



JUDICIARY OF
ENGLAND AND WALES

IN THE CENTRAL CRIMINAL COURT

THE QUEEN

-v-

DENIS MACSHANE

23 DECEMBER 2013

SENTENCING REMARKS OF MR JUSTICE SWEENEY

You are aged 65 and of positive previous good character.

You have pleaded guilty to an offence of false accounting which encompasses a total of 19 expenses claims made by you in the period from 6 January 2005 to 11 January 2008 when you were a Member of Parliament. The offence thus covers four successive financial years - 2005 to 2008. In each instance you produced and made use of an invoice purporting to come from an organisation called the European Policy Institute ("EPI" for short) which invoices you knew to be false misleading or deceptive in a material particular in that each represented that EPI had been commissioned by you to carry out research and translation services; that you were liable to pay EPI for the provision of those services; and that you had been invoiced in respect of the services by one EJ Matthews on behalf of EPI. The reality was that you were the person behind EPI and that you created each invoice yourself – signing the invented name EJ Matthews on each, and even going to the length of using 9 different variations of your own name in order to minimise the risk of suspicion by giving the impression that the invoices had been addressed to you by different individuals at EPI with whom you had no connection. In the result you obtained, by way of cheques or bank transfers paid to EPI, a total of £12,900 from the House of Commons authorities. The money was eventually paid back.

The Prosecution have accepted your written Basis of Plea. It is in the following terms:

- “(i) ...the false invoices submitted were intended to recoup some expenses genuinely incurred in respect of the defendant’s business as a Member of Parliament;
- (ii) there was no intention on the part of the defendant to make a financial profit from the submission of these invoices;

- (iii) the Crown accept that there was in fact no such personal profit in the defendant's case;
- (iv) The defendant's record keeping was chaotic and the reclaiming of expenses was not regarded by him as a priority, not least since in the period during which such invoices were submitted he was under significant personal pressure"

I make clear that I will sentence you upon that Basis.

It follows that your case is different to that of other members of the legislature who have been sentenced for offences arising from what has become known as the "expenses scandal". The Prosecution accept that each of the others was sentenced upon the basis that his claims were wholly false, whereas you must be sentenced upon the basis that there were other genuine expenses that you had incurred and paid in broadly the same sums and which you could have reclaimed legitimately in the proper manner, but which you chose instead to recoup by dishonest false accounting (hence the reference in your Basis of Plea to no personal profit).

However, notwithstanding your Basis of Plea, the dishonesty involved was considerable and was repeated many times over a long period.

As a Member of Parliament you were entitled, within prescribed rules, to claim for expenses incurred by you in the course of fulfilling the responsibilities of your office – in particular in relation to office and surgery accommodation, equipment and supplies for the office and surgery, work commissioned and bought in services (including interpretation, translation and research services), communications and certain travel and staff related costs. The relevant rules were set out in a document known as the Green Book, which emphasised that each Member of Parliament was responsible for ensuring that their claims were legitimate, above reproach and in accordance with the rules. For claims of less than £250, in effect the word of the Member of Parliament was good enough. Claims for items in excess of that sum (such as each of the relevant claims in your case) had to be supported by documentary evidence. In particular, a Member of Parliament could request direct payment to the supplier by submitting a form C2 and accompanying invoice. There was a different form and process for reimbursing monies already paid to a supplier.

When you submitted your first dishonest claim on 7 January 2005 you had been a Member of Parliament for more than a decade, and had been the Minister for Europe since 2002. You submitted a further three dishonest claims whilst still the Minister for Europe, and the remaining 15 dishonest claims after your return to the Back Benches following the General Election in May 2005.

You must therefore have been aware throughout that it was an essential feature of the expenses system then in operation that Members of Parliament were invariably treated as honest trustworthy people, and that the unwritten assumption was that only claims for expenses genuinely incurred in

accordance with the rules would be made, and using genuine documentation. Yet you acted in flagrant breach of that trust.

You had set up EPI in 1992, and opened a bank account in its name with yourself as the signatory. Evidence from your brother indicates that you set up EPI in order to publish books and run conferences, but that after your election to Parliament in 1994 it became dormant.

In relation to each dishonest claim you created an invoice to yourself from EPI for costs incurred in the provision of research and translation. Each invoice bore the address 100 New Kings Road (which was in reality a postal address and no more) and purported to be signed by the General Manager EJ Matthews. Each invoice was submitted with a form C2 in which you declared either "I certify that the expenses shown above have been wholly exclusively and necessarily incurred on parliamentary business" or (after the form changed in mid 2005) "I confirm that the payments requested are in respect of costs incurred wholly exclusively and necessarily in performance of my Parliamentary duties". The relevant funds were then sent, whether by cheque or BACS transfer, to EPI. To state the obvious, the Parliamentary authorities had no idea that they were, in reality, sending the money to you or that you were reimbursing yourself from it. There was, after all, a different form and process for reimbursement claims.

