providers) industry as a whole to ensure proportionality in terms of business reputation and continuity and willingness to give evidence
- That the potential witness was representative of the background/standing in society/walks of life within the potential pool of victims
- Willingness of the victim to give evidence

Some of the people we approached, e.g. Boris Johnson, were unwilling to take part in a judicial process and therefore the final list of people who we believe to be 'victims' based upon all of the work carried out are the 8 people listed in the table below: -

Victim	Role	Defendant
Helen Apsrey	Private Secretary	Goodman/Mulcaire
Jamie Lowther Pinkerton	Private Secretary	Goodman/Mulcaire
Paddy Harverson	Royal Household Press	Goodman/Mulcaire
Max Clifford	PR Consultant	Mulcaire
Andrew Skylet	Management & PR Consultant	Mulcaire
Gordon Taylor	CE of Football Association	Mulcaire
Simon Hughes	MP - Lib Dem	Mulcaire
Elle Macpherson	Model	Mulcaire

### 3. Informing Victims

On the 24th August 2006, following a case conference that set the strategy for the optimum means of proceeding to prosecution the SIO set out his strategy for dealing with potential victims.

In broad terms it stated that anyone on our spreadsheet described above, who had had their voicemail called by our suspects would be informed. In terms of by who, when and how the strategy was to be: -

- The police would inform as soon as practicable those that fell into the following categories;
  - Royal Household
  - MP's
  - Police
  - Military

- The rationale for this distinction was one of potential 'National Security Concern.'

- In addition briefings of the emerging security risks in relation to mobile phone voicemails were given to SCD14, The Security Service, Cabinet Office, The Royal Household and SOCA.

- Those 'victims' not in the above categories should be informed by their respective airtime provider. In terms of timing this was not an immediate action, but ongoing bearing in mind the desire to not unduly prejudice any court case.

- At the time the strategy recognized that there was still extensive research to be done with the phone companies to identify what the full extent of victims might be and therefore as outlined under the section above '*How were victims identified*' this could be a vastly bigger group of people and in reality we would probably never know the true scale. This strategy was therefore seeking to alert potential past victims in a proportionate matter without causing undue alarm (i.e. contact via Phone Company as opposed to police) and set in motion measures within the overall mobile phone industry to prevent it happening in the future.

#### 4. Measures to protect - phone industry action?

As part of the above process a meeting between police and Jack Wraith of the Mobile Industry Crime Action Forum was held in August 2006 to agree protocols around this activity. Individual agreements with O2 and Vodafone reinforced this position and in particular at the time of the trial a fully coordinated media strategy between the mobile phone industry was in place so that public concern could be reassured and reminders of good practice reinforced.

\*Philip - fill in detail from recent Phone company letters

\*Lucy - quotes/media releases at the time?

#### 5. Mulcaire's income?

Recovered from the addresses searched in relation to Mulcaire were a number of contracts between Mulcaire and the News of the World, some show agreements to pay Mulcaire a wage of £104,988 per year. These are dated 1st July 2005 and July 03 and at least one is signed by Greg Miskew of the NOTW. In addition to these contracts other financial documents recovered highlighted individual payments to Mulcaire from the NOTW for instance in the case of Gordon Taylor an agreement to pay £7000 once a story had been printed. (All used by counsel in the criminal prosecution)

#### 6. Suspects - Why not others?

*i) In general terms* - In 2006 Police, CPS and Senior Counsel considered whether or not there was evidence against anyone else and in the light of recent concern have revisited that decision. Supported by Senior Counsel the collective belief is that when set against both the investigation and prosecution strategy there was and remains insufficient grounds to arrest and /or interview anyone else.

*ii) Coulson* - the above applies and he was listed as named person in Mulcaire's 'pool of persons of interest and as Coulson has already made public to the CMS there is an indication that his voicemail may have been called by Mulcaire's phones on more than one occasion. It is not known why or for what purpose and it is not known whether an interception took place.

#### *iii) The 'Neville' e-mail*

In relation to the e-mail allegedly sent by Ross Hindley on the 29th June 2009 I would make the following observations: -

- The e-mail from Ross Hindley dated 29th June 2005 was found as a paper copy at Mulcaire's home address in Alberta Avenue on the 8th August 2006. This

document was then at least 14 months old and our 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, but it would have been prior to the date of the e-mail.
- In relation to trying to secure telephone data to support any alleged interception we already knew from Orange (Gordon Taylor used Orange) that they could only provide current data which applied to a 3 month period in 2006. Therefore there would be no data for the period in June 2005 or before. Orange had to write specific software to be able to analyse and identify details of potential interceptions for the period in 2006. This would not be possible for 2005.
- The other companies held data historically for between 6 months and a maximum of 12 months. Therefore the same would apply to them if it became relevant in terms of trying to look back to June 2005 or earlier.
- There was nothing to say that Neville had actually seen the document. Even if the person 'Neville' had read the e-mail, that in itself is not an offence and therefore there was no evidence to link him to a conspiracy to intercept communications.
- There is no clear evidence of the identity of 'Neville' - it is supposition that it refers to Neville Thurbeck or indeed any other Neville within NOTW or elsewhere.
- Mulcaire's computers were seized and examined, nothing in relation to Neville or Neville Thurbeck was indicated.
- Given the robust stance of NOTW as soon as the matter became public it would not be unreasonable to believe that anyone questioned/interviewed in relation to the whole investigation would do anything other than exercise their right of offering 'no comment.' Both Mulcaire and Goodman exercised this right the latter being advised by the NOTW legal team.
- Under the criteria of not seeking to use anything that contained reported conversation (to preserve the sensitivities of victims/ third parties), the e-mail would not have been chosen as part of the evidence put forward for Gordon Taylor in the prosecution case, but it was part of the sensitive unused material.

DPP has recently asked senior counsel to revisit this rationale and reports that, *'based on his knowledge of the investigation and prosecution strategy it appears to him unlikely that he would have advised the CPS that further investigation 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 Thurbeck. He has also advised me that*

*based on his current knowledge and understanding of the case his advice would not be any different today.'*

**7. Technical challenges** - victim not reveal details of contents of messages or who between - privacy

**8. Analogy**

Bank or CC analogy fraud - case example - Nigel Moore

**9. Previous 'corruption'**

\* Lucy - other cases?

**10. Civil Actions?**

GT only one for this case

Naz - do we want to say number of enquiries to date and how we are responding?

**11. Why SO13/CTC**

\* Lucy Press lines at time and recently?

**12. How many officers?**

**13. Cost?**

**14. Keith Vaz - Q& A**

**Questions** - Following contact between Stephen Rimmer's office and Laura in your office this afternoon, I attach some questions on which we should be grateful for urgent advice this afternoon so that Ministers can be more fully briefed. I hope that it goes without saying that there is no desire or intention to interfere with operational matters.

- In terms of informing people that their phones have been hacked, mentioned at the end of your statement on 9 July, how is this going to be done, what numbers are involved, and what is the timescale?
- What evidence on which individuals was put to the CPS in the Football Association / Gordon Taylor case?
- What is the Met's reaction to the "backhander" allegations?

*Answers* - In response to your request below, I provide the following response in the same order, for ease of reference;

1. I am ensuring that the MPS has been diligent, reasonable and sensible, and taken all proper steps to ensure that where we have evidence that people have been the subject of any form of phone tapping (by Clive Goodman or Glen Mulcaire) or that there is any suspicion that they might have been ; that they have been informed. This process could take some time. I am not prepared to release any names of particular individuals as it is a matter for those persons to reveal, should they wish, if they have been contacted by Police.

2. Gordon Taylor was classed as one of the 'victims' in the Glen Mulcaire criminal case, when evidence supported that his phone had been intercepted unlawfully. As a result, the evidence was provided to the Crown Prosecution Service and Senior Counsel for consideration and this formed part of his indictment at court, to which Glen Mulcaire pleaded guilty.

3. The MPS is surprised and disappointed at these allegations. I believe this refers to Rebekah Wade's historical comments to the House of Commons Select Committee in March 2003, when she stated her newspaper had paid Police Officers for information. There is absolutely no suggestion that these allegations are relevant in any way to the Clive Goodman and Glen Mulcaire case.

**15. Is it happening elsewhere/now?**

- We have no evidence to say so.
- Revert to what we have achieved and what mobile phone industry have put in place to stop

**16. What did we achieve overall?**

We achieved a significant step forward in terms of potential intrusion on privacy in that: -

- **Case Law** - It has now been firmly established for the first time that this type of behaviour is unequivocally unacceptable. What is more, it is a criminal act and you will go to prison if you do it. I believe that is a powerful achievement, in what is often viewed as a murky and frequently contested arena.
- **Protection of the Public** - Through the close cooperation and involvement of the airtime providers this type of intrusion has been aired in public and they have brought in a range measures to prevent it in the future. The wider, greater need has thus been addressed in terms of personal intrusion and indeed the potential risk to national security.