It is your case that EPI had continued to function after you became an MP; that you had first used the name 'EJ Matthews' as a nom de plume long before the 19 claims, because you thought that being associated with a pro-European think-tank might hinder your Parliamentary career within the Labour Party; that you had used EPI when publishing material on Europe and organising related events (some of which had been requested by the then Prime Minister); that you commissioned research and translation services from third parties and on an ad hoc basis and paid for them in cash; and that you did not keep receipts but instead tried to guess the amount spent and then aggregated the costs and submitted a claim. However none of that justifies the fact that your dishonesty was considerable and repeated many times over a prolonged period.

As the Prosecution put it in Opening, you were an MP (and, I repeat, a Minister at the time of four of the claims) and knew that you were required to act with probity and transparency in the making of expenses claims; you deliberately created misleading and deceptive invoices and then used them in order to procure payments of public money; by doing so proper scrutiny of the legitimacy of the expenditure and the amount of the expenditure was avoided – indeed made impossible; the deception used was calculated and designed to avoid suspicion falling on your claims; and those claims were intended to mislead the House of Commons authorities as to the true nature of the expenditure and the true identity of the supplier of the services.

On your behalf Mr Milliken-Smith QC rightly concedes that your offence crosses the custody threshold, but submits (in short) that given the difference between your case and those of the others who have been sentenced already in

relation to the expenses scandal, a significantly lower starting point is required; that the sentence should be further reduced to reflect a number of mitigating features and then full discount for your plea of guilty; and that looked at overall an immediate loss of liberty would be disproportionate - rather, he submits, a suspended sentence is sufficient.

In furtherance of those overall submissions Mr Milliken-Smith placed reliance, amongst other things, upon the following:

- (1) The Basis of Plea – and in particular the fact your offence was not committed out of greed or for personal profit (in the sense that I have already described)
- (2) Your positive previous good character – as demonstrated by your years of otherwise distinguished Trade Union and public service, and as attested to in the numerous character testimonials before the court from across the political spectrum and beyond – all of which I have taken into account.
- (3) The view of the Standards and Privileges Committee of the House of Commons, expressed at paragraph 54 of its Report, which (having noted your undoubted expertise on European Affairs and engagement with European matters before the House) accepted that your motivation in making the claims was to maintain that expertise, to promote the work of an All-Party inquiry, and to carry out informal work on behalf of the then Prime Minister – albeit that that view must be seen in the context of the strong criticisms made at paragraphs 45, 47-49 and 57-58 of the Report including the observation that yours was “the gravest case which has come to us for adjudication, rather than being dealt with under the criminal law”.
- (4) The fact that the claims were made at a time of turmoil in your personal life when you buried yourself in work – in particular after your divorce in 2003 (albeit that was some considerable time before the first claim in January 2005), the tragic death of your daughter Clare in an accident in March 2004 (albeit that was nine months before the first claim), your return to the Back Benches in May 2005, the death of your mother in 2006, and the sudden and to an extent unexpected death of Carol Barnes (your former partner and Clare’s mother) in March 2008.
- (5) The fact that the offending resulted in the loss of your employment as a Member of Parliament, and the loss of your reputation – albeit that that is entirely your own fault.
- (6) The fact that the false claims were made between five and almost nine years ago, that since your part in the expenses scandal has been revealed you have been subject to prolonged criticism and pressure, including investigations by the Parliamentary Commissioner, the Standards and Privileges Committee and the Police. Thus you have had a prolonged period of public humiliation, aggravated by the fact that at first you were told that you would not be prosecuted, and then that decision was changed resulting in your being sentenced long after the others.
- (7) The repayment of the monies.
- (8) Your remorse as reflected in your guilty plea, for which full discount should be awarded given that you did not dispute the facts in interview

(albeit that you did not admit dishonesty), indicated as much again at the Magistrates' Court, and at the preliminary hearing at this court on 27 September (albeit again not admitting dishonesty), and eventually pleaded guilty at the Plea and Case Management Hearing on 18 November.

In the end, sentence in each case of this type necessarily depends on its own facts, but set against the background that the Court of Appeal made clear in respect of your former colleague David Chaytor that the Sentencing Council's Definitive Guideline on Fraud is of little relevance. In your case, you have no one to blame but yourself. However chaotic your general paperwork was, there was deliberate, oft repeated and prolonged dishonesty over a period of years - involving a flagrant breach of trust and consequent damage to Parliament, with correspondingly reduced confidence in our priceless democratic system and the process by which it is implemented and we are governed.

Balancing the aggravating features with the Basis of Plea I identify a starting point of 12 months' imprisonment. I reduce that by four months to reflect (subject to the qualifications that I have identified) your other points in mitigation. In my view yours was plainly not a plea at the first reasonable opportunity, but rather one which should attract a discount of 25%, thus reducing the sentence to one of 6 months imprisonment. In my view, and in all the circumstances, particularly given the deliberate and the prolonged nature of the dishonesty involved, it is not appropriate to suspend that sentence.

Stand up please. Denis MacShane I sentence you to 6 months' imprisonment. If not released before, you will serve half that sentence.

Finally you will pay costs of £1500 – all of which is to be paid within two months.